

HM Inspectorate of Probation



Inspecting the Criminal Justice System: *Starting from First Principles*

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INSPECTING THE CJS: *Starting from First Principles*

EXECUTIVE SUMMARY:

1. At the time of writing, Government policy is moving strongly in the direction of replacing current inspection arrangements by creating a single Inspectorate for the Criminal Justice System (CJS), as one of potentially four main Inspectorates for public service as a whole. We in HMI Probation not only support the idea of a single Inspectorate for the CJS, we actually advocated it in 2003.
2. But we believe that the major overhaul desired by Government can only be achieved in practice by a radical approach, one of truly *Starting from First Principles*.
3. The approach we propose involves starting with what we see as two key *first order* decisions: definition and budget allocation. We think that with any public service, including criminal justice, there is a distinction to be made between providing that service and scrutinising it, i.e. between *provision* and *scrutiny*. The *first order* decisions are:
 - a) to define more precisely than hitherto what the *scrutiny* function aims to achieve, and alongside this
 - b) to decide how much of the total budget of that public service should be spent on *provision* of that service and how much on *scrutiny* of it.
4. The *second order* decisions replicate these first two decisions, but at the next level of detail. Hence these are:
 - a) Within the overall *scrutiny* function, defining the separate but complementary roles of *inspection*, *investigation*, *audit* and *performance management*, and also
 - b) deciding what should be spent on each of them.
5. These budget decisions have to be made at the start so that an explicit policy can rightly be established about what is 'proportionate'. We support the idea that scrutiny should be proportionate, but we reject the regularly expressed, but unevidenced, currently fashionable assertion that inspection – uniquely among other *scrutiny* functions – currently imposes a disproportionate 'burden' on the services it inspects.
6. Therefore we say that a decision should be made 'up front' as to what is proportionate, and expressed in budgetary terms as outlined within this paper. This idea may not at first sit comfortably with existing Treasury policy, but we believe that it should be considered as a means of tackling the current myths about both the costs and the 'burden' of inspection.
7. Having distinguished *inspection* from the other *scrutiny* functions, there is still a range of purposes for independent inspection, and each of these purposes needs to be identified and defined, some of which might themselves need a specifically separate budget allocation to be made.

8. Having thus defined the specific contribution that independent inspection can and should make to improving public service we then describe how the proposed Justice Inspectorate could work in practice if this approach were adopted. With its allocated finite budget it would focus on *whole processes* within the CJS and provide independent measurement of the quality of service received by *users* – victims, witnesses, defendants, sentenced offenders and, ultimately, the taxpayer.
9. Accordingly it will be a key task of the Chief Inspector to ensure that the new Inspectorate delivers best value to the three CJS Ministers, maximising the total quality and quantity of inspections in return for the money allocated and spent for this purpose.
10. **Part One** of this paper outlines a sketch of our proposed *Starting from First Principles* approach (**pages 3 – 13**).
In **Part Two** we discuss some related issues and questions (**pages 14-19**):
 - The name of any future single Inspectorate
 - Why central direction of a locally delivered service does need to be inspected
 - How to keep inspection proportionate
 - *Good liaison* (not Consultancy) as an enhancement to effective inspection practice
 - The boundary between *inspection* and *performance management*
 - How the focus of inspection should be on the quality of the service being provided to the 'users' and not on how the service is organised
 - What a 'risk-based' approach to inspection should mean – but it should NOT mean inspection 'holidays or breaks'
 - When unannounced inspections add value, and when they don't
 - The difference between *performance standards* and *inspection criteria*
 - How in practice the behaviour of individual postholders is more important than formal structures and accountability arrangements in enabling Inspectorates to make their contribution effectively
 - Independence of Inspectorates: We believe that Ministers and the public will be best served by Inspectorates that are independent in two respects:
 - Not only is their *scrutiny* function 'independent of service providers'
 - But also they are a source of independent advice to Ministers

PART ONE: OUR PROPOSAL FOR STARTING FROM FIRST PRINCIPLES

Purpose – to sketch an outline proposal during a current debate:

11. This paper has been written in the context of a current debate about what might be the best future arrangement for inspection in the CJS.
12. There are two drivers of this proposed reform. One is the drive by the three CJS departments to create a more 'joined-up' CJS generally. In this context it is logical to seek to make the inspection arrangements for the CJS also more 'joined-up'. The other driver is the determination to achieve wider reforms in the public sector, a policy direction led from within the Cabinet Office, which includes a stated desire to reduce the 'burden of inspection' on public services by reforming inspection arrangements, including by reducing the total number of Inspectorates.
13. We strongly support the idea of reforming inspection arrangements to ensure that they contribute more effectively (and efficiently) to improving public services. (Indeed, in 2003 this Inspectorate first made the case for a single Inspectorate for the CJS.)
14. The business case for doing this is quite straightforward. There is a clear need to get the CJ System to operate more effectively as a joined-up system, with an increase in the joining up of how performance is measured. As part of that process, the inspection arrangements also need to be joined-up, and it is logical to do this by creating a single Inspectorate for that purpose.
15. We furthermore argue that the design of new arrangements for inspection in the CJS should, in a fundamental way, be *Starting from First Principles*. Hence we sketch our outline proposal for how to do this.

Focusing on the desired destination:

16. The aim of this exercise is to get us to a new destination, one in which inspection in the CJS contributes as effectively as possible to improving service and is also good value for money. What route should we take to get to that destination?
17. A quick scan of the complex and idiosyncratic nature of the present inspection arrangements as a whole quickly leads one to conclude that we should not start from where we are now. Instead we should start with the **destination** i.e. we should decide first **where we want to be**.
18. This is particularly important as we need to remember that this drive for reform takes place partly as a component of a bigger programme to reform inspection arrangements, not just for the CJS but for public services generally.

The two *first order* decisions:

19. The approach we propose involves starting with what we see as two key *first order* decisions: definition and budget allocation.
20. By definition, we take the view that with any public service, including Criminal Justice, there is a need to make a fundamental distinction between providing that service and scrutinising it. *Provision* includes everything to do with making that service happen in the first place, including organising to make it happen. *Scrutiny* includes everything that is done to check to ensure that that service is happening as it should. *Inspection* is just one of the activities that comes under the heading of *scrutiny*, as will be discussed further below.
21. Having made this distinction between *provision* and *scrutiny*, we are now able to outline those two *first order* decisions that need to be made:
 - a) to define more precisely than hitherto what the *scrutiny* function aims to achieve, and alongside this
 - b) to decide how much of the total budget of that public service should be spent on *provision* of that service, and how much on *scrutiny* of it.
22. Why do we need to do this? Because in the current climate there is a need for a fundamental, open and transparent way of dealing with the issue of 'keeping scrutiny in proportion'. We accept that historically there has been a tendency for inspectors, auditors and performance managers to increase their activities because they can always identify new lines of inquiry that need to be pursued – the list of potential performance measures is endless! On the other hand, many have expressed a growing concern in recent years that the amount of resource spent on *scrutiny* – and on *inspection* in particular – has become (in the current parlance) a disproportionate 'burden' on public service.
23. Politically this latter view has gained quite a groundswell for a combination of reasons, and thereby attracted the active attention of the Cabinet, the Treasury and the Office for Public Service Reform (OPSR). It is right that this issue be examined. However, there is no benchmark on which to rest any judgement on what might be considered to be proportionate. Because so little work has been done hitherto on the costing of various scrutiny functions, including inspections, there is very little evidence on which to base the current fashionable assertions about inspection being a 'disproportionate burden'.
24. Accordingly, we propose a powerful, open and transparent way forward, albeit one that does not readily sit comfortably with existing Treasury policy. We believe that a key *first order* policy decision at the start of the process is to decide what proportion of a public service budget should be spent on *scrutiny* of it as distinct from *provision* of it. Why?
25. We observe that a large proportion of the electorate are rightly concerned about public services, and about whether or not they are doing a good job.

And we ask: For every pound of their money that they spend on a service, how many pence do they think should be spent checking on whether or not it is doing its job properly? We think that any figure under five pence in the pound is not going to sound disproportionately high to most taxpayers, who want to ensure that the other 95 pence is being well spent. Yet we are confident that the cost of *scrutiny* in general, and of *inspection* particularly, can be contained at a lower proportion than that, a point we return to later.

26. For now, we need to move on from the *first order* decisions to the *second order* decisions. This is on a similar principle, but at the next level down in terms of detail. This requires the defining of the separate but complementary roles of *inspection*, *investigation*, *audit* and *performance management* that are all within the overall *scrutiny* function. When defined well, they each make separate but complementary contributions to the overall purpose of checking on behalf of Ministers (acting in turn on behalf of the taxpayer) that a public service is doing what it should be doing.
27. Clear definition will not only ensure that the functions do not overlap with each other unnecessarily, but will also provide the necessary basis for budget allocation, because for accountability reasons some of these functions are often undertaken by separate organisations. Relating this to our subject matter here, it in particular allows a policy decision to be made on precisely what proportion of a public service budget should be spent specifically on *independent inspection*.

Distinguishing the Scrutiny Functions

28. We propose that the following core functions of scrutiny need to be identified and distinguished:
- **Performance Management:** This is the public service organisation itself monitoring and measuring its own performance so that it can give its own account to the taxpayer, and even more importantly provide a basis for continually improving its own performance.
 - **Audit (both internal and external):** Audit gives assurance to the public that public money is being properly spent and also scrutinises an organisation's arrangements to secure the best use of resources (i.e. value for money).
 - **Independent Investigations:** Recourse to independent investigation is necessary when complaints cannot be resolved within the organisation, or when incidents arise which cause sufficient public concern.
 - **Independent inspection:** This focuses on the safe and proper delivery of services and evaluates impact on *service users*, for the key purpose of enabling improvement in those services. It will be seen that further below we go into more detail about distinguishing between '*primary purpose of service*' and '*essential pre-requisites in delivering service*'.
29. Additional Note: The unattractive term *service user* is difficult to avoid when identifying and discussing roles within the CJS. The only true 'customer' of the CJS is the taxpayer, but the recipients of specific CJS work, for example sentenced offenders, are most certainly neither

customers nor clients. Even victims and witnesses, who are rightly seen much more as similar to 'customers', do not fully meet the customer analogy. Hence when discussing roles in CJS we tend to need to identify specific recipients of specific services, and when discussing all of those people together the convention has been growing of referring to them as *service users*.

30. Hence in our overview of the different scrutiny functions we can see that:
- *Performance Management* is internal to the organisation, and the benefits it achieves for the taxpayer are (or should be) accountability and continuous service improvement.
 - *Audit* is (historically at least) half inside and half outside the organisation because of the traditional split between internal and external audit. The benefits to the taxpayer are assurance and a contribution towards service improvement.
 - *Independent investigations* provide assurance to the public and make a contribution towards service improvement in terms of helping organisations learn from mistakes.
 - *Independent inspections* provide a measure of assurance, and help the organisation improve the service it is providing to its service users.

Table 1: Overview of the different key scrutiny functions

Scrutiny function	Internal or external?	Benefit to taxpayer
<i>Performance management</i>	Internal	Accountability, and continuous service improvement
<i>Internal Audit</i>	Internal	Assurance, and a contribution towards continuous service improvement
<i>External Audit</i>	External	Assurance and a contribution towards continuous service improvement
<i>Independent investigation</i>	External	Assurance, and enabling service to avoid repeating mistakes
INDEPENDENT INSPECTION	External	Assurance, and enabling service to improve its provision to service users

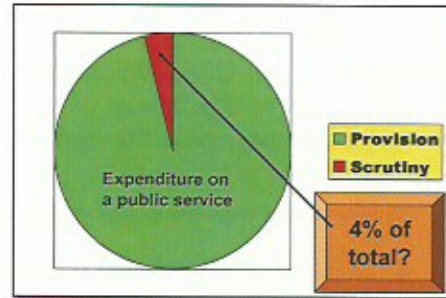
31. We say very little more about *performance management*, *audit* or *investigation* in this paper as this is not our aim here. We have simply needed to sketch out the other key *scrutiny* functions in order to help us identify what does and does not lie within the boundary of *independent inspection*. The rest of this paper will focus specifically on the role and function of *independent inspections*, although even that has more than one layer as we shall see.

32. Before doing so, however, we need to complete our discussion of the *first order* and the *second order* decisions by means of an illustration. One policy option for turning these ideas into practice would be to make a resource allocation decision along the following lines:

33. For every one pound we spend on the CJS we suggest that the taxpayer consider spending very approximately one penny on *performance management*, one penny on *audit* (to be split between internal and external audit), one penny on *independent investigation* and one penny on *independent inspections*. These figures are given mainly to give an indicative illustration of our strategic point, rather than as a detailed proposal, and indeed we recognise that hypothecating a budget for internal performance management would be problematic in practice.

34. Nevertheless our point is to highlight that with that approach we would be spending 96 pence in the pound on *provision* of a CJS, and just four pence in the pound on *scrutiny* of it – hardly an excessive ‘burden’ one might think. Of that, less than one penny in the pound would be spent on *independent inspection* – even less of a disproportionate ‘burden’.

How much on Scrutiny?



35. But in fact we spend much less even than that at present. We know this because in the year 2003/2004 the total expenditure on the CJS was in the order of £22 billion, and the budgets for all the CJS inspectorates total about £20 million. The amount currently spent on *independent inspection* in the CJS is thus **less than one-tenth of one percent** of the total CJS budget. The point here is not to argue as to what that precise figure should be, but to illustrate:

- a) how the issue of so-called ‘disproportionate burden of inspections’ can be approached, and
- b) how to achieve the potential additional benefit of clarity of role and function, which could then be carried into the future with confidence.

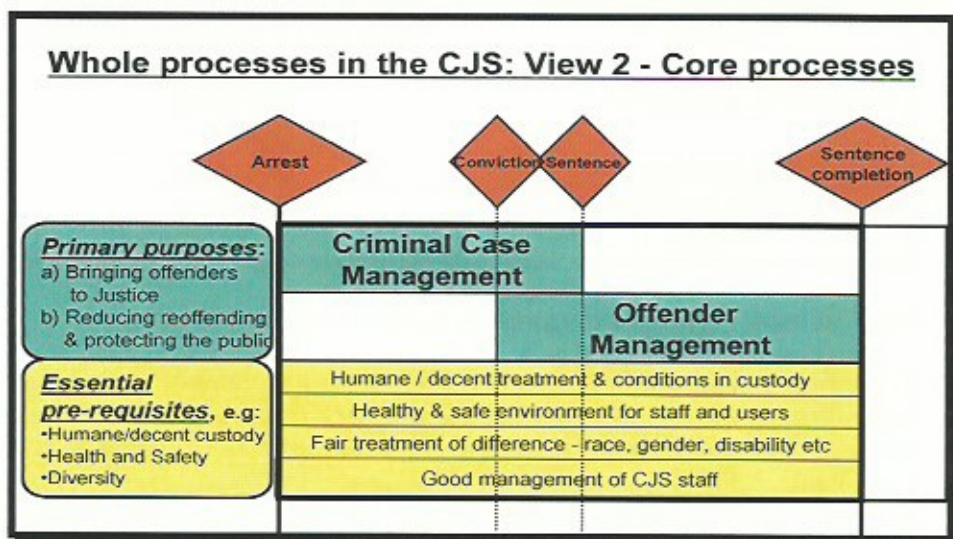
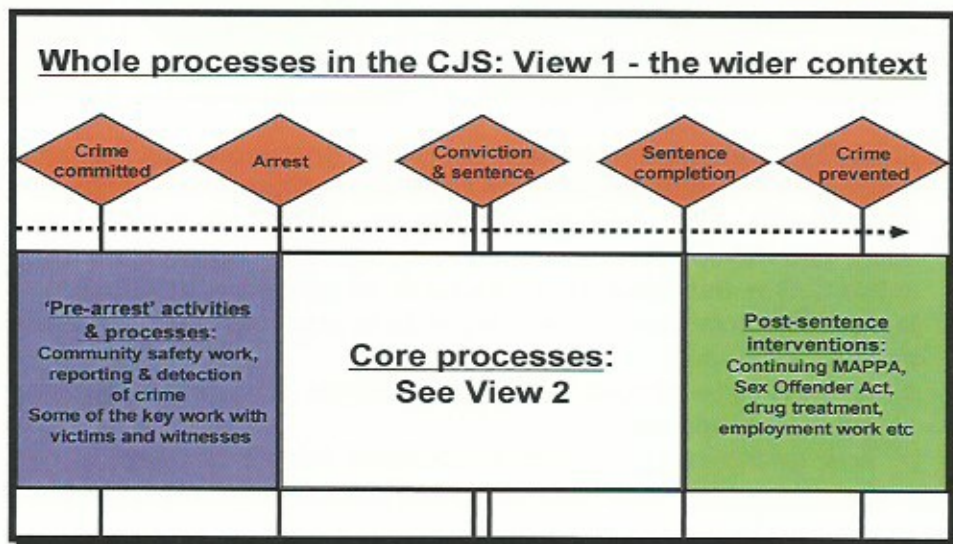
Table 2: Overview of illustrative resource allocation:

Activity	Pence per £ of total service budget
PROVIDING THE SERVICE	96 pence
<i>Performance management</i>	One penny
<i>Audit</i>	One penny
<i>Independent investigation</i>	One penny
INDEPENDENT INSPECTION	One penny
TOTAL	£1

Two (at least) types of inspection subject-matter:

36. It might be thought that having narrowed the scope of independent inspection down to ‘*safe and proper delivery of services*’ and ‘*impact on service user*’ and ‘*to enable service improvement*’ this would have given us something sufficiently specific to work with. But in fact experience, and reflecting on that experience, shows us that under the heading of inspection can be distinguished at least two separate major types of inspection subject-matter. The two areas of focus are:

- a) *Primary purpose of service:* In the case of the CJS the primary purposes of the service outlined in the CJS Strategy published in 2004 are to bring defendants to justice swiftly and fairly, and to reduce crime and protect the public. Hence this type of inspection focuses on whether these purposes are being achieved.
- b) *Essential prerequisites to delivering that service:* What else must the CJS do well with its service users as an *essential prerequisite* to achieving these primary purposes? A prominent example of this is to hold its prisoners in decent conditions and to treat them humanely, the core focus of the current HMI Prisons inspection programme.
37. We offer the following two charts to illustrate our understanding of how this applies to the CJS. We discuss the subject of *whole processes* later in this paper, but at this stage the two charts, particularly 'View 2', illustrate the distinction between the processes aiming to achieve the CJS's *primary purposes*, and those aiming to achieve some of the *essential prerequisites*:



38. In relation to the inspections with these two types of focus perhaps an analogy can be made with two other classic scrutiny exercises: a Performance audit and a Health and Safety audit. Both exercises make essential contributions to the life of the organisation: a Performance audit is about whether the organisation is achieving its *primary purpose*; the Health and Safety audit is checking to ensure whether or not one of the *essential prerequisites* are also properly in place.
39. We believe that an understanding of this distinction between *primary purposes* and *essential prerequisites* would enable some other key decisions to be made about the potential future Justice Inspectorate. How to locate the very important inspection work undertaken by HMI Prisons is currently a subject of lively debate, but by our definition it would be located under the heading of *essential prerequisites*. The same heading could in principle also include additional operational services such as the treatment and conditions of managing sentenced offenders in non-custodial settings, and also organisational issues such as diversity, and the recruitment and code of conduct standards by which CJS staff are managed across the country. There is potentially a very long list of topics that could be inspected under this heading, so how would this be managed in practice?
40. One of the merits of the budget allocation approach we have outlined is that establishing a fixed finite budget first means that hard choices have to be made about which inspection topics should be prioritised. We would expect a continuing desire by the Ministers and the public that someone independent continues to look inside total institutions (including some outside the CJS) on our behalf in order to assure us that people there are being treated decently. But many of the other topics – some that *'it would be good to inspect if we had the money'* – are unlikely to take priority over *primary purpose* inspections. Hence the fact that the budget would be finite would mean that many of them would in practice simply not be done – a perfectly proper position to be in.
41. To complete the preceding point, we recognise that there are problems with locating the current work of HMI Prisons in **organisational** terms in relation to the potential Justice Inspectorate. By our definition above, the inspections undertaken by HMI Prisons come within the *essential prerequisites* category, raising the question of whether or not this work should be located organisationally within the potential new Inspectorate.
42. On the one hand, if HMI Prisons stays outside the Justice Inspectorate, we appreciate that at first sight it may appear that one of the primary aims of Government to tidy up inspection arrangements will already appear to have failed, leaving an apparent anomaly. But on the other hand there are bigger problems with putting it inside the Justice Inspectorate. This is as much about budget allocation as it is about reporting accountability. Both of these matters should be managed at Ministerial level, to avoid the problems of a Chief Inspector having to decide on his or her own account about what should be spent on *primary purpose* and what should be spent on inspecting *essential prerequisites*.

43. One option could be to pursue the analogy with Health and Safety, where currently the Health and Safety Commission has inspectors that exercise a function across a range of different areas of service delivery. Another analogy is with the role of the Food Standards Agency. In a similar way, the current HMI Prisons inspection programme goes across and outside its prime relevant service delivery area, the CJS e.g. with Immigration Removal Centres. Hence there is a case for deciding that this work could be located with an independent commission charged with the specific purpose of inspecting the treatment and conditions of people detained in (all types of) custodial institutions. It is true that there would be some overlaps with the Justice Inspectorate, but 'boundary management' will be necessary whatever reorganisation decisions are made.

What the new Justice Inspectorate must achieve:

44. Whatever the eventual decision about the previous specific point, the underlying task of the new Chief Inspector will be broadly the same: to maximise the total quality and quantity of Inspections in return for the money allocated and spent for this purpose, i.e. delivering best value to the public, and being accountable to the three CJS Ministers for this. The new Inspectorate would have its allocated fixed finite budget, and the Chief Inspector and his or her management team would need to work out how to deliver as much inspection as possible for that money, in terms of both quality and quantity of inspection.
45. We outline a sketch here of some of the key principles by which those matters might be decided, and then follow that up by talking through some related issues and questions. The reasons for our views about some of these issues and questions will be much more apparent when taken in the context of the overall approach we are describing here of *Starting from First Principles*.
46. Hence we start here with our belief that the new Justice Inspectorate should give its primary attention to long-term inspection programmes. We believe that, although there is a role for the very occasional short-term enquiry, such as on whether or not a particular piece of current practice or a new initiative is working well or not, this is not the primary purpose of inspection.
47. For an excessive focus on short-term inquiries will represent a move to what we call the 'squeakiest wheel syndrome', where too much attention is paid to current squeaks, and not enough to steadily maintaining and improving the machine as a whole.
48. For most CJS work is, and will be even after major reform, about the regular delivery of well-mapped *whole processes* – albeit ones aimed at achieving outcomes. Special initiatives have a place, but they are the optional extras (the icing on the cake, to switch briefly to a new metaphor). The mainstream need in each of the principal CJ agencies is for a steady incremental *continuous improvement* in their core services. Hence a

long-term inspection programme, applying criteria consistently over that time, can make a big contribution to enabling and evidencing that steady incremental *continuous improvement*.

49. Furthermore, this is where inspection at its most effective. Inspection criteria provide a means of defining what 'doing a task well' looks like in practice (NB we draw a distinction later between *inspection criteria* and *performance standards*). If there is an underlying long-term consistency to the great majority of these inspection criteria the Inspectorate will be known to be fair when consistently asking CJS staff to aspire to achieve them. By consistently measuring the performance of CJS organisations in delivering a quality service to their users, these criteria provide a benchmark against which *continuous improvement* can be measured over a period of time. By its very nature, in CJS work the relevant period of time can sometimes be over several years.

A focus on whole processes:

50. With this in mind the future Chief Inspector should expect to exploit the key advantage secured should a single Inspectorate for the CJS be created. Government rightly wants a more joined-up CJS, and we strongly support the idea that a single Justice Inspectorate should scrutinise the CJS in terms of *whole processes*. As we see it, there are principally two distinct main *whole processes* contained within CJS that relate to its *primary purposes* (though there are of course a number of subsidiary processes, plus a number that come under the heading of *essential prerequisites*):

- a) Sequentially, first is the *whole process* by which, after an offence is recorded and investigated, one or more suspects are identified and 'brought to justice'. This process comes to an end at the point of sentence (or earlier of course where there is a lack of evidence on which to proceed, or where there is no finding of guilt). This is now generally called *criminal case management*.
- b) The second main *whole process* is the management of each individual sentenced offender from the start to the end of their sentence, and can be called *offender management*.

Related to the above are additional processes that aim to ensure the right outcomes for other service users such as victims and witnesses.

51. Our earlier two charts illustrate in sketch form how to map these core processes of the CJS, both in their wider context and in terms of distinguishing *primary purposes* from *essential prerequisites*. Hence in planning for a future world it would be a mistake to start by looking at current CJS Inspectorate work, and seek to identify 'potential joint inspections'. The task of trying to assess whether or not two or more Agencies have to work together is in any case an irrelevant one. Instead, the starting point should be to identify the nature of each selected *whole process*, and the nature of the contribution that has to be made by different 'players' in the process in order to make that process deliver its purpose.

52. For example, the need within Criminal Case Management for shared understanding of respective roles and for good communication between investigating Police Officer and Prosecutor was clear both before and after the time in the 1980s when CPS became an organisation separate from the Police. Within Offender Management a similar need for shared understanding and good communication between 'home area' Probation Officers and Prison staff will continue to be the same within the single NOMS as it has been during the time when the Probation Service and Prison Service have hitherto been separate organisations.
53. A future Justice Inspectorate will therefore not need to be distracted by organisational changes within NOMS or elsewhere if it has taken as its starting point a focus on *whole processes* and then proceeded to evaluate whether those processes have achieved the required outcomes with their service users. Hence:
- a) Are suspects/defendants being brought to justice swiftly and fairly? And are victims and witnesses being treated fairly and effectively?
 - b) Are sentenced offenders being managed effectively from the beginning to the end of their sentences, and are they being made less likely to reoffend, with the consequent benefits to the public?
54. Inspections should therefore focus on the ***processes that lead to those outcomes***. They should assess how well those processes are being delivered, i.e. are they effective in leading towards the desired outcomes? The inspections should produce findings that summarise those assessments, and where necessary make recommendations as to how service can be improved. This should be the focus of the new Chief Inspector's attention.
55. By providing these reports independently to the three CJS Ministers there will be an assurance to the Government and to the public, and this assurance will have been provided independently of the accountability that has to be demonstrated by the CJS agencies themselves.

Costing the benefits provided by *independent inspection*:

56. The Press like to refer to Inspectorates as 'watchdogs' and on a very simple level we think the public would be concerned if there were not a dog watching, and ready to bark, when required. They would want to be assured that a public service, reporting on a single line of accountability to Government, was not starting to lapse into any signs of complacency.
57. Having said that, much more important than the assurance role is the contribution that good quality *independent inspection* can and should make to service improvement. Rightly this is at the head of the 2003 Government policy on Inspection generally, entitled *Inspecting for Improvement*. The challenge for all Inspectorates is to identify how they make this contribution, and demonstrate that this is achieved at proportionate cost.

58. For this purpose we in HMI Probation have just produced and published a case study of our own, examining the costs and benefits of a very recent inspection exercise (*Assessing the Costs and Benefits of Inspection: a Case Study*, March 2005). We assessed the costs to the Inspectorate, and the costs to the inspected body, of undertaking two selected inspections, which were a year apart, but which were part of a programme that affects each Probation Area once every three years. We also assessed the benefits, in terms of the measured improvement in performance achieved by the inspected body in the second inspection compared with the first. We then discussed the issue of how one assesses how much of that improvement can be attributed to the inspection.
59. The headline finding was that there was a total expenditure of c£130,000, including costs to the inspected body, and an improved performance in the follow-up inspection (compared with the original inspection) of:
- Four gradings in quality of management
 - Forty-one percentage points in quality of assessment, and
 - Twenty-one percentage points in quality of intervention.
- We argued that the credit for the improvement should of course go to the inspected body (Hertfordshire Probation Area) for achieving the improvement, but clearly the involvement of HMI Probation made a catalytic contribution to this result.
60. This was a case study undertaken in one sector within the CJS world, and hence the conclusions should therefore be seen as indicative rather than definitive. Nevertheless, this study illustrates how to implement our point that conclusions about costs and benefits of inspection should be arrived at by judgement referenced against evidence, quantified wherever possible, instead of by the currently fashionable unevidenced assertions. Also, it provides additional evidence with which to assess what proportion of a public service budget should be spent on independent inspection – it was **one half of one percent** of the budget of the inspected body over the relevant period, even when including costs to the inspected body.
61. Was this a typical case? It was probably untypical to have this degree of measurable benefit (due to a large improvement being needed in this case!). Equally, however, as we undertook two inspections instead of one during the relevant three-year period, the costs were also untypically high.
62. Overall, we don't expect our case study to offer a detailed template for planning the costs and benefits of future CJS inspection, but we do expect it to prove a useful pointer towards that future planning. A Justice Inspectorate should focus primarily on the *processes that enable the primary purposes of the CJS to be achieved* (i.e. lead to the desired outcomes). In doing so, it should benefit the public in terms of assurance and enabling service improvement. And in planning its own work within its fixed finite budget it should be able to give good account of the costs that it incurs and the benefits achieved by public service – achieved at least in part as a consequence of its efforts.

PART TWO: RELATED ISSUES AND QUESTIONS

63. Having sketched out in Part One our proposal on how to plan a future Justice Inspectorate - and indeed all public service inspectorates – this gives us a context in which we can set out our position on a number of related issues and questions:
64. **The name of any future single Inspectorate:** We have used the term Justice Inspectorate in this paper because our understanding is that on the Courts side there will be a need to inspect aspects of the civil as well as the criminal Courts. Additionally, there is some debate about the term community safety, which some have argued is outside the CJS. We see community safety work as being inside the CJS, even though we accept that any inspection of Crime & Disorder Reduction Partnership (CDRP) work is likely to be led by the Audit Commission, as CDRPs are chaired by local authority Chief Executives. For simplicity's sake the name of the future Inspectorate should employ the one word Justice.
65. **Central direction of a locally delivered service does need to be inspected:** As is evident, we strongly believe in starting an inspection inquiry at the 'front line' i.e. impact on the *service user*. However, when an Inspector identifies a performance gap there is a need to be able to pursue the matter to whatever decision or failure is the cause of the problem. Sometimes this lies with the front-line worker, sometimes with his or her immediate manager, sometimes with senior managers or employers of the local service. And sometimes it can lie with a policy decision that has been made at national level. So although we will focus our main attention on the 'front line', we believe it cannot be right to exclude from consideration a line of inquiry concerning a matter where the responsibility may prove to lie with central Government.
66. **Keeping inspection proportionate:** It will already be clear that we challenge at a fundamental level the concept of inspection as a 'burden'. The concept is based on a repeated assertion which is fashionable, but unevidenced - other than by anecdote. We therefore also challenge others to put forward a better criterion than ours for judging whether or not inspection has become 'proportionate'.
67. Many of us have been senior managers, and indeed Chiefs, in the past. We recognise the unattractive disruptive nature that even a well-run inspection visit poses to the staff and managers of a service delivery organisation. But we believe that when we were in those former roles we were able to view this in a wider and fairer perspective. In particular we recognised the opportunity presented in those days to benchmark our performance against the external judgement provided by an independent Inspectorate. As inspectors now, we expect to be able to do as we were once prepared to be done by.
68. **Good Liaison (not Consultancy) as an enhancement to effective inspection practice:** Some commentators believe that Inspectorates often undertake Consultancy and take the view that this can conflict with good inspection practice. Our view is very different.
69. First, we do not purport to undertake consultancy, and we agree that if we were to do this it would probably lead to a conflict in roles. On the other hand, we on our part place a very high value on *good liaison* with all of the people of each of the organisations we inspect. In both this year's and last year's plan for the year ahead, we say that alongside 'fair and effective measurement' we also aim to 'engage effectively' and positively with the people of the organisations we inspect. We want them to come with us down the path towards *continuous improvement*, and to this end we regard *good liaison* as fundamental.

70. Furthermore it does not stop there, as is shown in our 'Cost-Benefit' case study. Through *good liaison* we can communicate with the bodies we inspect the criteria with which we will be undertaking our inspection. Increasingly Probation Areas and Youth Offending Teams are starting to take up the option of us helping them to understand more clearly what we will be looking for when we visit. There is no conflict here with good inspection (unless one regards inspection as some kind of 'unseen examination' exercise, which obviously we don't). Instead we believe that *good liaison* helps to enhance the potential contribution made by effective inspection practice to promoting service improvement.
71. **The boundary between *Inspection* and *Performance Management*:** Implicit to our position is the need to ensure that all parties share the same understanding of the distinctive roles of *inspection* and *performance management*.
72. To summarise: *Performance Management* is a business process, undertaken inside the organisation, either by or on behalf of its own managers. They monitor and measure performance, and use it as management information to guide their regular decisions and actions on how to improve performance. As there are so many aspects of performance, different organisations will focus their attention on different aspects at different times, depending on need, in order to build an all-round picture of good performance.
73. Performance Standards are set by the organisation itself, though the most high profile ones are set by employers, including Ministers on behalf of the taxpayer. *Inspection* is more selective and long term, but primarily measures the **quality** of processes which are aimed at delivering the right impact on service users. With rare exceptions, *inspection criteria* should be consistent with *performance standards* – a point we discuss further below – but in any case *Inspection criteria* should focus on long-term values that are essential to the success of the organisation as a whole, rather than short-term performance measures. Also, Inspectors can arrive at findings and make recommendations, but they cannot directly hold an organisation accountable for closing any identified performance gap, while the performance managers of an organisation certainly can!
74. **Inspection should focus on the Quality and effectiveness of the service provided to users, not on how the service is organised:** It has sometimes been asserted that changes in organisational arrangements will have a big effect on the methodology of future inspections. We contradict this view.
75. In HMI Probation we already have good experience of the benefits of focusing inspection criteria on the *quality and effectiveness of service delivered to the service user*. The effect of this approach is that in principle it does not fundamentally matter whether the service is being provided by a directly managed service, or commissioned from a third party, or whether that third party is a public service or a private provider. The focus is simply on the extent to which the service is provided well.
76. It is true that, in time, some people might want to see if they can draw conclusions from the work of Inspectorates as to whether one type of provision generally produces better results than another. (In our opinion this is most unlikely to prove conclusive, for a combination of reasons - but that is a secondary issue.) Our main point here is that if inspection is designed in the right way focusing on the *quality and effectiveness of service delivered to the service user* it remains largely unaffected even by radical changes made in the way in which the delivery of that service is organised.

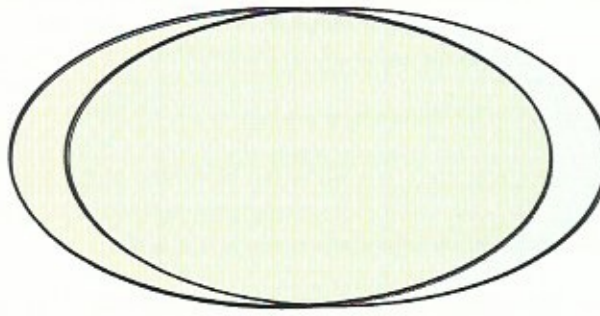
77. **What 'Risk-based' Inspection should mean – and what it should not mean:** One of the original Ten Principles of the 2003 Government Policy on Inspection is that inspection activity should be focused on where it is most needed. This is referred to as the principle of inspection needing to be 'risk-based'. This principle starts from the argument, which we would support, that we should not spend exactly the same amount of inspection activity on an organisation which is known to be doing very well as we do on an organisation which is known to be doing very poorly. But while we support this principle, we are strongly critical of the way in which this principle has been applied in various settings in recent years.
78. In particular, it is on the record that we have previously stated that the idea of giving so called 'excellent' organisations 'inspection holidays' or breaks is an entirely misguided notion. Inspection is supposed to be about improvement, and if (as is pretty well certain) no organisation is totally excellent, then the idea of there being no inspection at all for a period means that there is no opportunity for that organisation to have access to this external stimulus for improvement. Furthermore, although this approach might look attractive in the short-term, the implication in the long-term to all parties involved is that inspection is not about improvement but about punishment, and that good performance is about gaining exemption from punishment.
79. We believe that no public service organisation should miss its turn in the core inspection programme, as no matter how excellent it might be in many aspects of its activity, there are bound to be areas where inspections can at least make a potential contribution towards its further improvement. However, we do still support the idea that the **intensity** of inspection should vary, at least in part, in proportion to the identified improvement need of the inspected body.
80. We have two current examples of this. In our inspections of Probation Areas, we undertake follow-up inspections only where the level of performance in the original inspection has fallen below certain standards. Even then the intensity of follow-up varies according to whether there are one or two specific performance gaps, or where there has been a more wholesale performance failure. In relation to our Youth Offending Team Inspections, our management interviews are undertaken some four weeks after the Week One fieldwork visit of examining cases. This enables us to tailor the Week Two fieldwork to where the concerns and issues from Week One led us to focus greater attention. These examples illustrate how **risk-based inspection should be about how we focus the intensity** of our inspection activity, not about how we should 'let off' some organisations from being inspected altogether.
81. **When unannounced Inspections add Value, and when they don't:** Like others, we have noted the HMI Prisons practice in recent years of undertaking unannounced inspections, and we recognise and appreciate the added value that these offer in that particular setting for that particular purpose. But the value of this approach depends a great deal on the nature of the activity being inspected.
82. The running of a Prison, for example, involves re-creating a multitude of interconnected activities every day. It is true that poor long-term standards in some (but by no means all) of those activities can be concealed by putting on a special show on a short-term basis for the purpose of meeting an announced inspection. Hence an unannounced inspection will expose such types of action - coats of fresh paint, the serving of enhanced menus and the announcement of a new prisoner activity schedule are all potential examples of this syndrome. Other

Inspectorates, including the future new Justice Inspectorate, should certainly consider where there might be comparable activities where an unannounced visit can bring a considerably added value compared with an announced visit.

83. However we expect that in some other areas of CJ service – offender management for example – the long-term nature of the activities means that little added value will be gained by trying to apply an unannounced inspection. It is either on the record or it is not whether an offender has been properly assessed or whether the right interventions are being delivered in the right way, or whether the right outcomes are being achieved. It is true that files can be tidied up in terms of presentation in advance of an inspection, but as recording is increasingly done electronically it is becoming harder and harder to re-write the past. This is one example of an area where the added value of an unannounced inspection is likely to be very marginal indeed, especially when set against the additional cost and difficulty for both the Inspectorate and the receiving inspected body of implementing it. So with each CJ activity the case for undertaking unannounced inspections will have to be decided on its own merits.
84. **Performance Standards versus Inspection Criteria:** This issue is often posed as raising the question of whether Ministers (through their service delivery organisations) or inspectorates should 'set standards'.
85. We think that the question posed this way is misguided. So as a preliminary to this discussion, we seek first to establish and clarify some terminology by stating that service delivery organisations set *Performance Standards*, and inspectorates set *Inspection Criteria*. The purpose of both of them is to provide definitions of what 'providing a service well' looks like. The important consequential question is to discuss the extent to which *performance standards* and *inspection criteria* should ever differ – how much should this ever happen, why might it happen, and how should the consequences of this be managed?
86. It is fair to identify this as a potential genuine problem for a public service – if we are not careful we could be in the position where the service might not know which definition of performance it is being judged by. Clearly it would be an unattractive prospect if *inspection criteria* were in conflict with, or incompatible with, *performance standards*.
87. Equally, however, one of the key assurances offered by the existence of independent inspection is that at present it is possible for there to be some *inspection criteria* that lie outside the *performance standards* set by the Government or by service delivery organisations themselves. Although this should be the exception rather than the rule, if Inspectorates could not ever set any separate *inspection criteria* at all the public (and Ministers on their behalf) would not have the opportunity to consider the possibility of alternative definitions of success. (We return to this issue in the later discussion of Inspectorates being an independent source of advice.)
88. Additionally, since inspection activities are a focused finite event there will be a large number of performance standards for which there is no corresponding inspection criteria – many of the organisation's quantitative performance measures will not be addressed during the course of an independent inspection.
89. We offer a Venn diagram at this point, to illustrate how *performance standards* and *inspection criteria* will mainly be congruent with each other, but there will need to be scope for the occasional variation.

Diagram: Performance Standards and Inspection Criteria

Analogy with a Venn diagram: The two overlap but are separate. In order to give clear direction to service staff, it is desirable for there to be on the one hand a very large area of overlap between the two, where they are congruent with each other. On the other hand, there is a benefit to the public in an open and accountable democracy for the two to remain separate, and for a 'healthy tension' to be maintained between the two in the areas where they do not precisely overlap. This healthy tension helps to keep the public service vigilant from top to bottom.



90. **Structures versus Behaviours:** We observe in other policy development documents that a high priority is given to identifying structures and lines of accountability for future government arrangements. We understand the reason for this, and also the importance of lines of accountability. But we also add a note of caution about not expecting too much from what can be achieved by clarifying structures.
91. We observe that within apparently similar structures people can behave in a number of radically different ways. Some people exercise their authority in autocratic ways and others in inclusive ways; some are deferential and cautious to the person or organisation to whom and which they are immediately accountable, while others like to test the boundaries of their own authority extensively. In our experience the effectiveness of an organisation is at least as much, if not more, determined by how individual people choose to exercise their roles in practice than it is about how those roles were designed to work in theory at the planning stage. Other circumstances, such as the frequency of turnover of managers and of Ministers, all have an effect on the extent to which structures influence organisational effectiveness or individual behaviours do.
92. **Independence of Inspectorates:** In this context we reach the last issue. As we experience it, there is a current trend to circumscribe the independence of inspectorates, including some signs that any new Inspectorate might in the future be given much more restricted terms of reference.
93. We respect and support the desire to rationalise the role of a future Inspectorate, and indeed to identify its role by starting from First Principles. But we believe that those First Principles should include Inspectorates being independent in two respects:
- o Not only is their *scrutiny* function 'independent of service providers'
 - o But also they are a source of independent advice to Ministers

94. As we have already indicated in this paper, we believe there is a positive advantage to Ministers and senior officials in being able to refer to Chief Inspectors for independent advice in future, as indeed they often do now. It is, and will be, for the Chief Inspector to respond appropriately, constructively and proportionately when giving such advice, to ensure that the advice is experienced more as a benefit than as an unwelcome interference by the recipient of that advice.
95. We believe that in relation to this, and in relation to the setting of inspection criteria, it is not possible to design a rule in advance that will specify how these roles could be undertaken in practice. Inspectorates should set criteria independently (but responsibly), inspect independently and give advice independently. When done well all these roles will maintain the healthy tension that will help to keep public service vigilant and on the road to continuous improvement. (If it is done badly it can of course help to demoralise the service.) There is a thin line between healthy stimulation and destructive stimulation, and it cannot be defined precisely in advance by means of rules about structure and accountability how to stay the right side of the line. It is down to the skill of the people involved.
96. But without that healthy stimulus there is the danger that a centrally managed organisation, with only a single line of accountability to a Minister, can become either too complacent, or inward looking or monolithic in how it manages its business. We find it difficult to believe that Ministers will not want to have access to independent advice about their service delivery organisation, and with the CJS the Chief Inspector should clearly be recognised as a key source of that independent advice.

Concluding points:

97. The summary of this paper was at the beginning, in the section entitled Executive Summary. Following that we have sketched our outline proposal of what we mean by *Starting from First Principles*. Then we have explored some related issues and questions.
98. In the course of so doing, we recognise that we have raised some issues which the reader might wish to explore in greater detail. The issue of cost and benefits can be explored in our separate paper *Assessing the Costs and Benefits of Inspection: A Case Study* also published in March 2005. Some of the points we make about inspecting quality of service as delivered to service users have been discussed in the *HMI Probation Plan* for both 2004-5 and 2005-6 (the latter to be published imminently).
99. We believe that our proposed approach will:
- Implement the Government's policy on Inspection in the right way, and
 - Provide the public with independent assurance, and a contribution towards continuous service improvement, for the Criminal Justice System.

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March 2005