JUDICIARY FOR ENGLAND AND WALES

SPEECH BY NICHOLAS MOSS JP

PROBATION BOARDS AND HM INSPECTORATE - CLOSING THE GAP

ADDRESS TO HM INSPECTORATE OF PROBATION ANNUAL CONFERENCE – YORK

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It's seven months now since I was demobbed as a probation board chair after a six year tour of duty. It was at the back end of March that I collected my National Probation Directorate paperweight, along with the greatly appreciated parting gifts and good wishes from my now former area.

I've moved on. I know I have because my spellchecker has had fewer occasions to pull me up over mistyped terms, such as *unpaid work* or *unacceptable absence.*

More importantly, Probation has moved on. We have a new Offender Management Act. I make no apology for saying that I have been a great enthusiast for this modernisation, particularly because of the necessary scope it gives for assessing offender need and for commissioning accordingly by regional commissioners.

Some things have not changed. I remain a magistrate - a sentencer - and a supportive recipient of Probation's services in court; and supportive of the inspection process.

I mention all this for three reasons. First, to explain my credentials; second because my distance from Probation lends, I feel, a measure of objectivity; and third because I want to emphasise my abiding commitment to the value to our society of sentences served in the community for the right offenders.

Before I get into the detail, it's important that we remind ourselves that probation inspection is not an end in itself. It is a means to an end. In this context, it is an independent driver of improvement to Probation performance, so that those convicted of offences have ever improving prospects for rehabilitation; so that the risks they pose to the public are lessened and so that fewer re-offend.

It is essential that we do not to allow those purposes to be nudged from the number one position they must occupy.

I'll divide my comments into two. To start with, a personal account of being at the receiving end of enough inspections and examinations to last several lifetimes. Then some thoughts about how arrangements might change to improve the way the state accounts for what it does with, and for, offenders in its charge.

As a Board chair, I wasn't at the sharp end. My duties didn't require me to engage

directly with offenders. Necessarily, though, I met plenty of them. Nor was I expected to be involved directly in managing the area whose Board I chaired.

Until I corrected it locally, the standard national annual report template referred to Boards as being responsible for the operational management of their areas. They are not, with a capital 'N'. That such a basic misunderstanding found its way into a formal record is unhelpful.

The roles of the chair and of the board are described more accurately as being at the blunt end. Along with the task of supporting and promoting the area, my job, with Board colleagues, was one of those curious *ensuring* roles. Seeking to ensure that others were doing what they were supposed to do; but not doing it ourselves.

However, as a chair, with an inspection imminent and despite the separate roles, part of the natural Board mindset was to make common cause with an area management to *fend off boarders*. But, as I will explain, that reaction tapered dramatically over the years.

Indeed, I became increasingly supportive of the inspection culture and correspondingly less inclined to pen a victim personal statement on each occasion. It is a view forged in the cauldron of personal experience - and the genesis of my comments today.

Let me give you some further context. Soon after I started in 2001, we had a Performance Inspection Programme - PIP - follow-up report. Then we had a further follow-up in 2002; an Effective Supervision Inspection in 2003 and a follow up to that in 2004.

In 2005 we had a review of management handling of an offender who had committed serious further offences while on licence; and, to finish off, an Offender Management inspection in 2006. For part of that time, we also had scrutiny from the Regional Offender Manager - the ROM - assessing compliance with our service level agreements. Is that a record, I wonder?

But just one of those instances is sufficient to explain why I believe that if areas are to play a stronger part in the debate about how we deal with offenders, then Boards and the inspectorate are the ones who should make common cause. It's a gap to be closed.

Now, a story that Kate White *(HM Assistant Chief Inspector of Probation)* has heard many times. I hope she'll indulge me as I tell it once again. I'll try to draw a word picture of a late afternoon in December 2003 and ESI report time. I was admiring my collection of Christmas cards on the filing cupboard and pondering the fact that several had the identical picture of Queen Anne's Gate.

I concluded that in their modest, tax-payer friendly way, they added a corporate lustre to the festive season. Then, through the doorway, entered Kate bathed in the sort of light that you only get at that time of year. Dusk approaching, but a little tepid sunshine was still grappling its way through the broken Venetian blinds. She uttered something I shall never forget. '*Nicholas, there's a problem*.'

'*Oh dear*', I said. At least that was the gist of my reply!

The problem was that about ten per of files that Kate and her inspector colleagues had been looking at related to '*alert cases*'. It meant that a critically important group - high-risk offenders - were not being managed properly. In other words, not all that could be done to protect the community was being done.

Kate gave a full articulation of the position in formal feedback. It was worrying and painful in equal measures. But it gave me the independent evidence we had lacked to

enable the Board to promote the changes necessary to cause the management to put things right. It was the wake-up call the Area needed. It would not have been possible without the inspection.

As you would expect, those events spawned all sorts of measures. I explained to the Board what had happened and set a tone for improvement.

There was the management action plan and other management initiatives directed performance improvement, particularly its handling of high-risk cases. The Board scrutinised those steps vigorously and regularly.

The follow-up, a year later, noted that the Area still had a long way to go, but that there were improvements. And we - Board and management - were relieved that there was to be no further follow-up. Again, a predictable joint reaction in a culture where Board chairs had been advised that they were the chiefs' arch supports.

That's a short personal account of one inspection, the outcome and the action taken. Looking back, it was the combined value of three events: the 2003/04 ESI, the review of the SFOs and then the SLA performance reviews with the ROM that liberated me to challenge the Board/ management common cause mindset.

Those events cumulatively enabled the Board, to press the management firmly for major improvements to the Area's offender risk strategy in particular, as well as to number of its other duties. That it was uncomfortable is an understatement.

Then it was 2006, and my final inspection as Board chair. This time it was Offender Management. Again, relative improvements, noted, particularly in the all-important risk of harm thread where, satisfyingly, we scored more than a neighbouring area.

This spring my six years were over. That they seemed at times more like sixty reflects not so much the sheer ceaselessness of all that happened, but more on the experience I gained from so many crucial events over a fairly short period.

I turn now to the second part of my comments, which draw on that experience. I've been considering how the cultural backdrop against which the events were played out might now change.

I've described Boards as *ensuring* bodies; part of that familiar system of checks and balances. Details vary among sectors, but there are common characteristics. They include reliance on people who are not experts in particular fields being advised by professionals who are. Then having regard to their advice, those people taking decisions for the professionals to carry out - and scrutinising them.

It's not stretching things too far to suggest that this arrangement is captured in the phrase Ronald Reagan made famous: *trust, but verify*. Applied to Probation, it would mean that Boards should trust their managements, but verify their actions, nonetheless.

But then things become muddy. Board/management relationships are also expected to operate as interdependent partnerships. That reflects the mindset I mentioned earlier - the tendency of Boards to make common cause with their managements; and to endorse the notion that chairs are chiefs' arch supports.

Digging deeper you find other expectations: that Boards (and trusts) should keep their eyes open and their hands off; and that they are the ministers' eyes and ears. Using all those ears, eyes and hands appropriately may present a physical challenge - and an intellectual one, but you get the idea!

So, with advice aplenty, under current arrangements, how good can boards actually be at *ensuring* and *verifying*? It's an even more challenging question to answer when you add another proposition: I believe that Boards have *responsibility without real power*.

I would argue that to trust and verify properly, at the very least, boards need two things: knowledge and independence. First, probation knowledge: that's what an area's management and staff provide. Ministers don't appoint non-executive members of Boards and trusts because they know about Probation. They appoint them for their transferable skills: expertise from other fields, which can be applied to Probation.

However, part of the management's job is to brief boards sufficiently to understand the business; and therefore, to use their skills to ask the right questions. But the briefing process itself may be hazardous.

Decisions about what things boards are told and how, has a subjective dimension. This raises another question: can modern cannons of accountability support trusting and verifying information from the same source?

The second thing - independence - means that Boards (and trusts) need to be close enough to their managements to know what is going on and to be broadly supportive, but sufficiently distant to remain dispassionate.

I cannot assess the extent to which those two ingredients - knowledge and independence - are available and applied adequately across England and Wales on the strength of my experience of just one area.

However, I can question whether the ambiguities - the muddiness - in Board role I've referred to, provide a suitable model for modern independent scrutiny? Or if they simply reinforce the notion that Boards have *responsibility without the power they should have* and, therefore, whether we need another approach.

One thing that has been done to reduce the ambiguity - and I think it's right - is that chief officers of trusts will not be members of their trust governing bodies. They will be appointed and managed by them. You will know that at present, chiefs are members of their boards; are not appointed by them and are not formally accountable to them.

It will be some time before the new structure is common across England and Wales; but it is part of a new approach and will improve trust independence.

I hope you can see where I'm heading for another part. I suggest that by working together the inspectorate could offer Boards (and trusts) significant independent support and, therefore, some of the additional power that I believe they should have.

To support that proposition I refer to the benefits I derived from just one inspection: the arm's length evaluation; and what has been called, very aptly, a *free consultancy service*.

That's of enormous value, because independent assessment is not something that Boards are expected or budgeted to commission for themselves. As I have explained, seeking such independent diagnoses of weaknesses - or in the jargon, *Areas for Improvement*, *AFIs* - from managements is clearly not the answer.

I believe that, in future, Boards and trusts should be doing their independent *ensuring*

and *overseeing* as part of a shared continuous inspection process alongside the inspectorate. That's because essentially, they are both doing the same thing - just with different intensity. That's why I do not believe that the Inspectorate should regard a Board (or trust) principally as a body to be inspected as part of an area.

I suggest that inspectors and boards should meet regularly, without officers, to discuss for example, the Board's (or the trust's) take on performance; its assessment of strengths and AFIs. From the inspectorate's point of view, under such an arrangement, Boards would bring to its attention additional intelligence available only from people on the ground.

This is easy to express, but harder to achieve. Several mindsets need to change. First and it's something I referred to earlier: the tendency of a Board - and I expect that trusts may have a similar approach - to make common cause with the area's management. They should not.

Then there has been a tendency centrally, perhaps, to lump managements and boards together. I gave you an example of that with the annual report template. And, dare I suggest, the inspectorate's inclination to refer to Boards and chief officers in the same sentence? As your guest today, it would be churlish to make such an observation critically! So I suggest merely that this blurring has evolved over a long period and that maybe the time has come for clarification.

Of course, there are also big practical considerations to all this: inspections are infrequent and the resource implications of doing them differently could be heavy. It would also require boards (and trusts) to structure their views around a national template, since inspections must be carried out according to a common syllabus to enable comparisons to be made and trends identified. Then there is the constitutional position under which Boards are the legal embodiments of their areas, as trusts will be.

These are all major challenges. But I believe that the advantages of closer working are overwhelming and that such an arrangement would offer a helpful response to the implications of two of Andrew Bridges' *(HM Chief Inspector of Probation)* famous phrases: the *long haul* on the road to improvement; and the *long squeeze* - the unrelenting demand on probation resources. The latter inhibiting the achievement of the former.

For example, I believe there is a need for joint promotion of more focussed use by courts of sentencing reports and community orders to respond to the long-standing problem of *silting up*. So that probation can spread the jam more thickly, rather than squeeze it ever more thinly. Indeed, I know of at least one ROM - the east of England's - who has begun this debate from a commissioner's perspective. It needs a push also from the lead provider's angle.

As a sentencer I welcome that sort of informed discussion.

Let me also borrow short quote from an address last week by the Lord the Chief Justice, Lord Phillips, to the Howard League. He said, '*If the funding needed for the rehabilitation of offenders is to be provided, it is necessary to show that the uses to which it is put are cost effective. This I believe is an area of prime importance.*'

That prompts me to suggest that Boards (and trusts) and the inspectorate could collaborate here to demonstrate what we all believe to be true: that rehabilitation outside prison can be highly effective and, therefore, highly cost-effective, whoever provides it.

But that assertion needs to be proved. What better source of validations could be built than from the combined weight of an independent area board or trust, which knows its

patch and an independent inspectorate?

In making these suggestions, I appreciate that I have made some major assumptions. Particularly, that Boards and trusts - and the inspectorate -have the capacity or the will to work in this way. Nor have I the time to go into the implications arising from commissioning. On the other hand, perhaps I am assuming wrongly that constitutional constructs will always confound commonsense.

But I have tried to show three things: first, how much the inspection process helped the Board I chaired to press for the changes in management culture necessary; second to show what I believe are the wider implications.

Third, to point to the potential for future collaboration. Together, I like to think they indicate how much more could be achieved if Boards and trusts and the Inspectorate were the ones making common cause and, therefore, how a gap could be closed.

Nicholas Moss JP November 20th 2007
