

[Association for Criminal Justice Research and Development](#)
26th Annual Conference: *Accountability and Monitoring in the Criminal Justice System*

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Inspections and Investigations in Places of Detention and Imprisonment

**Chief Inspector of Prisons
Mark Kelly**

INTRO

- Good afternoon, and many thanks to the ACJRD for the possibility to speak with you today, and for once again providing such a valuable forum in which to reflect upon the “big picture” issues affecting the criminal justice system as a whole
- I very much regret that I was unable to join you in person in time for this presentation, due to the French air traffic control strike.

This afternoon, I would like to share some reflections about:

THE OFFICE OF THE INSPECTORATE OF PRISONS [OIP] TODAY & THE OFFICE OF THE INSPECTORATE OF PLACES OF DETENTION [OIPD] OF THE FUTURE

THE OIP TODAY

Focus on the state of our prisons

- Inspections
 - At the end of last year, the Inspectorate re-launched a programme of full unannounced inspections of all prisons in Ireland. These are in-depth inspections, lasting up to two weeks per prison, and drawing upon the detailed Framework for the Inspection of Prisons that you can find on our website – oip.ie. It is very many years since prisons in Ireland have been subject to this form of detailed scrutiny.
 - So far, we have carried out three full unannounced inspections: to Mountjoy Men’s Prison, Cork Prison and Cloverhill Prison. The reports on these inspections will be submitted the Minister for Justice shortly, but I would like to share with you some of the concerns that are already emerging as common themes, including:

- There is a burgeoning overcrowding crisis on our prisons. Over the last four months, the average over-capacity in the system as a whole has been in the region of 104%. However, this average figure masks a far worse situation in certain prisons. On Wednesday of this week, Limerick Female Prison was running at 161% of its capacity; and both Mountjoy Men's Prison and Cloverhill were operating at 107% capacity. This level of overcrowding results directly in:
- Holding prisoners in degrading conditions. To take just one example, at the beginning of our recent inspection of Cloverhill Prison, 152 people (one third of the prison's population) were being held four to a cell measuring less than 12 square metres, with one occupant sleeping on a mattress on the floor in each of these 38 cells. The in-cell lavatories are not partitioned and prisoners also eat breakfast, lunch and dinner in this highly-confined space. The design of the windows limits airflow in the cells, which are stuffy and malodorous. They are also excessively warm (temperatures in excess of 27C were recorded during the inspection) and reportedly become intolerably hot in high summer. Inter-prisoner violence is the inevitable result of confining four adult men in degrading conditions of this nature

This is not a problem that can be solved by the Irish Prison Service alone, given that it has no control over the numbers of prisoners sent to prison by the courts. There is a critical need to expand the use of alternatives to prison, and to put in place other measures – such as imposing an enforceable ceiling on the number of people who can be held in each prison.

A number of our prisons are already filled to bursting point, and this has the potential to create a grave crisis for the prison system as a whole.

- Many vulnerable people, including those with severe mental illness, continue to be held in our prisons, without any serious prospect of being transferred to psychiatric care facilities
- Access to education and training are inadequate, undermining efforts to effectively reintegrate prisoners into the community and fuelling recidivism
- The complaints system currently available to people living in prison remains deeply flawed

- Thematic Inspections
 - Education and training
 - Publication of a new thematic report on 23 June 2023. This inspection was carried out jointly with the Department of Education Inspectorate
 - Mental health
 - Expert analysis of the situation on 7 of the 12 prisons in the State – report close to completion
 - Deaths in custody
 - Work underway to glean insights of a systemic nature from the last ten years of investigations
- Investigations
 - Deaths in custody
 - After a lull in deaths in custody during the peak of the pandemic [13 deaths in 2020 and 8 in 2021] we have unfortunately seen the number of deaths in prison climb back to higher than pre-pandemic levels, with 22 deaths in 2022 and 10 already during the current year
 - Our focus is of course of investigating with a view to reducing the risk that deaths might happen in similar circumstances in future, and so our reports will have an increasing focus on systemic issues, such as ring-fencing the availability of prison staff to escort prisoners to appointments with psychiatric services
 - With our current resources, it will remain a challenge to clear a backlog of investigations; however, we are committed to ensuring that our reports are always available to Coroners before inquests take place

THE OIPD OF THE FUTURE

The **General Scheme of the Inspection of Places of Detention Bill**, which was published in June 2022 has recently completed its pre-legislative scrutiny stage in the Irish Parliament. The purpose of this future legislation is to enable Ireland to ratify the Optional Protocol to the United Nations Convention Against Torture [OPCAT] and to designate National Preventive Mechanisms [NPMs] to monitor conditions in all kinds of places where people may be deprived of their liberty.

Here's what we can discern from the General Scheme:

- Ireland is likely to have a **multi-member NPM**, drawing upon existing monitoring and inspection mechanisms, with the Irish Human Rights and Equality Commission playing a “coordination” role;
- In order to be able to ratify OPCAT, Ireland needs to **plug a major gap in existing monitoring arrangements by creating a mechanism to monitor detention by the police**. As this audience will

know, there has never been independent monitoring of detention by An Garda Síochána, so this will be a first.

The Government's proposal - which I very much welcome - is to transform our Office from the Inspectorate of Prisons into the Inspectorate of Places of Detention, with an expanded mandate as the NPM for the whole of the justice sector, including prisons, police detention, court holding cells and the transport of detainees and prisoners. This will mean that the entire "detention journey" of a person deprived of their liberty, from the moment that they are first placed in a Garda car, during their time in police custody and in court, right through to their possible imprisonment, will fall under the mandate of our new Office;

- it is implicit in Part 3 of the General Scheme that **other existing monitoring mechanisms**, such as the Health and Information Quality Authority and the Inspector of Mental Health Services **will also be designated as NPMs in their respective domains**, but they are not explicitly identified in the General Scheme.

My very first activity on taking up the role of Chief Inspector of Prisons last summer was to work with my new team to prepare our observations on the General Scheme, which were submitted to the **Joint Committee on Justice** to assist them in their pre-legislative scrutiny of the Scheme.

I would like to share with you just some of the headline issues that we raised with the Justice Committee when we gave evidence to it in October last year.

Because, although there is much to be welcomed in the General Scheme - not least its existence - there is still a need to:

(i) **guarantee the functional independence** of our future Inspectorate and other National Preventive Mechanism bodies, and

(ii) **clarify the proposed functions** of our future Inspectorate.

In relation to the functional independence of the OIPD and other NPM bodies in Ireland:

In Part 3 of the General Scheme, there is a very welcome recognition that "National Preventive Mechanisms, and the bodies that comprise them, should be accountable directly to the [Irish Parliament]" (Note to Head 12).

However, this is at variance with a number of other provisions in Part 1 of the Scheme, which envisages that the budget for our new Inspectorate would remain within the Department of Justice financial vote, and that the Minister for Justice would retain the power to appoint and to dismiss me.

The General Scheme also proposes that the OIPD's funds, premises, facilities and services will be provided by the Minister for Justice, and it would require me to have the consent of the Minister for Justice to appoint, and to determine the terms and conditions of service of our staff.

These provisions do not appear to me to be fully consistent with the Article 18 OPCAT requirement that a National Preventive Mechanism must enjoy functional independence.

And, as regards the proposed functions of the OIPD:

The General Scheme also contains a number of provisions that do not appear to be fully consistent with OPCAT Article 19.

For example, Head 11(10)(a) purports to restrict me from questioning or expressing an opinion on Government policy. As my contribution to your conference this afternoon clearly demonstrates, this is not a restriction to which I am currently subject.

Moreover, any such future restriction would be inconsistent with OPCAT Article 19(c) which – quite to the contrary – foresees a **duty** for National Preventive Mechanisms to submit observations on existing or draft legislation.

In order to ensure that Ireland can comply with the requirements of the OPCAT, we have proposed that: Part 1 of the General Scheme be brought into harmony with Part 3, and that the current institutional connection between our future Inspectorate and the Department of Justice be replaced with a model similar to that used to establish the Irish Human Rights and Equality Commission, including direct accountability to Parliament, rather than to a Minister.

I am pleased to be able to tell you that there are some promising signs that our voices have been heard.

The Joint Committee on Justice published its **pre-legislative scrutiny report** in April, and it recommends both:

- the **immediate ratification of the OPCAT**, prior to the legislation being enacted in full, and
- that the **legislation should guarantee the functional and financial independence of Ireland’s National Preventive Mechanisms**, “in order to align with corresponding guarantees within OPCAT”.

Last month, the Department of Justice has produced its **Plan for 2023**, which includes a commitment to publish the Bill to “enable ratification of [OPCAT]” and to “support the Bill’s progress” through Parliament.

Naturally, it is also very important that the provisions of the Inspection of Places of Detention Bill be consistent with, and complementary to, the provisions of the new Policing, Security and Community Safety Bill, which I am sure you will have spent some time considering earlier today. This is of special significance in relation to the coordination of the proposed inspection functions of the new PCSA, and in relation to the scope for joint investigative activity where GSOC is concerned. The architecture of policing accountability in Ireland is once again in flux, and it is crucial that our new structures work effectively together, without imposing an undue operational burden on An Garda Síochána.

It is for this reason that building and maintaining constructive working relationships across the wider criminal justice sector will be an imperative for the Inspectorate during the months ahead.

Consequently, I am very grateful indeed to the ACJRD for offering me this opportunity to speak to such a wide variety of experts from across the sector, and I very much look forward to broadening and deepening this dialogue with you.

Thank you.

Mark Kelly

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