



**Memorandum of Understanding  
between  
Healthcare Inspectorate Wales  
and  
Her Majesty's Inspectorate of Prisons**

**August 2015**

# Memorandum of Understanding between Healthcare Inspectorate Wales (HIW) and Her Majesty's Inspectorate of Prisons (HMI Prisons)

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## **1. Introduction**

1.1 This Memorandum of Understanding (MoU) has been agreed between Healthcare Inspectorate Wales (HIW) and Her Majesty's Inspectorate of Prisons (HMI Prisons). The agreement becomes effective when signed by the Chief Executive of HIW and Her Majesty's Chief Inspector of Prisons. The MOU:

- Acknowledges the regulatory and inspection role of the HIW and the inspection role of HMI Prisons whilst recognising the importance of mutual independence in fulfilling respective responsibilities.
- Supports the effective scrutiny of health and social care and treatment detainees in custody.
- Commits to the importance of promoting wellbeing in places in custody.
- Encourages both organisations, as members of the UK's National Preventive Mechanism, to work in accordance with the requirements of the Optional Protocol to the UN Convention Against Torture (OPCAT) – see Annex A.

## **2. Scope of the Memorandum of Understanding**

2.1 This Memorandum defines the circumstances in which, and the processes through which, HIW and HMI Prisons will co-operate when carrying out their respective functions in Wales.

2.2 It describes how the two Inspectorates' interests and responsibilities will complement each other and avoid duplication or confusion. This will enable prisons and Local Health Boards (LHBs) in Wales to be clear about their accountability and the staff of both HIW and HMI Prisons to be clear about when and how their work will be co-ordinated.

2.3 HMI Prisons has a statutory duty to inspect healthcare and substance misuse within custodial settings. HIW has the responsibility to inspect the quality and safety of patient care commissioned and provided by healthcare organisations in Wales. With regards to prison settings, HIW's focus is in relation to the quality and safety standards and governance arrangements for the provision of prison health services by the LHBs. Joint working arrangements set out in the MoU do not currently cover the private prison estate unless an independent provider of healthcare registered with HIW provides the healthcare within the prison.

2.4 This MoU does not override the statutory responsibilities and functions of HIW and HMI Prisons and is not enforceable in law. However, HIW and HMI Prisons agree to adhere to the contents of this MoU.

2.5 Either organisation can decline a request to collaborate on a specific piece of work on the grounds of efficiency or effectiveness or because to do so is deemed either not to be in the best interests of those using services or directly conflicts with either organisation's statutory duties, policies or functions.

### **3. Principles of joint working between HIW and HMI Prisons**

3.1 HIW and HMI Prisons will seek to ensure effective joint working through the following:

- HIW and HMI Prisons will respect each other's independent status and will cooperate when necessary or appropriate;
- The working relationship of HIW and HMI Prisons will be governed by the need to deliver optimal outcomes to those using prison healthcare services and the need to avoid unnecessary duplication and overlap;
- HIW and HMI Prisons will work together in undertaking their respective functions when this contributes most to improvements in prison healthcare services;
- HIW and HMI Prisons will work together to encourage the development of pertinent, consistent and accurate information in relation to prison healthcare services; and
- HIW and HMI Prisons will be open and transparent in their decisions about when and where it is considered appropriate for them to work collaboratively.

### **4. Functions covered**

4.1 The MoU sets out the principles and processes which HIW and HMI Prisons will follow when working co-operatively:

- reviews and inspections;
- co-ordination and exchange of information;
- levels of co-operation;
- procedures for collaborative working and escalation;
- areas for joint work and collaboration; and
- external communications.

### **Reviews and Inspection**

4.2 HIW and HMI Prisons may undertake joint inspections or reviews of any provision/provider of prison health services for which they both have responsibilities. Such joint inspections will be carried out by the two organisations retaining their separate statutory powers, functions and reporting requirements.

4.3 HMI Prisons have a predominantly unannounced inspection programme. They will set a minimum frequency for inspection of all types of establishment but within this will make the timing of inspections less predictable and the deployment of resources more flexible, based on considered intelligence and

proactive risk assessment. Every inspection will include an assessment of progress in implementing previous recommendations.

- 4.4 HMI Prisons will inform the HIW Head of Inspection of the venues for unannounced planned inspections in Wales as soon as is practicable, but at least a quarter in advance. HIW agree to keep this information confidential; action may be taken within HIW if HIW breaches this. The HIW Head of Inspection will decide whether an Inspection Manager will be available on this date to accompany HMI Prisons on the inspection.
- 4.5 The HIW Inspection Manager will send relevant information/intelligence to the HMI Prisons health inspector, in line with the relevant frameworks, prior to the visit where timescales allow.
- 4.6 HMI Prisons will lead the inspections and report on the health outcomes for prisoners. HIW will let HMI Prisons know if they will be accompanying HMI Prisons on their routine inspections of prisons in Wales. If so, HIW will provide staff to join for one or two days per inspection to focus on the clinical governance element of the inspection. HIW staff will provide the HMI Prisons health inspector with feedback on the clinical governance arrangements, in line with the Welsh Government's Healthcare Standards mapped to the HMI Prisons document entitled 'Expectations - Criteria for assessing the conditions in prisons and the treatment of prisoners' (current edition), as relevant.
- 4.7 HIW will undertake reviews of LHBs in accordance with its published programme. HIW will share relevant information from these reviews with HMI Prisons as laid down in this MoU and in line with the relevant frameworks prior to and during the visit, as appropriate. This information will cover how expectations and the healthcare standards for Wales are met in relation to the provision/commissioning of healthcare services in prisons by the LHB.
- 4.8 HMI Prisons will send a copy of all draft inspection reports to the HIW Head of Inspection, approximately eight weeks following the conclusion of a joint inspection of a Welsh prison, so that any factual inaccuracies in the reports can be clarified. Draft reports will also be sent to the Prison Service Area Manager and/or Director of Offender Management Wales and the Governor of the prison by HMI Prisons.
- 4.9 HMI Prisons will send a final draft (embargoed) report simultaneously to the HIW Director of Inspection, Regulation and Investigation, the Director General of the Prison Service and the Prison Service Briefing Unit, or the Director of Offender Management Wales and/or other relevant National Offender Management Service Director at least four to five working days prior to publication.
- 4.10 The Prison Service Area Manager and the Governor/Director for the prison are required to draw up an action plan within three months of publication of the report and return it to HM Chief Inspector of Prisons with a copy to the HIW Director of Inspection, Regulation and Investigation.

4.11 Where the final report identifies issues that relate to the LHB, the HIW Director of Inspection, Regulation and Investigation, will request that an action plan is drawn up by the LHB responsible for commissioning healthcare in the prison within three months of publication of the report and forward it to HMI Prisons' Head of Healthcare Inspection. A copy of the letter sent to the LHB requesting an action plan and a copy of the plan will be sent to the Prison Service Area Manager.

### **Co-ordination and Exchange of Information**

4.12 Subject to any statutory restrictions, HIW and HMI Prisons will share information about trends, complaints, concerns, data, approaches and initiatives, which are relevant to the shared aim of ensuring that prison healthcare services are being practised to relevant standards and that data collection is sufficiently robust to identify all relevant complications and outcomes. Details of how information will be shared and the principles underpinning the handling, processing and storing of such information are set out in Annex B.

4.13 Each organisation will keep the other informed of relevant activities relating to other parts of the United Kingdom or the UK as a whole.

### **Levels of co-operation**

4.14 Each organisation, through their respective senior representatives – Head of Healthcare Inspection in HMI Prisons and Head of Inspection in HIW, undertakes to keep the other informed on matters of strategic mutual interest.

4.15 The working relationship between HIW and HMI Prisons will be characterised by regular contact and open exchange of information, including formal and informal meetings at all levels. HIW and HMI Prisons will communicate at least 6 monthly, either by phone, email or a face to face meeting.

### **Procedures for collaborative working and escalation**

4.16 It is possible that either organisation will receive information which bears upon the other's responsibility. Given the overriding need to protect the interests of prisoners, it is important that both organisations, through this agreement, encourage a culture of mutual trust and understanding and be willing to share relevant information.

4.17 The interests of prisoners should remain paramount and where issues relate to the fitness to practise of healthcare professionals, this information should be referred to the appropriate regulatory body for further investigation. Nothing in this MoU seeks to preclude HMI Prisons or HIW from taking action that is justifiable to safeguard prisoners and/or staff.

## **Areas for joint work and co-ordination**

4.18 The full range of functions of both HIW and HMI Prisons are summarised in Annex A. Among them, the areas for joint work and co-ordination are:

- Regular inspection of the provision of healthcare services for prisoners in Wales;
- Assessment of the provision/commissioning of healthcare services for prisoners in Wales;
- Advice and information to ministers, service providers and commissioners and the public.

4.19 In support of these, HIW and HMI Prisons will share information and intelligence, and pool knowledge and expertise as appropriate and as needed to achieve the objectives of this MoU. HIW and HMI Prisons will also co-ordinate activity and in particular inspections or other steps to follow up concerns.

4.20 The ways in which HIW and HMI Prisons will do this in practice are set out in the protocol appended to this MoU at Annex B. The protocol will be reviewed every other year and revised or added to as the need arises.

## **External communications**

4.21 HMI Prisons will send a copy of relevant press releases (embargoed) to HIW in advance of the publication of HMI Prisons reports of inspections in Wales. HMI Prisons and HIW will also inform each other of external communications related to the performance of prison healthcare. This could include:

- the timing of press releases and any other publications relevant to the inspection process;
- involvement, as appropriate, in conferences and other public discussions; and
- assistance in the dissemination of information about good practice in prison healthcare.

## **5. Reconciliation of Disagreements**

5.1 Any disagreement between HIW and HMI Prisons will normally be resolved at working level, or Deputy Chief level. If this is not possible, issues should be referred to HIW Chief Executive and HM Chief Inspector of Prisons. They will be responsible for ensuring a satisfactory resolution.

## 6. Implementing this Memorandum

- 6.1 This agreement will be regularly reviewed – at least on an annual basis and whenever there is new legislation - to reflect feedback from operational staff, lessons learnt from implementation and the impact of any changes in legislation.
- 6.2 Both organisations have identified a person responsible for the management of the Agreement, contact details are provided at Annex C.

Signed

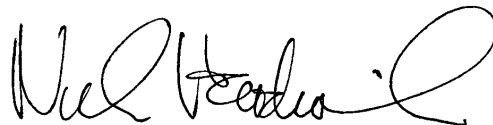


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Signed



Date: 25 August 2015

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## **Annex A: Responsibilities and functions**

1. Healthcare Inspectorate Wales (HIW) and the Her Majesty's Inspectorate of Prisons (HMI Prisons) acknowledge the responsibilities and functions of each other and will take account of these when working together.

### **Healthcare Inspectorate Wales**

2. HIW is the independent inspectorate and regulator of healthcare in Wales.
3. HIW carries out its functions on behalf of Welsh Ministers and, although part of the Welsh Government, protocols have been established to safeguard its operational autonomy. HIW's main functions and responsibilities are drawn from the following legislation:
  - Health and Social Care (Community Health and Standards) Act 2003;
  - Care Standards Act 2000 and associated regulations
  - Mental Health Act 1983 and the Mental Health Act 2007
  - Statutory Supervision of Midwives as set out in Articles 42 and 43 of the Nursing and Midwifery Order 2001
  - Ionising Radiation (Medical Exposure) Regulations 2000 and Amendment Regulations 2006.
4. HIW's primary focus is on:
  - Making a significant contribution to improving the safety and quality of healthcare services in Wales
  - Improving citizens' experience of healthcare in Wales whether as a patient, service user, carer, relative or employee
  - Strengthening the voice of patients and the public in the way health services are reviewed
  - Ensuring that timely, useful, accessible and relevant information about the safety and quality of healthcare in Wales is made available to all.
5. HIW's core role is to review and inspect NHS and independent healthcare organisations in Wales to provide independent assurance for patients, the public and others that services are safe and of good quality. Health services are reviewed against a range of published standards, policies, guidance and regulations. As part of this work HIW will seek to identify and support improvements in services and the actions required to achieve this. If necessary, HIW will undertake special reviews and investigations where there appears to be systematic failures in delivering healthcare services, to ensure that rapid improvement and learning takes place. In addition, HIW is the Local Supervising Authority for the statutory supervision of midwives in Wales.
6. HIW is also responsible for the registration and regulation of independent healthcare providers under the Care Standards Act 2000. The regulation of such establishments is governed by the Independent Health Care (Wales) Regulations 2011. However, under those Regulations, an establishment is excepted from being classed as an independent hospital under section 2 of the Care Standards

Act 2000 if it is an establishment which is, or forms part of, a prison, remand centre, young offender institution or secure training centre within the meaning of the Prison Act 1952. Similarly, independent clinics or independent medical agencies are not required to be registered by HIW if the medical services are provided only under arrangements made on behalf of patients by a prison or similar establishment. Any dentist that provides private services in Wales is required to be registered with HIW, in the case of a prison which is run privately; it would need to ensure that any dentist who provides services to prisoners is registered with HIW.

## **Her Majesty's Inspectorate of Prisons**

7. HMI Prisons is an independent inspectorate whose Chief Inspector is a Crown appointment. The Chief Inspector's powers derive from section 5A of the Prisons Act 1952 (as amended)<sup>1</sup>. The Chief Inspector reports directly to the relevant Secretaries of State and to Parliament on the treatment of and conditions for prisoners in England and Wales and immigration detainees in the United Kingdom. HMI Prisons also inspects court custody, police custody and customs custody facilities, with HMIC, and secure training centres with Ofsted. By invitation, HMI Prisons inspects some military detention facilities as well as prisons in Northern Ireland, and in other jurisdictions with links to the UK such as the Isle of Man. HMI Prisons is the coordinating body for the UK's National Preventive Mechanism (NPM)<sup>2</sup>, a group of 20 organisations which monitor places of detention in England, Wales, Scotland and Northern Ireland under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>3</sup>.

Details of HMI Prisons' framework, approach and general methodology can be found at: - [http://www.justiceinspectorates.gov.uk/HMI Prisons/about-our-inspections/](http://www.justiceinspectorates.gov.uk/HMI%20Prisons/about-our-inspections/)

## **Optional Protocol to the UN Convention Against Torture (OPCAT)**

8. The inspections and monitoring carried out by HMI Prisons and HIW are part of the mechanism by which the UK fulfils its obligations as party to the Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). OPCAT acknowledges that detained persons are particularly vulnerable to ill-treatment and that efforts to stop that ill-treatment should be focussed on prevention through a system of regular independent visits to places of detention.

When the UK ratified OPCAT in 2003 it accepted a State responsibility to:

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<sup>1</sup> Section 5A of the Prison Act 1952 (as amended by 1982 Criminal Justice Act, Immigration and Asylum Act 1999, Immigration, Asylum and Nationality Act 2006, Police and Justice Act 2006).

<sup>2</sup> The UK designated its NPM in March 2009. The UK's NPM is co-ordinated by HMI Prisons.

<sup>3</sup> Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, adopted on 18 December 2003; came into force 26 June 2006.

*“set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”*

The domestic visiting bodies which discharge those obligations form the National Preventive Mechanism (NPM). The NPM must be independent and adequately resourced to secure the necessary capabilities and expertise to provide effective inspection of detention facilities<sup>4</sup>. Both HMI Prisons and HIW have been officially designated as part of the NPM, which is coordinated by HMI Prisons, and both will carry out their work in accordance with the requirements for NPMs set out in OPCAT and by the UN Subcommittee on Prevention of Torture..

#### **The NPM must:**

- regularly examine the treatment of people deprived of their liberty in places of detention;
- make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detainees; and
- submit proposals and observations concerning existing draft legislation.

#### **The NPM must have:**

- access to information concerning the number of people deprived of their liberty, the number of places of detention and their location;
- access to information about treatment and conditions of detainees;
- access to all places of detention; and
- the opportunity to privately interview detainees and any other relevant person.

#### **The NC/Secretariat**

The Secretariat will:

- ensure copies of Annual Reports and publications are sent to membership bodies;
- provide any relevant information to the membership bodies that inform them of concerns in particular establishments;
- promote joint working between membership bodies;
- promote joint training between membership bodies;
- provide updated contact details of the membership bodies;
- promote an awareness of the vital role of HMI Prisons to Board Members;
- call an annual meeting of membership bodies to review working arrangements and key issues.

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<sup>4</sup> See First annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (February 2007 to March 2008), CAT/C/40/2 (14 May 2008).

## **Annex B: Protocol for Sharing Information**

1. The purpose of sharing information is to enable HIW and HMI Prisons to have as full a picture as possible of performance, while avoiding duplicate information requests of inspected bodies. This protocol sits in the context of relevant law, duties and codes of practice. Nothing in it can override each organisation's obligations to respect where information is confidential, or where it has been provided on the understanding that it will not be shared further; similarly, nothing in this protocol should prevent either body from providing information to other parties (such as professional regulators) where appropriate to safeguard prisoners, visitors, staff or the public.

### **2. Relevant Statutory and Common Law**

The HIW and HMI Prisons acknowledge that the following are relevant to the sharing of information:

- Data Protection Act 1998
- Freedom of Information Act 2000
- Human Rights Act 1998
- Common Law Duty of Confidentiality
- Health and Social Care (Community Health and Standards) Act 2003.

### **3. How Information will be shared**

#### **3.1 Systematic sharing of information:**

HIW will share information with HMI Prisons on findings related to its inspections and investigations and information related to LHBs as commissioners of prison healthcare in Wales. This will be done in the following ways:

#### **3.2 HIW Clinical Reviews of Deaths in Prison:**

From 1 April 2008, HIW has undertaken the clinical review element of investigations into deaths in prison for the Prison and Probation Ombudsman (PPO).

The PPO share their reports with HMI Prisons prior to an inspection. As and when appropriate, HIW will share any other relevant information, such as thematic reviews and analysis which HIW may undertake based on its clinical reviews, and specific concerns about prisons uncovered through clinical reviews which may be relevant to HMI Prisons' monitoring and inspection role.

#### **3.3 Ad hoc sharing of information:**

HIW will share information with HMI Prisons from its programme of inspections and any investigations by ensuring that HMI Prisons have early sight of recommendations related to the organisations, once they have been validated. The mechanisms for doing this will be via the points of contact as set out in this MoU.

### **3.4 HIW Corporate Information:**

HIW will ensure that HMI Prisons receives its corporate information as appropriate, including:

- newsletter;
- HIW annual report;
- Annual reports for HBs/Trusts; and
- operational plan.

### **3.5 HMI Prisons/HMIC Inspections of Police custody conditions:**

HMI Prisons work collaboratively with HMIC to inspect police custody suites in England and Wales. HMI Prisons will inform HIW of their intention to inspect custody suites in any police force in Wales and will provide HIW with a copy of the final report.

### **3.6 HMI Prisons Inspection of Court cells:**

HMI Prisons will inform HIW of their intention to inspect court cells in Wales and will provide HIW with a copy of the final report.

### **3.7 HMI Prisons Corporate Information:**

HMI Prisons will share their business plan and other corporate information with HIW as appropriate.

## Annex C: Contact details

### HIW officers

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