



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

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## Revision history and approval

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<b>Date created</b>	August 2020
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<b>Date agreed</b>	March 2021
<b>Formally agreed by</b>	HIW: Alun Jones HMI Prisons: Charlie Taylor
<b>Review date</b>	

## Introduction

1. The purpose of this Memorandum of Understanding (MoU) is to set out a framework to support the working relationship between Healthcare Inspectorate Wales (HIW) and Her Majesty's Inspectorate of Prisons (HMI Prisons). This working relationship is part of the effective scrutiny and oversight for health and social care within places of detention in Wales. Our joint inspection promotes patient safety and high-quality care and supports HIW to maintain its regulatory responsibilities.
2. This MoU relates only to the scrutiny and regulation of prison health care in Wales. It does not override the statutory responsibilities and functions of HIW and HMI Prisons and does not create legally binding rights or obligations; its purpose is to define the joint agreement between the two organisations, reduce the burden of inspection and to indicate a common line of action to improve the health outcomes and wellbeing of people held in Welsh prisons and Young Offender Institutions.
3. Joint working arrangements set out in the MoU do not currently cover private health providers within the private prison estate. HIW does not regulate or register any private healthcare provided in prisons, as they are exempt from the Independent Health Care (Wales) Regulations 2011. HMI Prisons' inspection responsibilities includes all health provision irrespective of its registration status be it private or an NHS provision
4. As part of the activities undertaken as part of this MoU, other agreements (for example, information sharing agreements, or joint working protocols) may be established.

5. The inspections by HMI Prisons and HIW are carried out in accordance with the UK's obligations as a party to the Optional Protocol to the United Nations Convention against Torture and other cruel, inhumane or degrading treatment or punishment (OPCAT). OPCAT requires each state party to designate an independent National Preventive Mechanism (NPM), which monitors places of detention for the purpose of preventing torture and ill-treatment. HMI Prisons and HIW are members of the UK's NPM, which is coordinated by HMI Prisons (Annex C).

## **Roles and responsibilities**

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

6. HMI Prisons is an independent inspectorate whose Chief Inspector is a Crown appointment. The Chief Inspector's powers derive primarily from section 5A of the Prisons Act 1952. The Chief Inspector reports to the Secretary of State and on the treatment of and conditions for prisoners and those held in court custody in England and Wales and immigration detainees in the United Kingdom. HMI Prisons also inspects: police custody and Border Force customs custody facilities with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS); 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 promotes the concept of "healthy establishments" in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public.
7. As part of these responsibilities, HMI Prisons has a statutory duty to inspect health, social care and substance misuse services within custodial settings. HMI Prisons have registered clinicians on staff who inspect healthcare. HMI Prisons' inspection programme includes full inspections, scrutiny visits and Independent Reviews of Progress. The framework includes health Expectations, which are aligned with health standards set out by professional and regulatory bodies and the National Institute for Health and Care Excellence. Details of HMI Prisons' framework, approach and general methodology can be found at: <https://www.justiceinspectorates.gov.uk/hmiprison/about-our-inspections/>
8. HMI Prisons inspects in partnership with the General Pharmaceutical Council. In Wales, HMI Prisons also inspects court custody, police custody (jointly with HMICFRS) and secure training centres (jointly with Estyn).

### **Healthcare Inspectorate Wales**

9. HIW is the independent inspectorate and regulator of healthcare in Wales. 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 2007, Mental Health (Wales) Measure 2010;
  - Independent Health Care (Wales) Regulations 2011;
  - Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008; and
  - Ionising Radiation (Medical Exposure) Regulations 2017 and Amendment Regulations 2018.
10. HIW's [Strategic Plan](#) describes the priorities are to:
- **Provide assurance:** provide an independent view on the quality of care;
  - **Promote improvement:** encourage improvement through reporting and sharing of good practice; and
  - **Influence policy and standards:** use what we find to influence policy, standards and practice.
11. 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.
12. 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 health boards in Wales.
13. 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.

## Principles of co-operation

14. In implementing this agreement, HIW and HMI Prisons intend that their working relationship will be characterised by the following principles:
- Respect for each other's independent status: HIW and HMI Prisons acknowledge their respective statutory and non-statutory responsibilities and functions and will take account of these when working together;
  - Effective inspection and regulation;
  - The need to make decisions that promote high quality health and social care, and which protect and promote patient health, safety and welfare;

- Full openness and transparency between the two organisations as to when cooperation is, and is not, considered necessary or appropriate;
- The need to use resources and intelligence effectively and efficiently through appropriate coordination and information sharing;
- The need to maintain public confidence in the two organisations; and
- HIW commit to addressing any identified overlaps or gaps in the regulatory framework and responsibilities.

15. HIW and HMI Prisons are also committed to transparent, accountable, proportionate, consistent and targeted inspection and regulation (the principles of better regulation).

## **Joint Priorities and Areas of Work**

### **Exchange of Information**

16. Co-operation between HIW and HMI Prisons will require the exchange of information. Exchange of information will be expected, but not limited, to cases where:
- HIW or HMI Prisons identifies concerns about the health and wellbeing of the public, particularly in relation to prison health and social care and the care provided to detainees in custody
  - Serious incidents, deaths or near misses
  - Safeguarding incidents or concerns
  - A resolution to a concern would benefit from a coordinated multi-agency response.
17. In such cases, all exchanges of information will be lawful and proportionate and shared in confidence with the named contact in the other organisation at the earliest possible opportunity. The contact details in Annex B will be used for the raising and sharing of concerns.
18. All arrangements for co-operation and exchange of information set out in this MoU and any joint working protocol that may be developed will take account of and comply with the General Data Protection Regulation (GDPR), Data Protection Act 2018, Freedom of Information Act 2000, Health and Social Care (Community Health and Standards) Act 2003, section 76 of the Health and Social Care Act 2008, Care Standards Act 2000 and all relevant HIW and HMI Prisons legislation relating to these matters, and respective Codes of Practice, frameworks or other policies relating to confidential personal information and information issues.
19. Both HIW and HMI Prisons are subject to the Freedom of Information Act 2000. If one organisation receives a request for information that originated from the other, the receiving organisation will discuss the request with the other before responding.

## Reviews and Inspection

20. In addition to the exchange of information, HIW and HMI Prisons may undertake joint inspections or reviews of any provision 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. These joint inspections do not preclude either organisation from undertaking inspections of prison health services individually.
21. 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 to establishments and the deployment of resources more flexible, based on considered intelligence and proactive risk assessment. Every full inspection will include an assessment of progress in implementing previous recommendations
22. HMI Prisons will inform HIW 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. HIW will agree whether a suitable member of HIW staff will be available on this date to accompany HMI Prisons on the inspection.
23. The HIW staff member will send relevant information/intelligence to the HMI Prisons health inspector, in line with the relevant frameworks, prior to the visit where timescales allow.
24. 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 routine inspections of prisons in Wales. If so, HIW will provide staff to join 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 [Health Expectations](#) for adults and [Health Expectations for children](#).
25. HMI Prisons will send a copy of all draft inspection reports to HIW following the conclusion of a joint inspection of a Welsh prison, so that any factual inaccuracies in the reports can be clarified by the HIW staff member if relevant. This will be in line with publication timescales: approximately eight weeks after a full inspection and three weeks after a scrutiny visit. HMI Prisons will also send draft reports to the Prisons Group Director Wales and/or Executive Director Wales, and the Governor/Director of the prison.
26. 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 Executive Director Wales and/or other relevant HM Prisons and Probation Service Directors prior to publication.

27. The Prisons Group Director Wales and the Governor/Director for the prison are required to draw up an action plan within three months of publication of full inspection reports and return it to HM Chief Inspector of Prisons with a copy to the HIW Director of Inspection, Regulation and Investigation
28. Where the final full inspection report identifies issues that relate to the health board, the HIW Director of Inspection, Regulation and Investigation will request that an action plan is drawn up by the health board responsible for commissioning health care in the prison within three months of publication of the report and forward it to HMI Prisons' Head of Health Care Inspection. A copy of the letter sent to the health board requesting an action plan and a copy of the plan will be sent to the Prisons Group Director Wales.
29. HIW will undertake reviews of health boards in accordance with its published programme. HIW will share relevant information from these reviews with HMI Prisons as laid down in this MoU. 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 health board.
30. Both organisations undertake a programme of thematic reviews. These may have relevance for the other organisation. If and when these occur, each organisation will inform the other of the plans for this review and offer the opportunity to provide input and support.

## **Media and Publications**

31. HIW and HMI Prisons will seek to give each other adequate warning of, and sufficient information about, any planned announcements to the public on issues relevant to both organisations, including the sharing of draft proposals and publications.
32. HIW and HMI Prisons commit to work together, where appropriate, to produce joint statements or communications highlighting collaboration or activities relevant to both organisations.
33. HIW and HMI Prisons respect confidentiality of any documents shared in advance of publication and will not act in any way that would cause the content of those documents to be made public ahead of the planned publication date.

## **Governance**

34. The effectiveness of the working relationship between HIW and HMI Prisons will be supported by regular contact, either formally or informally. This contact and any partnership working is described in Annex A.
35. Meetings to discuss intelligence, policy and operational issues of interest to both organisations should take place between relevant colleagues at both



organisations when appropriate; at least twice a year. Contact details of relevant operational level contacts in each organisation are shown at Annex B.

36. Resolution of any disagreement between HIW and HMI Prisons will normally be resolved at operational level. If this is not possible, it must be brought to the attention of the MoU managers identified at Annex B, who may then escalate it as appropriate within the two organisations to reach a mutually satisfactory resolution. Both organisations should aim to resolve disagreements in a reasonable time.

### **Duration and review of this MoU**

This MoU commences on the date of signatures below.

37. Both organisations have identified a person responsible for the management of this MoU in Annex B. They will liaise as required to ensure this MoU is kept up to date, identify any emerging issues and resolve any questions that arise in the working relationship between the two organisations.
38. This MoU is not time-limited and will continue to have effect unless the principles described need to be altered or cease to be relevant. This MoU will be reviewed annually by the MoU managers identified at Annex B, but may also be reviewed more urgently at any time at the request of either organisation.

### **Signed**



**Alun Jones**

Interim Chief Executive  
Healthcare Inspectorate Wales

Date: 16<sup>th</sup> April 2021



**Charlie Taylor**

HM Chief Inspector of Prisons  
Her Majesty's Inspectorate of Prisons

Date: 27<sup>th</sup> April 2021

## **Annex A – Partnership Working**

While this MoU sets out the guiding principle of information and incident sharing, there are also some specific activities which will facilitate the partnership between HIW and HMI Prisons:

### **Regular engagement**

In order to support the joint working of the two organisations, each will meet on a six-monthly basis between MoU managers, and any other relevant individuals. The purpose of these meetings will be to:

- Share intelligence about health boards and prison health providers;
- Discuss ongoing concerns and investigations;
- Share findings from recent and ongoing reviews;
- Review and reflect on recent joint inspections;
- Provide an opportunity to review and update this MoU;
- Review ongoing or potential thematic reviews;
- Programme allocations.

### **Information sharing**

In addition to the regular engagement, each organisation will make available to the other documents and reports which are relevant to each other's work. These include:

- Annual reports;
- Operational and business plans;
- HMI Prisons' Inspection plans in Wales;
- HIW Review reports;
- HMI Prisons' Inspection of Court cells.

## Annex B – Contact Details

Healthcare Inspectorate Wales	HM Inspectorate of Prisons
Welsh Government Rhydycar Business Park Merthyr Tydfil CF48 1UZ  Tel: 0300 062 8163	3 <sup>rd</sup> Floor, 10 South Colonnade Canary Wharf London E14 4PU  Tel: 0207 340 0500

There will be named contacts between HIW and HMI Prisons as follows:

Chief Executives	
<b>Alun Jones</b> <i>Interim Chief Executive</i>	<b>Charlie Taylor</b> <i>HM Chief Inspector of Prisons</i>
MoU managers	
<b>Joseph Wilton</b> <i>Head of Partnerships, Intelligence and Methodology</i> <a href="mailto:joseph.wilton@gov.wales">joseph.wilton@gov.wales</a> Tel: 0300 025 2663	<b>Tania Osborne</b> <i>Head of Health and Social Care Inspection</i> <a href="mailto:tania.osborne@hmiprison.gov.uk">tania.osborne@hmiprison.gov.uk</a> Tel: 0207 340 0500
Concerns referrals	
<a href="mailto:hiw.concerns@gov.wales">hiw.concerns@gov.wales</a> Tel: 0300 062 8163	<a href="mailto:hmiprison.enquiries@hmiprison.gsi.gov.uk">hmiprison.enquiries@hmiprison.gsi.gov.uk</a> Tel: 0207 340 0500
Information sharing	
<a href="mailto:hiw.pim@gov.wales">hiw.pim@gov.wales</a>	<a href="mailto:tania.osborne@hmiprison.gov.uk">tania.osborne@hmiprison.gov.uk</a>

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

1. 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 focused 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:

*“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>1</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.

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<sup>1</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 D – 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.

### **Relevant Statutory and Common Law**

2. 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.

### **How Information will be shared**

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

3. 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:

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

4. From 1 April 2008, HIW has undertaken the clinical review element of investigations into deaths in prison for the Prisons and Probation Ombudsman (PPO).
5. The PPO share their reports with HMI Prisons prior to an inspection. As and when appropriate, HIW will share any other relevant information, which may be relevant to HMI Prisons' inspection role.

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

6. 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.

**HIW Corporate Information:**

7. 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.

**HMI Prisons' Inspection of Court custody cells:**

8. 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.

**HMI Prisons' Corporate Information:**

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