

The Care Quality Commission and HM Inspectorate of Prisons



Memorandum of understanding



Objectives

This memorandum has two main purposes.

- It sets out the areas in which HM Inspectorate of Prisons (HMIP) and the Care Quality Commission (CQC) will work together and coordinate their roles and activity. The shared aim of doing that is to protect and promote the interests and rights of people who use health and social care services in custodial settings.
- It describes how the two organisations' interests and responsibilities will complement each other and avoid duplication or confusion. This will enable regulated bodies to be clear about their accountability and our staff to be clear about when and how to coordinate our work.

Principles

In working together, our approach will be built on five core principles.

1. Good inspection and regulation

We are committed to the principles of good inspection and regulation, articulated by the Better Regulation Task Force. These are that regulation should be proportionate, accountable, consistent, transparent and targeted. Working together and coordinating should enable us to put these into practice more successfully than if we acted alone and should help us to be more cost-effective overall.

2. Understanding each organisation and its independence

Joint work and coordination must be in the context of our two organisations' different remits and statutes. Our different systems of accountability (for example, a prison governor's accountability to HMIP, and a registered healthcare provider's accountability to CQC), and the different ways in which we are ourselves accountable to ministers, Parliament and the public, need to remain separate, but the ways in

which we deliver them should be aligned wherever that will avoid confusion or duplication.

3. Focus on results

We are working to promote improvement in health and social care services in custodial settings and in people's experiences of them, to improve outcomes for detainees. Our joint work will be based on where we can make a difference, including willingness to consider:

- issues which may not be a priority when considered from just one organisation's perspective, but where the broader potential benefits of approaching it jointly warrant collaboration
- prospectively seeking out areas where, by acting together, we may have greater impact in promoting quality of care than if we acted alone.

4. Pragmatism

We will take a practical approach to collaboration and design our methods so that they accommodate and make maximum use of each other's knowledge, expertise and existing processes, wherever that is appropriate. We will seek to re-use each other's findings and information wherever they are 'good enough', and take a common-sense approach that, between our efforts, finds the most effective and efficient ways of assuring quality of care and outcomes for prisoners.

5. Being clear

Of the various areas where we could work together, we will be clear about our individual and joint priorities and use regular reviews of this memorandum to check them. We will set out in detail what working together means in practice in each case (particularly through appendices to this memorandum); so that we can be confident that we are prioritising the right areas and being clear about them to our staff and regulated bodies.

Areas for joint work and coordination

The full range of functions of both HMIP and CQC are summarised in appendix one. Among them, the areas for joint work and coordination are:

- regulation and inspection of the provision of health and social care for people detained in custodial settings
- reviews, studies and reports
- advice and information to ministers, service providers and the public
- working collaboratively in fora to improve outcomes for detainees e.g. the Joint Police Programmes Board

In support of these, we will share information and intelligence, and pool knowledge and expertise, as appropriate and as needed to achieve the

objectives of this memorandum. We will also coordinate activity and, in particular, inspections and enforcement or other steps to follow up concerns.

The ways in which we will do this in practice, are set out in protocols appended to this memorandum. They will be reviewed every two years and revised or added to as the need arises, including by adding new areas for joint work and coordination, if appropriate.

Our approach to working together

Where we work together, there will always be a lead body, so that we and regulated bodies can be clear about which statutory powers we are acting under. Where healthcare or social care are provided as part of an offender service, then HMIP will have the lead in ensuring that the offender service meets expectations, including the expectations of them for health and social care. CQC will have the lead in ensuring that healthcare and social providers comply with registration and regulated activity regulations.

CQC will treat HMIP as the expert body in relation to the justice system, and HMIP will treat CQC as the expert body about the health and social care system. Each will seek to access the other's expertise when needed, rather than develop separate expertise.

As far as possible, where either organisation makes a direct intervention such as an inspection or registration visit of health or social care in a custodial setting, it should be joint or coordinated. This will include sharing, and where appropriate agreeing, recommendations and statutory requirements. Where one partner is not represented (for whatever reason), the remaining partner will take account of the absent partner's role and remit when carrying out an inspection but will also recognise their distinct statutory powers and functions. Coordination will be ensured as soon as practicable afterwards.

Where there are concerns about healthcare or social care in custodial settings, both organisations will pool information and risk assessments as appropriate and coordinate in using the full range of their powers and levers.

Where there are issues that are broader than each organisation's functions, and which affect both – such as contributing to government policy development – we will engage in these jointly as far as possible, and in close coordination.

We aim always to give each other advance notice of external communications relating to prison healthcare, and to coordinate in presenting our findings externally.

If we have any areas of disagreement, these will be reconciled at the lowest level possible. If they need to be escalated, that may be up to and including the HMIP Chief Inspector and CQC Chief Executive, who must resolve them.

Unless we agree specific exceptions, where we work together it will not affect

each organisation's standing policies and procedures, including human resources policies and terms and conditions of employment for staff.

We will nominate leads for day to day management of our joint work. Any disagreement between HMIP and CQC will normally be resolved through these leads. If this is not possible, it may be referred upwards by them, up to and including the chief inspector of HMIP and the chief executive of CQC, who will jointly be responsible for ensuring a mutually satisfactory resolution.

Implementing this memorandum

We will review this memorandum every two years. Those reviews will include considering:

- whether any revision is needed to this memorandum;
- whether any changes are needed to working arrangements, so that this memorandum can be put into practice effectively;

The lead officers named in the appendix to this memorandum will meet regularly as a leadership group and coordinate work to achieve our joint objectives and act as focal points for contact generally.

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Peter Clarke CVO OBE QPM
Chief Inspector, HMI Prisons

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David Behan
Chief Executive, CQC

Date.....

Date.....

Appendix 1

Functions of CQC and HMIP

HMIP

The Inspectorate was established as an independent inspectorate in 1980. It carries out its functions under section 5A of the Prison Act 1952¹ as amended by section 57 of the Criminal Justice Act 1982. Its main statutory functions are to inspect and report to the Secretary of State on conditions for and treatment of those detained in prison establishments in England and Wales and immigration removal centres in England, Wales and Scotland. In addition, the Inspectorate inspects, by invitation, prison establishments in Northern Ireland, the Channel Isles and certain Commonwealth territories, as well as immigration short-term holding facilities, the Military Corrective Training Centre, Colchester, and the Sovereign Base Areas, Cyprus.

In determining the inspection programme, HM Chief Inspector will use his judgement and expertise in deciding what to inspect, how inspections should be carried out, what the findings should be and whether an inspection is to be announced or unannounced. He will also publish the methodology against which he inspects places of detention including how the findings are supported.

CQC

The Care Quality Commission was established under the Health and Social Care Act 2008 as the independent regulator of health and adult social care in England.

Its main activities are:

- Registration of health and adult social care providers against a common set of standards. These are the standards providers have a legal responsibility to meet and that people have a right to expect whenever or wherever they receive care.
- Monitor and inspect services against those standards, carrying out inspections regularly, at any time in response to concerns. Undertaking themed inspections, special reviews and investigations based on particular aspects of care;
- Take action if we find that a service is not meeting the standards, using a range of powers.
- Involve people in its work, working with local groups, national organisations and the public

¹ 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).

- Report the outcomes of its work so that people who use services have information about the quality of their local health and adult social care services;
- Monitor application of the Mental Health Act 1983, including visiting detained patients to check that their rights are appropriately safeguarded

Optional Protocol to the UN Convention Against Torture (OPCAT)

The inspections and monitoring carried out by HMI Prisons and CQC 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)². 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:

“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)³. The NPM must be independent and adequately resourced to secure the necessary capabilities and expertise to provide effective inspection of detention facilities . Both HMI Prisons and CQC 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 Sub-committee on Prevention of Torture⁴.

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;

² Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, adopted by the UK on 18 December 2003; came into force 26 June 2006.

³ The UK designated its NPM in March 2009. The UK’s NPM is co-ordinated by HMI Prisons.

⁴ See first annual report of the Sub-committee 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).

- 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 persons.

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.

Appendix 2

Lead officers for contact between HMIP and CQC

CQC

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Majella Pearce
Deputy Head of Healthcare
Inspection

Protocols to the memorandum

1. Information sharing
2. Inspection and assessment of healthcare providers in health and justice settings

Protocol 1

Information sharing

The purpose of sharing information is to enable CQC and HMIP to have as full a picture as possible of performance, while avoiding duplicate information requests of regulated bodies. The actions set out in this Protocol will always be met in accordance with the relevant law, duties and codes of practice. Nothing in it can override each organisation's obligations to respect where information is confidential, similarly, nothing in this protocol should prevent either body from providing information to other parties (such as professional regulators) where appropriate to safeguard detainees , visitors, staff or the public, or for other valid purposes.

How information will be shared

(i) Systematic sharing of information

CQC and HMIP will routinely share information in the following ways:

HMIP will provide CQC with its schedule of inspections six months in advance to allow time for CQC to allocate inspectors to these inspections. This will be updated at each meeting of the lead officers.

HMIP will share information with CQC from its programme of inspections by ensuring that CQC lead officers have early sight of recommendations relating to registered providers, once they have been validated.

CQC will share information about registration and regulation of providers with HMIP during inspections and outside the inspection programme where regulatory issues or concerns arise for either organisation

HMIP will send the HMIP pre-inspection information pack to the identified CQC inspector during the week before the inspection takes place. The CQC will send the CQC pre-inspection pack to the identified HMIP inspector during the week before the inspection takes place. The two inspectors will make contact to discuss the information prior to the inspection as necessary.

Inspectors will share their findings during the course of an inspection. The CQC inspector and HMIP inspector will coordinate their written reports as agreed in the relevant joint methodology for inspections.

CQC and HMIP will produce a joint report of the inspection to ensure that key points and issues identified are reported coherently to the prison service and the individual health providers. Where appropriate

the CQC will embed its requirement notices within the joint report, whilst simultaneously notifying the regulated provider of the requirements.

CQC will make contact with HMIP when it intends to undertake a registration visit or a focused inspection of a place of detention. This will be done through the lead officer and will enable HMIP to input to the process to the extent that is agreed in each case.

CQC will notify HMIP when it decides to take enforcement action against any provider in relation to healthcare in the health and justice system.

(ii) Ad hoc sharing of information

CQC and HMIP will use the regular lead officers' meeting Offender HealthCare Working Group, meeting quarterly, to provide regular updates and sharing of information and intelligence, and to enable direct information sharing between CQC and HMIP as needed. The information to be shared will include findings on providers' performance; matters related to the fitness of a provider to carry on the service; and broader issues which may affect service provision.

CQC and HMIP will share local intelligence as relevant to each other's functions. This will be done informally through the lead officers, who will ensure that it is used appropriately.

In addition CQC and HMIP will share the content of complaints or other concerning information where complaints or concerns appear to indicate serious shortcomings in the care of a detainee or where the content may provide an indication that an urgent visit is required.

Collaboration on development of information

CQC and HMIP may from time to time collaborate on improving the quality or availability of information related to offender health and social care (including new information collection, for example for thematic reviews), or its analysis. This may be across any of their functions. Each case will be considered individually, overseen by the lead officers.

Protocol 2

Key principles for inspection and assessment of healthcare providers

All of CQC's regulatory activities in places of detention will be coordinated with HMIP, in line with our memorandum of understanding. Wherever possible, visits will take place jointly and where additional visits are required, for example during registration, information will always be shared between the two organisations.

Only suitably trained and experienced CQC inspectors will participate in the scheduled programme of inspections and contribute to the joint inspection report as agreed with HMIP inspectors. These identified inspectors will also provide feedback on the outcome of inspections to those CQC inspectors who hold the registered providers or locations on their portfolio.

All CQC inspectors will have enhanced DBS checks, undergo Counter Terrorism Clearance and receive security (key) training before they take responsibility for leading an inspection.

During the joint inspections, each organisation will work to its own remit and cover its respective key lines of enquiry and expectations, but they will work closely together and the work will be coordinated. This approach will be underpinned by a mapping of key lines of enquiry and expectations and by ongoing working relationships between the designated leads in CQC and HMIP.

Where CQC finds that a healthcare provider is not meeting the requirements of current legislation they will communicate this to the provider at the earliest opportunity to ensure that improvements are promptly made. At the same time, CQC inspectors will share this information with HMIP.

Where concerns arise, CQC will apply the same principles as in the regulation of other services, but inspection activity will be planned alongside HMIP. CQC will deal with these concerns on a case by case basis which will depend on the issue and level of concern:

- If the provider has registered locations outside the place of detention CQC inspectors may review the regulatory status of those locations before visiting the custodial setting.
- If concerns are low level, CQC will check them during a scheduled joint inspection
- If concerns are significant and specific to the place of detention a focused inspection may be arranged outside the scheduled inspection programme. This will be led by CQC and will include HMIP inspectors as necessary.
- Where CQC consider taking enforcement action, then it must be clear that CQC are leading this process and the powers they employ must be explicit.

HMIP inspections cover the prison as a whole, for which the prison governor is accountable. CQC's inspections assess whether the healthcare provider(s) are meeting essential standards and current legislation.

CQC's inspection findings will be included in the joint inspection report. Where appropriate the CQC will embed its requirement notices within the joint report. HMIP does not have enforcement powers but its powers as an inspectorate mean that actions taken can be complementary to lever improvement. This includes the interface between prison governor responsibilities and those of healthcare or adult social care provider.