



# Alternative approach to scrutiny during the COVID-19 pandemic

## Statement of purpose

- To fulfil HM Inspectorate of Prisons' statutory duty to report on treatment and conditions effectively, without adding unreasonable burdens to a system currently dealing with unprecedented challenges.
- To promote transparency about the response to COVID-19 in places of detention and ensure that lessons can be learned quickly.
- To use an adapted methodology which provides effective independent scrutiny while adhering at all times to the 'do no harm' principle. This means that HMI Prisons will not put detainees, prison staff or its own staff at unreasonable risk and will work in line with national guidance (see note i).

## Specific concerns about prisons and other forms of detention in light of COVID-19

HM Inspectorate of Prisons' (HMI Prisons) experience and recent guidance issued by bodies such as the United Nations Subcommittee on Prevention of Torture (SPT) and World Health Organization (WHO) indicates that prisons are unusually high-risk environments during the current outbreak, for prisoners, staff and the wider community. Specific concerns include:

- overcrowding, sharing of confined spaces and difficulties in maintaining personal hygiene, which all heighten risk of person-to-person transmission
- a higher likelihood of existing poor physical health with immune systems and respiratory health affected by poor nutrition, smoking and use of drugs and alcohol
- in some prisons, a high percentage of elderly prisoners and of prisoners with disabilities
- a higher likelihood of poor mental health, which can be further affected by isolation, withdrawal of visits and lack of activity
- the risk of stigmatisation and victimisation of prisoners showing symptoms

- staff shortages and deteriorating morale which may affect the prison's ability to care for prisoners
- the release of asymptomatic prisoners who carry the infection, some of whom will be homeless and unable to effectively self-isolate.

It is also well-established that without external scrutiny, closed institutions can develop their own unique norms and standards, leading in some cases to a deterioration in the treatment of prisoners.

## Proposed scrutiny approach during this time

We will undertake the following three strands of oversight activity.

### I. Maintain a strong strand of policy analysis.

- Examine new legal powers relating to detention introduced as part of the response, and their impact on treatment and conditions.
- Monitor whether new places of deprivation of liberty/detention are opened or the functions of places of detention change, and what governance is in place for these establishments.
- Examine the impact of policy responses. For example, the release of administrative immigration detainees or early release of prisoners.

### 2a. Establish lines of communication to ensure that the following information is received regularly and collated centrally within HMI Prisons. (This is a non-exhaustive list.)

- Daily information from central government (COBRA)
- Daily situation reports from the Ministry of Justice (MoJ)
- Daily establishment-level information from HM Prison and Probation Service (HMPPS)
- Daily incident reports
- Information received via correspondence and phone calls to HMI Prisons
- Information from Independent Monitoring Boards (IMB), including via the IMB Secretariat
- Information from partners, NGOs and other stakeholders
- Information from the media
- Intelligence from HMI Prisons staff
- Intelligence from Twitter and other social media (see note ii).

### 2b. Organise and analyse the information gathered to assess risks and determine priorities (see note iii).

- Identify specific problems and concerns at individual establishments such as:
  - acute staffing shortfalls
  - clusters of COVID-19 infection
  - spikes or increases in indicators such as self-harm, use of force and concerted indiscipline
  - emerging concerns about local capability and proportionality of response.
- Identify emerging themes across establishments such as:
  - shortages of equipment
  - lack of escort staff to facilitate transfer to hospital.
- Use the information to make risk-based recommendations for further monitoring and/or site visits (weekly updates). These recommendations will be judgement-based rather than algorithmic, as the quality, quantity and consistency of the available information is likely to be variable.

- Consider routine use of safety diagnostic tools in risk assessment.
3. A more active scrutiny approach informed by the analysis above. This could involve:
- informing HMPPS and/or other authorities of our concerns in writing and asking for a response
  - undertaking short scrutiny visits based on risk information gathered
  - undertaking short scrutiny visits of establishments by type, including some that are not considered high risk.

## Approach to short scrutiny visits

The rest of this paper elaborates on our short scrutiny visits methodology, which is tailored to the current circumstances. It is a specific methodology developed as a response to the COVID-19 crisis (see note iv). Such visits will have the following main characteristics.

- A one-day visit.
- HMPPS will be notified of the visit(s) as soon as possible. It will decide when to communicate with establishments.
- Close communication with a nominated member of staff in each establishment, who should be known to HMI Prisons by the Thursday preceding each visit.
- Continuous assessment before the HMI Prisons' team enters the establishment, with particular account taken of factors such as sudden critical staff shortages and increase in virus cases.
- Examination of key risk areas only (see below).
- Concerns will be described as part of a constructive commentary that takes account of context. The tenor will be closer to an independent review of progress than an inspection.
- Account will be taken of any health risks and national guidance, and there will be adherence to the 'do no harm' principle.
- Two or three inspectors will attend, including one health inspector.

### What will HMI Prisons look at?

We will focus on a limited number of key areas, all of which are based on our existing human rights-based Expectations (see note v). We will aim to capture the institutional response to the crisis and describe the day-to-day experience of prisoners and staff. Inspectors will use the following checklist.

#### **Safety**

##### *Leadership and management*

- What are the pressures on the prison's population and what is being done to address them?
- Are restrictive measures proportionate? Is the prison's defensible decision log clear and up to date and are the rationales clear?

- Is the prison population is being managed in line with guidance? How are cohorting arrangements working and is staff movement between wings minimised to prevent the spread of the virus?
- Are entry and exit procedures for staff clear, proportionate and always followed?
- Are prisoners, staff and managers socially distancing?
- What do staff think about the proportionality and adequacy of the prison's response to the crisis?
- Is communication with prisoners and staff clear and effective? Are prisoners and staff fully informed about the actions the prison is taking and do they understand their importance?

#### *Arrival and early days*

- How do prisoners experience arrival and early days?
- Are new prisoners given clear and comprehensive information about COVID-19 and the regime in place at the prison?
- Are normal reception processes still implemented, including a safety interview in private?
- Are the restrictions placed on prisoners during their time in the reverse cohorting unit proportionate?

#### *Support for the most vulnerable prisoners, including those at risk of self-harm*

- What is done to monitor and address psychological deterioration of prisoners, including those with mental health problems and those at risk of self-harm?
- Are those in isolation given regular and meaningful human contact?
- Has the level of self-harm changed in recent weeks and what has been done to respond to it? Are ACCT processes still being delivered?

### **Respect**

#### *Living conditions*

- Can prisoners maintain personal hygiene? Do all prisoners have daily access to showers, hot water, soap and cell cleaning materials?
- Are communal areas (e.g. kitchens, showers, workshops, association/exercise equipment) regularly cleaned and disinfected to a good standard?

#### *Health care*

- Do prisoners have access to safe and effective health, social care and dental services?
- Do prisoners have access to safe and effective medicines?

### **Purposeful activity**

- Do prisoners have daily access to the open air?
- Do prisoners have an adequate range of activity to undertake in-cell and suitable advice, especially those with specific health needs?
- Where possible, are some prisoners continuing to be employed?

### **Rehabilitation and release planning**

#### *Contact with children and families*

- Can prisoners maintain contact with their family and friends and other significant people, including legal advisors?
- Are restrictions on visits compensated for by increased access to alternative means of communication (e.g. telephone, email, video-calling, extra free letter writing materials)?

## Release planning

- Is release adequately planned and safe?
- Are public protection arrangements still being implemented as intended?
- Is there help available for prisoners with housing problems? Has anybody been released homeless recently?
- Is suitability for early release assessed thoroughly?

## Expectations relevant to the checklist

- Prisoners are kept safe at all times while segregated and individual needs are recognised and given proper attention. (10)
- Prisoners are held in a safe environment where security is proportionate. (12)
- Prisoners at risk of self-harm or suicide receive individualised care from a multidisciplinary team and have unhindered access to help, including from their families. (17)
- Adults at risk are appropriately located and supported. (Adapted 19)
- Prisoners are treated with humanity and respect for their human dignity. Relationships between prisoners and staff are positive and courteous. (21)
- Prisoners live in a clean and decent environment which is in a good state of repair and fit for purpose. (24)
- Prisoners can exercise their legal rights. (Adapted 36)
- Patients are cared for by services that accurately assess and meet their health, social care and substance use needs and receive treatment from competent staff in an environment that promotes dignity and maintains privacy. (Adapted 53 and 54)
- Prisoners have regular and predictable time out of cell and can use the time locked in their cell constructively. (Adapted 66 and 67)
- Prisoners can maintain access to the outside world. (Adapted 78)
- Risk of harm to others is assessed and managed in every case to protect the public. (82)
- Prisoners are given all necessary practical support ready for their day of release, including suitable accommodation. (Adapted 88 and 99)

## Visit methods

There will be no local data request to minimise burdens. Instead inspectors will use the following methods.

- Observations while walking around establishments.
- Speaking to prisoners. This will be done while adhering to social distancing guidelines and in the following ways.
  - On wings where prisoners may already be unlocked.
  - Opening cells where it is safe to do so and after staff have been consulted. The prisoner will be advised to stand at the back of the cell.
  - In workshops, if they are running.
  - At mealtimes when prisoners are collecting their food.
  - During other periods when prisoners may already be unlocked.
  - By using in-cell phones where they are available.
  - Isolating prisoners will normally only be spoken to by phone. If that is not possible and inspectors consider it important to speak to an isolating individual, this will be done only with HMI Prisons' own personal protective equipment (PPE) and normally by the HMI Prisons health inspector only.
- Speaking to staff. This will also be done while walking around establishments and while maintaining suitable distance. In addition, a link to an online staff survey will be issued before every visit.
- Review of NOMIS case notes after leaving the establishment in individual cases of concern.

- Maintaining a direct link with independent monitoring boards (IMBs), many of which are actively gathering information, for example, through daily establishment reports and phoning into segregation reviews. This information will feed into our visits and we will provide them with our reports. In immigration detention, we will also maintain contact with the Association of Visitors to Immigration Detainees.

## Health and safety

A clear and defensible position has been established for undertaking visits. Risks and mitigations have been extensively documented in HMI Prisons' new COVID-19 health and safety guidance. This draws substantially on HMPPS guidance, but also identifies additional measures that are necessary because of HMI Prisons' work and methodology. HMI Prisons will take account of guidance issued by individual establishments or sectors. A separate specific risk assessment has been developed and published.

HMI Prisons may also identify concerns that promote more effective and safer practices in prisons, thereby supporting public health.

## Thematic reporting

HMI Prisons will report back to individual establishments and HMPPS after each visit. We will not publish individual reports but a summary report on a series of visits which will highlight key themes. The reports will be subdivided by sector (e.g. the youth estate, male local prisons, the immigration estate). This approach will allow HMI Prisons to:

- deliver a relevant, current commentary, and influence decisions in real time
- avoid undermining legitimate operational activity during a time of crisis
- fulfil our commitment to transparency and preventive inspection by publishing findings and ensuring relevant lessons are identified.

The reports will include:

- a short narrative (approximately 1,500 words) on the experiences of detainees and the way that establishments are managing pressures and risks
- concerns that are clearly articulated, but reporting that is credible and constructive, and tells the story of what is happening
- no overarching judgements
- no recommendations.

When we have completed all the planned visits and reports, we may produce a longer report bringing together the main findings and learning points from the shorter publications.

## Conclusion and implementation

HMI Prisons is implementing a layered approach to scrutiny, entailing data collection and analysis, and remote oversight in the first instance. This will run parallel to short scrutiny visits organised by type of establishment and sector, with reports encompassing three visits. The aim is to fulfil our statutory duty to report on treatment and conditions, without adding unreasonable burden. HMI Prisons aims to identify concerns that promote more effective and safer practices in prisons.

The categories of establishment to be visited are:

- youth custody
- male adult local prisons
- training prisons (not including prisons holding those convicted of sexual offences)
- prisons holding those convicted of sexual offences
- prisons holding women
- immigration removal centres
- long-term and high security prisons
- open prisons.

A successful pilot visit was undertaken on 14 April 2020 and learning has been incorporated into our proposed approach. The first set of short scrutiny visits is on 21 April 2020. The approach set out in this document will be reviewed and amended in line with changing circumstances.

## Notes

- i. This document refers throughout to prisons, which form the bulk of HMI Prisons' work, and it encompasses young offender institutions and prisons holding women. With some amendments, short scrutiny visits will also be implemented in immigration removal centres (IRCs), for which a separate tailored briefing document is available.
- ii. The following suggestions by the SPT may be incorporated when the initial level of information gathering work is in place:
  - establishing HMI Prisons' 'hotlines' within places of detention and secure email and postal facilities.
  - distributing more information on the work of HMI Prisons and ensuring there are channels allowing prompt and confidential communication
  - electronic communications with detainees (this will be easier in IRCs but possible elsewhere).
- iii. There are significant limitations to what can be learned from data alone. During inspections, we view data as a starting point and our final conclusions often diverge from the direction in which it was initially taking us. The quality of information also depends on careful recording; in the current situation we may be able to rely less on full and thorough records given that staff will have other urgent priorities.
- iv. A number of National Preventive Mechanisms (NPMs) in other countries are continuing to undertake visits and there is support from bodies such as the SPT and Committee for the Prevention of Torture (CPT). At times of crisis and operational pressure, the risks of both conscious and unintentional mistreatment increase, and external perspective and oversight of closed institutions can be even more important than usual. The SPT guidance stresses these points and states that NPMs, 'should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken.' The CPT states that, 'Monitoring by independent bodies, including National Preventive Mechanisms... remains an essential safeguard... States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine.'
- v. For information, relevant human rights standards (specific to or closely related to infectious disease) are set out below.

### *Standard Minimum Rules*

#### Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period.

#### Rule 27

- I. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.



2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

#### Rule 33

The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

#### *European Prisons Rules*

#### Rule 42.2

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

#### Rule 42.3

When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

(f) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment.

#### Rule 43.2

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

#### Rule 43.3

The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

#### Rule 46.1

Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

#### Rule 46.2

Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.