Submission to the Joint Committee on the Draft Mental Health Bill

from HM Chief Inspector of Prisons

Introduction

1. HM Inspectorate of Prisons (HMI Prisons) welcomes the opportunity to submit comments on the draft Mental Health Bill. HMI Prisons is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952 and include reporting on the conditions for and treatment of prisoners, those held in immigration detention and children held in young offender institutions (YOIs) and secure training centres (STCs).

2. On all inspections, we inspect outcomes in relation to healthcare against our inspection criteria, known as *Expectations*. Our *Expectations* detail the outcomes we expect to see delivered to those in prisons and other forms of detention. Broadly speaking, we expect those in prisons to receive community-equivalent health care that meet their needs.[1] We carry out inspections of healthcare jointly with Care Quality Commission and Healthcare Inspectorate Wales.

3. Our below response is based on our inspection findings and comments on place of safety and remand for own protection, the 28-day transfer window and the importance of early identification of mental ill-health and neurodivergence. It also draws on our joint thematic reports, *Neurodiversity in the criminal justice system: A review of evidence*[2] and a *Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health Needs and Disorder*.[3]

Place of safety and remand for own protection (clause 41 and 42)

4. Prison is not a suitable environment in which to hold those who are acutely mentally unwell. For example, our inspection report on HMP & YOI Low Newton, inspected in June 2021, highlighted that six women had been remanded for their own protection in two months. In one case, a woman's repeated attempts to take her own life in the community had led to her being remanded into custody for what was deemed a public nuisance offence. Despite the best efforts of staff, inspectors found that the prison was not able to provide these women with the care they needed. The demands on staff time to look after these women were extraordinary and detracted from the attention they could give to others. Women attending the health care department for their GP appointments could hear the constant screaming of one of the women concerned.[4]

5. We therefore welcome the removal of prison as a place of safety and the removal of remand for own protection solely for mental health reasons under the Bail Act.[5] However, we suggest consideration is given to further limiting the use of remand for own protection. Clause 42 of the draft Mental Health Bill removes the ability to remand individuals under for their own protection under the Bail Act "by reason only of concerns about the defendant's mental health" but does not

[1] See, for example, our full *Expectations for men in prison* at Health, well-being and social care (justiceinspectorates.gov.uk).

[2] This work was undertaken by HM Inspectorate of Prisons, HM Inspectorate of Probation and HM Chief Inspector of Constabulary and Fire & Rescue Services and is available at Neurodiversity in the criminal justice system: a review of evidence (justiceinspectorates.gov.uk).

[3] This work was undertaken by HM Inspectorate of Probation, HM Inspectorate of Prisons, Care Quality Commission, Healthcare Inspectorate Wales, HM Inspectorate of Constabulary and Fire & Rescue Services, and HM Inspectorate of the Crown Prosecution Service and is available at A joint thematic inspection of the criminal justice journey for individuals with mental health needs and disorders (justiceinspectorates.gov.uk).

[4] The inspection report is available at Report on an unannounced inspection of HMP & YOI Low Newton by HM Chief Inspector of Prisons 2-18 June 2021 (justiceinspectorates.gov.uk), see paras 2.28-2.29.

[5] Ending the use of prison as a place of safety was a recommendation in our *Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health needs and Disorder.*

provide a definition of mental health. The amendment leaves open the possibility that individuals may be remanded for their own protection by reason of neurodivergence, which is not appropriate. It also leaves open the possibility that those who are acutely mentally unwell will still be remanded to prison for their own protection when there is another circumstance that may be considered to lead to a need for protection.

6. No comprehensive data is collected on the reasons why remand for own protection is used either for mental health reasons or otherwise and it is therefore difficult to form a comprehensive picture of the circumstances of those remanded for this reason. However, it is hard to envisage circumstances in which remanding a vulnerable person to prison for their own protection, where they may be held in poor conditions and spend much of their day locked in a cell, would be more appropriate than providing them with care and support in the community.

7. While the ability to remand for own protection remains (including before any amendments are made to the Bail Act), data should be systematically collected and published on the use of the provision, including the numbers of people remanded, the reason for remand, the length of time spent on remand, and the outcomes such as transfer to a mental health bed, conviction at trial etc. Data would allow for better planning for alternative provision for this group, allocation of resources to meet need and identification of disproportionality.

28-day transfer window (clause 31)

8. Inspectors regularly find that transfer times from prison to mental health settings set out in guidance are not met. Inspectors made a recommendation about this in seven out of nine of the inspection reports published on adult prisons in the first quarter of 2022/23 (April through June). For example, at HMP Doncaster, inspected in February 2022, only one of the 16 transfers to hospital under the Mental Health Act in the previous 12 months had been within the guideline of 28 days, the longest taking 95 days.[6] The longest wait we identified in our *Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health Needs and Disorder* was 375 days.

9. We therefore welcome efforts to create a statutory time limit for transfers to a mental health setting. However, we are concerned that the current drafting of the Bill may mean that it has limited impact on reducing waiting times for transfers in practice. Clause 31 of the draft Bill provides that authorities must seek to ensure that a transfer takes place within 28 days "unless there are exceptional circumstances which make it inappropriate". The Explanatory Notes provide examples of exceptional circumstances including "clinically exceptional or complex cases where a longer time period is required to properly understand an individual's needs and identify appropriate treatment." Our concern is that many of the prisoners we come across waiting for a transfer could be considered complex cases or to have exception clinical needs and that, as a result "exceptional circumstances" could be invoked in practice in the majority of cases. We would therefore suggest that consideration is given to further narrowing the scope of what may be considered exceptional circumstances so that the introduction of a statutory time limit is effective in practice.

10. We also note that the statutory time limit of 28 days should not become the target for transfers and should be seen as the maximum time limit for a transfer to take place. As noted above, prison is not a suitable environment for those who are acutely mentally unwell. Our expectation will therefore continue to be that prisoners who are assessed as requiring transfer are transferred without delay. We know that it is achievable to transfer prisoners within 28 days or less as we have found this to be the case on some inspections when there are clear pathways for transfers. For

[6] The inspection report is available at Report on an unannounced inspection of HMP & YOI Doncaster by HM Chief Inspector of Prisons 21-22 February and 28 February - 4 March 2022 (justiceinspectorates.gov.uk), see para 4.79.

example, during an inspection that took place in September of this year, transfer times for those transferred since January 2022 were 5, 7 or 15 days. In order to assist with transfers taking place as soon as possible, we would suggest that the possibility of a designated statutory transfer manager (as set out in the White Paper) be reconsidered.

11. To promote transparency and accountability, data should be regularly published on the length of transfer times, including the longest and average waits, and by geographic area.

Identification of need and information sharing

12. We would like to take this opportunity to reiterate the findings made in our *Joint Thematic Inspection of the Criminal Justice Journey for Individuals with Mental Health Needs and Disorder,* that mental health needs are not always identified in a timely manner in the criminal justice system and when they are identified, information is not shared throughout the system. Similarly, our joint report*, Neurodiversity in the criminal justice system: A review of evidence*, identified substantial gaps where opportunities to identify need, or divert an individual from the criminal justice system, were missed, and also identified failures to share information across the criminal justice system. These gaps need to be closed so that early identification of mental ill-health and/or neurodivergence takes place, allowing for opportunities for diversion and community alternatives to be explored from the outset to prevent people being detained in prison inappropriately.

13. We also wanted to draw attention to the situation of those in immigration detention. Inspectors continue to find that safeguards in immigration detention which are designed to identify and prevent those who are vulnerable from being held in detention do not work as effectively as they should. For example, our inspection of Colnbrook Immigration Removal Centre, undertaken in March 2022, identified that very few Rule 35 reports related to health concerns and reports did not always provide an adequate assessment of the impact of continued detention on a detainee's physical and mental health.[7] Our scrutiny visit to Harmondsworth Immigration Removal Centre, undertaken in March 2021, identified an individual who had been diagnosed with schizophrenia and who was considered to be at level three of the adults at risk policy but who had nonetheless been detained for five months following that assessment at the time of our visit despite repeat recommendations for release from the case progression panel.[8] Another detainee who healthcare staff in the centre considered lacked capacity to consent to a COVID-19 vaccination remained in detention due to a lack of suitable bail accommodation. These safeguards must work effectively to prevent people being held in immigration detention unnecessarily, with the recognition that release from administrative detention, rather than a transfer to a secure mental health setting, is a possibility for immigration detainees.

I hope that you find this information useful and should you require anything further, please do not hesitate to contact me.

Charlie Taylor, HM Chief Inspector of Prisons **September 2022**

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[7] Rule 35 of the Detention Centre Rules requires a medical practitioner to report to the Home Office on the case of any detainee whose health is likely to be injuriously affected by continued detention, who may have suicidal intentions, or who may have been the victim of torture. The inspection report is available at Report on an unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons 28 February - 18 March 2022 (justiceinspectorates.gov.uk), see paras 2.12-2.13.

[8] The *Adults at risk in immigration detention* guidance sets out how to identify if an individual is an 'adult at risk' and if they are, whether immigration detention should be maintained. Risks include a 'mental health condition or impairment'. Case progression panels are intended to provide further scrutiny to minimise the likelihood of immigration detention being inappropriate. The visit report is available at https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/04/Harmondsworth-IRC-SV-web-2021-2.pdf, see paras 2.17-2.19.