

Agenda – Health, Social Care and Sport Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 13 November 2019

Meeting time: 09.30

For further information contact:

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1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Motion under Standing Order 17.42 (vi) to resolve to exclude the public for item 3 of today's meeting

(09.30)

3 Health and Social Care (Quality and Engagement) (Wales) Bill: Consideration of draft report

(09.30–10.30)

(Pages 1 – 76)

Break (10.30–10.40)

4 Provision of health and social care in the adult prison estate: Evidence session with Prisons and Probation Ombudsman

(10.40–11.25)

(Pages 77 – 119)

Sue McAllister, Prisons and Probation Ombudsman

Research Brief

Summary of written evidence

Paper 1 – Prisons and Probation Ombudsman

5 Paper(s) to note

(11.25)



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

5.1 Letter from the Minister for Health and Social Services regarding the National Health Service (Indemnities) (Wales) Bill

(Pages 120 – 123)

6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of this meeting

(11.25)

**7 Provision of health and social care in the adult prison estate:
Consideration of evidence**

(11.25–11.40)

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**Prisons &
Probation**

Ombudsman
Independent Investigations

Sue McAllister CB
Prisons and Probation Ombudsman

Health, Social Care and Sport Committee
National Assembly for Wales
Cardiff Bay
Cardiff
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22 October 2019

Dear Committee for Health, Social Care and Sport

Re: Inquiry into the provision of health and social care in the adult prison estate

I understand that the Health, Social Care and Sport Committee is welcoming written submissions for the above inquiry.

My role

My office carries out independent investigations into deaths and complaints in custody. The PPO's role and responsibilities are set out in detail in our terms of reference¹.

We have two main duties:

- To investigate complaints made by prisoners, young people in detention (young offender institutions and secure training centres), offenders under probation supervision and immigration detainees.
- To investigate deaths of prisoners, young people in detention (including residents in secure children's homes), approved premises' residents and immigration detainees due to any cause, including any apparent suicides and natural causes.

The purpose of these investigations is to understand what happened, to correct injustices and to identify learning for the organisations whose actions we oversee so that we can make a significant contribution to safer, fairer custody and offender supervision.

The PPO does not investigate complaints that relate to the clinical judgment of medical professionals. However, there are complaints that touch upon issues of health and social

¹ www.ppo.gov.uk/about/vision-and-values/terms-of-reference/

care and, of course, our fatal incident investigations will always include a clinical review which we commission from medical professionals.

In relation to prisons, my role extends across England and Wales.

My submission to the inquiry into the provision of health and social care in the adult prison estate

HMP Parc & Healthcare Complaints

HMP Parc is a private prison operated by G4S. The primary care services at HMP Parc are also delivered through a contract with G4S meaning that healthcare is provided by doctors and nurses who are employed and contracted by G4S.

In 2017 we concluded an investigation into a complaint from a prisoner at HMP Parc about there being nowhere outside of the prison to escalate his healthcare complaint to. It became apparent during our investigation that this was the case.

Complaints about the clinical judgement of medical professionals is outside the PPO's remit and therefore we are unable to consider such complaints about healthcare at HMP Parc. The Parliamentary and Health Service Ombudsman (who consider such complaints relating to English prisons) has no remit in Wales, and the Public Services Ombudsman for Wales has been unable to investigate because healthcare at HMP Parc is privately run.

Following the investigation, we recommended that G4S, the Local Health Board and the HIW explored introducing an independent element to the complaints process for prisoners at HMP Parc.

Following our recommendation, an escalation process was introduced where complaints about healthcare at HMP Parc can be submitted to the Director of Strategic Support, Administration and Assurance (HMPPS in Wales) who is independent from G4S. The Director can request that an independent healthcare professional reviews the complaint if necessary.

It is encouraging that our recommendation was implemented so that the complaints will now be considered by someone outside of the establishment. However, I am still not convinced that the healthcare complaints process is as clear and thorough at HMP Parc as it is for prisoners in the rest of Wales and England. Ultimately, it appears that it is a non-clinician deciding whether a complaint should be looked at by someone with medical expertise.

HMP Parc and Healthcare Inspections

Healthcare Inspectorate Wales (HIW) inspects the majority of prison healthcare services. However, we are aware that primary healthcare provision at HMP Parc does not fall under the remit of the HIW because the healthcare is privately run. It is concerning that there appears to be no clear inspection oversight for the primary healthcare provision at HMP Parc. This also confuses matters when we need to escalate concerns or recommendations relating to the provision of primary healthcare at HMP Parc, as it is unclear who would have oversight and responsibility for them. I would ask that this is addressed.

Fatal Incident Investigations

HIW undertake the clinical reviews that form part of our investigations into fatal incidents in prisons in Wales. I understand that HIW provided the inquiry with a breakdown of the number and type of fatal incident investigations in their evidence. Therefore, I will not repeat those figures here.

Deaths from natural causes account for the majority (54%) of our fatal incident investigations, and the majority of these in 2018/19 were of men over 60. This is largely explained by the increase in older prisoners and associated age-related conditions. Our natural cause investigations focus in particular on the need for prisons to provide appropriate healthcare at a level equivalent to that which could be expected in the community.

The majority (31%) of the recommendations we have made following a natural cause death related to healthcare provision such as ensuring attendance at hospital appointments and avoiding delay, robust record-keeping and additional training for staff for particular medical conditions.

I am concerned that there have been two investigations into deaths at HMP Cardiff in 2019 where we have found that the healthcare provision was not equivalent to that in the community. The Governor, the healthcare providers and the NHS Commissioners need to address this worrying situation as a matter of urgency.

Between 2014 and 2018 we opened 16 investigations into self-inflicted deaths that occurred in Welsh prisons. Following our investigations into self-inflicted deaths across the prison estate, 24% of the recommendations we made related to suicide and self-harm prevention. This included training for staff in assessing risk, holding multi-disciplinary case reviews, recording all known risk factors and sharing relevant information.

It is important that prisoners receive effective continuity of care when they move into custody from the community, or from prison to hospital and back again. It is also important that they receive effective continuity of care if they move between Welsh and English prisons. Accurate record-keeping and good information sharing practices are crucial to this.

Disabled prisoners and ageing prison population

I have already referred above to the increase in older prisoners. In June 2017, we published “Learning from PPO investigations: Older Prisoners”². This report noted that the challenge to HMPPS is clear: prisons designed for fit, young men must adjust to the largely unexpected and unplanned roles of care home and even hospice.

² http://www.ppo.gov.uk/wp-content/uploads/2017/06/6-3460_PPO_Older-Prisoners_WEB.pdf

The proportion of older prisoners has been growing over the past decade and a half. In absolute terms, the number of prisoners over the age of 50 has nearly trebled, from more than 4,800 in 2002, to nearly 12,600 in 2016.

The overall demographic shift and increase in life expectancy in the general population will lead to an ageing prison population. This makes it all the more pressing that prisons have in place effective policies and processes that will allow them to ably care for ill and disabled prisoners.

One area for consideration across the prison estate is ensuring that cells and facilities are designed to accommodate disabled prisoners on normal location (and not just in healthcare centres). Earlier this year we investigated a complaint from a prisoner at HMP Berwyn in which he was complaining that his disabled cell was not properly equipped with shower facilities that were suitable for a wheelchair user. This demonstrates that consideration needs to be given to the provision of cells being designed to accommodate disabled prisoners.

Other areas to be considered include:

- Consideration of the resettlement needs of older prisoners (which are likely to be less about employment and more about coping strategies and location close to families).
- The provision of suitable environments within prisons to provide intensive palliative care and end of life care for terminally ill prisoners, and the development of close relationships with local palliative care services, including local hospices.
- Analysis of the rates of certain illnesses and disabilities within the prison population so that provision can be planned, such as ensuring staff have received appropriate training for particular medical conditions.
- The social care needs of older prisoners and whether there is a need for co-commissioning with Social Services.

Prisoner mental health

In January 2016, we published “Learning from PPO investigations: Prisoner mental health”³. Mental ill health is closely associated with the depressingly high rates of suicide and self-harm that we have seen in prisons in recent years.

There is no doubt that managing mental ill health is a significant challenge for HMPPS. Some of the most difficult and challenging behaviour in our prisons is displayed by distressed people with mental health problems trying to communicate that they need help.

Our 2016 report included 25 lessons for HMPPS and the MoJ. The commissioning of adequate mental health provision for prisons and the ability to transfer prisoners to secure hospital accommodation when necessary, are clearly crucial.

³ <https://s3-eu-west-2.amazonaws.com/ppo-dev-storage-4dvjl6iqfyh/uploads/2016/01/PPO-thematic-prisoners-mental-health-web-final.pdf>

Drug detoxification

Some of my fatal incident investigations have raised concerns with the drug detoxification programme in Welsh prisons. Unlike English prisons, as far as we are aware, Welsh prisons do not offer an integrated drug treatment system (IDTS) for prisoners who arrive dependent on substances, and they do not routinely offer opiate medication for maintenance or detoxification. There are some concerns about the impact this could have on prisoners who transfer from an English prison to a Welsh prison. We have previously raised this with the Welsh Affairs Committee.

The Welsh Affairs Committee published a report in May 2019 on “Prison Provision in Wales”.⁴ In this report the Welsh Affairs Committee said that they:

“...heard during prison visits that prisoners coming to the Welsh estate from English prisons posed a disproportionate problem, especially in relation to security, as a result of prisoners’ expectations that they would be prescribed substitute medication.”⁵

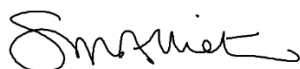
The Welsh Affairs Committee made the following recommendation in their report:

“We respect the Welsh Government’s decision to have a different drugs policy than England. However, this gives rise to particular issues when prisoners transfer from the English to the Welsh estate. To address these issues, we recommend that HMPPS work with NHS Wales to develop a transition arrangement for prisoners transferring from English prisons on arrival at Welsh prisons. This should be based on clinical advice, providing the necessary support until prisoners are fully integrated into the substance misuse programmes used in prisons in Wales. This arrangement should be in place by the end of 2019. We further recommend that more data should be collected and evaluation undertaken to gain a full picture of treatment differences between Wales and England, to include both opioid substitution psychosocial approaches and prescription arrangements.”

I would fully agree with this recommendation from the Welsh Affairs Committee.

I hope that this is helpful. Please get in touch if you require any additional information.

Yours sincerely



Sue McAllister CB

Prisons and Probation Ombudsman

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwelaf/742/742.pdf>

⁵ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwelaf/742/742.pdf> para 18.

Agenda Item 5.1

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Dr Dai Lloyd
Chair
Health, Social Care and Sport Committee

31 October 2019

Dear Dai,

National Health Service (Indemnities) (Wales) Bill

Thank you for inviting me to give evidence to the Committee on 23 October concerning the above Bill. During the session, I undertook to provide clarification on the matter of the £100m of liabilities referred to in the Bill's Explanatory Memorandum and Regulatory Impact Assessment. There are also some matters which I consider need further clarification for the Committee. For ease of reference I have structured this letter under respective headings.

Indemnity cover

During my responses to the Committee, on occasions I used the terms "indemnity insurance" or "insurance" or "indemnity premiums". For clarity, I was referring to the provision of indemnity, which is not an insurance product.

Both the Future Liabilities Scheme (FLS) for clinical negligence claims arising after 1 April 2019 and the proposed Existing Liabilities Scheme (ELS) for clinical negligence claims arising before April 2019 are discretionary "occurrence based" indemnity cover.

"Occurrence based" indemnity cover contrasts with "claims made" cover which is the nature of an insurance policy. Under "claims made" cover, if a GP did something negligent and then retired the next day, the GP will need to have "run-off" arrangements in place to cover any claims that are made after payment of policy premiums has stopped. These "run-off" arrangements are sometimes built into the policy, but in other cases require additional payments to be made. However, with "occurrence based cover", as long as the GP has paid the MDO subscription at the time the incident occurred that later gave rise to a claim, the GP will be covered in perpetuity. This means that even if the GP did something negligent but retired the next day and stopped subscriptions, even if the complaint and legal claim is made against the GP three years later, the GP will be covered.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Under the ELS and FLS schemes, indemnity for clinical negligence is discretionary which mirrors the ELS and FLS arrangements in England and the medical defence organisation (MDO) indemnity arrangements. Under discretionary indemnity, Welsh Ministers will have the discretion to settle a claim for clinical negligence. Exercising discretion would only be made in unique circumstances.

Limitation periods for bringing clinical negligence claims

Limitation periods for bringing claims are set out in the Limitation Act 1980. In essence, the period for clinical negligence claims is three years from the incident date or from the date of knowledge if that is later (as it often is). Children have until their 21st birthday and persons without capacity are not subject to a limitation period at all.

The scope of the ELS and FLS

The ELS and FLS scheme will cover the activities of all contractors who provide primary medical services which will include clinical liabilities arising from the activities of GP practice staff and other medical professionals such as salaried GPs, locum GPs, practice pharmacists, practice nurses. The scheme will not cover private work, complaints, involvement in coroners' cases, GMC hearings and other matters. The scheme will not cover primary care dentistry, community care dentistry community pharmacy, and optometry.

ELS Liabilities to be transferred to Welsh Government

The Welsh Government is bound by non-disclosure agreements with all three MDOs due to the sensitive nature of the information and discussions. Therefore, only limited information can be provided to the Committee.

The Welsh Government has commissioned external financial advisors to undertake financial due diligence in relation to the three MDOs covering actuarial advice in relation to potential clinical negligence liabilities incurred before 1 April 2019. The financial due diligence has included actuarial advice in relation to potential clinical negligence liabilities incurred before 1 April 2019. The actual value of the liabilities may fluctuate according to claims incidence patterns, claims notifications and the value of settled claims. These liabilities will only be taken on by the Welsh Government if an appropriate transfer of assets can be agreed with the participating MDO. The £100m estimate of liabilities is not the expected cost to the Welsh Government because it does not take account of any asset transfers from MDOs. The Welsh Government is confident that the estimate of liabilities provided by the external advisors is robust.

In the event of liabilities being greater than the estimate, Welsh Government will bear the risk of claims values being greater than those anticipated through due diligence work. Equally, the Welsh Government will benefit from any claims being settled at a lower value since liabilities may fluctuate according to claims incidence patterns, claims notifications and value of settled claims. In addition, there is some level of protection within the contracts being negotiated in the event of the liabilities value turning out to be significantly higher than anticipated in the form of some sharing of financial risk with participating MDOs.

The anticipated net financial exposure of Welsh Government in relation to each participating MDO cannot be disclosed because this would breach the non-disclosure agreements between MDOs and Welsh Government. The anticipated net financial exposure to Welsh Government is expected to be within the parameters set out when it was decided to commit to ELS, in return for which the ELS arrangements would strengthen the stability of indemnity provision which will provide assurance for patients in relation to pre-April 2019 clinical

negligence claims for redress. The ELS arrangements will also ensure that GPs in Wales are not treated at a disadvantage relative to GPs in England where ELS arrangements are being introduced. This will help to ensure that there is no negative impact on GP recruitment and retention and cross border activity.

The effect of the proposed Bill on medical defence organisations

The Bill has no effect on the MDOs. It provides the enabling power for the drafting of Regulations that will create the ELS.

The Market

It would be helpful to clarify my reply to Angela Burns AM final questions regarding the MDOs business and my reference to a “failing market”. My reference to the market failing was made in the context of MDOs being able to offer an affordable product. My response reflected that Government intervened in the MDO indemnity market given the increasing cost of GP professional indemnity and, in particular, the impact of the decision taken by the UK Government to change the Personal Injury Discount Rate (PIDR) 2.5% to minus 0.75% in February 2017 which would have resulted in the cost of indemnity cover for GPs increasing substantially, perhaps by 20% -25%, which would have been untenable for GPs. The decision to introduce the Future Liability Scheme (FLS) in April 2019 helped to address the concerns of GPs about the affordability of professional indemnity costs and has helped to deliver a sustainable, long term solution to address the increasing costs of professional indemnity.

My reference to the market failing in terms of an affordable product was made in this context. The Scottish Government has not introduced a state backed scheme for GP professional indemnity. I note the subsequent evidence given by MDDUS. I am happy to note that MDDUS is a very well respected, well managed, medical defence organisation which is underpinned by prudent financial management.

Conclusion

I consider that the ELS arrangements will strengthen the resilience of general medical services and will provide assurance for patients in relation to pre April 2019 clinical negligence claims for redress. The ELS arrangements, which will be aligned with ELS arrangements in England, will also help to ensure there is no negative impact on cross border activity in terms of GP recruitment, which could be the case if Wales ELS arrangements are not introduced, and if arrangements in Wales differ from those in England.

I am providing a copy this letter to the Chair of the Finance Committee.

Yours sincerely,



Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services