



HMIPS

HM INSPECTORATE OF
PRISONS FOR SCOTLAND

INSPECTING AND MONITORING

STANDARDS FOR INSPECTING AND MONITORING PRISONS IN SCOTLAND

INTRODUCTION

FOREWORD

“ALL PEOPLE DEPRIVED OF THEIR LIBERTY SHALL BE TREATED WITH HUMANITY AND WITH RESPECT FOR THE INHERENT DIGNITY OF THE HUMAN PERSON.”

(Article 10, UN International Covenant on Civil and Political Rights)

I am pleased to introduce these Standards for Inspecting and Monitoring Prisons in Scotland. They are the result of a revision of the Standards and the supporting Quality Indicators which were published in 2015.

The proper use of imprisonment forms an important part of the criminal justice system in Scotland, contributing to improving the safety and wellbeing of our country. A civilised society depends on well-run prisons which prepare those in custody for release back into the community.

The United Nations has recognised that people deprived of their liberty are particularly vulnerable to ill-treatment. The UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires the establishment of an independent National Preventive Mechanism (NPM) in each member state. HM Inspectorate of Prisons for Scotland (HMIPS) is a member of the United Kingdom’s NPM.

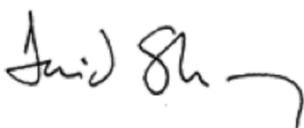
The regular monitoring and inspecting of prisons provide an important safeguard and a reassurance to the public. Such scrutiny needs to be conducted effectively, identifying both areas of good practice and where improvements should be made.

These revised Standards and their associated Quality Indicators have at their heart the upholding of the human rights of those detained in prison. The Standards articulate what is expected of a well-run prison, and contain very clear statements identifying what is important and what will be monitored and inspected.

We have adopted an approach underpinned by the PANEL principles, which relate to Participation, Accountability, Non-discrimination and equality, Empowerment and Legality. The focus is on the outcomes for those detained in prison. The PANEL principles provide a framework by which it is possible to analyse and assess the human rights impact of decision making, as well as providing guidance in terms of how to make decisions and implement processes. By using accessible language, PANEL translates the wide variety of human rights law minimum standards, so that they can be better understood and applied.

Standard 9: Health and Wellbeing is reported differently, being undertaken by Healthcare Improvement Scotland as part of the HMIPS inspection process. The Quality Indicators are consistent with the National Health and Social Care Standards: My support, my life (2017) principles. The supporting guidance reflects Healthcare Improvement Scotland’s Quality Framework, with the intention of driving improvements in health and social care through consistent quality assurance and inspection.

I am grateful to Lauren Mizen for her extensive work in revising and developing these Standards and Quality Indicators, and to all those who have contributed to their development. My hope is that these Standards will contribute positively to the effective scrutiny of prisons in Scotland, and will encourage continuous improvement in the quality and effectiveness of our prisons in Scotland.



David Strang

HM Chief Inspector of Prisons for Scotland
May 2018

INTRODUCTION

The UK is a party to the OPCAT. OPCAT is an international human rights treaty designed to strengthen the protection of persons deprived of their liberty. Acknowledging that such persons are particularly vulnerable to ill-treatment and believing that efforts to end ill-treatment should focus on prevention, OPCAT provides for a system of international and national visits to all places of detention.

In the UK there are 21 bodies that carry out these visits and they form the NPM. HMIPS is one of these bodies.

Membership of the NPM means that HMIPS is independent and impartial, with a remit to inspect and monitor outcomes for prisoners in Scotland. In order to do this effectively, we have written our own Standards based on nationally and internationally agreed human rights law standards.

Our nine Standards are as follows:

Standard 1: Lawful and Transparent Custody

Standard 2: Decency

Standard 3: Personal Safety

Standard 4: Effective, Courteous and Humane Use of Authority

Standard 5: Respect, Autonomy and Protection Against Mistreatment

Standard 6: Purposeful Activity

Standard 7: Transitions from Custody into the Community

Standard 8: Organisational Effectiveness

Standard 9: Health and Wellbeing

Each Standard has a number of Quality Indicators (QIs) which are graded individually to inform the overall grade for the Standard as a whole. Under each QI, there is a “Features” section, a “Specification” section and a “Legal Standards” section.

“Features” gives a brief overview of the themes in the QI and the key areas of interest to guide Inspectors and Independent Prison Monitors. “Specification” provides a more detailed description of evidence that could demonstrate that the outcome has been achieved for prisoners in relation to the QI. However, this description is neither exhaustive nor prescriptive and does not preclude the establishment from proving that the appropriate outcomes have been met by alternative means. It is for the Inspector or Independent Prison Monitor (IPM) to analyse what they observe and come to a judgement about whether the outcome has been met.

“Legal Standards” includes the relevant sections of both domestic law and human rights law which apply to the QI. Reference to independent legal sources is important because these provisions inform HMIPS as to what constitutes a satisfactory outcome for prisoners. HMIPS will be looking to what outcome is expected in the Legal Standards and measuring the performance of an establishment against these rather than their own subjective judgement. Also included in the “Legal Standards” section is reference to the PANEL principles. A more detailed explanation of PANEL follows in the document entitled “What is a Human Rights-Based Approach?” but essentially, the PANEL principles will mean that Inspectors and Independent Prison Monitors are looking to answer a number of additional questions relating to Participation, Accountability, Non-discrimination and equality, Empowerment and Legality to ensure that the QI has met an adequate outcome.

An introductory page to each Standard has been included with a series of questions under the PANEL headings to assist Inspectors and Independent Prison Monitors, and the inspected body, to understand how PANEL applies to the Standard as a whole. In order to further illustrate the Legality aspect, a short paragraph outlining the main human rights underpinning the Standard has also been included. This is not exhaustive of all rights engaged but is intended as a brief overview to demonstrate more clearly the foundation of our Standards in human rights.

HMIPS believe that although prisoners have been detained and lose their right to liberty, they do not deserve to lose the other rights that they are entitled to. Furthermore, we believe that in upholding prisoner rights, placing prisoners at the centre of decision making, eliminating discrimination and ensuring there are adequate mechanisms of redress, prisons in Scotland will be safer and more able to support prisoners' reintegration into the community on release. Ensuring that prisons are places of productive, positive and useful education, work and interaction, will lead to better outcomes for society overall in reducing recidivism and keeping our communities safer.

EVALUATION

HMIPS is supported in our work by Inspectors from Healthcare Improvement Scotland (HIS), Education Scotland, Scottish Human Rights Commission, Mental Welfare Commission and the Care Inspectorate.

The information gathered facilitates the compilation of a complete analysis of the prison against the Standards used. This ensures that assessments are fair, balanced and accurate.

In relation to each Standard and QI, Inspectors record their evaluation in two forms:

1. A colour coded assessment marker.

-  Indicates good performance which may constitute a practice worthy of sharing.
-  Indicates overall satisfactory performance.
-  Indicates generally acceptable performance though some improvements are required.
-  Indicates poor performance and will be accompanied by a statement of what requires to be addressed.
-  Indicates unacceptable performance that requires immediate attention.
-  Quality indicator is not applicable.

2. A written record of the evidence gathered is produced by the Inspector allocated each individual standard, consisting of a statement against each of the QIs contained within it and upon which the marking is based.

WHAT IS A HUMAN RIGHTS-BASED APPROACH?

What is a human rights-based approach?

Human rights and their corresponding obligations are enshrined in international legal rules and standards which are founded upon the inherent worth and dignity of each individual human being. A human rights-based approach puts these rights at the very centre of policies and practices and seeks to translate the goals of human rights law into realised outcomes for people.

At the centre of this approach is the relationship between the rights holder and the duty bearer. For HMIPS Standards, this is the relationship between the prisoner (rights holder) and the state (duty bearer) represented in various capacities by the Scottish Prison Service (SPS), the National Health Service (NHS), the Scottish Government and private contractors depending on the prison establishment, circumstances, subject matter and location within the prison.



In this relationship prisoners are recognised, not as mere passive receivers of treatment, but as active parties who have an influence in how their rights are realised and how the state can fulfil its obligations.

A human rights-based approach requires building the ability of the duty bearer to meet their obligations as well as enabling prisoners to understand and claim their rights. It includes a robust system of accountability for instances where human rights standards are not met.

What are state obligations?

As a duty bearer, the state has certain obligations towards prisoners to ensure that their rights are upheld and enforced.

Three types of state obligation:

RESPECT:

To refrain from interfering with the enjoyment of a right e.g. there is no arbitrary use of force

PROTECT:

To prevent other parties from interfering with the enjoyment of rights e.g. thorough investigations into any incidents take place

FULFIL:

To take active steps to put in place laws, policies, institutions, procedures and to allocate resources to enable people to enjoy their rights e.g. budgets are allocated in order to provide support for prisoners who require assistance

The state has obligations to meet a high level strategic and policy direction, but also at the lower level implementation of policy and the knowledge and understanding of those involved. A human rights-based approach helps to develop the capacity of the state to meet all these obligations and ensures that human rights form the golden thread from policy through to practice.

What is PANEL?

The central components to a human rights-based approach have been distilled into five principles: **P**articipation, **A**ccountability, **N**on-discrimination and equality, **E**mpowerment and **L**egality.

The **PANEL** principles provide a framework by which it is possible to analyse and assess the human rights impact of decision making as well as providing guidance for the state, in terms of how to make decisions and implement processes. By using accessible language, **PANEL** translates the wide variety of human rights law minimum standards so that they can be better understood and applied.

Participation:

Prisoners should be meaningfully involved in decisions that affect their lives.

Accountability:

There should be monitoring of how prisoners' rights are being affected as well as remedies when things go wrong.

Non-discrimination and equality:

All forms of discrimination must be prohibited, prevented and eliminated. The needs of prisoners who face the biggest barriers to realising their rights should be prioritised.

Empowerment:

Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.

Legality:

Approaches should be grounded in the legal rights that are set out in domestic and international laws.

Participation

“Prisoners should be meaningfully involved in decisions that affect their lives”

All prisoners have the right to participate in decisions which affect them. Components to the principle of participation include that it must be active, free and meaningful and give attention to issues of accessibility, including access to information in a form and a language that can be understood.

Participation is both a goal of implementing a human rights-based approach and a means by which it can be implemented. It is beneficial for prisoners to be involved in the decision making process, but it also benefits the decision making process if prisoners participate meaningfully as it leads to more transparent, informed and relevant decision making, which is responsive to the needs of the people affected.

Throughout these Standards, HMIPS have highlighted under certain QIs where participation is especially important, but we would expect to see participation of prisoners as a systematic priority generally throughout the development and in the delivery of policies and processes that affect them. In order for this to be meaningful, the prisoner voice must be heard and taken into account by decision makers.

Another important component is the issue of accessibility. The reality is that some prisoners will require extra support to enable them to fully, actively and meaningfully participate. HMIPS would expect that any barriers to participation would be identified and those prisoners would be assisted to overcome them in order to participate.

The principle of participation is particularly important in a prison setting because of the power imbalance that exists between the prison establishment and the prisoner.

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| ■ Is the establishment proactive in engaging with prisoners to hear their opinions? | ■ Is prisoner participation routine and embedded in the approach to decision making? |
| ■ Has the prisoner voice been an influential component of the decision making process; have their opinions been taken into account? | ■ Do prisoners feel able to participate and do they know when they are permitted to do so? |
| ■ Do staff understand the need for prisoner participation? | ■ Are there effective lines of communication between the prison and the prisoners regarding decisions made? |
| ■ Are all prisoner groups represented, including those who are in vulnerable situations, with protected characteristics and those who are not often heard? | ■ Is the prison proactive in providing support to those who need it in order to participate? |

Accountability

“There should be monitoring of how prisoners’ rights are being affected, as well as remedies when things go wrong”

Accountability requires effective monitoring of human rights standards. For accountability to be effective there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights. This principle focuses on the state as duty bearer and its responsibility to respect, protect and fulfil the rights of prisoners.

Effective monitoring of human rights standards requires the prison to identify the rights and entitlements of prisoners on an individual basis. Once this has been established, the corresponding action that needs to be taken to secure those rights can be put in place. This sort of systematic approach will enable the state to be fully aware of rights, its obligations and also any gaps which exist in terms of realising these rights.

In the event that human rights have been breached or violated, the principle of accountability requires the state to create mechanisms of redress. These enable prisoners to challenge decisions made about their treatment, access to services or any other matter they are concerned about. An important component to this is the provision of information that these mechanisms exist and how they can be accessed by all prisoners.

Lastly, the principle of accountability requires the state to evaluate and monitor the outcomes and processes with regard to their impact on human rights, both intended and unintended. We would expect prisons to have a system of review in place to ensure that the outcomes of decisions are regularly monitored so that in the event that rights are negatively impacted upon, remedies can be provided. In some cases, this will require immediate action but in other cases, the limitation of a right must be justified by the state as being absolutely necessary and strictly proportionate.

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| ■ Does the activity identify both the entitlements of rights holders and the obligations of duty bearers? | ■ Do mechanisms of accountability for violations of rights exist? |
| ■ Is there an individualised, person-centred approach to decision making? | ■ Are both outcomes and processes monitored and evaluated? |
| ■ Are remedies provided in the event of a rights violation? | ■ Are any limitations to rights justified by the state as being absolutely necessary and strictly proportionate? |
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Non-discrimination and equality

“All forms of discrimination must be prohibited, prevented and eliminated. The needs of prisoners who face the biggest barriers to realising their rights should be prioritised”

A human rights-based approach means that all forms of discrimination must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most vulnerable situations who face the biggest barriers to realising their rights. In the UK, non-discrimination is principally governed by the Equality Act 2010.

Non-discrimination requires the state to address discrimination proactively through introducing policies and practices as well as creating an environment which is as safe and inclusive as possible. This means that everything from interpersonal interactions to high level policy decisions must be grounded in equal treatment to all prisoners.

A key aspect of the non-discrimination and equality principle is the systematic analysis of the impact of decisions and policies upon those who are most vulnerable, marginalised and excluded, including those with protected characteristics. This analysis should occur both on an establishment level and a higher strategic level.

HMIPS would expect this approach to lead to the identification of prisoners with additional needs, the provision of required extra support and the progressive removal of barriers which prevent any group realising their rights whether due to protected characteristics or any other vulnerable status e.g. foreign nationals or those with speech and language deficits.

PROTECTED CHARACTERISTICS EQUALITY ACT 2010

- Age
- Disability
- Gender reassignment
- Marriage & civil partnership
- Pregnancy & maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

■ Are those who are most vulnerable and marginalised identified, along with those who have protected characteristics?

■ Is the prison proactive in engaging with and supporting all prisoners, taking into account any needs arising from a protected characteristic or any other vulnerable status?

■ What efforts have been made to address accessibility issues and to reasonably accommodate additional requirements?

■ Is the impact of decisions and policies upon those who are most vulnerable and those with protected characteristics analysed?

Empowerment

“Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives”

Prisoners should understand their rights, and be fully supported to participate in the development of policies and practices which affect their lives. Prisoners should be able to claim their rights where necessary and actively participate. An important aspect of the obligation to fulfil human rights is that for some prisoners to do this, they will require support and assistance from the prison to do so.

Prisoners must understand their rights and entitlements before they are able to claim them. Information must be shared with prisoners about the whole range of entitlements from daily life issues like food, canteen choices, access to personal property, cash or the telephone, to wider issues like access to programmes, time in the open air and exercise. We would expect prisoners to understand these processes, their entitlements and that the information is in a variety of formats to cater for those with additional needs who require extra assistance.

In order for prisoners to be able to claim their rights, the prison must ensure that any barriers which hinder their ability to do so are progressively removed. These might include, but are not exhaustive of, negative perceptions around the consequences of making a complaint, the attitudes of staff or other prisoners, speech and language deficits, foreign national status or a protected characteristic.

We would expect the prison to engage with prisoners on an individual basis, identify their needs and support them so they are empowered to claim their rights and participate fully in prison life as well as in developing policies and practices which affect them.

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| ■ Are prisoners able to influence change in decisions which affect their lives? | ■ Is information shared in the prison about rights and entitlements? |
| ■ Are prisoners aware of how to claim their rights and enforce their entitlements? | ■ Are prisoners placed at the centre of the decision making process? |
| ■ Are barriers to prisoners claiming their rights and entitlements identified and progressively removed? | ■ Are prisoners engaged with on an individual basis and empowered to claim their rights and entitlements? |
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Legality

“Approaches should be grounded in the legal rights that are set out in domestic and international laws”

The full range of legally protected human rights must be respected, protected and fulfilled. A human rights-based approach requires the recognition of rights as legally enforceable entitlements and is linked to national and international human rights law.

The legality element of PANEL reflects the universal and impartial nature of rights and requires duty bearers to define their objectives in terms of legally enforceable rights. Furthering rights should be an aim of decision and policy making.

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| ■ What do the legal standards set out as conditions upon a certain activity? | ■ Are the procedures, processes and approaches in line with legal standards? |
| ■ Are prison staff aware of human rights standards? | ■ Are the rights of prisoners identified along with the corresponding obligation of the duty bearer? |
| ■ Does the activity occur in accordance with the Scottish Prison Rules? | ■ Have the legal duties and limits of domestic law been adhered to? |
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HM Inspectorate of Prisons for Scotland is a member of the UK's National Preventive Mechanism, a group of organisations which independently monitor all places of detention to meet the requirements of international human rights law.

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