Behind Bars – Perspectives in Delivering Health in Prison

27th February 2024 12.30-14.00

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Welcome to today's programme:

Chair: Samantha Thomas- Safety and learning lead - General Practice | NHS Resolution

Guest speakers:

- Natalie Miller - Deputy regional manager for West Midland Prisons | Practice Plus Group
- Dr Jonathan McAllister - Regional medical lead-London and immigration removal centres | Lead GP-HMP Thameside | Practice Plus Group
- Michelle Hodkinson- Lead Commissioner for secure and detained estate-London | NHS England Health in Justice
- Ruth Kavanagh- Clinical quality and patient safety lead| NHS England Health in Justice
- Jo Easterbrook – Partner | Bevan Brittan
- Julie Charlton – Partner | Bevan Brittan

Housekeeping rules for today's session

- Today's main session will be recorded
- Please note – you will receive a feedback survey after the session. This is for evaluation purposes, and we'd really appreciate your feedback.
- Please feel free to put comments and questions in the chat box

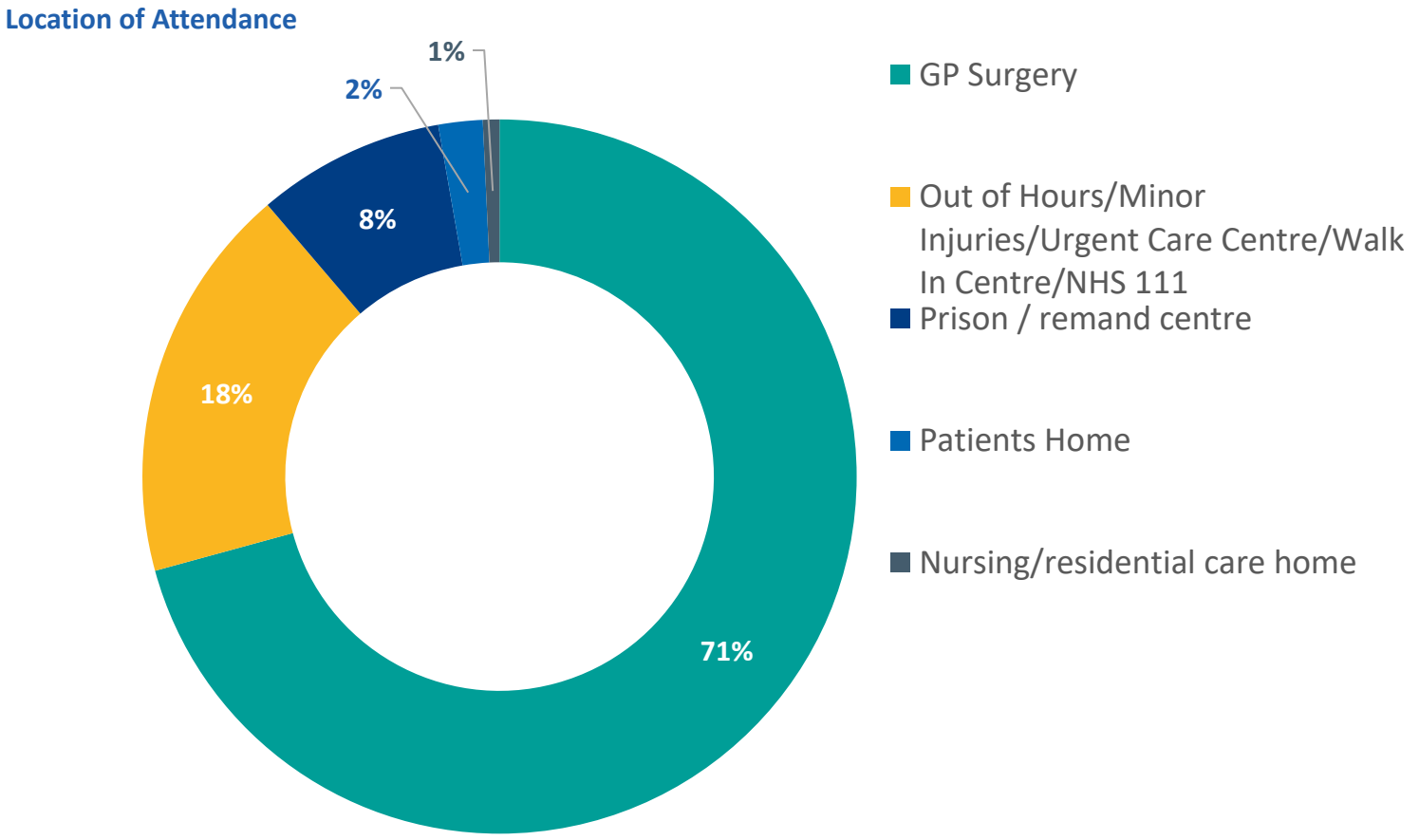
Clinical negligence scheme for general practice (CNSGP) report

Failure to investigate and/or diagnose, and missed, wrong and delayed diagnoses

Medication errors

Delays in care, including specialty reviews and referrals

Problems with communication, between primary and secondary care



Clinical negligence scheme for general practice (CNSGP) report

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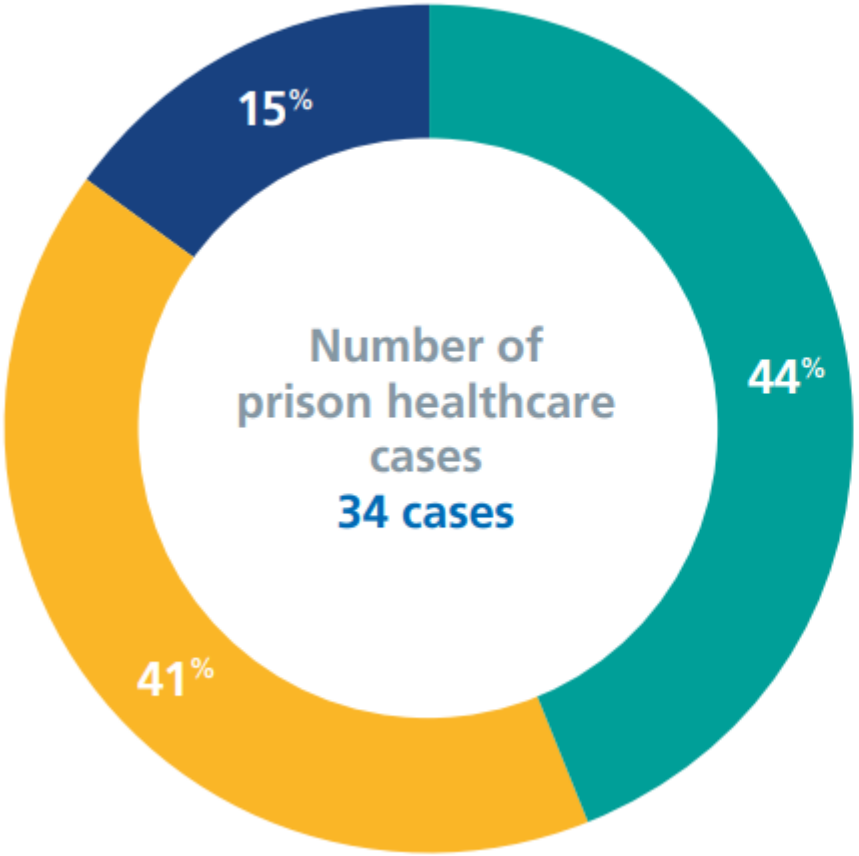
Prison healthcare claims by nature of injury



Other	44%
Medication error	41%
Other orthopeadic injury/infection	15%

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Behind Bars – Perspectives in Delivering Health in Prison

Natalie Miller

- Deputy regional manager for West Midland Prisons | Practice Plus Group

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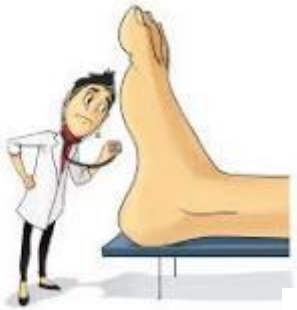
The Challenges of Delivering Healthcare Services within a Prison Environment

Natalie Miller – Deputy Regional Manager for West Midlands Prisons (North)

Healthcare Provision



Prisoner's Journey

HEALTHCARE

- Nearly three in five men (59%) and more than four in five women in prison (82%) say they have mental health problems
- 1,057 people were transferred from prison to a secure hospital in 2022—a 46% increase since records began in 2003
- 57% of women, 41% of men and 30% of children in prison report having a disability
- In 2022–23, basic screening suggested that nearly a third of arriving prisoners (31%) had a neurodivergent need.
- On average, a third of prisoners (34%) said they had an alcohol problem when they arrived in prison

Bed watch and Escorts

- Daily profiles for escorts
- Escort costs
- Cuffing arrangements
- Enablement issues
- Emergency escorts
- Staffing challenges
- ROTL/Compassionate release

Case Study

- Licence recall – life sentence
- Multiple seizures in prison reception
- Sent to hospital and investigations find tumours
- Given a few months to live
- Medically fit for discharge but palliative
- Inpatient unit
- Compassionate release
- ROTL
- The number of people granted compassionate release for health reasons is low—between 2012 and 2019, only 82 people were released.

Case Study

- Arrested in care home for assault
- Taken to hospital as confused
- Dementia
- Prison ordered to take over custody
- Medically fit for discharge – but severe dementia
- Long term bed watch – cost pressures
- Meetings with safeguarding and local authorities
- No place in community for him
- Assisted to court
- Released and housed in a care home

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Health & Justice: Commissioning and Provision

Ruth Kavanagh - Clinical Quality and Patient Safety Lead, NHS England – London

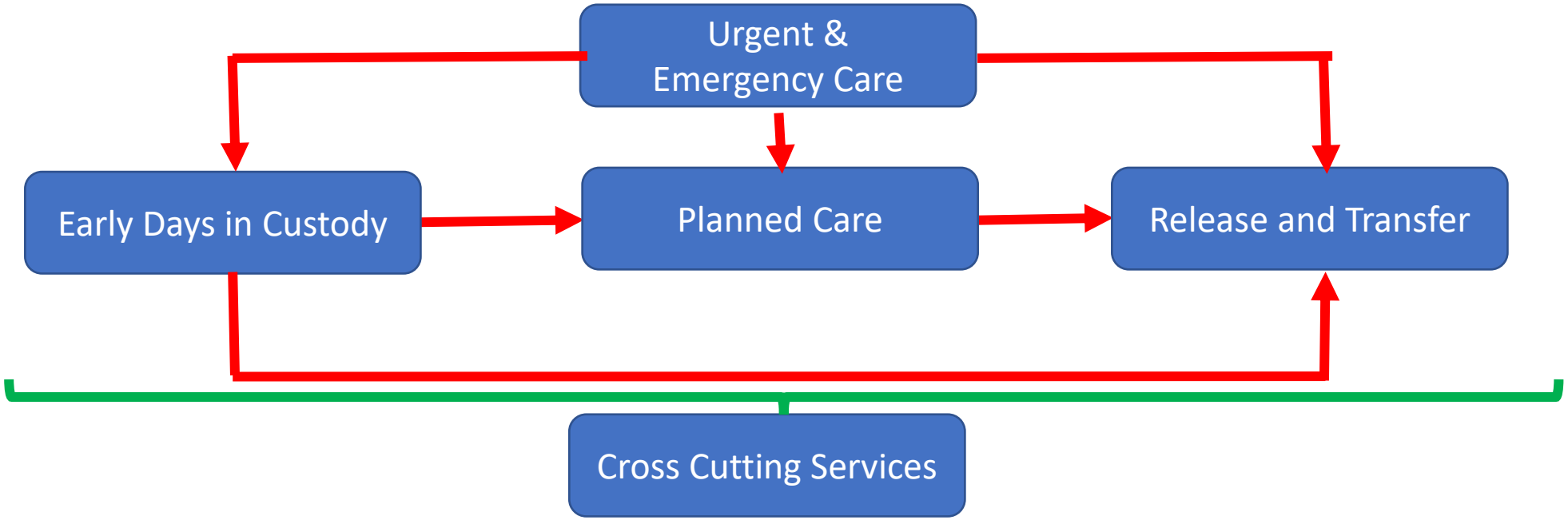
Michelle Hodkinson – Lead Commissioner for Secure and Detained Estate - London

Healthcare providers in Adult Prison Estate

Prison	Operational Capacity	Prime Provider	Mental Health Provider
HMP Brixton	798	Practice Plus Group	Barnet, Enfield & Haringey
HMP Belmarsh	675	Practice Plus Group	Practice Plus Group
HMP Isis	622	Oxleas	Oxleas
HMP Pentonville	1,111	Practice Plus Group	Barnet, Enfield & Haringey
HMP Thameside	1,232	Practice Plus Group	Practice Plus Group
HMP Wandsworth	1,562	Oxleas	Oxleas
HMP Wormwood Scrubs	1,079	Practice Plus Group	Barnet, Enfield & Haringey

H&J Services: Prison, YOI & IRC Healthcare

H&J Services – London Prison Healthcare – New Model of Care



MDT Teams		Cross Cutting Services
As a minimum will include: • Access to GPs • Primary Care Nurses • MH Nurses • Substance Misuse Nurses • Psychosocial workers • HCAs • Administration	Likely to also include: • OTs • Psychologists • Social Workers • Peer workers • Recovery workers	• Podiatry • Physiotherapy • Occupational Therapy • Health Promotion • Screening and Immunisation • Sexual Health • Radiography & Radiology • Diagnostics • Portering, cleaning

Key Benefits:

- Access to services – creating a single point of access and ensuring everyone referred into services are offered the relevant support and treatment pathway.
- Care Coordination – Care Coordination should be offered as a preventative measure to those at risk of becoming acutely unwell as well as those who already require formal care.
- Improved joint working – capitalising on the support available in the prisons regardless of who is delivering it. Develop greater joint working with other prison departments for example gym, education
- Consistency across the prison estate to reduce the need for duplication, especially around those who are transferred between prison establishments in London.
- Ability to drive quality and measure improved outcome by way of benchmarking and shared learning between providers.

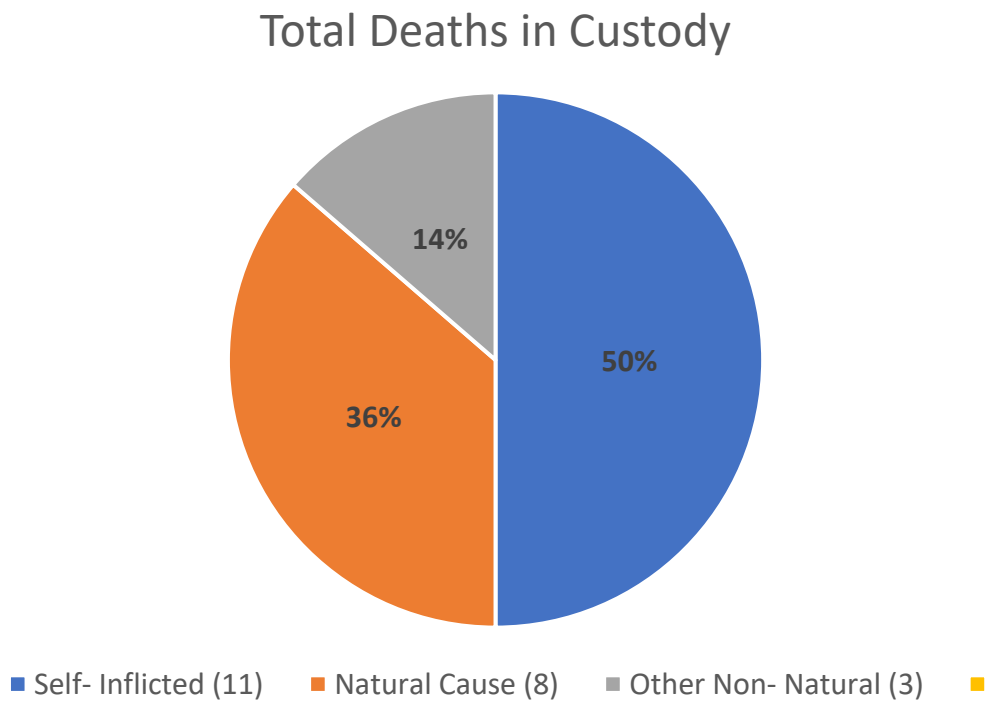
Clinical Quality and Patient Safety- Challenges in Prison Healthcare

Current and ongoing challenges include:

- Ongoing organisational change
- Recruitment and retention of the healthcare workforce
- Reliance on partners, including HMPPS and acute Trusts, to enable elements of prison healthcare delivery
- Clinical complexity and vulnerability of the patient population, impact of health inequalities
- Trauma: the impact on patients and the workforce
- Culture: ingrained elements of organisational culture can impact negatively on service delivery
- Environment and facilities: often not bespoke to healthcare provision, and based in sites with numerous environmental, facilities and Infection Prevention and Control issues. High costs associated with environmental improvement that must be met by HMPPS.
- Population pressures- impact of Operation Safeguard across 2022/23. Prisons operating at full capacity with swift throughput of patients. London's prisoner population was already high, holding 10% of the national prison population. Operation Safeguard also led to displacement of people, impacting on ability to plan continuity of care.

Deaths in Custody 2023- a Breakdown of Cases

Of the incidents reported in 2023, the breakdown is as follows:



Deaths in Custody 2023- Themes

Through analysis of the cases so far, a number of critical themes are present in our incidents:

Complexity and acuity of mental health presentations: highly complex mental health presentations, managing distress and crisis.

Information sharing processes: sharing of information, specifically risk information, between agencies, is identified as an area of weakness in the partnership working process. Specifically, issues are noted in:

- Information sharing between prison teams to healthcare
- Information sharing from pre- custody agencies e.g., Liaison and Diversion, Prisoner Escort Services
- Information regarding immigration status

End of life care: good practice, partnership working and high-quality care planning noted across most cases.

Quality of care in Inpatient Units noted as a weakness in some cases, specifically:

- Staff competence and confidence around managing physical healthcare conditions.
- Staff awareness around safeguarding processes.
- A need for cultural change and acknowledgement that these units now serve all vulnerabilities, rather than the historical mental health function of the units.
- The need for Inpatient Units to be seen as a core part of healthcare provision in the prison, rather than a stand- alone, isolated service.

Patient Safety and Clinical Quality: Ongoing Actions and Next Steps:

Improving information sharing between internal and external services: pan- London, multi- agency Standard Operating Process now in place.

Independent review of Inpatient Unit (IPU) function concluding, oversight meeting in place for IPU improvement, to include:

- Developing IPU competencies, staff support, skill mix and cultural change
- Establishment of pan- London peer support/ action learning set for IPU managers- focus on sharing learning and positive practice

Review of every potential Patient Safety Incident on an MDT basis, investigation of all deaths in custody and consideration of independent review where appropriate.

Mental Health focus- appointment of a Transfers and Remissions Clinical Lead to expediate transfer to hospital where required, specific workstreams supporting transfer/ remissions/ unplanned releases of Mental Health patients/ PICU interface.

Establishment of the Health and Justice Learning Hub

Environmental and facilities focus

Improving quality and service development initiatives through the use of patient and family feedback

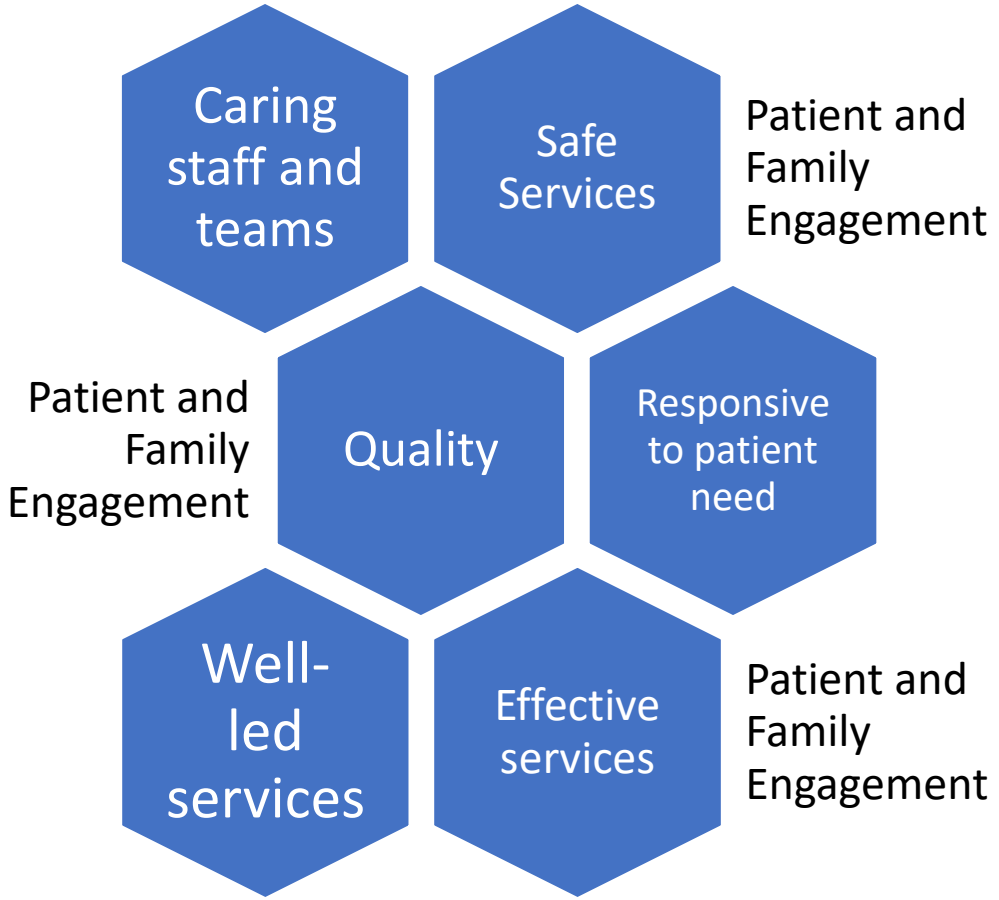
Patient and Public Voice Initiatives

Feedback: PPV groups- generic and specific feedback gathering

Feedback: complaints and compliments

Feedback: engagement via cohort specific providers- CYP and Adults

Feedback: surveys, Friends and Family test, 1:1's



Feedback: involvement in investigation and inspection

Feedback: carers and families- Family specific engagement via Pact

Feedback: supporting Commissioners in procurement of new services

Feedback: supporting peer involvement in service delivery

Prison Healthcare Learning Focus: London Health and Justice Learning Hub

An existing Prison Healthcare provider were appointed to host the Learning Hub in September 2023. The high-level objectives are:

- To bring the London Health and Justice system together with a specific focus on embedding learning and enhancing safety within our services, including prisons, prison healthcare, NHS England, wider providers, people with lived experience of our services, regulatory bodies, coroners, HMCTS, Met. Police and Custody Healthcare.
- To establish a mechanism to share learning and good practice across providers and different parts of the Health and Justice system in London.
- To develop shared protocols will be developed and agreed between stakeholders when a patient safety incident or death in custody occurs.
- To develop and enhance our pan- London approach to learning
- Will demonstrate openness and transparency to our stakeholders when something goes wrong, and set out what we are doing to improve

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Welcome

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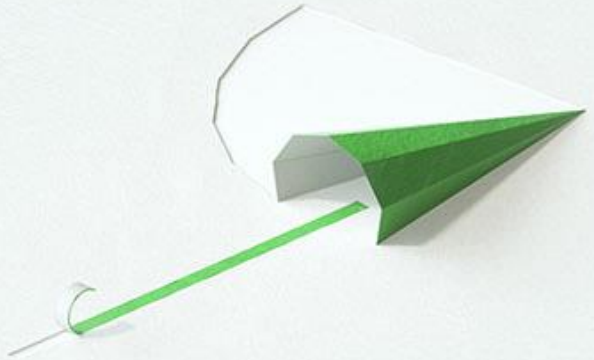
Perspectives on delivering health in the prison and justice system

Jo Easterbrook & Julie Charlton

27 February 2024



Prison Health Inequality

- Median age of death from natural causes 67.5 compared with 86.7 in the general population
- **NCEPOD** survey found out of 247 deaths there were 23 potentially avoidable natural deaths 16 of which had an acute condition (infection or acute cardiovascular system causes) listed as the cause of death
- In 129 cases where reviewers examined health assessments, they identified scope for improvement in 57 (44%) including history taking for physical health problems,
  mental health conditions or smoking alcohol or drug misuse
- Recommendations:
  - Call for improved cardiopulmonary resuscitation training for non-clinical staff
  - Better use of national early warning score (NEWS2)
  - Clear well-communicated protocols and policies for emergency transfer to hospital

The Long Wait – A Thematic Review of Delays in the Transfer of Mentally Unwell Prisoners by HM Chief Inspector of Prisons

- Prisons remain a legal “place of safety”
- Fewer than 15% of patients were transferred within 28 days
- Average wait was 85 days
- Biggest barrier to improving outcomes was the limited access to mental health beds
- Prison was being used as an alternative to a hospital bed even when the need for an admission was evident before imprisonment
- There were delays for two thirds of the patients waiting for a referral once it was identified that their mental health needs could not be treated in prison.
- Only 25% of patients who were urgently referred were transferred to secure mental health provision within the national guidelines of 28 days, compared with 10% of the non-urgent patients.
- Very unwell patients were still being released back into the community while waiting for an access assessment for admission under the Mental Health Act. this meant that they were being detained by the community mental health team at the gate on release.

Mental Health Care in Prisons

- **Independent Monitoring Board** – lack of secure mental health beds in the community means many prisoners in England are spending long periods in isolation during which their health and well-being deteriorate
- Survey of 31 closed men's prisons over 4 weeks in Autumn 2022 – 26% included prisoner who were held in isolation whilst waiting to be assessed or transferred to more appropriate secure settings because of their mental health needs.
- Target for transfer is 28 days – severe delays reported
  - One prisoner spent more than 800 days in care and separation units
  - Prisoner with autism, schizophrenia and ADHD – nine months in isolation and experienced a dramatic deterioration in his mental health
- "Segregation is an absolute last resort for those deemed a danger to themselves or others. Prisons are entitled to the same care as they would receive in the community , which is why we guarantee the most vulnerable individuals are able to access mental health support tailored to their needs."

  - MOJ spokesman

Claims by Prisoners

- Access and Communication for Claimants in prison
- Access to funding – Conditional Fee Agreements
- Litigants in person
- Co-defendants – MOJ, NHS and Independent Health Providers & GPs
- Causes of action
    1. Common law – negligence (*Bolam & Bolitho test)*
    2. The Human Rights Act

Common Causes of Claims in Negligence

- Failure to refer for medical assessment
- Failure to investigate
- Failure to refer for medical treatment
- Failure to treat
- Failure to review/follow up
- Failed handovers

Contributory Negligence

St George v Home Office [2008] EWCA Civ 1068

- A prisoner who fell out of a top bunk bed while suffering an addiction withdrawal seizure, thereby sustaining a head injury that resulted in brain damage,
- The prison doctor had not arrived on the scene quickly enough and had also delayed in calling for an ambulance. When the ambulance arrived it was obstructed at the prison and was further obstructed on its departure. As a result of those culpable delays, S's fit was prolonged by more than half-an-hour. Furthermore, the first aid administered by the prison nursing team should have included immediately protecting S's airway and giving him oxygen. The failure to do so was a fundamental breach of reasonable practice.
- S's brain damage had been caused either by the fit itself or by its being prolonged by the negligent treatment, which led to a reduction in the delivery of oxygen to his brain. On either view, causation was made out.
- C should not have his damages reduced for contributory negligence. Although he was at "fault", within the meaning of the Law Reform (Contributory Negligence) Act 1945 s.1(1) , in becoming addicted to drugs and alcohol in his mid-teens, the addiction was not a potent cause of the injury.
- He had told prison staff about his addiction and previous seizures. The staff knew or ought to have known that he might suffer from withdrawal seizures, yet they placed him in a top bunk.

Duty of Care - MOJ

- The direct duty of care owed by the Ministry of Justice to serving prisoners was limited to matters arising out of their custody. Whilst the duty probably extended to matters relating to access to healthcare, it did not extend to responsibility for negligent medical care provided by healthcare services. – Razumas v Ministry of Justice[2018] EWHC 215 (QB)

Illegality

- The defence of illegality means that a person cannot rely on their illegal act or conduct to found an action against another person. The Latin maxim, "*ex turpi causa non oritur actio*", meaning "*out of an illegal act there can be no cause of action*"
- The court refused to strike out a **negligence** claim brought by a mentally disordered claimant who alleged that the defendant health providers' treatment of him had given rise to circumstances in which he had killed three people. The defendants had failed to establish the defence of illegality, namely that a claim could not succeed if it was founded on the claimant's illegal or immoral act, as they needed to show that the claimant knew his actions were wrong. As the claimant had been acquitted of murder and manslaughter by reason of insanity, there was no such knowledge, nor was any quasi-criminality involved.

Lewis-Ranwell v G4S Health Services (UK) Ltd [2022] EWHC 1213 (QB)

Fundamental Dishonesty & Illegality

Cojanu v Essex Partnership University NHS Trust [2022] EWHC 197 (QB)

- The claimant had entered prison on remand on 17 June 2015 following the attempted murder of his wife. When he arrived, he had a laceration on two fingers on his right dominant hand. In his personal injury claim, he alleged that the defendant had cancelled a pre-arranged appointment to have his fingers repaired following his arrival at prison and had failed to arrange speedy and appropriate treatment.
- **Held :** the defendant had breached its duty of care and the claimant had lost 15% of his right-hand function as a result of the defendant's **negligence**;
- The claimant had been dishonest in his evidence about the cause of his injury (asserting that his wife had attacked him with a knife) but to be **fundamental dishonesty** (under S57 Criminal Justice & Court's Act 2015) the dishonesty had to relate to a matter fundamental in the claim. Dishonesty relating to a matter incidental or collateral to the claim was not sufficient and the dishonesty had to have a substantial effect on the presentation of the claim,
- The claimant had subsequently been convicted for attempted murder, but the defendant could not rely on the defence of illegality because :
    - There was no inextricable link between the claim and the crime.
    - The loss which the claimant suffered was not caused by the crime, but by the defendant's breach of duty in failing to arrange treatment.
    - The courts should not use the common law doctrine of illegality to take away the force and effect of Parliament's decisions to grant convicted and unconvicted persons in prison the equivalent rights to NHS care as were afforded to other members of the public (paras 95-104).

Human Rights Act Claims For Damages – clinical setting

- No claim for ‘mere’ clinical negligence
- Gross negligence
- Systemic failure
- The operational duty
- Detained or vulnerable patients
- Protection from danger

Human Rights Act claim – the key components

- S6(1)

‘It is unlawful for a public authority to act in a way which is incompatible with a Convention right’

- S7(1) and (2)

‘ A person who claims that a public authority has acted (or proposes) to act in a way which is unlawful by s6(1) may - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal…but only if he or she is a victim of the unlawful act’

- No a claim in tort

The Defendant and the Claimant in a HRA claim

Public Authority - Defendant

- NHS Trusts
- Dentists
- General Practitioners

Victims - Claimants

- Direct
- Indirect

The Articles – European Convention on Human Rights ECHR

Article 2 – *Everyone's right to life shall be protected by law*

Article 3 – *No one shall be subjected to torture or to inhuman or degrading treatment or punishment*

Article 8 – *Everyone has the right to respect for his private and family life, his home and correspondence*

Article 5 – *Everyone has the right to liberty and security of a person. No one shall be deprived of his liberty save…in accordance with a procedure prescribed by law*

Case examples

- Daniel v St Georges Healthcare NHS Trust & London Ambulance Service [2016] EWC 23 (QB)

- Scarfe & Ors, R (on the application of) v HMP Woodhill & Anor [2017] EWHC 1194 (Admin) (23 May 2017)

Case examples

- Arutyunyan v. Russia January 2012
- McGlinchey and Others v. the United Kingdom April 2003
- Kolesnikovich v. Russia9 22 March 2016
- Vincent v France 2006
- ZH v Hungary

The Remedy under the HRA

S8(3) HRA

- No award of damages is to be made unless, taking into account all of the circumstances of the case including
- (a) any other relief or remedy granted or order made in relation to the act in question (by that or any other Court)
- (b) the consequences of any decision in respect of that act, the court is satisfied that the award is necessary to afford **just satisfaction** to the person in whose favour it is made

Declaration

Damages – pecuniary and non pecuniary

How to avoid a claim – the 3 Rs

- Records
- Record
- Report

Behind Bars – Q&A Panel

- **Natalie Miller** - Deputy regional manager for West Midland Prisons | Practice Plus Group
- **Dr Jonathan McAllister** - Regional medical lead-London and immigration removal centres | Lead GP-HMP Thameside | Practice Plus Group
- **Michelle Hodkinson-** Lead Commissioner for secure and detained estate-London | NHS England Health in Justice
- **Ruth Kavanagh-** Clinical quality and patient safety lead| NHS England Health in Justice
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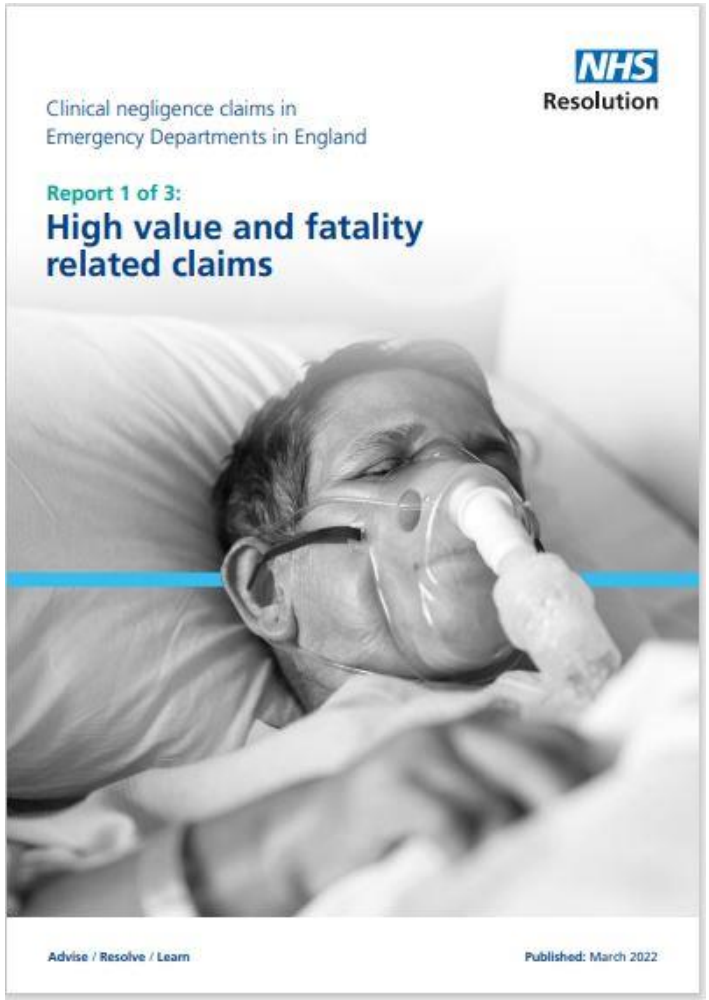
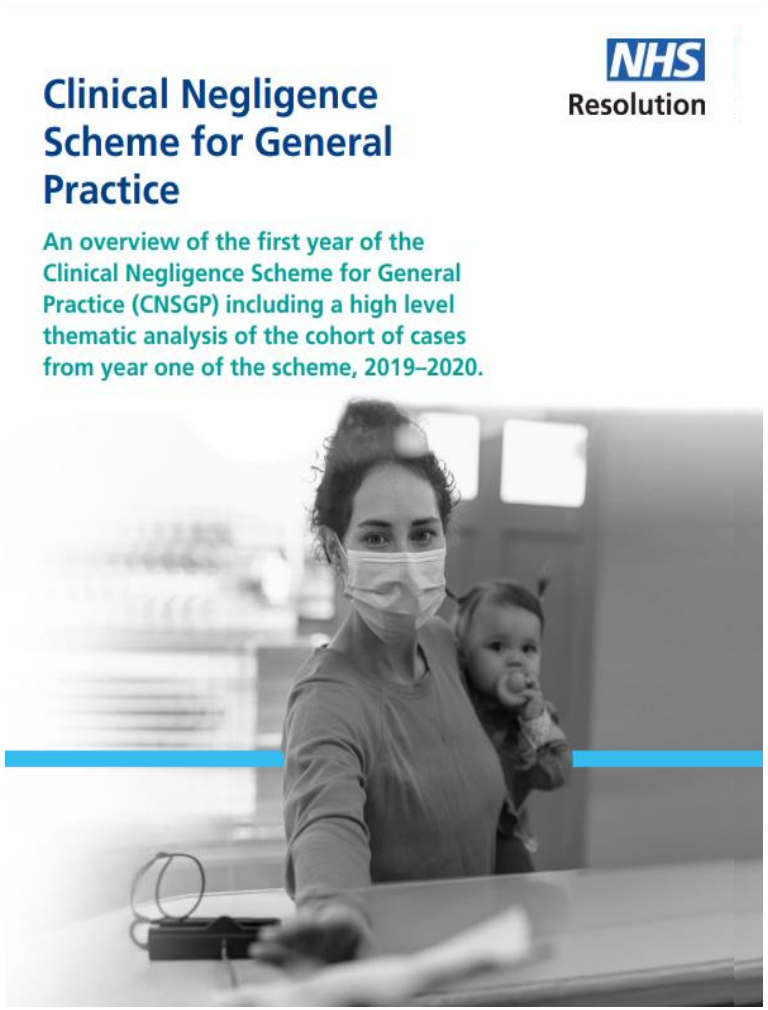
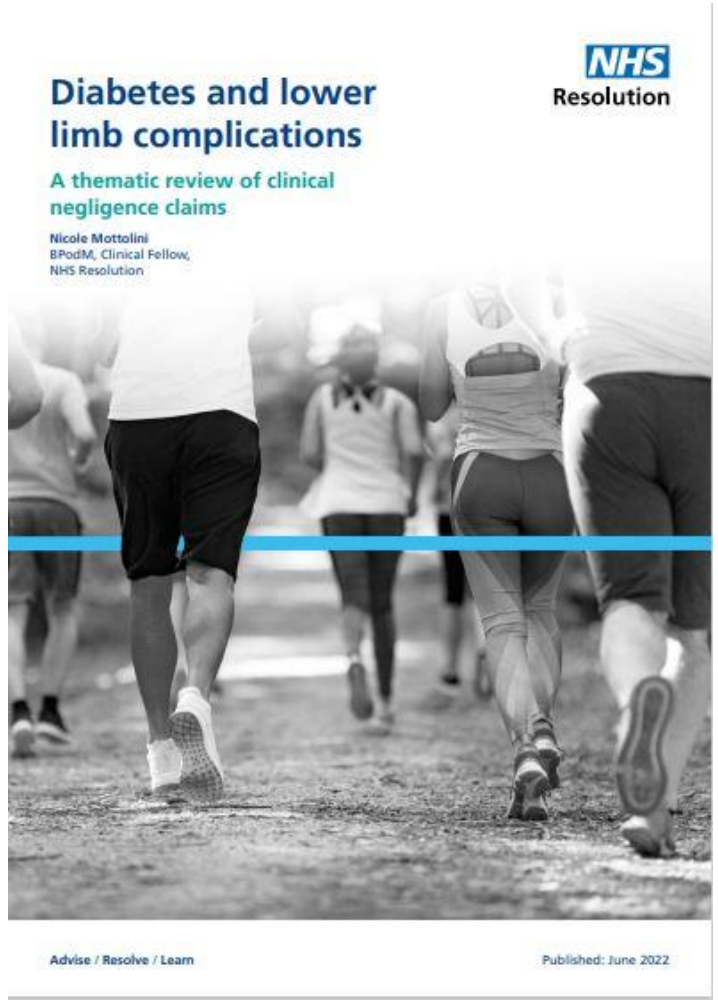
- **Samantha Thomas** - National Safety and Learning Lead for general practice | NHS Resolution

Thematic reports







Resources

- HM Inspectorate of Prisons (HMIP) (2024) The long wait: A thematic review of delays in the transfer of mentally unwell prisoners The long wait: A thematic review of delays in the transfer of mentally unwell prisoners (justiceinspectorates.gov.uk)
- Independent Monitoring Boards (IMB) (2024) Segregation of men with mental health needs- a thematic monitoring report Hosted here
- National Confidential Enquiry into Patient Outcomes and Deaths (NCEPOD) (2024) – Prison Healthcare NCEPOD - Prison Healthcare (2024)
- NHS Resolution (2022) Clinical negligence scheme for general practice. An overview of the first year of the scheme https://resolution.nhs.uk/resources/nhs-resolution-first-year-of-an-indemnity-scheme-for-general-practice-published/
- NICE: NICE Guideline 57 - Physical health of people in prison
- NICE: Quality standard 156 - Physical health of people in prison
- Prisons and Probation Ombudsman independent investigations- fatal incidents reports Fatal Incident reports | Document Types | Prisons & Probation Ombudsman (ppo.gov.uk)

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Thank you