

**A joint response to His Majesty’s Inspectorate of Prisons (HMIP) ‘The long wait: A thematic review of delays in the transfer of mentally unwell prisoners’**

April 2024

NHS England (NHSE) published [‘The transfer and remission of adult prisoners under the Mental Health Act 1983: good practice guidance’](#) (referred to as the ‘NHSE good practice guidance’ throughout this paper) in June 2021 which set out the process for transferring and remitting patients in England to and from prisons, and mental health, learning disability and/or autism inpatient services, and the timeframe within which the assessment, transfer and remission of individuals detained under the Mental Health Act should be completed.

The guidance seeks to promote good practice and support effective joint working between the agencies involved in transfer and remission processes, to ensure patients are able to access effective treatment in a timely and safe manner. To further support these ambitions, NHSE has been working with partner agencies, such as the Ministry of Justice (MoJ) and His Majesty’s Prison and Probation Service (HMPPS), to identify and address the ongoing causes of delays to both transfers and remissions and establish an approach for continuous improvement.

NHSE welcomes His Majesty’s Inspectorate of Prisons (HMIP) ‘The long wait: A thematic review of delays in the transfer of mentally unwell prisoners’ (referred to as ‘thematic review’ throughout this paper) as a contribution to this work. The key concerns identified by the thematic review corroborate the NHSE prioritisation of activity, some of which is set out in the table below.

| Thematic review key concerns  | NHSE/HMPPS Response  |
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| <p><b>Thematic review key concern 1:</b><br/>Only 15% of patients in our sample were transferred within the 28-day deadline and waiting times for a bed were too long. The average wait was 85 days from identification of need, with a range from three to 462 days.</p> | <p>The timeframes identified in the thematic review are not in line with those set out in the NHSE good practice guidance which establishes that the <i>“monitoring of transfer begins on the day that the initial referral is made to the appropriate clinical team by the prison mental health team”</i>. Nevertheless, NHSE recognises that the timeframe is being exceeded for too many people. NHSE has already completed work to:</p> <ul style="list-style-type: none"> <li>• Map out the complexity within the transfer process and identify the primary challenges and barriers within prisons, prison mental health teams, adult secure and PICU hospitals.</li> <li>• Establish four core workstreams to address the challenges and barriers identified:               <ul style="list-style-type: none"> <li>a) <b>Improving data collection and monitoring:</b> a new clinical template has been developed, to record the referral, assessment and transfer process for prisoners and detainees, under</li> </ul> </li> </ul> |

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|  | <p>sections 47 and 48 of Mental Health Act 1983, for use within SystemOne (the clinical IT system in prisons). We are working to use the information generated to derive data on the timeliness of transfers. We are also proactively working with health and justice commissioners to improve data quality and completeness of an existing manual collection.</p> <p>b) <b>Improving the referrals process:</b> a National Referrals Review was launched in October 2023, to review and standardise the varied referral processes and documentation used across England that can contribute to delays.</p> <p>c) <b>Ensuring clinical leadership throughout the clinical pathway from and to prison and mental health hospital:</b> NHSE established the ‘Mental Health and Justice Strategic Advisory Group’ in November 2023 to provide clinical leadership, advice, and oversight to areas of interface between the criminal justice system and mental health inpatient services (see 4 for further information).</p> <p>d) <b>Improving knowledge, skills and confidence across the multiple teams involved in the transfer and remissions processes:</b> NHSE has already delivered several bespoke training and awareness sessions for colleagues within HMPPS to improve their understanding of the transfers process, further sessions are planned across both criminal justice and health systems.</p> <ul style="list-style-type: none"> <li>▪ Drawing on the learning from the work outlined in this paper, and the thematic review, NHSE will refresh the good practice guidance in 2024-25, and launch with a clear programme of implementation support activities.</li> <li>▪ In addition, a programme of webinars will be developed for delivery throughout 2024-25.</li> </ul> |
| <p><b>Thematic review key concern 2:</b><br/>Despite a service within local courts to divert patients with acute mental health issues to community services, we continued to find people being placed in prison for their own protection, who were arriving in</p> | <p>The Draft Mental Health Bill was not progressed in the fourth parliamentary session, but health and justice partners remain committed to preventing remands for ‘own protection’ on mental health grounds and the use of prison as a place of safety.</p>  |

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| <p>prison very unwell. Prison was being used as an alternative to a hospital bed even when the need for an admission was evident before imprisonment.</p> | <p>In partnership with HM Courts &amp; Tribunals Service and NHSE, the Ministry of Justice (MoJ) is piloting a regional Health and Justice Hub in the North East. Through the Hub, we are aiming to improve how local health and justice services work together to better support defendants with severe mental health needs, smoothing the pathway into the right treatment and support. The Hub is working to:</p> <ul style="list-style-type: none"> <li>• Provide active oversight of defendants, liaising with defence, prosecution, liaison and diversion services and NHS partners to smooth access to care, identify blockers and prevent delays.</li> <li>• Commission psychiatric reports for the court, improving the quality and consistency of reports and upskilling report writers on requirements to ensure courts have the information they need.</li> <li>• Collect relevant data about a defendant's journey through the system, improving forecasting ability for demand for beds and treatment.</li> </ul> <p>The Hub will run through 2024, with a process evaluation to identify replicable good practice.</p> <p>In addition, the nationwide expansion of the HMPPS Bail Information Service will help to ensure judges have the necessary information to make a timely and informed decision on bailing a vulnerable individual with confidence. The Chancellor recently announced new funding to allow for additional resources to be recruited which will enable the provision of a service for all courts across England and Wales, as well as all reception prisons, including Privately Managed Prisons and the Women's Estate. Bail Information Officers will strengthen links between courts and bail accommodation services and build effective bail packages. This will support more offenders with mental health needs to access support in the community, avoiding unnecessary remands into custody.</p> <p>NHSE has also been contributing towards work that will support a reduction in inappropriate remands to custody on mental health grounds and will continue to work with partners to:</p> <ul style="list-style-type: none"> <li>• Identify and address the barriers to the use of Section 35 and Section 36 of the Mental Health Act (remanding to hospital).</li> <li>• Increase the use of primary and secondary care Mental Health Treatment Requirements (MHTR), as an alternative to custody. Improving health and social care</li> </ul> |
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|  | <p>outcomes will support the reduction of further reoffending.</p> <ul style="list-style-type: none"> <li>• Work towards a more integrated and seamless approach across Liaison and Diversion services, Specialist Community Forensic Teams (SCFT), and Community Mental Health Teams (CMHT).</li> </ul>   |
| <p><b>Thematic review key concern 3:</b><br/>There were delays for just under half of the patients waiting for a referral once a need had been identified. In some prisons there were considerable delays for patients waiting for an initial referral.</p>  | <p>The NHSE good practice guidance sets out that a referral for an access assessment should be made as soon as it is identified that a patient’s mental health needs cannot be treated in prison.</p> <p>The activities described above to refresh the good practice guidance and improve the knowledge, skills and confidence of teams responsible for the various aspects of the transfer process, e.g., making a referral, will lead to a reduction in the time people wait for an initial referral to be made. As outlined above, the National Referrals Review aims to standardise the varied referral processes and documentation used across England that can contribute to delays. Clarity regarding referrals processes and information required will reduce the time to refer.</p>   |
| <p><b>Thematic review key concern 4:</b><br/>There was little oversight or accountability for the long waiting times for assessment and transfers, of the responsible commissioned health providers. Data describing access and waiting times for beds were not publicly available. There were no comprehensive national data on the number of patients awaiting transfer under the Mental Health Act and their waiting times.</p> | <p>Responsibility for the transfer process is held across multiple organisations and teams including prison mental health services, HMPPS, adult secure services or PICU providers, and the Mental Health Casework Section (MHCS).</p> <p>Health and justice partners are determined to ensure these transfers take place in a timely manner and are working to improve oversight and monitor delivery of the 28-day time limit set out in NHSE’s good practice guidance.</p> <p>NHSE has developed a new clinical template for use within SystmOne (the clinical IT system in prisons) to record the referral, assessment and transfer process of prisoners and detainees under sections 47 and 48 of Mental Health Act 1983.</p> <ul style="list-style-type: none"> <li>○ Implementation of the template will promote clinical best practice, ensure accurate and consistent recording within the clinical IT system and provide more robust assurance around mental health transfer timeliness across the secure estate.</li> <li>○ The template has been piloted in 25 prisons across England and will be rolled out to all prisons before the end of 2023-24.</li> </ul> <p>In November 2023, NHSE established the ‘Mental Health and Justice Strategic Advisory Group’ to the Adult Secure</p> |

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|  | <p><u>Clinical Reference Group (AS CRG)</u> and the <u>Health and Justice Clinical Reference Group (H&amp;J CRG)</u>. This group provides clinical advice and leadership on areas of interface between the criminal justice system and services in mental health and has responsibility for the programme of continuous improvement across the transfer and remission processes.</p> <ul style="list-style-type: none"> <li>○ This group will bring together key operational partners with responsibility for the various aspects of the transfer process.</li> <li>○ This group will monitor data and intelligence relating to the transfer process and determine the actions required to support continuous improvements.</li> </ul>   |
| <p><b>Thematic review key concern 5:</b> An urgent referral as a result of a patient’s rapid deterioration in mental or physical health did not guarantee prompt transfer, despite guidelines requiring a more rapid response.</p>   | <p>NHSE recognises more needs to be done to ensure urgent referrals are actioned at pace to ensure that, where appropriate and safe to do so, prisoners are rapidly transferred to hospital.</p> <p>A deep-dive will be carried out in 2024-25 through the National Referrals Review to identify and address the causes of delays to these urgent referrals, and further clarity provided via the refreshed national service specifications and refreshed NHSE good practice guidance.</p>   |
| <p><b>Thematic review key concern 6:</b> The outcomes for and experience of patients were not central to the transfer process. Patients did not receive an independent assessment which was accepted by all commissioned services, meaning that the process often included multiple unnecessary assessments. There was a lack of safeguarding and independent advocacy for patients awaiting transfer.</p> | <p>In 2021-22, the National Institute for Health Research Policy (NIHR) commissioned a multi-year research project into access assessments (AA) for admission to adult low and medium secure services. The research findings will be published shortly, providing significant evidence about:</p> <ul style="list-style-type: none"> <li>● The use of structured professional judgement approaches in the process of admission assessments</li> <li>● The AA practices across these specialised services</li> <li>● The experiences of the AA process from the perspective of a) professionals who make referrals, b) professions who conduct AA and, c) patients who have experienced the process.</li> </ul> <p>The research findings will be used to inform the National Referrals Review and will support the development of further action by the Mental Health &amp; Justice Strategic Advisory Group throughout 2024-25. This is likely to include – but not limited to - consideration of a ‘trusted assessor’ approach that will minimise the number of assessments undertaken.</p> |

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| <p><b>Thematic review key concern 7:</b><br/>Prisoners and staff were coming to harm during the time it took to transfer patients. Patients' conditions deteriorated, staff suffered assaults and the effect of supporting prisoners with a level of need for which they had not been trained. There was no national reporting on incidents involving this vulnerable group and staff did not always have the appropriate training in recognising specific safeguarding issues associated with patients awaiting assessment or transfer under the Mental Health Act.</p> | <p>HMPPS are committed to making prisons a safe place to work and providing prison officers with the right support, training and tools to empower them to do their jobs. HMPPS provide post-incident care teams, occupational health support and counselling for members of staff who are assaulted while doing their jobs. In addition, NHS providers report locally for healthcare related incidents, including assaults on staff, through HMPPS processes.</p> <p>HMPPS also provide training to all new prison officers which includes modules on violence reduction and suicide and self-harm prevention.</p> <p>The introduction to mental health training is also provided to prison staff as part of the safety skills modules. To support all staff working in prisons, NHSE developed an <u>e-learning safeguarding training programme</u> for those in operational roles. The programme focuses on adult safeguarding and the roles and responsibilities of everyone working in these settings in England. It is targeted at and was developed for a multi-agency audience, to enable better collaboration between teams and create a culture of safety by embedding and improving understanding of safeguarding. The programme supports any mandatory training staff are required to undertake.</p> <p>For prisoners assessed as at risk of suicide and self-harm, HMPPS provide individualised support through our case management process. This approach places a strong emphasis on identifying individual risks, triggers and protective factors and having effective care plans in place to record, address and mitigate risks. This includes prisoners who have a mental health need or are awaiting transfer. Assessments are multidisciplinary and involve contributions from healthcare staff and other relevant stakeholders (for example, substance misuse and mental health teams) as appropriate.</p> <p>HMPPS are committed to improving information sharing between agencies and promoting better joint working to improve outcomes for individuals with mental health needs and will therefore explore HMIP's data recommendation in longer term with health and justice partners.</p> |
| <p><b>Thematic review key concern 8:</b><br/>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</p>  | <p>NHSE recognises the significant difficulties highlighted in the report around patients on short sentences and on remand, who arrive in custody requiring treatment under the Mental Health Act.</p>   |

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| community mental health team at the gate on release. | <p>It is noted in the report that prison mental health staff go to great lengths to ensure that patients are not released without treatment.</p> <p>The Mental Health and Justice Strategic Advisory Group will carry out a deep-dive into the practice of assessments and detention under the civil sections of the Mental Health Act immediately following release. This will identify opportunities for earlier assessments or expedited urgent assessments prior to release from prison.</p> |
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In addition to the priorities set out in the table above, NHSE has embarked on further areas of work that are intended to lead to the systemic changes that are needed to deliver the sustainable change required for those individuals in contact with the criminal justice system who need care and treatment for mental ill health and disorders.

**A Mental Health Pathway through the Criminal Justice System:** a ‘Health and Justice Mental Health Pathway Expert Working Group’ has been established to review the ‘mental health pathway’ through the criminal justice system. As part of this, the group will:

- Ensure, from a patient perspective, the pathway is robust, seamless, and individualised and responsive to a person’s needs and requirements.
- Provide people with mental health concerns, timely, consistent, high-quality advice, treatment, and support across all services.
- Reduce reoffending and improve health outcomes by addressing underlying mental health issues at the earliest opportunity.
- Reduce the number of people with mental health issues who are sentenced to custody, ensuring they receive appropriate care and treatment in the right settings at the earliest opportunity.

**Establish the appropriate service models for people with mental disorders who cannot be treated in prison:** the Mental Health and Justice Strategic Advisory Group will establish a working group to consider the service model(s) required for people in prison who are in psychological distress or require significant MH support outside of prison, including for those who do not meet the thresholds for detention under the MHA within an adult secure or PICU hospital. This will be a collaborative endeavour across all relevant commissioners and services, and importantly, include people with lived experience. The outcomes of this work will inform the review of existing national service specifications.

**Workforce:** NHS is facing unprecedented workforce challenges. In October 2023, NHSE carried out the first ever Adult Secure Workforce Audit to understand the unique workforce challenges faced in these specialised services. This work is being used to inform national programmes of work, including the NHS Long Term Workforce Plan, to support the recruitment and retention of more staff.