Introduction
The Prisons and Probation Ombudsman (PPO) carries out independent investigations into deaths and complaints in custody. The detailed role and responsibilities of the PPO are set out in his office's Terms of Reference. The PPO has 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 the PPO makes a significant contribution to safer, fairer custody and offender supervision. Details of the PPO’s Terms of Reference can be found at: http://www.ppo.gov.uk/about/vision-and-values/terms-of-reference/.

The PPO welcome the commitment made by the Care Quality Commission (CQC) and Her Majesty’s Inspectorate of Prisons for England and Wales (HMIP) to the regulation and inspection of health and social care in prisons and young offender institutions (YOI), and health care in immigration removal centres (IRC), as outlined in this consultation document. A holistic methodology, one which considers the rights of prisoners and staff, promotes equality and non-discrimination, and seeks to improve the standards of health and social care within secure settings, is vital. The proposed joint HMIP/CQC inspection approach has the potential to meet this aspiration. However, as set out below, there are some aspects of the proposed approach which we consider could be improved.
Consultation process
It is disappointing that the PPO was not among the initial round of stakeholders invited to contribute to the development of the proposed joint HMIP/CQC inspection approach. While the remit of the PPO does not cover complaints about clinical judgements, complaints that fall within the jurisdiction of the prison, such as complaints about access to healthcare staff, about the transfer of prisoners on a ‘medical hold’, and about the role and behaviour of healthcare staff in the use of force, for example, are within our remit.

Further, our investigations into deaths in custody raise issues such as the provision of social care to prisoners, the input of healthcare staff to the use of restraints on seriously ill prisoners and the administration of monitoring process for prisoners at risk of self-harm and suicide. These issues occur exactly at the intersection between prison and healthcare, the same context in which the proposed joint HMIP/CQC inspection approach will operate.

The PPO has published a number of Learning Lessons bulletins and thematic reports which the Care Quality Commission may wish to consider as part of this consultation. Of particular relevance are: End of Life Care (2013)\(^1\), Restraints (2013)\(^2\), and Self-inflicted deaths of prisoners on ACCT (2014)\(^3\). Individual investigation reports into deaths in custody may also be useful and can be found on our website.

We have structured our response to broadly correspond with the questions asked in the consultation document.

THE PROPOSED JOINT HMIP/CQC INSPECTION APPROACH

The introduction to the proposed approach states:

A focus of the new approach to inspection is to gather and use the experiences of detainees, and the views of their families and those close to them about the quality of their care. (p. 9)

The PPO hope that this focus also includes consulting with the PPO and other relevant organisations, such as prisoner NGOs, to ensure that broader themes and patterns relating to the provision of health and social care in secure environments are considered.

The consultation does not clarify whether the proposed joint HMIP/CQC inspection approach will take over the current healthcare inspection element of an HMIP inspection or will function as a standalone inspection. There is little merit in duplicating work but equally, it is important that the health and social care expertise within HMIP is not lost.

We note that Immigration Removal Centres are to be inspected every four years, in contrast to every two to three years for prisons. No reasoning is provided for the disparity in the inspection schedule. It is also confusing as the comprehensive inspection, outlined on page 14, states that IRC inspections will be carried out every two years. Those in IRCs are some of the most vulnerable within the UK’s custodial system; access to good quality and appropriate healthcare is thus particularly important. As such, we advocate the CQC reconsider the inspection schedule for IRCs.

The proposed joint HMIP/CQC inspection approach will be tested in practice from 1 April 2015 and learning and adaption to the approach will follow. It is important that stakeholders are able to feed into this review process.

Key lines of enquiry (KLOE)

The provision of healthcare within prisons is expected to comply with Prison Service Instructions (PSI) which are distinct from the “guidance, standards and best practice” referenced within the KLOEs. It would be useful if the KLOEs included reference to PSI compliance. The same principle should be applied when tailoring the proposed approach for the inspection of YOI and IRCs.

Safety. At S.2 (2) it would be useful to include, in the proposed inspection “Prompts”, a requirement that the results of a review/investigation are shared with staff. Our experience has shown that PPO recommendations and final reports are not always shared
with the staff involved with a death, preventing lessons from being learned.

At S.3 (3), where reference is made in the Prompts to the use of force, it would be helpful to clarify whether this applies only to the use of force within a health/social care context or more broadly within the prison as a whole, as part of safer custody measures. For example, will the CQC examine how operational prison staff apply the use of force?

At S.3 (4), reference is made, in the Prompts, to the need for safeguarding systems for adults and children in YOI/IRCs. This is appropriate but it is also important to acknowledge that while specific and tailored protection should be provided to vulnerable groups, everyone within secure settings could become a victim of abuse. As such, we advocate this line of enquiry is developed further to apply to all detainees.

**Effective.** E.1 (2), we welcome the inclusion, in the proposed inspection “characteristics”, of effective systems to identify and support all young people who are parents or expectant parents. This is particularly relevant for those within IRCs, who may have specific needs in relation to this status.

E.1 (3), where the prompts require that discrimination is “avoided when making care and treatment decisions”, the protected characteristics of those covered by the relevant legislation have been divided into two sections. It is not clear why this approach has been taken or the benefit of such an approach. As such, we advocate following the same structure as set out in the Equality Act 2010, to avoid confusion.

E.4 (1-4), it is unclear if the KLOE, related to coordinated working, applies only to health and social care staff or includes prison staff. One of the key challenges for prisons, we have encountered in our investigations, is ensuring that communication between healthcare and prison operational staff is smooth and effective. It would be useful if this KLOE could clarify the application of these requirements.

E.5 (2), concerned with sharing of information between teams and services as people move within the system is welcomed.

**Caring.** The Prompts at C.2 (2-4) make reference to detainees and “those close to them”. This latter group is not defined but we assume this may include their next of kin. However, the inclusion of “those
close to them” seems to subsequently be ignored under the characteristics section of the KLOE. It would be beneficial to clarify exactly what is meant by the inclusion of “those close to them” and how the CQC understands this will work in practice.

**Well-led.** Wholly absent from the section relating to leadership, culture, vision and values, is any reference to human rights. Part of the principle of protecting and promoting rights is that it should form a central framework to the work of both the CQC/HMIP and those institutions they are working within. As such, it would be useful to include a reference to the relevant rights throughout this section.

**Locations**
The proposed joint HMIP/CQC inspection approach will be applied in three distinct environments: prisons, young offender institutions and immigration removal centres. There is little in the consultation document which acknowledges the differences between these environments. We suggest there is scope for the proposed joint HMIP/CQC inspection approach to clearly delineate how it will be applied in each of the environments, without losing the central standards used by CQC and HMIP.

The tools used by the proposed joint HMIP/CQC inspection approach will also need to be tailored to each environment. For example, questions used as part of the survey about healthcare services will need to be age appropriate when used in YOIs. For inspections in IRCs, CQC may need to engage with detainees in a range of languages and ensure mechanisms are in place to allow this to happen efficiently. Issues around language, literacy and capacity are particularly important when seeking consent from detainees to provide access for the inspection team to their health records.

**Comprehensive inspections**
The description of the comprehensive inspection states that HMIP researchers will conduct a confidential survey with detainees which will include information about healthcare services. It is not clear if the CQC will redesign the existing survey questions, as they relate to Healthcare, who will design the questions relating to healthcare or how much input the CQC will have into this aspect of the process.

**Focused inspections**
Where inspections are “focused” and led by CQC, the consultation indicates the inspection may not look at all the Key Lines of Enquiry. Our concern is that issues and problems which have emerged since the previous inspection will be ignored, as the focused inspection will only use the KLOEs raised in the previous inspection. It is hoped that a focused inspection will include a
mechanism to pick up any issues and challenges which have arisen since the previous inspection.

Where such an investigation is the result of concerns raised with the CQC through other sources, it would be helpful to publish the threshold used by the CQC to determine when sufficient evidence or data has been presented to warrant an inspection. For example, if the PPO became aware that a particular prison had a spate of deaths of natural causes which were marked by poor referral times in cancer cases, at what point would the CQC consider investigating? How many deaths would need to occur or recommendations made? What mechanism will the CQC use to ensure the effective and timely collection and monitoring of data and evidence from outside organisations, such as the PPO?

Themed inspections
The commitment to identifying wider health themes within secure settings is particularly pertinent when one considers the increasing age and infirmity of the prison population. We hope, for example, that the issue of older prisoners will be considered as a themed inspection.

Ratings
We suggest that it would be inappropriate to rate healthcare services in custody using the criteria applied in the community. There would certainly be merit in highlighting good practice, for example, in the provision of palliative care. More broadly, it is not clear as to the merits of a rating for health and care services within a secure setting rather than for individual providers.

Equality and human rights
The inclusion of the importance of respecting human rights is welcome. At page 17, the consultation document states “Respecting diversity, promoting equality and ensuring human rights will mean that everyone using health and social care services receives good quality care” yet there is nothing in the proposed joint HMIP/CQC inspection approach which engages with how the CQC will achieve this goal. The use of a human rights approach by the CQC is positive but it is unclear why those in custody are provided only with the right to life and staff are provided with (unnamed) “rights”. To ensure human rights are mainstreamed throughout the custodial environment it is helpful to clearly delineate these rights and refer to the UK’s relevant international human rights obligations.

Use of force
There are two particular areas of healthcare provision which often come under scrutiny when investigating complaints about the use of force. The PPO would like to see both of these areas considered in the proposed inspection approach. The first is the role of healthcare staff in incidents of
use of force. The PPO’s experience has shown that there are often challenges and questions around the member of healthcare staff’s independence in scrutinising and intervening (if necessary) during a restraint. Our experience has shown that healthcare staff often lack the understanding and confidence to perform the role properly, and will incorrectly defer to prison staff. Second is a constant complaint from prison staff that they do not have the necessary medical information about a prisoner's medical conditions that they would ideally have when carrying out a restraint - eg a heart condition or breathing difficulties. The prisoner has assumed that this information has been given to prison staff by healthcare but often is has not been because of data protection issues. Getting the balance right between releasing medical information to help prison staff deal with prisoners and keeping it confidential because of data protection is an issue the PPO would like to see scrutinised.

Restraints
The PPO has found that the inappropriate use of restraints on seriously ill or dying prisoners is an issue which has consistently appeared in our fatal incident investigations. Though there has been some improvement in recent years, it continues to form the focus of recommendations. The use of restraints is mentioned in this consultation document as part of “monitoring the use of the Mental Capacity Act”. However considering the significance of the Graham judgment, where the High Court held that the use of handcuffs on a prisoner while he was receiving life-saving chemotherapy infringed Article 3 of the Human Rights Act, and the importance of medical opinion in the prison’s risk assessment for restraints, we argue that this issue should be given a greater consideration.

Whistle blowing
It is important that robust mechanisms are provided for concerns, complaints and whistle blowing to be raised and that there is appropriate awareness within the custodial setting of the existence of such mechanisms. This latter point is particularly important considering the use of locum staff, by healthcare providers, who may not be fully familiar with the prison, YOI or IRC system.

Working with detainees
The proposed joint HMIP/CQC inspection approach advocates the gathering and analysis of information from detainees through comments and feedback from individual detainees, among other sources. It would be useful to know how the CQC plans to protect detainees from sanction or retribution where they raise concerns about poor care, for example.

Planning the Inspection
As part of the PPO’s investigation, recommendations may be issued to a prison; for example, on the need for nursing staff to bring the correct
emergency equipment as part of an emergency response. Will the implementation of the PPO recommendations be considered at the planning stage of an inspection? Where focus groups of detainees are held by HMIP, how much input will CQC have to the design of the discussion as it relates to healthcare?

The provision of an HMIP telephone number which prisoners can call to discuss their health and social care is welcome; however, it is not clear if this will be a free-phone number.

The consultation states that the way CQC will engage with other stakeholders, who gather detainees’ views on services in secure settings, is “under review” but no further details are provided. It would be useful to know the outcome of this review.

We note the suggestion that the CQC may ask Clinical Commissioning Groups and NHS England area teams to provide information which will be considered during the inspection. This is a welcome inclusion in the process, though there would also be benefit in asking detainees to assess their treatment at external hospitals, for example, engaging with the issues around continuity and quality of care between a prison and community.

The consultation also proposes that families of people receiving healthcare in secure settings will be contacted as part of the inspection. It is not clear how these contact details will be obtained and what criteria will be applied to evaluate the appropriateness of this contact; for example, where a family member is also the victim of the offence. The CQC may be unaware of the nature of the relationship within the family. Similarly, how will the CQC ensure that a prisoner has given permission for their family to be contacted?

**Site visits**
The CQC proposes to speak individually to detainees during site visits. It would be useful to know what mechanism will be used to ensure confidentiality. There would also be benefit in including an assurance that prisoners that speak to CQC cannot be sanctioned by the prison/IRC/YOI. A similar principle should apply when a detainee’s family raises an issue of concern about the detainees’ health and social care in custody.

The consultation comments that one approach to gathering the views of detainees during the site visit is the use of comment cards. What consideration has been given by the CQC to potential literacy and language barriers which may inhibit the gathering of this data?

The commitment to speak to a range of staff as part of the inspection, while
on site, is positive. However, it would be useful to know what protection will be put in place for staff whistleblowers who raise concerns with CQC?

It is unclear if, under the heading “reviewing records”, the CQC will have access to the custodial record of prisoners and whether sufficient consideration has been given to how this process should be managed.

Feedback on the visit
It would be beneficial if feedback on the implementation of the PPO’s recommendations, which is currently provided by HMIP following each inspection, can continue to be provided to the PPO promptly.

Complaints about CQC
The consultation outlines the complaints process for the CQC and states where a complainant has exhausted the CQC complaint process, and remains unhappy with the outcome of the complaint, the complaint can be submitted to the Parliamentary and Health Service Ombudsman (PHSO). It would be helpful to include, at the least, the PHSO’s contact details.