INDEPENDENT REVIEW OF HEALTHCARE INSPECTORATE WALES

by Ruth Marks

Response from BMA Cymru Wales

INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the independent review Healthcare Inspectorate Wales.

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of over 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

RESPONSE

Having submitted the appended written evidence last year to the National Assembly for Wales Health and Social Care Committee’s inquiry into the work of Healthcare Inspectorate Wales (HIW), BMA Cymru Wales is keen to contribute to this subsequent review which has been commissioned by Welsh Government.

We are aware that you have already received a copy of BMA Welsh Councils’ booklet ‘Creating a Healthier NHS for Wales - openness, transparency and raising concerns’ which contains considered proposals on the role of Healthcare Inspectorate Wales.

We note the terms of reference for the Review:

- Existing functions and responsibilities of HIW
- The remit of HIW in respect of the NHS and the independent healthcare sector
- To draw on the experiences of inspectorates elsewhere, for example, identifying what lessons Wales can learn from methodologies being developed in Scotland, Northern Ireland and England.
- To look at the existing web of legislation underpinning HIW and form a view on where its needs to be consolidated, simplified and/or strengthened, taking into account the changing provision of healthcare services and shift to more community based care.
- To take into account the wider related work, including the Audit, Inspection and Regulation Review, Regulation & Inspection Bill, Community Health Council reform and the relevant actions arising from the Williams Commission, in order to consider the potential implications of this for the operation of HIW.
- To undertake a period of engagement with key stakeholders to seek wider views on the future function and responsibilities of HIW.
To develop proposals to inform part of a green paper setting out the scope for an NHS Quality Bill and make recommendations for any immediate actions that could be put in place ahead of any legislative change.

Overview
Given that a decade has passed since Healthcare Inspectorate Wales (HIW) was established, we would agree that the time is clearly apposite to review, and if need be renew, its purpose, functions and remit.

We note that, HIW’s functions and responsibilities are presently drawn from a number of legislative sources, and this serves to make its purpose and remit both unclear and confusing. We are aware that HIW’s main functions and responsibilities are drawn from:

- The Care Standards Act 2000 and associated regulations
- The Health and Social Care (Community Health and Standards) Act 2003
- The Mental Health Act 1983 and the Mental Health Act 2007
- Statutory supervision of midwives as set out in Articles 42 and 43 of the Nursing and Midwifery Order 2001
- The Ionising Radiation (Medical Exposure) Regulations 2000, and Amendment Regulations 2006

From this, it is apparent that HIW’s remit has evolved in a piecemeal and reactionary manner over the last ten years, rather than in a manner which could be regarded as either proactive or ‘standard-setting’. What is also not clear to us is the extent to which HIW’s resources and expertise have (or rather have not) grown to accommodate the increase in its role, or to assist it in keeping up with the ever-growing demands of a modern healthcare service.

We consider that it would be sensible to consolidate the different elements of HIW’s remit that are currently provided by these various pieces of legislation and instead provide it with a clear and unified legislative remit laid out in one single statute. At the same time, this could also provide an opportunity to address some of the concerns which exist around the exercise of HIW’s inspection and regulation functions, and to strengthen its remit where necessary – as detailed in the points which follow.

Concerns
The considered view of BMA Cymru Wales’ members is that HIW does not currently provide the necessary assurances that standards of care are being met and maintained.

We believe that HIW is not fit for purpose as currently constituted and therefore it does not carry the full confidence of the medical profession. It appears that many of the concerns raised by BMA Cymru Wales’ members have been echoed in the conclusions reached by the National Assembly for Wales’s Health and Social Care Committee in its recent report into HIW. We share the serious concern expressed in that report that should serious issues relating to the quality and safety of services arise that ‘they would not be detected in a timely or systematic way’ if we were to rely on HIW alone.

We are concerned, for instance, that HIW tries to do too much with too little resource, and that it fails to undertake an effective inspection regime of NHS organisations, possibly due to lack of capacity and a lack of identified priorities. There is a need to ensure that both the inspection and the regulatory side of HIW’s work are resourced and balanced effectively (i.e. not skewed towards either regulation or inspection) – and that responding to unforeseen events does not take HIW away from other planned work.

BMA members have also expressed concern about the extent to which HIW is able to truly act independently of Government, especially independently of Government Ministers. This issue – the ability of HIW to assert its independence - needs to be expressly clarified in any revision of the legislation underpinning HIW. We

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1 Health and Social Care Committee ‘The work of Healthcare Inspectorate Wales’ March 2014
believe that the Wales Audit Office positively demonstrates operational independence in action, for instance; by setting its own workplan and reporting to the National Assembly for Wales’ Public Accounts Committee.

Another area on which we have heard concerns expressed is that HIW inspections do not adequately consult or engage with clinicians when inspecting or responding to a concern. Merely speaking to the executive team, or a medical director for instance, does not equate to engaging with clinicians at the ‘coal-face’ and arguably could provide a completely different picture to that experienced by those the delivering care and interacting with patients on a daily basis.

HIWs operational plan for 2014-15 sets out its work programme and priorities over this period. However, we feel that it does not fully respond to some of the concerns raised during the recent Health and Social Care Committee Inquiry, specifically about the need to increase its visibility. The new measures it has set out, such as an increase in capacity, have yet to be seen to make an improvement. However, they are a welcome development.

We remain unclear about how HIW ensures that its staff are able to maintain the expertise and are properly supported and trained, for example in order to know what the remit is and what they are looking for.

It appears that there is an NHS-wide uncertainty about what early warning system is in place to identify poor care or outlier services. Indeed, there seems confusion about what an effective warning system looks like. Post Francis, this is a major concern and has to be addressed if HIW is to provide the necessary assurances that it is fulfilling its function and that standards of care are being met and maintained.

In regards to General Practice specifically we have heard concerns from members of an increase in required administrative and compliance activities (appraisal, revalidation, Community Health Council (CHC) inspection, CG Toolkit - though not mandatory most do comply - LHB annual inspection, QOF visit, annual health and safety visit and HIW) which while these may be seen as necessary do take time away from providing direct patient care. In the era of rising demand and prudent healthcare there is a real risk of over-inspection and duplication – not to mention the impact on workforce morale, which is already at an all time low.

Finally, we believe that HIW should not require the permission of Welsh ministers to enact their powers to place an organisation in special measures. Additionally, the very definition of ‘special measures’ needs clarifying, at the moment is seems to be whatever HIW wants it to mean.

Healthcare Improvement

There is clearly a requirement for HIW to become truly responsive to the changing landscape of healthcare delivery in Wales. Importantly, this includes supporting moves towards more care being delivered in the community and the integration of health and social care.

We believe that there is a particular role for HIW to play in moving this agenda forward. For instance, rather than being seen as a reactionary regulator or inspector, HIWs remit could sensibly be reconstituted towards providing a supportive and proactive ‘improvement’ agenda. This could, for example, be supported with a change in its mandate to support organisations through a learning/improvement process and to export best practice across Wales, perhaps with an embedded role for Community Health Councils in capturing and engaging the views of service users.

More broadly, as we have already mentioned, there is a need to better engage and involve clinicians and healthcare professionals in the work of HIW – by more and better use of ‘peer’ reviews on inspections panels, in setting standards and in seeking their advice on the work of HIW. Those clinicians who have been involved in such work take their learning back to their organisations. One element of inspections could involve seeking the opinion of relevant staff about how ‘engaged’ they feel by their managers, for example
when their manager was last on the ward / how often are they seen / how in touch they are. This would be useful to identify structural gaps and systemic problems.

We support moves to encourage and embed self-assessment by healthcare organisations in the form of ‘service specific modules’ as a way of improving and maintaining standards within these organisations and bringing such improvements into everyday working and governance arrangements. We see limited progress on this agenda to date and are unclear about how clinicians are engaged in the process of ‘standard setting’. We are also concerned how HIW will check that these modules are in place effectively within organisations.

In summary, we feel that HIWs role should be part of a dialogue of continuous improvement, and that in any legislative consolidation there should be scope for further revision or enhancement in order that it is able to respond to the rapidly changing landscape of healthcare delivery in Wales.

**Learning from inspectorates elsewhere**

We are not best placed to provide a comprehensive analysis or ‘lessons learned’ review of inspectorates elsewhere, although from feedback received from GP colleagues in England there has been a lot of concern about access to patient data by the newly formed CQC. The confidentiality of private medical information is the basis of the trust that patients put in their family doctors and it is vital that this is not compromised. If inspectors require access to the private medical records of patients (and they do have the right to this information, but it must be done by a clinician with the Regulatory responsibility to maintain confidence) we believe that there should be sufficient systems in place that obtain the explicit consent of patients and comply with both data protection and General Medical Council requirements.

We are aware that colleagues in England have also reported that CQC’s approach is crushing morale with concerns expressed about the degree of aggressive micromanagement. In 2013 the CQC was deemed ‘not fit for purpose’ at the BMA’s annual policy making conference.

**Suggestions for improvement**

Having noted some of our concerns about HIW above, we would support an appropriate consolidation and strengthening of HIW’s powers and remit.

One area we would like to see HIW undertake more often are investigations to identify systemic failures in governance arrangements – for example where NHS Managers / the Board may be detached from the reality of the ward (or other point of care delivery) and the experience of both patients and clinicians.

The use of external (peer and lay) inspectors / reviewers is very important. This gives HIW much greater credibility amongst professions and makes good use of specialist skills or knowledge identified for specific inspections. Securing the involvement of patient representatives on such inspection visits or reviews would also be a welcome development.

In light of recent reports (such as Andrews, and Evans) it is clear that complaints about NHS services need to be used as a real-time way for continual improvement of service delivery. It is also clear that NHS organisations and their partners need to communicate, share information and work together better – for instance between CHCs and HIW. HIW should have access to relevant information from Health Boards and Trusts, and from other stakeholders such as CHCs and the Wales Audit Office in a timely manner. The remit and work of these organisations should complement each other appropriately.

We know that a programme of reviews in primary care is being rolled out (2014-15) and that the inspection regime in GP practices does currently appear to be more robust than that for secondary care for example. We are aware that HIW planned to produce guidance for GPs about these visits, detailing the purpose and
process for example. However, at the time of writing we know that some practices are poised to receive a visit from HIW within weeks and have yet to receive any guidance.

We feel that there is a need to undertake some work to aid greater understanding about the purpose and work of HIW more widely. There is certainly a need for greater transparency of its role, this is currently compounded by the limited amount of public information available and the accessibility of that information – navigation of the HIW website is difficult and does not seem to hold a lot of information. Even amongst healthcare professionals HIW needs to become more visible, one way in which it can better do that is to follow up on its recommendations and findings – something BMA members report does not seem to occur.

We would like to see HIW support doctors in their calls for appropriate medical staffing levels across primary and secondary care. Evidence is clear about the link between overstretched services and patient safety / quality care. HIW should look at workforce numbers on the ground but also issues like over-reliance on locums and staff sickness (and stress/burnout) as smoke signals - this should form a central part of its monitoring and inspection regime.

A related area which needs urgent improvement is the quality and accuracy of NHS data collection – particularly around workforce numbers and staffing vacancies. For instance, there are variations of what constitutes a ‘vacancy’ and a plethora or reporting mechanisms.

You will be aware of the recent calls we have made for an all-Wales independent NHS inquiry to ascertain the sustainability of services. We believe that such a review is needed to identify the factors that have the potential to lead to fundamental breaches of care. BMA Cymru Wales suggested that, as a starting point, the eight ambitions identified by Sir Bruce Keogh should be adapted and posed as key questions by the NHS inquiry team.

In summary, these questions would cover:

- Early warning systems and escalation procedures;
- How data on best practice is collected, shared and used to drive quality improvement;
- How patient experience is used to drive improvement;
- Patient, staff and public participation in the work of the regulator;
- How NHS organisations across Wales access academic, clinical, and management thinking;
- Nurse staffing levels and skill-mix;
- The training and career options offered by NHS organisations and how the views of junior doctors are sought and considered;
- How frontline NHS staff are engaged in the design and delivery of services and how they are supported to raise concerns.

Each of the points above are also directly related to the role that HIW should play in ensuring that sufficient and safe standards of care are met and sustained by NHS organisations – and comprise a significant part of the ‘improvement’ agenda we advocated for earlier in this paper. Such a review would establish a baseline against which service improvement can be evaluated by HIW.

An NHS Wales Quality Bill

We await the publication of the Welsh Governments green paper on a future NHS Quality Bill. There is little detail presently available on what the green paper will contain, and as such it difficult to comment fully given that the desired intentions of it remain largely unknown.

The Bill does appear to present an ideal opportunity to provide HIW with a clear legislative underpinning.
Through a focus on ‘quality’ the Bill could offer an opportunity to move NHS Wales to a more secure and sustainable future as detailed in the recommendation contained in the Welsh Council booklet ‘Creating a Healthier NHS for Wales - openness, transparency and raising concerns’.

The NHS Quality Bill could, for instance:
- Take forward many of the recommendations in the recent Evans report ‘Using the Gift of Complaints’
- Focus on clinically derived and clinically appropriate targets, and remove short-term organisational and financial targets which are clinically inappropriate and which impact on patient care;
- Ensure adequate staffing numbers and skill-mix;
- Place HIW at the centre of the quality improvement agenda, including the sharing of best practice, enhancing the patient experience and supporting staff to raise concerns;
- Quality Officers could be appointed in each Health Board or Trust – responsible for effectiveness, safety, and experience;
- Ensure the wider participation of patients, nurses, and doctors on review teams. Inspectors should not be a remote group of people;
- Embed effective mechanisms to engage staff in the design and delivery of NHS services and that staff are supported (via an NHS Charter) to raise concerns on any aspect of patient care. Part of HIWs work should look at whether staff are able to speak out freely;

We consider that there is scope to link HIW inspections in some way to the GMC trainee survey and to work closely with the Wales Deanery, training does not happen in isolation and trainees see a variety of settings / practices.