12 October, 2018

The Rt Hon Maria Miller MP
Chair, Women and Equalities Committee
House of Commons
London SW1A 0AA

Dear Ms Miller

Inquiry into sexual harassment in the workplace

Thank you for your letter dated 31 July 2018 requesting me to provide information to the Women and Equalities Committee following the publication of its report on Sexual harassment in the workplace on 25 July 2018. I set out my response to your queries below, beginning with an explanation of my own function.

Role of Chief Inspector and HMI Prisons

The role of the Chief Inspector is set out in a number of pieces of legislation. Broadly speaking, the function of the Chief Inspector is to inspect certain places of detention in England and Wales in order to report on the treatment and conditions of those detained with a view to promoting positive outcomes for them and also the wider public. I am aided in my role by a team of inspectors, researchers and secretariat staff, who together form HMI Prisons. HMI Prisons does not itself have any statutory basis and while its staff are appointed by me and perform their roles independently of government, they are employed as civil servants (by the Ministry of Justice).

The role of the Chief Inspector and HMI Prisons is one of an inspectorate rather than a regulatory body. I do not have any regulatory powers or any other power to compel the government or places of detention to comply with my recommendations. Our role as an inspectorate is also separate from that of complaints and investigative bodies. The reason for these distinctions is that the role of inspection is fundamentally one of prevention through the provision of independent and regular oversight of the treatment and conditions of those detained. The importance of this preventive role was recognised by the UK government when it established the National Preventive Mechanism (NPM) pursuant to its obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading  

1 The details of the relevant legislation are set out on HMI Prisons’ website at https://www.justiceinspectorates.gov.uk/hmiprisons/about-hmi-prisons/terms-of-reference/.  
2 I note that I do not have regulatory powers akin to those described in paragraph 61 and 62 of the Committee’s July report.
Treatment or Punishment (OPCAT). OPCAT reflects the understanding that people deprived of their liberty are particularly vulnerable to ill-treatment and that efforts should be directed at preventing that ill-treatment from occurring. OPCAT embodies the idea that prevention of ill-treatment in detention can best be achieved by a system of independent, regular visits to monitor the treatment and conditions of detainees in all places of detention. States Parties to OPCAT are required to establish or designate a body or bodies to carry out the role of preventative monitoring at the national level (known as a NPM). In the UK, HMI Prisons is one of 21 organisations designated by the government to carry out this role. The way in which we carry out our functions is therefore shaped and influenced by the requirements that must be in place in order to enable members of the NPM to carry out their OPCAT role.

Central among these requirements is our independence from the establishments we inspect (and the organisations and individuals that commission and run them and that work within them), both actual and perceived. We therefore do not participate in management or staffing decisions in relation to places of detention nor seek to advise the responsible government departments on such matters. Rather we set standards relating to outcomes that we expect to be met for those detained, provide independent oversight of the achievement of those standards and make recommendations for improvement. This includes the assessment of outcomes to advance equality and combat discrimination for those detained.

**Incorporating equality considerations**

HMI Prisons has taken a number of steps to ensure that equality considerations are an integral part of the way that we carry out our day-to-day function of inspecting the treatment and conditions for those detained, and the way in which we work together and with others.

An Equality and Diversity Advisory Group (EDAG) was formed in 2016 in order to, as outlined in its terms of reference, “support HMIP’s work in promoting equality and valuing diversity. Its role [is] to develop, implement, monitor and evaluate internal processes, policies and decisions to ensure that they comply with the Equality Act 2010, other relevant equality and diversity legislation and our obligations under OPCAT Art.18(2). Its role [also includes] monitoring outcomes.” One of the members of the EDAG has joined Project Race, a Ministry of Justice team who focus on identifying and eliminating barriers to progression for Black, Asian and Minority Ethnic staff members across the Ministry. The EDAG was responsible for developing our Equality and Diversity action plan (approved by me and the wider management board of HMI Prisons) and is responsible for monitoring and reporting on our progress against that plan. The plan sets out a number of actions together with measures for progress. For example, actions completed pursuant to the current plan include rolling out mandatory equality and diversity training for staff, reviewing our job description with the aim of increasing diversity across our workforce, and creating a staff support team to promote and improve staff welfare.

The EDAG was also responsible for creating the agenda for an all-staff development day on improving our equality and diversity practices both within our own organisation and in the carrying out of our inspection role. This day took place in July of this year and topics discussed included an overview of findings on equality and discrimination from our own inspections, a session on tackling internal challenges within organisations and an overview by the Rt Hon David Lammy MP of the findings of his review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. The EDAG will follow up on actions agreed by staff at the conclusion of the development day, including an agreement to consider a thematic inspection into equality and diversity.
In addition to the EDAG, there are dedicated inspection leads for issues relating to equality and discrimination. These leads provide a focal point for queries that arise on inspections and also assist HMI Prisons to respond to consultations and comment on government policy that impacts on outcomes for those detained. Currently, we have leads for women, children and young people, disabilities and diversity. We have recently recruited a number of new inspectors and will be therefore seeking to allocate further inspection focal points for equality and diversity.

In relation to project planning, we have chosen to ask our staff to undertake equality impact assessments in their decision making and planning processes. For example, when a project plan for thematic inspection work or the revision of inspection standards is developed, the lead inspector and researcher must respond to a series of questions about the equality impact on detainees, our own staff and other stakeholders and also consider how the project will contribute to our understanding of equality. These assessments are then discussed and debated at management level before a project is approved.

**Within our workforce**

In relation to HMI Prisons’ staff, a number of steps have been taken which aim to both prevent sexual harassment from occurring and provide a mechanism to respond to sexual harassment if it does occur. These training and processes relate to staff behaviour towards one another, towards those outside of the inspectorate and also to behaviour from third parties directed at inspectorate staff.

During induction, staff are advised by their line manager that they are able to contact a number of different people for assistance with any problems or concerns, including harassment. We aim to provide staff with a number of different avenues through which they can seek assistance so that they feel comfortable in doing so. Staff are advised that they can raise issues with their line manager, manager’s manager, or the Deputy Chief Inspector. The Head of Secretariat is an additional point of contact for bullying and harassment should people prefer. We also provide opportunities for people to seek advice and support outside of the line management structure through four diversity representatives and our new staff support team.

The staff support team was created this year in order to provide an avenue for staff to raise concerns on a confidential basis. The team is made up of four staff members who have received training to carry out their role of listening to individual’s concerns and providing sign-posting to other services which may assist where appropriate. All existing staff were introduced to the staff support team, their role and the relevant policy during a staff development day. New staff meet with a member of the staff support team during their induction. The staff support team may direct staff requiring further advice and assistance to contact the employee assistance programme which offers 24/7 support to staff, including advice and counselling when an incident of harassment has occurred. Staff can also contact this service directly. All staff are told during induction that if they are harassed by a third party while on inspection, they should raise this with the coordinating inspector if they feel comfortable to do so, who will assist them to make a complaint should they wish. Alternatively, they may make use of any of the avenues above to raise this issue.

All staff are also required to undertake a range of training as part of their induction. As noted above, this includes mandatory equality and diversity training. This training consists of several online units, which include an explanation of what harassment is and what to do if a staff

---

3 Subject to some exceptions where confidentiality cannot be maintained and which are outlined in the staff support team policy provided to all staff.
member experiences or witnesses harassment. In addition, all staff working within places of
detention are required to undertake personal protection training and training on managing
difficult situations within a prison environment (both of which are delivered in person). All staff
must also take training on safeguarding children (delivered in person). A record of training is
kept and staff are sent reminders when they need to refresh their training (for training which
covers harassment, this is once a year).

Finally, the induction process requires staff to be provided with, and familiarise themselves with,
codes of conduct. As civil servants, our staff are subject to the Civil Service Code of Conduct,
which informs staff that a zero-tolerance approach to harassment will be taken and explains the
consequences of such behaviour, including the possibility of dismissal. HMI Prisons also
maintains its own Code of Conduct, which explains what harassment is, states that such
behaviour will not be tolerated and explains the options available to report harassment.

The names and contact details of where staff can seek assistance are provided in staff induction
packs and are also available in our human resources folders. Information about civil service
policies and the employee assistance programme is also available through the Ministry of Justice
intranet page.

I understand that the Committee has noted concerns that the policies in place in the civil service
do not explicitly refer to sexual harassment, and that the civil service will now review their
policies. HMI Prisons will ask to be kept updated on these changes via the Ministry of Justice. In
addition, in the interim and in the interest of time, I have asked the EDAG to undertake a review
our own training and policies in light of the Committee’s concerns (see below).

As part of our work

As noted above, my role, aided by the staff of HMI Prisons, is to report on outcomes for those
detained, and this role is one of inspection, rather than regulation. This role is also limited to
reporting on the conditions and treatment of detainees, rather than inspecting the performance
of a government department or service overall. It is therefore not within my functions to
comment on outcomes for staff working within establishments. In addition, it is essential that
detainees understand that we are independent from the staff working in establishments so that
they feel they may speak freely to us, which may be compromised if we are seen to be taking on
the concerns of those staff. As noted above, our independence is crucial to our functioning as an
inspectorate and member of the NPM.

Although it is not within our role to comment on staff outcomes and therefore to collect
information relating to sexual harassment of staff, allegations in relation to sexual harassment of
staff would be responded to if we became aware of these on inspection as part of our
safeguarding procedures. Action would be taken following discussion with me. If the staff
member did not want to waive their right to confidentiality, anonymised details of the allegation
would be passed to the Governor/Director (unless the allegation involved that person). If the
staff member was willing to waive their right to confidentiality full details of the allegation would
be passed to the Governor/Director for them to investigate. Any information that suggested an

---

4 The detention facilities we inspect include prisons, young offender institutions, secure training centres,
immigration detention facilities, police custody suites, court custody facilities, border force customs custody suites
and immigration holding facilities and vehicle escort facilities. By invitation we also inspect military detention
facilities and prisons outside of England and Wales (including in Northern Ireland and in some overseas territories).
5 In addition, I note that staff working within places of detention are not members of regulated professions. For
example, the role of a prison officer is not regulated such that they have professional credentials which could be
removed as a result of perpetration of or failure to address sexual harassment in the workplace.
adult at risk or child had been harmed or was at risk of being harmed, including sexual assault, would be passed to the Governor/Director. We would monitor progress and request updates from the place of custody on action taken and outcomes, but would not include information about specific allegations in inspection reports (as is the case with allegations made by detainees).

We are very aware that staff are working in some extremely difficult conditions and we hope that our recommendations in relation to improving conditions for detainees will also lead to improved working conditions for staff, for example, through reduced levels of discrimination. I therefore set out below how we have embedded equality and diversity considerations into our inspection, research and policy work more broadly.

We have sought to ensure that our inspection process sets clear standards in relation to the elimination of discrimination, harassment and victimisation, the advancement of equality and the fostering of good relations. This is done through the development of our own set of standards, known as our Expectations. These standards are underpinned by relevant international and regional human rights standards, including the rights to equality and non-discrimination. They are not restricted to the achievement of operational policy (i.e. if we do not think operational policy is sufficient, we will set a higher standard in our own expectations to meet human rights standards). Expectations are amended following public consultation and consultation responses have provided us with valuable insight into the experiences of certain groups, leading to strengthened expectations. Recognising that different groups have differing needs, we have a number of sets of Expectations (adult men, adult women, children and young people and for those held in immigration detention, police custody, court custody and border force). Each set contains expectations in relation to equality and non-discrimination.

In addition to setting clear standards to be met, we also aim to gather robust evidence on which to base recommendations for improvement in the achievement of equality and diversity. Prior to all inspections of prisons (adult and children), immigration removal centres, the Military Corrective Training Centre and secure training centres, HMI Prisons’ researchers carry out a voluntary, confidential and anonymous survey of a representative proportion of the detainee population. The survey covers a range of areas, including arrival at the establishment, safety, health services, respectful custody and resettlement. Questionnaires are tailored to different types of detention, and questions are guided by our expectations. Demographic questions are also asked to help identify prisoners with a protected characteristic, so their experiences can be further analysed. The characteristics covered by the survey follow those set out in the Equality Act: ethnicity; nationality; religion; disability; mental health; sexuality; those who identify as a different gender to the male/female category of the establishment; those who identify as transgender and age (21 or 25 and under and over 50 or 70).

---

8 For example, in the Expectations: Criteria for assessing the treatment of and conditions for men in prisons, there is a section headed “equality, diversity and faith” which contains 16 expectations (from a total of 100 expectations) and related indicators. For example, expectation 39 is that “discriminatory behaviour is challenged robustly and consistently” and related indicators (demonstrating achievement) include, “all forms of discriminatory language and conduct are challenged”, “prisoners and staff know what behaviours and language are acceptable”, and “prisoners, staff and visitors know how to report an incident, are supported to do so and are safe from any repercussions.” The expectations can be found at https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/prison-expectations/.
Following the administration of the survey, the results are analysed by the research team and provided to inspectors to guide them to possible issues that detainees may be experiencing (or areas of possible good practice). Inspectors can then explore these issues during the inspection. This includes responses to questions relating to equality and diversity directly, and the results of comparator analyses, for which each question is reformulated into a binary ‘yes/no’ format and affirmative responses compared. For example, comparison analysis will be undertaken for white prisoners’ responses compared with those of prisoners from black or minority ethnic groups and disabled prisoners’ responses compared with those who do not have a disability. The survey analysis is published in the relevant inspection report and data from all surveys published during the financial year is aggregated for our annual report, which includes a diversity analysis of these results.9

While on inspection, a designated inspector (or inspectors) will be assigned to examine and report on the establishment’s achievement against equality and diversity expectations. Inspectors will consider a range of sources in order to triangulate evidence in relation to each equality inspection. In order to canvass views from detainees, focus groups with detainees who identify with a protected characteristic are often undertaken, allowing detainees to discuss issues in detail. Inspectors also request the data collected by each establishment, which we expect to include up to date information about the number of detainees with protected characteristics held by the establishment. Inspectors use this data (in addition to our own survey data) to inform them as to what services and plans they would expect the establishment to have in place and also provide feedback on the collection of data where this is insufficient. For example, at HMP The Mount, the data provided by the establishment indicated that no prisoners identified as gay or bisexual and inspectors consequently noted as follows: “prison records indicated that there were no gay prisoners, which was not credible. Prisoners told us that it would be difficult for a man to disclose he was gay. Nothing had been done to explore and change this perception at The Mount, which differed markedly from many similar prisons.” A recommendation was made that “managers should explore why it is difficult for prisoners to identify as gay or bisexual at The Mount and take action to address this problem, including provision of appropriate services and facilities.”10

Each prison develops an action plan following an inspection, outlining how it will respond to our recommendations, including in relation to equality and diversity. We expect this plan to outline concrete steps that will be taken at all levels. All of our inspection reports and the corresponding action plans are published on our website. As has been recently announced, HMI Prisons is in the process of reviewing our methodology to allow us to undertake short visits to monitor progress of some prisons in the achievement of our recommendations. This will include, where relevant, the achievement of recommendations aimed at improving equality within an establishment.

Where we have been aware of allegations prior to inspection, we consider adapting our inspection methodology to explore these further. For example, the April 2015 inspection of Yarl’s Wood immigration removal centre was preceded by allegations of abusive behaviour by staff, and an undercover television programme showing instances of inappropriate staff behaviour. At that inspection every woman detained there was offered a confidential individual

9 For example, “are your religious beliefs respected here?”, “if you have a disability, are you getting the support you need”, and “if you were being bullied/victimized by staff here, would you report it?”.

10 See, for example, appendix five of our most recent annual report (2017-18), available at https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/annual-report-2017-18/.

11 The full report is available at https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/hmp-the-mount-3/.
interview with a female inspector. Ninety-two women detainees and eight former women detainees (referred to us by community groups) were interviewed.\textsuperscript{12}

In addition to our regular inspection programme, we carry out thematic inspections, a number of which have focussed on the treatment and needs of persons with particular characteristics who are in detention. For example, our most recent thematic work (to be published in mid-October), examines developments in the provision of social care in prisons since the coming into force of the Care Act 2014 and the Social Services and Well-Being (Wales) Act 2014, which place obligations on local authorities to provide social care, including to those in prisons. We also utilise our inspection evidence in relation to equality and diversity outcomes to comment on government policy and respond to consultations, with the aim of assisting government to improve equality and diversity outcomes for those detained. For example, we responded to a consultation by Her Majesty’s Prisons and Probation Service on their Equality Monitoring Tool, making suggestions as to how the tool could be improved to capture more useful data within prisons. A summary of our findings in relation to equality and diversity for each year is also included in our annual report.\textsuperscript{13}

Finally, we seek to share good practice in the promotion of equality by highlighting examples in individual inspection reports. These examples are then grouped together on our website with an indicative heading and location of the prison to enable easier access.\textsuperscript{14}

HMI Prisons seeks to ensure that all detainees who wish to speak with us are able to do so. Our survey is translated into 14 languages and researchers also administer the questionnaire via a face-to-face interview for respondents who otherwise may not be able to read or complete the survey. In addition, the survey questions and design are piloted before being used, allowing those detained an opportunity to comment on whether the survey covers issues of importance to them and also whether it is understandable and user friendly. Translation services are used to enable all detainees who wish to speak to an inspector or researcher to do so (and interviews and focus groups are undertaken without establishment staff being present). Staff members answering phones in our office are also able to utilise translation services to enable them to speak to those detained or any other person who may call our information line.

**Planned actions**

As noted above, I have asked the EDAG to review our training materials and policies in light of the Committee’s concerns. Specifically, I have asked them to consider including training on preventing and responding to sexual harassment as part of an upcoming development day and to undertake a workplace risk assessment for bullying and harassment, including sexual harassment. More broadly, I have asked the EDAG to collate information about how we incorporate equality considerations into our work and publish this in one place on our website. We will be appointing new inspectors to be equality and diversity inspection leads. I note that we are already considering how we might better share instances of good practice that we find on inspection and this includes best practice in advancing equality and combatting discrimination.

\textsuperscript{12} The full report can be found at https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/yarls-wood-immigration-removal-centre.

\textsuperscript{13} See, for example, pages 32 to 34 of our Annual Report 2017-18.

\textsuperscript{14} See https://www.justiceinspectorates.gov.uk/hmiprisons/goodpractice/?goodpractice-expectation=equality-diversity-and-faith.
I hope that the above provides the Committee with the information it requires. However, please do not hesitate to let me know if further information is needed.

Your sincerely,

[Signature]

Peter Clarke CVO OBE QPM
HM Chief Inspector of Prisons