

# **Memorandum of Understanding between the Independent Chief Inspector of Borders & Immigration and Her Majesty's Chief Inspector of Prisons**

## **Introduction**

1. This Memorandum of Understanding (MoU) sets out a framework for co-operation, collaboration and communication agreed between the Independent Chief Inspector of Borders and Immigration (ICIBI) and Her Majesty's Chief Inspector of Prisons (HMCIP).

## **Responsibilities and Remits**

### HMCIP

2. HMCIP reports on conditions for and treatment of those in prison, young offender institutions, secure training centres, police and court custody suites, customs custody facilities and military detention.

3. HMCIP also has a statutory responsibility to inspect and report to the Home Secretary on conditions for and treatment of detainees in all places of immigration detention in the United Kingdom. Section 152 (5) of the Immigration and Asylum Act 1999 requires HMCIP to report on detainees in immigration detention centres. Section 46 (1) of the Immigration, Asylum and Nationality Act 2006 extended HMCIP's remit to short term immigration holding facilities and escort arrangements.

4. HMI Prisons' work is carried out in accordance with the UK's obligations as a party to the Optional Protocol to the Convention against Torture and other cruel, inhumane or degrading treatment or punishment (OPCAT). OPCAT requires each state party to designate an independent 'national preventive mechanism' (NPM), which monitors places of detention for the purpose of preventing torture and ill-treatment. HMI Prisons is a member of, and coordinates, the UK NPM.

### ICIBI

4. Under Section 48 of the UK Borders Act 2007, the ICIBI has statutory responsibility to monitor and report on the efficiency and effectiveness of the performance by the Secretary of State (Home Secretary), her officials and other persons, in exercising customs, immigration, asylum or nationality functions in the UK and overseas.

5. The ICIBI provides written inspection reports, with recommendations, to the Home Secretary. The Home Secretary is responsible for laying the reports in Parliament, which she is committed to doing within eight weeks of receipt, subject to both Houses sitting.

6. Section 48(2A) of the UK Borders Act 2007 refers to immigration detention. It states that, unless directed to do so by the Secretary of State, the ICIBI shall not monitor and report on the exercise of *'functions at removal centres and short term holding facilities (and in pre-departure accommodation), and under escort arrangements, in so far as Her Majesty's Chief Inspector of Prisons has functions under section 5A of the Prison Act 1952 in relation to such functions'*.

### **Scope and Purpose of the MoU**

7. While the statutory responsibilities and remits of the ICIBI and HMCIP are distinct, there are overlapping areas of interest and opportunities for the two inspectorates to co-operate, collaborate and communicate. This MoU sets out how the ICIBI and HMCIP will manage this.

8. This MoU does not place any additional legal obligations on either party, nor does it imply any transfer of responsibility from one to the other, or sharing of statutory functions. The ICIBI and HMCIP will work within their respective statutory frameworks at all times.

### **Principles**

9. The ICIBI and HMCIP will ensure effective, efficient and legally compliant co-operation, collaboration and communication by:

- Respecting each other's independent status and statutory obligations and boundaries;
- Keeping one another informed of plans and issues that may interest or affect the other inspectorate;
- Giving proper protection to any documents, information or data that is shared (by adhering to relevant statute(s), protective security policies and working practices).

### **Areas for co-operation, collaboration and communication**

10. ICIBI and HMCIP may co-operate, collaborate and communicate in relation to any matters, but the areas where this is most likely to be beneficial

are in relation to inspection programmes, actual inspections where there is an identified shared or overlapping interest, and inspection practices.

### Inspection programme

11. Annually, or more often if appropriate, ICIBI and HMCIP will share their plans for future inspection activity, in so far as they are likely to be relevant to the other, with the aim of identifying opportunities for co-operation and collaboration. This will be done on an 'IBI/HMI Prisons Eyes Only' basis, and nothing will be shared with either the Home Office or Ministry of Justice unless expressly agreed with the relevant Chief Inspector.

### Inspections

12. While ICIBI and HMCIP may agree to co-operate and collaborate on any topic falling within their respective remits, the most likely area for this relates to immigration detention, where:

- the ICIBI's focus is on the quality and consistency of Home Office decision-making, its handling of any immigration or asylum related applications or claims from or on behalf of a detainee, its provision of information, compliance with UK law about discrimination, and handling of complaints related to any of these matters; while,
- HMCIP's focus is on the treatment and conditions of detainees within places of immigration detention or under escort, to which prison inspectors may apply independently set expectations mapped against international human rights standards, which may differ from and may exceed Home Office requirements.

13. Where the inspectorates have agreed in principle to co-operate and/or collaborate on an inspection(s), or to conduct parallel/complementary inspections, the precise scope and form of this co-operation and/or collaboration will be subject to detailed planning, covering *inter alia* areas of foreseeable difficulty or conflict, and agreement on how these will be handled. If agreement is not possible at the planning stage, either inspectorate may decide not to proceed, but this will not prevent the other inspectorate from proceeding alone.

14. Written agreements to co-operate and/or collaborate on an inspection(s) will be jointly produced, and will be signed off by the ICIBI and HMCIP.

15. Because of the different statutory remits and arrangements for publication, it is not envisaged that the ICIBI and HMCIP will produce joint inspection reports. The options for reporting are:

- a single report from one or other Chief Inspector that makes reference to the findings of the other inspectorate; or
- parallel/complementary reports from each Chief Inspector.

16. The ICIBI and HMCIP will retain full ownership of any report(s) published in either of their names. Where quoting directly the findings of the other inspectorate, the text will be cleared in draft with the relevant Chief Inspector.

17. Having co-operated and/or collaborated on an inspection(s), the ICIBI and HMCIP may disagree on the interpretation of evidence, and on their conclusions or recommendations. If such a disagreement cannot be resolved, it is for the ICIBI or HMCIP to decide whether and how to reflect this in any report(s).

#### Inspection practices

18. The two inspectorates will seek opportunities to support one another in relation to inspection 'best practice', including sharing information about their methodologies, and experiences of what works; offering 'shadowing' opportunities, and short or longer-term secondments; and undertaking joint training where appropriate.

#### **Review**

19. This MoU will be reviewed by the ICIBI and HMCIP annually, or at any time if requested by either party.

SIGNED J.V. Boyle.....

**Chief Inspector of  
Borders and Immigration**

DATE 22/9/16.....

SIGNED Peter Clark.....

**HM Chief Inspector of Prisons**

DATE 20th September 2016.....