



MEMORANDUM OF UNDERSTANDING BETWEEN HM INSPECTORATE OF PRISONS AND THE NATIONAL COUNCIL FOR LAY OBSERVERS

Introduction

1. This memorandum of understanding (MoU) has been agreed between Her Majesty's Inspectorate of Prisons (HMIP) and the National Council (NC) for Lay Observers (LOs) on behalf of individual LOs. It:
 - acknowledges the individual independence of LOs and HMIP and the differing responsibilities of both parties;
 - supports both parties' work to provide effective independent scrutiny of treatment and conditions for detainees in court custody and during transportation;
 - emphasises the importance of promoting positive outcomes for detainees in court custody and during transportation; and
 - recognises that both parties carry out their work as members of the UK's National Preventive Mechanism (NPM), in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT).
2. Nothing in this memorandum will supersede the obligations of parties to fulfil their individual responsibilities as set out in their existing policies and procedures.

Purpose

3. The purpose of this MoU is to promote a clear understanding of the respective roles of each party, to promote an effective relationship between LOs and HMIP and to facilitate partnership working as appropriate.

Her Majesty's Inspectorate of Prisons

4. HMIP is an independent inspectorate whose Chief Inspector is a Crown appointment. The Chief Inspector's powers derive from section 5A of the Prisons Act 1952 (as amended) (Section 5A of the Prison Act 1952 (as amended by 1982 Criminal Justice Act, Immigration and Asylum Act 1999, Immigration, Asylum and Nationality Act 2006, Police and Justice Act 2006)). The Chief Inspector reports directly to the relevant Secretaries of State and to Parliament on the treatment of and conditions for prisoners in England and Wales and immigration detainees in the United Kingdom. HMIP also inspects court custody facilities, police custody and Border Force customs custody facilities with Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), and secure training centres with Ofsted. By invitation, HMIP inspects some military detention facilities as well as prisons in Northern Ireland, and in other jurisdictions with links to the UK such as the Isle of Man.

Details of HMIP's framework, approach and general methodology can be found at:
<http://www.justiceinspectrates.gov.uk/hmiprisons/about-our-inspections/>

The Lay Observers

5. The role of LOs is to monitor the facilities provided to Detained Persons (DPs) and the treatment received to assess whether they are treated with decency and respect and that their welfare is properly managed.
6. They are also responsible for monitoring the facilities and quality of transportation used, when detained persons are being moved between police stations, courts and prisons, by observing the compliance with relevant rules and standards of decency. To ensure this is undertaken effectively LOs have unrestricted access to every part of the custody suite and transport vehicles as well as associated records when under the care of PECS contractors.
7. The Criminal Justice Act 1991 states that there should be appointed:
 - b) *a panel of lay observers whose duty it shall be to inspect the conditions in which prisoners are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State.*
8. LO members are independent and unpaid. In performing their duties, they:
 - have unrestricted access to the court custody suites they visit;
 - can talk to any detainee they wish, out of sight and hearing of a member of staff, if necessary;
 - visit courts to confirm that detained persons are being treated decently, inspect conditions in custody areas and inspect the vehicles used by the contractors;
 - visit police stations to observe the handover of detained persons from the police to the contractors;
 - visit prisons to observe the handover of detained persons from prison to the contractors, and vice versa;
 - visit prisons to observe detained persons escorted there from other prisons using the Inter Prison Transfer [IPT] contract and inspect the vehicles used by the contractors; and
 - speak with prisoners to establish how they have been treated during transportation.
9. The primary purpose of the LOs' National Council is to provide leadership, guidance, training and quality control to the panel of LOs and to help them fulfil their statutory and other duties. The Chair is required to produce an Annual Report to the Secretary of State. The Secretary of State also requires the National Council to protect the independence of LOs in making their proper enquiries and reporting fully the conclusions they reach.

Optional Protocol to the UN Convention Against Torture (OPCAT)

10. The inspections by HMIP and monitoring by LOs are carried out in accordance with the UK's obligations as a party to the Optional Protocol to the United Nations

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. HMIP and the LOs are members of the UK's NPM, which is coordinated by HMIP.

Information sharing and joint working

11. The Chair of the LO National Council and HM Chief Inspector of Prisons will meet every six months to discuss issues of common concern and mutual interest.

12. The LO National Council will:

- provide a copy of the LO Annual Report to HMIP;
- provide copies of recent reports on any custody suites to be inspected;
- provide reports that contain serious issues as and when produced;
- provide any relevant information to HMIP to inform them of concerns in particular establishments or with transportation;
- inform and consider joint work with HMIP on issues relevant to both parties;
- inform LOs about correspondence and other intelligence received from HMIP as appropriate;
- invite a representative of HMIP to contribute to the induction and other relevant training as specified in the National Council Training Programme;
- provide the reports of HMIP inspections to appropriate LOs to support and inform their own monitoring role;
- discuss with HMIP any concerns arising from the report;
- follow-up with relevant LOs any correspondence or other intelligence received from HMIP, and inform HMIP of the outcome;
- promote an awareness of the vital role of HMIP and the NPM to LOs; and
- through the Chair, meet with HMIP on an annual basis to review the MoU.

13. HMIP will:

- provide LOs with copies of the HMIP Annual Report;
- inform and consider joint work with LOs on issues relevant to both parties;
- seek information from LOs on issues of concern prior to a planned inspection;
- meet with a representative of the LOs as soon as possible after the commencement of an inspection to establish the views of the local LOs;
- invite the Chair of the LOs or their representative to attend the hot debrief at the end of the inspection to discuss emerging findings;
- alert the LOs and/or the Chair as appropriate to any serious issues arising from an inspection;
- send a copy of the report of the inspection or visit to the LOs;
- contribute to any training relevant and supportive of effective monitoring;
- provide updated contact details;
- inform the LO National Council and Secretariat of correspondence or other intelligence that may require, or benefit from, action by the LOs;
- ensure HMIP staff are aware of the work and role of LOs; and
- through the Chair meet with LOs annually to review the MoU.

Data and Retention Periods

14. This MoU is also the data sharing agreement between HMIP and the LOs. The parties may share personal and sensitive information, records or images obtained during the course of their respective duties for the purposes outlined in paragraphs 12 and 13 above. Such information will be shared using the Ministry of Justice email system.
15. Both parties will meet all legal and government requirements for the protection and storage of such personal and sensitive information, records and images.
16. Both parties will keep personal information, records and images for the retention periods defined by their respective organisational data retention policies, and then destroy such information in accordance with Ministry of Justice policy.
17. All public sector bodies, including HMIP and LOs, are instructed to retain any and all documents which contain or may contain content pertaining directly or indirectly to the sexual abuse of children or to child protection and care. Such evidence should therefore not be disposed of after the retention period outlined in each organisation's data retention policy but should be retained. For the purposes of this instruction, the word "children" relates to any person under the age of 18.

Sanctions

18. If LOs or HMIP inspectors become aware of any detainee alleging that they have been subject to sanction or other prejudice arising from their, or someone acting on their behalf's, communication with representatives of the LOs or HMIP inspectors, they will alert immediately the National Council and HMIP lead inspector for courts, who will then follow the agreed protocol on sanctions.

Reconciliation of Disagreements

19. Any disagreement between HMIP or the LOs will normally be resolved at working level, for example, between the Chair and Inspection team leader. If this is not possible, issues should be referred to HM Chief Inspector of Prisons and/or the Chair of the NC. They will be responsible for ensuring a satisfactory resolution.
20. Each signatory to this memorandum will respect the independence and views of the other.

Signed



Peter Clarke CVO OBE QPM
HM Chief Inspector of Prisons

Date: 16 July 2020



John Thornhill
Lay Observer National Council

Date: 24 July 2020