



HM Courts &  
Tribunals Service

## **Memorandum of Understanding on the inspection of court and tribunal custody facilities in England and Wales between HM Inspectorate of Prisons and HM Courts and Tribunals Service**

This memorandum of understanding (MoU) has been agreed between Her Majesty's Courts and Tribunals Service (HMCTS) and Her Majesty's Inspectorate of Prisons (HMI Prisons).

### **Background**

1. HMI Prisons 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). The Chief Inspector reports directly to the relevant Secretaries of State and to Parliament on the treatment of, and conditions for, those in prison, young offender institutions and court custody suites in England and Wales, and immigration detention facilities in the United Kingdom. HMI Prisons also inspects police and Border Force customs custody (jointly with HM Inspectorate of Constabulary and Fire & Rescue Services), and secure training centres (jointly with Ofsted). By invitation, HMI Prisons 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.
2. HMI Prisons' work is 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, Inhuman 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.

### **Statutory status of court custody inspections**

3. The Public Bodies (Abolition of Courts Boards, Her Majesty's Inspectorate of Courts Administration and Public Guardian Board) Order 2012 transferred the powers of the disbanded HM Inspectorate of Court Administration for inspecting court custody to HMI Prisons.

4. The inspection of court custody facilities will be carried out by inspectors from HMI Prisons and, occasionally, observers from other organisations concerned with the work of the NPM.

### **Objectives of the inspection programme**

5. The programme of inspection is designed to meet obligations under OPCAT by examining the treatment and conditions under which people are detained in court custody and during escort.
6. In addition, the programme will provide an operational and strategic overview of the effectiveness of court custody arrangements. This includes: partnerships with other agencies involved in working with people who are, or have recently been, in court custody; and the work of Prisoner Escort and Custody (PECS) contractors when transferring detainees between police stations, courts and prisons.
7. These outcomes will be measured against agreed, published inspection criteria, known as Expectations.
8. To meet the requirement for regular inspection, while also being proportionate, the inspection programme will ensure that all courts and tribunals custody facilities are inspected at least once every eight years, although inspections may be more frequent. The nature and timing of inspections will be determined by HMI Prisons, informed both by chronology and risk.

### **Methodology**

9. The inspection methodology focuses on five key areas:
  - leadership and multi-agency relationships;
  - transfer to court custody;
  - in the custody suite: reception processes, individual needs and legal rights;
  - in the custody cell, safeguarding and healthcare; and
  - release and transfer from court custody.
10. These areas are captured in detailed published custodial inspection criteria, known as Expectations. Stakeholders were consulted in the original development of Expectations for court custody, as well as subsequent significant revisions. The most recent review of Expectations was undertaken, and a revised set of Expectations was published, in 2020.
11. HMI Prisons' Expectations for court custody are available on the HMI Prisons website:

<https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/court-custody-expectations/>

12. The court custody inspection methodology draws on established and effective inspection methodologies deployed by HMI Prisons in other custodial settings. It includes, but is not limited to:
  - collation of performance data and intelligence;
  - analysis of documentation;
  - fieldwork visits to every court and tribunal with custody facilities in the cluster area(s) being inspected;
  - interviews with detainees, staff, court and custody contractor managers and other key individuals, PECS managers, health care staff, solicitors and lay observers;
  - scrutiny of custody records and person escort record forms (PERS) and if necessary, review of other sources of evidence (records, letters, memos, complaints, e-mails and CCTV);
  - a briefing about the main findings from the inspection team leader for HMCTS managers, the PECS contractor and the PECS contract manager immediately after the inspection is completed;
  - publication of a final report;
  - receipt of an action plan within 12 weeks of the inspection; and
  - a meeting between HMI Prisons inspectors and key HMCTS and custody contractor managers within six months of inspection to review progress in implementing the improvement plan.
13. Fieldwork will usually take place for eight to ten working days (longer in larger clusters) in the cluster area (or clusters), sometimes including courts that sit on Saturdays and bank holidays. The report will be published within 16 weeks of completing the fieldwork.
14. A team of inspectors designated by HM Chief Inspector of Prisons will conduct the inspection. HM Chief Inspector or his/her deputy will participate in some inspections.
15. All core HMI Prisons team members will have experience of working in places of detention or have had a period of on-the-job shadowing to achieve a reasonable understanding of court custody issues, legislation and practice. All are trained in security and personal safety awareness, and conflict resolution.
16. HMCTS and PECS have agreed that HMI Prisons is permitted to take cameras into the court custody area and take photographs as part of the inspection process. A separate protocol has been developed for this purpose, which can be found at Appendix A.
17. HMI Prisons regularly reviews its inspection methodology, and consults with key stakeholders about how any practical considerations in undertaking inspections will be managed to minimise the inconvenience to the inspected clusters.

## **Court cluster area selection**

18. During each programme of inspection, which last approximately eight years, each cluster area is inspected. The timing of each inspection is determined through a combination of: risk assessment, benchmarking data and practical factors (such as the need to have a mix of urban and more rural areas in each year of the inspection programme); the importance of inspecting courts and escort arrangements staffed by all the current contractors; and the maintenance of an appropriate geographic and regional spread.

## **Notification of HMCTS and contractors**

19. HMI Prisons will inform the HMCTS HQ Operations Directorate of their intention to inspect a court custody cluster eight weeks before the inspection starts. The Head of the Contracted Services will engage with the HMCTS Cluster Manager to provide details to HMI Prisons of a nominated operational Single Point of Contract (SPOC) who will provide support to the inspection team throughout the inspection process.
20. At this time the Head of Contracted Services will also advise the appropriate senior HMCTS staff, the Head of PECS and the Lay Observers Secretariat of the inspection.
21. The SPOC will be a manager in the cluster with the appropriate level of authority. The operational SPOC will be required to provide management data for inspectors, and have had contact with PECS, the custody contractor and other key stakeholders in the cluster and should be someone who would be aware of any major concerns or difficulties that may affect the viability of the inspection.
22. The inspection team will inspect all custody facilities in the cluster(s). They may need to see court and tribunal custody facilities that are not currently used but have not been permanently closed (“mothballed”) if there is a possibility that cells might be brought back into use.
23. While the specific circumstances encountered may dictate additional or different actions, the inspection team leader or co-ordinator will:
  - contact the nominated HMCTS Cluster Manager/SPOC eight weeks before the inspection, so that they can inform the relevant HMCTS managers, engage with the custody contractor, the PECS contract delivery manager and local Lay Observer to advise that the inspection team are visiting to inspect the custody facilities at the cluster’s courts and tribunal centres. The purpose of this contact is also to make practical arrangements for the inspection, set up meetings with key managers that will take place during the inspection, ensure inspectors can gain access to custody facilities, and obtain management data, minutes of relevant inter-agency meetings etc;
  - ensure that inspectors and any observers present photographic identification to identify themselves and their role;

- explain the purpose of the inspection;
  - provide details of a central point of reference (if required to confirm the inspection's validity);
  - provide the HMCTS cluster manager/SPOC with any written information or confirmation of authority to inspect that may be required;
  - explore whether there are any exceptional and substantial operational reasons why the inspection should not proceed or should be delayed at any particular court; and
  - (subject to the above) arrange access for the team to all the custody facilities in the cluster(s) through the SPOC.
24. If HMCTS management raises objections to the inspection proceeding, the team leader will refer the matter immediately to HM Chief Inspector of Prisons with an opinion on the validity of the reasoning given and a recommendation that either:
- the inspection should be delayed or deferred; or
  - the request for access to carry out the inspection be reasserted by the Chief Inspector with an explanation offered as to why the reason offered for discontinuing the inspection does not constitute a sufficient cause for deferral or delay.

### **Inspection findings and report**

25. During the inspection, HMI Prisons will provide HMCTS with an illustrative report concerning the physical conditions of court custody facilities. If present, this is likely to include photographs of potential ligature points and graffiti. This report will not form part of the final report but is intended to illustrate potential concerns and will be for use by HMCTS.
26. On the final day of the inspection, the team leader and a member of the inspection team will provide a verbal debrief, summarising the main findings of the inspection. This will be offered to the representatives of HMCTS, the PECS custody contractor, the PECS contract delivery manager, the HMCTS Facilities Manager for the cluster and the local Lay Observer. Any particularly urgent or dangerous issues will be communicated to the Cluster Manager as and when they emerge. This debrief will be followed up by written notes of the main findings within five working days and these will also be shared with HMCTS HQ Operations Directorate.
27. The full findings will be made available to HMCTS as a draft report. HMI Prisons will present this to the HMCTS HQ Operations Directorate within eight weeks of the inspection so that any challenges to factual accuracy can be resolved prior to publication, usually within 18 weeks of the inspection. While it is appreciated that the draft report may have to be shared among key stakeholders, care should be taken how widely the draft report is shared before publication. Report contents and recommendations will ultimately be determined by HM Chief Inspector of Prisons and it will be for him or her, not officials, to alert Ministers and other stakeholders to imminent publication.

28. All reports will be published and placed on the HMI Prisons website together with a media statement to cover publication. HMI Prisons will compile the media statement in liaison with HMCTS Press Office. However, media handling will ultimately be a matter for HM Chief Inspector. HMI Prisons will send HMCTS and the PECS contract delivery manager, custody contractor and Lay Observers Secretariat advance copies, embargoed to an agreed publication time and date.

### **Follow-up action**

29. HMCTS will be asked to provide HMI Prisons with their considered response to the final report. It is acknowledged that liaison with PECS and the contracted provider will be necessary at this stage. It is expected that the production of an improvement plan will be coordinated by HMCTS that sets out whether recommendations are accepted and the consequential action taken or planned to address the report's recommendations. This improvement plan will be published as a response to the inspection findings.
30. HMCTS will send the action plan to HMI Prisons within 12 weeks of the publication date of the inspection report. HMI Prisons inspectors will assess progress in implementing the action plan within approximately 12 months of the inspection being completed by means of a meeting between representatives from HMI Prisons, HMCTS, PECS and the escort and custody contractor. HMIP will contact HMCTS Contracted Services Division to make arrangements for the meeting.
31. A follow-up inspection may be considered but would not normally be undertaken within 12 months of the original inspection dates.

### **Data and Retention Periods**

32. This MoU is also the data sharing agreement between HMI Prisons and HMCTS. HMCTS or the custody contractor will provide HMI Prisons with case level information when requested. This will include paper and electronic records. HMI Prisons will ensure that it uses suitably encrypted media when sharing sensitive electronic data.
33. HMI Prisons will meet all legal and government requirements for the protection of personal information, records and images seen during the inspection.
34. Personal data provided to HMI Prisons will be kept for retention periods defined by HMI Prisons and then destroyed in accordance with Ministry of Justice policy.
35. All public sector bodies, including HMI Prisons, 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 HMI Prisons' 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.

### **Conduct and complaints**

36. The conduct of inspectors, including partner inspectors and observers, will be the responsibility of the on-site inspection team leader. Complaints about inspection staff should be referred to the inspection team leader or to the Chief or Deputy Chief Inspector as appropriate. Formal complaints will be dealt with in accordance with the HMI Prisons complaints process.
37. Formal complaints by inspectors about HMCTS or the custody contractor’s employees or sub-contractors will be made to the HMCTS Cluster Manager or the contractor’s area operations manager. Complaints about PECS or contracted staff will be made to the Head of PECS.
38. HMI Prisons will seek voluntary feedback for quality assurance purposes from inspected organisations after each inspection. In addition, HMI Prisons will conduct an annual stakeholder survey to inform performance improvement.

### **Safeguarding and sanctions**

39. HMI Prisons inspectors will follow HMI Prisons safeguarding policies and protocols, which set out procedures to be followed should information come to the attention of any member of staff indicating that a child or vulnerable adult has suffered, is suffering or is at risk of suffering harm during their period in detention. If any such information comes to the attention of inspectors during an inspection, they must report it immediately to the HMI Prisons team leader or inspection coordinator, who will then follow HMI Prisons’ safeguarding protocols. Any general undertaking of confidentiality or anonymity during the inspection must have the caveat that this cannot be maintained where information suggests that a child or a vulnerable adult has been harmed in any way.
40. If 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 HMI Prisons inspectors or representatives of the Lay Observers, they will alert the HMI Prisons lead inspector immediately, who will then follow the agreed protocol on sanctions.

### **Reconciliation of disagreement**

41. Any disagreement between HMI Prisons and the inspected organisation will normally be resolved at working level between the relevant officials. If this is not possible, it may be referred upwards through those responsible for operating this MoU, up to and including HM Chief Inspector of Prisons and HMCTS Operations Director, who will jointly be responsible for ensuring a mutually satisfactory resolution.

**Signed:**



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**Peter Clarke CVO OBE QPM  
HM Chief Inspector of Prisons**

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**Kevin Sadler  
Deputy Chief Executive and  
Operations Director, HMCTS**

**Date:** 16 July 2020

**Date:** 26 July 2020





**Protocol between Her Majesty's Courts and Tribunals Service, Prisoner Escort and Custody Services and HM Inspectorate of Prisons regarding photography within court custody suites  
July 2020**

1. This Protocol has been agreed between Her Majesty's Courts and Tribunals Service (HMCTS), Prisoner Escort and Custody Services (PECS) and HM Inspectorate of Prisons (HMI Prisons) and sets out the parameters for the taking of and distribution of photographs by HMI Prisons within the custodial areas of court buildings as part of their inspection visits.

**Entry to custody suites**

2. Inspectors will be permitted to enter custodial areas with cameras for the express purpose of taking photographs to illustrate particular aspects of their inspection visit.
3. Photographs of any other area within courts (including public areas) are strictly forbidden.

**Permitted subjects**

4. No photographs should be taken of:
  - a. PECS contractors' staff, HMCTS staff or members of staff from any other agency;
  - b. Detainees;
  - c. Personal data which could identify an individual;
  - d. IT systems;
  - e. Alarms, locks, CCTV cameras or other equipment used to secure an area; or
  - f. Staff areas within the custody suite.

**Storage and sharing**

5. HMI Prisons will meet all legal and government requirements for the protection of personal information, records and images seen during the inspection.
6. Photographs taken by HMI Prisons will be kept for retention periods defined by HMI Prisons and then destroyed in accordance with HMI Prisons' retention policy.

### Approval of images prior to publication

7. Prior to publication, any photographs captured during the course of an inspection must be shared with the following contacts for approval:
  - Head of PECS
  - Head of HMCTS Contracted Services
  - Head of HMCTS Safety and Security
8. If any of the above contacts object to the publication of an image, this should be made in writing to HMI Prisons setting out the relevant breach of this protocol.

### Publication

9. Once approved, photographs captured during the course of an inspection may be used by HMI Prisons in their regional inspection reports of court custody facilities and in annual reports. Regional and annual reports are published on the HMI Prisons website and are public documents. HMI Prisons will not be required to obtain further approval to use approved photographs in future publications.