



Reintroduction of court custody inspections by HM Inspectorate of Prisons during the COVID-19 pandemic

Context

1. HM Inspectorate of Prisons (HMI Prisons) has inspected court custody facilities since 2012. These inspections are part of the Chief Inspector's statutory remit and also contribute to the United Kingdom's response to its obligation to ensure regular independent inspection of all places of detention pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Pursuant to OPCAT, members of the UK's National Preventive Mechanism, including HMI Prisons, have a mandate to examine the treatment of people in detention, make recommendations and submit proposals on legislation.
2. At the start of the COVID-19 pandemic, many courts were closed. HMI Prisons suspended all its inspection activity on 17 March 2020 in line with government guidance on social distancing and in recognition of the very significant challenges faced by places of detention at that time. However, circumstances have since changed: by the beginning of July, 134 magistrates' and 79 crown courts were open for business. In addition, HMI Prisons has conducted a series of short scrutiny visits in prisons which have demonstrated that, with some adjustments, it is possible to continue inspection activity during the COVID-19 pandemic. HMI Prisons has consulted with Her Majesty's Courts and Tribunals Service (HMCTS), Prisoner Escort and Custody Service (PECS) and the Chair of the Lay Observers and all parties have agreed that some form of inspection should now be reintroduced.
3. The main objective of reintroducing inspection is to provide independent reporting on treatment and conditions in court custody, and by doing so, promote transparency about the response to COVID-19 in places of detention and satisfy our OPCAT mandate. The need for ongoing independent scrutiny is vital given the increased risks surrounding detention during the pandemic.

Specific concerns about places of detention during COVID-19

4. Recent guidance issued by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and World Health Organization (WHO) indicates that places of detention are unusually high-risk environments during the current outbreak, for prisoners, staff, and the wider community (see Further resources). Specific concerns, based on the WHO and SPT guidance and our knowledge and experience of inspecting court custody facilities, include:
 - crowding – sharing of confined cell space; travelling in close proximity in cellular vehicles; and overall difficulties in ensuring space for social distancing
 - difficulties in maintaining hand hygiene due to limited access to soap, hot water, etc
 - difficulties in ensuring adequate cleaning and disinfection of facilities
 - lack of access to health care provision, including liaison and diversion services
 - risks to the physical and mental health of staff and potential staff shortages
 - potential difficulties accessing personal protective equipment (PPE), e.g. masks, gloves, etc
 - difficulties ensuring confidential access to legal representatives
 - the possibility of lengthy stays in court custody or lengthy trips to and from court.

Proposed approach to the inspection of courts during lockdown

5. Consideration has been given to whether, in the light of concerns about transmission of the COVID-19 virus, a modified inspection methodology should be adopted (similar to the short scrutiny visits conducted in prisons during lockdown) for the inspection of court custody. We have considered both the risk of HMI Prisons staff spreading COVID-19 in court custody (and subsequently into other places of detention and the community) and the burden of inspections when determining what our approach should be.
6. Unlike prisons, court custody facilities are not a ‘closed’ environment. Instead, they have a significant number of people flowing through them, many of whom will have been in the wider community immediately prior to a short stay in police custody and before transfer to court. In addition, escort staff, who move detainees between police stations, courts and prisons, are regularly cross-deployed across many courts to supplement the core custody staff. We therefore consider it unlikely that the presence of HMI Prisons staff on site would increase the risk of virus transmission in a court setting.
7. In addition, to minimise the spread of COVID-19, we will ensure that our inspection work is in line with the ‘do no harm’ inspection principle, which requires us to take steps to ensure we do not put detainees, court custody and escort staff or our own staff at unreasonable risk. Accordingly, we have developed detailed health and safety guidance specifically for courts, which our staff will follow at all times (available at <https://www.justiceinspectorates.gov.uk/hmiprison/about-hmi-prisons/covid-19/courts>). We will also observe any additional health and safety processes in place at each site.
8. We have considered whether our inspection activity would overburden local managers, who will no doubt be facing additional demands during the pandemic. However, the key agencies are aware of, and content to meet, the burden of inspection when inspection activity is reintroduced. We will keep this under review, and seek feedback from local managers following the first inspection to make any necessary adjustments. We are also conscious of

the need to be sensitive towards staff who work in court custody and their concerns around working in these environments at a worrying time.

9. Given the importance of independent scrutiny at this time and the fact that we are able to take steps to mitigate the risks of inspection, our proposal is to reinstate our full inspection methodology. We propose to conduct the first inspection in a small cluster which can be inspected within one week. This will allow us to test the approach and keep any burden to a minimum.

Approach to the inspections

10. Our inspections will be very similar to those before COVID-19, but there are some adjustments to health and safety and to our inspection criteria, as follows.

Before the inspection:

- In line with our current Memorandum of Understanding with HMCTS, the inspection will be announced and a request for data made to the Head of Contracted Services at HMCTS eight weeks prior to the inspection date. The Head of Contracted Services will then be responsible for advising the relevant HMCTS Cluster Manager, PECS and the PECS contractor of the inspection.
- Frequent communication will be maintained with an identified single point of contact in the court cluster.
- HMI Prisons will continuously risk-assess the appropriateness of the visit, taking into account court and PECS risk assessments. The timing of an inspection may be changed if there are COVID-19-related concerns in a particular locality (for example, critical staff shortages or regional restrictions).
- Account will be taken of any health risks and national guidance, and there will be adherence to the 'do no harm' principle.
- Visits will usually last a maximum of one week, depending on the number of courts in the cluster (only smaller clusters will be inspected initially). Other inspection activity, including strategic interviews and the immediate debrief, will be conducted remotely and will take place outside of this timeframe. All court custody facilities in the cluster that are operating will be visited. This may include Blackstone courts if they include custody facilities.

During the inspection:

- Inspections will be conducted against the second version of our *Expectations for detainees in court custody* published in March 2020 (see Further resources).
- The existing *Expectations* provide enough scope for HMI Prisons to consider the organisational response to the COVID-19 pandemic. Alongside the usual indicators under each expectation, inspectors will consider additional questions under a number of expectations, such as:
 - Is communication about the management of risks associated with COVID-19 clear and effective? Does this include communication to staff and detainees about how to protect themselves from COVID-19 while in the court custody suites? (Expectation 1.1)
 - Have staff received any additional training and support to carry out their roles during the COVID-19 pandemic? (Expectation 1.1)
 - What are the pressures on court custody and escort staff caused by COVID-19 and what is being done to address them? (Expectation 1.1)
 - Is oversight and management of the risk of infection effective in safeguarding detainees? (Expectation 1.1)
 - Are detainees, staff and managers following health guidance, including socially distancing? (Expectation 3.3)

- Are sufficient stocks of PPE and hand sanitiser/soap available? (Expectation 4.3)
- Are detainee transport vehicles cleaned between uses? (Expectation 2.1)
- Are detainees given clear and comprehensive information about COVID-19 and what to expect while in court custody (Expectation 3.1)
- Are cleaning routines appropriate? (Expectation 4.1)
- Is the use of force or searching carried out in such a way as to minimise the risk of spreading COVID-19? (Expectation 4.2)
- Is health advice sought and followed when detainees are symptomatic or require shielding? (Expectation 4.6)
- Are detainees provided with face coverings if they need to use public transport to get home? (Expectation 5.1)
- Are suitable measures in place for detainees who have or are vulnerable to COVID-19 on release? (Expectation 5.1)
- We will share these additional considerations with the cluster manager in the area to be inspected in advance of the inspection.
- Strategic interviews will be completed remotely, for example using Microsoft Teams or Skype, prior to on-site inspection.
- Three or four inspectors will attend each inspection, but in most cases, only one inspector at a time will attend each custody suite. Health inspectors may visit custody facilities during the inspection.
- Visits will be conducted in line with HMI Prisons' health and safety guidance and will also take account of health and safety guidance issued by both HMCTS and PECS.
- At the end of an inspection, feedback will still be delivered, but this will be done remotely.

After the inspection:

- A full inspection report will be produced within 14 weeks of the end of the inspection, or earlier where possible. However, if we identify any urgent concerns relating to COVID-19, which are not being effectively managed, we will write to HMCTS immediately.

Further resources

HM Inspectorate of Prisons, *Expectations for detainees in court custody*, March 2020, available at <http://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/court-custody-expectations/>

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, available at <https://undocs.org/CAT/OP/10>

World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, available at https://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf