



Report by HM Inspectorate of Prisons

Prison communications inquiry

by HM Chief Inspector of Prisons

28 November 2014

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Letter to the Lord Chancellor and Secretary of State for Justice

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The Rt Hon Chris Grayling MP
The Lord Chancellor and Secretary of State for Justice
102 Petty France
London
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Dear Secretary of State

Prison Communications Inquiry

On 11 November 2014 you asked me to investigate the circumstances surrounding the interception of telephone calls from prisoners in England and Wales to the offices of Members of Parliament, and to make recommendations to ensure that there are sufficient safeguards in place to minimise the risk of such calls being recorded inappropriately in the future. You also asked me to ensure that sufficient safeguards are in place for all confidential calls from prisoners.

You asked me to conduct my inquiry in two stages. The first stage was to undertake a review of the urgent, practical steps which NOMS are currently taking to minimise the risk of recording or listening to calls inappropriately in the future. I was asked to report on this first stage by 30 November 2014 and I set out my first stage report below.

I have found that the urgent, interim measures taken by NOMS have been largely, but not wholly, effective in ensuring that prisoners' calls to MPs are not recorded or listened to. The technical measures that have been taken are effective but depend on the accuracy of the data that is inputted and so human error remains possible. Insufficient action was taken to ensure that one private sector provider, SERCO, who use a different telephone monitoring system to public and other private sector providers, had introduced equivalent measures. I also have some further technical queries that it has not yet been possible to resolve.

The system depends on prisoners being aware of their responsibilities to identify confidential numbers and I found that more needed to be done to ensure they understood this responsibility.

The second stage of my inquiry will look at the circumstances of how these telephone calls came to be recorded in the past. I will keep the findings of this first stage under review in the light of any new matters I identify as my work progresses.

Yours sincerely

Nick Hardwick
HM Chief Inspector of Prisons

28 November 2014

Section 1. Announcement of the inquiry and terms of reference

- I.1** On 11 November 2014, the Secretary of State for Justice, the Rt Hon Chris Grayling, informed Parliament that confidential telephone calls between prisoners and constituency MPs, or their offices, had been recorded, and in some cases listened to, by prison staff.
- I.2** The Secretary of State asked me ‘to investigate the circumstances surrounding the interception of telephone calls from prisoners in England and Wales to the offices of Members of Parliament, and to make recommendations to ensure that there are sufficient safeguards in place to minimise the risk of such calls being recorded inappropriately in the future’. I was also asked ‘to ensure that sufficient safeguards are in place for all confidential calls from prisoners’.
- I.3** The Secretary of State asked me to conduct my inquiry in two stages. The first stage was to undertake a review of ‘the urgent, practical steps which NOMS are currently taking to minimise the risk of recording or listening to calls inappropriately in the future’. I was asked to report on this first stage by 30 November 2014. The full terms of reference are attached at Appendix 1.
- I.4** This report sets out the findings of the first stage of my inquiry and is submitted in advance of my detailed investigation which will be completed in early 2015. This first stage relies heavily on information provided by the National Offender Management Service (NOMS), which I have no reason to doubt but have not always been able to verify independently. As such the findings in this report are provisional and I will review them in the light of any matters I identify in the second stage of the inquiry.
- I.5** The report is set out in two sections. Section 2 covers the context and background. Sections 3 and 4 give our findings and recommendations.

Section 2. Context and background

- 2.1** The ability of MPs to talk in confidence to their constituents, including prisoners, is a long-established and important principle. Any breach of this principle is a very serious matter.
- 2.2** There have been previous occasions when actual or potential breaches of this principle have been matters of concern. The ‘Wilson doctrine’ was established in 1966 to ensure that MPs’ communications were not intercepted by the security services. I am grateful for having my attention drawn to the report by Sir Christopher Rose into the recording by the police of conversations between the Rt Hon Sadiq Khan and one of his constituents in Woodhill prison in May 2005 and June 2006.
- 2.3** My inspectorate has more general concerns about whether the rights of prisoners to have confidential or privileged communication with a variety of bodies is sufficiently understood and respected. In the surveys we conducted as part of every inspection we undertook in 2013–14, an average of 41% of prisoners told us that staff opened letters from their legal representatives without prisoners being present. Prisoners who write to my office frequently raise concerns about confidential letters from legal representatives and from myself being inappropriately opened. I am satisfied that in at least some of these cases the concerns are well founded. In my view, the attitude to confidential communication in some establishments is too casual and it is not surprising that in some cases this has included communication with MPs.

How concerns about prisoners’ communication with MPs were identified

- 2.4** In August 2014, a prisoner wrote a letter of complaint to NOMS because he believed that calls to his lawyer were being listened to. At the end of September 2014, the prisoner repeated his complaint, giving more detail. Following this and the intervention of his MP, Gordon Marsden, in October 2014, NOMS Security Group commissioned a local investigation with the cooperation of British Telecom (BT). It was found that the phone system had, for about a week in 2011, been set up incorrectly to record calls to the prisoner’s lawyer. He had not called his lawyer during that period so no calls had been intercepted. However, during the investigation, it emerged that 24 calls to the prisoner’s MP had been recorded over a period of 20 months, from March 2011 to January 2013. None of these calls had been listened to. In January 2013, the recording of these calls stopped as a result of a member of prison staff changing the local setting to ‘not record’. NOMS could not establish why the setting was changed, why the original error was made or why it had not been notified to managers.
- 2.5** In light of these concerning findings, NOMS investigated further. By early November 2014, NOMS had established that other MPs’ calls had been both recorded and listened to since 2006, the earliest date from which data is available. The Secretary of State was notified. Before detailing the NOMS investigation, it is necessary briefly to explain the relevant powers and the PIN (personal identification number) phone technology.

Power to record and listen to calls

- 2.6** NOMS acknowledges that maintaining family ties can help reduce reoffending and that access to telephones is an aid to maintaining these ties. However, safeguards need to be in place to prevent inappropriate use of telephones to, for example, contact and harass victims or witnesses. Section 4(4) of the Regulation of Investigatory Powers Act (RIPA) makes lawful the interception of communications in prisons conducted in accordance with the Prison Rules. Section 47 of the 1952 Prison Act allows for rules to be made to manage and regulate prisons, and these rules empower prisons to record and listen to prisoners' telephone calls. The Prison Rules 1999 set out the circumstances in which communications may be read, listened to, logged, recorded and examined by prison staff.¹
- 2.7** Such action must be necessary and proportionate. 'Legally privileged' telephone calls between a prisoner and his or her lawyer may not be recorded or listened to unless the prison governor has reasonable cause to believe that the communication is being made to further a criminal purpose. This must be authorised by the Chief Executive Officer of the Prison Service¹. Other confidential communication ('confidential access' communication), including calls to MPs, is protected in the same way².
- 2.8** In addition to the Prison Rules, prisons must comply with two Prison Service Instructions (PSIs). PSI 49/2011 on Prisoner Communication Services covers various aspects of communication, including correspondence, telephone calls and visits. PSI 24/2012 governs the PIN phone system, which prisoners use to make calls. Both PSIs set out the steps prisons must take to ensure prisoners are aware that calls may be recorded and listened to. They also set out the steps a prisoner should take to ensure that 'legally privileged' and 'confidential access' calls are not recorded or listened to. While legal privilege applies simply to calls to lawyers, confidential access can apply to a wide range of bodies, including Members of Parliament, Members of the European Parliament and Members of the Welsh Assembly, as well as organisations such as the Samaritans and Her Majesty's Inspectorate of Prisons. The full list of these organisations is set out in PSI 49/2011 and in a footnote to a communications compact which prisoners are asked to sign. This list is not up to date and needs to be reviewed regularly³.

The PIN phone system

- 2.9** All public sector prisons and young offender institutions, as well as the majority of private sector prisons in England and Wales, have operated the same PIN phone system provided by BT for the past 10 years. The exception is prisons run by Serco, which use a PIN phone system provided by Unify Business Solutions rather than BT (see below). Prisoners are

¹ That is, the CEO of the National Offender Management Service.

² It is important to be clear about terminology. PSIs use the terms 'listening to' and 'monitoring' interchangeably, while we found that prison staff often used 'monitoring' to refer to both recording and listening to calls. To avoid such confusion, we refer in this report to the distinct acts of 'recording' and 'listening to' calls.

³ The full list on the current communications compact attached to PSI 24/2012: Criminal Cases Review Commission, Legal Ombudsman, Care Quality Commission, Parliamentary & Health Service Ombudsman, Office of the Legal Services Ombudsman, Prisons and Probation Ombudsman, Her Majesty's Inspectorate of Prisons, Members of the National Council of Independent Monitoring Boards and its Secretariat, Equality and Human Rights Commission, Members of Parliament or Members of the National Assembly for Wales or Members of European Parliament, Embassy or Consular Officials, Samaritans, Registered Medical Practitioners (but only in cases where they are treating a prisoner with a life threatening medical condition), an Electoral Registration Officer (for submitting a postal vote only). Other organisations that one might expect to be on the list, such as the Independent Police Complaints Commissioner, do not appear. The list needs updating.

issued with a PIN, which they use to make calls from phones normally located on wings. In a small number of establishments, prisoners can make calls from phones located in their cells.

- 2.10** In 2012, the PIN phone system changed from a mixed regime that allowed both call ‘barring’ and call ‘enabling’, to one that was an enabling system only. The barring system allowed low risk prisoners to call any number unless it was specifically barred. For example, the prison would have to proactively find a victim’s telephone number and enter it on the system. The prisoner would then be barred from calling that number.
- 2.11** After the implementation of PSI 24/2012, on 21 November 2012⁴, prisoners were unable to call any numbers unless they applied to have them enabled. As part of this process, prisoners have to supply prison staff with the confidential access telephone numbers they wish to call and prison staff are then required to check that the numbers are genuine and should not therefore be recorded or monitored. The PSI states that these changes were made partly to help ‘reduce instances of inadvertent interception of privileged communications’. The new system is more efficient at preventing abuse of the system by protecting the public from inappropriate phone calls, and it should also reduce the likelihood of confidential access or legally privileged numbers being inadvertently recorded.
- 2.12** The PIN phone system allows non-confidential calls to be recorded and either listened to live or after the event (which is much more common). The configuration of the system is intended to prevent legally privileged calls and those to confidential access numbers being listened to live or recorded. Some of these numbers are entered onto the computer system locally by prison staff on submission of a request form by the prisoner. There is also an estate-wide or global list of confidential access numbers set by NOMS centrally that cannot, in theory, be overridden locally. Local PIN phone computers show basic details of such calls in greyed out boxes that cannot be accessed or manipulated by prison staff (see paragraph 3.7).
- 2.13** Although the five private sector prisons run by Serco⁵ use different telecommunications technology, there is a requirement for the technology and processes to comply with the same PSIs that apply to other prisons and, as it contract manages private prisons, NOMS has some supervisory responsibilities for them. We were told by NOMS and BT that recordings were automatically deleted after 90 days, but in one of the Serco prisons recorded calls were apparently ‘archived’ after 90 days. It is currently unclear what this means and we will investigate this issue further in stage two of the inquiry.

The communications compact

- 2.14** On or shortly after their arrival, prisoners should be asked to read and sign a communications compact confirming that they understand that their calls ‘will be recorded and may be monitored by prison staff’. Staff must ensure that prisoners understand what they are signing, and must also sign to say they have done so (see Appendix II).
- 2.15** The communications compact has been updated on a number of occasions in recent years. The current version annexed to PSI 24/2012 advises staff:

'If a prisoner has reading difficulties the compact must be read to them. The prisoner and the member of staff who issued/explained the compact must sign the form.'

⁴ The new system was phased in over a period of three months.

⁵ HMPs Thameside, Doncaster, Dovegate, Lowdham Grange and Ashfield.

Prisoners are instructed as follows:

'You must ensure that you clearly identify your confidential telephone numbers when you complete the PIN phone application form. This is your responsibility. Failure to do so is likely to result in confidential calls being recorded and they may be monitored.'

- 2.16** A PIN telephone system number request form is attached to the compact which the prisoner is expected to complete. The form contains two boxes, one for non-confidential 'family and friends' numbers and the other for 'legal telephone numbers'.

Other safeguards

Notices

- 2.17** PSI 49/2011 requires prisons to display a notice by all prisoner PIN phones with similar information to the communications compact. The PSI suggests a text for these notices (see Appendix III). Our judgement on the adequacy of the prison notices in relation to PIN phones is set out in paragraph 3.16.

Accidental interception of calls

- 2.18** PSI 49/2011 acknowledges the possibility that some confidential access numbers might be incorrectly entered onto the PIN system, with the result that they will be recorded and may be listened to. In such cases, staff must stop listening to a call as soon as it becomes apparent that it should be treated as confidential. The matter should be reported immediately to senior management so that appropriate action can be taken to prevent a recurrence.

The Interception of Communications Commissioner's Office (IOCCO)

- 2.19** IOCCO and NOMS have a non-statutory agreement allowing the Commissioner to oversee the interception of prisoners' communications. In his most recent annual report⁶, the Commissioner pointed out that numerous prison documents governing the recording and listening to of prisoners' calls were 'fragmented and contradictory', and that it was difficult for prison staff to fully understand the regulations. In 2013, eight full-time IOCCO inspectors audited 88 prisons. They found 21 instances between 1 January 2011 and 7 October 2014 where legal calls had been listened to without the necessary authorisation. Five of the 21 were identified by IOCCO during its inspections. The others were identified by prison staff. IOCCO has not found cases of calls to MPs or other privileged organisations being listened to.

NOMS' investigation

- 2.20** As stated above, NOMS found that 24 calls to a prisoner's MP had been recorded but not listened to, and subsequently undertook to establish whether other confidential calls had been recorded or listened to. By early November 2014, NOMS, with the help of BT, had found that a total of 358 calls to 32 separate MPs had been recorded and listened to between March 2006 and October 2014⁷.

⁶ The Rt Hon Sir Anthony May, 2013 Annual report of the Interception of Communications Commissioner, published April 2014.

⁷ There has not yet been any investigation of calls made from prisons operated by Serco.

- 2.21** The telephone numbers of 18 of these 32 MPs were not recorded on the PIN system as confidential access. In the other 15 cases⁸, the number was listed accurately on the computer, and there was no obvious explanation for why calls to these numbers were recorded and listened to. Calls to one MP fell into both categories, that is, for some prisoners it was recorded as a confidential access number and for others as a family and friends number. It should be noted that the NOMS investigation only looked at the PIN IT system and not the paper records held by prisons and used by prison staff to input the data. It did not therefore establish conclusively whether failure to log numbers for the 18 MPs as confidential was due to prisoner error or staff error.
- 2.22** The number of calls to individual MPs ranged from 127 to one, and seven of the 32 MPs had 15 or more calls recorded and listened to. From 2013 onwards, after the new PSI was implemented, 37 calls to five different MPs were listened to, and one of these was identified as an MP on the PIN phone system. The length of calls is not yet known, but we understand that this can be established. Telephone numbers for a further 157 different MPs had erroneously been set up to record but, as far as NOMS and BT could establish, these numbers had not been listened to.
- 2.23** On 5 November 2014, the matter was brought to the attention of the Secretary of State for Justice and urgent interim action was taken to put in place more effective measures to ensure that prisoners' calls to MPs were not recorded or listened to. These measures included globally registering all MPs' office and constituency numbers as confidential on the PIN phone system. NOMS Security Group told us that this was done on Monday 10 November. In addition, the Parliamentary Under Secretary of State for Justice, Andrew Selous MP, wrote to all MPs asking if there were additional telephone numbers that should be added to the list of confidential numbers. On 11 November, the Secretary of State for Justice told the House that he believed that all recordings of calls to MPs had been destroyed and that if any remained, these recordings would also be destroyed. Most of these recordings should have been destroyed under the 90 day retention policy (see paragraph 2.13). However, we identified calls recorded in the last 90 days that, as far as we could establish from NOMS, had not yet been destroyed. It had not been thought necessary to destroy these recordings because the telephone number had been attributed to someone other than an MP, likely to be a constituency employee. We have suggested that NOMS seek to destroy these recordings immediately. To be clear, in my view, calls to MPs' offices should evoke the same considerations of confidentiality as calls to MPs themselves. Furthermore, we are not yet assured that all recordings of calls in Serco prisons are destroyed after 90 days.

HM Inspectorate of Prisons' investigation methodology

- 2.24** Inspectors have spoken with a number of staff in NOMS Security Group, BT managers, Unify Business Solutions managers and the Head of IOCCO (see Appendix IV). Inspectors made unannounced visits to a representative group of 13 prisons⁹ between 17 and 21 November 2014. In each of the 13 prisons visited, we spoke to key staff involved with the prison's phone systems, including reception and first night officers and managers, security staff, intelligence analysts and censors, finance and PIN phones clerks. A number of test calls were

⁸ One MP appeared on both lists, which is why the total adds up to 33 rather than 32.

⁹ We visited adult four male category B local prisons, Pentonville, Durham, Doncaster and Thameside; one male category B local prison with a category C unit, Bullingdon; one category B local male prison with a high security unit, Manchester; one category B prison, Swaleside; two male high security prisons, Belmarsh and Woodhill; one male category C training prison, Guys Marsh; two women's prisons, Bronzefield and Styal; and one young offender institution, Feltham. There are two distinct units at Feltham, one for boys aged 15–18, and one for young men aged 18–21. We visited both. Doncaster and Thameside are managed for NOMS by Serco and Bronzefield is managed by Sodexo. The other establishments are all public sector prisons.

undertaken, computer recording systems were interrogated, relevant documentation was examined and both newly arrived and experienced prisoners were interviewed to establish practical outcomes.

- 2.25** I also wrote to all 32 MPs whose phone calls with prisoners had been recorded and listened to, and asked them to provide any relevant information. No such information has yet reached us. I have subsequently sent each affected MP a list of the relevant calls.
- 2.26** There has been no investigation into the number of intercepted calls to ex-MPs', current or ex-Members of the Welsh Assembly, or Members of the European Parliament. These are matters that we will address in stage two of the investigation. No interim steps have yet been taken to protect confidentiality of calls in these cases.

Section 3. Findings

- 3.1** The terms of reference for this investigation asked me to ‘review the urgent, practical steps which NOMS are currently taking to minimise the risk of recording or listening to of calls inappropriately in future’¹⁰ by 30 November 2014. We have therefore examined two issues relating to this task.
- The efficacy of the technical steps taken to address these problems by NOMS, BT (provider of phone services to public and most private sector prisons) and Unify (provider of phone services to Serco prisons).
 - The awareness of the PIN phones system among prisoners and staff.

Technical measures taken to prevent recording of calls

- 3.2** In each prison, inspectors arrived unannounced and obtained PIN phone accounts that are normally issued to newly arrived prisoners. We then called a number of confidential numbers before checking security recording systems. A total of 60 test calls were conducted and in every prison they included calls to MPs’ constituency and/or parliamentary numbers, as published on the parliament website. Inspectors also placed MPs’ numbers on the ‘family and friends’ list, an error that could easily happen, to check if calls to MPs could be recorded and/or listened to inadvertently.
- 3.3** Test results were generally positive for prisons using BT’s PIN phone system, but not for the two Serco prisons in the sample, which used different technology supplied by Unify Business Solutions. In the Serco prisons, calls to MPs’ numbers we registered as confidential access numbers were not recorded. However, four calls to MPs’ numbers listed as ‘family and friends’ were recorded and these conversations were played back to us. We also called the Samaritans number, a globally allowed number that should not have to be placed on any list. This was recorded and played back to us in a Serco prison. It is not clear why this was possible, nor, at this early stage of the inquiry, how easily the problem can be rectified¹¹.
- 3.4** Unify Business Solutions staff told us they were unaware that the Samaritans number was being recorded. They also said they had not been in dialogue with NOMS Security Group about the PIN phone system since the announcement of this inquiry. NOMS similarly confirmed that there had been no contact with Serco prisons and that the interim measures in place elsewhere had not been discussed with Serco. Specifically, MPs contact numbers had not been placed in the global list of confidential access numbers in Serco’s PIN phone system.
- 3.5** No calls to MPs’ telephone numbers, correctly entered into the globally allowed list in prisons using the BT PIN phone system, were recorded or listened to. This included calls to MPs’ numbers entered into the ‘family and friends’ list in prisons using the BT system.
- 3.6** One call to an MP’s published constituency office number was recorded at a prison using BT technology and we were able to listen to the recording. Although the computer system indicated ‘unable to locate recording’, staff quickly found a way to access the recording and play it to us. We referred this to NOMS Security Group and it was established that the MP’s

¹⁰ Legitimate interceptions of calls under warrant are beyond the remit of this inquiry and I have given no consideration to this point.

¹¹ Although one might assume that Unify can simply place MPs’ numbers on a global list as BT has done, the fact that the Samaritans number was recorded has made us question this assumption.

name had inadvertently been missed off of the global list issued by the NOMS Security Group. This could have happened in other cases. We were told that the ‘unable to locate recording’ message was a ‘glitch’ and that these issues were subsequently rectified. We did not find conclusive evidence of any other calls to MPs or other confidential numbers at prisons using the BT system being recorded.

- 3.7** Although staff at a number of prisons thought that they or someone in the establishment could override the centrally imposed setting of ‘not record’, no one knew who could do this, how it could be done or if it had been done. At several prisons using the BT system we also found a number of instances where calls from numbers on the global list were not ‘greyed out’ (see paragraph 2.12) on local computer systems, suggesting they may have been recorded. We raised this with BT, who told us that these numbers had not been recorded. However, it remains unclear why these numbers were not greyed out like the others. We are awaiting further clarification from BT.
- 3.8** At all prisons, calls clearly identified as ‘legal telephone numbers’ on the communications compact pro forma and then accurately transferred to the PIN computer system, were not recorded or listened to.

Awareness of procedures

Explaining the communications compact

- 3.9** All of the prisons we visited used the newer communications compact attached to the back of PSI 24/2012, and first night staff were responsible for ensuring that newly arrived prisoners were aware of it. In some prisons, we observed first night staff explaining the compacts appropriately and our follow-up interviews with recently arrived prisoners confirmed that they understood the contents.
- 3.10** However, most prisoners told us the compacts were not explained or were explained in such a cursory way that they had not absorbed the contents. In particular, we were not assured that the many prisoners with literacy difficulties and foreign nationals with limited understanding of English had a sufficient understanding of the compacts. Although in one prison we were told that Toe-by-Toe mentors¹² ‘might’ assist those with literacy difficulties, this was clearly not systematic. The compact was available in English only and interpreters were not systematically used for those who were not fluent in English. While Bronzefield did not translate the compacts, it provided useful guidance notes in a range of common languages, which was good practice. Thameside made innovative and good use of technology to provide professional interpretation for all first night processes.
- 3.11** Prisoners’ ability to absorb practical information on their first night in custody is limited. Many prisoners arrive after long days in court, sometimes after long trials, or after lengthy journeys from other prisons, and may be experiencing the after-effects of alcohol or drug misuse. The volume of information given to prisoners on their arrival is also considerable. The PIN phone compact is just one of a number of documents that prisoners are expected to understand and sign shortly after arrival. The fact that very few prisoners were given a copy of the compact to review later was therefore a particular weakness. In one establishment (Manchester) a copy of the compact was included in the induction booklet that was given to prisoners to keep, which was good practice¹³.

¹² Toe by Toe is a phonics-based approach to helping prisoners learn to read (usually delivered as part of the Shannon Trust reading plan).

¹³ However, although Manchester used the up to date compact in reception, the induction booklet copy was out of date.

- 3.12** All prisoners we asked were aware that their calls could be recorded and listened to, and all thought their solicitors' numbers were confidential. However, most had little knowledge of other exceptions and did not understand arrangements for calling MPs. For example, one prisoner, coming to the end of a nine year sentence, thought that calls to MPs were all recorded.

The contents of the compact

- 3.13** In many prisons the compacts had been photocopied so many times that they were hard to read or, in parts, completely illegible. While compacts were always signed by prisoners, most were not signed by staff to confirm that they had explained the contents as required in PSI 24/2012.
- 3.14** The compacts were not written in plain language. They contained two separate lists in annex B, one for 'family and friends' numbers that would be recorded and might be listened to; one for 'legal telephone numbers'. This could imply that only lawyers' calls could be notified as confidential. The only mention of MPs was in a footnote to the compact, which also listed a range of other numbers that should not be recorded. Outdated versions of the compact were still available online through The National Security Framework, increasing the risk of staff using an old version by mistake.
- 3.15** The outdated version of the compact differs from the new version in two material respects: first, the new compact states: 'If a prisoner has reading difficulties the compact must be read to them. The prisoner and the member of staff who issued/explained the compact must sign the form.' In the old version, this had been: 'Prisoners must sign a copy or if a prisoner has reading difficulties the compact must be signed on his/her behalf...' Second, the following line is not included in the old compact: 'You must ensure that you clearly identify your confidential telephone numbers when you complete the PIN phone application form. This is your responsibility. Failure to do so is likely to result in confidential calls being recorded and they may be monitored.'

Notices to prisoners and staff

- 3.16** There were notices above phones in most, but not all, prisons informing prisoners of the policy on recording calls. While they listed the names of groups such as the Prisons and Probation Ombudsman and Samaritans who should never be monitored, they did not make it clear that MPs' or lawyers' numbers had to be listed by prisoners as confidential in order to be treated as such. If the interim system of placing all MPs' numbers on the globally allowed list is discontinued, these notices will have to be revised.
- 3.17** There were no suitable notices displayed anywhere in the Serco establishments advising prisoners that their calls could be listened to or about the confidential calls policy.
- 3.18** In most, but not all, of the prisons we visited, staff were aware of the recent concerns about phones. We saw some recently issued notices to staff and some prisoner notices. Staff notices had not filtered down to all staff, including some key individuals. In one prison, a censor responsible for monitoring calls was aware only that he should not listen to legal calls. He said that even if he had become aware of listening to a prisoner speaking to an MP, he would have continued to listen. Neither he nor any other staff in that prison could remember seeing any specific guidance on telephone numbers that should always be confidential. In one of the Serco prisons, censors told us that they had listened to calls to the Samaritans, and it was only when they were read the compact by an inspector that they realised their error.

- 3.19** Staff were aware in all prisons of the clear procedures to be followed if they became aware that they were listening to a call that was privileged. Local systems were in place and we will check the adequacy of them in the next stage of this inquiry.

Section 4. Conclusions and recommendations

Conclusion I

The urgent interim measures taken by NOMS have been largely, but not wholly, effective in ensuring that MPs' calls are not recorded or listened to.

- 4.1 During 60 phone tests, five calls to published constituency office numbers were recorded and played back to us. One was in a prison using the BT PIN phone system; the rest were in Serco prisons using different technology. One call to the Samaritans number, which should have been globally permitted, was also recorded and played back to us in a Serco prison. All of the Serco examples related to numbers placed on the family and friends list. In the case of the public sector prison running BT technology, it was established that the MP's name had inadvertently been missed off of the global list, and we were told that this had been rectified after we pointed it out.
- 4.2 In the case of the Serco prisons, it may be that the solution is simply to place the telephone numbers of MPs and other confidential access organisations onto the global list and to do this accurately. However, at this early stage of the inquiry it is unclear to us whether there are any obstacles to this solution. What is apparent is that NOMS had not adequately communicated with Serco the need to follow the interim measures taken in other prisons. Nor had Serco taken tangible independent action following the Secretary of State's announcement on 11 November. This means that we have inevitably identified more problems in Serco prisons than in the others.
- 4.3 There was no strong evidence that prison staff could override centrally imposed controls. However, there were a number of instances where it appeared that numbers on the global list might be susceptible to some degree of local interference. Although BT informed us that this was not possible, it is not clear why these numbers appeared in a different format to others that were clearly inaccessible in greyed out boxes.
- 4.4 Censors were not always aware that they should not listen to calls to MPs and Samaritans and new guidance had not filtered down to all relevant staff. This is something that we will examine further in stage two of this investigation.
- 4.5 No interim steps have been taken to protect confidentiality of calls to current or ex-Members of the Welsh Assembly (AMs) or Members of the European Parliament (MEPs).

Recommendations

- 4.6 **NOMS and BT should check that all published MPs' telephone numbers are on the global list of numbers that are set to 'not record', and NOMS and Unify should ensure that similar steps are taken in relation to Serco prisons. This measure should immediately be extended to all AMs and MEPs.**
- 4.7 **Plans should be made now to update the telephone numbers of MPs immediately after the General Election in 2015 and these numbers should be regularly reviewed thereafter.**

4.8 NOMS and BT should establish that globally allowed numbers cannot be overridden locally and explain the variation in the local systems.

Conclusion 2

Prisoners' were often unaware of their responsibilities set out in compacts to identify confidential numbers and staff had not done enough to inform them of this responsibility.

4.9 The onus was put on prisoners to understand their responsibilities but these were not adequately communicated to them by staff. Few prisoners could remember the relevant information and contributory factors were:

- Most prisoners told us that they had very limited explanation of the compacts by staff and there was insufficient support for those with problems with literacy or who were not fluent in English.
- Some compacts had been photocopied so many times that they hard to read and some parts of them were completely illegible. The old compact is still accessible to staff through the NSF and this is likely to cause confusion. The compacts are not written in plain language, do not make it clear that anything other than lawyers' numbers need to be notified to staff, and in most prisons copies were not given to prisoners to keep and review.
- Notices above PIN phones did not make it clear that MPs' or even lawyers' numbers have to be listed by prisoners to be treated as confidential. If the interim system of setting all MPs' numbers to 'not record' is changed, this will have to be addressed.

Recommendations

4.10 Communications compacts should be legible, fully explained to arriving prisoners, signed by staff as well as prisoners, and copies should be given to prisoners.

4.11 Immediate action should be taken to re-write the compact in clear language and test it with prisoners. It should make it absolutely clear which calls must be notified to staff for them to be regarded as confidential. Notices should reflect the same.

During the course of the second stage of my inquiry, I will test the implementation of recommendations 4.6 to 4.8, which can be achieved relatively quickly. I will also examine progress towards recommendation 4.10.

Section 5. Appendices

Appendix I: Investigation – Terms of reference

Purpose

To investigate the circumstances surrounding the interception of telephone calls from prisoners in England and Wales to the offices of Members of Parliament, and to make recommendations to ensure that there are sufficient safeguards in place to minimise the risk of such calls being recorded inappropriately in the future.

To consider the current arrangements and make recommendations, if appropriate, to ensure that there are sufficient safeguards in place for all confidential calls from prisoners.

Background

It has been established that a number of telephone calls from serving prisoners to the Parliamentary or constituency offices of Members of Parliament were recorded by prison staff between 2006 and 2014. In some instances the prisons involved appear to have been informed by their prisoners that the telephone numbers to be called were those of the offices of MPs, in others not. In some instances the calls were recorded, in others the calls were recorded and those recordings later listened to, at least in part, by prison staff. In other instances the calls were recorded and listened to live, at least in part.

Rules 34 and 35A of the Prison Rules 1999 make provision in relation to prisoner communications. Of particular relevance, rule 35A(2A) provides that a prison governor may not make arrangements for interception of any communications between a prisoner and ‘any body or organisation with which the Secretary of State has made arrangements for the confidential handling of correspondence’ unless there are reasonable grounds to believe that the communication is being made with the intention of furthering a criminal purpose and authorisation from specified officers of NOMS is obtained. The arrangements for the confidential handling of correspondence are set out in PSI 49/2011 and include:

Correspondence between prisoners and their MP, AM and MEP must be treated as privileged but only where they are acting in a constituency capacity (not in a social capacity). This privilege does not extend to Members of the House of Lords, who have no constituency responsibilities, or to Local Councillors.

Investigation

The investigation will:

Facts

- Establish the full extent of calls recorded to the offices of Members of Parliament – numbers, dates, recipients, duration. This should highlight calls which were recorded, later listened to or monitored live.
- Consider the Prison Rules and policy relevant to the interception of prisoner phone calls to MPs and assess whether (and if so to what extent) any interception was not in accordance with those Rules and policy. In particular:

- Establish whether whole or parts of calls were monitored live or recordings listened to inappropriately.
- Determine how, why and on whose authority calls to MPs offices came to be recorded, recordings listened to or monitored live inappropriately.
- Determine whether the Rules, policy and safeguards relating to the monitoring of calls to the office of MPs, and other confidential communications, are clear and make any recommendations for changes to improve compliance.

Conclusions and recommendations

- Set out conclusions and recommendations to minimise the risk of confidential calls being intercepted inappropriately in the future.

Approach

The investigation will be carried out working closely with NOMS Officials and with the Interception Commissioner's office.

Final report

The report will be delivered to the Secretary of State for Justice in two stages:

- By 30 November review the urgent, practical steps which NOMS are currently taking to minimise the risk of recording or listening to of calls inappropriately in the future.
- A final report will be submitted early in 2015.

Appendix II: The current communications compact

ANNEX A

NAME.....

PRISON NUMBER.....



HMP XXXXXX COMMUNICATIONS COMPACT

Note to staff – this compact must be explained to all prisoners.

Prisoners must sign a copy of this compact before being allowed to use the PIN phone System. If a prisoner has reading difficulties the compact must be read to them. The prisoner and the member of staff who issued/explained the compact must sign the form.

The signed whole copy must be stored consistently in the prisoners' core record, security file or wing file.

INTRODUCTION

The Prison Service has a duty to ensure that prisoners are able to maintain contact with friends and family where this is in the best interests of both parties. Nevertheless, prisons must balance this with their duty to hold prisoners in lawful custody in well-ordered establishments, and to contribute to prevention and detection of crime. Some monitoring of prisoners telephone calls and mail is therefore necessary.

TELEPHONE CALLS – TERMS & CONDITIONS OF USE OF PIN PHONE SYSTEM

You are being allowed to use the PIN phone system on the following conditions:

1. The Personal Identity Number (PIN), which you will be given, will allow you to use the telephone. Only you must use this PIN number. You must keep it safe. You must not let other prisoners use your PIN and must not use another prisoner's PIN.
2. Calling or attempting to call unauthorised telephone numbers, using PIN numbers which are not yours, or handing the phone to another prisoner to continue a

conversation you have initiated using your PIN number may result in disciplinary action against you or in certain cases a criminal investigation.

The telephone numbers you have on your social and confidential list will be held on your individual account on the computer database which runs the PIN phone system and stored in accordance with the provisions of the Data Protection Act 1998.

4. **CONVERSATIONS WHICH TAKE PLACE USING PRISON PIN PHONES WILL BE RECORDED AND MAY BE MONITORED BY PRISON STAFF. PIN PHONES CAN BE USED ONLY BY PRISONERS WHO CONSENT TO THIS.**
5. The exception to paragraph 4 is that calls to your legal advisers (as notified by you to the PIN phone clerk), courts, or Confidential Access organisations¹⁴ are confidential and will not be recorded or monitored except where there is reasonable cause to believe that the calls are intended to further a criminal purpose. The decision to monitor these calls will be taken only on the authority of the Chief Executive Officer of the National Offender Management Service (NOMS), the Director of National Operational Services or Duty Director. In such circumstances recording will continue for no longer than necessary to establish the facts and to take any action necessary.
6. You must ensure that you clearly **identify your confidential telephone numbers** when you complete the PIN phone application form. This is **your** responsibility. Failure to do so is likely to result in confidential calls being recorded and they may be monitored.
7. Prisoners in the list below are subject to monitoring on account of an identifiable risk they pose:
 - a. prisoners who are identified as posing a risk to children;
 - b. prisoners remanded for, or convicted of, an offence under the Protection from Harassment Act 1997, or subject to a restraining order or injunction. This must continue while an order/injunction is in force, and subsequently if deemed necessary;
 - c. prisoners convicted of an offence listed in the Sex Offenders Act 1997, and subject to a restraining order, as set out in PSI 28/2001;
 - d. category A prisoners;
 - e. Escape (E) list;
 - f. where information suggests a prisoner may intimidate victims/witnesses.

¹⁴ Confidential Access organisations are explained in PSI 49/2011 and apply to both telephone and mail communications – the current list (December 2011) is as follows:

- Criminal Cases Review Commission (CCRC)
- Legal Ombudsman
- Care Quality Commission
- Parliamentary & Health Service Ombudsman
- Office of the Legal Services Ombudsman
- Prisons and Probation Ombudsman (PPO)
- Her Majesty's Inspectorate of Prisons (HMIP)
- Members of the National Council of Independent Monitoring Boards (IMB) and its Secretariat
- Equality and Human Rights Commission (EHRC)
- Members of Parliament (MP) or Members of the National Assembly for Wales (AM) or Members of European Parliament (MEP)
- Embassy or Consular Officials
- Samaritans
- Registered Medical Practitioners (but only in cases where they are treating a prisoner with a life threatening medical condition)
- An Electoral Registration Officer (for submitting a postal vote only)

8. A maximum of up to 5% of all other calls made on the PIN phone system are subject to monitoring on a daily basis.
9. This form may be used as evidence in any subsequent adjudication involving abuse of the telephone.
10. No credit cards calls or diverted calls via other telecommunication providers are permitted.
11. You must not conduct a conversation on a PIN phone that contains any of the following;
 - plans or information which would assist or encourage any disciplinary or criminal offence
 - escape plans that might jeopardise the security of prison;
 - information that might jeopardise national security;
 - information associated with the making of any weapon, explosive, poison or other destructive device,
 - obscure or coded messages;
 - material which would create a clear threat, or present danger of violence or physical harm, to any person, including incitement or racial hatred, or which might place a child's welfare at risk; and/or
 - material which is intended to cause distress or anxiety to the recipient or any other person, such as messages which are indecent or grossly offensive, or a threat, or information which is known or believed to be false.
12. **FAILURE TO ABIDE BY THESE CONDITIONS MAY RESULT IN WITHDRAWAL OF ACCESS TO THE TELEPHONE AND DISCIPLINARY ACTION UNDER PRISON RULE 51 (YOI RULE 50).**

LETTERS – TERMS & CONDITIONS FOR WRITTEN CORRESPONDENCE

1. Prisoners must include their name, number and establishment address on any outgoing correspondence. Any legally privileged mail must be marked.
2. A maximum of up to 5% of the correspondence sent and received on a daily basis by prisoners is subject to monitoring. **All mail, except legally privileged or to a confidential access organisation, may be opened to check for illicit enclosures and may be subject to monitoring.**
3. Letters can be read in the following cases:
 - prisoners in High Security establishments or any unit which holds Category A prisoners;
 - prisoners who are on the Escape (E) list;
 - prisoners who are identified as posing a risk to children;
 - prisoners remanded for, or convicted of, an offence under the Protection from Harassment Act 1997, or subject to a restraining order or injunction. Routine reading must continue while an order/injunction is in force, and subsequently if deemed necessary;
 - information has been received that the prisoner presents a risk for the intimidation of victims/witnesses.
 - prisoners remanded for, or convicted of, an offence of sending or attempting to send obscene mail
4. The exception to 2 and 3 is that correspondence that is legally privileged (Prison Rule 39 or YOI Rule 17) or to / from a confidential access organisation, will not normally be

opened or read. However, it should be recognised that it may be opened accidentally or in error if it is not clearly marked as either ‘Rule 39’, ‘YOI Rule 17’ or ‘Confidential Access’. If staff suspect that a letter marked ‘Rule 39’ or ‘confidential access’ may contain an unauthorised item, they may, on authority of the Governor, decide to open it in your presence. In exceptional circumstances, the Governor may be so concerned about the contents of the correspondence that they decide to read it in your presence. This would be because they think it may endanger the security of the prison, or someone’s safety, or that the letter is intended to further a criminal purpose.

5. Prisoners may write their letters or receive letters in the language of their choice, but letters not written in English and which are subject to reading may be subject to delay while they are translated.
6. Correspondence must not contain the following:
 - a. material which is intended to cause distress or anxiety to the recipient or any other person, such as messages which are indecent or grossly offensive; or a threat; or information which is known or believed to be false;
 - b. plans or material which could assist or encourage any disciplinary or criminal offence (including attempts to defeat the ends of justice by suggesting the fabrication or suppression of evidence);
 - c. escape plans, or material which if allowed may jeopardise the security of a prison establishment;
 - d. material which may jeopardise national security;
 - e. descriptions of the making or use of any weapon, explosive, poison or other destructive device;
 - f. obscure or coded messages;
 - g. material which is indecent and obscene under Section 85(3) of the Postal Services Act 2000;
 - h. material which, if sent to, or received from, a child might place his or her welfare at risk;
 - i. material which would create a clear threat or present danger of violence or physical harm to any person, including incitement to racial hatred or which might place a child’s welfare at risk;
 - j. material which is intended for publication or use by radio or television (or which, if sent, would be likely to be published or broadcast) if it contravenes the guidance in PSI 49/2011 and PSI 01/2012.

COMMUNICATIONS COMPACT: AGREEMENT TO TERMS AND CONDITIONS

- I confirm that I understand the terms and conditions of use of the PIN telephone system and for written correspondence and I agree to them. I understand that this Compact will be retained on my file:

Prisoner Name:	
Prisoner Number:	
Signature:	
Date Signed:	

Name of member of staff:	
Job Title:	
Signature:	

ANNEX B



**HMP
PIN TELEPHONE SYSTEM
NUMBER REQUEST**

Prison Number	Name	Unit

The telephone numbers you submit will only be allowed on the understanding that the recipient is willing to accept your call.

Certification

I am requesting that the names and telephone numbers listed on this form be added to my list of telephone contacts.

I certify that all numbers listed are to persons willing to accept my calls and that the telephone calls made to those persons will be made for the purposes allowable under Prison Rules.

Signature	Date

Wing Staff. I confirm that this form has been fully completed and that the information contained on it is correct and complete to enable the appropriate checks to be made.



Print: _____

Public Sector Prisons

Security _____

Date arrived at Security _____

(Security)	Not subject to Public Protection Measures
Public Protection Measures apply YES / NO	Signed: _____ Print: _____

Date forwarded from Security to Pins Clerk: _____

(Input on PINS System)
PINS Clerk Name: _____ Signed: _____ Date: _____

FAMILY & FRIENDS NUMBERS TO BE ADDED

Number (Including Area Code)	Full name of Recipient	Relationship to Prisoner	Address	Approved YES / NO (Sign/Print/Date)

LEGAL TELEPHONE NUMBERS TO BE ADDED

Number (Including Area Code)	Name	Company Town/City	Approved by Security OSG YES / NO (Sign/Print/Date)

NUMBERS TO BE REMOVED

Number (Including Area Code)	Name of Recipient	Relationship to Prisoner

Appendix III: Suggested PIN phone notice text

Suggested text for notices to be placed adjacent to wing PINphones' as set out in PSI 49/2011, annex C.

'CONVERSATIONS MADE ON THIS PINPHONE WILL BE RECORDED AND MAY BE LISTENED TO BY PRISON STAFF. PINPHONES ARE PROVIDED ONLY FOR USE BY PRISONERS WHO CONSENT TO THIS. IT IS YOUR RESPONSIBILITY TO ADVISE THE PERSONS YOU SPEAK TO THAT THE CONVERSATION WILL BE RECORDED AND MAY BE MONITORED BY PRISON STAFF.'

CALLS TO YOUR LEGAL ADVISER, THE SAMARITANS, CONSULAR OFFICIALS, THE PRISONS OMBUDSMAN AND THE CRIMINAL CASES REVIEW COMMISSION, OR CALLS TO CERTAIN OTHER REPUTABLE ORGANISATIONS ARE REGARDED AS PRIVILEGED AND WILL NOT BE RECORDED OR MONITORED.'

Appendix IV: List of people interviewed

In addition to a wide range of staff during prison visits, the following managers were interviewed for this investigation:

National Offender Management Service

Adrian Scott, Head of NOMS Security Group
Steve Gorman, Head of Counter Terrorism and Key Threats
Matthew Clarke, Head of Key Threats
Barney Clifford, Key Threats Manager and Policy Lead

British Telecom

Elizabeth Curr, Accounts Manager, BT Business
Dave Prew, Head of PIN System Support
Ian Robinson, Director of Business Technical Solutions Unit
Neil Scoresby, Head of Commercial Unit for Prisoner Telephony

Unify Business Solutions

Eddie Bird, Director

Interception of Official Communications Commissioner Office

Jo Cavan, Head of IOCCO