



## **Memorandum of Understanding between Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMI Prisons) for the joint inspection of police custody in England and Wales**

This memorandum of understanding (MoU) has been agreed between Her Majesty's Inspectorate of Prisons (HMI Prisons) and Her Majesty's Inspectorate of Constabulary (HMIC) and defines accountabilities and responsibilities for the joint inspection of police custody in England and Wales.

This memorandum underpins the memorandum of understanding (MoU) on the joint inspection of police custody conditions in England and Wales between the College of Policing (CoP), the Association of Chief Police Officers (ACPO)<sup>1</sup>, the Association of Police and Crime Commissioners (APCC)<sup>2</sup>, the Mayor's Office for Policing and Crime (MOPAC), the British Transport Police Authority (BTPA), the Court of Common Council in its capacity as the City of London Police Authority (COLPA), Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMI Prisons).

### **1. Her Majesty's Inspectorate of Constabulary**

HMIC is an independent inspectorate that inspects and monitors the 43 territorial police forces in England and Wales. Its statutory powers to inspect and report on the efficiency and effectiveness of these forces are set out in section 54 (2) of the Police Act 1996<sup>3</sup>. On occasions, HMIC is commissioned by the Home Secretary and local policing bodies to inspect any, or all police forces on a particular subject. Her Majesty's Inspectors of Constabulary are appointed by the Crown and not employed by the police service or government. Her Majesty's Chief Inspector of Constabulary reports to Parliament on the efficiency and effectiveness of police forces in England and Wales.

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<sup>1</sup> ACPO was superseded by the National Police Chiefs Council in April 2015.

<sup>2</sup> On behalf of 41 Police and Crime Commissioners in England and Wales.

<sup>3</sup> Section 54 (2) of the Police Act 1996; came into force 22 May 1996.

## **2. Her Majesty's Inspectorate of Prisons**

HMI Prisons is an independent inspectorate whose Chief Inspector's powers derive from section 5A of the Prisons Act 1952 (as amended)<sup>4</sup>. The Chief Inspector is appointed by the Crown and 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. HMI Prisons also inspects court custody. With HMIC, it inspects police and HM Revenue and Customs custody facilities; and with Ofsted, secure training centres. 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.

HMI Prisons is the coordinating body for the UK's National Preventive Mechanism (NPM)<sup>5</sup>, a group of 20 organisations which monitor places of detention in England, Wales, Scotland and Northern Ireland under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>6</sup>.

## **3. Optional Protocol to the UN Convention Against Torture (OPCAT)**

The national programme of police custody inspections is founded on international law and standards for the treatment of persons deprived of their liberty. These are expressed in the United Nations Convention on 'Torture, Cruel, Inhuman and Degrading Treatment or Punishment'.

The obligations which fall upon signatories to the convention are expressed in the Optional Protocol to the treaty (OPCAT). The OPCAT protocol acknowledges that detained persons are particularly vulnerable to ill-treatment and that efforts to stop that ill-treatment should be focussed on prevention through a system of regular independent visits to places of detention.

The requirement to pursue the current inspection programme dates from 2003 when Her Majesty's Government (HMG) ratified the OPCAT protocol, thereby accepting for the United Kingdom a State responsibility to:

"set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment "

The domestic visiting bodies which discharge those obligations form the National Preventative Mechanism (NPM). The NPM must be independent and

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<sup>4</sup> 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).

<sup>5</sup> The UK designated its NPM in March 2009. The UK's NPM is coordinated by HM Inspectorate of Prisons.

<sup>6</sup> Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, adopted on 18 December 2003; came into force 26 June 2006.

adequately resourced to secure the necessary capabilities and expertise to provide effective inspection of detention facilities<sup>7</sup>.

The NPM must:

- regularly examine the treatment of people deprived of their liberty in places of detention;
- make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detainees; and
- submit proposals and observations concerning existing draft legislation.

The NPM must have:

- access to information concerning the number of people deprived of their liberty, the number of places of detention and their location;
- access to information about treatment and conditions of detainees;
- access to all places of detention; and
- the opportunity to privately interview detainees and any other relevant person.

#### **4. The inspectorates' roles as members of the NPM**

The UK NPM is made up of 20 inspection and monitoring bodies. These bodies monitor various types of detention across all jurisdictions, including prisons, police and court custody, and immigration and mental health detention. HMI Prisons and HMIC are two of the bodies in the UK NPM, delivering the UK Government's obligations arising from its status as a party to OPCAT.

HMIC fulfils its responsibilities to inspect detention facilities in police custody jointly with HMI Prisons, following a ministerial decision to this effect. Together the two inspectorates deliver a regular programme of inspection of police custody facilities to monitor the treatment and conditions for detainees and to make recommendations regarding the prevention of ill-treatment.

HMIC and HMI Prisons are jointly responsible for completion of the annual self assessment of police custody inspections, produced by the international Sub-committee on the Prevention of Torture (SPT). The purpose of the self assessment is to provide a report to the NPM on how well the inspectorates are meeting their obligations under OPCAT, and to provide a driver for improvement in delivering the inspectorates' activities.

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<sup>7</sup> See First annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (February 2007 to March 2008), CAT/C/40/2 (14 May 2008).

## 5. Statutory status of inspections

Schedule 4A of the Police and Justice Act 2006 provides as follows:

- paragraph 1 enables HMIC to delegate any of its functions to another public authority<sup>8</sup>;
- paragraph 4 requires the inspectors of constabulary to cooperate with other inspectorates, including HMI Prisons, CQC and the Auditor General for Wales, where it is appropriate to do so for the efficient and effective discharge of the functions of the inspectors of constabulary;
- paragraph 5 allows that the inspectors of constabulary may act jointly with another public authority where it is appropriate to do so for the efficient and effective discharge of their functions; and
- paragraphs 6A and 6B set out the powers of the inspectors of constabulary regarding access to police information and police premises.

A function which is delegated, under Schedule 4A (1), including delegation within a cooperative or joint arrangement, must be regarded, in law, as having been carried out by HMIC:

(1) An inspector of constabulary may delegate any of their functions (to such extent as they may determine) to another public authority.

(2) If an inspector of constabulary delegates the carrying out of an inspection under sub-paragraph (1) it is nevertheless to be regarded for the purposes of section 54 and this Schedule as carried out by the inspector<sup>9</sup>.

This means that while functions may be delegated, the powers of HMIC may not. Police custody inspections are conducted jointly by HMIC and HMI Prisons under paragraph 5(1) and (2) of Schedule 4A, and certain functions of HMIC are delegated to HMI Prisons by HMIC under paragraph 1(1) of Schedule 4A.

Delegation of functions enables inspections of police custody conditions to be carried out jointly, in a way that employs the expertise of inspectors from HMIC and HMI Prisons and removes the need for staff from both inspectorates to attend relevant interviews or visits in the course of an inspection.

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<sup>8</sup> Schedule 4A of the Police and Justice Act 2006 came into force 8 November 2006.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2006/48/part/4>

## **6. Governance arrangements**

As above, in law, the powers to inspect police custody rest with HMIC. In this context, HMIC is accountable to parliament and the public for the discharge of its inspection obligations. In discharging these obligations, HMIC may delegate inspection functions to HMI Prisons.

HMIC will delegate to HMI Prisons the functions necessary to conduct inspections of police custody jointly in an efficient and effective manner. This delegation is subject to any restrictions set out in this memorandum of understanding and any other matters as may be discussed from time to time by the joint custody programme board. The operational arrangements and team responsibilities are set out in the Joint Police Custody Inspection Manual.

HMIC and HMI Prisons will jointly appoint a team leader who may be employed by either HMIC or HMI Prisons. The team leader will be accountable to both inspectorates for implementation, quality and outcomes of the inspection programme, within a joint governance framework.

## **7. Joint governance framework**

Governance of the inspection programme is through the joint custody programme board comprising senior representatives from both inspectorates. The board sets the strategy for, directs, oversees and monitors the inspection programme to ensure that it meets its agreed objectives. The board will consider how it will report on the work of the inspection programme and what format that will take. The terms of reference for the programme board are set out at Annex A. The board will receive reports from and delegate work as required to a joint operational group comprising the operational/policy leads and senior responsible officers from each inspectorate.

## **8. Financial arrangements**

The resource model for the police custody inspections is set out at Annex B. The resource model will be reviewed by the programme board on a regular basis to ensure that the custody inspection programme continues to meet its objectives in an efficient and effective manner. The resource model is underpinned by an expectation that the size of the inspection team may be scaled up or down according to the size of force to be inspected.

HMIC, in consultation with HMI Prisons, will propose the annual budget for delivering the joint inspection programme, with reference to the resource model and wider organisational priorities. In consultation with representatives from HMIC/P, the team leader will produce a draft inspection schedule in

quarter three for the following financial year, within the agreed budget. This will be submitted to the programme board for approval.

HMIC will transfer to HMI Prisons a proportion of the total annual budget for delivery of the joint police custody inspection programme – to be reviewed and agreed annually by the programme board in the context of the inspection schedule, agreed delegated functions and any corporate efficiencies required. This is intended to cover:

- recruitment, management and salary costs as applicable;
- other costs associated with HMI Prisons' discharge of delegated functions.

Spend against budget will be monitored by the programme board.

## **9. The inspection programme**

HMIC, with HMI Prisons conducts a rolling programme of unannounced inspections of police custody across the 43 police forces in England and Wales. The first cycle of all force inspections took six years. The programme involves regular inspections and uses a risk based approach to scheduling, using data and findings from previous custody inspections and taking account of the passage of time between inspections. The second cycle of inspections started in April 2014. The nature and timing of an inspection will be at the discretion of HMIC and HMI Prisons.

The programme of inspections is designed to meet the obligations set out in OPCAT and to provide a strategic and operational overview of the effectiveness of an important aspect of policing. The inspections examine the operation of police custody, the treatment and conditions under which people are detained and associated outcomes for detainees.

Assessments of police custody arrangements are made against published inspection criteria known as 'Expectations'. These Expectations are drawn from international human rights conventions and take account of national policing standards and evidence about effective practice as derived from authoritative national sources<sup>10</sup> and previous inspection evidence. HMIC and HMI Prisons will regularly review and consult with the policing sector on the Expectations to ensure that they remain fit for purpose, to extend or improve them to meet any legislative or other changes in police services, and as a means of driving improvement and raising standards in police forces.

Detailed operational arrangements for delivering the inspection programme and the publication of reports are set out in the Joint Police Custody

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<sup>10</sup> Including the College of Policing Authorised Professional Practice

Inspection Manual and its associated procedures. This sets out the responsibilities for each inspectorate in delivering the various aspects of the inspection programme and the publication of reports, including the quality assurance arrangements and the timescales for completion of activities. The manual is set out at Annex C.

Inspections will be unannounced and conducted in a two phase approach within a two week period.

As a general principle, inspections will be led by an experienced inspector, designated as team leader, as agreed by HMI Prisons and HMIC. The team leader will have sufficient knowledge of the policing landscape to command the confidence of both inspectorates as well as the wider sector. Inspection team members will be independent of the police service, as required by the NPM, and possess inspection skills and detailed knowledge of police custody, diversion and vulnerability in addition to the required inspection skills. Programme management arrangements for the end to end inspection cycle may be provided by either inspectorate – as agreed under functions to be delegated.

#### **10. Reporting**

HMIC and HMI Prisons will publish reports setting out the findings from their inspections, in the public interest. The reports will include recommendations aimed at improving the operation of police custody and the treatment and conditions for detainees. Expectations on forces and Police and Crime Commissioners in responding to HMIC/P recommendations from custody inspections are set out in the MoU for the joint inspection of police custody conditions in England and Wales referenced above.

#### **11. Sanctions protocol – to follow**

#### **12. Information security and data retention**

HMI Prisons and HMIC will comply with the provisions of the Data Protection Act 1998. HMIC and HMI Prisons will ensure the use of suitably encrypted media when sharing sensitive electronic data. HMIC and HMI Prisons will meet all legal and government requirements for the protection of personal information, records and images accessed on inspection. Personal data provided to HMIC and HMI Prisons will be kept for retention periods defined by their respective inspectorate's policies and then destroyed in accordance with standard Ministry of Justice policy.

#### **13. Conduct of inspection team**

Staff from both inspectorates will comply with the joint police custody inspection code of conduct [to be developed] when carrying out their roles,

and conduct themselves in a professional way at all times. In the event of any complaints by a force or other external body the inspection team leader will deal with this in the first instance. If any issues of conduct are raised that require further action each inspectorate will take responsibility for their own staff in line with their human resource policies and procedures.

HMIC and HMI Prisons will seek feedback from inspected forces and key stakeholders about inspections carried out, for quality assurance and improvement purposes. Any issues of conduct raised through this route will be dealt with as outlined above.

**14. Annual reporting**

Through the programme board, HMI Prisons and HMIC will consider how best to demonstrate the impact that the inspection programme has in improving the arrangements for police custody and the treatment and conditions of detainees. This may be through reporting annually on their inspections of police custody or by issuing a learning the lessons/best practice report.

**15. Learning from the inspection programme**

HMIC and HMI Prisons recognise the importance of learning from inspection and the impact of the inspection programme on improving custody provision in police services. Positive practice will be promoted through the inspection programme and shared more widely with the sector. From time to time the programme board will receive reports in relation to this. Bespoke induction and refresher training for inspection team members will be built into the annual inspection schedule to support the learning process.

In the interests of consistency and efficiency, HMIC/P will agree a joint policy on responding to requests for contributions to national seminars and conferences about police custody, and will supply a representative from the joint inspection programme whenever appropriate.

**Signed:**



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

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**Drusilla Sharpling CBE**  
**HM Inspector of Constabulary**

**Date:** 15 March 2016

**Date:** 22 March 2016



## **Annex A - Programme Board terms of reference**

# **Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Prisons Police Custody Inspections Programme Board**

## **Terms of Reference**

### **Background**

Since 2007, Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMI Prisons) have jointly inspected police custody arrangements across England and Wales. The programme of inspections is designed to fulfil the UK's international obligations under the Optional Protocol to the United Nations Convention Against Torture and other cruel, inhumane or degrading treatment or punishment (OPCAT).<sup>11</sup> It provides an overview of the effectiveness of an important and high risk aspect of policing, measured against published inspection criteria and national policing standards.

The inspections are conducted under Schedule 4A of the Police and Justice Act 2006 which enables each of the criminal justice inspectorates to delegate powers to each other, and to other public authorities<sup>12</sup>. Inspections of police custody conditions are carried out jointly by inspectors from HMIC and HMI Prisons. The inspection team also includes healthcare inspectors<sup>13</sup> and social researchers. To facilitate this approach, HM Chief Inspector of Constabulary delegates functions to HM Chief Inspector of Prisons, as described in the Memorandum of Understanding between the two inspectorates. HMIC contributes funding on an annual basis to HMI Prisons for services in this respect.

### **The role of the programme board**

The board will provide leadership, direction and oversight for the custody inspection programme and its constituent projects. It will act in the public interest and have an unambiguous focus on driving improvements in police custody arrangements. The board will:

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<sup>11</sup> OPCAT requires state parties to establish an independent National Preventive Mechanism to inspect all places of detention.

<sup>12</sup> Schedule 4 A of the Police and Justice Act 2006 came into force 8 November 2006.

<sup>13</sup> Health care inspectors assess the provision of healthcare in custody suites, and social researchers.

- Ensure that the programme continues to be developed and implemented within a human rights framework derived from UK domestic law and the UK's obligations under international law;
- Develop and establish a memorandum of understanding (MoU) between the two inspectorates and review it annually. The MoU will formally define the relationship between HMI Prisons and HMIC in respect of custody inspections;
- Agree the strategic objectives for the programme;
- Set and monitor the annual budget for the programme;
- Agree a programme of inspection within the agreed budget;
- Provide support and challenge to inspection team leader(s) and inspection teams, ensuring inspection teams have the right skills and experience;
- Receive reports from inspection team leader(s) and review progress systematically;
- Agree the inspection assessment criteria (the Expectations<sup>14</sup>);
- Quality assure the inspection approach, methodology and products;
- Ensure that the full range of key stakeholders have the opportunity to contribute to and influence the development of the programme;
- Oversee annual reports, **separately or jointly**, on inspection findings, that identify any areas of concern and highlight effective practice;
- Annually assess compliance with the NPM assessment framework; and
- Manage high level risks and issues associated with the programme.

### **Membership**

The programme board will be chaired alternately by HMI Prisons and HMIC. Core membership will be HMCIP and his deputy, the HMI responsible for custody inspections, the relevant HMIC programme director and the relevant leads from each inspectorate. Members of inspection teams will attend meetings in line with business need.

### **Frequency of meetings**

The board will meet quarterly.

### **Secretariat**

The secretariat will be provided alternately by HMI Prisons or HMIC in line with arrangements for chairing the board (set out above).

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<sup>14</sup> When inspecting police custody suites, inspectors from HMIC and HM Inspectorate of Prisons use detailed criteria, or Expectations to assess the treatment and conditions of those detained in police custody these are available

## **Annex B – Resource model**

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## **Annex C – Joint inspection manual**

In particular the manual covers the responsibilities for the following areas:

- programme management
- agreeing team members
- accommodation, on site meeting room requirements and travel
- co-ordinating the inspection, planning on site activities/timetable and obtaining IPCC investigation reports
- arranging custody record analysis
- preparing a research pack for the inspection team
- announcing the inspection and arranging access for inspectors, including access to IT systems
- arranging interviews and any focus groups
- requesting any data and documents from the force
- managing inspection team feedback sessions
- collection and capture of evidence from inspectors and research team
- determination meeting and preparing and delivering hot de-brief
- drafting the report and seeking comments
- quality assurance of the report and sign off
- action plan submission and follow up visit