



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

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

### **Background**

1. The UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was ratified by the UK in 2003 and came into force in 2006. OPCAT requires States Party to establish an independent "National Preventative Mechanism" (NPM) to carry out a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. HM Inspectorate of Prisons coordinates, and is one of several bodies making up the NPM in the UK. The mandate of the NPM applies to all places where persons are deprived of their liberty, including court and tribunal custody facilities.
2. In England and Wales, Ministers have agreed that the inspection of custody conditions should be carried out by HMI Prisons. To meet the requirement for regular inspection, while also being proportionate, a programme will ensure that all courts and tribunals custody facilities are inspected at least once every eight years but inspections may be more frequent. The nature and timing of inspections will be determined by HMI Prisons, informed both by chronology and risk.
3. The current programme of court custody inspections will ensure that every court and tribunal custody facility in England and Wales will undergo at least one inspection before the end of 2021.

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

4. The programme of inspection is designed to meet the obligations under OPCAT, by examining the treatment and conditions under which people are detained in court custody and during escort. In addition, the programme will provide an operational and strategic overview of the effectiveness of court custody arrangements. These include partnerships with other agencies involved in working with people who are or have recently been in court custody; and the work of PECS

contractors when transferring detainees between police stations, courts and prisons. These outputs will be measured against agreed, published inspection criteria, known as Expectations.

5. HMI Prisons is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952 as amended by section 57 of the Criminal Justice Act 1982. HMI Prisons has a statutory duty to report on the treatment of prisoners and detainees and the condition in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects police and customs custody (jointly with HM Inspectorate of Constabulary and Fire & Rescue Services) and secure training centres (with Ofsted). Prison inspections are led by HMI Prisons but include colleagues from HMI Probation, Ofsted and the CQC who inspect functions within their respective remits. HMI Prisons does not investigate individual complaints.

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

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

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

### **Methodology**

8. The inspection methodology focuses on three key areas: leadership, strategy and planning; individual rights and treatment and conditions (including healthcare). It reflects published custodial inspection criteria, the expectations that underpin OPCAT, and inspection methods that are effective in other custodial settings. Inspectors apply published Expectations for court custody. Expectations is the document that sets out the detailed criteria HMI Prisons uses to appraise and inspect custody and it is available on the HMI Prisons web site at: <https://www.justiceinspectorates.gov.uk/hmiprison/our-expectations/court-custody-expectations/>. Stakeholders were consulted in the development of the methodology, Expectations for court custody, and inspection framework.

9. The court custody inspection framework that has been developed and piloted by HMI Prisons since 2011 is an adapted version of the methodology employed in prisons, police custody and other custodial settings. HMI Prisons convened a stakeholder group comprising representatives of the principle organisations involved in the provision of court custody and escort services.

10. The inspection methodology includes, but is not limited to:

- collation of performance data and intelligence;
- analysis of documentation;

- fieldwork visits to every court and tribunal with custody facilities in the cluster area(s) being inspected;
- interviews with detainees, staff, court and custody contractor managers and other key individuals, PECS managers, healthcare staff, solicitors, and lay observers;
- scrutiny of custody records and person escort record forms (PERS) and if necessary, review of other sources of evidence (records, letters, memos, complaints, e-mails, and CCTV);
- a briefing about the main findings from the inspection team leader for HMCTS managers, the PECS contractor and the PECS contract manager immediately after the inspection is completed;
- publication of a final report;
- receipt of an action plan within 12 weeks of the inspection; and
- a meeting between HMI Prisons inspectors and key HMCTS and custody contractor managers within six months of inspection to review progress in implementing the improvement plan.

11. Fieldwork will usually take place for six to ten working days in the cluster area (or clusters), sometimes including courts that sit on Saturdays and bank holidays. The report will be published within 16 weeks of completing the fieldwork. HMCTS and Prisoner Escort and Custody Services (PECS) have agreed that HMI Prisons are permitted to take cameras into the court custody area and take photographs as part of the inspection process. A separate protocol has been developed and jointly agreed.

12. A team of inspectors designated by HM Chief Inspector of Prisons will conduct the inspection. HM Chief Inspector or his/her deputy will participate in some inspections.

13. All core HMI Prisons team members will have experience of working in places of detention or have had a period of on-the-job shadowing to achieve a reasonable understanding of court custody issues, legislation and practice. All are trained in security and personal safety awareness, and conflict resolution.

### **Court cluster area selection**

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

### **Notification of HMCTS and contractors**

15. HMI Prisons will regularly review the methodology and Expectations and consult with key stakeholders about how any practical considerations in undertaking unannounced inspections will be managed to minimise the inconvenience to the inspected clusters(s). A review of Expectations will be undertaken with key stakeholders by the end of the financial year 2018-19.

16. HMI Prisons will inform the HMCTS HQ Operations Directorate and the relevant HMCTS Regional Support Unit (RSU) of the cluster(s) that will be inspected 8 weeks before the inspection starts. The Head of the Regional Support Unit will appoint and provide details to HMI Prisons of a nominated operational Single Point of Contract (SPOC) who will provide support to the inspection team throughout the inspection process.

17. The SPOC will be a manager in the cluster with the appropriate level of authority. The operational SPOC will be required to provide management data for inspectors, and have had contact with the custody contractor and other key stakeholders in the cluster, and should be someone who would be aware of any major concerns or difficulties that may affect the viability of the inspection.

18. The inspection team will inspect all custody facilities in the cluster(s). They may need to see court and tribunal custody facilities that are not currently used but have not been permanently closed ('mothballed') if there is a possibility that cells might be brought back into use.

19. While the specific circumstances encountered may dictate additional or different actions, the inspection team leader or co-ordinator will:

- contact the RSU and HMCTS HQ Operations Directorate eight weeks before the inspection so that the RSU can inform the HMCTS cluster manager and delivery managers, the custody contractor and the PECS contract manager that the inspection team are visiting to inspect the custody facilities at the cluster's courts and tribunals. The purpose of this contact is also to make practical arrangements for the inspection, set up meetings with key managers that will take place during the inspection, ensure inspectors can gain access to custody facilities, and obtain management data, minutes of relevant inter-agency meetings etc;
- ensure that inspectors and any observers present photo identification to identify themselves and their role;
- explain the purpose of the inspection;
- provide details of a central point of reference (if required to confirm the inspection's validity);
- provide the RSU and the cluster manager with any written information or confirmation of authority to inspect that may be required;
- explore whether there are any exceptional and substantial operational reasons why the inspection should not proceed or should be delayed at any particular court; and
- (subject to the above) arrange access for the team to all the custody facilities in the cluster(s) through the operations SPOC.

20. If HMCTS management raises objections to the inspection proceeding, the team leader will refer the matter immediately to HM Chief Inspector of Prisons with an opinion on the validity of the reasoning given and a recommendation that either:

- the inspection should be delayed or deferred; or

- the request for access to carry out the inspection be reasserted by the Chief Inspector with an explanation offered as to why the reason offered for discontinuing the inspection does not constitute a sufficient cause for deferral or delay.

### **Inspection findings and report**

21. On the final day of the inspection, the team leader and a member of the inspection team will provide a verbal debrief, summarising the main findings of the inspection. This will be offered to the representatives of HMCTS, the PECS custody contractor, the PECS contract manager, the HMCTS Facilities Manager for the cluster and the local Lay Observer. Any particularly urgent or dangerous issues will be communicated to the cluster manager as and when they emerge. This debrief will be followed-up by written notes of the main findings within five working days and these will also be shared with HMCTS HQ Operations Directorate.

22. The full findings will be made available to HMCTS as a draft report. HMI Prisons will present this to the HMCTS HQ Operations Directorate within 8 weeks of the inspection so that any challenges to factual accuracy can be resolved prior to publication, usually within 18 weeks of the inspection. Report contents and recommendations will ultimately be determined by HM Chief Inspector of Prisons and it will be for him or her, not officials, to alert Ministers and other stakeholders to imminent publication.

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

### **Follow-up action**

24. HMCTS will be asked to provide HMI Prisons with their considered response to the final report. It is expected that the production of an improvement plan will be coordinated by HMCTS that sets out whether recommendations are accepted and the consequential action taken or planned to address the report's recommendations. This improvement plan will be published as a response to the inspection findings.

25. HMCTS will send the action plan to HMI Prisons within 12 weeks of the publication date of the inspection report. HMI Prisons inspectors will assess progress in implementing the action plan with approximately six months of the inspection being completed by means of a meeting between representatives from HMI Prisons, HMCTS, PECS and the escort and custody contractor.

26. A follow-up inspection may be considered but would not normally be undertaken within 12 months of the original inspection dates.

## **Data and Retention Periods**

27. This MOU is also the data sharing agreement between HMI Prisons and HMCTS. HMCTS or the custody contractor will provide HMI Prisons with case level information when requested. This will include paper and electronic records. HMI Prisons will ensure that it uses suitably encrypted media when sharing sensitive electronic data.

28. HMI Prisons will meet all legal and government requirements for the protection of personal information, records and images seen during the inspection.

29. Personal data provided to HMI Prisons will be kept for retention periods defined by HMI Prisons and then destroyed in accordance with Ministry of Justice policy.

## **Conduct and complaints**

30. The conduct of inspectors, including partner inspectors and observers, will be the responsibility of the on-site inspection team leader. Complaints about inspection staff should be referred to the inspection team leader or to the Chief or Deputy Chief Inspector as appropriate. Formal complaints will be dealt with in accordance with the HMI Prisons complaints process.

31. Formal complaints by inspectors about HMCTS, PECS, or the custody contractor's employees or sub-contractors will be made to the HMCTS cluster manager or the contractor's area operations manager.

32. HMI Prisons will seek voluntary feedback for quality assurance purposes from inspected organisations after each inspection. In addition, HMI Prisons will conduct an annual stakeholder survey to inform performance improvement.

## **Correspondence or comments received**

33. Correspondence or comments received from detainees or members of the public by HMI Prisons that raise issues or matters of potential concern or urgency about a detainees' safety will be referred to HMCTS, with the individual's consent. Correspondence will be kept as intelligence about the organisation concerned and retained in line with data retention policy.

## **Reconciliation of disagreement**

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

**Signed:**



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

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**Guy Tompkins**  
**Director of Operations, HMCTS**

**Date:**

**Date:**

31 July 2018  
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31 August 2018  
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HM Prison &  
Probation Service



HM Courts &  
Tribunals Service

**Protocol between HMCTS, Prisoner Escort and Custody Services and HM Inspectorate of Prisons regarding photography within court custody suites  
July 2018**

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

**Entry to custody suites**

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

**Permitted subjects**

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

**Storage and sharing**

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

### Approval of images prior to publication

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

### Publication

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