



PROTOCOL

BETWEEN

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS



INDEPENDENT MONITORING BOARDS



and



and

PRISONS AND PROBATION OMBUDSMAN



Purpose of the protocol

1. This protocol sets out a broad principle for how Her Majesty's Inspectorate of Prisons (HMI Prisons), Independent Monitoring Boards (IMBs), Lay Observers and the Prisons and Probation Ombudsman (PPO) will work together - in line with obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) - to protect any prisoner/detainee from sanctions or other prejudice arising from their, or someone acting on their behalf's, communication with either HMI Prisons, IMBs, Lay Observers or the PPO, and to provide reassurance to prisoners/detainees that they can freely communicate with these organisations without fear of sanctions or other prejudice.
2. The term 'sanctions' covers a range of acts or omissions attributable to staff who carry out, permit or tolerate ill-treatment of a prisoner/detainee as a result of communication with HMI Prisons, IMBs, Lay Observers or the PPO.¹ These may include punishments such as a removal of basic entitlements (for example, access to food, water, exercise or medical care), limits on communication with the outside world (for example, restricting visits), isolation, humiliation, physical, verbal or psychological abuse, or threats of any of the above.² These may also include administrative punishments, such as re-categorisation, loss of employment, relocation within an establishment or transfer to another establishment.
3. This protocol covers:
 - i. allegations of sanctions occurring in prisons, young offender institutions, secure training centres and immigration detention facilities
 - ii. allegations of sanctions occurring in court cells made by individuals who either come from, go to, or return to prison on the day the alleged sanction took place
 - iii. allegations of sanctions occurring during travel in the custody of an escort contractor to, from or between prisons, young offender institutions, secure training centres, immigration detention facilities and courts.
4. This protocol currently excludes allegations made by individuals who are not (or do not on that day become), a detainee in a prison, a young offender institution, a secure training centre or an immigration detention facility.
5. Prison, immigration, escort and court detention staff who have similar concerns about sanctions as a result of contact with HMI Prisons, IMBs, Lay Observers or the PPO are protected by the relevant agencies' 'reporting wrongdoing', 'whistleblowing' and public interest disclosure policies to which they should be directed.
6. Nothing in this protocol will supersede the obligations of parties to ensure the safety and security of individuals and establishments as set out in their existing policies and procedures.
7. This protocol has been endorsed by HMI Prisons, the IMB Management Board, the Lay Observers National Council and the PPO.

¹ Subcommittee on Prevention of Torture (2014) *Policy of the Subcommittee on Prevention of Torture on reprisals in relation to its visiting mandate: Advance unedited copy*

² European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, (2014) *24th General Report of the CPT*

The role of HMI Prisons

8. 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 conditions in prisons, young offender institutions, immigration detention facilities and court custody. HMI Prisons also inspects police custody and customs custody (jointly with HM Inspectorate of Constabulary and Fire & Rescue Services), and secure training centres (jointly 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 deal with individual complaints.

The role of IMBs

9. Members of an IMB are from the local community and are appointed by the Secretary of State for Justice under the Prison Act 1952 or the Home Secretary under Section 152 of the Immigration and Asylum Act 1999.
10. The IMBs are part of the UK's National Preventive Mechanism (NPM), set up under OPCAT.
11. Members of the IMB have unrestricted access to their local prison, immigration removal centre or short-term holding facility and can talk to any prisoner/detainee out of sight and hearing of members of staff.
12. The role of the IMB is to monitor the conditions for and treatment of prisoners and detainees in a specific prison, young offender institution, immigration removal centre or short-term holding facility.
13. IMB members are unpaid independent public appointees.
14. If a prisoner or detainee has an issue that they have been unable to resolve, they can put in a confidential request to see a member of the IMB.
15. The IMB Management Board's primary purpose is to develop the strategies and procedures to provide guidance, training, information and support to Boards to help them fulfil their statutory and other duties. The Management Board is led by the National Chair.

The role of Lay Observers

16. Lay Observers are independent, unpaid, public appointees made by the Secretary of State for Justice under S.81(1)(b) of the Criminal Justice Act 1991. They have a duty to inspect the conditions in which detainees are transported or held by escort and custody contractors in England and Wales.
17. Members have unrestricted access to custody suites at any time and can talk to any prisoner or detainee they wish to, out of sight and hearing of a member of staff if necessary.

18. Lay Observers visit:
 - i. courts to confirm that detainees are being treated decently, inspect conditions in custody areas, and inspect the vehicles used by the escort contractors;
 - ii. police stations to observe the handover of detainees from the police to the escort contractors;
 - iii. prisons to observe the handover of detainees from the prison to escort contractors and vice versa.

19. The primary purpose of the Lay Observers' National Council (NC) is to provide leadership, guidance, training and quality control to Boards and to help them fulfil their statutory and other duties. The Chair is required to produce an Annual Report to the Secretary of State. The Secretary of State also requires the NC to protect the independence of Boards in making their proper enquiries and reporting fully the conclusions they reach.

The role of the PPO

20. The Prisons and Probation Ombudsman investigates complaints from prisoners, children in secure training centres, those on probation and those held in immigration detention. The Ombudsman also investigates all deaths that occur in prisons, secure training centres, secure children's homes, immigration detention and in probation-approved premises.

21. The Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the bodies he or she investigates.

Obligations arising from OPCAT and HMI Prisons', the IMBs' and the Lay Observers' status as part of the UK's National Preventive Mechanism

22. The UK is a party to OPCAT. At the national level, OPCAT requires each State Party to maintain, designate or establish an independent national preventive mechanism (NPM) for the prevention of torture.³ At the international level, OPCAT established the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) which also conducts visits to places of detention within the jurisdiction of States Parties.

23. HMI Prisons, IMBs and Lay Observers are three of the organisations which make up the UK NPM, the body which delivers the UK government's obligations arising from its status as a State Party to OPCAT.

24. OPCAT requires State Parties to *'ensure that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the SPT or NPM any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.'*⁴

25. The SPT has set out the obligation of State Parties to ensure that there are no reprisals following either their or NPM visits in its guidance to NPMs and state parties.⁵

³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Article 17

⁴ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Articles 15 and 21.1

⁵ Subcommittee on Prevention of Torture (2014) *Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Available at:

26. Inspections, monitoring and investigation evidence suggests that there have been rare instances when prisoners/detainees have been subject to sanctions for communicating, or trying to communicate, with HMI Prisons, IMBs, Lay Observers or the PPO.

The Protocol

27. This protocol is intended to assist joint working between HMI Prisons, IMBs, Lay Observers and the PPO, to protect prisoners/detainees from any sanctions which might take place as a result of communicating, or trying to communicate, with HMI Prisons, IMBs, Lay Observers or the PPO.
28. The overlapping remits and duties of HMI Prisons, IMBs, Lay Observers and the PPO place them in a unique position to work together to combine their experience and evidence base, to learn lessons and better prevent sanctions being applied to prisoners/detainees in the future.
29. Through their inspection, monitoring and investigating methodology, working practices and the conduct of their staff and volunteers, HMI Prisons, IMBs, Lay Observers and PPO will make every effort to prevent sanctions from occurring as a result of their work, in accordance with the principle of 'do no harm'⁶ and the guidance of the SPT.
30. HMI Prisons, IMBs, Lay Observers and the PPO will have in place and oversee procedures which require their staff and volunteers to:
- i. Make clear to all prisoners/detainees in their written and verbal communication that they may communicate freely with HMI Prisons, IMBs, Lay Observers or the PPO and should not be subjected to sanctions for doing so;
 - ii. Make clear to all prisoners/detainees in their written and verbal communication that if they have any concerns about sanctions they may raise these at any time with HMI Prisons, IMBs, Lay Observers or the PPO;
 - iii. On receiving information of an alleged sanction as a result of communication with HMI Prisons, IMBs, Lay Observers or the PPO, consult with the prisoner/detainee concerned with the aim of pursuing the matter on the basis of consent;
 - iv. Establish the nature of the allegation and whether it qualifies as a sanction;
 - v. Take the following steps to address the matter:
 - Refer the allegation to an appropriate senior manager in the inspected body. For allegations made in court custody or during escort, both the custody provider and HMCTS should be informed;
 - If the nature of the allegation makes this problematic, if the allegations are exceptional or very serious, or if the matter has been referred to an appropriate senior manager but their response is unsatisfactory, ensure that the matter is properly escalated to senior levels within the body or establishment being inspected or monitored. In court custody, concerns should be escalated as necessary to PECS;
 - While it is preferable that the matter is pursued on the basis of consent,

http://www.apr.ch/content/files/UN/SPT_2013%20Annual%20Report.pdf; Subcommittee on the Prevention of Torture (2010) *Guidelines on national preventive mechanisms* CAT/OP/12/5

⁶ HM Inspectorate of Prisons (2014) *Guide for inspectors*, available at: http://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/02/2.-GUIDE-FOR-INSPECTORS-December-2014_-01.pdf

- in exceptional circumstances (where it appears that there may be an immediate serious risk to the prisoner/detainee or to other individuals) consider referring the matter to the appropriate senior manager even if the prisoner/detainee does not give consent;
- Having referred the allegation, make arrangements for the relevant body or establishment to report back on their investigation into the matter, setting an appropriate timeframe depending on the nature of the complaint;
- vi. Inform the internal organisational lead on sanctions of the allegation and update them on further developments as the matter is addressed;
 - vii. Inform the three other organisations in this protocol of the allegation and update them on further developments as the matter is addressed; and
 - viii. Ensure all staff and volunteers are aware of the provisions of this protocol and are implementing it in their practice.
31. HMI Prisons will also:
 - i. Maintain a log of all incidences of alleged sanctions involving HMI Prisons, IMBs, Lay Observers or the PPO to allow for follow-up and analysis; and
 - ii. Share the log of incidences at regular intervals with organisational leads (see paragraph 42 below) at the IMB Management Board, the Lay Observers National Council and the PPO.
 32. IMBs will also:
 - i. If made aware of alleged sanctions through their monitoring, or informed of alleged sanctions by HMI Prisons, Lay Observers or the PPO, closely monitor the treatment of and conditions for the prisoner/detainee concerned, and the general treatment of and conditions for the prisoners/detainees in the establishment with this in mind, for as long as the potential risk presents.
 33. Lay Observers will also:
 - i. If made aware of alleged sanctions through their monitoring, or informed of alleged sanctions by HMI Prisons, IMBs or the PPO, closely monitor the treatment of and conditions for the prisoner/detainee concerned (if possible), and the general treatment of and conditions for the prisoners/detainees in the relevant courts, for as long as the potential risk presents.
 34. The PPO will also:
 - i. Consider whether to conduct an investigation into an allegation that is either reported directly or referred by HMI Prisons, IMBs or LOs.
 35. Organisation leads will be:
 - i. HMI Prisons: Deputy Chief Inspector of Prisons, supported by the lead sanctions inspector and Policy Officer
 - ii. IMB: National Chair, supported by Head of Secretariat
 - iii. Lay Observers National Council: Chair, supported by Head of Secretariat
 - iv. PPO: Deputy Ombudsman (complaints)
 36. Organisation leads will meet every six months to discuss potential findings which may emerge from this work.

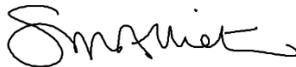
Information and data sharing

37. All organisations will meet the information sharing requirements which are outlined in the respective organisations' current Memoranda of Understanding, as these also serve as the data sharing agreements.
38. The organisations may share personal and sensitive information, records or images obtained during the course of their respective duties for the purposes outlined in this sanctions protocol. Such information will be shared using the Ministry of Justice email system.
39. All organisations will meet all legal and government requirements for the protection and storage of such personal and sensitive information, records and images.

Signed



Charlie Taylor, HM Chief Inspector of Prisons
Date: 09.02.2021



Sue McAllister, Prison and Probation Ombudsman
Date: 18.02.2021



Dame Anne Owers, Chair Independent Monitoring Boards
Date: 09.02.2021



John Thornhill, Chair Lay Observers
Date: 09.02.2021

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Sanctions process flowchart

