



PROTOCOL

BETWEEN

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS



INDEPENDENT MONITORING BOARDS



and

PRISONS AND PROBATION OMBUDSMAN



Purpose of the Protocol

1. This protocol sets a broad principle for how Her Majesty's Inspectorate of Prisons (HMIP), Independent Monitoring Boards (IMBs) National Council and the Prisons and Probation Ombudsman (PPO) will work together to protect any prisoner/ detainee from sanctions or other prejudice arising from their, or someone acting on their behalf's, communication with either party and to provide reassurance that they can freely communicate with HMIP, IMBs and the PPO without fear of sanctions or other prejudice.
2. Staff who have similar concerns are protected by the relevant agencies 'reporting wrong doing' and public interest disclosure policies to which they should be directed.
3. This protocol has been endorsed by HMIP, IMB National Council and the PPO.

The role of HMIP

4. HMIP 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. HMIP 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. HMIP also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted). Prison inspections are led by HMIP but include colleagues from HMI Probation, Ofsted and the CQC who inspect functions within their respective remits. HMIP does not deal with individual complaints.

The role of IMBs

5. The role of IMBs is to monitor day-to-day life in their local prison or removal centre and ensure that proper standards of care and decency. IMB members are independent and unpaid.
6. Members have unrestricted access to their local prison or immigration detention centre at any time. They can also talk to any prisoner or detainee they wish to, out of sight and hearing of a member of staff, if necessary.
7. Board members also play an important role in dealing with problems inside the establishment. If a prisoner or detainee has an issue that he or she has been unable to resolve through the usual internal channels, he or she can put in a confidential request to see a member of the IMB.
8. The IMBs National Council's primary purpose is to provide leadership, guidance, training and quality control to boards and to help them fulfil their statutory and other duties. The National Council is required by the Secretary of State, through and on the advice of the Secretariat, to ensure boards work in accordance with policies and good practices where it is considered necessary for standard procedures to be operated by all boards. The Secretary of State also requires the

National Council to protect the independence of boards in making their proper enquiries and reporting fully the conclusions they reach.

The role of the PPO

9. 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 prison, secure training centres, secure children's homes, immigration detention and in probation hostels (approved premises).
10. The Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the Prison Service, Probation Trusts, the Home Office, the Youth Justice Board and the Department of Health.

Obligations arising from Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and HMIP's and IMBs' status as part UK National Preventative Mechanism (NPM)

11. The UK is a party to the UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). At the local level OPCAT requires each state party to maintain, designate or establish one or several independent national preventative mechanisms (known as the NPM) for the prevention of torture¹.
12. HMIP and IMBs are two of the organisations that deliver the UK government's obligations arising from its status as a party to OPCAT. At the international level, OPCAT established the Subcommittee for the 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 state parties. SPT visits to the UK are likely to be rare events.
13. The UK ratified OPCAT in December 2003 and designated its NPM on 31 March 2009. The UK NPM is made up of 18 different inspection/ monitoring bodies which covers the whole of the UK. The bodies monitor various types of detention including prisons, police, court and customs custody, children in secure accommodation, immigration, mental health and military detention, across all jurisdictions.
14. 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*²."
15. The SPT has made references to the obligation of State parties to ensure that there are no reprisals following either their or NPM visits; this has been in their

¹ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Article 17

² Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Articles 15 and 21.1

Annual Reports, country visit reports and specific mention is also made in revised NPM guidelines.

16. HMIP inspection evidence suggests that there have been rare instances when prisoners/ detainees have been subject to informal, unauthorised sanctions for engaging with inspection teams or to prevent such engagement. This is a particular concern for those prisoners who lack the competence to advocate on their own behalf. These concerns are likely to be exacerbated for prisoners/detainees who have been or fear being subject to sanctions arising from their contact with HMIP, IMBs, PPO or the SPT.

The Protocol

17. This protocol is intended to assist joint working between the three organisations with a clear focus on ensuring that prisoners/ detainees are protected from any victimisation/ sanctions which might take place for communicating or trying to communicate with the IMB, HMIP or the PPO.
18. 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.
19. HMIP will:
 - Make clear to all prisoners/detainees in its written and verbal communication prior to, during and after an inspection that they may communicate freely with inspectors and may not be subject to sanctions for doing so and that they may raise any concerns about this, at any time, with the inspectorate or IMB;
 - If allegations are made to HMIP that such sanctions have been applied, obtain the permission of the prisoner/detainee to inform both the IMB and the PPO;
 - If such permission is obtained, inform relevant members of both the IMB National Council through the IMB Secretariat and either the Prisons and Probation Ombudsman or his Deputy;
 - In exceptional circumstances, where it appears that there may be a risk to the prisoner concerned, other individuals or the security of an establishment, pass the allegation directly to the Chief Executive of NOMS;
 - Where the issue raised is a general concern that sanctions might be applied, rather than a specific allegation, obtain permission from the prisoner/detainee to pass the concern to the local IMB and the PPO;
 - Treat allegations concerning sanctions relating to a prisoner's/detainee's contact with the IMB or PPO in the same way as allegations relating to an inspection;
 - Log all incidences where a sanction is reported to have taken place to allow for follow-up and analysis; and
 - Ensure all members of HMIP are aware of the provisions of this protocol...
20. The IMB National Council will pass any concern about the use of sanctions it receives from HMIP to the relevant local IMB and have in place and oversee national procedures that require individual IMBs to:
 - Make clear to all prisoners/detainees in its written and verbal communication that they may communicate freely with the IMB, the

inspectorate and the PPO and may not be subject to sanctions for doing so and that they may raise any concerns about this, at any time, with the IMB;

- If allegations are made directly to the IMB that such sanctions have been applied or they are informed about them by the establishment, speak confidentially to the prisoner/detainee concerned, and if such allegations are not evidently spurious or trivial, obtain the permission of the prisoner/detainee to inform HMIP and the Prisons and Probation Ombudsman (PPO);
- If allegations are passed to them by HMIP via the IMB National Council, obtain further information as necessary from HMIP, speak confidentially to the prisoner/detainee concerned, and if such allegations are not evidently spurious or trivial, obtain the permission of the prisoner/detainee to inform the Prisons and Probation Ombudsman (PPO) and to update HMIP;
- When such permission is obtained from the prisoner/detainee, refer the complaint to the PPO;
- Where such a complaint was initially made to HMIP, keep HMIP informed of any action they take;
- In exceptional circumstances, where it appears that there may be a risk to the prisoner concerned, other individuals or the security of an establishment, pass the allegation directly to the Chief Executive of NOMS and inform HMIP;
- Where the issue raised is a general concern that sanctions might be applied, rather than a specific allegation, obtain permission from the prisoners/detainee to inform the HMIP and the PPO of the concern;
- Closely monitor the treatment and conditions of any prisoner/detainee who has made allegations or raised concerns about sanctions, either with the IMB or HMIP and report any further concerns to HMIP and PPO;
- Ensure HMIP is copied into all correspondence to ensure the incident is logged; and
- Ensure all members of the IMB are aware of the provisions of this protocol.

21. The PPO will:

- accept any referrals by an IMB member or HMIP suggesting that an allegation of sanctions has been applied;
- Depending on the seriousness of the allegation, decide whether to conduct an investigation;
- Keep both HMIP and the IMB informed of their decision;
- Inform HMIP and IMB if the PPO received complaints direct about the application of sanctions; and
- Ensure all members of the PPO are aware of the provisions of this protocol.

22. Organisation leads will be:

- HMIP: Danielle Pearson (HMIP policy officer)
 - IMB: John Thornhill (Chair IMB National Council)
 - PPO: Louise Falshaw (Deputy Ombudsman)
- Organisation leads will reconvene on a six monthly basis to discuss potential findings which may emerge from this piece of work.

ENDS