



**MEMORANDUM OF UNDERSTANDING**  
**between PRISONS AND PROBATION OMBUDSMAN and**  
**the WELSH GOVERNMENT**

**The investigation of deaths in custody**

1. The Prisons and Probation Ombudsman (PPO) is appointed by and reports directly to the Secretary of State for Justice. The Ombudsman's office is wholly independent of the services in remit, including the National Offender Management Service (NOMS) and the Home Office. It is also operationally independent of, though it is sponsored by, the Ministry of Justice. The roles and responsibilities of the Prisons and Probation Ombudsman are set out in his or her Terms of Reference<sup>1</sup>. The PPO has three main investigative duties:
  - complaints made by prisoners, young people in detention, offenders under supervision of the probation service and immigration detainees, including those under escort
  - deaths of prisoners and young people or children in detention, approved premises residents and immigration detainees due to any cause, including any apparent suicides and natural causes
  - using the PPO's discretionary powers, the investigation of deaths of recently released prisoners or detainees.
2. The Chief Fire and Rescue Advisor & Inspector (Wales) is appointed under section 28 of the Fire and Rescue Services Act 2004 and, by virtue of this role becomes the "enforcing authority" under Article 25 of the Regulatory Reform (Fire Safety) Order 2005 (the Order) to enforce the fire safety requirements of the Order – essentially, to adequately safeguard all persons from fire - at Crown premises in Wales. The range of Crown premises within the inspection regime of the CFRA (W) includes all custodial buildings in Wales with the exception of Police custody suites and any relevant parts of the defence estate. There are similar but separate arrangements for inspecting Crown premises in England, Scotland and Northern Ireland.
3. The CFRA (W) discharges his or her inspection functions through an inspector appointed under article 28 of the Order.
4. The Crown must comply with the statutory requirements of the Order, but is not subject to the statutory enforcement provisions. Such Crown immunity is based on the assumption that the Crown will comply with legislative requirements without the need for enforcement action.
5. The Order is focused entirely upon ensuring that responsible persons are adequately safeguarding employees and all other relevant persons - including prisoners and detainees – from injury through fire. This requires responsible persons to provide both premises which are safe for people to use and also to implement fire safety management arrangements to ensure that the fire safety

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<sup>1</sup> <http://www.ppo.gov.uk/terms-of-reference.html>

measures – including the fire action plan – are effective when needed in an emergency.

6. The Health and Safety Executive (HSE) is also an interested party, though not a signatory to this MoU.
7. HSE is responsible for the enforcement of health and safety legislation (Health and Safety at Work Act 1974 and associated Regulations) in prisons. This includes the obligation on employers to:
  - ensure so far as is reasonably practicable the health, safety and welfare at work of employees, and
  - conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that non-employees who may be affected are not exposed to risks to their health and safety.
8. Certain injuries to members of the public are reportable, by the Prison Service or Prison Operator, to HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). These are injuries that occur as a result of an incident which arises out of or in connection with the work activity of the prison where the injured person dies or is taken from the site of the incident to hospital for treatment. Suicides are not accidents as defined in RIDDOR, and are therefore not reportable. HSE does not normally investigate suicides or self harm injuries to persons in detention unless there are clear indications of health and safety management failures at the outset.
9. HSE's appointed inspectors have the power to investigate reported injuries, dangerous occurrences and complaints. HSE's objective in investigating incidents and complaints is to determine the underlying causes and ensure lessons are learned to ensure:
  - that action has been taken by the duty holder to manage any ongoing risk and prevent similar incidents in the future;
  - wider lessons can be shared with other duty holders;
  - HSE can determine whether there has been a significant failure to comply with health and safety law and consider whether enforcement action is appropriate.
10. HSE's primary focus is to determine whether there have been organisational or systemic failures, although the duties of individuals will be considered where appropriate.

## **Purpose**

11. The purpose of this Memorandum of Understanding is to encourage joint working between the signatories and interested party in order to:
  - improve the effectiveness of each investigative organisation as measured against their respective organisational aims and objectives
  - reduce the burden of investigation on the services in remit.
12. The content of this MoU will not interfere with the independent/ statutory role of each of the named bodies.

## **Working together**

13. In the event of a fire-related death in custody PPO and CFRA (W) will commit to do the following:

- PPO will contact the CFRA (W) once notified of a fire-related death in custody in Wales
- PPO/ CFRA (W) will liaise with the HSE lead to check if HSE also intend to investigate
- the initial investigatory visit (to clarify the nature of the event) will be undertaken jointly, where this meets the needs and timescales of each party
- each will notify the other of subsequent planned visits, and attempt to meet any request for co-ordination of visits subject to the needs and timescales of each party
- joint meetings will be held with other interested parties such as the police, HSE, Fire and Rescue Services, etc
- parties will communicate periodically to check on interpretation and consistency of findings
- each will provide the other with the contact details of the lead investigator for each fatal incident, who will be the contact point for discussion, interpretation, information exchange, etc.

## **Sharing of information**

14. Each party is committed to share relevant information either at their own instigation or on request, subject to its organisational policy or other restrictions set out in this MoU, and to provide information as soon as is practicable but at a minimum within 14 calendar days of any request.

15. The ongoing safety of persons at the premises is paramount, and nothing in the MoU precludes CFRA (W) from taking action to safeguard employees or relevant persons.

## **Confidentiality**

16. Neither party will disclose the contents of the other's investigatory material or draft reports publicly, or to representatives of any organisation which is not a statutory enforcing authority or independent investigatory body for the incident under investigation, unless statutorily obliged to do so in the public interest.

## Review meetings

17. Formal annual review of the MoU by lead officers. Additional meetings can be requested by lead officers to discuss and resolve joint working and co-operation issues as they arise, together with any other issues.

Signed

Handwritten signature of Nigel Newcomen in black ink.

Nigel Newcomen CBE  
Prisons and Probation Ombudsman

Date: 14 June 2016

Signed

Handwritten signature of Des Tidbury in black ink.

Des Tidbury QFSM  
Chief Fire & Rescue Advisor Welsh  
Government

Date: 24 June 2016