

**MEMORANDUM OF UNDERSTANDING
between PRISONS AND PROBATION OMBUDSMAN and
HOME OFFICE IMMIGRATION ENFORCEMENT**

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 Home Office Immigration Enforcement. 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 its Terms of Reference (attached and subject to revision). The PPO has three main investigative duties:
 - complaints made by prisoners, offenders under supervision of the probation service and immigration detainees, including those under escort
 - deaths of prisoners, 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. Immigration Enforcement is one of the immigration commands within the Home Office. Immigration Enforcement is responsible for the management of 10 immigration removal centres, 1 pre-departure accommodation facility and over 30 short-term holding facilities, both residential and non-residential, as well as the care of the foreign nationals detained within.
3. Responsibility for the operation of the services for immigration detainees (including escorting) lies with Returns which is part of Immigration Enforcement. Responsibility in the Home Office for funding matters in relation to the oversight of detention facilities lies with the Operational Policy & Rules Unit

Purpose

4. The purpose of this Memorandum of Understanding is to inform staff and contractors in both PPO and Immigration Enforcement of their respective responsibilities with regard to the three investigative duties described above as they apply to immigration detention.
5. The Ombudsman's Terms of Reference allow his staff to investigate the actions of both Home Office staff and contractors acting on behalf of the Home Office. This remit extends to all immigration detention in the UK, not just England and Wales as is the case with prisons and probation and immigration escorts carried out by Home Office staff or contractors both nationally and internationally. PPO will liaise with the Independent Police Complaints Commission (IPCC) at an early stage where there is an indication that the respective Terms of Reference might

overlap in respect of a particular case, for example complaints about immigration officials exercising powers similar to those of a constable.

Frequency of investigation

6. The work of the PPO necessarily responds to demand. As such the PPO will investigate any eligible complaint from an immigration detainee and investigate any death in immigration detention as and when it occurs.

Discretionary Investigations

7. PPO will consider any request from the Home Office to conduct discretionary investigations. Discretionary investigations will be discussed on a case-by-case basis with timelines and resource costs agreed in advance.

Detainee access

8. PPO will provide publicity material for the immigration detention estate and escorts in multiple languages. The publicity material will explain how independent complaints investigations are conducted and how and when detainees can contact the PPO. The Home Office will inform staff and their contractors about the work of the PPO and share the PPO's complaints publicity material with all detainees, providing detainees with leaflets and displaying posters in all places of detention.
9. Detainees have the right to confidential access to the Ombudsman which will be respected by all Home Office staff and contractors. PPO letters to and from detainees will be treated as confidential access: if letters sent to detainees from PPO are to be opened this must always be in the presence of the addressee. Postage for letters from detainees to the PPO must be paid for by the Home Office. Telephone calls will be at the detainee's expense. The opportunity must be given to conduct calls with PPO investigators in private: these calls will not be recorded or monitored by staff or anyone acting on behalf of the Home Office. Home Office or contractor staff will not prove an obstacle to a detainee's confidential access to the Ombudsman.

PPO Access

10. The PPO is subject to the Data Protection Act 1998 and the Freedom of Information Act 2000. The Ombudsman follows Government policy that official information should be made available unless it is clearly not in the public interest to do so. The Ombudsman's disclosure policy describes the level of disclosure as applied to fatal incident investigations. Circumstances where disclosure may not be in the interests of the public include where the information is:
 - against the interests of national security
 - likely to prejudice the security of the detention facility
 - likely to put at risk a third party source of information
 - likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a detainee
 - likely to prejudice the administration of justice including legal proceedings
 - in papers capable of attracting legal privilege.
11. As outlined in the PPO's Terms of Reference, the Home Office and its detention/escorting contractors will grant PPO unfettered access to

documentation, both paper-based and electronic, for the purpose of their investigation. However, to ensure that sensitive information is securely managed PPO accepts that the source of security intelligence, for instance, may be redacted before the information is shared with the investigator. Written consent must be obtained by the Home Office before third party source information is released to PPO.

12. All staff acting on behalf of the Ombudsman will have access to immigration detention facilities for the purpose of interviewing staff, detainees and accessing relevant documentation. PPO investigators will need to interview staff and/or contractors and detainees in private and the centre should provide suitable rooms for this purpose. Any visit will normally be arranged with the facility in advance. PPO staff may need to be issued with keys (subject to the required security checks and training) and will also need to take recording equipment into the detention facility for the purpose of recording interviews with staff and detainees. This equipment will be declared at reception, and will remain with the PPO investigator at all times. Only the minimum amount of equipment required for the purpose will be admitted. Telephone translation facilities will be provided. PPO will meet the cost of any translations.

Complaints investigations

13. The Ombudsman will investigate only eligible complaints (as described in the PPO Terms of Reference). All immigration detainees must have exhausted the internal complaints system and their complaint must be eligible in all other respects. Complaints must be submitted by detainees themselves (or by their legal representatives). The Ombudsman will exceptionally consider complaints from third parties made on behalf of the complainant if the complainant is dead or they are unable to act on their own behalf. The Ombudsman will ultimately decide whether to investigate a complaint.
14. Complaints must be submitted to the Ombudsman within three calendar months of the completion of the internal complaints process. Complaints out of this timeframe will exceptionally be investigated if there is good reason for the time delay or the issue is so serious as to outweigh the time lag.
15. The Ombudsman will complete an investigation in any way he sees fit, for example, by local resolution, mediation, a formal letter etc. All complainants will be notified of the outcome of their complaint in writing. A copy will also be sent to the Home Office. A copy of any formal report will be sent to the Home Office and the complainant in draft for comment before it is finalised. Both parties will have one week within which to comment on the factual accuracy of the report. Where a report contains potentially confidential or sensitive material the draft will be sent to the Home Office one week before it is sent to the complainant to enable them to alert the PPO to any concerns about sharing this material with the complainant. A lack of response during this period will be construed as acceptance of the content.
16. The PPO will endeavour to respond to all complaints within 12 weeks of a complaint being considered eligible. Investigations into complex or serious complaints may take longer.

Fatal Incident Investigations

17. The Home Office will notify the PPO duty manager for fatal incident investigations as soon as a death has occurred. PPO will keep the Home Office up-to-date with any changes to contact details.
18. As set out in the Terms of Reference, the Ombudsman will decide on the extent of the investigation required depending on the circumstances of the death. The PPO will nominate a point of contact for the Home Office for each fatal incident investigation. The PPO contact will provide feedback to the Home Office during the investigation. The aim of any fatal incident investigation will be to:
 - establish the circumstances and events surrounding the death including the management of the individual but also outside factors
 - examine whether any changes in policy or practice would help prevent a recurrence
 - examine health issues and clinical care. The clinical review is conducted by a nominated health expert who is independent of the facility's healthcare
 - provide an explanation for bereaved families
 - assist the Coroner's inquest to fulfil Article 2 of the ECHR by ensuring that the facts are brought to light and any lessons learnt.
19. So immediate lessons can be learnt in the case of a fatal incident, the PPO recognises that the Home Office or its service providers will conduct an internal management review of the death. The terms of reference for the review will be agreed in advance with the PPO to ensure the review does not hamper, or attempt to shadow or duplicate, the PPO's own investigation. A copy of the internal investigation will be shared with PPO.
20. Any police investigation will take precedence over the Ombudsman's investigation into a death in custody. If the Ombudsman believes a disciplinary investigation should be conducted he will notify the Home Office. If he feels immediate action needs to be taken in response to an investigation's findings he will also alert the Home Office.
21. The Ombudsman will produce a written report of each investigation. PPO will endeavour to produce a draft report within 20 weeks of a natural causes death and 26 weeks for all others though the timelines are often impacted by the clinical review and the family's interventions. If an identified or identifiable member of staff is criticised in the report an advance copy will be shared so the Home Office can make representations, otherwise draft reports will be shared with the Home Office, the bereaved family, the Coroner and the relevant health commissioner for factual accuracy check. The Home Office will have 28 days to respond on the content. Final reports will be issued after the Inquest. Anonymised reports will be published on the PPO website.

Learning Lessons

22. PPO will conduct thematic analysis of investigation findings in order to promote the learning of lessons across immigration detention. Due to the comparatively small number of deaths in and complaints from the immigration context thematic analysis is likely to be conducted on prison investigations. However, in order to promote shared learning across the different forms of detention, the PPO will share learning lessons reports with all services in remit.

Recommendations

23. Recommendations may be made to the relevant authority, or others, as a result of an investigation or thematic analysis. The Home Office has four weeks to produce a written reply to all recommendations, describing whether the recommendation has been accepted and what action will be taken in response.

Media handling

24. All thematic PPO reports and the annual report will be accompanied by a press notice which will usually be released under embargo shortly before publication. The PPO will share all immigration related press notices with the Home Office (via their press office) prior to publication for information purposes only. Reports into deaths in custody may or may not have a release, as appropriate, but the PPO press officer will communicate with the Home Office press office in the event of substantial media interest.

Conduct

25. Investigators represent the interests of the Ombudsman during all investigations. As such the conduct of investigators remains the responsibility of the Ombudsman. Complaints about investigators from Home Office staff or the staff of the Home Office service providers should be referred to their line manager, in the first instance, or higher up the line management chain as appropriate. The PPO takes all complaints seriously.
26. Formal complaints by investigators about Home Office staff or those acting on behalf of the Home Office will be made to the Home Office line manager or Centre Manager.
27. PPO will seek regular feedback from key members of the Home Office and service provider staff and/ or complainants in order to improve the performance of the office.

Resource calculation

28. The resource provided to PPO by the Home Office will be reviewed annually based on the cost per case and the average number of cases investigated by PPO in the last few years. The resource allocation and coverage will be agreed by the Home Office and the PPO in advance of each financial year.

Review

29. The MoU will be reviewed annually with regular review meetings attended by key representatives throughout the year. Lead contacts will include:

PPO

Deputy Ombudsman: Complaints Investigations
Deputy Ombudsman: Fatal Incident Investigations
Deputy Ombudsman: Learning Lessons & Strategic Support

Immigration Enforcement, Home Office

Deputy Director Head of Detention Operations, Returns, Immigration Enforcement, Home Office
Detention Policy Lead, Operational Policy & Rules Unit, Home Office

The signatories will meet bi-annually.

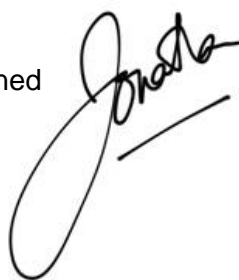
Signed

A handwritten signature in black ink, appearing to read 'Nigel Newcomen'.

Nigel Newcomen CBE
Prisons and Probation Ombudsman

Date: 27 September 2013

Signed

A handwritten signature in black ink, appearing to read 'Jonathan Nancekivell-Smith'.

Jonathan Nancekivell-Smith
Returns Director, Immigration
Enforcement, Home Office

Date: 27 September 2013