

**MEMORANDUM OF UNDERSTANDING
between PRISONS AND PROBATION OMBUDSMAN and
YOUTH JUSTICE BOARD**

The investigation of complaints and deaths in secure training centres

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 Youth Justice Board (YJB). It is also operationally independent of, though it is sponsored by, the Ministry of Justice (MoJ). The roles and responsibilities of the Prisons and Probation Ombudsman are set out in his Terms of Reference¹. The PPO has three main investigative duties:
 - complaints made by prisoners and young persons in custody, 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. The YJB is an executive non-departmental public body. Its board members are appointed by the Secretary of State for Justice. The YJB:
 - oversees the youth justice system in England and Wales
 - works to prevent offending and reoffending by children and young people under the age of 18
 - ensures that custody for them is safe, secure, and addresses the causes of their offending behaviour.
3. The YJB is responsible for the purchasing and allocation of placements in secure facilities for young people (young offender institutions [YOIs], secure training centres [STCs] and secure children's homes [SCHs]) who have been remanded or sentenced to custody. In addition, the YJB oversees the secure escort services to and from STCs and SCHs and has a duty to set standards and monitor these secure facilities.

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

Purpose

4. The purpose of this Memorandum of Understanding is to inform staff and contractors in the PPO and the YJB of their respective responsibilities with regard to the three investigative duties described above as they apply to STCs².
5. The Ombudsman's Terms of Reference allow his staff to investigate the actions of YJB staff as well as staff acting under the governance of the YJB, such as secure training centre staff and those working in youth offending teams (YOTs). This remit extends to all STCs and YOTs in England and Wales as well as escorts carried out by staff or contractors acting on behalf of the YJB.

Frequency of investigation

6. The work of the PPO necessarily responds to demand. As such the PPO will investigate any eligible complaint³ from a young person detained in an STC and investigate any death in an STC as and when it occurs.

Discretionary Investigations

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

Resident access

8. The PPO will provide publicity material for the secure training centre 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 YJB will inform staff and their contractors about the work of the PPO and share the PPO's complaints publicity material with all residents, providing residents with leaflets and displaying posters in all STCs.
9. Residents have the right to confidential access to the Ombudsman which will be respected by all STC staff and contractors. PPO letters to and from residents will be treated as confidential access: if letters sent to residents from the PPO are to be opened this must always be in the presence of the addressee. Postage for letters from residents to the PPO must be paid for by the STC. Telephone calls will be at the resident'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 STC. STC or contractor staff will not prove an obstacle to a resident's confidential access to the Ombudsman.

² The PPO's investigations in YOIs are covered by PSI 58/2010 and PSI 64/2011 and the PPO's investigations of deaths in secure children's homes are covered by a separate MoU with the Department for Education

³ The Ombudsman may decide not to accept a complaint otherwise eligible for investigation where it is considered that no worthwhile outcome can be achieved or the complaint raises no substantial issue.

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, STCs, YOTs, the YJB and its detention/escorting contractors will grant the PPO unfettered access to documentation, both paper-based and electronic, for the purpose of their investigation. However, to ensure that confidential or sensitive information is securely managed the PPO accepts that the source of security intelligence, for instance, may be redacted before the information is sent to the investigator, though the investigator still has the right to see the original documents in full. Written consent must be obtained by the YJB before third party source information is released to the PPO.
12. All staff acting on behalf of the Ombudsman will have access to STCs for the purpose of interviewing staff, residents and accessing relevant documentation. PPO investigators will need to interview staff and/or contractors⁴ and residents in private⁵ 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 STC 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.

Complaints investigations

13. The Ombudsman will investigate only eligible complaints (as described in the PPO Terms of Reference). All residents must have exhausted the establishment's complaints process and that of the STC Monitor and their complaint must be eligible in all other respects. Complaints must be submitted by residents themselves (or by their legal representatives or Advocates). 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

⁴ Staff and/or contractors may bring another person to accompany them during an interview e.g. a trade union representative

⁵ It is inappropriate for a member of STC staff to accompany the young person during a PPO interview. However, a young person can request that an Advocate be present during any interview. The existing advocacy contract will cover the cost of such a request.

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 and consideration of the matter by the Monitor. 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 both the STC and the YJB. A copy of any formal report will be sent to the STC, the YJB and the complainant and/or their representative in draft for comment before it is finalised. All parties will have one week, though an extension can be negotiated if the case is detailed and/or complex, 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 STC/YJB one week before it is sent to the complainant to enable the STC/ YJB 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 YJB will notify the PPO duty manager for fatal incident investigations at the earliest opportunity following a death; and ensure that this is within one working day. The PPO will keep YJB up-to-date with any changes to contact arrangements/ 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 STC/YJB for each fatal incident investigation. The PPO contact will provide feedback to the STC/YJB 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 Local Safeguarding Children's Board (LSCB) will conduct a serious case review of the death. The PPO will liaise with the LSCB directly about the nature and outcome of their review. .

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 STC/ YOT/ YJB. If he feels immediate action needs to be taken in response to an investigation's findings he will also alert the STC/ YOT/ YJB.
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. Draft reports will be shared with the STC, YOT, YJB, LSCB, the bereaved family, the Coroner and the relevant health commissioner for factual accuracy check. The YJB, the YOT and the STC will have 28 days to respond on the factual accuracy of the content and the recommendations. Reports will be finalised once comments have been considered. Anonymised reports will be published on the PPO website after the Inquest has concluded; the PPO will ensure that the YJB is aware of when the publication will take place.

Learning Lessons

22. The PPO will conduct thematic analysis of investigation findings in order to promote the learning of lessons across the secure training estate. In reality, the paucity of deaths in and complaints from secure training centres means thematic analysis in this context will be rare. 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. All learning lessons reports relating to secure training centres will be shared with the relevant services in advance of publication for factual accuracy check.

Recommendations

23. Recommendations may be made to the YJB, the YOT and the STC, or others, as a result of an investigation or thematic analysis. The YJB has four weeks to produce a written reply to all recommendations, describing whether the recommendation has been accepted and, if it has, setting out timebounded action that will be taken in response, together with accountabilities.

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 STC related press notices with the YJB (via the Ministry of Justice 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 Ministry of Justice 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 YJB staff, the staff of YJB service providers (such as STCs or secure escort providers) and YOT staff 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 YJB staff or those acting under the governance of YJB will be made to the line manager or Centre Director.

27. The PPO will seek regular feedback from key members of YJB and service provider staff and/ or complainants in order to improve the performance of the office.

Resource calculation

28. The YJB will fund each PPO complaint investigation on a case-by-case basis. Payment will be received quarterly for investigations completed within that quarter⁶ and for any further costs incurred during that period e.g. resulting from legal action associated with the case.

29. Funding for deaths investigations is included in the PPO's central budget allocation.

Review

30. The MoU will be reviewed annually with 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

YJB

Head of Contract & Supplier Management
Head of Safeguarding

The signatories will meet bi-annually.

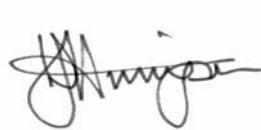
Signed



Nigel Newcomen CBE
Prisons and Probation Ombudsman

Date: 21 January 2014

Signed



Lin Hinnigan
Youth Justice Board

Date: 21 January 2014

⁶ Where final reports have been issued