



HM Courts &
Tribunals Service

Memorandum of understanding on the inspection
of court and tribunal custody facilities in England
and Wales between

HMI Prisons and HM Courts and Tribunal Service

July 2024

This memorandum of understanding (MoU) has been agreed between His Majesty's Courts and Tribunals Service (HMCTS) and His Majesty's Inspectorate of Prisons (HMI Prisons).

Background

1. HM Courts and Tribunals Service (HMCTS) is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales. HMCTS is responsible for the fabric and integrity of all courts which includes criminal courts with operational court custody suites some of which is delivered through contracted services, including Private Finance Initiative (PFI) facilities. HMCTS is also responsible for ensuring the welfare needs of detainees held within those sites or those that work within those custody suites have clean, decent, safe and secure facilities. HMCTS engages HM Inspectorate of Prisons to inspect the custody facilities at each of our sites (including PFI buildings) at a minimum of every 8 years. HMCTS will consider and respond to any recommendations made by HMIP following their inspections.
2. HMI Prisons is an independent inspectorate whose Chief Inspector is a Crown appointment. HM Chief Inspector of Prisons' responsibilities are set out in sections 5A and 43 of the Prison Act 1952 (as amended). They are to inspect (or arrange for the inspection of) and report to the Secretary of State on:
 - prisons, young offender institutions (YOIs), and secure training centres (STCs) in England and Wales;
 - court custody facilities in England and Wales and escorts to and from these facilities; and
 - immigration removal centres (IRCs), short-term holding facilities, pre-departure accommodation and escort arrangements throughout the UK.
3. In particular, the Chief Inspector shall report to the Secretary of State on the treatment of detainees and the conditions in establishments. The majority of inspections undertaken by the Chief Inspector benefit from the assistance of other inspectorates and inspections of STCs are undertaken jointly with Ofsted and the CQC. The Chief Inspector may also carry out inspections of military custody and other jurisdictions by invitation. The Chief Inspector must prepare an annual report to be laid before parliament.
4. HMI Prisons' work is carried out in accordance with the UK's obligations as a party to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT requires each state party to designate an independent National Preventive Mechanism (NPM), which monitors places of detention for the purpose of preventing torture and ill-treatment. HMI Prisons is a member of, and coordinates, the UK NPM.

Statutory status of court custody inspections

5. The Public Bodies (Abolition of Courts Boards, Her Majesty's Inspectorate of Courts Administration and Public Guardian Board) Order 2012 transferred

the powers of the disbanded HM Inspectorate of Court Administration for inspecting court custody to HMI Prisons.

6. The inspection of court custody facilities will be carried out by inspectors from HMI Prisons and, occasionally, observers from other organisations concerned with the work of the NPM.

Objectives of the inspection programme

7. The programme of inspection is designed to meet obligations under OPCAT by examining the treatment and conditions under which people are detained in court custody and during escort.
8. In addition, the programme will provide an operational and strategic overview of the effectiveness of court custody arrangements. This includes: partnerships with other agencies involved in working with people who are, or have recently been, in court custody; and the work of Prisoner Escort and Custody (PECS) contractors when transferring detainees between police stations, courts and prisons.
9. These outcomes will be measured against agreed, published inspection criteria, known as Expectations.
10. To meet the requirement for regular inspection, while also being proportionate, the inspection programme will ensure that all courts and tribunals custody facilities are inspected at least once every eight years, although inspections may be more frequent. The nature and timing of inspections will be determined by HMI Prisons, informed both by chronology and risk.

Methodology

11. The inspection methodology focuses on five key areas:
 - leadership and multi-agency relationships;
 - transfer to court custody;
 - in the custody suite: reception processes, individual needs and legal rights;
 - in the custody cell; safeguarding and healthcare; and
 - release and transfer from court custody.
12. These areas are captured in detailed published custodial inspection criteria, known as Expectations. Stakeholders were consulted in the original development of Expectations for court custody, as well as subsequent significant revisions. The most recent review of Expectations was undertaken, and a revised set of Expectations was published, in 2020.
13. HMI Prisons' Expectations for court custody are available on the HMI Prisons website: [Expectations – HM Inspectorate of Prisons \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/expectations-hm-inspectorate-of-prisons/)

14. The court custody inspection methodology draws on established and effective inspection methodologies deployed by HMI Prisons in other custodial settings. It includes, but is not limited to:
- collation of performance data and intelligence;
 - analysis of documentation;
 - fieldwork visits to every court and tribunal with custody facilities in the cluster area(s) being inspected;
 - interviews with detainees, staff, court and custody contractor managers and other key individuals, PECS managers, health care staff, solicitors and lay observers;
 - scrutiny of paper and electronic custody records including digital person escort record forms (dPERS) and if necessary, review of other sources of evidence (records, letters, memos, complaints, e-mails and CCTV);
 - a briefing about the main findings from the inspection team leader for HMCTS managers, the PECS contractor, PECS Managers, Lay Observer secretariat and local Lay Observer following the inspection is completed;
 - publication of a final report;
 - receipt of an action plan within 12 weeks of publication of the report; and
 - a meeting between HMI Prisons inspectors and key HMCTS, PECS and custody contractor provider managers within twelve months of inspection to review progress in implementing the improvement plan.
15. Fieldwork will usually take place for 6 working days (longer in larger clusters) generally including courts that sit on Saturdays and bank holidays. The report will usually be published within 10-12 weeks of completing the fieldwork.
16. A team of inspectors designated by HM Chief Inspector of Prisons will conduct the inspection. HM Chief Inspector or their deputy will participate in some inspections.
17. All core HMI Prisons team members will have experience of working in places of detention or have had a period of on-the-job shadowing to achieve a reasonable understanding of court custody issues, legislation and practice. All are trained in security and personal safety awareness.
18. HMCTS and PECS have agreed that HMI Prisons is permitted to take cameras into the court custody area and take photographs as part of the inspection process. A separate protocol has been developed for this purpose, which can be found at Appendix A.
19. HMI Prisons regularly reviews its inspection methodology and consults with key stakeholders about how any practical considerations in undertaking inspections will be managed to minimise the inconvenience to the inspected clusters.

Court cluster area selection

20. The inspection programme will ensure that all courts and tribunals custody facilities are inspected at least once every eight years, although inspections may be more frequent. The timing of each inspection is determined through a combination of: risk assessment, benchmarking data and practical factors (such as the need to have a mix of urban and more rural areas in each year of the inspection programme); the importance of inspecting courts and escort arrangements staffed by all the current contractors; and the maintenance of an appropriate geographic and regional spread.

Notification of HMCTS and contractors

21. HMI Prisons will inform the HMCTS HQ Custodial Services Division of their intention to inspect a court custody cluster eight weeks before the inspection starts. The Head of the Custodial Services will engage with the HMCTS Cluster Manager to provide details to HMI Prisons of a nominated operational Single Point of Contract (SPOC) who will provide support to the inspection team throughout the inspection process.
22. At this time the Head of Custodial Services will also advise the appropriate senior HMCTS staff, the Head of PECS and the Lay Observers Secretariat of the inspection.
23. The SPOC will be a manager in the cluster with the appropriate level of authority. The operational SPOC will be required to provide management data for inspectors and have had contact with PECS who shall provide PECS related management information through shared systems with identified inspectors, the custody contractor and other key stakeholders in the cluster. The SPOC should be aware of any major concerns or difficulties that may affect the viability of the inspection.
24. The inspection team will inspect all custody facilities in the cluster. They may need to see court and tribunal custody facilities that are not currently used but have not been permanently closed ("mothballed") if there is a possibility that cells/holding areas might be brought back into use.
25. While the specific circumstances encountered may dictate additional or different actions, the inspection team leader or co-ordinator will:
 - contact the nominated HMCTS Cluster Manager/SPOC eight weeks before the inspection, so that they can inform the relevant HMCTS managers, engage with the custody contractor, the PECS Contract Delivery Manager, Lay Observer secretariat and local Lay Observer to advise that the inspection team are visiting to inspect the custody facilities at the cluster's courts and tribunal centres. The purpose of this contact is also to make practical arrangements for the inspection, set up meetings with key managers that will take place during the inspection, ensure inspectors can gain access to custody facilities, and obtain management data, minutes of relevant inter-agency meetings etc;
 - ensure that inspectors and any observers present photographic identification to identify themselves and their role;

- explain the purpose of the inspection;
 - provide details of a central point of reference (if required to confirm the inspection's validity);
 - provide the HMCTS Cluster Manager/SPOC with any written information or confirmation of authority to inspect that may be required;
 - explore whether there are any exceptional and substantial operational reasons why the inspection should not proceed or should be delayed at any particular court; and
 - (subject to the above) arrange access for the team to all the custody facilities in the cluster(s) through the SPOC.
26. If HMCTS management raises objections to the inspection proceeding, the team leader will refer the matter immediately to HM Chief Inspector of Prisons with an opinion on the validity of the reasoning given and a recommendation that either:
- the inspection should be delayed or deferred; or
 - the request for access to carry out the inspection be reasserted by the Chief Inspector with an explanation offered as to why the reason offered for discontinuing the inspection does not constitute a sufficient cause for deferral or delay.

Inspection findings and report

27. During the inspection, HMI Prisons will provide HMCTS with an illustrative report concerning the physical conditions of court custody facilities. If present, this is likely to include photographs of potential ligature points and graffiti. This report will not form part of the final report but is intended to illustrate potential concerns and will be for use by HMCTS.
28. On an agreed date at the end of the inspection, the team leader and a member of the inspection team will provide a verbal debrief, summarising the main findings of the inspection. This will be offered to the representatives of HMCTS, PECS, the PECS custody contractor and the local Lay Observer. Any particularly urgent or dangerous issues will be communicated to the Cluster Manager as and when they emerge. This debrief will be followed up by written notes of the main findings within five working days and these will also be shared with HMCTS HQ Custodial Services.
29. The full findings will be made available to HMCTS as a draft report. HMI Prisons will present this to the HMCTS HQ Custodial Services Division within eight weeks of the inspection so that any challenges to factual accuracy can be resolved prior to publication. Photographs captured during the course of an inspection will be shared as part of the fact check process. Inspection reports will usually be published within 10-12 weeks of completion of the inspection. While it is appreciated that the draft report may have to be shared among key stakeholders, care should be taken how widely the draft report is shared before publication. Report contents, including priority and key concerns, will ultimately be determined by HM Chief Inspector of Prisons and it will be for them, not officials, to alert Ministers and other stakeholders to imminent publication.

30. All reports will be published and placed on the HMI Prisons website together with a press notice or full press release, which is shared with MoJ press office in advance of publication. HMCIP's press officer engages with the media at the discretion of HMCIP and will liaise with the MOJ press office on issues where appropriate.

Follow-up action

31. HMCTS will be asked to provide HMI Prisons with their considered response to the final report. It is acknowledged that liaison with PECS and the contracted provider will be necessary at this stage. It is expected that the production of an improvement plan will be coordinated by HMCTS that sets out whether recommendations are accepted and the consequential action taken or planned to address the report's recommendations. This improvement plan will be published as a response to the inspection findings.
32. HMCTS will send the action plan to HMI Prisons within 12 weeks of the publication date of the inspection report. HMI Prisons inspectors will assess progress in implementing the action plan within approximately 12 months of the inspection being completed by means of a meeting between representatives from HMI Prisons, HMCTS, PECS and the escort and custody contractor and by invitation a lay observer. HMIP will contact HMCTS Custodial Services Division to make arrangements for the meeting.
33. A follow-up inspection may be considered but would not normally be undertaken within 12 months of the original inspection dates.

Data and Retention Periods

34. This MoU is also the data sharing agreement between HMI Prisons and HMCTS. HMCTS, PECS and the custody contractor will provide HMI Prisons with case level information when requested. This will include paper and electronic records. HMI Prisons will ensure that it uses suitably encrypted media when sharing sensitive electronic data.
35. HMI Prisons will meet all legal and government requirements such as GDPR for the protection of personal information, records and images seen during the inspection.
36. Personal data provided to HMI Prisons will be kept for retention periods defined by HMI Prisons and then destroyed in accordance with Ministry of Justice policy.

Conduct and complaints

37. The conduct of inspectors, including partner inspectors and observers, will be the responsibility of the on-site inspection team leader. Complaints about inspection staff should be referred to the inspection team leader or to the Chief or Deputy Chief Inspector as appropriate. Formal complaints will be dealt with in accordance with the HMI Prisons complaints process. Where appropriate, these will be actioned through the partner organisation's complaints process.

38. Formal complaints by inspectors about HMCTS or the custody contractor's employees or sub-contractors will be made to the HMCTS Cluster Manager or the contractor's area operations manager. Complaints about PECS or contracted staff will be made to the Head of PECS.
39. HMI Prisons will seek voluntary feedback for quality assurance purposes from inspected organisations after each inspection. In addition, HMI Prisons will conduct an annual stakeholder survey to inform performance improvement.

Safeguarding and sanctions

40. HMI Prisons inspectors will follow HMI Prisons safeguarding policies and protocols, which set out procedures to be followed should information come to the attention of any member of staff indicating that a child or vulnerable adult has suffered, is suffering or is at risk of suffering harm during their period in detention. If any such information comes to the attention of inspectors during an inspection, they must report it immediately to the HMI Prisons team leader or inspection coordinator, who will then follow HMI Prisons' safeguarding protocols. Any general undertaking of confidentiality or anonymity during the inspection must have the caveat that this cannot be maintained where information suggests that a child or a vulnerable adult has been harmed in any way.
41. If inspectors become aware of any detainee alleging that they have been subject to sanction or other prejudice arising from their, or someone acting on their behalf's, communication with HMI Prisons inspectors or representatives of the Lay Observers, they will alert the HMI Prisons lead inspector immediately, who will then follow the agreed protocol on sanctions.

Reconciliation of disagreement

42. Any disagreement between HMI Prisons and the inspected organisation will normally be resolved at working level between the relevant officials. If this is not possible, it may be referred upwards through those responsible for operating this MoU, up to and including HM Chief Inspector of Prisons and HMCTS Operations Director, who will jointly be responsible for ensuring a mutually satisfactory resolution. This MOU will be reviewed every two years or sooner if considered appropriate by either party.

Signatories



Charlie Taylor
Chief Inspector of Prisons
15th July 2024



Nick Goodwin
Chief Executive, HMCTS
26th July 2024

Annex A: Protocol between HM Courts and Tribunals Service, Prisoner Escort and Custody Services and HM Inspectorate of Prisons regarding photography within court custody suites

1. This Protocol has been agreed between His Majesty's Courts and Tribunals Service (HMCTS), Prisoner Escort and Custody Services (PECS) and His Majesty's Inspectorate of Prisons (HMI Prisons) and sets out the parameters for the taking of and distribution of photographs by HMI Prisons within the custodial areas of court buildings as part of their inspection visits.

Entry to custody suites

2. Inspectors will be permitted to enter custodial areas with cameras for the express purpose of taking photographs to illustrate particular aspects of their inspection visit.
3. Photographs of any other area within courts (including public areas) are strictly forbidden.

Permitted subjects

4. No photographs should be taken of:
 - a. PECS contractors' staff, HMCTS staff or members of staff from any other agency;
 - b. Detainees;
 - c. Personal data which could identify an individual;
 - d. IT systems;
 - e. Alarms, locks, CCTV cameras or other equipment used to secure an area;
 - or
 - f. Staff areas within the custody suite.

Storage and sharing

5. HMI Prisons will meet all legal and government requirements for the protection of personal information, records and images seen during the inspection.
6. Photographs taken by HMI Prisons will be kept for retention periods defined by HMI Prisons and then destroyed in accordance with HMI Prisons' retention policy.

Approval of images prior to publication

7. Prior to publication, any photographs captured during the course of an inspection must be shared with the following contacts for approval:
 - Head of PECS
 - Head of HMCTS Contracted Services
 - Head of HMCTS Safety and Security.

8. This will be done when the draft report is shared with HMCTS for comments around matters concerning factual accuracy. If any of the above contacts object to the publication of an image, this should be made in writing to HMI Prisons setting out the relevant breach of this protocol.

Publication

9. Once approved, photographs captured during the course of an inspection may be used by HMI Prisons in inspection reports of court custody facilities and in annual reports. Inspection and annual reports are published on the HMI Prisons website and are public documents. HMI Prisons will not be required to obtain further approval to use approved photographs in future publications.

Annex B: Detailed data handling and sharing instructions between HMIP and PECS

Safe handling

1. Additionally, HMIP personnel must:
 - Not share the management information data outside of the purposes of conducting court custody inspections;
 - Not send to or share the management information using a personal email address.

Data Controller & Processors

2. PECS (HMPPS and Suppliers) are the Data Controllers, and HMIP are the data processors. This activity and access has been agreed to be necessary as highlighted below for both Personal Data (Article 6) and Special Category Data (Article 9).

GDPR Article 6 Lawful Basis for Processing Personal Data

3. Processing shall be lawful only if and to the extent that at least one of the following applies:

Points highlighted in bold below identify the agreed lawful bases of processing personal and special category data.

- a. the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
 - b. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
 - c. **processing is necessary for compliance with a legal obligation to which the controller is subject;**
 - d. processing is necessary in order to protect the vital interests of the data subject or of another natural person;
 - e. **processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;**
 - f. processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.
4. Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

GDPR Article 9 Lawful Basis for Processing Special Category Data

5. Where there is a special category of data is recorded and shared with HMIP, in addition to the GDPR Article 6 lawful basis detailed above, the Data

Controller and Processor also needs to fall within an Article 9 exemption to process the special category data, which is ordinarily prohibited.

6. Special category data is personal data "revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation".
7. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
8. Paragraph 7 shall not apply if one of the following applies:

Points highlighted in **bold** below identify the agreed lawful bases of processing personal and special category data.

- a. the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
- b. processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
- c. **processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;**
- d. **processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;**
- e. processing relates to personal data which are manifestly made public by the data subject;
- f. processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- g. **processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;**
- h. processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or

the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 9;

- i. processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;
 - j. processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.
9. Personal data referred to in paragraph 7 may be processed for the purposes referred to in point (h) of paragraph 8 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.