

MEMORANDUM OF UNDERSTANDING BETWEEN DIRECTORATE OF SECURITY (HMPPS), THE PRISONER ESCORT AND CUSTODY SERVICES (PECS), HER MAJESTY’S COURTS AND TRIBUNAL SERVICE (HMCTS) AND THE NATIONAL COUNCIL FOR LAY OBSERVERS.

INTRODUCTION.

1. This memorandum of understanding (MoU) has been agreed between the Directorate of Security (DoS) Her Majesty’s Prison & Probation Service (HMPPS), Her Majesty’s Courts and Tribunal Service (HMCTS) and the National Council (NC) for Lay Observers (LOs) on behalf of individual LOs with specific reference to LOs having access to Category A detainees when they are attending court
2. It:
 - acknowledges the individual independence of LOs and the differing responsibilities of LOs, DoS and HMCTS;
 - supports the LOs work to provide effective independent scrutiny of treatment and conditions for prisoners in court custody and during transportation;
 - accepts the importance of promoting positive outcomes for prisoners in court custody and during transportation; and
 - recognises that the LOs carry out their work as members of the UK’s National Preventive Mechanism (NPM), in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT).
3. Nothing in this memorandum will supersede the obligations of parties to fulfil their individual responsibilities as set out in their existing policies and procedures.

Purpose

4. The purpose of this MoU is to promote a clear understanding of the respective roles of each party, to promote an effective relationship between LOs, DoS and HMCTS, and to facilitate partnership working as appropriate.

The Lay Observers

5. The role of LOs is to monitor the facilities provided and treatment received by those detained in court custody suites to confirm if they are treated with decency and respect and that their welfare is properly managed.
6. They are also responsible for monitoring the facilities and quality of transportation used, when detained persons are being moved between police stations, courts and prisons, by observing the compliance with relevant rules and standards of decency. To ensure this is undertaken effectively LOs have unrestricted access to every part of the custody suite and transportation.
7. The CJA 1991 states that there should be appointed:

b) a panel of lay observers whose duty it shall be to inspect the conditions in which prisoners are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State.

8. LOs are independent public appointees and unremunerated. In performing their duties, they:
 - have unannounced unrestricted access to the court custody suites they visit;
 - can talk to any Detained Persons they wish, out of sight and hearing of a member of staff, if necessary.
 - visit courts to confirm that Detained Persons are being treated decently, inspect conditions in custody areas, and inspect the vehicles used by the contractors;
 - visit police stations to observe the handover of Detained Persons from the police to the contractors;
 - visit prisons in accordance with the agreed protocol on a case-by-case basis between HMPPS and the LO National Council:
 - a. to observe the handover of Detained Persons from prison to the contractors and vice versa.
 - b. to observe Detained Persons escorted there from other prisons using the Inter Prison Transfer [IPT] contract and inspect the vehicles used by the contractors;
 - c. to speak with Detained Persons to establish how they have been treated during transport.
9. The primary purpose of the LOs National Council (NC) is to provide leadership, guidance, training and quality control to LOs and to help them fulfil their statutory and other duties. The Chair is required to produce an Annual Report to the Secretary of State. The Secretary of State also requires the NC to protect the independence of the LOs in making their proper enquiries and reporting fully the conclusions they reach.

Optional Protocol to the UN Convention Against Torture (OPCAT)

10. The monitoring by LOs 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, inhumane 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. LOs are members of the UK's NPM.

Information sharing and joint working

11. The Chair of the LOs National Council DoS / HMPPS and HMCTS will meet at regular intervals to exchange information and discuss issues of common concern and mutual interest.
12. The LOs National Council will:
 - provide a copy of the LOs Annual Report to DoS / HMPPS and HMCTS;
 - provide copies of all formal visit reports;
 - provide specific reports that contain serious issues as and when necessary;
 - provide any relevant information to DoS / HMPPS and HMCTS to inform them of concerns in particular establishments or with transportation;
 - inform LOs about information and other intelligence received from DoS / HMPPS and HMCTS where appropriate and risk assessed;
 - invite a representative of DoS / HMPPS and/or HMCTS to contribute to the induction and other relevant training if deemed appropriate by NC;

- only where necessary and risk assessed - follow-up with relevant LOs any correspondence or other intelligence received from DoS / HMPPS and HMCTS;
- promote an awareness of the vital role of DoS, Cat A Section HMPPS and HMCTS to Lay Observers;
- through the Chair, meet with DoS / HMPPS and HMCTS on an annual basis to review the MoU;
- provide the names to DoS / HMPPS and HMCTS of LOs working in areas for security purposes;
- provide to DoS / HMPPS and HMCTS examples of good practice;
- contact DoS / HMPPS first on any issue relating to Category A prisoners;
- Any LO interacting with a Category A prisoner must be security vetted to CTC level, a list of names and vetting / security clearance must be provided to DoS / HMPPS at the time this MoU is agreed. It is the responsibility of LOs National Council to ensure this list of names is accurate and up to date and therefore reviewed regularly. Regular checks will be made by DoS / HMPPS;
- ensure that all visits to court custody suites for the purpose of visiting a Category A prisoner, Cat A vehicles, are arranged at a convenient time with the I/C Escort. In compliance with Health and Safety regulations and procedures. LOs, prior to visiting a Cat A prisoner or inspecting a Cat A vehicle, after approval / arrangements from the I/C Escort, will be subject to a Level B Search plus wanded down before entry and at exiting a court custody suite, visiting area or Cat A vehicle. All visits / inspections will be accompanied by a member of staff from the escorting team (unless the visit takes place in a closed visit environment).

13. DoS / HMPPS, PECS and HMCTS will:

- meet quarterly with the LOs Chair. DoS / HMPPS, The Head of PECS and HMCTS Head of Contracted Services, or nominated representatives will meet to discuss all business appropriate initiative updates and highlight any positive or negative trends;
- alert the LOs and/or the Chair as appropriate to any serious issues arising via the Secretariat;
- provide NC and/or the Chair updates on serious issues raised in LOs reports;
- offer to contribute to any training relating to and supportive of effective monitoring;
- provide updated contact details as agreed and appended to this MOU;
- inform the LOs National Council and Secretariat of correspondence or other intelligence that may require, or benefit from, action by the LOs;
- ensure DoS (HMPPS), PECS and HMCTS staff are aware of the work and role of LOs;
- through the Chair meet with LOs annually to review the MoU;

Data and Retention Periods

14. This MOU is also the data sharing agreement between DoS / HMPPS, HMCTS and the Lay Observers. The parties may share personal and sensitive information, records or images obtained during the course of their respective duties for the purposes outlined in paragraphs 10 and 11 above. Personal and sensitive information includes any information that identifies a person, including DPs, DoS and court staff and LOs. Such information will be shared using the Ministry of Justice email system.

15. Both parties will meet all legal and government requirements for the protection and storage of such personal and sensitive information, records and images.
16. Both parties will keep personal information, records and images for the retention periods defined by their respective organisational data retention policies, and then destroy such information in accordance with Ministry of Justice policy.
17. All public-sector bodies, including DoS (HMPPS)/HMCTS and LOs, are instructed to retain any and all documents which contain or may contain content pertaining directly or indirectly to the sexual abuse of children or to child protection and care. Currently MoJ is complying with the moratorium imposed by the Independent Inquiry into Child Sexual Abuse (IICSA). Please see Annex attached. Such evidence should therefore not be disposed of after the retention period outlined in each organisation's data retention policy but should be retained. For the purposes of this instruction, the word "children" relates to any person under the age of 18.

Sanctions

18. If Lay Observers become aware of any prisoners alleging that they have been subject to sanction or other prejudice arising as a result of communications with the Lay Observers, they will immediately alert the National Council. This can be a communication between the Lay Observer and the prisoner or someone acting on their behalf. There is a joint MOU on reprisals between HMPPS, IMB, PPO and LOs. A copy of the MoU can be found on the LOs website at this address - <https://layobservers.org/about-us/national-preventative-mechanism/> National Council will also inform DoS / HMPPS and HMCTS.

Reconciliation of Disagreements

19. Any disagreement between individual LOs and escort or court staff will normally be resolved at working level. If this is not possible, issues should be referred to DoS / HMPPS and HMCTS and/or the Chair of the NC. They will be responsible for ensuring a satisfactory resolution.
20. Each signatory to this memorandum will respect the independence and views of the other.



Gavin O'Malley Prison Group Director of LTHSE



John Thornhill, National Chair, Lay Observers

27.10.22