

Date: 04 May 2021

# **Protocol**

Between

**The Ministry of Justice**

as the Department

and

**The Lay Observers' National Council**

## Introduction

- 1.1 This protocol has been drawn up by the Ministry of Justice (MoJ) and the Lay Observers' National Council. It sets out at a high level the role of each body in relation to the other, and the responsibilities of the principal individuals in running, sponsoring and overseeing the Lay Observers' Secretariat.
- 1.2 The Chair of the National Council is appointed by the Secretary of State for Justice. The Chair is a non-statutory public appointment.
- 1.3 The National Council and regional group are appointed by the Chair. The National Council sets the overall strategy and corporate and business plans for the Lay Observers, and develops policies and guidance that support their work and enhance their independence and impact, working within existing legislative and financial constraints.
- 1.4 Lay Observers are supported by a Secretariat which is shared with the Independent Monitoring Boards (IMBs). The Secretariat is a team of MoJ civil servants that provides the Lay Observers with administrative and policy support. The Secretariat is tasked by the Chair.
- 1.5 The Chair, National Council and the appointed regional group, who support the National Council at a regional level, form the governance structure for the Lay Observers and are responsible for the operation of this protocol. This protocol does not confer any legal powers or responsibilities. It is approved by the Permanent Secretary of the MoJ and the sponsoring Minister and signed and dated by the Permanent Secretary and the Chair.
- 1.6 This protocol does not detail the monitoring role of Lay Observers. The *Lay Observers Core Brief* and other guidance developed by the Chair exist for this purpose.
- 1.7 This protocol remains in place until a new document has been agreed and replaces it. It must be reviewed at least every three years and, where appropriate, revised by agreement between the National Council and the MoJ.
- 1.8 This protocol is published on the Lay Observers' website, and copies of the document are placed in the Libraries of both Houses of Parliament.

## 2. Remit

- 2.1 Lay Observers are independent, unpaid public appointees who are appointed by the Secretary of State for Justice under S.81(1)(b) of the Criminal Justice Act 1991. They have a duty to inspect the conditions in which detainees are transported or held by escort and custody contractors in England and Wales.
- 2.2 The Lay Observers geographical remit covers England and Wales. Lay Observers report on how far those detained are treated with **respect and decency** and their **welfare** is effectively managed.

**2.3** The Lay Observers visit:

- courts to observe the treatment of detainees, inspect conditions in custody areas, and inspect the vehicles used to transport detainees.
- police stations to observe the handover of detainees from the police to the contractors; and
- prisons to observe the handover of detainees from prison to the contractors and vice versa.
- prisons to observe how detainees are escorted there from other prisons using the Inter Prison Transfer [IPT] contract and inspect the vehicles used by the contractor.

**2.4** The Lay Observers have a responsibility to monitor compliance with child protection processes, and the relevant sections of the Children Act 1989, for contractors responsible for escorting and holding under 18s. They should make themselves aware of contractor child protection arrangements and have a responsibility to report child protection concerns in line with processes put in place by the relevant regional group.

**3. Independence**

**3.1** The independence of the Lay Observers, their Chair and their National Council is of paramount importance.

**3.2** Lay Observers are members of the UK's National Preventive Mechanism (NPM), designated by the UK Government to meet the obligations of the United Nations Optional Protocol to the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The NPM, through its members, carries out a system of regular visits to all places of detention in the UK in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

**3.3** OPCAT requires that NPMs, and by extension any bodies making up a NPM, are functionally and operationally independent, have the necessary resources to perform their functions, have access to information relevant to the treatment of detainees, have access to all places of detention, the liberty to determine where and when to visit, and to maintain contact with the UN Sub-committee on Prevention of Torture (SPT).

**3.4** Lay Observers are operationally independent of, though sponsored by, the MoJ.

**3.5** The following paragraphs identify those elements of the relationship between the sponsoring Department (MoJ) and the Lay Observers' National Council that support the required independence of the Lay Observers. Further details on these elements are set out elsewhere in this framework.

**3.6** The Chair is a Ministerial appointment. Ministers can only remove the Chair in the limited circumstances set out in the terms of appointment which are not subject to unilateral change. The Chair appoints the National Council and the regional support group of Lay Observers through a process of open competition and selection.

### Funding

**3.7** The Lay Observers receive funding from the MoJ who is responsible for ensuring that the use of any such funds meets the standards of governance, decision-making and financial management, as set out in *Managing Public Money (MPM)* (see paragraph 6 below). In making decisions on behalf of the Lay Observers, the Principal Accounting Officer of the MoJ will take into account the operational independence of the Lay Observers.

### **4. External communications**

#### General arrangements

**4.1** The Chair and National Council, with the agreement of the Chair, may issue press notices to the media in their own names for published reports.

**4.2** As independent bodies, the Chair and the National Council, with the agreement of the Chair, are free to speak publicly and to participate in debates and events.

**4.3** The Lay Observers Secretariat's Head of Policy and Communications is the principal national link with the media, providing media advice to Lay Observers and the Chair and liaising with the MoJ where appropriate. They should ensure that the relevant press office is informed about any known or planned media activity and refer any enquiries to the appropriate press office. This liaison will at all times respect Lay Observers independence.

**4.4** The Lay Observers will maintain separate websites from any presence on GOV.UK.

#### Working with stakeholders

**4.5** The Chair, the National Council or any delegated Lay Observers may brief external organisations or individuals about the Lay Observers work, including but not limited to parliamentarians and voluntary bodies, in order to support the role and aims of the Lay Observers.

## **GOVERNANCE AND ACCOUNTABILITY**

### **5. Ministerial responsibility**

**5.1** The Secretary of State for Justice is accountable to Parliament for 'the policies, decisions and actions of this Department',<sup>1</sup> including matters relating to the performance of the Lay Observers.

### **6. The Principal Accounting Officer's specific accountabilities and responsibilities**

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<sup>1</sup> 1.1, MoJ Account Officer System Statement, October 2017

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650540/moj-accounting-officer-system-statement-2017.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650540/moj-accounting-officer-system-statement-2017.PDF))

**6.1** The Permanent Secretary of the MoJ is the Principal Accounting Officer. The Lay Observers Secretariat does not have its own accounting officer to whom financial responsibility is delegated. The Head of the Secretariat accounts to the Principal Accounting Officer for the appropriate use of resources in accordance with budgetary delegation arrangements. The responsibilities of the Principal Accounting Officer are set out in Chapter 3 of Managing Public Money (*MPM*).

**6.2** The Principal Accounting Officer is responsible for ensuring that the Lay Observers Secretariat meet the standards set out in box 3.1 of *MPM*.

**6.3** The Principal Accounting Officer is responsible to Parliament for the issue of any funding for the Lay Observers to operate effectively. The Principal Accounting Officer is also responsible for advising the Secretary of State for Justice:

- on an appropriate budget for the Lay Observers to operate effectively in light of the MoJ's overall public expenditure priorities; and
- how well the Lay Observers are achieving their strategic objectives, and whether they are delivering value for money.

**6.4** The Principal Accounting Officer is also responsible for ensuring arrangements (consistent with the overriding principle specified in section 3 on independence) are in place in order to:

- ensure the Lay Observers are fulfilling their statutory obligations;
- review performance and delivery against the Lay Observers corporate and business plans;
- address significant problems relating to financial probity which may arise in relation to the Lay Observers, making interventions where judged necessary;
- periodically carry out an assessment of the risks both to the MoJ and the Lay Observers objectives and activities;
- inform the Chair of relevant Government policy in a timely manner; and
- bring concerns about the activities of the Lay Observers to the Chair and to ExCo or Ministers as appropriate.

## **7. Responsibilities of the MoJ as sponsor**

**7.1** As the Lay Observers are operationally independent of the MoJ but share accounting and a number of other functions (please see paragraph 14), the Department has appointed a sponsorship team which applies the principles of sponsorship, usually reserved for bodies operating completely at arms' length.

**7.2** The MoJ operates a proportionate risk-based approach to sponsorship which will be considerate of the independence of the Lay Observers as set out in paragraph 3 above, and in accordance with the Cabinet Office [Code of Good Practice on](#)

partnerships between Departments and ALBs<sup>2</sup>. The sponsorship team is drawn from the Prison Policy Directorate, Scrutiny Performance and Engagement Division in the MoJ's Policy and Strategy Group. The team has a dual policy and assurance sponsorship function, with guidance and best practice on assurance provided by the Arm's Length Bodies (ALB) Centre of Expertise in the MoJ's Chief Financial Officer's Group.

**7.3** The sponsorship team's policy responsibilities are to act as the policy interface between the Lay Observers Chair and National Council, in particular:

- support the Lay Observers voice being heard across the MoJ and Government where policy development will have an impact on custody; including cases where the views of the Chair may be at variance with current Government policy.
- inform the Chair of relevant Government policy in a timely manner, determining how Ministerial policies in relation to the Lay Observers can best be delivered in terms of policy and strategy implementation;
- advise and brief Ministers in respect of the Lay Observers remit when requested by Ministers; and
- lead the budget negotiation, in tandem with the MoJ Finance Business Partner, for each financial year.

**7.4** The sponsorship team's assurance responsibilities are to act as a "critical friend" to the Lay Observers Chair and the National Council and in particular:

- support the development of positive and effective working relationships between the Lay Observers Secretariat on behalf of the Lay Observers and all parts of the Department, ensuring that the sponsorship relationship is tailored and proportionate to the needs of both organisations where appropriate;
- review the Lay Observers performance and delivery against the corporate and business plans on a continuing basis, ensuring that risks to both the Lay Observers and MoJ are assessed periodically and provide assurance to the Department's Executive Committee (ExCo) that appropriate governance arrangements are in place;
- address any significant problems in the governance or management of the Lay Observers by raising them with the Chair in the first instance, and, if necessary, drawing them to the attention of the Principal Accounting Officer;
- assist the Chair and Secretariat in liaising with relevant leads in MoJ, for example, in respect of Human Resources policy, accommodation provision and IT strategy as necessary; and
- in liaison with the Chair and the ALB Centre of Expertise, complete the annual Impact Support and Analysis process when required, which assists in providing

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<sup>2</sup> <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

assurance to the MoJ ExCo that the appropriate assurance and partnership arrangements are in place, reflecting both the needs of the Lay Observers and the Department.

7.5 The sponsorship team will work with the Secretariat and the Chair to ensure that requests for advice or information are dealt with expeditiously, and, in the event of delays, that a revised timetable is mutually agreed.

*Accountability and sponsorship meetings*

7.6 The Director General of the Policy and Strategy Group is responsible for the Lay Observers budget allocation.

7.7 Business Assurance Meetings are accountability meetings which consider: issues, risks, financial performance, progress against business planning documents and corporate updates. They will be led by the ALB Centre of Expertise (CoE) with input and attendance from policy colleagues, finance business partners, the Lay Observer Secretariat, and other relevant corporate MoJ teams (e.g. HR). Any potential conflicts about matters that cannot be resolved at these meetings should, as relevant, be brought to the attention of the Principal Accounting Officer via the ALB CoE.

7.8 The policy sponsorship team will also maintain regular contact with the Head of the Secretariat and the Chair to ensure there is ongoing dialogue.

7.9 The Chair will meet the sponsoring MoJ Director to consider strategic issues, organisational performance and consideration of opportunities arising from the quarterly Business Assurance Meetings, and any other pertinent issues. These strategic meetings will be held at least twice a year but may be called at any mutually agreed time.

7.10 The Head of the Secretariat will meet with the responsible Deputy Director or delegated officer to consider issues arising from the quarterly Business Assurance Meetings, and any other pertinent issues. These meetings will be held at least twice a year but may be called at any mutually agreed time.

*Escalation of issues*

7.11 Any potential conflict between the MoJ and the Lay Observers Chair should be attempted to be resolved through ongoing dialogue and/or at the quarterly Business Assurance Meetings. There may, however, be a need for intervention outside this framework, in circumstances where:

- either party considers that the other does not comply with this framework or that there is a real risk to the operational independence of the Lay Observers;
- there are early indications that a risk of material failure may occur in the operation of the Lay Observers, and the judgement of the Chair, National Council or the MoJ is that additional input is needed to prevent the risk materialising;

- the financial performance of the Lay Observers is deteriorating and there are significant concerns within MoJ Finance over financial control; and
- broadly, an adverse situation arises which the National Audit Office, on behalf of Parliament, may, in the public interest, be asked to investigate. This could include a situation beyond poor financial control, poor performance, or issues relating to regularity or propriety.

**7.12** In such circumstances, the issue should be raised with the sponsoring Director and the Chair and, if necessary, escalated further as either party sees fit.

**8. Responsibilities of the National Council and the Head of the Secretariat**

**General**

**8.1** The Principal Accounting Officer must assure himself that the Head of the Secretariat has adequate systems in place to meet the standards in Box 3.1 of *MPM* (in line with his responsibilities in *MPM* paragraph 3.3.1). The Head of the Secretariat is responsible for assisting the Principal Accounting Officer in fulfilling these responsibilities by:

- accounting to the Principal Accounting Officer for the appropriate use of resources in accordance with budgetary delegation and spending control arrangements;
- ensuring that effective procedures for handling complaints about the Secretariat are established and ensuring that these are widely known within the Lay Observers, where appropriate;
- acting in accordance with the terms of this document, *MPM* and other instructions and guidance (so far as they concern matters of financial probity, procurement and Human Resources) issued from time to time by the Department, Her Majesty's Treasury (HMT) and the Cabinet Office;
- giving evidence on the Head of the Secretariat's stewardship of public funds, normally with the Principal Accounting Officer, when requested by the Public Accounts Committee; and
- providing assurance to the MoJ in preparing its Governance Statement to Parliament covering Human Resources, corporate governance, risk management, finance and commercial processes, key business processes and oversight of any local responsibilities, for inclusion in the MoJ annual report and accounts.

**Responsibilities to the MoJ**

**8.2** The National Council's particular responsibilities to the MoJ include:

- developing, consulting on and externally publishing the Lay Observers corporate and business plans. This is agreed independently of MoJ, taking into account the department's wider strategic aims and agreed priorities;

- providing forecasts and monitoring information on performance and finance to the Department via the Head of the Secretariat. This is to include: prompt notification of over and under spends and details of corrective action being taken; any significant problems whether financial or otherwise (including legal challenge); and, whether detected by internal audit or other means, are notified to the Department in a timely fashion; and
- ensuring that financial considerations are taken fully into account by the National Council and the Head of the Secretariat at all stages in reaching and executing their decisions, as outlined in the spending controls, and that financial appraisal techniques are followed.

**8.3** The National Council is responsible for:

- developing the strategy and culture of the organisation.
- providing mechanisms for Lay Observers reporting on the conditions in which detainees are held and transported by escort contractors' staff;
- ensuring visits are carried out by Lay Observers, reports are completed, and concerns brought to the attention of the Prisoner Escort & Custody Service Contract Delivery Managers, HMCTS and other relevant stakeholders;
- maintaining Lay Observers membership at a level which allows them to perform their duties;
- ensuring the recruitment of Lay Observers is conducted fairly, openly and on merit;

The National Council considers matters relevant to all Lay Observers and is chaired by the National Council Chair in order to meet the statutory requirements and expectations of the Minister.

*Publication by the National Council – Annual Report*

**8.4** The National Council will produce an annual report. The annual report will cover a summary of the main issues arising from monitoring over the year, the activities carried out and recommendations made by Lay Observers. This provides the general public with a clear statement of how far detainees are treated with **decency** and **respect** and how their **welfare** is properly managed.

*Publication by the National Council – Corporate Plan*

**8.5** The National Council will prepare and publish a corporate plan setting out the proposed work and priorities of the Lay Observers over a three-year period, alongside annual business plans. The corporate plan will be reviewed annually.

*Consultation with and advice to Ministers*

**8.6** The Chair has direct access to Ministers to raise any issues of concern or to provide an update on performance and delivery. The Chair will meet Ministers at any mutually agreed time. The Lay Observers annual report is presented directly to

Ministers, and the Lay Observers may contact Ministers directly about any major issues of concern.

**8.7** The sponsorship team should be made aware of any contact with Ministers and copied in on any written submissions for such meetings where this is known by the Secretariat.

## **CORPORATE GOVERNANCE**

### **9. National Governance**

#### *The Chair*

**9.1** The post of the Chair is a public appointment made by the Secretary of State for Justice for a three-year term, renewable once at Ministerial discretion. The Chair reports to the Secretary of State.

**9.2** The Chair will be subject to an annual appraisal of the performance of the Lay Observers conducted by or on behalf of the Director of the Prisons Policy Directorate.

**9.3** The Chair is responsible for leading the work of the Lay Observers and ensuring that there are systems, policies and guidance to assist Lay Observers to perform their statutory responsibilities effectively and independently.

**9.4** The Chair is the principal national media spokesperson and national liaison point with Ministers, the Department, Parliament, Her Majesty's Courts and Tribunal Service (HMCTS), Her Majesty's Prison and Probation Service (HMPPS) and partner organisations. The Chair chairs the National Council and task manages the Head of Secretariat.

#### *Appointment of the Chair*

**9.5** Appointments will comply with the Cabinet Office Governance Code for Public Appointments.

#### *Regional structure*

**9.6** Regional Lay Observers are organised into the regional structure as decided by the National Council, managed by the National Council representatives and the regional support group.

#### *Head of the Secretariat*

**9.7** The Head of the Secretariat is a civil servant and employee of the MoJ, and as such is subject to the Department's employment contract. The Head of Secretariat is assigned a line manager from within the Department or its associated bodies for administrative and developmental purposes. The Head of the Secretariat's line manager will conduct their appraisals, drawing on contributions from the Chair. The Head of the Secretariat reports to the Chair for operational matters.

## FINANCIAL RESPONSIBILITIES

### **10. Managing Public Money and other Government-wide corporate guidance and instructions**

**10.1** The Head of Secretariat is the delegated budget holder for the Lay Observers. The Head of Secretariat is delegated their budget by the Director General Policy and Strategy Group. The Head of the Secretariat is the senior manager for the Secretariat and has a responsibility to provide advice and support to the Chair, National Council and members on specific aspects of the Lay Observers operation, recruitment issues and data protection. The Head of the Secretariat has accountability for the Lay Observers finances, and is ultimately responsible to the Principal Accounting Officer via the Director General Policy and Strategy Group.

**10.2** Unless agreed by the MoJ and, as necessary, by HMT, the Head of the Secretariat will follow the principles, rules, guidance and advice in *MPM*, referring any difficulties or potential bids for exceptions to the sponsorship team and Finance Business Partner in the MoJ in the first instance. A list of guidance and instructions with which the Head of the Secretariat should comply is in **Appendix A**.

**10.3** Subject to section 12, once the budget has been approved by the MoJ in consultation with the Chair, the Head of the Secretariat will have authority to incur expenditure approved in the budget without further reference to the MoJ, on the following conditions:

- the Head of the Secretariat will comply with the delegations set out in writing from the Director General Policy and Strategy Group. These delegations will not be altered without the prior agreement of the MoJ;
- the Head of the Secretariat will comply with *MPM* regarding novel, contentious or repercussive proposals; and inclusion of any planned and approved expenditure in the budget will not remove the need to seek formal Departmental approval where any proposed expenditure is outside the delegated spending control limits or is for new schemes not previously agreed.

**10.4** The Head of the Secretariat will provide the MoJ with such information about its operations, performance, individual projects or other expenditure as the MoJ may reasonably require.

### **11. Risk management**

**11.1** The Head of the Secretariat or Deputy Head will ensure that the risks they face are dealt with in an appropriate manner, in accordance with relevant aspects of best

practice in corporate governance. The Head of the Secretariat, together with the National Council, will also develop a risk management strategy, in accordance with HMT's guidance *Management of Risk: Principles and Concepts* ([Orange Book](#)<sup>3</sup>).

**11.2** The Head of the Secretariat should adopt and implement policies and practices to safeguard against fraud and theft in line with the Cabinet Office Guide to [Managing Fraud](#) and [Government Functional Standard](#) for public bodies. The Head of the Secretariat is also responsible for the management of health and safety risks for members of the secretariat.

**11.3** Risks should be subject to regular review at the sponsorship meetings, and where the risk is capable of impacting on the MoJ itself, escalated to the MoJ business group or Departmental risk register, as appropriate.

**12. Budgeting procedures**

**12.1** Each year, in light of decisions by the MoJ on the updated MoJ draft corporate plan and subject to the budget negotiations set out in 10.1, the MoJ will send, to the Head of the Secretariat, as close to the end of the financial year as possible:

- a formal statement of the annual budgetary provision allocated by the Department in light of competing priorities across the Department, and any forecast income approved by the Department, including funding from other Departments; and
- a statement of any planned change in policies affecting the Lay Observers.

**12.2** The Head of the Secretariat will operate relevant systems that enable timely and effective reviews (at least quarterly) of financial and non-financial performance against the budgets and targets set out in the corporate plan. Expenditure against budget is monitored in accordance with agreed spending controls and budget delegation letters. Reporting information to the MoJ will be proportionate to the Head of the Secretariat's activities and risks posed to the MoJ. As a minimum, the Head of the Secretariat will provide the MoJ with information on a monthly basis that will enable the Department to satisfactorily monitor:

- the Head of the Secretariat's cash management, headcount information and financial risks and/or opportunities;
- forecast outturn by resource headings with variance analysis; and
- other data required for HMT's Online System for Central Accounting and Reporting (OSCAR).

**12.3** The Head of the Secretariat's delegated authorities are set out in writing in a letter from the sponsoring Director General to the Head of the Secretariat. The Head of the Secretariat will obtain the MoJ's prior written approval before:

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220647/orange\\_book.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220647/orange_book.pdf)

- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the Head of the Secretariat's annual budget as approved by the Department;
- incurring expenditure for any purpose that is or might be considered to be novel or contentious, or which has or could have significant future cost implications;
- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the MoJ;
- making any change of policy or practice which has wider financial implications that might prove repercuive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principle, rules, guidance and advice in *MPM*.

**12.4** From time to time, the MoJ may need to impose Department wide spending controls on the Lay Observers that may require additional instances of written approval. In considering applications under any such spending controls, MoJ must take due and proper regard to the Lay Observers role as an independent scrutiny body. In respect of recruitment of staff, spending control applications should be applied in light of any specific agreement to further delegate the authority to recruit to the Head of the Secretariat.

*Cash holding*

**12.5** The Head of the Secretariat will use the services of the Government Banking Service (GBS).

*Audit*

**12.6** The Head of the Secretariat will remain within MoJ arrangements for internal and external audit.

## **ORGANISATION MANAGEMENT**

**13. Staff**

**13.1** Lay Observers do not directly employ any staff. Lay Observers receive central support from the Secretariat.

**13.2** The Secretariat is subject to MoJ pay and conditions (including issues relating to pensions, redundancy and compensation) and policies in relation to the management of staff.

**13.3** Subject to its delegated authorities, the Head of the Secretariat will ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

**14. Corporate service provision**

**14.1** A number of support functions will be provided to the Lay Observers Secretariat by the MoJ. Such functions will generally include:

- Information and Communications Technology (ICT)
- Human Resources
- Finance
- Facilities
- Procurement
- Legal services (Government Legal Department)
- Digital services
- Estates
- Information assurance
- Data incident handling (for significant incidents involving personal data)

**14.2** Some of these support functions, for example, facilities, estates and ICT, will include the management of aspects of risk on behalf of the Lay Observers, notably fire safety and security risk management.

## **15. Complaints and litigation**

**15.1** Where complaints are received about the Lay Observers or matters within their remit, the MoJ will refer these to the Chair to deal with. Complaints about the personal conduct of the Chair or National Council, or those relating to the sponsorship or mandate of the MoJ, will be considered by the responsible Minister. If the responsible Minister decides a complaint against the Chair should be investigated, he will appoint a civil servant from another part of the MoJ to investigate the issues and make recommendations to him about the complaint resolution.

**15.2** The Chair will manage any litigation arising from the Lay Observers operational activities, involving the Government Legal Department and other officials, including the sponsorship team, at the earliest appropriate stage. The sponsor will also inform the Chair as soon as they are aware of litigation or potential litigation in relation to the Department which makes specific reference to the work of the Lay Observers or a Lay Observer member. Where the Chair chooses to seek legal advice independent of MoJ, this will normally be sought from elsewhere within the Government Legal Department.

## **Access**

**15.3** Subject to putting in place a data sharing agreement, the MoJ will have a right of access to all of the Lay Observers financial and personnel records as required to discharge the obligations of the MoJ and the Principal Accounting Officer.

## **16. Sustainable Development**

**16.1** The Chair will comply with policies and guidance issued by the MoJ, HMT or other relevant bodies in relation to sustainable development, contributing to the Greening Government Commitments (GGC) targets and 2050 net-zero carbon commitment.

**17. Occupational Health and Safety**

**17.1** The Secretariat will follow MoJ's Occupational Health and Safety (OHS) policies and documentation and the Lay Observers will ensure the proportionate management of OHS risks.

**18. Freedom of Information and Data Protection**

**18.1** The Lay Observers, including, the Chair and National Council, are not subject to the Freedom of Information (FOI) Act 2000 or the Environmental Information Regulations 2004. They are, however, subject to the requirements and obligations outlined under the Data Protection Act (DPA) 2018, and the EU General Data Protection Regulation (GDPR).

**18.2** Compliance support, advice, guidance and drafting will continue to be provided to the Lay Observers, their Chair and National Council either from within the Lay Observers Secretariat or through resource procured on their behalf.

**18.3** Additionally, the Secretariat will maintain a central monitoring record of FOI and DPA requests received and dealt with. The MoJ may require this information for inclusion in Departmental statistics.

**19. Welsh Language Scheme**

**19.1** The Lay Observers are committed to the principle of treating the English and Welsh languages on a basis of equality when conducting public business in Wales. The Lay Observers in Wales operate their own Welsh Language Scheme that complies with the Welsh Language Act 1993, and the Welsh Language (Wales) Measure 2011 and has been approved by the Welsh Language Board.

## **RELATIONSHIPS WITH OTHER BODIES**

**20. Relationship with Parliament**

**20.1** The Lay Observers, normally through the Chair, will provide both written and oral evidence to parliamentary committees and inquiries.

*Parliamentary Questions*

**20.2** Parliamentary Questions (PQs) relating to the Lay Observers will be sent by the MoJ's Parliamentary Branch to the sponsorship team who will inform the Secretariat and agree whether the PQ is about Government policy on monitoring or about the work or operation of the Lay Observers. In the case of the former, the sponsorship team will produce the draft reply and submit to Parliamentary Branch but will first seek any immediate comments from the Chair. In the case of the latter, the Chair will agree a draft reply for the Secretariat. The Secretariat will liaise with the

sponsorship team who have responsibility for sending responses to Parliamentary Branch. The general expectation is that the sponsorship team would not amend the draft.

**Ministerial Correspondence**

**20.3** Members of Parliament will be encouraged to write directly to the Chair about specific activities and the administration of the Lay Observers. When Ministers receive correspondence from Members of Parliament on these matters, they will normally ask the Chair to reply (sending a copy of the reply to the sponsorship team). Where a Minister decides to reply personally, for example, where the correspondence involves wider policy considerations, advice will be sought from the Chair.

**21. Arm's Length Bodies**

**21.1** The Lay Observers currently work in partnership with scrutiny bodies including Her Majesty's Inspectorate of Prisons, the IMBs, the Prisons and Probation Ombudsman, Independent Custody Visitors and others.

**22. Other Government Departments**

**22.1** The Chair may also correspond with other Government Departments regarding the findings of the Lay Observers, where appropriate.

**22.2** The Lay Observers have a separate protocol with PECS covering the agreements in place for visits and a Memorandum of Understanding, MoU, with HMIP. The Lay Observers will develop MoUs with other relevant bodies.

**22.3** The Chair and National Council may make such agreements as it considers necessary.

*AKR*

Signed .....

*John Thornhill*

Signed... .....  
*John Thornhill*

Date...04/05/2021.....

Antonia Romeo  
Permanent Secretary  
Ministry of Justice

Date ...04/05/2021.....

John Thornhill  
National Chair  
Lay Observers' National Council



Ministry  
of Justice



## **Appendix A:**

### **Government-wide corporate guidance and instructions**

The Body shall comply with the following general guidance documents and instructions:

- Appropriate adaptations of sections of *Corporate Governance in Central Government Departments: Code of Good Practice*

<https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>

- Code of Conduct for Board Members of Public Bodies

<https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies>

- Guidance for Ministerial Appointments to Public Bodies

<https://www.gov.uk/government/publications/code-of-practice-for-ministerial-appointments-to-public-bodies>

- Managing Public Money (MPM)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-chapters_annex_web.pdf)

- Public Sector Internal Audit Standards,

<https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

- Management of Risk: Principles and Concepts:

<https://www.gov.uk/government/publications/orange-book>

- HM Treasury Guidance on Tackling Fraud,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/194146/charter\\_budget\\_responsibility040411.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/194146/charter_budget_responsibility040411.pdf)

- Government Financial Reporting Manual (FReM),

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/283206/2014-15\\_FReM.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283206/2014-15_FReM.pdf)

- Fees and Charges Guide, Chapter 6 of *Managing Public Money*;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-chapters_annex_web.pdf)

- Departmental Banking: A Manual for Government Departments, annex 5.6 of *Managing Public Money*;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-chapters_annex_web.pdf)

- Regularity, Propriety and Value for Money,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212460/Regularity\\_Propriety\\_and\\_Value\\_for\\_Money.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/212460/Regularity_Propriety_and_Value_for_Money.pdf)

- The Parliamentary and Health Service Ombudsman's Principles of Good Administration  
<https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration>

- Consolidation Officer Memorandum, and relevant DCO letters;  
A7.2 Drawing up framework documents  
Communications  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/835558/Managing\\_Public\\_Money\\_MPM\\_with\\_annexes\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835558/Managing_Public_Money_MPM_with_annexes_2019.pdf)

- Managing Public Money
- relevant Freedom of Information Act guidance and instructions (Ministry of Justice);
- [Model Code for Staff of Executive Non-Departmental Public Bodies (Cabinet Office)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690948/Public\\_Bodies\\_-\\_a\\_guide\\_for\\_departments\\_-\\_chapter\\_5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690948/Public_Bodies_-_a_guide_for_departments_-_chapter_5.pdf)

- Cabinet Office's Policy on Spending Controls.  
<https://www.gov.uk/government/publications/cabinet-office-controls-version-5/cabinet-office-controls-policy-version-5>

- Cabinet Office [Guide to Managing Fraud](#) for public bodies.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778306/GuideToManagingFraudForPublicBodies.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778306/GuideToManagingFraudForPublicBodies.pdf)

- Government Functional Standard for public bodies.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/894811/Counter\\_Fraud\\_Functional\\_Standard.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894811/Counter_Fraud_Functional_Standard.pdf)

This is not an exhaustive list. Further advice on relevant guidance can be provided by MoJ Financial Reporting, Transactions and Governance team.