

MEMORANDUM OF UNDERSTANDING BETWEEN THE PRISONER ESCORT AND CUSTODY SERVICES (HMPPS), HER MAJESTY'S COURTS AND TRIBUNAL SERVICE AND THE NATIONAL COUNCIL FOR LAY OBSERVERS

Introduction

1. This memorandum of understanding (MoU) has been agreed between the Prisoner Escort and Custody Services (PECS) (in Her Majesty's Prison and 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. It:
 - acknowledges the individual independence of LOs and the differing responsibilities of LOs, PECS and HMCTS;
 - supports the LOs' work to provide effective independent scrutiny of treatment and conditions for detainees in court custody and during transportation;
 - accepts the importance of promoting positive outcomes for detainees 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).
2. 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

3. 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 and PECS and HMCTS, and to facilitate partnership working as appropriate.

The Lay Observers

4. 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.
5. 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.
6. 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.*

7. LO members 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 detainee 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 detainees to establish how they have been treated during transport.

8. 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)

9. 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

10. The Chair of the LO National Council and PECS and HMCTS will meet at regular intervals to exchange information and discuss issues of common concern and mutual interest.

11. The LO National Council will:

- provide a copy of the LO Annual Report to PECS 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 PECS and HMCTS to inform them of concerns in particular establishments or with transportation;
- inform LOs about information and other intelligence received from PECS and HMCTS as appropriate;
- invite a representative of PECS and/or HMCTS to contribute to the induction and other relevant training if deemed appropriate by NC;
- follow-up with relevant LOs any correspondence or other intelligence received from PECS and HMCTS;
- promote an awareness of the vital role of PECS and HMCTS to Lay Observers;
- through the Chair, meet with PECS and HMCTS on an annual basis to review the MoU;
- provide the names to PECS and HMCTS of LOs working in areas for security purposes;
- provide to PECS and HMCTS examples of good practice;
- contact PECS first on any issue relating to contractors;
- centrally appoint LO representatives to attend regional or cluster level stakeholder meetings and brief them fully;
- attend or send a representative to the quarterly UOF/Welfare board and provide an executive summary to the board;
- ensure that all visits to custody suites, prisons, vehicles and vehicle basis will be conducted in accordance with the Visits Protocol and in compliance with Health and Safety regulations and procedures.

12. PECS and HMCTS will:

- meet quarterly with the LO Chair. The Head of PECS and HMCTS Head of Contracted Services, or nominated representatives will meet to discuss PECS business, 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 LO 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 LO National Council and Secretariat of correspondence or other intelligence that may require, or benefit from, action by the LOs;
- ensure PECS and HMCTS staff are aware of the work and role of LOs;
- through the Chair meet with LOs annually to review the MoU; and
- provide details to LO Secretariat centrally of regional/cluster stakeholder multi agency meetings.
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- CDMs will arrange a quarterly meeting, in advance of the HMCTS Quarterly Stakeholders Meeting, with regional CDMs and inviting the lead area Lay Observer to provide business and initiative updates and enable the LOs to have a voice and feedback trends and concerns as well as positive practice observed.

Data and Retention Periods

13. This MOU is also the data sharing agreement between HMCTS/PECS 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, PECS and court staff and LOs. Such information will be shared using the Ministry of Justice email system.

14. Both parties will meet all legal and government requirements for the protection and storage of such personal and sensitive information, records and images.
15. 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.
16. All public-sector bodies, including PECS (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

17. If Lay Observers become aware of any detainee 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 detainee 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 LO's website at this address - <https://layobservers.org/about-us/national-preventative-mechanism/> National Council will also inform PECS and HMCTS.

Reconciliation of Disagreements

18. 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 PECS and HMCTS and/or the Chair of the NC. They will be responsible for ensuring a satisfactory resolution.
19. Each signatory to this memorandum will respect the independence and views of the other.

Signed



John Thornhill
Lay Observer National Council

Date

Signed

T. Coates

Tim Coates
Head of Prisoner Escort and Custody Services

Date 22-06-2021

Signed

A handwritten signature in black ink, appearing to read 'Claire Medhurst', with a stylized, cursive script.

Claire Medhurst
Deputy Director, Intelligent Client Capability
HMCTS

Date: 23 July 2021

INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE OFFICIAL

Categories of document for retention

Government Departments, Agencies, and all other public sector bodies, are instructed to retain any and all documents; correspondence; notes; emails and all other information – however held – which contain or may contain content pertaining directly or indirectly to the sexual abuse of children or to child protection and care. For the purposes of this appendix, the word “children” relates to any person under the age of 18.

Such information may include, but is not limited to, the following:

- a. Any material, including reports; reviews; briefings; minutes; notes and correspondence in relation to allegations (substantiated or not) of individuals, organisations, institutions, public bodies or otherwise who may have been involved in, or have knowledge of, child sexual abuse, or child sexual exploitation;
- b. Any material, including reports; reviews; briefings; minutes; notes and correspondence in relation to allegations (substantiated or not) of individuals (in particular, but not limited to, people of prominence in politics, public life, education, religious organisations, local authorities, and the media) having engaged in sexual activity with, or having a sexual interest in, children;
- c. Any material, including reports; reviews; briefings; minutes; notes and correspondence in relation to institutional failures to protect children from sexual abuse or other exploitation;
- d. Any material relevant to statutory responsibilities for the care of children in public or private care;
- e. Any material relevant to the development of policy on child protection;
- f. Any material relevant to the development of legislation on child protection;
- g. Any material relating to the determination of the award of Honours to persons who are now demonstrated to have had a sexual interest in children or are suspected of having had such an interest.

It is not possible to produce a definitive list under (g). Accordingly, we invite you to ensure that no documentation relating to the award of Honours to any person is destroyed pending the outcome of the Independent Inquiry.

Protocol between The Prisoner Escort and Custody Services (HMPPS), Her Majesty's Courts and Tribunals Service (HMCTS) and The National Council for Lay Observers regarding the taking, storage and sharing of photographs

1. This Protocol has been agreed between the Prisoner Escort and Custody Services (HMPPS), Her Majesty's Courts and Tribunals Service (HMCTS) and The National Council for Lay Observers, and sets out the parameters for the taking, storage and sharing of photographs by Lay Observers whilst undertaking their roles and responsibilities.

Entry to court custody suites

2. Lay Observers will be permitted to enter court custodial suites with cameras for the express purpose of taking photographs to illustrate particular aspects of their observation 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. The National Council for Lay Observers will meet all legal and government requirements for the protection of personal information, records and images seen during the observation.
6. Photographs taken by Lay Observers will be kept for retention periods defined by The National Council for Lay Observers and then destroyed in accordance with The National Council for Lay Observers' retention policy.

Approval of photographs and images prior to publication

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

- Head of HMCTS Safety and Security

8. If any of the above contacts object to the publication of a photograph or an image, this should be made in writing to The National Council for Lay Observers via the Secretariat setting out the relevant breach of this protocol.

Publication

9. Once approved, photographs and images captured during the course of an observation may be used by The National Council for Lay Observers in their observation reports of court custody suites and in annual reports. The National Council for Lay Observers will not be required to obtain further approval to use approved photographs and images in future publications.