



Memorandum of understanding between

HMI Prisons and The National Council for Lay Observers

July 2024

Introduction

- 1.1 This memorandum of understanding (MoU) has been agreed between His Majesty's Inspectorate of Prisons (HMIP) and the National Council (NC) for Lay Observers (LOs) on behalf of individual LOs. It:
- acknowledges the individual independence of LOs and HMIP and the differing responsibilities of both parties;
 - supports both parties' work to provide effective independent scrutiny of treatment and conditions for detainees in court custody and during transportation;
 - emphasises the importance of promoting positive outcomes for detainees in court custody and during transportation; and
 - recognises that both parties 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).
- 1.2 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

- 1.3 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 HMIP and to facilitate partnership working as appropriate.

HM Inspectorate of Prisons

- 1.4 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.
- 1.5 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.

- 1.6 Details of HMIP's framework, approach and general methodology can be found at: [How we inspect – HM Inspectorate of Prisons \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk)

The Lay Observers

- 1.7 LOs are independent, unpaid, public appointees made by the Secretary of State for Justice under S.81(1)(b) of the Criminal Justice Act 1991. They have a duty to monitor the conditions in which detained people are transported or held by escort and custody contractors in England and Wales.
- 1.8 LOs have unrestricted access to court custody suites and can talk to any prisoner or detained person they wish to, out of sight and hearing of a member of staff if necessary.
- 1.9 LOs visit:
- courts to confirm that detained people are being treated decently, and that conditions in custody areas, and vehicles used by the escort contractors are decent;
 - prisons to observe the handover of detained people from the prison to escort contractors and vice versa.
- 1.10 The primary purpose of the LOs' National Council (NC) is to provide leadership, guidance, training and quality control to individual LOs and to help them fulfil their statutory and other duties. The Chair reports annually to the Secretary of State.

Optional Protocol to the UN Convention Against Torture (OPCAT)

- 1.11 The inspections by HMIP and monitoring by LOs are 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. HMIP and the LOs are members of the UK's NPM, which is coordinated by HMIP.

Joint working

- 1.12 The Chair of the LO National Council and HM Chief Inspector of Prisons will meet every six months to discuss issues of common concern and mutual interest.
- 1.13 The LO National Council with support from the LO staff team will:

- Ensure that all new LOs understand the role and remit of HMIP as part of their initial training;
- provide a copy of the LO Annual Report to HMIP;
- provide copies of recent reports on any custody suites to be inspected;
- provide any relevant information to HMIP to inform them of concerns in particular custody facilities or with transportation;
- inform and consider joint work with HMIP on issues relevant to both parties;
- inform LOs about correspondence and other intelligence received from HMIP as appropriate;
- provide the reports of HMIP inspections to appropriate LOs to support and inform their own monitoring role; and
- promote an awareness of the vital role of HMIP and the NPM to LOs.

1.14 HMIP will:

- provide LOs with copies of the HMIP Annual Report;
- inform and consider joint work with LOs on issues relevant to both parties;
- seek information from LOs on issues of concern prior to a planned inspection;
- meet with a representative of the LOs in advance of an inspection to establish the views of the local LOs;
- invite the Chair of the LOs or their representative to attend the debrief at the end of the inspection to discuss emerging findings;
- alert the LOs National Chair as appropriate to any serious issues arising from an inspection;
- send a copy of the report of the inspection to the LOs;
- contribute to any training relevant and supportive of effective monitoring;
- ensure HMIP staff are aware of the work and role of LOs.

Information sharing agreement

1.15 Both parties agree to comply with:

- Data protection legislation
- HM Government's Security Policy Framework:
<https://www.gov.uk/government/publications/security-policy-framework>
- The Information Commissioner's Office (ICO) Framework Code of Practice for sharing personal information:
http://ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

1.16 In particular this includes:

- Preserving the integrity, confidentiality, and availability of shared data and preventing the corruption or loss of such data

- Processing the data only to the extent, and in such a manner, as is necessary for the effective functioning of the justice system or as required by law or any regulatory body
- Conducting, if necessary, a Data Protection Impact Assessment (DPIA) when changes are made to the processing of data

1.17 Specific measures to protect personal information:

- We shall at all times aim to protect personal data, the release or loss of which could cause harm or distress to individuals by compromising its confidentiality, integrity, or availability.
- We shall handle all information that meets the definition as set out in the Government Security Classification System definitions for OFFICIAL, including any marked OFFICIAL-SENSITIVE, according to the prescribed standards including the specific measures set out in this agreement.
- When OFFICIAL or OFFICIAL-SENSITIVE marked information is held on paper, it will be locked away when not in use.
- When shared information is held and accessed on IT systems, we shall ensure the mandatory security outcomes described in the Security Policy Framework are met.
- When shared information is moved between locations, we will securely transfer the information and it will be held and accessed in secure premises.
- Any IT system is assessed as secure to the appropriate level.
- We agree to avoid the use of removable media for storage to personal data wherever possible, and when removable media must be used then:
 - the information transferred will be the minimum necessary to achieve the business purpose
 - the media will be encrypted to the standards specified by the MoJ
 - user rights to transfer data to removable media will be carefully considered and strictly limited only to those absolutely necessary for business purposes.

1.18 All material that has been used as shared data will be subject to controlled disposal (if and when it is agreed that the material cannot be returned to the source party):

- Paper records will be destroyed by incineration, pulping, or shredding so that reconstruction is unlikely.
- Digital/electronic media will be disposed of through secure destruction, overwriting, or erasure for re-use.

1.19 We will ensure that all data users that handle personal information are aware of the sensitivity of the data, the handling requirements, and successfully undertake information assurance risk awareness training on appointment and thereafter regularly throughout the length of their service.

- 1.20 We shall maintain, at all times, the ‘need to know’ principle and limit access to information to the minimum possible.
- 1.21 We shall maintain business continuity and incident recovery frameworks that cover the protection of shared data to maintain its integrity, availability, and confidentiality.
- 1.22 We shall not process personal data provided by the other party with countries who do not have adequacy arrangements in compliance with the UK GDPR, unless there is prior written consent and, where consent to a transfer is provided, the processing will comply with:
- the obligations of a Data Controller under data protection legislation by providing the adequate level of protection to any personal data that is transferred, and any reasonable instructions as notified by the party that owns the data.
- 1.23 If at any time we suspect or have reason to believe that shared data has or may become corrupted or lost, then we shall notify the other immediately, reporting any losses to MoJ Security as necessary
- 1.24 All personal data shared will be held, and destroyed, according to the retention schedules defined by the originating organisation.

Sanctions

- 1.25 If LOs or HMIP inspectors become aware of any detained person alleging that they have been subject to sanction or other prejudice arising from their, or someone acting on their behalf’s, communication with representatives of the LOs or HMIP inspectors, they will alert immediately the National Council and HMIP lead inspector for courts, who will then follow the agreed protocol on sanctions.

Reconciliation of Disagreements

- 1.26 Any disagreement between HMIP or the LOs will normally be resolved at working level, for example, between the National Council Lead LO and Inspection team leader. If this is not possible, issues should be referred to HM Chief Inspector of Prisons and/or the Chair of the National Council. They will be responsible for ensuring a satisfactory resolution.
- 1.27 Each signatory to this memorandum will respect the independence and views of the other.

Review

- 1.28 Both parties agree to an annual review of this MoU.

Signatories



Charlie Taylor
HM Chief Inspector of Prisons

July 2024



David Whalley
on behalf of the Lay Observer National Council

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