

# Terms of Reference

## **PRISONS AND PROBATION OMBUDSMAN TERMS OF REFERENCE**

### **The Role**

1. The Prisons and Probation Ombudsman (PPO) is appointed by the Secretary of State for Justice, following recommendation by the House of Commons Justice Select Committee. The Ombudsman is therefore an administrative appointment. These Terms of Reference represent an agreement between the Ombudsman and the Secretary of State as to the Ombudsman's role.
2. The Ombudsman is wholly independent. This includes independence from Her Majesty's Prison and Probation Service (HMPPS), and any individual Local Authority, the Home Office, the Youth Justice Board (YJB), providers of secure youth accommodation, the Department for Education (DfE), the Department of Health, NHS England & Improvement and Healthcare Inspectorate Wales (HIW)<sup>1</sup>. This enables the Ombudsman to execute fair and impartial investigations, making recommendations for change where necessary, without fear or favour. The Ombudsman's ability to act entirely independently from the authorities in remit is an absolute and necessary function of the role.
3. The Ombudsman's office is operationally independent of, though it is sponsored by, the Ministry of Justice (MoJ). The perceived and visible independence of the Ombudsman from the sponsorship body is fundamental to the work of the Ombudsman. No MoJ official may attempt to exert undue influence on the view of the Ombudsman.

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<sup>1</sup> Referred to throughout as 'the authorities'.

4. The bodies subject to investigation by the Prisons and Probation Ombudsman will make sure the requirements of these Terms of Reference are set out clearly to staff in internal policies, procedures and instructions.

### **Matters subject to investigation**

5. The Ombudsman can investigate:
  - i. decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of prisoners, detained individuals, or young people in secure accommodation<sup>2</sup>. The Ombudsman's remit does not depend on the authority in remit or their staff, acting or failing to act, or taking decisions, themselves. The Ombudsman will therefore also look at the decisions and actions of contractors and subcontractors and of the servants and agents of the services in remit, including members of the Independent Monitoring Board and other volunteers, where these are relevant to the matter under investigation;
  - ii. decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of offenders under probation supervision. The Ombudsman's remit does not depend on HMPPS, or their staff, acting or failing to act or taking decisions, themselves. The Ombudsman will therefore also look at the decisions and actions of contractors and sub-contractors and of the servants and agents of HMPPS, including volunteers and supply chain organisations, where these are relevant to the matter under investigation; and
  - iii. decisions and actions (including failures or refusals to act) in relation to the management, supervision, care and treatment of individuals detained under immigration powers, including residents of immigration

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<sup>2</sup> The PPO will investigate fatal incidents in Secure Children's Homes (SCHs). This includes fatal incidents of young people placed in SCHs on welfare grounds. The Ombudsman will not investigate complaints from young people in SCHs.

removal centres, those held in short term holding facilities or pre-departure accommodation, and those under immigration escort. The Ombudsman's remit does not depend on the Home Office or their staff, acting or failing to act, or taking decisions, themselves. The Ombudsman will therefore also look at the decisions and actions of contractors and sub-contractors and of the servants and agents of the Home Office, including members of the Independent Monitoring Board and other volunteers, where these are relevant to the matter under investigation.

6. The Secretary of State for Justice may also request that the Ombudsman carries out an exceptional investigation that would normally be outside of the Ombudsman's remit. It would be for the Ombudsman to decide whether they are able to undertake the investigation.

### **Right of access**

7. The 'Head' of the relevant authority (or the relevant Secretary of State where appropriate) will ensure that the Ombudsman has unfettered access to all relevant material, held both in hard copy and electronically, that is required for the purpose of investigations within the Ombudsman's Terms of Reference. This includes classified material, physical and mental health information, and information originating from or held by other organisations e.g. contractors (or their sub-contractors) providing services to or on behalf of those within remit. The Ombudsman will consider representations as to the necessity of particular material being provided, the means by which provision is achieved and any sensitivity connected with future publication, but the final decision rests with the Ombudsman who will define the material required based on the context of the investigation.
8. The Ombudsman and their staff will have access to the premises of the authorities in remit, at times specified by the Ombudsman, for the purpose of conducting interviews with employees, prisoners, detained individuals and other individuals, for examining source materials (including those held electronically such as CCTV), and for pursuing

other relevant enquiries in connection with investigations within the Ombudsman's Terms of Reference. The Ombudsman will normally arrange such visits in advance.

9. The Ombudsman and their staff have the right to interview all employees, prisoners, detained individuals and other individuals as required for the purpose of an investigation and will be granted unfettered access to all such individuals. This includes the staff of contractors and sub-contractors.

## **Complaints**

10. The Ombudsman's complaints investigations will support the UK's compliance with the requirements of Article 3 (read with Article 1) of the European Convention on Human Rights, specifically by ensuring the independent investigation of allegations of torture, inhumane or degrading treatment or punishment.
11. The aims of the Ombudsman's investigations are to:
  - establish the facts relating to the complaint with particular emphasis on the integrity of the process adopted by the authority in remit and the adequacy of the conclusions reached;
  - examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence;
  - seek to resolve the matter in whatever way the Ombudsman sees fit, including by mediation; and
  - where the complaint is upheld, restore the complainant, as far as is possible, to the position they would have occupied had the event not occurred.
12. The Ombudsman will consider the merits of the complaint as well as the procedures involved.

## Persons able to complain

13. The Ombudsman will investigate eligible complaints submitted by the following people:
- i. Prisoners<sup>3</sup>, including prisoners in the custody of the Prisoner Escort and Custody Service (PECS)<sup>4</sup>, and young people, including those in youth detention accommodation<sup>5</sup>, who have failed to obtain satisfaction from the internal complaints system in place at the relevant institution;
  - ii. offenders who are, or have been, under probation supervision or accommodated in approved premises and who have failed to obtain satisfaction from the probation complaints system; and
  - iii. individuals detained under immigration powers<sup>6</sup>, including residents of immigration removal centres, pre-departure accommodation, short-term holding facilities and those under managed immigration escort anywhere in the UK and internationally<sup>7</sup>, who have failed to obtain satisfaction from the Home Office complaints system;
14. The Ombudsman will normally only act on the basis of eligible complaints from those individuals set out at paragraph 13 and not on those from other individuals or organisations. However, the Ombudsman has discretion to accept complaints from third parties on behalf of individuals set out at paragraph 13, where the individual concerned is either deceased or is unable to act on their own behalf. Complaints from legal representatives (or similar) will require the written consent of the individual set out at paragraph 13, before the complaint can be considered by the Ombudsman.

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<sup>3</sup> The PPO definition of a prisoner for these purposes is an individual who is under a sentence of imprisonment, is in prison or is on temporary release from prison.

<sup>4</sup> Individuals in the custody of PECS can only complain if they are also a prisoner. The PPO will not investigate complaints from those in PECS custody where the complaint is regarding an event that took place on police premises.

<sup>5</sup> For the purposes of complaints, this does not include secure children's home accommodation.

<sup>6</sup> defined throughout as those detained under powers set out in the Immigration Acts.

<sup>7</sup> The PPO's remit only covers individuals detained under powers set out in the Immigration Acts.

15. The Ombudsman also has discretion to accept complaint referrals (that it would be inappropriate for the authority to consider under its own internal complaints procedure) direct from HM Inspectorate of Prisons (HMIP), the IMB or Lay Observers, acting on behalf of the National Preventive Mechanism under OPCAT<sup>8</sup>, where an individual alleges that the authority has prevented them from communicating with HMIP, the IMB, Lay Observers or PPO, or that they have been subject to victimisation or sanctions as a result of doing so<sup>9</sup>.

### Eligibility of Complaints

16. Before putting a complaint to the Ombudsman, a complainant must first seek redress through the appropriate use of the relevant prison, PECS, youth detention accommodation<sup>10</sup>, probation or Home Office complaint procedure.
17. Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman. The cost of postage of complaints to the Ombudsman by prisoners, individuals detained under immigration powers and young people in detention, will be met by the relevant authority.
18. Where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will contact the relevant authority in remit who will provide the Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.
19. If a complaint is considered ineligible, the Ombudsman will inform the complainant and explain the reasons, in writing.

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<sup>8</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international human rights treaty designed to strengthen protection for people deprived of their liberty. It recognises that such people are particularly vulnerable and aims to prevent their ill-treatment through establishing a system of visits or inspections to all places of detention. OPCAT requires that States designate a 'national preventive mechanism' (NPM) to carry out visits to places of detention, to monitor the treatment of and conditions for detainees and to make recommendations regarding the prevention of ill-treatment. The UK ratified OPCAT in December 2003 and designed its NPM in March 2009. The UK's NPM is currently made up of 18 visiting or inspecting bodies who visit places of detention such as prisons, police custody and immigration detention centres.

<sup>9</sup> The relationship between the named bodies is described in a separate protocol.

<sup>10</sup> For the purposes of complaints, this does not include secure children's home accommodation.

20. The Ombudsman may decide not to accept a complaint otherwise eligible for investigation, or to discontinue any ongoing investigation, where they consider that no worthwhile outcome can be achieved, or the complaint raises no substantial issue.
21. The Ombudsman may also decide to discontinue an investigation where they consider the complainant's behaviour to be unreasonable<sup>11</sup>. The Ombudsman will inform the complainant in writing of the reasons for this action.

### Time Limits

22. The Ombudsman will consider complaints for investigation if the complainant is dissatisfied with the reply from the authority in remit.
23. The Ombudsman will also consider complaints for possible investigation if the complainant does not receive a final reply within 30 working days of making the complaint or
  - i. 45 working days in the case of complaints relating to probation matters; or
  - ii. 30 working days of making the complaint in the case of complaints from individuals detained under immigration powers, unless the complaint is a serious misconduct complaint being investigated by the Professional Standards Unit, for which the timescale is 60 working days.
24. Complainants submitting their complaint to the Ombudsman must do so within three calendar months of receiving a substantive reply from the relevant authority.
25. The Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of the relevant authority and the Ombudsman considers that it is appropriate to do so.

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<sup>11</sup> As defined by the PPO policy on Dealing with Unreasonable Behaviour from Complainants.



26. Complaints submitted after these deadlines will not normally be considered. However, the Ombudsman has discretion to investigate those where it considers there to be good reason for the delay, or where it considers the issues raised to be of sufficient severity to warrant an exception to the usual timeframe.

#### Limitations on matters subject to investigation

27. The Ombudsman may not investigate complaints about:
- i. policy decisions taken by a Minister and the official advice to Ministers upon which such decisions are based;
  - ii. the merits of decisions taken by Ministers, except in cases which have been approved by Ministers for consideration;
  - iii. actions and decisions (including failures or refusals to act) in relation to matters which do not relate to the management, supervision, care and treatment of the individuals described in paragraph 13 or outside the responsibility of the authorities in remit. This exclusion covers complaints about conviction, sentence, immigration status, reasons for immigration detention or the length of such detention, and the decisions and recommendations of the judiciary, the police, the Crown Prosecution Service and the Parole Board and its Secretariat;
  - iv. matters that are currently or have previously been the subject of civil litigation or criminal proceedings; and
  - v. the clinical judgement of healthcare professionals.

#### **Fatal Incidents**

28. The Ombudsman's fatal incident investigations will support the UK's compliance with the requirements of Article 2 (read with Article 1) of the European Convention on Human

Rights which ensures the right to life, specifically the need for the independent investigation of all deaths in custody.

29. The Ombudsman will investigate the circumstances of:

- i. the deaths, from any cause, of prisoners and young people, including those in youth detention accommodation<sup>12</sup> and those in Secure Children's Homes on a welfare basis. This generally includes people temporarily absent from the establishment but still subject to detention (for example, under escort, at court or in hospital);
- ii. the deaths of people in the custody of PECS in HMCTS court premises or in PECS custody on escort<sup>13</sup>;
- iii. neonatal deaths and stillbirths that occur within the prison or under prison transfer (including on prison transfer to hospital);
- iv. neonatal deaths and stillbirths that occur in hospital following transfer from prison where the PPO considers it necessary to exercise their discretion to investigate;
- v. the deaths of children living in a Mother and Baby Unit within a prison;
- vi. the deaths of those who have been released from prison where the PPO considers it necessary to exercise their discretion to investigate;
- vii. the deaths of residents of approved premises (including voluntary residents) where the PPO considers this is necessary, including for Article 2 compliance; and
- viii. the deaths of detained individuals, including residents of immigration removal centres, pre-departure accommodation, short-term holding

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<sup>12</sup> This covers deaths in young offender institutions, secure training centres and secure children's homes.

<sup>13</sup> The PPO's remit does not cover deaths that occur in police premises.

facilities and those under managed immigration escort anywhere in the UK and internationally<sup>14</sup>.

30. The Ombudsman will have discretion to investigate, to the extent appropriate, other fatal incidents that raise issues about the care provided by the relevant authorities in respect of paragraph 5 (i) to (iii).
31. The Ombudsman will act on notification of a death from the relevant authority and will decide on the extent and output of the investigation, which will be determined by the circumstances of the death.
32. The aims of the Ombudsman's investigations are to:
  - establish the circumstances and events surrounding the death, in particular the management of the individual by the relevant authority or authorities within remit, but also including any relevant external factors;
  - examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence;
  - in conjunction with NHS England & Improvement,<sup>15</sup> HIW or the relevant authority in the cases of the deaths of individuals detained under immigration powers in Scotland or Northern Ireland,<sup>16</sup> where appropriate, examine relevant health issues and assess clinical care;
  - provide explanations and insight for the bereaved relatives; and
  - help fulfil the investigative obligation arising under Article 2 of the European Convention on Human Rights ('the right to life') by working together with coroners to ensure as far as possible that the full facts are brought to light

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<sup>14</sup> The PPO's remit only covers individuals detained under powers set out in the Immigration Acts.

<sup>15</sup> The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 confer responsibility on the NHS Commissioning Board (NHS England) for commissioning health services in prisons and custodial establishments.

<sup>16</sup> In the case of fatal incident in Immigration Removal Centres in Scotland or Northern Ireland.

and any relevant failing is exposed, any commendable action or practice is identified, and any lessons from the death are made clear<sup>17</sup>.

### Clinical issues

33. The Ombudsman's investigation includes an examination of the clinical issues relevant to each death. In the case of deaths in prisons, youth detention accommodation, Secure Children's Homes and immigration detention facilities, the Ombudsman will ask NHS England & Improvement or, in Wales, the HIW<sup>18</sup> to review the clinical care provided according to agreed protocols, including whether referrals to secondary healthcare were made appropriately. The Ombudsman may also ask NHS England & Improvement or the HIW to provide a clinical reviewer for other fatal incident investigations when the Ombudsman determines a clinical review is necessary. The clinical reviewer will be independent of the relevant authority's healthcare provision and will have unfettered access to healthcare information. Where appropriate, the reviewer will conduct joint interviews with the Ombudsman's investigator.

### **Relationship with other investigations**

34. The Ombudsman may defer all or part of a complaint or fatal incident investigation, when the police are conducting a criminal investigation in parallel. If at any time the Ombudsman forms the view that a criminal investigation should be undertaken, the Ombudsman will alert the police.<sup>19</sup>
35. In the case of the death of a young person in custody, the Local Safeguarding Children Board in England will conduct a serious case review. In Wales, the Safeguarding Children Board may undertake a child practice review. This will normally take place in parallel to the Ombudsman's investigation. The PPO will seek to work closely with the relevant Safeguarding Board to maximise the benefit of both exercises.

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<sup>17</sup> The relationship between the Ombudsman and the Coroners' Society is described in a separate Memorandum of Understanding.

<sup>18</sup> In the case of fatal incidents in Immigration Removal centres in Scotland or Northern Ireland, the equivalent relevant authority.

<sup>19</sup> The relationship between the Police and the Ombudsman is described in a Memorandum of Understanding.

36. If at any time during or following a complaint or fatal incident investigation the Ombudsman forms the view that a relevant authority in remit should undertake a disciplinary investigation, the Ombudsman will inform that authority.
37. If at any time findings emerge from the Ombudsman's investigation that the Ombudsman considers require immediate action by the relevant authority, the Ombudsman will alert the relevant authority to those findings at the earliest opportunity.

### **Output from the Ombudsman's investigations**

38. The Ombudsman has the discretion to choose the manner in which the findings of investigations are reported but all investigations will result in a written response.
39. The Ombudsman may share an advance draft of the written response, in whole or part, to the authority in remit where there is concern over the disclosure of security issues.
40. If a draft report contains criticism of named staff or recommends that disciplinary action be considered against an identified individual, the Ombudsman will normally disclose an advance copy of the draft, in whole or part, to the relevant authority in order that they, and the staff member(s) subject to criticism, have the opportunity to make representations (unless that requirement has been discharged by other means during the course of the investigation).
41. The Ombudsman may make recommendations to the authorities within remit, the relevant Secretary of State or to any other body or individual that the Ombudsman considers appropriate given their role, duties and powers.

### **Complaints Investigations**

42. Where a formal report is to be issued, the Ombudsman will send a draft to the head of the authority in remit and the complainant.
43. The recipient(s) will have an agreed period to draw attention to any factual inaccuracies. The relevant authority may also use this opportunity to respond to any recommendations.

44. The Ombudsman will consider any feedback on the draft report, but will exercise their own discretion on what, if any, changes to make, and issue a final report. Final reports will be issued to the complainant and the relevant authority. Additional circulation of final reports will be at the Ombudsman's discretion.
45. The authorities within remit or the relevant Secretary of State will provide the Ombudsman with a response to the final report within four weeks, indicating whether a recommendation is accepted or not (in which case reasons will be provided) and the steps to be taken by that authority within set timeframes to address the Ombudsman's recommendations, including evidence of implementation of the recommendations. The Ombudsman will advise the complainant of the response to the recommendations.

#### Fatal Incident Investigations

46. Where a fatal incident investigation report is to be issued, the Ombudsman will send a draft and any related documents to the head of the authority in remit, the bereaved family, the Coroner, and NHS England & Improvement or HIW.<sup>20</sup>
47. The recipients will have an agreed period to draw attention to any factual inaccuracies.
48. The authorities within remit or the relevant Secretary of State will provide the Ombudsman with a response, within the specified timeframe, of receiving the draft report, indicating whether a recommendation is accepted or not (in which case reasons will be provided) and the steps to be taken by that authority within set timeframes to address the Ombudsman's recommendations. Where that response has not been included in the Ombudsman's report, the Ombudsman may, after consulting the authority as to its suitability, append it to the report at any stage.
49. The Ombudsman will consider any feedback on the draft report, but will exercise their own discretion on what, if any, changes to make, and issue a final report.

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<sup>20</sup> In the case of fatal incidents in Immigration Removal centres in Scotland or Northern Ireland, the equivalent relevant authority.

50. Final reports will be issued to the relevant authority, the bereaved family, the Coroner, the Local Authority, and NHS England & Improvement or HIW<sup>21</sup>. Additional circulation of final reports will be at the Ombudsman's discretion.
51. In the case of a fatal incident investigation, and having considered any views of the recipients of the report and having complied with the legal obligations in relation to data protection and privacy, the Ombudsman will publish the final report on the Ombudsman's website. All references to individuals other than the deceased will be anonymised.<sup>22</sup>
52. The Ombudsman will consult the Coroner or relevant authority if the report is to be published before the inquest.

## **Reporting Arrangements**

53. The Ombudsman will produce and publish an annual report, which the Secretary of State for Justice will lay before Parliament. The content of the report will be at the Ombudsman's discretion but will normally include:
- anonymised examples of complaints investigated;
  - anonymised examples of fatal incidents investigated<sup>23</sup>;
  - recommendations made and responses received;
  - a summary of the workload of the office, including the number and types of complaints received, investigated and upheld and the number and types of death notifications received and investigated;
  - the office's success in meeting its performance targets;
  - a summary of the costs of the office.

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<sup>21</sup> In the case of fatal incidents in Immigration Removal centres in Scotland or Northern Ireland, the equivalent relevant authority.

<sup>22</sup> In reports of fatal incident investigations of people under the age of 18, the deceased person's details are also anonymised.

<sup>23</sup> Anonymised at the discretion of the Ombudsman.

54. The Ombudsman may publish additional reports on issues relating to their investigations, such as themed learning lessons publications. The Ombudsman may also publish other information as considered appropriate.
55. The Ombudsman's targets for conducting investigations, responding to complainants and publishing reports will be set out in an annual business plan.

## **Disclosure**

56. The Ombudsman is subject to the Data Protection Act 2018, the General Data Protection Regulation (GDPR) and the Freedom of Information Act 2000.
57. In accordance with the practice applying across government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so.
58. The Ombudsman, HM Inspectorate of Prisons and Probation, IMB and the Lay Observers will share relevant information, knowledge and expertise, especially in relation to conditions for prisoners, residents and detained individuals generally. The Ombudsman may also share information with other relevant specialist advisers and investigating bodies, such as the Independent Office for Police Conduct, to the extent necessary to fulfil the aims of an investigation. Protocols will be developed in order to describe the Ombudsman's relationship with relevant partners.