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Dear Tony

### PECS LAY OBSERVERS' ANNUAL REPORT

Thank you for meeting with me on 26 October to discuss your recent Annual Report. It was helpful to consider the important issues raised in your report, and in particular, the thirteen recommendations you made. I have now had chance to review these recommendations, and offer the responses below.

**Recommendation 1: Delegate the duty of care to an overarching authority to provide assurance and oversight of all contractual arrangements at all stages of the Detained Person's (DP's) journey**

There are no plans to re-structure or transfer responsibilities. I believe the law already imposes, on the Secretary of State, a duty of care to DPs, principally to ensure that the contractual arrangements in place and the systems and processes used, ensure a DP's safety. In addition, duties of care are owed to a DP by various other parties, including contractors, and the Secretary of State will not be legally liable for all cases of safety failings. Furthermore, there is effective co-operation, especially between police, HMCTS and HMPPS, which will alleviate the problems highlighted in the Annual Report. Arrangements can be reviewed and improvements considered as we work to retender this contract. We would like to review the current reporting process and how such data is used to inform and monitor contract obligations and service standards as part of the contract management service.

**Recommendation 2: Improve the accuracy of Person Escort Records (PERs)**

I agree that it is essential that PER risk information is always completed and communicated to all parties to ensure effective management of DP risk. Since September 2017, PECS have worked with the escort contractors to review the quality of completed PERs originating from prisons and police, focussing on missing or poorly communicated risk information. The findings of this project will be shared with HMPPS's Prisons and Security Group to improve the accurate completion of PERs through an evidence based feedback approach from PER users.

**Recommendation 3: Detained Persons should not be accepted if there is an omission in their PER, and training should be provided to staff on how to deal with someone with a non-compliant record**

The project referred to above should improve quality and reduce omissions. However, where there are clear and significant omissions, then I agree that the contractor should not agree to take a prisoner and should request that either the Police or Prison complete the PER before the movement takes place.

**Recommendation 4: Court and custody staff, legal representatives and LOs need access to Liaison and Diversion (L&D) teams (or other available professionals) to ensure their advice on a Detained Person's fitness to participate in court when in distress.**

Whilst L&D services already use early intervention for people with mental health needs and other vulnerabilities, this is not the same as providing advice on an individual's fitness to participate in proceedings. That would require a different level of clinical qualification, and is not within the scope of L&D services (which are commissioned by the NHS, not MoJ). The service, commissioned by NHS England, is currently available across 70% of England, with a full rollout expected by 2020/1. Wales has a separate but similar Criminal Justice Liaison and Diversion Service. However, this early intervention could include advising the court that a further fitness to plead investigation is required, thereby reducing delays in securing that assessment and ensuring that vulnerable offenders are identified early on and receive the help they need.

**Recommendation 5: Agree criteria for prioritising facilities management actions for custody suites**

HMCTS monitors the condition of custody facilities and a process is already in place to escalate matters so that necessary works remain prioritised to ensure facilities are safe and secure. Regular inspections are undertaken to ensure cleanliness, and progress of improvements is continually monitored with contractors. HMCTS recently launched a Building Champions Campaign which empowers a member of staff in each Court to identify and progress required improvements. This programme will help minimise waiting times on necessary maintenance works, including those in custody facilities.

**Recommendation 6: Review the process for assessing 'fitness for trial', taking into account the cognitive state of the detainee**

The process for assessing fitness for trial is owned and managed by the independent judiciary. Prior to transfer to court from prison, a healthcare provider will assess whether there are relevant medical risks preventing transfer. They may consider whether trial is appropriate, though this is not mandated. Where a defendant is clearly unwell, the defendant's solicitor is alerted. The solicitor would then alert the judiciary hearing the case. Should the judiciary consider an assessment of the defendant's fitness to be required, legislation sets out the process in both Crown and Magistrates' courts. There is also a clear process, set out in criminal procedural law, where the accused person is unable, due to a mental disorder, to understand the process, their charge and consequences of their plea, or communicate with their lawyer effectively. A judge will order a fitness assessment if they believe any of the above to be true.

**Recommendation 7: Review staff procedures to ensure compliance with legislation and agreements**

Contractor staff instructions and standard operating procedures (SOPs) are commercial documents owned by the contractor. These are agreed and regularly reviewed with HMPPS officials, to ensure they remain compliant with legislation, departmental policies, and contractual requirements.

**Recommendation 8: DPs need access to medical and mental health support (including medicine dispensation authorisation) i) within the court precinct (if more than 10 detainees per day), or; ii) with a minimum 15 minutes' response time (if fewer than 10)**

My officials are currently liaising with the Department of Health on this recommendation. We are exploring the possibility for Clinical Commissioning Groups (CCGs) to include courts in their commissioning of services to improve access to medical and mental health support for DPs and my officials will keep you updated as discussions progress.

**Recommendation 9: Seek assurance from local fire officers that fire drill and prevention procedures are adequate in courts**

Fire drill and prevention procedures are regularly tested every six months in every courthouse. Where fire risks are identified within custody areas, they are progressed as a priority.

**Recommendation 10: YJB escort contract is extended to cover journeys from police custody to court. YJB officers to remain in court to provide them care as part of contract**

The contract now sits under MoJ and the Youth Custody Service (YCS), and no longer the YJB. We are aware there is a current gap in the service. The team leading the work to re-tender the PECS contracts is currently considering whether the contract could be extended in consultation with Youth Justice Directorate and we will keep you updated as discussions progress.

**Recommendation 11: Children and young people's court appearances are prioritised**

Court listing is a judicial matter, and the Secretary of State cannot and should not influence the independent judiciary. However, listing guidance, from the Lord Chief Justice, already requires the judiciary to prioritise the listing of cases involving children and young persons, including defendants, victims and witnesses. In addition, HMCTS works with the judiciary to prioritise the listing of cases involving Children and Young People wherever possible to minimise the time spent in court custody.

**Recommendation 12: Establish protocol for Lay Observers to interview prisoners about escort experience on arrival at prison**

In principle, MoJ and PECS support this initiative but recognise that this will, in some prisons, be difficult to achieve without impacting on essential elements of their induction process. We will continue working with PECS and the Lay Observers to look at the feasibility of this, and hope to trial it in a small number of prisons.

**Recommendation 13: Establish guidelines for accessibility of lawyers for DPs while in court custody (no more than 2 hours after arrival in court or 2 hours before court appearance)**

The Legal Aid Agency (LAA) operates duty solicitor services in Magistrates' Courts across England & Wales to assist individuals without a legal representative, with no financial eligibility criteria. The duty solicitor remains at court all day until discharged and contacts defendants as soon as possible, but this must be balanced with their commitments to other court users requiring their assistance. The LAA monitors the operation of the duty solicitor schemes and works with local HMCTS leads to ensure appropriate provision. A two hour minimum wait cannot be guaranteed, but should additional duty solicitor coverage be required in a particular court, we can amend rota arrangements to increase duty provision. Such amendments are typically made following consultation with local HMCTS leads, but the LAA would be happy to meet with LOs and HMCTS to discuss concerns they have in specific courts.

In addition to these specific recommendations, I was persuaded at our meeting of the need to consider including quality indicators in the PECS contracts, and will ensure that sufficient attention focused on quality of care will be considered as part of the re-tendering process. We would like to include you in these discussions.

Thank you for inviting me to attend a Lay Observer visit. First-hand experience is invaluable for understanding both the experience of DPs and the methodology of the Lay Observers, and I would very much like to take up this opportunity. My Private Office will be in touch to set this up.

Please accept my warm thanks for your thorough and enlightening Annual Report, and for your organisation's hard work in helping us to better maintain the standard of quality and care for DPs.

Yours sincerely



**SAM GYIMAH MP**