



PROTOCOL

BETWEEN

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS



INDEPENDENT MONITORING BOARDS



and

PRISONS AND PROBATION OMBUDSMAN



Purpose of the Protocol

1. This protocol sets out a broad principle for how Her Majesty's Inspectorate of Prisons (HMI Prisons), Independent Monitoring Boards (IMBs) and the Prisons and Probation Ombudsman (PPO) will work together, in line with obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT), to protect any prisoner/detainee from sanctions or other prejudice arising from their, or someone acting on their behalf's, communication with either HMI Prisons, IMBs or the PPO and to provide reassurance to prisoners/detainees that they can freely communicate with HMI Prisons, IMBs and the PPO without fear of sanctions or other prejudice.
2. The term 'sanctions' covers a range of acts or omissions attributable to staff who carry out, permit or tolerate ill-treatment of a prisoner/detainee as a result of communication with HMI Prisons, IMBs or the PPO.¹ These may include punishments such as a removal of basic entitlements (for example, access to food, water, exercise or medical care), limits on communication with the outside world (for example, restricting visits), isolation, humiliation, physical, verbal or psychological abuse, or threats of any of the above.² These may also include administrative punishments, such as recategorisation, loss of employment, relocation within an establishment or transfer to another establishment.
3. This protocol covers allegations of sanctions occurring in prisons, young offender institutions, secure training centres and immigration detention facilities.
4. Prison and immigration detention staff who have similar concerns about sanctions as a result of contact with HMI Prisons, IMBs or the PPO are protected by the relevant agencies' 'reporting wrong doing', 'whistleblowing' and public interest disclosure policies to which they should be directed.
5. Nothing in this protocol will supersede the obligations of parties to ensure the safety and security of individuals and establishments as set out in their existing policies and procedures.
6. This protocol has been endorsed by HMI Prisons, the IMB National Council and the PPO.

The role of HMI Prisons

7. HMI Prisons is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952, as amended by section 57 of the Criminal Justice Act 1982. HMI Prisons has a statutory duty to report on the treatment of prisoners and detainees and the conditions in prisons, young offender institutions and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (jointly with Ofsted). Prison inspections are led by HMI Prisons but include colleagues from HMI Probation, Ofsted and the CQC, who inspect functions within their respective remits. HMI Prisons does not deal with individual complaints.

The role of IMBs

¹ Subcommittee on Prevention of Torture (2014) *Policy of the Subcommittee on Prevention of Torture on reprisals in relation to its visiting mandate: Advance unedited copy*

² European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, (2014) 24th *General Report of the CPT*

8. The role of IMBs is to monitor day-to-day life in their local prison or immigration removal centre and ensure that proper standards of care and decency are upheld. IMB members are independent and unpaid.
9. Members have unrestricted access to their local prison or immigration detention centre at any time. They can also talk to any prisoner or detainee they wish to, out of sight and hearing of a member of staff if necessary.
10. Board members also play an important role in dealing with problems inside the establishment. If a prisoner or detainee has an issue that he or she has been unable to resolve through the usual internal channels, he or she can put in a confidential request to see a member of the IMB.
11. The IMB National Council's primary purpose is to provide leadership, guidance, training and quality control to Boards and to help them fulfil their statutory and other duties. The National Council is required by the Secretary of State, through and on the advice of the Secretariat, to ensure Boards work in accordance with policies and good practices where it is considered necessary for standard procedures to be operated by all Boards. The Secretary of State also requires the National Council to protect the independence of Boards in making their proper enquiries and reporting fully the conclusions they reach.

The role of the PPO

12. The Prisons and Probation Ombudsman investigates complaints from prisoners, children in secure training centres, those on probation and those held in immigration detention. The Ombudsman also investigates all deaths that occur in prisons, secure training centres, secure children's homes, immigration detention and in probation approved premises.
13. The Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the bodies it investigates.

Obligations arising from Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and HMI Prisons' and IMBs' status as part UK National Preventive Mechanism

14. The UK is a party to the UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). At the national level, OPCAT requires each state party to maintain, designate or establish an independent national preventive mechanism (NPM) for the prevention of torture.³ At the international level, OPCAT established the Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) which also conducts visits to places of detention within the jurisdiction of state parties.
15. HMI Prisons and IMBs are two of the organisations which make up the UK NPM, the body which delivers the UK Government's obligations arising from its status as a party to OPCAT.
16. The UK NPM is made up of 20 different inspection and monitoring organisations, covering the whole of the UK. These organisations monitor various types of detention

³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Article 17

across all jurisdictions, including prisons, police and court custody, and immigration and mental health detention.

17. OPCAT requires state parties to “ensure that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the SPT or NPM any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.”⁴
18. The SPT has set out the obligation of state parties to ensure that there are no reprisals following either their or NPM visits in its guidance to NPMs and state parties.⁵
19. Inspections, monitoring and investigation evidence suggests that there have been rare instances when prisoners/detainees have been subject to sanctions for communicating, or trying to communicate, with HMI Prisons, IMBs or the PPO.

The Protocol

20. This protocol is intended to assist joint working between HMI Prisons, IMBs and the PPO, to protect prisoners/detainees from any sanctions which might take place as a result of communicating, or trying to communicate, with HMI Prisons, IMBs or the PPO.
21. The overlapping remits and duties of HMI Prisons, IMBs and the PPO place them in a unique position to work together to combine their experience and evidence base, in order to learn lessons and better prevent sanctions being applied to prisoners/detainees in the future.
22. Through their inspection, monitoring and investigating methodology and working practices and the conduct of their staff and volunteers, HMI Prisons, IMBs and PPO will make every effort to prevent sanctions from occurring as a result of their work, in accordance with the principle of ‘do not harm’⁶ and the guidance of the SPT.
23. HMI Prisons, IMBs and the PPO will have in place and oversee procedures which require their staff and volunteers to:
 - Make clear to all prisoners/detainees in their written and verbal communication that they may communicate freely with HMI Prisons, IMBs or the PPO and should not be subjected to sanctions for doing so;
 - Make clear to all prisoners/detainees in their written and verbal communication that if they have any concerns about sanctions they may raise these at any time with HMI Prisons, IMBs or the PPO;
 - On receiving information of an alleged sanction as a result of communication with HMI Prisons, IMBs or the PPO, consult with the prisoner/detainee concerned with the aim of pursuing the matter on the basis of consent;
 - Establish the nature of the allegation and whether it qualifies as a sanction;
 - Take the following steps to address the matter:

⁴ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Articles 15 and 21.1

⁵ Subcommittee on Prevention of Torture (2014) *Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Available at: http://www.apt.ch/content/files/UN/SPT_2013%20Annual%20Report.pdf; Subcommittee on the Prevention of Torture (2010) *Guidelines on national preventive mechanisms* CAT/OP/12/5

⁶ HM Inspectorate of Prisons (2014) *Guide for inspectors*, available at: <http://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/02/2.-GUIDE-FOR-INSPECTORS-December-2014-01.pdf>

- Refer the allegation to the appropriate senior manager at the establishment;
- If the nature of the allegation makes this problematic, if the allegations are exceptional or very serious, or if the matter has been referred to an appropriate senior manager but their response is unsatisfactory, ensure that the matter is properly escalated to senior levels within the body or establishment being inspected or monitored;
- Whilst it is preferable that the matter is pursued on the basis of consent, in exceptional circumstances (where it appears that there may be an immediate serious risk to the prisoner/detainee or to other individuals) consider referring the matter to the appropriate senior manager even if the prisoner/detainee does not give consent;
- Having referred the allegation, make arrangements for the relevant body or establishment to report back on their investigation into the matter;
- Inform the internal organisational lead on sanctions of the allegation and update them on further developments as the matter is addressed;
- Inform the two other organisations in this protocol of the allegation and update them on further developments as the matter is addressed; and
- Ensure all staff and volunteers are aware of the provisions of this protocol and are implementing it in their practice.

24. HMI Prisons will also:

- Maintain a log of all incidences of alleged sanctions involving HMI Prisons, IMBs or the PPO to allow for follow-up and analysis; and
- Share the log of incidences at regular intervals with organisational leads at the IMB National Council and the PPO.

25. IMBs will also:

- If made aware of alleged sanctions through their monitoring, or informed of alleged sanctions by HMI Prisons or the PPO, closely monitor the treatment of and conditions for the prisoner/detainee concerned, and the general treatment of and conditions for the prisoners/detainees in the establishment with this in mind, for as long as the potential risk presents.

26. The PPO will also:

- Consider whether to conduct an investigation into an allegation that is either reported directly or referred by HMI Prisons or IMBs.

27. Organisation leads will be:

- HMI Prisons: Deputy Chief Inspector of Prisons, supported by Policy Officer
- IMB National Council: Chair
- PPO: Deputy Ombudsman

Organisation leads will reconvene on a six monthly basis to discuss potential findings which may emerge from this piece of work.

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ENDS