



**PROTOCOL**

**BETWEEN**

**HER MAJESTY'S CHIEF INSPECTOR OF PRISONS**



**AND**

**HER MAJESTY'S CHIEF INSPECTOR OF CONSTABULARY AND  
FIRE & RESCUE SERVICES**



## Purpose of the Protocol

1. This protocol sets out a broad principle for how Her Majesty's Inspectorate of Prisons (HMI Prisons) and Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) will work together, in line with their obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT), to:
  - prevent any detainee held in police custody from being subjected to sanctions or other prejudice arising from their, or someone acting on their behalf's, communication with either party;
  - protect any detainee held in police custody should they be subjected to sanctions as a result of communication with HMI Prisons or HMICFRS; and
  - provide reassurance to detainees that they can freely communicate with HMI Prisons and HMICFRS without fear of sanctions or other prejudice.
2. The term 'sanctions' covers a range of acts or omissions attributable to police officials who carry out, permit or tolerate ill-treatment of a detainee as a result of communication with HMI Prisons or HMICFRS.<sup>1</sup> This may include punishments such as a removal of basic entitlements (for example, food, water, exercise or medical care), limits on communication with the outside world, isolation, humiliation, physical, verbal or psychological abuse, or threats of any of the above.<sup>2</sup>
3. Police staff who have similar concerns of sanctions as a result of contact with HMI Prisons or HMICFRS are protected by the relevant agencies' 'reporting wrong doing', 'whistleblowing' and public interest disclosure policies to which they should be directed.
4. This protocol has been endorsed by HMI Prisons and HMICFRS.

## The work of HMI Prisons

5. HMI Prisons is an independent inspectorate whose duties are primarily set out in Section 5A of the Prison Act 1952. Section 28 of the Police and Justice Act 2006 further states that the Chief Inspector of Prisons must

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<sup>1</sup> 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*

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

cooperate and consult with other criminal justice inspectorates, including HMICFRS. HMI Prisons inspects police custody in England and Wales and reports on the conditions for and the treatment of those detained there, in conjunction with HMICFRS. HMI Prisons has a statutory duty to inspect prisons, young offender institutions and immigration detention facilities, and it also inspects court and customs custody (with HMICFRS) and secure training centres (with Ofsted). HMI Prisons does not deal with or investigate individual complaints.

### The work of HMICFRS

6. HMICFRS is an independent inspectorate. It inspects and monitors the 43 territorial police forces and all fire and rescue services in England and Wales. HMICFRS has statutory powers to inspect and report on the efficiency and effectiveness of these police forces as set out in Section 54 (2) of the Police Act 1996. On occasions, HMICFRS is commissioned by the Home Secretary and local policing bodies to inspect any, or all, police forces on a particular subject. Her Majesty's Inspectors of Constabulary and Fire & Rescue Services are appointed by the Crown and are not employed by the police service or government. Her Majesty's Chief Inspector of Constabulary and Fire & Rescue Services reports to Parliament on the efficiency and effectiveness of police forces in England and Wales. HMICFRS does not deal with or investigate individual complaints.

### Joint police custody inspections by HMI Prisons and HMICFRS

7. Since 2008, HMI Prisons and HMICFRS have jointly inspected police custody conditions across England and Wales. To facilitate this approach, HM Chief Inspector of Constabulary and Fire & Rescue Services has formally delegated powers to HM Chief Inspector of Prisons, giving all members of the inspection team the powers of HM Inspectors of Constabulary and Fire & Rescue Services. The team also includes healthcare inspectors, who inspect the provision of healthcare in custody suites, and researchers.

### Obligations arising from the UN Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and HMI Prisons' and HMIC's status as members of the UK National Preventive Mechanism

8. 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 a national level, OPCAT requires each state party to maintain, designate or establish an independent 'national preventive

mechanism' (NPM) for the prevention of torture.<sup>3</sup> At an 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.

9. HMI Prisons and HMICFRS are two of the bodies in the UK NPM, which delivers the UK Government's obligations arising from its status as a party to OPCAT.
10. The UK NPM is made up of 21 inspection and monitoring bodies. These bodies monitor various types of detention across all jurisdictions, including prisons, police and court custody, and immigration and mental health detention.
11. 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."<sup>4</sup>
12. 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 states parties.<sup>5</sup>

### The Protocol

13. This protocol is intended to assist joint working between HMI Prisons and HMIC with a clear focus on ensuring that detainees held in police custody are protected from any sanctions which might take place as a result of communicating, or trying to communicate, with HMI Prisons or HMICFRS.

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

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

<sup>5</sup> 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](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 <sup>6</sup> HM Inspectorate of Prisons (2014) *Inspection Framework*, p.7, available at:

<http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/1.-INSPECTION-FRAMEWORK-April-2014-02.pdf>

14. The protocol reflects the inspectorates' commitment to placing the experience of the detainee at the heart of police custody inspections.<sup>6</sup>
15. Through their inspection methodology and the conduct of their staff, HMI Prisons and HMICFRS will make every effort to prevent sanctions from occurring as a result of their work, in accordance with the guidance of the SPT and the 'do not harm' principle.<sup>6</sup> The specific nature of police custody compared to other forms of detention, where officers know less about their detainees, turnover is high, and detainees are held in close quarters,<sup>7</sup> warrants that inspectors pay close attention to their working methods in order to prevent sanctions and address them appropriately when they do occur.
16. Nothing in this protocol will supersede the obligations of parties to ensure the safety and security of individuals as set out in their existing policies and procedures.
17. HMI Prisons and HMICFRS will work together in the context of joint police custody inspections to:
- Have in place and oversee procedures that require the inspection teams to:
    - Make clear to all detainees in all communication during a police custody inspection that they may communicate freely with inspectors and should not be subject to sanctions for doing so, and that they may raise any concerns they have about this at any time, during or after the inspection, with HMI Prisons/HMICFRS, or make a complaint through the police complaints process, or the Independent Police Complaints Commission (IPCC);
    - If allegations of sanctions are made to HMI Prisons/HMICFRS during or following an inspection, consult with the detainee with the aim of pursuing the matter on the basis of the detainee's consent;
    - Refer the matter to a chief officer of the area police force;
    - In exceptional circumstances, where it appears that there may be an immediate serious risk to the detainee concerned or other individuals, consider referring the matter a chief officer of the area police force even if the detainee does not give consent;

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

<sup>7</sup> Association for the Prevention of Torture (2013) *Monitoring Police Custody: A practical guide*

- Having informed a chief officer of the allegation, make arrangements for them to report back on their investigation into the matter;
  - Consider whether the allegation also warrants immediate referral to the IPCC and, if so, make that referral;
  - Inform the detainee making the allegation that should they wish to make a complaint themselves they can pursue this through the police complaints process or the IPCC;
  - Consider the implications of the allegation for other detainees being held who may face similar risks. In doing so, if the detainee making the allegation has not given consent for the information to be shared, ensure that their confidentiality is maintained;
  - Where possible, inform the local Independent Custody Visitors scheme manager of the situation and keep them updated of any developments (if necessary, relevant contact details can be obtained via [www.icva.org.uk](http://www.icva.org.uk)); and
  - Report any incidents to the nominated support for the organisational lead on sanctions and keep them updated on any further developments.
- Consider formally referring the matter to the IPCC via a senior leader at HMI Prisons/HMICFRS should the investigation by the area police force be unsatisfactory;
  - Log all allegations of sanctions to allow for follow-up and analysis;
  - Keep each other informed of all allegations of sanctions and updated on any further developments;
  - Ensure all staff at HMI Prisons/HMICFRS are aware of the provisions of this protocol.
18. Where any contact is made with the IPCC, reference should be made to the existing Memorandum of Understanding between HMI Prisons, HMICFRS and the IPCC.
19. Organisational leads will be:
- HMI Prisons: Martin Lomas, Deputy Chief Inspector of Prisons, supported by Maneer Afsar (P team leader)
  - HMICFRS: Katherine Riley, Portfolio Director, Criminal Justice Joint Inspections and Protecting Vulnerable People, supported by Norma Collicott (Custody Lead)
20. Programme Board meetings between HMI Prisons and HMICFRS will include a standing agenda item to discuss any findings which emerge from the implementation of this protocol.

**ENDS**

