



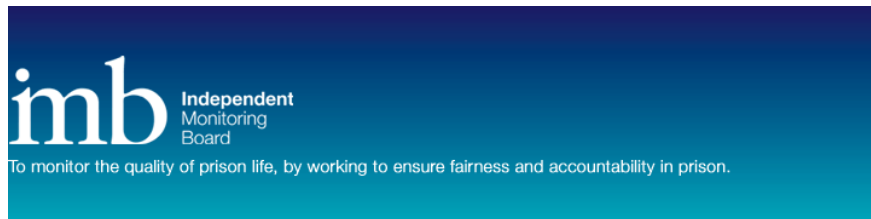
## **PROTOCOL**

## **BETWEEN**

## **CRIMINAL JUSTICE INSPECTION NI**



## **INDEPENDENT MONITORING BOARD**



**and**

## **THE PRISONER OMBUDSMAN FOR NORTHERN IRELAND**



## Purpose of the Protocol

1. This protocol sets a broad principle for how Criminal Justice Inspection (CJI), the Independent Monitoring Boards (IMBs) and the Prisoner Ombudsman (PO) will work together to protect any prisoner/detainee from sanctions or other prejudice arising from their, or someone acting on their behalf's, communication with either party and to provide reassurance that they can freely communicate with CJI, the IMBs and the PO without fear of sanctions or other prejudice.
2. Staff who have similar concerns are protected by the relevant agencies 'reporting wrong doing' and public interest disclosure policies to which they should be directed.
3. This protocol has been endorsed by CJI, the IMB and the PO.

## The role of CJI

4. CJI is an independent statutory inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland apart from the judiciary. It also inspects a number of other agencies and organisations that link into the criminal justice system. CJI's powers are set out under the Justice (Northern Ireland) Act 2002 and s.46 of the Justice and Security (Northern Ireland) Act 2007. In relation to places of detention CJI has a statutory duty to report on the treatment of prisoners and detainees and on the condition of Northern Ireland prisons, the young offender institution (YOI) and the Juvenile Justice Centre. CJI also inspects court custody and police custody. Prison inspections are led by CJI but include colleagues from HMI Prisons, the Education and Training Inspectorate (ETI) and the Regulation and Quality Improvement Authority (RQIA) who inspect functions within their respective remits. CJI does not deal with individual complaints.

## The role of the IMBs

5. The role of the IMB is to monitor day-to-day life in their local prison and ensure that proper standards of care and decency. IMB members are independent and unpaid.
6. Members have unrestricted access to their local prison 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.
7. 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.
8. The IMBs Executive 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 Executive Council is required by Minister of Justice, 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 Minister of Justice also requires the Executive Council to protect the independence of boards in making their proper enquiries and reporting fully the conclusions they reach.

## The role of the PO

9. The Prisoner Ombudsman investigates complaints from prisoners and their visitors. The Ombudsman also investigates all deaths that occur in prison, certain deaths that occur shortly after release and, where invited by the Prison Service, serious self-harm incidents.
10. The Ombudsman is appointed by the Minister of Justice and is completely independent of the Prison Service and South Eastern Health and Social Care Trust.

## Obligations arising from Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and CJI's and IMB status as part of the UK National Preventative Mechanism (NPM)

11. 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 local level OPCAT requires each state party to maintain, designate or establish one or several independent national preventative mechanisms (known as the NPM) for the prevention of torture<sup>1</sup>.
12. CJI and the IMB are two of the organisations that deliver the UK government's obligations arising from its status as a party to OPCAT. 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. SPT visits to the UK are likely to be rare events.
13. The UK ratified OPCAT in December 2003 and designated its NPM on 31 March 2009. The UK NPM is made up of 18 different inspection/monitoring bodies which cover the whole of the UK. The bodies monitor various types of detention including prisons, police, court and customs custody, children in secure accommodation, immigration, mental health and military detention, across all jurisdictions.
14. 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>2</sup>."
15. The SPT has made references to the obligation of State parties to ensure that there are no reprisals following either their or NPM visits; this has been in their Annual Reports, country visit reports and specific mention is also made in revised NPM guidelines.
16. Inspection evidence across the UK suggests that there have been rare instances when prisoners/detainees have been subject to informal, unauthorised sanctions for engaging with inspection teams or to prevent such engagement. This is a particular concern for those prisoners who lack the competence to advocate on their own behalf. These concerns are likely to be exacerbated for prisoners/detainees who have been or fear being subject to sanctions arising from their contact with CJI, IMBs, PO or the SPT.

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<sup>1</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Article 17

<sup>2</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Articles 15 and 21.1

## The Protocol

17. This protocol is intended to assist joint working between the three organisations with a clear focus on ensuring that prisoners/detainees are protected from any victimisation/sanctions which might take place for communicating or trying to communicate with the IMB, CJI or the PO.
18. 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.
19. CJI will:
  - Make clear to all prisoners/detainees in its written and verbal communication prior to, during and after an inspection that they may communicate freely with inspectors and may not be subject to sanctions for doing so and that they may raise any concerns about this, at any time, with the Inspectorate, IMB or PO;
  - If allegations are made to CJI that such sanctions have been applied and, if such allegations are not evidently spurious or trivial, obtain the permission of the prisoner/detainee to inform both the IMB and the PO;
  - If such permission is obtained, inform relevant members of both the IMB Executive Council through the IMB Secretariat and either the Prisoner Ombudsman or his Deputy;
  - In exceptional circumstances, where it appears that there may be a risk to the prisoner concerned, other individuals or the security of an establishment, pass the allegation directly to the Director General of the Prison Service;
  - Where the issue raised is a general concern that sanctions might be applied, rather than a specific allegation, obtain permission from the prisoner/detainee to pass the concern to the local IMB and the PO;
  - Treat allegations concerning sanctions relating to a prisoner's/detainee's contact with the IMB or PO in the same way as allegations relating to an inspection;
  - Log all incidences where a sanction is reported to have taken place to allow for follow-up and analysis; and
  - Ensure all members of CJI are aware of the provisions of this protocol.
20. The IMB Executive Council will pass any concern about the use of sanctions it receives from CJI to the relevant local IMB and have in place and oversee national procedures that require individual IMBs to:
  - Make clear to all prisoners/detainees in its written and verbal communication that they may communicate freely with the IMB, the Inspectorate and the PO and may not be subject to sanctions for doing so and that they may raise any concerns about this, at any time, with the IMB;
  - If allegations are made directly to the IMB that such sanctions have been applied or they are informed about them by the establishment, speak confidentially to the prisoner/detainee concerned and, if such allegations are not evidently spurious or trivial, obtain the permission of the prisoner/detainee to inform CJI and the PO;
  - If allegations are passed to them by CJI via the IMB Executive Council, obtain further information as necessary from CJI, speak confidentially to the prisoner/detainee concerned, and if such allegations are not evidently spurious or trivial, obtain the permission of the prisoner/detainee to inform the PO and to update CJI;
  - When such permission is obtained from the prisoner/detainee, refer the complaint to the PO;

- Where such a complaint was initially made to CJI, keep CJI informed of any action they take;
- In exceptional circumstances, where it appears that there may be a risk to the prisoner concerned, other individuals or the security of an establishment, pass the allegation directly to the Director General of the Prison Service and inform CJI;
- Where the issue raised is a general concern that sanctions might be applied, rather than a specific allegation, obtain permission from the prisoners/detainee to inform the CJI and the PO of the concern;
- Closely monitor the treatment and conditions of any prisoner/detainee who has made allegations or raised concerns about sanctions, either with the IMB or CJI and report any further concerns to CJI and PO;
- Ensure CJI is copied into all correspondence to ensure the incident is logged; and
- Ensure all members of the IMB are aware of the provisions of this protocol.

21. The PO can only act upon receipt of an eligible complaint, but will:

- Explore any notifications by an IMB member or CJI suggesting that an allegation of sanctions has been applied;
- Depending on the seriousness of the allegation, ensure the prisoner knows how to complain; and/or refer the matter elsewhere e.g. to the prisoner's solicitor or NIPS Headquarters to be addressed;
- Keep both CJI and the IMB informed of their actions;
- Inform CJI and IMB if the PO receives complaints directly from prisoners about the application of sanctions; and
- Ensure all members of the PO are aware of the provisions of this protocol.

#### Information and data sharing

22. It will be the responsibility of the signatories to this agreement, when Personal Data is being shared, to ensure that there is full compliance with all relevant legislation including the Data Protection Act 1998 and all internal NICS (DOJ) Data Sharing Protocols. Information must only be transmitted / shared in line with the appropriate policy applicable for the protective marking on the document. The relevant information will be retained by the party to whom it is disclosed until it is no longer required for the purpose for which it was shared and must be kept no longer than necessary.

23. Information discovered to be inaccurate or inadequate for the specified purpose will be brought to the notice of the originator of the data. The originator will be responsible for the correcting the information. The data must only be used for the purpose of factual accuracy. It cannot be used or disclosed for any other reason.

#### Information Assurance

24. CJI, the IMB and PO endorse the Information Assurance requirement to promote an environment in which the Confidentiality, Integrity and Availability of systems and processes are protected. Each of the parties to this agreement is responsible for ensuring that they have appropriate security arrangements in place. Information to be shared must be protectively marked under the HMG Protective Marking Scheme. CJI, the IMB and PO will comply with updated guidance on information sharing.

25. Organisation leads will be:

- CJI: Rachel Lindsay (CJI NPM Lead)
  - IMB: Dennis Constable (Chair IMB Executive Council)
  - PO: Tom McGonigle (Prisoner Ombudsman)
- Organisation leads will reconvene on an annual basis to discuss potential findings which may emerge from this piece of work.

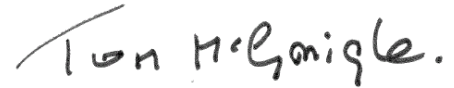
Signed:



**Brendan McGuigan**  
**Chief Inspector of Criminal**  
**Justice in Northern Ireland**



**Dennis Constable**  
**Chair**  
**IMB Executive Council**



**Tom McGonigle**  
**Prisoner Ombudsman NI**

Last reviewed 06/08/2015

ENDS