

# Lay Observers

Independent monitors  
of court custody & escort



## **ANNUAL REPORT** **TO THE SECRETARY OF STATE FOR JUSTICE** **2016-2017**



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## INTRODUCTION

Lay Observers are independent people appointed by the Secretary of State under S.81(1)(b) of the Criminal Justice Act 1991. They inspect the conditions in which Detained Persons are transported or held by escort and custody contractors in England and Wales.

They visit:

- courts to confirm that Detained Persons are being treated decently, monitor conditions in custody areas, and assess the vehicles used by the contractors;
- police stations to observe the handover of Detained Persons from the police to the contractors;
- prisons to observe the handover of Detained Persons from the prison to the contractors and vice versa;
- prisons to observe Detained Persons escorted there from other prisons using the Inter Prison Transfer [IPT] contract and inspect the vehicles used by the contractor.

Those held within court custody suites and transported by escort services are referred to by Lay Observers as 'Detained Persons'.

For more information on the Lay Observer organisation, please see Appendix A.

The Chairman of the Lay Observers reports annually to the Secretary of State for Justice. This is my second annual report as Chairman of the Lay Observer National Council, covering the period from April 2016 to March 2017.

Over the past year the Lay Observer National Council reviewed, with our key stakeholders, our expected outcomes for Detained Persons in court custody or under escort. As a result, a statement of expectations was agreed and adopted by the National Council of Lay Observers in December 2016. These expectations form our monitoring framework.

This report outlines our findings against our expectations and makes recommendations to address issues requiring action by the various bodies with a duty of care in relation to Detained Persons.

Towards the end of the period covered by this report, the National Council developed and adopted standards for assessment to ensure consistency in monitoring against the expectations. These are outlined below and will be reported on (as updated in May 2017) in our annual report for 2017/18.

*Tony FitzSimons*

Chairman, Lay Observers

## **EXECUTIVE SUMMARY**

### **Key findings for the Secretary of State**

1. The Ministry of Justice lacks a unified and coherent approach to assure the exercise of its duty of care to persons under escort and in court custody.
2. The system of disconnected contracts and responsibilities for the different elements of services for escort and court custody, whilst well intended, is bound to fail with the risk of serious consequences to the welfare and access to justice of the Detained Persons.
3. Access to healthcare, both physical and mental health, for individuals in custody at courts is often inadequate and can impair their capacity to participate effectively in court proceedings.
4. The records sent by police and prisons when handing over custodies to the contractors are frequently inaccurate and rarely give sufficient information to allow proper risk assessments of the security and welfare of the Detained Person to be made.
5. The condition and cleanliness of many custody suites continues to fall below acceptable standards.
6. The custody arrangements for children and young people facing trial are unsatisfactory.
7. Those individuals who are transported from court custody to prison often have to wait far too long to be transferred.
8. The long periods spent at court are unsatisfactory, especially in the light of item 5 above.
9. Training for staff, especially training for the management of custody suites, lacks rigour and is too often haphazard. This has a negative impact on the welfare of those in custody.
10. Fire precautions in custody suites often fall well below acceptable standards.

### **Key recommendations for the Secretary of State**

All recommendations are addressed to the Secretary of State for Justice as the office holder with the overall responsibility for the safe operation of escort and court custody services. Although he may choose to discharge this duty and, indeed, these recommendations through a complex network of agencies and contractors, the following proposals lie ultimately with him.

1. The Secretary of State for Justice should have an explicit duty of care to all Detained Persons which is delegated to an overarching authority to provide assurance and oversight of all contractual arrangements.
2. Concerted efforts should be made to improve the accuracy of Person Escort Records (PERs) at all stages of the Detained Person's journey.

3. Detained Persons should not be accepted where there is any omission on their Person Escort Record and written instructions and training should be provided to staff on the action to take when presented with a potential Detained Person with a non-compliant record.
4. Court and custody staff, legal representatives and Lay Observers should be able to access Liaison and Diversion teams (or other available professionals) to ensure their advice on a Detained Person's fitness to participate effectively in court proceedings is provided to the court when a Detained Person is in distress.
5. The criteria for prioritising facilities management actions in the court custody suite and for urgently addressing the failings outlined within this report should be agreed.
6. The process for assessing 'fitness for trial' should be reviewed and more detailed criteria and guidance, which takes account the cognitive state of Detained Persons whilst in custody, should be developed for medical professionals, lawyers and court staff.
7. All staff instructions and operating procedures should be reviewed to ensure compliance with relevant legislation and operational agreements.
8. Detained Persons should have access to medical and mental health support with medication dispensing authorisation located:- within the court precinct for custodies with more than an average of ten Detained Persons per day - within fifteen minutes guaranteed response time for custodies with fewer than ten Detained Persons per day.
9. Assurances should be sought from each local fire officer that fire drill and prevention procedures are adequate in every court.
10. The Youth Justice Board contract for the escort of children and young people (CYP) to be extended to cover journeys from police custody to court. All youth justice escort officers should remain in court to provide specialist care for the children and young people as part of their contract.
11. Children and young people's appearances in court should be prioritised.
12. A Protocol should be established for Lay Observers to interview prisoners about their escort experience following their arrival at the prison.

Additionally,

13. The Legal Aid Agency, the Law Society and Bar Council should establish standards and guidelines for the accessibility of lawyers to Detained Persons whilst in court custody awaiting their appearance. This should include a wait of no longer than two hours after arrival in court or two hours before the scheduled court appearance.

## LAY OBSERVER EXPECTATIONS FOR DETAINED PERSONS

For all those in escort and court custody we expect:

- **Duty of care is properly exercised**  
Detained Persons have access to health and personal care suitable to their needs during their time in transport and court custody.
- **Held in suitable accommodation**  
Detained Persons are held in a court custody environment that is clean, safe and fit for purpose.
- **Access to justice**  
Detained Persons are informed of their rights and are capable of accessing suitable legal advice.
- **Transported promptly in suitable vehicles**  
Detained Persons are transported to and from court correctly and with minimal delay. Inter-prison transfers are efficiently planned and completed with all movements using appropriate vehicles and equipment.
- **Treated with respect as an individual**  
All Detained Persons are treated with dignity and respect, free from discrimination and victimisation.
- **Risks to wellbeing are minimised**  
Transport and custody are managed in a manner that ensures the wellbeing of Detained Persons.



## **ASSESSMENT STANDARDS**

Assessment standards have been developed and adopted for each expectation to provide a basis for consistent, objective and scalable assessments by Lay Observers. In most cases the judgement as to whether a standard has been met can be observed and stated as a simple yes or no. If an area of a Detained Person's care is observed to be below the standard, the Lay Observer makes a judgement as to the severity of the impact on the Detained Person's welfare and access to justice, in their particular circumstances, on a common scale of 1-3.

**Level 1** – requires attention, but not immediately.

**Level 2** – a serious matter that requires urgent attention.

**Level 3** – an unacceptable incident that should be remedied immediately.

Standards in relation to cell temperature or graffiti are assessed against a set of descriptors for each level. As the impact on the Detained Person's welfare and access to justice can differ depending on the circumstances in a particular court, the Lay Observer provides a description of the observation and rationale for the rating against the assessment standards.

Please see Appendix B for more detail on of each of these standards, which have been updated since the reporting period.

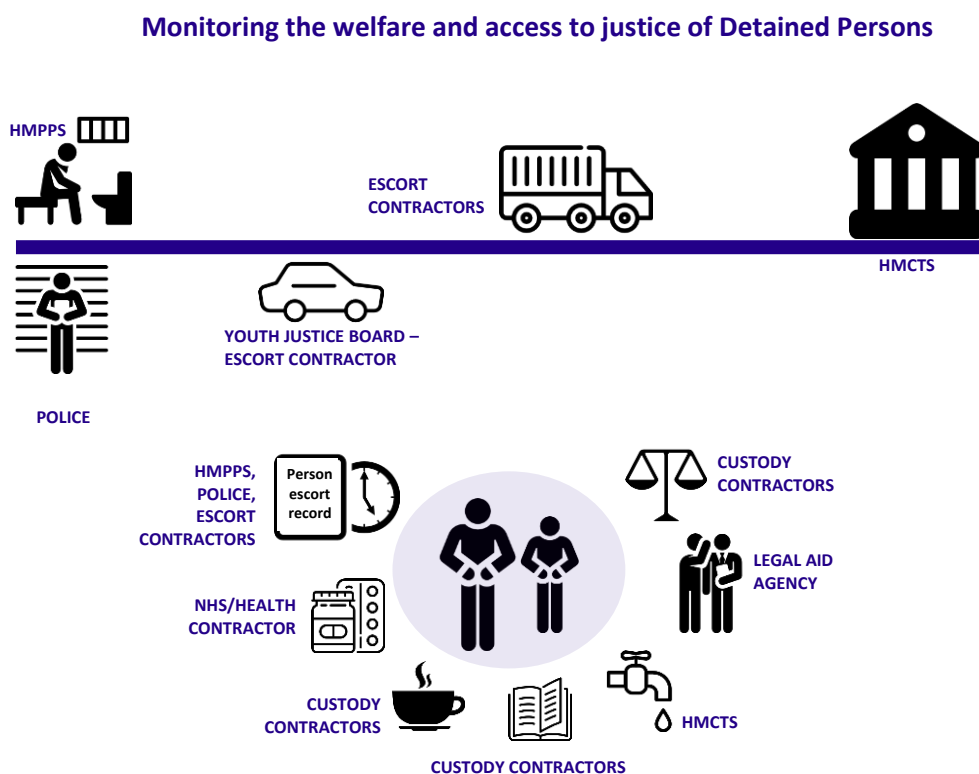


# DUTY OF CARE

## 1. Responsibility for the overall duty of care for Detained Persons

The Secretary of State for Justice has a duty of care in relation to the welfare and access to justice of the Detained Persons involved in the 50,000 movements of people under escort and court custody each month. The Lay Observer Expectations for Detained Persons outlined above provide a framework for how Lay Observers expect this duty to be fulfilled.

Lay Observers are concerned that the Ministry of Justice lacks a unified approach to assure the proper exercise of the duty of care. Elements of the Secretary of State's duty of care are provided by a number of different bodies, in a fragmented way, without any contractual or service level agreement between them as portrayed by the diagram below.



Without any overarching body exercising the duty of care, nor any form of protocol bringing the various elements of a Detained Person's welfare together to form a unified whole, the Secretary of State lacks proper assurance that the risks to the welfare and access to justice of people under escort and court custody are managed and mitigated. In the 2015 case of Mr Sivaraj Tharmalingham's death in court custody, the coroner commented that the lack of coordination between organisations and the failures to meet appropriate standards by those responsible for the care of Mr Tharmalingham under escort and custody had contributed materially to his death. The risks to the welfare and access to justice of Detained

Persons are real and, for the Secretary of State, are multiplied by the 1,500 movements that take place each day.

The root cause of the majority of the issues of concern identified in Lay Observer visit reports, and included in this annual report, can be traced back to the lack of co-ordination between the departments and contractors identified above.

For example, HMCTS provide the court custodial facilities for the escort contractors (GeoAmey in the North and Serco in the South) to occupy. Although there are basic design standards applied to new court custody suites, these guidelines are not applied to older custody suites. In February 2017, the responsibility for the management of the HMCTS estate transferred from MoJ Estates Department to the HMCTS Property Directorate, encompassing all aspects of estates and facilities management (including maintenance, health and safety and security). These responsibilities are delivered through two additional contractors (G4S in the North and Mitie in the South). The cleaning of the cells and custody suite areas is the responsibility of Mitie and G4S after business hours but during the working day it is the responsibility GeoAmey and Serco. Issues relating to the management of the contracts result in inadequate cleaning and frequent and protracted delays in repairs to facilities that affect the welfare of Detained Persons and a lack of contingent action planning to mitigate the effect of delays.

This system, whilst well intentioned, is bound to fail with the risk of serious consequences to the welfare and access to justice of Detained Persons.

### ***1.1 Recommendations in relation to the overall duty of care for Detained Persons***

- The Secretary of State for Justice should have an explicit duty of care to all Detained Persons which should be delegated to an overarching authority to provide assurance and oversight of all contractual arrangements.
- Appropriate written protocols, service level agreements or contracts, should be developed and agreed between the parties currently delivering elements of a Detained Person's care to provide an assurance framework.

## ASSESSMENT AGAINST EXPECTATIONS

Detailed below are our assessments against the agreed expectations for Detained Persons for the year from April 2016 to March 2017.

### 2. Duty of care is properly exercised

**Detained Persons have access to health and personal care suitable to their needs during their time in transport and court custody.**

#### 2.1 Inadequacies of the Person Escort Record (PER)

Most people who are escorted to court custody are transferred to a Prisoner Escort and Custody Services contractor from either a prison or police custody, where it is most likely that they will have stayed overnight. We understand that they will have received a healthcare visit to review their fitness for trial if coming from police custody or their fitness to travel if coming from prison. However, the Person Escort Record does not require a signed declaration to that effect by prison or police custody officers respectively. In some cases, where a Detained Person is coming from police custody, the Person Escort Record is accompanied by a document signed by a healthcare professional declaring that the person is fit for trial and whether it should be subject to review. In all cases where a Detained Person is moved - including inter-prison transfers - a Person Escort Record (PER) should be completed. This important document is intended to record all the information that escort and custody officers need to make assessments and minimise risk to the security and wellbeing of a Detained Person and their belongings. The PER includes information on an individual's medical needs, medication, healthcare contacts, any self-harm risk, accompanying property, and details of the offence they are accused or convicted of. This provides staff with the information they need to provide adequately for their welfare and assess their ability to participate effectively in court proceedings. In the case of Detained Persons arriving at court after being on bail, there will be no knowledge of any risks in relation to the individual, particularly relating to medical treatment of mental health, unless they declare issues to custody staff on arrival.

In our judgement, the guidance provided for completion of the PER does not ensure that the information requested will meet the purpose intended. The section on risks merely asks for information, without guidance on the level of detail, the date nor the severity of the incident.

The sections on medical and mental health care do not require information on the nature of the condition, when treatment/medication was provided, when treatment/medication should be next administered, what medication is required and whether/where it is being transported. The mental health section, in particular, should include information on access by/to a Liaison & Diversion team (or similar) in police or prison custody. It should also detail any court custody supervision or support needed to effectively participate in court proceedings.

Police and prison staff may believe that they have completed the PER satisfactorily according to the guidance, whilst the escort contractors may find that the information is inadequate for them to understand the risks associated with each Detained Person. In addition, escort staff receiving Detained Persons from prison or police custody need certainty as to whether a PER is completed correctly so that they can decide whether or not to accept a Detained Person into their custody.

We suggest that inadequate guidance is a significant contributor to the failure of PERs in general to communicate relevant and timely information to escort staff to assure the welfare, security and access to justice of people being escorted to and in custody.

The space provided in the PER is insufficient to allow a complete documentation of the behavioural and medical risks relevant to the Detained Person and any mitigations recommended by competent officials. Information is, therefore, often perfunctory, comprised of unknown acronyms or is too vague to communicate effectively. The PER is not a reliable medium for the transfer of risk management between the various bodies with a duty of care to the Detained Person.

A number of court custodies do not record events affecting the Detained Person on the paper PER, preferring to make direct entries onto proprietary computer systems and attaching a print out to the paper PER at the end of the day. This approach carries the risk that information collection is fragmented and not always current and available to monitor. As a result, staff may not have immediate access to relevant information to be able to respond effectively to immediate issues or any subsequent inquiry.

At the time of writing, trials are underway of a new electronic PER. At this point we are unable to comment on how effective the new system may be to address the weaknesses highlighted.

### *2.1.1 Incomplete PERs*

Lay Observers have noted that PERs often have omissions of important information (15% of those reviewed in March 2017), even to the extent of being blank (a rare occurrence). Accompanying medication data, no known risk boxes, healthcare contact phone number and medical information sections are routinely left blank by the originating police and prison custodies.

Originating police and prison custodies have little incentive or supervision to ensure the compliance of the PER accompanying each Detained Person. There do not appear to be any arrangements or protocols between the various agencies on contributing to, or using, PERs to ensure compliance and address the potential consequences of non-compliance in the documentation that accompanies around 50,000 people movements every month.

### *2.1.2 PER inaccuracies in relation to health issues and medication*

Inaccuracies or missing information in PERs often come to light when Lay Observers speak to Detained Persons about their health history, treatment and medication needs. The Detained Person may thus be placed in a position where his or her needs are not being met. This can mean distress and discomfort with the result that they may not be able to effectively participate in the court process. It may be that they do not have their needs met until their release/transfer to prison. These inaccuracies and alleged failures (by both police and prison custody) to supply medication for reported illnesses occur frequently (in approximately 25% of those with identified medical conditions, March 2017) and, when advised of their right to complain, Detained Persons are most likely to reply that it is pointless to do so as they believe that nothing will happen as a result. It therefore appears that the criminal justice processes place inadequate emphasis on the welfare of the Detained Person and discourage them from complaining.

### *2.1.3 Accepting the transfer of Detained Persons with inaccurate or incomplete PERs*

Lay Observers have noted that Detained Persons have been accepted into court custody with omissions and inaccuracies, leading to a lack of proper risk understanding by escort and custody staff. In these cases, staff must either rely on conversations with Detained Persons themselves, their own prior knowledge of individuals, or must contact the originating custody for clarification.

Neither escort nor custody staff collect consistent records of errors in PERs received by them. When querying this absence of record keeping, the reply is often that there are so many errors that it would be too much work to keep a record. Some court custodies have indicated that they take up the issue with police and the prisons concerned, however it does not appear that there is a documented process for reporting or following up non-compliant PERs with the originating custodies.

It is the policy of Her Majesty's Prison and Probation Service (HMPPS) that the contractor may refuse to accept a Detained Person from their previous custody if the accompanying PER is non-compliant. Many escort and court staff do not appear to know the criteria or circumstances when they may refuse to accept a Detained Person into their custody. No contractor escort or member of custody staff has been able to reference any instructions or training from their management on the matter of accepting Detained Persons with non-compliant PERs. It does not appear that any formal records are kept of the number of Detained Persons whose transfer of custody has been refused. A senior contractor manager has informed Lay Observers that no such records exist.

## **2.2 Recommendations relating to inadequacies of the Person Escort Record**

- Detained Persons should not be accepted where there is any omission on their Person Escort Record (PER) and written instructions and training must be provided to staff on the action to take when presented with a potential Detained Person with a non-compliant record.

- A record of the number of Detained Persons refused because of non-compliant PERs should be kept and regular reviews should be held with senior managers of each originating institution to review the causes of non-compliance.
- Specific guidance should be issued for completion of the medical and mental health sections of the PER to include the following information:
  - Name and status of reviewing medical professional;
  - Nature of current medical condition;
  - Nature of any relevant previous medical condition and relationship, if any, to current condition;
  - Any risk to the Detained Person’s ability to communicate their defence if any condition(s) are inadequately treated during planned escort and custody period;
  - Treatment required for condition and frequency;
  - Time and location of treatment provision;
  - Time for next treatment provision(s);
  - Location of medication provided for use during escort and custody;
  - Guidance to escort and custody staff on giving accompanying medication to Detained Person and on seeking further medical advice whilst under escort and custody;
  - The signature of the Detained Person confirming the information recorded.
- Updated guidance should be produced on the risks sections of the PER to ensure inclusion of the dates when the risk-related events took place.
- HMPPS to consult the Lay Observer Chair and National Council on any updates to the format, content and completion process of the PER.

## **2.3 Healthcare**

It is expected that people under escort and in court custody should have access to healthcare support at least equal to a non-custodial member of the public and should be given appropriate treatment required to ensure that they are able to participate effectively in the court proceedings.

### *2.3.1 Medication availability*

Where treatment requiring medication is identified in police or prison custody, it is expected that such medication will be made available to the Detained Person for a period which covers the whole day of the court hearing to ensure that there is no deterioration in the Detained Person’s condition until they can receive further scheduled medication either on release or in prison. It has been reported to a visiting Lay Observer that police healthcare have refused to provide a Detained Person with medication for their condition whilst custody staff have also reported that Detained Persons haven’t made them aware of any healthcare conditions they



may have. It is impossible for Lay Observers to verify either of these claims since the Detained Person is not required to confirm in writing the medical observation report nor the existence of accompanying medication.

It is common for a Detained Person on medication to have insufficient medication for the full day or that medication is in the person's property but is not made available during the day. With a number of health conditions, such as withdrawal from drugs (including heroin or methadone), anxiety, depression and personality disorders the result of this can be a gradual deterioration in cognitive capability during the custody day due to the distress caused by the condition which may impair the capability of the individual to participate in court proceedings.

Of particular concern, because of the frequency of its occurrence, is the apparent absence of any protocol permitting the provision of methadone to a person suffering withdrawal from methadone whilst in court custody due to failures to ensure adequate provision by the originating custody. The impact of withdrawal on a person's apparent ability to participate in court proceedings can be quite severe, yet no treatment other than a sedative can be supplied even if a doctor attends.

It is of concern that Serco, the Region Two contractor, has a Medical Standard Operating Procedure, that includes the phrase: "treatment of withdrawing symptoms is seldom urgent, although the abuser will claim it is. If the doctor is unable to attend for a few hours, unless the prisoner looks genuinely ill no harm will follow". It does go on to say: "If you are worried about the prisoner's condition inform the doctor". The response by Detained Persons is mostly to wait out the distress since they feel that complaining will be ineffective and they do not want to raise the matter with their solicitor since they may prefer to get their appearance "over with" rather than seek an adjournment.

These failures to provide adequate medication and the potential consequences were highlighted in our 2015/2016 Annual Report. Regrettably, there has been no improvement this year despite repeated reference to this issue in monthly reports and in quarterly meetings with our stakeholders.

### *2.3.2 Medical healthcare support*

All Detained Persons have the right to request to see a Healthcare professional. However, there is no physical medical support located in the custody area of any court. The escort and custody contractors are required by their contract to make suitable arrangements for a healthcare professional to be available if needed in the court custody area. The escort contractors have sub-contracted a company to provide a helpline/triage service and the provision of medical advice, which is paid for within the overarching contract with minimal specification by HMPPS.

Whilst there are no statistics publicly available on the level of service provided by the third party company, the routine reports from custody staff outside the London area are that the response time for a doctor at court is often four hours or more. Visit reports have noted that as a result court custody staff rarely call for advice on

supporting Detained Persons who have medical needs indicated on their PER, relying instead on closer observation of the Detained Person and, if there is serious deterioration in their health, calling for an ambulance. In effect, custody staff make decisions on the treatment in custody of those Detained Persons who are at risk, and those whose condition deteriorates whilst under escort or court custody, without the benefit of informed medical advice. Yet the Standard Operating Procedure (SOP) of both contractors requires that a doctor be consulted if there are any concerns about a Detained Person's health. It is of great concern that despite regular auditing, medical provision is inadequate.

The SOPs of both contractors place the responsibility for determining whether the health of a Detained Person is a cause for concern on custody staff. In the higher volume courts (those with more than ten Detained Persons per day in custody), the custody staff can have insufficient understanding of the health and welfare issues of the Detained Persons. On occasions, Lay Observers in their interviews with Detained Persons have uncovered several issues of concern that were apparently unknown to custody staff. In response, staff have reported that they have little time to engage with Detained Persons unless they express concerns directly to them. Neither of the escort contractors' SOPs require their staff to seek to inform the Detained Person's solicitor of any unresolved concerns they may have about a Detained Person's fitness to participate in court proceedings (although there have been numerous reports of staff taking it upon themselves to seek out the solicitor and ensure that they are aware of their concerns).

The medical healthcare support process does not adequately ensure that Detained Persons are a) not in distress whilst in court custody, or b) not at risk of being unable to participate effectively in court proceedings. Health care support is not specified, monitored, relied on nor accessed consistently by custodial staff and there is an over-reliance on custodial staff to diligently and consistently engage with all Detained Persons in custody about all aspects of their care. The risks posed by the medical support process were highlighted in our annual report for 2015/16 with the recommendation that the Minister undertake a comprehensive review of the adequacy of healthcare support for Detained Persons. We are not aware of such a review being initiated.

### *2.3.3 Mental health support*

The Ministerial response to our 2015/16 Annual Report highlighted the planned rollout of Mental Health Liaison and Diversion teams to support those with mental health problems involved in the criminal justice system. The rollout of these teams appears to presently cover approximately 50% of England and Wales with full coverage scheduled to be in place by 2020. However, a number of courts have access to community health nurses and mental health nurses based in proximate police stations. The Lay Observer National Council estimates that approximately 30% of courts do not presently have adequate mental health support.

When they are located in the court precinct, the Liaison and Diversion teams do visit those Detained Persons they may have seen previously in police custody. However,

they are not always a resource that custody staff can call on while the Detained Person is in court custody to assess their competence to effectively participate in court proceedings. Lay Observers are not aware of the number of Detained Persons diverted from the criminal justice system, but the flow of Detained Persons with identified mental health disorders does not appear to have been reduced at all. At the time of writing, there do not appear to be any protocols that allow the Liaison and Diversion team to support the court and the Detained Person with an assessment of their ability to participate in court proceedings when in distress.

Many Detained Persons are received into court custody with identified risks such as self-harm, violence and mental health disorders which require close and frequent observation of them during their stay in court custody (every ten minutes is a common protocol). With high volumes of Detained Persons, and sometimes stretched resources, it can be very difficult to address these risks with such close and routine supervision. CCTV in specific cells for such Detained Persons would help to minimise the risk associated with failure to carry out cell observations. A recent survey by Lay Observers on the adequacy of court facilities has shown that fewer than ten courts of those surveyed have CCTV installed to monitor individual cells.

#### ***2.4 Recommendations relating to healthcare***

- Detained Persons should have access to medical and mental health support with medication dispensing authorisation located:
  - within the court precinct for custodies with more than an average of ten Detained Persons per day
  - within fifteen minutes guaranteed response time for custodies with fewer than ten Detained Persons per day.
- Police and prison custodial suites should provide Detained Persons with identified medical conditions, documented in the Person Escort Record (PER), with medication sufficient to last until 8pm on the day of the Detained Person's court appearance. The originating authority should confirm this provision and any dispensing instructions in the PER, which should then be agreed and evidenced by the signature of the Detained Person (separate arrangements will be needed for those who cannot read or write). HMPPS should instruct its contractors to instruct and train their escort and custody staff to refuse to take custody of Detained Persons whose PERs do not comply.
- Medical protocols should be established that allow doctors to administer medication to Detained Persons to alleviate symptoms affecting their ability to participate in court proceedings.
- Liaison and Diversion teams should be able to support the custody staff and the solicitor/court in determining the ability of a Detained Person to participate in court proceedings in the event that their condition deteriorates whilst under escort or court custody.

- CCTV should be installed to cover at least three cells in custody suites with more than fifteen Detained Persons per day; two cells for those with ten to fifteen Detained Persons per day and one cell for those with up to five Detained Persons per day to provide coverage for those persons considered at risk of self-harm or violence.

### **3. Held in suitable accommodation**

**Detained Persons are held in a court custody environment that is clean, safe and fit for purpose.**

Our last report drew the Minister's attention to the poor condition of the court custody estate, particularly in London. Consequently during 2016/17 the Lay Observer National Council increased the monitoring of London courts. Lay Observers, HMPPS, PECS, CDMs and HMCTS staff have collaborated to identify and prioritise remedial works during the year. Towards the end of the year court visit reports have noted significant improvements particularly in some of the worst London courts and stakeholders have provided positive feedback on the influence of Lay Observers in these improvements. Nevertheless, the overall condition of the estate remains poor, as reflected in a high level of adverse assessments in visit reports each month - every month at least one court is reported as having a concern rated as unacceptable requiring immediate resolution (level 3 under our recently-adopted assessment standards). The main areas of concern are outlined below.

#### **3.1 Graffiti**

Over the year there have been initiatives to remove graffiti from benches, walls and doors in the cells in a number of courts. These initiatives have been supported by warnings of, and administration of, sanctions against Detained Persons causing damage to the cell. The incidences of offensive and unacceptable graffiti have reduced as a result in 2016/17. However, there are still a significant number of court custodies where graffiti is still a cause for concern. In March 2017, 83 custodial suites out of 145 visited had graffiti concerns, with 35 of these of a serious nature.

#### **3.2 Cleanliness**

As with graffiti, there has been a concomitant effort between agencies, contractors and Lay Observers to prioritise and improve the cleanliness of cells and corridors in the custody suite. A number of deep cleans and changes of cleaning contractor have taken place to reduce the incidence of concerns about ingrained dirt. However, often the walls and floors may appear to be free of visible dirt but a wipe with a cloth will reveal that surface dirt is still in place. Custody staff and Lay Observers remain concerned about the quality of cleanliness and of the cleaning contractor in a number of custodies. In March 2017 there were 67 courts where Lay Observers noted concerns, with 16 of these regarded as being serious.

#### **3.3 Heating/Cooling/Hot water**

There have been frequent reports of boiler/cooling breakdowns which take a long time to rectify and remain on the court defect logs for some time before repair, causing frustration to court staff and discomfort to Detained Persons. The standard temperature guidelines issued as a result of the *Workplace (Health, Safety and Welfare) Regulations 1992* do not apply to Detained Persons but are frequently, and

unreasonably breached. Lay Observers have noted temperatures in courts that can range from causing discomfort to unacceptable conditions, especially in the winter months. Courts do not routinely measure with reliable thermometers the temperature in the cells themselves at the beginning of and during the day. During March 2017, there were 34 incidents of utilities malfunction with 15 of these regarded as causing serious or unacceptable levels of discomfort to the occupants of the cells concerned.

### **3.4 Sanitary facilities**

There has been an improvement over the last two years in the provision of toilet, hand washing and female sanitary facilities. However, there are a small number of custodial suites still refusing to provide soap and hand drying other than on request by a Detained Person. Lay Observers have reported this practice as unacceptable (endorsed by the Ministerial response to the 2015 cleaning audit) and yet it is still allowed to continue in this minority of custodies. In March 2017 there were 15 such establishments and 13 incidents of toilets not working satisfactorily.

### **3.5 Alarms**

There have been a number of courts where the affray alarms have not been working for some considerable time, putting staff and Detained Persons at risk. In most cases the repairs were not given the highest priority by facilities management, meaning that custody staff had to rely on localised contingency plans. Most cases were rectified by the end of the year.

### **3.6 Food and kitchen facilities**

There were incidences where food was found to be out-of-date but this was usually rectified rapidly when identified by a Lay Observer. Overall the food available to Detained Persons was of limited range and, on rare occasions, it did not meet the religious or health needs of the Detained Person; usually this was rectified by custody staff. Some of the kitchens and equipment observed were not well maintained and clean. As at March 2017, 19 of the courts visited had unsatisfactory kitchens, of which five were seriously poor.

### **3.7 Accommodation for vulnerable Detained Persons**

As noted under the section on healthcare, few courts have CCTV in individual cells. Similarly, few are accessible for disabled people (fewer than thirty in both cases, but some courts have still to be documented). In these cases mitigation action is often taken at the expense of the welfare of the Detained Person. In the case of Detained Persons with a disability, this may mean transporting disabled persons over long distances to attend compliant courts. Whilst the use of cellular vehicles is not the default for Detained Persons with limited mobility or a disability, when they are used this means long uncomfortable journeys in cramped cells in vehicles with no seat belts. The supervision of vulnerable Detained Persons can stretch cell officer resources, creating a risk to the effective supervision of Detained Persons. There were at least 71 vulnerable Detained Persons (as detailed in their PER) in March

2017 on a Lay Observer visit sample of 1.5% of Detained Person movements, meaning that there could well have been around 5000 vulnerable person movements in total that month.

### **3.8 Facilities management**

Court custody facilities management became the responsibility of HMCTS Property Directorate from MoJ Estates Department in February 2017. Whilst it is not clear whether HMCTS Property Directorate have sufficient budgeted financial resource to remedy the facilities defects in the estate, it is evident that a major contributory factor to the delays in remedial action has been poor communication between custody contractors and HMCTS operations and property teams. The defect and action logs maintained by each party were rarely aligned and comprehensive. In the majority of court custodies the Delivery Manager did not visit the custody suite on a regular basis (monthly) to see at first hand the conditions affecting the welfare of Detained Persons. As a result there has been frustration, misunderstanding and insufficient mitigation planning - “matters are in hand” was a common, but vague, assurance given. Detained Persons, therefore, suffer unduly from the failure to provide fit for purpose facilities in a timely manner in a large number of court custodies (30 out of 115 monitored).

It is understood that business cases are required for large items of expenditure, but the criteria for prioritisation does not seem to have been agreed between the parties in any formal manner. Additionally, the allocation of responsibility for developing mitigations or contingency plans whilst remedial action is being progressed is not clear.

### ***3.9 Recommendations relating to being held in suitable accommodation***

- HMPPS Custody Contractors and HMCTS Property Directorate should agree and document the criteria for prioritising facilities management actions in the court custody suite.
- HMPPS Custody Contractors, HMCTS Operations and HMCTS Property Directorate should agree on a process and format for the documentation and communication of facilities defects in the court custody area.
- HMCTS Property Directorate should be instructed to provide an expected completion date for all defects accepted for remediation to the Court Delivery Manager.
- HMCTS Court Delivery Managers should be instructed to visit the custody area on at least a monthly basis and agree/document mitigation action plans for expected delays (advised by HMCTS Property Directorate) in remedial works.
- Appropriate accessible court custody provision should be available within a two hour journey for disabled people.

## **4. Access to justice**

**Detained Persons are informed of their rights and capable of accessing suitable legal advice.**

### **4.1 Fitness for trial**

Detained Persons are normally seen by a healthcare professional prior to being transported. The Ministry of Justice does not appear to have provided these professionals with guidance on their requirements for such an attendance. The Person Escort Record requires medical or mental health risks to be identified but it does not require that the statement of risks is based on the attendance of a healthcare professional nor does it require a statement as to fitness.

As noted above in the healthcare section, there appear to be no guidelines for establishing whether a Detained Person is capable of participating effectively in the court proceedings, particularly if their condition in custody has deteriorated since having been seen the previous day. Court custody staff are therefore, understandably, reluctant to challenge where a Detained Person has been confirmed “fit for trial with no need for review”.

From the perspective of HMCTS, if a defendant in a trial is unwell, an officer of the court (their solicitor or barrister) is expected to notice this whilst taking instructions and then bring this to the attention of the judiciary who have responsibility for taking a view on whether the case can proceed at that time or whether an assessment of fitness for trial is needed in line with the criminal code. Unless found to be unfit to stand trial, there is a presumption of fitness.

The custody contractor has reported that court custody staff will alert the Detained Person’s solicitor and the court clerk in the event that they have concerns about an individual’s ability to participate in proceedings. Lay Observer reports have confirmed that this does happen, but it relies on the confidence, experience and willingness of the court custody manager or equivalent. It may not be possible for them to contact the solicitor in advance of the Detained Person’s court appearance and it is not clear, in the absence of advising the solicitor, how the court should be informed of their concerns. There is no direction or training given to custody managers on the circumstance and process for undertaking such action.

The criteria for, and the process of, determining a Detained Person’s fitness for trial does not appear to provide the assurance that they are capable of effectively participating in court proceedings and, therefore, providing the appropriate access to justice as required by the UK’s signature of the Optional Protocol for the Convention against Torture (OPCAT).

### **4.2 Access to a solicitor**

Detained Persons normally arrive in court custody before 9.30am (as required by contract). It would seem appropriate to the Detained Person’s ability to participate



effectively in court proceedings that they see their solicitor within two hours of arrival to ensure that there is adequate time for consideration of their case, particularly when it is a first time contact (with the duty solicitor, for example). It can be a matter of extreme frustration for a Detained Person (sometimes resulting in a serious disturbance) when they haven't seen their solicitor within a reasonable time and don't know when this will take place. It is common for a Detained Person's meeting with a solicitor to occur more than two hours after their arrival in custody. Custody staff often make attempts to contact solicitors in these situations, but sometimes with little result.

It seems that there are no standards for the attendance by solicitors with their clients at court, particularly those provided by Legal Aid. In our assessment, this does not provide assurance that Detained Persons are receiving adequate access to justice

### **4.3 Access to rights and complaints**

HMPPS require their custody contractors to place a leaflet documenting the Detained Person's rights and the process for making a complaint in each custody cell each day as a matter of contract. It is important that it is placed in the cell to provide the optimum assurance that the Detained Person has time to read and comprehend the information. Despite repeated assurances from contractor senior management that these instructions have been reinforced, Lay Observer reports from the North West, parts of London and South Central indicate continued deliberate non-compliance with this instruction in certain custodies.

The complaints process requires the complaining Detained Person to request a complaint form from the custody office and to present it to the custody office for submission to HMPPS. The identity of the complainant and nature of the complaint are immediately evident to the staff against whom the complaint may be being made, increasing the risk of reprisals against Detained Persons.

It is reported by custody contractors that there are few complaints from Detained Persons about their treatment under escort and in court custody. However, no complaint does not necessarily mean that there is no cause for complaint. When Lay Observers have advised Detained Persons that they may make a complaint, the reply from the Detained Person is often that it is a "waste of time, nothing will happen" or "don't want to get into trouble" or "just want to get it over with". Detained Persons' expectations of the observance of their rights are often very low when they enter custody and are confirmed by the absence of procedures to assure them of their access to their rights and justice.

Lay Observers are, therefore, concerned by poor management practices that are affecting Detained Persons' access to their rights and justice.

#### ***4.4 Recommendations relating to access to justice***

- The concept of 'fitness for trial' should be reviewed and more detailed criteria and guidance, which take account the cognitive state of Detained Persons whilst in custody, should be developed for medical professionals, lawyers and court staff.
- The Legal Aid Agency, the Law Society and Bar Council should consider standards and guidelines for the accessibility of lawyers to Detained Persons whilst in court custody awaiting court appearance. These should specify a wait of no longer than two hours after arrival in court or two hours before the scheduled court appearance.
- Sanctions should be applied to contractors for the non-availability of rights leaflets in every court cell on every day.
- A confidential complaint process should be developed for Detained Persons.

## **5. Transported promptly in suitable vehicles**

**Detained Persons are transported to and from court correctly and with minimal delay. Inter-prison transfers are efficiently planned and completed with all movements using appropriate vehicles and equipment.**

### **5.1 Minimal delay**

Although the total number of prisoner movements has fallen from the approximate 55,000 per month in 2015/6 to approximately 50,000 per month in 2016/17, the number of Detained Persons experiencing extended delays appears to have increased. The arrival at court time is strictly measured by a set calculation based on distance between court and prison (commonly referred to as the 'DRACT time'), and the arrivals at prison in the evening by penalties for arrivals after lockdown. However, the almost universal lack of a "sweep vehicle" to transport those destined for prison after their court appearance in the early afternoon results in Detained Persons spending at least eight hours in court custody regardless of the timing of their appearance. Court custody is a windowless cell with a hard, wooden bench, 60% chance of graffiti and no official reading materials. Furthermore, those already in prison miss a significant part of the day's regime which could include education, rehabilitation activity or access to healthcare. A reasonable expectation would be for a maximum wait of two hours after being sentenced.

### **5.2 Correct appearance**

It is reported by court managers that unnecessary journeys and court appearances do occur but reports indicate that the frequency is low. Precise statistics are not kept to enable scheduling errors to be monitored.

### **5.3 Inter prison transfers**

An established protocol allows Lay Observers to be present at prisons when Inter-Prison Transfers (ITPs) arrive. For the most part, this protocol has worked satisfactorily on the infrequent occasions accessed by Lay Observers. Monitoring inter prison transport remains an unsatisfactory process for Lay Observers since there is limited opportunity to interview a prisoner between the van and the reception. A number of initiatives have been attempted with IMB National Council and the Executive Director of Prisons, HMPPS, to secure their support in finding a satisfactory method to interview prisoners in the prison post arrival; unfortunately without success. Resolving this issue is a main priority for the Lay Observer National Council this year (2017/8).

### **5.4 Appropriate vehicles and equipment**

The vehicle specification remains unchanged in key respects of Detained Persons' welfare; the hard plastic seats without seatbelts and confined cells remain and are unfit for journeys greater than 30-45 mins. We understand that a new vehicle specification is being developed for the next PECS contract for 2018/9.

These large cellular vehicles and their inventory are particularly unsuited to the transport of children and young people from police custody to court. An entirely different and more suitable specification and inventory is used for the transport to court from secure establishments; a car with single occupancy and two escorts. The difference results from different escort contracts; the former is with PECS and the latter is with the Youth Justice Board. We estimate that about 500 children and young people are transported from police custody in this unacceptable manner each month.

Approximately 15% of all vehicles inspected by Lay Observers have defects; ranging from dirty cells to unpadded headrests to omissions from the required inventory. These defects are reported to the contractors.

### ***5.5 Recommendations relating to suitable transport***

- The Youth Justice Board contract for the escort of children and young people (CYP) to be extended to cover journeys from police custody to court. All youth justice escort officers should remain in court to provide specialist care for the children and young people as part of their contract.
- Each contractor vehicle base should deploy “sweep” vehicles to collect and transport those in court custody sentenced/remanded to prison during the early afternoon each day.
- A protocol should be established for Lay Observers to interview prisoners on their escort experience following their arrival at the prison.

## **6. Treated with respect as an individual**

**All detainees/prisoners are treated with dignity and respect and are free from discrimination and victimisation.**

### **6.1 Children and young people in court custody**

The specifications for the escort of children and young people from secure establishments to court require that they be accompanied by two specifically trained escort officers in a manner suitable to a young person (for example, in an unmarked car with blacked-out windows and with an equipment bag with items relevant to a young person). In contrast, when transported from police custody they are placed in a cellular vehicle with adults (albeit separated by a sliding partition) and escorted by staff with no special qualifications in escorting children and young people. In court custody, although located in a separate area, they are treated like an adult in a windowless cell with a hard wooden bench with no diversionary materials and are supervised by a custody officer with no specific qualifications.

The PECS contract does not require appropriate consideration for the welfare of children and young people as provided by the Youth Justice Board (YJB) contract (overseen by the same department). It clearly does not provide an appropriate level of respect to the individual and can involve risks to custody officers who are not trained in the proper treatment and restraint of children and young people. This was recently illustrated by an incident in which a custody officer suffered the loss of two fingers following poor behaviour of a young person.

This inconsistency in the treatment of children and young people has been raised with the YJB and HMPPS with no apparent change in policy or practice as a consequence.

### **6.2 Delays to children and young people's court appearances**

Although HMCTS has assured that children and young people's court appearances are scheduled as quickly as possible, visit reports indicate that, for example, in March 2017 the appearance in court of children and young people was delayed until late in the day in over 20% of cases. These delays are routinely reported, at their request, to the YJB. Given the harshness of the accommodation conditions (see above), these delays do not appear to respect the vulnerability of children and young people, and have not been adequately addressed by HMCTS.

### **6.3 Delays in releasing those released from custody**

The response time in the processing of Detained Persons who are released from custody and were originally transported from prison can result in delays of up to three hours from the judgement of the court to their release. These extended delays are reported to be frequent and not exceptional. They are caused by the unavailability of prison staff at certain times of day, delays securing the warrant from the court office and issues related to the Detained Person's property.

It is difficult for Lay Observers to monitor the number of such delays but there were ten observed in March 2017 and more were reported by court staff. This treatment is not respectful of the individual and has not, to our knowledge, been addressed by HMCTS or the escort contractors.

#### **6.4 Reading materials**

There has been a dramatic improvement in the number of custodies where reading material is made available to Detained Persons, albeit sometimes in a heavily used state. Some Detained Persons have been reported to have refused the reading material because of its heavily soiled state. However, it remains the case that the availability of materials to occupy Detained Persons for long periods in the harsh physical conditions of the cell is not developed and organised centrally by the contractors. The consequences of this are boredom for the Detained Person and, therefore, an increased propensity towards violence in the custody suite.

#### ***6.5 Recommendations relating to respectful treatment as an individual***

- Children and young people's appearances in court should be prioritised.
- HMCTS, HMPPS Prisons and escort contractors should work together to create a process for the release of Detained Persons (in particular children and young people) to achieve a maximum delay of one hour. The good practice found in some courts, where Judges and Magistrates inform the Detained Person that their release may involve a short delay, should be extended across all courts.
- A daily supply of free newspapers to each custody suite should be provided.

## **7. Risks to wellbeing are minimised**

### **Transport and custody are managed in a manner that ensures the wellbeing of Detained Persons.**

Whilst the Lay Observers' mandate precludes observations about the commercial conduct of the escort contractors, we are concerned to assess management practices which could impact on the welfare and access to justice of Detained Persons. Our assessments of these began at the end of this reporting year (2016/17) and, therefore, our observations in this report are limited.

#### **7.1 Management and staff training**

Many of the observations detailed in this report relate to the inconsistent application of good practice by management and staff in the escort and custody suite. Where our observations and reports have identified practices below the standards implied by the Lay Observer expectations, we have enquired about any related training that management and staff have received. It appears that the likely cause of many of the issues raised in this report could be traced to a lack of documented instructions and supporting training for both staff and management. For example, it has been reported to us that:

- new custody managers are not routinely given a formal management training course/induction/knowledge assessment to ensure their comprehensive understanding of appropriate SOPs;
- escort staff are not formally instructed and trained on the criteria and process for refusing the transfer of custody from prison/police in the event of the presentation of a non-compliant Person Escort Record (PER); and
- custody managers receive little feedback in respect of escalation of issues relating to PERs and other related issues from partner organisations.

#### **7.2 Fire prevention**

The duty to undertake fire prevention actions falls to HMCTS. There does not appear to be a standard policy to test fire procedures regularly (for example, every 6 months) with full evacuation of the custody suite. Many custody managers report that they cannot remember such a fire drill. Reliance is placed on desktop exercises. Given the "rabbit warren" nature of many custody suites, this policy appears to be contrary to the welfare of its occupants. There does not appear to be any evidence that these policies and practices have been reviewed and approved by local fire officers.

#### **7.3 First night leaflets**

There has been a significant improvement in the appropriate provision of first night leaflets compared to the previous year. It is rare for a custody suite not to have a stock and give them to those going to prison for the first time. The only exception is

the provision of the information in foreign languages, which can vary between courts.

#### **7.4 Food**

Out-of-date, unchilled and mislabelled (eg Halal compliant) food is still observed more frequently than necessary (in 15% of observations in March 2017). Simple inventory management procedures are not observed in these cases.

#### ***7.5 Recommendations relating to minimising risks to wellbeing***

- All staff instructions and operating procedures should be reviewed to ensure compliance with relevant legislation and operational agreements.
- Assurances should be sought from each local fire officer that fire drill and prevention procedures are adequate in every court.
- Food inventory management instructions should be issued to custody managers.



## **APPENDIX A: THE LAY OBSERVER ORGANISATION**

Lay Observers monitor the welfare and access to justice of Detained Persons being brought to court and held in court custody and the transport of detainees under the supervision of escort contractors. We aim for high standards of monitoring and, whilst being independent, we aim to be a reliable partner within the monitoring framework of custodial environments.

### **Organisation governance**

The Lay Observers organisation consists of approximately seventy Lay Observers, led by a Chairman, a National Council and a number of Area Co-ordinators.

Under the leadership of the Chairman, the National Council is responsible for:

- the fair and open recruitment, training and professional development of Lay Observers;
- agreeing national policies;
- ensuring that visits are carried out and reports completed;
- bringing concerns to the attention of the escort and custody contractors and other stakeholders.

Pending the introduction of a formal appointments process in 2017/18, four interim Area Coordinators were introduced to support the governance of the Lay Observer organisation during the year.

Five National Council meetings were held during the year with the Area Coordinators attending three of these to approve policy and process developments.

Lay Observers are supported in their role by a Secretariat provided by the Ministry of Justice.

### **Systems and reporting**

A secure document system called STOWED was introduced in 2015 to receive and store Lay Observers' visit reports. After a short period during which Lay Observers became familiar with the new system, it became well established during 2016/17 as the national vehicle for reporting and storing individual court reports. It was further developed to allow a national consolidation of all reports each month.

To support data protection of the distribution of court custody visit reports and related communications to and from Lay Observers, a secure encrypted dedicated server with dedicated email accounts was introduced.

With the introduction of the Statement of Expectations and the related Assessment Standards, the visit report template was revised to allow each standard to be

displayed along with an assessment rating with related comments and rationale by the Lay Observer. Since its launch on 1 March 2017, Lay Observers have been reporting their assessments and observations in a standard template. The template allows the consolidation of reports at area, region and national level and the systematic reporting of trends and issues at both court and national level. This will be reflected in the Annual Report for 2017/18.

The visit reports are sent immediately to the court custody manager and, in cases where a Level 2 or above has been assessed, to the PECS Contract Delivery Manager. A consolidated report (with individual court reports attached) for each Area and contract Region is sent to appropriate PECS CDMs each month to allow the issues identified to be immediately addressed.

Each month visit reports are consolidated into a national report, with a commentary, which is distributed to all Lay Observers, PECS and HMCTS and other criminal justice monitoring organisations at the end of the month.

### **Recruitment and Training**

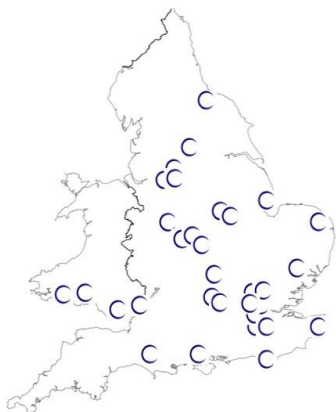
Following the recruitment campaign in 2015/6, the number of active members has grown to 70, falling short of the target of 150. Excessive delays in security vetting have resulted in probationary appointments being delayed until the latter part of 2016/17 with a small number of appointable candidates losing interest in the role.

As a consequence of delays in recruitment, it was not possible to run another recruitment campaign to make up the shortfall whilst the backlog of processing applications from the previous campaign was being cleared. Therefore, the full benefit of the number of active members were only available for part of the year.

Training and mentoring of new Lay Observers has been challenging, given the very limited resources available this year. Nevertheless, a full one day training programme, with accompanying materials, has been developed for new recruits. The programme consists of a half day in a classroom and a half day of experience in court custody. Each new member is mentored by an experienced Lay Observer during their probationary period of 6 months.

## Forward look and areas for development in 2017/18

Lay Observers undertook an average of 145 custody visits each month during the year, reviewing an average of 750 Detained Persons per month (approx. 1.6% of the 50,000 prisoners moved each month).



We aim to increase the coverage of Lay Observer monitoring to 5% of all Detained Person movements. We have developed a resourcing model to determine the number of Lay Observers required at various levels of assessment and deployment with each Lay Observer undertaking a minimum of two visits per month and interviewing a maximum of six Detained Persons per visit, with each court custody suite being visited each month.

Based on the throughput of Detained Persons at each court in the second quarter of 2016/17, the number of Lay Observers required to deliver a 5% level of monitoring of court custody would be 130. Consequently, we are planning to recruit to that level with recruitment being targeted around an accessible radius of each court, indicating immediate shortages in the North East and London where recruitment campaigns are targeted for 2017/18.

We have yet to develop a method for satisfactorily interviewing prisoners undertaking inter prison transfers and transfers to prison from court about their total journey experience. Consequently, given the shortfall against requirements for court custody visiting, we will continue to prioritise court visits and undertake few prison visits. Developing an appropriate method for assessing the experience of escort and custody of prisoners is a key priority for 2017/18. This will inevitably create a need for more Lay Observers to be recruited and trained.



## APPENDIX B: ASSESSMENT STANDARDS

### Lay Observer Standards

Court.....

Date of visit .....

Lay Observer (Print) .....

SCO .....

Custodies	A	B		A	B
Adult Male			Adult Female		
CYP Male			CYP Female		
Total			Total		
<b>Overall Totals</b>					

No of cells out of use	
No of detainees sharing cells	
No of detainees identified as vulnerable	
No of detainees with identified medical conditions	
No in court without their medication	
No of PERs with inaccuracies	

#### DPs have access to legal advice and support

Rights forms in cells in language of DPs	Y/N
DPs understand their rights	Y/N
Where necessary adequate interpreter facilities are available	Y/N
All DPs have access to legal representation within 2 hours of arrival	Y/N
(If no) staff able to explain why	Y/N
DPs have access to their legal papers	Y/N

Other notes re support/advice:

#### DPs are held in a custody suite that is clean, safe and in a good state of repair

Graffiti assessment	0/1/2/3
Cleanliness assessment	0/1/2/3
Kitchen is clean with suitable clean, working equipment including microwave	Y/N
Hot water available for hand washing	Y/N
Toilets working satisfactorily	Y/N
Soap, hand drying available without DPs having to request	Y/N
Toilets clean	Y/N
Female sanitary provision available	Y/N
The condition of all interview rooms is satisfactory	Y/N
Air cooling/heating working	Y/N
Cell temperatures adequate (neither too hot nor too cold)	0/1/2/3
Alarms all working	Y/N
All cell officers carry an anti-ligature knife	Y/N

Other notes re safety & repairs:

#### Detainees have access to suitable health care to meet their needs during their time in the custody suite

PERs accurately record health needs & medication accompanying DP	Y/N
There is good mental health cover (in Magistrates courts)	Y/N
Medication to cover journey day until early evening available or administered	Y/N
All DPs are satisfied that their medical needs have been met whilst at court	Y/N

Other notes re health care:

#### Detainees are transported to and from court in reasonable time and in suitable vehicles

No DP presented at court unnecessarily	Y/N
Females all brought to court in vehicle with only female DPs	Y/N
If shared was there separation from males Or abuse from males	Y/N
DPs do not have to wait for more than 2 hrs in cells after their trial	Y/N
CYPs transported quickly after their court appearance	Y/N

Other notes re transport:

#### All detainees are treated with respect and are free from discrimination

DPs not subjected to any form of discrimination	Y/N
Food available for a range of diets	Y/N
CYPs/females and vulnerable DPs separated from other DPs	Y/N
Vulnerable DPs carefully monitored	Y/N
Handcuffs used appropriately	Y/N
DPs given reading materials	Y/N

Other notes re respect/discrimination:

#### The custody suite is managed and run in a manner that ensures the wellbeing of DPs

Records completed quickly and accurately	Y/N
Risk assessments made accurately	Y/N
Staff interaction with DPs is good	Y/N
Issues, including inaccurate PERs, escalated quickly and efficiently	Y/N
Court manager/facilities manager visit the custody suite regularly	Y/N
DPs released with minimal delay	Y/N
DPs remanded are informed of what to expect when they go to prison (FNLs)	Y/N
Staff understand the adult and child safeguarding policies and these policies are followed at all times	Y/N
Precautions to prevent and react to fires in the custody suite are rigorous	Y/N



## APPENDIX C: CONSOLIDATED REPORT EXTRACT, MARCH 2017

### LEVEL STANDARDS

#### *DPs HAVE ACCESS TO SUITABLE HEALTH CARE TO MEET THEIR NEEDS DURING THEIR TIME IN THE CUSTODY SUITE*

	N/A	0	1	2	3
PERs accurately record health needs & medication accompanying DP	38	72	23	10	2
There is good mental health cover (in Magistrates courts)	82	52	8	3	0
Medication to cover journey day available or administered	79	56	8	2	0
All DPs are satisfied that their medical needs have been met whilst at court	50	86	7	2	0

#### *DPs HAVE ACCESS TO LEGAL ADVICE AND SUPPORT*

	N/A	0	1	2	3
Rights forms in cells in language of DPs	23	102	17	3	0
DPs understand their rights	35	106	3	1	0
Where necessary adequate interpreter facilities are available	85	55	5	0	0
All DPs have access to legal representation within 2 hours of arrival	53	69	20	3	0
DPs have access to their legal papers	87	58	0	0	0

#### *DPs ARE TRANSPORTED TO AND FROM COURT IN REASONABLE TIME AND IN SUITABLE VEHICLES*

	N/A	0	1	2	3
No DP presented at court unnecessarily	42	91	8	4	0
Females all brought to court in vehicle with only female DPs	100	44	1	0	0
DPs do not have to wait for more than 2 hrs in cells after their trial	79	40	20	6	0
CYPs transported quickly after their court appearance	113	21	6	4	1

#### *ALL DPs ARE TREATED WITH RESPECT AND ARE FREE FROM DISCRIMINATION*

	N/A	0	1	2	3
DPs not subjected to any form of discrimination	32	113	0	0	0
Food available for a range of diets	19	120	5	0	1
CYPs/females and vulnerable DPs separated from other DPs	66	76	2	1	0
Vulnerable DPs carefully monitored	77	67	1	0	0
Handcuffs used appropriately	68	77	0	0	0
DPs given reading materials	34	106	5	0	0

**DPs ARE HELD IN A CUSTODY SUITE THAT IS CLEAN, SAFE AND IN A GOOD STATE OF REPAIR**

	N/A	0	1	2	3
Graffiti assessment (refer to standards)	13	49	48	33	2
Cleanliness assessment (refer to standards)	15	73	41	15	1
Kitchen is clean with suitable clean, working equipment including microwave	16	110	14	3	2
Hot water available for hand washing	15	112	8	8	2
Toilets working satisfactorily	19	113	10	2	1
Soap, hand drying available without DPs having to request	16	114	12	3	0
Toilets clean	17	120	6	2	0
Female sanitary provision available	37	104	3	1	0
The condition of all interview rooms is satisfactory	28	102	7	8	0
Air cooling/heating working	17	114	9	5	0
Cell temperatures adequate (refer to temperature standards)	18	115	8	3	1
The custody suite and associated areas are in good condition and suitable for use by DPs	19	96	14	12	4
All cell officers carry an anti-ligature knife	20	106	17	2	0

**THE CUSTODY SUITE IS MANAGED AND RUN IN A MANNER THAT ENSURES THE WELLBEING OF DPs**

	N/A	0	1	2	3
Records completed quickly and accurately	30	111	3	1	0
Risk assessments made accurately	60	82	3	0	0
Staff interaction with DPs is always good	29	115	1	0	0
Issues, including inaccurate PERs, escalated quickly and efficiently	67	70	7	1	0
Court manager/facilities manager visit the custody suite regularly	51	78	15	1	0
DPs released with minimal delay	74	61	9	0	1
DPs remanded are informed of what to expect when they go to prison (FNLs)	60	80	4	1	0
Food is in date, stored correctly and sufficient for a range of diets	19	109	17	0	0
Precautions to prevent and react to fires in the custody suite are rigorous	57	84	4	0	0
The management of the custody suite ensures the wellbeing and access to justice for DPs. Precautions to prevent and react to fires in the custody suite are rigorous	54	89	2	0	0



## **APPENDIX D: CHAIR'S COMMENTARY ON REPORTS, MARCH 2017**

The number of visits in March recovered to more normal levels, although still a little below the peak of July 2016 with the number of Detained Persons/Prisoners being reviewed at 1.4%.

The new visit assessment and report form was introduced on 1 March and all of these visits were reported in the new format. Whilst the National Council acknowledge that the wording of some standards will require refinement over time (particularly the inventory for the van) and that it is not an appropriate format for prison visits, nevertheless we are grateful that all Lay Observers have adopted the new approach without too much disruption and are all now using their Lay Observer email address to send copies to the SCO/CCM.

I would like to thank Lay Observers for their visits in the month while encouraging everyone to try to maintain at least the required minimum of 2 visits per month.

I am particularly pleased with the new consolidated national report, which mirrors at a national level the report on an individual court. The new report is on STOWED (entitled consolidated report March 17) and I would encourage all Lay Observers to have a look at this report since it is the aggregate product of each your reports and allows you to see the overall national picture that we present and discuss with stakeholders. Hopefully you will appreciate the benefit in communication with stakeholders and Ministers of having quantified evidence of our concerns rather than anecdotes. Consolidations in the same format are available on STOWED at regional and area coordinator level to aid your communication with PECS and HMCTS on trends at a local level.

Whilst we will always be seeking to develop and improve, I firmly believe that we have now delivered on the vision of a Lay Observer process which is capable of being consistent, is based on objective standards and allows the evidential reporting of trends and can therefore deliver on our primary objective of being a reliable monitor of Detained Persons' welfare and access to justice for our stakeholders

The number of Level 3s reported increased from 12 in February to 18 in March, 13 of which related to the Clean, Safe and Good State of Repair Expectation, 2 related to Healthcare Expectation and the remaining 3 to the Respect, Journey Length and Custody Management Expectations. The number of Level 2s increased substantially to 140 from 66 in February, 96 of which reflect serious inadequacies against our Expectations for Clean, Safe and Good State of Repair. Whilst there is evidence of attention to remediation of defects at a limited number of courts, it is disappointing to note that many Level 1 and 2 assessments related to the same court each month and record that custody staff have no or unreliable information about work to be undertaken.

As suggested previously it would be helpful to record the extent of delays with Court Delivery Managers and the Facilities Management helpline so that we can direct these concerns to HMCTS Property.

There were 10 serious concerns noted with inadequate documentation in the PER related to Healthcare.

A concern has been raised relating to the confidentiality of the medical information contained in a sealed envelope attached to the PER. This practice is used by some police custodies to record the treatment provided by their medical support. Whilst Lay Observers do not have the right to see private medical records they are permitted to see the medical information pertinent to the Detained Person contained at the bottom of the second page of the PER. In some cases there is no medical information in the PER but there is an envelope attachment to the PER. If practical, it is helpful to interview the subject Detained Person. If that interview raises concerns about the welfare of the individual the Lay Observer can relay their concerns to the SCO/CCM and request they open the envelope to determine whether they (SCO/CCM) should seek further medical support. These circumstances warrant at least a level 1 since the PER has been inadequately prepared and a level 2 if the welfare of the individual has been compromised as a result.

In a similar vein, a decision by court custody staff to relax the supervision regime recommended by the originating police or prison custody in the case of a self-harm risk without external advice should be pursued by the Lay Observer with the SCO/CCM for its rationale and its documentation in the PER. We should be particularly concerned if these decisions are not recorded or appear to be for resource reasons.

### **Lessons from Visit Reports**

The following topics are the focus of discussion at area meetings this month and next:

1. There are still some courts where Rights leaflets are not placed in cells for Detained Persons to read. This is a contractual requirement. Level 1 initially but, if noted a second time, Level 2.
2. There is little evidence that non-English speakers are given Rights leaflets in their own language. Many Lay Observers have reported that the leaflets have been provided only after the Lay Observer had commented. This should be noted and given a Level 1.

Many Detained Persons are poor readers. Have any been given help in explaining their rights? Please note good practice.

3. Reading materials are seldom mentioned. Please note good practice e.g. where courts make a special effort to provide a range of reading materials.

4. Cleanliness of many custody suites is poorer than would be acceptable in other areas of the court. Always look in the corners of cells to see if there has been a build-up of dirt due to poor cleaning. Look at the lower part of the walls. Any food or drink stains should have been removed quickly before the stain solidifies and becomes difficult to remove. Are the benches clean or is there a build-up of dirt? Ask the custody staff if they have any concerns about the standards of cleanliness. If they have a concern, what has the SCO done to escalate the matter?
5. Children and Young People (CYPs). Are they in the cells for too long? The agreed intent is for them to be dealt with quickly and moved out of the cells quickly. Is this happening?

CYPs are often brought to court in special vehicles. These children are accompanied on their journey by two escorts who have been specially trained. Are those children being treated as children when in the cells? Are they given any reading materials suitable for their age?

6. Sometimes Detained Persons need something that is stored in their property bag. Lay Observers have noted that some have their medication in the property bag. There is a variation in the response to these requests. In some courts the bag is opened in the sight of the Detained Person who then signs for what has been removed before the bag is then resealed. In other courts there is a refusal to open any property bag. Please note the practice if seen.
7. PERs from both police and prisons are often poorly completed. Sometimes the errors are obvious but more frequently they need careful scrutiny to discover their accuracy. Often the section on medications is ignored and occasionally this has been when a Detained Person has urgent need for medication during the day.

Often the errors in the medical section can be implied. If, for example the markers indicate the Detained Person to be a heroin user but there is nothing in the medical section the Detained Person should be asked about his/her medication.

Sometimes errors are through omissions. SCOs often know Detained Persons and will say if the PERs differ from one appearance to the next. Please note these. When a PER is found to be inaccurate please make a note, including reference to the Detained Person (not by name but by cell number and/or reference number). Also record the originating prison/police station.

8. It is common for Detained Persons sitting in cells to be unwell. This is particularly true for those withdrawing from drugs and/or alcohol. It is worthwhile asking the Detained Person about his/her access to medication. In the last month a number of reports have highlighted occasions when a Detained Person withdrawing from drugs had a superficial medical inspection whilst in police custody but no

medication was prescribed because, at that time, the Detained Person was showing no outward manifestation of drug withdrawal. By the time the Detained Person had been in the custody suite for a short while the signs of drug withdrawal could be seen. Please ask the SCO what action has been taken about inaccurate PERs. Has the matter been escalated? Has the SCO contacted the medical helpline? (Many have no confidence in this helpline and do not use it). Actions to escalate issues or to contact medical help should be noted.

9. Legal visits. Whilst this is not part of any contract, it is useful for us to have some indication of the number of Detained Persons who have long waits to have a legal visit. Obviously there are often good reasons, especially if the Detained Person has instructed his/her own legal representative and that person has not arrived at the court. In addition to noting the number of Detained Persons who have long waits, any additional information about the reasons for these delays is useful.
10. The treatment of CYPs is an increasing concern. Despite an acknowledgement that all CYPs should spend as little time in court as possible, our reports indicate that these youngsters are not being dealt with speedily. Where the young offender is brought to court by a dedicated CYP team (now a GEOAmev contract) please complete a form and make sure it is sent to Lyn-Marie Evans.

The CYP teams are specially trained in dealing with children and young offenders. Too often when they arrive in the custody suite they spend their time just sitting in the staff area and are not allowed into the cells area to look after the young person they have brought to court. Too often these young offenders are treated no differently from adult offenders. If it is important to have dedicated and trained escorts, why is it acceptable to treat these offenders as adults whilst they are in the cells? Any additional evidence will help our reporting.

11. When some significant defects in the condition or fabric of the custody suite have been noted some Lay Observers have found it useful to speak to the court manager (or facilities manager in larger courts). This has been found useful in establishing links between the visiting Lay Observer and HMCTS and also to find out if the court manager receives copies of the visit reports. Where the reports have not been regularly received Lay Observers have offered to email a copy to the manager.
12. Not all custody staff need to carry an anti-ligature knife at all times. The cells officer, however, should carry a knife.
13. Graffiti is being removed in a number of courts, particularly in London, but is rapidly being replaced. We should remember to record the existence of notices to Detained Persons confirming prosecution for making graffiti, whiteboards noting cell condition and any other good practices seeking to prevent graffiti.

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