



National Offender
Management Service

THE PRISONS & PROBATION OMBUDSMAN

This instruction applies to :		Reference :
NOMS HQ Prisons		AI 26/2010 PSI 58/2010
Issue Date	Effective Date	Expiry Date
24/01/2022 (Re-issued)	02 December 2010	N/A
Issued on the authority of	Operational Policy Sub-board	
For action by	Governors and Heads of Groups. In this document the term Governor also applies to Directors of Contracted Prisons.	
For information	<p>All staff in prison establishments and all staff in NOMS HQ</p> <p>May 2016 - The PPO's contact details have been updated on Pages 6-7</p> <p>January 2022 - Update to reflect and signpost to the PPO's new Terms of Reference (ToR) and re-directing to new policies superseding this policy concerning Prisoner Complaints and Intelligence Collection Management and Dissemination; including contact details.</p>	
Contact	<p>For the PPO's Terms of Reference: Contact us Prisons & Probation Ombudsman (ppo.gov.uk)</p> <p>For Prisoner Complaints Policy Framework Contact: nlt@justice.gov.uk</p> <p>For Intelligence Collection Management and Dissemination in prisons and probation Contact: Intelligence.projects@noms.gsi.gov.uk</p> <p>For <u>PPO Fatal Incident Investigation (FII) Disclosure matters.</u> Contact: scoplearning@justice.gov.uk</p>	
Associated documents	PSO 2710 Follow up to deaths in custody National Security Framework	
<p>Replaces the following document which is hereby cancelled: - PSO 2520 - The Prisons and Probation Ombudsman</p> <p>This PSI should be read in conjunction with the following document: Annex A (Joint Working Protocol between the National Offender Management Service and the Prisons and Probation Ombudsman) of PSO 2710 – Follow up to deaths in custody</p>		
<p>Audit/monitoring: Senior Managers above establishment level are responsible for monitoring compliance with the mandatory actions set out in this Instruction.</p>		
<p>Introduces amendments to the following documents: - PSO 2710 – Follow up to Deaths in Custody</p>		

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1. Executive summary

Background

- 1.1 This Instruction replaces PSO 2520, to take account of developments since 2001 and to inform staff and prisoners of the revised Terms of Reference for the Prisons and Probation Ombudsman (PPO) and the implications for existing related policy and procedures.
- 1.2 This instruction also introduces the revised FII disclosure policy. It reminds staff of the procedures to follow when they are disclosing documents as part of the investigation into a death in custody or a discretionary investigation into a death after release.

The Prisons and Probation Ombudsman

- 1.3 The PPO is wholly independent of the National Offender Management Service (including HM Prison Service and Probation Services in England and Wales), the UK Border Agency and the Youth Justice Board. The PPO is appointed through an open competition by the Secretary of State for Justice.
- 1.4 The Ombudsman's office is operationally independent of, though it is sponsored by, the Ministry of Justice. The Ombudsman reports to the Secretary of State.

Desired outcomes

- 1.5 This instruction aims to ensure that: -
 - Governors and all staff are familiar with the role of the PPO and the extent of the PPO's remit.
 - All prisoners entering a prison are made aware of the function and accessibility of the PPO.

- Staff are aware of the PPO's disclosure policy and their responsibilities insofar as which documents should be disclosed to the PPO.
- Staff know which information for an investigation into a death in custody should be redacted prior to documents being disclosed.
- Staff are aware of the arrangements that have been agreed about access to security and intelligence information in relation to the PPO's investigation of deaths in custody.

Application

1.6 This Instruction describes the arrangements for informing prisoners about how and when they can contact the PPO and the role of staff in facilitating this (see Section 3). The instruction also provides the PPO's revised Terms of Reference (see Annex A). This instruction also sets out what documents should be disclosed to the PPO and in what format, and provides the PPO's revised FII disclosure policy at Annex B.

Mandatory actions

PPO Terms of Reference

1.7 *Governors must ensure that:*

- *In accordance with section 3 of this Instruction, information about the PPO is made widely available to all prisoners and staff and posters and leaflets must be displayed throughout the prison.*
- *Prisoners wishing to make a complaint to the PPO are allowed to do so in accordance with the procedures set out at section 4 of this Instruction. Such correspondence must be treated as confidential*
- *Prisoners are aware of the deadline for the submission to the PPO of complaints.*
- *When the PPO is carrying out investigations or enquiries that staff comply with requests for information and assistance in accordance with section 5 of this Instruction.*
- *On completion of a PPO investigation and where a recommendation has been accepted by the Chief Executive Officer of NOMS, the follow up action must be implemented within the specified period and the PPO must be notified accordingly.*
- *Staff are made aware of the changes to the Terms of Reference, and the PPO's revised FII disclosure policy.*

Disclosure of sensitive information (applicable to both complaints and Fatal Incident Investigations)

1.8 The PPO is subject to the Data Protection Act 1998 and the Freedom of Information Act 2000 and follows the Government's policy that official information should be made available unless it is clearly not in the public interest to do so. *Staff providing information to the PPO or checking draft reports must identify to the PPO any information which they consider should not be disclosed.* Further details relating to death in custody investigations are set out at Section 7 and Annex B respectively. Examples will include circumstances where disclosure would be:

- against the interests of national security;
- likely to prejudice the security of the prison;
- likely to put at risk a third-party source of information;
- likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a prisoner;
- likely to prejudice the administration of justice including legal proceedings;
- of papers capable of attracting legal privilege

1.9 *A basic principle is that the PPO must have unfettered access to documents during their investigations and this is enshrined in the PPO's ToR.* However, in order to ensure that sensitive documents such as Security Information Reports (SIRs) are securely managed, there is an agreement between NOMS and the PPO to ensure that only the relevant information, particularly from SIRs, is routinely provided to the PPO in the course of his investigations. In the event of third party (police or other organisations) information, the written consent of the data owner will need to be obtained before being disclosed to the PPO. Any concerns by establishment staff about the release to the PPO of specific information should be discussed with your Head of Security or Operations. For medical records, the prisoner's consent is required for disclosure. For personnel records of staff the agreement of the staff member concerned is required.

1.10 The following arrangements have been agreed in relation to the PPO's access to security information:

The key requirements with regards to security information are:

- *When requests are made to security staff by those acting on behalf of the PPO for copies of SIRs, these must be provided by the establishment but the source of the intelligence must be deleted/made unreadable. It should also not be possible to clearly infer the source from reading the redacted text. If the SIR is of a confidential nature then this can be sent via the Brent fax to the National Intelligence Unit (NIU) who in turn will arrange for it to be delivered to the PPO.*
- *Should a further request then be received concerning the source of the intelligence, the Head of Operations/Security will address the 'need to know' principle and if in agreement will indicate the nature of the source. If the Head of Security/Operations considers that the source should be withheld, the matter will be decided on by the Governing Governor/Director*
- *In the event that there is no satisfactory resolution then the matter will be referred to the NIU by the Governing Governor/Director for consideration by the Head of Security Group and to the Ombudsman by his representative*
- *All third party names, e.g. other prisoners' names, or other sensitive information must be 'redacted' before disclosure.*
- *If there are concerns about disclosure of the subject matter of the SIR, the matter must be referred to the Head of Operations/Deputy Governor. Only in an exceptional case would the information requested not be disclosed. In such circumstances the Governing Governor/Director must inform the PPO in writing giving the reasons for withholding the information. The NIU may be referred to for advice*
- *The National Security Framework (Function 4, Intelligence Systems) sets out the requirements for the sanitising and dissemination of SIRs.*

Disclosure to PPO of documentation following a death in custody (further guidance is contained in Section 8 and 9)

- *All staff involved in the collation of documents which will be disclosed to the PPO following a death in custody must be familiar with this Instruction, including which documents may be withheld or redacted before being disclosed.*
- *With the exception of Security Information Reports (SIRs) staff must ensure that the PPO is provided with two copies of any documents that require redaction: one redacted, and one not. Staff should also ensure that a copy is taken of each document provided to the PPO and that such copies are stored in a locked cabinet.*
- *Security staff should be aware that when requests are made by the PPO for copies of SIRs then one copy of each SIR must be provided but the source of the intelligence must be deleted or made unreadable. All requests for sensitive documents as set out in paragraphs 19-24 of the PPO's FII disclosure guidance (at Annex B) must be referred to the establishment's security manager.*

Disclosure to staff of PPO draft fatal incident reports

- 1.11 Governors should ensure that any staff named in the PPO's fatal incident report are given the opportunity to read the report at the draft stage and to respond within the consultation period (usually 21 days from the date of issue). Responses to PPO reports are coordinated through the regional offices, who then liaise with the National Safer Custody Managers who are based in Offender Safety, Rights and Responsibilities Group.
- 1.12 In the event that a named member of staff has been specifically criticised the PPO will issue an advanced disclosure copy of the draft report 21 days in advance of issuing it to the prisoner's family and the Coroner. In such cases the Governor should ensure that the member of staff has the opportunity to see the report, and to respond if appropriate, within the 21 day period.

Resource Impact

- 1.13 Governors and all other prison staff will need to be aware of the additional information provided in this Instruction and to note the changes in the Terms of Reference. These have been revised to accurately reflect the PPO's current remit and to introduce some changes to policy.
- 1.14 The PPO's revised FII disclosure policy may lead to an increase in the work undertaken by the Investigation Liaison Officer and/or the security department of an establishment. There may also be additional photocopying costs.

2. The Prisons and Probation Ombudsman's revised Terms of Reference

- 2.1 The PPO's revised Terms of Reference came into effect on 11 June 2009.
- 2.2 The three main changes introduced by the revised Terms of Reference are as follows:
- Whilst the PPO and the PPO staff normally pre-arrange visits to the premises of the authorities in remit, there is now the option of making unannounced visits.
 - The PPO will now consider a complaint which has been submitted within three calendar months (increased from one month) of exhausting the internal Prison Service complaints system.

- The revised Terms of Reference now set out the circumstances in which draft reports will be disclosed, including the circumstances in which advance disclosure will be given.

2.3 The revised Terms of Reference (copy at Annex A) formalise aspects of the PPO's remit which were not clearly acknowledged in the previous version and were therefore not reflected in PSO 2520.

3. Arrangements for informing prisoners about the Prisons and Probation Ombudsman

3.1 *Governors must ensure that:*

- *Information about the PPO is made widely available to all prisoners*
- *Posters and leaflets in respect of the PPO are displayed in prison libraries, reception and on all prisoner noticeboards.*

Publicity material

3.2 A promotional DVD has been produced by the PPO. It is aimed specifically at prisons, to be shown to prisoners and prison staff. It explains how independent complaints investigations are conducted and informs prisoners about how and when to contact the PPO. You can view the content of the DVD on the PPO website www.ppo.gov.uk. A further DVD has been produced concerning FII procedures.

3.3 The PPO's office publish a leaflet/application form and posters in varying sizes (A2 and A3) with separate versions for male and female prisons about the correct process when making a complaint. The leaflet is also available in the following languages: Welsh, Arabic, Bengali, Chinese, Dutch, French, German, Greek, Gujarati, Hindi, Italian, Polish, Portuguese, Punjabi, Russian, Spanish, Tamil, Turkish, Urdu and Vietnamese.

Early Days

3.4 The prisoner early days process should include an explanation of the PPO's role in relation to the complaints procedure. Prisoners should be informed that they may pursue a complaint with the PPO only after all the internal avenues of complaint have been exhausted provided they do so within three calendar months. All prisoners should be given a copy of the PPO's leaflet during the early days process and should be told about the availability of information on DVD and in foreign languages.

3.5 Governors will be sent copies of the PPO's Annual Report for circulation and for the prison library. If required further copies can be obtained from the address given at paragraph 4.4.

Visits by the Prisons and Probation Ombudsman and the PPO's staff for the purpose of giving presentations

3.6 The PPO and the PPO's staff are available to give presentations to staff in establishments about the work of the office. The PPO's office will contact establishments directly to arrange visits. Staff should as far as possible, facilitate arrangements for presentations to be made.

3.7 Staff wishing to request visits and presentations may do so by contacting the PPO's office (details at paragraph 4.4 below).

4. Complaints

4.1 The PPO will investigate complaints submitted by the following categories of person:

- Prisoners who have failed to obtain satisfaction from the prison complaints system and whose complaints are eligible in other respects
- Offenders who are, or have been, under probation supervision, or accommodated in Approved Premises, or who have had reports prepared on them by NOMS and who have failed to obtain satisfaction from the probation complaints system and whose complaints are eligible in other respects
- Immigration detainees who have failed to obtain satisfaction from the UKBA complaints system and whose complaints are eligible in other respects.

Matters about which the PPO can consider/investigate

4.2 The PPO can:

- Consider the merits of matters complained of as well as the procedures involved
- Investigate decisions and actions (including failures or refusals to act) relating to the management, supervision, care and treatment of prisoners in custody, by prison staff, people acting as agents or contractors of NOMS and members of the Independent Monitoring Boards. (The PPO's Terms of Reference therefore include contracted out prisons, contracted out services including escorts, and the actions of people working in prisons but not employed by NOMS.)

Matters about which the PPO is NOT able to consider/investigate

4.3 The PPO cannot consider/investigate:

- Policy decisions taken by a Minister and official advice to Ministers upon which such decisions are based
- The merits of decisions taken by Ministers, save for in cases which have been approved by Ministers for consideration
- Actions and decisions outside the responsibility of NOMS, UKBA and the Youth Justice Board, for example complaints about sentence, conviction etc
- Cases currently the subject of civil litigation or criminal proceedings
- The clinical judgement of medical professionals

Making Complaints

Address of the Prisons and Probation Ombudsman

4.4 The PPO's contact details are:

The Prisons and Probation Ombudsman
PO Box 70769
London
SE1P 4XY

Tel: 020 7633 4100
Lo-call: 0845 010 7938
Fax: 020 7633 4141
Email: mail@ppo.gsi.gov.uk
Website www.ppo.gov.uk

- 4.5 Complaints to the PPO do not have to be presented on any special form, however the leaflet (see paragraph 3.3) contains a form which prisoners can use if they choose. *Postage must be paid by the prison. Prisoners must be provided with paper for the purpose of writing to the PPO if requested.*
- 4.6 *Prisoners must submit complaints within three calendar months of exhausting the internal Prison Service complaints procedures.* Prisoners should be informed that they need exhaust the internal complaints process before pursuing their complaint with the PPO. The PPO will not normally accept a complaint where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts that gave rise to the original complaint and the complainant submitting their case to the PPO, unless the delay has been the fault of the relevant authority, or where the issues raised are so serious as to override the time factor.
- 4.7 *Prisoners must be permitted access to the PPO and staff must not prevent the submission of complaints nor judge whether they are eligible for consideration.* It is the PPO's decision whether to investigate a complaint. If a complaint is considered ineligible, the PPO will inform the complainant and explain the reasons, normally in writing.

Confidentiality of correspondence

- 4.8 Prisoners have a right of confidential access to the PPO. Prisoners may hand in their letters sealed for despatch, provided that the envelope is marked "Confidential Access" and addressed to the PPO at the address in paragraph 4.4. Staff dealing with correspondence should ensure that the address is correct, but may only check the content of the letter in accordance with the provisions of PSO 4411 Annex A.
- 4.9 *Incoming letters from the PPO addressed to prisoners must also be treated as confidential and must only be opened in accordance with the same PSO 4411 Annex A provisions.* Letters from the PPO's office to individual prisoners should be readily identifiable by the PPO's logo on the envelope and by being marked "Prisons and Probation Ombudsman – Confidential". *Such letters must be passed to the prisoner unopened unless there is reason to query their origin. In that event, the letter must be passed unopened to the Governor who may arrange for enquiries to be made with the PPO's office and, if necessary, for the letter to be opened in the prisoner's presence.*

5. Complaints: Investigations and enquiries

- 5.1 *Governors and Heads of HQ groups must ensure that:*
- *Where the Chief Executive Officer of NOMS has accepted a recommendation made by the PPO, the follow-up action is implemented within the time period specified*

Documents for disclosure – see also paragraph 1.8

- 5.2 *All staff must co-operate fully with all requests from the PPO or the PPO's staff for information, material or access to establishments and prisoners (see paragraphs 1.8 – 1.10).*

- 5.3 The PPO's complaints investigators are likely in the first instance to ask to see copies of the prisoner's internal complaint and any related material. *Briefing and Casework Unit, and establishment staff must, where appropriate and at the same time, provide any additional documents or information they consider relevant.* The PPO's staff may subsequently need to make further enquiries with Headquarters or establishment staff, the Independent Monitoring Board, prisoners or other people, by correspondence, by telephone or by visit and interview. They may need to examine files and copy documents.

Interviews

- 5.4 *The PPO and the PPO's staff will have access to establishments, headquarters and regional offices at reasonable times as specified by the PPO, for the purpose of conducting interviews, examining documents (including those held electronically), and for pursuing other relevant inquiries in connection with investigations.* The PPO will normally arrange such visits in advance. Such visits will count as special visits, rather than against a prisoner's allocation, but will not require a special visits order.
- 5.5 *Interviews with prisoners must be within sight, but out of the hearing, of staff unless the prisoner, or the PPO or the PPO's staff, requests that it takes place within hearing. A room must be provided for this purpose.* Subject to the agreement of the PPO or the PPO's staff, the prisoner may have a friend or adviser present so long as that person would normally be allowed to visit the prisoner.
- 5.6 The PPO or the PPO's staff will occasionally tape-record interviews subject to the permission of the interviewee. If this is necessary arrangements will be made in advance for the PPO's equipment to be set up.
- 5.7 The PPO's staff will endeavour to arrange visits (or telephone calls) at a time which does not conflict with prisoners' work or education commitments but, in any event, *prisoners must not lose pay as a result of an interview or telephone conversation which takes place at the request of the PPO's office.*
- 5.8 Staff being interviewed may be accompanied if they wish by a work colleague or trade union representative.
- 5.9 Staff and prisoners being interviewed need to understand that evidence given will not be admissible in any disciplinary proceedings without their consent, but that it may be disclosed in court proceedings where such disclosure is required by law. They also need to understand that information given may be used in the PPO's reply subject to the provisions about disclosure in paragraph 1.8 and about draft investigation reports in paragraphs 5.13 and 5.14.

Telephone calls

- 5.10 Prisoners may telephone the PPO's office at their own expense. For those wishing to do so the general enquiry number for the PPO's office is 020 7035 2876 and this is globally available to all prisoners with access to the BT pinphone system, calls to this number are not recorded or monitored. Prisoners whose complaints are under consideration may be given a dedicated telephone number to enable them to telephone the PPO's office. For those on a call enabling regime, the dedicated number for the caseworker at the PPO's office should be submitted on the 'closed' side. This means that calls to this number cannot be recorded or monitored by prison staff.
- 5.11 If a member of the PPO's staff wishes to speak to a prisoner by telephone, s/he will telephone the establishment to make arrangements to speak to the prisoner. *On receipt of such a request, prisoners must be given the opportunity to use an official telephone out of*

hearing of staff and at a time convenient for the regime. Where telephone calls take place within prisoner working hours the condition of paragraph 5.7 will apply.

Draft complaints investigation reports

- 5.12 The PPO may conclude an investigation in any way s/he sees most fit, for example by local resolution (see Section 6 for further information), mediation, a formal letter etc. Where the PPO intends to issue a formal report, a draft is sent to NOMS Headquarters so that checks may be made for confidential or sensitive material which ought not to be disclosed and for factual accuracy. Should any staff be criticised in a report, the draft report will allow any identifiable staff an opportunity to make representations. The Briefing and Casework Unit will acknowledge the draft and co-ordinate the response. NOMS may also use this opportunity to say whether the recommendations are accepted.
- 5.13 *The letter or email accompanying the report will give the dates by which responses must be received.* NOMS will normally have two weeks to issue a response. This comprises:
- One week after dispatch from the PPO's office which should be used to draw to the attention of the PPO any confidential or sensitive material in the draft which ought not to be disclosed. It is essential to note that one week after dispatch to the Prison Service, the PPO will send a copy of the draft to the prisoner.
 - One further week to send to the PPO any comments on the factual accuracy of the draft.
- 5.14 Where an acknowledgement has been sent to the PPO's office but no final response has been made within the deadlines set, the PPO will proceed on the basis that NOMS does not wish to comment.

Final reports

- 5.15 The PPO's final report may uphold a complaint in whole, in part, or may reject it. Where a formal report is to be issued on a complaint investigation, the PPO will send a draft to the Head of the relevant authority, to allow that authority to draw attention to points of factual inaccuracy, and to confidential or sensitive material, and to allow any identifiable staff subject to criticism an opportunity to make representations.
- 5.16 Notwithstanding the outcome of the complaint, a recommendation may be made to the Chief Executive Officer or the Secretary of State for Justice. Where this is the case the Briefing and Casework Unit will check the final report and consider whether to accept any recommendations made.
- 5.17 Where no recommendation has been made, the report is sent directly to the head of Briefing and Casework Unit who will copy it to all interested parties.
- 5.18 Requests for additional copies of final reports should be sent to the Briefing and Casework Unit.

Dealing with recommendations

- 5.19 On completion of an investigation, the PPO may make a recommendation for action to be taken. The PPO may make recommendations to the authorities within remit, the Secretary of State for Justice, the Home Secretary or the Secretary of State for Education, or to any other body or individual that the PPO considers appropriate given their role, duties and powers. For those recommendations that fall to the Prison Service to consider, co-ordination of responses will be undertaken by the Briefing and Casework Unit, who will

commission contributions from the appropriate Director of Offender Management or Headquarters group. *The PPO must be notified of action taken as a result of any recommendations.*

5.20 The Prison Service has a target of four weeks to reply to recommendations. Briefing and Casework Unit will monitor the timeliness of responses. *Where action to implement a recommendation cannot be completed in time to meet the four week deadline, the response must inform the PPO why and continue to provide the PPO with all subsequent progress.*

5.21 Examples of action which the PPO might recommend are:

- Ex-gratia payments for property lost as a result of negligence by NOMS: payment will normally be made to the prisoner's private cash account; *the prisoner must be informed of this by letter; side copied to the PPO.*
- An apology for actions resulting in an injustice to a prisoner; *the Ombudsman must be sent a copy of the letter of apology to the prisoner.*
- Mitigation or quashing of a punishment of additional days: the Ombudsman's terms of reference exclude decisions, or the review of decisions, by independent adjudicators (district judges), but the PPO requires confirmation that prisoners' adjudication records and release dates have been amended if punishments of added days are quashed or mitigated
- A review by NOMS Headquarters of its guidance on policy issues: *the PPO must be told the expected timescale, and given details of the outcome of the review.*

6. Complaints: Settlement by local resolution

6.1 It will be open to the PPO in the course of a complaint to seek to resolve the matter in whatever way the PPO sees most fit, including by mediation and by local resolution.

6.2 Where the PPO considers that a complaint may be suitable for local resolution, the PPO will approach the Governor of an establishment concerned or Headquarters. The PPO will approach the prisoner separately. Governors have authority to agree a settlement in the case of non-reserved subjects (where it concerns a decision taken at establishment level). It is not necessary to refer proposals for local settlement to DOMs or the Briefing and Casework Unit.

6.3 In most cases local resolution will be proposed where the investigation of a complaint has brought to light new evidence or factual errors in the decision making process. Suitable types of complaint typically include (although these are not exclusive) the following: minor property losses (up to a settlement limit within the Governor's delegated authority); loss of earned privileges; and decisions on categorisation, release on temporary licence or home detention curfew (but excluding those concerning lifers, category A or escape list prisoners). In the latter category the Governor can agree that a board will reconsider a decision in the light of new information.

6.4 The intention of local resolution is not to involve Governors in protracted negotiations but rather to seek agreement on complaints at an earlier stage. For example, where resolution involves reaching financial settlement with the prisoner over property loss the PPO will submit to the Governor a proposed figure with supporting argument.

6.5 Complaints concerning Reserved Subjects will not usually be suitable for local resolution. Where the PPO considers that local resolution may be appropriate in a Reserved Subject

complaint the PPO will approach the Headquarters unit where the original decision was made.

- 6.6 Once the settlement has been agreed, the PPO's office will write to both the Governor and prisoner to confirm this. Where further action is required to implement the settlement, Governors are asked to ensure action is taken promptly. *Governors must inform the PPO once the settlement has been implemented.*

7. Deaths in custody investigations

- 7.1 The policy for the investigation of deaths in custody is contained within PSO 2710 entitled Follow up to deaths in custody. Paragraphs 29-41 of Annex A (of this Instruction) set out the revised Terms of Reference relating to death in custody investigations but do not change the procedures set out in Annex A of the current PSO 2710 (Joint Working Protocol between the National Offender Management Service and the Prisons and Probation Ombudsman).

8. Disclosure of documents following a death in custody

- 8.1 PSO 2710 Follow up to deaths in custody currently makes it mandatory for establishments to collate and provide copies of the documents requested by the PPO investigation teams. This task will usually be carried out by the establishment's designated investigation liaison officer.

Redaction of Security Information Reports (SIRs)

- 8.2 *Every assistance must be given to the PPO and staff and proper consideration given to any requests for the identification of sources.* Likewise, PPO staff will take into account that there may be occasions when they consider it necessary to know the source in order to ensure the reliability of their investigation findings. Correspondingly, there may be other occasions in which such knowledge is not vital.
- 8.3 The key requirements with regards to security information are:
- *When requests are made to security staff by those acting on behalf of the PPO for copies of SIRs, these must be provided by the establishment but the source of the intelligence must be deleted/made unreadable. It should also not be possible to clearly infer the source from reading the redacted text. If the SIR is of a confidential nature then this can be sent via the Brent fax to the National Intelligence Unit (NIU) who in turn will arrange for it to be delivered to the PPO.*
 - *Should a further request then be received concerning the source of the intelligence, the Head of Operations/Security will address the 'need to know' principle and if in agreement will indicate the nature of the source. If the Head of Security/Operations considers that the source should be withheld, the matter will be decided on by the Governing Governor/Director.*
 - *In the event that there is no satisfactory resolution then the matter will be referred to the NIU by the Governing Governor/Director for consideration by the Head of Security Group and to the Ombudsman by his representative.*
 - *All third party names, e.g. other prisoners' names, or other sensitive information must be 'redacted' before disclosure.*
 - *If there are concerns about disclosure of the subject matter of the SIR, the matter must be referred to the Head of Operations/Deputy Governor. Only in an exceptional case would the information requested not be disclosed. In such circumstances the*

Governing Governor/Director must inform the PPO in writing giving the reasons for withholding the information. The NIU may be referred to for advice.

- 8.4 The National Security Framework (Function 4, Intelligence Systems) sets out the requirements for the sanitising and dissemination of SIRs.

Redaction of documents other than SIRs

- 8.5 *All documents that are to be disclosed which contain third party, e.g. other prisoners' names, or other sensitive information must be 'redacted' before disclosure. Redaction means editing the sensitive details, by blocking them out, in the document which is to be provided so that the details cannot be seen.*
- 8.6 *Where redaction of documents is required, all establishments must provide two copies of the document that required redaction to the PPO: one redacted and one not. The NOMS is required to ensure that information about third parties is not inappropriately disclosed. Providing the PPO with appropriately redacted documentation will help ensure that this information is not inadvertently included in annexes to PPO reports.*

9. Policy and strategic context

This PSI arises from the PPO's revised Terms of Reference and revised Fatal Incident Investigation disclosure policy.

10. Guidance

The PPO's Terms of Reference and FII disclosure policy are attached as annexes to this PSI

(signed)

Ian Poree
Director of Service Development, NOMS

The Prisons and Probation Ombudsman for England and Wales

Terms of Reference latest update December 2021 available [here](#)

PPO FATAL INCIDENT INVESTIGATION (FII) DISCLOSURE POLICY

INTRODUCTION

1. At the heart of the Prisons and Probation Ombudsman's work on fatal incidents is a commitment to full, fair, open and transparent investigations. This commitment is essential if the Ombudsman's investigation is to meet the aims set out in his terms of reference. Of particular relevance is the aim of assisting the inquest to meet the State's obligations under Article 2 of the European Convention on Human Rights. This includes enabling the family to participate fully in the inquest, and ensuring that the full facts are brought to light. One of the Ombudsman's aims is also to provide explanations and insight for bereaved relatives.
2. When dealing with disclosure under this policy, the question of what information should be disclosed to whom, and when, has to be set against the background of these aims.

The Ombudsman's policy is that disclosure should occur as fully and as early as his terms of reference, and the law allows.

This document describes how that policy applies in practice.

3. Although this guidance applies to all members of the Fatal Incidents Investigation team including family liaison and administrative staff, for the sake of brevity only investigators are referred to.
4. The guidance refers to all the Ombudsman's fatal incidents investigations regardless of whether the death took place in prison, young offenders institution (YOI), immigration removal centre (IRC), court, probation approved premises or after release. Also for the sake of brevity, this policy refers to the service in remit.
5. The policy should not be confused with the Ombudsman's obligations under the Freedom of Information (FOI) Act 2000 and the Data Protection (DP) Act 1998. Where a written request is made, by any person, for specific information contained in documents held by the Ombudsman, then an obligation to disclose that information may arise under one of the acts, even if disclosure would not occur under this policy. Having said that, there are a number of exemptions from the disclosure obligations in the acts and, in many cases, the exemptions allow the Ombudsman to lawfully refuse to disclose information which would also be withheld under this policy.
6. The Ombudsman has a separate policy on disclosure under the FOI and DP Acts. As strict time limits must be met when responding to requests made under the FOI Act (20 working days) and DP Act (40 days), investigators must act quickly in response to written requests for information. They should consult their line managers in the event that they receive a written request for information.

DISCLOSURE POWERS

7. The Ombudsman's powers of disclosure are set out in his terms of reference at paragraphs 5-7.

The Ombudsman is subject to the Data Protection Act 1998 and the Freedom of Information Act 2000.

In accordance with the practice applying throughout government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so.

The Ombudsman and HM Inspectorates of Prisons, Probation and Court Administration, and the Chief Inspector of the UK Border Agency, will work together to ensure that relevant information, knowledge and expertise is shared, especially in relation to conditions for prisoners, residents and detainees generally. The Ombudsman may also share information with other relevant specialist advisers, the Independent Police Complaints Commission, and investigating bodies, to the extent necessary to fulfil the aims of an investigation.

COMMUNICATING THE DISCLOSURE ARRANGEMENTS

8. Before individuals are asked to provide information – for example, during an investigation interview – they should be told that the information they provide may be disclosed to relevant parties, if this is necessary to achieve the aims of the investigation. The standard notices about the investigation and information given to interviewees explain this. However, investigators need to make sure that people giving information less formally are also aware that the information may be disclosed.

WHO DECIDES ON DISCLOSURE?

9. It is for the Ombudsman, or his staff on his behalf, to decide what information from the investigation should be disclosed, to whom, and when. It is the responsibility of the Ombudsman to make pre-inquest disclosure in order to satisfy the Article 2 investigative obligation. Coroners have their own obligations about disclosure of documents which are available to them. The Ombudsman operates on the presumption of disclosure and so investigators must take care that they only request and retain information which is relevant to the investigation. Material which is irrelevant to the investigation should be shredded or returned to the sender and not retained by the PPO.

TO WHOM SHOULD INFORMATION BE DISCLOSED?

10. The Ombudsman may disclose information to anyone whom he considers requires it in order to meet the aims of his investigation. This will include the organisations under investigation, and any specific individuals who may be subject to criticism. It will be particularly important in the pre-inquest phase to disclose information to the family of the deceased, their personal representatives, and anyone else who will be involved in the inquest, so that they can properly prepare for it.
11. Generally, information which is disclosed to one party will be disclosed to all parties. This means that any information disclosed to the family or their representatives before the inquest must be simultaneously disclosed to the service in remit and the Coroner. (NB the Memorandum of Understanding with the Coroners Society provides that the Coroner will be supplied on request with copies of redacted and unredacted documents.) In some circumstances, it may be relevant to disclose information to prisoners or approved premises residents, for example, where there is specific comment or criticism of their actions. Families occasionally ask for the draft report to be sent to a third party such as their legal representative. The report remains confidential until after the inquest.
12. The Ombudsman would want to disclose information to anyone the Coroner would consider a 'properly interested person' at the inquest. But he is not restricted by the Coroner's decision as to who is an 'interested person'. It is for the Ombudsman to decide to whom information should be disclosed in order to meet the aims of his investigation.
13. The Ombudsman may disclose information to specialist advisers, and other bodies conducting related enquiries, for example, the NHS, the National Patient Safety Agency,

Her Majesty's Inspectorate of Prisons, Her Majesty's Inspectorate of Probation, Care Quality Commission or Social Services.

WHAT CAN BE DISCLOSED?

14. Under this policy, there are two things an investigator must consider when deciding whether to disclose documents gathered as part of an investigation.
 - The investigator should first consider whether the document is relevant to the investigation.
 - The investigator should then consider whether there are any restrictions on disclosure or exemptions, for example, because of information on third parties or sensitive information, which it is in the public interest not to disclose.
15. These considerations may make it necessary to redact, summarise or withhold all or part of a document. Any document which is redacted will be made available in an unredacted form to the Coroner on request.
16. As stated above, even if the investigator's judgement is that a document or any information contained in it should not be disclosed under this policy, an obligation may still arise under the Freedom of Information Act or the Data Protection Act. The Ombudsman's policy on requests for information under those Acts will apply in those circumstances.

Relevant information

17. Under this policy, the Ombudsman will only disclose information that is relevant to the investigation. Before disclosing each piece of information, the investigator should therefore satisfy himself that all or part of it is relevant to the investigation and its aims. Where a document is composed of relevant and irrelevant information, only the relevant information should be disclosed. **The investigator should take advice from his/her line manager if asked by a family to disclose information that he/she considers irrelevant.**
18. All the information in an investigation report, and its annexes, **must** be relevant to the investigation. When drafting reports and deciding on the inclusion of annexes, investigators must always apply the test of relevance. If a piece of information or a document is not relevant, it must not be included. It follows that investigation reports and annexes will almost always be subject to full disclosure, unless any of the information falls into the exemptions set out below. As a minimum the documents that are annexed will include all those which have been prepared by the PPO, such as the clinical review and the interview transcripts, which are not available elsewhere. Each report will list the other documents which have been read by the investigator but are not annexed. If the PPO holds these documents, and they are not sensitive (see below), then they will be disclosed on request.

Sensitive information

19. There are a number of types of information that may be considered to be 'sensitive' and careful consideration must be given before disclosure. Under this policy, disclosure should be withheld when to do so would be against the public interest. The investigator must consider the information which is relevant to the investigation and decide whether, for example, disclosure might prejudice national security, or the security of a prison, court or immigration removal centre security, or be likely to prejudice the administration of justice.
20. In practice, it will be rare for documents to be withheld entirely, without providing even an outline of the information in them. If documents are being withheld entirely, the investigator should normally confirm that they exist, unless there is a good public interest reason not to do so.

21. The originator and the security manager at the establishment must be contacted about the release of 'sensitive' information prior to its disclosure, and informed if the information is disclosed. In some cases appropriate redactions must be made to the documents disclosed.
22. As set out above, the Ombudsman's policy on requests for information under the FOI or the DP Act will need to be considered where a written request has been made for disclosure of sensitive information. There may be exemptions from the rights of access under those acts which apply and investigators should seek advice from their line manager on the application of these exemptions.

Security Information Reports (SIRs) and other security information

23. Care needs to be taken with security information reports where disclosure might, for example, prejudice future collection of information, or endanger sources of information. There may be grounds for redacting the reports, summarising them in general terms in the Ombudsman's report, or withholding them. It is unlikely that it will ever be necessary or proper to disclose the name of a prisoner or detainee who has supplied information to staff. However, the administrative sections of an SIR might be copied to demonstrate how quickly the information was acted upon and how seriously it was treated. Other security information, particularly information with potential Public Interest Immunity implications, must not be disclosed.
24. The PPO and the Prison Service have agreed the following arrangements:
 - Copies of SIRs must be provided by the establishment but the source of the intelligence will be deleted or made unreadable. If the SIR is of a confidential nature, it can be sent via the Brent fax to the National Intelligence Unit (NIU) who will arrange for it to be delivered to the PPO.
 - Should the PPO request information about the source of the intelligence, the Head of Operations/Security will consider it on a 'need to know' principle and, if in agreement, will indicate the nature of the source. If the Head of Operations/Security disagrees, then the matter will be decided upon by the Governing Governor.
 - In the event that there is no satisfactory resolution, the matter will be referred by the Governing Governor to the NIU for consideration by the Head of Security Group and to the Ombudsman by his representative.
 - If the source of the security information is identified by the Prison Service as a Covert Human Intelligence Source (CHIS) (that is, a confidential informant whose identity is not widely known), then the Prison Service can neither confirm nor deny their existence within the establishment. Applications by PPO staff which may identify a CHIS will be referred to NIU in the first instance

CCTV evidence

25. There are two main issues regarding the disclosure of CCTV images. The first is that disclosure may compromise the security of the establishment, such as disclosure of keys or lock mechanisms. The other is the infringement of the rights, under the Data Protection Act, of those who appear in the footage and whose presence was incidental to the death in custody.
26. All CCTV evidence obtained from a third party (e.g. the police) should be checked by the 'owner' before it is disclosed to the PPO investigator. The footage must be stored and transferred safely, especially prior to redaction. CCTV evidence should be redacted before

disclosure by the PPO, for example by removing pictures of other prisoners if they are not relevant to the investigation. The advice and assistance of the 'owner' will be necessary. When disclosure does take place, all parties should receive a copy.

27. The PPO may arrange for CCTV footage to be viewed, rather than making a copy. For technical reasons, viewing may take place at a suitable location such as the prison or police station.

Telephone conversations

28. Transcripts of the deceased's telephone conversations may well be obtained in the course of the investigation. Care should be taken to protect the privacy and confidentiality of the person being spoken to before the transcript is disclosed to anyone else. The transcript may need to be redacted beforehand (e.g. by removing the words spoken by the other person). Disclosure to the person being spoken to is more straightforward than disclosure to a third party.

Letters and other papers written by the deceased

29. Letters and papers written by the deceased may be found after the death. They may be removed by the police or Coroner's officer and it is important to consult them before disclosing to anyone else. Such correspondence may include letters which have not been posted or which had been passed for posting, as well as suicide notes and diaries. Suicide notes are not always written in letter form and messages may be left in other formats such as being written on the wall of the cell.
30. Chronologically the PPO investigation is the third investigation of the death, after the police and Coroner, and so the PPO does not usually retrieve such correspondence. When the PPO does obtain it first, the papers should be given to the Coroner and disclosure should only be with their agreement. Care should be taken to protect the confidentiality of the people referred to in any material. It is however permissible to inform the next of kin of the existence of the material.

Photographs of cells / maps

31. Photographs of cells and maps of prisons, immigration removal centres, court cells and custody suites must not routinely be disclosed. The investigator must seek the advice of the relevant security manager, whether of the prison or the court, before such documents can be disclosed.
32. Care should also be taken before disclosing any information which might put the residents of an approved premises at risk.

Legal privilege documents

33. Legal privilege documents between the Prison Service and their lawyers, Treasury Solicitors, should not have been disclosed to the PPO. If the PPO does receive any legal privilege documents they must be returned to the prison.

Other information

34. Documents containing third party names and details e.g. other prisoners' ACCT documents or Safer Custody meeting minutes containing names of prisoners must be appropriately redacted if it is decided to disclose.
35. Once the investigator is satisfied that the information is relevant to the investigation, they must then go on to consider whether there is an exceptional reason for it being exempt from disclosure. There are two exemption tests - whether the disclosure of third party information would be unlawful, and whether disclosure of any information would be against the public interest.

Disclosure of police statements

36. The Ombudsman has a Memorandum of Understanding (MOU) with the Association of Chief Police Officers (ACPO) which considers the sharing of information and evidence. The MOU states that:

“The PPO may only subsequently disclose information obtained from the police investigation if he considers that the public interest in making the disclosure outweighs the public interest in maintaining confidentiality.”

37. The police will provide the investigator with copies of statements taken by them, the deceased's police custody record and police antecedents. The PPO investigator must check with the investigating police officer whether they have concerns about disclosing the information contained in police statements. When the police are concerned about onwards disclosure, the senior investigating police officer will consult the Crown Prosecution Service.

Disclosure of third party information

38. Investigators must consider particularly carefully the question of whether third party information (i.e. information about an identifiable third party) should be disclosed, or whether disclosure would be unlawful. The relevant legal tests are set out below.

The Data Protection Act 1998 and Article 8 of the European Convention on Human Rights

39. The disclosure of irrelevant third party information will often be unlawful under the terms of the DP Act 1998 and Article 8 (right to private and family life) of the European Convention on Human Rights. It is therefore essential that the investigator is satisfied that the disclosure of any information about a third party, passes the test of relevance (i.e. disclosure is necessary to fulfil the aims of the investigation). As noted above, the aims of the investigation include enabling the family to participate meaningfully in the inquest.
40. Where disclosure of the information is relevant, it is unlikely to be a breach of the principles in the DP Act. Under Article 8, disclosure of third party information can be made in order to protect the rights and freedoms of others. This includes the right to a proper Article 2 investigation. So disclosure of relevant information is also unlikely to be a breach of Article 8. However, the more sensitive the third party information, the more care needs to be taken that full disclosure is required to meet the Article 2 investigative obligation. For example, information that a third party has HIV and is a prostitute would need to be of

particular relevance before it should be disclosed. If it seems that disclosure of the information in full may not be necessary and proportionate, investigators must consider whether documents could be anonymised or redacted without compromising the aims of the investigation. Documents containing third party names and details (for example, ACCT documents relating to other prisoners or Safer Custody meeting minutes containing the names of other prisoners) must be redacted before disclosure.

41. It is not absolutely necessary to get the consent of a third party to the release of relevant information about them. However, once an investigator has decided that information is relevant to the investigation and if consent has not been sought when the information was collected, it is preferable to seek consent or let the third party know that the information is to be disclosed, where it is practicable to do so.

Common law of confidentiality

42. The Ombudsman may owe a duty of confidentiality in relation to information that is provided to him in confidence. However, the fact that someone says that information is provided in confidence does not necessarily make it so. For example, information already available from another source, or normally available from the inspection of records, cannot be made confidential by labelling it so. It is necessary to consider the content of the information in order to decide whether it has genuinely been provided in confidence. It will almost always be unlawful to disclose genuinely confidential information if it is not relevant to the investigation.
43. On the other hand, it may be unlawful not to disclose confidential information if it is relevant to the aims of the investigation and disclosure is necessary to meet the Article 2 investigative obligation. In these circumstances, the investigator will have to balance the duty of confidentiality against the Article 2 investigative obligation, and try to find a compromise if appropriate. For example, it may be possible to meet both the confidentiality and the Article 2 duties by providing the information in a summary, anonymous or redacted form.

Articles 2 and 3 of the European Convention on Human Rights

44. There may be circumstances when the disclosure of relevant third party information would put a third party's life or safety at risk, and therefore breach their own right to life under Article 2 or their rights under Article 3. There might be a conflict between the Article 2 investigative obligation and the Article 2 or Article 3 rights of the third party. If there is a real risk of breaching a third party's Article 2 or Article 3 rights, then the third party information should not be disclosed. But consideration should be given to whether documents can be anonymised or redacted to avoid compromising the Article 2 investigative obligation.

Disclosure of medical records

45. There are specific issues in relation to medical records and public interest questions. The family of the deceased will almost certainly have a right under the Access to Health Records Act 1990 to the medical records of a family member who has died, and public interest questions do not have to be considered. This applies irrespective of whether or not the information is relevant to the aims of the Ombudsman's investigation.
46. But in relation to medical information about a third party, public interest questions do come into play. Medical confidentiality exists to protect both the individual and the broader public interest in the provision of a confidential medical service. So disclosure of relevant third party medical records can lawfully be withheld when it is considered to be in the public interest. Medical confidentiality must only be breached where it is really necessary and proportionate to do so in the public interest, or to protect the public.

47. The same considerations apply to other records, such as those made by a therapist in the course of counselling sessions.

WHEN SHOULD INFORMATION BE DISCLOSED?

48. It is quite common to receive requests to disclose documents before the investigation has started. It is important that investigators do not disclose information before making sure it is relevant and time must be taken to do this. The investigator must however release a document as soon as they have decided it is relevant. If a request for information is made under the FOI then the investigator must address it within the time limit stipulated by the Act. As the holder of the information the investigator is obliged to respond to the request, and such requests should not be passed to the originator of the document, although they may need to be consulted. (It may save time to ask the service whether they have an objection to documents originating from them being disclosed but, if they object and the investigator disagrees with their objection, the final decision is still the investigator's.)
49. Publication of any information might prejudice the inquest process and so recipients will be advised that the information should not be forwarded to anyone else.

During the course of the investigation

50. During the course of the investigation, the Ombudsman will have access to a number of documents. Most of these will be records from the relevant service, but some will be from other sources, such as the police (for example police statements, custody records). Documents may be disclosed during the course of the investigation, but before the report has been drafted, as long as the tests set out above are met. For example, it may be that early disclosure of documents to the family allows them to raise relevant issues during the course of the investigation, or provides them with a full opportunity to prepare for the inquest. All parties to an investigation must be informed when documents are disclosed to one party prior to issuing the draft report.
51. If there is any doubt as to whether the documents should be disclosed, the views of the relevant organisations or individuals must be sought. These views should be carefully considered, but the Ombudsman is not bound by them. At the end of the day, the decision on disclosure remains a matter for him.

Advance disclosure

52. The PPO operates on the basis of full and simultaneous disclosure to all parties to the investigation and the family's needs for the information are paramount. However, from time to time, specific and substantial criticisms are made of individuals in the draft report. This is covered in paragraph 37 of the Ombudsman's terms of reference which read as follows:

If the draft report criticises an identified member of staff, the Ombudsman will normally disclose an advance draft of the report, in whole or part, to the relevant authority in order that they have the opportunity to make representations (unless that requirement has been discharged by other means during the course of the investigation).

53. In these cases, the draft report should be advance disclosed to the service in remit. For this to apply, the criticisms should refer to an intentional or reckless failure to follow local or national policies and/or instructions. This failure must have, or potentially could have, contributed to the events leading up to or surrounding the death of the prisoner concerned. An example of a criticism that warrants advance disclosure is a nurse who refuses to attend

a prisoner. Minor criticisms do not warrant advance disclosure. An example of a minor criticism is an officer who does not sign an ACCT review.

54. The purpose of advance disclosure is to allow the individual who is criticised the opportunity to check that their actions and accounts are described accurately in the PPO report. In exceptional cases, when the inquest is imminent (i.e. within the next 28 days), it may be necessary to waive the consultation with the service and the individuals in order to ensure that the family has a fair opportunity to participate in the inquest. The investigator will need to balance the circumstances of each case carefully.
55. Feedback to the whole report is not required at this stage as a further period will be allowed when the report is also disclosed to the bereaved family.
56. In the event of advance disclosure being necessary, the draft must be sent first to the service which employs (referred to as the employer) the individual who is criticised. The individual may be employed by a healthcare agency and not by the establishment where the death took place. In cases where the individual is not a direct employee of the National Offender Management Service, a copy of the report must be sent to Safer Custody and Offender Policy group and the Governor/ manager of the establishment. The investigator should make clear in the covering letter that specific named individuals within the service should be given a copy of the draft report, or any relevant specified parts. The employer is responsible for making the draft report available to the individual who is criticised.
57. When in doubt, the investigator must always err on the side of prior consultation with the service and should seek advice from his/her team leader. When deciding on advance disclosure of the draft to the employer or individuals concerned, the investigator will bear in mind the need to make sure that the family has the draft report in sufficient time to prepare for inquest, to enable them to make an informed contribution.
58. The employer and the individual who is criticised will be given 21 days to comment on the facts. The timescale will rarely be extended as the PPO's duty is to disclose to the family as soon as possible. The investigator will take account of these comments and decide on further disclosure. The investigator will always tell those involved of the decisions in relation to any comments or objections provided, and the reasons for them.
59. The advance disclosed report will not normally be disclosed at a later date to other parties to the investigation.
60. Unless the Ombudsman believes that there is a grave risk to other prisoners, residents or detainees, the advance disclosed report will not normally be disclosed to the establishment where the death took place, unless they are the employer, or to any other agency.

Disclosure of the draft report and annexes

61. Unless the draft report is advance disclosed, the report and annexes are sent at the same time to the bereaved relatives and the relevant service to allow a factual check and an opportunity to respond to the draft findings and recommendations. A period of 28 days will be allowed for this process. The same procedure will be followed if the investigator publishes a second revised draft report. A copy of the draft report will also be sent to the Coroner.
62. Generally it will suffice to write the response to recommendations under the relevant recommendation in the main body of the report. However, investigators may include the whole of the relevant service (and the family) response to the draft report as an annex if they decide it is necessary to do so. Action plans received from the relevant service will also be annexed. Care should be taken to ensure that the copy list and contact details are redacted.

63. Occasionally feedback from one party to the report may be likely to give rise to serious concerns from one of the other recipients. An example would be when a draft recommendation is re-directed to another party or an additional recommendation is made. In these circumstances, the Ombudsman will consider whether the report should be issued in draft for a second time.

When the report is finalised

64. The finalised copy of the report will be sent to the recipients of the draft. The investigator will also review whether there are any additional individuals or organisations who should receive the report. The investigator should set out in a covering letter any changes that have been made to the report since the draft was issued.

After the inquest

65. From time to time the inquest may uncover additional information which is relevant to the Ombudsman's Terms of Reference and additional recommendations may be identified. In the event of substantial changes being made or additional recommendations proposed, the report will be re-issued as a draft following the procedures already described.
66. There may also be requests for additional disclosure after the inquest is over. The investigator will consider each request in the light of this guidance.
67. After the inquest, anonymised reports will be published on the PPO website. There is separate guidance on the process for doing this.

HOW SHOULD INFORMATION BE DISCLOSED?

68. All parties to whom disclosure is made before the inquest should be told that the information is provided in confidence. Bereaved relatives should be told that, prior to the inquest, the documents can only be used for the purpose of preparing for the inquest.
69. It should be made clear to all parties when the report is a draft, and they should be warned that the final version may be different.
70. Bereaved relatives will be asked if they want to see the report, and if so, how they wish to receive it. If they wish to receive it personally in a meeting with the investigator, this will be arranged. Although the family liaison officer reads each report before it is sent out, the investigator must let the family liaison officer know if there is anything that could be distressing or sensitive in the documentation, so that the family can be forewarned.
71. A record must be kept of all the documents that have been disclosed, to whom and when. The investigator should also keep a record of any decisions not to disclose information and of the reasons for such decisions. The originator of the document should be informed that disclosure is taking place and documents should be disclosed simultaneously to the other interested parties and the Coroner.

**Prisons and Probation Ombudsman
July 2009**

EIA Stage 1 – initial screening

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it. The equalities issues that you should consider in completing this screening are:

- Race
- Gender
- Gender identity
- Disability
- Religion or belief
- Sexual orientation
- Age (including younger and older offenders).

Aims

What are the aims of the policy?

The aim of the policy is to ensure that all staff are familiar with the role of the Prisons and Probation Ombudsman (PPO) and the extent of his remit and all prisoners entering a prison are made aware of the function and accessibility of the PPO. The PPO's office exists to carry out investigations into deaths and complaints. They act independently and ensure that they investigate all cases objectively.

Effects

What effects will the policy have on staff, offenders or other stakeholders?

This Instruction replaces PSO 2520 it takes account of developments since 2001 and informs staff and prisoners of the revised Terms of Reference for the PPO. It reminds staff of their responsibility to inform prisoners of the function and accessibility of the PPO and the procedures to follow when they are disclosing documents as part of the investigation into a death in custody or a discretionary investigation into a death after release.

Evidence

Is there any existing evidence of this policy area being relevant to any equalities issue?

Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/Inspectorate and other relevant reports/complaints and litigation/relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?

There is no evidence to suggest that the policy is relevant to any equalities issue. All prisoners new to custody are given an explanation of the PPO's role in relation to the complaints process and a copy of the PPO's leaflet. This information is available on audiotape, video and in foreign languages. Posters and leaflets are displayed in prison libraries, reception and on all prison noticeboards. Prisoners have a right of confidential access to the PPO and must be provided with paper for the purpose of writing if requested. Prisoners may also telephone the PPO's office at their own expense using the general enquiry number which is globally available to all prisoners with access to the BT pinphone system.

Stakeholders and feedback

Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

Prisoners and staff are the target group.

Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?

Full consultation with a range of stakeholders (including the Unions), has taken place. The feedback has been positive, with no significant issues raised.

Impact

Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?

This policy applies to all prisoners therefore it should not have a disproportionate impact on any particular racial or ethnic group. There is no evidence to suggest that the policy is applied with any degree of difference.

In 2009-10, the Ombudsman received 4,641 complaints of which 87% were submitted by prisoners.

Local discretion

Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?

No, Governors must ensure that the mandatory actions detailed in this Instruction are followed. There is no discretion on application.

Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	No	There has been no fundamental change to the policy.
Gender (including gender identity)	No	As above
Disability	No	As above
Religion or belief	No	As above
Sexual orientation	No	As above
Age (younger offenders)	No	As above
Age (older offenders)	No	As above

If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.

If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.

Monitoring and review arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes in terms of the various equalities issues.

Directors of Offender Management will monitor compliance in their region with the mandatory actions set out in this Instruction.

State when a review will take place and how it will be conducted.

N/A

	Name and signature	Date
Policy lead	Simon Greenwood	
Head of group	Pat Baskerville	