

26 October 2023

**Reference: FOI 508 Freedom of Information request**

Thank you for your email, which we received on 2 October 2023. Your request has been handled under the Freedom of Information Act 2000.

**You asked us:**

To provide details of the Prisons and Probation Ombudsman's ruling on X-Ray scanning on prisoners and the MoJ's response.

**Our response:**

We have searched our records and we hold the requested information. A copy of the information that you requested is enclosed with our response. These documents contains a synthesis of the findings from the cases the PPO have investigated.

You have the right to appeal against our response if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

# Continuous Improvement Forum (CiF)

## Use of body scanners

Use of X-Ray Body Scanners (Adult Male Prisons). Policy Framework that underpins this

# Introduction

Exhaustive v proportionate. It is important to focus on what has been assessed, rather than look at every aspect.

## The Assessment Process.

Outline of case

Assessed as being about secreted items protocol.

What next? Lets look at 4 areas you *might* investigate:

Preliminaries of scan

Preparing the scan

Justification

Management

# The preliminaries of body scanning (why is it used? the set-up of the area etc) [REDACTED]

This consideration might not always be relevant, depends on the issue that has been raised. However given that complaints can possibly be about the result of a bodyscan being erroneous, it's worth considering that there are preliminary checks that need to be completed to ascertain if the machine is running correctly (akin to the calibration process for MDT's.)

NI ombudsman case. Proportionate v Exhaustive

- **5.32 The X-ray body scan operator must undertake a daily safety check before the X-ray body scanner machine is used.**
- **5.33 The RPS must undertake a weekly safety check. This check sheet must be recorded in the Radiation Protection Book (described below).**
- **5.34 The daily and weekly check must include:**

**Daily and Weekly Checks Use of X-ray Body Scanners Re-Issue Date: [REDACTED] (Adult Male Prisons) [REDACTED]**

- **ensuring the warning light and emergency stop button are working correctly; and**
- **checking any other recommended manufacturer or engineer requirements.**

# Preparing and conducting the scan



## **Use of X-Ray Body Scanners (Adult Male Prisons)**


5.45 The Governor must ensure that the Staff and Prisoner Information sheet provided at Annex F is displayed on the wall near the X-ray body scanner and be accessible to prisoners being scanned, and any staff and visitors in the area. This information sheet must also be provided to prisoners in induction packs.

A suitably appointed person must ensure as detailed in PSI 32/2011 Ensuring Equality that information is appropriately conveyed to prisoners with protected characteristics, including those with physical or learning disabilities and those who do not speak English. This Policy Framework must also be made available to prisoners should they wish to read it.

# Annex F Information Notice for Staff and Prisoners

Instructions and Information for prisoners being scanned (see the framework for full details):

- If you have female reproductive organs you must not be scanned. You should make the prison aware at this point before scanning if you do have female reproductive organs.
- Comply with the instructions / orders given by the officer (refusing a scan may be considered as a failure to comply with a lawful order which may constitute an offence against prison discipline).
- There is no legal requirement for prison staff to obtain consent from those being scanned before conducting a scan. If you refuse to be scanned, you may be subject to disciplinary action under Prison Rule 51/YOI Prison Rule 55 for disobeying a lawful order.
- The machine produces an internal image (it is not a graphic image). You should talk to staff if you have any concerns.
- Please note female staff work in this establishment and the X-ray body scan image may be taken and/or subsequently viewed by female members of staff. If you have any concerns please talk to staff before the scan is undertaken.

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- In his complaint, [REDACTED] explained that wanting a male member of staff to conduct the scan was out of respect for religious and other beliefs, and while there is no requirement for [REDACTED] to facilitate this request, their own documentation, as well as national policy implies that prisoners have, in the least, the right to raise a concern for consideration on an individual basis.
  - We did not consider prisoners are being informed of the fact they can request a scan by a male member of staff, which the prison should then consider, therefore we upheld this aspect of [REDACTED] complaint, and made formal recommendations in respect of this matter.

# The justification for the scan

5.66 Prisoners must not be selected for X-ray body scanning on a random basis.

5.67 All cases of exposure to ionising radiation through the use of an X-ray body scanner must be:

- fully justified in accordance with The Justification of Practices Involving Ionising Radiation Regulations 2004. This means that the exposure may only occur when the benefit to the individual or society outweighs the health detriment that may be caused to the individual;
- necessary for the prevention and detection of crime or disorder and/or connected to: prison security, prison order or prison discipline, or protecting the safety of prisoners, visitors or prison staff; and
- proportionate.



# The justification for the scan (cont.)

5.68 To demonstrate that a scan is justified all five points below must be met:

- **intelligence or reasonable** suspicion suggests that the prisoner is internally concealing items;
- there are **no other means of detecting** the suspected item (for example, a full or rub down search);
- it is **necessary to reduce the risks** posed by illicit and unauthorised items being conveyed into or out of a prison and that these risks outweigh the health detriment caused by exposure to radiation;
- there are **no other circumstances of the prisoner, the intelligence or the reasonable suspicion, which would make the exposure disproportionate**; and
- there is evidence that the scan will **not cause that individual to exceed the maximum annual dosage constraint of 700 µSv** per individual in the current calendar year. The X-ray body scan operator must check the prisoner's NOMIS record to ensure the dosage constraints have not been met. If records are missing, the prisoner must not be scanned until it is confirmed that they have not exceeded the dosage constraint.

# The **justification** for the scan (cont.)

5.69 Use of the X-ray body scanner must be led by intelligence or reasonable suspicion. For example, the action for an X-ray body scan could have come from:

- direct communications from the Security Department that the individual is likely to be internally concealing an item;
- **agreed action at the monthly security meeting;**
- direct communications from Police, Courts or other law enforcement agencies that the individual is likely to be internally concealing illicit and unauthorised items;
- reasonable suspicion during or following a visit that the individual is likely to be internally concealing items; or
- reasonable suspicion that the individual is likely to be internally concealing an item which could be based on information on the prisoner's Prisoner Escort

Record (PER) or pre-sentence interview, report or behavioural indicators.

# The justification for the scan (cont.)

5.70 Any decisions relating to the use of the X-ray body scanner on individuals or groups must be recorded as an Intelligence Report or on the monthly security minutes as described below; and will form part of the history for the justification of why a particular prisoner was selected to be X-ray body scanned in that instance. Monthly security meeting minutes or direct written communications from the Security Department or other agencies are a sufficient record of the justification used. Where intelligence is used as the justification, the format and route for sharing intelligence is by an intelligence assessment provided by the prison intelligence unit via secure email, as per local process. It should not include the evaluation code.

5.71 In some circumstances a prisoner may be part of a group of prisoners where there is intelligence or reasonable suspicion for that group to be X-ray body scanned. However, the prison must still be satisfied that each individual scan is justified and proportionate as described in 5.69.

# Annex F

What is the justification for its use & the prison's responsibilities?

Prisons are authorised to conduct these scans under the Justification of Practices Involving Ionising Radiation 2004 (as amended 2018) and the approval for use held by HMPPS. The X-ray body scanner will be used in addition to other searching procedures in accordance with PSI 07/2016 Searching of the Person. Prisons must consider the requirement for a scan, weighing up the societal benefit, against any potential health risks caused by the X-ray machine.

Every scan must be justified and proportionate, which means:

- There must there must be intelligence or reasonable suspicion that a prisoner is concealing items inside themselves;
- There is evidence that the scan will not cause that individual to exceed the maximum annual dosage constraint of 700  $\mu\text{Sv}$  per individual in the current calendar year.
- There are no other means of detecting the suspected item (for example full or rub down search).

Prisons are required to operate under strict guidelines and safeguards to ensure that the risks to health are minimal for the person being scanned and others operating and in the vicinity of the scanner.

# Policy lead guidance

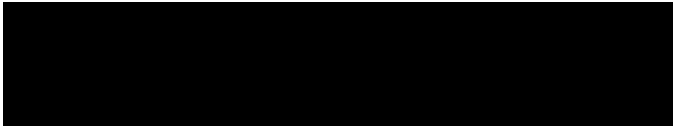
- This matter was discussed with [REDACTED] from the BodyScanner Governance & Support Team. [REDACTED] clarified that:

*‘In order to meet the requirements of the legislation the security committee must meet on a monthly basis To review the threats and routes into the jail and they will decide based on this assessment which cohorts are to be scanned. Once the machines have been installed the statistics from the machine will also be included in this evidence.’*

- She went on to define a cohort as:

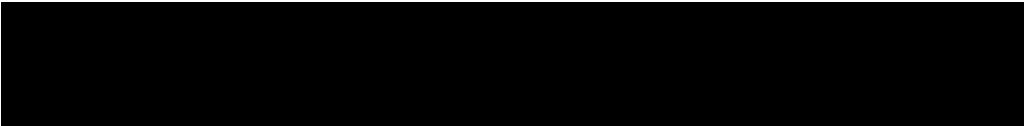


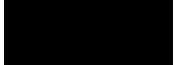
*‘A cohort is a group of prisoners that have been identified as having a risk of smuggling contraband into the jail. There should be no random scanning, the cohorts that are scanned should be supported by the intelligence picture, reviewed and documented by the security team.’*

- [REDACTED] noted that it may not be necessary to identify the cohort by name, if an identifiable risk had been assessed as coming from a particular establishment, for example, if the prison was seeing an influx of drugs upon reception of prisoners from [REDACTED], it may be reasonable to justify scanning all prisoners transferring from that prison. However, the scanning of any prisoner or cohort must be justified based on the intelligence picture.

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- [REDACTED] was subject to a body scan at [REDACTED].
  - We reviewed the Security Team minutes for the quarter prior to the scan taking place. Some months, body scanning was not covered at all, on others, it looked as follows:

### **Body Scanner Statistics:**

- 57 Body Scans carried out in May 2022
- 22 New Reception scans.
- 6 Rescans from previous positive/ inconclusive scans.
- 29 Intel/suspicion led scans.
- 3 Refused scan.
- 11 Positive Scans on Individuals.
- 3 re-scanned negative.

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- While it is evident from the minutes provided that the Security team are meeting monthly, there is no record within the minutes of specific discussions regarding body scanning, individuals or cohorts to be scanned, or that there is a known or evidential threat via this means of entry into the prison. While the statistics show that there are a number of positive results from the body scanner, there is nothing to say that these are specifically from new receptions, or any other evidence that justifies the continual scanning of all new prisoners.
  - In the absence of the prison being able to demonstrate that this discussion was taking place, we could not say that the decision to scan   was based on a security or intelligence led picture, but was instead part of the prisons blanket scanning process, which we considered to be outside of the scope of the national policy, and is demonstrative of this policy being incorrectly applied.
  -  complaint was therefore **upheld**.

# Case Study 3

- [REDACTED] complained that he had been illegally body scanned at [REDACTED].
- [REDACTED] provided us with their Local Tactical Assessments for the quarter prior to [REDACTED] scan.

- These assessments show that the prison had recorded that:

Intelligence also indicates there has been significant amounts of drugs coming onto the [REDACTED]-wing with the transfers where potentially the drugs are coming in via reception.

- Prevention:

Transfers into the establishment to be included as an intelligence 'cohort' for body scanning for 28 days from installation/training completion.

- Enforcement/Disruption

New transfers to be thoroughly searched including in the shoes and also prisoner property to be properly searched before issue to IP and any suspected papers to be sent to [REDACTED] for testing.



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- The PPO concluded that:

*The conveyance of illicit substances into prison is a well-known problem, and the PPO supports the efforts of operational staff to address this. In this regard I cannot say the policy is unreasonable or disproportionate. It is evident from the minutes provided that the Security team are meeting monthly, and that there are discussions regarding body scanning, individuals and cohorts to be scanned. These minutes demonstrate that there is and was a known or evidential threat via this means of entry into the prison (at the time [REDACTED] was transferred into the prison).*

- [REDACTED] complaint was **not upheld**.

# What **action** to take when there is a positive scan

Prisoners suspected of secreting items are often held in segregation, and will need to be managed under the relevant policy.

Use of segregation following a positive scan.

5.101 states:

“If the prisoner refuses or is unable to safely remove or pass a suspected item the prison must consider the risks presented by that prisoner to themselves and/or others. In all cases the prison must consider the location and observation requirements of the prisoner. This could include use of segregation and/or ACCT, if applicable, locating the prisoner in healthcare, or sending the prisoner for outside medical intervention. This decision should be made in conjunction with the advice from healthcare.”

# Secreted items protocol and health concerns?

PP 20-21 of the policy deal with this

Is it reasonable to simply keep someone in seg and just re scan them? The question to consider is whether there should be a clear process managing such cases, and prisons in the Long-Term High Security Estate might have a secreted items protocol, or a local searching strategy, which will ensure they are managing the risk, while minimising the risk to the individual.

██████████ we talked about at Assessment. The complainant basically stated that the person had not discharged their duty of care towards him by facilitating a medical assessment as DST did not attend his cell. We did not uphold this, but identified the following

“Security ██████████ staff would not need to be present for medical checks to be conducted on ██████████ if he remained in ██████████ cell. ██████████ was subject to secreted items protocol and therefore ██████████ movement from outside his cell would be controlled by ██████████ staff. So for example, if he wanted to use the shower it would be searched before and after use by ██████████. For example, the ██████████ team are not required when his meals are placed into his cell or when the duty governor visits.”

“The secreted items policy was reviewed in 2022 and updated accordingly. There is a section around the requirements of healthcare in a secreted items case. This amendment to the local policy was not appropriately cascaded to healthcare and therefore the medical checks were not completed. I have spoken to healthcare, and they are aware of the policy and will be completing the checks on future prisoners subjected to secreted items protocol.

HMPPS have indicated that it might not be reasonable for healthcare staff to monitor every prisoner suspected of secreting items.

# Segregation. What then?

██████████. Complained about being segregated. Segregation reasonable.

██████████ Management when suspected of secreting items reasonable.

██████████. ██████ case. Scan not reasonable. Seg reasonable, but regime they provided was not as full as it might be. Led to the following recs:

## **Segregation Regime**

Issues a notice to staff that:

- i) the segregation regime must be as full as reasonably possible. Only activities, which involve mixing with general population prisoners should be stopped.
- ii) If additional restrictions are imposed on a prisoner's their regime, the reasons for these additional restrictions must be recorded on the segregation paperwork. Additional restrictions must be proportionate to the prisoner's identified risk.

Continued:

**68. At the next and future monthly security meetings:**

Body Scanner

Discusses whether cohorts of prisoners will be body scanned.

Records this decision in the minutes.

If the body scanner is to be used for cohorts of prisoners, records the reasons for this decision in the minutes.

**69. Every time the body scanner is used on a prisoner:**

Ensures that staff record on NOMIS that the body scanner has been used on a prisoner and the radiation dosage they received.

[Redacted]

The Prisons and Probation Ombudsman (PPO) carries out **independent investigations** into complaints and deaths in custody. The detailed role and responsibilities of the PPO are set out in our office's Terms of Reference. The PPO has three main duties:

- to **investigate complaints** made by prisoners, young people in detention (prisons and secure training centres), offenders under probation supervision and individuals detained under immigration powers (detained individuals)
- to **investigate deaths** of prisoners, young people in detention, approved premises' residents and detained individuals due to any cause, including any apparent suicides and natural causes
- to **investigate deaths** of **recently released prisoners** that occur within 14 days of release from prison (except homicide)

The purpose of these investigations is **to understand what happened, to correct injustices** and **to identify learning** for the organisations whose actions we oversee so that the PPO makes a significant contribution to safer, fairer custody and offender supervision.

We may use or share your data only to the necessary extent when conducting our independent investigations in the exercise of our official authority. We will share your data with third parties (e.g. the prison) in order to make sure the information is accurate; to prevent or detect failings; and to identify lessons learnt. We may sometimes need to share your data with third parties if required by law. We only keep your personal data for as long as it is needed, as set out in our data retention policy. If you need any further information about how your data is used, please contact us.

## How to Appeal

### Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Prisons and Probation Ombudsman's office **within two months of the date of this letter**, at the following address:

Prisons and Probation Ombudsman  
Third Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU  
E-mail: Mail@ppo.gov.uk

### Information Commissioner's Office (ICO)

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the ICO at the following address:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Internet address: <https://ico.org.uk/>