The Professional Trades Union for Prison,
Correctional & Secure Psychiatric Workers

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Action		Information	
England/Wales		England/Wales	X
Scotland		Scotland	X
Northern Ireland		Northern Ireland	X
Special Hospitals		Special Hospitals	X
Private Sector		Private Sector	X
IRC		IRC	X

2nd December 2019

Dear Colleagues

POA VICTORY ON HEALTH & SAFETY

The POA has secured a landmark agreement by the Prison Service which for the first time:

> commits managers to a legally binding procedure for addressing urgent health and safety concerns, and
> ensures that the POA can advise our members of their health and safety rights without being accused of unlawfully inducing industrial action.

This is the result of a successful settlement of a claim arising out of health and safety concerns raised by members at HMP Lindholme in October 2018.

On 12th October 2018, members at HMP Lindholme arrived at work to hear that two of their colleagues had been seriously assaulted the night before. They had long-running concerns about the safety of the prison and did not feel safe running a full regime that day, so carried out a controlled regime. The POA branch committee, supported by an NEC member, tried to engage with local prison management on behalf of members about their concerns, but were instead accused by management of unlawfully inducing industrial action. The Prison Service brought a claim against the POA for an injunction and damages.

The POA counterclaimed about the unsafe conditions officers were having to work in, with inadequate numbers of staff having to deal with high levels of drugs, weapons, and assaults. We argued that, in circumstances like those at HMP Lindholme on 12th October 2018, the POA must be entitled to advise members of their health and safety rights and to seek to represent their concerns to management in order to try to get them resolved.

We made clear, with an open offer to the Prison Service, that our main objective in the litigation was to have a clear protocol which confirmed our right to advise members about their health and safety rights and to take their concerns to management to try and resolve them, without being accused of unlawfully inducing industrial action and without facing an automatic application for an interim injunction.

We are delighted to report that we have achieved that objective. The Prison Service has agreed to a Protocol (attached) to be followed when members have urgent health and safety concerns. This ensures that, when members come to us with such concerns, POA representatives can advise members of their health and safety rights and duties and the Prison Service will not treat that as unlawfully inducing industrial action.

The Protocol also includes, for the first time, a legally binding commitment by the Prison Service that local management will meet POA officials to discuss members' urgent health and safety concerns and to try to resolve those concerns in good faith, so that we can ensure members' voices are heard.

The Protocol must of course be used sensibly and in earnest. It must not be used as a pretext for taking or endorsing action which would not be otherwise permitted because if it is so used, the protection which it affords will be lost.

This outcome is an important victory for the POA. It secures our main objectives in this particular case and ensures that we have a legally binding agreement setting out clear parameters which will enable us to advise and represent our members in circumstances like those at HMP Lindholme on that day.

We commend the Lindholme Committee and the branch membership. By their resolve and commitment this has enabled the way forward to this landmark victory for the POA that will now assist every branch in the country.

Your sincerely

MARK FAIRHURST
National Chair

Yours sincerely

STEVE GILLAN
General Secretary

Protocol in relation to Health and Safety concerns

Her Majesty's Prison and Probation Service ('HMPPS') and the Prison Officers' Association ('POA') agree to work to the following Protocol when there are health and safety concerns.

1. Management role

1.1. It is for HMPPS management to determine what regime should apply in each establishment, taking into account any health and safety concerns, where appropriate in consultation with the local POA branch committee.

1.2. If a prison officer has concerns about health and safety whilst on duty, the first steps to be taken should be in accordance with HMPPS procedures, which set out the actions officers should take.

1.3. If an officer is unsure as to how to proceed when they are concerned about health and safety, they should in the first instance consult with their line manager as to what they should do.

2. Officers and the POA

2.1. HMPPS and the POA agree that, in circumstances where any prison officer or group of prison officers seek advice from the POA about their rights and obligations in relation to concerns about health and safety which the officer(s) believe make it unsafe for them to enter a prison or particular part of a prison and/or to undertake any particular activity or set of activities within a prison, POA officers and/or officials may provide the following advice and, provided they go no further, HMPPS will not regard the provision of such advice as an inducement to take industrial action or to commit a breach of discipline for the purposes of section 127 of the Criminal Justice and Public Order Act 1994:

(a) Officers have a right to a reasonably safe place and system of work. The Prison Service and local management at each prison have a duty to take reasonable care for officers' health and safety and not to place an officer at unreasonable risk of harm.

(b) Officers also have a duty to take reasonable care for their own safety and that of others, so officers should not do anything that would place themselves or others at unreasonable risk of harm. It is for the officer to exercise their own judgment about what steps to take to comply with the duty and the POA cannot advise you as to any particular course of action. In reaching that judgment, officers must make their own individual decision, and not seek to induce any other officer to withhold any of their services.

(c) Officers are entitled to seek advice from the POA and to ask your POA branch committee (or other appropriate POA official) to raise any health and safety concerns that they have with management. HMPPS has agreed that if an officer asks the local POA branch committee (or other appropriate POA official) to raise urgent health and safety concerns on their behalf, local prison managers will meet with the committee (or other appropriate official) as soon as reasonably practicable and will endeavour in good faith to agree a resolution to the issues as quickly as possible.

(d) It is unlawful for the POA or any other person to induce an officer not to perform any services as a Prison Officer or to commit a breach of discipline. This includes inducing officers to refuse to follow the reasonable instructions of local managers about the regime applying in the relevant establishment, even if the officer[s] and/or the local POA branch disagree with local management about what regime should apply. Any refusal to follow the reasonable instructions of local managers would also lead to HMPPS considering whether disciplinary action is appropriate.

(e) If an officer reasonably believe that there is serious and imminent danger to themselves or others, the officer is entitled to take appropriate steps to protect themself or others from that danger without being subjected to any detriment or dismissed for doing so. In such circumstances, it is for the officer to make an assessment of what steps are appropriate and the POA cannot advise the officer as to any particular course of action.

3. <u>Procedure for the resolution of urgent health and safety concerns</u>

3.1. HMPPS and POA further agree that the POA is entitled to make representations to management in relation to any concerns that its members may have about their health and safety. HMPPS agrees that, if the POA branch committee at a prison (or other

POA official with authority to discuss the issues) notifies local prison management that they wish to raise urgent health and safety concerns on behalf of any member or members, local management will take the following steps, which the parties intend shall be legally enforceable for the purposes of section 179(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992:

(a) Local management will arrange to meet with members of the POA branch committee (and/or other POA official(s) with authority to discuss the issues) as soon as reasonably practicable;

(b) Local management will endeavour in good faith to agree a resolution of the concerns with the POA branch committee (or other official(s)) and will in any event take account of those concerns when deciding what regime should apply, what instructions should be given to officers and/or any other relevant actions or steps;

(c) Local management will afford reasonable facilities for the POA branch committee (or other official(s)) to communicate with its members in order to seek their views about any proposed resolution of the matters in question.

4. General

4.1. For the avoidance of doubt, relevant HMPPS policies and procedures in relation to health and safety, and in particular, advice given and decisions made about what regime should apply, must take into account the obligations of HMPPS in relation to the health and safety of prison officers, other staff and prisoners.

4.2. Also for the avoidance of doubt, if the POA adheres to the guidelines set out in paragraph 2above, it is acknowledged by HMPPS that the POA's actions would not breach section 127 of the Criminal Justice and Public Order Act 1994.