



### **Statement by the Irish Prison Service in relation to the recording of prisoner telephone calls**

On Wednesday 26th March, 2014 the Director General of the Irish Prison Service became aware of an anomaly whereby a number of prisoners- 84 as of Friday 28th March, 2014- who had more than one solicitor on the Prisoner Phone System had their phone calls to the second solicitor recorded.

In these cases, calls to additional solicitors were inadvertently recorded as they were outside the restriction parameters that were then in place on the Prisoner Phone System. At present the Prisoner Phone System records all prisoner calls with the exception of 2 call channels which are left unrecorded. There are channel 1 which is assigned to the prisoner's solicitor and channel 99 which is assigned to the Samaritans. This is in accordance with Rule 46 of the Prison Rules, 2007.

The anomaly was discovered on foot of a request by the Director General to the IT Section on the morning of Wednesday 26<sup>th</sup> March, 2014 to confirm to him that there were no issues in relation to the recording of phone calls by the IPS in light of developments in AGS.

On the evening of 26 March, 2014 the IT Section advised the Director General that there may be an issue in relation to the recording of telephone conversations between prisoners and their solicitor in instances where a prisoner had more than 1 solicitor listed on the Prisoner Phone System.

During the course of Thursday 27<sup>th</sup> the IT Section carried out an analysis of the Prisoner Phone System to determine how many prisoners had a second solicitor listed on the system. This analysis identified 84 such prisoners.

With immediate effect (Thursday evening) all previously recorded call were made inaccessible to staff members.

On Friday 28<sup>th</sup> ICT confirmed to the Director General that the scope of the problem related to 84 prisoners in total on that date.

Action was immediately taken on the Prisoner Telephone System to prevent Staff adding 2nd or more solicitors to the system as an interim measure - the company that supplies and supports the Prisoner Call System put in place a script which runs every 5 minutes to check each channel excluding channels 1 and 99 and where the relationship to the prisoner is listed as Solicitor, to remove this number.

The Director General then asked IT Section to examine the list of 84 prisoners to ascertain if they had made telephone calls to the second solicitor and if possible to ascertain how many of such calls had been listened to.

The Director General informed the Department of Justice of the evolving situation on the evening of Sunday 30<sup>th</sup> March.

### **Further Development – 139 cases now identified**

At 4.00p.m. on Tuesday 01 April, 2014 following ongoing engagement between our IT Section and the prisoner phone service provider, a further 55 prisoners currently in custody have been identified as previously having a second solicitor listed on the system. In these cases the second solicitor has been removed from their phone card, however, such telephone calls would have also been recorded for the duration that the second solicitor was listed on the system.

### **What is happening in relation to the 139 cases?**

As outlined above immediate action was taken to remove access by any staff member to telephone recordings between any of the 84 prisoners and a second solicitor.

Steps have also been taken, as outlined above, to ensure no such further conversations are recorded until a permanent solution is introduced to the prisoner Telephone System.

The Irish Prison Service intends to write to the solicitors of the 84 prisoners who are currently affected and the 55 prisoners who historically had a second solicitor registered on the system to inform them of this situation and to apologise for the inadvertent recording of the calls.

### **What prison does this relate to?**

This issue is not confined to a particular institution but relates to an anomaly in the Prisoner Phone System which operates across the prison estate with the exception of the 2 open centres and the E Block in Portlaoise prison.

### **How long has this been happening?**

This anomaly has potentially been in place since July 2010 when the current Phone System was introduced.

### **How many phone calls were recorded?**

Since the introduction of this system a total of 2,842 calls between a prisoner and a second solicitor have been recorded.

1,749 such calls relate to the 139 prisoners currently in custody who have or who previously had a second solicitor listed on the system.

Of the total number of calls recorded, 81 such phone calls were accessed by prison staff.

### **Who has had access to such recordings?**

Staff who have access to monitor prisoner phone calls at individual prison level; staff of the Operations Directorate in Headquarters and a member of staff in the IT Section would have had access to the inadvertently recorded material.

### **Have the content of the inadvertently recorded phone calls ever been made available to any third party?**

No.

In order for AGS to get copies of any recorded phone conversations by prisoners, they need to firstly make an application (at Superintendent level) to the Director of Operations, IPS, providing the specific details and reasons that they require same.

The Director of Operations has categorically stated that the IPS has never approved the provision of a copy of a prisoner's phone calls to his/her Solicitor to AGS under any circumstances.

### **Could the scale of this problem be greater than currently advised?**

Potentially a prisoner could have a second solicitor listed as a friend. However, in such cases prisoners will have been advised that such phone calls are recorded.

### **Who knew about this in the Irish Prison Service?**

As outlined above, this issue came to the attention of the Director General of the IPS on Wednesday 26 March, 2014.

However, the anomaly was known to the Operational Support Group, the IT Section and Operations Directorate in relation to two cases which came to light in November, 2013.

In these instances the decision was taken to list the second solicitor on the system and an instruction issued to OSG staff that such calls should not be monitored under any circumstances.

The scale of this problem was not appreciated at that time and it was intended to deal with the issue by way of a future amendment to the Prisoner Phone System.

### **How will the Prisoner Phone System be amended to address this anomaly?**

The permanent solution to this issue will involve adding three extra non-recordable slots for each prisoner. In future any additional solicitor numbers will be entered in these slots. The slots will be further protected by having a relationship drop down of solicitor only to further remind staff that these are only for solicitor numbers. All other call slots will not have the solicitor relationship drop down, again to remind Staff of the correct positions to enter solicitor/non-solicitor numbers. It is expected to have this solution in place within a number of weeks.

### **Legal Basis**

The legal basis for the recording of prisoner telephone calls is contained in Rule 46 of the Prison Rules, 2007.

#### **Telephone calls**

**46. (1)** The Governor may permit a prisoner to communicate with members of his or her family or his or her friends by means of telephone calls, for such period or periods of time and in accordance with such procedures, as the Governor shall determine.

(2) Subject to the availability of facilities, a convicted prisoner who is not less than 18 years of age shall be entitled to make not less than one telephone call per week to a member of his or her family or to a friend.

(3) Subject to the availability of facilities, a convicted prisoner who is less than 18 years of age shall be entitled to make not less than two telephone calls per week to a member of his or her family or to a friend.

(4) Subject to the availability of facilities, an unconvicted prisoner shall be entitled to make –

(a) not less than five telephone calls per week to a member of his or her family or to a friend, and

(b) as many telephone calls as are reasonably necessary for the purpose of enabling him or her to manage his or her property or business affairs, subject to such reasonable limitations as the Governor may impose in the interest of the effective management of the prison and to the maintenance of good order and safe and secure custody.

(5) A prisoner to whom Rule 38 (*Visit by legal adviser or relating to court appearance*) or Rule 39 (*Visit to foreign national*) applies shall, in addition to being entitled to make a telephone call under paragraph (2), (3) or (4), be entitled to make a telephone call

to a person from whom he is entitled to receive a visit in accordance with either such Rule, at any reasonable time.

(6) A prisoner to whom Rule 37 (*Visit for prisoner committed in default of payment of money or in prison in default of bail*) applies shall, in addition to being entitled to make a telephone call under paragraph (2), (3) or (4), be entitled to make a telephone call to a person from whom he is entitled to receive a visit in accordance with such Rule, at any reasonable time.

(7) The Governor may, for the purposes of maintaining good order and safe and secure custody or ensuring that a prisoner does not make any telephone calls to which paragraph (8) applies, intercept a telephone communications message made during a telephone call, provided that the prisoner or the person with whom he or she proposes to communicate is informed before any communication takes place that any telephone communications message made during the course of the telephone call may be intercepted.

(8) The Governor or a prison officer authorised by the Governor may effect the termination of a telephone call to which this Rule applies if, upon reasonable grounds, he or she believes that the telephone communication -

- (a) is threatening in nature,
- (b) could cause serious offence or distress to the recipient of the call
- (c) could cause an interference with the course of justice,
- (d) the recipient of the call has informed either the Minister or the Governor that he or she does not wish to receive telephone calls from the prisoner,
- (e) would facilitate or encourage the commission of a criminal offence or hamper the prevention, detection, investigation or prosecution of a criminal offence,
- (f) could give rise to a legal action by a third party against the Governor or the Minister,
- (g) is contrary to the interests of national security,
- (h) is contrary to the interests of the security, good order and government of the prison or
- (i) infringes the rights and freedoms of another person (including the right to privacy of another prisoner).

(9) In this Rule “intercept” means to listen, attempt to listen, record or attempt to record, howsoever affected, a telephone communications message taking place during a telephone call.

(10) The Minister may set down the rates at which telephone calls to local, mobile, national or international numbers from a prison may be charged to a prisoner and the Governor of a prison shall inform or cause to be informed every prisoner of such charges and of the method of payment of such charges, if applicable, prior to such calls being made by a prisoner.

(11) The Governor may set out by local order arrangements for making telephone calls under this Rule, including the period or periods of time for calls.

(12) The Governor may, if he considers it appropriate, arrange for recipients of telephone calls from prisoners to be informed as to the origin of the call in advance of it being connected.