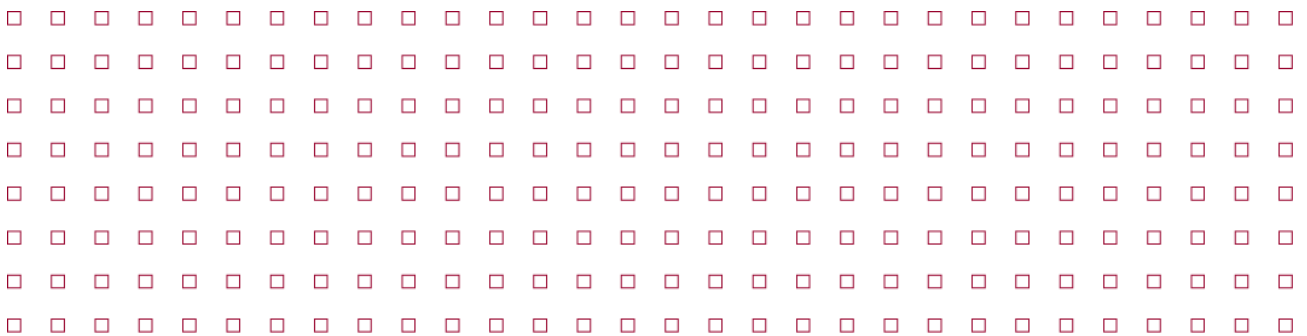




Ministry
of Justice

Statutory Partnerships and Responsibilities

November 2013





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Contents

Statutory Partnerships and Responsibilities	3
Community Safety Partnerships	4
Multi-Agency Public Protection Arrangements	4
Safeguarding Children Boards	5
Youth Offending Teams	5
Safeguarding Adult Boards	6
Victims	7
Efficient and effective criminal justice system (Police and Crime Commissioners)	8

Statutory Partnerships and Responsibilities

Statutory Partnerships and Responsibilities

This paper considers the statutory partnerships and responsibilities which are relevant to Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS). In addition to their core supervisory functions, a number of legislative provisions impose duties on 'providers of probation services', but only where this is provided for in the contracts entered into under section 3 of the Offender Management Act 2007. In other words, contracted providers will be subject to particular duties if the contracts make express provision to this effect. This issue arises in particular in the context of partnership working.

The table below sets out our initial thinking on where we think CRCs should be required to participate in the relevant statutory partnership. It also sets out the statutory partnerships and duties the NPS will retain. Our assessment is based on:

- the cohort of offenders primarily dealt with by the partnership
- if participating would help integrate providers with other key stakeholders
- if participating is in the interests of public safety

We would not exclude either the NPS or CRCs from being involved in or contributing to a statutory partnership. In circumstances where participation in a partnership/legislative requirement is not mandated for a CRC in the contract, but the CRC nevertheless wants to contribute to it, we would look to the provider to clarify the role and contribution with the local NPS (and other partners where appropriate).

This paper will be used to inform the partnership working aspect of the exit strategy for Probation Trusts and enable them to plan the allocation of resources for the statutory partnerships between the NPS and the CRC in the contract package area during the transition period once the Probation Trusts split in April 2014. This will enable providers to take on an existing structure within the CRCs and ensure providers are fully aware of their statutory partnerships and responsibilities once they begin to deliver services. However, once providers begin to deliver services we will seek to ensure that contracts retain the flexibility for these arrangements to be negotiated to reflect local variations and wider changes including new legislation, where appropriate.

This paper does not cover non-statutory partnerships. Trusts are currently mapping these partnerships to ensure all local relationships are captured and to test the resourcing of partnership activity as part of their transition planning. We committed in the strategy document that providers will need to demonstrate how they will sustain and develop IOM arrangements in their area – a key non statutory partnership.

We are also considering how best to ensure that all providers engage appropriately in those non-statutory partnership working arrangements which make an important contribution to protecting the public.

Community Safety Partnerships

Community Safety Partnerships (CSPs) are an important feature of the network of partnerships that help to tackle crime and reduce reoffending and were set up under Sections 5-7 of the Crime & Disorder Act 1998. There are about 300 CSPs in England and 22 in Wales usually at district or unitary authority level and are made up of representatives from Police, Probation Service, Local Authority, Health, Fire and Rescue authorities. More information on CSPs can be found at the following link:

<https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/community-safety-partnerships>

Reducing Reoffending, Cutting Crime, Changing Lives – Reducing Reoffending Guidance for Crime and Disorder Reduction Partnerships and Community Safety Partnerships is available on:

http://www.justice.gov.uk/downloads/offenders/probation-instructions/pi_05_2010_statutory_changes_to_community_safety_partnerships_csps_.pdf

<http://webarchive.nationalarchives.gov.uk/20100413151441/http://www.crimereduction.homeoffice.gov.uk/crimereduction055.htm>

Requirements

We will designate CRCs as a responsible authority under section 5 of the Crime and Disorder Act 1998 in the contracts, and therefore subject to the statutory requirements to participate in CSPs. We will expect them to fully meet their statutory responsibilities to these partnerships as we believe it will be a key forum for providers to participate in and integrate with wider partners. The NPS will also continue to be a responsible authority. We expect the NPS and CRCs to decide how best to engage in the partnership in this instance. In transition, this function will be carried out by a representative from the CRC but the NPS can identify a lead representative to liaise with the CRC or also attend the CSP if resources allow.

Multi-Agency Public Protection Arrangements

Multi-Agency Public Protection Arrangements (MAPPAs) are designed to protect the public, including previous victims of crime, from serious harm by sexual and violent offenders. They operate in each of the 42 criminal justice areas in England and Wales and require the local criminal justice agencies and other bodies dealing with offenders to work together in partnership in dealing with these offenders. The supervision of this work is carried out by the Strategic Management Board (SMB) in each area. It has a range of governance-related functions, including monitoring performance, ensuring anti-discriminatory practice, measuring compliance with the MAPPAs Key Performance Indicators, and producing the annual MAPPAs report. Offenders detained in hospitals under the Mental Health Act 1983 may also be subject to MAPPAs arrangements.

Guidance on MAPPAs has been issued in order to help the relevant agencies in dealing with MAPPAs offenders. These agencies are required to have regard to the guidance which can be found at the following link:

<http://www.justice.gov.uk/downloads/offenders/mappa/mappa-guidance-2012-part1.pdf?type=Finjan-Download&slot=0000036C&id=0000036B&location=0A64420B>

Requirements

Given that offenders managed under MAPPA will be allocated to the NPS, the NPS will continue to be the responsible authority in relation to MAPPA. We will not designate CRCs as the responsible authority for MAPPA. There may be occasions on which a CRC might be expected to contribute to and co-operate with MAPPA, but we believe that we do not have to designate them a responsible authority for them to interact with MAPPA. Instead, the CRC will have a contractual duty to cooperate in relation to MAPPA. In transition, this function will be carried out by a representative from the NPS, and the CRC will have a duty to cooperate.

Safeguarding Children Boards

All organisations have a responsibility to promote the welfare of children and protect them from harm as set out in the Children Act 2004. Specifically Section 11 of the Act places duties on a range of organisations including probation to ensure their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children.

The responsibilities including the core legal requirements are contained in the following guidance:

<http://www.workingtogetheronline.co.uk/chapters/contents.html>

Requirements

Safeguarding children is a key public protection issue and both the NPS and CRCs will be expected to have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This expectation will be reflected in the NPS Service Level Agreement (SLA) and the contracts of CRCs.

The NPS will continue to sit on child safeguarding boards. This is consistent with the Section 11 guidance (which says that as they deal with advice for court and transition issues they are well placed to identify offenders who pose a risk of harm to children as well as children who may be at heightened risk of involvement in (or exposure to) criminal or anti-social behaviour and of other poor outcomes due to the offending behaviour of their parent/carer(s). CRCs will also be designated as 'board partners', who as such must provide a representative for the Board. In transition we expect the NPS to have a representative to sit on the safeguarding board and for the CRC to also have a representative to sit on the safeguarding board. The Welsh Government is currently considering combining youth and adults safeguarding into a single board (see the section on Safeguarding Adults Boards below). Provision for this is within the Social Services and Well-Being Bill.

Youth Offending Teams

Youth Offending Teams are a partnership of organisations (including the police and local authority) with a legal responsibility to prevent offending and reduce re-offending. They are overseen by a management board usually chaired by a senior official within the local authority. It is the duty of every local authority, acting with partner agencies, to set up one or more teams for their area.

More information can be found at the following link:

<http://www.justice.gov.uk/about/yjb/>

Requirement

The priorities of the Youth Justice Board (YJB) and local Youth Offending Teams (YOT) will be taken into account to inform commissioning decisions at CPA level. We are considering the role of Probation officers who are seconded from the NPS to YOTs, but senior managers in the NPS will contribute to YOT Management Boards.

The extension of statutory supervision will apply to all offenders that are over 18 at the point of release, including offenders sentenced to juvenile sentences. Provisions in the Offender Rehabilitation Bill will (subject to Parliamentary approval) enable CRCs, the NPS or YOTs to supervise those aged 18 or over during the top-up period of supervision. The NPS will inform the provider of a new case being allocated to them within an agreed timescale which will be defined within the NPS Service Level Agreement (SLA). We will ask providers as part of the bidding process to say how they would interface with the NPS and YOTs to facilitate transition of cases.

The NPS will be responsible for making the decision on whether an offender who is sentenced as a juvenile but who turns 18 during their sentence should be supervised by a CRC or the NPS once he/she is over 18 or whether they should remain with the relevant YOT, and for making the arrangements for any transfer. In transition, the NPS will designate someone to be responsible for transition cases and we would expect the CRC to have a representative for the NPS and YOT to liaise with in relation to transition cases.

Safeguarding Adult Boards

In England, safeguarding adult responsibilities are currently non-statutory. The Care Bill (currently going through Parliament) as currently drafted does not make probation a statutory member of an adult safeguarding board (although they can be invited to be members) but it will contain a general duty to co-operate between providers of probation services and local authorities with respect to social care. It is possible that probation providers could be made statutory members through regulations.

In Wales, providers of probation services are also not currently statutory members of adult safeguarding boards. However, the Social Services and Well-being (Wales) Bill contains clauses that will merge their adult and childrens safeguarding Boards and will make probation providers statutory members. The Welsh Bill has provisions similar to those in the England Care Bill including a wide ranging provision around supplying information to the Boards, and a duty to cooperate with local authority on safeguarding matters and also in promoting well-being more generally.

More information can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No__secrets__guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf

Requirements

In England, we will reflect any new duties following passage of the Care Bill and its regulations in both the NPS SLA and CRC contracts.

In Wales, we will reflect any new duties following passage of the Social Services and Well-being (Wales) Bill and its regulations in both the NPS SLA and the CRC contracts.

This is consistent with the approach taken for child safeguarding but we will review the position above in light of any changes.

In transition we expect the NPS and CRC to fulfil their duty to cooperate and have an appropriate member of staff if needed.

Victims

There are a number of responsibilities in relation to the victims of offenders sentenced to 12 months or more for a violent or sexual offence, as specified in the Domestic Violence, Crime and Victims Act 2004 and set out in the statutory Code of Practice for Victims of Crime ('Victims' Code'). Victims are entitled to be offered participation in the statutory Victim Contact Scheme and if they opt in, make representations about the licence conditions to which the offender will be subject to on release, and to be informed about which victim-related licence conditions are put in place and when these will cease. Victims are also entitled, at the discretion of the Probation Trust, to receive information about key stages in the offender's sentence from a designated Victim Liaison Officer in the Probation Trust, such as if the offender receives any temporary or permanent release, is transferred to open conditions, or has their case considered by the Parole Board. If the offender's release or transfer to open conditions is to be considered through the Parole process, victims in the Victim Contact Scheme are entitled to make a Victim Personal Statement (VPS) explaining the impact that the offence has had on them or their family and to apply to the Parole Board to attend an oral hearing to read their VPS aloud in cases where the Parole Board decides that it is appropriate to hold an oral hearing. The entitlement under the Domestic Violence, Crime and Victims Act also extends to victims of mentally disordered offenders who are detained in hospital under the Mental Health Act 1983.

A new Victims' Code was published on 29 October and will come into force later this year replacing the old Code. Both the old and new versions of the Code can be found at the following link:

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

Requirements

The statutory Probation Victim Contact Scheme will continue to be implemented by the NPS who will retain the victim contact role for all cases to which it applies. Having one organisation (NPS) responsible for the scheme is in the best interests of the victim and reduces risk of revictimisation which could result from overlapping operations conducted by multiple service providers. The statutory duties will be reflected in the NPS SLA.

CRCs will not be subject to these statutory duties except section 9 in relation to participating in a domestic homicide review (this duty is applied to all providers of probation services i.e. there is no choice whether to apply this duty through the contracts). The remaining statutory duties cover a range of responsibilities around notifying other agencies of information from or relating to victims in non-community settings (custodial or hospital). We believe it makes sense for the NPS, who is responsible for the victim contact role, to continue to carry out these duties and ensure a continued and seamless service for the victim.

However, CRCs will be contractually required to support the NPS to ensure the continued effective implementation of both the statutory Probation Victim Contact Scheme and associated statutory responsibilities, and also the established good practice in relation to discretionary victim contact including identifying and providing key information about

offenders to NPS staff so that they can then communicate this to victims and, if applicable, allow them to make representations.

In transition we expect the probation service to designate staff to continue its function in delivering the statutory Victim Contact Scheme and for the CRC to have a member(s) of staff to fulfil their responsibility to ensure an effective implementation of the scheme.

The EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU – known as the “EU Victims Directive”) also includes provisions in relation to the information that should be offered to victims, including the obligation to ensure that in cases where there is an identified risk of harm victims are notified of the release or escape of the offender and any relevant measures imposed for the victim’s protection where there is an identified risk. The UK must implement the EU Victims Directive fully by 16 November 2015.

We will provide more information on this when it is available and will review the position above in light of any changes necessary to transpose the Directive.

Efficient and effective criminal justice system (Police and Crime Commissioners)

Under the Police Reform and Social Responsibility Act 2011, providers of probation services are included in the list of ‘criminal justice bodies’, who, together with the elected local policing body, must make arrangements (so far as it is appropriate to do so) for the exercise of functions to provide an efficient and effective criminal justice system for the local police area. This duty is applied to all providers of probation services i.e. there is no choice whether to apply this duty through the contracts. We are attaching Police and Crime Plans to tender documents.

More information on the requirements can be found at:

<http://www.legislation.gov.uk/ukpga/2011/13/section/10/enacted>

Requirements

This applies automatically to both NPS and CRCs.

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
Safeguarding Children	Children Act 2004	10	If designated by the arrangements under section 3 OMA as a 'relevant partner', providers must co-operate with the local authority in making arrangements with a view to improving the well-being of children (England). Secretary of State is also a relevant partner for these purposes, in relation to his functions under section 2 and 3 OMA	Yes	Yes
		11	Secretary of State must make arrangements to ensure that services provided by another person via arrangements under section 3 OMA are provided having regard to the need to safeguard and promote the welfare of children (England).	N/A as applies to SoS	N/A as applies to SoS
		13	If designated by the arrangements as a 'board partner' providers must provide a representative for the Local Safeguarding Children Board (England). Secretary of State is also a board partner for these purposes, in relation to his functions under sections 2 and 3 OMA.	Yes	Yes
		25	If designated by the arrangements as a 'relevant partner', providers must co-operate with the local authority in making arrangements with a view to improving the well-being of children (Wales). Secretary of State is also a relevant partner for these purposes, in relation to his functions under section 2 and 3 OMA.	Yes	Yes
		28	Secretary of State must make arrangements to ensure that services provided by another person under arrangements under section 3 OMA are provided having regard to the need to safeguard and promote the welfare of children (Wales).	N/A – applies to SoS	N/A applies to SoS
		31	If designated by the arrangements as a 'board partner' providers must provide a representative for the Local Safeguarding Children Board (Wales). Secretary of State	Yes	Yes

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
			is also a board partner for these purposes, in relation to his functions under sections 2 and 3 OMA.		
Community Safety Partnerships	Crime and Disorder Act 1998	5, 6	If designated by the arrangements as a 'responsible authority' the provider must formulate and implement crime and disorder reduction strategies (commonly known as Community Safety Partnerships). Under section 10(2) Police reform and Social Responsibility Act 2011 in exercising their functions under section 6 responsible authorities must co-operate with the elected local policing body on community.	Yes	Yes
Youth Offending Partnership Boards	Crime and Disorder Act 1998	38	Where the arrangements so provide, providers must co-operate with the local authority to ensure that all youth justice services are available in the local area. Duty to co-operate is also imposed on the Secretary of State when exercising his functions under section 2 and 3 OMA. Duty must be exercised in accordance with any guidance issued by the Secretary of State.	Yes	No
		39	Where the arrangements so provide, providers must co-operate with the local authority to establish one or more youth offending teams (YOTs) in the local area. Duty to co-operate is also imposed on the Secretary of State when exercising his functions under section 2 and 3 OMA. Duty must be exercised in accordance with any guidance issued by the Secretary of State.	Yes	No
		41	Duty to furnish information or report to the Youth Justice Board on the operation of the youth justice system	N/A as applies automatically	N/A as applies automatically
Multi Agency Public Protection Arrangements	Criminal Justice Act 2003	325	If identified as such by the arrangements, providers will be a member of the 'responsible authority', which must establish arrangements for the purpose of assessing and managing the risks posed in the area of certain violent and	Yes	Duty to co-operate

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
			sexual offenders and others who pose a serious risk of harm to the public (MAPPA). The responsible authority must co-operate with listed agencies and must have regard to any guidance issued by the Secretary of State.		
	Sexual Offences Act 2003	91B	If the provider has been identified as a relevant provider for the purposes of MAPPA (section 325 CJA 2003), and is notified of an application to review an indefinite notification order it must provide any information relevant to the application to the chief police officer within 28 days.	Yes	No
Safeguarding Adults	Care Bill (England) Social Services and Well-being Bill (Wales)	6 111	<p>Clause 6 (co-operation generally) of the Care Bill provides that a relevant provider of probation services in the authority's area is a 'relevant partner' of the local authority. The LA must co-operate with each of its relevant partners, and each relevant partner with the LA in the exercise of their respective functions relating to adults with need for care and support (and their carers). In particular, co-operation is to be for the following purposes:</p> <p>(a) promoting the well-being of adults with needs for care and support and of carers in the authority's area,</p> <p>(b) improving the quality of care and support for adults and support for carers provided in the authority's area (including the outcomes that are achieved from such provision),</p> <p>(c) smoothing the transition to the system provided for by this Part for persons in relation to whom functions under sections 58 to 65 are exercisable,</p> <p>(d) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect, and</p>	Yes	Yes

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
			<p>(e) identifying lessons to be learned from cases where adults with needs for care and support have experienced serious abuse or neglect and applying those lessons to future cases.</p> <p>In Wales, the Social Services and Well-being Bill makes similar provision to clause 6 of the Care Bill. The Welsh Government has now introduced amendments to the Bill that make probation a statutory member of the safeguarding boards.</p>		
Victims	Domestic Violence, Crime and Victims Act 2004	9	Providers can be directed to establish or participate in a domestic homicide review. If asked to take part in such a review providers will be under a duty to have regard to the Secretary of State's guidance about such reviews.	N/A as applies automatically	Yes
		35	If identified as a 'relevant provider of probation services' by the arrangements, providers must take all reasonable steps to ascertain whether victims wish to make representations about the licence or supervision conditions for offenders who receive a sentence of 12 months or more and are convicted of sexual or violent offences as specified in s45(2) . Duty to provide information to the victim on the whether licence or supervision conditions imposed, and if so the conditions, which relate to contact with the victim or their family conditions which relate to contact with the victim or their family.	Yes	No
		36A	Where a victim wishes to make representations or receive information representations under s.36 then the provider identified by the arrangements must notify the hospital of the victim's name and address and their representations and notify the victim of the name and address of the hospital.	Yes	No

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
		37	Where representations are made under s.36 about an offender who is also subject to a restriction order the provider identified by the arrangements' is required to forward these representations to the person who is required to determine the matter.	Yes	No
		39	If identified as required to do so by the arrangements, providers must take all reasonable steps to ascertain whether victims wish to make representations about whether a person who is subject to a hospital direction should be subject to any conditions on his discharge from hospital, if so what conditions and what conditions should be part of a community treatment order. Further duty to provide information to the victim about any conditions the offender is subject to.	Yes	No
		40	Where representations are made under s.39 then the provider identified by the arrangements must forward the representations on to the person who is responsible for deciding the matter.	Yes	No
		42	If identified as required to do so by the arrangements, providers must take all reasonable steps to ascertain whether victims wish to make representations about whether a person who is subject to a transfer direction order should be subject to any conditions on his discharge from hospital, if so what conditions and what conditions should be part of a community treatment order. Further duty to provide information to the victim about any conditions the offender is subject to.	Yes	No
		42A	Where a victim wishes to make representations or receive information under s.42A then the provider identified by the arrangements must notify the hospital of the victim's name and address and their representations and notify the victim of the name and address of the hospital.	Yes	No

Body	Legislation	Section	Duty	Propose to place requirements on NPS	Propose to place requirements on CRCs
		43	If representations are made under s.42 then the provider identified by the arrangements must forward the representations on to the person who is responsible for deciding the matter.	Yes	No
Effective Criminal Justice System	Police Reform and Social Responsibility Act 2011	10	Providers are included in the list of 'criminal justice bodies', who, together with the elected local policing body, must make arrangements (so far as it is appropriate to do so) for the exercise of functions to provide an efficient and effective criminal justice system for the local police area.	N/A as applies automatically	N/A as applies automatically

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