



Ministry
of Justice



HM Prison &
Probation Service



Date: 20th March 2018

Memorandum of Understanding for the Arrangements for the Oversight of Probation Services in England and Wales

between

The Ministry of Justice

and

HM Prison and Probation Service

and

HM Inspectorate of Probation

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Introduction

1. This Memorandum of Understanding (MoU) is agreed by the Ministry of Justice (MoJ), Her Majesty's Prison and Probation Service (HMPPS) and Her Majesty's Inspectorate of Probation (HMIP). The MoU sets out for the public the key roles and responsibilities of these three bodies in conducting the oversight of probation services delivered by the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) across England and Wales as from the introduction of HMIP's new inspection methodology in April 2018.
2. This MoU defines oversight as the arrangements for overseeing and assuring the delivery of probation services and how we use these arrangements to drive performance improvements across the system. This MoU will allow NPS divisions and CRCs to understand who does what and how things happen and why, on oversight.
3. The MoU sets out the principles that underpin the oversight model. It also sets out the key aspirations that the parties to this MoU share for the longer-term future of oversight of probation. The key aspirations include the intention to move, over time, to a more risk-based approach; to better incentivise providers to achieve good service delivery; to reduce the total oversight burden on providers, and; to consider how best MoJ/HMPPS can use and respond to HMIP inspection ratings.
4. The MoU also summarises the key interfaces between the parties to this MoU and which will operate within the underlying operating model upon the implementation of the new HMIP inspection methodology in April. It focuses on those arrangements that relate to HMIP's inspection methodology and includes the targeting of and response to HMIP inspection recommendations and how information will be exchanged.
5. In addition to the key interfaces summarised in this MoU, to ensure the NPS divisions and CRCs have a good understanding of how things happen and why, the parties to this MoU operate detailed oversight arrangements which may change over time but will remain underpinned by the principles set out in this MoU. The detailed arrangements will be kept under regular review and the MoU will be updated periodically to show those developments.
6. The MoU does not confer any legal powers or responsibilities and it is not intended to be legally binding. It does not set out details of HMIP's inspection methodologies or inspection standards, details of which are available on the HMIP website.
7. The MoU does not seek to change what is asked of probation providers, for example in contracts with CRCs.
8. The MoU does not seek to describe, in any great detail, aspects of oversight that are entirely within the remit of one of the parties, but rather it covers key interfaces that need agreement.

Background

9. HMIP's new inspection methodology uses new inspection standards as well as annual inspections and ratings of each NPS division and each CRC. The detail of how the new inspection methodology will operate will be available on the HMIP website. It represents a significant change to the inspection arrangements, and providers will want to understand what the wider implications are for how probation services are overseen.

10. It is helpful to set out the oversight arrangements of those involved in overseeing probation services, to agree the underlying oversight model and the underpinning principles, and to agree the aspirations for the oversight of probation going forward.
11. The parties to this MoU acknowledge that CRC contracts, NPS Service Level Agreements (SLAs) and commissioned services are based on MoJ policies and are constrained by affordability. HMIP's own inspection standards, however, are set independently and represent an independent view of the standards probation services should aim to achieve. Therefore, while the CRC contract or NPS SLA continues to be the measure by which HMPPS assesses performance, HMIP's independent inspection reports allow MoJ/HMPPS to see where the contract/SLA/commissioned services might not be adequate and, therefore, where improvements can be made.

Underlying Principles

12. The oversight arrangements are underpinned by the principles of good regulation and inspection set out by Hampton (2005)¹. Those principles were intended to streamline and modernise the regulatory system in order to reduce administrative burdens on those bodies subject to oversight. This section of the MoU sets out how each of the principles have been interpreted and how they apply to the oversight arrangements for probation:
 - (i) **Transparency.** Greater transparency increases confidence in the decision-making process. The parties to this MoU will agree and operate working arrangements in a transparent way, making clear how the performance of NPS divisions and CRCs is evaluated. This MoU sets out the arrangements for the key interfaces between the parties of this MoU, and the parties will be open and transparent about any proposed changes to these arrangements.
 - (ii) **Consistency.** To achieve greater consistency requires agreed working arrangements which should be monitored. The key interfaces summarised in this MoU, as well as the more detailed working arrangements that operate between the parties to this MoU will be monitored by the parties to this MoU. The arrangements will show how each party works alongside the others, so that oversight is understandable to all and is, so far as possible, predictable. Each party to this MoU aims to be consistent in the decisions it makes and the actions it takes.
 - (iii) **Accountability.** The parties to this MoU will be held to account for adhering to the working arrangements agreed between them. The MoJ and HMPPS will be held to account for *ensuring* the availability and continuity of provision of good quality services, and for their decisions which affect any NPS division or CRC. CRCs and NPS divisions will be held to account for the provision of good quality services. HMIP will be held to account for the quality of its inspections and the decisions it makes (but will not be held to account for the quality of services of those it inspects). Additionally, all parties have well-published, accessible, fair and effective complaints procedures underpinned by clear lines of accountability to Ministers, parliament and assemblies and the public.
 - (iv) **Proportionality.** The level of oversight, including the sanction in response to poor service delivery, should be proportionate to the risks posed. Inspection and assurance programmes will be proportionate and not unduly burdensome overall or for any one NPS division or CRC. HMIP and Operational Assurance will keep under review the frequency of their inspections

¹ Hampton, P. (2005), Reducing administrative burdens: effective inspections and enforcement. HM Treasury.

and audits respectively. All parties will ensure, so far as possible, that any information from any party need be provided once only.

- (v) **Targeted.** The targeting of oversight resources where they are most effective and at areas of highest risk is essential in providing the public with a safe and effective probation service. Exchanged information will be used to plan and co-ordinate Operational Assurance audits and HMIP thematic inspections so that they are targeted at those providers or those issues and specific problems of most concern and which may potentially give rise to the most serious risks.

The Oversight Model and Key Interfaces

13. The Ministry of Justice uses the established 'three lines of defence'² model to oversee probation services. While functional teams across this model have distinct roles and obligations, there is some planned overlap to ensure there is more than one source of intelligence on which to make assessment of delivery and business risk, so that there is no single point of failure in the system and so that major performance issues are not missed.
14. **The first line of defence** is provided by the HMPPS Contract Management team which manages the day to day contractual oversight with each CRC, and by the HMPPS NPS line management function which manages the day to day oversight of each NPS division. Contract Managers monitor performance and use financial and other contractual levers where appropriate. They liaise with Commercial Contract Management to facilitate the implementation of contract changes and manage the resolution of related disputes. Teams within HMPPS support NPS divisions and CRCs to develop evidence-based practice to help them meet expected standards of delivery.
15. **The second line of defence** is provided by the Operational and System Assurance Group (OSAG/Operational Assurance). This function provides internal HMPPS assurance and drives improvements by independently (of line management) providing assurance to both HMPPS and MoJ on the quality of delivery of all HMPPS offender-facing services including prisons (private and public sector), probation providers (CRCs and the NPS), the youth estate, and other offender services contracts. Operational Assurance combines its own audit data with information from HMI Probation and HMI Prison inspection reports, Contract Management, MoJ Commissioning and others to drive improvement by identifying system design or interface issues which may prevent the proper operation of the system.
16. Operational Assurance also provides operational support for the development of Probation Instructions (which set out mandatory standards and requirements) and Good Industry Practice guidance (which sets out practice expectations of providers) for the NPS and CRCs. It also gives advice to CRCs and NPS divisions on implementation of the Probation Instructions and Good Industry Practice guidance.
17. **The third line of defence** is provided by HMIP though their independent, annual inspection and rating of probation providers, and (potentially) by other public bodies (for example, the National Audit Office).

² Developed in response to the Breendon review (2013) of MoJ contracts, the 'three lines of defence' model is a Treasury and NAO approved model for whole-system internal and external assurance and risk management, and is the model used by the UK and Ireland Chartered Institute of Internal Auditors and the Global Institute of Internal Auditors.

18. Each NPS division and CRC inspected by HMIP will be given a composite (overall) rating and individual ratings for specific areas of activity, based on inspection evidence. Further details are available on HMIP's website. HMIP will publish all inspection reports and ratings. Where an NPS division or CRC fails to achieve a good or outstanding rating, the inspection report itself will show why and will point to those areas where the organisation needs to improve.
19. HMIP inspection reports will feed into the oversight of probation services via the MoJ Scrutiny Intelligence team which uses HMIP reports and findings to alert ministers to poorly performing providers.

Factual Accuracy Checking of HMIP Inspection Reports

20. Operational Assurance will commission a factual accuracy check of all HMIP inspection reports and will respond to HMIP on factual accuracy before HMIP issue each final probation inspection report.

How HMIP will Target its Inspection Recommendations

21. In each inspection report, HMIP makes a set of recommendations, usually no more than ten. Where the recommendation is less about quality of what is delivered and more about the nature of the service that is being commissioned and/or the terms of the contract/SLA itself, HMIP will target the recommendation to MoJ as the commissioner. The recommendation will otherwise be targeted to the appropriate authority, be that ministers, MoJ Policy, HMPPS, the CRC (owners or individual CRCs), NPS (the centre or individual divisions), or other government departments.

Responding to HMIP's Inspection Recommendations (and the implications for differing perspectives between contractual standards/SLAs and HMIP inspection standards).

22. HMIP's recommendations must be considered and responded to by the body to whom they have been made. To implement the recommendations, the NPS division or CRC prepares an action plan (with input from Contract Management (in respect of CRCs) or the relevant line management function (in respect of NPS divisions), and advice from Operational Assurance) for HMIP to receive.
23. Sometimes, an HMIP recommendation may go beyond what is required by the CRC Contract or Service Level Agreements, or it may recommend the NPS division or CRC to change the way they work, when those working arrangements have not been challenged previously by other parties. This is because the HMIP standards that underpin inspections are not restricted by costs or by current CRC contract provisions or NPS SLAs. Currently, the NPS division or CRC is not strictly obliged to act on HMIP recommendations (though they are required to respond). However, failure to do so may affect performance and the quality of their probation work and that may, in turn, be reflected in future inspections and ratings.
24. HMIP usually follows up NPS division and CRC action plans in the next annual inspection. To inform the next round of HMIP inspections, HMPPS will provide HMIP with information on progress with the action plan (in response to HMIP's recommendations) as at a particular point in time. HMIP follows up separately those recommendations addressed to those other than the inspected body.

Planning and Consulting on Audit/Inspection Activities

25. HMIP and Operational Assurance will provide each other with timetables of inspection and audit visits and will, to avoid excessive burden on individual providers, liaise on any issues arising from the timetabling.

Exchanging Information

26. The parties to this MoU will communicate to all other parties any changes they may make from time to time to any oversight mechanism including changes to governance structures, information-recording tools, digital systems, inspection standards, inspection methodology etc. The parties will co-operate to reduce the collective information-sharing burden – on providers in particular. They will routinely exchange information as agreed via their respective internal governance boards and committees, including information from published HMIP inspection reports.
27. Contract Management’s assessment of operational delivery will be provided to Operational Assurance who will use that information and HMIP’s published inspection findings to support them to both plan and undertake its audit programme. Operational Assurance will combine its audit findings with HMIP inspection findings and with Contract Management assessment of operational delivery and other sources of information to drive probation improvements.
28. Without committing specifically to frequency or to other details that may be subject to change, MoJ Commissioning will provide HMIP with performance management information, and other documents as agreed between HMPPS and HMIP - for HMIP’s use - in advance of HMIP inspections. This is designed to limit the amount of pre-inspection information requested from NPS divisions and CRCs.

Key Aspirations

29. The parties to this MoU will work together to address the following key aspirations for the oversight of probation services:
 - (i) **To move to a more risk-based approach to probation oversight.** In such an approach, comprehensive risk assessment is the foundation for the planning and targeting of oversight and enforcement programmes. This approach would seek to ensure that oversight activity would be proportionate to the risk, releasing resources from unnecessary oversight which would be redirected towards improving performance.
 - (ii) **To review incentives for providers to achieve good service delivery.** The parties to this MoU will work with providers to review how they are incentivised to achieve good quality outcomes. The parties will consider the contractual and legal feasibility and impact of different incentives as well as the impact upon how HMPPS manages providers. Any set of incentives should drive providers to meet the independent inspection standards set by HMIP as well as the standards set by the contract and SLAs. The incentives should recognise that our objective is not to meet the standards per-se but is to improve quality of service delivery and that the standards are a tool to assess whether that is being achieved.
 - (iii) **To reduce the total oversight activity on providers.** Linking with the risk-based approach and the approach to incentivising good performance, the parties to this MoU will consider how to more efficiently and effectively target oversight activity so that unnecessary scrutiny (of

providers in particular) can be removed (where appropriate to the risk). This will allow resources and support to be directed to where it is most needed, so that learning can be shared to promote excellence and drive improvements.

- (iv) **To consider how best MoJ/HMPPS can use and respond to HMIP inspection ratings.** HMIP's annual ratings of each CRC/NPS division will be based on a four-point scale of 'Outstanding,' 'Good,' 'Inadequate,' and 'Requires Improvement.' It is intended to provide a clearer and more transparent view of performance of probation providers and help incentivise them to improve the quality of service delivery. The parties to this MoU will consider how to link HMIP inspection ratings to the options for incentivising good performance and how the ratings should feed into the day-to-day management of providers against the contract/SLA.

Reviewing, Amending and Monitoring the MoU

30. The MoU will be effective from the date it is approved by the parties to this MoU and will (both prior to implementation of the new HMIP methodology, and subsequently) be subject to review. Processes and/or timescales described in the MoU may change from time to time without the MoU necessarily being updated in advance of or immediately following the change in processes/timescales. The MoU will be updated periodically, by agreement with the parties to this MoU, to reflect changes. The MoU will be monitored and reviewed by the Probation Oversight Working Group to ensure that the processes outlined within are working effectively.

Approved by



Signed

Justin Russell, Director General, Offender Reform and Commissioning Group, on behalf of MoJ.

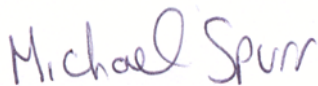
Date 20.03.2018



Signed

Dame Glenys Stacey, HM Chief Inspector of Probation, on behalf of HMI Probation.

Date: 20.03.2018



Signed

Michael Spurr, CEO and Accountable Officer, on behalf of HMPPS.

Date: 20.03.2018

Annex A – Agreed hierarchy and glossary of terms relating to standards of service delivery

The term 'standards' encompasses all standards for probation services including National Standards, Contractual Standards/Expectations, Service Level Agreements, Inspection Standards/Measures, Probation Instructions, and Good Practice Guidance.

