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Correctional & Secure Psychiatric Workers**

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POA Circular 85/2017

29th June 2017

Dear Colleagues,

Action		Information	
England/Wales	<input checked="" type="checkbox"/>	England/Wales	<input type="checkbox"/>
Scotland	<input type="checkbox"/>	Scotland	<input checked="" type="checkbox"/>
Northern Ireland	<input type="checkbox"/>	Northern Ireland	<input checked="" type="checkbox"/>
Special Hospitals	<input type="checkbox"/>	Special Hospitals	<input checked="" type="checkbox"/>
Private Sector	<input type="checkbox"/>	Private Sector	<input checked="" type="checkbox"/>
IRC	<input checked="" type="checkbox"/>	IRC	<input type="checkbox"/>

REPORTING VIOLENCE IN THE WORKPLACE AND NEXT STEPS

The Executive previously promulgated POA Circular 97/2016 following a number of Circulars advising members to report all assaults to the Police and to place the prisoner on report at the same time. The latest Safer Custody statistics for prisons in England and Wales, again highlight the increasing level of violence against staff. The Executive recognise this is a similar trend in all POA workplaces.

This is totally unacceptable and must be addressed.

In order to assist members and local Committee's, the following procedures should be adopted:

- If a member of staff is assaulted they should place the prisoner on report and refer the assault to the Police. The member should remind the Police Officer of the attached protocol on the appropriate handling of crimes in prisons (AHCP) and its purpose. The local Police Intelligence Officer should assist in this.
- It is advisable for the member to go to the local Police Station to make this report and to obtain a crime reference number (which will be necessary for any CICA application).
- The Governor must suspend the adjudication pending the outcome of the Police Investigation: see para 7.2 of AHCP.
- The Police must investigate the assault, taking into account the provisions of the AHCP and, where appropriate, refer the matter to the CPS for a charging decision.
- The Governor has an absolute duty to assist the Police; see para 8.1 AHCP and also note the provisions of para 6.2: the "prison community impact statement" should be completed within two weeks of a Police referral, but before the Police refer the matter to the CPS for a charging decision.
- If for any reason the CPS or Police determine that the assault is not to be prosecuted, despite para 9.4 AHCP which stresses that, "Assaults on Prison Officers undermine the fundamental principle of control and order which is necessary for the safe running of any prison", the member must contact the POA Legal Department as soon as possible, so that legal advice can be provided as to whether the decision was justified or can be challenged.
- The POA has been successful with applications against the Police and CPS through the Judicial Review process, challenging the failure to prosecute acts of violence against POA members.

- If it is determined that the decision of the Police and or CPS is not to prosecute the assault through the Courts, the Governor should then conclude the adjudication.

The protocol for handling violence against staff in prisons is attached for your consideration and action. It is advisable for all local Committees to place this on the agenda for monthly meetings with Management, to ensure the protocol is being used effectively so that members are being dealt with and the incident is investigated properly.

SEEKING COMPENSATION AND PAY

Following any assault, if members wish to seek compensation, it is vital that the key steps are followed to proceed with any claim.

If the member is injured as a result of the assault the normal process for compensation is through the CICA.

- The member must raise a claim on-line with the CICA at the following website address www.gov.uk/claim-compensation-criminal-injury as soon as possible and ensure they enter POA Headquarters as their representative.
- **The member must forward a copy of the completed CICA application to the Legal Department at Cronin House.**
- The member must have attended their GP or hospital and obtained treatment, but members should not wait for their treatment to be completed before registering a claim.
- The member should also contact the Department for Work and Pensions or equivalent and report the assault as an industrial accident.
- The local Committee should ensure the assault is investigated and local risk assessments and safe systems of work reviewed.
- The member should also contact the union's Solicitors Thompsons and seek advice on pursuing a Personal Injury Claim, if they believe the employer was negligent. These claims are difficult, but can succeed in obtaining members fair and just compensation, providing negligence can be proved. Please contact Thompsons direct on 0800 587 7515. For the avoidance of doubt, Thompsons will not complete the CICA claim.
- For the vast majority of POA members all sick absence as a result of the assault, is excused and pay remains unaffected. Members should check this with their employer and seek assistance from the local Committee if necessary.
- In some cases, employers are not following the Rules and are placing members on reduced pay or asking them to apply for sick leave excusal. This is generally wrong and if this happens to any of your members they must raise a grievance where appropriate and seek advice.

The POA has continued to raise the issues of Staffing, Regimes, Profiles, Risk Assessments and Safe Systems of Work with the employer. Unfortunately, they ignore our concerns and accept that POA members, their staff, will be assaulted; this is unacceptable.

Please draw the contents of this Circular to all members' attention and raise the AHCP with your Local Management to ensure the process is followed.

Yours Sincerely



STEVE GILLAN
General Secretary

enclosure



National Offender
Management Service



CPS



ASSOCIATION OF
CHIEF POLICE OFFICERS

The appropriate handling of crimes in prisons

Protocol between:

- National Offender Management Service
- Association of Chief Police Officers
- Crown Prosecution Service

Not Protectively Marked

27 February 2015

Foreword

This protocol, agreed by the National Offender Management Service (NOMS), the Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO), sets out the principles relating to the referral, investigation and prosecution of crimes committed in prisons. It applies to all prison and YOI establishments and to Immigration Removal Centres operated by NOMS and covers crimes committed in prison by any person including by prisoners, staff, social and professional visitors and contractors.

The protocol aims to ensure that acts of criminality within prisons are properly addressed where the prison determines that the internal discipline process is insufficient and where the circumstances indicate that criminal prosecution is appropriate.

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1. Introduction and scope of this protocol

- 1.1. The Crown Prosecution Service (CPS) is the principal prosecuting authority dealing with criminal prosecutions in England and Wales.
- 1.2. The National Offender Management Service (NOMS) is an Executive Agency of the Ministry of Justice. Its role is to commission and provide offender services in both the community and in custody in England and Wales.
- 1.3. Chief Constables with Chief Officers at ACC level and above who are members of ACPO are responsible for the investigation of alleged criminal activity in their individual force Area. The Association of Chief Police Officers (ACPO) brings together the expertise and experience of chief police officers from the United Kingdom, providing a professional forum to share ideas and best practice, co-ordinate resources and help deliver policing which keeps the public safe.
- 1.4. This document sets out the principles agreed by the above signatories governing the referral, investigation and prosecution of crimes committed in prisons¹. It aims to ensure that acts of criminality that occur in prison are properly addressed within the Criminal Justice System where the prison determines that the internal prison discipline process is insufficient and where the circumstances indicate that criminal prosecution is appropriate.
- 1.5. The College of Policing notes the protocol and supports its aims.
- 1.6. Prison is the final sanction available to the courts and often manages those who have failed alternative punishments, it is therefore essential that order and control within prisons is maintained. Prison staff play a key part in this. They must feel confident that the criminal justice system will support them and afford them the protection that they deserve. It is also important that prisoners too can feel safe within prison. Many prisoners are considered to be vulnerable and require additional support and protection.
- 1.7. Approximately 65,000 incidents are recorded in NOMS establishments every year of which up to 20,000 could be classified as crimes. Many of these will be dealt with by the prison disciplinary system rather than referred to the police. As is the case in the community, crimes such as assaults, criminal damage, drug crimes and disorder are relatively common within prisons. Other crimes, such as escapes, mobile phone crime or “potting” (where urine and/or faeces are thrown over staff), are more prison-specific.
- 1.8. A crime in prison that goes unpunished or that is not dealt with effectively undermines the safety and security of the prison and the effort of the police, the CPS and the criminal justice system as a whole.

¹ References to “prison” in this document refers to Prison or Young Offender establishments both public and private and Immigration Removal Centres Operated by NOMS on behalf of the Home Office.

2. Purpose of this protocol

2.1. The purpose of this protocol is to:

- clarify the roles and responsibilities of the relevant parties in respect of dealing with crimes in prisons;
- set out the factors to be considered by NOMS, the police, and the CPS when determining whether to investigate and/or prosecute an incident in prison, or to refer the incident for internal adjudication/disciplinary procedures;
- encourage and ensure consistent early liaison between the parties where appropriate;
- clarify how information will be shared between the parties;
- reflect NOMS, police and CPS national policy;
- ensure a robust and appropriate criminal justice response to crimes in prisons;
- achieve improved and consistent performance in the investigation and prosecution of prison offences;
- improve the service to victims of crime in prisons, and increase public confidence more widely in the ability of the Criminal Justice System to deal with crime in prisons;
- ensure compliance with National Crime Recording Standards (NCRS) and the Home Office Counting Rules (HOOCR).

3. Joint Collaboration

- 3.1. NOMS, the police and CPS are committed to ensuring that there is effective communication between our organisations and will engage regularly in the first instance at local level to discuss areas of mutual interest and concern, performance and working practices.
- 3.2. A national group comprising representatives from NOMS, CPS and ACPO will monitor implementation of the protocol, directing further work to be undertaken where required. Other relevant bodies may be invited to attend as necessary.
- 3.3. NOMS, the police and the CPS will ensure that there are appropriate local and regional contacts within each organisation in order to facilitate local and regional communication.
- 3.4. Prisoners will be produced to the court or to the police for interview where required. Prisons will keep the police and CPS informed of any changes in the location of an individual involved in a CPS prosecution. This will assist in updating a witness who is a prisoner on the progress of the case or, if the prisoner is a defendant, allow the relevant production order to be directed to the correct prison in order for the defendant to be produced at court or via a video link facility (see also 8.1) where this is appropriate.
- 3.5. At local level there will be effective liaison on intelligence matters between each prison establishment and the police through the police appointed Prison Intelligence Officer and on general matters through established links between prison security and local police as well as between prison management and police commanders.

- 3.6. In addition, prison establishments, or a representative of prison establishments in an area, will engage with local Community Safety Partnerships to ensure that particular crime and disorder problems occurring within a prison are considered as part of the crime prevention strategies developed for the local community.
- 3.7. The Operational Partnership Team² at NOMS HQ will act as a central point of contact for prisons, the CPS and the police with the aim of helping to resolve queries and difficulties arising from the operation of this protocol that cannot be resolved at a local level (see para 12).
- 3.8. The CPS Director's Guidance on Charging sets out arrangements prescribed by the Director of Public Prosecutions for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases. The police do not have to refer every case to the CPS, although certain specified cases do require referral to the CPS for a charging decision as set out in the Guidance. The police can also seek full and early advice where the case is complex or involves challenging issues. However specific cases involving a death, rape or other serious sexual assault should always be referred to the CPS as early as possible and in any case once a suspect has been identified and it appears that continuing the investigation will provide evidence for a charging decision.
- 3.9. Arrangements for full and early consultation in these most serious and complex cases will be agreed locally between Police and CPS. Referral arrangements in other cases will be to CPS Direct.

4. Victims

- 4.1. Victims, regardless of whether they are staff or prisoners, are entitled to services under the Victim's Code. NOMS, the police and CPS will comply with their responsibilities as set out in the Code of Practice for Victims of Crime.
- 4.2. The prison will facilitate the reporting of a crime to the police if the victim wishes a crime committed against them to be reported. This does not mean that a full criminal investigation and prosecution will necessarily follow, but it is important that the victim's views on the investigation and prosecution are properly conveyed to the police and CPS. Police Forces will comply with the NCRS and HOCA when receiving crime referrals. .
- 4.3. The prison will take into account the views of a victim who does not wish a crime committed against them to be reported to the police. Whilst the views of the victim are important and may influence the decision to refer for prosecution, where the circumstances of the crime meet the criteria set out in Annex B or the circumstances are sufficiently serious, the prison must report the crime to the police while offering appropriate support to the victim.
- 4.4. The police must ensure that in every case reported to them the victim has the opportunity to provide a Victim Personal Statement (VPS). This includes victims who are prison officers and victims who are prisoners. The purpose of

² The Operational Partnership Team is part of NOMS, Security Group and is composed of a mixture of Civil Servants and staff from a range of Law Enforcement Agencies. Its purpose is to facilitate and promote the highest standard of cooperation between Law Enforcement Agencies and NOMS.

a VPS is to assist the court by enabling the victim to describe the effect the offending has had on them and their lives. Victims are entitled to say whether they would like to read their VPS aloud in court or whether they would like it read aloud or played (if recorded) for them. In all cases, the VPS and the information about the victim's preference will be relayed to the court at the first hearing by the CPS advocate.

5. Witnesses

- 5.1. As with any other witness, it is essential that all witnesses in prison cases receive from the police an accurate explanation of the special measures for which they may be eligible and are made aware that the court will determine whether any special measures will be granted. The police will consult with witnesses and obtain their views, which will be passed to the CPS in a timely manner to inform any special measures application.
- 5.2. Where the victim/witness is a serving prisoner, particular care will need to be taken in planning and any special measures that are to be put in place given the practical difficulties that may arise.

6. Prison Community Impact Statements

- 6.1. The police will ensure that a prison in which an offence is committed is offered the opportunity to provide a Prison Community Impact Statement (PCIS). The purpose of a PCIS in this context is to provide relevant and useful information on behalf of the prison about the impact the offence has had on the prison. Offences committed within prison can often have wider implications for such things as control and order or fear of crime, both of which have a different dynamic in the unique prison environment when compared to the wider community. The use of community impact statements is an important opportunity for the prison to describe the particular impact an offence or offending may have had and to ensure that this is properly understood and taken into account in considerations for prosecuting and sentencing.
- 6.2. The prison should aim to complete a community impact statement within two weeks of a police referral, but in any event before the case is submitted by the police to the CPS for a charging decision. The statement provides substantive information about the alleged perpetrator, the prison and the affect of the incident on the establishment or individuals within it. The statement is used to inform decisions at charging and sentencing. Providing the statement to the CPS in advance of a charging decision means that the full seriousness of the case can be taken into account when determining the public interest test.

7. Referral of Crime

The Prison Adjudication System

- 7.1. Before reporting any incidents to the police, the prison will wish to consider each case to see if it can be dealt with by means of the Prison Adjudication System which can in some instances provide a relatively quick and cost effective means of dealing with minor crime in prisons. Further details regarding the Prison Adjudication System can be found at Annex A.
- 7.2. Where a crime is reported to the police, the prison will normally wish to proceed with the adjudication process and lay a disciplinary charge in parallel. This must be done within 48 hours of discovery of the alleged offence. The disciplinary charge will then be adjourned awaiting the outcome of the police investigation. If the police or CPS decides not to proceed with a prosecution, and there has not been an unreasonable delay in making that decision, then the adjudication may be reconvened and the disciplinary charge heard.
- 7.3. The prison adjudication system exists primarily to assist with control and order within the prison. It is not a replacement for the Criminal Justice System. Even for minor offences it has a number of limitations, as described in Annex A, and is suitable only for less serious criminal offences or where there is little prospect of a successful prosecution.

Referral to the police

- 7.4. Those crimes listed in Annex B must be reported by prison managers to the police for investigation.
- 7.5. Other crimes within prison will also be reported to the police if there are aggravating factors or there is a local agreement with the police to always report and/or investigate that type of crime (see Annex B). An informed and balanced decision must be taken regarding the appropriate disposal for each individual case. Some crimes committed in prison, which may be regarded as relatively minor in the wider community, have a disproportionate impact in a custodial setting.
- 7.6. Referring a crime to the police does not automatically mean that a full police investigation will take place or that the Crown Prosecution Service will be consulted and a criminal prosecution will take place. In cases which fit the NCRS/HOCR definition the police will record the circumstances as a crime. The level of subsequent investigation will be determined by local force policies. A number of factors will be taken into account in making these decisions, including whether it is in the public interest to commit to a full criminal investigation. However in making this decision police will take full account of any local, regional or national prison priorities and the views of any victim(s).
- 7.7. Where a decision is made that a formal criminal investigation will not take place the prison Single Point of Contact (SPoC) will be informed as soon as practicable and in any case within 10 working days of the referral being made. This will enable any prison adjudication procedures to commence expeditiously.

- 7.8. Where a formal police investigation is commenced the police investigators will contact the prison SPoC as soon as practicable and in any case within 10 working days, to update prison managers and make any arrangements necessary to progress the investigation.
- 7.9. Details of the referral arrangements for some specific types of crime in prison will be agreed and set out in Operational Guidance Documents (OGDs) where there are particular complexities involved in the referral or where the crime has a particularly high impact or profile. The current OGDs are shown at Annex C and Annex D and will be updated periodically.

8. Investigation

- 8.1. Where a crime is reported to the police, the prison governor will ensure that all appropriate actions are taken by the establishment to support successful prosecution. This may include:
- providing a full explanation for the decision to refer to the police for investigation;
 - providing detailed information to support the application of the public interest test in the Code for Crown prosecutors;
 - facilitating the taking of witness statements by the police in a timely manner and where possible, before any relevant parties are moved from the establishment;
 - providing access to the crime scene;
 - preserving any relevant evidence (including CCTV footage; PIN phone recordings);
 - providing a factual account of the incident;
 - in cases of multiple offenders, detailing the individual roles of each participant;
 - providing previous prison adjudication records or previous use of force investigation reports involving victims and suspects, where relevant;
 - facilitating access to prison healthcare staff who may be able to provide early evidence of injuries sustained;
 - details of membership of certain high risk prisoner groups (such as Urban Street Gangs or Organised Crime Groups);
 - evidence of previous non compliance with prison security procedures and regulations (such as possession of illegal mobile phones, drugs or other controlled articles or substances in prisons);
 - involvement in previous incidents of violence, serious non-compliance or activities that seriously undermine prison security that have been previously managed by the prison authorities internally;
 - where prisoners have been moved to another prison - providing information to the police and CPS on the location of the prisoner³.
- 8.2. A Prison Community Impact Statement should also be provided as soon as possible (see Section 6) and the prison should assist in facilitating the provision of any Victim Personal Statement to the CPS prior to the first date of

³ The NOMS Prisoner Location Service can provide details of location of any serving prisoner – contact: Prisoner.Location.Service@noms.gsi.gov.uk

hearing in court. This statement may be updated if additional impact becomes apparent during the proceedings.

- 8.3. The police will keep the prison informed regarding the progress of the case in compliance with data protection and other legislation.
- 8.4. Where a case is referred to the CPS and a decision is taken either by the police or the CPS not to proceed, the police will inform the prison in writing as soon as possible in order to avoid jeopardising the possibility of proceeding with the prison disciplinary charge (see para 7.2). It is important that reasons for any delays regarding the decision to prosecute are communicated to the prison. There is no fixed limit to the duration of an adjournment of adjudication proceedings. The adjudicator is required to consider whether natural justice is being compromised if the case remains unresolved 6 weeks or more after commencement.
- 8.5. Prisons will ensure that records are maintained showing the outcome of referrals to the police and any subsequent prosecutions.

9. CPS advice and decisions to charge

- 9.1. Prosecutors and the police will work closely together to build cases, ensuring that all possible avenues of evidence are explored and that the correct charge is identified.
- 9.2. The police will ensure that any statements supplied to the prosecutor at the pre charge stage will, where required, be accompanied by a completed MG2 (Initial Witness Assessment) to ensure that any requirement for special measures receives early informed consideration.
- 9.3. The prosecutor will ensure that MG3s (Report to Crown Prosecutor for Charging Decision) contain a full record of the decisions taken with reasons for those decisions. Every MG3 will also contain an Action Plan unless there is no additional or outstanding work required from the police. To ensure cases are managed efficiently, action dates will be agreed between the CPS and the police on the recorded Action Plan.
- 9.4. The CPS will make decisions in accordance with the:-
 - Code for Crown Prosecutors;
 - Director's Guidance on Charging;
 - CPS Policies, in particular Prison Security Offences and Offences by Prisoners;
 - CPS Charging standards; CPS Charging standards on Assault;
- 9.5. Subject always to the consideration set out in the Code (paragraph 4.10) to consider each case on its own facts and merits, when reviewing cases involving assault on prison officers, and in assessing the public interest stage, prosecutors should bear in mind the impact of the offence on the proper running of the establishment and the potential impact of a decision not to prosecute. Assaults on prison officers undermine the fundamental principle of control and order which is necessary for the safe running of any prison.

- 9.6. Further, in considering the public interest stage, prosecutors must have regard to the provisions of the Code that state that a prosecution is more likely if the offence has been committed against a victim who was at the time a person serving the public. A prison officer is a person who serves the public. Where a prison officer is assaulted whilst performing his/her duty, this would weigh heavily in the balance towards a prosecution. The importance of a criminal record that properly reflects an individual's offending behaviour is a factor that prosecutors should consider when reviewing a case involving an assault on a prison officer and can also be taken into account at court during sentencing for any further offences.
- 9.7. The CPS will explain a decision to take no further action or to reduce a charge to the police, and to the victim in accordance with the obligations under the Code of Practice for Victims of Crime. This is in addition to the rights of an individual victim under the CPS Victims' Right to review. The police will inform the prison of any such decisions. The Director's Guidance on charging will apply setting out arrangements prescribed by the Director of Public Prosecutions for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases. Where a decision by the CPS is not agreed upon by the police, the process of appeal under management review of charging decisions and actions will apply.
- 9.8. Where such a decision is taken by the CPS or police, a victim of crime in prison can invoke the Victims' Right to Review policy, which enshrines a victim's right to request a review of decisions taken by the CPS not to charge, to discontinue or otherwise terminate all proceedings.
- 9.9. Sentencing Issues: In considering the public interest for prosecution the prosecutor will consider the likely penalty, including whether the offence will attract a consecutive sentence that would be imposed by the courts (see 11.2). The Sentencing Council Definitive Guidelines on Offences Taken into Consideration and Totality clearly states that consecutive sentences will ordinarily be appropriate where any offence is committed within the prison context.
- 9.10. The likelihood that a concurrent sentence will be imposed is not in itself sufficient to refrain from prosecuting an offence committed by a prisoner in prison.

10. Case preparation

- 10.1. Under the Transforming Summary Justice (TSJ) model for first hearings, the decision where the case is to be listed will be made at point of charge. Anticipated Guilty Plea cases will be listed in “GAP” courts and Anticipated Not Guilty Plea cases in NGAP courts. GAP courts will be characterised by high volume and swift turnover, with as many cases as possible sentenced at first hearing. NGAP courts will require advanced preparation by prosecution, police and defence, and sufficient time to allow every case to be meaningfully progressed.
- 10.2. If the defendant pleads not guilty, the evidential file sent by the police will include:
- the Victim Personal Statement;
 - the Community Impact Statement;
 - completed MG2, as necessary;
 - the key evidence in the case;
 - any relevant exhibits, CCTV, and forensic reports;
 - PNC print of suspect and key prosecution witnesses previous convictions (including any out of court disposals);

11. Pleas and sentencing

- 11.1. The reviewing prosecutor will give clear instructions to the advocate conducting the case at court regarding the acceptability of pleas, in accordance with the Attorney General’s Guidelines on the Acceptance of Pleas and the Prosecutors Role in the Sentencing Exercise, including drawing attention to relevant sentencing guidelines.
- 11.2. Prosecutors should assist the court to reach the correct sentence by providing full details of the offence, including material from the Prison Community Impact Statement and the Victim Personal Statement, and drawing the Court’s attention to the relevant Sentencing Council Guidelines.

12. Prisons - Route to Raise Concerns

- 12.1. Where prisons have concerns over the way in which a crime has been investigated or prosecuted, they should first liaise locally with their police contacts, who will engage with their local CPS office as appropriate. Where prisons cannot satisfactorily resolve concerns at local level they may refer the matter to a Police Advisor within the Operational Partnership Team at NOMS Headquarters (see para 3.7) who will liaise with the relevant local police and CPS office as required.

13. Disclosure and Information Sharing

- 13.1. Data exchange and disclosure: Data exchange between NOMS, the CPS and ACPO is encouraged but will only take place in appropriate circumstances and in compliance with data protection and other relevant legislation. The signatories will work closely to develop and adopt good practice in the sharing of personal and non-personal information.
- 13.2. There will be occasions where the police and the relevant prison have evidence in the form of documentation or other material which will inform the other in their respective investigations and proceedings. The parties will endeavour to assist one another by sharing and providing information wherever possible.
- 13.3. The Criminal Procedure and Investigations Act (CPIA) 1996 and its supporting Code of Practice, is the legislation that governs the way law enforcement agencies and prosecutors deal with unused material in criminal investigations and prosecutions. NOMS and prisons do not have duties under CPIA, but must assist law enforcement agencies and prosecutors in satisfying their duties under the Act. Often NOMS and prisons will also be in possession of material of their own, which may be or become relevant to the criminal proceedings. This material is known as 'Third Party Material' and guidance is given to law enforcement agencies and prosecutors on how to deal with this material. Prison Governors should support law enforcement agencies and prosecutors in undertaking their duties in respect of this material. This may involve allowing access to the material and providing copies. Often the material involved may be sensitive and require careful handling. Liaison in resolving these issues should be at local level between police or law enforcement agency, Crown Prosecutors and prison managers. However in cases of difficulty or where advice is needed in complex cases, the Operational Partnership Team at NOMS Headquarters can be contacted for advice and guidance.

14. Preservation of Evidence

- 14.1. NOMS is almost exclusively the initial handler of crimes committed in prisons. Managing the initial discovery or disclosure and reporting of crime is crucial to securing a just outcome, whether at prison adjudication or court hearing. Prison governors will ensure that staff are aware that the proper preservation of evidence at this stage of proceedings is critical. Procedures for preserving evidence are set out in Prison Service Instruction (PSI) 51/2010 "Dealing with Evidence".

15. Review

- 15.1. The signatories agree to review this protocol annually.

16. Signatories

Alison Saunders
Director of Public Prosecutions

Michael Spurr
Chief Executive, National Offender Management Service

DAC Maxine de Brunner
Association of Chief Police Officers

26 February 2015

Annex A

The Prison Adjudication System

For a full description of prisoner disciplinary procedures see Prison Service Instruction (PSI) 47/2011 <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-47-2011-prison-discipline-procedures.doc>

Brief Description

1. Adjudications are the procedure whereby offences against the Prison or YOI Rules alleged to have been committed by prisoners or Young Offenders are dealt with. The adjudication system sets out how prisoners or Young Offenders are charged with offences, the procedure for inquiring into the charge to determine the accused prisoner/Young Offender's guilt or innocence, including their right to a defence, the punishments for those found guilty, and their right to apply for a review. Adjudications, along with the separate Incentives and Earned Privileges policy framework, contribute to maintaining order and control, and a safe environment, within establishments.
2. Adjudications may be conducted by the Governor of a prison (or Director of a private prison) or delegated to another suitably experienced and trained member of staff at operational managerial level. On a finding of guilt a Governor may award punishments including: loss of privileges; removal from work or from activities; stoppage of earnings; removal from a wing or cellular confinement for up to 21 days.
3. Adjudications are inquisitorial rather than adversarial – i.e., the role of the adjudicator is to inquire impartially into the facts of the case, hearing evidence from the reporting officer, the accused prisoner and any witnesses, and taking into account any written or other physical evidence. The adjudicator then weighs up all the evidence and decides whether or not the charge has been proved beyond reasonable doubt, and if proved, the appropriate punishment. The adjudicator will dismiss the charge if not satisfied that it has been proved beyond reasonable doubt.
4. In serious cases, a Governor can refer cases to Independent Adjudicators (IAs) as they have the powers to add days to the custodial element of a prisoner's sentence. An Independent Adjudicator may award up to 42 added days for each offence. Added days do not add to the total sentence but are taken from the period the prisoner may have served on licence in the community and are added to the period they spend in prison. IAs are District Judges or Deputy District Judges approved by the Lord Chancellor for the purpose of enquiring into charges referred to them.

Advantages and Limitations of the Adjudication Process

5. The majority of criminal offences committed in prison will also be prison disciplinary offences and many of these will be suitable for disposal through the internal prison adjudication system. The prison adjudication system provides a relatively quick and inexpensive way to deal with less serious crimes as well as all disciplinary matters which are not crimes.

6. However, the adjudication system is not a replacement for the wider Criminal Justice System. There are significant limitations to the use of the internal adjudication system for more serious crimes including: findings of guilt at prison adjudication are not recorded as criminal offences; they do not appear on the Police National Computer; they are not taken into account in the same manner as previous convictions during sentencing at any future court appearance; they are not disclosable to future employers or others entitled to know of spent or unspent convictions.
7. The main punishment at adjudication for more serious offences are additional days (see para 4, above). However, there are a range of prisoners who cannot receive additional days in custody including: Indeterminate Sentence prisoners such as those serving life sentences, those under 18 subject to Detention and Training Orders (DTO), and foreign nationals who have completed a determinate sentence and are now held solely under immigration powers. Unsentenced prisoners held on remand may only be given prospective added days but these do not come into effect if the prisoner is subsequently found innocent or given a non-custodial sentence.
8. A prisoner who has not had a further finding of guilt at an adjudication for six months (four months for young offenders) since the date of the offence for which additional days were imposed may apply for some of the days to be remitted (known within establishments as 'Restoration of Remission'). This is usually up to 50% of any added days but can exceptionally be more and up to 100%.

Annex B

Crimes within Prison that must be reported to the Police

Some crimes will be so serious that referral to the police is necessary. Where referrals are made the Police crime recording decision making will accord with the National Crime Recording Standards (NCRS) and Home Office Counting Rules (HOCR).

The crimes listed below are those that must be reported by Prison Managers to the police for investigation. Whilst the views of victims are important and may influence any decision to refer for prosecution, the crimes listed below must nevertheless be reported to the police.

This does not mean that other crimes types should not be reported. Reporting other crime types is a decision for local prison managers taking into account any aggravating and mitigating factors, local crime problems in the prison and the perceived benefits in prosecution in dealing with these, together with any local agreement with the police and/or CPS to consider prosecutions in certain circumstances. In some cases (as indicated below) additional guidance specific to individual crime types has been agreed between NOMS and ACPO:

B1 : Crimes that must be referred to the police⁴:

- a) murder, attempted murder and manslaughter;
- b) rape and attempted rape;
- c) threats to kill, where evidence of genuine intent exists;
- d) offences resulting in the occasioning of serious injury by any means;
- e) offences involving the use of a serious degree of violence or serious threats of violence, even if only minor injury is sustained, for example offences involving the use of a weapon which is likely to cause serious injury (this includes made, adapted or intended offensive weapons); this also includes offences that may meet the CPS charging standard for Violent Disorder or Affray;
- f) sexual offences or other personal sexual violation or where violence, or the threat of violence, was used in the commission of the offence;
- g) unlawful imprisonment (hostage taking) unless there is proof of collusion between hostage taker and alleged victim;
- h) riot and offences of serious disorder including prison mutiny;
- i) any escape from an establishment or secure escort;
- j) all absconds from open prisons (prison to request an investigation with the aim of referral for prosecution for “escape from custody” as well as for the purposes of assistance in returning the offender to custody);
- k) misconduct in Public Office;
- l) robbery, involving the use or threat of serious violence or a weapon;
- m) possession with intent to supply of any class of controlled drugs by prisoners, visitors or staff;

⁴ Includes encouraging, assisting and inciting these offences

- n) possession of controlled drugs by visitors or staff (any class of drug or any quantity);
- o) conveyance (smuggling) into or out of a prison by any person, of other List A items, namely explosives, firearms, ammunition or offensive weapons.

B2: Crimes that must be referred to the police where certain conditions are met⁵:

- a) assaults committed on members of staff working for, or on behalf of the Prison Service. See additional guidance at Annex C for aggravating factors for referral of cases of Common Assault and Battery;
- b) assaults committed against prisoners by staff unless the assault is very minor and prison management consider that it will be more appropriately dealt with by the staff disciplinary system (unless the prisoner wishes to refer the assault);
- c) attempted escape from an establishment or secure escort provided that the attempt amounts to more than mere preparation for the offence or where referral is necessary in order to investigate the attempted escape or where the attempt involves material or weapons intended to facilitate the offence;
- d) failure to return from temporary release where it is clear that there was intent to stay away from the prison and the Unlawfully at Large (UAL) contingency plan has been activated including notification to the police *unless* the prisoner voluntarily submits to prison or police custody later the same day or other exceptional circumstances apply. (Prison to request an investigation with the aim of referral for prosecution for “failure to return whilst on temporary licence” as well as for the purposes of assistance in returning the offender to custody);
- e) arson, unless there was a low risk of the fire taking hold or the state of mental health of the perpetrator suggests a referral would be counter-productive;
- f) criminal damage caused by an individual or as a result of group action to prison or prison property where the cost of the damage exceeds £2,000.

B3 : Other Offences will be referred to the police where:

- a) there are aggravating factors involving in the offence such as use of a weapon or violence or exploitation or other factor likely to lead to a longer sentence;
- b) there are aggravating factors associated with the victim such as vulnerability, or the crime was motivated by discrimination, due to the victim's racial or ethnic origin, religious beliefs, disability, gender, age, political views or sexual preference;
- c) the crime, although minor, has wider or more far reaching consequences for the prison because of the nature of the prison community as evidenced in the Prison Community Impact Statement – for example, mobile phone crime unchecked can often result in more serious crimes being facilitated from prison ranging from drug supply to murder;

⁵ Includes encouraging, assisting and inciting these offences

- d) agreement has been reached with the police at local level to pursue certain crime types because, for example, the crime, although generally deemed to be minor, is prevalent in the local area/prison and therefore warrants a more serious criminal justice response or a more serious response for a period of time;
- e) there are grounds for believing that the crime is likely to be repeated or continued, for example, the offender has a history of like-recidivism;
- f) the crime is part of, or linked to, organised criminal activity on a wider scale than this offence alone.

The prison must allow a prisoner who is a victim of a crime to report that crime to the police if they wish to do so even if the prison has decided not to report that crime directly themselves.

In all these cases discussions should be held with local police to agree priorities for referral and for the police to reflect this in any recommendation to the CPS to prosecute.

A list of Operational Guidance Documents is published separately to provide further guidance to police and prisons on the referral criteria of specific offences. See Annex C and Annex D for current OGDs. Additional guidance will be published in the future.

Annex C

Operational Guidance Document: Assaults on Prison Staff

NOMS and ACPO have agreed the following operational guidance regarding the reporting, investigation and prosecution of assaults against staff committed in prison.

1. REPORTING GUIDANCE - ASSAULTS ON STAFF

All assaults on staff will be referred to the police for investigation and consideration for prosecution other than those less serious assaults, where there is little or no injury, which are more appropriately dealt with at adjudication by the prison disciplinary system.

Dealing with minor assaults in this way provides for a faster and more efficient disposal of this type of offence and removes the risk that a court on a finding of guilt might impose a nominal penalty or an absolute discharge which is of little deterrent value.

Those assaults on staff dealt with by means of the prison disciplinary system are likely to be classified as “Common Assault” or “Battery”. Examples will typically include:

- Assaults where there is no injury (such as pushes and grabs);
- Assaults resulting in less serious injury, not requiring hospital treatment, including minor scuffs or reddening of the skin; superficial scratches; minor bruises; small cuts requiring no more than a plaster, grazes or abrasions and minor swellings.

Minor assaults of this nature, should still be considered for referral to the police if there are aggravating factors which suggest that the internal adjudication system is insufficient to deal with the particular nature or circumstances of the assault or where the victim of the assault wishes it to be referred. Key aggravating factors are set out below.

2. AGGRAVATING FACTORS WHICH WOULD INDICATE A REFERRAL TO THE POLICE FOR LESS SERIOUS ASSAULTS

- Where there was clear intent to cause more serious injury than that sustained.
- The assault was pre-planned/premeditated rather than reckless or an immediate reaction to a particular situation.
- The assailant has a history of previous violent behaviour, including through his or her index offence, and there are grounds for believing that this behaviour is likely to be repeated or continue.
- assaults occasioning transfer of bodily fluids including biting (where the skin is broken and saliva may have transferred into the wound); spitting (where the assailant is known to have an infectious disease); and “potting” (where excreta are thrown at staff) are particular aggravating factors.
- the crime is part of, or linked to, organised criminal activity on a wider scale than this offence alone.
- The assault comprised, or was accompanied by, threats to kill where the threat and intent appeared genuine.

- Assaults motivated by or demonstrating hostility to the staff member based on his/her religion; race; ethnic origin; sexual orientation; gender; disability; age or political views.
- Assaults causing psychological harm. That is, any psychological impact suffered by staff resulting in more than a transient emotional response (such as fear, distress or panic).

Operational Guidance Document: Unauthorised Possession of Knives and other Weapons

NOMS and ACPO have agreed the following operational guidance regarding dealing with offences of the unauthorised possession by prisoners of a knife, bladed or pointed weapon or other offensive weapon. **[N.B. Offence expected to commence later in 2015 – see foot]**

1. REPORTING GUIDANCE -

All incidents of the unauthorised possession of a knife, bladed or pointed weapon, or other offensive weapon must be investigated to determine the appropriate course of action to take; i.e. adjudication or referral to the police for consideration of investigation and recommendation for prosecution.

Prisons are not required to report all possession offences to the police. However, prisons may do so depending on local protocols and agreements with Criminal Justice System partners.

It would normally be appropriate to deal with offences that are considered to be less serious (i.e. where there are no aggravating factors – [see section 2](#)) internally as part of the prison adjudication system. Dealing with minor offences in this way provides for a faster and more efficient disposal of this type of offence and removes the risk that a court on a finding of guilt might impose a nominal penalty or an absolute discharge which is of little deterrent value. Mitigating factors which may indicate that internal disciplinary action is more appropriate are set out at [section 3](#).

In more serious cases where the decision has been made to refer an offence to the police, (i.e. where there is reason to suggest that the adjudication system is insufficient to deal with the particular nature or circumstances) a disciplinary charge should still be laid in the usual way (within 48 hours of the incident save for exceptional circumstances) but adjourned to await a decision by the police or CPS on prosecution. If the police or CPS decide not to proceed then the matter may revert to be considered at adjudication.

Opening an adjudication will allow the prison to evaluate whether there is sufficient evidence of possession and, if so, whether the circumstances of the offence suggest that referral to the police is appropriate.

2. AGGRAVATING FACTORS FOR REFERRAL TO THE POLICE -

Key aggravating factors that would indicate that referral to the police may be appropriate include the following:

- Cases where the prisoner has a history of violence within prison;
- Evidence that the accused prisoner has been engaged in persistent criminal behaviour that puts the safety and lives of others at risk;
- Cases where there are grounds for believing that violent/criminal behaviour is likely to be repeated or continue;

- Evidence that the crime is part of, or linked to, organised criminal activity on a wider scale than this offence alone;
- Any evidence of the weapon having been used to attack or threaten another person;
- Cases where multiple weapons are found in possession;
- Cases where the weapon found has potential for causing particularly serious injuries;
- Evidence of high levels of violence at the prison where the weapon was found and the need to reduce this.

3. MITIGATING FACTORS FOR CONSIDERATION –

Mitigating factors that may indicate that internal disciplinary proceedings rather than criminal action is more appropriate include those listed below. The occurrence of one or more of these factors does not necessarily mean the crime should be dealt with by internal disciplinary proceedings. Each case must be considered on its own merits in the context of the evidence available and factors such as violence in the prison in question.

- Cases where the prisoner has no previous history of violence and/or other criminal behaviour within prison;
- Cases where it is strongly believed that the prisoner in question has been coerced to hold the weapon for another prisoner;
- No evidence that the offence is part of, or linked to organised criminal activity;
- No evidence that the prisoner has used the weapon to attack or threaten another person;
- No evidence that the offence is likely to be repeated;
- Prisons must take into account the special circumstances of known self-harmers holding weapons.

This is a new Offence introduced in the Serious Crime Bill expected to gain Royal Assent in March 2015. This specific Offence is expected to come into force later in 2015. Contact Emma.Prince@noms.gsi.gov.uk for further details.