



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

**National Chair:** Mark Fairhurst  
**General Secretary:** Steve Gillan

**Headquarters:**  
Cronin House  
245 Church St.  
Edmonton  
London N9 9HW

t. 020 8803 0255  
f. 020 8803 1761  
e. [general@poauk.org.uk](mailto:general@poauk.org.uk)  
w. [www.poauk.org.uk](http://www.poauk.org.uk)

**North Regional Office**  
1 Linden House  
Sardinia St.  
Leeds  
LS10 1BH

t. 01132 428833  
f. 01132 429075  
e. [adminnro@poauk.org.uk](mailto:adminnro@poauk.org.uk)

**Northern Ireland**  
Castell House  
116 Ballywalter Rd.  
Millisle Co Down  
BT22 2HS

t. 02891 861928  
f. 02891 864839  
e. [adminni@poauk.org.uk](mailto:adminni@poauk.org.uk)

**Scotland**  
21 Calder Rd.  
Edinburgh  
Scotland  
EH11 3 PF

t. 0131 443 8105  
f. 0131 444 0657  
e. [adminscot@poauk.org.uk](mailto:adminscot@poauk.org.uk)

**POA Circular 044/2019**

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

8th May 2019

Dear Colleagues

**CRIME IN PRISON REFERRAL AGREEMENT**

Please draw to the attention of all POA members the agreement between HMPPS, the Police and the Crown Prosecution Service contained within the Crime in Prison Referral Agreement.

This agreement has been shaped by the National Executive during detailed discussions and we believe highlights your rights when you are assaulted at work. Please ensure your senior managers adhere to this agreement.

We advise that all assaults against staff are reported to the Police.

Your safety is non-negotiable.

Yours sincerely

**MARK FAIRHURST**  
National Chair  
For and on behalf of the NEC

**ENCLOSURE**

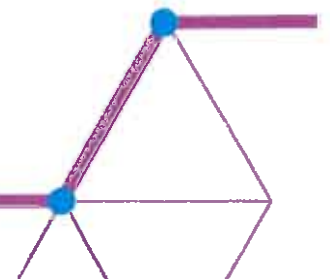


HM Prison &  
Probation Service



# Crime in Prison Referral Agreement

07 May 2019





# Introduction

1. This document sets out the agreement between Her Majesty's Prison and Probation Service (HMPPS), National Police Chiefs' Council (NPCC) and the Crown Prosecution Service (CPS).

## **Purpose of this Agreement**

2. This Agreement:
  - 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 disciplinary process is insufficient, and the circumstances indicate that a criminal prosecution is appropriate or where a statutory obligation exists.
  - Establishes a common understanding of the roles and responsibilities of HMPPS, the police and the CPS relating to the referral, investigation and prosecution of crimes committed in prison.
  - Aims to achieve an improved and consistent performance in the investigation and prosecution of offences in a custodial setting.
  - Applies to all prisons, including those contracted, Young Offender Institutions and Immigration Removal Centres operated by HMPPS on behalf of the Home Office.
  - Recognises the principles agreed upon are not legally binding, and are not intended to create any legally enforceable rights or obligations. Each party will discharge its own statutory and common law obligations.
  - Agree the principles outlined in this agreement reflect a national minimum expectation for all signatories. Additional guidance may be provided to each agency.

## **Referral of a crime**

3. The prison should contact the police immediately if there is a very serious incident such as a sudden death, life threatening injury, active escapes or serious disorder/ incident where staff require the immediate attendance of police to protect life or the integrity of establishment, in line with locally agreed contingency plans. The prison should also discuss the forensic strategy for these serious incidents with the police.
4. Any serious assault, sexual assault, escape from a secure establishment or escort, concerted indiscipline with extensive damage caused, conveyance into or out of an establishment of explosives or firearms, must be referred to the police. Please see Annex A for a more detailed list.
5. Whilst the views of the victim are always important and may influence the decision to refer for prosecution, the crimes in Annex A must be referred to the police. There may be circumstances where a case would be pursued without the victims involvement (this is often known as a victimless or evidence-led prosecution).
6. Before reporting other incidents to the police, the prison will consider whether a case could be more appropriately dealt with by the Prison Adjudication System<sup>1</sup> or whether the victim wants the crime referred to the police.
7. When an incident is referred to the police, internal disciplinary charges should be laid by the prison in the normal way within 48 hours of the incident, and an adjudication opened on the following day and adjourned pending police investigation. If the police or CPS decide not to proceed with a prosecution then the adjudication may be reconvened and the disciplinary charge heard, as long as it is fair to continue, considering the natural justice principles.
8. All crimes suitable for referral, should be referred to the police within 7 days of the incident.
9. Whilst the list in Annex A is the minimum requirement for referrals, there may be local arrangements based on current threats and risks to the prison to include additional offences. Discussions on the current threats and risks should take place regularly with the Governor, prison managers and local law enforcement officers.
10. In making a crime referral, the prison will:
  - Provide a full description of the incident to the police, including details of offenders, victims and witnesses and including any previous relevant behaviour;
  - Preserve the evidence ensuring continuity (including CCTV and body worn video cameras (BWVC)) in accordance with the Dealing with Evidence Prison Service Instruction<sup>2</sup>;
  - Enable access for the police to attend the prison and take witness statements;
  - Provide access to the crime scene;

<sup>1</sup> <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2018/psi-05-2018-prisoner-discipline-procedures-adjudications.pdf>

<sup>2</sup> <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2016/psi-08-2016-dealing-with-evidence.doc>

- Provide the police with a Prison Community Impact Statement<sup>3</sup>;
  - Help arrange staff to be available to provide statements to the police;
  - Where prisoners have been moved to another prison, provide information of the movements of the prisoner to the police and CPS;
  - Record the crimes referred to the police in the Crime in Prison Data Tracker; and
  - Provide documents for disclosure to the police and CPS
11. In cases of serious crime where there is likely to be key forensic evidence, the prison will make early contact with the police to agree a clear forensic strategy.
  12. If a prison determines that an offence does not meet the threshold but the victim wishes to report the crime to the police themselves, the prison must allow the victim to do so.
  13. Victims, regardless of whether they are staff or prisoners, are entitled to services under the Victims Code. [Special measures](#) to support witnesses and victims may be put in place, at the discretion of the court, if the witnesses are considered to be vulnerable or at risk of intimidation.
  14. The prison should assist in facilitating the provision of any Victim Personal Statement or Prison Community Impact Statement to the CPS prior to the first hearing. These can also be submitted at any time prior to sentencing. A further statement may also be submitted if the impact to the victim changes.

### **Investigation**

15. Referring a crime to the police does not automatically mean that a full police investigation will take place or that the CPS will be consulted and a criminal prosecution take place.
16. Following a referral, the police will acknowledge receipt to the prison's Crime in Prison Single Point of Contact (SPoC) or Local Counter Corruption Manager for corruption cases, within 10 working days and advise of the next steps, this may include requesting additional information.
17. Where a decision is made that a formal criminal investigation will not take place, the police will advise the prison's Crime in Prison SPoC/ Local Counter Corruption Manager within 10 working days with the reasons for the decision not to pursue the investigation. See paragraph 26 for escalation processes.
18. Where a formal police investigation is commenced, the police investigators will update the SPoC/ Local Counter Corruption Manager and make any arrangements to progress the investigation, who will in turn keep Governors, prison managers and Adjudication Liaison Officer advised.
19. The police will keep the prison SPoC/ Local Counter Corruption Manager informed regarding the progress of the case on a regular basis. The frequency of the update should

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<sup>3</sup> The Prison Community Impact Statement does not form part of the evidence, however highlights the impact crimes committed within prison has.

be agreed between the police, the prison SPoC/ Local Counter Corruption Manager and the victim, however at minimum, once a month.

#### **CPS advice and decision to charge**

20. The CPS will make a charging decision in accordance with the:
  - [Code for Crown Prosecutors](#);
  - [Director's Guidance on Charging](#);
  - CPS Policies, in particular [Prison Related Offences](#) and [Misconduct in Public Office](#);
  - CPS charging standards: [CPS Charging standards on Assault](#) and [Assaults on Emergency Workers \(Offences\) Act 2018](#).
  
21. For certain offences, the police may make the charging decision.
  
22. Subject always to the consideration set out in the *Code for Crown Prosecutors* (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 as set out in the Prison Community Impact Statement and the impact of a decision not to prosecute.
  
23. In considering the public interest stage, prosecutors must have regard to the provision of the Code that states 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.
  
24. The CPS will explain a decision to take no further action or to reduce a charge to the police, and will write to the victim in accordance with the obligations under the *Victims Code*. The police will inform the prison SPoC of such a decision.
  
25. *The Sentencing Council Definitive Guidelines on Offences Taken into Consideration and Totality* states that a consecutive sentence will ordinarily be appropriate where any offence is committed within the prison context.

#### **Escalation**

26. If the prison disagrees with the decision not to proceed with an investigation, this can be raised locally with the police force and their appeals process can be followed.
  
27. 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.

28. Where such a decision is taken by the CPS, a victim of crime in prison can invoke the [Victims' Rights to Review](#), 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.

For further information on this guidance, please contact [crimeinprison@noms.gsi.gov.uk](mailto:crimeinprison@noms.gsi.gov.uk)

### Signatories



**Phil Copple**  
Director General for Prisons, HMPPS



**Deputy Chief Constable Jason Hogg**  
Thames Valley Police  
NPCC Lead for Prison Intelligence



**Gregor McGill**  
Director of Legal Services



## **Annex A**

### **Mandatory Crime Referral Criteria**

The crimes below must be reported to the police for investigation.

- Murder, attempted murder and manslaughter;
- Rape and attempted rape;
- Threats to kill, where evidence of genuine intent exists or there is intelligence to believe there is a threat to life or serious harm;
- Offences involving the use of a serious degree of violence or serious threats of violence;
- Offences resulting in the occasioning of serious injury and that:
  - i. Results in detention in outside hospital as an inpatient;
  - ii. Requires medical treatment for concussion or internal injuries; or
  - iii. The injury is a fracture, scald or burn, stabbing, crushing, extensive or multiple bruising.
- Assaults against a member of staff, except where there is little or no injury (see Annex B);
- Sexual offences where there has been a penetrative assault or the offence has been committed against a member of staff<sup>4</sup>;
- Offences involving the throwing of bodily fluids ("potting") when it has hit a member of staff in the face or head;
- Unlawful imprisonment (hostage taking) unless there is proof of collusion between the hostage taker and alleged victim;
- Riot and offences of serious disorder, including prison mutiny;
- Any escape from an establishment or secure escort;
- Any abscond which the prisoner remains at large for more than 24 hours;
- Misconduct in Public Office;
- Robbery, involving the use or threat of serious violence or weapon;
- Possession with intent to supply drugs by prisoners, visitors or staff (including psychoactive substances);

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<sup>4</sup>Where sexual abuse is reported that is non-recent, not taken place in a prison environment and there are no live safeguarding risks, reporting would normally be victim-led through normal reporting channels. 'Non-recent' abuse is defined as having taken place more than a year before it is reported.

- Possession of drugs by visitors or staff (any class of drugs or any quantity, including psychoactive substances or tobacco which is mixed with drugs);
- Conveyance into or out of a prison by any person, of other List A<sup>5</sup> items, namely explosives, firearms, ammunition or offensive weapons;
- Tobacco found in possession of visitors or staff where intelligence or evidence suggests an intent to supply to prisoners;
- Mobile phones or component parts found in the possession of, or identified as belonging to, prisoners identified as high-priority either through the Prisoner Risk Assurance Service (PRAS) or subject to Lifetime Offender Management (LOM)<sup>6</sup>;
- Mobile phones found in possession of visitors or staff where intelligence or evidence suggests an intent to supply to prisoners; or
- Any incident of breach or attempted breach of a restraining order or injunction by a prisoner.

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<sup>5</sup> As defined by PSI 10/2012 - <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-10-2012-conveyance-prohibited.doc>

<sup>6</sup> Mobile phones found in possession of or identified as belonging to other prisoners can be referred in there is a compelling reason to do so (see Annex C).

## **Annex B**

### **Staff Assaults**

1. Other than those less serious assaults where there is little or no injury, which are more appropriately dealt with by adjudication, all assaults on staff will be referred to the police for investigation and consideration for prosecution.
2. Dealing with minor assaults by adjudication may provide a more efficient disposal. Some examples of these offences include assaults where there is no injury (pushes or grabs) or less serious injury not requiring hospital treatment, including minor scuffs and reddening of the skin; superficial scratches; minor bruises; small cuts, grazes or abrasions and minor swellings. If the member of staff requests the crime is referred to the police, the prison must do so.
3. Assaults occasioning transfer of bodily fluids including biting (where the skin is broken and saliva may have transferred into the wound) or spitting (where the assailant is known to have an infectious disease) should be considered for a referral to the police;
4. There may be factors which would indicate a referral to the police and each incident should be considered on a case by case basis, including considering the perpetrators offending history. This may include, but is not limited to:
  - a. Where there is clear intent to cause more serious injury than that sustained.
  - b. The assault was pre-planned/ premeditated rather than reckless or an immediate reaction to a particular situation;
  - c. The assault is part of, or linked to, organised criminal and TACT-related<sup>7</sup> activity; or
  - d. 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.
5. See Annex D for the Staff Assault 8 Point Plan

### **Assaults of Emergency Workers (Offences) Act 2018**

6. Following the introduction of the [Assaults on Emergency Workers \(Offences\) Act 2018](#) on 13<sup>th</sup> November 2018, police and prosecutors should cease charging the existing offences of common assault, battery, assaulting a police officer in the execution of their duty and other existing similar offences where the complainant is an emergency worker.
7. Emergency workers are defined at [S.3\(1\)](#) of the Act, this includes:
  - a. Prison officers;
  - b. Person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
  - c. Prison custody officer, so far as relating to the exercise of escort functions;
  - d. Custody officer, so far as relating to the exercise of escort functions;

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<sup>7</sup> TACT - Term for prisoners in custody for offences subject to terrorism legislation (Terrorist Act).

TACT- related - Term for prisoners in custody for non-Terrorism legislation offences, but where upon sentencing the Judge states that the offence is related to terrorist activity (Terrorist Act).

## Annex C

### Other Offences

1. There may be other offences where it is appropriate to refer to the police, however these will need to be determined on a case by case basis.

#### **Aggravating Factors**

2. Each case should be determined on a case by case basis. Some things that should be considered include:
  - There is intelligence or evidence to suggest the prisoner has links to serious and organised crime groups;
  - There is intelligence to suggest the prisoner is a TACT or TACT related nominal;
  - There is evidence that the crime is part of, or linked to, wider criminal activity than this offence alone;
  - The victim is vulnerable or the crime was motivated by discrimination (this is often known as hate crime);
  - Offences which have resulted in a high degree of damage or danger to life such as arson; or
  - Offences which mirror the prisoner's index offence or there is an ongoing risk.
3. If the prison become aware or are concerned about potential TACT or extremist offences or radicalisation, they should contact the Regional Counter Terrorism Lead.
4. There may also be offences which would not usually meet the criteria, however it is appropriate to refer to the police due to the prisoner's repeat or escalating offending, or if there is belief the prisoner is adapting their offending to try to avoid a police referral. The prison should raise their concerns with their local police force and explain the circumstances of these cases.
5. This list of aggravating factors is not exhaustive and local arrangements based on current threats and risks to the prison should take place between the prison and local police force. These should be reviewed regularly due to the changing nature of the environment.

#### **Weapons**

6. Unauthorised possession of a knife, bladed or offensive weapon will be considered by the prison to determine the appropriate course of action, taking into consideration any aggravating factors.
7. A referral to the police may be appropriate if a blade or multiple weapons have been found that can be attributed to a prisoner.
8. If a prison is having a particular problem with weapons, a discussion should take place with the local police force to determine the threshold for these offences.

#### **Mobile phones**

9. Mobile phones present substantial risks in prisons and beyond. Mobile phones or component parts found in the possession of prisoners identified as high-priority either through the Prisoner Assurance Risk Service (PRAS) or subject to Lifetime Offender Management (LOM) or visitors or staff where intelligence or evidence suggests intent to supply to prisoners must be referred to the police.
10. Other incidents involving mobile phones should be determined on a case by case basis. Some considerations, but not limited to, are:

- If there is evidence or intelligence that the prisoner is using the phone for criminal activity or the prisoner is identified as a high-priority offender either through intelligence to the police or HMPPS or is flagged as an organised crime nominal.
- If serious criminality is discovered during the interrogation of the phone, including serious organised crime, terrorism or extremist related offences, the interrogation should immediately be stopped and referred to the police.

## Annex D



HM Prison &  
Probation Service



### Staff Assaults 8 Point Plan

HMPPS will not tolerate assaults or hate crimes on our officers, staff or volunteers. Being assaulted or abused in any way is not part of the job.

1. In line with the [Crime in Prison Referral Agreement](#), assaults against members of staff will be referred to the police for investigation and consideration for prosecution. Less serious assaults, where there is little or no injury, are more appropriately dealt with by the prison disciplinary system.
2. The Duty Manager must ensure that the Duty Governor (and designated support officer, if the prison has one) is informed to provide continuity of welfare support. Line managers and other staff should be notified as considered appropriate locally. The victim will also have access to the Employee Assistance Programme and the Care Team within the prison. The Prison Officers Association can also provide valuable additional support to the victim.
3. To achieve a successful prosecution, the best evidence must be presented to the police in a timely manner, including any victim and witness statements, CCTV and Body Worn Video Camera footage that can be instrumental in these cases.
4. The prison will provide a Prison Community Impact Statement to highlight significant implications for the safety, control, and order that crimes committed within a prison cause and the impact the offence itself has had on the prison. Victim Person Statements should be used to detail the harm caused to the victim.
5. The Victims' Code applies to all victims including prison officers who have been subject to assault or hate crime. Complying with the Victims' Code means keeping the victim updated, discussing outcome options, and taking account of the victim's point of view before imposing an outcome. [Special measures](#) to support witnesses and victims may be put in place, at the discretion of the court, if the witnesses are considered to be vulnerable or at risk of intimidation. The prison will also provide appropriate after care to members of staff.
6. The assault will be reported on the Incident Reporting System. Serious assaults will also be telephoned into the National Incident Management Unit. If there has been a use of force, the relevant paperwork will also be completed.
7. The police will keep the prison updated of the progress of the case. The police will provide a full explanation to the prison if it is decided not to proceed with a case. The prison should consider any lessons learned following this feedback.
8. Victims recover better and more quickly if they receive the right welfare and supervision. This also helps to avoid long-term negative consequences. The affected person's manager should meet with them as soon as it is practical to do so. The victim may downplay the impact on them, but managers should be aware of the potential effects of the incident, which may include the decision whether they want police involvement.

### **What you can expect from the Police**

When the Police take on a crime in prison investigation they will update you at key stages of the investigation and at regular intervals. The frequency of update and preferred method of contact should be agreed between the officer and victim, default should be at least monthly or at key points such as arrest/charge.

The officer in the case (OIC) will identify whether the victims are vulnerable and / or assess whether they are at risk of intimidation. The OIC will assess whether they are likely to need to attend court and if so tell them so they can receive the appropriate support. The OIC will record details of all contact or attempted contact on the appropriate crime recording system.

The Police aim to deliver a high quality of service to victims and witnesses.

### **What you can expect from the Crown Prosecution Service (CPS)**

CPS prosecutors when identifying the correct charge will do so in accordance with the Code for Crown Prosecutors; the Director's Guidance on Charging; CPS policy, in particular the Prison Related Offences guidance; CPS Charging Standards; and CPS Charging Standards on Assault. The prosecutor will consider each case on its own facts and merits.

The prosecutor will, when reviewing cases involving assaults on prison officers that meet the criteria within the Protocol and in assessing the public interest stage, bear in mind the impact of the offence on the safe and secure running of the establishment and the potential impact of a decision not to prosecute.

When considering the public interest stage of the Code for Crown Prosecutors, prosecutors will have regard to the provisions 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.

The CPS will explain a decision to take no further action or to reduce a charge to the police, and will write to the victim in accordance with 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.

When considering the public interest for prosecution, 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.

Draft POA Circular

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