



HM Inspectorate  
of Probation

Date: 18th August 2023

# 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**

## Introduction

1. This Memorandum of Understanding (MoU) is agreed by the Ministry of Justice (MoJ), His Majesty's Prison and Probation Service (HMPPS) and His Majesty's Inspectorate of Probation (HMI Probation). The MoU sets out the key roles and responsibilities of these three bodies in conducting the oversight of Probation services delivered by the Probation Service across England and Wales following unification of the National Probation Service and Community Rehabilitation Companies on the 26<sup>th</sup> June 2021. The Probation Service is now a single, publicly delivered organisation responsible for managing all people on Probation in the community.
2. While the primary purpose of this MoU is to set out the functional aspects of the oversight of Probation services, the three parties have entered into this agreement in the spirit of collaboration. It is the intention of the signatory organisations to work together proactively, sharing intelligence where necessary and appropriate to support the shared aim of all the bodies, namely, to promote the delivery of excellent practice in Probation across England and Wales.
3. 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 and positive outcomes for people on Probation. This MoU will allow the public and Probation staff to understand who does what and how things happen and why, on oversight.
4. The MoU sets out the principles that underpin the oversight model. The MoU also summarises the key interfaces between the parties to this MoU. It focuses on those arrangements that relate to HMI Probation's inspection framework and includes the targeting of and response to HMI Probation inspection recommendations and how information will be exchanged.
5. In addition to the key interfaces summarised in this MoU, to ensure the Probation regions have a good understanding of how things happen and why, the parties to this MoU will operate against 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 when required 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 any party's oversight arrangements, such as HMI Probation's inspection methodologies or inspection standards, details of which are available on the HMI Probation website.
7. The MoU does not seek to change what is asked of the Probation Service, for example in the services it delivers or those it commissions through the Dynamic Framework.
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.
9. The parties to this MoU acknowledge that Probation services, commissioned and co-commissioned services are based on MoJ policies and are constrained by affordability.

HMI Probation's own inspection standards, however, are set independently and represent an independent view of the standards Probation services should aim to achieve.

## **Underlying Principles**

10. The oversight arrangements are underpinned by the principles of good regulation and inspection set out by Hampton (2005).<sup>1</sup> 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 the Probation Service is evaluated. The MoU sets out the arrangements for the key interfaces between the parties. The parties will be open and transparent about any proposed changes to these arrangements.

(ii) Consistency. 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 also be monitored by these parties. 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 by one another 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 aspect of the Probation Service. Each Probation region will be held to account for the provision of good quality services. HMI Probation 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 should be proportionate to the risks posed. Inspection and assurance programmes will be proportionate and not unduly burdensome overall or for any one Probation region. HMI Probation and Operational and System Assurance Group (OSAG) will keep under review the frequency of their inspections 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 OSAG audits and HMI Probation thematic inspections so that they are targeted at those

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

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**

11. The Ministry of Justice uses the established ‘three lines of defence’<sup>2</sup> model to oversee Probation services. Developed in response to the Breedon review (2013) of MoJ contracts, the ‘three lines of defence’ model is approved by Treasury and NAO for whole-system internal and external assurance and risk management. The model is used by the UK and Ireland Chartered Institute of Internal Auditors and the Global Institute of Internal Auditors.
12. 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 major performance issues are not missed.
13. The first line of defence<sup>3</sup> for in-house services delivered by the Probation Service will be provided via line management. For contracted services, this first line of defence is provided by the HMPPS Contract Management team which manages the day to day contractual oversight of each Commissioned Rehabilitation Service (CRS) with input from the Regional Performance and Quality Teams. 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 Probation regions and CRSs to develop evidence-based practice to help them meet expected standards of delivery.
14. The second line of defence is provided by OSAG. This function provides internal HMPPS assurance and drives improvements by independently (of line management) providing assurance to both HMPPS and MoJ (including Ministers) on the quality of delivery of all HMPPS offender-facing services including prisons (private and public sector), the Probation Service, Commissioned Rehabilitation Services (CRS), the youth estate, and other offender services contracts. OSAG combines its own audit data with information from HMI Probation inspection reports, MoJ Commissioning and others to drive improvement by identifying system design or interface issues.
15. The third line of defence is provided by HMI Probation through their independent inspection and rating of Probation providers, the programme of thematic and joint inspection and (potentially) by other public bodies (for example, the National Audit Office).
16. Since unification of the Probation Service, Probation is now delivered regionally and locally through Probation Delivery Units (PDUs). Each PDU inspected by HMI Probation

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<sup>3</sup> The first line of defence is defined as: activity undertaken that builds in quality at or near the point of delivery.

will be given a composite (overall) rating and individual ratings for specific areas of activity, based on inspection evidence. Further details [on the ratings](#) are available on HMI Probation's website. HMI Probation will publish all inspection reports and ratings. Where a PDU fails to achieve a good or outstanding rating, the inspection report will point to those areas where the organisation needs to improve. HMI Probation will also highlight areas of effective practice.

17. HMI Probation aim to inspect and rate all regions and PDUs in England and Wales over a 36-48 month timeframe starting at the end of 2023. These inspections will be rated at both PDU and Regional levels (subject to consultation).
18. Thematic inspections are carried out solely by HM Inspectorate of Probation or jointly with other inspectorates. The latter come under the remit of the criminal justice joint inspection programme. Each thematic inspection looks at a specific area of probation delivery, through a detailed examination of practice, as well as the strategic leadership and partnership arrangements that support such work. Inspection reports include examples of good practice and recommendations for improvement.
19. Following their thematic inspection of the Serious Further Offences (SFO) review process, HMI Probation were asked to take on a new responsibility to quality assure a random sample of approximately 20 per cent of SFO reviews each year. Work began on schedule in April 2021 after HMI Probation had consulted on their approach and agreed a set of quality standards with HMPPS colleagues (who continue to assure the remaining 80 per cent against the same standards). In addition, very occasionally, the Secretary of State for Justice can ask the Inspectorate to review a particular case or aspects of a case following a Serious Further Offence.
20. HMI Probation local and thematic inspection reports will feed into the oversight of Probation services via the MoJ Sponsorship team which uses HMI Probation reports and findings to alert ministers to poorly performing providers.
21. HMI Probation findings influence policy through highlighting areas for improvement<sup>4</sup>. HMI Probation's recommendations recognise good performance and address any failure appropriately. The data and intelligence from inspections enables the MoJ to make appropriate reforms and adjustments to policy.

### **Factual Accuracy Checking of HMI Probation Inspection Reports**

22. OSAG will commission a factual accuracy check of all HMI Probation core and thematic inspection reports and will respond to HMI Probation on factual accuracy before HMI Probation issue each final Probation inspection report.

### **How HMI Probation will target its inspection recommendations**

23. In each core inspection report, HMI Probation makes a set of recommendations, usually no more than ten. Each recommendation will be targeted to the appropriate authority, be

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<sup>4</sup> [The ten principles \(justiceinspectors.gov.uk\)](https://www.justiceinspectors.gov.uk)

that ministers, MoJ policy, HMPPS, the Probation Service, or other government departments.

24. HMI Probation's recommendations must be considered and responded to by the body to whom they have been made. To implement the recommendations from local inspections, the region and PDU prepares an action plan (with input from MoJ, HMPPS, the Probation Service and advice from OSAG) for HMI Probation to receive. The action plan is published on the Gov.uk website
25. The scope of HMI Probation recommendations focus on Probation delivery, including CRS. Sometimes this may go beyond what is required by the CRS contracts, or it may recommend that the Probation region change the way they work, when those working arrangements have not been challenged previously by other parties. It is for the Regional Probation Director to assess and address CRS ways of working and/or service delivery in their region. Failure to do so may affect performance and the quality of their Probation work and that may, in turn, be reflected in future audits, inspections and ratings.
26. HMI Probation usually follows up Probation Service action plans in the next inspection. HMPPS will provide HMI Probation with information on progress with the action plan (in response to HMI Probation's recommendations) at a particular point in time.
27. The response to HMI Probation thematic joint inspection and Serious Further Offence Independent Review recommendations is coordinated by OSAG. This includes liaison with other government departments where required and submission of the action plan which should be within 10 weeks of receipt of the draft report for factual accuracy checks. The action plan is published on the Gov.uk website and is updated by OSAG within 12 months, detailing the progress made.

### **Planning and Consulting on Audit/Inspection Activities**

28. HMI Probation and OSAG will provide each other with timetables of inspection and audit visits and will, to avoid excessive burden on individual regions, liaise on any issues arising from the timetabling.

### **Exchanging Information**

29. The parties to this MoU will communicate to all other parties any significant changes they may make from time to time to oversight mechanisms including changes to governance structures, information-recording tools, digital systems, audit methodology, inspection standards and/or methodology etc. The parties will co-operate to reduce the collective information-sharing burden – on providers in particular. They will routinely exchange information, including information from published and unpublished reports.
30. Probation Service line management and Contract Management's assessment of operational delivery will be provided to OSAG who will use that information and HMI Probation's published inspection findings to support them to both plan and undertake its audit programme. Operational Assurance will combine its audit findings with HMI

Probation inspection findings and with Contract Management assessment of operational delivery and other sources of information to drive improvement.

31. Without committing specifically to frequency or to other details that may be subject to change, the Probation Service and MoJ will provide HMI Probation with performance management and oversight information, and other documents as agreed between the parties and HMI Probation - for HMI Probation's use as per its legislative remit - in advance of HMI Probation inspections. This is designed to limit the amount of pre-inspection information requested from Probation regions.
32. HMI Probation reserve the right to include data provided at Unit level as part of the EIA or Inspectorate fieldwork processes in our inspection reports. For unpublished data HMI Probation will, if necessary, publish relevant tables (at Unit Level) as annexes, to provide the necessary context of figures published and will only draw or make national comparisons when checked with data assurance colleagues. If additional time is required to complete the FAC process, OSAG and HMIP will agree a reasonable revised deadline for return of the FAC. Any objections to the publication of specific pieces of data will be raised by OSAG during the FAC process.
33. Case inspection data undertaken as part of Joint thematic inspections with other criminal justice inspectorates and health and social care inspectorates and evidence in advance provided as part of information collection will be shared with those bodies as part of the inspection process and will be used to inform analysis undertaken, inspection activity and may be used to inform recommendations.

#### **Reviewing, Amending and Monitoring the MoU**

34. The MoU will be effective from the date it is approved by the parties involved and will be subject to annual 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 monitored for review by the MoJ Sponsorship Team to ensure that all parties remain content.

**Sign-off**



Justin Russell

Chief Inspector of Probation

25<sup>th</sup> May 2023



Kim Thornden-Edwards

Chief Probation Officer

22<sup>nd</sup> June 2023



Marie Southgate

Director, Prison Policy, MoJ

18<sup>th</sup> August 2023