This is one of a series of papers setting out the desired standards (i.e. the necessary skills and arrangements), which should be present when working with mentally disordered offenders. The ‘standards’ will apply to different points of intervention in the criminal justice process where there is an interface between the criminal justice system and that of health and social care.

The aim of this series is to identify the skills, resources, strategic and operational arrangements necessary to achieve effective and appropriate outcomes for mentally disordered offenders and those agencies working with them.

It is not the purpose of the papers to explore how these skills and arrangements should be developed or established. Rather, its purpose is to state what should be in place and [the standards] can be used by agencies and areas as a checklist against which their services and the skills of their practitioners can be measured.

Each standard will:

- describe the relevant ‘point of intervention’ and the possible outcomes;
- identify the key practitioners, agencies and organisations;
- identify the desired and relevant skills required by practitioners to achieve and effective outcome;
- identify the necessary resources;
- identify the appropriate strategic arrangements;
- identify the appropriate policies and operational protocols.

For the purpose of this series, a mentally disordered offender is defined as:

“Those who come into contact with the criminal justice system because they have committed, or are suspected of committing, a criminal offence and: who may be acutely or chronically mentally ill; those with neurosis, behavioural and/or personality disorders; those with learning difficulties; some who, as a function of alcohol and/or substance misuse, have a mental health problem; and, any who are suspected of falling into one or other of these groups. It also includes those in whom a degree of mental disturbance is recognised, even though that may not be severe enough to bring it within the criteria laid down by the Mental Health Act 1983, and those offenders who, even though they do not fall easily within this definition – for example, some sex offenders and some abnormally aggressive offenders – may benefit from psychological treatments.”

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1 Standard 1 ‘Initial Contact with the Police’; Standard 2 ‘At the Police Station. Both available online at http://www.nacromentalhealth.org.uk. Further ‘standards’ will include those that apply to: the prison; and, the community.
AIMS

To ensure that the defendant’s needs are met including legal, health, and social care needs.

To ensure that consideration is given to the appropriateness of prosecuting or diverting the arrested person.

To achieve the most effective and appropriate outcome and the least restrictive option as well as ensuring personal and public safety.

PRIOR TO THE FIRST OR SUBSEQUENT COURT APPEARANCE

The Crown Prosecution Service (CPS) is the key agency. In the period before a court appearance, relevant information may be obtained from agencies such as mental health services, social services, probation and so forth, which might lead them to discontinue a prosecution.

The CPS has guidelines and criteria in its Code for Crown Prosecutors 2004\(^2\), which makes specific reference to the role of the prosecutors in respect of mentally disordered offenders stating that:

“A prosecution is less likely to be needed if:

- a prosecution is likely to have a bad effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence (5.10 f)

the defendant … is, or was suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering significant mental or physical ill health with the need to safeguard the general public (5.10 g)”.

If the CPS decides not to continue with a prosecution there are three ways in which proceedings can be terminated. The prosecution:

- can apply to the court to withdraw the proceedings;
- can offer no evidence and invite the court to acquit or discharge the defendant;
- can discontinue proceedings using a procedure under Section 23 of the Prosecution of Offences Act 1985.

The method chosen will be based on either evidential or public interest grounds, or both, as set out in the Code for Crown Prosecutors. Information about the offender’s mental health needs and any responses which are being made to these will be taken into consideration by the prosecutor in assessing whether the public interest requires a prosecution.

\(^2\) This is the 5\(^{th}\) edition of the Code and replaces all previous editions. It can be found on the CPS website at http://www.cps.gov.uk/publications/docs/code2004english.pdf
The CPS can also refer cases back to the police with a recommendation that a formal caution issued by the police would provide an adequate way of dealing with the matter.

**AT THE COURT**

**From the day of a first court appearance**

All cases are initially seen at the magistrates’ court and about 90% of cases are dealt with purely by magistrates. Indictable only and some triable either way offences will subsequently be dealt with at the Crown Court and some summary and triable either way offences may be sent to the Crown Court for sentence.

The CPS can discontinue a prosecution at any stage of the process and information, which is made available to them on the day of a first court hearing may allow this.

Many courts now have arrangements – facilitated by the Criminal Justice Liaison Schemes, Court Assessment or Diversion Schemes or similar - for assessing the mental health of people brought to court where the police, gaolers or others involved suspect there may be a mental health problem and making recommendations to the court. Information from this source, as well as the probation service (eg, through bail information) and other professionals involved in assessments, may be used by the CPS.

Information from these sources will also help magistrates to make the most appropriate decision which results in the most effective outcome.

A mentally disordered person has the same right to be considered for bail as any other defendant. However, the presumption in favour of bail in the 1976 Bail Act may be overturned in the case of a mentally disordered defendant if, in the magistrate’s view, it is necessary for the defendant to be remanded in custody for their own protection, for the protection of others or for a report to be prepared.

The magistrates may also consider that bail is not appropriate for defendants who are homeless or who appear to have an unstable lifestyle. Although not grounds for refusal of bail in itself, this may effect the assessment of the risk, which the defendant presents to themselves or to others and also a consideration about the likelihood of their appearing in court when next required to do so. The availability of - and access to - bail accommodation schemes can therefore be an important factor in decisions about where mentally disordered offenders should be remanded and whether or not they are remanded in custody at all.

Where the magistrates have been advised, or become aware, that a defendant may be mentally disordered they may wish to obtain a psychiatric report. These can be obtained in a number of ways. Magistrates have the power under s35 of the Mental Health Act 1983 (and also s36 in the Crown Court) to remand a defendant charged with an imprisonable offence to hospital for an assessment (and for treatment, if it is needed, under s36). However, this power can only be exercised where a psychiatrist has already seen the person and gives written or oral evidence to the court that such an order is appropriate and that a hospital bed is available for the person. The

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3 Summary offences are those which are always heard at the magistrates’ court (they tend to be the less serious), indictable only offences are those offences always heard at the Crown Court (they tend to be the more serious), and triable either way offences which can be heard in either court.
magistrates must also be of the opinion that it would be impracticable for a report on
the offender's mental condition to be made if he or she were remanded on bail.

The magistrates may decide to use a custodial remand in the hope that a psychiatric
assessment will be undertaken at a prison and reported back to the court. Alternatively, the court may decide to remand the person on bail with a condition that
they attend at an Out-Patients department for the purpose of obtaining a psychiatric report.

**Subsequent court hearings**

The speed with which many cases are brought before a court, particularly in respect
of less serious offences, means that important information may not be available to
the magistrates at a first hearing. At subsequent hearings this information may
become available and can provide the court with further options. There are several
aspects to this.

Not all offenders who are mentally disordered will have been identified as such at the
point of the first hearing. Where it becomes apparent subsequently, it may be that the
court will then exercise its powers and request a psychiatric assessment and report.
New information about an offender's mental health may come from the probation
service (if further checks have been made), from the health care service for prisoners
(if the person has been remanded in custody), from the person's solicitor and so
forth.

If bail was not granted at the first appearance the court can subsequently decide to
grant bail, especially where a probation service bail hostel place is then offered or
another community-based service is made available.

In addition to new information being available to the court, the CPS may also decide
to exercise its powers to discontinue a prosecution. It would need to be persuaded
either that a prosecution was no longer necessary in the public interest and/or that an
alternative response to the offender which might not be available to the court - such
as compulsory detention in hospital under a civil section of the Mental Health Act
1983 - was more appropriate and would best serve the public interest.

**Final court hearing: disposal**

The courts have two broad options when dealing with a defendant who is mentally
disordered. They can either dispose of the case by passing a sentence using their
powers under criminal law, or they can make an order under Part III of the Mental
Health Act 1983.

The Criminal Justice Act 2003 contains a number of specific requirements for courts
to take into account when dealing with a mentally disordered defendant. First, under
s.156 whenever the courts are considering a custodial sentence they should request
a pre-sentence report. These reports will normally be prepared by the probation
service and may include reference to any concerns about the offender's mental
health. Second, s.157 of the Act requires the magistrates to obtain and consider a
medical report before passing a custodial sentence in any case where the offender
is, or appears to be, 'mentally disordered' within the criteria set out in the Mental
Health Act 1983.

Where the pre-sentence reports, including a psychiatric report, provided to the
magistrates do not advise that the defendant requires hospital treatment they are
likely to dispose of the case using one of the criminal justice responses open to it. They are able to use any criminal justice disposal they see fit but have the additional option in these cases of making a probation order with psychiatric conditions schedule 1A, paragraphs 5 to 10 of the Powers of Criminal Courts Act 1973 (inserted by schedule 1 of the Criminal Justice Act 1991).\(^4\)

Alternatively, it may be that the report provided to the magistrates advises disposing of the case by making an order under Part III of the Mental Health Act 1983. For example, both Magistrates' and Crown Courts are able to make a hospital order or guardianship order under s37. If the court is unsure whether a hospital order is the appropriate disposal it may make an interim hospital order under s38 of the Act.\(^5\)

If the court considers the offences to be serious or that there is a risk of further offending the case may be remitted to the Crown Court with a view to that making an order which places restrictions on the discharge of the offender from the order. For example, where a person is placed on a s37, the Crown Court can make a restriction order under Section 41 of the Mental Health Act 1983 where the restrictions are indefinite or specified by the court.

**WHO IS INVOLVED**

Crown prosecutors play a key role beyond the initial involvement of the police and any other professionals at the point of arrest. Prosecutors are under a duty to keep cases under continuous review and can abandon proceedings at any point in the criminal justice process including prior to a case being heard and during court proceedings.

Magistrates are key decision-makers when any offender appears before the court. They have a number of important powers, which they can exercise in deciding how to deal with the defendant.

Court clerks assist magistrates by providing legal advice and by advising on appropriate sentencing disposals.

Where a case is heard at Crown Court or is transferred there for sentence the Judge is the key individual involved. They will be responsible for ensuring that the trial is conducted in a fair manner, pronouncing on matters of law, advising the jury, and for deciding upon the most appropriate sentence if the defendant is convicted.

Solicitors (particularly duty solicitors) have an important role to play here also. They are often well placed to draw the magistrates' attention to the possibility that the defendant is mentally disordered. Solicitors may also pursue separate arrangements for obtaining a psychiatric report and may be able to encourage the magistrates to make use of community-based provision that the magistrates might not otherwise be aware of.

Other important individuals will be the probation staff; gaolers; Criminal Justice Liaison or Diversion or Assessment workers; and, doctor approved under s12 of the...\(^4\) The Criminal Justice Act 2003 replaces all current community disposals with one community order (s122). These sentencing provisions were operational from April 2005 but only apply to people convicted after that date. A condition for mental health treatment can be made under s207.\(^5\) For further information on Part III of the Mental Health Act 1983 see Nacro training pack, 'Working with Mentally Disordered Offenders'.
Mental Health Act 1983 and Approved Social Worker (ASW) where a full mental health assessment may be necessary.

The role of health and social services professionals at the court has two primary purposes. Firstly, they can advise the court about the defendant’s mental health needs. This is important, for example, where there are concerns about the defendant’s capacity to understand the criminal justice process and to be able to instruct their solicitor. Secondly, further options, which require the involvement and agreement of specific professionals - such as compulsory admission to hospital under a civil section or Part III of the Mental Health Act 1983 - can also be considered as alternatives to prosecution. Health and social care professionals will be needed to arrange and facilitate this process. They may also make recommendations about disposal following conviction.

Consideration of a person’s mental health needs and the process of obtaining a further mental health assessment may be facilitated by a Criminal Justice Mental Health Liaison Scheme, Court Assessment Scheme or Court Diversion Scheme. These are usually staffed by Community Psychiatric Nurses (CPNs) and sometimes by Approved Social Workers (ASWs) or psychiatrists or a mixture of professionals including probation officers. Such schemes may assist the court in identifying people with mental health problems, provide information where the defendant is already known to mental health services, advise on the best course of action to take, and facilitate the gathering of information and/or further assessment.

If the person has a Dual Diagnosis of mental disorder and substance misuse then a referral should also be made to the Criminal Justice Intervention Team established through the Drugs Intervention Programme (DIP).

Gaolers may be well placed to observe a defendant while they are held to appear before the court and to communicate any concerns they may have, including on a person’s mental health needs, to the Criminal Justice Mental Health Liaison Scheme or similar, where one exists, or to court officials.

An important role of the probation service staff is that of the Bail Information Officer, which most probation services have at courts in their areas. The provision of bail information - providing relevant and verified information - can lead to the removal of objections to bail and/or the avoidance of unnecessary custody.

Probation officers in court may also pick up on the possibility that a defendant is mentally disordered and may be requested by a court to obtain information about the person or prepare a Pre-Sentence Report (PSR). This may highlight any concerns about a person’s mental health needs.

Probation officers can provide assessments of risk to the public and staff as well as assessment of risk of self-harm and can make referrals to resources and facilities within the Service (eg, hostels) and in the community (eg, mental health services).

POSSIBLE OUTCOMES

Prior to Conviction

- the court may remand on bail. Conditions may be imposed. The person may go to hospital as a condition of residency or under s35 of the Mental Health
Act 1983 for assessment from the magistrates’ courts or under s36 for treatment from the Crown Court;

- the court may remand in custody.

**Post-Conviction but Prior to Sentence**

- the court may remand on bail. Conditions may be imposed. The person may go to hospital as a condition of residency or under s35 of the Mental Health Act 1983 for assessment from the magistrates’ courts or under s36 for treatment from the Crown Court;
- the court may remand in custody.

The remand will be for the purpose of obtaining information to assist sentencers make the most appropriate decision and achieve the most effective outcome. Such information is most usually contained in Pre-Sentence Reports (PSRs) written by the probation service. Mental health services may also be asked to contribute a report to assist with sentencing.

**At Sentence**

- disposal criminal justice legislation. The full range of options are available including a community disposal with an added requirement that the person attends for specialist psychiatric care and treatment⁶;
- disposal under Part III of the Mental Health Act 1983;

Assessments and recommendations from one or more psychiatrists are needed by a court before it can make a hospital order or a probation order with psychiatric requirements. In the latter case the probation service also plays a key role.

**WHAT IS NEEDED**

**Individual Skills**

For court staff, including judges, magistrates, and clerks, these would include:

- understanding of mental health issues including of learning disability, and what information is needed for the court to make an appropriate and effective disposal
- knowledge of the Mental Health Act 1983 and Codes of Practice
- knowledge of how to obtain a mental health assessment for a person appearing in court
- knowledge of how to obtain a psychiatric report and what that might contain
- understanding of the risk assessment and risk management process and of who should provide such information to the court

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knowledge of local services and how to access them eg, community mental health teams, drug/alcohol teams, crisis teams etc including voluntary sector provision and specific services for Black and Minority Ethnic services users and women

knowledge of local Criminal Justice Mental Health Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar, how to access them, and what information they might provide to the court

understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For solicitors these would include:

- basic mental health training including learning disability
- working knowledge of the Mental Health Act 1983 and the Codes of Practice
- working knowledge of local mental health services and how to access them
- working knowledge of appropriate local voluntary sector providers including specific services for Black and Minority Ethnic service users and women
- knowledge of local Criminal Justice Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar and how to access them
- understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For Crown Prosecutors these would include:

- basic mental health training including learning disability
- knowledge of the Code for Crown Prosecutors
- working knowledge of the Mental Health Act 1983 and Codes of Practice
- knowledge of local Criminal Justice Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar and how to access them
- understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For health and social care staff these would include:

- risk assessment skills
- working knowledge of the court process and possible outcomes
- knowledge of the Mental Health Act 1983 and Codes of Practice
- knowledge of local mental health services and how to access them
- knowledge of appropriate local voluntary sector providers including specific services for Black and Minority Ethnic service users and women
- knowledge of local Criminal Justice Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar and how to access them

- understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For Criminal Justice Mental Health Liaison Service/Court Assessment Schemes/Court Diversion Schemes etc these would include:

- risk assessment skills
- knowledge of the court process and possible outcomes
- knowledge of the Mental Health Act 1983 and Codes of Practice
- knowledge of local mental health services and how to access them
- knowledge of appropriate local voluntary sector providers including specific services for Black and Minority Ethnic service users and women
- knowledge of, and good liaison with, other support services including substance misuse services, accommodation providers, employment and education providers; advice services
- understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For probation staff these would include:

- basic mental health training including learning disability
- risk assessment skills
- knowledge of the court process and possible outcomes
- working knowledge of the Mental Health Act 1983 and Codes of Practice
- knowledge of local mental health services and how to access them in order to effect assessments
- working knowledge of appropriate local voluntary sector providers including specific services for Black and Minority Ethnic service users and women
- knowledge of local Criminal Justice Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar and how to access them
- knowledge of accommodation providers and other appropriate and relevant resources and how to access them
- understanding of the issues to do with mentally disordered offenders including the appropriateness of prosecuting and diversion

For gaolers these would include:

- basic mental health training including learning disability
risk assessment skills

- knowledge of local mental health services and how to access them in order to effect assessments
- knowledge of local Criminal Justice Liaison Schemes, Court Assessment Schemes, Court Diversion Schemes or similar and how to access them

**Resources**

- Criminal Justice Mental Health Liaison Scheme, Court Assessment Scheme, Court Diversion Scheme or similar
- rota of solicitors available at court who have a knowledge of mental health issues and a working knowledge of the Mental Health Act 1983 and Codes of Practice
- rota of Crown Prosecutors with a knowledge of mental health issues and knowledge of the Mental Health Act 1983 and Codes of Practice to assist the court in difficult cases
- pro forma and service level agreement for obtaining psychiatric reports for the court from health
- a Directory of Services appropriate to the needs of mentally disordered offenders
- information on how to access services
- the use of ‘Crisis Cards’ or similar to be carried by service users to help services identify nominated friend or carer in times of crisis

**Strategic Arrangements**

- single point of entry into the health and social care system
- single point in health for the processing requests to obtain a psychiatric report for the court
- a local or regional Mentally Disordered Offenders Group to oversee current arrangements and develop new initiatives to meet the needs of mentally disordered offenders and those agencies working with them
- an operational steering group to oversee the role and operation of the Criminal Justice Mental Health Liaison Scheme/Court Assessment Scheme/Court Diversion Scheme including identifying trends and gaps in services and to review operational policies and protocols
- a multi-agency training group to look at the training needs of all practitioners including Appropriate Adults and doctors seeking s12 Mental Health Act 1983 approval

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7 For guidance on co-ordinating strategic arrangements see ‘Multi-agency partnership working and mentally disordered offenders’, Nacro (2005)
Policies and protocols

- Assessments - a joint agreement between the court, health, and social services for mental health assessments at court. This should define: the process of assessment including target response times by all relevant practitioners; the possible outcomes; and, arrangements for communicating information and recommendations to the court.

- Court Reports – a Service Level Agreement (SLA) between the court, mental health trusts, and Strategic Health Authority (SHA) for obtaining psychiatric reports for the court. This should include: how the request is processed; what information might require; what information is possible; and, how the information is communicated to the court.

- Operational Protocol – an operational protocol for the Criminal Justice Mental Health Liaison Scheme/Court Assessment Scheme/Court Diversion Scheme. This should include information on recording and monitoring the activity of the scheme.

- Information Sharing – a joint written agreement between all relevant agencies on the sharing of confidential information.

- Recording and Monitoring – a joint protocol between relevant agencies to understand the numbers of mentally disordered offenders who come into contact with the criminal justice system. The protocol will help to: identify pressures both on services and on points of intervention within the criminal justice system; identify trends and gaps in services; and, assist in reviews of operational policies and protocols. The protocol should identify the means by which the information is recorded and collated, by whom, and how it is made available to joint commissioning and strategic planning bodies.

- Conveying – a joint agreement between the courts, mental health trusts, escort services, police, and the ambulance trust on transport arrangements, risk assessment, and personnel involved. This would include criteria on when the police are involved with such arrangements.

- Admission to hospital – a joint agreement between health, primary care, and social services on admission to hospital under the Mental Health Act 1983.

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⁸ For guidance on confidentiality and data protection see ‘Information sharing – Challenges and opportunities: A guide to sharing confidential information regarding mentally disordered offenders’ Nacro (2004)