

Adult Social Care and Health

Provision of social care in prisons

Issue Date:	09 February 2023
Version	Version 4
Review Date:	February 2025
Owner:	Policy and Quality Assurance Team Policy&StandardsEnquiries@kent.gov.uk

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Version	Date	Summary of change	Reviewed by
4	08/02/2023	<p>Reference to Community Rehabilitation Company removed.</p> <p>National Probation Service - Responsible for the supervision of offenders in the community and the provision of reports to the criminal courts to assist them in their sentencing duties.</p> <p>Section 6. <i>Point of contact</i>: Contact number updated.</p> <p>Section 7 <i>Care Needs Assessment</i>. updated in relation to HMP East Sutton Park.</p> <p>Section 13 renamed <i>People who pay the full cost of their care</i>.</p>	Richard Munn - Service Manager North Kent Area (Dartford, Gravesham, Swanley & Swale)
3		Refresh of document	PQA Team

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POLICY

1. Principles

1.1 People in custody or custodial settings who have needs for care and support should be able to access the care they need.

1.2 Prisoners can often have complex health and care needs and experience poorer health outcomes than the general population.

1.3 All adults in custody or custodial settings should expect the same level of care and support as the rest of the population.

2. Scope

The policy and operational guidance apply to the provision of social care support in custody or custodial settings and relates to prisons, approved premises, and other bail accommodation. It can also apply to people aged 18 years and over in young offender's institutions, secure children's homes, and secure training centres.

3. Definitions and common terms

ASCH	Adult Social Care and Health, Directorate of Kent County Council
CA	Care Act
SMT	Senior Management Team
DMT	Directorate Management Team.
MOJ	Ministry of Justice
NOMS	National Offender Management Service
SC	Social Care

Prisoner

The term generally used to describe men and women who are in custody – People working in the Criminal Justice system were banned from using terms such as 'resident', 'client' or 'service-user' in April 2022 by the Ministry of Justice.

Approved Premises

Premises approved as accommodation under section 13 of the Offender Management Act 2007 for the supervision and rehabilitation of offenders, and for people on bail. They are usually supervised hostel-type accommodation.

CHC Continuing Healthcare

NHS continuing healthcare is the name given to a package of care that is arranged and funded solely by the NHS for individuals who are not in hospital and have been assessed as having a "primary health need"

CQC Care Quality Commission

Independent regulator of health and social care services in England.

DBS Disclosure and Barring Service

The DBS provides criminal records checks.

HMP Her Majesty's Prison

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An institution under the terms of the Prison Act 1952. HMPPS commissions prison services from public and private sector organisations. Kent prisons are operated by the public sector.

HMIP Her Majesty's Inspectorate of Prisons

An independent inspectorate which inspects and provides reports and advice to the Government on the standards and management of prison, young offender institutions & detention services.

HMPPS Her Majesty's Prison and Probation Service

HMPPS (formerly National Offender Management Service, NOMS) is an executive agency of the Ministry of Justice responsible for the commissioning and provision of offender services in the community and in custody.

IMB Independent Monitoring Board

Statutory body to monitor day-to-day life in prisons and immigration removal centres, ensuring that proper standards of care and decency are maintained.

IRC Immigration Removal Centre

IRCs are run by public and private detention organisations on behalf of UK Border Agency. IRCs hold those subject to deportation who require secure conditions. They are a national resource holding male adult detainees aged 18 years and over. There is no longer an IRC in Kent.

KCC Kent County Council

KCC is an upper tier local authority and has responsibility for provision of social care for eligible persons who are an *ordinarily resident* of Kent (note- Medway is a separate Unitary authority). Care and support provided from KCC is subject to its charging policy.

LA Local Authority

The local authority can be two tier with county councils and district & borough councils (for example, Kent) or one tier, unitary. It is responsible for devolved decision making.

MAPPA Multi Agency Public Protection Arrangements

Arrangements in England and Wales for the "responsible authorities" tasked with the management of registered sex offenders, violent and other types of sexual offenders, and offenders who pose a serious risk of harm to the public.

MOU Memorandum of Understanding

MOUs provide the mutually agreed standards of working between organisations. Less formal than contracts they provide a framework within which both parties can work to achieve common goals.

NHS National Health Service

The NHS provides health services which are free at the point of delivery.

NHS England

Responsible for commissioning healthcare services for people detained in prison.

NPS National Probation Service

Responsible for the supervision of offenders in the community and the provision of reports to

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the criminal courts to assist them in their sentencing duties.

National Probation Service, commissioned by HMPPS, is the agency responsible for conducting offender risk assessments and managing high risk offenders in the community.

OT Occupational Therapy

Occupational therapy is the assessment and treatment of physical and psychiatric conditions using specific activity to prevent disability and promote independent function in all aspects of daily life.

PPO Prison and Probation Ombudsman

Carries out independent investigations into deaths and complaints in custody and under probation supervision in the community.

YOI Young Offenders Institution

Young Offender Institution, the custodial setting for children and young people under the age of 18. There are no YOI establishments in the local authority area of KCC.

4. Legislative context

Section 76 of the Care Act sets out the responsibilities for the provision of care and support for adult prisoners and people residing in approved premises.

Section 76 Explanatory Notes

456) ...Where it appears to the local authority that adults in prison or approved premises may have needs for care and support, the local authority will be under a duty to assess their needs under section 9 [of the Care Act] and where they have need which meet the eligibility criteria, may be under a duty to meet those needs...

457) the local authority in whose area a prison, or approved premises, is located will be responsible for providing assessments and meeting care and support needs for the prisoners of those custodial settings...

459) ...The duty for local authorities to protect property will not apply to the property of adult prisoners and prisoners in approved premises with care and support needs while in custody.

Statutory guidance on the application of Section 76 Care Act 2014 is provided in Chapter 17 of the Department of Health Care and Support Statutory Guidance

5. Overview

An overview of responsibilities for prisons, prisoners assisting other prisoners and KCC is provided at Appendix 1

Practice Guidance

6. Point of contact

KCC expects to receive most enquiries and contacts from prisons within Kent although some referrals will be from prisons outside of Kent where a person is transferring to a Kent prison or is being released from a prison outside of Kent.

North Kent ARMS team is the single point of access for prison social care referrals. Contact should preferably be made by telephone: 03000 41 61 61 but can alternatively be made online: -

www.kent.gov.uk/social-care-and-health/adult-social-care/care-and-support/how-to-get-adult-social-care-support/care-needs-assessments

NKS ARMS will add the person's information to the system and, where appropriate liaise with any other area or Team that may need to provide the assessment.

6.2 Children's Referrals

Children's Management Information has a business process in place for the receipt of notifications.

1. In the event a request is sent to adult services please ensure that notifications of the following are sent to the children's secure email account:
ppralerts@kent.gov.uk
 - A person being received into prison.
 - Notifications of release from a prison or a transfer from one prison to another.
2. Notifications of Requests for contact with children from a prison are sent to the Central Duty Team - CY email account: central.duty@kent.gov.uk

6.3 Self-Referrals

People in a custodial setting have a right to self-refer for an assessment.

6.4 Responsibility

The Social Care in Prisons team are only responsible for prisoners who are currently in custody in prisons with KCC's remit. Those in other prisons including Medway are the responsibility of the local team.

7. Care Needs Assessments

The issues and challenges created within the prison environment differ from those in the community, a care home or other non-custodial environment. Completing a care need assessment with a person in a custodial environment follows the same policy and guidance as any needs assessment in line with section 9 of the Care Act and the Care and Support (Assessment) Regulations 2014.

Where assessments are to be completed by staff who are not familiar with the prison, the prison must provide the assessor with induction training before working in the prison. The assessor should be given access to any areas that the offender uses, or should be able to use, and which pose problems for them in some way (such as toilets, showers, refectories,

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training/education areas) may be required depending on the needs of the individual.

In the case of HMP East Sutton Park, special attention should be given to the specific needs of women in custody particularly those who are pregnant or though care and support needs, may have difficulty seeing their children.

7.2 Hospital Assessments

Where a person in a custodial setting is admitted to hospital and it appears they may have a need, or a change in need, for care and support, they should receive a need assessment prior to discharge in the same way as any other person who receives hospital care.

8. Independent Advocacy

People in prison have the same rights to the support of an independent advocate during needs assessment, care and support planning and reviews of plans as people in the community where they meet the criteria:

- The person has 'substantial difficulty' in being involved in the process.
- The person has no one 'appropriate' to facilitate their involvement. (Peers or prison officers do not fulfil the requirement under the Care Act for independent advocacy support)
- The person has mental capacity issues and requires an advocate under the Mental Capacity Act

The single point of referral for independent advocacy is:

<http://livewellkent.org.uk/in-your-area/swale/>

Where advocacy is required to support a safeguarding concern, it is the responsibility of HMPPS to provide support.

9. Right to Refuse

Someone in a custodial setting can refuse a needs assessment and if so, the Local Authority is not required to carry out an assessment subject to the same conditions as in the community:

- The person lacks capacity to refuse and the LA believes the assessment is in the person's best interests; or
- The person is experiencing or is at risk of abuse or neglect.

10. Information systems

Recording on systems, whether social care, NHS or prison is the responsibility of the worker in that organisation and will be completed in line with organisational guidelines.

11. Information Governance (IG)

Information Sharing where the person is in a custodial setting has the same legislative requirements as it would in a community setting.

The prison-based staff making a referral to KCC should discuss with the person prior to making a referral. Prison staff may make a referral whether or not the person is in agreement with it proceeding.

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Staff sharing sensitive personal data (information) via email will follow their respective organisation's Information Governance policies and use secure email.

Staff who are completing assessments regularly in the prison setting should complete the MoJ vetting procedures, and these involve signing a confidentiality statement from MoJ.

The prison will share relevant health and safety information to ensure the personal safety of anyone working with offenders.

12. Determining Eligible Needs

Where the assessment indicates the prisoner has care and support needs, it must be determined if the needs meet the eligibility criteria.

Should the assessed needs not meet the eligibility criteria, the person must be provided with written information about:

- what can be done to meet or reduce needs and what services are available; and
- what can be done to prevent or delay the development of needs for care and support in the future.

It is good practice to copy this information to managers of custodial settings, with the person's consent as this may be relevant to how the individual is managed in the custodial setting.

13. People who pay the full cost of their care

Where a person in a custodial setting has above the financial threshold for support, or does not meet the eligibility for local authority support and wishes to purchase their own care, this request should be referred to the custodial setting and they will contact HMPPS for advice.

14. Care and Support Planning

Where it is determined the person has eligible needs for local authority support a care and support plan must be developed. Others concerned with the person's health and wellbeing, including prison staff, probation Offender Managers, officers within the prison and healthcare staff and the fit with the custodial regime should be included within the plan.

The plan must contain the elements defined in the Care and Support Plan policy, including the Personal Budget and sign off.

The aim of the plan is to build on strengths, maintain independence and/or regain lost independence. The individual must be involved in deciding how to have their needs met. The plan will make recommendations about meeting the individual's needs as well as describing the services which will be provided where appropriate. Not all eligible needs will attract a direct service; some needs may be met by other means such as prisoner to prisoner support or the provision of equipment. Where this is the case, the Social Care in Kent Prison's Team practitioner will discuss with the Establishment Contact what is

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appropriate and acceptable within each prison regime and ensure that training is provided where necessary.

15. Review

Review follows the same requirements as set out in the *Care and Support Plan Review Operational Guidance* on tri-x. Where the case is complex, the review will be the responsibility of KCC practitioners.

Individuals will receive a review of their care and support in the following circumstances:

- A move from one Kent prison to another. (Where the move is to a prison in another local authority area the receiving Local Authority should assess the individual before they are moved)
- Upon identification of new/changed needs
- Within 8 weeks of the start of or significant amendment to, their care package and then every 12 months thereafter unless sooner where there has been a change of need.
- Upon each entry from the community to custody
- Upon release from custody. (Where the individual plans on release to move to a new Local Authority, it should be the responsibility of that Local Authority to carry out a needs assessment)

16. Duty of care

Prison staff have a common law duty of care to all prisoners. The prison service provides 'Prison Service Instructions (PSI), which include mandatory actions for prison staff and provide useful information about what prisoners can do to support other prisoners, and other support within the prison environment: <https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2015>

17. Equipment - delivery/ use etc.

Assessment may lead to a decision on the provision of equipment either as a measure to prevent needs for care and support or as part of Care and Support planning.

Some equipment may not be agreed by HMPPS due to its nature and risks unique to supporting people in custodial settings. There is no definitive list of equipment prohibited from prisons at present.

It is the responsibility of KCC staff to identify and make recommendations on the equipment to meet presenting need. Specialist, moveable equipment is provided by the LA and should be requested using the normal route. Building adaptations, fixtures and fittings are the responsibility of the prison service.

18. Ordinary Residence

Custodial Settings

Adults detained or residing in a custodial setting are treated as an *ordinarily resident (OR)* in the area where the custodial setting is located.

Section 117

Where prisoners have been detained under s47 and s48 of the Mental Health Act 1983

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and transferred back to prison, their entitlement to aftercare should be dealt with in the same way as in the community. S117 (3) as amended by the Care Act applies to determine which local authority is responsible for commissioning or providing s117 aftercare:

- If the person was OR in the area of a local authority immediately before being detained in hospital, that local authority will be responsible for the aftercare while the person is in prison and upon their release from prison.
- If the person was not OR in any area (homeless) immediately before detention, the local authority responsible will be where they are prisoner, or where they have been discharged (the LA responsible for the prison to which the person has been discharged).

Bail accommodation

People bailed to a particular address in criminal proceedings are, like those in prison or approved premises, treated as ordinarily resident in the local authority in which they are required to reside. This means Kent County Council is responsible for the assessment and provision of care and support for a person bailed to an address in Kent.

Home Detention Curfew

A Home Detention Curfew (HDC), or 'tag' as it is commonly known, is a scheme that allows certain offenders to be released from prison early subject to an electronically monitored curfew. Prisoners serving sentences of between three months and four years can be considered for the scheme which can grant early release between two weeks and 135 days earlier than the half way point of the sentence. HDC is a privilege, not a right, and despite a HDC date being automatically generated for the majority of prisoners, not all prisoners will be eligible. Certain offences automatically rule out the prospect of release under the scheme.

Electronically monitored curfews can also form part of a community order or be part of a package of bail conditions set by the court.

HDC is early release rather than temporary absence. Under Release On Temporary License (ROTL), the full expectation is that the individual will return to prison; under HDC the expectation is that they won't, unless they breach (which is also true for any ex-prisoner on license). Those released under HDC can claim benefits and make use of other community services (which ROTL prisoners cannot). Therefore, the responsibility transfers.

People leaving prison.

The starting presumption is that the deeming provision approach set out in s39 of the Care Act is followed for people leaving prison who are in need of specified accommodation; that people leaving prison remain ordinarily resident in the area in which they were ordinarily resident (OR) immediately before the start of their sentence.

Determining OR may not always follow this presumption and each case must be considered on an individual basis. In situations where an offender is likely to have needs for care and support on release from prison/ approved premises and their place of OR is unclear and/ or they express an intention to settle in a new local authority area, the local authority in which they plan to live should take responsibility for carrying out the assessment.

19. NHS Continuing Healthcare

Section 22 of the Care Act provides the limits on what may be provided by the local authority. Where it appears from the assessment, that a prisoner has a primary health need so may be eligible for NHS Continuing Healthcare, the CHC Checklist screening tool should be used to help the assessing practitioner identify if a referral is needed for a full consideration of whether the health needs qualify for NHS Continuing Healthcare funding by NHS England.

20. Continuity of Care

Individuals in custody must have continuity of care where they are moved to another custodial setting or are being released back into the community. Where a person is being moved between custodial establishments into a different local authority area or being released into a different local authority area, the first authority must inform the 2nd authority and provide them with a copy of the person's care and support plan. Both local authorities should work together during the move to ensure the adult's care is continued without interruption during and after the move.

It is good practice for the receiving authority to assess the individual prior to the move although this is not always possible and discussion, with consent, may be a more appropriate way of supporting the transfer.

In some instances, due to security, the HMPPS may not disclose information until the last minute. These will be exceptions and KCC should endeavor to respond to these situations as well as it is able.

21. National Probation Service (NPS)

NPSs have a presence in prisons as well as in the community.

They are responsible for compiling and delivering the resettlement plan for those prisoners who are assessed as being low to medium risk.

In Kent, they are contracted to provide accommodation and employment brokerage; finance and debt management; support for sex workers and support for victims of domestic abuse/sexual violence. They also have an important role in signposting individuals into other services - including social care. They are expected to be part of any pre-release planning and transitioning arrangements for those with a care and support plan.

22. Homelessness Duty to Refer

Under the Homelessness Reduction Act 2017 (HRA) and Regulations, specified public authorities in England, which includes prisons, have a duty as of October 1, 2018, to refer to local housing authorities (LHAs), people they consider may be homeless or threatened with becoming homeless within 56 days.

The referring prison must have consent from the individual before referring them and the individual should identify which LHA they would like to be referred to, as they would if approaching a housing authority directly.

Housing authorities have a duty to help secure accommodation for any applicant threatened with homelessness on leaving custody, irrespective of priority need.

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Housing authorities and prisons should work together to ensure the accommodation needs of people leaving custody are met. Probation must provide direct support to help people find accommodation.

23. Complaints

Information on how to complain will be available in prisons and provided by the social care practitioner.

Individuals in prison can make a complaint to KCC about any aspect of social care assessment and provision under the Care Act. Information on how to make a complaint will be available in libraries alongside more generic information.

The prison request and complaint team may review complaints in the first instance to ensure they are directed to the appropriate organisation. Where the complaint relates to KCC social care responsibilities it will be managed by KCC's adult social care complaints team, email: customercarecomplaintsadults@kent.gov.uk

Address: 3rd floor Invicta House, Maidstone, ME14 1XX.

However, if the individual wishes to complain about decisions relating to their assessment or Care and Support Plan following discussions with the practitioner who has assessed them, then they should approach the Prison Social Care provider in the first instance, who will attempt to remedy the problem without recourse to formal complaints processes.

The Prison and Probation Ombudsman (PPO) conducts investigations in prisons following complaints about prison services. The Ombudsman also investigates all deaths that occur in prison and approved premises. All parties will fully cooperate with any investigation as required.

24. Safeguarding

NOMS (applicable to HMPPS) legal responsibility and overall policy for safeguarding is set out in PSI 05/2014 and specifically for Adults PSI 16/2015. Concerns will be raised with the Establishment Safeguarding Lead and KCC practitioners will fully co-operate with any action taken as a consequence. Care and support plans will address any safeguarding issues or concerns relating to that individual, and the prison's safeguarding policies and procedures applied.

KCC will offer advice and assistance in individual cases but does not have a legal duty to lead enquiries in prisons.

Representatives from the Prison Service have been members of the Kent and Medway Safeguarding Adults Board since 2012. As members of the Board, they have signed up to the multi-agency policies, procedures and guidance and are able to access multi-agency safeguarding adults training. They also contribute towards the Board's Strategic Plan and Annual Plan and the development of policies and quality assurance mechanisms.

Kent County Council ASCH Directorate have been in contact with the prison service to support and advise on their safeguarding policy and process. Representatives of the Prison Service can contact colleagues in ASCH for advice about adult safeguarding issues.

25. Charging & Financial Assessment

The practitioner will be responsible for undertaking a full assessment with the support of the KCC Client Financial Services team.

Arrangements for prisoners to access external funds will be in line with PSI 01/2012 Manage Prisoner Finance.

Appendix 1

Care Act responsibilities – what everyone needs to know.

Local authorities are responsible for:

- completing care and support assessments for prisoners
- producing care and support plans (with prison and Healthcare involvement)
- providing care and support services for those with eligible needs
- delivering specialist and moveable items (eg: walking frames or hoists)
- making preparations for prisoners who move to ensure continuity of care including if the move is to a different LA area, informing the new Local Authority

Prison staff are responsible for:

- informing the local authority when they are aware of new prisoners who may have care and support needs, or when a prisoner shows signs of developing them
- making sure the local authority quickly knows about urgent cases and immediate needs (e.g. help with using a toilet)
- monitoring prisoners and intervening, if necessary
- delivering building adaptations, fixtures and fittings (e.g. grab rails and ramps)
- co-operating with local authority staff and services, and making sure they can do their work in prisons safely.

Prisoners needing help.

- can self-refer for assessment
- can be referred by prison staff, or by Healthcare
- can refuse an assessment, unless the local authority thinks it is in their 'best interests' to have one
- can now get care and support services
- must be given the opportunity to complain to the Local Authority if they are not happy with their assessment or the support provided
- will be assessed to see how much, if anything, they should pay towards their care
- convicted prisoners must not receive direct payments for the costs of care
- will not have 'choice of accommodation'

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If they are referred and do not meet the eligibility criteria prisoners will get written information and advice from the local authority on how their needs can be met and not get worse, including the support that may be available in the prison

Prisoners helping other prisoners

Things they **can help** each other with include:

- cell cleaning
- moving around the prison
- hair styling
- collecting/cutting up food - but does not include assistance with eating and drinking
- some personal care: i.e. tasks that do not require contact with or exposure of intimate parts of the body

Things they **shouldn't help** each other with include:

- intimate care: i.e. tasks concerned with personal hygiene and bodily functions and products
- handling medication