

Police and Courts

Liaison and Diversion Manager and
Practitioner Resources

NHS England and NHS Improvement



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Equalities Statement

“Promoting equality and addressing health inequalities are at the heart of our values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act, 2010) and those who do not share it; and
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from, healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.”

The protected characteristics covered by the Equality Act (2010) are: age, disability, gender reassignment, marriage and civil partnership (but only in respect of eliminating unlawful discrimination), pregnancy and maternity, race—this includes ethnic or national origins, colour or nationality, religion or belief—this includes lack of belief, sex, sexual orientation.

‘Inclusion Health’/Health Inequalities has been used to define a number of groups of people who are not usually well provided for by healthcare services, and have poorer access, experiences and health outcomes. The definition covers people who are homeless and rough sleepers, vulnerable migrants (refugees and asylum seekers), sex workers, veterans and those from the Gypsy, Roma and Traveller communities.

Liaison and Diversion services are expected to pay due regard to these groups when planning and delivery a service. This includes the completion of Equality Impact Assessments regularly, with actions to ensure the service is addressing the needs of these cohorts.

Police and courts

This resource paper focuses on the police and courts in relation to Liaison and Diversion services in England.

This briefing:

- Explains the justice pathway
- Identifies the key legislation that informs practice at each point of intervention on the justice pathway
- Identifies the key professionals that Liaison and Diversion services should interact with at each point of intervention

Why police and courts matter to services

Liaison and Diversion services act as a resource for the youth and criminal justice systems. They provide information to and facilitate disposals for the police and courts to ensure appropriate and effective outcomes. For Liaison and Diversion services to achieve their aim of reducing health inequalities and enabling people to access care and treatment, they need to work closely with police, courts and other criminal justice partners.

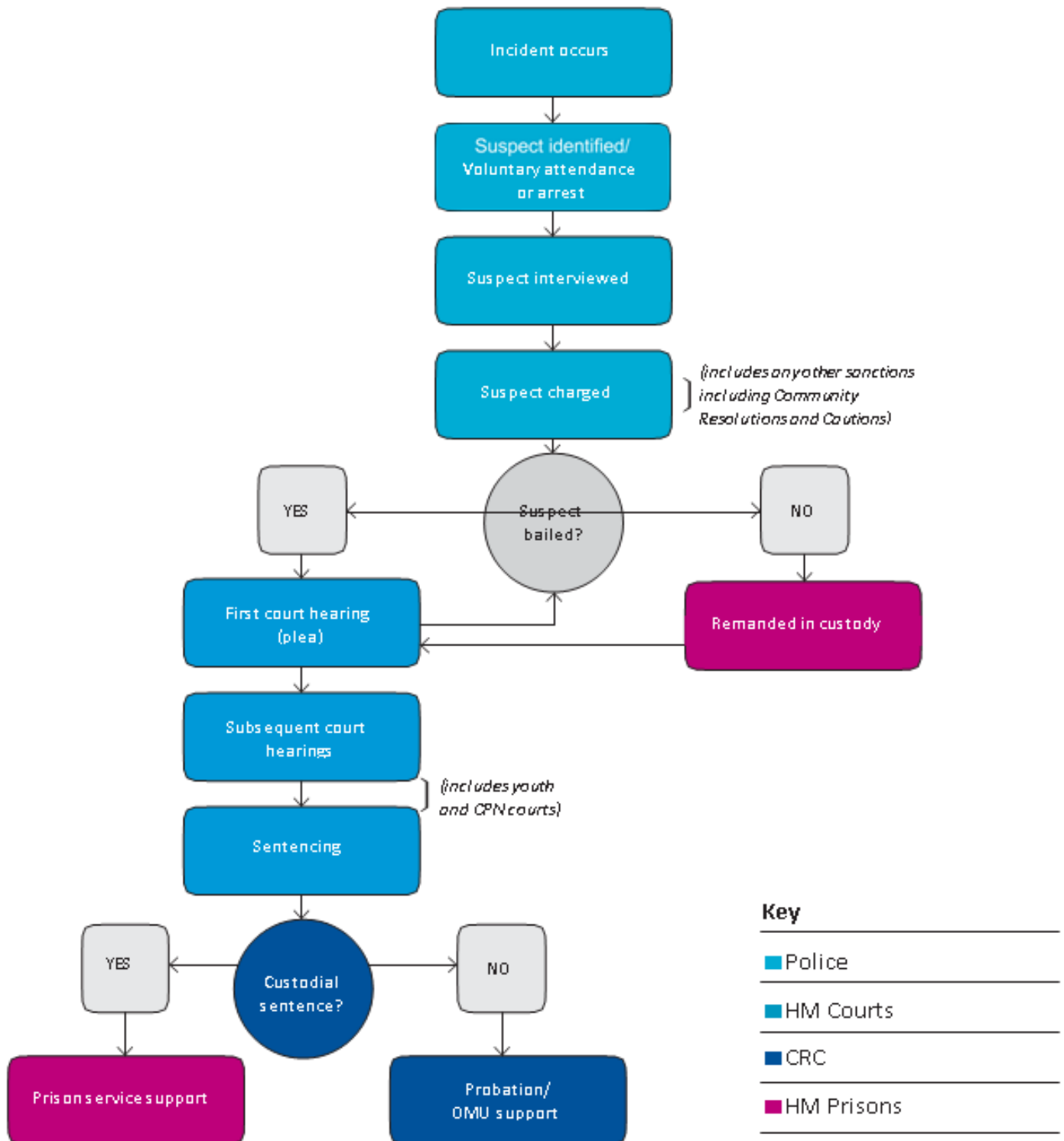
Pathways

Liaison and Diversion services need to be accessible as soon as possible after an individual is suspected of having committed a criminal offence, and be available at the point of need and at the following locations (the list below does not cover all possible settings):

- police custody suites
- police stations (or other prosecuting authorities) where voluntary attendance (VA) occurs
- Any other location where a voluntary interview takes place e.g home, school
- magistrates' courts
- agreed Crown Courts
- youth courts and referral order panels
- probation to assist with the production of pre-sentence reports (PSR)
- youth offending teams (YOTs)
- community settings, including schools and restorative justice settings, where police engage with children and young people

Key stages in the justice process

The following flow chart shows the process for adults entering the criminal justice system. Liaison and Diversion services can be involved at any point within the police and courts stages.



*CRC = Community Rehabilitation Companies/Probation

The approach for Liaison and Diversion services working with children and young people is significantly different from that of working with adults. Most decisions about children and young people will take place at the pre-police custody stage.

Some young people do, however, enter custody and a smaller number do progress to court and there are opportunities to appropriately divert at both these points (for more details see the resource paper in this series on developing an all-age response).

Police

Traditionally, Liaison and Diversion services have operated in conjunction with the police at the custody stage of the criminal justice process. However, changes in practice now mean that police will intervene earlier in community settings, particularly when dealing with children and young people and when dealing with people who have voluntarily attended the police station or other locations for a voluntary interview.

Whenever the police come into contact with an individual, they are governed by the Police and Criminal Evidence Act 1984 (PACE) and its codes of practice. For people with mental health concerns, a learning disability or other vulnerability Code C, (2014) is particularly relevant.

When a person is taken into police custody, the key professional is the custody officer (usually a sergeant) who is responsible for their detention and has a range of options at their disposal. In particular, they protect the rights of the individual by being:

- independent of the investigation
- a guardian of welfare and rights

A custody record will be opened and this will be used to document details of all decisions, interviews, actions and assessments etc. The arresting officer will be asked about the circumstances of the arrest which may include any concerns they have from their initial contact with the person. The arrested person will be read and given a copy of their rights under PACE.

The arrested person will be asked a series of questions to ascertain whether there are any concerns that should be addressed by the Liaison and Diversion or other practitioner working in the custody suite. If the custody officer has concerns about a person's mental health, suspected learning disability or other vulnerability identified in the Liaison and Diversion operational model, they should refer to the Liaison and Diversion services for screening and possible assessment (see the resource paper on this process).

When someone is in custody for an offence their detention is subject to the 'PACE clock' which determines how long a person can be held without charge and who needs to approve longer periods of detention¹. Liaison and Diversion practitioners will need to be mindful of the 'clock' when they are screening an individual or making arrangements for a further fuller assessment.

Other key professionals operating in police custody include: -

- **Detention officers** who work as part of a team of custody staff and assist with receiving and processing detainees, taking fingerprints, photographs and DNA samples, updating systems and records and ensuring the welfare of detainees.

¹ (Home Office, 2014)

- **Custody healthcare staff** are qualified healthcare practitioners (nurses, Forensic physicians, Forensic medical examiners (doctors) or paramedics) who are responsible for the health, safety and welfare of detainees. They will assess whether someone is fit to be detained, interviewed, transferred or charged and will assist with risk assessments when the custody officer decides to release a detainee. Other responsibilities include gaining consent for healthcare interventions, conducting forensic examinations, looking after minor injuries and administering medications.

Although custody healthcare staff are primarily responsible for a person's physical health they will also identify whether a person has other concerns and where necessary make a referral to L&D services. In some cases, Liaison and Diversion will carry out a joint assessment with custody healthcare staff. Some clinical tasks can currently only be undertaken by Forensic medical examiners and forensic nurse practitioners.

- **An appropriate adult** is an independent volunteer or a family member, guardian or someone responsible for the person's care and treatment. Where the custody officer suspects or is told that someone who has been arrested has a mental health problem, a learning disability or is otherwise vulnerable (or anyone under the age of 18 years old) they are required, under 'PACE,' to ensure that an appropriate adult is present during certain periods in a detainee's detention and in any subsequent interviews. Liaison and Diversion services may sometimes need to refer individuals to an appropriate adult. For more information go to www.appropriateadult.org.uk.
- **Substance misuse (Drug or Alcohol) workers** may work alongside custody staff to screen individuals taken into custody and identify and work with those who may need help. Options for those who need support include one-to-one interventions with a trained custody referral worker, harm reduction advice (e.g. information about substances, staying healthy and coping with challenging situations), signposting and referral to local support services and drug testing. In the case of dual diagnosis (i.e. a mental health problem and a substance misuse problem), a joint-assessment should take place by both the Liaison and Diversion practitioner and drug worker.

In some, but not all police stations, detainees may be subject to drug testing² with the legal requirement to attend an assessment of their drug misuse³ if they have tested positive. It is the role of the drug worker to conduct any required assessment and, where appropriate, to inform the police where an individual has failed to attend and remain at the assessment.

In determining any outcome, including decisions about whether or not to charge, release on bail or remand in custody, the police need to balance the safety of the public, the wishes of the victim(s), public interest and the needs of the individual. The

² (Section 63B of PACE 1984, as amended by Section 7 of the Drugs Act 2005)

³ (Part 3 of the Drugs Act 2005)

role of Liaison and Diversion services is to provide information to support others in making these decisions by:

- providing information on the person's mental health, learning disability or other vulnerability
- assessing the risk that the person poses to themselves and/or others
- providing information on referral options
- facilitating access to services

Information from Liaison and Diversion services should be provided to the police in writing to be included in the custody record and in the case papers if the person is charged.

Crown prosecution services (CPS)

The Code for Crown Prosecutors⁴ sets out both the evidential test and the public interest test that need to be met for any charge to be made. When deciding whether a prosecution is required for the public interest, prosecutors need to consider “if a prosecution is likely to have an adverse effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence”.

Prosecutors should also “have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required”.

In both these cases Liaison and Diversion services can play an important role. This support can either be provided through the report completed by the Liaison and Diversion practitioner, which will be included in the case papers and will provide context and background for the CPS, or Liaison and Diversion services can undertake an assessment on behalf of the CPS prior to any court case.

⁴ (Crown Prosecution Service, 2013)

Courts

A Liaison and Diversion service needs to have a presence in the youth courts, the magistrates' courts and certain agreed Crown Courts. The Criminal Procedure Rules ('CrimPR') govern the practice and procedure of the criminal courts. The role of the Liaison and Diversion services is to provide relevant information to assist the judiciary and magistrates to make appropriate and effective decisions in relation to sentence, bail and case management by:

- providing information on the person's mental health, learning disability, or other vulnerability
- assessing the risk that the person poses to themselves and/or others
- providing information on referral options and
- facilitating access to services

All cases are initially seen at a magistrates' court and 90% of all cases are dealt with entirely by magistrates. These include summary and some 'either way' cases. 'Summary offences' refers to most motoring offences, minor criminal damage, being drunk and disorderly and other less serious offences.

Magistrates' courts can also deal with some of the more serious offences, such as burglary and drugs offences, and these are called 'either way' offences and can be heard either in a magistrates' court or the Crown Court. Magistrates' courts always pass the most serious crimes such as murder, rape and robbery, known as indictable offences, to the Crown Court.

Sentences or disposals that magistrates' courts can administer include up to six months in prison (or up to 12 months for more than one offence), fines up to £5,000, community sentences or a combination of these. If the magistrates' court decides the sentence should be for longer than six months, it can pass the case to the Crown Court.

Youth courts are special types of magistrates' courts for people aged between 10 and 17. For serious crimes, like murder or rape, the case starts in a youth court but will be passed to the Crown Court.

Key professionals based in courts include: -

- **Sentencers** including judges, district judges, and magistrates
- **Justices legal advisers** are professional legal advisers to non-stipendiary (unpaid) magistrates/justices of the peace. Justices legal advisers are qualified lawyers but they do not take part in the decision making within the court.
- **Ushers** who make sure that everyone involved with a court case is present and knows what they have to do during the hearing.
- **Prosecutors** who present the prosecution case in court usually CPS.
- **Defence solicitors** who advocate on behalf of the defendant
- **National Probation Service staff** who prepare Pre Sentence Reports to help the courts select the most appropriate sentence

- **Youth Offending Teams** which operate at youth courts, supporting the young person and their family and providing information for the court. YOTs also work with young people and families in the community.
- **Intermediaries** who assist vulnerable witnesses, defendants and defendants with learning disabilities or communication difficulties to understand and participate in cases.

All of the above, as well as family members, carers and the persons themselves should be able to refer to Liaison and Diversion services. Service should have a range of informative materials available for different professionals and service users, which explaining the role of the Liaison and Diversion services and how to make a referral.

Information should be provided to the court using the national court reporting template, via secure email to enable HM Courts & Tribunals Service to upload it onto the digital court systems.

Voluntary attendance & voluntary interviews

Voluntary Attendance (VA) and Voluntary Interviews (VI) are the terms used for those individuals who have voluntarily agreed to be interviewed by the police but have not been arrested and taken to police custody. Changes to the PACE codes of practice in 2012 mean that the power of arrest is only exercisable if a police officer has reasonable grounds for believing that it is necessary to arrest the person.⁵ This has meant that more people are voluntarily interviewed by attending a police station or elsewhere for interview following an incident than was the case previously. The safeguards outlined in PACE which apply to an arrest and detention in police custody also apply to VA.

In applying the 'necessity test/criteria', the police officer must "take into account the situation of the victim, the nature of the offence, the circumstance of the suspect and the needs of the investigating process" (PACE Code G 2.8). Examples of 'necessity' include;

- police cannot ascertain the individual's name and address
- prevent injuries to the individual or others
- protect a child or other vulnerable person
- prompt and effective investigation of the offence
- preserving evidence
- to conduct a drug test

Every individual interviewed through VA/VI is entitled to receive the same service from Liaison and Diversion as those who have been arrested and taken to a police custody suite. To ensure that this happens the service will need to develop processes that fit in with and complement the local VA/VI process operated by the police.

The following outlines how the processes should work:-

1. The police should use an appropriate risk assessment/case identification tool (see the resource paper in the series on case identification, screening and assessment) when there are concerns that an individual has mental health issues, a learning disability or other vulnerability. This should be used either at the initial investigation of an incident, at the interview following VA/VI or when the case is being reviewed by a supervising officer.
2. If the concerns are confirmed and provided the voluntary attender consents to their information being shared, the police should contact Liaison and Diversion services. There should be a single point of contact within the Liaison and Diversion service where referrals can be made.
3. The L&D service should be provided with the name, date of birth and address, if known, of the individual concerned. The police should also state the reason for the referral. Where possible, the Liaison and Diversion service should

⁵ (Home Office, 2012).

gather information on the individual; Liaison and Diversion staff may want to discuss the case with the referring police officer as part of this process.

4. If an immediate concern is identified Liaison and Diversion should make every effort to see the person as soon as possible.
5. If a concern is identified but the immediate action is not needed, Liaison and Diversion should invite the individual, either by phone or by letter, to attend a screening and/or assessment at a mutually agreed location. Appointments should be 'opt out' (i.e. your appointment is on [insert time and date] unless you ring and cancel) rather than 'opt in' (i.e. ring the L&D service to arrange an appointment).
6. Following the screening and/or assessment and assuming consent is given, information which is relevant to the individual's actions or behaviour due to their vulnerability at the time of committing an offence should be passed back to the referring police officer and a written record should be attached to any case file. This information should assist the police in their decision-making or ensure that safeguards and reasonable adjustments are made – e.g., ensuring that an appropriate adult is present at subsequent interviews.

Individuals may be seen in a variety of criminal justice and community settings (including their own home) depending on any risk that may be identified. Wherever possible and practical children and young people should not be seen in criminal justice settings. Rather, these should take place in health, community and educational settings and in their own homes with their parents present.

Information flow

Liaison and Diversion services should assist criminal justice agencies and decision makers to ensure appropriate and effective outcomes for people with mental health problems, learning disabilities or other vulnerabilities. This includes decisions about charging, bail, disposal and sentencing.

Information provided by Liaison and Diversion services to the police and courts should include details of:

- the reasons for the referral
- the mental health concerns, learning disabilities or other vulnerabilities
- current or previous contact with health and care services including details of the individual's care coordinator and other relevant professionals
- any treatment or ongoing care plan where relevant to the case and disposal in question
- social circumstances
- the risk assessment including information about the risk that the person poses to themselves and/or others
- health and care options
- the individual's ability to engage with criminal justice processes including the need for any reasonable adjustments

Information should always be provided in writing

The responsibility for the transfer of information is the responsibility of criminal justice agencies. However, the Liaison and Diversion service should ensure there is an added safeguard by setting up their own system to ensure custody or police custody stage to the Liaison and Diversion practitioners at court and then, depending upon the outcome, to healthcare in prisons, the National Probation Service and/or Community Rehabilitation Companies (CRCs).