

**Multi-Agency Public Protection Arrangements ( MAPPA)**

**Memorandum of Understanding  
Between**

**The Responsible Authorities (City of Edinburgh Council, Midlothian Council, East Lothian Council, West Lothian Council, Scottish Borders Council, Lothian & Borders Police, Scottish Prison Service, NHS Lothian, NHS Borders, the State Hospitals Board for Scotland)**

**and**

**Duty to Co -operate Agencies**

**Lothian and Borders Community Justice Authority**

**Statutory Basis**

1. Sections 10 and 11 of the Management of Offenders (Scotland) Act 2005 (see Appendix A, attached) require the Scottish Prison Service, Local Authorities and the Police, as responsible authorities in the area of a local authority to jointly establish arrangements for the assessment and management of risks posed by sex offenders subject to the notification requirements of the Sexual Offences Act 2003, violent offenders convicted on indictment and subject to a probation order or statutory supervision on release from detention or prison and other offenders whose conviction leads the responsible authorities to believe that they may cause serious harm to the public.
2. In addition, the legislation also provides the Health Service with a statutory function as a responsible authority to establish joint arrangements for the assessment and management of risk posed by mentally disordered offenders who are restricted patients within the above defined categories.

**Duty to Co-operate**

3. Sections 10(3) and (4) of the Act provide that in establishing and implementing the joint arrangements, the responsible authorities must act in co-operation with such persons as Scottish Ministers specify by Order. As a result it will be the duty of those persons (includes agencies and bodies) specified in the order to co-operate with the responsible authorities. Co-operation must be compatible with the exercise, by those persons and authorities, of their other statutory functions. It is intended as a means of enabling different agencies to work together but within their legitimate role whilst

retaining their responsibility for action. The Act also provides that the Duty to Co-operate is reciprocal and requires agencies to co-operate with each other. The definition of "co-operate" includes the exchange of information. Both public and other agencies are required to act responsibly and jointly deliver the requirements of the law and compliance with the Duty to Co-operate will be reinforced through regulation and inspection regimes.

4. Section 10(5) of the Act requires the responsible authorities and the duty to cooperate agencies to develop a memorandum such as this, enabling the practicalities of cooperation to be developed, agreed and reviewed as necessary.
5. Section 10(7) of the Act defines the "Responsible Authorities" who are required by section 10(1) to work together to establish joint arrangements for the assessment and management of risks posed by sex and violent offenders. One of the "Responsible Authorities" is the local authority. It is envisaged that the responsibility for working on the joint arrangements will lie primarily with the Chief Social Work Officer. However, other local authority services, such as education and housing services, will be required to cooperate in the implementation of this work to discharge the corporate responsibility under this function.
6. The Responsible Authorities in Lothian & Borders (as detailed in Appendix B – attached) have a duty to co-operate, and are signatories to this Memorandum of Understanding.

### **Principles and Purpose of the Duty to Cooperate**

7. This Memorandum has been prepared by the responsible authorities in consultation with the duty to co-operate agencies. It is founded on the principles defined by Part 6 of the MAPPA Guidance and sets out the purpose of the duty to cooperate and how that duty will be delivered by the agencies party to the Memorandum.
8. All agencies involved with sex and violent offenders<sup>1</sup> and party to this memorandum are committed to working on a reciprocal basis by:

---

<sup>1</sup> Although violent offenders are referred to within the Management of Offenders etc (Scotland) Act 2005, they have yet to be formally introduced to the Multi Agency Public Protection Arrangements for Scotland. This Memorandum of Understanding extends to the appropriate sharing of information concerning offenders currently subject to these arrangements, and will extend to include violent offenders (as defined within the Act) upon their formal introduction to the MAPPA arrangements for Scotland.

- sharing relevant information within agreed protocols and the development of good practice in relation to the assessment and management of MAPPA offenders within the area of the CJA ;
  - the effective use of resources to manage those offenders;
  - co-operating in order to develop and sustain public confidence in the multi agency public protection arrangements; and
  - in accordance with legislation
9. The purposes of co-operation are to co-ordinate the involvement of different agencies in assessing and managing risk to enable every agency which has a legitimate interest, to contribute as fully as its existing statutory role and functions require in a way that complements the work of other agencies.
10. The duty to co-operate relates only to the operational, case-related work involved in assessing and managing the risks posed by sex and violent offenders as defined by section 10 of the Management of Offenders etc (Scotland) Act 2005.
11. As previously stated the duty to cooperate is reciprocal. It requires the Responsible Authorities to co-operate with the Duty to Co-operate agencies, and those agencies to co-operate with the Responsible Authorities in assessing and managing the risks posed by sex and violent offenders.
12. Duty to co-operate agencies co-operate only in so far as this is compatible with their existing statutory responsibilities. Therefore, the duty does not require the agencies on which it is imposed to do anything other than what they are already required to do. It does require them to carry out their responsibilities, where these relate to sex and violent offenders, however to do so collaboratively with the Responsible Authorities and the other duty to co-operate agencies.
13. The Responsible Authorities and the duty to co-operate agencies must set out the ways in which they are to co-operate in this memorandum. This document constitutes this agreement.

### **Practicalities of Co – operation**

14. A short-life working group is being convened to redraft the ‘MAPPA Roles and Responsibilities (Lothian and Borders Community

Justice Authority) document'. The aim is to produce a concise practical working document, which will outline for staff their role and the practicalities of how MAPPA will operate within the CJA. The document will also clarify the specific role and responsibility of each agency.

These operating procedures will be reviewed annually by the MAPPA Co-ordination unit and will be updated to incorporate any fresh guidance, legislation or good practice.

### **Disclosure of Information**

15. Disclosure of information beyond the responsibilities regarding registered sex offenders is the responsibility of the **Chief Constable**. The signatories to this memorandum agree that in any situation where the issue of disclosure of a person's status as a Registered Sex Offender is a possibility, the case must be referred to the police.
16. Disclosure of information on other offenders subject to the MAPPA should only be undertaken following discussion with the Responsible Authorities and other duty to cooperate agencies involved.
17. Additional detailed guidance regarding disclosure will be documented in the Roles and Responsibilities document.

### **Information sharing**

18. An Information Sharing Agreement for Staff Working within the Multi-agency Public Protection Arrangements (Lothian and Borders Community Justice Authority) is also being developed to outline the information sharing framework within which signatories to this agreement will operate. The aim is to agree this document by 31 July 2009.

### **Dispute Resolution**

19. The primary objective of the MAPPA is public protection. It is hoped that the transparent and accountable nature of MAPPA and the good working relationships of the professionals within it, will mean that disagreements will be minimal.
20. However, there will be occasions when the Responsible Authorities and/or the duty to cooperate agencies cannot reach agreement. It is

therefore necessary to have an agreed protocol for speedy dispute resolution.

21. Whilst the responsible authorities and duty to cooperate agencies retain responsibility for discharge of their statutory function, the MAPPA Coordinators have a role in negotiating and challenging decisions and providing an oversight of processes across Lothian and Borders and the MAPPA Level 2/3 meetings review and agree risk management plans.

In the event that parties are unable to reach agreement then the matter should be referred to the Chair of the Level 3 MAPPA, who will be the Detective Superintendent for Public Protection, or, the Chief Social Work Officer for the relevant Local Authority area. The Chair will, in consultation with the Detective Superintendent for Public Protection/Chief Social Work Officer as relevant and appropriate Designated Director of the relevant Health Board and/or the Medical Director of the State Hospital, be responsible for the final decision

### **Annual Report**

22. The agencies party to this Memorandum agree to cooperate with the Responsible Authorities in the preparation of the annual report under section 11 of the Management of Offenders etc (Scotland) Act 2005 e.g. in the provision of statistics, case studies etc

### **Risk Proofing and Quality Assurance**

22. Agencies involved in MAPPA should agree to ensure that they have processes in place for risk proofing and quality assurance of their functions and duties.

### **Media Handling Strategy**

23. The management of MAPPA offenders requires effective partnerships between all agencies. This includes a joint approach to the media and handling of publicity.
24. The MAPPA Roles and Responsibilities (Lothian and Borders Community Justice Authority) document will include the joint media strategy the agencies will follow. With regard to the Scottish Prison Service, any consideration of media issues should be directed to the Head of Corporate Affairs.

## **Status of the Memorandum of Understanding**

25. This Memorandum is a working document and will be reviewed and updated to reflect changing circumstances. Such changes will be subject to the agreement of all parties. The review of this document will take place 12 months from the date of adoption.
26. Date of adoption 1 October 2009.

27. The signatories to this Memorandum are:

|  |   |
|--|---|
| <br>.....<br>on behalf of<br>City of Edinburgh Council  | <br>.....<br>on behalf of<br>Lothian & Borders Police             |
| <br>.....<br>on behalf of<br>Midlothian Council         | <br>.....<br>on behalf of<br>Scottish Prison Service              |
| <br>.....<br>on behalf of<br>East Lothian Council      | <br>.....<br>on behalf of<br>NHS Lothian                         |
| <br>.....<br>on behalf of<br>West Lothian Council     | <br>.....<br>on behalf of<br>NHS Borders                        |
| <br>.....<br>on behalf of<br>Scottish Borders Council | <br>.....<br>On behalf of<br>State Hospitals Board for Scotland |

## **APPENDIX A**

### **Sections 10&11 of the Management of Offenders Etc (Scotland) Act 2005**

#### ***Assessing and managing risks posed by certain offenders***

#### **10 Arrangements for assessing and managing risks posed by certain offenders**

(1) Subject to subsection (11), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who-

(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);

(b) has been convicted on indictment of an offence inferring personal violence and--

(i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or license of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(c) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if-

(i) the acquittal is on the ground of insanity; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(d) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane; or

(e) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.

(2) It is immaterial-

(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place);

(b) for the purposes of paragraph (b) or (e) of that subsection, where the offence of which the person has been convicted was committed; or  
(c) for the purposes of paragraph (c) or (d) of that subsection, where anything that the person was charged with having done took place.

(3) Subject to subsection (11), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Subject to subsection (11), it is the duty of-

(a) any persons specified under subsection (3) to co-operate; and  
(b) the responsible authorities to co-operate with each other, in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

(5) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.

(6) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 11.

(7) In this section and in section 11, the "responsible authorities" for the area of a local authority are-

(a) the chief constable of a police force maintained for a police area (or combined police area) any part of which is comprised within the area of the local authority;  
(b) the local authority;  
(c) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority; and  
(d) the Scottish Ministers.

(8) The Scottish Ministers may by order made by statutory instrument amend the definition of the "responsible authorities" in subsection (7).

(9) A statutory instrument containing an order under-

(a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;

(b) subsection (8) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(10) Different provision may be made under subsection (3) for different purposes and for different areas.

(11) The functions and duties, under the preceding provisions of this section and under section 11, of the responsible authorities mentioned in subsection (7)(c) extend only to the establishment, implementation and review of arrangements for the assessment and management of-

(a) persons subject to an order under section 57(2)(b) of the Criminal Procedure (Scotland) Act

1995 (c.46) (imposition of special restrictions in disposal of case where accused found to be insane);

(b) those subject to a restriction order under section 59 of that Act (provision for restrictions on discharge);

(c) those subject to a hospital direction under section 59A of that Act (direction authorising removal to and detention in specified hospital); or

(d) those subject to a transfer for treatment direction under section 136 of the Mental Health

(Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners for treatment for mental disorder).

(12) But it is the duty of the responsible authorities mentioned in subsection (7)(c) to co-operate (to the extent mentioned in subsection (4)) with the other responsible authorities, with each other and with any persons specified under subsection (3), in the establishment and implementation of arrangements for the assessment and management of persons other than those mentioned in paragraphs (a) to (d) of subsection (11).

(13) In subsection (7)(c)- "Health Board" means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29); and "Special Health Board" means a board so constituted under section 2(1)(b) of that Act.

(14) The reference in subsection (6)(c) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

## **11. Review of arrangements**

(1) The responsible authorities must keep the arrangements established by them under section 10 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.

(2) As soon as practicable after the end of each period of 12 months beginning with 1st. April, the responsible authorities must-

- (a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 10;
- (b) publish the report in the area of the local authority; and
- (c) submit the report to the community justice authority within the area of which the area of the local authority is comprised.

(3) The report must include-

- (a) details of the arrangements established by the responsible authorities; and
- (b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.

## **Appendix B**

### **Responsible Authorities**

City of Edinburgh Council

Midlothian Council

East Lothian Council

West Lothian Council

Scottish Borders Council

Lothian & Borders Police

Scottish Prison Service

NHS Lothian

NHS Borders

State Hospitals Board for Scotland