

March 2005



THE RESPONSIBILITIES OF THE JUDGE MEMBERS OF THE PROBATION BOARDS AND THEIR LIAISON FUNCTIONS WITH NOMS

1. The Criminal Justice and Court Services Act 2000 established Probation Boards with effect from 1 April 2001. Section 4(5) and Schedule 1 require the membership to include a Crown Court Judge appointed by the Lord Chancellor. It was envisaged in 2001 that the commitment of the members of the Board would be for ten meetings a year, each lasting about five hours. The Local Probation Boards (Miscellaneous Provisions) Regulations 2001 (SI 786) require a Board to meet at least four times a year and, as far as practicable, ten times a year.
2. It became apparent, soon after the appointments were made in April 2001, that several of the judges appointed were concerned about their role on the Boards. These concerns related to matters seen to be of an executive nature – such as employment, budgets and premises, and the time needed for attendance. The concerns were relayed to the then Lord Chancellor's Department, who accepted that the sitting time of judges should not be lost by unnecessary attendance.
3. Judges were advised to discuss their individual positions with the Chair of their Boards, and to agree how they could best serve on the Board. It was envisaged that guidance might be necessary.
4. It has become apparent, in the view of the majority of judges on Boards, and of the Boards themselves, that some general guidance would assist, given the circumstances prevailing in 2005.

(a) Membership of the board

5. The statutory position is clear: there is no distinction between a judge who is a member of the Board and other members. The judge shares with other members of the Board corporate responsibility for the decisions of the Board in the discharge of the functions under s.5 of the Act. The role is therefore not limited to liaison. Nor is it limited to a right to attend and speak on issues relating to the judiciary; this latter role might, in the light of events, probably have been more appropriate, but such a role is, unfortunately, not compatible with the statutory provisions.
6. As a member of the Board, it is good practice that the judge should attend as much of each meeting of the Board as sitting and other commitments permit, subject to the consideration set out in paragraph 9. It is not

sufficient, save in exceptional circumstances, that the judge's views are relayed to the Board by the Chief Officer or Chair.

7. Wherever possible, Boards should be asked to facilitate attendance by the judge for as much of the meetings as possible, and in particular for those items where the judge has a special expertise. It would be helpful if Boards, because of the pressure on judges' time, could take this pressure into account as a significant factor in the timing of Probation Board meetings. Judges should therefore advise the Board of times that are usually best – a Monday or Friday or later in the day. Listing Officers should be notified of the times of Board meetings as far in advance as possible; they should check regularly with judges about meeting dates and try and ensure that sitting commitments fit in as far as possible with meetings.
8. However, it is appreciated that it may not be possible for judges in some Areas to attend for a significant part of meetings, given the business of the court at which they sit and their primary duty to attend to that business. The Board should ensure therefore that the judge receives the papers for the meeting well in advance and if there are particular items on which he has a direct contribution to make, he should discuss with the Chairman the timing of that agenda item in an endeavour to ensure that he is present.

(b) Topics covered by the Board

9. Boards welcome the contribution of the judge to the full range of issues that a Board has to consider; the judge's presence is not limited to liaison – he or she is a full member of the Board. The extent of that contribution is a matter for each judge and Board. The judge will be able to make a significant contribution to topics such as the Area business plan, performance and court related issues, but there are other aspects of Board business which may be less directly related to the judge's key skills.
10. Boards also welcome the contribution the judge can make to identifying incipient problems and in ensuring that especial attention is paid to the matters in which the courts have a particular interest.
11. Judges are not expected to and should not advise Boards on legal matters relating to their business. They should not normally be involved in matters involving employment or trades union issues or grievance procedures. They must never play any part in any grievance or discipline procedure relating to a probation officer who has worked in the Crown Courts.
12. Codes of Conduct for Board Members or Standing Orders adopted by Boards must take into account the special position of judges; issues relating to these should be referred to Presiding Judges or the Senior Presiding Judge.

(c) The Area business plan

13. The Board each year has to consider the Area plan. This currently follows a national plan and sets out the priorities of the Probation Service as determined by the Secretary of State. The judge has a very important contribution to make in relation to the Area plan.
14. It is accepted that probation officers owe a duty to the court to comply with the requests of the court when sentencing. A court must act solely in accordance with the provisions of Acts of Parliament, the Guidelines laid down by the Sentencing Guidelines Council, advice from the Judicial Studies Board and decisions of the Court of Appeal. There should normally be no conflict of interest in a judge seeking to ensure that the Probation Service Area plan provides for this.
15. Normally a judge will also be able to make a useful contribution to the setting of targets and performance measures at a local level. The national plan should not set targets incompatible with the independent position of the court, and there should therefore be no conflict between the position of the judge and membership of the Board.
16. If resources available to the Board are insufficient, or there are difficulties arising out of the provision of resources to meet the requirements of Orders made under s.177 of the Criminal Justice Act 2003, then the judge will have a key role in advising the Board how the resources might best be used in a way that is compatible with the duties of the courts set out in paragraph 14. In essence the judge should have a pivotal role in advising the Board on how resources might best be used in both Magistrates' and Crown Courts.

(d) Conflicts of interest

17. A judge, like any other member of the Board, should declare any conflicts of interest. At present, conflicts do not normally arise between the constitutional position of a judge and his or her membership of the Board. If this position changes, further guidance will be given.
18. Nor is there any conflict of interest which would prevent a judge sitting on breach proceedings, contested or uncontested, involving the Probation Service; breach proceedings are not a matter for the Board.
19. Probation Boards should be aware that in some circumstances the naming of specific offenders in Board business (such as serious incident reports) may create a conflict of interest for the judge. This should be avoided.

(e) Visits to courts by the Board

20. From time to time, a Board may consider it helpful for the judge member to invite other members of the Board to sit in court and to meet other members of the judiciary.

21. Experience has also shown that it is extremely valuable for a judge to highlight to other members of the Board changes that are brought about by Acts of Parliament, when they relate to the work of the criminal courts or the Probation Service.

(f) Liaison with other judges and magistrates

22. The Probation Board judge is the channel for any liaison necessary between the Probation Service and Crown Court judges.
23. The Probation Board judge is uniquely placed to identify matters of common interest between the Board and all sentencers in the Area. The Probation Board Judge should act as a liaison link and a channel to represent those interests between the Magistrates and District Judges (Magistrates' Courts) and the Board.

(g) Liaison with NOMS

24. It is important that, as NOMS is developed, the judge member of the Probation Board should also assume direct responsibility for the overall liaison between the judiciary and NOMS at 42-Area level.
25. It is intended that the meetings of the NOMS liaison body in each of the 42 Areas would meet either half-yearly or quarterly, at a time to coincide with the Area Judicial Forum – either before or after the meeting – as the participants at the Area Judicial Forum would generally be those who would attend for liaison with NOMS. Further guidance in relation to those meetings will be issued.

(h) Advice

26. It may, from time to time, be helpful for a judge to participate in local training events for the Board, although such occasions should be infrequent. It would also be very useful for the judge members from each of the 42 Areas to meet from time to time, probably once every twelve to eighteen months, to discuss issues amongst themselves and with other interested bodies, including NOMS, the National Probation Directorate and the Probation Boards Association.
27. It may unfortunately be the case that a judge considers that there may be a conflict between the his or her position as a judge and the general policy of the Board, or a policy on some particular matter, or a policy of the Chief Officer. If this occurs, the judge should immediately seek the advice of the Presiding Judges or the Senior Presiding Judge.