



PC06/2009 – DETERMINING PRE-SENTENCE REPORT TYPE

IMPLEMENTATION DATE: 25 May 2009

EXPIRY DATE: May 2012

FOR ACTION: Chairs of Probation Boards/Trusts, Chief Officers/Executives, Secretaries of Probation Boards/Trusts

FOR INFORMATION: Board/Trust Treasurers, Improvement and Development Managers, Directors of Offender Management

CONTAINS MANDATORY ACTIONS

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ATTACHED: Annex A: Guidance on working with courts
 Annex B: Guidance issued by the Senior Presiding Judge
 Annex C: Letter from Lord Justice Leveson to Presiding Judges and Resident Judges
 Annex D: Equality Impact Assessment Form
 Annex E: Resource Impact Assessment Form

RELEVANT PREVIOUS PROBATION CIRCULARS:

Replaces PC12/2007

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PURPOSE

To provide chief officers and executives with revised instructions for determining which type of pre-sentence report to use that will ensure standard delivery reports (SDRs) are only used where it is not possible to provide sufficient information to meet the needs of the court within the fast delivery report (FDR) format.

To provide guidance for streamlining processes for court reports and court administration.

MANDATORY ACTIONS

A standard delivery report (SDR) must only be used if it is not possible to provide sufficient information to meet the sentencing intentions of the court within the fast delivery report (FDR) format. Directors of Offender Management will monitor compliance in their region with the

mandatory actions set out in this probation circular. Probation areas and trusts must demonstrate compliance with these actions when required to do so by the Directors of Offender Management.

This circular incorporates consultation comments from areas, courts and sentencer organisations, including the Magistrates Association. It is endorsed by Lord Justice Leveson, Senior Presiding Judge; the Justices' Clerks' Society and HM Courts Service.

SUMMARY

This circular introduces a revised decision process which will assist probation areas and trusts to determine the most suitable type of pre-sentence report: oral, fast delivery or standard delivery. It ensures that resources are targeted most effectively by promoting the use of FDRs where sufficient information can be made available to the court to enable appropriate sentencing, whilst maintaining public safety at the heart of the PSR preparation process. The guidance will lead to greater recognition that the FDR is the most suitable report in the majority of cases in Magistrates Court and provide for an increased usage in the Crown Court.

1. Introduction

1.1 This circular has two drivers:

a) Courts timeliness targets and Criminal Justice Simple Summary Speedy (CJSSS) principles have led to an increased emphasis on speedy justice which benefits courts, public and offenders, ensuring that supervision, treatment and interventions commence as soon as possible.

b) The specifications, benchmarking and costings report has recommended that an increased use of fast delivery reports (FDR) from around 40% to a minimum of 70% FDRs in Magistrates Court is achievable and will provide sufficient information to meet the needs of the court in many cases.

1.2 This circular provides for increased flexibility, in opting for an FDR format, whilst maintaining defensible decision making. The principle to be applied, (stated in the "Position statement on the work of the Probation Staff in Courts" NOMS 11.8.08) is as follows:

"The assumption should be that oral reports or the FDR process should be used for the preparation of a pre-sentence report (PSR), except in those cases where the Probation Service selects a standard delivery report (SDR) as the most appropriate type."

2. Implementation issues

Areas and trusts should take the following action:

2.1 Ensure timely completion of OASys in line with National Standards and that OASys is updated following a significant event.

2.2 Ensure effective targeting for offending behaviour programmes.

2.3 Ensure that the guidance issued by Lord Justice Leveson (See Annexes B and C) together with the contents of this circular are discussed with sentencers locally.

2.4 Ensure that probation and courts protocols provide for procedures to facilitate the smooth running of the provision of pre-sentence reports to inform sentencing, including the

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approach, endorsed by Lord Justice Leveson (Annex B) whereby "Probation staff use their knowledge to select the most appropriate format".

- 2.5 Areas and trusts should use national and local information to monitor the proportion of report types, check for appropriate targeting and impact on compliance; and identify improvement actions where necessary.
- 2.6 Areas and trusts should seek opportunities to negotiate leaner processes with local courts, particularly minimising administrative work in collecting court results. The potential benefits of the new Magistrates Court information system, Libra, are currently being explored, with a view to using it as the primary probation source of court results. Further information will be released when the work is completed.
- 2.7 The SBC report also proposed the establishment of functional mailboxes as a single point of contact for the distribution of information between different probation areas/trusts about court results. Work is being undertaken to establish mailboxes for this purpose and a further announcement will be made when that is complete.
- 2.8 Areas and trusts should also take forward the other proposals made in the SBC report as follows:
- Providing PSR appointments directly at court to avoid delay and unnecessary additional administration.
 - Deploying PSO staff in more active roles within the court setting rather than relying on them to collect results.
 - Clarifying the role distinctions between court based PSOs and administrative staff.
- 2.9 Information to support improvement can be accessed on EPIC "Knowledge Matters" eg Court Report Timeliness section and "CJSSS lessons learned and examples of good practice" (Service Delivery/Offender Management/Courts). Further work will be done to identify and disseminate effective practices.

3. Definitions of Report Types

- 3.1 In section 158 of the 2003 Act a PSR is defined as 'a report which with a view to assisting the court in determining the most suitable method of dealing with an offender is made or submitted by an appropriate officer and contains information ... presented in such a manner as may be prescribed by rules made by the Secretary of State'.
- 3.2 Oral, fast delivery and standard delivery reports are all pre-sentence reports, of equal standing, differentiated by their assessment basis and the amount of time required for preparation. FDRs and SDRs are written reports handed in to the court. Oral reports are presented in court, but should be based upon a written note of the content which is passed to the responsible offender manager to inform the assessment process.
- 3.3 Courts require sufficient information to reach a sentencing decision. It is for probation areas to exercise direction over the type of report. Court officers have a role to advise the courts as to the appropriate report type and should assume that an FDR is suitable in most circumstances, based upon the decision process below.

Question:	If "Yes":	If "No":
1. Is there enough information to enable the court to sentence now?	The court proceeds to sentence or the court officer presents an oral report to supplement court	Go to question 2

	information	
2. Would an FDR assessment secure sufficient information to facilitate informed sentencing?	The court officer requests a stand down of the case or adjournment for an FDR	The court officer requests adjournment for an SDR

An SDR must only be used if it is not possible to provide sufficient information to meet the sentencing intentions of the court within the FDR format.

4. When should an SDR be used?

- 4.1 The SDR should be reserved for the most serious and complex of cases, the majority of which will, by definition, be heard at the Crown Court. However, there will be a minority of cases, especially where the individuals have not been previously assessed by the probation service, heard at the Magistrates Court, which are suitable for an SDR.
- 4.2 Such cases will usually be identified by risk factors in the offence details which indicate the likelihood of serious harm ("Risk of Serious Harm can be defined as a risk which is life threatening and/or traumatic and from which recovery, whether physical or psychological can be expected to be difficult or impossible" OASys definition); or a history of serious harm, which indicates the need for a more complex assessment prior to sentence. These exceptions are described in the table below:

Core offender/offence profile indicating an SDR	More detailed indicators – if offender/offence meets core profile for an SDR
<i>Current violent/sexual offence which indicates likelihood of Risk of Serious Harm (RoSH) or offender history of serious harm requiring further assessment.</i>	<ul style="list-style-type: none"> • Offence definition as in OASys Risk of Serious Harm Screening R1.2. (and not a current case where the risk issues have already been assessed) • Known High/Very High/MAPPA categories 1,2,3 managed at levels 2,3
<i>Current domestic violence offence which indicates likelihood of RoSH or offender history of serious harm requiring further assessment.</i>	<ul style="list-style-type: none"> • Offence/history relates to serious domestic violence (eg. obsessive and/or threatening behaviour) • Multi-agency liaison is required.
<i>Safeguarding Children/Child Protection issues</i>	<ul style="list-style-type: none"> • Offence/history indicates current risk to children concerns • Multi-agency liaison is required - the initial enquiry should take place on the day.
<i>Serious Hate Based offence which indicates likelihood of RoSH or offender history of serious harm requiring further assessment.</i>	<p>Offence/history indicates serious hate based aggravating factors:</p> <ul style="list-style-type: none"> • racial/religious • sexuality/ disability/transgender
<i>PPO case</i>	<ul style="list-style-type: none"> • Offender is a new prolific or other priority offender • Evidence of a significant escalation of likelihood of reoffending (eg. repeat court appearances) • Multi-agency liaison is required
<i>Serious Mental Health issues</i>	<ul style="list-style-type: none"> • Offence/history indicates significant mental health issues and multi-agency liaison is required

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<i>Serious Vulnerability issues</i>	<ul style="list-style-type: none"> • Indication of personal vulnerability including emotional immaturity, which could significantly impact on compliance or lead to severe difficulty coping in custody
<i>Diversity needs</i>	<ul style="list-style-type: none"> • Interpreting services required and not available within FDR timescale (although timescale may be subject to individual area agreements with the court). • Other issue requiring full assessment such as complex nationality/immigration status.
<p>A full SDR is usually required for the interventions below unless arrangements are in place for specialist assessments to be completed within the timescale of the FDR:</p> <ul style="list-style-type: none"> • <i>CALM or ART; IDAP or CDVP; CSOGP; or intensive alternatives to custody (IAC)</i> • <i>Drug Rehabilitation Requirement (DRR)</i> • <i>Alcohol treatment Requirement (ATR)</i> 	

- 4.2 A risk of serious harm (RoSH) screening and offender group reconviction score (OGRS version 3) calculation are mandatory for all reports and must be based upon at least a full list of previous convictions and the Crown Prosecution Service (CPS) case information including witness statements. This process may indicate the need for a full OASys assessment owing to the seriousness of the offence(s); complexity of offender criminogenic issues; or the sentencing package indicated by the Court's assessment of seriousness and intended purpose(s) of sentencing ("Sentencing Information" form). Other assessment tools (e.g. Risk Matrix 2000 or SARA) may also be necessary depending on the offence.
- 4.3 It is noted that Areas may have local arrangements in place to undertake OASys RoSH analysis within FDR timescales where necessary, which have been negotiated with courts. This enables more serious cases to be dealt with by FDR.

5. When should an Oral Report be used?

- 5.1 Oral reports are appropriate where sentencing needs limited information regardless of whether the offence seriousness is low/medium or high. The assessment is based upon calculation of the OGRS score; risk of serious harm screening and existing information including previous convictions, CPS casefile and where available a recent PSR (less than 12 months). They are most suitable to provide brief information often regarding a specific sentence enquiry and/or updates against a current sentence plan. Where a more comprehensive assessment is necessary, an FDR or SDR will be appropriate.

Core offender/offence profile indicating an oral report	More detailed indicators – if offender/offence meets core profile for an oral report
<i>Currently supervised case</i>	<ul style="list-style-type: none"> • Information available • No major changes in circumstances or risk
<i>Serving prisoners likely to receive a concurrent sentence</i>	<ul style="list-style-type: none"> • Limited assessment required
<i>Enforcement cases with report</i>	<ul style="list-style-type: none"> • Update on specific enquiry
<i>Supervision requirement</i>	<ul style="list-style-type: none"> • Limited assessment required • Tier 1 or 2 case likely
<i>Standalone UPW up to 300 hours</i>	<ul style="list-style-type: none"> • Limited assessment required
<i>Supervision with Drink Impaired Drivers Programme</i>	<ul style="list-style-type: none"> • Targeting matrix applied • Limited assessment required
<i>Specified activity requirement</i>	<ul style="list-style-type: none"> • Limited assessment required

<i>Curfew requirement</i>	<ul style="list-style-type: none"> Limited assessment required
<i>Attendance Centre requirement</i>	<ul style="list-style-type: none"> Limited assessment required

6. When should a Fast Delivery Report be used?

6.1 Where there is sufficient information to ensure a defensible decision, FDRs should be used across sentencing thresholds including custody. They are normally prepared on the same day or within five days, but local negotiations may provide for a flexible timescale enabling more cases to come into scope, where the time required for the enquiry is the primary reason for a longer adjournment period.

6.2 Areas may have separate resources available to enable specialist assessment for specific sentencing options, such as Drug Rehabilitation Requirement (DRR) or Alcohol Treatment Requirement (ATR). Efforts should be made to engage treatment providers in making resources available, since speedy sentencing expedites the justice process and provides a quicker route into supervision and/or treatment.

6.3 An FDR should be based upon:

- Risk of Serious Harm (RoSH) screening
- Offender Group Reconviction Score (OGRS)
- Screening for complex offending related problems
- Checking known person status with Children’s Services (where possible)
- Screening for basic skills deficits
- Accredited Programme Targeting matrix where appropriate
- Offender’s self-assessment

Core offender/offence profile indicating a fast delivery report	More detailed indicators – if offender/offence meets core profile for a fast delivery report
<i>All less complex cases (not already known to Probation)</i>	<ul style="list-style-type: none"> • Full OASys RoSH analysis not required or can be undertaken where necessary. • Tiers 1/ 2 sentencing package
<i>Less serious violent, domestic violence or sexual offending</i>	<ul style="list-style-type: none"> • No indication of high risk of serious harm to public • The impact upon the victim (based upon witness statement) is unlikely to be significant and long term.
<i>Currently supervised case</i>	<ul style="list-style-type: none"> • Up to date information available from OM/OMU (see below – section 7) • OASys (within 4 months) or previous PSR (within 12 months) • No indication of escalation of risk of serious harm • Offence not high seriousness
<i>Currently supervised PPO</i>	<ul style="list-style-type: none"> • Up to date information available from OM/OMU (see below - 7)

	<ul style="list-style-type: none"> • OASys (within 4 months) or previous PSR (within 12 months) • No indication of escalation of likelihood of re-offending • No indication of escalation of risk of serious harm • Offence not high seriousness
<i>Less serious mental health or vulnerability issues</i>	<ul style="list-style-type: none"> • Information available • Unlikely to impact significantly upon ability to comply
<p><i>Assessment required for:</i></p> <p><i>a) Programme using FDR targeting matrix (Yes to 3 out of 4 questions and OGRS 50+ indicates General Offending Behaviour Programme (GOBP) eligibility)</i></p> <p><i>OR</i></p> <p><i>b) Other accredited programme if assessment available within timescale (which may be negotiated with the court)</i></p>	<p>a)</p> <ul style="list-style-type: none"> • GOBP (ETS/TF) • DIDs • Cognitive Skills Booster <ul style="list-style-type: none"> • DRR or ATR if treatment provider assessment available. • OSAP/LIAP • Other accredited programme
<i>Specified activities</i>	<ul style="list-style-type: none"> • Limited assessment information required
<i>Custody inevitable</i>	<ul style="list-style-type: none"> • Impact of custody assessment required

7. Current Case

- 7.1 If the offender is currently supervised the court officer should always try to consult with the offender manager. Where an offender manager knows in advance that re-offending has occurred, depending on the tier in which the offender is being managed, an OASys review should already have been done and the court officer briefed accordingly. As a minimum, the offender manager should ensure that the court officer is well briefed as to the offender's progress against the current sentence plan.
- 7.2 In view of the existing knowledge of the offender, the presumption should be that an FDR will provide sufficient information, unless issues arise which require comprehensive reassessment of risk of serious harm or complexity of sentence factors. Ideally, the offender manager should complete the FDR. However, areas should have arrangements in place to enable court officers to complete the report, having access to information and discussion with offender manager, line manager or member of the offender management unit with knowledge of the case.

8. OGRS – significant factor

- 8.1 Areas and trusts should maintain existing arrangements in court for the calculation of OGRS 3, which is a significant factor informing the report type decision.
- 8.2 An OGRS score of under 76 should be considered an indication that an FDR is appropriate unless there are counter indicators (for instance, risk of serious harm indicators). An OGRS score of 76 and over indicates a higher likelihood of reoffending given the offender

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characteristics during a two year period. However, a high score alone does not indicate the need for an SDR unless there are other indicative factors relating to risk of serious harm.

ANNEX A: Guidance on working with Courts

1. Informing the Court Officer's Judgement

- 1.1 Areas and trusts will have a range of staff and grades within courts, which are busy places and decisions often have to be taken quickly on the basis of 'best information available'. Court officers and offender managers may be either PO or PSO graded, although additional efficiencies may be gained by enabling suitably trained PSOs to undertake FDRs. The key is to ensure that staff are appropriately skilled, trained and competent to undertake the tasks required.
- 1.2 The PSR type decision process takes into account the offence(s), offender characteristics and circumstances, and ensures that the provision of information is sufficient to inform the court's sentencing intentions. The factors below will influence the decision but they are not an exhaustive list. Professional judgement is required to assess, on balance, which report type is most suitable.

Factor:	Description/Comment
<i>Court's assessment of seriousness</i>	An FDR may be appropriate across the sentencing thresholds (Community Order bands low, medium, high and the custody threshold). The Impact of Custody section will ensure that appropriate attention is given to the emotional and social impact.
<i>Court's intended purpose/s in sentencing</i>	Knowledge of the court's sentencing purpose will assist with determining report type. An FDR will be suitable where punishment or less complex rehabilitation/treatment are being considered. An SDR will be required where a highly intensive sentencing package is indicated, unless the area or trust has appropriate assessment arrangements in place.
<i>Advice from OM or Line Manager</i>	A current case may require an SDR, if there have been significant changes in risk/circumstances.
<i>Diversity Issues</i>	Staff should be proactive in identifying and responding to potential diversity issues. The assessment must be sufficient to ensure that appropriate consideration is given to issues relevant to the individual offender and offending circumstances.
<i>Risks/Complexities?</i>	The assessment process may reveal significant risks or complex needs requiring further investigation. The proposed sentence could be a multi-requirement order involving the participation of other agencies.
<i>Are risks being controlled/minimised?</i>	Where an existing risk management plan is achieving the aim of public protection, an FDR or oral report may be appropriate.
<i>Offender's progress under supervision</i>	Is progress being made against a current sentence plan? To what degree are the objectives of the plan and the purpose of the sentence being achieved?
<i>Court's information needs?</i>	If, for example, an offender's OGRS score is 76 or over but the court has indicated that the offence is in the low/medium community sentence band and is looking to sentence quickly, an oral report or FDR is likely to be suitable.

	Arrangements in some areas or trusts enable risk of serious harm analysis to be conducted speedily. An FDR may be suitable if the court's information needs can be met and the decision is defensible.
<i>Is new offence different in type/seriousness to current supervision?</i>	In cases where new offences are of a less serious type the court's information needs may be appropriately met by an FDR or oral report.
<i>Availability of recent OASys?</i>	If a full OASys has been completed/reviewed within four months, an oral report or FDR should usually be prepared, except where there is evidence of an increase in risk of serious harm or where the offender was previously assessed as high or very high risk of serious harm.
<i>Is a new OASys required?</i>	Court officers, (with the offender manager or line manager) should assess whether a new OASys is required to inform sentencing and if so normally advise the court to adjourn for an SDR (unless the area or trust has provision for OASys preparation within the FDR process). Where this is not required, the court should be advised as to oral or FDR suitability.
<i>Is the case out of Area or Trust?</i>	The same process should be applied. Where this leads to FDR suitability, this should be undertaken in court after liaison with the home offender manager; if more information is required, this will normally require an SDR adjournment for 15 days (10 if in custody).

2. Pre-hearing Preparation and Diversionary Work

- 2.1 Previous guidance has stressed the importance of regular liaison between strategic / operational managers, sentencers, court staff and defence solicitors and barristers; and a focus upon improvement initiatives often led by local criminal justice boards. This should continue as it is the primary means by which to ensure good service delivery to the courts and, without undermining sentencer independence, supports the most efficient use of probation resources. Areas and trusts should ensure that the protocol with courts includes procedures to facilitate the selection of appropriate report type and which support the framework outlined in this circular.
- 2.2 Court officers need to engage proactively with the court and agreed liaison structures should enable probation staff to use their knowledge to select the most appropriate report type and for the judiciary to agree that position. Pre-hearing preparation, including the use of LIBRA, can identify cases that may be sentenced with no or least necessary probation involvement; and the pre-identification of appropriate report type where the court requires information.
- 2.3 An effective approach is to arrange a pre-court meeting with courts staff to exchange information and to select the most appropriate report type for the case. Justices' clerks can, properly, advise on the likely starting point penalty and sentencing range but should not give a view as to the likely seriousness assessment as this is a matter for the magistrates or judge alone. Probation staff may present information regarding the appropriate report type to the court during the hearing of the case. This may require a brief stand down or adjournment to undertake initial enquiries. The focus should be on ensuring

that Probation staff play a full role in promoting speedy and appropriate sentencing.

- 2.4 Pre-hearing preparation should include information exchange between offender managers and court officers where offenders currently supervised appear before the courts. Offender managers should ensure that OASys can provide up to date information, including information relevant to the current case wherever possible.
- 2.5 Areas and trusts should also maximise opportunities for pre-sentence information exchange with partnership agencies eg Criminal Justice Intervention Teams (CJITs) where drug misusing offenders are appearing before the courts; and wherever possible for assessment to be available to support the report process. This will ensure that specialist information is available to report writers and the courts as speedily as possible.
- 2.6 Preparation work in breach cases ensures that court business is not delayed through unnecessary adjournments, consistent with the principles of CJSSS and joint end to end enforcement targets. Offender managers should ensure that sufficient information is available at the first hearing to enable the court to proceed to resolution, due process permitting. Within the guidelines issued in PC15/06 (Guidance On The Implementation Of Practice Recommendations Arising From An HMIP Independent Review Of A Serious Offence Case, February 2006, Annex A section 8.6), areas and trusts should avoid unnecessary adjournments by providing robust breach reports which include a response to supervision and clear proposal.. Further information can be provided by oral report or FDR where necessary.

3 Adjournment Statement

- 3.1 The Sentencing Guidelines Council advises courts to provide report writers with a provisional assessment of seriousness and intended purpose(s) of sentencing in the form of a written adjournment statement or Sentencing Information form (SGC CJA 2003 New Sentences 1.1.16). The statement is important in assisting with correct targeting of proposals and meeting the court's information needs. The NSNCG has endorsed the expectation that adjournment statements should be provided in all Magistrates' Court cases. For Crown Court cases any indication of seriousness and intended purpose of sentencing will be provided at the judge's discretion. Where no indication of seriousness is given the report writer will need to make a judgement about seriousness to inform the targeting of proposals. This should be based on the case circumstances and sentencing guidelines, with the rationale for the decision being articulated in the report.

4 Post Adjournment Review

- 4.1 Following local negotiations with sentencers, a number of areas and trusts have arrangements in place to review report type *post adjournment* where appropriate. Examples of post adjournment review include:
 - The court has adjourned for a report when no court officer was available to advise on report type
 - A case initially adjourned for an FDR reveals the need for more detailed enquiries
 - A case initially adjourned for an SDR is subsequently assessed as suitable for an FDR

- 4.2 Building on local liaison arrangements, probation staff and managers should adopt a proactive approach to reviewing report type post adjournment as this flexibility will help ensure that probation resources are used efficiently and public safety remains central to the assessment process. Areas and trusts should seek to involve courts in such decision making as far as reasonably practicable. Any such decision must take account of court report timeliness targets.
- 4.3 Where a report will not be available for the court hearing (e.g. the offender has failed to attend for interview), areas and trusts should inform the court at the earliest opportunity, ensuring that the reason for non-provision is made clear. This will enable both probation and courts to make the most effective use of resources.



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

Liaison between the Judiciary and Ministry of Justice: National Offender Management Service and Criminal Justice Group

**Guidance issued by the Senior Presiding Judge
June 2008**

Introduction and Principles

- 1. This document replaces the existing August 2005 guidance. It has been agreed on the basis that discussions with the judiciary are vitally important in ensuring available resources are used as effectively as possible. It does not constrain the overriding duty of the court to impose a just sentence in any particular case. These decisions are binding and the necessary resources have to be found to implement them. Rather, it sets out ways in which sentencers and representatives of the Ministry of Justice should liaise in order to ensure that the court is best assisted to do its work.**
2. This guidance has been produced following discussions with the Senior Presiding Judge, Senior District Judge, the National Bench Chairman's Forum, the Magistrates Association and the Justices' Clerks' Society. It is issued by the Senior Presiding Judge and is based on the following principles:
 - The sentencing task is an independent function of sentencers.
 - The provision of independent high quality advice on offenders through reports for sentencers is the function of the Probation Service.
 - Regular liaison at the local level is the priority, and is assisted by an agreed national framework within which it can take place. The function of the National Offender Management Service regional tier is to ensure that effective local liaison is taking place, and to be involved where relevant, including where agreed with sentencers, through regional forums. Local groups are able to refer matters that they think will have wider importance to the national group.
 - Effective liaison must be established with both the Crown Court and magistrates' courts.
 - Liaison is assisted by current information about the availability and effectiveness of various sentencing options, and performance data about the local probation service.
 - Probation service resources are a matter for the National Offender Management Service but the use by courts of these resources and particularly any variations [for example on previous years usage] should be regularly reported to courts.

- Pre Sentence Reports are provided within the timescales set by the courts, to meet the information requirements of sentencers. Probation staff use their knowledge to select the most appropriate format.
3. The Ministry of Justice (MoJ) was reorganised with effect from 1 April 2008. The National Offender Management Service (NOMS) was created on that date. It operates through a framework agreement agreed with the Ministry of Justice and is now primarily focussed on delivery. NOMS is responsible for ensuring delivery of prison and probation services and any other operational services funded by MoJ [e.g. prisoner escort services; electronic monitoring].
 4. At a national and regional level the next two years are seen as a transitional period where integration and efficiency of the management operation will be a priority. It is intended that these improvements will assist service delivery at the front line, including through the transfer of resources. The current structures including Regional Offender Managers (ROMs), and Prison Service Area Managers will be reviewed over that period, with a view to creating a Director of Offender Management in each of the English regions and Wales responsible for ensuring the delivery of all services.
 5. Two pilot areas have been identified, London and Wales, and in each of these areas a Director of Offender Management has been appointed. In the other eight areas, Prison Service Area Managers and ROMs are still in place but are working closely together. ROMs are responsible for Probation Areas and report through the Director of Probation to the Chief Operating Officer.
 6. Effective operational liaison with the Judiciary is a key priority for the new agency and local sentencers and the local Probation Service have a key role to play in making this effective. At national level, there is a group that brings together representatives of sentencers and their advisers, the Criminal Justice Group (responsible for criminal law and sentencing policy), and the National Offender Management Service. Links between national and local groups are important.

General Liaison

7. The National Offender Management Service requires the local probation service to liaise with sentencers to analyse and report how resources have been used in their area in a given period and to assist them in planning for the next cycle. They will be seeking feedback on the provision of services, including the quality and timeliness of delivery of the various elements of sentences.
8. Sentencers will need to discuss many of the same subjects and provide feedback on the extent to which the above has been achieved.
9. The National Offender Management Service will expect that opportunities be made available to sentencers to observe work or other activities which are being done locally.
10. These meetings will be assisted by the provision of information to sentencers. The type of information will include:

- Completion rates of community penalties;
- Data on enforcement of fines nationally and for each CJS area;
- Quarterly data on the use of tagging on bail for each CJS area.
- Data on custodial sentences in the magistrates' courts
- Programmes available locally as part of a community order – details of specific local programmes and any available information about compliance with local programmes;
- The enforcement of and compliance with community penalties locally (including tagging);
- Quarterly local reoffending reports;
- The availability of local provision for those on bail;
- Local information on compliance with bail conditions.

This information can also be provided, if required, outside of meetings.

Arrangement of meetings

11. In the Crown Court, the probation liaison judge (this will be the judge member of the Probation Board, until Probation Boards change to Trusts) will be responsible, in conjunction with the Resident Judge and Court Manager, for arranging the liaison between probation and other Circuit Judges. In London, special arrangements are to be made. These meetings should take place at least three times a year. In Probation Trusts the judge is not a full member of the Trust Board and acts in an advisory capacity.
12. In the magistrates' courts:
 - a. Each Area Judicial Forum should make it clear that the establishment of liaison meetings at Bench level (or combination of Benches if appropriate) is essential for the maintenance and development of effective relationships.
 - These will be chaired by the Chairman of the Bench or his/her nominee or a District Judge (Magistrates' Courts).
 - Those present should be representatives of Magistrates and of any District Judges (Magistrates' Courts), the Justices' Clerk (or the senior legal adviser to the Bench) and representatives of providers. Such meetings should take place at a court where the Bench sits about three times a year and be organised jointly by the Justices' Clerk and the probation service in the Area.
 - The Justices' Clerk will minute the meetings in conjunction with the probation service and circulate the minutes to all Magistrates and District Judges who sit on that Bench.
 - It will be for each Bench to decide how many should be present at the meeting.
 - b. Liaison meetings should also take place within the area of each AJF; such meetings, as is the case with the AJF meetings, should be arranged and facilitated through the Circuit Judicial Secretariat or Area Director, to take place before or after the meeting of the AJF. The probation liaison judge should be

present and should chair that meeting. Such meetings should take place at least three times a year.

National and Regional Meetings

13. In addition to the meetings referred to in paragraph six the Senior Presiding Judge will meet with the Director General of NOMS and the Director of Probation on a quarterly basis.
14. Directors of Offender Management (DOMs)/Regional Offender Managers (ROMs) will want to meet with local Resident Judges, the probation liaison judge and the Chairman of the AJF. The arrangements for these meetings shall be agreed locally with the help of the Area Director, but should be at least twice a year, once to plan future resources and once to review probation performance.
15. DOMs/ROMs will also need to talk to the following people from time to time: Resident Judges from each Crown Court; the Justices' Clerk for each relevant area; Chairs of Benches; and District Judges operating in the region. Depending on the size and organisation of the HMCS areas within the region, it might be possible to organise this in a single meeting, if not separate arrangements will need to be made.

Limits on discussion

16. The discussion at meetings between the judiciary and the Probation Service and the National Offender Management Service should not involve the discussion of individual sentencing decisions or levels or patterns or consistency of sentencing (including information provided by the SGC to sentencers for that purpose). These matters are for discussion by the judiciary as set out in paragraphs 22 to 25.

Resources

17. From time to time, it is possible that sentencers' demands for services or programmes will exceed the capacity which probation has been funded to deliver.
18. Where this problem is first identified by justices, the bench chairman will discuss the matter with the Chief Officer, having informed the probation liaison judge for the area. If the matter cannot be resolved this will be escalated as in paragraph 20 below.
19. Where it is the probation office that anticipates an issue as to the availability as to the availability of programmes or sentences which probation cannot provide because resources are insufficient, the DOM/ROM will at once inform the probation liaison judge for the Area.
20. The probation liaison judge will discuss the issue with the Resident Judge (if the issue affects the Crown Court) and the Bench Chairmen, District Judge (Magistrates' Courts), Magistrates and Justices' Clerk for the Area (if the issue affects the magistrates' courts). The DOM/ROM is responsible for resolving the issue.

21. If the issue is not resolved, the Senior Presiding Judge and the Director of Probation (representing NOMS) will be informed.

Information provided by the SGC

22. The SGC will publish from time to time data on sentencing patterns, both national and local.

23. The SGC intends to provide this to:

- i. All judges
- ii. All magistrates
- iii. All Justices' Clerks

24. Sentencers must act in accordance with the provisions of Acts of Parliament. They should also take into account the approach set out in the Guidelines laid down by the Sentencing Guidelines Council, decisions of the Court of Appeal or other courts binding on them and materials from the Judicial Studies Board.

25. It will be both useful and necessary for sentencers, at periodic intervals, to discuss issues relating to local sentencing amongst themselves, including issues as to consistency using information provided by the SGC:

a. In the Crown Court, this will generally be done:

- 1. At the annual circuit seminars organised by the Presiding Judges for the Judicial Studies Board.
- 2. If the Resident Judge or the probation liaison judge (judge member of the Probation Board until legislative change) think necessary at a particular Crown Court or group of Crown Courts within an Area.

b. In the magistrates' courts, this will be done:

- 1. At the Area Judicial Forum.
- 2. At training organised locally through the MATC, BTDC, Justices Clerks etc for the Judicial Studies Board.
- 3. At Bench meetings.
- 4. At seminars or meetings organised by the Judicial Studies Board and by the Senior District Judge (Magistrates' Courts).

26. This guidance will be reviewed in April 2010.



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

THE RT. HON. LORD JUSTICE LEVESON

To:
Presiding Judges
Resident Judges

19 January 2009

Probation Reports in the Crown Court

I recently spoke with Roger Hill, in his former capacity of Director of Probation, about how we might apply in the Crown Court some of the benefits derived from CJSSS in the Magistrates' Courts, in relation to Probation Reports.

As a result of that conversation, I have agreed some general principles which you may find helpful:

1. Use of Fast Delivery Reports: Fast Delivery Reports (FDRs) should be used as much as possible always, of course, subject to the discretion of the Judge, and having regard to the availability of probation staff at court. In particular oral reports or FDRs could be used for cases where the offender will inevitably receive a lengthy prison sentence (but not an indeterminate sentence) and the Judge considers there to be no benefit in adjourning for a Standard Delivery Report (SDR).

Probation Areas/Trusts have been advised to support this initiative, prior to the necessary changes in probation policy.

2. Use of Breach reports as sentencing documents: In some areas breach reports have been used to prove the breach as well as propose options for sentencing, should the offender plead guilty or be found guilty. This may be supplemented by a short oral report. This practice avoids further adjournments and probation areas/trusts will be encouraged to adopt this approach.
3. Re-use of existing reports – In many instances a previous report (prepared during the previous year) will have been completed on defendants appearing at Crown Court. This report could provide sufficient information for sentencing when supplemented by an oral update by probation staff at court on the day. This practice is to be encouraged, provided that the report, together with an oral update, can still provide a reasonable assessment for court sentencing purposes.

This letter is being copied to all Probation chief officers. I would, therefore, encourage you to discuss with them how these practices can best be implemented at a local level.

Lord Justice Leveson



Ministry of JUSTICE

National Offender
Management Service

ANNEX D

EQUALITY IMPACT ASSESSMENT FORM

Part 1 - INITIAL ASSESSMENT

1. Officer(s) & Unit responsible for completing the assessment:

Sarah Winwin Sein
Offender Management Team

2. Name of the policy, strategy, function or project:

PC06 2009 - Determining Pre-sentence Report Type

3. What is the main purpose or aims of the policy, strategy, function or project?

To provide Probation Areas with revised guidance for determining Pre-Sentence Report type, which enables Areas to increase the proportion of FDRs within Magistrates Courts to 70%.

4. Who will be the beneficiaries of the policy/strategy/function/project?

NOMS; Courts including sentencers; Probation Areas; and offenders

5. Has the policy/strategy/function or project been explained to those it might affect directly or indirectly?

Yes. Policy formulated as result of SBC recommendation which involved extensive investigation and discussion with Sentencers (including Magistrates Association) and Probation Areas. Discussion concerning increased use of FDRs has taken place between Lord Justice Leveson and Roger Hill, and a letter was issued (Annex C).

6. Have you consulted on this policy/strategy/function/ project?

Draft document has been widely circulated, despite the expedited timescale, inviting comment. Consultation has included NOMS departments; Sentencer organisations; ROMs/DOMs; Probation Areas; HMCS and HMIP.

7. Please complete the following table and give reasons/comments for where:
- (a) The policy/strategy/function/project could have a positive impact on any of the diverse groups or contributed to promoting equality of opportunity and improving relations between groups.
 - (b) The policy/strategy/function/project could have a negative impact on a diverse group, i.e. disadvantage them in any way.

Diverse Group	E.g. of positive impact	E.g. of negative impact	Reason/comments
Men	<p>The revised PSR process continues to focus on providing the level of risk and needs assessment appropriate to each case, within the most efficient format.</p> <p>Through making better use of resources offenders will have speedier access to PSR appointments and reduced remand times. This will also speed up commencement of supervision or treatment.</p>	<p>Areas must ensure that pre-sentence assessment allows for adequate exploration of offence related diversity issues. It is possible that the time available in which to prepare an FDR may not always facilitate this.</p> <p>Impact of custody assessments must address social and personal impact including vulnerability. Areas need to ensure that where this is part of an FDR assessment the quality of that assessment is not compromised.</p> <p>There is a concern that increased use of FDR may compromise the ability of Probation to influence the use of community orders through weakened targeting. This may disproportionately</p>	<p>The draft PC contains triggers to ensure that these issues are included in implementation and that an SDR should be used where necessary eg where enquiry not possible within FDR timescale.</p> <p>Training for report writers – Areas should maintain a defensible position in terms of quality of service delivery and duty of care to staff. Staff (who may be PO or PSO grades) preparing PSRs must be appropriately trained and supervised.</p> <p>Monitoring should include analysis of any pattern of negative impact on offender groups.</p>

		affect groups of offenders eg Black offenders.	
Women	As above. It should encourage courts to avoid more intensive assessments on apparent welfare grounds which could reduce the likelihood of women being vulnerable to “double jeopardy” principles.	As above.	As above
Asian or Asian British people	As above	As above	As above
Black or Black British people	As above	As above	As above
White people (including Irish people)	As above	As above	As above
Chinese people	As above	As above	As above
Any other racial/ ethnic group (please specify)	As above	As above	As above
Mixed Race people	As above	As above	As above
Disabled People (please give details as to which group)	As above	As above	As above
Gay, lesbian and bisexual people	As above	As above	As above
Transgender people	As above	As above	As above
Older people (50+)	As above	As above	As above

NOTE: Evidence must be listed in questions 5 – 10 to show why a decision was made to not go on to a full impact assessment

Date completed: 20th February 2009

Signed by Unit or Directorate manager: Paul Hindson

Date approved by Senior Management: 20 February 2009

A copy of this initial screening must be published along with the policy/ strategy/ function/ project outline. A signed copy must be retained by the Unit/ Department for audit purposes.

EQUALITY IMPACT ASSESSMENT FORM

Part 2 – Full Assessment

1. Officer(s) & Unit responsible for completing the assessment:

Sarah Winwin Sein
Offender Management Team

2. Name of policy/strategy/function/project:

PC06 2009 - Determining Pre-Sentence Report Type

3. In Part 1 (Initial Screening), which diverse group were identified as being disadvantaged by the policy/ strategy/ function/ project proposals?

- X Age
- X Disability
- X Faith/belief
- X Gender
- X Race
- X Sexual orientation
- X Gender identity

4. Summarise the negative impact for each group:

The policy has the potential to impact on all specific groups. See initial assessment.

The next two questions must be completed, but only after consultation and necessary, relevant research has been carried out to inform the response given.

5. What previous consultation has taken place or will take place with each diverse group affected either externally or internally?

(PLEASE NOTE: trades unions, staff associations and staff should be included in the consultation process)

The expedited timescale has limited consultation on the current draft policy document. A full impact assessment was undertaken on PC 12/07 which this document replaces. However, the SBC recommendations, upon which the policy is based, have been subject to extensive consultation. Further work needs to be done.

6. What relevant research material and qualitative and quantitative data was obtained? Please list:

SBC Programme – Probation - Final Report
Proportion of FDRs and SDRs prepared for courts in 2008
Caseload analysis (ODEAT)
Offender Management Inspection reports
Sentencer guidance issued
HMIP “Towards Race Equality” (2000); ” Towards Race Equality: Follow Up Inspection” Report (2004)

7. What information did the consultation provide about the negative impact of the policy/ strategy/function or project proposals?

Concern identified that the time available in which to prepare an FDR may not always allow for adequate exploration of offence related diversity issues.

8. What changes do you propose to make to the policy/strategy/function or project as a result of the research and/or consultation?

The document includes reference to diversity issues – see 4.2 Table; and 9.2 Table:
“Staff should be pro-active in identifying and responding to potential diversity issues. The assessment must be sufficient to ensure that appropriate consideration is given to issues relevant to the individual offender and offending circumstances.”
Areas should ensure that where diversity issues cannot be sufficiently assessed within an FDR format and/or timescale, an adjournment is sought to provide an SDR.

9. Will the planned changes to the policy/strategy/function or project: lower the negative impact? Or
- ensure that the negative impact is legal under anti-discriminatory law? (please note: if this answer is chosen, evidence must be provided as to the legal advice sought to support this view)
- X provides an opportunity to promote equality of opportunity and improves relations between diverse groups?

10. What equality monitoring/ evaluation/ review systems have been put in place to ensure regular checks are undertaken on the effects of the policy/ strategy/ function or project proposals? Give details:

National and Area action will be required.

a) NOMS OM Team will monitor national information relating to proportion of report types by Area and statistics published annually under section 95 of the Criminal Justice Act 1991. Qualitative information will be gained from HMIP Offender Management Inspection reports. Further work will be done to identify and disseminate effective practices.

b) The document includes monitoring of outcomes by Areas (section 2.5) as follows: "Areas should use national and local information to monitor the proportion of report types, check for appropriate targeting and impact on compliance; and identify improvement actions where necessary."

11. When will the policy/ strategy/ function or project proposals be reviewed?

Annual review following issue.

Date completed: 20th February 2009

Signed by Unit or Director Manager: Paul Hindson

Date approved by senior management: 20 February 2009

A copy of this full equality impact assessment must be published along with the policy/ strategy/ function/ project outline. A signed copy must be retained by the Unit / Department for audit purposes.

ENSURING ACCESS TO INFORMATION

How will you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

- Information used is available on EPIC and related websites.

How will you ensure that your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy/strategy/function/ project?

(N.B. You will need to include this in your action plan)

- NOMS OM Team will continue to engage directly with Areas' implementation via PrOMPT forum.
- Further work will be done by the OM Team to identify and disseminate effective practices.
- Areas will implement the PC in liaison with Sentencers and HMCS; (sections 2.3 and 2.4 apply) and ensure that Protocols include procedures to facilitate the smooth running of the provision of PSRs to inform sentencing.

How will you monitor the actions to ensure that the policy / strategy/ function or project delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

National and Area action will be required.

- NOMS OM Team will monitor national information relating to proportion of report types by Area and statistics published annually under section 95 of the Criminal Justice Act 1991. Qualitative information will be gained from HMIP Offender Management Inspection reports. Further work will be done to identify and disseminate effective practices.
- The document includes monitoring of outcomes by Areas (section 2.5) as follows: “Areas should use national and local information to monitor the proportion of report types, check for appropriate targeting and impact on compliance; and identify improvement actions where necessary.”

Probation Resource Impact Assessment Template**A. SCREENING DETAILS**

<p>1. Title of Probation Circular (PC) PC06 2009 - Determining Pre-Sentence Report Type</p>
<p>2. Notes on the reliability of the costing below and issues for the Probation Coherence Group to consider.</p>
<p>a) Probation budgets 2009-10 have already been reduced in line with SBC recommendations. This PC is required to enable Areas to increase the proportion of FDRs:SDRs completed from around 40:60 to 70:30 in Magistrates Courts. If not implemented these savings will not be realised which will place Areas in an untenable financial situation. This outcome would also have negative political implications for NOMS.</p>
<p>b) Court staff may be PO or PSO grades although the SBC report bases their findings on PO grades performing PSR tasks. There is no available information to gauge Area staff deployment to support costings estimated.</p>
<p>c) Pre-Sentence Reports will by their nature require differential amounts of time to complete due to the issues raised on a case by case basis. Any time estimate can only provide an "average".</p>
<p>d) Differential practices will result in variations in time/costs saved by the increased usage of FDRs. There will be "hidden" costs which are pushed into post-sentence processes. For instance, a case may be suitable for an FDR but require a full OASys analysis to ensure defensibility, which will usually be completed after commencement. Allowance has been built into SBC calculations.</p>

3. Method

Identification of Task	(a) Additional /Reduced Time to Perform Task (hours)	(b) Number of Times Task Performed Annually Nationally	(c) National Increase /Decrease in Hours (a x b = c)	(d) Hourly Cost (determin ed by grade of staff) £	(e) National Annual Total Cost/Saving (c x d = e) £
prepare approximately 30% more FDRs instead of SDRs as a proportion of cases heard in Magistrates Courts. (Based upon SBC figures.)	SBC Report estimates that FDR production takes 2 hours and a SDR takes 7 hours. Therefore, a saving of 5 hours was calculated for each report converted.	2007 Q2 – 2008 Q2 All PSRs (Mags) = 201,764 and of this total 112,567 were SDRs and 89,197 FDRs. To achieve 70% FDRs there would need to be approx. 141,235. Therefore, 52,038 current SDRs will be converted to FDRs.	5 hours X 52,000 SDRs = 260,000 Decrease in hours BUT excluding cases resulting in curfew or AC requirements at approx 50%. Total = 130,000	PO costs per hour = £31.97 130,000 X £32.00 = 4.16m	4.16m
Total for PC					