

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY & PRACTICE COMMITTEE
SENTENCING POLICY & PRACTICE COMMITTEE

Determining Pre-sentence Report Type

Response

Thank you for giving us the opportunity to comment on your draft circular – **Determining Pre-Sentence Report Type**

This has been considered by our Judicial Policy & Practice and Sentencing Policy & Practice Committees. There are mixed opinions about the Circular and the move towards greater use of Oral and FDRs. There is support for such reports becoming the norm for all types of sentence and SDRs only being required where necessary and under specific conditions. One member stated that his practical experience at a court where the use of FDRs and Oral reports has almost 80% level for a number of years suggested it did not hamper sentencing. If further specific information was required it was sought and usually provided even if it meant a 10 minute stand down.

An alternative view has been expressed that the new approach is resource-driven and that targets might drive the assessment on the type of report so that the decision is based on administrative desirability rather than judicial grounds. It is appreciated that the move to greater use of Oral and FDRs might be driven by the desire to improve efficiency in the courts but most delays are caused by procedures which have to be followed rather than by inefficiencies of the parties. The decision as to type of report must be down to the professional judgment of the report writer taking into account the remarks of the sentencer(s).

In general, therefore, we welcome the move towards speedier delivery of reports to inform the sentencing process. However, there are a number of points that should be made to assist the understanding of everyone involved in the process.

The decision on seriousness is a judicial one based upon Sentencing Guidelines that identify a range of factors which contribute to the decision on a proportionate and appropriate sentence. That decision is also guided by the Criminal Justice Act 2003 which identifies five purposes of sentencing and therefore cannot be limited to having *'public safety at the heart of the PSR preparation process.'*

Where the sentencing court has considered its preliminary assessment of an appropriate sentence it is required to complete a written Adjournment Statement (SGC CJA New Sentences 1.1.16). Paragraph 10.1 of the Circular is perfectly clear in the expectations of the Court Officer to enable the report suitability decision to be made. There is opportunity for further development work to ensure that the form is completed in sufficient detail to identify the careful assessment of seriousness and purpose/s of sentence so that the Court Officer is then able to select the appropriate type of report. This will ensure that cases unsuitable for an

FDR are screened out at that stage. The type of report should be determined by factors and information available on the day, by the requesting Bench, and it would be inappropriate to adopt a too formulaic approach. It is for the writer of a report to provide the necessary information and advice that matches the level of seriousness originally considered by the sentencer(s).

There is understandable concern about the impact of Oral and FDRs on breach rates. There is some evidence, in London at least, that there is a significantly higher rate of breach at the outset of a community sentence imposed after an on the day report than with those imposed following a Standard Delivery Report. If this were widespread, then the cost savings and expected efficiency obtained by increasing the number of Oral and FDRs would be more than offset by the imposition of more serious sentences as a result of breaches. Currently there is little flexibility for probation officers in returning offenders who breach to court and in how the court sentences them. We would welcome some research to collect data which provided information about any correlation between type of report and breaches of sentence.

The Circular identifies a number of processes to identify the correct level of report and in some cases the probation officers would have to work through four separate charts in order to identify what sort of report type should be used in individual cases. We wonder if their needs to be such detail when the Adjournment Statement informs the decision.

Our specific comments on the wording of the Circular are as follows:

2.4 We do not understand the phrase 'safe sentencing'. We believe this should be '*informed* sentencing'.

8.1 Last sentence. We feel this should be strengthened to make it clear that it is essential that competent and experienced staff undertake the right tasks.

8.2 This paragraph makes the point that diversity issues must be considered. It is also important that other factors which result in the offender not understanding the process and thus not being able to contribute towards the report are also recognised.

2 March 2009