

# THE MAGISTRATES' ASSOCIATION

## SENTENCING POLICY & PRACTICE COMMITTEE

### **NOMS Specification, Benchmarking and Costing Programme: Specification on 'Assessment and Reports Pre-Sentence'**

Thank you for giving the Magistrates' Association the opportunity to comment on the draft.

**1. Has the increased use of FDRs/Oral Reports had any impact on your organisation?**

We welcome an increase use of FDRs and oral reports as it speeds up the sentencing process.

In some areas, FDRs generally are delivered orally. Generalisation is risky, but on the whole these reports are requested when the case appears to be relatively straightforward from a sentencing point of view with no complications regarding the offence or the offender. Use of oral reports enables cases to be completed more swiftly. Courts must however be confident that the Probation Officer or PSO delivering the report will not hesitate to say if a case seems to be unsuitable for such a report.

**2. At present, SDRs are prepared exclusively by Probation Officers and FDRs by a mix of Probation Officers and PSOs, depending upon local delivery arrangements and the seriousness and complexity of the case. Some areas are moving towards PSOs preparing all reports. Do you have views on who should appropriately prepare reports?**

The important aspect of any report is that it should be delivered promptly (i.e. within agreed time-limits), cover those points which the court has identified as being relevant, and offer realistic sentencing options. It goes without saying that the report should also be clearly written and impartial. As long as reports fulfil all these criteria there is no reason why they should not be prepared by PSOs, but there needs to be robust quality control by the Probation Service.

**3. Consideration is being given to the inclusion in PSRs of a more explicit discussion of whether the resource which will be required to deliver a sentence is justified by the seriousness of the offence and/or the risk presented by the offender and represents public value. Would you approve or see any dangers in this approach?**

The strength of the legal system in England and Wales is that there is a clear distinction between the roles of the police, courts, and correctional services as supplied by NOMS. The extension of the use of out-of-court disposals by police and other groups has blurred the dividing line between sentencer and sentence manager and caused a considerable degree of public disquiet. The inclusion in PSRs of discussion as to whether the sentence that the court is considering presents value for

money is not appropriate as it would blur it even more. Sentencers, whether judges or magistrates, are trained in sentencing: Probation Officers are not. If courts are led to believe that the reports they receive are written with financial restraints in mind, rather than to assist them in sentencing appropriately, then they will not have confidence in those reports or the service that provides them.

Magistrates decisions of seriousness must be determined solely by assessments of culpability and harm as per CJA 2003. We have no objection to the (completely separate) provision of more general information on the average cost of given interventions/programmes and, more importantly, on 'what works'. We feel strongly that PSRs must not go into the sort of 'discussion' contemplated here.

- 4. All SDRs are prepared using the SDR template in OASys. Information is pulled through from the assessment to a report template which can be edited for presentation to the court. Do you think this has had any impact on the quality of reports?**

The current format of SDRs is extremely comprehensive and as such the quality of these reports is generally seen by sentencers as being high.

- 5. The FDR is also prepared using a template which can be hand written or typed. Do you have any comments on the suitability of this template?**

The FDR is fine - it is quick to read which is an advantage.

- 6. One proposal is that the SDR and FDR should be in a single expandable format so they had a uniform appearance. Would you find this helpful?**

We do not see the need to have uniformity of appearance.

### **Further comments**

On the detail, on the fifth (unnumbered) page, reference is made to recording the court's request for information. We feel that this should preferably be via a sentencing reasons form. On the ninth page, at serial 15, reference is made to '*the likely impact of community and custodial sentences*' - 'impact' in terms of what? On the eleventh page, serials 23 and 24 both bring in the resource issue; though we are glad to see reference in the right hand column to SGC guidelines.