

Use of the Protocol for “Pre-Sentence Report Before Plea”

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The Probation Institute has considered the new [Protocol](#) for the preparation by the Probation Service, of a pre-sentence report (PSR) before plea, for use in the Magistrates Court where there is an intention to plead guilty and the legal representative has requested the PSR before plea.

In completing this Position Paper we have held discussions with the Courts and Tribunal service, with MOJ and with Fellows and other members of the Probation institute.

We understand the pressures - volume of cases and long delays, which will have led to the agreement of this Protocol. However there has long been professional practice that pre-sentence reports should normally only be prepared when a defendant has either pleaded guilty or been found guilty by the relevant court. In our view this practice ensures legal justice for the defendant, avoids pressure to plead guilty, and also ensures that, as far as is possible, the report writer is making enquiries and proposals for sentencing based on the agreed view of the offence/s.

We regard the Protocol with caution therefore, and hope to contribute to ensuring that where the use of the Protocol is appropriate, the interests of justice and sound professional practice will always be carefully observed.

We believe that there are risks attached to preparing the PSR before a plea is formally taken in court, or the trial completed. These risks are:

- The defendant may be pleading guilty in order to receive a reduced sentence or to get out of custody after a long remand. If s/he would otherwise plead not guilty we suggest that this would be an injustice which should not be encouraged.
- Preparation of a PSR before the plea is taken, without accurate and up to date information about the charge/s that will be put, could undermine the overall outcomes of the case for all parties.
- Preparation of a PSR before plea does not allow the court to give an indication of its view of the seriousness of the offence/s, which can be a very important indicator.
- A report prepared under pressure without sufficient time for thorough enquiries would also undermine the potential outcomes. In this context we note particularly that the Protocol is intended for use in cases where a "PSR is likely to be deemed necessary and where there may be issues including domestic abuse, safeguarding, mental health, vulnerability, complexity, alcohol or drug use".
- If the defendant is on bail, it is possible that further offences may be committed before the case reaches a court hearing. This would potentially invalidate the contents of the Pre-Sentence Report.
- As the request for a PSR before plea under the protocol comes from the defence solicitor this may suggest that it is part of the defence itself. The PSR should, of course, be wholly independent and not part of the defence.

Here are some of the issues that we consider should be taken into account when using the Protocol for Pre-Sentence Report before Plea.

1. The request for the PSR before plea must come from the defence solicitor on the appropriate forms - attached to the Protocol. It is important to check that the defendant has fully consented to the preparation of a Pre-Sentence Report before the plea or finding of guilt is established. Do they fully understand the implications of this?
2. The protocol indicates that the PSR should arrive with the court at least 3 days before the scheduled hearing. It recognises that Probation may request that the date of the plea hearing is adjourned to allow time for the PSR to be fully prepared. It is essential that sufficient time is provided to enable the necessary inquiries/assessments and preparation of a report with researched sentencing options. We would suggest ten working days as a minimum adjournment period with fifteen days as the optimum. It might be more constructive and beneficial to ask the court for an adjournment post plea or conviction.
3. Accurate information about the charge (from police, witnesses) is essential. The report writer must obtain the Initial details of the Prosecution Case (IDPC) before commencing the preparation of the PSR. - If the defence solicitor requests a PSR before plea but the IDPC is not available, or indicates ambiguities concerning the plea, the request should not be accepted.
4. Has the charge changed since arrest? Why? Could it change again?
5. Has the individual considered pleading not guilty at any stage? If so, what has changed?
6. If you are preparing a report on an individual who believes that notwithstanding the plea, they are not guilty it is difficult to discuss culpability, remorse, causes of this offending. This may also affect the willingness of the individual to engage with rehabilitation, particularly on a community sentence.
7. The court should be made aware in the report that the PSR was prepared before either a plea or a finding of guilt were established.
8. The report will be stored on the court system but should not be accessed by the court until a plea of guilt has been established.
9. If at any stage in the preparation of the PSR it becomes apparent that the defendant's position regarding a plea is unclear the preparation of the report should be paused and reviewed by relevant parties. The defendant's legal representative should be informed.

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