



Pre-Sentence Report Before Plea

Introduction

The purpose of this document is to create a clear operational process, so that pre-sentence reports can be prepared in advance of the magistrates' court taking a plea at the first hearing. The signatories to the protocol have a responsibility to comply with it and the court and Crown Prosecution Service are encouraged to facilitate it.

Legal basis

- The parties have a duty to actively assist the court by early communication to establish the defendant's likely plea at the first available opportunity¹.
- The court has a duty to obtain a pre-sentence report before considering community or custodial sentences unless it decides such a report is unnecessary².
- The statutory definition of a pre-sentence report³ means a court may consider a pre-sentence report which it has not commissioned, to meet its duty.
- The process also preserves the taking of a guilty plea by the court, following a clear acknowledgement of guilt⁴.

Benefits

The process will mutually benefit the court, defendant and criminal justice partners as it will:

- enable the court, in suitable cases, to proceed efficiently and expeditiously to sentence following a guilty plea without adjourning or standing the case down for a pre-sentence report.
- enable more flexibility in scheduling the pre-sentence report interview, which takes place prior to the hearing. The defence may ask the legal adviser, where necessary, to vary the first hearing date to ensure there is sufficient time to produce the report
- reduce the time spent physically at court, when social distancing measures are in place, therefore protecting all parties' welfare during the pandemic.

Scope

A pre-sentence report applies where:

- it is anticipated that an adult defendant, charged to appear before a GAP or NGAP hearing on bail or postal requisition, will be sentenced in the magistrates' court; for offences triable either way see Sentencing Council [allocation guideline](#).
- a defendant is willing to indicate a guilty plea to all offences charged on the full prosecution basis.
- a defence legal representative, on behalf of their client, requests a PSR Before Plea.

This protocol does **NOT** apply to cases to be sent or committed for sentence to the Crown Court where [CrimPD 3A.9](#) and guidance within the Better Case Management handbook⁵ should continue to apply.

Process

¹ [CrimPR 3.3 \(2\)\(a\)](#)

² [Section 156\(3\) Criminal Justice Act 2003](#)

³ [Section 158 Criminal Justice Act 2003](#)

⁴ [CrimPR 24.7](#)

⁵ <https://www.judiciary.uk/publications/the-better-case-management-bcm-handbook/>

The process is set out in **Annex A**. The form used to request a Pre-Sentence Report Before Plea is attached at **Annex B** ("the applicable form").

Compliance


In the event of parties consistently failing to comply with their responsibilities under the protocol the matter is to be reported to the Local Criminal Justice Board.

Signatories



National Probation Service:

Sonia Flynn
Chief Probation Officer



Law Society:

Richard Atkinson & Ian Kelcey
Co-Chairs Criminal Law Committee

Approval by

Senior Presiding Judge of England and Wales

1st October 2020

Annex A

Process Before the Scheduled Hearing



Pre-Sentence Report
Before Plea Process N

The Defence Legal Representative shall:

- 1.1 apply for the IDPC and receive instructions from the defendant on likely plea, as soon as is reasonably practicable.
- 1.2 Where the plea is likely to be guilty confirm with the defendant whether the prosecution case is accepted in full.
- 1.3 Where the prosecution case is accepted in full, consider whether
 - 1.3.1 the offence on the full prosecution version is likely to pass the threshold for a community sentence;
 - 1.3.2 a pre-sentence report is likely to be necessary and if so ask the defendant if they would agree to comply with a PSR Before Plea, were this to be arranged.
- 1.4 Where the Defence Legal Representative is of the opinion to request a PSR before Plea, explain the PSR before Plea process to the defendant reminding them that arranging a PSR Before Plea provides no indication of any sentence and that
 - 1.4.1 all sentencing options remain open including an immediate sentence of imprisonment,
 - 1.4.2 the court will decide whether to consider the PSR before Plea, if one is available,
 - 1.4.3 the court may proceed to sentence without a pre-sentence report if the court considers it unnecessary.
- 1.5 Where the defendant agrees to the request for a PSR Before Plea complete the applicable form and send it electronically to the National Probation Service mailbox for the magistrates' court scheduled to hear the case, with an email including the URN and scheduled hearing date, entitled "PSR Before Plea", by the very latest, 3 working days before the scheduled hearing, copying in the court and CPS.

National Probation Service shall:

- 2.1 upon receiving an email entitled "PSR Before Plea" check without delay whether part 1 of the applicable form has been completed.

Incomplete Form

- 2.2 Where the form is incomplete,
 - 2.2.1 refuse the request for the PSR Before Plea
 - 2.2.2 complete part 2 of the form ticking "refused as form incomplete"

- 2.2.3 return the form to the defence legal representative and court with an email including the URN and hearing date, entitled “PSR before Plea – refused – form incomplete”

Completed Form

2.3 Where the applicable form has been properly completed

- 2.3.1 obtain the IDPC from Court Store
- 2.3.2 check whether any recent pre-sentence report exists
- 2.3.3 consider whether to produce a PSR Before Plea.

2.4 In deciding whether to produce a PSR Before Plea consider:

- 2.4.1 whether the circumstances of the offence on the full prosecution version are likely to merit at least a community order, considering sentencing guidelines;
- 2.4.2 whether a pre-sentence report is likely to be deemed necessary by the court. This includes in particular where there are issues involving domestic abuse, caring responsibilities, safeguarding concerns, mental health, vulnerability, complexity, alcohol or drugs.

2.5 Where a PSR Before Plea request is then refused

- 2.5.1 complete part 2 of the applicable form ticking “refused other reasons”
- 2.5.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and scheduled hearing date, entitled “PSR Before Plea refused”.

2.6 Where a PSR Before Plea request is then granted

- 2.6.1 complete part 2 ticking “granted”;
- 2.6.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and hearing date, entitled “PSR Before Plea request granted”;
- 2.6.3 proceed to produce the PSR Before Plea in the usual way and upload to Court Store before the hearing date.

Insufficient time to produce PSR

2.7 Where the National Probation Service would produce a PSR Before Plea, but there is insufficient time before the first hearing

- 2.7.1 complete part 2 of the form ticking “insufficient time”
- 2.7.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and scheduled hearing date, entitled “PSR Before Plea – insufficient time”, confirming the timescale in which a PSR Before Plea could be produced and requesting the court to reschedule the hearing date to a date no earlier than that timescale can be met.
- 2.7.3 proceed to produce the PSR Before Plea, upon being notified by the court that the hearing date has been varied to enable sufficient time to prepare the report.

The Magistrates’ court legal adviser shall:

2.1 upon a request from NPS to re-schedule the first hearing to enable the PSR before Plea to be produced,

- 2.1.1 promptly consider the request;

- 2.1.2 where the request is refused, promptly notify the defence legal representative, CPS and NPS of this;
- 2.1.3 where the request is granted, ensure in the normal manner that
 - 2.1.3.1 the defence legal representative, CPS and NPS are notified of the new hearing date;
 - 2.1.3.2 the defendant is notified of the new hearing date;
 - 2.1.3.3 the defendant's bail is extended where appropriate.

Process at the court hearing

Magistrates' Court Legal Adviser/Court Associate shall:

- 3.1 Where a PSR Before Plea has been produced, confirm at the pre-court meeting with the defence legal representative where available, the guilty plea indication.
- 3.2 Where a PSR Before Plea has been produced, highlight this to the district judge/magistrates' hearing the case in the pre-court briefing.

The Court shall:

- 4.1 take the plea for a summary only offence⁶ or proceed to indication of plea for a triable either way offence⁷,
- 4.2 proceed to consider sentence in accordance with the Criminal Procedure Rules 2015 and the Criminal Practice Direction 2015,
- 4.3 decide whether to "obtain and consider a pre-sentence report" prior to sentencing, by accessing the PSR Before Plea on Court Store.

Annex B

Pre-Sentence Before Plea Request Form



PSR Before Plea
Request Form Final .d

⁶ [Section 9\(1\) Magistrates' Courts Act 1980](#)

⁷ [Section 17A Magistrates' Courts Act 1980](#)