Justice Informed:
the pre-sentence report pilot trials in the Crown Court

Volume I

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SUMMARY

1. The Criminal Justice Act 1991 is to be implemented in October 1992. It replaces social inquiry reports with pre-sentence reports (PSRs) and mandates their review by judges before they impose custody in summary or "either way" cases, or before they impose significant community sentences in any type of case (summary, "either way", or indictable only). Pre-sentence reports are preferred but not mandatory before custody may be imposed in indictable only cases.

2. To identify organisational implications of the PSR provisions, pilot trials were conducted between May and December 1991 in five Crown Court Centres (Birmingham, Bristol, Lincoln, Newcastle-upon-Tyne, and Southwark). In the pilot trials, participants from all parts of the criminal justice system (judges, recorders, legal advisers, prosecutors, probation officers, court clerks, prison officers, and police) acted as if the PSR provisions were effective, and PSRs were ordered, prepared, and delivered as will be required from October 1992.

3. The pilot scheme was overseen by a National Steering Committee including representatives of affected agencies and professions (Home Office, Lord Chancellor's Department, Crown Prosecution Service, Bar, Law Society, Probation Service, Association of Chief Officers of Probation, and others). Individual pilot trials were supervised by Local Steering Committees in each of the five areas. The membership of the local committees mirrored that of the national committee, with local representatives of affected agencies and professions participating. An American criminal lawyer from the Vera Institute of Justice in New York was retained to serve as national coordinator of the project.

4. The pilot trials were monitored and evaluated by the Research and Planning Unit of the Home Office, by experts in other Government departments, by private associations, and by outside academics. The monitors' reports are set out in the appendices which are Volume Two.

5. The pilot trials were successful in identifying significant organisational implications of the PSR provisions. While some problems were encountered, and others are projected, the pilots generated numerous solutions and innovations as well. Many of the solutions and innovations involve multi-agency and cross-professional cooperation, and success in the pilots was only possible because of the multi-agency and cross-professional make-up of the supervising National and Local Steering Committees. The significant findings and recommendations of the project are set out in Section III of the report, and they are summarised as follows:

6. More than 20,000 additional reports will be required annually for all courts (the Crown Court and magistrates' courts). This reflects a ten percent or greater increase in the total number of reports prepared currently.

7. The impact of the PSR provisions will be greatest in the Crown Court, and most of the additional reports (about 19,000) will be required there. There probably will be a thirty percent increase in demand for reports in the Crown Court.

8. With respect to approximately thirty percent of all Crown Court reports, adjournment will be necessary to gain their completion. About fifteen percent of Crown Court reports currently are prepared on adjournment, so the number of adjournments will rise considerably as a result of this legislation. The increase in sentencing adjournments is directly attributable to the provision making PSRs mandatory. A report must be prepared even though a not guilty plea or a late change of plea may have prevented pretrial preparation of a report. While previously reports were often dispensed with when a case arrived at court without a report on the file, such waiver will be impossible from October 1992 in cases triable summarily or "either way" where custody is being considered, and in all cases (summary, "either way", and indictable only) where a significant community sentence is under consideration.

9. To efficiently meet the increased demand for reports on adjournment, court-based capability to prepare reports quickly should be established at each Crown Court Centre.

10. Communication between the Judiciary and the Probation Service must be improved on two critical levels if reports are to be prepared efficiently and to a good standard once they are mandatory. First, probation management and the Resident Judge at each Crown Court Centre should agree a protocol pursuant to which the Probation Service will provide PSRs for the court. That protocol should specify procedures for sentencers and probation officers to follow once it is apparent an adjourned report may be required in a case. The procedures agreed should take into account the genuine needs of the court, the offender, and others in the process, but also the needs and capabilities of the area probation service. Secondly, it is critically important that communication between sentencers and probation officers be good "on the ground" in the particular case. When a report is sought on adjournment, the sentencer should briefly stand down and permit a court-based probation officer quickly to assess the case for its complexity. Only after the probation officer has reported back to the sentencer with respect to the time required to prepare a report to good standard should the sentencer set the report deadline and sentencing date.

11. As the PSR provisions bring significant change for reports in both contents and method of production, it is essential that Probation Service quality control procedures be operational and fully effective.

12. Local "Pre-Sentence Report Implementation Committees", with membership mirroring that of the Local Steering Committees created for the pilots, should be established. They should oversee implementation of the PSR provisions at each Crown Court Centre, and serve as a forum for inter-agency dispute resolution and multi-agency, cross-professional problem solving.

13. The Crown Prosecution Service should consistently provide offence information to the Probation Service to facilitate the efficient production of good reports. Provision of such information occurred in all cases during the pilots and was universally found to improve the quality of reports. An extremely positive result of the pilot trials is that the CPS is committed in principle to the provision of information to the Probation Service, and is now working on the most appropriate arrangements for that provision.

14. The Prison Service must ensure that outside probation officers can gain immediate access to offenders remanded in custody on whom short-notice reports have been ordered. This should be accomplished through issuance of a written policy by the Governor of each remand facility describing the method by which probation officers are to be accommodated in such circumstances.

15. Court listing officers should avoid scheduling "not guilty" plea cases for the final days of part-time recorders' sitting periods. Such a change in listing procedure would permit members of the part-time Judiciary to impose sentence in those cases where they heard the facts. Even when an adjournment is required for several days to permit preparation of a report, under the proposed listing procedure the part-time sentencer who heard the facts could nevertheless impose sentence, and do so <u>without</u> needing to return to the court after expiration of his or her sitting period.

16. Uniform national sentencing days and times should be established to mitigate the impact of a substantial increase in the number of sentencing adjournments in the Crown Court. The Bar Council endorse this recommendation in Appendix F.

17. The Judiciary, the Lord Chancellor's Department and the legal profession should use more aggressive methods to reduce the number of "late changes of plea" and "cracked trials". Specific ideas are proposed in Appendix H.

18. There should be better notification of guilty pleas from solicitors. This could be achieved through a requirement that solicitors complete and submit a form approximately two weeks before a firm trial date, recording their clients' intentions with respect to plea as of that late date.

19. The pilot trials could not and did not discover all of the organisational issues that probably will be presented upon national implementation of the PSR provisions. The National Steering Committee should be retained for possible future service should significant problems develop upon national implementation.

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ACKNOWLEDGEMENTS

Many people contributed to the successful operation of the Pre-Sentence Report Pilot Trials in the Crown Court, and to the completion of this report. As this was a multi-agency, multi-professional undertaking, it would take pages to list all to whom I am grateful. But I am compelled to express particular thanks to certain individuals without whose assistance the exercise could not have succeeded.

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J.K.B., London, February 1992.

SECTION I

INTRODUCTION

A. The Criminal Justice Act 1991

On 25th July 1991, the Criminal Justice Act 1991 received the Royal Assent. The Act creates a new framework for sentencing based on the seriousness of the offence. Custody is to be reserved for more serious offenses, with less serious matters being punished in the community. To ensure that sentencing decisions are well-informed, Part I of the Act requires judges to call for and review certain reports, before passing sentence, in a wide range of criminal cases. The new reports are called "pre-sentence reports", and as has been true with current "social inquiry reports", generally they will be prepared by the Probation Service. Sentencers are required to order the new pre-sentence reports ("PSRs") in cases triable summarily or "either way" where consideration is being given to a custodial sentence, and in all cases (summary, "either way", and indictable only) where they are thinking of imposing a significant community sentence. The PSR provisions will be implemented in October, 1992. (Relevant portions of the Criminal Justice Act 1991 are set out in Annex 1 to this section.)

The new provisions making pre-sentence reports mandatory in such a wide range of criminal cases represent a significant change from current procedure where judicial use of reports in sentencing, while common, is generally optional and left to the sentencer's discretion. Historical data gathered in five sample areas during this study indicate that optional social inquiry reports previously have been prepared on roughly 70% of convicted offenders in the Crown Courts. The vast majority of these reports -- over 80% -- have been prepared "pretrial": before a trial or plea proceeding has occurred in the Crown Court. Relatively few social inquiry reports have been ordered by Crown Court sentencers in cases where reports were not already in the file as of the trial/plea hearing date. Apparently in order to avoid the delay, inconvenience and general disruption associated with adjournment of sentencing proceedings, judges have tended to dispense with a report if the document was not in hand on the trial/plea date, except in unusual cases.

In recent years, and particularly since 1986, the Probation Service in England and Wales has not generally prepared social inquiry reports "pretrial" in those cases where before the trial date the defendant was reporting an intention to plead not guilty. In such cases files routinely have arrived in sentencers' hands containing no social inquiry report. Thus, typical cases that have been sentenced without reports are those where defendants proceeded to contested trials pleading not guilty, but were found guilty, or those where defendants first announced pleas of guilty late in the process (usually on the

day scheduled for trial -- so called "cracked trials"). In a Home Office study titled "Sentencing in the Crown Court", David Moxon reported that higher percentages of black defendants were being sentenced to custody without reports, and this could partly be attributed to the relative frequency with which black defendants either proceeded to contested trials or only announced guilty pleas at the last minute.

In a small portion of Crown Court cases arriving at court for plea proceedings without a report on the file, a guilty plea has been of record for three or more weeks before the trial date. Many of these cases, also, have been sentenced without a report.

Clearly, it is a central policy objective of the pre-sentence report provisions in the 1991 Act to ensure that judges are uniformly and consistently well-informed when passing sentence in moderately serious and serious cases, regardless of the procedure the case followed before conviction and regardless of whether there was an opportunity to prepare a report pretrial. In many instances when previously reports could and probably would have been dispensed with, under the new Act they will be mandatory.

It is somewhat paradoxical that the new Act does not require sentencers to obtain pre-sentence reports in cases where very serious, "indictable-only" offences are charged and where custody is apparently inevitable. The tone of the Act is such that reports remain preferable in such circumstances, but are not mandatory if the court is of the opinion that a report is unnecessary in the particular circumstances of an "indictable only" case. This exception may find its origin in a British tendency to regard sentencing reports as only relevant to the question of whether custody should or should not be imposed, and not relevant to other considerations such as <u>how lengthy</u> a term should be imposed, or how the defendant should be supervised upon release from custody.

B. <u>Anticipated impact of pre-sentence report legislation - need for pilot trials established</u>

In 1990 and early 1991, Home Office officials began to plan for implementation of the pre-sentence report provisions. It soon became obvious that significant, pre-implementation piloting was in order, to discover the broad organisational implications of the PSR provisions for the wider criminal justice system. The Home Office was also interested in learning more about additional financial costs the provisions might bring to the process.

In early days many planners in Government attempted to forecast the impact of the PSR provisions, but precise predictions and the development of solutions were difficult:

-- The Home Office projected that the Probation Service would need to prepare 20,000 additional reports annually. While they budgeted for this likelihood, they were not completely confident

of their projection, and they were uncertain as to whether "per-report" costs would change with the new law;

-- The Home Office expected that it would be necessary for area probation service management to redesign procedures for serving Crown Courts in the era of mandatory reports, but they were reluctant to give guidance without first gaining practical experience with the new provisions;

-- The Lord Chancellor's Department and courts administrators predicted a sizeable increase in the number of adjourned sentencing proceedings once reports became mandatory. They noted that reports would be required before sentencing could occur in the many "late change of plea", "contested trial", and other cases where under current practice reports were usually not obtained. Substantial additional demands on limited court resources were forecast. For judges and recorders, additional scheduling difficulties were predicted. Court officials were concerned about the length of adjournments. In advance of practical experience with the Act, however, officials could not say with certainty what the scope of these difficulties might be;

-- The Home Office suggested that the report preparation process could not be efficient and streamlined, and thus adjournments for reports could not be kept short, unless the Crown Prosecution Service would agree to supply offence and "previous convictions" information to the Probation Service at an early stage in all Crown Court cases. The CPS were willing to consider the request but reluctant to commit to a national program until they knew what it would cost their service in money and personnel. (This issue was and remains relevant for other agencies with prosecutorial authority, such as Customs and Excise, Inland Revenue and the Serious Fraud Office);

-- Planners saw that the police would need to provide "previous convictions" information to the Crown Prosecution Service, for relay to the Probation Service, rapidly and efficiently. How they might do this was unclear;

-- The Home Office projected that some adjournments for report preparation would necessarily be lengthy unless the Prison Service could provide probation officers with rapid access to remanded offenders as to whom "pretrial" reports had not been prepared. The Prison Service was unclear on the extent to which they could meet this need of the Probation Service, and they were reluctant to make promises in advance with resource and organisational implications unknown;

-- Planners asked whether members of the Bar could be persuaded to participate more vigorously in plea review hearings, in advance of trial dates, so as to reduce the number of late changes of plea, and increase the percentage of cases in which it was possible for the Probation Service to prepare a report "pretrial" (again, to reduce the number of cases in which an adjournment for a report would be required). The extent to which the Bar would embrace this strategy and other "scheduling improvement" initiatives was unknown;

-- Solicitors asked about the probable length of sentencing adjournments for reports, as they were concerned that their clients would be spending additional time in custody not knowing their fate. No planner could confidently predict the likely, "typical" length of such adjournments.

A Criminal Justice Conference was held at Bramshill Police College in September 1990, and the organisational implication of the Act, including the PSR provisions, were discussed. There emerged from that meeting of experts a consensus that some piloting of the PSR provisions, in advance of national implementation, was essential if officials and professionals in the system were to implement the new law competently in 1992. After that conference, and in consultation with other Departments of the Government and the Association of Chief Officers of Probation, the Home Office began the design of the pilot scheme reported on here.

C. Design of the pilot scheme

In setting up the pilot trials, the Home Office made it clear that they wished to focus on organisational and resource issues. The organisational issues were of greatest importance as they were thought to be inter-locking in nature, involving the legal profession, the Judiciary, the Probation Service, the Lord Chancellor's Department, the Crown Prosecution Service, the Police, and the Prison Service. To the extent significant organisational problems would be uncovered by the pilots, solutions would need to be worked out through potentially time-consuming negotiation and experimentation among and by these distinct entities. If there was to be sufficient time to consider the lessons of the pilots and to sort out the organisational issues before national implementation of the Act, the piloting needed to begin quickly.

Other concerns, particularly relating to the content of the new pre-sentence reports, were thought important but susceptible to clarification through measures other than the pilot trials. Thus, while the term "pre-sentence report" is used repeatedly to describe the reports prepared during the pilot trials, and indeed in the name of the project, the reports actually prepared during the pilot trials were traditional social inquiry reports. Questions about how reports should address the "seriousness" of offences and other sensitive issues about the content of reports were not dealt with in this project.

Similarly, these pilots were not designed to measure or assess the impact of the new legislation, including the pre-sentence report provisions, on actual sentencing decisions of judges.

The narrow remit of these pilots was to identify within the criminal justice system the organisational changes and difficulties arising from application of new law making reports mandatory across a wide range of cases.

In order to achieve the project's objective, all those participating in the pilot trials -- probation officers, courts administrators/clerks, barristers, solicitors, prosecutors, and, most of all, recorders and judges -- would need to pretend that the new provisions were already in effect. Legal advisors saw no difficulty here, as participants would be pretending that certain procedures were required when in fact they were merely optional under current law. No current law would be violated by operating as though the new, more specific rules were effective.

With the objectives of the undertaking made clear, the Home Office gained clearance and agreement from the Senior Judiciary to operate the pilots. In early 1991 the Home Office circulated a paper explaining its intentions and aspirations with respect to the scheme (set out in Annex 2 to this Section). The Probation Service Division invited submissions from area probation services interested in operating PSR Crown Court pilot schemes. Five pilot plans were submitted and accepted, and pilot schemes were then operated between May and December 1991, in five Crown Court Centres:

1. Birmingham Crown Court, at the request of the West Midlands Probation Service;

2. Bristol Crown Court, at the request of the Avon Probation Service;

3. Lincoln Crown Court, at the request of the Lincolnshire Probation Service;

4. Newcastle Crown Court, at the request of the Northumbria Probation Service; and

5. Southwark Crown Court, at the request of the Inner London Probation Service.

A National Steering Committee was organised, to oversee and manage the pilot trials at the national level. Chaired by a senior Home Office official, it included representatives from the Lord Chancellor's Department, the Crown Prosecution Service, the five area probation services participating in the pilot schemes, the Bar Council, the Law Society, the Association of Chief Officers of Probation, the police, the Association of Chief Police Officers, and Customs and Excise. A representative of Lord Justice Watkins, the Deputy Chief Justice, was also a member. In addition to members from the Criminal and Constitutional Department and its Probation Service Division, the Home Office also participated through its Research and Planning Unit, its Management Division, and through Her Majesty's Inspectorate of Probation.

The explicit terms of reference for the National Steering Committee were:

1. to oversee the setting up and running of the pilot trials;

2. to promote co-operation between the different agencies involved so as to facilitate the effective running of the pilot trials;

3. to oversee the monitoring and evaluation so as to ensure that the objectives of the pilot trials were achieved; and

4. to produce a final report of the pilot trials.

The National Steering Committee met at six week intervals during operation of the pilots, and the meetings served as a valuable forum for inter-agency and inter-professional discussion and problem solving. Sensible co-ordination of the pilot trials was possible due to the efforts of the members. Senior officials responsible for implementation of the PSR provisions were able to decide questions arising for their departments after first being informed of potential consequences for others.

Local steering committees in each of the five pilot areas were also organised, to manage the actual operation of each pilot. In many ways the membership of each local steering committee mirrored that of the National Steering Committee, with appropriate local officials and professionals in attendance. Each local committee was chaired by the area's Courts Administrator. Most local steering committees met monthly. The terms of reference for the local steering committees were similar to those for the National Committee, although the work was on a less theoretical and more applied basis.

Each local steering committee agreed to prepare a report of its experience with the pilot scheme, and those reports appear as Section IV of this report. There was general agreement that these local committees were extremely valuable and the key to successful operation of the pilot trials.

As the pilot scheme was conceived, Home Office officials and the Association of Chief Officers of Probation decided that an independent, outside expert should be retained to serve as National Co-ordinator of the undertaking. Unbiased, central co-ordination of the scheme was thought to be essential to its success. Because of the extensive dealings with the Judiciary and the legal profession that were expected, a lawyer was sought for the position. The Vera Institute of Justice in the United States was approached by the Home Office and they agreed to provide an American criminal lawyer on secondment, to serve in this capacity.

The Vera Institute of Justice is an organisation based in New York that works in partnership with Government to design and pilot reforms in criminal justice. Vera lawyers have previously worked in England and Wales, most recently designing model bail information schemes for the Probation Service and the Crown Prosecution Service, and designing and piloting the Public Interest Case Assessment (PICA) programme with the Crown Prosecution Service and the Inner London Probation Service. The Vera lawyer selected to co-ordinate the PSR

project (Jim Bredar) had practised criminal law in the U.S. for eight years, as both a prosecutor and as defence counsel.

The pilot trials were successfully launched in all five areas between 10 May and 3 July 1991.

Although the Resident Judges of the five Crown Court Centres at which the pilot trials took place were not members of either the National Steering Committee or the local steering committees, they met the National Co-ordinator both individually and as a group during the course of the pilot trials.

In October, 1991, as the scheme was nearing its conclusion, a small study of the quality of reports produced during the pilots was commissioned by the Home Office. While recognising that under the new Act reports would eventually have somewhat different contents than at present, the Home Office was anxious to learn more about current quality and utility of social inquiry reports, and, specifically, whether new practical measures tried during the pilots would affect the contents, quality and utility of the documents. The quality study is described in slightly more detail in the next sub-section.

D. Contents of this report

After this introductory section, four additional sections are set out. In Section II, the National Co-ordinator reports his assessment of the key organisational implications of the new provisions mandating the preparation of pre-sentence reports. The section is not a summary of the pilot experience in each area, and it does not attempt to recount all that was learned during operation of the pilots. The local steering committee reports which follow in Section IV provide this "in-depth" information. Rather, the National Co-ordinator addresses the most important organisational topics raised by the scheme nationally.

In Section III, the National Co-ordinator sets out his Findings and Recommendations. This short section is a summary of the most important points uncovered by the pilot scheme.

The local reports, set out in Section IV, detail the experience gained "on the ground" when local agencies, professionals, and Crown Court judges for six months acted as though the new PSR provisions were effective. The reports contain a wealth of information gathered from across the criminal justice system which will be of great value to anyone attempting to plan, at either the national or local level, for implementation of the new PSR provisions.

Section V (set out in Volume Two) contains the appendices to the report. The pilot scheme had a significant monitoring and evaluation component, and the results are reported here. The Home Office Research and Planning Unit conducted monitoring directed at ascertaining (and projecting) the number of additional reports required, the timescale on which they must be

prepared, and at measuring compliance with the new provisions during the pilots (Appendix A). The Home Office Management Division conducted a study which focused on additional costs for the Probation Service generated by the new provisions (Appendix B). The Lord Chancellor's Department conducted monitoring designed to reveal any new burdens placed on the courts as a result of the PSR provisions (Appendix C). The Crown Prosecution Service gathered statistics so as to reveal the cost of providing offence information to the Probation Service in all Crown Court cases, and to disclose the cost to the CPS of Crown Counsel attending additional (adjourned) sentencing hearings made necessary by the requirement that reports be prepared in most Crown Court cases. The CPS have submitted a brief statement summarizing their views (Appendix D).

In addition to monitoring reports, the appendices also include important statements from key organisations and individuals outside of Government pertaining to the PSR pilots. In particular, the Association of Chief Officers of Probation, an organisation that greatly assisted the operation of the pilots, offer their view and findings (Appendix E). Next, Peter Birts, QC, the representative of the Bar Council to the National Steering Committee, reports on the experience from the perspective of the Bar (Appendix F). Mr Birts, also an assistant recorder, has submitted a second view from the perspective of a sentencer (Appendix G).

Also set out in an appendix is the submission of the National Co-ordinator to the Royal Commission on Criminal Justice suggesting procedures to minimise the number of "cracked trials" in England and Wales (Appendix H). This issue was continually encountered during operation of the pilots, and the problem has direct implications for planners attempting to design an implementation strategy for the pre-sentence report provisions of the new Act.

There was brief reference above to the study of the quality of reports prepared during the pilots. This study was conducted by Dr Peter Raynor of University College, Swansea, and by Dr Loraine Gelsthorpe of Cambridge University. While these pilots focused on organisational and resource issues, there was always the concern that the demand for more reports, and for some reports more quickly, might lead to an erosion of the quality of reports produced by the Probation Service. To address this concern, in October 1991, the Home Office commissioned a separate study to look at the contents of reports prepared by the Probation Service in the five areas during the pilot trials. A second objective of the quality study was to assess judicial views on the proper contents of pre-sentence reports. While this study was conducted independently and not under the direction of the National Co-ordinator from the Vera Institute, its great relevance to the study of organisational issues requires that it be included in this report (Appendix I).

Annex 1 to SECTION I

Relevant Provisions of the Criminal Justice Act, 1991.

Criminal Justice Act 1991

1991 CHAPTER 53

An Act to make further provision with respect to the treatment of offenders and the position of children and young persons and persons having responsibility for them; to make provision with respect to certain services provided or proposed to be provided for purposes connected with the administration of justice or the treatment of offenders; to make financial and other provision with respect to that administration; and for connected purposes.

[25th July 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

POWERS OF COURTS TO DEAL WITH OFFENDERS

Custodial sentences

Restrictions on imposing custodial sentences.

1.—(1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—

(a) that the offence, or the combination of the offence and one other offence associated with it, was so serious that only such a sentence can be justified for the offence; or

(b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.

(3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.

PART I

(4) Where a court passes a custodial sentence, it shall be its duty—

(a) in a case not falling within subsection (3) above, to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and

(b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

Length of custodial sentences.

2.—(1) This section applies where a court passes a custodial sentence other than one fixed by law.

(2) The custodial sentence shall be—

(a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it; or

(b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall—

(a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and

(b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.

Procedural requirements for custodial sentences.

3.—(1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above.

(2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—

(a) shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it; and

(b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.

(4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence—

(a) shall obtain a pre-sentence report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

(5) In this Part "pre-sentence report" means a report in writing which—

(a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social services department; and

(b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

Additional requirements in the case of mentally disordered offenders.

4.—(1) Subject to subsection (2) below, in any case where section 3(1) above applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) shall obtain a medical report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

(5) In this section—

"duly approved", in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 ("the 1983 Act") by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;

1983 c. 20.

"medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is duly approved.

(6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

PART I

Suspended and extended sentences of imprisonment. 1973 c. 62.

5.—(1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the Powers of Criminal Courts Act 1973 ("the 1973 Act") there shall be substituted the following subsections—

"(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—

(a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and

(b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order."

(2) The following shall cease to have effect, namely—

(a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and

1977 c. 45.

(b) section 47 of the Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

Community sentences

Restrictions on imposing community sentences.

6.—(1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of the opinion that the offence, or the combination of the offence and one other offence associated with it, was serious enough to warrant such a sentence.

(2) Subject to subsection (3) below, where a court passes a community sentence—

(a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and

(b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it.

(3) In consequence of the provision made by section 11 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.

(4) In this Part "community order" means any of the following orders, namely—

(a) a probation order;

(b) a community service order;

(c) a combination order;

(d) a curfew order;

(e) a supervision order; and

(f) an attendance centre order.

PART I
Procedural requirements for community sentences.

7.—(1) In forming any such opinion as is mentioned in subsection (1) or (2)(b) of section 6 above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it.

(2) In forming any such opinion as is mentioned in subsection (2)(a) of that section, a court may take into account any information about the offender which is before it.

(3) A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—

(a) a probation order which includes additional requirements authorised by Schedule 1A to the 1973 Act;

(b) a community service order;

(c) a combination order; and

(d) a supervision order which includes requirements imposed under section 12, 12A, 12AA, 12B or 12C of the Children and Young Persons Act 1969 ("the 1969 Act"). 1969 c. 54.

(4) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) shall obtain a pre-sentence report if none was obtained by the court below; and

(b) shall consider any such report obtained by it or by that court.

Probation and community service orders

Probation orders.

8.—(1) For section 2 of the 1973 Act there shall be substituted the following section—

"Probation

Probation orders.

2.—(1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—

(a) securing the rehabilitation of the offender; or

(b) protecting the public from harm from him or preventing the commission by him of further offences,

the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years.

For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.

PART I

(2) A probation order shall specify the petty sessions area in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2 to the Criminal Justice Act 1991 (offenders who change their residence), be required to be under the supervision of a probation officer appointed for or assigned to that area.

(3) Before making a probation order, the court shall explain to the offender in ordinary language—

(a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 3 below);

(b) the consequences which may follow under Schedule 2 to the Criminal Justice Act 1991 if he fails to comply with any of the requirements of the order; and

(c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,

and the court shall not make the order unless he expresses his willingness to comply with its requirements.

(4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—

(a) to the offender;

(b) to the probation officer responsible for the offender's supervision; and

(c) to the person in charge of any institution in which the offender is required by the order to reside.

(5) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the clerk to the justices for that area—

(a) a copy of the order; and

(b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

(6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

(7) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the minimum or maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.

Annex 2 to SECTION I

PSR(91)9 -- PILOT TRIALS ON PRE-SENTENCE REPORTS IN SELECTED CROWN COURTS [Home Office paper issued in 1991 when pilots were being planned.]

PILOT TRIALS ON PRE-SENTENCE REPORTS IN SELECTED CROWN COURTS

DESCRIPTION OF PILOTS

21 May 1991

Introduction

1. The Criminal Justice Bill creates a new framework for sentencing based on the seriousness of the offence. Custody is to be reserved for the more serious offences with most offenders being punished in the community. In order to assist the courts with the information relevant to the sentencing decisions, the Bill makes provision for wider use of reports, to be called pre-sentence reports. The Bill requires the courts to consider a pre-sentence report before imposing a custodial sentence in all cases where the sentence for the offence is not fixed by law. The only exception to this is that a court need not obtain a report if the offender is convicted of an indictable-only offence and the court thinks that a report is unnecessary in the circumstances. In addition, the courts are required to call for a pre-sentence report before sentencing an offender to a probation order with additional requirements, a community service order, a combination order or a supervision order with requirements. It is expected that these provisions will require the probation service to produce an additional 20,000 reports per year. A note at Annex A sets out in greater detail the purpose of pre-sentence reports.

2. Concern has been expressed about the provisions on pre-sentence reports in the Bill because of the fear that they will add to delays in the court process. There is particular concern about cases where the defendant pleads "not guilty" but is found guilty and may then have to wait, perhaps in custody, for a report to be prepared. Similar concerns have been expressed about cases where there is a late change of plea from "not guilty" to "guilty". Practical difficulties may occur where cases are dealt with by the part-time judiciary.

3. In September 1990 a criminal justice conference was held at Bramshill to consider the implications of the proposals about reports in the White Paper "Crime, Justice and Protecting the Public". Those proposals are now in the CJ Bill. Participants at that conference included members of the senior judiciary, a recorder, a solicitor, and representatives from the probation service, the Crown Prosecution Service, police, justices' clerks, magistrates and others. One of the recommendations of that conference was that there should be pilot trials in selected Crown Courts to look at the organisational and resource implications of the proposals about reports.

Objectives

4. There are two main objectives for these pilot trials:

   a. to identify the organisational changes necessary to ensure that the provisions in the Bill on pre-sentence reports can be implemented effectively, efficiently and economically;

   b. to identify more accurately than has been possible so far, the resource implications of those changes.

A subsidiary but also important objective is to use the information gathered during the pilot trials in drawing up National Standards for Pre-Sentence Reports.

Description of pilot trials

5. The pilot trials will need to 'mimic' as closely as possible the provisions in the Criminal Justice Bill. It will accordingly be necessary for the judges in the selected Crown Courts to call for reports in all cases where they are proposing to sentence the offender to a probation order with an additional requirement under what are at present sections 3, 4A and 4B of the Powers of Criminal Courts Act 1973 or a community service order. In addition, it will also be necessary for the judges to call for reports in those cases where they are contemplating a custodial sentence and the penalty for the offence is not fixed by law. The probation service will need to be able to respond to these requests for reports in such a way as to minimise delay in the court process.

6. It is planned that the pilot trials should begin in April 1991 and run for 6 months.

Organisational implications

7. The probation service will need to look at:

   a. the organisation of report writing. Whether there should be dedicated teams of report writers or whether reports should be written by field teams; how information is to be gathered from other criminal justice agencies and elsewhere;

   b. the targeting of reports and information gathering. How decisions will be taken about which guilty plea cases to produce reports for, whether some indication should be sought from the judge; whether any preparatory work can be done in cases where defendants are pleading "not guilty"; what can be done when there is a late change of plea; use of risk of custody scales;

   c. how to maintain quality of reports while improving speed of production.

8. The CPS will need to look at how they can quickly provide information to the probation service about the offence and any previous convictions. It has been agreed that it will be the probation service's responsibility to collect information from the CPS.

9. The police will need to look at how they can assist in the provision of information about previous convictions.

10. Crown Court administrators will need to look at:

a. the scope for plea review days and other mechanisms for avoiding late changes of plea;

b. the scope for listing trials in such a way that contested cases are heard early in a recorder's period of sitting so that the probation service has the maximum amount of time to prepare reports post-conviction with a view to a sentencing day at the end of the sitting period;

c. the organisation of recorders' sitting days, including the possibility of arranging a sentencing day some 10 to 14 days after the main sitting period.

11. Prison Service will need to look at how quickly probation officers can be given access to defendants remanded in custody so that the production of pre-sentence reports is not delayed. In some cases access within 24 hours will be necessary.

12. If it is possible to engage the interest of the legal professions locally then solicitors will need to consider the implications for their clients of late changes of plea and possible consequent delays in sentencing. There are issues for counsel about appearing at plea review days.

Criteria for choosing areas for pilot trials

13. For the trials to be realistic, it will be essential to choose busy Crown Courts. Wide geographical spread will also be necessary. A London Crown Court should be included if possible because of the special problems which London poses. A court with a high proportion of "not guilty" pleas would also ensure a realistic trial. The Home Office research study "Sentencing in the Crown Court" by David Moxon showed that black defendants plead "not guilty" disproportionately more than white defendants, so it might be sensible to include a Crown Court with a relatively high proportion of black defendants. A further factor is that the Crown Prosecution Service and the probation service have already collaborated in 3 areas on the provision of information to the probation service for social inquiry reports. It would be sensible to build on at least one of those projects which were held in Northumbria, Hampshire and South West London. Choosing a Crown Court served by only one probation area would make the process of monitoring and evaluation more straightforward than otherwise.

National and local structure for implementation

14. Proposals for pilot trials at Southwark, Bristol, Newcastle, Lincoln, Birmingham, have been received from probation services. These would satisfy the criteria set out in para 13 and it is accordingly proposed to site the pilots in those courts.

15. The results of these pilot trials will have implications for criminal justice agencies throughout England and Wales and resource implications for central government and local authority expenditure. It is therefore proposed to set up a national structure to oversee the progress of the pilots. This would be in the form of a national steering committee, chaired by the Home Office, on which representatives would be welcome from the agencies participating in the pilot trials: probation service, CPS, police, LCD, Prison Service, Criminal Bar Association and the Law Society. Possible terms of reference for this national steering committee might be:

1. to oversee the setting up and running of the pilot trials;

2. to promote co-operation between the different agencies involved so as to facilitate the effective running of the pilot trials;

3. to oversee the monitoring and evaluation so as to ensure that the objectives of the pilot trials are achieved;

4. to produce a final report on the pilot trials.

16. In order to ensure effective implementation at the local level, it will similarly be necessary to set up local steering committees, again on which the main local agencies would be represented, including perhaps representatives of the local bar and solicitors. The terms of reference of the local steering committees might be adapted from those proposed for the national committee.

Development, monitoring and evaluation

17. It is expected that the development of projects at the local level will be guided and pursued by the local steering committee. The CPS, the Lord Chancellor's Department and the Home Office will ensure that at the local level the Crown Prosecution Service, the Crown Courts' administrators, the probation service, the police and the Prison Service are all asked to co-operate and share responsibility for ensuring the effectiveness of the pilot trials. One of the functions of the national steering committee (see paragraph 15 above) will be to oversee the effectiveness of that co-operation. It is also proposed to set up a small development team, headed by a Project Co-ordinator, which will provide help to local areas in drawing key participants together and in ensuring that proper procedures are set up for monitoring and evaluation.

18. The head of the development team - the Project Co-ordinator - will be accountable to the national steering committee. His role, supported by the team, will be:

a. to facilitate the setting up of the projects;

b. to help and advise the local steering groups and the participating agencies at the local level to ensure the smooth running of the projects;

c. to ensure that the data collected in each project is such as to enable the projects to be effectively monitored and evaluated;

d. to provide regular progress reports to the national steering committee;

e. to produce a final report on the projects in a manner to be determined by the national steering committee.

It is hoped to secure as Project Co-ordinator an American lawyer on secondment from the Vera Institute of Justice in New York. The Vera Institute successfully carried out a similar function for the Home Office and the Association of Chief Officers of Probation in 1987/88 in piloting bail information schemes in magistrates' courts involving the police, CPS, probation service and justices' clerks.

19. The Home Office will be responsible for the monitoring of these pilot trials. Bearing in mind the 2 main objectives, it would be essential to ensure that information is collected about:

a. organisational change and good practice that develops;

b. the speed at which pre-sentence reports are produced and the quality of those reports;

c. costs and savings.

20. For this purpose it will be necessary to collect the following information both before and during the pilots:

a. a description of current organisational arrangements covering:

1. how requests for reports are notified to the probation service;

2. in what cases;

3. how information is collected and from whom;

4. how reports are produced;

5. how long these processes take;

6. how long defendants spend in custody post-conviction awaiting sentence;

b. an assessment of the quality of reports;

c. costs and, during the pilots, savings.

21. In addition, although addressing impact on sentencing is not an objective of the pilots it will be interesting to see whether the greater number of reports - without the new sentencing framework of the Criminal Justice Bill - is helpful in sentencing. So it is proposed to collect sentencing figures before and during the pilot.

SECTION II

KEY ORGANISATIONAL IMPLICATIONS OF THE NEW PRE-SENTENCE REPORT PROVISIONS

The main objective of the pre-sentence report pilot trials in the Crown Courts was identification of the organisational implications of the new legislation, for the criminal justice process generally and for its constituent parts. A subsidiary objective was assessment of the resource implications of the new legislation. In this section the key organisational issues for both the wider process and individual participants are identified and discussed.

A. More reports than before

In planning for implementation of the new pre-sentence report provisions, the Home Office forecast that as many as 20,000 additional reports would be required annually. It certainly stands to reason that substantially more reports will be ordered when the Act becomes effective, as their preparation was previously optional with courts and now will be mandatory in the great majority of Crown Court cases. At present, in the thousands of summary and "either way" cases where a custodial or significant community sentence is contemplated by the judge, and where there has been a last minute announcement of an intention to plead guilty or a guilty verdict after a contested trial, or for some other reason no report prepared pretrial, sentencing can and frequently does occur without a report. Under the new law this will no longer happen.

In the course of 1990, the Probation Service in England and Wales prepared 193,920 social inquiry reports for all criminal courts. Of these reports, 60,860 were prepared for the Crown Court and 133,060 were prepared for magistrates. During the same period, 822,000 total offenders were convicted, with 83,000 being convicted in the Crown Court and 739,000 being convicted in magistrates' courts. (Source: Home Office.)

Thus, in 1990 social inquiry reports were prepared with respect to:

- 24% of all offenders convicted,
- 73% of offenders convicted in the Crown Court, and
- 18% of offenders convicted before magistrates.

During operation of the pilot trials, sentencers and all other participants in the criminal justice process pretended that the pre-sentence report provisions in the Criminal Justice Act 1991 were effective. Reports were ordered in cases as will be required from October 1992, when the Act is implemented. Thus,

during the pilot trials in the five areas, sentencers generally called for reports when they found themselves considering imposition of custody in summary or "either way" cases, and when thinking of imposing significant community sentences in all types of cases.

When the new pre-sentence report provisions were treated as effective, there was a significant impact on the rate of report preparation, as comparison between the Crown Court statistic of 73% (above) and the numbers in the third column of the following table make clear:

During pilot; May - Dec. 1991

	Convicted offenders	Number of convicted offenders on whom reports prepared	Percentage, or "report preparation rate"
Birmingham	1558 (1 July - 23 Dec.)	1249	80%
Bristol	675 (1 June - 30 Nov.)	526	78%
Lincoln	370 (13 May - 27 Sept.)	314	85%
Newcastle	878 (20 May - 19 Nov.)	769	88%
Southwark	Unavailable	Unavailable	Unavailable

The report preparation rate (at least in areas where there was good data collection) was substantially higher during the pilots. From the data reported in this table and other relevant information, the Home Office Research and Planning Unit project a minimum national report preparation rate of 87% for all Crown Court cases after implementation of the PSR provisions of the Act. They predict the national increase in the number of Crown Court reports required annually, after implementation of the Act, to be at least 19,000, from just over 60,000 to about 80,000 (see Appendix A). (The Lord Chancellor's Department predicts that around 25,000 additional Crown Court reports will be required -- see Appendix C.) These numbers are only

approximations as data collection methods during the pilots were not perfect. However, from these figures one may sense the general numerical implications of the PSR provisions.

A limitation of this study is that it was confined to the Crown Court, and no similar projections for magistrates' courts are thus possible. However, as will be discussed subsequently, most of the growth in the report preparation rate for the Crown Court came in types of cases where reports are not prepared pretrial (eg: late changes of plea, guilty verdicts after contested trials, etc). This growth occurred during the pilots because reports in such cases were now mandatory when before they were optional and generally dispensed with. In the magistrates' courts, almost all reports ordered are already prepared on adjournment, post-plea or post-trial. There is no significant pretrial preparation of reports. Adjournments for reports are not the exception as in the Crown Court, but the rule. And it is widely believed that magistrates are already routinely calling for reports in all cases where they are considering imposition of a custodial or significant community sentence. This leads one to the conclusion that there will be little growth in the demand for reports in the magistrates' courts, and that the primary impact of the new pre-sentence report provisions will be in the Crown Court, and, more specifically, in those Crown Court cases where there has been a late announcement of a guilty plea or a guilty verdict after a contested trial.

However, taking a somewhat cautious approach, the Home Office Research and Planning Unit have suggested there might be modest growth of 7,000 reports (5%) for magistrates as a result of the Act. If these 7,000 reports were added to the additional 19,000 for the Crown Court, implementation could mean the Probation Service will be required to prepare 26,000 more reports annually.

Returning to the Crown Court, as noted above local areas should anticipate an increase in the Crown Court report preparation rate from current levels to at least 87%. Almost all of this growth in demand will be for reports called for upon adjournment of sentencing proceedings. Some of this growth in the number of reports needed after adjournment may, in time, be shifted into the "pretrial" preparation area if the Probation Service and its partners in the criminal justice system embrace those recommendations made below designed to decrease the number of late announcements (and/or late discovery) of guilty pleas.

In order properly to plan for implementation, Probation Service managers need to know more than is contained in the simple prediction that many more Crown Court reports will be sought on adjournment. Managers want to know the timescale on which "adjourned reports" will need to be prepared, so they may consider and plan in advance how they will produce reports according to that timescale. One of many lessons learned in the pilot trials is that every area Probation Service will need the capability to produce some Crown Court reports very quickly. But the pilots also exposed that areas vary one from another with respect to how many of these "short notice" reports are needed. For instance, judges and recorders in Birmingham

frequently asked that reports be prepared quickly -- often on the same day -- while sentencers in Newcastle made similar requests only infrequently. (See sub-section C(2)iii below.) The different rates at which courts asked for faster reports may have been a function of what service the local probation team offered to provide at the beginning of the pilots. Regardless, it is difficult to make national projections as to the number of reports that will be needed according to particular timescales. The reports of the Local Steering Committees, together with their annexes (all set out in Section IV), treat these issues in detail, as does the report prepared by the Home Office Research and Planning Unit (set out in Appendix A).

B. Adjournments for reports

One of the key findings of the pilot trials is that the new pre-sentence report provisions will result in a significant increase in the number of sentencing adjournments in the Crown Courts, to permit preparation of mandatory reports that previously probably would not have been called for. While adjournments for reports may have occurred in 15% of Crown Court cases before the pilots, during the pilots such adjournments were required in up to 30% of Crown Court cases. (See Appendix A.) Adjournments were the principal cause of difficulty during the pilots, but also were an area where there was significant problem-solving and innovation.

(1) Are more sentencing adjournments inevitable, and will they become a major issue for the criminal justice system?

In certain categories of cases, preparation and consideration of reports will be mandatory before sentence may be imposed, regardless of whether it is convenient to do so. Judges formerly could and did dispense with reports when they did not believe that the sentencing process would be assisted by preparation of a report, and/or when they simply believed their preparation would be disruptive to the wider process (ie when report preparation would necessitate an adjournment because a report had not been prepared pretrial). No such discretion to waive a report will exist from October 1992, in a wide range of cases. If there is no report on the file, because the defendant was maintaining he was not guilty during the pretrial period, or for some other reason, sentencing must be adjourned until the report is prepared. Thus, there will be significantly more sentencing adjournments.

The problems associated with reports called for on adjournment dominated discussion in the national and local steering committees during operation of the pilots. But the issue must be kept in perspective. Data collected during the pilots suggest that after implementation of the Act it will be possible to prepare approximately 70% of all Crown Court reports pretrial. While this is different from the situation that

obtained formerly when over 80% of reports could be prepared pretrial, it is worth emphasizing that a sizeable majority of cases in the Crown Court, about 70%, will not be affected by the set of difficulties about to be discussed.

(2) **Could the system function well without these additional, problematic sentencing adjournments?**

While an increase in the number of sentencing adjournments is not by itself desirable, as such adjournments inevitably have some adverse consequences, the rationale of the Act's PSR provisions is that it is better to accommodate additional adjournments for reports than to accept the current situation where a report is usually dispensed with when to obtain one would require an adjournemnt. The advantage under the new law is that judges will be consistently well-informed when they impose sentence and, consistent with the new sentencing framework, will have an opportunity to consider a specific community-based sentence option in almost every case.

Many sentencers doubt the value of making PSRs mandatory. Judges do not believe they inappropriately dispense with reports currently, even in cases involving late changes of plea or guilty verdicts after trial. Sentencers generally maintain that they always call for reports and postpone sentencing in those "late change" or "contested trial" cases where a report truly would be helpful in making the sentencing decision. They contend that they only dispense with reports now when it is clear that a report will not be helpful.

During operation of the pilots there were instances where sentencers were influenced by the contents of reports that they would not have ordered but for the mandatory provision of the new law and their promise to pretend it was in effect. The National Coordinator was present in the Birmingham Crown Court when a recorder expressed surprise at the contents of a report he had ordered only because of the pilot scheme; the recorder openly acknowledged that his view of the case was affected by what he unexpectedly learned from the Probation Service. A probation officer's account of the same event is set out in paragraphs 4.6 to 4.9 of the statement of the Birmingham Local Steering Committee, appearing in Section IV.

(3) **Negative consequences of sentencing adjournments.**

The pilot trials revealed many of the specific problems caused by sentencing adjournments. While the broad interests of justice frequently may be served when the process is slowed and a report is ordered on adjournment, in lieu of immediate sentencing, other important interests suffer because of and during adjournments. Beginning with defendants, during adjournments they are left on tenterhooks, not knowing their fate. While the report they await ultimately may benefit them,

while they wait they suffer anxiety. If their anxiety is unnecessarily prolonged, the process becomes cruel. If the defendant is remanded in custody during the adjournment, but is ultimately found to deserve a community sentence, there is profound injustice in his pre-sentencing incarceration (not to mention the increased burden on already over-crowded remand facilities).

Judges dislike adjournments caused by the report requirement because of delays and scheduling difficulties caused. During the pilots several judges reported that they preside in so many cases that it is difficult to remember the subtle, specific facts of particular cases, and that their sentencing decisions made three and four weeks after plea/trial are probably not as good as those made immediately. This understandable dimming of judicial memory must, of course, be weighed against the value of the additional information they receive in a report that they otherwise would lack.

A third problem with sentencing adjournments is that they are expensive. During the pilots, through the legal aid scheme the Lord Chancellor's Department had to pay lawyers to return to court to appear at adjourned sentencing hearings. The Lord Chancellor's Department projects that upon national implementation it will face costs for additional court time (salaries for judges and court staff, fees for recorders, facilities expenses, etc). The Prison Service may have held prisoners on remand who ultimately were found appropriate for community supervision. Also, the Prison Service may have made additional trips to court with remanded offenders. The Crown Prosecution Service had to pay for counsel to make additional appearances.

Sentencing adjournments are also inconvenient. In some areas the work of listing officers became much more difficult, as additional hearings had to be fit into already crowded lists. Despite the clerks' best efforts, it was sometimes necessary to bring members of the part-time Judiciary back from other courts or from their practice at the Bar, after their sitting period had ended, to impose sentence in cases in which they had previously presided. Alternatively, in a few instances cases were passed to other judges for sentencing. The latter is universally accepted to be bad practice: sentencing decisions simply cannot be sufficiently well-informed if made by Judges other than those who heard the trial or plea.

The Bar found it difficult to fit adjourned sentencings into crowded diaries. Barristers' diaries tended to be booked in the near term, and they consequently requested more lengthy adjournments, much longer than was necessary to actually prepare the report in some instances. (This particular problem was sometimes avoidable when there had been a contested trial, if the Probation Service was able to prepare a report in one or two days. It happened that counsel had often blocked out the time immediately after the scheduled end of the trial, half expecting that the trial would run longer than predicted. Thus, counsel were sometimes available for a day or two immediately after trial before their diaries were completely booked.)

Finally, barristers and recorders participating in the pilot trials forecast certain adverse "knock-on effects" as a result of the increase in sentencing adjournments due to the need to prepare reports in most cases. This problem was not experienced during the pilots because they operated in only five court centres, but the Bar predict that it will surface when all Crown Courts are operating under the new law. Barristers and recorders will be required to stop in the midst of subsequent cases, particularly subsequent contested trials, to return to courts they attended in previous weeks to appear in adjourned sentencing proceedings. They note that the second court, including the judge, lawyers, defendants, witnesses, jurors and the court staff will all be kept waiting while they are away finishing work in the earlier case.

C. Addressing the "adjournments" problem: Lessons learned during the pilots.

The pilots revealed early and quite clearly that more sentencing adjournments are the principal negative by-product of the mandatory PSR provisions. The pilot experience suggests adjournments for reports will be required in as many as 30% of all Crown Court cases from October 1992. This prospect, and experience gained in the operation of the pilot scheme, raise three topics for more detailed discussion here:

1. How may the number of sentencing adjournments for report preparation be minimised;

2. How may such adjournments be kept short; and

3. How may the system better cope with such adjournments.

When addressing these topics the critical objective of ensuring the quality of reports must always be in mind, or efficiencies gained will be illusory.

(1) Minimising the number of cases that require adjournment for preparation of a pre-sentence report.

The best strategy for avoiding the adverse consequences of adjournments for report preparation is to avoid the adjournment altogether. This, of course, was not always possible during the pilots (ie in the cases where there was a guilty jury verdict after a contested trial). But examination of the pilot experience suggests that a significant number of the adjournments for reports that did occur could have been avoided.

i. Plea Information from solicitors.

In some of the cases where the court and the Probation Service first learned on the day of trial of a defendant's intention to plead guilty, later investigation revealed that the defendant had in fact changed his mind days and even weeks prior to the trial date, but that his solicitor had not informed court officials of this changed intention until the day of trial. By waiting until the trial date to give notice of the change, the solicitor denied the system the opportunity to gain the advance preparation of a report and thus avoid a sentencing adjournment.

The solution to this communication breakdown seems to be the establishment of a mechanism whereby solicitors are routinely canvassed regarding their client's plea intentions 14 or 21 days prior to the trial date. This could be accomplished by requiring solicitors to complete a form on plea status at this point. Such a form would be automatically posted to solicitors 3 or 4 weeks prior to the trial date, with the requirement that it be returned, completed, no later than 2 weeks or 10 days before the trial date. The form would not apply pressure designed to gain a particular plea -- it would simply and neutrally ascertain the plea intention at that point. Failure to return the form in a timely manner would incur a financial sanction.

Solicitors currently are asked to complete "Form A" which addresses the question of plea. However, the "Form A" procedure consistently reports an artificially high number of "not guilty" pleas when measured by what ultimately happens, probably because the form is sent to solicitors too soon after committal. Many defendants who ultimately plead guilty only decide to do so as the trial date draws near. Asking their intention as to plea soon after committal is not helpful -- the system needs to collect this information later in the life of the case. Also, in many areas solicitors are not reliable in their completion and submission of "Form A," and some court clerks report that up to 40% of the forms are not returned.

ii. Liaison between Court Staff and Probation Service.

The pilots revealed that it is also critical for the Probation Service and court personnel to liaise during the pretrial period. There were instances where solicitors provided court clerks advance indications of guilty pleas, but this information was not passed on to the Probation Service, causing an adjournment to be necessary because no report was prepared pretrial. Also, sometimes court personnel learned of a change of plea, before trial, through means other than contact with solicitors. That information was not always immediately passed to the Probation Service which, of course, would have been desirable so that a report could have been prepared before the trial date.

iii. "Cracked Trials".

The increased number of sentencing adjournments that will be required when pre-sentence reports are mandatory in many cases adds force to the contention that the larger, so-called "cracked trials" problem must be solved. This issue has been taken up by the Working Group on Pretrial Issues and others. For the uninitiated, a "cracked trial" is one where the defendant maintains a not guilty plea (or, does not indicate a plea) until the day scheduled for trial when he suddenly announces a guilty plea. For some defendants the strategy is tactical; for others it is the product of an unwillingness to face difficult circumstances. Regardless, the practise causes enormous problems for the criminal justice system generally as it must prepare for many trials that never occur. Jurors, witnesses, court staff and police officers are inconvenienced and paid to attend trials that never occur. Now, as a result of the PSR provisions of the new Act, more sentencing adjournments can be added to the list of difficulties created by "cracked trials."

A mechanism must be developed whereby defendants are persuaded to take their final decision on plea no later than 10 days before the trial date. If such a mechanism were effective, the Probation Service could produce reports pretrial in many more cases, thus avoiding the need for sentencing adjournments in the same cases. The mechanism proposed here is to ban, during the 10 days prior to trial, the negotiations between prosecution and defence lawyers that typically lead to the settlement of criminal cases, and to set a deadline, 10 days before trial, for announcing the defendant's final plea. In theory this would advance the point in time at which defendants would make the <u>final</u> decision on plea that controls whether a case will really go to trial. This is a complex idea and it is developed in detail in the document set out in Appendix H.

(iv) Commissioning and producing reports more efficiently.

In a minority of cases, adjournments arose because reports had not been completed, despite the fact that the Probation Service knew well in advance of a guilty plea. In about one third of these cases, reports were commissioned by probation management but not produced. It cannot be said to what extent this reflects refusal or reluctance on the offender's part to be interviewed, and to what extent other problems. In two thirds of cases, reports were simply not commissioned. (See Appendix A.) Clearly both types of cases need more detailed scrutiny by probation management.

There was also a small but significant group of cases where reports <u>had</u> been presented at court, but the judge adjourned to enable a further report to be made. One can only speculate at the reasons, but again it seems likely that adjournments could be reduced if probation management identified the underlying factors.

(2) Keeping adjournments for report preparation as short as possible.

As discussed above, the best solution to the adjournment problem is to avoid sentencing adjournments altogether. Such is not always possible in a system where many defendants (quite properly) exercise rights to contested trials, some of which end in guilty verdicts. Also, regardless of efforts made to persuade defendants to decide their pleas at an earlier stage, in a significant number of cases guilty pleas will continue to be announced for the first time on the trial date. These objective facts, coupled with the good practice rule that precludes preparation of reports on defendants who are pleading "not guilty," inevitably will lead to there being a significant number of sentencing adjournments for report preparation once the new Act is implemented. Because most of what is bad about sentencing adjournments is even worse when the adjournments are lengthy, much of the effort made during the pilots was directed at keeping sentencing adjournments as short as possible.

i. Preserving the good quality of reports.

The pressure to keep sentencing adjournments short raises, at least theoretically, a tension for the Probation Service: Some hypothesise that a diminution in the quality of reports is the necessary and inevitable consequence of responding to the need to prepare some reports quickly. It was not the objective of these pilot trials rigorously to assess the impact of the new PSR provisions, and the procedures they spawned, on the contents and quality of reports. That important issue is the focus of the independent study conducted by Dr Raynor and Dr Gelsthorpe which is attached in Appendix I. It is true, however, that in planning and operating these pilot trials probation managers were extremely attentive to "quality of report" issues, and "quality" concerns affected the planning and execution of this project on a daily basis. The descriptions of the local pilot experiences, set out in Section IV, reflect this. Probation officers participating in the pilots were not slaves to narrowly defined efficiency interests, and to the extent that new, streamlined procedures were found to endanger the good quality of reports, those procedures were appropriately modified or abandoned.

This is not to say that good quality was always evident in the reports produced during the pilots. Both Probation Service management and the "quality researchers" (Raynor and Gelsthorpe) found instances where sub-standard reports were produced. However, instances of poor quality and incompleteness in report writing were not generally found to correlate with speed of production or other unusual factors and procedures introduced by the pilots. Poor quality, when evident, seemed to be a function of variables <u>not</u> unique to this project. Regardless, given the requirements and pressures implementation of the new Act will bring, the Probation Service should be reviewing and preparing to rigorously employ its quality control procedures.

ii. Good communication between the Probation Service and the Judiciary.

When the preparation of reports was mandatory during the pilots, good communication between the Probation Service and judges was found to be of central importance to the effort to keep adjournments as short as possible. Good communication was essential on two levels: First, it was necessary for probation management to meet with the Resident Judge at the Crown Court as the pilot began, to make clear the Probation Service plan for meeting both the expected demand for more reports generally, and the expected demand for many more short-notice reports on adjournment. If difficulties were to be avoided later, it was thought critical that there be a mutual understanding, in advance, regarding the extent to which the Probation Service was capable of producing good reports quickly. In most areas the Probation Service promised the court a flexible attitude: they would meet all requests for reports and, to the extent professionally possible, they would meet the timescale for production specified by the court in the particular case. But it was also made clear that the Probation Service would not ask its officers to put their signatures to reports which the officers considered sub-standard and/or lacking in necessary depth and content, solely to meet short deadlines.

Resident Judges in each of the five pilot areas promised and delivered a completely cooperative attitude on the timescale issue, both during initial meetings when the pilots began and in later discussions with Probation Service management.

Once a good understanding was achieved with the Judiciary as to the capability and intentions of the area Probation Service, good communication on a second level became important. When reports were ordered on adjournment, it was often found necessary for the Probation Service to abandon its traditional position that 21 or 28 days time was required to prepare a report. Constraints affecting other players in the process, outside of the Probation Service, made it impossible for the Probation Service always to be afforded such a period for report preparation. Instead, in most of the pilot areas it developed that probation officers would assess particular cases and then, sometimes after negotiation, agree with sentencers a timescale for report preparation and consequent length of adjournment. This critical dialogue between the probation officer and the judge typically occurred on the plea/trial date, when it became clear that there was no report on the file and that one would be needed, either because the defendant had suddenly announced a guilty plea or had been found guilty after a contested trial. The reader is referred to Section IV of this report (the local steering committee statements) for more detailed descriptions of the above negotiation process. Probation officers learned that in the vast majority of cases adjourned for reports, sentencers were quite willing to permit probation officers first to assess a case, and then were willing to discuss, consider and take into account probation officer concerns before determining the timescale on which the adjourned report would be required.

In this context the pilots have uncovered a significant training issue. As noted above, in the pilot areas probation officers were drawn into dialogue and even negotiation with sentencers as to the appropriate timescale for the preparation of short notice reports. In early days some of the involved officers found this dialogue with the court a bit daunting. With time and experience, though, their confidence grew and in all areas officers were comfortable with their new role at the conclusion of the pilots. Crown Court officers will require training in this area, to the extent that such discussions with judges in court have not been the routine in their respective areas.

iii. Organising the Probation Service to produce some Crown Court PSRs quickly.

During the pilots, the Probation Service experienced different demand for faster reports in different areas. In Newcastle, only 19% of reports sought on adjournment were required in less than 21 days. In Birmingham, 42% of such reports were sought in less than 21 days. (See Section IV below).

During the pilots, all probation areas attempted to prepare adjourned reports as quickly as was possible without undermining the quality of the reports prepared. Different strategies were adopted to achieve this end, and they are described in the local steering committee statements in Section IV. Readers are specifically commended to make a comparison between the approaches taken in Newcastle and Birmingham. To anyone curious about how the Probation Service should perform in the Crown Courts in the new era of mandatory PSRs, the strategies and experiences in these two pilots are particularly instructive.

In **Newcastle**, managers hoped to disrupt existing good practice as little as possible in meeting the new demands. The Northumbria Probation Service strongly favour field preparation of reports, even when a report has been ordered on adjournment and at short notice. Policy reflecting this preference affected operation of the pilot there, and it meant that almost all Northumbria PSRs prepared during the pilot were written by officers who were aware of and in direct contact with the community from which particular offenders had come. These officers were most familiar with resources available in particular communities, and thus were probably best qualified to tailor community sentence proposals to meet the needs of individual offenders.

Given this understandable bias in favour of field preparation, it was fortunate that sentencers in Newcastle did not impose difficult time constraints for the preparation of most adjourned reports. In over 80% of cases, sentencers were content to grant the Probation Service 21 days or more in which to prepare reports. This circumstance allowed the Northumbria Probation Service to operate during the pilot with only minor modification of its well-functioning service delivery plan. One must question, however, whether it is likely that judges nationally

will be so accepting of longer adjournments. Experience outside of Newcastle suggests they will not, at least in part out of the oft-stated concern about remanded offenders waiting for long periods not knowing their fate.

It has been noted that in approximately 19% of cases where reports were required on adjournment in Newcastle, the Probation Service were granted less than 21 days to prepare the report. In approximately 15% of adjourned cases there, the Probation Service was required to prepare a report in 7 days or less. While field teams were able to prepare a substantial portion of these very short notice reports, it was necessary for court-based officers to prepare slightly more than half. (All seemed to be of sufficient quality.) In some instances field team officers were found to lack sufficient flexibility in their schedules to respond to short-notice requests for reports -- e.g.: reports required in less than 7 days.

In **Birmingham**, the experience was very different. There, of the reports required on adjournment, 42% were provided in 21 days or less. Virtually all of those reports were prepared by a court-based team of probation officers. Probation managers in Birmingham are confident that a well-staffed court team was the best strategy for meeting the high demand for short notice reports. Officers based at the court developed a special sensitivity to the needs of other professionals and agencies involved with a case, and were able to perform their unique duties as probation officers very well, but also in a manner that complemented the work of court staff, legal advisers and sentencers. Officers assigned to the court team had previous field experience and did not feel alienated from offenders' communities or resources available there. They benefitted from close consultation with field-based colleagues in this regard. They were also quite ready to ask sentencers to grant additional time for the preparation of particular reports, if such was necessary to permit appropriate field work to occur (e.g.: hostel assessment, etc.).

The detailed experiences in the two pilot areas may be reviewed in Section IV. An important general point, however, is that while demand for short notice adjourned reports varied, in both areas some capacity to prepare pre-sentence reports at court was necessary. That court-based report-writing capability could be relatively small at Newcastle and needed to be relatively large at Birmingham. The important point is that it had to exist in both places if the court was to be properly served.

The experiences in the other three pilot areas were similar. In all areas it was found necessary to establish a court-based report-writing capability. In Lincoln, the team consisted of one officer. In Bristol, several officers were involved. In some of the areas the report writing responsibilities were shared by court liaison officers; in Southwark, report writing was done by two specialist officers who undertook almost no other court liaison responsibilities.

While it is the Judiciary who ultimately control how quickly reports must be prepared, the experience in the different pilot areas suggests that the Probation Service can affect the demand

for faster reports, positively or negatively, if it chooses to use its influence. One must believe that a key reason why the Birmingham Court Team were asked to prepare so many faster reports is because they expressed and demonstrated an ability to provide this service -- competently and consistently. Given the multitude of difficulties that lengthy sentencing adjournments cause elsewhere in the process, it seems sensible that the Probation Service provide reports as quickly as possible, consistent with the higher obligation always to provide a quality document.

Returning to the training of officers, the pilots suggest that new emphasis should be placed on teaching court-based officers to include in their first assessment of cases consideration of the length of time that will be required to prepare the report. With respect to cases where there has been an adjournment for a report, often judges will be expecting officers to provide a credible, justified request for a specific time period in which to prepare a report. If a case genuinely requires 21 or 28 days because of unusual problems (ie drug problems, child abuse issues, need for detailed assessments etc), then judges, as measured by the experience gained during the pilots, will probably be willing to grant appropriate time for report preparation. But probation officers frequently will be expected to justify requests for 3 or 4 weeks. Such periods may not be granted automatically. Thus, officers will need training in assessment of "time required," as well as in oral presentation of their views.

iv. Technology.

In seeking to prepare quality reports as quickly as possible, a lesson for the Probation Service from the pilots is that technological aids, such as word processors and fax machines, become critical tools of the trade. In Newcastle, a linked word processor network allowed a report to be prepared in the field and then printed in the court liaison officer's room at the Crown Court. This technology facilitated rapid transmission to court of field-prepared pre-sentence reports. Fax machines were found invaluable in all areas when there was a premium on transmitting and receiving information quickly, whether that information transfer was between probation officers or between the Probation Service and others.

In Birmingham, officers experimented with typing some PSRs themselves, directly on a word processor which contained a pre-formatted pre-sentence report form. The form was flexible and quite general in that it simply established categories in which the officers might wish to report information to the court. Categories thought unnecessary in particular cases could be omitted. This strategy is potentially useful if and when officers are asked to prepare same day reports. However, some difficulties are also noted. Not all officers are proficient typists. Additionally, such practise by probation officers potentially raises a contentious issue with labour unions representing secretarial employees of the Probation Service.

v. Offence information from the Crown Prosecution Service.

Before the pilots began, the Probation Service correctly anticipated that they would be under pressure to prepare a significant number of reports quickly. In planning their delivery of service during the pilots, the Probation Service predicted that an impediment to the faster preparation of reports would be their inability to obtain offence information in a timely manner. Unbiased information about the nature and circumstances of the offence is a critical component of a good pre-sentence report.

Historically, in preparing social inquiry reports, the Probation Service has had difficulty in gathering offence information from official sources. Neither the police nor the Crown Prosecution Service were under a specific duty to pass statements and other investigative documents to the Probation Service, and the Probation Service was left to gather this information through a variety of informal methods. With no specific procedure in place, the gathering of offence information was sometimes the most time-consuming aspect of preparing a report.

In anticipation of operating the pilot trials, the Home Office secured the agreement of the Crown Prosecution Service to supply offence information to the Probation Service for each case passing through the Crown Court in the five pilot areas. The CPS undertook to supply either "advance disclosure bundles" or full "committal bundles" directly to the Probation Service, just after committal, in every Crown Court case. After sorting out a few mechanical issues in early days, the CPS performed superbly and exactly as promised.

The direct provision of offence information from the CPS to the Probation Service was extremely helpful to the Probation Service in their effort to prepare good reports quickly. Time previously expended by officers chasing down offence information from a variety of sources was saved and devoted to better report writing under the new procedure. The quality of <u>all</u> reports, not simply those prepared at short notice, improved due to the consistent provision of complete offence information. Receipt of the CPS bundles shortly after committal in every case permitted the Probation Service to prepare good-quality pre-sentence reports with greater speed than had previously been possible.

The CPS bundles included information on offenders' previous convictions. This information was supplied without difficulty to the CPS by the police.

The cost of supplying offence information bundles was borne by the CPS.

The significance of this new channel of communication between the CPS and the Probation Service cannot be over-emphasised. While relatively simple to conceive and execute, this innovation may have been more responsible than any other for the successful production of good quality pre-sentence reports at short notice.

The CPS tentatively has committed itself to the long-term provision of offence information to the Probation Service in all indictable and "either way" cases.

If the Probation Service is to have and make use of CPS bundles for all Crown Court cases sentenced from October 1992, it will be necessary for the CPS to begin supplying the bundles in June or July 1992, on cases then processed by the CPS, as many of those cases will only come on for sentencing from October. A lesson of the pilots is that there is sometimes a 4 or 5 month lag between investigation and charging (which is the easiest time for the CPS to assemble the bundle for the Probation Service), and the time when sentence is imposed in a case.

vi. The Prison Service and access to remanded offenders.

In preparing a good pre-sentence report, a probation officer must conduct at least one and possibly more interviews of the offender. When requested to prepare reports on adjournment at short notice, probation officers usually need almost immediate access to offenders to conduct the interviews if they are to meet court-imposed deadlines. Such access may be difficult to obtain if the offender has been remanded in custody. This issue was tackled during the pilots in all five areas.

The first lesson of the pilots in this regard is that, if possible, remanded offenders should be interviewed in the court cells on the day of their appearance for plea or trial. This procedure saves the probation officer from needing to gain access to crowded and sometimes distant remand facilities, at short notice, to conduct the necessary interviews. Court-based report writers in particular found this procedure efficient.

The pilots also revealed that interviews frequently cannot be conducted at court when a report has been ordered on adjournment. In some courts facilities are simply inadequate to permit a professional interview. In other cases, even though facilities are adequate, the offender's emotional state is such that a productive interview cannot be accomplished. This is particularly true when a defendant has just been found guilty after a contested trial. When such instances occurred during the pilots, it was necessary for probation officers to interview offenders at remand facilities.

During the pilots, probation officers were usually able to gain immediate or nearly-immediate access to conduct interviews. Interviews normally occurred in the "special visits" areas of remand facilities. Occasionally, however, probation officers were not able to gain immediate access because the "special visits" area was completely booked. In these circumstances there was the danger that lack of immediate access for an interview would delay production of the report and thus prolong the sentencing adjournment.

Most local steering committees and the National Steering Committee addressed this problem. It became clear that all remand facilities needed a firm, written policy in place whereby probation officers ordered to prepare short notice reports on adjournment would be guaranteed immediate access to remanded offenders even in the situation where the "special visits" area was booked. Unquestionably, this need will exist nationally after implementation of the Act. Policies experimented with during the pilots included directives from prison governors that when normal "special visits" facilities were full, probation officers were to be permitted to interview offenders in private rooms on the wings of facilities. When followed, this procedure often meant that interviews occurred in the offices of the seconded, prison-based probation officers.

One prison governor went further and suggested that in these circumstances the interview actually be conducted by the seconded probation officer. This procedure seems less preferable. Seconded officers usually have been away from report writing for a substantial time. Most seconded officers are not from the same area as defendants on whom they would be asked to prepare reports, are probably unaware of local probation resources available, and would be restricted in their knowledge of current community sentence options. Finally, seconded probation officers are already fully occupied providing service to the institution.

There is a special problem with short notice access to remanded offenders in areas where prisons are currently locking out new prisoners, due to overcrowding. In those areas remanded offenders are being held in police cells. Police stations seldom have adequate facilities to accommodate probation officer visits and interviews. Sometimes it is even difficult to locate particular offenders, at short notice, as it is unclear in which police station they are being held. A mechanism must be developed whereby probation officers can routinely gain access to such offenders at short notice if report preparation is not to be delayed by this problem.

In Bristol, consideration is being given to a procedure whereby courts will list cases involving locked-out defendants for "mention." When so listed, an offender will be brought to court only for his case to be "mentioned" -- not for any real action. It is purely a ruse to allow probation officers and legal advisers to meet with clients when they have otherwise been unable to make contact due to the lock-out situation. While there are advantages to this "stop-gap" measure for courts, lawyers and probation officers, one must question whether such a procedure is cost-effective for the criminal justice system as a whole. Surely it must be less expensive to solve the access problem where the offender is being held than to transport him in custody and under guard to court for a phoney proceeding.

The Prison Service is in the process of privatising some prisoner escort services. When those private contracts are negotiated, the Prison Service should be careful to advise the contractors that sometimes offenders need to be kept at court for several hours after the conclusion of their case, so that they might be interviewed by a probation officer.

The true burdens that will be imposed on the Prison Service by implementation of the PSR provisions of the Act were not measured during operation of these pilots. In each of the five pilot areas, the pilot scheme was operated in only one of several Crown Courts feeding into the local remand facility. No remand facility felt the full brunt of demand for short notice access by probation officers that will come when the Act is effective in all courts. Therefore, it would be a mistake for the Prison Service to assume that its easy experience during the pilots will be mirrored nationally from October, 1992. Each remand facility should develop a written policy now, aimed at guaranteeing short notice access for probation officers ordered to prepare pre-sentence reports in adjourned cases. Without such policies in place before October, 1992, this access problem will likely become a major obstacle after implementation, causing a slow-down in the production of adjourned reports.

vii. Uniform national sentencing day and time.

During operation of the pilots it emerged that scheduling difficulties between listing officers and barristers caused some sentencing adjournments to be longer than was otherwise necessary. It sometimes happened that pre-sentence reports were prepared and on the file in adjourned cases many days and even weeks before barristers could be scheduled to return to court for the sentencing proceeding. On other occasions listing officers simply scheduled adjourned sentencing proceedings for dates in the very short term without regard for barristers' diaries.

Sentencing adjournments pose special problems for the Bar. When listing officers contact barristers' clerks to schedule adjourned proceedings, they often discover that the barrister's schedule is completely booked for the next 3 or 4 weeks. When scheduling on the day of the plea or trial, it is very difficult to fit in a sentencing hearing several days or a week hence. Multi-defendant cases are particularly problematic because several different barristers' diaries must be consulted and accommodated. When listing officers insist that an adjourned sentencing proceeding must be scheduled in the near term, barristers are often faced with the difficult choice of deciding whether that case or the one it now conflicts with should be passed to other counsel -- they simply cannot be in two courts at the same time. Some at the Bar are re-examining the ethical principle that holds that individual counsel should always keep a case for himself through sentencing if he has appeared for the offender at plea or trial. Abandonment of this rule of practice would be unfortunate as it is essential to there being a trusting relationship between defendant and advocate.

Separate from wrestling with barristers clerks, listing officers generally have trouble fitting additional adjourned sentencings into already crowded lists, especially when trying to keep adjournments short. There are simply no time-slots available.

During the pilots several judges noted their opposition to long sentencing adjournments caused by the unavailability of barristers in the short term, but many of the same judges also expressed irritation at the prospect of barristers announcing, in the midst of on-going trials, that they were required to be absent for a few hours or a day to attend an adjourned sentencing which had been scheduled at short notice in another court. The judges forecast that this would be an extreme problem in multiple-defendant trials if individual barristers were continually needing to be excused to handle adjourned sentencings in "dangling" cases.

A uniform national sentencing day and time would address this problem. Under the concept, time would be reserved every week in every Crown Court nationally for adjourned sentencing proceedings. A two hour slot on Thursday afternoons, Friday mornings or Friday afternoons would be most viable. Listing officers would keep that time-slot free for the last minute listing of sentencing proceedings. That slot would always be available at short notice, so adjournments could always be short from the listing perspective. The irritation of judges and other participants in on-going proceedings would be kept to a minimum as they would know well in advance that a single adjournment would probably be required at the designated time each week, to allow counsel to return to other courts. And while one or more of the barristers participating in the matter then before the judge were away attending sentencing proceedings, the judge himself could handle <u>his</u> adjourned sentencing matters at that same time, making the best use of what otherwise would have been wasted time.

A barrister representing a defendant pleading "not guilty" would be able to project weeks in advance, with reasonable certainty, that any sentencing in that case would probably occur, e.g., on the Friday following the trial date, and his clerk could make appropriate arrangements.

Some judges and barristers have suggested that courts convene early one day per week for adjourned sentencing hearings, and that the uniform national sentencing time be set for 9.30 or 10.00 a.m. on Fridays. This would minimise disruption to other court business and schedules.

The Bar Council in principle have endorsed the concept of a uniform national sentencing day and time, as they make clear in their submission which is set out as Appendix F.

(3) Coping with adjournments required to permit preparation of pre-sentence reports.

As has been discussed, during the pilots much was learned about how to avoid adjournments altogether in some cases, and about how to keep adjournments short in other cases. Simultaneously, those participating in the pilots identified changes and procedures that will help the system generally cope with more adjournments and their consequences.

i. Listing and special problems involving the part-time Judiciary.

Sentencing adjournments were found to be particularly problematic when they were necessary in cases which came on for hearing near the end of part-time recorders' sitting periods. For instance, recorder Smith is sitting in Birmingham for a two week period. On the Thursday of the second week of his sitting period, he presides in a case where there is a sudden, last minute change of plea to guilty. For the reasons described previously there is no pre-sentence report on the file, and because the case is triable either way and the sentencer is considering imposition of a custodial or significant community sentence, a written report must be reviewed before sentence may be imposed. Unless the Probation Service is able to prepare a report in one day, by Friday afternoon, the part-time recorder will be required to return to the Birmingham Crown Court after his sitting period has expired, to impose sentence. This is both expensive for the Lord Chancellor's Department, who must pay the recorder for an additional half day and possibly a full day, and extremely inconvenient and disruptive for the recorder who probably will have returned to his practice at the Bar.

During the pilots, in the above circumstances recorders occasionally felt pressure to re-assign cases to other sentencers. Such pressure was felt even though the idea of such reassignments after plea or trial was universally abhorred -- all agreed that an offender should only be sentenced by the judge to whom the facts were opened or the case was tried.

Listing officers must carefully review the cases assigned to members of the part-time Judiciary near the end of sitting periods. Only cases with reports on the file (e.g. cases where PSRs have been prepared pretrial) should be assigned for consideration during the last 3 or 4 days of sitting periods. Cases without reports (i.e. cases where there is a not guilty plea) should be listed for consideration during the first week of recorders' sitting periods. While this may be an unwelcome and difficult complication for listing officers, it is a necessary procedure if the Lord Chancellor's Department is to avoid the expense and inconvenience of continually bringing back part-time recorders after their sitting periods have expired.

An additional difficulty involving the part-time Judiciary was noted during the pilots. In a few instances, when recorders found themselves in the situation described above, they adjourned the case for sentencing in a different city. This happened particularly when a recorder was scheduled to sit as a recorder in another city immediately subsequent to his sitting where the case arose.

This procedure is understandably attractive to recorders as it is convenient and less disruptive to their schedules. However, the practice imposes impracticalities on others in the system. If the defendant is on bail, he is probably without the funds to pay for transportation to the recorder's next city. Is his solicitor expected to pay this expense, and then claim it back under the legal aid scheme? If the defendant is in custody,

then the Prison Service may be faced with the need to make a special trip to a distant court with a single passenger.

Because of the inefficiencies imposed elsewhere, the Lord Chancellor's Department should consider giving firm directions that this procedure is inappropriate.

In some pilot areas, when part-time recorders discovered that they were about to preside in a case where there had been a last minute change of plea and thus no report on the file, and when this occurred at the end of the sitting period, the recorder would stop counsel from opening the facts and instead direct that the case be re-assigned so that it would come up at an earlier point in the sitting period of some other recorder. By this method recorders avoided becoming tied to cases that would require their return after expiration of their sitting period. Where employed, usually the procedure was successful in eliminating the cost and inconvenience of bringing recorders back to court. The procedure may reduce a court's throughput, but not necessarily. If, when directing that the case be re-assigned, the recorder also makes certain that the Probation Service is notified and asked to prepare a report, then a report probably will be ready when the case is next listed, and the next hearing can be a joint plea and sentencing proceeding. This, then, would be a no less efficient procedure than that normally followed in "not guilty" plea cases where there must always be a second, adjourned sentencing hearing anyway.

ii. Payment of additional counsel fees by the Crown Prosecution Service.

Counsel for the Crown generally are expected to contribute little during the sentencing phase of a case. Thus, under pre-pilot practice, when sentencing adjournments occurred prosecuting counsel were frequently excused from attending adjourned sentencing proceedings.

During the pilots, it emerged that presence of counsel for the Crown at the second, adjourned proceeding was necessary more often than under past procedure. This was partly due to recorders protecting themselves from becoming tied to cases where adjournments for reports were necessary: As described above, recorders did this by preventing counsel from opening the facts at initial hearings and instead directing that the case be listed before another recorder at an early point in the other recorder's sitting period. When this procedure was followed, the CPS was forced to bring counsel back for the second proceeding. Thus, counsel had to be paid for attending two hearings in the same case, when previously counsel probably would have attended and been paid for only one proceeding.

Even when cases were opened during the initial proceeding, the Crown found it increasingly desirable to bring counsel back for the sentencing proceeding to ensure that an accurate picture of the offence was put before the sentencer.

iii. Transcribed "oral" pre-sentence reports.

Long before commencement of these pilot trials, Crown Court judges in Bristol (and in other courts) routinely directed probation officers to provide oral social inquiry reports in some cases. This practice developed informally as judges sought to gain Probation Service input before sentencing in some relatively uncomplicated cases that arrived at court without reports. (Usually, the defendant had plead not guilty until the trial date, precluding preparation of a report.)

Some judges were dismayed to learn that the new Criminal Justice Act requires that reports be written and thus would appear to prohibit sentencing on informal, oral reports in most circumstances.

During the pilot trial the Resident Judge in Bristol concluded that with a slight modification of the informal oral report procedure, the method could be brought into compliance with the new Act. His solution was to ensure that the presentation of oral reports was taken down by the shorthand writer in court and then immediately transcribed. He then asked that the probation officer who had offered the oral report check the transcript and sign it, usually one or two days after the sentencing proceeding. This procedure was followed in at least seven instances during the Bristol pilot.

The National Steering Committee and the Home Office had misgivings about this method, on two grounds. First, they noted that when reports are mandated, the new Act explicitly requires that sentencing occur only after a pre-sentence report has been considered. The Act goes on to define a "pre-sentence report" as being a document "in writing." Criminal Justice Act 1991, Part I, Section 3, sub-section (5). Secondly, they took the view that oral reports to courts, hastily planned and presented, are inevitably incomplete and lacking in depth.

Some Crown Court judges are content to leave resolution of the first objection to higher courts, and they respond to the second objection by noting that in court, "oral" work is not synonymous with "inferior" work, as is possibly true elsewhere in life. They note that the most important activities in court, from the examination of witnesses to the instructing of juries, occurs orally.

While there can be genuine debate on the second point, the first seems clear. A plain reading of the new statute would seem to prohibit the sentencing of a defendant in a summary or either way case, where imposition of custody or a significant community sentence is being considered, before the consideration of a written pre-sentence report. The fact that certain oral testimony will be transcribed and available in written form one or two days after imposition of sentence would not seem to change the reality that at the moment sentence was imposed, there was no report "in writing," and therefore there was no "pre-sentence report."

Information pertaining to the relative costs of preparing "oral" reports is set out in Appendix B, paragraph 3.40.

iv. Possible "knock-on", exponential scheduling problems for courts, barristers and recorders.

During operation of the pilots, the Bar repeatedly predicted that the minor scheduling problems encountered for courts, barristers and recorders during the pilots would multiply exponentially when sentencing adjournments became common and frequent in all Crown Courts. Their prediction was (and remains) that the problems would be of a different character when all Crown Courts, rather than only five, implement the new procedures. Then, the Bar have predicted, barristers will not need to be excused during subsequent cases only on rare occasions, to attend "dangling" sentencing proceedings in one of the few courts participating in a pilot, but instead will be required to regularly and frequently impose delays in subsequent cases as they scurry back to multiple courts for multiple adjourned sentencing proceedings.

This fear could have some basis, although the problem was not (and really could not have been) encountered during the pilots when procedures were changed in only five courts. To the extent that the problem develops on the scale of some of the pessimistic predictions from the Bar, the uniform national sentencing day and time reform outlined above will become essential.

SECTION III

FINDINGS AND RECOMMENDATIONS

All who participated in the pre-sentence report pilot trials learned much about the practical and organisational implications of the PSR provisions of the Criminal Justice Act 1991. The detailed findings and recommendations of local steering committees, government agencies, and groups participating from outside of government may be found in sections IV and V of this report. The National Co-ordinator has made certain key findings and recommendations which have national application, and they are set out here.

1. The Probation Service will be required to prepare more reports.

According to projections of the Home Office, (see Appendix A), the Probation Service will be required to prepare more than 20,000 additional reports per year from October 1992, when as a result of the Act preparation of pre-sentence reports will be mandatory in all summary and "either way" cases where custody is being considered, and in all types of cases (summary, "either way", and indictable only) where a significant community sentence is being considered. This would constitute an increase of more than 10% in the total number of reports required, considering that the Probation Service prepared 193,920 total reports in 1990. More specifically, the pilots indicate that most of this increase in demand for reports will come in Crown Court cases where the offender is offering a not guilty plea (or no plea) before the day of trial, or where for some other reason a report cannot be prepared in advance of court proceedings. In such cases, reports will not have been prepared pretrial but nonetheless will be required under the mandatory provisions. Under former practice, reports were usually dispensed with in such circumstances. When the most important statistical comparison is made -- that between the projected increase in Crown Court reports (at least 19,000) and the total of Crown Court reports prepared in 1990 (60,860) -- the rate of increase for Crown Court reports is over 30%. This is significant growth for which planning is required.

At the start of the pilot scheme, the Home Office projected that the new PSR provisions would require the preparation of 20,000 additional reports per year. In anticipation of this increased workload, the Probation Service sought and gained budgetary authority to appoint additional probation officers, and to fund their support (e.g: secretaries, etc).

2. **Up to thirty percent of all Crown Court pre-sentence reports will be requested on adjournment, and, the Probation Service will be required to prepare these adjourned reports according to VARYING timescales.**

After implementation of the new PSR provisions, in most Crown Court cases the Probation Service will continue to be able to prepare pre-sentence reports pretrial and without time pressure. However, because reports will be mandatory in most Crown Court cases, there will be a substantial increase in the number of reports required on adjournment: 30% of Crown Court reports will be sought on adjournment in some areas. With respect to these 30% of Crown Court reports, the traditional Probation Service request for 21-28 days preparation time is not realistic in the new era of mandatory reports. When so many more reports will be required on adjournment, the needs and interests of others in the criminal justice process dictate that some of these reports be prepared quickly, to keep adjournments short. In particular, the important interests of unsentenced offenders remanded in custody must be kept in mind here. The Probation Service must offer a flexible position on timescale for adjourned report preparation.

This is not to say that the Probation Service should be ready to prepare all adjourned reports quickly, or that quality should be sacrificed to improve efficiency. Rather, the Probation Service must be ready to prepare each adjourned report on a timescale appropriate for that particular case. Some uncomplicated, straightforward reports should be available, in writing, on the same day. A large percentage of adjourned reports can be completed in 7 days or less, and the achievement of such a timescale should usually be the objective when an offender has been remanded in custody. In some cases, however, preparation of an appropriate and professional report legitimately will require 3 or 4 weeks, as when offenders present with drug abuse or psychiatric problems. In such instances, when justification is given by the Probation Service, others in the process (judges, the Bar, listing officers) must be flexible and accommodate the need for greater report preparation time.

3. **At every Crown Court Centre the Probation Service must establish court-based capability to prepare some reports quickly.**

To meet the demand for short-notice reports on adjournment, which will exist in every Crown Court Centre to varying degrees, each Crown Court Centre will require a court-based report writer or team of report writers. It would be most efficient if this new report writing responsibility was merged into the duties of already-present, court-liaison probation officers, with an appropriate increase in court-liaison staff to manage the additional workload. In some areas the demand for faster reports prepared at court will be substantial; in other areas it will be less. But the pilots indicate that there will be some demand for this service at every Crown Court Centre once reports are mandatory across a wide range of cases. The Probation Service in local areas will be required to gauge the

local situation before determining the necessary size of their particular court-based teams.

Technological aids, such as fax machines and word processors, will be required by court team members if they are to consistently produce quality reports at short-notice.

4. **Better communication between the Judiciary and the Probation Service is required.**

If the production of mandatory pre-sentence reports is to occur without difficulty, there must first be better communication between the Judiciary and the Probation Service regarding the mechanics of report preparation. Good communication is required on two levels:

a. First, before 1 October 1992, the Chief Probation Officer (CPO) in each area should meet with the Resident Judge at the local Crown Court Centre to discuss and make clear Probation Service capability and intentions with respect to the production of pre-sentence reports. CPOs should be ready to change the traditional 21-28 day preparation rule for adjourned reports, in favour of a flexible response. But CPOs should also request that the Probation Service not be asked to prepare fast reports in inappropriate cases, or without there first being a conference between the sentencer and the probation officer assigned the case (see below). Misunderstandings between the Judiciary and the Probation Service about report production in specific cases can be avoided in local areas if a written "protocol" is prepared by the area Probation Service and submitted, before 1 October 1992, to the Resident Judge. The "protocol" should describe the capability and intentions of the Probation Service with respect to the preparation of pre-sentence reports. If found acceptable by the Court, it should be transmitted by the Resident Judge to all sentencers, resident and part-time, who will be sitting in the Crown Court. During operation of the pilot scheme in Birmingham, such a document was prepared by the West Midlands Probation Service and approved and circulated by the court. It proved extremely useful. The Birmingham protocol is set out in Section IV of this report.

b. Secondly, better communication between the Judiciary and the Probation Service is required "on the ground," in the individual case. The "protocol" described above should define how this communication should be accomplished. In general, the policy should be that sentencers, when faced with the need for a report on adjournment, should

   -- briefly stand down so that a probation officer may assess the case and report back to the sentencer,

and only <u>then</u> should the judge specify the report deadline and sentencing date. Standing down for assessment in every

case without a report will be time-consuming on the day, and such a procedure may mean that additional probation officers will be required at court. But the benefit will come in the form of a reduced number of remanded offenders being held unnecessarily by the Prison Service, and in some remanded offenders being held in custody for shorter periods.

Court-based probation officers will require training in how best to assess cases to determine the time required for report preparation, and in how best to present Probation Service views to sentencers, particularly when more lengthy adjournments will be required for preparation of a proper report.

5. **There must be good quality control for pre-sentence reports.**

As implementation of the Act will require some significant changes in the methods by which reports are prepared, the Probation Service must be doubly careful to monitor the quality of reports produced, particularly in early days under the Act, and particularly with reference to reports prepared at short-notice on adjournment. Experience teaches that it is during times of transition in policy and method that particular instances of bad practice "slip through the cracks," with consequent harm and unfairness in individual cases. Within the Probation Service quality control methods should be reviewed, redesigned if necessary, and made fully effective before changeover begins in October 1992.

6. **Local "PSR Implementation Committees" should be established.**

To facilitate the smooth implementation of the new provisions making pre-sentence reports mandatory in many cases, local "PSR Implementation Committees" should be set up in each Crown Court Centre. In both membership and remit, these committees should mirror the local steering committees established during the pilot trials. The committees should serve as the forum for resolution of inter-agency difficulties and friction points as the PSR provisions are implemented. These committees should operate for between six months and one year, meeting on a monthly basis.

While judges did not sit on the local steering committees during the pilot scheme, they were missed. The input of judges is critical to the successful reorganisation of the sentencing process. While probably not in the role of Chairman, the Resident Judge in each Crown Court, or his or her nominee from among other judges, should serve on the local PSR Implementation Committees.

7. **Consistent provision of offence information by the Crown Prosecution Service to the Probation Service is essential.**

To improve the quality of reports, and with special reference to those reports which must be prepared quickly, the Crown Prosecution Service should provide offence information to the Probation Service in connection with every Crown Court case. This information should be in the form of an "advance disclosure bundle" or a "committal bundle", and it should be provided at the time of, or immediately after committal. The pilots demonstrated conclusively that the receipt of this information by the Probation Service is essential to the consistent preparation of thorough and accurate pre-sentence reports.

The CPS must start delivering these bundles in June or July 1992, with respect to all cases processed by the CPS during those months and thereafter, if the Probation Service is to have bundles for all cases sentenced from October 1992.

8. **The Prison Service should ensure that outside probation officers can gain immediate access to remanded offenders on whom short-notice reports have been ordered.**

Before October 1992, the Prison Service should have in place, at every facility to which Crown Court defendants are remanded, a firm policy by which probation officers from outside of the prison will be assured immediate access to remanded offenders on whom short-notice reports have been ordered. This is to permit interviews essential to the completion of PSRs. The prison policy should provide for access on the wings of prisons in those instances when "special visits" areas are completely booked. It is not enough for prison governors to simply agree that probation officers will be granted access in such circumstances; the pilots demonstrated that it is necessary for more junior prison staff to be made aware, through a written policy, that probation officers ordered to prepare short-notice reports have priority in gaining access to offenders, and must be accommodated.

9. **Listing officers should avoid scheduling "not guilty" plea cases for the final days of part-time recorders' sitting periods.**

Listing officers must carefully review the cases assigned to members of the part-time Judiciary near the end of sitting periods. Only cases with pre-sentence reports on the file (e.g. cases where PSRs have been prepared pretrial) should be allocated for consideration during the last three or four days of sitting periods. Cases ready for plea or trial without reports on the file should be listed for consideration during the first week of recorders' sitting periods.

10. **Uniform national sentencing days and times should be established.**

The Lord Chancellor's Department in conjunction with the Judiciary should establish uniform national sentencing days and times for the listing of adjourned sentencing proceedings. Observations made during the pilots suggest that Friday mornings at 10 am are probably the best time. Such uniform sentencing days and times are required if the listing of additional adjourned sentencing proceedings is to be accomplished without creating serious difficulties for court clerks, the Bar, and judges. Those who resist this concept must come to terms with the reality that sentencing adjournments will occur in as many as 30% of all Crown Court cases from October 1992. Currently, sentencing adjournments probably occur in about 15% of Crown Court cases.

11. **The "Cracked trials" problem must be alleviated.**

The "cracked trials" problem bedeviling British courts must be resolved. Some strategy must be adopted whereby the "day of reckoning" for defendants facing plea decisions is advanced, from the day of trial to a point at least 10 days before trial. The proposals set out in Appendix H should be seriously considered by the Judiciary, the Lord Chancellor's Department and the Bar.

12. **There should be better notification of guilty pleas from solicitors.**

Solicitors should be required to immediately notify listing officers and the Probation Service when defendant clients change their intention as to plea. While many defendants only take the decision to plead guilty on the day of trial, others change their minds several days or weeks before the trial date, and listing officers and the Probation Service need to hear of this changed intention at the earliest possible stage. The Lord Chancellor's Department should circulate a form to solicitors approximately two weeks before firm trial dates, asking solicitors to report their clients' intentions with respect to plea as of that late date. An increase in the number of guilty pleas notified to the court and the Probation Service in advance of the day of trial will increase the incidence of pretrial report preparation, and thus decrease the number of sentencing adjournments.

13. **The pilot trials could not and did not uncover all of the issues that probably will be presented upon national implementation of the PSR provisions. The National Steering Committee should be retained to address additional issues, should they arise.**

When the new Act is implemented nationally, and the PSR provisions are made applicable to cases in all Crown Court centres, it is likely that the criminal justice system will experience some problems not encountered during operation of pilot trials in only five areas. Barristers will be asked to attend adjourned sentencing proceedings in all Crown Court centres in which they have cases -- not just in one court centre where a pilot scheme is operating. The Prison Service will find that many probation officers, not just those from one pilot court, are seeking immediate access to remanded offenders in order to prepare short-notice reports on adjournment. Probation managers will need to cope with short-notice requests for reports from all Crown Court centres they serve, not just one that is participating in a pilot. There will be "knock-on" effects, spilling over from one agency to another, and from one court centre to another. It is impossible for those who have observed and participated in the five pilot trials to predict all of the potential organisational implications of the PSR provisions. It would seem sensible to retain the National Steering Committee which oversaw the pilot trials for possible additional service in late 1992 and early 1993, as it then may be necessary for a multi-agency, cross-professional body to address issues of national significance which present themselves only upon national implementation of the PSR provisions.

SECTION IV

REPORTS OF THE LOCAL STEERING COMMITTEES

A. Birmingham

THE BIRMINGHAM PILOT SCHEME

(A report on the findings of the pilot trial on pre-sentence reports in Birmingham Crown Court, July 1991 - December 1991)

Prepared by the Members of the Birmingham Local Steering Committee

January, 1992

Membership of The Birmingham Local Steering Committee

Mr. V. Grove (Chair)	Courts Administrator, Birmingham Group of Courts, Lord Chancellor's Department.
Mr. B. Mouzer (Secretary)	Assistant Chief Probation Officer Birmingham Courts, West Midlands Probation Service.
Mr. P. Barton	Chief Clerk, Birmingham Crown Court.
Mr. D. Blundell	Birmingham Branch Crown Prosecutor, Crown Prosecution Service.
Mr. R. Derby	Assistant Governor, Her Majesty's Prison, Winson Green.
Mr. M. Fowler	Birmingham Law Society.
Dr. R. Green	Senior Liaison Probation Officer Birmingham Crown Court, West Midlands Probation Service.
Det. Sgt. F. Jennings	Antecedents Department, West Midlands Police.
Det. Ins. P. Shields	Antecedents Department, West Midlands Police.
Mr. P. Thomas	Criminal Bar Representative, Midland and Oxford Circuit

The Local Steering Committee would also like to acknowledge the able assistance of Mr. J. Bredar of the Vera Institute of Justice; and of Mrs. A. Hill who took minutes of meetings and typed this report. Special thanks are due also to all those staff whose extra efforts made the Birmingham pilot possible, in particular the employees of the West Midlands Probation Service in the Birmingham Crown Court liaison unit.

The Steering Committee met on five occasions.

West Midlands Probation Service
Birmingham Crown Court Liaison Unit

Dr. R. Green	Senior Liaison Probation Officer
Mr. L. Coley	Probation Officer
Ms A. D'Ippolito	Probation Officer
Mrs. B. Dove	Probation Assistant (resigned)
Mr. F. Figures	Probation Officer (Temporary Part-Time)
Mr. P. Lines	Probation Officer
Ms. K. Preedy	Probation Assistant
Mrs. B. Scott	Probation Officer (Temporary Part-Time)
Mr. W. Thomas	Probation Officer
Mrs. B. Adams	Liaison Secretary (Pre-Trial)
Mrs. J. Broom	Team Assistant (Post-trial)
Ms A. Gordon	Team Assistant
Mrs. A. Hill	Team Assistant to the Pilot Scheme

1. Introduction

1.1 The publication of the Criminal Justice Bill 1991, and of Home Office Circular PSR (91) 1, gave rise to very real concerns amongst those concerned with the administration of criminal justice in Birmingham. Some believed that the requirement for written pre-sentence reports in specified cases was impractical and would not work; others thought it could work, but changes would be needed to avoid additional delays in an already busy Court complex, not least the injection of additional resources.

1.2 Concerns expressed at the time by the various participants, which will probably have a familiar ring to those who have to embark shortly on implementing the written pre-sentence report requirement contained in what is now the Criminal Justice Act 1991, were wide ranging: unacceptable delays in the processing of cases (Crown Court Administration); infringement on judicial decision-making (some judges; Bar); resources and quality of reports (Probation Service); cost of providing better information (Crown Prosecution Service); provision of interviewing facilities at short notice (Prison Department); and the cost of providing antecedent information at an earlier stage in proceedings (Police).

1.3 At the end of the six-months pilot period, a few judges and many members of the Bar in Birmingham still would prefer not to have the requirement in law to have a written pre-sentence report in specified circumstances. They believe this is a matter best left to the discretion of the sentencing judge. This view is not shared by West Midlands Probation Service, Birmingham Law Society, and the Birmingham Branch of the Crown Prosecution Service.

1.4 However, all participants in the Birmingham Pilot Scheme now believe that the requirement can be made to work, provided there is proper inter-agency planning; and the provision of the necessary additional, experienced staff by the Probation Service in the Court building itself.

1.5 This report aims to describe the Birmingham pilot scheme in the hope that those who have yet to decide upon and establish an organisational structure may gain from the Birmingham experience. It is our view that the organisational structure created in Birmingham worked well, and provides a model which others could choose to adopt.

2. The Crown Court in Birmingham (Before the Pilot)

2.1 The Crown Court in Birmingham serves a large, urban multi-racial community which has been badly affected by recent recessions in the motor vehicle and allied engineering industries. The level of crime generally is on the increase. The Crown Court receives most of its cases from Birmingham and Sutton Coldfield Magistrates' Courts, plus those from Coventry and Solihull Magistrates' Courts which require a High-Court Judge.

2.2 During 1990 Birmingham Crown Court sentenced 3457 defendants. It is a larger, busier Court than neighbouring Crown Courts such as Wolverhampton, Coventry and Warwick. The average waiting time for a case to be dealt with (date of committal to date of sentence) for defendants on bail during 1990 was 7.2 weeks. The average time spent awaiting disposal by defendants in custody during the same period was 6.6 weeks. The Judiciary and the Crown Court Administration are very concerned about such delays and through-put targets are vigorously pursued to reduce waiting times to as short a period as possible.

2.3 The Court building itself is modern (opened in 1987), and houses twelve Court rooms. It is served by six circuit judges who are regularly based in Birmingham. They include the Recorder of Birmingham and a Liaison Judge, both of whom are 'resident judges'; visiting High Court Judges (usually three per Term); plus visiting part-time judges (Recorders and Assistant Recorders). It is the aim of the Crown Court Administration to achieve 100% occupancy of Court rooms, though it is rare for all twelve Court rooms to be engaged for criminal work at the same time, a considerable amount of civil work being completed in the city.

2.4 Facilities within the building are generally good, though office accommodation is at a premium. Interviewing facilities are generous except on the busiest days: there are six consulting rooms on each of the three floors, plus seven similar rooms in the cells area for defendants in custody.

2.5 Before the pilot scheme began, the probation service enjoyed a generous allocation of office space by national standards, though the space was full to capacity. It comprised an administration support office (occupied by three clerical staff plus equipment); one general office (occupied by two probation officers plus one probation assistant); and one office for the senior probation liaison officer.

2.6 Communication between the different Court-users was generally good, though undertaken on an ad-hoc basis. The Crown Court users group existed, although it had not met on a regular basis for some time, and so a local steering committee was considered necessary to concentrate on the particular issues concerning the pre-sentence Pilot.

2.7 Out of the 3457 defendants who were sentenced at Birmingham Crown Court during 1990, 2450 had a social enquiry report prepared. Most of these were prepared pre-trial; a few were prepared post-trial after an adjournment; an even smaller number were prepared by the probation officers based permanently within the Court building.

2.8 Social enquiry reports were only prepared pre-trial where the defendant had indicated a definite guilty plea to all charges, or in mixed plea cases where there was a guilty plea indicated to the most serious charge. In cases where defendants changed their plea from not guilty at short notice, or even on the day at Court, it was necessary either for the case to be adjourned for a social enquiry report; or a Court-based probation officer would complete a short, 'stand down report' delivered orally or in hand-written form; or a short assessment of suitability to perform community service was carried out, the outcome delivered orally.

2.9 The resources to complete 'stand down' reports or community service assessments were extremely limited. Two full-time probation officers, plus one probation assistant (unqualified to complete 'stand down' reports), were located permanently within the Crown Court. These staff were supplemented by additional officers from the larger Birmingham Courts probation team (covering Magistrates, Crown and Juvenile Courts) on busiest days if spare resources were available. Often there were not any spare resources; Crown Court officers were fully occupied in Court, answering questions from judges and barristers, and making initial appointments for defendants placed on community service or probation. Hence, cases where sentencers wanted Reports were often adjourned for the customary full period: it was the policy of the West Midlands Probation Service to complete such reports within twenty one days for defendants remanded in custody; and within twenty eight days for defendants remanded on bail.

2.10 Information available to the West Midlands Probation Service to complete social enquiry reports was limited. Attempts were made to obtain details of defendants' previous convictions from the police at the point of committal (only partially successful); antecedent histories were supplied by the Police some three weeks after the date of committal (including brief resumes of the circumstances of the most recent convictions); otherwise, report writers were dependant on what probation staff in the Magistrates, Courts could glean from evidence presented orally, at the first hearing or during Committal proceedings. This dearth of information meant that frequently probation officers only had defendants' accounts of the circumstances of their offending. On occasions these accounts were highly unreliable but defence solicitors and arresting police officers were difficult to contact to obtain a more balanced view. Nothing was available from the Crown Prosecution Service. The result was that judges and defence barristers were frequently heard to complain about unrealistic recommendations in social enquiry reports, and probation officers were sometimes supervising difficult offenders on whom they had inadequate information.

2.11 In those few cases where Crown-Court-based probation Officers prepared 'stand-down' reports, such reports were well-received; the author had usually been in Court to hear the prosecution case, and had the opportunity to discuss the focus of such reports with the judge and defence barrister. However, they were usually delivered orally or presented in hand-written form due to insufficient typing resources. Very occasionally, a Court-based officer would prepare a full typed social enquiry report at short-notice (usually within a week). The provision of stand-down and short-notice, typed reports by Court-based officers was usually to accommodate the logistical problems of the Court: part-time Recorders or Assistant Recorders who were coming to the end of their period of sitting; a multi-defendant case, where only one or two defendants lacked reports and it was desirable to deal with all defendants together and expeditiously. If an officer was unavailable, and the request could not be met, the case either had to be adjourned for the full period of three/four weeks; or the judge sentenced without a report. The latter course was a matter for concern for the probation service, as outlined in a research report entitled: "How Do You Plead?". It seemed to the probation service that defendants' who had not indicated at the committal stage that they were going to plead guilty were dealt with less fairly. The Court would only order a social enquiry report where it could easily accommodate such preparation; if the ordering of a report caused logistical problems for the Court, then the report was not ordered. The probation service was eager therefore to try to make the new pre-sentence report requirement work without causing unnecessary delay.

3. Planning For Implementation

3.1 The pilot trial on pre-sentence reports in Birmingham Crown Court actually commenced on 1st July, 1991. However, the planning for implementation began several months earlier, in December, 1990, as far as the probation service was concerned. The first meeting of the local steering group was held in early April, 1991. Even after such an early start, the probation service was unable to get its additional resources in place to commence the pilot at the beginning of June in line with the other four pilot areas. This highlights the importance of making an early start, and planning well ahead, in order to have a workable structure in place for the commencement date of the relevant section of the Act.

The Probation Service

3.2 The probation service plan for the local pilot scheme can be found at Annexe A. This is an amended version (amended August, 1991) of the original plan produced in December, 1990. The amendments incorporate changes in practice introduced as a result of the experience gained during the first few weeks of the pilot period.

3.3 At the planning stage for the pilot scheme, the West Midlands Probation Service already had a concern to move the focus of its work in Birmingham from the Magistrates Court to the Crown Court. To achieve such a change of focus, the service envisaged reducing the demand for reports in the lower Court to achieve extra space for writing reports in plea change cases in the higher Court, where the use of custody was more prevalent. The planned strategy for achieving the necessary reduction in the demand for reports in the lower Court was a threefold line of approach: verbal advice to be given to the Court by the duty probation officer in the simplest cases; in more complex cases, a short, written same-day report prepared by the duty probation officer; and in the most complex cases a full, written report prepared as quickly as possible.

3.4 In practice, in the Crown Court this tiered approach was found to be insufficiently flexible and responsive. As a result, the more elastic response outlined in Annexe A was developed.

3.5 In the light of this thinking to make better use of duty probation officers at Court, and out of a desire to respond to the concerns of the Judiciary and the Crown Court Administration about unnecessary delay, the probation service plan in Birmingham was to increase the probation officer resource at Court, and thereby respond more quickly to report requests after conviction.

3.6 It was felt little time would be saved by preparing social histories before trial where defendants indicated they were pleading not guilty: the motivation for the offence could not be discussed; social circumstances could have changed by the time the matter reached the Crown Court; possible community sentencing options could not be considered without a discussion about offence

motivation. Reports after conviction, however, would be able to take account of what was said in Court; and could be more focused after dialogue with judges and defence barristers about what was required.

3.7 In order to provide the kind of service envisaged, it was estimated that three additional full-time-equivalent posts would be required. This was based upon the premise of a report being prepared after conviction in every case where no pre-trial report was available. An additional team assistant would be required to type the reports prepared by these officers.

3.8 A major concern was that some judges, for reasons of expediency, might order reports at short notice in cases inappropriate for this kind of service, and not allow these Court-based probation officers sufficient time to do a professional job and prepare good quality reports with which the authors were satisfied. To avoid such a danger, "A Note of Guidance" (contained in Annexe A) was drafted on the subject of the procedure for ordering social enquiry reports. This was shared with the senior circuit judge and agreed as standard practice for all judges in Birmingham. The intention behind this "Note of Guidance" was to avoid potential difficulties in open Court between judges and probation officers.

3.9 This "Note of Guidance" was incorporated into a briefing pack about the pilot scheme. It was decided to issue this to the Crown Court Administration (for placing in each of the twelve retiring rooms); an individual copy to each of the six circuit judges regularly sitting in Birmingham; one to each set of barristers' chambers in Birmingham; to the Birmingham Law Society; and to each member of the local steering committee.

3.10 A further effort to ensure good communication was to organise a lunch-time briefing meeting and discussion, with cold finger buffet provided, in the Crown Court building. Invitations were sent to each set of barristers' chambers, and to each judge sitting at Birmingham on that day.

3.11 Besides changes within its own organisation, the probation service required assistance and cooperation from other criminal justice agencies; access to prisoners at short notice (Prison Department); additional accommodation at Court for its extra staff (Crown Court Administration); better and regular information about offenders and their offences (Crown Prosecution Service and Police); and early notification of changes of plea from 'not guilty' to 'guilty' (Law Society and Bar).

3.12 To achieve the level of cooperation required, the various agencies likely to be affected were invited to become members of a local steering committee. The aim was to ensure good communication between these agencies, during the course of the pilot scheme and to monitor its progress.

3.13 Finally, additional equipment was provided: a word-processor for the additional team assistant to be employed; and as an incidental experiment, a further word processor pre-programmed with a social enquiry report format. A third word

processor/micro-computer for the liaison secretary would have been desirable to replace the manual system used to record committals from Magistrates Courts, Crown Court Listing Numbers, and the names of report authors. However, competing demands for technology from other sectors of the probation service meant this was not possible.

3.14 It was envisaged that, even with an extra team assistant, at times of heavy demand for short-notice reports, resources would be insufficient to get reports typed quickly. For this reason, as an incidental experiment, it was decided to arrange for the probation service computer services section to design a pre-programmed social enquiry report format; the aim was for officers to use the format to enter information themselves onto the word-processor, thereby obviating the need for a team assistant always to do the job. A copy of the format used can be found at Annexe B, together with operating instructions provided for officers. However, this experiment was only partially successful, and wherever possible it was preferred to have a team assistant type in the report.

Crown Court Administration and Judiciary

3.15 Little forward planning was required by the Crown Court Administration to prepare for the pilot scheme, though the Chief Clerk and Administrator assisted greatly with the communication between the different parties. For example, the Administrator agreed to chair the local steering committee and bring the various parties together; the Chief Clerk negotiated with the Birmingham Bar for the release of two consulting rooms to accommodate the additional probation staff.

3.16 Communication between the judiciary and the probation service to plan for the commencement of the pilot scheme was important. The Crown Court Administration was able to advise on the best channel of communication; this proved to be the Recorder of Birmingham, the senior circuit judge. The organisational structure for preparing reports was discussed and agreed, as also was a written "Note of Guidance" for the ordering of reports. It was agreed with the senior judge that difficulties between the probation service and judiciary in open Court were undesirable; for this reason, the judge issued guidance to all other judges sitting in Birmingham about the requirements and procedures for the pilot.

3.17 Negotiation, discussion and planning for the pilot scheme between the judiciary and probation service proceeded well, save for one difficulty: the inability of the probation service to get into place the additional experienced officers by the agreed start date. This caused some embarrassment to both parties, and underlines the importance of early planning and recruitment. In retrospect, the delay in the starting date (by one month) was beneficial, because it allowed time to prepare more thoroughly. However, at the time the delay caused anxiety and unnecessary pressure.

Crown Prosecution Service

3.18 An early start in the provision of information was also required by the Crown Prosecution Service. Documents to be supplied were: the summary of information prepared for the prosecutor by the police for the first hearing in the Magistrates' Court; the police record of interview with the defendant; and a copy of the police antecedents.

3.19 The plan was for the two members of staff within the Crown Prosecution Service who prepared committal "bundles" or files to extract the relevant documents at the time the bundles were being photocopied and simply take extra copies of these documents for the probation service. This was not perceived as a major difficulty. There was greater concern, however, amongst Crown Prosecution Service staff about having to retrieve documents from bundles already prepared in cases already committed but awaiting disposal.

3.20 For this reason, the Crown Prosecution Service planned to start copying the relevant documents from bundles in May- one month ahead of the proposed start-date. In fact, it proved to be two months ahead of the start-date. Inevitably, however, there would still be many cases 'in the system' -already committed and awaiting disposal: this delay in disposal, in exceptional cases, could be up to a year. It was agreed, therefore, to identify one person within the Crown Prosecution Service, and one person within the probation service, to liaise with each other about retrospective retrieval of information from committal bundles. A standard pro-forma was agreed upon to request this information. (Annexe C). It was anticipated that gradually, as cases were processed, fewer retrospective retrievals would need to be requested, and indeed this proved to be the case.

Criminal Bar

3.21 In the initial planning stages, communication between the Bar and the probation service proved difficult because no existing channel of communication was in place. However, the Bar needed to be appraised of the contents of the new Bill relating to the requirement for written pre-sentence reports. Eventually, on the advice of the senior circuit judge and the Crown Court Administration, a briefing document (Annexe A) was sent to the Head of each set of Chambers. Heads of Chambers were also invited to send a representative to the lunch-time briefing meeting and discussion referred to earlier in 3.10, though in practice few did so.

3.22 The most effective methods of communication with barristers during the planning stage proved to be discussion with individuals at Court, usually when they collected reports from the probation office; and by means of a Bar representative on the local steering committee.

Law Society

3.23 No change in practice was required of defence solicitors, who were effectively cushioned from the effects of the pilot scheme by the Bar. However, defence solicitors needed to be informed of the pilot scheme and its implications for their clients. This was done via a representative of the Birmingham Law Society, with whom the probation service was already in contact via the Birmingham Magistrates' Court users group.

3.24 The Law Society representative was asked by the probation service to try to improve notification of late changes of plea so that pre-trial reports could be prepared, even at short notice, by the additional officers to be located in the Crown Court building. The probation service provided a name and telephone number for such notifications and asked that these be published in the local Law Society Bulletin. This was agreed but, in fact, produced little or no improvement in the numbers of such notifications during the pilot period.

Prison Department

3.25 The local prison serving Birmingham Crown Court for adult male remand prisoners was H.M.P. Winson Green; for female remand prisoners H.M.R.C. Risley; and for male remand prisoners under twenty one years H.M.R.C. Brockhill (this has since changed to H.M.R.C. Brinsford). The Prison Department were concerned about the lack of interview facilities for probation officers to have access to prisoners at short-notice.

3.26 Winson Green prison, for example, is overcrowded and there is great pressure on the twelve interview cabins in the special visits area. This area is used for visits by police, solicitors, counsel, and others making "official" visits to prisoners besides the probation service. The special visits area is usually fully occupied, and at times of heavy demand there can be up to a week's delay before an appointment can be made.

3.27 However, prison management believed they would be able to accommodate the requirements of the probation service because they perceived that the demand to see prisoners at short-notice would be light. Also, excellent interviewing facilities existed in the cells area at Birmingham Crown Court, and the prison would have no objection to bringing prisoners to Court for a morning interview, the case then to be listed for presentation of the report and sentencing in the late afternoon.

3.28 Prison management prepared a contingency plan for the situation where a short-notice visit to prepare a report was requested, and the special visits area was fully booked. In that situation, the probation officer would be asked to interview the remand prisoner in any other room which could be made available: the prison probation officer's room; the bail information scheme room; the legal aid officer's room; or even the relevant Assistant Governor's

office. Such rooms, whilst possibly not ideal, would be adequate for the interview to take place. The prison department wished to cooperate by maintaining a flexible attitude to meet the needs of the probation service and of the Courts.

The Police

3.29 No forward planning was required by the Police. The Antecedents Department within the C.I.D. Support Services were already supplying antecedent information. The only concern was the accuracy of such information: recent convictions are not recorded as the case finalisation papers are not forwarded to N.I.B. at New Scotland Yard as quickly as they might be by divisional A.S.U. staff. There has been a recent scrutinity within the West Midlands Police on this problem and measures are in hand to redress the situation. However, this problem existed prior to the commencement of the pilot scheme: probation officers could overcome this difficulty to some extent, though not entirely satisfactorily, by reference to their own computerised client information system.

Conclusion

3.30 Four crucial points emerged from the planning stage of the pilot scheme in Birmingham:

a. There is a need to start planning early, especially for probation services and the Crown Prosecution Service - probably in May to be sure of an October start, allowing for delays in arranging meetings during the summer holiday months;

b. Good clear communication is essential between all parties involved;

c. A local steering committee is a very useful tool to bring about the level of effective communication repuired;

d. A written briefing document, or protocol, discussed with and agreed by the local judiciary is essential.

4. The Pilot Scheme in Action

4.1 During the period 2nd July, 1990 - 21st December, 1990 (inclusive), before the pilot scheme existed, 1612 offenders were sentenced. Reports were presented in 1004 cases, of which 816 reports were prepared pre-trial and 188 were prepared after adjournment. These figures are represented diagrammatically in Annexe D.

4.2 The Pilot Scheme in Birmingham Crown Court operated from 1st July, 1991 - 23rd December 1991 (inclusive). During this period, 1320 offenders were sentenced. Reports were presented in 1115 (84%) cases, of which 778 (70%) reports were prepared pre-trial, and 337 (30%) were prepared after adjournment. These figures are represented diagrammatically in Annexe E.

4.3 Annexe F shows diagrammatically that of the 337 reports prepared after adjournment, 198 (58%) were prepared within 21 - 28 days by field teams, and 139 (42%) were prepared in under 21 days by court team officers. In fact, of the 139 reports prepared in under 21 days by the court team officers, 49 (35%) were prepared on the same day; 84 (60%) were prepared within 7 days; and 6 (5%) were prepared within 8 - 21 days.

4.4 The ability of the probation service to prepare reports at short-notice is generally felt to have avoided the delays envisaged by some judges, the Crown Court Administration, Bar and Law Society. This was achieved by effectively doubling the probation service presence in the Crown Court building: the number of probation staff was increased by three full-time-equivalent probation officers, and one extra typist/clerical support worker. These extra staff were accommodated in two consulting rooms with the Court building, released by the Bar from use by them in the interest of creating an effective structure for short-notice reports. This model was found to work very well by all parties concerned. The experience gained during the period of the pilot scheme in Birmingham is set out in some detail in the following paragraphs in case it is helpful to those who will need to create a structure to meet the written pre-sentence report requirement from October, 1992.

The Probation Service

4.5 An area of difficulty envisaged by the probation service before the pilot began was unreasonable pressure to complete reports at short-notice at the expense of a professional, competent job being done. It was anticipated that this pressure would come from some judges, though in fact it came also at times from defence barristers. The "Note of Guidance" for judges about ordering reports avoided most difficulties, though not all.

4.6 Early in the second month of the pilot scheme, a visiting Recorder overlooked the "Note of Guidance". At the end of a trial of two defendants, he ordered pre-sentence reports to be available for the next day, without calling for a probation officer to interview the defendants and advise the Court how long would be required for reports to be prepared. The liaison probation officer covering the Court (who had been required elsewhere when the reports were ordered) enlisted the assistance of the senior liaison probation officer, and both went to speak with the visiting Recorder in Chambers. The Recorder's problem was that his period of sitting in Birmingham ended the next day. He indicated that he had already decided to sentence the two defendants to a period of custody; that he felt a pre-sentence report was unnecessary in that particular case; and that he only wanted two or three lines indicating whether or not there was anything exceptional. After discussion, it was agreed that the probation officer would interview the two defendants in the cells area, prepare a short note (not a report), and indicate whether or not a further adjournment was required.

4.7 The probation officer worked hard to interview the two defendants and prepare a short written note within the twenty four hours given. However, it quickly became apparent to this officer that there were extremely complicated circumstances relating to both defendants: one had just successfully completed a heroin addiction rehabilitation programme, was thought to be making good progress on his drug abuse, and thus had behaved in a manner totally inconsistent with his recent rehabilitation; the other was very young and involved in a peculiar relationship with his parents which, upon examination, might provide some insight into his sudden tendency towards violence.

4.8 The probation officer reported back that preparation of a short-notice report in such circumstances was inappropriate, and requested the opportunity for the probation service to prepare more thorough and lengthy reports. The reasons were set out in a letter to the Recorder. The Recorder read this letter in open Court, when he received it in lieu of the reports he had ordered. He asked a few questions of defence counsel and, after making some observations about his hectic schedule, stated that it would be inappropriate to sentence these men without full social enquiry reports being prepared and read first. He then scheduled the case for when he was next in Birmingham, some four weeks later, and both defendants were remanded in custody to await the reports. Both defendants waived any objection to the month-long wait, on the advice of

counsel who quickly perceived that the reports might be a mechanism by which their clients could avoid lengthy prison terms, or possibly receive a reduced term of imprisonment.

4.9 This incident is recounted in detail to emphasise two points: real effort needs to go into the development of a protocol to assist officers in deciding the length of adjournment necessary to provide a satisfactory report; even with such a protocol in place, difficulties may still arise and Court-based probation officers need to be experienced, confident in their public speaking and Courtwork skills, and to develop a relationship of trust with the judiciary such that their professional advice is valued and accepted.

4.10 Probation officers involved in the Birmingham pilot initially were uneasy about too short a period being allowed, fearing that judges and barristers would want short-notice reports as the norm, and that quality would suffer as a result. Some pressure was applied on Court officers, as illustrated above. In particular members of the Bar pressed for same-day reports if they wished to keep a case before a particular judge, had heavy schedule and did not wish to come back on another day, or had a client in a multi-defendant case without a report whilst all the other reports were available.

4.11 Despite these pressures, by relying on their Courtwork skills and developing the judiciary's confidence in their assessments, probation officers did feel able to resist such pressures and to retain their professional integrity. Officers came to feel that there are different products on the menu of services which the probation service is capable of providing. Different products (same-day, short-notice, and full-term reports) are available for different situations. Some cases require a report in great detail; others a more focused report, concentrating on specific issues, worked out in discussion with the sentencing judge and defence barrister. It was realised that a differential approach is possible, according to the probation officer's assessment of the individual case. It is vital, however, that Court based probation officers are supported by their managers when conflicts of judgement arise. There is also a need for special training.

4.12 Probation officers developed some skill in identifying where short-notice reports were inappropriate. Examples are: cases involving child abuse (where there is a need to liaise with other agencies such as social services, health visitors, or the N.S.P.C.C.); cases involving drug and alcohol abuse (where there is a need to liaise with other agencies to put together an appropriate programme to challenge the abuse); cases of psychiatric illness (where there is a need for a psychiatric report and to liaise with doctors about treatment possibilities); cases where a challenging, demanding, community 'package' needs to be put together (e.g. referral to a group for sex offenders; groups for violent offenders; or a period of residence in a probation hostel).

4.13 Some flexibility was developed, however, about the need for adjournments where community service or day activity centre managers were prepared to take telephone referrals, relying on the ability of the officer at Court to assess

motivation, and thereby enabling same-day and short-notice reports to be completed without further delay. However, this was only done in cases where the circumstances were relatively straightforward.

4.14 Where probation supervision was to be recommended, Court-based Officers sought to discuss the case first with the field team senior probation officer, or the organisers of groups such as alcohol education, anger management, and sex therapy. Additionally, leaflets about such community facilities were kept in a resources drawer in the probation office at Court.

4.15 One of the difficulties about Court-based officers being available to prepare reports at short-notice was that the demand for their services was uneven. Initially, when the structure for the pilot was established, the additional officers were recruited to prepare reports, and the pre-existing officers and assistant were to act as duty officers in Court. This proved to be a false distinction, and very quickly the officers became inter-changeable, all of them preparing reports and covering Courts according to the needs of the situation. Court-based probation officers need to be engaged in other activities, but the other activities need to be sufficiently flexible to allow the officers to concentrate on their primary responsibilities - Court cover and report preparation - at a moment's notice. Some of the other activities undertaken in Birmingham included: taking reports from field teams which were overloaded and unable to cope with demand; liaison with field teams about Court matters; training of newly-qualified officers and trainee probation officers in courtwork skills; and representation of the Court perspective on relevant committees such as offender accommodation, mental health, and workload management.

4.16 Occasionally the uneven flow of same-day and short-notice reports for typing also caused difficulties for the team assistant assigned to this work. For this reason, a pre-programmed word processor, using the Word Perfect System and a format for short-notice reports developed by the probation service's computer services section, was introduced to the pilot scheme. Officers could then type in information onto the format, without having recourse to a team assistant. A copy of the format and instructions can be found at Annexe B.

4.17 This experiment proved only partially successful, and reports were typed by a team assistant whenever possible. Probation officers felt they needed further training in keyboard skills and use of the system; asked for changes in the format, including a paragraph entitled "Basis of the Report" to cover sources of information and any particular focus to the report requested by the judge; and also wanted a facility to change the paragraph headings, or even omit a paragraph, according to the needs of the individual case. It is the revised version of the format which can be found at Annexe B.

4.18 Some judges and barristers expressed a preference for the pre-programmed format because of its consistency. During the course of their work they are obliged to read many reports, and find the lack of consistency of format in reports to be very frustrating. For example, many judges would like the date the report was prepared at the top of the page; and all paragraphs to be

numbered for ease of reference. Clearly there needs to be discussions at local level between probation services, and the judiciary and Bar, about this issue.

4.19 Probation Officers at Court were generally praised by judges and the Bar for the quality of the reports they prepared in less than the normal period. Both parties found such reports to be focused, in tune with what they were looking for, and unencumbered by irrelevant detail. One visiting circuit judge spent five minutes addressing the Court about these reports: he mentioned his scepticism about the pilot on first sitting in Birmingham; however, he said he had been impressed by the assistance he had received, both its quality and its speed. However, it should be emphasised that there is potential to improve quality still further. A great deal was learned about the preparation of written reports at short notice during the pilot period: it is an evolutionary process, and reports prepared at the end of the pilot were of better quality than at the beginning. Further training will be required.

4.20 Nevertheless, Court probation officers came to feel that their reports were having an effect on sentencing. The same circuit judge referred to in 4.19, in a different case mentioned how he had had a custodial sentence in mind in an assault case, but had been persuaded to make a probation order with a condition of attendance at a "violent offenders" group by a report prepared at short notice.

4.21 One continuing area of disappointment for the probation service was the number of cases where pleas of 'not guilty' converted to 'guilty' on the day at Court. Better communication between Prosecution and Defence could have brought forward such constructive discussions, enabling the probation service to prepare more pre-trial reports and reducing the need to prepare reports at short notice. The probation service itself could do more to improve its communication with defence solicitors and the Bar. However, with a little intelligent adjustment to the present structures and procedures, more could also be done by the Law Society and Bar. The probation service was so concerned about the lack of progress on this issue, despite notifying the Law Society of a central contact within the Crown Court probation liaison unit, that it commissioned a probation officer, Ms A. D'ippolito, to spend some time exploring the potential for change. Her findings are found in Annexe G.

Crown Court Administration and Judiciary

4.22 Some judges have reservations about the proposed legal requirement to have a pre-sentence report in specified cases. Despite this view, most judges cooperated with the pilot scheme, and found the shorter notice report facility extremely helpful in reducing delays. When they chose not to observe the requirement to have a report, they usually explained why in open Court. Typical reasons were: the judge intended passing a custodial sentence and did not wish to keep the defendant in suspense; the judge had heard all he or she needed to know during the conduct of the trial; it would be unfair to co-

defendants to delay sentence because one defendant did not have a report. They believe that the negative aspect of the requirement to have a report - delay - can be mitigated by the provision of additional probation officer resources at Court to enable short notice reports to be prepared where appropriate.

4.23 The Crown Court Administration anticipated some problems in the re-listing of cases to enable reports to be prepared, and feared delay could ensue. In fact, the threat of increased delay and a reduction in throughput receded due to the facility of same day and shorter notice reports. Some difficulties are likely to be encountered when all Crown Courts adopt the pre-sentence report requirement in October 1992: cases can follow full-time circuit judges when they move on, but part-time judges (Recorders and Assistant Recorders) will need to be brought back to Birmingham if a shorter notice report is impracticable. The cost implications are higher because part-time judges brought back are entitled to claim for half a day, even if they only deal with one case for sentence. Crown Court Administration staff try to use returning part-time judges for the whole day, by giving them other plea cases to deal with, but this also depends on Courtroom availability. Similar difficulties could well be experienced by the listing officer in getting defence barristers back to deal with cases when all Crown Courts implement the requirement: Crown Court listing officers could find themselves competing with one another for a defence counsel's attendance at Court.

4.24 In the light of the requirements of the new Act, the Crown Court Administration feels that it might be appropriate for the Lord Chief Justice to give directions to judges about the general principles to be applied when considering the question of reserving cases to themselves. At present the usual practice is that if a defendant pleads guilty, but there is no report, the case should not be opened and the judge need not then reserve the case to him or herself. Conversely, if a judge has already heard a trial he should reserve the case. There are also "grey areas" where prosecution or defence barristers may ask whether the judge intends to reserve the case to him or herself. This is then a matter for the individual judge to consider.

4.25 The Crown Court Administration would prefer a fixed date for a resumed hearing, when a report has been ordered. However, it is recognised that fixed dates may pose insuperable problems for barristers who have to fulful professional obligations in several courts or court centres, and who cannot do so without some flexibility in listing. Resumed hearings fixed for a particular week would be more acceptable for the Bar, and would still be helpful to the Crown Court listing officer. Such a compromise would be acceptable to both parties.

4.26 The briefing pack on the pilot scheme, and in particular the "Note of Guidance" for ordering reports, were found to be helpful by the Crown Court Administration.

4.27 Whilst the Chief Clerk was agreeable to negotiating the transfer of

accommodation in the Court building from the Bar to the probation service during the pilot period, it is anticipated the Crown Court Administration could have difficulty identifying extra accommodation for additional probation service staff in Crown Courts in certain locations. Accommodation is particularly at a premium in older Court buildings.

4.28 The Crown Court Administration is disappointed also at the number of cases listed for trial which "crack" on the day. In other words, where a case listed for full trial is disposed of without a jury being sworn. A new form has recently been introduced, to be completed by defence solicitors, to provide intelligence about the likely plea. This has resulted in an improvement in the pre-trial information as about two-thirds of these forms are now being returned. However, the information supplied remains tentative: many trials still convert to guilty pleas on the day. One of the questions on this form asks whether a probation report will be needed: the Crown Court Administration has agreed to notify the probation service of affirmative responses to this question; equally, the Crown Court Administration would like the probation liaison unit in the Crown Court to notify the listing officer about plea intentions expressed to the probation service at the point of committal in the Magistrates' Court, and also when completed reports are received, seeing these practices as a means of improving "intelligence" about likely pleas and facilitating the listing process.

Crown Prosecution Service

4.29 The supply of information to the probation service did not prove to be as great an undertaking as had been feared. Three documents were supplied: the summary of information prepared by the arresting police officer; the police record of interview with the defendant; and the antecedent history. The method of simply photocopying one extra copy of each document, when the committal bundles were being made up, was a simple, efficient method of supplying this information.

4.30 Retrieving information retrospectively from bundles already made up was much more costly in terms of time. This was necessary when cases had already been committed and were awaiting disposal. For this reason, Crown Prosecution Service officers would be well-advised to commence the supply of information in advance of the October,1992 implementation date for this section of the Act. Probation officers will be unable to consider issues of seriousness of offence, and risk to the public, in their pre-sentence reports without Crown Prosecution Service information. An early start will prove more cost effective than dealing with requests for retrospective retrieval. As it is, the cost of supplying information has been minimal.

4.31 The transfer of documents from the Crown Prosecution Service to the probation service proved to be simple: these were collected on a daily basis by bail information staff employed by the probation service at the Magistrates Court. The transfer of information to the probation service in the shire counties may cause greater problems and prove more expensive due to geographical

distances.

4.32 The Crown Prosecution Service anticipated incurring extra expenditure due to the need for adjournments for reports to be prepared. Counsel are paid by the case in the Crown Court and fees are fixed. If a case is not opened counsel will still have to be paid for appearing; a second counsel, or the same counsel appearing for the adjourned hearing, would have to be paid next time. In practice, the Crown Prosecution Service found that in most cases the prosecution case was opened, and then there was an adjournment for a report: prosecuting counsel was then released from appearing on the second occasion. This reduced considerably the number of occasions on which it was necessary to pay a barrister for a second appearance. Financially this procedure is better for the Crown Prosecution Service, although it is recognised that the Bar has a different view in relation to defence counsel: if a case is opened, the same defence barrister would need to attend for the second hearing as the prosecution case would not be repeated. This limits the flexibility of the Bar. Whilst the Crown Prosecution Service recognise that financially it is better to have one appearance by prosecuting counsel, ethically it may be better to have the prosecuting counsel also present on the second occasion for the sake of continuity.

4.33 The suggestions made by the Bar and Law Society (and strongly endorsed by the probation service) for a permanent desk and named person within the Crown Prosecution Service, with whom pleas could be discussed and compromises reached, were heard by the Crown Prosecution Service. ***The Crown Prosecution Service responded as follows:***

a. *"Although superficially attractive, the number of cases per year (4500 in Birmingham alone) would make such a system unmanageable. The present system is that any telephone call to the Law Clerks Section of the Crown Prosecution Service is received by a telephonist, who can identify the Law Clerk responsible for a file within seconds. If that Clerk is available an instant contact is made, if not then all the usual details are noted and the call is later returned. When alternative pleas are offered, the Law Clerk <u>always</u> consults with the prosecuting counsel (see Law Clerk's comment at 4.41). The current system is, accordingly, able to respond to those solicitors who are able and willing to discuss pleas.*

b. *The Crown Prosecution Service would, however, suggest a more radical scheme to identify guilty pleas and prevent abortive trials. They would adopt the Scottish system of giving discounts only for early guilty pleas. It would require <u>all cases</u> to be subject to a plea and directions hearing. Guilty*

pleas at this stage would receive a discount, later guilty pleas would not. This simple principle, applied at Court with prosecution and defence counsel and judge in attendance, would obviously concentrate the defendant's mind. It would work if the judges would "police" the system.

c. *If reports were then required, the case would have to be adjourned. The extra expense of all cases going to a plea and directions hearing would be offset by a substantial reduction in what are, currently, late guilty pleas. Time, cost and frustration would be reduced*".

Criminal Bar

4.34 The Birmingham Criminal Bar developed certain ideas during the Pilot period which were submitted in writing. ***These notes are reproduced in full***:

"*The requirement for a report in virtually every Crown Court case is undesirable, because:*

a. *It removes an important element of discretion from the sentencing judge, upon whom the ultimate responsibility for sentencing rests.*

b. *It can work to the detriment of the defendant: one who, for example, knows that he is going to receive a custodial sentence, and wants the sentence to start as soon as possible in order that he may be eligible for parole at the earliest moment.*

c. *A defendant may not want a pre-sentence report. He may want to be sentenced without opening up his life to a stranger, however well-meaning. Why should he not be entitled to say "NO"?*

d. *It may well be in the interest of a defendant to be sentenced by Judge A today, without a report, rather than Judge B in three weeks time, albeit with a report.*

4.35 *It may be that the requirement of a pre-sentence report will in practice operate with more than marginal frequency to prevent a sentencer who is intent on imposing a custodial sentence from doing so, or will reduce the length of the sentence imposed: many members of the Bar doubt whether it will. However, there is no doubt that the*

implementation of the whole of the 1991 Act will reduce the number and length of prison sentences imposed.

4.36 *A consequence of the requirement for pre-sentence reports in the overwhelming majority of cases will undoubtedly be increased delay in disposal and consequential increases in cost. The Bar is concerned to reduce these and accordingly makes the following recommendations:*

a. *The Probation Service in each Court Centre should receive a sufficient increase in resources to enable written reports as required by the Act to be prepared at Court in as many cases as possible, and as rapidly as possible. The Bar has been greatly impressed by the efficiency of the system devised at the Birmingham Crown Court, and the enthusiasm with which it has been operated. We hope that such efficiency and enthusiasm can be found elsewhere. We fear that the introduction of compulsory reports in virtually every case without the allocation of sufficient resources will result in substantially increased delays and cost to public funds.*

b. *When a report is suddenly needed, because, for example, of a last-minute change of plea or a conviction by a jury, it should be prepared if possible on the day, or within a day or two; at the most within the week. Otherwise, counsel will be unable to maintain the commitments we make to our clients and the Courts. Envisage this situation: five defendants charged with various offences of violence on one indictment: two offer acceptable pleas on the first day; two or three are convicted after a three day trial before a Recorder. The Recorder who heard the case must sentence; he or she must have the case opened by Counsel who prosecuted the trial, and at least those defendants convicted after trial should have the counsel who represented them at trial. The defendants who pleaded did so on the advice of counsel instructed for the trial, with whom they may well have earlier conferred; counsel is professionally tied to the case. The Act requires reports, and the probation service asks for three weeks to prepare reports. In three weeks time the Recorder, and some at least*

of the counsel concerned, are bound to be involved in other cases, at other Court centres, around the circuit. How many judges must suspend their sittings for a day? At how much cost?

c. *Where sentence has to be put back for a pre-sentence report, it should not be to a fixed day, but to a day within a particular week: to enable the various inevitable listing problems to be resolved, as far as possible, through the usual channels.*

d. *It will frequently happen that a defendant pleads, but there is no report. if the case cannot be dealt with within a day or two, the question arises whether the case should be opened, thereby committing the judge (or Recorder) and defence counsel to the case, but enabling prosecuting counsel to be released. Every case should be dealt with individually, but it will probably prove less costly to the public purse if in general the case is not opened, but left to be dealt with afresh when the report is ready.*

4.37 *Many of the problems addressed above have arisen in the course of the pilot scheme. When the Act is in force, and every case in every Court centre raises the same problems, the Bar anticipates that delays and additional costs will multiply. The devotion of additional resources to the Court probation service may reduce this burden; it will, however, remain a substantial one."*

4.38 The Bar also commented upon the quality of reports generally. Most barristers felt the information supplied to the probation service by the Crown Prosecution Service led to better sentence recommendations: the wording of recommendations was better, and recommendations were more realistic.

4.39 Reports prepared in suitable cases in less than the usual time were found particularly useful by the Bar: Court-based officers were more alert to the relevant issues, having had the opportunity to hear the prosecution case, listen to the judge's comments, and discuss the defendant with the defence counsel. The Bar felt all reports are of more assistance if they are focused, concentrating on the offence motivation, attitude and potential for rehabilitation, and the best community options for sentence.

4.40 The Bar would like to see improved lines of communication between all parties to the criminal justice system. It is recognised that it would be better if plea

decisions could be taken earlier - provided the right decisions were taken with all available information. A permanent desk and named person, to whom defence solicitors and barristers could refer, might help this process.

Law Society

4.41 Similarly, the Law Society would like improved communication between solicitors and the Crown Prosecution Service. The Law Society has found some plea decisions made by the Crown Prosecution Service to be surprising: issues of value judgement are not always being addressed , and sometimes decisions can seem bizarre. A permanent desk and named contact would help iron out some of these difficulties.

4.42 The Law Society found itself to be a passive participant, obliged to make no major changes, during the pilot period. It was cushioned in most respects by the Bar. Contrary to the view of some members of the Criminal Bar in Birmingham, the requirement to have a pre-sentence report was felt to be an advantage to most solicitors' clients; a few defendants may have preferred a delay for personal reasons and been disappointed by the facility to have reports at shorter notice in simple, straightforward cases.

4.43 The Law Society found shorter-notice reports to be a useful tool, and felt the machinery brought into being by the pilot scheme was more of a help to judges than a frustration. To the extent that the requirement to have a pre-sentence report is an infringement of judicial discretion, the Law Society felt it to be a positive development.

4.44 The quality of reports did not appear to have suffered when these were prepared in less than the normal 21/28 days in appropriate cases. The Law Society feels the real problem is unrealistic recommendations in reports; the likelihood of these is reduced by the supply of better information to the probation service by the Crown Prosecution Service. The Law Society is concerned, however, that shorter-notice reports should not become the norm: quality might then suffer, and probation officers need to be allowed the time to do a professional job.

4.45 The Law Society recognised that a better job could be done by them in communicating plea changes to the probation service. However, the probation service could better identify such situations itself by choosing carefully the question asked at the point of committal: for example, not "Are you pleading Guilty?" but rather "Are you going to admit anything?". This latter question might better identify the likelihood of a guilty plea to a reduced charge. It is also recommended that at the point of committal, wherever possible the probation service should seek to speak with the solicitor as well as the defendant. The Law Society believes that probation officers need to be prepared to trust the judgement of the solicitor about plea, contrary to the view expressed by the defendant on some occasions. Such information about the likely plea could then be shared by the probation service with the Crown Court

Administration, thereby improving their "intelligence" to facilitate the listing process.

4.46 The Law Society did not experience any problems due to cases being adjourned for reports. The frequency will increase, of course, from October, 1992 and legal executives attending Court might then experience conflicts in their schedules. No extra problems were experienced in obtaining the preferred counsel to defend a case: obtaining preferred counsel has always been a difficulty.

Prison Department

4.47 The prison department is not aware of any major problems in arranging access for probation officers to see remand prisoners during the pilot period. However, the situation may be different from October, 1992.

4.48 Most remand prisoners were seen by probation officers for reports in the cells area of the Crown Court building. This caused no problems to the Prison Department, though one interview late in the afternoon had to be terminated early because the prisoner needed to be transported to the relevant establishment. Little or no extra cost is involved (the occasional lunch or breakfast). The cells interview is seen as a good strategy for avoiding short-notice visits to prisons where pressures are greater. There is no objection to bringing prisoners to Court early, in the morning, so an interview can be conducted at Court and the report completed for an afternoon hearing. Not all Courts, however, have the excellent cells area interview facilities as Birmingham; older Court buildings in particular may lack such facilities.

4.49 Only on three occasions were probation officers forced to seek access to special visits at prison department establishments. On one occasion the special visits area was fully booked, but arrangements were made to use a prison probation officer's room on the Remand Wing; on the second occasion, access to the local remand centre for males was possible, but there were problems in locating the prisoner due to transfers between establishments; and on the last occasion, the special visits area was full, so the officer negotiated extra time with the judge to enable her to use a visits space at a later date.

4.50 Little demand for short-notice visits was experienced because the pilot was restricted to Birmingham Crown Court. However, Her Majesty's Prison Winson Green also serves Wolverhampton, Coventry and Warwick Crown Courts on a regular basis; and occasionally also, Shrewsbury, Gloucester, and Worcester. Warwick has no interview facilities in the cells area - only the cells themselves; other older Courts may have similar problems. Real problems are anticipated when the Act comes into force if probation officers are forced to seek access to special visits areas at short-notice. This could mean longer and increased numbers of remands in custody if probation officers have to wait until interview space is available. This would have clear cost implications for the Prison Department. Wherever possible, the more practical and cheaper option is for remand prisoners to be seen in the cells area at Court.

4.51 Women remand prisoners could experience even greater problems. Although there is a small women offenders unit at Her Majesty's Prison, Winson Green, it is not used much. Women remand prisoners usually go to establishments at some distance from Birmingham - Risley or Pucklechurch - and currently always return there if these are the establishments whence they came in the morning. Once again, the easiest, cheapest option is a cells interview at Court.

The Police

4.52 During the pilot period in Birmingham, the police antecedents department had no problems in getting the required information out to the probation service. No extra staff or photocopying were necessary as this information was already provided. Previous working practices were not affected. The police were embarrassed at times, however, by the inaccuracy of the information provided which was often three to six months out of date. Steps are being taken to improve this by increased use of the Police National Computer.

4.53 Lists of previous convictions at the point of committal are prepared by a different section - The Central Information Unit. In cases where previous convictions were not available at the committal stage, the Central Information Unit responded to requests from the probation service in individual cases. The Central Information Unit, however, also deals with police record checks from all statutory and voluntary organisations across the Force area, and so its workload is substantial. Delays in processing requests for information can occur. An arrangement exists within the Antecedents Department that specific convictions in urgent cases will be obtained by them and forwarded to the probation service circumventing the usual channels.

Conclusion

4.54 Despite the various forebodings about the practicability of the pilot scheme, and the risk to the quality and professionalism of reports prepared at short-notice, the scheme actually ran reasonably smoothly. Moreover, although some judges and some members of the Bar may not like the requirement in law to have a pre-sentence report, judges found the facility to get reports at short-notice, or even on the same day in appropriate cases, highly useful. Most members of the judiciary and Bar expressed their pleasure at the quality of the reports prepared.

5. Resources

5.1 During the period of the pilot scheme, slightly fewer (392 less) defendants were sentenced in Birmingham Crown Court compared with the same period during 1990. In percentage terms, however, the probation service prepared reports in 20% more of the cases sentenced during the pliot, compared with the same period in 1990. Clearly, if extra reports are to be prepared as a result of the legal requirement to prepare them, more resources will be needed by the probation service to do this work.

5.2 To minimise delay, and also reduce the extra costs to other Court users, the probation service needs to structure in a certain way. The Birmingham local steering committee is unanimous that some of the extra probation officers need to be located in the Crown Court building, together with the necessary typing support and new technology, so that reports can be prepared quickly, efficiently, and to a satisfactory standard of quality, in simple, straightforward cases. Without this shorter-notice facility, substantial delays and extra costs would be incurred.

6. Summary of Findings

6.1 The planning to meet the requirements of the Criminal Justice Act 1991 for written pre-sentence reports needs to start well in advance of the implementation date - we would recommend at least five months in advance.

6.2 Good channels of communication need to be established between the various parties to the criminal justice system. An existing court users group might achieve this though, in Birmingham, a specially created local steering committee worked well.

6.3 The additional delay and extra costs anticipated by several participants in the criminal justice system in Birmingham were considerably reduced by virtue of the probation service creating a facility at Court to prepare shorter-notice reports in simple, straightforward cases.

6.4 The previously held view that "all reports require an adjournment of three or four weeks in order to prepare good quality, professional documents" is no longer held in Birmingham. It is now realised that there are different products on the menu of services which the probation service is capable of providing. The different products (same-day, short-notice, and full term reports) are available for different situations.

6.5 The requirement to complete extra written reports necessitates the provision of additional resources for the probation service to allocate additional officers, typing/clerical staff, and new technology to the Crown Court setting and, of course, also in the field.

6.6 The location of additional resources within the Crown Court building itself enabled reports to be prepared at short-notice, in some cases even on the same day. If these resources had not been located at Court, the ability to prepare reports in less than the normal period would have been considerably reduced.

6.7 Accommodation within Court buildings is often at a premium. Careful negotiations need to take place between the interested parties to enable additional probation officers to be accommodated within the Court building itself. In Birmingham, due to the Bar's desire to have a shorter-notice reports facility, it was prepared to transfer temporarily to the probation service the use of two consulting rooms. Arranging accommodation in older Court buildings is likely to be more problematic; however, if a shorter-notice reports facility is to be arranged, some agreement has to be reached.

6.8 Probation officers recruited to work in Crown Court need to be skilled communicators, familiar with the special language of the Court room. There is potential for difficulties in open Court if a shorter-notice reports facility is created: probation officers have to be able to argue for the time they feel is needed to complete a professional, good quality report. They need to be

supported in this by their managers, and they can also be helped by special training in speaking in public.

6.9 The potential for difficulties is reduced by good communication between the various parties. In addition to the creation of a local steering committee in Birmingham, a briefing document was prepared by the probation service and issued to all interested parties. The document included a protocol for ordering reports, agreed with the senior resident judge on behalf of all judges, and this could be expanded to identify types of case where the full period is likely to be required e.g. cases of child abuse; defendants suffering from mental illness, and so forth.

6.10 In Birmingham, a procedure whereby the duty probation officer interviewed the defendant for ten to twenty minutes, and then reported back to the Court on how long would be needed to complete the report, was found to be helpful.

6.11 Planning by the Crown Prosecution Service to supply information to the probation service needs to start early. It is less costly and time consuming for documents to be photocopied at the time a committal "bundle" is being prepared, than to be retrieved retrospectively from a "bundle" in a case already committed. Hence, the supply of information date needs to commence in advance of the implementation date for the pre-sentence report requirement - possibly at least two months in advance. Even then, the Crown Prosecution Service will be requested by the probation service to supply some information retrospectively, but the amount will be reduced considerably by forward planning.

6.12 The three documents supplied to the probation service by the Crown Prosecution Service (police summary of information; police record of interview with the defendant; and antecedents) were found to be adequate and informative. The cost to the Crown Prosecution Service was found to be minimal. In Birmingham these documents were transferred to the probation service daily, collected by bail information staff who were already collecting documents on a daily basis. In the shire counties, the transfer of documents may prove costlier due to geographical distance.

6.13 The supply of antecedent information by the police to the probation service did not affect previous working practices. No additional costs were incurred.

6.14 The supply of better information to the probation service improved the quality of reports generally. Fewer unrealistic recommendations were made in reports because probation officers were better informed of the prosecution case.

6.15 Reports prepared in less than the normal time were not felt by most of their customers to be of inferior quality. In fact, the judiciary and Bar found them to be more focused on the relevant issues. This was probably due to their authors usually being in Court at the time they were ordered, and so able to take note of any comments made by judges or defence counsel. Also, there

is potential to improve quality still further. The probation service has only very limited experience of providing short-notice written reports at present. A good deal has been learned during the pilot period, and further improvements can yet be made.

6.16 During the Birmingham pilot period, Court-based probation officers were not pressured to prepare reports in less than the normal period against their better professional judgement. Generally, when officers asked for extra time, they received it. The figures show that 42% of post-trial reports were prepared at shorter-notice, whilst 58% were adjourned for the standard period of three/four weeks. For this system to work well, a climate of trust must be created between the judiciary and the probation service. Shorter-notice reports should not become the norm, otherwise quality inevitably would suffer.

6.17 In order to be able to prepare shorter-notice reports, probation officers need access at short-notice to prisoners remanded in custody. In Birmingham, the Prison Department were concerned about their ability to meet such requests for access due to lack of space in the special visits areas. In fact, during the pilot period, only three visits needed to be made at short-notice. This was because probation officers developed a pattern of interviewing their clients in the cells area at Court. This caused no difficulties to the Prison Department; indeed they saw it as a means to avoid potential problems over access. However, not all Courts have such good interviewing facilities as Birmingham in the cells area. Problems are envisaged when probation officers from several Courts may want access at short-notice at the same time. Careful planning between the probation service and governors of local prisons will be needed. Otherwise the preparation of reports at short-notice could prove extremely difficult on prisoners remanded in custody. Remand periods may need to be extended, to enable the preparation of reports, which could increase costs for the Prison Department. Also, future development plans for prisons and cells areas at Courts should take into account the demands likely to be made on special visits areas by probation officers seeking access at short notice. This factor also needs to be taken into account when arranging any private sector contracts for escort services.

6.18 During the pilot period in Birmingham, the probation service experimented with a pre-programmed format on a word processor for shorter-notice reports. Officers could use the format, in-putting information themselves, and printing off the report, without recourse to a typist. This experiment proved only partially successful, and reports were typed by a team assistant whenever possible. Probation officers felt they needed further training to use the facility properly, and preferred a more flexible format capable of meeting the needs of the individual case. Judges and barristers generally preferred the consistency of format provided by the facility, and would like to see a consistent format used for all reports.

6.19 The Birmingham pilot scheme led to some delay in the processing of cases, but not to the extreme delays at first feared. This was due to the facility to have written reports prepared in less than the normal time in appropriate cases. Nor

did the pilot lead to the great increase in costs anticipated. Judges, who might have had to be brought back to deal with a case, were able to avoid this because reports were usually completed before the end of their period of sitting in Birmingham. Prosecuting counsel were often allowed to open a case, and then were released from a second appearance at the adjourned hearing, thereby avoiding an extra fee payable by the Crown Prosecution Service. Financially it is better for the Crown Prosecution Service if there is one appearance; however, it is felt by them to be better ethically to have continuity.

6.20 Fixed dates for adjourned hearings, when reports are presented and sentence passed, generally are not favoured by barristers who have to fulfil professional obligations in several Courts or Court Centres, and who cannot do so without some flexibility in listing. Resumed hearings fixed for a particular week would be more acceptable for the Bar, and would still be helpful to the Crown Court listing Officer. Such a compromise would be acceptable to both parties.

6.21 Complications in the arrangement of dates for adjourned hearings are likely to increase when the requirement to have pre-sentence reports is introduced nationally. In addition to the help which is given by a shorter-notice reports facility, the Crown Court Administration felt some guidance may be needed about the reservation of cases to named judges. At present there is a practice: if a defendant pleads guilty and there is no report, the case should not be opened and therefore does not need to be reserved to that judge; conversely, if a judge has heard a trial he or she should reserve the case. In between these scenarios is a grey area where prosecution or defence counsel may ask whether the judge intends to reserve a case to him or herself, and the decision is a matter for the discretion of the individual judge. This practice may need to be formalised.

6.22 To have to bring back a part-time judge to receive reports and pass sentence is potentially an expensive exercise. Part-time judges are entitled to claim for half a day, even if they only return to deal with one sentence. On some occasions better use can be made by using the part-time judge for the whole day, but the ability to do this depends on a number of factors including Court room availability.

6.23 Better channels of communication are needed between the parties to the criminal justice system over the question of plea. Costs could be reduced considerably if pleas were known in advance, and fewer reports would need to be prepared at short notice.

6.24 Various changes were suggested during the Birmingham pilot period: discounts on a sentence could be available up to the point of a "Plea and Directions" hearing, but not afterwards; permanent desks , with named people, could be set up in the offices of the different agencies to facilitate better communication; the probation service could ask a more relevant question at the point of committal - for example, not "Are you pleading Guilty?", but rather "Are you going to admit anything?"; also the Law Society felt the probation service could trust defence Solicitors' professional judgement about plea, sometimes contrary

to what defendants themselves are saying.

6.25 There were differing views in Birmingham about the value of the requirement to have pre-sentence reports. Some members of the judiciary and Bar felt it unhelpful, infringing judicial discretion, causing unnecessary delay in some cases, and unlikely to change the mind of a judge intent on passing a custodial sentence. The Law Society, and the probation service took a different view. These organisations felt it would lead to a better informed judiciary when it came to sentencing. The Law Society felt the machinery brought into being by the pilot had been more of a help to judges than a hinderance. The probation service felt that reports had enabled judges to avoid passing custodial sentences in a few cases, and speculates that the length of custodial sentences may have been reduced on occasions, or community service orders made in cases more serious than previously.

6.26 Despite their differing views about the value of pre-sentence reports, all parties to the pilot scheme in Birmingham are agreed, at the end of the pilot period, that the structure created in Birmingham to prepare reports in less than the normal period in appropriate cases proved an excellent facility for providing reports of good quality, in an appropriate timescale, and without undue delay or substantial extra cost.

ANNEXE A

(Parts of this Annexe have been removed from this copy as they are also reproduced in the National Co-ordinator's report.)

PILOT TRIALS ON PRE-SENTENCE REPORTS IN SELECTED CROWN COURTS

BIRMINGHAM CROWN COURT

Aim:

To develop and evaluate a procedure within the Crown Court for providing pre-sentence information in guilty, mixed plea, changed plea, and found guilty situations. Where no information has been provided before the initial Crown Court appearance, this information will be provided as soon as possible and in appropriate detail within a twenty eight day timescale. The information will be in written form, will be offence focussed and will include an assessment of the offender's potential for rehabilitation, the protection of the public from serious harm from the offender in the future and the most appropriate community based disposal to reduce the likelihood of re-offending.

Location: County of West Midlands - Birmingham Crown Court

Agencies in Partnership:
West Midlands Probation Service
West Midlands Probation Committee
The Recorder, Birmingham Crown Court
The Liaison Judge, Birmingham Crown Court
The Chief Clerk, Birmingham Crown Court
The Branch Crown Prosecutor, Birmingham
Birmingham Bar Council
Birmingham Law Society
West Midlands Police, CID Support Services
Governor, HMP Birmingham, also representing:
HMRC Brockhill and HMP Risley

1. Pre-Trial Assessment Objectives

(a) Guilty Pleas: Where there is a clear indication of a guilty plea at the point of committal in the Magistrates Court, a full, written Social Inquiry Report will be provided in advance for the Crown Court hearing.

(b) Mixed Pleas: Where there are mixed pleas, if there is a plea of guilty to the more serious offence, a full written Social Inquiry Report will be provided in advance for the Crown Court hearing. However, where the plea of guilty only applies to the minor offence, no pre-trial report will be prepared at that stage.

(c) Not Guilty Pleas: Where a defendant indicates a not guilty plea or a plea of guilty only to a lesser offence at the point of committal in the Magistrates Court no pre-trial report will be prepared. However, if notified by defence lawyers of a change of plea not less that 7 working days prior to the Crown Court hearing, the Service will endeavour to provide a full written Social Inquiry Report pre-trial.

(d) Defendants Under Statutory Supervision: Will be dealt with depending on plea. At the point of committal in the Magistrates Court, the information gathered by the Duty Probation Officer/Assistant in that Court will be passed to the Supervising Officer. The Supervising Officer will be required to prepare a full Social Inquiry Report if there is a guilty plea or a plea of guilty to the more serious offence; where there is a not guilty plea or a plea of guilty only to the lesser offence the Supervising Officer will be required to prepare a short report on the defendant's response to supervision. It will be prepared in readiness for when the case is listed for trial and will be produced to the Court in the event of the conviction of the defendant. It will give his/her response to the requirements or conditions of his/her supervision. This would be true in respect of any recently completed period of supervision or in any current period up to the point of the Court appearance.

2. Post-Conviction Assessment Objectives

(a) Guilty Pleas: A full, written Social Inquiry Report will have been prepared pre-trial on all persons who have indicated a guilty plea within 7 working days of the Crown Court hearing. Where an offender has changed plea less than 7 days before the hearing, or has failed to keep appointments with the Probation Service, the Court Duty Probation Officer will interview the defendant and report back to the Court respecting the following three possibilities:-

(i) In some straightforward circumstances the Probation Officer may be able to provide a written report later on the same day.

(ii) In more complicated cases or where information needs to be verified, motivation tested or other agencies involved, an adjournment will be required. The period that is normally required is three weeks for defendants in custody and four weeks for defendants on bail. Where possible, a date for the resumed hearing should be fixed when ordering the report.

(iii) There will be other cases where an adjournment is necessary but the report can be prepared in less than the normal period. This may apply where a defendant is already known to a Probation Officer, where a Judge is due to leave the area or where there are other special circumstances.

Probation Officers will do all that they can to try to ensure that proceedings are not delayed unnecessarily. It will assist this process if Prosecution and Defence representatives are asked to make available to the Probation Officer any relevant documents and other information which could help with the report. (See Note of Guidance issued to all Birmingham Crown Court Judges attached.)

(b) Mixed Pleas: Where an offender indicates a guilty plea to the more serious offence, a full, written Social Inquiry Report will have been prepared pre-trial. Where a defendant indicates a not guilty plea to the more serious offence, but changes that plea to guilty or is found guilty, then the threefold approach outlined in 2(a) above will apply to provide information and advice to the Court.

(c) Not Guilty Pleas: Where a defendant changes plea on the day, or is found guilty, the threefold approach will apply to provide information and advice to the Court.

(d) Defendants Under Statutory Supervision: Where a defendant under statutory supervision changes plea on the day, or is found guilty, a short report on the defendant's response to supervision will have been prepared pre-trial by the Supervising Officer. If the supervising Probation Officer is not available to complete the Social Inquiry Report process on the same day, then the Duty Probation Officer in the Crown Court will follow the procedure outlined above on behalf of the Supervising Officer, following a close consultation with him/her.

3. Targetting Defendants

Use of the County computerised Risk of Custody Score will assist Duty Probation Officers in the Crown Court in implementing the procedure and in avoiding probation and community service disposals in inappropriate cases.

No particular value is seen in screening out defendants from the procedure by use of the R.O.C. score. A particular defendant may appear to have a low risk of custody due to being on bail, few or no previous convictions, and/or a relatively minor type of offence. Alternatively, custody may seem inevitable due to a long list of previous convictions and/or the serious nature of the offence. However, in both scenarios experience suggests that it is difficult to predict: apparently low risk cases may occasionally merit Probation intervention and be at risk of custody due to local factors; equally, information provided by the Duty Probation Officer may avoid custody in a seemingly hopeless case, or at least reduce the length of sentence. For these reasons it is felt that the aim should be to provide information in all appropriate cases post-conviction, and that no particular defendants should be screened out from the procedure. The appropriateness of Probation Service intervention can be determined by means of close liaison and discussion with Judges and defence counsel, whilst at the same time being careful to preserve the independant, professional

position of the Duty Probation Officer.

At the same time, however, it is recognised that some defendant groups may benefit from the introduction of the procedure more than others without being specifically targetted. For example, there is research evidence (C.F. MOXON) that black defendants plead not guilty more frequently than their white counterparts, and so more of that group at present are sentenced to custody without information being provided by the Probation Service. This situation could be expected to change under the proposed pilot scheme.

4. Resources

The Birmingham Crown Court comprises 12 Court rooms, and sits for 50 weeks per annum.

The Court sentenced 3457 cases in 1989, whilst 246 defendants were acquitted.

The Court is ordinarily resourced by 2 full-time Probation Officers and 1 Probation Assistant. There is also a Senior Probation Officer who is responsible for overseeing work in the Crown Court as well as the Juvenile Court. These officers can call on assistance from colleagues in the Magistrates Court when required, providing the resource exists.

There is also 1 Team Assistant, 1 Computer Operator/Clerical and a further Typist/Clerical, all full-time. These members of staff offer clerical, administrative and typing support and have access to one word processor, one computer terminal (with access to hostel vacancies, client information and risk of custody score) and one electronic typewriter.

Office space dedicated to Probation staff within the Crown Court exists but is full to capacity. This comprises one Administration Support office (occupied by the 3 clerical staff); one General Office (occupied by the 2 POs and 1 PA); and one office for the Senior Probation Officer.

5. Resources - Additional

Of the 3191 cases to appear before the Birmingham Crown Court from January - October 1990, 260 were acquitted.

Of the remaining 2931 sentenced cases, 1787 had no SIR at the first hearing due to failure to keep appointment (440); or an indication of a full not guilty plea, or indication of not guilty plea to the more serious offence (1347).

Of the 1787, 40 were assessed for Community Service on the same day; 50 had a same-day written report; and 319 were adjourned for a full SIR.

This means that the potential extra workload for the pilot scheme is 1656 reports per annum. This averages out at about 138 per month.

If the figure of 138 is divided between the 3 Birmingham fieldwork Divisions, this makes 46 extra enquiries per Division per month. This equals 184 extra Probation Officer hours per Division per month.

In fact, some of these enquiries can be dealt with by way of assessments and enquiries carried out at Court on the day and will not require full adjournments. Therefore, the provision of 3 Probation Officer full-time equivalents and an additional Team Assistant may be sufficient.

Two additional word-processors have been provided and it is hoped to obtain a third word-processor which will computerise and bring together the Court and Probation systems, ledger, listing number and named officer. An additional terminal will give access to the West Midlands Client Information System and risk of custody score.

Two additional temporary offices have been provided by converting two of the conference rooms which are normally used by the Bar.

6. Monitoring

A monitoring system is established to provide information in accordance with the National Monitoring Scheme. Additional and complementary local monitoring may be developed in discussion with the Local Steering Group and the National Co-ordinator.

BAM/RG:DEW
16.8.91

WEST MIDLANDS PROBATION SERVICE

SOCIAL INQUIRY REPORTS IN BIRMINGHAM CROWN COURT

DURING THE PILOT STUDY PERIOD 1.7.91 - 31.12.91

A NOTE OF GUIDANCE

The following procedure is suggested to enable Judges to obtain written Probation reports where the proposed Act would require them and where they have not been provided pre-hearing.

1. Enquire whether there is a representative of the Probation Service in Court. If there is not, ask the Usher to fetch one.

2. Request a Probation Officer to interview the defendant in order to determine how long it will take to provide a written report. In some cases the Probation Officer may already have the answer to this question.

3. The possibilities are as follows:

   (i) In some straightforward circumstances the Probation Officer may be able to provide a written report later on the same day.

   (ii) In more complicated cases or where information needs to be verified, motivation tested or other agencies involved, an adjournment will be required. The period that is normally required is three weeks for defendants in custody and four weeks for defendants on bail. Where possible, a date for the resumed hearing should be fixed when ordering the report.

   (iii) There will be other cases where an adjournment is necessary but the report can be prepared in less than the normal period. This may apply where a defendant is already known to a Probation Officer, where a Judge is due to leave the area or where there are other special circumstances.

Probation Officers will do all that they can to try to ensure that proceedings are not delayed unnecessarily. It will assist this process if Prosecution and Defence representatives are asked to make available to the Probation Officer any relevant documents and other information which could help with the report.

BAM:DEW
21.6.91

ANNEXE B

(Short-notice Report Format and Notes of Guidance for using Format)

WEST MIDLANDS PROBATION SERVICE

COMPUTER SERVICES DEPARTMENT

CREATING STAND-DOWN REPORTS FOR THE BIRMINGHAM COURTS

1. **SWITCH ON** - Switch on the Computer, Computer Screen, Printer Sharing Device (if installed), and Printer.

2. The opening menu is now shown on the computer screen.

3. **LOAD WORDPERFECT** - Select "W" followed by RETURN, this loads the Wordperfect wordprocessing package.

4. **INITIALISE THE PRINTER** - Press "SHIFT F7" to change to the Print Screen, select "7" Initialise Printer, Select "Y" to answer yes to prompt at the bottom of the screen. This procedure is to be carried out every time the printer is switched on.

5. **LOAD A BLANK REPORT** - Press "ALT L", this will automatically load a blank report, and prompt you for input to the form.

6. **FILLING IN THE REPORT** - At each stage of completing the form a message will be displayed at the bottom of the computer screen, telling you what information to type in. After completing each part of the form you must press "F9" to go to the next stage. When completing the various sections the text will automatically wrap around (justify itself to fit inside the box), so there will be no need to use the RETURN KEY if your sentence uses more than one line. If you wish to use RETURN to start a new line, you will have to line up the cursor with the above text before starting to type the new line. To line up the cursor with the above line use the INDENT key (F4 on the keyboard).

7. **CORRECTING MISTAKES** - Any mistakes can be corrected immediately, so long as you notice them before moving on to completing the next stage of the form. You cannot move back through the report correcting mistakes until the final stage of the report is completed.
   Once you have completed the report, you have the freedom of moving around the document to correct mistakes.

8. **CHECKING FOR SPELLING MISTAKES** The report can also be checked for spelling mistakes by pressing "CTRL F2" for Wordperfects Spell Checker, select "3" for document, if any misspelt words are found they will be highlighted, and a list of alternatives will be displayed. To choose an alternative select the letter to the left of the word, to type in your own correction press "5" to edit the highlighted word, when you have corrected it press "F7" to return back to the original screen.

9. **PRINTING THE REPORT** - Firstly ensure the printer has been initialised (see No. 4 above), Press "ALT P" this will reformat your report to be printed on A4 size paper then the report will automatically be printed out. If another copy is required, Press "ALT P" again. The REPORT REFERENCE NUMBER will be printed at the top of the first page of each report, and also at the end of each report -
THE REFERENCE NUMBER MUST BE MATCHED FROM THE FIRST AND LAST PAGE OF EVERY REPORT to ensure the report is complete.

9. **SAVING THE REPORT** - If you wish to save the completed report, Press "F7" (EXIT), a prompt will be displayed at the bottom of the screen asking if you want to save the document answer "Y"es. A prompt will now appear asking you for a document name, overtype the prompt with a new document name, then press RETURN. A prompt will be displayed asking you if you want to leave Wordperfect, if you have finished answer "Y"es, if you have more reports to process answer "N"o, and goto to number 5 above.

10. **SWITCHING OFF** - Before switching off the computer the internal Disk Drive must be set to a parked position to ensure no damage can occur if the computer is moved, Select "S" (switch off) from the opening menu followed by RETURN. The Computer, Computer Screen, and Printer can now be switched off.

PROBLEM SOLVING

A) **I WANT TO ABANDON THE REPORT I HAVE JUST STARTED** - Press "SHIFT F9" (merge codes), Select "1" (quit), Press "F7" (exit), Press "N"o to save document, and either "Y"es or "N"o to leave Wordperfect.

B) **I WANT TO EDIT A REPORT THAT I HAVE SAVED TO DISK** - Press "F5" (list files), Press RETURN. A list of saved files will be displayed on screen, move the cursor to highlight the file you wish to edit. Press 1 to retrieve the document. Press "ALT E" to reformat the report to allow editing. The way the reports have been setup you may find the speed of the cursor is slowed down dramatically when editing a report that has been saved, if "ALT E" is not used to reformat the report.

C) **I HAVE PRESSED "RETURN" INSTEAD OF "F9"** - Press the BACKSPACE KEY (the key above the return key), until you are back to the position where you pressed RETURN.

D) **I NEED MORE HELP** - A Computer Help Desk is in operation at Victoria Square, any problems should in the first instance be reported to the Help Desk on 021 631 3484 Ext 2088 - Tie Line 711 2088.

WEST MIDLANDS PROBATION SERVICE

REPORT TO BIRMINGHAM CROWN COURT

Ref.No:	6666666
Date:	18 December 1991

NAME:
AGE:
DoB:
ADDRESS:
OFFENCE(S):
1 BASIS OF REPORT:
2 OFFENCE MOTIVATION AND ATTITUDE:
3 BACKGROUND HISTORY:
4 PRESENT CIRCUMSTANCES:
5 HEALTH:
6 LEISURE ACTIVITIES:
7 EDUCATION AND EMPLOYMENT:
8 FINANCES:
9 RESPONSE TO PREVIOUS SUPERVISION:
10 RISK OF RE-OFFENDING:

11 CONCLUSION AND COMMUNITY OPTIONS:
PROBATION OFFICER .....   18 December 1991 Ref.No: 6666666

WEST MIDLANDS PROBATION SERVICE

COMPUTER SERVICES DEPARTMENT

CREATING A STATEMENT OF MEANS FOR THE BIRMINGHAM COURTS

1. **SWITCH ON** - Switch on the Computer, Computer Screen, Printer Sharing Device (if installed), and Printer.

2. The opening menu is now shown on the computer screen.

3. **LOAD WORDPERFECT** - Select "W" followed by RETURN, this loads the Wordperfect wordprocessing package.

4. **INITIALISE THE PRINTER** - Press "SHIFT F7" to change to the Print Screen, select "7" Initialise Printer, Select "Y" to answer yes to prompt at the bottom of the screen. This procedure is to be carried out every time the printer is switched on.

5. **LOAD A BLANK FORM** - Press "ALT F", this will automatically load a blank form, and prompt you for input to the form.

6. **FILLING IN THE REPORT** - At each stage of completing the form a message will be displayed at the bottom of the computer screen, telling you what information to type in. After completing each part of the form you must press "F9" to go to the next stage. When completing the various sections it is important that you keep to one line of text for each item.

7. **CORRECTING MISTAKES** - Any mistakes can be corrected immediately, so long as you notice them before moving on to completing the next stage of the form. You cannot move back through the report correcting mistakes until the final stage of the report is completed.
   Once you have completed the report, you have the freedom of moving around the document to correct mistakes. If after you have completed the form, you need to edit any figures, you will have to recalculate the totals.
   To recalculate the totals make sure the cursor is within the Table:-

   1. Press "ALT F7" (Columns/Table)
   2. Press "5" (Maths)
   3. Press "1" (Calculate)
   4. Press "F7" (Exit)

8. **CHECKING FOR SPELLING MISTAKES** - The report can also be checked for spelling mistakes by pressing "CTRL F2" for Wordperfects Spell Checker, select "3" for document, if any misspelt words are found they will be highlighted, and a list of alternatives will be displayed. To choose an alternative select the letter to the left of the word, to type in your own correction press "5" to edit the highlighted word, when you have corrected it press "F7" to return back to the original screen.

9. **PRINTING THE FORM** - Firstly ensure the printer has been initialised (see No. 4 above), Press "ALT P" this will reformat your report to be printed on A4 size paper then the report will automatically be printed out. If another copy is required, Press "ALT P" again.

9. **SAVING THE FORM** - If you wish to save the completed report, Press "F7" (EXIT), a prompt will be displayed at the bottom of the screen asking if you want to save the document answer "Y"es. A prompt will now appear asking you for a document name, overtype the prompt with a new document name, then press RETURN. A prompt will be displayed asking you if you want to leave Wordperfect, if you have finished answer "Y"es, if you have more reports to process answer "N"o, and goto to number 5 above.

10. **SWITCHING OFF** - Before switching off the computer the internal Disk Drive must be set to a parked position to ensure no damage can occur if the computer is moved, Select "S" (switch off) from the opening menu followed by RETURN. The Computer, Computer Screen, and Printer can now be switched off.

PROBLEM SOLVING

A) **I WANT TO ABANDON THE FORM I HAVE JUST STARTED** - Press "SHIFT F9" (merge codes), Select "1" (quit), Press "F7" (exit), Press "N"o to save document, and either "Y"es or "N"o to leave Wordperfect.

B) **I WANT TO EDIT A FORM THAT I HAVE SAVED TO DISK** - Press "F5" (list files), Press RETURN. A list of saved files will be displayed on screen, move the cursor to highlight the file you wish to edit. Press 1 to retrieve the document.

C) **I HAVE PRESSED "RETURN" INSTEAD OF "F9"** - Press the BACKSPACE KEY (the key above the return key), until you are back to the position where you pressed RETURN.

D) **I NEED MORE HELP** - A Computer Help Desk is in operation at Victoria Square, any problems should in the first instance be reported to the Help Desk on 021 631 3484 Ext 2088 - Tie Line 711 2088.

WEST MIDLANDS PROBATION SERVICE

STATEMENT OF MEANS

	Name:	D.O.B. Ref. No: 18 December 1991	
	NET INCOME		COMMENTS
	1. Wages - Self		
	2. Wages - Partner		
	3. Unemployment Benefit		
	4. Income Support		
	5. Retirement Pension		
	6. Pension		
	7. Child Benefit		
	8. Invalidity Benefit		
	10. Maintenance		
	11. Contributions		
	12. Family Credit		
	13. Other		
	TOTAL INCOME	£0.00	
DEBTS	ESSENTIAL EXPENDITURE		COMMENTS
	1. Rent/Mortgage		
	2. Second Charge		
	3. Rates/Community Charge		
	4. Water Rates		
	5. Credit Cards		
	6 Life Assurance		
	7. House Insurance		
	8. TV Rental		
	9. TV Licence		
	10. Telephone		
	11. Electricity		
	12. Gas		
	13. Housekeeping		
	14. Fine		
	15. Maintenance Payments		
	16. Travelling Expenses		
	17. Clothing		
	18. Legal Aid		
	19. Compensation		
	20. Other Loans		
	TOTAL EXPENDITURE	£0.00	
	TOTAL INCOME	£0.00	
	DISPOSABLE INCOME	£0.00	

ANNEXE C

(Pro-forma requesting Information from the Crown Prosecution Service)

WEST MIDLANDS PROBATION SERVICE

PILOT PROJECT FOR PRE-SENTENCE REPORTS

From Richard Green SLPO
Crown Court Liaison Office
Probation Service
58-60 Newton Street
BIRMINGHAM B4 6NF

To Mr. Martin Courbet
Crown Prosecution Service
Crown Court Office
14th Floor
The McLaren Building
Dale End, BIRMINGHAM

Would you please forward information regarding clients as listed below.

DATE OF COMMITTAL	NAME	D.o.B.	ANTECEDENTS	SUMMARY OF EVIDENCE	TRANSCRIPT OF INTERVIEWS

Pre - Pilot

Birmingham Crown Court (02.07.90. - 21.12.90 inc.)

1. ALL CONVICTED OFFENDERS — 100%

2. OFFENDERS ON WHOM REPORTS PREPARED — 64%

3. 81% OF REPORTS PREPARED PRE-TRIAL

19% OF REPORTS PREPARED AFTER ADJOURNMENT

ALL FIGURES APPROXIMATE

ANNEXE D

During Pilot

Birmingham Crown Court (01.07.91. - 23.12.91.)

1. ALL CONVICTED OFFENDERS — 100%

2. OFFENDERS ON WHOM REPORTS PREPARED — 84%

3. 70% OF REPORTS PREPARED PRE-TRIAL, BY FIELD TEAMS | 30% OF REPORTS PREPARED AFTER ADJOURNMENT

ALL FIGURES APPROXIMATE

ANNEXE E

Reports Prepared After Adjournment in Birmingham

(Roughly 30% of all Reports)

1.	TIME SCALE	21 - 28 DAYS (58%)	<21 DAYS (42%)
2.	PREPARED BY	FIELD TEAMS (58%)	COURT TEAM (42%)

ALL FIGURES APPROXIMATE

ANNEXE F

PLEA CHANGES AND THEIR IMPLICATIONS FOR THE PROBATION SERVICE

IN THE LIGHT OF THE CRIMINAL JUSTICE ACT 1991

The implementation of the Sentencing Provision of the Criminal Justice Act in October 1992 will lead to a significant increase in the number of pre-sentence reports. This will inevitably cause costly and frustrating delays. However, the problem would be appreciably eased by avoiding an increase in, or even reducing, the need for short-notice reports resulting from late plea changes. The objective of this report is to investigate ways in which this may be achieved by an improved response on the part of the probation service.

For the purpose of this report, it was important that I gained a better understanding of the overall operation of the criminal justice system. To this end, I was graciously invited into one set of chambers and one firm of solicitors for a period of two weeks. During this time, I had detailed discussions with individual barristers, solicitors and clerk, as well as brief consultations with a member of the Crown Prosecution Service and a member of the Lord Chancellor's Department. Notably the views of individuals operating in the system varied considerably. Indeed, it became apparent to me that whilst the Law Society, the Bar, the Crown Prosecution Service, the Lord Chancellor's Department and the probation service understood their own role in the criminal justice system, they had misconceptions concerning the roles of sections other than their own. This is primarily due to poor communication between different sections of the system.

In addition to engaging in discussion, I was able to observe barristers and solicitors in the course of their work and to follow the process of plea compromises. Defendants facing multiple charges can expect to have some of them discontinued. I understand that the reasons for this will vary. Pleas of guilty are then entered on the remaining charges. Alternatively, where there are only one or two charges, defendants will enter pleas of guilty to lesser charges: for example, not guilty to Section 18, but guilty to Section 20, and so forth.

I am informed that at Birmingham Crown Court, upwards of two thirds of cases listed for trial are ineffective. Presented in the table below are statistics taken from information gathered by the Crown Court office regarding all cases that were ineffective between 15th October 1991 and 21st November 1991 (27 days sitting).

LISTED FOR TRIAL

Number of Cases	Reasons
3	Administration Support Unit (West Midlands Police) failed to notify witnesses
9	Prosecution offered no evidence
10	Prosecution accepted pleas of guilty to lesser charges
13	Defendant changed plea of guilty following discussion with counsel
2	Bench Warrants
1	Case adjourned - counsel unavailable
4	Defence witness problems
5	Prosecution witness problems
3	Prosecution evidence incomplete, in dispute or badly prepared.
Total 50	

Statistics on trials that were effective during this period have not been kept, however, an approximate figure would be 20/25

Although these statistics are not sufficiently sophisticated to highlight possible complexities in individual cases, the fact remains that in almost half of these fifty cases defendants eventually pleaded to lesser charges or changed their plea to guilty. Late plea changes led to adjournments for the preparation of reports. The implementation of the sentencing provision of the Criminal Justice Act in October 1992 will result in an increase in the number of such adjournments, leading in turn to substantial delays and considerable expense to the Courts.

Plea determination is influenced by many factors, some of which are particularly likely to lead to late plea changes.

1. Defendants sometimes manipulate the system by awaiting the day of trial to see if witnesses will attend Court.

2. Defendants may be unwilling to address their predicament.

3. Securing Bail is always a factor.

4. Counsel or defendants may wish to know which judge will sentence.

5. Defendants may fail to keep appointments with their solicitors and counsel (a problem also experienced by the probation service).

There is little hope of eradicating these factors without a radical overhaul of the whole criminal justice system. However, by adopting a more positive approach, the system as a whole could work around the problems and improve the situation considerably. 'Fine tuning' to the system could allow pre-sentence reports to be made available more quickly in cases involving a plea change, thereby avoiding unnecessary adjournments. This would undoubtedly benefit all concerned.

Earlier, I drew attention to the problem of inadequate communication. here are two common examples of this (there are others).

1. If a defendant is undecided about his or her plea, the Crown Prosecution Service could, if appropriate, prior to the trial date, indicate their position with regard to acceptable pleas to lesser charges or the negotiated dismissal of some charges. In a substantial number of cases at Birmingham Crown Court this does not take place. The reasons for this have been a shortage of staff, and general pressure of work. In the course of my discussion with a member of the Crown Prosecution Service, I was informed that their predicament had improved recently. Morale appeared to be good and I gained the impression that the service would if able, cooperate with changes that would be of benefit to the system. I am further informed that the quality of liaison between the Crown Prosecution Service and solicitors is poor. It is important that a way is found to improve this liaison. Solicitors should be urged to take equal responsibility for communication.

2. It is the practice of field work teams in the probation service to write to solicitors asking for an indication of the defendant's intended plea. At the Birmingham Crown Court, many of these letters are ignored or a not guilty plea is indicated, only for it to be changed on the day of trail.

   There are various reasons for the occurrence of such lapses: fear of impending change, suspicion of motives, protection of one's own interests, lack of knowledge regarding the system overall, a weakness in conceptual ability and a lack of resources and time. Some of these

reasons are inherent to human nature and not easily remedied. Nonetheless, the situation would be significantly improved by better organisation. Indeed, it is notable that where effective communication does take place at present, it is generally as a result of the personality and commitment of individual participants in the criminal justice system and does not reflect the provision of adequate channels by the system itself.

The Way Forward

At this point, I should make it clear that this report is not a critique of the criminal justice system as such. If it were, it would have a different emphasis and conclusion. However, changing the criminal justice system as a whole is not a primary objective of the probation service. I have therefore focused on ways to improve the existing system that do not require and overhaul of the system in its entirety.

1. Cooperation between sections of the criminal justice system would be enhanced if each section of the system knew more about the modus operandi of the others. To this end, each section should be urged to acquaint the others with their own interests and working practices.

2. Better cooperation between sections of the system requires more efficient channels of communication. The probation service should take the initiative in this respect by centralising their system at Birmingham Crown Court. Only the paperwork on defendants entering definite guilty pleas should be forwarded to fieldwork teams. Concentrating the procedure for dealing with cases involving potential late plea changes at the Crown Court will not only reduce the pressure on fieldwork teams, but also obviate the frequently unsatisfactory method fieldwork teams have of contacting solicitors.

   Under the present system, a letter is sent to the firm of solicitors concerned. Some respond indicating a not guilty plea. Only for this to change, or they do not respond at all.

3. A desk should be set up with one **named** person whose primary responsibility is to liaise with solicitors and the Crown Prosecution Service. This position could be filled by a probation assistant or a team assistant. The Crown Prosecution Service should be urged to adopt the same approach, i.e., a 'desk' should be set up with a **named** person responsible for liaising with the probation service and solicitors. Having contacted each other initially, these two people could then introduce themselves to the firms of solicitors operating in Birmingham. Indeed, I can see no reason why this could not eventually be extended to include chambers. Even this most insular section of the criminal justice system would benefit greatly from more interaction with the system as a whole.

I see the modified procedure working in the following manner;

a. After consultation with his or her solicitor, the defendant presents as undecided about plea.

b. Solicitor contacts the Crown Prosecution Service 'desk', which liaises with counsel. For this to be effective, the Crown Prosecution Service would need to forward their briefs earlier than is current practice. Crown Prosecution Service then informs the solicitor of counsel's readiness to accept pleas to lesser charges or the negotiated dismissal of some charges.

c. Solicitor speaks with defendant and defense counsel. Since pleas are ultimately determined by defendants after consultation with their advisers, it is essential that the prosecuting and defense counsels have some form of contact at this point. It would also be essential that solicitors liaise with the Crown Court Listing Officer once decisions regarding pleas have been taken.

d. Probation service 'desk' will already be in close contact with the solicitors and the Crown Prosecution Service 'desk'. the solicitors may, pending fruitful negotiation, be able to indicate to the probation service that the defendant will enter some form of guilty plea.

e. Probation service 'desk' contacts defendant and, subject to confirmation of his or her intent to submit a plea of guilty, a pre-sentence report is prepared.

f. Probation service 'desk' notifies the listing officer in the Crown Court Administration of the outcome of the discussion.

These 'desks' would ultimately save the criminal justice system time, energy and therefore money too. In view of this, the cost of setting them could be shared by more than one section of the system, and should be well justified.

Finally, I would like to say that good communication works to the collective benefit of all concerned.

Angela D'Ippolito
Probation Officer

B. Bristol

REPORT OF THE LOCAL STEERING COMMITTEE

ON THE PRE-SENTENCE REPORT

FEASIBILITY STUDY

AT BRISTOL CROWN COURT,

20TH MAY TO 19TH NOVEMBER, 1991

FINAL COPY

REPORT OF THE LOCAL STEERING COMMITTEE ON THE PRE-SENTENCE PILOT TRIALS FEASIBILITY STUDY AT BRISTOL CROWN COURT (20.05.91-19.11.91)

Introduction

This report was prepared after consultation with all the members of the Steering Committee in Avon and members of the Avon Probation Service. I wish to express my thanks to all those people who helped in the preparation, and who worked so hard during the six month period of the trials.

The required data, Avon Pilot plan and contributors are included in the appendices.

Bristol Crown Court

There are 12 Courts, the majority of the cases are remitted from the five Magistrates Courts in Avon, but some cases are remitted from neighbouring counties. There are eight Crown Court Judges, 97 Recorders and 40 Assistant Recorders.

Report Preparation Prior to the Pilot Trials

The majority of reports were prepared following committal to the Crown Court by a process of establishing the plea from the defendant's solicitor. This was achieved by letter including a tear off slip to be returned to the Probation Court team. The reply rate remained constant at about 50%. A Response to supervision report was prepared on all current clients pleading not guilty. Most guilty cases with known contact within the last year were referred to the last Supervising Officer who usually prepared a report. These three strategies were designed to ensure that "wherever possible" defendants who were pleading guilty or who were known to the Service had a report prepared prior to sentence. Following either a late change of plea or a finding of guilt, the process became more arbitrary; dependent largely upon the Judiciary. The remand period for reports was usually 21 days. Monitoring figures for the three months prior to the pilot trials showed that on average 10 people received a custodial sentence without a S.I.R.

In January 1991 a half-time Probation Officer was appointed to the Court team. Her task was to undertake Short Remand and Day of Hearing Reports. The criteria for the latter was that they should be low tariff offenders. Avon Probation Service uses the Cambridge model of risk of custody/risk of re-offending scales as aids to offender analysis and report preparation.

Court Users Group

This Group had been in operation for the last three years. It met on a bi-monthly basis. It included all the agencies and Court personnel represented on the Steering Group and was chaired by His Honour Judge Fallon. It was a powerful forum for discussion and action.

Avon Pilot Plan

The Pilot plan underwent a number of changes, the final plan being noted in the appendices. A summary of the main points follows:-

(1) Estimated Demand - Of 8-10 reports per month based upon three months monitoring prior to Pilot Trials of defendants without a report/or subject to a Day of Hearing Report.

(2) Use of Resources/Management of Demand

(i) Two and a half Probation Officers assigned to Crown Court - increased to three full-time Probation Officers and one part-time Clerical Officer in September, 1991.

(ii) "Day of Hearing" - 12 reports to be transcribed by Court Transcriber - cost borne by the Court.

(iii) All other reports prepared by field teams, except short remands to be undertaken by Court Probation Officers.

(3) Monitoring of Pilot Trials

(i) Monthly meeting of Steering Group.

(ii) Monthly meeting chaired by presiding Judges, including Probation Service, Chief Clerk and Judiciary.

(iii) New S.I.R. monitoring form to commence in July. Database organised by A.C.P.O. (Courts) and Court team.

Participation of Other Agencies

Because there was already a Court Users Group in existence it did not require significant change to convert it into the Steering Group for the Pilot Trials. The chairing of the Group passed to Mr. A. Butler, the Crown Court Administrator. The Judges wished to contribute to the process of the Pilot Trials and met separately with the Probation Service, Chief Clerk and Listing Officer immediately after the Steering Groups monthly meeting.

Changes in Probation Service Practice

(1) The redeployment of two and a half Probation Officers to cover the Crown Court. These were increased to three Officers in early September. An extra Clerical Officer was appointed on a six month contract in September to undertake completion of the monitoring forms.

(2) The collection of depositions and witnesses statements from the Crown Prosecution Service had to be organised. Fortunately Avon staff already collected I.R.P. and previous convictions on a daily basis, the Offices being adjacent.

(3) There needed to be considerable increase in storage space for the depositions and witnesses statements.

(4) The whole process of time-management for the three Clerical staff had to be reviewed. The Office houses a field work and specialist staff so it was very difficult to ensure that Clerical staff were able to give sufficient time to the Pilot Trials, as they were required to undertake other duties as part of the Central Office team.

(5) As far as possible all reports called for with a short remand period were undertaken by the Crown Court team. All Day of Hearing Reports stopped in order to comply with the terms of the Act. However, it was agreed that a total of 12 reports should be prepared orally and transcribed by the Court. This was a problematic decision. It was not an entirely satisfactory arrangement, both in terms of quality of the reports and in controlling the demand. There were considerable lessons to be learnt from the experience in Avon. It was difficult to stop the practice of Day of Hearing reports both for the Courts and Officers. In order to meet the increased demand for reports meant that Probation Officers and Clerical staff had to be available and free from other duties.

(6) Avon Probation Court Officers are very fortunate in enjoying good working relationships with both the Judiciary and the Court staff. This mutual understanding and respect enabled the trials to progress without any noticeable tensions and friction. There were some changes in practice to meet other agencies objectives. Most noticeable was the need for Probation Officers to be more accessible in the Court setting, not always easy in 12 Courts on three sites. The Senior Probation Officer had to be more accessible also to meet with the Judiciary and Court staff to discuss specific issues. This inevitably had an effect upon other key tasks related to the Magistrates Court serviced by the same Court team.

(7) Although the "run-in" time for the Pilot Trials appeared to be sufficient there were difficulties for the whole Service in understanding the aims and objectives of the trials. Specialist sections of the Service were not always able to

respond to requests for quick decisions and delays did occur. It is worth noting that during the six month period the field work teams were also under resourced. Staff vacancies are a frequent part of Service life but the need to produce an increased number of reports with under resourced field teams was very difficult to manage.

(8) Continuing the issue of tensions and difficulties during the Pilot Trials some of the "key players" experienced problems in meeting the Probation Service needs. The prison although always co-operative at management level was under pressure. Access for visits to remanded defendants did on occasions prove difficult. This coupled with defendants being remanded in police cells often outside Avon caused further difficulties. The Bar who needed to play a key part in the success of the trials had become used to the system of Day of Hearing Reports. The Probation Court Officers were required to extend their skills of negotiation and diplomacy in explaining the purpose of the Pre-Sentence Report and why a delay for its preparation was inevitable.

Implications for Other Criminal Justice Agencies

Interviews with other key agencies involved in the pilot trials has played an important part in the preparation of this report.

Judiciary

The presiding Judges were co-operative beyond the call of duty. All took a keen and critical interest in the trials, and without their intervention and advice the Probation Service would have been disheartened by the extra workload. In particular His Honour Judge Fallon exercised great skill and ingenuity devising a method for transcribing reports. It is important to record that the Judges' belief that quality of the reports was of greater assistance than speed of delivery. This was the highest accolade of the work that Avon Probation Service has undertaken to improve offence analysis of community sentence recommendations.

Given the numbers of visiting Records and Assistant Recorders it was not surprising that this important group experienced the most significant effect of the trials. The majority were most helpful and patient with the disruption to their period of sitting. There were naturally cost implications for cases being recalled.

The Crown Prosecution Service

The implications of the trials from their perspective have been primarily the cost of extra copies of papers.

The Court Administration

Mr. Butler who chaired the Steering Group had to undertake extra work, and has had a cost implication to manage when the visiting Judiciary had to return to consider reports.

The Chief Clerk and Listing Officer

Both Mr. Jeffery and Mr. Roberts did not think the trials affected their work too significantly. It would appear that because of their commitment to the trials they managed to "rearrange" cases without any great disruption. Mr. Jeffery considered that the major difficulty was ensuring all the Recorders and Assistant Recorders were aware of the trials and its implications for them.

The Bar

The Bar, through its representative, Mr. Glen was a thoughtful participant to the trials. However, due to pressure of work, he was not able to attend consistently enough for the full benefit of his advice to be available. Mr. Glen reported that the Bar (over 100 members) had not commented that the Pilot Trials had had any serious affect upon their work. But he is aware that in the future members of the Bar will have to face inconvenience in the form of delays and conflicts of duty regarding their clients.

The Law Society

This group perceived that they had a minimal part in the trials.

The Prison Department

Given the constraints that all prisons experience the staff at Horfield Prison made strenuous efforts to allow given access to remanded men and women at Pucklechurch. The remands in Police cells did cause some difficulties. Mr. O'Brien's view was that the trials did not cause significant problems for the prisons.

The Avon and Somerset Constabulary

Although a relative late arrival to the Steering Group the Police were consistently helpful regarding supply of information. The force works closely with the Service in the Bail Information Scheme, cautioning and diversion and these personal contacts built up by the process were useful.

Resources

The subject of resources has already been addressed in previous paragraphs but it is a very significant issue which must be addressed before the Criminal Justice Act is implemented. The monitoring information from the Pilot Trials will give some important evidence for this. Avon's experience was that the whole Service needed opportunities to discuss the implications of reports being required at short notice and to prepare for increased demand. It is not simply a matter of using dedicated teams of Officers to prepare reports although this is necessary. It is also a question of applying the whole issue of qualitymanagement to the system of Court delivery, including administration, the communication between the Court teams and the rest of the Service, the participation by other key agencies.

Working with offenders is time-consuming and frequently frustrating. Failed appointments, late changes of plea are amongst a range of issues which can cause delay in report preparation. Where a 4a Schedule 11 and 4b Orders are being considered time must be allowed for proper thorough assessment. It is important to develop systems that ensure that avoidable delays are reduced to an acceptable standard and that all staff accept the rationale for "doing it right first time". This requires that time spent in preparation for the advent of Pre-Sentence Reports includes looking at all parts of service delivery and not just the report preparation.

Summary

The main action points from the Avon experience are:-

(a) That information systems need to "user friendly". The present systems used by individual Criminal Justice agencies are not compatible. There is an urgent need for a comprehensive system to be developed. Whilst not underestimating the enormity of the task until it occurs verifiable analysis of the work will be questionable.

(b) That there is a clear need for all the key agencies to understand each others objectives. This does not mean that each must abandon their own. It does mean that there needs to be a forum for exchanging views and for mutually determining how to reduce the "rubbing points" between all parties.

(c) There is a need to be ready to meet the unexpected and to be aware of events in relatively discreet parts of the criminal justice system The effect of organisational changes both in personnel and practice can radically alter delivery of key services.

(d) Training in Pre-Sentence Reports will be a key part of the preparation for the Criminal Justice Act implementation. This needs to be interpreted in its widest sense. Offending behaviour analysis is a key component, presentation in Court is another. Understanding the process of the law is also crucial so that the Service understands how and when it can intervene and offer professional help to sentencers.

(e) Avon is currently consulting the Judiciary and Magistrates on its Courts' guide to the Service facilities and listening to how information should be presented so that the key elements of community disposals are succinct and available. If the key elements of the legislation are to be effective then Sentencers need to be assured that the Service is concentrating upon the seriousness of the offence and has set firm and realistic goals for supervision to reduce the risk of further offences.

(f) Wherever possible the Probation Service and the Judiciary

should meet to discuss issues pertaining to service delivery. The success or otherwise of community disposals relies upon Sentencers' confidence in the Service. The regular meetings in Avon have already been described and their importance can not be over-emphasised. The preparation for the Criminal Justice Act in Avon may include joint seminars for the Judiciary and the Probation Service.

(g) The key words that are currently used for service delivery are that it should be effective, efficient and economical. It is important to include that it should be equitable and of quality if the purpose of Pre-Sentence reports is to be achieved.

20.12.91
CS/HS

Members of the Steering Group

Mr. A. Butler, Administrator, Bristol Crown Court
Mr. N. Jeffery, Chief Clerk, Bristol Crown Court
Mr. A. Roberts, Listing Officer, Bristol Crown Court
Mr. I. Glenn, The Bar
Mr. A. Miles, The Law Society
Chief Inspector B. Trigg, Avon and Somerset Constabulary
Mr. B. Chilten, Crown Prosecution Service
Ms. H. Waterhouse, Senior Probation Officer, Bristol Courts team
Ms. C. Sapsed, A.C.P.O., Avon Probation Service.

Other Contributors

Mr. P. O'Brien, Assistant Governor, H.M. Prison, Bristol
Mrs. S. Perry)
Ms. H. Clarke)
Mr. M. Pattman) Bristol Court team Probation Officers,
Ms. P. Clements) Avon Probation Service
Ms. S. Wood)
Ms. C. Heal) Administrative staff
Ms. B. Phillips)

The Presiding Judges

His Honour Judge Fallon
His Honour Judge McCarraher, V.R.D.
His Honour Judge Bursell, Q.C.
His Honour Judge Fanner
His Honour Judge da Cuna

AVON PROBATION SERVICE

CROWN COURT PILOT SCHEME IN BRISTOL

INTRODUCTION

The Avon Probation Service was invited to take part in the feasibility study into the provision of Pre-Sentence Reports to the Crown Court. The study was designed to mimic as closely as possible the provisions in the Criminal Justice Act which comes into force in 1992. This requires that the Court calls for a report before imposing a custodial sentence in all cases where the offence is triable either on indictment or summarily; or for offences where the offender has not previously received a custodial sentence. It also requires a report to be prepared where the Court is considering making a Probation Order with requirements, Community Service, and similar Orders.

ESTIMATE OF ADDITIONAL REPORTS

The three month survey of cases prior to the pilot indicated that a consistent 5% of all cases in the Crown Court received a custodial sentence without a report. In addition the Court team prepared Day of Hearing Reports of which 2% were within the target group as defined by the Act. It was expected that the pilot trials would generate an additional demand of 8/10 reports per month. The major difficulty for the Service was the withdrawal of the Day of Hearing Reports which were not permitted under the terms of the Act.

USE OF RESOURCES

The existing team at the beginning of the pilot trials were two and a half Probation Officers and two full-time administrative staff. Considerable difficulties were envisaged in increasing the staff team, due mainly to rate-capping of Avon County Council. However, by early september it had proved possible to increase the Probation Officers by one half, and similarly for the administrative staff. The management of the collection of additional information from C.P.S. was undertaken by ancillary staff and collected from the Central office by field work staff; this did not constitute a significant change in practice as the previous arrangement with C.P.S. involved the supplying of I.R.P.'s and pre-convictions. The use of Day of Hearing Reports was reduced to cases which under exceptional circumstances could not be dealt with by a remand period and intended to be reserved to specific sentencers. This did not prove particularly viable and had to be extended to Recorders who were sitting for limited periods. In order to conform to the requirements of the Act the Day of Hearing Report was transcribed by the Court and signed by the Probation Officer.

MANAGEMENT OF PERCEIVED DEMAND

Given that the existing practice in Avon included a system for establishing pre-Court an expectation of plea in order that the Service was alerted to possible demand; it was not envisaged that considerable additional structures would need to be instituted. Clear instructions were prepared for the field and Court teams which outlined the specific duties of report preparation for cases which fall within the remit of the pilot trials. The current practice was that 80% of all reports are prepared pre-sentence by the field work teams, and that this practice continued for the six month period commencing in July. It was envisaged that there would be difficulties in meeting the need for reports following late changes of plea or when a finding of guilt had been established. The decision was made that the Court team would undertake those that were required within a week, or less either by preparing a transcribing a Day of Hearing Report or written by Probation/administrative staff. A small percentage of these could be known to the Service already and be the subject of a Response to Supervision Report; in these cases the Supervising Officer would prepare the report. The expectation is that these reports would be completed in two to three weeks. For referrals to the Intensive Supervision Centre and the P.A.C.T. Scheme four weeks. This could cause delays for sentencers and negotiations with the Court listing staff are planned to examine if these cases could be identified at the point when pleas are established. This would enable the Court team to allocate some report requests to field work teams. All Avon Probation teams have access to fax machines and can send reports to the Court team.

The section of the Act required that reports were designated 'Pre-Sentence Reports'. Given that the Service had undertaken a major training exercise in report preparation in 1990, report writers were to continue their usual methods of preparation and presentation but note that the concluding discussion of the most appropriate community-based sentence was clear and unambiguous; and that use of the word 'recommendation' would be reduced to a minimum. A clear gate-keeping structure had been introduced as a result of the training programme and this plus the S.I.R. monitoring form due for introduction during August were important components in controlling quality during the pilot period.

MONITORING OF THE PILOT TRIALS IN AVON

At the interface between the various court agencies involved in the pilot trials close understanding of each other's role would be crucial. The proposed membership of the Steering Group was negotiated and that the following would be represented at the first meeting in July; C.P.S., the Bar, the Law Society, the Probation service, the Crown Court Administrator, the Listing Officer, the Chief Clerk; responses were awaited from the Police and the prison departments. The group would be chaired by the Chief Administrator, the Probation Service would provide secretarial back-up. It was proposed that following the Steering

Group the Senior Circuit Judge His Honour Judge Fallon, and his fellow judges would meet the Chief Clerk and Probation representatives to review progress. Meetings between the Judges and Probation Service had been a regular event for nearly two years, and the Judges were particularly interested in maintaining this forum during the pilot period.

Overall the monitoring procedure would be orchestrated by the Home Office, there would be some difficulty in that the team are required to undertake their normal duties in addition to participating in the pilot trials. Given that a substantial part of the period includes the summer months there would be difficulties, due to annual leave etc.

In addition the introduction of a new Service S.I.R. monitoring form timed for introduction this summer would give a further tension to the monitoring process.

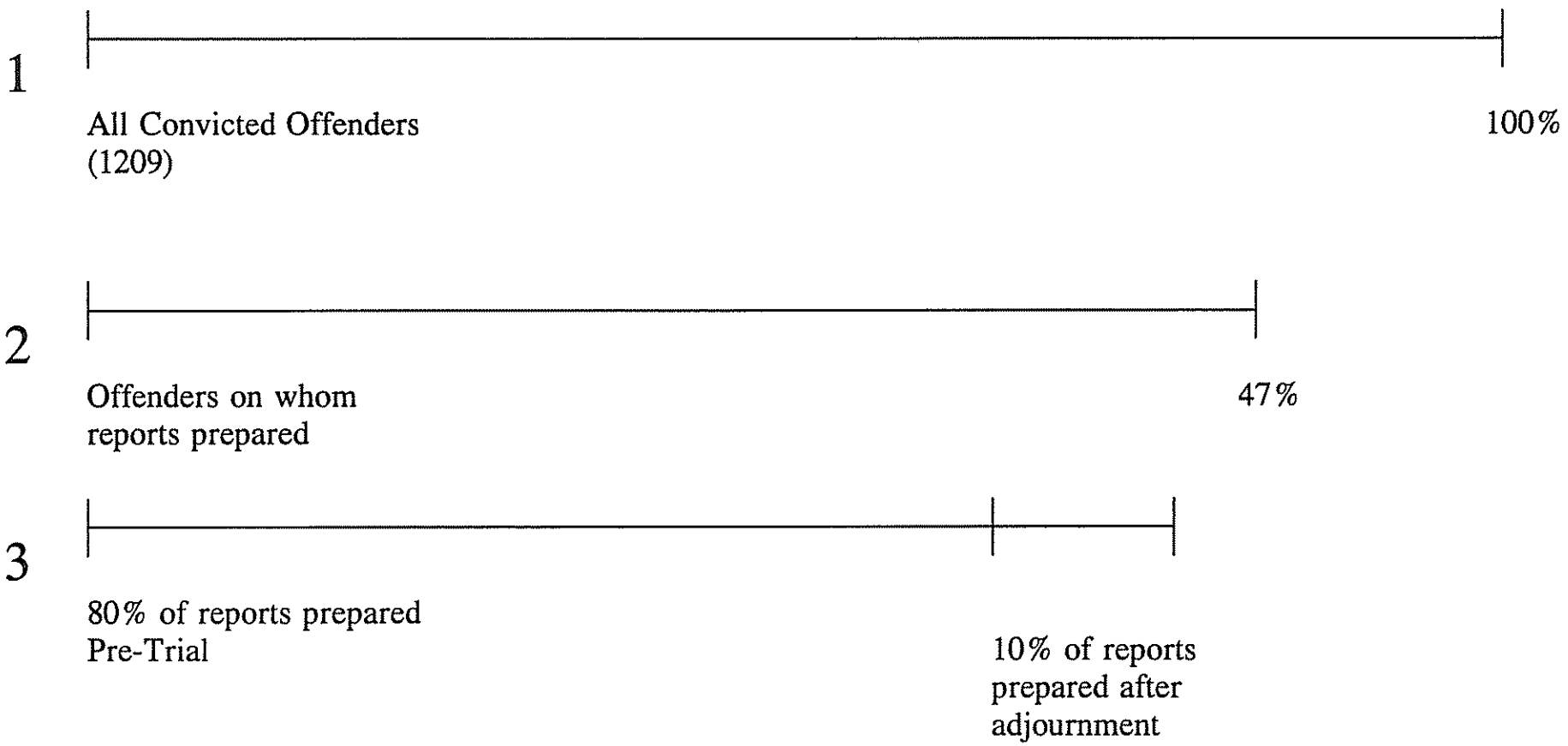
CONCLUSION

Avon Probation Service would take part in the Crown Court pilot trials to commence in July. It would be less than honest not to record that participation was accompanied by some anxiety. Avon was already under-resourced for the predicted demand for reports, Probation Orders, etc. before agreeing to be a pilot area. It would be possible to increase the staff resources at a minimal level, this would give some respite.

PRE-SENTENCE PILOT TRIALS

Bristol Crown Courts

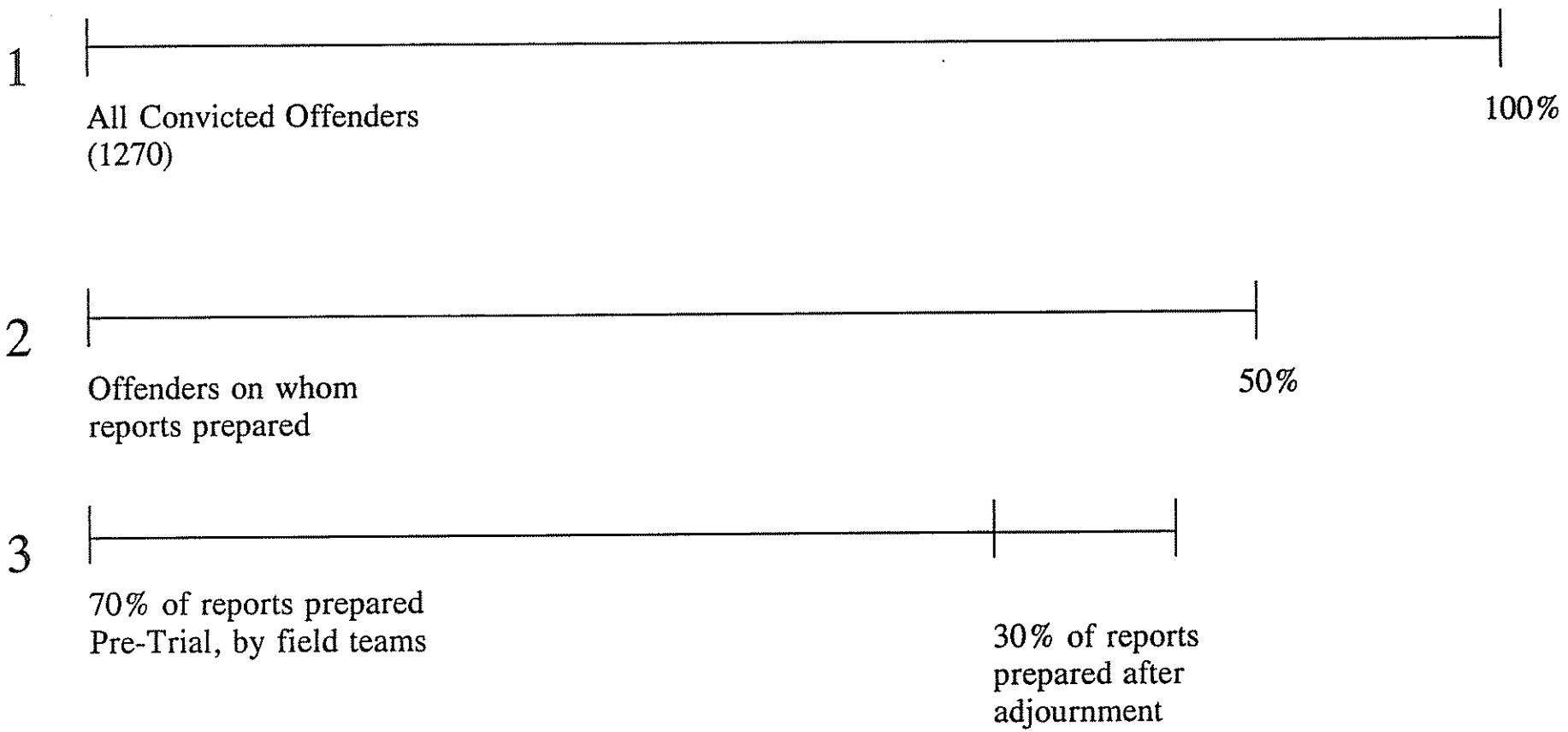
July-November 1990



All figures approximate

DURING PILOT

Bristol Crown Courts



All figures approximate

REPORTS PREPARED AFTER ADJOURNMENT

BRISTOL

(Roughly 27% of all reports)

Bristol

1	Timescale	~~21-28 days~~	~~<21 days~~
		45%	65%
2	Prepared by	~~Fieldteams~~	~~Court team~~
		25%	75%

C. Lincoln

LINCOLN LOCAL STEERING COMMITTEE REPORT

PRE-SENTENCE REPORT PROJECT

Background

1. Geographically one of the largest counties in England and Wales (591,480 hectares) Lincolnshire is comparatively sparsely populated (586,900 in mid 1989) The county has one Crown Court situated in the City of Lincoln. It deals with first, second and third tier cases from Lincolnshire, which has 11 petty sessional divisions, some of them very small. First and second tier cases from the south part of Humberside, which was part of Lincolnshire until local authority re-organisation in 1974 are also dealt with at Lincoln Crown Court. The Lincoln Crown Court is a two and a half Court room centre which means that the third Court sits for six months of the year.

2. The information in Appendix D gives some indication of the volume of work in the Lincoln Crown Court. The whole question of comparison is bedevilled by the way in which statistics are collected by the various criminal justice agencies. The Probation Service and the Crown Prosecution Service deal in number of defendants whereas the Crown Court deals in number of cases. As far as probation statistics are concerned the months of August and September 1991 have been distorted by the fact that because of the pending closure of the Crown Court cases were being transferred elsewhere.

3. In Lincolnshire both the Probation Service and the Police are county services, but Probation Teams and the Police Sub-Divisions do not have exactly the same boundaries. The Probation Service has 162 staff, including 60 main grade Probation Officers. The Chief Crown Prosecutor is responsible for the Crown Prosecution Service in Cambridgeshire and Lincolnshire, with his office based in Huntingdon. There is a Branch Prosecutor based in Lincoln. HM Prison, Lincoln, is a local prison situated about half a mile from the Lincoln Crown Court. Its catchment area is Nottinghamshire, Lincolnshire and the south part of Humberside. Of the remand population not more than about 10% orginate from Lincolnshire Courts. All the agencies involved in this project had previous experience of liaison with each other in various situations. This enabled the Local Steering Committee to achieve a high level of co-operation.

The Project

4. Lincolnshire became part of the Crown Court Pilot Project on pre-sentence reports at a comparatively late stage and had to make a rapid start as the Crown Court was scheduled for closure for renovation at the end of September 1991. The project started on 13 May 1991, and ended with the closure of the Crown Court on 27 September 1991. The speed with which the project was mounted caused some initial problems for the Probation Service, but these were quickly resolved by local negotiations with staff.

The Probation Service strategy paper for the project is attached as Appendix 'A' to this report.

Method by which Probation organised its service to the Lincoln Crown Court prior to the commencement of the Project

5. For some time before the project commenced 1.5 probation officers were allocated to liaison duties at the Lincoln Crown Court (annual cost £27,600). Up to three Courts ran at any one time and the Probation liaison staff were responsible to a Senior Probation Officer who had overall responsibility for the Crown Court and Magistrates' Courts in Lincoln.

6. Crown Court reports were allocated at team level by team Seniors and the Crown Court staff were then informed as to who was preparing the report. A full time clerical assistant was responsible for the Probation side of the Crown Court administration (annual cost £10,900). The Probation Service in Lincolnshire has traditionally prepared pre-trial reports in a high proportion of cases and this was formalised when the project started. In general reports were prepared in all cases where the defendant was known to be pleading guilty on the presumption that the main reason for the committal of cases to the Crown Court is the seriousness of the offence.

7. In March 1989 a report for the Association of Chief Officers of Probation by Senior Probation Officers with responsibility for Crown Court liaison in the Midland and Oxford Circuit entitled "How Do You Plead", highlighted the fact that a significant proportion of defendants receiving an immediate sentence of imprisonment did so without a Social Inquiry Report or stand-down inquiry.

8. The Lincolnshire Probation Service devised a phased strategy to deal with this matter. Initially one of the probation officers responsible for Crown Court liaison part-time was encouraged to do social inquiry reports at short notice when his other commitments allowed this. In November 1990 a full time probation officer (annual cost £18,400) was appointed to produce reports which are required by the Crown Court at short notice. He spent some of his time in the Crown Court pro-actively drawing to the attention of Counsel and the Court the availability of this Service. Retrospective feedback shows that relying on communicating new services in this way may not be effective when a comparatively large number of sentencers, barristers and solicitors are involved.

9. By the time this project started the Lincoln Crown Court was increasingly making use of this officer's services and asking for reports at short notice, especially on conviction after a trial. This facility was however still under-used when the project started in May 1991. During the previous 6 months the specialist Probation Officer had produced for Lincoln Crown Court 15 short notice reports and 7 other reports. Overall his rate of report production, including some reports for other Crown Courts was 4.5 per month. Experience before and during the project strongly suggests that a Shire Probation Service serving a Crown Court with a workload similar to Lincoln's would require a least one specialist full time Probation Officer to provide reports as required by the Criminal Justice Act 1991.

Main Features of the History of the Project

10. Local Steering Committee

All the agencies involved nominated a key person to represent them with regard to the project. The Local Steering Committee met on three occasions. Representation at meetings was very high. The general opinion was that the meetings were useful and have done much to improve inter-agency co-operation in the county. Members of the Local Steering Committee are listed in Appendix 'B' to this report.

11. The Humberside Probation Service decided not to become involved in the project. The project consequently only concerned defendants committed to the Lincoln Crown Court by Lincolnshire Courts, or those living in Lincolnshire at the time of committal. There were no first or second tier sittings of the Lincoln Crown Court during the period of the project and consequently Humberside's non-inclusion had little impact on the number of defendants included in the project sample.

12. Prior to the project probation officers preparing social inquiry reports tried to obtain information about the offences with which the defendant was charged, and that person's previous convictions in a number of ways. They were frequently given this information on a grace and favour basis. Checked previous convictions were invariably available before a defendant appeared in Crown Court, but not always at the time when the report was actually being prepared. The practice adopted by the Lincolnshire Police prior to the pilot scheme was for the information to be supplied to the Probation Service by the Police Crown Court Liaison Officer after committal. Information about offences came from a variety of sources, including defence solicitors and investigating police officers. Obtaining this information was often time consuming and reports sometimes had to be written with only the defendant's version of events available.

13. Before the project commenced the Crown Prosecution Service agreed to provide Probation with copies of papers on the day of committal. Shortly afterwards it was arranged by Police and CPS that the prosecution court file submitted to the CPS for committal proceedings would contain the accused's previous convictions and any offences admitted and to be taken into consideration. The Crown Prosecution Service agreed to photocopy these with their own relevant papers at the committal stage.

14. The CPS started passing papers to Probation on 2 April 1991, and consequently before the project commenced on 13 May 1991 Probation staff had objective and comprehensive information about most of the defendants about whom they prepared reports. The papers were made available to the Probation representative by Crown Prosecution Service staff in Court. The Scheme has worked remarkably smoothly. The Police report that there have been no resource implications for them. As will be seen from the table at Appendix 'C' to this report the total cost to the Crown Prosecution Services was £987.30.

15. As envisaged one of the main demands for pre-sentence reports at short notice has been as a result of a finding of guilt after a trial or late change of plea. As part of the project the Lincolnshire Probation Service intended that where there was a definite plea of not guilty and if both the solicitor and defendant consented the defendant should be interviewed and background information gathered so that in a case of a finding of guilt or late change of plea a report could subsequently be prepared with minimum delay. The scheme had the enthusiastic support of the Bar and the qualified approval of the Lincolnshire Law Society. The number of defendants pleading not guilty who were interviewed in these circumstances was small. Some probation officers had serious reservations about contacting defendants who were known to be pleading not guilty inspite of the built-in safeguards, which included destruction of gathered information in cases of acquittal.

16. In the few cases where such information was available the probation officer eventually preparing a report did not in general find this initial information particularly useful and had to cover at least some of the same ground again.

This practice has cost implications for the Probation Service and in the case of a subsequent acquittal is wasted time. On the other hand the ability to prepare a report at very short notice can have substantial saving of resources for other parts of the criminal justice system, in particular Counsel and Courts.

The comparatively short length of the project did not give time for either probation staff or solicitors and barristers to become familiar and comfortable with the new arrangements. The experiment probably needs to be repeated over a longer period with greater opportunity to consult with probation staff and to publicise the scheme and the reasons for it to solicitors and barristers.

17. During the course of the project probation staff learnt of a change of plea in a variety of ways but no fail safe method of doing this was devised. In relation to one case a Recorder identified a lack of effective communication about a change of plea. The first person to know of a change of plea are defence solicitors and probation information frequently comes from them. The Local Steering Committee are of the view that the listing officer who receives Form 'A' information is probably the best and most consistent source of this information and that this person should have the duty of informing probation of a change of plea.

18. The whole matter is part of the much larger problem of "cracked" trials. The cost of this to the Police, to witnesses, juries and other people involved in the process is phenomenal. Locally efforts are made to remind solicitors of their duty to notify the listing officer of any change of plea. During the course of the project a suggestion was made that a note to this effect should be printed on warned lists and this is being pursued.

The Access of Report Writers to Remand Prisoners

19. As already mentioned Lincoln Prison is the local prison for the whole of Lincolnshire, Nottinghamshire and South Humberside. The Prison provides facilities for up to 40 professional visits Tuesday-Friday, 9.30 am - 11.30 am. These visits are booked in advance through the Movements Officer. Generally 35-40 visits are booked. Staffing levels make it difficult to easily increase the 40 ceiling. A Governor Grade can, if necessary, authorise visits over the 40 mark or out of time, in the afternoon or evenings. However this only happens in exceptional circumstances when visits are particularly urgent.

20. During the course of the project access to prisoners was not a problem for the specialist report writer. Not all defendants were remanded in custody; of those who were some could be interviewed on Crown Court premises before being sent to prison; some because of the length of the adjournment could be seen after a visit had been booked in the Prison in the normal way. On only one occasion had the report writer problems in gaining access to a prisoner and this problem was quickly resolved because of prison officer co-operation. Only when the Criminal Justice Act comes into operation, and Probation Services throughout the whole catchment area of the Lincoln Crown Court have the duty to prepare pre-sentence reports will the existing arrangements to provide ready access to probation officers preparing reports be truly tested. Difficulty in gaining access to prisoners at short notice could occur if the informal arrangements used during the period of the project are not replaced by formal policy and procedures established by the Prison Service in consultation with Chief Probation Officers.

21. The position has been exacerbated recently because of integral sanitation work in Lincoln Prison. It has now reached its occupational capacity and has started locking prisoners out. This means that some prisoners will be held in Police cells throughout Lincolnshire, but hopefully not many of those who have reached the real trial stage. This will however undoubtedly cause visiting problems for some Court report writers.

Need for short notice reports

22. The large majority of the work at the Lincoln Crown Court is done by Judges resident in the area. What happened in practice if there was a mandatory need for a report which had not been prepared by the Probation Service was that there was negotiation between the Judge, the Probation Service and Defence about a mutually convenient time for the adjourned hearing. In general the agreement allowed the specialist report writer ample time in which to do the report.

23. During the four and a half month project (13.5.91 to 27.9.91) the specialist report writer produced for Lincoln Crown Court 21 short notice reports and 23 other reports, therefore achieving the production of 10 reports per month of which just under a half were completed at short notice.

24. Genuine short notice reports were only required when a Recorder was at the Lincoln Crown Court for a limited period and not scheduled to return at all or for a considerable time. In two cases sentence was passed by a Judge or Recorder without a report in spite of the Court's participation in the project. In these cases the sentencers concerned announced that they deemed a report to be inappropriate. Fully suspended sentences were also passed without a report. In all other cases reports were provided and in the time required.

25. It should also be noted that not all reports prepared after a finding of guilt or late change of plea could in fact be used at the time of the further adjournment because of listing problems which were not the responsibility of the Probation Service.

26. CPS were only asked to monitor the extra cost incurred when Prosecution Counsel had to be retained in a case where there was an adjournment for a pre-sentence report from mid-way through September. In the two week period concerned the cost of Prosecution Counsel was £44 plus travelling cost and ten minutes of law clerk time. The cost of Defence Counsel was not measured. The local Steering Committee expressed the hope that consideration of cost will not lead to prosecuting counsel being excused attending sentencing hearings because if this happens it could lead to Judges not having both sides of the case properly represented. Defence Barristers are ethically restrained from handing over a case adjourned for sentence to another Barrister, and yet the fee of 43 plus travel allowance is poor remuneration for a special journey to the Crown Court, particularly where other work may have to be foregone in order to attend. There will also be immense logistical problems for Barristers in such returns for sentence once the Act is fully operational.

RECOMMENDATIONS

Some members on the local Steering Committee, especially the Bar representative, had serious criticisms of the Criminal Justice Act and the feared unworkability of some aspects of the provisions with regard to pre-sentence reports. There was not consensus about these matters and particulars are not included in this report because the purpose of the project was limited to identifying the organisational changes necessary to ensure that the provision of the Act on pre-sentence reports can be implemented effectively, efficiently and economically.

The following recommendations were accepted unanimously by local Steering Committee members:

i) A Shire Probation Service serving a Crown Court with a workload similar to Lincoln's will require at least one specialist full time probation officer to provide urgently required reports under the Criminal Justice Act 1991. The flow of work to this probation officer will of necessity be irregular, but the potential of the post can be maximised by the postholder doing other time limited work, for example non urgent report writing and relief court liaison duties (paras 8 ff refer).

ii) A fail safe method needs to be devised for informing probation officers at the earliest possible moment of a change of plea. The local Steering Committee was of the opinion that the listing officer is probably in the best position to provide up to date and consistent information and should have the duty of passing this to the Probation Service Crown Court Liaison Officer. (Para 17 refers)

iii) Once the Criminal Justice Act becomes operational it is anticipated that there will be difficulty in probation report writers gaining access to prisoners at short notice. The matter of access to prisoners should not be left to informal arrangements but be the subject of formal Prison Service policy and procedures and agreement between Prison Governors and Chief Probation Officers. (Para 19 ff refer)

iv) In the case of adjournments for reports it is hoped that courts will take into consideration the convenience of <u>everyone</u> concerned, namely the Court, the Prosecution, the Defence and the Probation Service, when arranging a suitable date for sentence. (Para 22 refers)

APPENDIX A

LINCOLNSHIRE PROBATION SERVICE

PILOT TRIALS ON PRE-SENTENCE REPORTS IN THE LINCOLN CROWN COURT

STRATEGY PAPER

1. Background Information

The Criminal Justice Bill creates a new framework for sentencing based on the seriousness of the offence. Custody is to be reserved for the more serious offences with most offenders being punished in the community. In order to assist the courts with the information relevant to sentencing decisions, the Bill makes provision for wider use of reports, to be called pre-sentence reports.

Courts will be required to consider a pre-sentence report in a wide range of circumstances before passing sentence. This will necessitate some reports being produced at fairly short notice. The Lincolnshire Probation Service has agreed to take part in a pilot project to look at the organisational and resource implications of these proposals. The six month pilot trials will commence on 13 May 1991.

2. Objectives

a) To identify the organisational changes necessary to ensure that the provisions in the Bill on pre-sentence reports can be implemented effectively, efficiently and economically in Lincolnshire.

b) To identify the resource implications of the changes.

c) Identify what changes if any need to be made to Manual Entry A20a about the preparation of Social Inquiry Reports.

3. Preparation of reports for the Lincoln Crown Court

The main reason for the committal of cases to the Crown Court is the seriousness of the offence and there is therefore a presumption that the Court would generally be assisted in the sentencing process by the preparation of a report. In deciding whether or not to have a report prepared Senior Probation Officers should take into consideration the following general principles:

i) Even where an offence is so serious that it is highly unlikely that any court will agree to punish an offender in the community information will still be needed by the Probation Service about the person concerned with regard to future licence, parole etc.

ii) The Criminal Justice Bill envisages courts being required to call for pre-sentence reports in the following circumstances:

a) Before imposing a custodial sentence in all cases where the offence is triable either way or summarily. Provided that where the offence, or any other offence associated with it, is triable only on indictment the Court may dispense with a report if, in the circumstances of the case, the Court is of the opinion that it is unnecessary to obtain a pre-sentence report.

b) Where the offence is triable only on indictment but where the offender has not previously received a sentence of imprisonment.

c) All young offenders.

d) Before sentencing an offender to a probation order with additional requirements, a community service order, a combination order or a supervision order with requirements.

iii) Where a defendant has gone to the Crown Court for trial and where there is a low risk of custody on conviction (ie. a gravity weighting of under 20) it will not generally be necessary to make preparations to provide a report in the case of conviction unless there are special circumstances which in the view of the Senior Probation Officer concerned makes this seem desirable.

4. Action required during the course of the pilot trials

Assistant Chief Probation Officer with responsibility for the Crown Court

He will have overall responsibility for the organisation, administration and evaluation of the pilot trials. He will also be responsible for liaising with other criminal justice agencies about the pilot trials unless he considers it appropriate to delegate part of this task to the SPO with responsibility for the Crown Court.

Team Senior Probation Officers

i) The prime responsibility for the preparation of reports for the Crown Court remains with teams. Probation officers should prepare reports for all cases where a defendant and/or solicitor states that a guilty plea is to be made to a charge.

ii) Team Seniors should ensure that all solicitors practising in their area have up-to-date information and pamphlets about the full range of facilities offered by the Lincolnshire Probation Service. They should also be given full information about the pilot trials and be requested to give Probation early warning of likely pleas.

iii) Where there is a definite plea of not guilty all available information about that defendant, including previous probation records, should be sent to the Crown Court (Reports) Probation Officer. Where both the solicitor and defendant consent the defendant should be interviewed locally and background information gathered and sent to the Crown Court (Reports) Probation Officer, who will in the case of finding of guilt or change of plea prepare a report.

vi) In order to monitor that teams are maintaining their prime responsibility for the preparation of reports Seniors will be sent the following information at monthly intervals:

a) Name and committing PSD of all defendants given a custodial sentence without a SIR.

b) Names of all defendants and committing PSD where the Crown Court Probation Officer intervened and did a report at short notice.

Senior Probation Officer with responsibility for the Crown Court

i) He will have the day to day responsibility for the pilot trials, the supervision of the Crown Court (Reports) Probation Officer and for the quality of reports submitted to the Crown Court.

ii) He will liaise as agreed with his ACPO with other Court users and ensure that Barristers and Judges have up-to-date information about the full range of facilities offered by the Lincolnshire Probation Service and also about the pilot trials.

iii) He will ensure that accurate information is collected as outlined below in order to evaluate the pilot trials.

Crown Court (Reports) Probation Officer

As laid down in the job description.

Project Evaluation

i) The Project ACPO, in consultation with the Information Manager and Crown Court Senior Probation Officer will be responsible for setting up systems to collect data, and for providing the information required for the pilot trials.

ii) The Home Office Research and Planning Unit monitoring form will be completed in respect of each defendant sentenced by the Lincoln Crown Court during the project period by a project Probation Assistant. Her day to day work will be supervised by the Crown Court SPO.

iii) The feasibility of Home Office suggestions for the content of pre-sentence reports will be tested by selected staff from teams throughout the county experimenting with the writing of Court reports. A support group will be provided for these staff by the Project ACPO and the work evaluated at the end of the project.

JB
15.7.91

APPENDIX B

LOCAL STEERING COMMITTEE RE LINCOLN CROWN COURT PRE-SENTENCE PILOT TRIAL

Lord Chancellor's Department

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CRIMINAL JUSTICE BILL - PILOT TRIALS ON PRE-SENTENCE REPORTS IN CROWN COURTS - LINCOLN CROWN COURT

		APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	TOTAL
1.	Number of Cases	74	66	75	63	78	59	415
2.	Number of Defts.	109	101	101	102	105	79	597
3. (a)	Committal Bundle Supplied	46	31	31	38	44	26	216
(b)	Ad Supplied	28	35	44	25	34	33	199
4.	Probation Service Requests only - Time To Locate File	Nil	2 mins	Nil	Nil	Nil	Nil	2 mins
5.	Number of Pages - Ad	800	2217	1404	916	1544	1177	8058
	- Committal Bundle	2788	2227	1320	1922	2111	1320	11688
6.	Probation Service Requests only - Time to Photocopy	Nil	4 mins	Nil	Nil	Nil	Nil	4 mins

19746
x5p
£987.30p

CROWN PROSECUTION SERVICE

DEFENDANTS CONCLUDED (FROM PI DATA)
ON INDICTMENT ONLY - BOTH GUILTY PLEAS AND TRIALS

Lincolnshire

Quarter ended		
31.12.86	147	
31.03.87	202	
20.06.87	190)	349
30.06.87	159)	
31.12.87	277	
Total 1987	828	
31.03.88	318	
30.06.88	222)	513 (+47%)
30.09.88	291)	
31.12.88	313	
Total 1988	1144	
31.03.89	379	
30.06.89	230)	510 (-0.6%)
30.09.89	280)	
31.12.89	262	
Total 1989	1151	
31.03.90	295	
30.06.90	288)	545 (+7%)
30.09.90	257)	
31.12.90	270	
Total 1990	1110	
31.03.91	293	
30.06.91	240)	574 (+5%)
30.09.91	334)	

Overall % increase
1991 over 1987 = 64%

SOCIAL INQUIRY REPORTS PREPARED BY LINCOLNSHIRE PROBATION OFFICERS FOR THE LINCOLN CROWN COURT

	1987	1988	1989	1990	1991
January	32	43	38	37	44
February	50	45	58	62	53
March	34	65	37	34	51
April	34	32	28	27	36
May	39	28	42	50	53
June	32	41	47	42	45
July	39	54	50	41	52
August	36	26	43	46	30
September	28	51	43	35	34
October	67	32	38	49	
November	34	38	47	59	
December	33	29	26	37	
Total:	458	484	497	518	398

LORD CHANCELLOR'S DEPARTMENT

LINCOLN CROWN COURT

12 MONTH ROLLING TOTALS NUMBER OF CASES RECEIVED AND DISPOSED OF

	RECEIPTS	DISPOSALS
1986	722	655
1987	893	861
1988	1001	1025
1989	800	806
1990	793	799
1991	728	831

Month by Month

1990	Jan	66	62
	Feb	37	89
	Mar	74	60
	Apr	50	56
	May	55	53
	June	61	68
	July	78	76
	Aug	65	50
	Sept	67	69
	Oct	87	62
	Nov	92	91
	Dec	51	53
1991	Jan	111	53
	Feb	54	87
	Mar	73	66
	Apr	52	38
	May	70	71
	June	67	49
	July	60	100
	Aug	62	67
	Sept	-	84

D. Newcastle

REPORT OF THE LOCAL STEERING COMMITTEE

ON THE PRE SENTENCE REPORT FEASIBILITY STUDY

AT NEWCASTLE CROWN COURT, 20th MAY to 19th NOVEMBER 1991

Members of the Local Steering Committee:

Mr K Budgen (Chair), Courts Administrator.

Mr H S Adair, Assistant Chief Probation officer, Northumbria Probation Service

Mr P Caulfield, Law Society

Mr P F Grieveson, Branch Crown Prosecutor, Crown Prosecution Service

Mr A Holman, Governor, Low Newton Remand Centre and Female Local Prison

Mr R P Lowden, Barrister at Law

Mr M A Mogg, Governor, Durham Prison

Mr D Murray, Probation Officer, Northumbria Probation Service

Mr A P Rutherford, Senior Probation Officer, Northumbria Probation Service

Mr J C Shaw, Chief Clerk, Newcastle Crown Court

Mr R P Wright, Acting Detective Superintendent, Northumbria Police

Mr J K Bredar, Vera Institute of Justice Project Co-ordinator also attended all meetings of the Local Steering Committee.

INTRODUCTION:

The 1991 Criminal Justice Act creates a new framework for sentencing based on the seriousness of the offenee. Custody to be reserved for the more serious offences with most offenders being punished in the community. In order to assist the Courts with information relevant to sentencing decisions the Act makes provision for wider use of reports to be called Pre Sentence Reports. In September 1990 a Criminal Justice Conference was held at Bramshill to consider the implications of the proposals about reports in the White Paper "Crime, Justice and Protecting the Public". These proposals are now in the 1991 Criminal Justice Act. One of the conference recommendations was that there should be pilot trials in selected Crown Courts to look at the organisational and resource implication of the proposals about reports.

Pilot trials were set up, based on Crown Courts at Newcastle upon Tyne, Bristol, Lincoln, Southwark (Inner London) and Birmingham. The pilot trials were to 'mimic' as closely as possible the provisions of the Criminal Justice Act. Local Steering Committees were set up in each of those areas. This report is the observations of the agencies who took part in the pilot trial based at the Newcastle Crown Court.

The Newcastle Crown Court moved into purpose built premises in October 1990. It is a twelve Court first tier Centre and usually there are nine or ten criminal Courts sitting each day. The Local Steering Committee has met on six occasions and has comprised representatives of all those, apart from Judges, who are involved in the Court process. This report sets out observations made by each of the agencies represented on the Local Steering Committee through their involvement in the six months Feasibility Study in the Newcastle Crown Court.

1. LORD CHANCELLOR'S DEPARTMENT

Observations of Mr K Budgen, Court Administrator:

The Criminal Justice Act requires the Court to obtain Pre Sentence Reports before forming an opinion as to the suitability of an offender for community sentences which means in this area about 75% of committals to the Crown Court may require a Pre Sentence Report. 2,000 of these cases would be at Newcastle Crown Court, 800 at Durham and 1,700 at Teesside. The principle of having Pre Sentence Reports prepared in these cases means there are practical problems in fitting the new arrangements into the Crown Court system. Where a case is known to be a plea of guilty a Pre Sentence Report can be obtained before the matter is listed for sentence. The Court can then decide on the sentence on the day the matter is listed. The Probation Service would have had sufficient notice to prepare the report and no delay is caused. However, where the defendant pleads not guilty and is found guilty following his trial, or subsequently changes his plea to guilty problems arise. Following a conviction the Court is bound to adjourn the matter for a Pre Sentence Report (unless one is not required under the Act). The adjournment is unsatisfactory because of the following:-

1) The defendants have to wait to know what is to be their sentence. Often they are remanded in custody. If granted bail there is a possibility they will re-offend, as demonstrated by a recent study undertaken by Northumbria Police.

2) a. The Judge will have lost the "feel" for the case and will need to re-read his notes.

b. The Judge may have moved to another Court when the matter is ready for relisting and so either the case has to be transferred to his new location or the Judge has to return to the Court.

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c. If the Judge is a Recorder or Assistant Recorder it is unlikely he will still be sitting in a judicial capacity at the Court when the Pre Sentence Report is received. This will mean returning to the Court to sentence the defendant. This can involve considerable extra cost and is inconvenient, as the Judge will also have other commitments by this time at a distant location.

3) Counsel representing the parties will be inconvenienced by having to deal with adjourned sentences unless they happen to be in the same Court on other matters. In some cases there will be a clash of commitments and it may be necessary for other Counsel to act, which is undesirable.

4) The Legal Aid Fund will have to cover the additional expenses accrued in the adjournment, which will increase the burden on the Fund significantly, bearing in mind the number of cases and representatives involved.

5) The Crown Court Administration will have extra work involved in listing adjourned sentences. Cases will tend to be disposed of at a slower rate which will adversely affect waiting time targets. There will also be an effect on the number of outstanding cases which will rise when all the pending cases are included. Statistically this will give the impression that the Crown Court is less efficient. It may be necessary to change the information collected so that cases awaiting sentence are taken out of the system.

It is clear that the Pre Sentence Report provisions in the Act are administratively inconvenient and certainly involve substantial extra costs.

2. NEWCASTLE CROWN Court ADMINISTRATION

Observations of Mr J.C. Shaw, Chief Clerk:

The list office have felt the major brunt of this project. They were faced with a large build up of adjourned matters which increased the throughput of work and in the beginning reduced the disposal rate. They spent considerable periods of time relisting matters to be heard before the original Judge when that Judge was often sitting at another Centre. They had to liaise to a much larger extent with the Bar clerks to ensure that Counsel were available for adjourned matters. On occasions the Court sat early in order that Counsel who was part heard before another Judge could mitigate on the adjourned matter. Judges normally sit at 10.30 am but it was frequently necessary to sit at 10 o'clock, and on one occasion 9.15, to enable Counsel to be in another Centre for 10.30. Arrangements have had to be made for Recorders/Assistant Recorders to return specially to sentence. This had been a rare occurrence but during the duration of the Pilot Study it has occurred a number of times. There is naturally a cost implication, particularly at a Centre such as Newcastle where Recorders/Assistant Recorders are generally based at some considerable distance. Further a Recorder had a case relisted for sentencing at a Court more convenient to him, resulting in travel difficulties for the other parties concerned. The Pilot Study has given no indication of any benefits for the List Office, more cases are active at any given time, negotiations with the Court Administrator's Office who are responsible for the disposition of Judges increases as it does with the Bar clerks. Cases are being brought into the list at short notice after fast track reports had been prepared which from time to time upset the balance of the Judges' list, especially at a Court such as Newcastle where Judges sit civil and criminal matters sometimes on a day and day about basis. There has been a situation where a Judge felt bound to bring into the list two adjourned criminal matters when sitting as the official referee, causing quite serious problems to the civil matter. There has been a resultant effect, at

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Determining Officer level and within the general office. Determining Officers have to deal with fees accruing from the additional hearings. For the general office there is an increase in remand orders and as each record sheet is updated, following the hearing it is recopied to go with the Judge's bundle. The work in this area, whilst not difficult, in the face of rising work loads with scarce resources has proved time consuming.

3. EFFECT OF AND ACCESS TO THE PRISON SYSTEM

a) HM PRISON DURHAM

Observations of Mr M A Mogg, Governor:

Generally it has been extremely difficult to assess the impact of the Pre Sentence Report Pilot Study at Newcastle Crown Court at the prison. There have been only three occasions when the normal special visits facility has been unable to meet the need of a reporting Probation Officer for an urgent appointment. On each of these occasions the services of the Prison Probation Team have been imposed on to facilitate the visit. This was contrary to the arrangements made by the Assistant Chief Probation Officer in Durham, which was for a table in the domestic visits area to be made available, which I did not consider to be satisfactory.

It has not been possible to identify any increase in the number of offenders remanded in custody because of the Pre Sentence Report Pilot, the computers in the prison identify "Judgement respited" cases but many of these occur from other Crown Courts. There must have been a slight increase but this may have been offset by a final sentence of non-custody.

Durham Prison, of course, serves three other Crown Court areas and it would seem reasonable to expect a proportionate increase in custodial remands for Pre Sentence Reports and emergency urgent interviews. Such an increase is likely to be three times that of the project numbers.

I am still of the opinion that Probation Officers working in the prison could and should have an input into the Pre Sentence Report process. How this might best be achieved will depend on the model adopted for dealing with Pre Sentence Reports in a particular area. It would seem to me that the Pre Sentence Report is designed to present to a Judge the options for sentence and their relative merits. One option will always be custody, and this may need to be presented (possibly) as a positive disposal, rather than a last resort. As such knowledge of facilities and the concepts of sentence planning (also part of the CJA), together with the options for the part of the sentence to be served in the community under supervision seems essential. On the contrary setting out the custody option as likely to achieve little for an individual should be as powerful an argument as the alternative benefits of the non-custodial option.

b) LOW NEWTON

Observations of the Governor, Mr A Holman, Low Newton Remand Centre and Female Local Prison:

No difficulties have been encountered at Low Newton over the Pilot Scheme period at a time when the number of inmates has been unusually high. No difficulties are anticipated in the future when numbers are more likely to reduce. The system and facilities at Low Newton provide special visit accommodation for interviews for fast track reports, mornings and afternoons, Monday to Friday. In the event of all the special visits rooms being booked it is agreed with my seconded Senior Probation Officer a room can be provided in the Probation Offices. In summary the effects of the 1991 Criminal Justice Act Pre Sentence Report provision can be accommodated by Low Newton.

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4. NORTHUMBRIA POLICE

Observations of Acting Detective Superintendent R Wright:

The main implications for the Police Service were to ensure that the Probation Service was provided with the information they required without any delay. This information was supplied to the Crown Prosecution Service normally at the time or within days of the defendant being committed for trial. The Crown Prosecution Service undertook to supply the Probation Service with this offence information and committal bundles on all defendants appearing before the Crown Court, therefore there have been no resource implications for the Police Service during this Pilot Study and we would not anticipate any implications in the future.

5. CROWN PROSECUTION SERVICE

Observations of the Branch Crown Prosecutor Mr P F Grieveson:

This has involved preparation of a copy either of the advance information papers served upon the defence or, if none, the bundle of committal papers. Thereafter, these documents have been made available for collection by the Probation Service. Clearly, whichever alternative has been chosen, resources were used which were not used prior to the beginning of the feasibility study, both in terms of photocopying costs and staff time. That apart, we have encountered no difficulty in fulfilling our obligations. It may be that the odd case has slipped through the net but I do not believe that this has occurred in any significant number.

There was a stage of transition from the previously-existing procedures into those required by the feasibility study, which required the Probation Service to obtain the appropriate papers from CPS Crown Court Section, where those papers had not previously been supplied by the Branch. Crown Court Section received far fewer requests than they expected. Again, however, the resource factor apart, no great difficulty was encountered.

CPS involvement at Crown Court

The feasibility study has revealed that there will be a significant resource implication for CPS when the requirement for pre-sentence reports becomes a statutory one. There is no problem where the report has been prepared and is available where a defendant pleads guilty on his first appearance before Court. The problem arises where the report is not ready for whatever reason, and the matter is adjourned. Here, significant costs arise from the need for CPS staff and Counsel to attend on a second occasion. It is my very strong view that steps need to be taken to prevent, or at least substantially reduce, the occasions on which an adjournment is necessary to allow preparation of a report. If this were achieved, I anticipate that the major objections of the Bar and Judiciary would also be removed.

The problem of late pleas was addressed by the National Working Group on Pre-Trial Issues, whose report was published in November 1990. The group comprised representatives of the Crown Prosecution Service, Police, Home Office, Justices' clerks Society and the Lord Chancellor's Department. Recommendations of the group included:

> No.93: "We recommend that the defendant should have the right at committal to indicate whether he intends to plead to any of the charges upon which he is committed."
>
> No.94: "We recommend that to discourage those committed for trial from entering tactical not guilty pleas, the likelihood that an early plea of guilty will attract a discount on sentence should be published."

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No.142: "We recommend that the Judges should be invited to consider whether the practice of allowing discounts of sentence for pleas of guilty should be made more widely known, and whether they should indicate in open Court the manner in which they approached the question of discount in particular cases."

Paragraphs 338 to 341 of the report also discussed the problem.

These recommendations, when implemented, will help but they were made before the feasibility study revealed the extent of the problem in relation to pre-sentence reports. It is paramount that procedures be developed to ensure that reports are ready and cases proceed on a defendant's first appearance.

The Headquarters of the Crown Prosecution Service will be providing information relating to the costing of the additional expenditure of resources that has arisen from the Pilot Study but it is clear there are resource implications for the Crown Prosecution Service.

6. THE BAR

Observations of Mr R P Lowden, Barrister at Law, the Bar Representative:

The legislation was approached from a position of hostility by the Bar. It was felt to be unnecessary, in that anybody who felt that his client would benefit from a pre-sentence report asked for one, and was granted it. It failed to secure some last minute guilty pleas because Counsel, not knowing who the Sentencing Judge would be, was unable to advise what he thought the sentence would be. Additionally, there is no point in considering asking for an "in any event" indication from a Judge who cannot sentence that day. It is also unpopular because it delays taxation and payment of Counsel's fees.

We have commendably resisted the temptation to sabotage the pilot, and a few cases have been brought to my attention where what was regarded as an inevitable prison sentence was avoided or shortened by a Pre-Sentence Report after adjournment. The profession must, in any event, look to ways of living with the legislation when it is implemented in October 1992. The following are the main matters that appear to the Bar to need consideration.

There is, at present, an anomaly in payment of fees on a case listed "no witnesses to attend". Defence Counsel is entitled to his brief fee on a hearing in which the Defendant pleads guilty and the case is adjourned for report. Prosecuting Counsel is not. He is paid an appearance fee, and he had less chance of knowing in advance that the case would be adjourned than had his Defence colleague. This does not matter in an ideal world where the same Counsel can always attend for the second hearing, but listing problems have dictated that Defence Counsel have, in practice, to distinguish between "must do" adjourned sentences, and those which can, reluctantly, be returned. Adjournments following a Trial, where a case has been "nursed" before plea with Chambers Conferences etc., or where a plea is tendered and accepted on a particular factual basis, fall into "must do" categories. These cases require listing accommodation, which is where the Bar's greatest problems in the pilot scheme have arisen.

The absence of a Judge on the Steering Committee has led to an apparent failure by some Judges to appreciate the Bar's difficulties in this area, and to be less than understanding when they are kept waiting by Counsel, unavoidably in two Courts at once, or where different Counsel appear to mitigate to those who appeared on the plea.

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Counsel availability is a diminishing priority in the listing of cases. Counsel are correspondingly reluctant to "nurse" a case to a guilty plea when there is an increasing risk that the case will be listed when that Counsel cannot attend. Many last minute changes of plea could be avoided by more early Conferences, so that a report can be prepared for the first and only hearing. But a Defendant who is persuaded at that stage to plead guilty only does so because he has confidence in his Counsel. If that Counsel does not appear, he has a proper grievance. Until Counsel availability achieves a higher status in listing, the Bar can do little to avoid the problem of the late change of plea and the consequent need for statutory adjournment.

The re-listing of a case which pleaded guilty on a particular factual basis at a time when both original Counsel and the visiting Recorder who took the plea were elsewhere. This has led to at least one case which is on its way to the Court of Appeal. This highlights the need in such cases for Counsel to make in writing any such agreement, and for the original Judge/Recorder's notebook to be available to the Sentencing Judge. This was a case which would not formerly have required a Social Enquiry Report.

Recorders and Assistant Recorders must return, however inconveniently, to sentence Defendants whom they have tried. This will inevitably disrupt their future cases, which will, having regard to their status as Counsel, necessarily be important and expensive ones. The Judge who heard the evidence is best equipped to sentence. It is wrong to allow another Judge, for reasons of convenience, to sentence somebody convicted after a Trial. Such a suggestion, which has actually been made to me by the Lord Chancellor's Department on one occasion, and which has been rumoured on others to have emanated from the Home Office, must be resisted. This has implications in terms of sitting days, sitting fees, Recorders' travelling expenses and National Insurance Contributions which need consideration at Circuit level.

The disruptions experienced during the pilot scheme in Newcastle will be multiplied when all Courts must apply the new law. We feel that these can be off-set to some small extent by:

(a) Greater priority in Listing to be given to Counsel availability in "must do" cases.

(b) More flexibility in the apportionment between entitlement to the Brief Fee and the entitlement to an Appearance Fee in some cases.

(c) Recognised times during the week (for example one afternoon, or 10 o'clock to 10.30 am) in which to list adjourned hearings, so that Recorders can travel at less unexpected times, and Judges can learn to expect a period of greater disruption.

7. LAW SOCIETY

Observations of Mr P A Caulfield, Solicitor, Law Society Representative:

Solicitors were expected to co-operate with the Pilot Study by providing the earliest possible indication of the final plea. Whilst this was conscientiously undertaken one has to bear in mind the difficulties the profession faced in obtaining instructions from people some of whom by their very nature are extremely unreliable and dare I say devious and manipulative.

The only realistic prospect of success of such a scheme would be for the implementation of the recommendations of the National Working Group on Pre Trial Issues Report of November 1990, whereby defendants would be given every incentive to notify an early guilty plea, provided of course that the proposed system of discounts on sentence is uniformly and universally applied and further that the information is communicated to the defence at a very early state in the proceedings.

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8. PROBATION SERVICE

Observations of the Northumbria Probation Service:

a) Background:

The Northumbria Probation Service submission to the Home Office on their proposed arrangements for the Pre Sentence Report Feasibility Study at Newcastle Crown Court is attached (Appendix 'A'). It was felt that the main responsibility for the preparation of Pre Sentence Reports should continue to rest with Probation Officers working in field teams and only occasionally would this task be undertaken by officers based at the Crown Court. This was because it was felt officers working in field teams have a day to day knowledge of the community where the offender is living and have links with and knowledge of resources and agencies working in that community. However, it was acknowledged in that paper that some reports would need to be prepared by staff at the Crown Court. To facilitate this a Probation Officer was appointed to assist with this task, in addition to undertaking work on another pilot project due to start at the end of September 1991. An additional full time clerical assistant was also employed at the same time, again with a two fold responsibility to assist with the monitoring arrangements as part of the Feasibility Study and also to type reports at the Crown Court, in addition to work for the other project. There was also an expectation when a case was to be adjourned for a Pre Sentence/Social Enquiry Report this would be for the conventional period of approximately 21 days, unless there was a real need or pressure for the report to be prepared in a shorter period. That paper also indicated the need to establish through improved liaison with solicitors, a better understanding of the intended plea in the hope that reports could be available to the Court at first hearing where a change of plea to guilty had been notified 7 or more days before the expected date of hearing.

The Probation staffing at the Courts prior to the commencement of the Pilot and the additional resourcing, comprised of two full time Probation Liaison Officers and the equivalent of two full time clerical/administration staff. Field Probation Officers in the Newcastle Division also supplemented the full time Probation resource by undertaking Court duties on a rota basis. Probation Court Liaison and Duty Officer staff, as part of their role, have undertaken stand-down enquiries for the Court and on occasions have also prepared reports on behalf of field colleagues. Often this was on behalf of Probation Officers whose clients were appearing in this area but lived in other parts of the country. The system in the Northumbria Probation Service in processing cases committed to the Crown Court was, and still is, very much a field activity. All notifications of committals to the Crown Court from the Magistrates Court are sent to the Probation section in the Crown Court and these committal notifications, together with antecedents when available, are sent to field teams with the request for the report to be available in three weeks time. It is the normal expectation that cases will be listed within four weeks of committal. Officers would then make the necessary enquiries to ascertain the plea and notify the Probation Service at the Court whether or not a report would be prepared. There was no need to change the system because of this Feasibility Study. One point for clarification is the term Pre Sentence Report in relation to the reports prepared by the Probation Service. Whilst they have been called Pre Sentence Reports they have continued to be prepared as traditional Social Inquiry Reports.

b) Statistical Information - Breakdown of Cases at Newcastle Crown Court:

Pre Trial:

i. Appendix 'B' gives a percentage break-down of reports prepared in the four month period prior to the Pilot Study. 71% of cases sentenced had reports prepared. 82.5% of that 71% were prepared pre-trial.

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ii. Appendix 'C' gives a comparison of four months pre Pilot Study and four months during Pilot Study, which shows that of all convicted offenders pre and during Pilot there was little difference in the percentage where reports were available pre trial. The percentage of cases sentenced pre Pilot, without reports, was 28.8% and during the Pilot 10.6%, thus demonstrating as would be expected a much lower percentage of cases sentenced without reports during the Pilot Study. Adjournments for reports show an 18% increase during the Pilot Study, compared with pre Pilot.

iii. Monitoring Forms completed: 992

Adjournments for Pre Sentence Reports: 425

Time Scales for Pre Sentence Report adjournments 21 days+: 344

15 days	1
14 days	10
12 days	2
10 days	3
7 days	12
5 days	9
4 days	16
3 days	7
2 days	6
1 day	12
same day	3
	425

Percentage of fast track reports (i.e. less than 21 days): 19.06%

Remands:

Bail 304

Custody 121

c) Fast Track Reports:

Required in seven days and under: 65 (15.3%)

d) Authors of Pre Sentence Reports:

36 Pre Sentence Reports (i.e. 8%) have been prepared by officers at the Crown Court. All of these were required in seven days or less. Field Probation Officers prepared 389 (i.e. 92%) out of a total 425 Pre Sentence Report adjournments and this included 29 reports required in 7 days or less. Therefore of the 65, seven days and less, reports 55.4% were completed by the Crown Court staff. (See Appendix 'D') This is consistent with the Service's original Pilot submission which sought, where possible, to refer the vast majority of requests for reports to field officers.

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e) Provision of Crown Prosecution Information:

During the period of the Pilot Study advance information and committal bundles on defendants appearing before the Crown Court have been made available to the Probation Service by the Crown Prosecution Service. It was decided from the outset that these papers would be collected weekly from the three Crown Prosecution Service offices based in Washington, Newcastle and Cramlington, involving a round weekly trip of 55 miles. The receipt of the Crown Prosecution papers was noted on our computer client index, together with the other details of the case, and the date the information was despatched to the field officer preparing the report was also entered. The pilot has shown up a flaw in this system however as often information has not been available to the field officer preparing the report until after the defendant has been interviewed. The collection of information on a weekly basis has built in a time delay as it could be papers which have been made available two or three days after the committal may not then be collected for almost a week and in some cases the system has built in a time delay of up to ten days, which is not acceptable. There is universal agreement within the Service that the provision of Crown Prosecution Service information at an early stage is of considerable help to the report writer. In reviewing our future arrangements prior to the implementation of the Criminal Justice Act in October 1992, it seems we need to take account of the need for a speedier referral of papers received from the Crown Prosecution Service to the field officer. It may be that at the time of committal these papers could be made available by the Crown Prosecution Service and this is a matter which requires some attention. There is also the possibility that a local courier service could help in the movement of documents and again this is something which will need to be considered.

f) Remands in Custody for Pre Sentence Reports:

It was anticipated prior to the Pilot this may be an area of difficulty if the local prisons were unable to accommodate officers wanting to interview defendants who had been adjourned for Pre Sentence Reports on a shorter timescale. In the event of the 121 remands in custody the vast majority of these have been remanded for a 21 day period. In those cases where a fast track report has been required, on many occasions it has been possible for the Crown Court team to interview the defendant at the Crown Court. This Court interview is dependant on the case being adjourned early in the day. On two occasions defendants have been produced the following day at the Crown Court from the prison to facilitate this process. In the few cases, however, that have been remanded to Durham Prison for fast track reports there have been some difficulties encountered by field officers. There is a pressure on interview accommodation at Durham Prison and because of this the Governor suggested that Probation officers working in the prison could be used to prepare the reports and in any event if field officers were wanting quick access to prison accommodation they could be accommodated by the Probation Officers on the wings. This has been resisted by Probation officers at the prison and certainly the Probation Service view is that field Probation officers or Crown Court Officers should be preparing reports and not officers seconded to the prisons. It does need to be emphasised that the instances of problems have been few but will be multiplied once the Act comes into force and effects other Probation areas.

g) Adjournments for Pre Sentence Reports:

Of the 53 cases adjourned for 5 days or less, 41 of these short adjournments have been ordered by Recorders. It was always anticipated that Recorders seised of a case and leaving the area, would require reports in short timescales. It had been anticipated prior to the Pilot that it may be possible to avoid some adjournments for Pre Sentence Reports if a change of plea could be determined at an earlier stage than on the day of the Court hearing. If this information could then be made available to the Probation Service 7

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days prior to the case being listed it was hoped a Pre Sentence Report would be prepared by the Service. It does not seem to have been possible for this earlier notification of change of plea to be notified to the Service. 80% of the cases adjourned for Pre Sentence Reports have been as a result of change of plea and this change, in almost every case, has only been indicated on the day the case has been listed. This is a matter that has been discussed by the Local Steering Committee and it does seem there are significant barriers in the system which militate against an earlier indication of change of plea in the majority of cases.

h) Resource Implications for the Probation Service:

The submission to the Home Office regarding the arrangements for the Pre Sentence Report Feasibility Study indicated the possibility that about 15 additional short notice reports per month would have to be prepared by the Service. The figures at appendix 'B' indicate an 18.3% increase in the number of reports required pre and post Pilot. It can be calculated from these figures that around 350 to 400 additional reports per year will need to be prepared by this Service as a result of the 1991 Criminal Justice Act. This does not take account of additional reports which will be required at Durham Crown Court, which takes cases from this area. It is also clear that field teams have not always been able to respond to requests for fast track reports and on many occasions these have had to be completed by officers at the Crown Court. This does have implications for the Probation Officer staffing at the Crown Court and extra administrative resources which will be required. The Service has responded to all requests by the Court for reports within both short or traditional periods of adjournment but it is clear from the statistics that the vast majority of cases have been adjourned for a more normal twenty one day period.

9. CONCLUSION:

The two main objectives of the pilot trials were to:

a) Identify the organisational changes necessary to ensure that the provisions in the Criminal Justice Act 1991 on pre-sentence reports can be implemented effectively, efficiently and economically.

b) Identify more accurately than has been possible the resource implications of these changes.

During the Pilot Study at Newcastle Crown Court what has become increasingly apparent is the complex organisational exercise which has to be undertaken in terms of re-arranging Court sittings to accommodate Judges, Recorders and Counsel. The Probation Service has needed to prepare more reports in shorter time-scales in order to accommodate the needs of the Court.

Much of the apparent additional cost and disruption extra adjournments for reports will cause could have been avoided in many cases if pleas could have been determined at an earlier stage, thus allowing a higher proportion of pre sentence reports to be available at first appearance. The present system does appear to perpetuate "the plea on the day" norm. It is clear the pre sentence report proposals in the Criminal Justice Act 1991 have resource implications for the agencies involved.

Inter-agency dialogue and co-operation is essential in meeting the provisions of the Criminal Justice Act 1991 and the Local Steering Group in Newcastle has provided a helpful and constructive forum for those discussions to take place.

APPENDIX A

NORTHUMBRIA PROBATION SERVICE

PRE-SENTENCE REPORTS FEASIBILITY STUDY

AT NEWCASTLE CROWN COURT

MAY - OCTOBER 1991

1. INTRODUCTION: The Northumbria Probation Service was invited by the Home Office to take part in this trial or feasibility study into the provision of "pre-sentence reports" to Crown Court by the Service in a situation which mimicked as closely as possible the provisions of the Criminal Justice Bill, currently being debated in Parliament. In particular this requires Courts to call for and consider a pre-sentence report before imposing a custodial sentence in all cases where the offence is triable either on indictment or summarily or, for offences triable only on indictment where the offender has not previously received a sentence of imprisonment (including all young offenders); and also before sentencing an offender to a probation order with additional requirements, a community service order, a combination order or a supervision order with requirements. On finally accepting the invitation, this meant that the Newcastle Crown Court would be the focus for this feasibility study. The trials are also taking part in Inner London (Southwark Crown Court); West Midlands (Birmingham Crown Court); Avon (Bristol Crown Court); and Lincolnshire (Lincoln Crown Court). They have now been re-scheduled to commence on 1st May 1991 for a six month period.

2. OBJECTIVES OF STUDY: To identify the organisational changes necessary to ensure that the provisions in the Bill on pre-sentence reports can be implemented effectively, efficiently and economically; and to identify more accurately the resource implications of those changes. It will also be useful to monitor the impact on sentencing locally. In essence, a key aspect of the study is to see if the Service, locally, can respond as quickly as possible in the above situations, through providing pre-sentence reports.

3. ESTIMATE OF ADDITIONAL PRE-SENTENCE REPORTS: The Northumbria Service (in the main, Newcastle, South Tyneside and Gateshead and Northumberland and North Tyneside divisions) prepares pre-trial reports on the majority of defendants appearing before Newcastle Crown Court in any case. Additionally, a number of social inquiry reports are called for and prepared post-conviction, following a trial or a late change of plea. An exercise has been carried out by the Research and Information Officer to estimate the likely number of totally additional pre-sentence reports which would have to be prepared by the Service, given the new requirements which the study would introduce. This would amount to around 15 additional "short-notice" reports per month (i.e., across all three divisions mentioned above). The above will consist mainly of those defendants who have been found guilty at trial or else change plea at a late stage. Even then, it is felt that the Service can, in the normal course of events, improve its practice in becoming more aware of likely pleas or changes of pleas by defendants in sufficient time to act by preparing a pre-sentence report.

   Improved liaison between the Crown Court Officers and/or field officers and Solicitors should provide a better understanding of intended plea. Further, the Service's involvement in the forthcoming North-East Circuit initiative on more active intervention on "plea days" for 17-20 year olds, should streamline this aspect of our work. Consequently, the number of additional pre-sentence reports required per month might even be less than the above estimate.

One further point should be considered. The Service will increasingly can introduce some degree of selectivity in determining on which defendants, pleading guilty, to prepare pre-sentence reports. This may off-set any additional pressures. Although the Service will need to debate this matter more fully; it may be that use of the criminality profile can identify some defendants, who have elected to be sentenced at Crown Court, and who are not deemed to be at risk of custody. It is possible that decisions can be taken not to prepare pre-sentence reports on such defendants.

4. PROPOSED APPROACH TO THE PREPARATION OF PRE-SENTENCE REPORTS:

The aim of the Service, with regards to this feasibility study, is to produce good quality pre-sentence reports for the Newcastle Crown Court in as short a time as is realistically possible.

(a) In the normal way, probation officers will be expected to prepare pre-sentence reports on defendants pleading guilty to the main or a substantive charge (unless the team S.P.O. has decided that this will not be necessary for the reasons just mentioned above), in readiness for the day of hearing.

(b) If the Service is notified of a change of plea, from 'not guilty' to one of 'guilty' to the main or a substantive charge, seven or more days before the expected date of the hearing, then it would be expected that an appropriate probation officer of the relevant field team would prepare a pre-sentence report for that hearing.

(c) If such a change of plea were notified between one and seven days before the expected date of the hearing, then the expectation would be that the field officer would prepare a pre-sentence report as soon as possible, and normally within seven days of the notification of the change to the Crown Court probation section (unless the defendant was an existing or recent (i.e., within three months) client - (see below). It may be that the Judge agrees to a slightly longer period of remand.

(d) If an existing or recent client of the Service is indicating a plea of ' not guilty' to the main or a substantive charge then the appropriate field probation officer would be expected to prepare a report, in advance of the trial limited to the clients' background circumstances and response to supervision. This should be lodged with the 'Pre-sentence reports' P. O. based at the Crown Court, and a channel of communication should be opened up between the two officers. If found guilty, this report would be presented to the Court. The field officer would be expected to attend the Court that day, if possible, to provide a 'top-up' to the report, possibly after the opportunity to interview her/his client. If not available on the day, one of the Crown Court P.O.'s, in conjunction with the P.S.R. P.O., can interview the client and provide a brief top-up report. If alternatively, the Judge was agreeable to a short period of remand, then the relevant field P. O. would be expected to produce the 'top-up' report for the agreed date, possibly within two or three working days.

(e) If a defendant is found 'guilty' at trial and the Judge requests a report, then the appropriate field P.O. would be expected to prepare a 'post-conviction' pre-sentence report as soon as possible, with an aim to be available to the Court within seven days of conviction, unless the Judge agrees to a longer period of remand.

5. OPERATIONAL ISSUES:

(a) Greater use will need to be made of the P.S.R. P.O. and other Crown Court probation staff by field staff in making pre-sentence reports available at short notice. It may be that the P.S.R. P.O. will actually, in many cases, physically produce the report at his office base in the Crown Court building, as a result of telephone communication.

(b) The ability to transmit pre-sentence reports via the word-processing facility of NPIMS from field to Crown Court office should avoid any unnecessary delays.

(c) Written 'day-of-hearing' pre-sentence reports can still be prepared by the Crown Court P. O. staff, particularly on specific issues such as suitability for Community Service, hostel placement, and so on.

(d) We must remember that this is a trial or feasibility study with the aim of learning what the main organisational, and resource issues are in preparing pre-sentence reports, particularly at short notice. The trials will be monitored by the Home Office Research and Planning Unit. The Vera Institute of Justice has been commissioned to provide a Development Worker (Jim Bredar), to work and support all the staff involved in the various trial Areas, and to co-ordinate the overall development of the trials.

6. STEERING GROUPS:

(a) National Steering Group: This has now been set up and has met. The A.C.P.O. (Newcastle Division) is a member of this Group.

(b) Local Steering Group: We are now in the process of establishing a local steering group, having contacted the local Police, C.P.S., Crown Court Judge and Administrator; Prison Governor, local Law Society, local Bar. We plan to hold the first meeting of the Group on 29th April 1991. The Lawyer from Vera - Jim Bredar - is expected to visit Newcastle on that date and can therefore attend the meeting.

7. PROVISION OF INFORMATION FROM THE CROWN PROSECUTION SERVICE:

Discussions have taken place with the C.P.S. staff covering the three divisions in Northumbria and arrangements have now begun for them to make available to us advance information and committal bundles on all defendants appearing before the Crown Court. This information will be collected regularly and passed on to the relevant probation officers.

8. RESOURCES: Because of the low number of additional pre-sentence reports expected to be necessary each month, there is felt to be no need to establish any special Crown Court report-writing "team". However, a probation officer has recently been appointed with a two-fold remit. In September 1991, the officer will concentrate on the work to be done under the PICA (Public Interest Case Assessment) pilot project. However, on taking up the post in mid-April 1991, the officer will work, primarily in a co-ordinating role, on the pre-sentence reports study. He will be under the supervision of the S.P.O. (Courts) who will have day to day responsibility for the trial. The A.C.P.O. (Newcastle Division) will be a member of both the local and National Steering Groups.

Hugh S. Adair,
Assistant Chief Probation Officer.

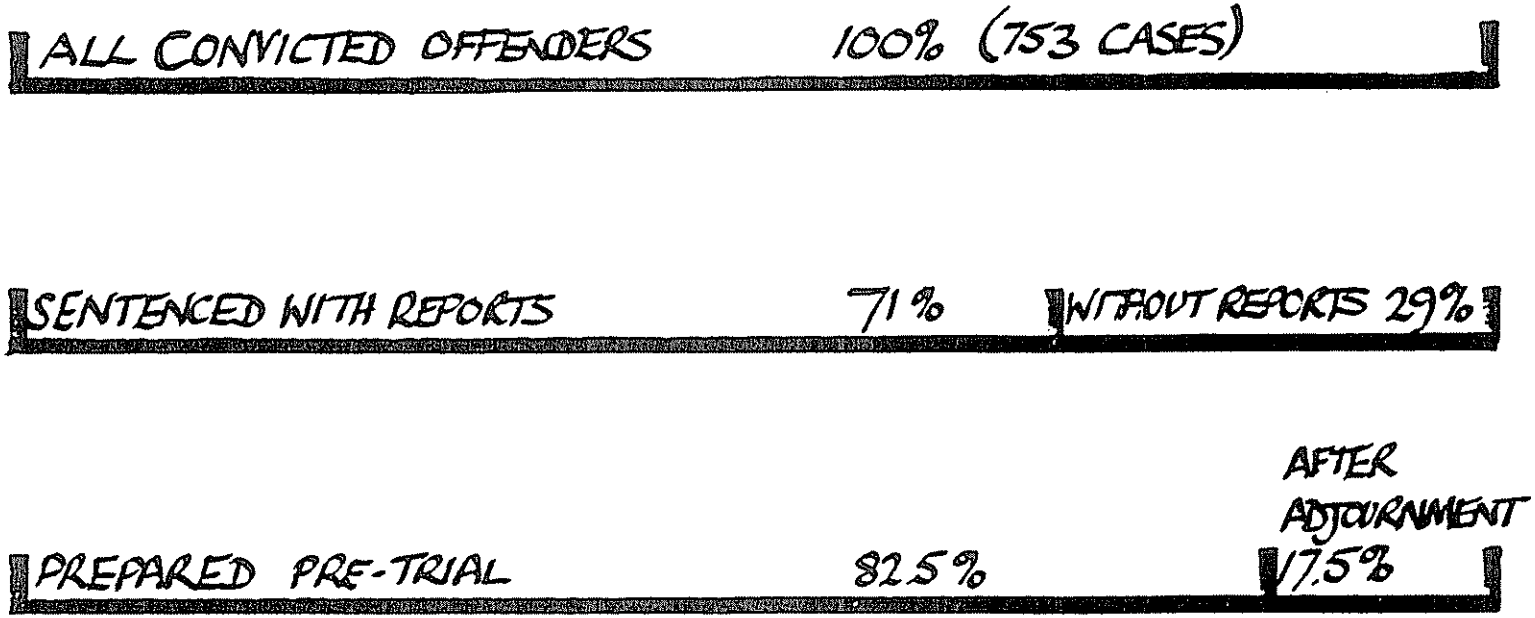
APPENDIX B

NEWCASTLE CROWN COURT

BREAKDOWN OF REPORTS PREPARED

PRE-PILOT

JANUARY - APRIL, 1991



NOTE: DURING THIS PERIOD, THE NUMBER OF "FAST TRACK" REPORTS WAS NEGLIGIBLE

APPENDIX B

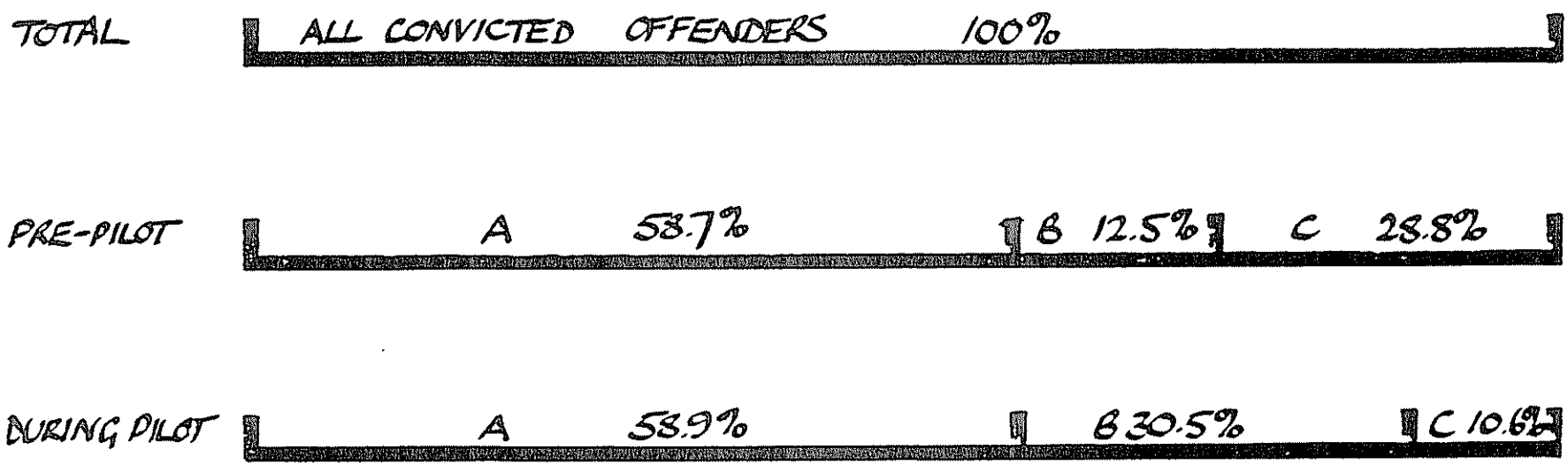
APPENDIX C

NEWCASTLE CROWN COURT

PROPORTIONS OF REPORTS PREPARED

PRE- AND DURING PILOT

(EFFECTIVENESS OF PILOT)



KEY:

A - SIR PREPARED PRE-TRIAL

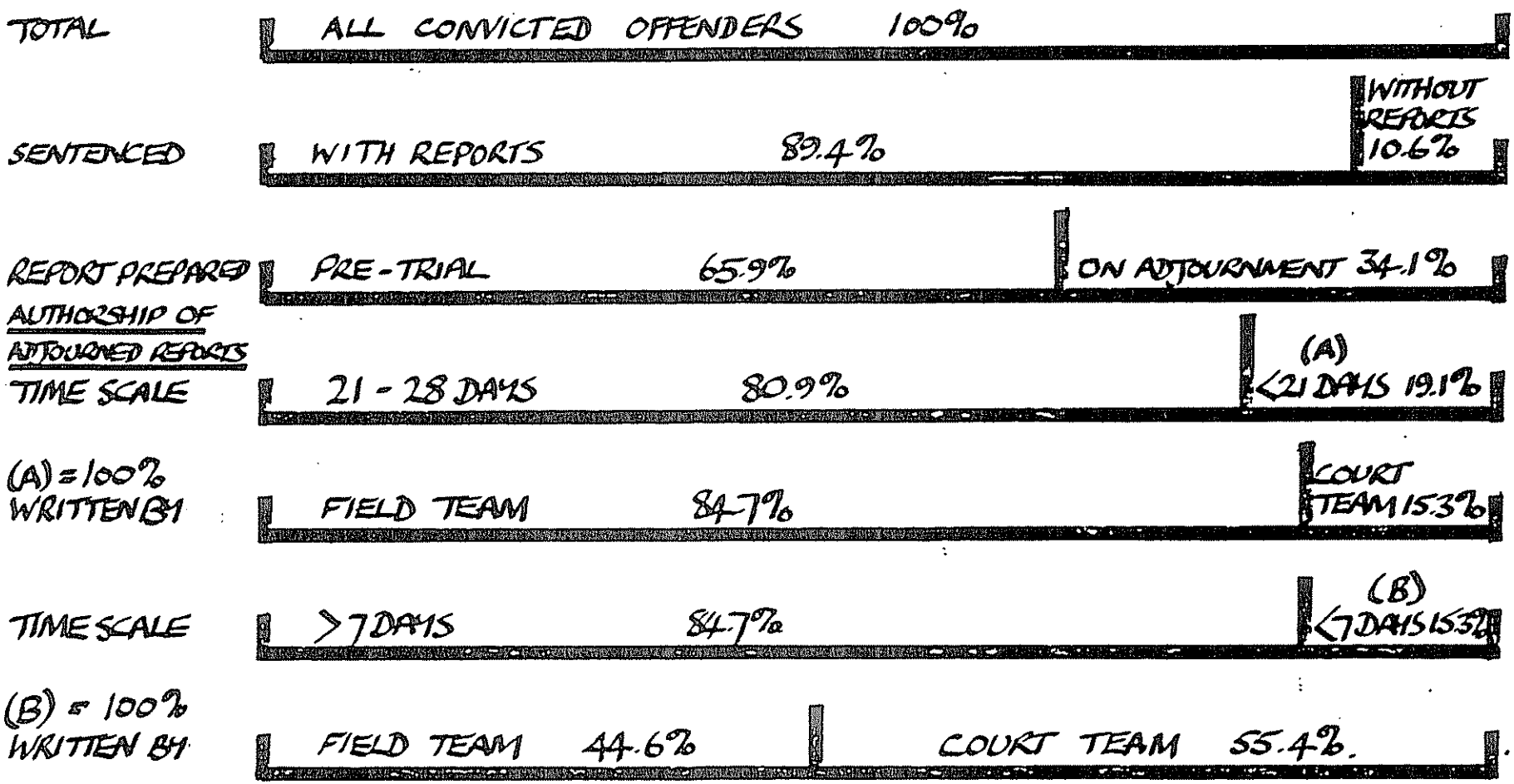
B - SIR PREPARED ON ADJOURNMENT

C - SENTENCED WITHOUT REPORT

APPENDIX C

APPENDIX D

NEWCASTLE CROWN COURT
BREAKDOWN OF REPORTS PREPARED DURING PILOT PERIOD



APPENDIX D

E. Southwark

REPORT ON THE PILOT PROJECT AT SOUTHWARK CROWN COURT:

1. THE ADVANTAGES AND DISADVANTAGES OF SOUTHWARK CROWN COURT AS CHOICE OF COURT:

When it was proposed by the Home Office that Pilot Projects should be established in selected Crown Courts, the Inner London Probation Service believed that as the largest Metropolitan area it was important to participate in the scheme.

There are five Crown Courts in Inner London but Middlesex Guildhall Crown Court and the Central Criminal Court were judged to be unsuitable because of the nature of the cases passing through them, while Knightsbridge Crown Court and Inner London Crown Court could not be used because of developments within the Probation teams. Therefore, Southwark Crown Court was the only one where the Pilot Project could be sited although it was recognised from the outset that there were disadvantages.

The increase in the number of long trials has caused a sharp decrease in the number of cases going through the court with consequently fewer cases requiring Social Enquiry Reports. The impact of this on the Project has been that the other agencies co-operating in the scheme have hardly experienced any stress because of an increased workload. Although it was anticipated that it would be advantageous to see whether the new system could cope with a large number of defendants who would be homeless, addicted to drugs and/or alcohol and with all the other problems associated with deprivation, a first analysis of the work shows that these people did not figure in such numbers to test the system's ability to deal with them. However, on the plus side, a number of black defendants have appeared before the court during the life of the Project and the analysis of the information that has been gathered should enable the Home Office to draw some conclusions about the treatment of black defendants in the Criminal Justice System.

In order to illustrate the extent of the decrease of the number of cases going through Southwark Crown Court, figures for completed cases are compared with those at Inner London Crown Court which is similar in size and catchment area.

Fig.1: Lord Chancellor's Department figures for cases completed during November 1989 to November 1990 -

Southwark Crown Court - 2,407
Inner London Crown Court - 4,043

The projected figures for November 1990 to Novembr 1991:

Southwark Crown Court - 1,935
Inner London Crown Court - 3,600

2. DESCRIPTION OF COURT AND THE SYSTEM OF OBTAINING REPORTS:

Southwark Crown Court has fifteen courts and seven Resident Judges. The other courts are covered by Visiting Judges, Recorders and Assistant Recorders who sit from between one to four weeks.

The existing establishment for the Crown Court Liaison Probation Service is as follows:-

1 Senior Probation Officer
4 Probation Officers
1 Crown Court Probation Administrator
1 Deputy Crown Court Probation Administrator
6 Clerical Assistants

Before the Pilot Project began, the following system was used by the Crown Court Liaison Probation team to obtain reports. When committal papers were received from a Magistrate's Court a letter was sent to the defendant's solicitor asking for information about the plea; if the plea was one of guilty, or of guilty to the more serious part of the indictment, a request for a report was sent to the field team covering the defendant's address provided that the reply was received from the solicitor at least four weeks before the defendant's court appearance. Reports on other defendants were done after a court appearance and at the direction of the judge whether the defendant entered a late plea of guilty, a plea of guilty on the day of hearing or was found guilty after trial.

The Crown Court Liaison staff occasionally prepared reports where the time allowed was not sufficient for the request to be sent to the field team. During the period of July 1990 to March 1991 the liaison staff undertook 36 enquiries which is an average of five a month or less than one per officer.

3. INVOLVEMENT OF OTHER AGENCIES BEFORE THE PILOT:

Before the Pilot scheme began there was little involvement of other agencies in the process of obtaining reports. The exception was solicitors, many of whom co-operated with providing information to the Probation Service about the plea and the Police who provided details of previous convictions. Although the Crown Prosecution Service were extremely helpful in giving information to the Probation Service, this was done on an informal person-to-person basis. The prisons were not asked to make any particular contribution nor were members of the Bar. There were no negotiations with the List Office about the listing of cases.

4. THE PROBATION SERVICE'S PLAN FOR THE PILOT PROJECT:

The Probation Service's plan for the Pilot scheme, which was adopted by the Local Steering Committee, is attached as Appendix A. Its Objectives are

1. To prepare Social Enquiry Reports on all cases where Courts will be obliged to ask for them under the Criminal Justice Act 1991.

2. To prepare reports where the defendant is remanded within seven days of the trial ending or by a date negotiated with the court.

3. To test whether the resources allocated to the Project are sufficient to meet Objectives 1 and 2.

4. To prepare an analysis of the reasons for the length of remands

The following changes in Probation practice were proposed:-

1. Pre-trial:

a) When a plea of guilty is indicated by solicitors with less than four weeks before the date of hearing, the report will be prepared by the Crown Court Probation Officer

b) The same procedure will be followed when there are mixed pleas

c) Where the defendant is pleading guilty to the lesser part of the charge and the Senior Probation officer thinks it appropriate that a report is prepared but there is not sufficient time to send it to a field team, then a Crown Court Probation Officer will undertake the work.

2. Post-Trial:

a) When a plea is entered on the day of hearing or when there is a finding of guilt following the trial, the Crown Court Probation Officer will conduct a short interview with the defendant to identify the issues that need to be covered in the report and then negotiate with the court for a remand date. Only in exceptional cases will officers ask for more than seven days. These reports will be prepared by the Crown Court Probation Officer.

5. OTHER AGENCIES' ASSESSMENT:

The following is the assessment of the Project by other agencies with particular reference to the implications for them of the new procedures.

A. CHIEF CLERK AT SOUTHWARK CROWN COURT:

The Previous System:

The system before these trials commenced was that a Judge, providing he had sufficient information before him, would proceed to pass sentence directly following conviction and any mitigation. He would, on occasion, in addition to reading various reports, hear oral evidence from a Probation Officer or another e.g. prospective employer and, if satisfied, then pass sentence. The Jury would frequently if not invariably be present for the Judge's sentencing remarks and disposal.

The New System:

When a case is listed for trial and the solicitors tell Probation it will be/or may be a plea, then Probation prepare a social enquiry report, as before. However, difficulties arise with cases which plead at the eleventh hour when listed for trial (fixed or floating) and which fail to be caught by the new system.

Judges usually put cases back for a report. They are aware that for offences which are indictable only they do not have to have a report, but generally appear to be requesting one. This is an additional and in some cases unnecessary drain on the resources available here and elsewhere.

Present levels of cases put back average some 20 cases a week; many more than previously at this court. It needs to be borne in mind that the workload here is atypical and the burden will be greater in the more "normal" crown court. Probation usually require four weeks to prepare a report, although on occasion, a Judge will ask for a report in 48 hours. Our experience has been that Probation will co-operate and rush a report through in these circumstances. So far all reports have been available as and when required.

Most cases are, therefore, put back for a month and the adjourned date announced in court. Where cases are reserved Recorders, etc. return for a short sitting at 10.00 a.m. and will occupy the court for 15 or 30 minutes. This is paid on the basis of ¼ day sitting, or as a ½ day sitting if it extends to 1 - 2½ hours. The senior resident judge here takes the view that all Recorders, etc. should return to deal with the sentence.

The additional work in the office generally amounts to about 15 minutes per case and in the List Office about 5 minutes per case with either an AO or EO involved.

Problems and Difficulties:

There are three main areas where problems have been experienced.

(a) Court Room/Chambers Usage:

returning sentencers have to "double up" in the use of courts and chambers. This can be disruptive, particularly when a sentence thought to take 15 minutes (and thus listed early) over-runs into the "normal" court time.

(b) availability of Counsel:

with the extension of the scheme to all courts, London based Counsel will undoubtedly face conflicting demands on their time. Alteration and/or cancellation of the adjourned date will increase the resource demands on the court and reports will become outdated.

(c) Juries:

There have been already formal complaints made when jurors are kept waiting due to "doubled" courts. Explaining the reasons does not mitigate the loss of goodwill. Juries are also disappointed at not hearing the result of a case - again there have been complaints. The court will always respond to a juror's subsequent enquiry as to sentence but these will become more numerous with the resulting resource implications. In any event, the judicial view is that knowledge of the sentence alone is much less useful than having the supporting reasons, etc.

Conclusions:

There are no major problems in operating the scheme at this court; other courts may well have more difficulties due to the difference in their workload.

There are presentational aspects that need addressing and, ideally, it would be useful not to have to "double up" on courts.

Part of the "job satisfaction" for juries will disappear; I see no resolution to this aspect of matters.

There are minor resource implications in terms of staff time/telephone charges at this court; these will be amplified elsewhere.

B. CROWN PROSECUTION SERVICE:

Since 3 April, 1991 the Crown Prosecution Service has been providing papers to the Probation Service. In relation to either way offences a copy of the advance information is prepared and for indictable only offences a full committal bundle is provided. To date, 987 sets of papers have been forwarded to the Probation Service in five months: an average of 197 sets of papers per month. Upon this basis, at the conclusion of the six month period, which commenced when the courts started ordering reports from 3 June, 1991, the Crown Prosecution Service will have provided 1,579 sets of papers.

Southwark Crown Court receives work from 3 CPS Branch Offices (Central, Northern and Eastern and Juvenile) encompassing four Magistrates' Courts (Bow Street, Horseferry Road, Clerkenwell and Thames). The administration staff in these offices have been instructed to ensure that the appropriate copies are placed in the CPS file and transported to Southwark Crown Court Section.

Once received in the Southwark Crown Court section the file is noted and a separate detailed record kept of the types of bundles provided. This work occupies an AO on each team in the Branch office and an AO in the Crown Court Section. Owing to the fact that provision of the papers had been made to the Probation Service some two months before the scheme actually started, there were very few requests made for papers under the transitional arrangements.

The changes that have been made to the working practices, both at Branch and at the Crown Court Section, are sustainable but undeniably at a cost in terms of staff labour. As regards costs in photocopying terms, the detailed documentation monitored by the AO on the Crown Court Section is provided monthly to Alan Jeffrey in Management Consultancy Branch for calculation of cost.

Judge Butler's written instructions to the Judiciary will be seen that to indicate that on a late plea of guilty Judges should not have the facts opened to them. In these circumstances the Crown Prosecution Service have to bear the cost of another hearing, probably with a different Counsel instructed. No records have been kept of the instances where this has occurred but law clerks report that such occasions are on the increase. The costs' implications for the Service are likely to be high.

C. LONDON CRIMINAL COURTS SOLICITOR'S ASSOCIATION:

There have been no reported difficulties by Members of the Association. Late notification of plea is likely to continue to be a problem. This is due in part to the nature of the clientele, and late or piecemeal service of some evidence (for a variety of reasons) by the Prosecution and/or Police.

D. METROPOLITAN POLICE:

It would appear that if the scheme is introduced nationwide, it would have little effect on the current police practice of submission of Antecedents to the Crown Prosecution Service. However, I would recommend that Crime Support Groups are encouraged to submit FULL, ACCURATE and VALIDATED Antecedents immediately a case is committed for sentence or trial to provide Probation Officers with the information they require to produce pre-sentence reports.

E. PRISONS:

Solicitors' Visits - Brixton:

The officer who is in charge of the visits' complex says that the introduction of the short notice appointments has posed surprisingly few problems. This view is supported by the fact that it has not been necessary to use a secondary scheme that was devised to cope with any overspill. A cautionary note that must be introduced at this point is that the setting up of the Project fortuitously coincided with a reduction in the unconvicted population held at Brixton and this element has certainly smoothed the process.

Southwark Crown Court Cell Area:

It is quite clear that there has been a high level of co-operation between Probation and Prison staff at the court with no problems reported. An example of the rapport established is that prisoners are sometimes retained in the court during the afternoon period in order to speed the preparation of the report.

Future Implications:

There is currently a rationalisation programme being conducted by the Prison Department whereby the London Crown Courts will be dispersed to the four main London Prisons (Wormwood Scrubs, Wandsworth, Pentonville and Brixton). This process is underway but proceeding slower than planned. If the Project was introduced in all of the London Courts as policy before this dispersal was complete, the Visits Department at Brixton would be unable to cope with the increased demand in their current accommodation.

F. MEMBER OF THE CRIMINAL BAR:

There has been very little feedback from the Bar which has been interpreted as a positive indication that the scheme is working well. The members of the Bar who have been approached, including Recorders and Assistant Recorders, appear to be relatively content to return to court on the adjourned hearing for reports. Members of the Bar and their Clerks have, it seems, become accustomed to juggling their diaries and if absolutely necessary returning Briefs to more junior members for the adjourned hearing. Similarly, those members of the Bar who sit as Recorders and Assistant Recorders have also, it appears, become accustomed to having to return to court although it caused them, perhaps, more inconvenience.

6. NUMBER OF REPORTS PREPARED DURING THE PROJECT:

From the 1 June until 15 November when the Project ended, 721 reports have been prepared. This compares with 621 reports prepared during a similar period last year. However, a smaller number of cases passed through the courts during this period in 1991 and the 721 represents a rise of 20%.

Fig. 2: 1st June - 15 November, 1991

Year	Completed Cases	SIRS
1990	1,070	621
1991	962	721
	(rise of 20%)	

146 reports were prepared by the two officers assigned to the Project: the remaining 575 reports have been undertaken by field officers. Last year all 621 reports were undertaken by the field. This means that the Crown Court Liaison Officers completed the 100 reports additional to last year's figures and 46 reports which is the amount by which the total prepared by the field fell. This shift probably reflects the inability of officers in the field to accommodate short remands.

As the second objective of the Project was to complete reports within seven days, attempts were made to keep information on the reasons why some cases were remanded for longer but in only 25 of the 71 reports was it possible to ascertain a reason and this is probably too small a number to

indicate any significant pattern. However, simply for information the reasons are given in figure 4.

7. ANALYSIS OF LENGTH OF TIME OF REMANDS:

Of the 125 enquiries which have been completed at the time of writing this report, information about the length of remands was collected in all but 8 and of these, three are still waiting to be sentenced after the outcome of a co-defendant's trial.

Figure 3 shows the numbers and percentages of reports completed within specific periods of remand.

Fig. 3: Number of reports - 138

7 days or less	14 days or less	21 days or less	over 21 days
67 (48.5%)	41 (29.7%)	23 (16.6%)	7 (5.0%)

As the second Objective of the Project was to complete reports within seven days, attempts were made to keep information on the reasons why some cases were remanded for longer but in only 25 of the 64 reports was it possible to ascertain a reason; 25 reports is probably too small a number to indicate any significant pattern but the reasons for the remand are set out below in Figure 4.

Fig. 4: Reasons for length of remands in 25 SIRs:

Convenience of Judges	Pilot Project overload	Request of Defence	Total of Co-Defs.	Lost Court papers	Army Personnel	Late Plea (pre-trial)
11	3	3	3	2	2	1

8. INNOVATIONS - SUCCESSFUL AND UNSUCCESSFUL:

The difficulties encountered by agencies other than the Probation Service are set out in their individual contributions in paragraph 5.

The Probation Service achieved its first Objective of preparing SIRs on all cases where courts are obliged to ask for them under the Criminal Justice Act 1991. It was partially successful in completing its second Objective of preparing reports within seven days of the trial ending or by a negotiated date with the court. The third objective of testing whether the resources allocated to the Project were sufficient to meet Objectives 1 and 2 was also achieved and has provided the Service with a guide to the amount of officer time and back up clerical assistance that will be necessary to deal with the new demands of the Act. However, implicit in this Objective is the idea that the Project would test out the capacity of all the agencies concerned to fulfil their obligations under the Criminal Justice Act but, because the workload at Southwark Crown Court proved so small, this did not happen and other agencies were not put under any pressure with the exception of the court administration and the C.P.S. The fourth Objective of preparing an analysis of the reasons for the length of

remand was not met because in many cases these could only be arrived at through the subjective view of one of the participants in the negotiations.

In the Southwark Project the two additional officers undertook all the SIRs while the existing team continued with the regular Crown Court liaision work. This proved to be an inefficient use of officer time and an undue burden on the Senior who had, in effect, to manage two separate teams in one office.

The physical conditions in which the whole Probation team worked during this period were uncomfortable and overcrowded and if, as a result of these Projects, it is decided that one of the most effective ways of meeting the additional demands for reports is to increase the numbers of officers working at Crown Court then the accommodation made available by the Lord Chancellor's Depatment will have to be renegotiated by the Home Office.

DIFFICULTIES CAUSED BY OTHER PARTICIPANTS:

The success of the project depended upon a high level of co-operation from all participants and with a few exceptions this was forthcoming. However, a few Judges would not join in negotiations when the length of remand was being discussed and although their demands for very quick reports could be met within the Project, all the other Judges were prepared to negotiate. It was also disappointing that while co-operation in identifying early pleas continued to be forthcoming from the Solicitors, the opportunity was not taken to identify more of such cases and thus reduce the number of short remands.

SUCCESSFUL INNOVATIONS:

The information provided by the Crown Prosecution Service, and in the l ter stages of the Project, by the Customs and Excise, should have proved very valuable to the officers writing the reports. However, an internal inspection of the SIRS showed little evidence of the impact of this additional information although in conducting their interviews the officers were able to challenge some of the statements the defendants made about the offences. This Inspection took place only on the reports written by the two officers working on the Pilot Project and was not extended to those reports prepared by field officers in cases where the report was written before the defendant appeared in court and as a result of a guilty plea being indicated. It is most likely that the value of the CPS bundle can be seen in these cases where before probation officers have had to rely on the version of events given by the defendants.

The Probation Service thought that the most effective way of meeting the new demands of the Act would be to have two additional officers assigned to the Crown Court with the exclusive task of writing reports. This had a number of advantages in that officers became familiar with the court, had direct access to information from trials, were able to negotiate with other court users about access to defendants or information and enabled sentencers to become familiar with their work.

This innovation proved a most expensive one for the Service. Under the Workload Measurement that applies in Inner London it is expected that officers in report writing teams complete between 25 to 30 reports a month: in the Project each officer averaged only 13 completed reports a month. To put it in crude but graphic terms the Pilot has needed two officers to produce the work of one. There will be a more detailed analysis of activity and cost after the Home Office monitoring has been completed but these preliminary findings suggest that if officers are to be available to undertake work at short notice, they cannot be employed on any other task.

The existing FAX machine and the word processor which was introduced for the purposes of the Project have been indespensible. However, there was no additional technology and the close monitoring required by the Project and which will no doubt be needed to monitor the effect of the Act, has had to be completed by a manual collection of data which has taken up a great deal of the time of the two officers and of the Senior.

11. CHANGES IN EACH ORGANISATION:

The change which above all others would assist the Probation Service in preparing reports and overcome most of the practical difficulties set out in the section on Court Administration would be an earlier identification of guilty pleas. This would enable officers to prepare reports ahead of hearing dates and enable sentences to be passed as soon as the facts were put before the court.

Should this not happen and a large number of reports continue to be prepared on remand, then the need for officers to be given interview space in Prison at very short notice will increase. It may be that the only way that this could be dealt with is for the Prison to set aside some interviewing rooms specifically for the use of Probation Officers. This in turn will impinge upon Solicitors and other professionals who need access to Prisons inmates.

12. THE RESULTS OF AN INTERNAL INSPECTION OF THE SIRS PREPARED IN THE PROJECT:

The independent research commissioned by the Home Office into the quality of the reports will clearly be the main source of information. Nevertheless, the Management of the Inner London Probation Service chose to exercise its responsibility for the quality of the work undertaken by conducting an Internal Inspection. This was done according to the standards used in a recent ILPS' Inspection of SIRs. The Check List that was used is attached to this Document (Appendix B). Care was taken to ensure that reports prepared in different lengths of time were inspected although no difference emerged between those prepared in under seven days and those prepared in more than three weeks.

Reports were of an equivalent standard to reports normally presented to Courts. As a result of recent inspections, the Service is not satisfied with this standard as they showed a lack of verification of information, background details that were not relevant to the defendant's behaviour, no analysis of the pattern of offending and an undue reliance on the defendand's account of the offence. Although the average number of

reports completed by each officer was only 13 a month, this does not reflect the actual pace of work as the demand for reports varied and there were times when the officers were under very great pressure. This is probably reflected in the quality of most of the work and in the difficulty in maintaining an adequate system of checking reports.

However, throughout the Project, both the probation officers and members of the Management of the Service received direct comments from the Judges at Southwark Crown Court and also from the Court of Appeal commending the excellence of the work. This will no doubt become clearer after the independent research is published but even at this early stage it raises some interesting questions: the first concerns the standards by which reports are judged and it would appear that the Management of the Service and the Judges may be very far apart in what they require in SIRs. Secondly, it is possible to speculate that the availability of reports at the time they are required by the courts is valued more than is the contents. Thirdly, there is the possibility that in the communication between Judges and probation officers who are well known to them more, is conveyed than is apparent in the written document.

CROWN COURT PILOT SCHEME AT SOUTHWARK CROWN COURT

OBJECTIVES:

1. To prepare Social Inquiry Reports on all cases where Courts will be obliged to ask for them under the Criminal Justice Act 1991.

2. To prepare reports where the defendant is remanded within seven days of the trial ending or by a date negotiated with the Court.

3. To test whether the resources allocated to the Project are sufficient to meet Objectives 1 and 2.

4. To prepare an analysis of the reasons for the length of remands.

EXISTING ESTABLISHMENT:

1 Senior Probation Officer
4 Probation Officers
1 Crown Court Probation Administrator
1 Deputy Crown Court Probation Administrator
6 clerical assistants

ADDITIONAL STAFF FOR THE DURATION OF THE PROJECT:

2 probation officers
1 part time shorthand typist

CURRENT PRACTICE:

1. Pre-Trial:

a) Reports are provided on all defendants where a plea of guilty is established before the Court Hearing. The Crown Court Probation Office contacts solicitors and ascertains the plea. If it is guilty then a request for a report is sent to the office covering the defendant's address. Solicitors are asked to reply not less than four weeks before the date of Hearing in order to give officers sufficient time.

b) In cases of mixed pleas where the defendant is pleading guilty to the more serious charge or where he/she is pleading guilty and not guilty on equivalent charges reports are requested as in a).

c) Where the defendant is pleading guilty to the lesser charge, the Senior Crown Court Probation Officer should decide whether it is a case where a report could usefully be prepared and arrange for it to be done by the field if there is sufficient time.

d) Reponse to Supervision Reports: If defendants who are currently under supervision or very recently ceased to be super-

vised plead either not guilty or guilty to a less serious part of the indictment then a Response to Supervision Report is prepared.

2. Post-Trial:

a) At the end of a trial when the defendant is found guilty or if a guilty plea is entered on the day and the court decides to remand the case for three weeks then the request is sent to the field team covering the defendant's address.

CHANGES IN PRACTICE DURING THE PILOT PROJECT:

1. Pre-Trial:

a) When a plea of guilty is indicated by solicitors with less than four weeks before the date of Hearing the report is prepared by the Crown Court Probation Officer.

b) The same procedure is followed when there are mixed pleas.

c) Where the defendant is pleading guilty to the lesser part of the charge and the Senior Probation Officer thinks it appropriate that a report is prepared but there is not sufficient time to send it to a field team, then the Crown Court Probation Officers will undertake the work.

2. Post Trial:

a) When a plea is entered on the day of Hearing or when there is a finding of guilt following the trial, the Crown Court Probation Officer conducts a short interview with the defendant to identify the issues that need to be covered in the report and then negotiates with the court for a remand date. Only in exceptional cases will officers ask for more than seven days; these reports will be prepared by the Crown Court Probation Officer.

RESPONSIBILITIES:

1. The ACPO will -

a) attend the National Steering Committee Meetings.

b) attend the Local Steering Committee Meetings.

c) prepare the Minutes of the Local Steering Committee Meetings.

d) supervise the work of the Senior Probation Officer.

e) be accountable to the Inner London Probation Service for the management of the Project and to ensure that the contract with the Home Office is fullfilled.

2. The SPO will -

a) attend the Local Steering Committee and be responsible for the Minutes in the absence of the ACPO.

b) liaise with all agencies at Southwark Crown Court to ensure the smooth running of the scheme.

c) supervise the work of the probation officers in the Pilot Project.

d) control the quality of SIRS in the Project by using the ILPS' Crown Court Check List.

e) ensure that the National and Local monitoring is completed.

3. The Project Officers will -

a) undertake all additional SIRs

b) keep records as required by the National and Local monitoring schemes.

4. The Secretary will -

a) type the Reports

b) maintain the files

c) assist in monitoring

5. The Crown Court Probation Administrator -

a) will provide retrospective information required by the Home Office monitoring.

b) supervise the work of the Secretary of the Project.

c) send out Crown Prosecution Service information and requests for reports to field teams and keep a separate record of those cases dealt with by the field but falling within the Project.

MSP/SKT
6.9.91

APPENDIX B

INNER LONDON PROBATION SERVICE

CHECKLIST FOR INSPECTION OF SIRs NOVEMBER 1990

BASIC DATA

(Please complete this section before reading the report)

Reference Number ..... (eg. CC19, MC55)

FR8 available? Yes/No

609 available? Yes/No/Incomplete/ First offender

Guilty Plea or Trial and Conviction (Tick one Box) ☐ ☐

If Crown Court:

Judgement Respited
Pre-Trial (Tick one box) ☐ ☐ ☐
Committal for Sentence

Date of Birth ..... Age .....

Gender ..... Race: Black/White/Other/No information

No. of previous sentencing occasions .....

Any previous custody .....

Main offence at sentence .....

Was this in breach of a court order? Yes/No/Not known

Remanded on Bail or in Custody .....

Subject to statutory supervision when report written Yes/No

Recommendation .....

FACTORS

Scoring of Factors:

1. Very Poor
2. Poor
3. Average
4. Good
5. Very Good

After reading the report answer the detailed checklist questions set under each factor (1-10). Use the "Comments" section for reflections/modifications of your answers and for illustrative quotations. Most questions can be answered Yes/No/Inapplicable.

Score each factor after you have gone through the detailed questions. Mark those questions which were most important in determining your score.

1.	PREPARATION (1 2 3 4 5)		COMMENTS
a)	How many interviews?		
b)	Were there any home visits?	Y/N/I	
c)	Are sources of information indicated? (Client/Other/None)	C/O/N	
d)	Have relevant facts been verified? (Yes/Attempted/No attempt recorded)	Y/A/N	
e)	Are there obvious gaps in the information presented?	Y/N	
f)	Are there references to contact/enquiries with/referrals to/information provided on:		
	CS	Y/N	
	Day Centre	Y/N	
	Community Resources	Y/N	
	Others	Y/N	

2.	PRESENT OFFENCE(S) (1 2 3 4 5)		COMMENTS
a)	Is there a brief clear statement of the offence?	Y/N	
b)	Are details presented from a source other than interview with the client? (Specify sources: FR8/Defence/CPS/ Codefendant/Police)	Y/N	
c)	Does the report present a balanced account of the offence?	Y/N	
d)	Is the level of seriousness of the offence acknowledged by SIR writer?	Y/N	
e)	If offence is admitted, are the views and attitudes of the client adequately covered?	Y/N/I	
f)	Are links with any previous offences explored and explained?	Y/N/I	
g)	Is there an explanation by the writer of why the offence occurred?	Y/N/I	
h)	Is any breach of order addressed in the report?	Y/N/I	

3. PREVIOUS OFFENCES (1 2 3 4 5)		COMMENTS
a) Is past offending reviewed and assessed?	Y/N/I	
b) Are patterns and gaps identified and explained?	Y/N/I	
c) Does the report describe and evaluate the clients' response to previous supervision?	Y/N/I	
d) Does the report describe and evaluate the client's response to other disposals?	Y/N/I	

4. SOCIAL CIRCUMSTANCES (1 2 3 4 5)		COMMENTS
Under this heading code each item: M: for mentioned, but not directly related to offence; O: for related to offence or to future offending N: for not mentioned at all		
Family history	M/N/O	
Family relationships	M/N/O	
Other relationships	M/N/O	
Education	M/N/O	
Employment	M/N/O	
Mental Health	M/N/O	
Physical Health	M/N/O	
Finance	M/N/O	
Accommodation	M/N/O	
Experiences of:		
Racism	M/N/O	
Sexism	M/N/O	
Other discrimination	M/N/O	
Alcohol abuse	M/N/O	
Drug abuse	M/N/O	
Plans for the future	M/N/O	
Other Factors (specify)	M/N/O	
Does the report deal with the present circumstances of the offender?	Y/N	

5. CONCLUSION (1 2 3 4 5)		COMMENTS
a) Is there an assessment of the client in her/his social circumstances?	Y/N	
b) Is there an assessment of the client's offending behaviour?	Y/N	
c) Has the risk of further offending been addressed?	Y/N	
d) What sentencing options are explored in the conclusion?		
Probation with conditions	Y/N	
Probation without conditions	Y/N	
CS	Y/N	
Fine	Y/N	
Custody	Y/N	
Others	Y/N	
e) Are these targeted on the courts' likely sentencing wishes?	Y/N	

(Continued on Page 4)

5.	CONCLUSION - CONTINUED		COMMENTS
f)	What other options should be addressed?		
	None	Y/N	
	Probation with conditions	Y/N	
	Probation without conditions?	Y/N	
	CS	Y/N	
	Fine	Y/N	
	Custody	Y/N	
	Others	Y/N	
6.	RECOMMENDATION (1 2 3 4 5)		COMMENTS
a)	Is there a clear recommendation?	Y/N	
b)	Is it appropriate to make a recommendation?	Y/N	
c)	Does the recommendation follow naturally from the information in the body of the report?	Y/N	
d)	Is the recommendation "realistic" in view of the level of seriousness of the offence(s)?	Y/N	
e)	If probation is recommended is the supervision package clearly spelt out?	Y/N/I	
7.	PRESENTATION (1 2 3 4 5)		COMMENTS
a)	Are paragraphs numbered?	Y/N	
b)	Are headings used?	Y/N	
c)	How many pages does SIR cover?	1/2/3/4+	
d)	Does the report follow a logical sequence?	Y/N	
e)	Is there a summary of the main points?	Y/N	
f)	Is the recommendation clearly distinguished from the rest of the report?	Y/N	
g)	Is the report pessimistic, optimistic or neutral about the client?	P/O/N	
h)	Does the SIR present the client's strengths?	Y/N/I	
i)	Does the writer seem impartial?	Y/N	
j)	Does the report contain jargon?	Y/N	
k)	Is the SIR concise or verbose?	C/V	
l)	Does the SIR present probation work as well organised and professional?	Y/N	
8.	EOP ISSUES (1 2 3 4 5)		COMMENTS
a)	Is there evidence of discrimination by the writer?	Y/N	
b)	Is there evidence of stereotyping?	Y/N	
c)	Are references to gender or race relevant to the offence?	Y/N	
d)	Are significant aspects of the client's social/ cultural/racial background explained to the court?	Y/N	
e)	Does the SIR have an anti-racist perspective?	Y/N	
9.	LINKS WITH FR8 (1 2 3 4 5)		COMMENTS
a)	Does the FR8 include a statement of the level of the seriousness of the offence?	Y/N/I	
b)	Is this reflected on the SIR?	Y/N/I	
c)	Does the FR8 give other guidance to issues that should be addressed in the SIR?	Y/N/I	
d)	Were these dealt with in the SIR? (All/Some/None)	A/S/N	

10. TARGETING	COMMENTS
What, in your view, are the chances of this client receiving a custodial sentence? (circle) 1. NO CHANCE 2. NOT LIKELY 3. IN THE BALANCE 4. LIKELY 5. DEFINITELY	

11. GATEKEEPING

a) Would you be prepared to see this report go to the court, or would you refer it back to the author?

Go to Court
Refer back

If "Refer Back"

b) List up to three headings (1-10), in order of priority, under which you would refer the report back:

i) .....

ii) .....

iii) .....

SPACE FOR FURTHER COMMENT IF NECESSARY

Inspected by: ..... Checked by: .....

Date: .....

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