

## The changing use of pre-sentence reports

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### Summary

As part of our work to understand why the number of community sentences – community orders, suspended sentence orders and other similar disposals - has fallen by 24% over the past ten years in England and Wales, we are examining the relationship between the courts and probationary services, with a particular focus on the National Probation Service's work in courts.

In this interim analysis, we present emerging findings from the national data on the use of pre-sentence reports (PSRs) to see whether changes in their use have impacted on the use of community sentences. Sentencers are expected to obtain a PSR before passing any community sentence (other than a stand-alone unpaid work requirement) or any custodial sentence (except one where custody is the only option).

We have found that between 2012-13 and 2016-17:

- There has been a 22% fall in the number of new PSRs produced. This fall means that there has been an increase in the number of sentences passed (both community sentences and custody) where no new PSR has informed sentencing;
- There has been a significant change in how PSRs are delivered to court, with an increasing proportion of PSRs delivered orally rather than in writing;
- While the number of PSRs has fallen, where they are used, the likelihood that sentencers follow the recommendations in the report has increased slightly (by 4% since 2012/13);
- Because cases with PSRs are more than ten times more likely to receive a community sentence, falling numbers of PSRs is strongly linked to the decline in community sentences;
- Our modelling suggests that if the number of PSRs had remained stable that there could have been 33,000 more community sentences a year.

These emerging findings open up a range of further questions-- What is driving the fall in new PSRs? How is advice being provided in cases which don't have them? And ultimately, what is making sentencers less likely to use community sentences when they don't have pre-sentence advice?

We are exploring these issues with practitioners, in advance of our final report, due in the September 2018, but we invite practitioners and experts to get in touch and help us explore these questions.

### Background to this briefing

The Centre for Justice Innovation is working to identify ways to improve the use of community sentences – community orders, suspended sentence orders and other similar sentences. Community sentences have been shown to be significantly more effective than short term custodial sentences in reducing reoffending. We are therefore concerned to note that there has been a 24% decrease in the number of community sentences in England and Wales over the past ten years, with much of the decline occurring since 2011, while other UK jurisdictions have maintained or increased their use<sup>1</sup>. While it is difficult to say exactly what is causing this trend, our previous work on this issue suggests that it

does not seem to be the result of falling case volumes nor is the decline a result of a changing offence mix. Whilst clearly, community sentences will not be right for every offender, we are concerned that there are some offenders currently receiving either fines or custodial sentences who would benefit from the combination of support and accountability offered by a community sentence.

Based on our research to date, we believe that there are a range of policy and practice choices, some recent and others long-standing, which have impacted on the relationship between courts and probation and that these are a more likely explanation of the falls in the use of community sentences. This paper, therefore, examines the relationship between the courts and probation, with a particular focus on pre-sentence advice provided to sentencers by the National Probation Service (NPS). It uses national data from a range of sources to examine how the provision of this advice has changed since 2012-13<sup>2</sup>.

### Pre-sentence reports

Pre-sentence reports (PSRs), give judges and magistrates an expert assessment of the risk posed by an offender, the factors which lie behind their offending and the strengths that they can draw on to move away from crime. They also provide an opportunity for the NPS report writers who produce them to make a sentence recommendation. This expert assessment is vital in effective sentencing: evidence shows that finding the right intervention can help a person move away from crime while the wrong one can actually increase the chance of reoffending<sup>3</sup>. Sentencers are expected to obtain a PSR before passing any community sentence (other than a stand-alone unpaid work requirement) or any custodial sentence (except one where custody is the only option).

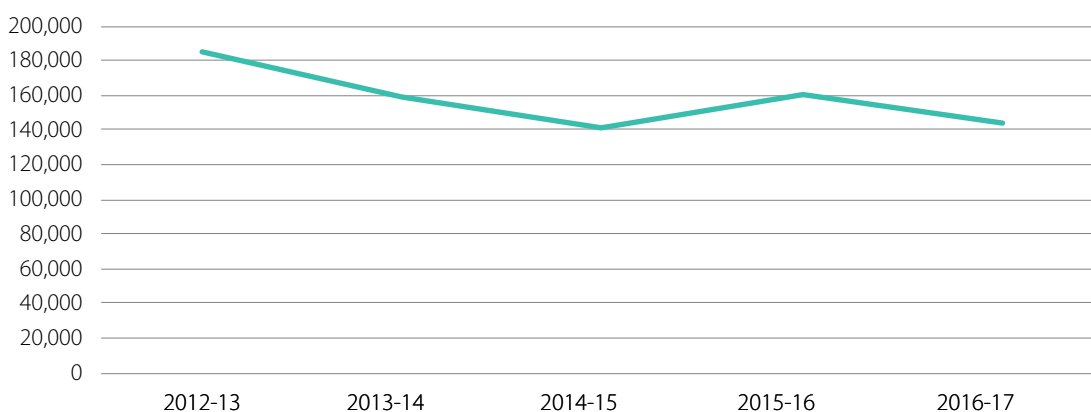
### The volume of pre-sentence reports

#### Finding 1: The total number of pre-sentence reports produced has fallen by 22% over the last five years.

As figure 1 demonstrates, only 144,000 PSRs were delivered in 2016-17, compared to 184,000 in 2012-13, a fall of 22%. This decline has been broadly consistent across all offence groups.<sup>4</sup>

This decline in the number of PSRs used is striking given that overall numbers of sentences passed remained stable over this period.<sup>5</sup> It is not clear what the reason is for this, though one possible contributor may be the new NPS policy of reusing existing PSRs for subsequent convictions up to a year after the report was first submitted. However, the trend predates the introduction of this guidance.<sup>6</sup>

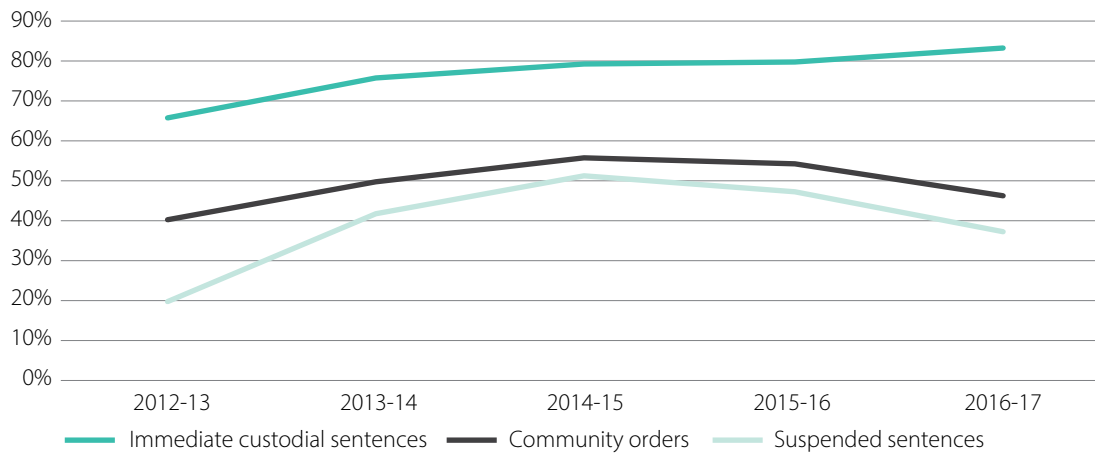
Figure 1: The total number of pre-sentence reports produced in all courts in England and Wales, 2012-13 to 2016-17<sup>7</sup>



**Finding 2: More custodial and community sentences are being made without the advice of a pre-sentence report.**

Sentencing Council guidance provides sentencers with some flexibility about when they need a PSR<sup>8</sup> but sentencers are generally expected to use a PSR before passing any community sentence (other than a stand-alone unpaid work requirement) or any custodial sentence (except one where custody is the only option). Yet, with the numbers of pre-sentence reports falling, a greater proportion of community and custodial sentences are now being passed without the benefit of a new pre-sentence report (see figure 2).

Figure 2: Proportion of different sentences passed without a PSR in England and Wales (2012-13 to 2016-17)<sup>9</sup>



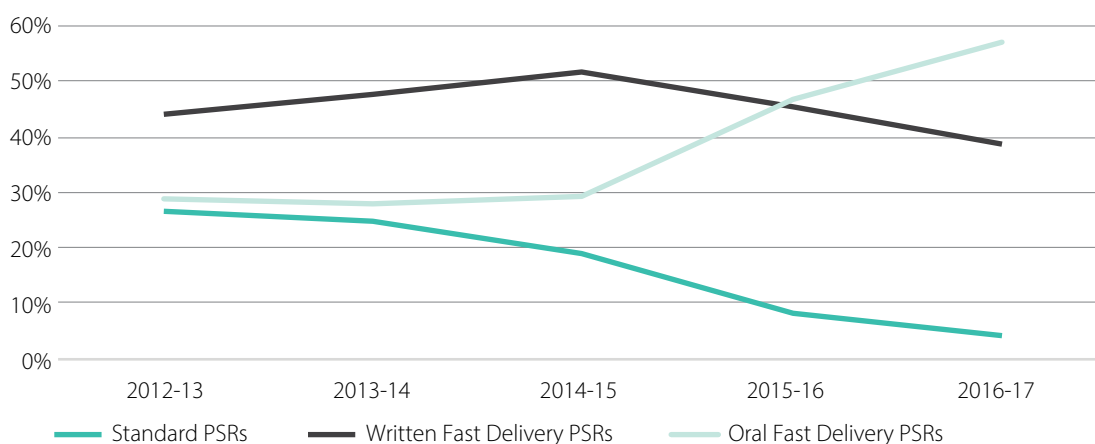
**The use of different pre-sentence report formats**

**Finding 3: Oral pre-sentence reports have nearly doubled in the last two years, while both forms written reports have fallen sharply over the same period.**

As well as providing a new definition of PSRs, the 2003 Criminal Justice Act also removed the requirement for them to be delivered to courts in writing, opening the door for the development of a format for the oral delivery of reports. Today, the NPS uses three different report formats: oral and written FDRs (both of which are usually delivered on the day) and standard delivery reports (SDRs) (delivered after an adjournment which is used to obtain additional information).

As figure 3 illustrates, the use of oral FDRs has nearly doubled, from 29% of all reports in 14-15 to 57% last year. Written FDRs have fallen by a quarter, from 53% to 39% and SDRs have fallen from 19% to only 4%.

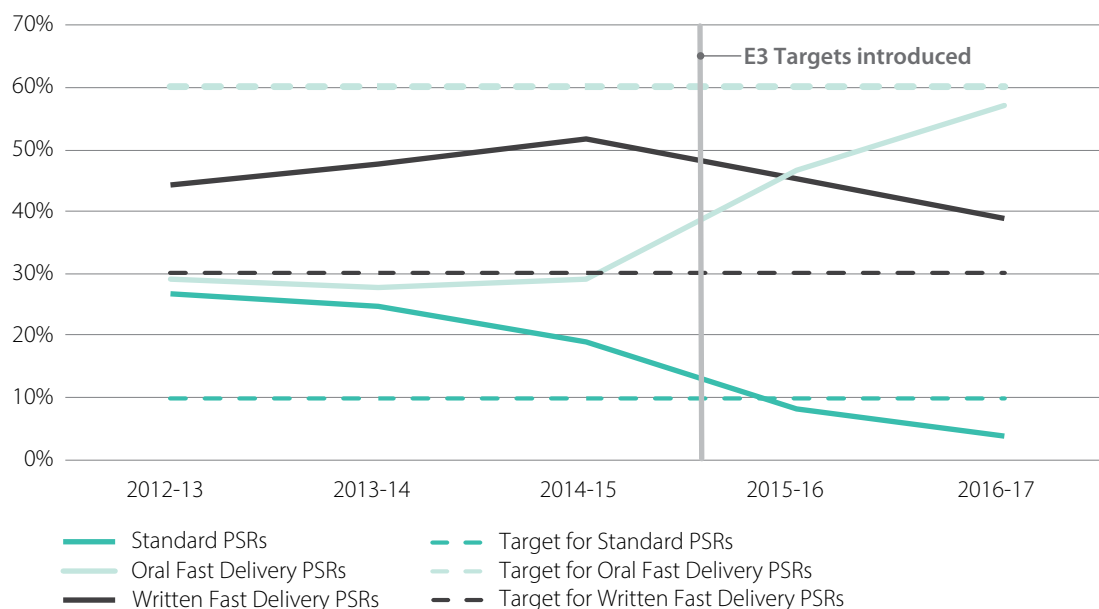
Figure 3: Breakdown of pre-sentence reports issued in all courts in England and Wales by format, 2012-13 to 2016-17



**Finding 4: These changes in how reports are delivered to court are the result of intention policy and practice changes, most importantly the NPS’ E3 National Operating model and its targets.**

These changes in report formats have driven by the introduction of targets for the use of PSR formats. New operating guidance on the use of different PSR formats was set out in the NPS’s 2016 E3 National Operating model and an accompanying probation instruction.<sup>10</sup> The model introduced new national targets for the use of different PSR formats. Oral FDRs were to be increased to 60% of all reports, while written FDRs and the most time-consuming SDRs were to be reduced to 30% and 10% respectively.

Figure 4: Breakdown of pre-sentence reports issued in all courts in England and Wales by format, 2012-13 to 2016-17, with E3 targets included



It should not be assumed that the growing use of oral FDRs is, in itself a cause for concern. The E3 model includes a range of innovations which seek to ensure that report writers can access all the relevant information in time to produce on the day reports<sup>11</sup> and a recent inspectorate review found that more than 90% of the Oral FDRs in their study were of sufficient quality to inform sentencing<sup>12</sup>.

However, the very low use of SDRs, which is currently less than half of the 10% target, does imply that more comprehensive assessments are being used only in a very limited number of cases. This does at least beg the question of whether all the information which would be relevant to sentencing is being presented in every case.

**Concordance rates**

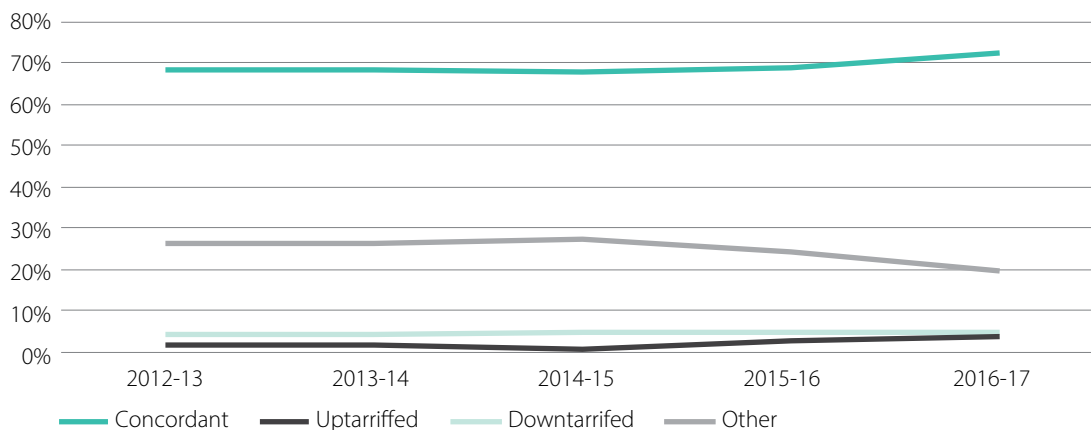
**Finding 5: The likelihood that sentencers follow probation recommendations (the concordance rate) has increased slightly (by 4% points).**

Unlike their counterparts in other UK jurisdictions, pre-sentence report writers in England and Wales include a recommendation of what, in their view, is the most appropriate sentence option. As figure 7 shows, the past five years have seen a slight increase in the proportion of PSRs recommending community sentences, from 89% in 2012-13 to 91% in 2016-17.

Whether the sentence passed by the court is concordant with recommendation of the PSR recommendation is a key metric of a PSRs’ effectiveness. Figure 4 shows that there has been a slight increase in concordance rates, which have risen from 68% to 72%.

This has been accompanied by a fall in rates of “uptariffing” (sentencers imposing a more punitive form of sentence than the one recommended by probation) which has fallen from 26% to 19%. Rates of “downtariffing” (sentencers imposing a less punitive form of sentence than the one recommended by probation) have increased slightly, from 68% to 72%.<sup>13</sup>

Figure 5: Concordance rates in all courts in England and Wales, 2012-13 to 2016-17

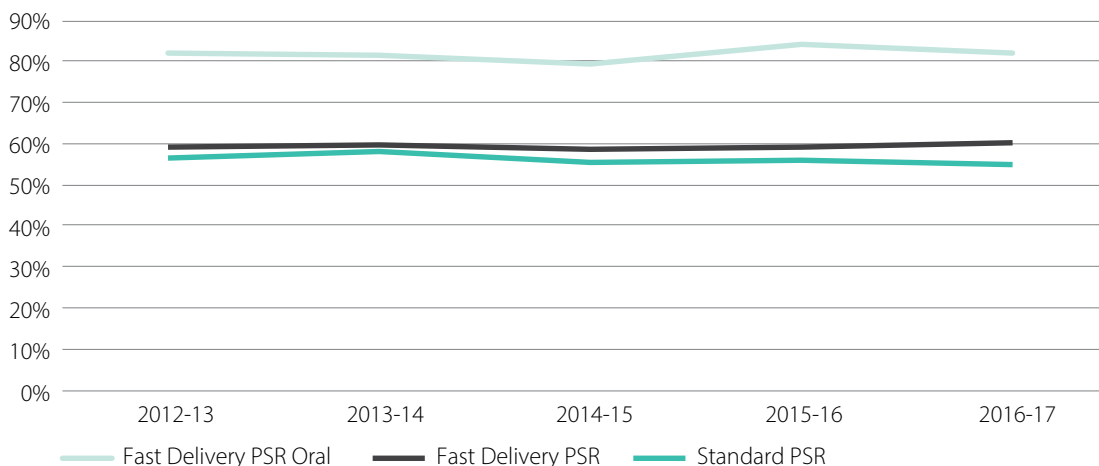


**Finding 6: Oral fast delivery reports have consistently had the highest concordance rates of all PSR formats over the period.**

Figure 6 sets out concordance rates for the different PSR formats. It shows that concordance with Oral FDRs has been consistently higher than with other formats over the past five years.

This difference is likely accounted for by the tendency for longer-format reports to be used in more serious cases as concordance rates are consistently lower for more serious offence groups.<sup>14</sup>

Figure 6: Concordance rates for different PSR formats in all courts in England and Wales, 2012-13 to 2016-17

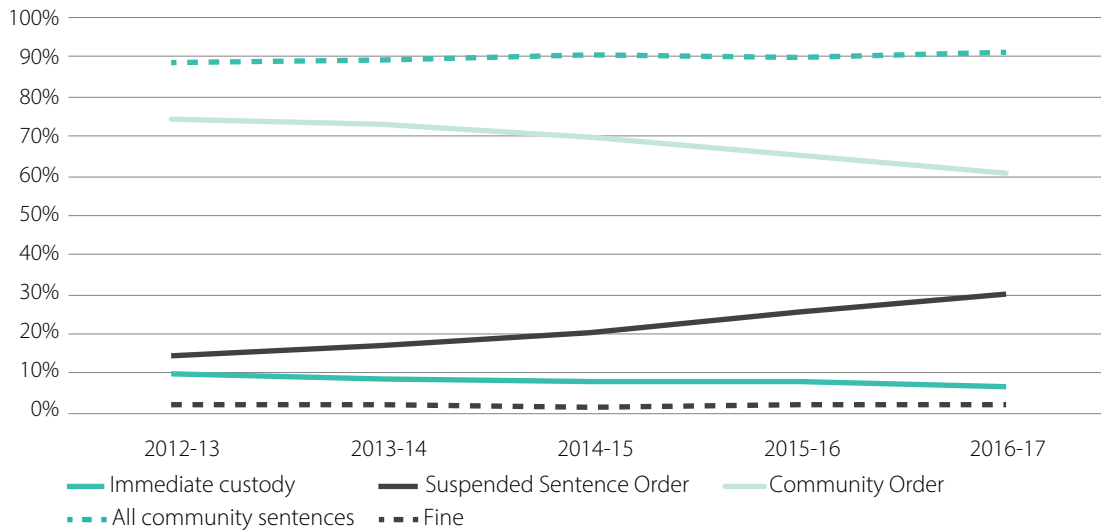


**PSR recommendations**

**Finding 7: There has been a small increase in the proportion of PSRs recommending community sentences.**

Within that group, there has been a significant trend towards the recommendation of suspended sentences and away from community orders. Suspended sentences have increased from 15% to 31% of all recommendations, while community orders have fallen by almost exactly the same amount, from 76% to 61%. In other words, suspended sentences have displaced community orders in PSR recommendations on almost one-for-one basis.

Figure 7: PSR recommendations by type of sentence recommended, 2012-13 to 2016-17



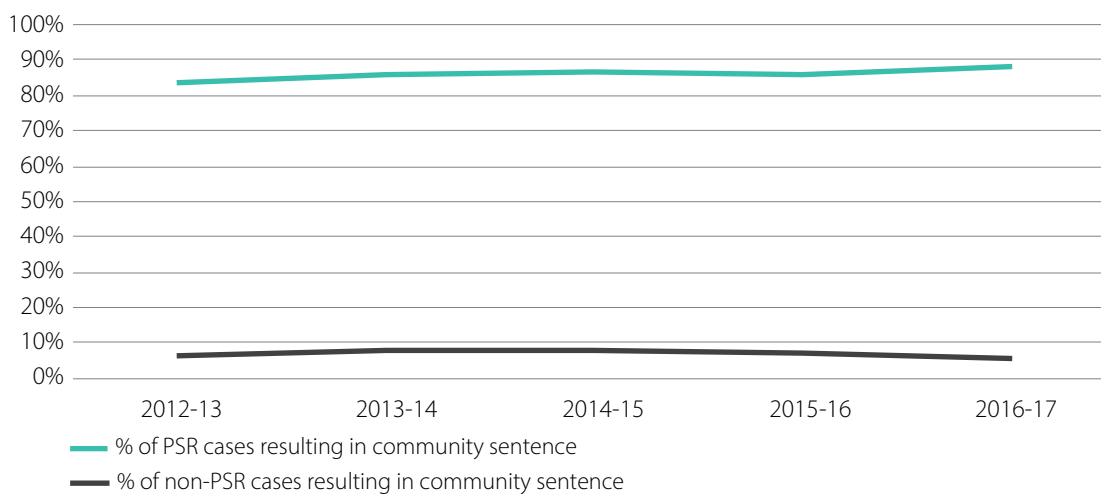
### PSRs and sentencing outcomes

#### Finding 8: Rates of community sentences use in cases without new PSRs have fallen

Cases where there is a PSR have always been far more likely than cases without one to result in a community sentence. This is to be expected: as a group these cases represent an offence mix and offender profile that are seen as appropriate for a community sentence. In many cases, the request by the court for a PSR is to determine what type of community sentence is passed, rather than whether one is passed.

Figure 8 shows the proportion of PSR and non-PSR cases that receive community sentences. Community sentence usage in PSR cases has risen slightly from 75% to 79%. However community sentences usage in non-PSR has fallen by more than a quarter, from 5.6% to 4.3%. This fall is striking. Over the past five years, as we have seen a reduction in the number of PSRs requested by the courts, we should expect to see more sentencing cases where a community sentence is appropriate fall into in the non-PSR group and, therefore, see a greater proportion of non-PSR sentencing cases result in a community sentence. The fact that there has been a decline in the use of community sentences in the non-PSR group suggests the possibility that not having new PSRs is associated with a reduction in these cases' likelihood to receive a community sentence.

Figure 8: PSR recommendations by type of sentence recommended, 2012-13 to 2016-17

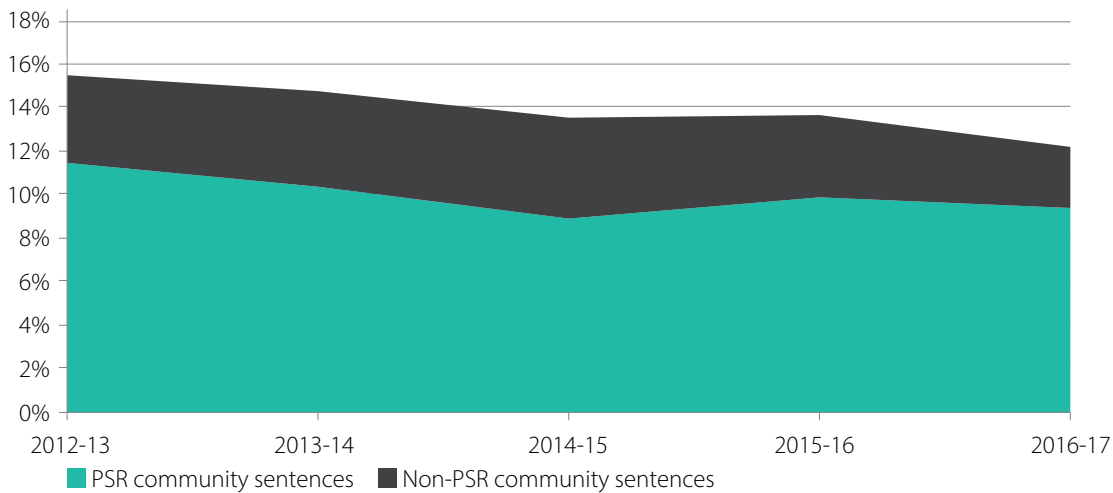


### Finding 9: The reduced use of pre-sentence reports seems to be a significant driver of the declining use of community sentences.

Figure 9 shows how the make-up of the community sentence population has changed since 2012-13. It shows that, the majority of the decline in community sentences (a little over three quarters) has occurred within the cases which have new PSRs. Given that, as noted above the proportion of this group getting pre-sentence reports has not changed, the key factor here is the shrinking size of this group.

Our modelling suggests that, if new PSRs were still being used as commonly as they were in 2012-13, and if community sentence rates within those two groups were unchanged, then we would see an extra 33,000 community sentences a year, reversing around 85% of the decline since 2012—13<sup>15</sup>.

Figure 9: Breakdown of different sources of community sentences as a proportion of the overall caseload, 2012-13 to 2016-17



However, we would urge caution when interpreting these findings. The data alone does not speak to the causes in falls in PSRs or the causal relationship between PSRs and the use of community sentences. It could very well be that PSR use has declined because sentencers are less likely to consider a community sentence, rather than the other way around. It should not be assumed that increasing the number of PSRs will necessarily result in an increase in community sentences. Nonetheless, we can infer a relationship between these two factors.

### Conclusions and questions

The statistics presented above tell a complex story about the relationship between changing use of PSRs and the declining use of community sentences. However, we can draw a number of tentative conclusions.

First, we can see that PSRs continue to recommend community sentences, and that those recommendations continue to carry weight with sentencers. In cases with new PSRs, reports are actually slightly more likely to recommend community sentences and sentencers are slightly more likely to follow those recommendations meaning that the use of community sentences in these cases is actually up.

Second, we can see that the way that pre-sentence advice is delivered has changed significantly. There are fewer new PSRs being produced each year, and far fewer of those are written. While the NPS has put significant effort into procedures to ensure the quality of pre-sentence advice under the new regime, such as the effective proposal framework to support more robust recommendations, the development of new procedures to facilitate timely access to information and new approaches to updating older PSRs, this nonetheless amounts to a significant reduction in the volume of pre-sentence advice produced.

Third, we can see that the falling use of community sentences seems to be related to two factors: the increasing proportion of cases receiving no new pre-sentence report and the declining use of community sentences in those cases.

However, as always, the statistics only tells part of the story. We find ourselves with many questions to answer before we can have a full picture of the causes of declining community sentences – or the approaches which can reverse that decline. In particular, we wonder:

- Why is the use of pre-sentence reports declining? Is it driving the reduced use of community sentences, or being driven by it?
- How prevalent is the re-use of existing PSRs? How far is it contributing to declining numbers of new PSRs? Where it occurs, how are recommendations made? How is advice in these cases being recorded?
- What factors are driving sentencers' reduced use of community sentences in cases where there is no new PSR? There is much discussion of declining sentencer confidence, but what does this mean and what is driving it? How does sentencers' interaction with probation, and in particular their reliance on breach hearings to obtain a picture of offenders' post-sentence progress impact their perceptions?

Answering these questions will require the expertise of those closer to the sentencing process. Therefore we invite all those with insights – whether probation officers, sentencers, researchers or policymakers – to help us find the answer.

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## Endnotes

1. Phil Bowen. (2017). *Community sentences across borders*. (London: Centre for Justice Innovation.)
2. Comparisons with earlier time periods are not possible due to a break in the data series.
3. Andrews D, Bonta J. *The psychology of criminal conduct*. 2. Cincinnati, OH: Anderson; 1998
4. Centre for Justice Innovation Analysis based on data from answer provided by Ministry of Justice in response to House of Lords written question HL6524, 20 March 2018.
5. Data taken from Ministry of Justice Criminal Justice Statistics Quarterly, table Q5.1a
6. The NPS's guidance on PSRs recommends that a report can be re-used if the offender is sentenced for a new offence up to a year after the previous report was produced (though care should be taken when using reports more than six months old) . In other cases where an offender is on an order, more informal reports may be made, based on evidence from the current offender manager. It may be that a growth in the use of these options is driving the declining use of officially recorded PSRs. However, without more research, we cannot assume that this is the case.
7. Data taken from Ministry of Justice Offender Management statistics quarterly, probation table 4.12
8. Sentencing Council (2017) *Imposition of Community and Custodial Sentences: Definitive Guideline* p6 & p8. Available online at <https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive-Guideline-Imposition-of-CCS-final-web.pdf>
9. Analysis based data taken from Ministry of Justice Offender Management Quarterly probation table 4.13 and Ministry of Justice Criminal Justice Statistics Quarterly, table Q5.1a
10. NOMS Op Cit and National Probation Service (2016) *NPS Operating Model Version 1.0: Effective. Efficient. Excellent*. Available online at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/555747/NPS-Operating-Model.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/555747/NPS-Operating-Model.pdf) NPS. Op cit and NOMS Op cit.
11. See PI 04/2016
12. HMI Probation (2017) *The work of probation services in courts*. p22. Available online at: <https://www.justiceinspectrates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/06/The-work-of-probation-services-in-courts-report.pdf>
13. Analysis based on data taken from Ministry of Justice Offender Management Quarterly (probation table 4.13). We ranked the sentencing options in descending levels of punitiveness as: 1) Immediate custody, 2) Suspended Sentence Order, 3) Community Order, 4) Fine. Cases where the sentences is listed as "other" have been excluded from our analysis.
14. Analysis based on data from answer provided by Ministry of Justice in response to House of Lords written question HL6524, 20 March 2018.
15. Analysis based on data taken from Ministry of Justice Offender Management Quarterly (probation table 4.13 (and Ministry of Justice Criminal Justice Statistics Quarterly, (table Q5.1a). This model assumes that sentencing rates

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