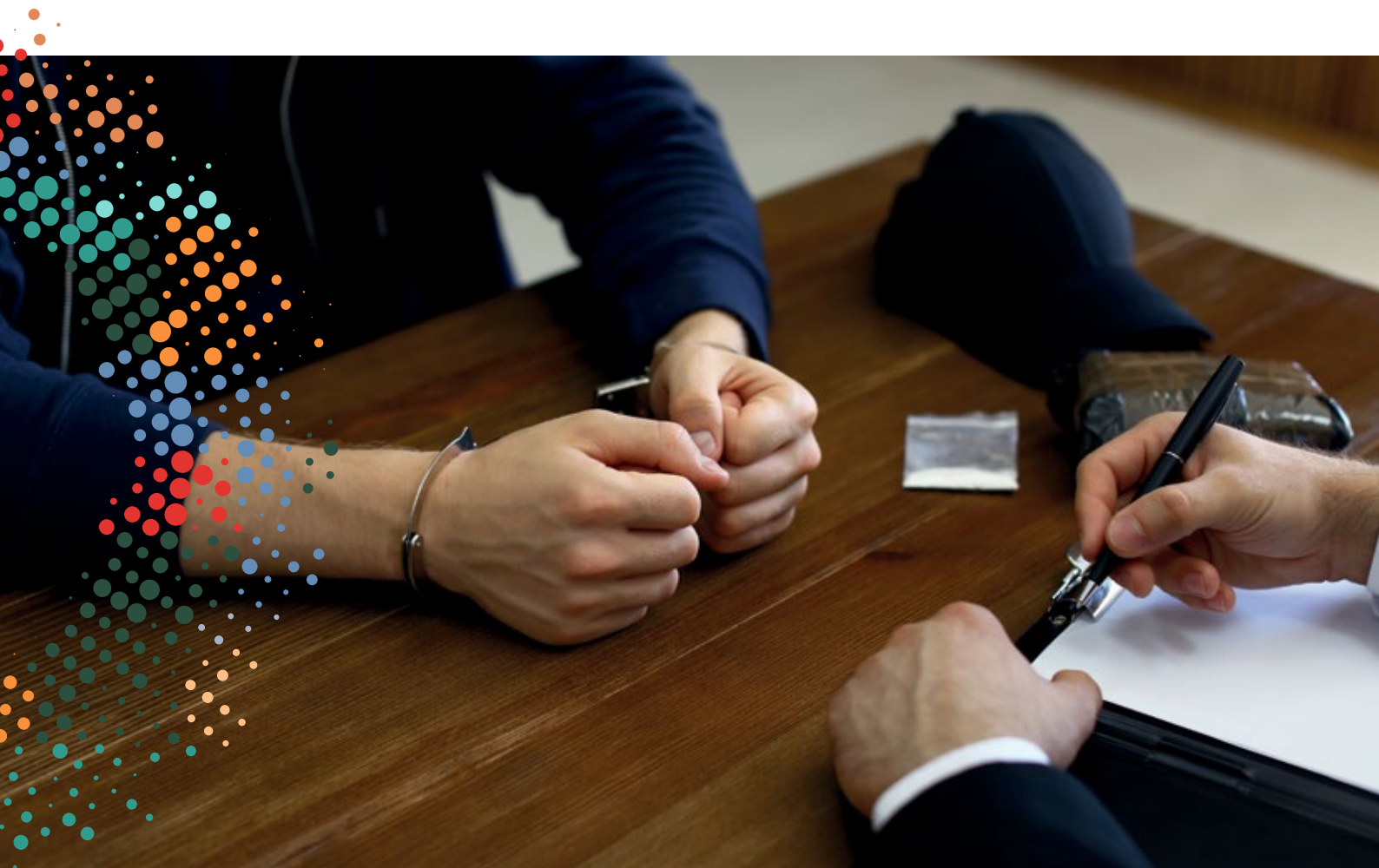




# Pre-Sentencing Report Toolkit

Fair Sentencing for Romani (Gypsy),  
Roma and Irish Traveller People



**December 2023**

## About the Traveller Movement

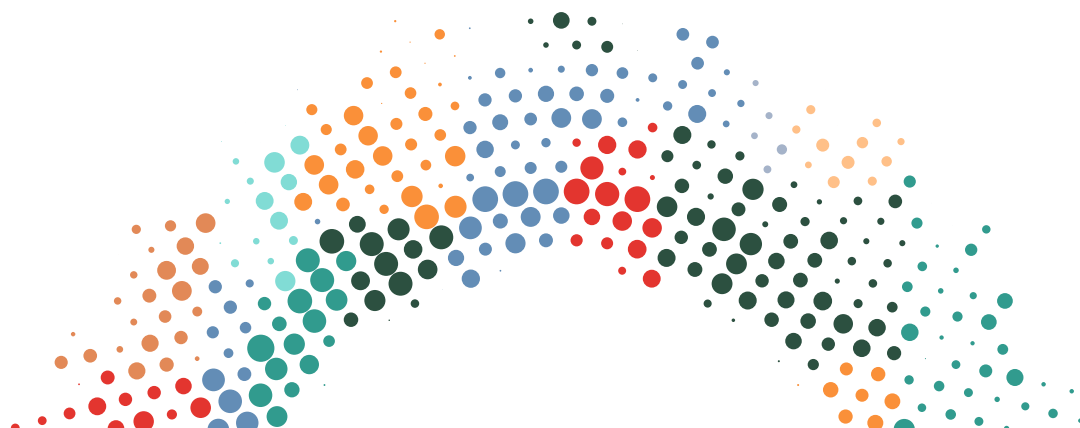
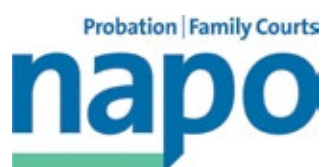
The Traveller Movement is a registered UK charity promoting inclusion and community engagement with Gypsies, Roma and Travellers. The Traveller Movement seeks to empower and support Gypsy, Roma and Traveller communities to advocate for the full implementation of their human rights.

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The Traveller Movement wishes to thank all the members of the Romani (Gypsy), Roma and Traveller community whose experiences and input guided the writing of this toolkit. We thank colleagues across the sector who kindly gave up their time to contribute their expertise and give feedback on early drafts of this toolkit. We would especially like to thank Napo, who kindly agreed to contribute to this toolkit. We would also like to thank the Lloyds Bank Foundation, whose generous funding made this project possible.



# Foreword

Romani (Gypsy) Roma and Traveller people are consistently faced with discrimination throughout the justice system, this discrimination is only compounded by the current structure of Pre-Sentence Reports (PSRs). The overfocus on Fast Delivery and Oral reports and away from Standard Delivery reports means that unconscious biases are being compounded rather than mitigated by PSRs. A justice system that is entrenched with systemic prejudice is a broken justice system. This report provides the building blocks to restructure the justice system.

There has been a significant under investment in probation since Transforming Rehabilitation but also since reunification. Whilst money has been given to the Ministry of Justice, these funds have not been directed at the front line and instead have been used for projects that have very little or no impact on service delivery. The purpose of PSRs has been totally undermined in recent years, as the requirements for speedy delivery has taken priority over the quality and the purpose of a PSR.

With prisons at breaking point with overcrowding, it is vital that we have a fully functioning and effective probation service to offer alternatives to custody. In 2011 the probation service won the European Gold Award for Excellence, proving what can be achieved. Napo wants to see probation go back to this high level of quality and effectiveness but this cannot be achieved under the current models.

A return to gold standards starts with accurate PSRs and a releasing of probation from prison. We need a separate probation and prison service. Both Napo and the POA are very clear that the two service are and should be separate. They have different functions and purposes and as such have their own cultures.

The probation service needs to be embedded in the local communities it serves and have the autonomy to meet the needs of those communities. We need to see a return to the Trust structure, removing probation from the civil service ensuring it is free of political agendas.

A person's journey with probation starts with their PSR. It is vital that is done properly and equips probation, the courts and the client with a high quality and detailed report. Probation and the wider justice system also needs to be responsive to individuals' circumstances and needs. That is why Napo is calling for an end to arbitrary targets on fast delivery reports and a return to probation deciding on the report type according to the needs of the individual they are interviewing.

Traveller Movement's Pre-sentencing Toolkit provides the context and tools to undo the systemic discrimination faced by Romani (Gypsy), Roma and Irish Traveller groups in the justice system whilst also offering a solution to the overcrowded prison estate.



**Ian Lawrence**

*General Secretary, Napo*

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*“The probation service needs to be embedded in the local communities it serves and have the autonomy to meet the needs of those communities.”*

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# Introduction

Romani (Gypsy), Roma and Irish Traveller people are significantly overrepresented in the criminal justice system. They are often refused bail and rarely given community sentences which leads to a cycle of reoffending. This issue persists throughout all age groups; the disproportionate representation of young Romani (Gypsy), Roma and Traveller in the youth prison estate continues to grow.<sup>1</sup> A lack of understanding and awareness about Romani (Gypsy), Roma and Irish Traveller histories and cultures, combined with misconceptions and unconscious bias, can lead probation officers, magistrates, youth justice officers and judges to consider simply the fact that a person is a member of the Romani (Gypsy), Roma and Irish Traveller ethnicities as a risk factor for flight.

Pre-Sentence Reports (PSRs) should be used as an opportunity to challenge stereotypes and recognise the diversity among Romani (Gypsy), Roma and Irish Traveller people. PSRs are an essential tool to challenge the unconscious biases and prejudices we all have which affect our decision-making processes. Identifying and understanding these biases is central to addressing them and mitigating their impacts. Cultural awareness, in terms of considering cultural differences and understanding how culture includes people's beliefs, values, behaviours, and ways of understanding their world, is essential to delivering a fair and balanced service.

PSRs represent an important form of communication between probation officers as report writers and judges as report readers. They form part of the sentencing process and give the sentencing judge (or magistrate) an idea of the defendant's background and the most suitable course of action in light of their offence. A good PSR should give the court a full and well-balanced picture of who the offender is, their background, and any needs they have and should be a chance to address any discriminatory bias that may exist before passing a sentence. PSRs should assist in diverting non-violent offenders away from custodial sentences and towards community sentences, the evidence is clear that community sentences more effectively reduce crime than repeated short custodial sentences. However, there has been a 46% decline in the use of community sentences over the past ten years in England and Wales.<sup>2</sup>

Anecdotal evidence suggests that people from a Romani (Gypsy), Roma and Irish Traveller background may be more likely to be placed on remand and refused bail, with a lack of use of diversionary schemes and community sentences. A lack of understanding by probation officers, youth justice officers, magistrates and judges about the fact that Romani (Gypsy), Roma and Irish Traveller people are distinct ethnicities protected under the Equality Act 2010 and the complex array of factors that have led to such overrepresentation of Romani (Gypsy), Roma and Irish Travellers in the criminal justice system. Often when forming the PSRs and handing down sentences, this misinformation and unconscious bias leads magistrates and judges to consider Romani (Gypsy), Roma and Irish Traveller ethnicities as a risk factor.

This toolkit aims to improve the PSRs that Romani (Gypsy), Roma and Irish Traveller children, women and men are provided with. The probation service must ensure that PSRs are used to provide judges and magistrates with the information they need, and it is vital to provide information about the intersecting and diverse experiences of communities which experience unconscious bias, direct and indirect discrimination, and differential treatment throughout the criminal justice system. This will help practitioners recognise unintentional biases that may affect perceptions of risk and the likelihood of utilising community sentences.

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<sup>1</sup> The Traveller Movement 'Disrupting the School to Prison Pipeline' (July 2022)

<sup>2</sup> Centre for Justice Innovation, 'Smarter Community Sentences' (2020).





## Key Recommendations:

- > There should be a move away from Fast Delivery Reports and oral forms of delivery, Pre-Sentence Reports should be tailored and focused on the individual, facilitate post-sentence work and mitigate biases, this requires in-depth engagement by probation officers with offenders. Judges, youth justice officers and magistrates must also recognise the importance of this process.
- > The Ministry of Justice should adopt NAPO's position that all individual's with a protected characteristic should have a full standard delivery report. This would protect against unconscious or conscious bias within the justice system.
- > The Ministry of Justice should adapt the Offender Assessment System and risk assessment tool guidance documents to ensure that cultural biases do not affect the outcomes of Romani (Gypsy), Roma and Irish Traveller people whose ethnicities are protected categories under the Equality Act 2010.
- > The Probation Service should include information on Romani (Gypsy), Roma and Irish Traveller culture and history in equality and diversity training. Where possible, training should engage local Romani (Gypsy), Roma and Irish Traveller populations so that practitioners gain insight and form connections with local communities.
- > There should be a focus on moving away from custodial sentences for non-violent offenders, complex criminal history is the main factor for reoffending, and more towards tailored and focused community sentencing for these offenders.
- > The Ministry of Justice, judges and magistrates should make themselves aware of how overlapping and compounding inequalities such as health outcomes, educational outcomes, and discrimination are factors in why many Romani (Gypsy), Roma and Irish Traveller people have come into contact with the criminal justice system.



# Romani (Gypsy), Roma and Irish Traveller Ethnic Groups

It is important to remember that Gypsies, Roma and Travellers are all different and distinct ethnic groups and cultures. The specific ethnic and cultural backgrounds for each of these three ethnic groups should be considered on an individual basis, as people within this defined category will have different experiences of discrimination based on their specific cultural, ethnic and religious background.

People are recognised in law as distinct ethnicities protected against discrimination by the Equality Act 2010. This gives a Public Sector Equality Duty on public bodies to eliminate discrimination, advance equality and foster good relations.<sup>3</sup>

However, the lives of Romani (Gypsy), Roma and Irish Traveller communities are blighted by discrimination and social exclusion. In 2019, an inquiry by the Women and Equalities Committee found that successive governments had comprehensively failed Romani (Gypsy), Roma and Irish Traveller communities.<sup>4</sup> Romani (Gypsy), Roma and Irish Traveller people were found to have the worst outcomes of any ethnic group across a range of areas including education, health, and employment. This, along with evidence of systemic discrimination and over-policing, are all causal factors resulting in the overrepresentation of Romani (Gypsy), Roma and Irish Traveller people across the criminal justice system.



<sup>3</sup> gov.uk, 'Public sector equality duty' (2012).

<sup>4</sup> Women and Equalities Committee, *House of Commons*, 'Tackling inequalities faced by Gypsy, Roma and Traveller communities' (2019).

# Disproportionate Representation of Romani (Gypsy), Roma and Irish Traveller communities in the Criminal Justice System

According to the 2021 census, the Romani (Gypsy)/Irish Traveller population of England and Wales is at 67,768 (0.1%), with the Roma population – having been included in the 2021 census for the first time – at 100,981 (0.2%)<sup>5</sup>.

The 2021 census became the first central government study to adopt the 18+1 ethnic data monitoring mechanism. This meant for the first time, Irish Traveller and Roma became recognised as separate ethnic groups.

However, it is likely that **this figure is an underestimation** as the Census relies on people self-declaring their ethnicity. Romani (Gypsy), Roma and Irish Traveller people, who have faced historic prejudice and discrimination from the majority population, are often reluctant to disclose their ethnic background due to mistrust and fears of discrimination. As a result, official data on the Romani (Gypsy), Roma and Irish Traveller population in the UK is unreliable. Other sources estimate that Romani (Gypsy), Roma and Irish Traveller people comprise up to 1% or 1.5% of the general population.<sup>6</sup>

As one of the smallest ethnic groups in the UK, Romani (Gypsy), Roma and Irish Traveller people are significantly overrepresented in the criminal justice system. In surveys distributed around all prisons in England and Wales for the 2019/20 HMIP Annual Report, 5% of male prisoners and 7% of female prisoners reporting that they came from an Irish Traveller background.<sup>7</sup> In comparison, official prison data (using the P-NOMIS system) only registered 2% of men and 1% of women as 'Gypsy' or 'Irish Traveller' in 2019 and 2020.<sup>8</sup> This demonstrates the unreliability of prison ethnic monitoring systems with regards to Romani (Gypsy), Roma and Irish Traveller ethnicities, yet this group remain clearly overrepresented in the justice system.

Romani (Gypsy), Roma and Irish Traveller youth in Young Offender Institutions (YOIs) and Secure Training Centres (STCs) are even more disproportionately represented. The 2019/20 Children in Custody report highlighted that nearly 10% of children in the youth estate came from a Traveller background.<sup>9</sup> This overrepresentation is a huge cause for concern.

The number of Roma people in prison is currently not accounted for. The absence of Roma people from official monitoring has meant, for example, that it is impossible to analyse whether sentencing decisions or reoffending rates for Roma people are proportionate. Anecdotal evidence from prison staff reports exceptionally high rates of Roma and migrant Roma people in UK prisons. Roma people can find themselves isolated with English often not being a primary language.

In 2021, the ONS Census introduced 'Roma' as an ethnic category for the first time. The Traveller Movement hope that other services and institutions, such as the courts and prison service, will follow suit to improve the reliability of conviction and imprisonment rates of Roma people, as recommended in the 2019 Women and Equalities Report into Gypsy, Roma, and Traveller Inequality.

At present the Government doesn't have plans to change this in accounting for the number of 'Roma' currently in the prison estate of England and Wales.

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5 Gov.uk, '<https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest> (2021).

6 Ibid.

7 HM Chief Inspectorate of Prisons, '[Annual Report 2019-20](#)' (2020).

8 Ministry of Justice and HMPPS, '[Offender Management Statistics Quarterly: January to March 2022](#)' (2022): [Table A1\\_9ii](#).

9 HM Inspectorate of Prisons, '[Children in Custody 2019-20](#)' (2021).



**In a Written Question submitted by Ian Byrne on 9<sup>th</sup> June 2023 (answered on 14<sup>th</sup> June 2023), to the Ministry of Justice:**

‘Ian Byrne: To ask the Secretary of State for Justice, what estimate His Majesty’s Prison and Probation Service has made of the total number of prisoners in England and Wales that come from Gypsy, Roma, and Traveller backgrounds in the latest period for which data is available.

In response, Minister of State for Prisons and Probation, Damian Hinds: The number of prisoners self-designating as ‘Gypsy’ and Traveller are published as part of a more detailed data set, which are released annually as part of the series “Offender Management Statistics Quarterly”. The most recent publication of this data was in July 2022.

The requested information can be found in Table A1.9ii of the ‘Annual Prison Population 2022’ publication: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1094517/Population\\_30June2022\\_Annual.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094517/Population_30June2022_Annual.ods).

This showed that on 30 June 2022 1,459 prisoners self-designated as Irish Traveller or Gypsy.

**We do not record separate figures for those declaring as “Roma”. They may self-declare in the category “White: Irish Traveller or Gypsy”, or as “White: Other background”.**<sup>10</sup>

Practitioners need to be aware currently the Roma population across the prison estate of England and Wales, are currently invisible in the eyes of the HMPPS data collection mechanisms.



<sup>10</sup> <https://members.parliament.uk/member/4831/writtenquestions#expand-1643484>





# Problems with Sentencing

Evidence suggests that Romani (Gypsy), Roma and Irish Traveller adults and youth are less likely to receive diversionary schemes at the police station, as well as community sentences when their cases are advanced to court. Considerable evidence suggests that community sentences are a much more effective method at reducing reoffending rates than short-term custodial sentences, in other words community sentences break the reoffending cycles for offenders who are often vulnerable persons with intersecting disadvantages leading them to be more likely to be overrepresented in the prison estate. A 2019 study conducted by the MoJ found that ‘sentencing offenders to short term custody with supervision on release was associated with higher proven reoffending than if they had instead received community orders and/or suspended sentence orders’<sup>11</sup> with re-offences per sentencing occasion being around 65 more per 100. A public health approach that focuses instead on long-term commitment and collaboration across stakeholders and addressing the complex interplay of social, economic and neurodiverse factors that contribute to criminal behaviour is vital to achieving the ultimate goal of reducing recidivism and promoting community well-being.

Minority ethnic defendants are more likely to receive custodial sentences and less likely to receive community sentences than White British defendants.<sup>12</sup> This is believed to be especially true for Romani (Gypsy), Roma and Irish Traveller people.<sup>13</sup> A lack of understanding and awareness about Romani (Gypsy), Roma and Irish Traveller histories and cultures, combined with misconceptions and unconscious bias, can lead magistrates and judges to consider simply the fact that a person is a member of the Romani (Gypsy), Roma and Irish Traveller ethnicities as a risk factor for flight.

Children are particularly affected by the refusal of bail. In 2020/21, the number of children who received a sentence or caution fell by 17% compared to 2019/20. Despite this, both the proportion of children on remand and the length of time in remand increased. For the first time, children in remand constituted the highest proportion of the custodial population. 60% of children remanded in youth custody were from an ethnic minority background, including Romani (Gypsy), Roma and Irish Traveller.<sup>14</sup>

Romani (Gypsy), Roma and Irish Traveller people, alongside those from other ethnic minority backgrounds, tend to be given custodial sentences over diversionary programmes. The overuse of remand, and lack of opportunity to partake in community-based schemes and rehabilitative programmes, disadvantage already marginalised communities and increases existing ethnic disparities in the sentencing process.



## A note on youth and adult sentencing:

This toolkit focuses on the use of language and the importance of understanding unconscious bias.

The youth justice system has a different system for PSRs which includes a measure to check its quality, yet this report’s guidance on how to understand bias in the PSR process is applicable to both the youth and adult estate.

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11 Ministry of Justice, ‘The impact of short custodial sentences, community orders and suspended sentence orders on reoffending’ (2019).

12 The Traveller Movement. Reducing the number of women in custody. (2021).

13 HMIP. People In Prison: Gypsies, Romany And Travellers.(2014)

14 Youth Justice Board and Ministry of Justice, ‘Youth Justice Statistics 2020/21’ (2022).

# Neurodiversity and Sentencing

Evidence produced in the Criminal Justice Joint Inspection review of evidence on neurodiversity in the criminal justice system<sup>15</sup> suggests that neurodivergence is more prevalent in the criminal justice system than in the wider community. Studies cited suggest that the prevalence of dyslexia in the prison estate could be over 50%, with one-third of people in prison self-identifying as having a learning difficulty or disability. Speech and language professionals estimate that 80% of prisoners have some speech, language or communication need.

Romani (Gypsy), Roma and Irish Traveller children are more likely than White British children to be diagnosed with Special Educational Needs and Disabilities (SEND). In 2019/20, 30% of Irish Traveller pupils and 27% of Romani (Gypsy) and Roma pupils had identified SEND, in comparison to 12.2% of the general school population.<sup>16</sup>

Evidence indicates that neurodiverse people are disadvantaged at all points of the criminal justice system, particularly at the sentencing stage. This usually comes from a misunderstanding from probation officers, youth justice officers, judges, and magistrates of the effect neurodiversity has on the ability of the person to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction. PSRs fail to acknowledge neurodiverse conditions as a mitigating factor and often note the behaviour as a risk factor.

## The Lammy Review

In 2017, the Lammy Review highlighted the role of PSRs as a method to help scrutinise sentencing decisions and provide detailed information on the character of a defendant.<sup>17</sup>

Additionally, the review showed concern for the unconscious bias that PSRs may perpetrate. In recent years, the Ministry of Justice (MoJ) has encouraged a move away from Standard Delivery PSRs (written while courts are adjourned, drawing on detailed interviews with defendants) towards Fast Delivery PSRs. These are typically prepared on the day of sentencing following a shorter interview and are delivered either orally or in a written format. The Lammy Review noted that *'judges have received guidance discouraging them from using PSRs altogether for some offences'* and recommended that the use and effectiveness of PSRs should be reconsidered by the MoJ.<sup>18</sup>

In the year, 2019/20, **98,154** PSRs were produced, **3 per cent** were standard delivery reports, **45 per cent** were fast delivery (short format) written reports, **52 per cent** were oral reports<sup>19</sup>.

According to the MOJ, 'In 2022 overall, there were a total of 83,240 pre-sentence reports produced. The breakdown in terms of method of delivery was as follows: 3,561 Standard PSR (**4.3 per cent**), 58,375 Fast Delivery PSR Written (**70.1 per cent**), 21,304 Fast Delivery PSR Oral reports (**25.6 per cent**)<sup>20</sup>.

Poor-quality PSRs are a key causal factor in the disproportionate representation of Romani (Gypsy), Roma and Irish Traveller youth and adults in the prison estate, as specific needs are not understood nor met in the sentencing process.

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15 Criminal Justice Joint Inspection, *Neurodiversity in the criminal justice system: A review of evidence*, (2021).

16 gov.uk, Education Statistics, *'Special educational needs in England'* (2021).

17 David Lammy MP, *'The Lammy Review'* (2017).

18 *Ibid*, 35.

19 HM Probation - <https://www.justiceinspectorates.gov.uk/hmprobation/research/the-evidence-base-probation/specific-types-of-delivery/court-reports/>

20 Lord Bellamy (Parliamentary Under Secretary of State for Justice) in reply to a Written Question submitted by Baroness Whitaker - <https://www.theyworkforyou.com/wrans/?id=2023-07-13.HL9358.h&s=speaker%3A12957#gHL9358.q0> (July 2023).



# Grayling and Transforming Rehabilitation

In 2019 National Audit Office published a damning report<sup>21</sup> into the Transforming Rehabilitation reforms introduced by Chris Grayling in 2013. The report found that the reforms failed to reduce reoffending and in fact increased the number of offenders who were recalled to prisons and have left services underfunded and staff overworked. The Public Accounts Committee released a report<sup>22</sup> in 2019 which said that Grayling's reforms had taken an unacceptable risk with the taxpayer's money and that the reforms had let both offenders and those working in the justice system down.

Transforming Rehabilitation overhauled the probation service by breaking up 35 existing probation trusts (all of which had been rated as good or excellent in the previous year) and created 21 Community Rehabilitation Companies (CRCs), which were privately run and intended to deal with low or medium risk offenders and a public sector National Probation Service (NPS) to manage offenders who pose higher risks. The CRCs were run by eight privately owned companies on contract and were managed by HMPPS. At the time Napo described the privatization as a "reckless and dangerous political and social experiment that would put the public at risk".

In January 2020 HMIP conducted an inspection on the central functions supporting the National Probation Service which found that for NPS staff 'workloads are high, with 60 per cent of probation officers carrying a workload over the 100 per cent target level and some much more than this'.<sup>23</sup> Further noting that the high level of staff vacancies for probation officers is at critical levels in some areas vacancies are as high as 60%. In a recent Inspection of Dorset Probation Delivery Unit the Inspector noted that the area was fully staffed at managerial level but had up to 40% vacancies for probation officers. In relation to CRC staffing levels the HMIP commented to the Justice Committee that there was a 'consistent issue with what staff perceive to be unmanageable caseloads'.<sup>24</sup>

In the most recent report 'Caseloads, workloads and staffing levels in probation services'<sup>25</sup> HMIP's key findings were that 'when probation practitioners hold a caseload of fifty or more, they are less likely to deliver high-quality work meeting the aims of rehabilitation and public protection' but that 'less than half (46 per cent) of probation practitioners believed they had a manageable workload'.

As part of the Transforming Rehabilitation reforms shifted the duties of court work, which included the preparation of PSRs, to Probation Service Operators (PSOs). At this point it is expected that 65 per cent of PSRs are produced by PSOs and there is a target for the purpose of pushing for Fast Delivery Reports and stepping away from the Standard Delivery Reports. The target being that 10% of reports should be Standard Delivery, and there should be a 60/30 split between oral and written fast reports.

Napo has stated that:

*"An arbitrary target on fast delivery reports is simply a money and time saving exercise that fails to meet a key aspect of good practice, which is responsiveness. It also has resulted in a reduction in sentencers confidence of probation, reduced the use of PSR's in Courts and makes management of the case going forward more difficult. We would like to see a return to probation having the autonomy to decide on which report is most appropriate according to the person they are interviewing. Quite often information will come to light in a PSR interview that changes the overall context of the case as well as the individuals' circumstances."*

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21 National Audit Office, *Transforming Rehabilitation: Progress review*, 2019.

22 House of Commons Committee of Public Accounts, *Transforming rehabilitation: progress review*, 2019.

23 HM Inspectorate of Probation, *An inspection of central functions supporting the National Probation Service*, 2020.

24 House of Commons Justice Committee, *The future of the Probation Service*, 2021.

25 HM Inspectorate of Probation, *Caseloads, workloads and staffing levels in probation services*, 2021.





They type of report written for the Court was already at the discretion of the probation service and often that of the practitioner. This meant that the report was written to meet the individual needs of both the case and the client. Removing this autonomy and having an arbitrary target has led to less detailed reports, less information for sentences and key aspects of a person's circumstances not being taken into account in the offence analysis. It has, in Napo's view further eroded the trust and confidence sentencers have in probation.

## Napo's Position

A PSR is a vital part of someone's sentence. From a Courts point of view, they can have confidence that all relevant factors of someone's behaviour is considered and analysed. And that an appropriate sentence, that can be managed in the community, is imposed. From probations perspective a PSR is the first part of sentence management and informs the person managing the case of all criminogenic factors and risk concerns. It forms the bed rock of continual assessment throughout their sentence. If a PSR is wrong from the outset, or poorly informed, it makes managing a person on a community sentence much more difficult and makes it much more likely that safeguarding issues are missed.

Prior to Transforming Rehabilitation, probation had end to end case management. This meant that you wrote the PSR then managed that person throughout their sentence. Now we have designated Court teams that write all reports for Court and then the case is handed on to the case manager. Whilst this may have efficiency benefits for the service, it creates a lack of consistency in the client's journey through probation but can also make it more difficult for the person managing the case.

The purpose of PSRs has been totally overlooked and undermined in recent years, as cost cutting and the requirements for speedy delivery has taken priority over the quality and the purpose of a PSR. An arbitrary use of FDR's and Verbal reports in Magistrates Courts has left sentencers in the dark about a persons need and to what extent individuals pose a risk to the community. Napo is very clear on their position in relation to PSR's and protected characteristics. All individuals with a protected characteristic should have a full standard delivery report. This small step ensures that the report and specifically the offence analysis can fully take into account a person's life experiences that may well have played a contributory factor in their offending and may have a significant bearing on any sentence passed. It would also protect against unconscious or conscious bias within the justice system and assist the sentence manager on drawing up a sentence management plan that addresses key criminogenic needs, personal circumstances and supporting the individual by identifying barriers to change. It is well documented that people with protected characteristics are disproportionately represented in the justice system. It is vital that steps are taken to avoid this at the earliest opportunity.

The full report also allows enough time for probation to carry out full checks. This is especially important to some groups. For example, women are more likely to have multiple needs such as substance abuse and are more likely to be a victim themselves. It is therefore crucial that the Court is furnished with the full picture when deciding on culpability, underlying causes of offending behaviour and the appropriate sentence they should impose. Without this information, sentences could be handed out that are hugely detrimental to the individual and/or key safeguarding issue could be missed.



# Structure of Pre-Sentence Reports

Current probation guidance on 'Determining Pre-Sentence Reports' indicates that a PSR should contain (as a minimum), but is not limited to:

- > Offence analysis and the pattern of offending, beyond a restating of the facts of the case.
- > Relevant circumstances of the defendant, with links to offending behaviour highlighted as either a contributing factor or a protective factor.
- > Risk of serious harm and likelihood of reoffending analysis, based on static predictors and clinical judgement.
- > The outcome of pre-sentence checks with other agencies or providers of probation services, including if any checks are still outstanding.
- > An assessment of maturity for young adult males (aged 18-25 years of age).
- > Consideration of individual and particular vulnerabilities, domestic arrangements and caring responsibilities, as well as the impact of any sentence upon those children or vulnerable adults cared for by the defendant. Courts must be mindful of the impact of sentencing on dependents, particularly for women defendants as they tend to be the primary carer for dependents. This may also include pregnancy and the impact of custody on the unborn child.
- > An assurance that the sentence proposals are commensurate with the seriousness of the offence and will address the offender's assessed risk and needs.<sup>26</sup>



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26 HM Prison and Probation Service, 'Determining Pre-Sentence Reports: PI 04/2016' (2021).

# Steps to Creating an Informed Pre-Sentence Report



1. PSRs should focus attention on each individual case to explore the best way forward to reduce both the risk of harm and the risk of reoffending.
2. They should also help to facilitate post-sentence work, endorsed by the court through the sentencing decision.
3. PSRs should give judges and magistrates an expert assessment of the risk posed by the defendant, the factors which lie behind the offence for which they are being charged, and the strengths that they can draw on to move away from crime.
4. PSRs provide an opportunity to engage with the defendant. For probation officers, this engagement helps provide an evidence-based account to the Court, to test the authenticity of the defendant's perspective and their levels of motivation for change. Judges also recognise the importance of this process in relation to testing a commitment to change.
5. Engagement is also important in terms of attending to issues of individual's needs. Referring defendants to probation can be a method to ensure that that people receive help and support in terms of access to services and the opportunity to begin a process of change.

*“The background of the convicted person ... deals with the understanding of that person and of the crime that they have committed, will look at family background, educational background, health issues, mental health issues, behavioural history, family history ... [and] will then deal with the record of the person, in so far as criminal law is concerned.”*

**Niamh Maguire and Nicola Carr, Probation Service,**  
*‘Individualising Justice: Pre-Sentence Reports in the Irish Criminal Justice System’ (2017), 84.*





# What Effective and Ineffective Pre-Sentence Reports Look Like

Effective PSR	Ineffective PSR
✓ Clear, structured format	x Lack of structure
✓ Neutral language	x Negative, prejudiced, or leading language
✓ Consistency between policy and practice	x Lack of consistency between policy and practice
✓ Detailed information on the defendant's background	x Lack of relevant information

## The Role of Risk Assessment in Pre-Sentence Reports

PSRs should focus attention on the case of the individual and the best outcomes to reduce the risk of both reoffending and harm.

All PSRs are underscored by risk assessment tools, to determine the statistical likelihood of the individual reoffending. This is important in both sentencing decisions and sentence planning – with regards to community sentences, risk assessments can help to identify the most appropriate interventions to address individuals' specific needs and issues.<sup>27</sup>

The effectiveness of a PSR lies in the extent to which risk is prioritised over other forms of information. While information provided in the report on the level of risk is important, assessment of the individual's ability and motivation to not fall back into reoffending habits is also an important factor.

*“People in the CJS are often assessed for risk. However, our engagement indicated that an exclusive focus on risk makes people feel misunderstood and untrusted.”*

**Ministry of Justice**, 'Tackling Race Disparity in the Criminal Justice System: 2020 Update' (2020), 10.

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<sup>27</sup> Gwen Robinson, *Sentencing Academy*, 'Pre-Sentence Reports: A review of policy, practice and research' (2022).

# Offender Assessment System (OASys)

Prison and probation services use a tool called the Offender Assessment System, or the OASys.

Staff use OASys to complete a risk and needs assessment. This means working out why people offend and what can be done to stop offending. It also requires judgement on whether people in prison or on probation are likely to harm themselves or other people, and what can be done to reduce the likelihood of this.

The assessment includes an interview and a self-assessment questionnaire for clients to complete.

*“Several probation officers commented on the limits of the OASys risk assessment system in regard to Traveller offenders. OASys risk assessment questions on accommodation, for example, are heavily biased towards settled modes of living as being the “norm”.”*

*“Officers should exercise discretion when completing OASys assessments, to ensure that scoring of Traveller offenders is not affected by cultural bias. In relation to “appropriateness of living arrangements”, for example, scores should be based on specific concerns and information and not assumptions relating to Traveller sites.”*

**Joe Cottrell-Boyce**, *Traveller Equality Project*,

*‘Working with Gypsy and Traveller Offenders: A Thames Valley Probation Study’* (2014), 2-3.

The Probation Service should include information on Romani (Gypsy), Roma and Irish Traveller culture and history in equality and diversity training. It is important that such information reflects the differences between Romani (Gypsy), Roma and Irish Traveller communities, and highlights their status as three distinct ethnic groups. It is important that those working in the Probation Service are aware that Romani (Gypsy), Roma and Irish Traveller ethnicities are protected categories under the Equality Act 2010 and therefore are protected against discrimination on the grounds of ethnicity. Where possible, training should engage local Romani (Gypsy), Roma and Irish Traveller populations so that practitioners gain insight and form connections with local communities.

HMPPS should adapt OASys guidance documents to ensure that cultural bias does not impact the assessment of Romani (Gypsy), Roma, and Traveller offenders. For example, regarding the appropriateness of accommodation, it should be pointed out to assessors that site accommodation should not automatically be considered less ‘suitable’ or ‘appropriate’ than bricks and mortar accommodation.

*“Bearing in mind the importance of family support networks to Travellers, and the cultural significance of living on sites as opposed to bricks and mortar accommodation, (Probation) officers should support applications for HDC [home detention curfew] or release on licence to sites, where no specific concerns exist to prevent this. Officers should be aware of the prevalent perception that Traveller sites are automatically unsuitable accommodation, and be prepared to advocate for Traveller service users while formulating release plans with other agencies.”*

**Ibid, 3.**



# Bias and Stereotypes

*“Reports that provide inaccurate information, although rare, are highly prejudicial to the offender because that information may influence the judge’s determination whether to impose custodial or a non-custodial sentence.”*

Niamh Maguire and Nicola Carr, *Probation Service*, ‘Individualising Justice: Pre-Sentence Reports in the Irish Criminal Justice System’ (2017), 102.

PSRs should be used as an opportunity to challenge stereotypes and recognise the diversity among Romani (Gypsy), Roma and Irish Traveller people.

We all have unconscious biases and prejudices that affect our decisions. Identifying and understanding these biases is central to addressing them and mitigating their impacts.

Culture is a complex concept. It includes people’s beliefs, values, behaviours, and ways of understanding their world. Considering cultural differences is essential to delivering a fair service.

Cultural awareness is acknowledging the differences between people from other backgrounds, including differences in attitudes and values.





# Checklist for Informed Practice

<b>Ethnicity and culture</b>	<ul style="list-style-type: none"><li>✓ How does the defendant describe their ethnicity and/or cultural identity?</li><li>✓ Does the defendant need the support of an interpreter?</li></ul>
<b>Accommodation</b>	<ul style="list-style-type: none"><li>✓ Is the defendant's accommodation stable?</li></ul>
<b>Employment and education</b>	<ul style="list-style-type: none"><li>✓ Is the defendant employed, in education, or in training?</li><li>✓ How confident is the defendant with reading and writing?</li><li>✓ Will a custodial sentence impact upon the defendant's employment?</li><li>✓ Was the defendant excluded from school and if so, did they enter Alternative Provision?</li><li>✓ Was the defendant home-schooled?</li></ul>
<b>Experience of crime</b>	<ul style="list-style-type: none"><li>✓ Has the defendant ever experienced racism/discrimination/homophobia?</li><li>✓ Has the defendant been the victim of another crime?</li></ul>
<b>Responsibilities and dependants</b>	<ul style="list-style-type: none"><li>✓ Does the defendant have any children or dependants under the age of 18?</li><li>✓ Are there any other financial dependants? If so, how many?</li><li>✓ Who would financially support dependants if the client is unable to?</li><li>✓ How will dependants be impacted by sentencing decisions, especially if the defendant is a sole parent/carer?</li></ul>
<b>History of offending</b>	<ul style="list-style-type: none"><li>✓ Has the defendant ever had a community sentence?</li><li>✓ Was it completed successfully? If not, why didn't it work?</li></ul>
<b>Support networks</b>	<ul style="list-style-type: none"><li>✓ Is there a support network of family and friends?</li></ul>
<b>Identifying barriers</b>	<ul style="list-style-type: none"><li>✓ What might prevent the defendant from having successful rehabilitation?</li><li>✓ What is the most suitable sentence in light of any barriers?</li></ul>
<b>Identifying opportunities?</b>	<ul style="list-style-type: none"><li>✓ What would support the defendant's rehabilitation?</li><li>✓ Are there any educational/training/rehabilitative programmes available in the community to the defendant?</li></ul>
<b>Health and wellbeing</b>	<ul style="list-style-type: none"><li>✓ Does the defendant have any known conditions or disabilities?</li><li>✓ Has the defendant articulated any concerns about their physical or mental health?</li><li>✓ Are there any other concerns about the defendant's physical or mental health?</li><li>✓ Has the defendant articulated any concerns about past or present substance misuse?</li><li>✓ Are there any other concerns about past or present substance misuse?</li></ul>



# Case Studies

Several accounts of the PSR process revealed ongoing issues that may disadvantage those from ethnic minority backgrounds.

The [Disproportionality Project \(2020\)](#) looked into the disproportionate representation of BAME youth in the criminal justice system across Islington and Haringey Boroughs. Discussion of PSRs during interviews with young people with lived experience prompted some interesting reflections.

*“Yeah (I contributed to the PSR) ... (It was) a true representation ... It helped me not go to jail, yeah ... but what am I doing for a whole year coming here?... But it’s punishment. That’s it. If you was to give someone a punishment, you’d give them a punishment, that’s like at least they learn something ... (I would have respected a punishment) if it was shorter and I actually learnt something.”*

**C. Greer et al.,**

*Centre for City Criminology: City, University of London, ‘The Disproportionality Project: Addressing issues relating to the disproportionately high representation of Islington’s and Haringey’s BAME young people in the Criminal Justice System’ (2020), 30.*

A solicitor with whom the Traveller Movement works closely, recalled the use of informal and discriminatory language used in a PSR for a young Traveller boy.

*“The term “Billy Boy” was used throughout the report in lieu of my client’s actual name.”*

Furthermore, the solicitor discussed how Romani (Gypsy), Roma and Irish Traveller ethnicity is unfoundedly considered a ‘risk factor’ in sentencing. Many young Irish Traveller boys are reportedly told not to speak in court as their accent may identify them as a Traveller, which may negatively impact sentencing outcomes.



## The case study below has come from a three-year court programme run by Hibiscus in Westminster Magistrates' Court, where the team supported several Roma women

Two Bulgarian Roma women, one in her mid-twenties and the other one in her late 30s, were co-defendants for a theft-related offence at Westminster Magistrates Court. We spoke to each in the early morning before their hearing to complete an initial assessment with them, screen for any safeguarding risks and to provide them with emotional support and information about the court system and what they can expect, doing so in their own language.

Maria\* is a single mother of three children who are currently living in Bulgaria with the rest of her family. She has been in and out of the UK, engaging in short-term and seasonal employment and bringing money home to her family. She gets paid cash in hand and has a National Insurance number. She has worked as a cleaner and dish washer at restaurants.

Anelia\* also has a child in Bulgaria and said she is working in the same restaurant as her older friend who is the co-defendant, but she is yet to be paid for the work she has done and doesn't have a National Insurance number. She had also been in and out of the UK and bringing money back for her family whenever she could.

Both were tearful and emotional about being in court and struggled to understand what their rights were, as well as what possible court outcomes they could expect. They had a private solicitor arranged for by friends.

We noticed a male in the court building who claimed to be a friend of both co-defendants and their husbands. However, he did not know much about the lives of these two women and after speaking with him in more detail, we found his presence and behavior suspicious. One indicator of modern slavery/trafficking in such cases is older men or women with well-spoken English who sit in the court room audience often to instill fear and monitor what is being shared, and to whom the defendants look at for answers when they are being asked questions by the Bench. We spoke to the women who were still in court custody about this man and one of them said that it could be her boyfriend, but could not describe his physical appearance.

Both of them said they were not in any duress to commit theft at the moment and that they had not been threatened. Due to the uncertainty in their circumstances and their relationship with the male, we alerted their solicitor and probation who successfully argued for the case to be adjourned for a PSR for the day after tomorrow, so that a more thorough investigation could be made. The male had left the court room in a hurry when he had seen the security guard patrolling the building.



## A probation officer completed one of the PSR interviews with a Bulgarian interpreter after also receiving our assessment feedback

One of the Hibiscus workers assisted with the second PSR interview, interpreting for the probation officer. Earlier in the day, the Bulgarian interpreter had a go at us for stepping in to interpret for one of the cases, raising her voice and saying that we should not be telling her how to do her job (which none of us had in any way done). During Anelia's interview, Anelia told the Hibiscus worker she is glad the Hibiscus worker is the one interpreting for her during the interview, as the Bulgarian interpreter had been really 'mean and condescending' to her and had not interpreted everything to the probation officer she had wanted to say. She also felt like she could not raise this with the probation officer at the time. The same interpreter has been observed later on shushing other defendants if they are crying in the court room or are in distress, or asking repeat questions, and has also made discriminatory remarks about defendants, which we are keeping a log of and have informed NPS about.

The PSR interview one of the workers interpreted for took a lot longer than the usual 20 to 30 mins we have observed it to last. Anelia's solicitor came in midway the interview to advise her on what she should plead during the hearing, as they were in a hurry to represent other clients during the day in court. Anelia was given a chance to ask all the questions she needed to ask, to express emotion and to go through a detailed safeguarding questionnaire, question by question. She was very stressed and cried in the beginning. Anelia had not had a constant fixed above in the UK due to the transient nature of her work, her recent return to the UK and the fact she had not been able to afford to keep paying rent while she was away from the UK. She was unsure of her exact address details and said her friends had arranged for a private solicitor who had given her another address to say in court since she is worried that the address she was staying, which was shared by many people who had recently moved to the UK before they could find something more permanent, could have been associated with previous offenders. The probation officer was grateful for Hibiscus worker support and said it had been a positive experience for her to have someone there to support the defendant emotionally, to patiently explain what the procedure was and what that meant for her, and to speak to her in her own language. She maintained that the man in the court room is someone who she was seeing, but that no one was threatening her or pushing her to commit a crime at the moment.

Upon court return, both plead guilty as advised by their solicitor. It was shared that Maria has had prior offences a long time ago and the PLO confirmed that there were no specific criminal offences related to her address. Anelia had no prior offences. The probation officer presented the PSR in court and argued that the co-defendants know one another and that the defendant has shared that the offence was spontaneous, not intentional; that Maria was hoping to stay in the UK and settle here to work, her issued National Insurance number being evidence of that. Probation therefore argued for an alternative to custodial sentencing: a 12-month Community Order, electronically monitored curfew, and exclusion from the borough of Westminster where the offence was committed.

The Prosecution argued that there was significant planning involved, that the victim was a tourist and had been targeted. The second probation officer also argued that it was an opportunistic act and suggested that a 12-month Community Order, electronically monitored curfew, exclusion from the borough of Westminster would be a better alternative to custodial sentencing. They also said that the women could continue to work with us in the community, as they had consented. They said that at the moment there are no safeguarding concerns that can be confirmed at this stage.

*The judge, however, said that custody threshold is passed for both and gave Maria 12 weeks of custody and Anelia 10 weeks of custody and both were asked to pay £122 for the victim surcharge each.*

\*Not their real names.



# Good Practice Examples for Unbiased Pre-Sentence Reports

PSR paragraph	Fair content	Biased content
Offence analysis and the pattern of offending, beyond a restating of the facts of the case.	Takes all accounts into consideration: prosecution, client, and victim. Outlines the different possible reasons or motivations for the offence. How does the client feel about what they have done? Do they take responsibility? Is there a pattern of offending?	Primarily repeats the facts of the case, as presented by the prosecution. Does not include relevant context regarding different possible reasons for the offence. Does not include the client's account of the incident.
Relevant offender circumstances, with links to offending behaviour highlighted as either a contributing factor or a protective factor.	Client is from a supportive extended family. Client is self-employed. Client has a stable home life and lives in their family home with...	Client is from a large Romani (Gypsy)/Roma/Traveller family. Client does not have a regular income and is not claiming benefits. Client lives on a Traveller site. Client shares a home with their spouse/partner and various relatives.
Risk of harm and likelihood of reoffending analysis, based on static predictors and clinical judgement.	Client is X years old. It is their X offence. Their last offence was committed X ago. They have never had a custodial sentence.	Client is X years old. They committed their first offence at X years old. They are a prolific offender whose offending behaviour is escalating. Despite this, they have, so far, avoided going to prison.
The outcome of pre-sentence checks with other agencies or providers of probation services, including if any checks are still outstanding.	Pre-sentence checks were carried out with X, there are no further checks outstanding. They show that...	Pre-sentence checks have not been completed.
The addressing of any indications provided by the court.	The court has specifically asked that we address X. Having looked into these factors, it is considered that...	The court has requested that we address ABC. This has not been done.
Sentence proposals that are commensurate with the seriousness of the offence and will address the offender's assessed risk and needs.	Taking all factors into consideration, including the client's mitigating factors, the client has been assessed as X risk because... We have discussed with the client their needs and the support needed to help their rehabilitation. We have identified their needs as X. Based on the above, the following sentencing options are recommended...	The client has been assessed as X risk The client was reluctant to engage to discuss their support needs. Despite this their needs are considered to be X. The following sentence is recommended ...

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*“When probation practitioners hold a caseload of fifty or more, they are less likely to deliver high-quality work meeting the aims of rehabilitation and public protection”*

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The Traveller Movement would like to say a heartfelt  
**THANK YOU** to our funders for their support.



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