

## ANALYSIS AND RESEARCH

### NOTE OF SUBGROUP MEETING

07 May 2019

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Members present: Alpa Parmar (Chair), Rebecca Crane, Maura McGowan

In attendance: Emma Marshall (Head of Analysis and Research)  
Amber Isaac (Statistician)  
Pamela Jooman (Statistician)  
Caroline Nauth-Misir (Statistician)  
Sarah Poppleton (Social Researcher)  
Heidi Harries (Social Researcher)  
Husnara Khanom (Social Researcher)

#### 1 UPDATE ON SOCIAL RESEARCH WORK

- 1.1 Sarah Poppleton (SP), Heidi Harries (HH) and Husnara Khanom (HK) gave an overview of their current work; in brief: the data collection across all magistrates' courts for five offences/orders (bladed article/offensive weapon; harassment and stalking; and breach of community order, suspended sentence order and protective order) commenced on 23 April and will end on 30 September. The response rate for the first week was 40%, which is higher than any previous exercise in the magistrates' court, and is due not least to intensive efforts to publicise the exercise and make the online forms as accessible as possible (e.g. the online video). On our public confidence work, some questions have been re-run on an omnibus survey and the report is being prepared for publication in the summer. The team is also completing interviews for the road testing of the mental health guideline, and preparing the data used in the theft assessment for publication (for use by the public, primarily academics).

#### 2 UPDATE ON STATISTICAL AND RESOURCE ASSESSMENT WORK

- 2.1 Amber Isaac (AI) told the group about some of the statisticians' current projects: Pamela Jooman (PJ) has been producing a new tool, using the programming language 'R', to automate the production of the statistical tables that are published alongside the guidelines. This will save the team multiple days per year, enabling it to focus on other priorities. Caroline Nauth-Misir (CNM) gave details of some of the resource assessments that she is currently working on, including those for arson and criminal damage, drug offences and firearms. This work involves (amongst other analyses) transcript analysis of judges' sentencing remarks, analysis of data collected through the Crown Court Sentencing Survey and at magistrates' courts, and data from the Home Office on drugs seizures. AI talked about the exercise that is currently being run across the office, to re-sentence cases of assault using some of the new draft guidelines, to determine

how sentencing practice may change under the new guidelines. Several Council members have volunteered to help with this exercise to make it as robust as possible.

### **3 REVIEW OF RISK REGISTER AND BUDGET**

#### *Risk register*

- 3.1 Emma Marshall (EM) noted that the risk register has been updated to reflect changes agreed at the last subgroup meeting.
- 3.2 EM flagged that the register will be reviewed at the next subgroup meeting (likely to be in September), which is timed to feed into the meetings of the Governance subgroup.
- 3.3 She noted that she plans to update risk 7 - criticism that guidelines do not take account of specific minority groups, including BAME – with the fact that AI has recently been undertaking analysis on race and drugs and the fact that Council hopes to respond to this in the Autumn.
- 3.4 In relation to risk 7, Alpa Parmar (AP) asked if there was any way for us to make the data used for the race analysis accessible to academics. EM and AI advised that they are speaking to the UK Statistics Authority and to the data protection team at MoJ to see what is possible to share, and how. They advised that the team will do what it can, but that there are some data protection requirements (e.g. around disclosure) that, of necessity, limit this.

Action: Risk register to be reviewed at the next A&R subgroup meeting (September); EM to update risk 7 as discussed above, and EM and AI to investigate data sharing possibilities as discussed above.

#### *Budget*

- 3.5 CNM confirmed that we have not yet received our budget allocation from MoJ for the next financial year. It is anticipated that we will receive this in June.
- 3.6 CNM explained that OSC is working on the basis that the budget for analysis and research in 2019/20 will be £63,000 out of a total expected OSC budget of £1.42m. Out of this, £8,000 of the budget is for transcripts of judges' sentencing remarks, £5,000 is for another data collection in 2020/21, and some of the budget is expected to be used for the potential analytical projects that the Sentencing Council might commission for the 10-year anniversary (these projects were discussed further as agenda items later in the meeting). The cost of the venue for the 10-year anniversary will also be covered by the A&R budget.
- 3.7 AP asked if we would be able to get a free venue for the anniversary event. EM explained that this has been looked into, but the free options available either are not in London (which could result in lower attendance), or they involve hosting with partners (e.g. law firms), which may risk the event not being viewed as impartial.

### **4 COLLABORATION WITH ACADEMICS**

- 4.1 EM reiterated the benefits of the Council working with academics, and introduced three potential projects suggested by the A&R team (noting that there are likely to

be more projects to consider in the future). EM also flagged that although these projects will not cost the Council any money, they will require some internal resource and therefore it is recommended that we focus only on three projects for the time being.

- 4.2 AI explained that the first project involves looking at sentence outcomes for offenders sentenced for multiple offences, to see whether this might aid our understanding of current sentencing practice (at present, the sentencing data used relates to principal offences only). The subgroup agreed that this project would be a useful piece of work to do.
- 4.3 The second project involves examining the issue of "role", and whether the Council's current approach to "role" ensures consistency and proportionality of approach. EM highlighted this is likely to be a largely qualitative project using data from sentencing transcripts. The subgroup agreed that this is an important and useful project to undertake. AP suggested it might be worthwhile to also look at the effect of race and gender alongside "role".
- 4.4 The third project is more communications focussed, and involves examining whether there are any improvements the Council could make to its digital guidelines to ensure they meet their aims, and also whether the move to digital guidelines has affected sentencing behaviour in any way. The subgroup agreed that this is an important piece of work, and noted that little has been done in this area to date.
- 4.5 AP recommended that the Council includes a clause in its service-level agreement (SLA) with the relevant contractor, stating that the Council must be acknowledged in any work which is published. This is an important way in which the Council can demonstrate its collaboration with academics.
- 4.6 EM also flagged that any work involving transcripts would need permission from HMCTS to pass these onto the academics. EM is currently pursuing this.

Action: EM will circulate these projects to the wider Council for their comments and will continue to explore permissions for supplying sentencing transcripts to academics.

## **5 ANALYTICAL IDEAS FOR 10-YEAR ANNIVERSARY**

- 5.1 EM introduced three potential analytical projects to support the Council's 10-year anniversary plans and that could be presented at the event due to be held in April 2020. The first and third projects would be undertaken by externally commissioned contractors, and the second would be conducted internally by the Analysis and Research (A&R) team. There is around £30-£35k available in the budget to cover the two external projects and it was noted that agreement to proceed with these would be needed relatively quickly because the procurement process can take 8-10 weeks.
- 5.2 The first project involves a review of the evidence on consistency of sentencing, to get a better understanding of how the Council may have met one of its key aims (to promote greater consistency). This should provide a better understanding of the studies that have been conducted, their findings and the methodologies used. This will augment work that has already been undertaken to develop a methodology to measure consistency of approach to sentencing, and to apply the chosen method to data for three of the Council's guidelines. A report summarising the findings from this will be circulated to the subgroup and then to the full Council over the next couple of months, with the aim of publishing in the

summer. It is proposed that the findings of this study be incorporated into the proposed wider review of evidence on consistency.

- 5.3 AP commented that this would be a useful opportunity to interrogate the idea of what “consistency” really means, and the extent to which it aligns with the concept of fairness. The subgroup agreed that this is an important project to undertake.
- 5.4 The second project involves measuring the cumulative impact of the Council’s guidelines on sentencing, including the extent to which changes in sentencing practice following the introduction of guidelines can be attributed to the guidelines, the impact of the guidelines on sentencing severity, and any possible subsequent impacts on prison, probation and youth justice services.
- 5.5 The subgroup agreed that this would be a useful project, and that the 10-year anniversary presented the Council with an ideal opportunity to do this. Rebecca Crane (RC) commented that the Council would need to be prepared for the findings of this (as well as the other projects), as the findings might not show what the Council would hope them to. However, EM noted that there is likely to be an expectation at the event that the Council comments on its overall impact over the last 10 years and so if it is not able to do this, others at the event might instead draw their own conclusions (which may or may not be accurate).
- 5.6 Maura McGowan (MM) also noted that there should have been a decrease in successful appeals of sentence following the introduction of guidelines, so this is something that should be explored as part of this project. PJ noted that a data sharing agreement has been organised with the Court of Appeal so we should be able to examine any impact on appeals.
- 5.7 The third project involves conducting research to explore sentencers’ and other interested parties’ views on sentencing guidelines, particularly how their views have changed from before the guidelines’ introduction, to now. This might involve a representative online survey with judges and magistrates and then follow-up interviews or focus groups, and for other interested parties, may involve more informal discussions.
- 5.8 Subgroup members agreed that this is an important piece of work and that it is important that this is commissioned externally in order that it is conducted by independent researchers. MM and AP suggested that it would be useful to include the public’s awareness and understanding of guidelines as part of this project. SP noted that this is already covered by the recent work on public confidence, which could be highlighted at the event. Selected findings from the public confidence work could also be updated and the discussion could include public as well as sentencers’ and other interested parties’ views.
- 5.9 AP commented that these projects would be a good opportunity for the Council to publicise its impact, and that the projects with academic involvement underline the collaborative premise of what the Council is aiming to do.
- 5.10 EM explained that the three project outlines would be sent around to all Council members, and then once approved, the team would start the process of procuring them.

Action: A&R team to explore trends in appeals as part of Project 2; EM to circulate the project outlines to the full Council.

## 6. SURVEY OF THE THEFT PUBLICATION DATA

- 6.1 AI reminded the group that it was agreed at the January subgroup meeting to publish a user feedback survey to inform future data publications. This agenda item was to discuss the draft survey questions. AI explained that these are very much in draft form as we need to discuss what types of data we can publish with the data protection team. She noted that publishing the survey alongside the theft data (which is due to be published this year to help with an ongoing project) is a good opportunity, as users will then have data to explore whilst responding to the survey.
- 6.2 In relation to the future publication of data, AP asked what would be included in the datasets and whether any summary analysis of the data would accompany it. AI gave some examples of the factors (e.g. culpability factors, harm factors, aggravating and mitigating factors) and explained that only analysis conducted as part of the assessment of the theft guideline would be available online (published in February 2019). EM noted that in the past (when we published data from the Crown Court Sentencing Survey) we have received feedback which said that users didn't use the summary analytical report published alongside the data as their primary interest was conducting their own analysis using the data. AI suggested that if users respond to the survey saying that they want an analysis report (spontaneously, rather than being asked as a question) then this is something we can consider, although there would have to be a very strong demand for this due to limited resource in the A&R team.
- 6.3 In relation to the need to ensure that any published data do not breach data protection requirements, and therefore that offenders' identities are protected, AP asked whether there is a time limit on this protection (i.e. whether after a certain period of time has elapsed, we could publish more detailed data where offenders could be identified). EM said this is likely to be indefinite but this is something we can check with the data protection team. AP also asked if the survey would capture the views of judges and AI explained that the survey is designed to capture views of those who are intending to use the data.
- 6.4 The subgroup was happy with the draft survey questions and AP commented on its merit and that the open-ended questions at the end are useful. AP also mentioned that this may be a good way to capture international interest particularly for US/UK comparative analysis. EM suggested to AP that it would be helpful if AP could publicise the survey amongst her colleagues.

**Action: A&R team to discuss the theft data with the data protection team and prepare the data, ready for publication.**

## 7 DATE OF NEXT MEETING/AOB

- 7.1 EM said that she would look to arrange to next meeting for mid-September, because then the outcome of that meeting can be fed back to the next Governance subgroup meeting in October.

Action: EM to liaise with members to confirm the date of the next meeting.

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