

ANALYSIS AND RESEARCH

NOTE OF SUBGROUP MEETING

24th January 2019

Members present: Alpa Parmar (Chair), Rebecca Crane

Apologies Maura McGowan

In attendance: Steve Wade (Head of Office)
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 SOCIAL RESEARCH UPDATE

- 1.1 Sarah Poppleton (SP) gave an overview of the social researchers' current work; in brief: three reports are due for publication within the next few months (assessments of impact for the Robbery and Theft Offences guidelines, and public confidence in sentencing); we are currently road testing the draft s18, s20 and ABH guidelines with Crown Court judges, and we will be testing the mental health overarching principles from February onwards; lastly, we are setting up the second, post-guideline stage of our online data collection in magistrates' courts, the first phase of which ran in 2016/17. This new stage covers all magistrates' courts rather than a sample, and five offences (breach of a community order, breach of a suspended sentence order, breach of a protective order, s2 harassment and stalking, and possession of a bladed article or offensive weapon). The exercise will run from 23 April to 30 September 2019.

2 UPDATE ON STATISTICAL AND RESOURCE ASSESSMENT WORK

- 2.1 Amber Isaac (AI) told the group about some of the statisticians' current projects: we are working closely with the Home Office and Border Force to obtain new data on drugs seizures to feed into the development of the revised Drug Offences guideline; we are setting up a data sharing agreement with the Criminal Appeals Office so that we can access data on appeals to contribute to our guideline evaluations, and we are developing a tool to automate the production of the statistical bulletin tables that are published alongside draft guidelines. The team is also busy drafting a report summarising the findings from the Health and Safety guideline evaluation and a draft resource assessment for the Mental Health

guideline, both of which will be circulated to Council members in due course. Analysis of the effect of offenders' race and gender on sentencing outcomes for drugs offences is also under way, and outcomes from this are scheduled to be presented at the April Council meeting.

3 REVIEW OF SUBGROUP TERMS OF REFERENCE

- 3.1 The group discussed and agreed the subgroup terms of reference (ToR). Alpa Parmar (AP) asked about how membership was decided; EM noted that this was traditionally the academic member and representatives from both the magistrates' courts and Crown Court. Steve Wade (SW) noted that it is possible there could be a fourth member, once new members of the Council had been recruited.
- 3.2 SW set out the role of the subgroup. He explained that the subgroup "owns" the Analysis and Research (A&R) programme and strategy, including the budget, although in practical terms, the available budget is currently so limited that the A&R team do not currently have much flexibility. The group also owns the A&R risk register, with the Governance subgroup looking across all risk registers and reporting back to individual subgroups if they feel any action is needed in particular areas. In addition, the Chair of the subgroup may periodically give a precis of their subgroup meetings at Council meetings, which would give an opportunity to flag key themes, including any emerging from the group's assessment of risks.
- 3.3 The group discussed the budget of the A&R team, and whether there were other sources we could draw on. SW explained that funding for the type of work we do is limited and opportunities are few and far between. Emma Marshall (EM) noted that this is why we are pursuing opportunities to collaborate with external academics. In the past, on occasion, we have also been able to receive some funding from MoJ for work that they have specifically requested. However, this is unlikely to be the case in the near future.
- 3.4 SW explained that MoJ is an unprotected department and therefore the likely best-case scenario for the budget next year is the same as this year, plus inflation.
- 3.5 Rebecca Crane (RC) asked about the subgroup's role in assisting in the liaison with the wider academic community and research bodies (as reflected in the ToR). This could cover members' support of our activities in this area (e.g. support for the academic seminar), rather than needing to specifically undertake any actions. It would also encompass AP "championing" our work in the context of her academic background and contacts. EM offered to amend the wording for this part of the ToR to ensure it is clear.

Action: EM to amend the wording for the final point in the ToR

4 REVIEW OF RISK REGISTER AND BUDGET

Risk register

- 4.1 EM explained that the bottom 3 risks - 5, 6 and 7 – are shaded in yellow to indicate that these have been identified as higher level risks and as a result are included on the Council-wide risk register that is considered by the Governance subgroup.
- 4.2 The group considered these risks in turn. Risk 5 (guidelines have an impact on correctional resources that cannot be assessed or the resource assessment does not anticipate) is currently rated as 'High' ("impact" 4/ "likelihood" 3), but has a target rating of 'Medium' ("impact" 3/ "likelihood" 2). The group discussed the ways in which this risk is being mitigated, including carrying out bespoke data collections, using alternative data sources where available (for example on the mental health guideline), and investigating options of data collection using the common platform (however, it was noted that this is unlikely to yield outcomes in the near future). After some consideration the group decided that this risk should continue to be acknowledged as 'High', and would therefore remain unchanged (rather than lowering the "target impact" rating to 'Medium').
- 4.3 The group then considered risk 6 (sentencers interpret guidelines incorrectly), currently 'Medium' ("impact" 3/ "likelihood" 3). EM explained how this risk is mitigated, for example by undertaking rigorous road-testing. RC suggested adding in an additional control of feeding into sentencers' training in guidelines, as well as the fact that the Council evaluates its guidelines which helps to identify any potential issues with guideline interpretation. EM mentioned that one option for future collaboration with academics may be a project that helps us to examine how sentencers use the digital guidelines. The group decided that the current risk rating, as well as the target rating should be reduced to 'Low' ("impact" 2/ "likelihood" 2).
- 4.4 In relation to risk 7 (Criticism that guidelines do not take account of specific minority groups, including BAME), which is currently rated as 'Very high' (both "impact" and "likelihood" rated as 4), EM explained that the piece of analytical work on race and sentencing for drug offences has started, and the A&R team will ensure that this is prioritised. The group agreed this risk should remain 'Very high', particularly in light of the current context surrounding the Lammy Report.
- 4.5 The group then moved on to discuss the A&R risks that appear on this register only (1 to 4). Risk 1 (analytical strategy is unable to meet the Council's needs) is currently rated as 'High' ("impact" 4 /"likelihood" 3). EM outlined that the Office is now running bespoke data collections to fill data gaps, but response rates have been low; ways to mitigate this involve circulating evaluation summaries to sentencers to show how the collected data has been used (although there is inevitably a time lag before we can publicise this). RC suggested incorporating a five-minute slot into the annual training undertaken by all district and deputy district judges, to explain the importance of the data collection (for example a short video).
- 4.6 Due to time constraints, it was agreed that the subgroup would provide any comments in relation to risks 2, 3 and 4 via email after the meeting.

Action: EM to amend risks 1, 5 and 6.

Action: SP to liaise with relevant contacts regarding annual training for district/deputy judges.

Action: AP/RC/Maura McGowan (MM) to send EM any further comments on the risk register via email.

Budget

- 4.7 Caroline Nauth-Misir (C N-M) updated the group on the current A&R budgetary position. Currently our full year forecast spend is similar to our budget, so we are likely to break even. However, there is a chance of an overspend of around £2,000 due to a disputed invoice relating to the last financial year. Any overspend can be accommodated within the overall office budget, where there is a surplus. Subgroup members asked various questions about how we manage overspend and underspend and they commented on the high volume of work that is achieved on a very small budget.
- 4.8 C N-M confirmed that we have not yet received our budget allocation from MoJ for the next financial year.

5 ROAD TESTING TO SUPPORT THE MENTAL HEALTH GUIDELINE

- 5.1 SP presented the plans for road-testing the mental health guideline. The subgroup was positive about the two-stage design and felt this was suitable within the context of limited time and resources and particularly liked the idea of piloting. AP asked about the sample and whether there would be a balance of gender. SP highlighted that we don't select by gender but we do aim to get a good demographic spread of sentencers, so some female sentencers will definitely be included.
- 5.2 The issue of self-selection bias in our research pool was raised. The team explained that whilst there is this issue, we are also doing more group testing at events, such as the MA Annual AGM, and through this we can reach a wider mix of people. RC suggested asking the Chief Magistrate to nominate judges to take part in road testing which may help to increase participation. She also suggested testing the guideline with district judges.
- 5.3 With reference to the time lag between the first and second stage of road testing, it was felt that 3-6 weeks was too long and that 2-3 weeks would work better and keep up the momentum.
- 5.4 There was some discomfort with the question in the draft topic guide about asking how the guideline may affect colleagues' behaviour. Concerns were principally around it being too anecdotal and the responses being misleading. This will now be removed.
- 5.5 SP asked the subgroup their opinion on asking participants to take part without specifically revealing that we are testing the mental health guideline (in order not to bias responses). It was agreed that we should try this, but be clear in communications about why we cannot disclose the guideline at the first stage but explain that it will be revealed before the second stage interview.
- 5.6 The subgroup was asked if they would be happy to assist with the piloting stage for this work and all agreed (MM having agreed by email, previously).

Action: SP to incorporate the tweaks to the research proposal suggested above, pilot the online work with the group in February and engage with the Chief Magistrate to nominate judges.

6 STRATEGY FOR PUBLICATION/ANALYSIS OF DATA

- 6.1 Pamela Jooman (PJ) presented a paper on options for publishing the data collected as part of the Council's bespoke data collections.
- 6.2 RC noted that a disadvantage of not publishing the data would be that the Council may receive requests for the data under the Freedom of Information Act 2000. Publishing the data therefore helps to alleviate this risk.
- 6.3 There was a discussion regarding how the data analysis included in a guideline assessment report would differ to that that might be included in a summary report published alongside a dataset (akin to the approach previously used when publishing the Crown Court Sentencing Survey data). PJ explained that an assessment report focuses on the relevant guideline and its impact, whereas a summary report would cover a lot more, including more detailed information on the prevalence of each sentencing factor and information on guilty pleas. EM added that because of this, the Crown Court Sentencing Survey summary reports were very resource-intensive to produce, and there had been little feedback from users to suggest that the reports were useful. Instead, feedback has suggested that users (predominantly academics) are only interested in accessing the data so that they can conduct their own analysis. It was concluded that in light of the limited resources available, and that since the assessment reports already provide a summary of the data, publishing the datasets without an accompanying summary report should be sufficient.
- 6.4 RC questioned the suggestion of conducting a survey with users to find out what their data needs are. EM explained that some users of the CCSS data express a preference for the data to be published in a different way. For example, sentence lengths had been grouped into bands, but some users said they would find detailed sentence lengths more useful. In order to comply with data protection legislation, the Council would need to remove other sensitive information from the datasets if this data were to be added in. Surveying users to ask which of several options they would find most useful would be an effective way of balancing the various issues. AP added that running a survey would demonstrate that the Council takes users' views into account and would help to justify the decisions made if academics came back with any queries about the published data.
- 6.5 AP suggested that the survey be widened out to capture the views of not just sentencing academics, but of other experts and users. However, as the survey would be publicised on the Sentencing Council website, it would be possible for anyone with an interest to feed in their views.
- 6.6 RC and AP agreed with the timings proposed in the paper: for the datasets to be published sometime after the publication of the relevant guideline assessment. EM added that the work to prepare and publish datasets would always be fitted around other priorities, and if higher priority work arose then timings may need to shift.

Action: A&R team to develop a plan for publishing the datasets and share this with Council members.

7 COLLABORATION WITH ACADEMICS

- 7.1 EM outlined that we had recently held a brainstorming session in the Office to gather ideas for areas where we might usefully collaborate with academics. The group discussed some of the ideas raised and were asked for any other suggestions.
- 7.2 RC suggested exploring the impact of the digital work on judges' decision making, suggesting that it may have an impact on how sentencers absorb information.
- 7.3 When discussing the public confidence project, it was suggested by SP that there were gaps in the evidence and that further work into public confidence to address these gaps would be useful.
- 7.4 When discussing totality and the potential need to do more work on this, RC asked whether we knew how often each guideline is accessed (this might be one way of identifying how many people are using the totality guideline).
- 7.5 When discussing mental health, RC highlighted that it was important to know more about hospital orders as sentencers often do not know what happens to the individual after the sentence is handed down.

Action: EM to look into the web statistics for the totality guideline

Action: EM to collate suggested ideas for subgroup to review before sending to Council

8 DATE OF NEXT MEETING

- 8.1 The dates of future meetings need to be agreed. RC and AP have a preference to attend in person, and RC has a preference to meet during the afternoon (rather than evening). As the group needs to feed progress into the Governance subgroup, it was agreed that that we would look internally at the timings of all subgroups and then get back to the group with suggested dates.

Action: EM to contact subgroup members with suggestions for dates for future meetings.