

ANALYSIS AND RESEARCH SUBGROUP MEETING 20 OCTOBER 2023 MINUTES

Members present: Simon Drew
Elaine Freer
Jo King
Johanna Robinson
Mark Wall

Members of Office
in attendance: Eliza Cardale
Charlotte Davidson
Alice Luck-Scotcher
Nic Mackenzie
Lauren Maher
Emma Marshall
Erica Mojevwe
Harriet Miles
Sharmi Nath

Apologies: Gail Peachey

1. WORK UPDATES

Social Research team

1.1 Nic Mackenzie updated the subgroup on the current work in the team and upcoming projects. The team is currently comprised of Eliza, Alice, Harriet, Gail and Nic. The team has recently published a round-up of the research activities in which sentencers have been involved over the last 12 months. This included thanking them for their contributions and encouraging more sentencers to join our research pool.

1.2 In the coming months, the team will be publishing the user testing survey analysis report, which looks at how guideline users use and interact with the Sentencing Council's website. This will be published alongside an externally commissioned Behavioural Insight Team report which explores how users access, navigate and use the guidelines. These reports were presented to the Council in September.

1.3 In the new year, they will also be publishing research to review the expanded explanations. This explored how sentencers use and interpret a selection of expanded

explanations. The selection was based on recommendations from the externally commissioned research on [Equality and diversity in the work of the Sentencing Council](#), conducted by the University of Hertfordshire, which was published in January this year. An overview of the findings from the expanded explanations report was covered in Ruth's paper on Miscellaneous Amendments in July.

1.4 Finally, the team are continuing to work on the Assessment of the impact and implementation of the Sentencing Council's Breach guidelines. Once this has been completed, it will be sent to the subgroup for comments.

1.5 Also coming up are five road testing exercises: on the imposition, blackmail, kidnap and false imprisonment, non-fatal strangulation, motoring, and immigration guidelines. The team is in the process of scoping and developing these pieces of work. They are also commissioning work to update the Council's previous literature review on [Effectiveness of sentencing options on reoffending](#) and a second piece of work to review the Sentencing Council's overarching guideline on domestic abuse, and are in the early stages of considering next steps to further explore consistency in sentencing.

1.6 Jo King asked whether we should highlight in the publications instances where changes have already taken place or where the Council has agreed on actions based on findings. This will show we are responsive and act quickly on issues. It was agreed that these instances should be made clear in the publications, if relevant and appropriate.

1.7 Jo King asked whether she could observe any of the focus groups as part of research for the development of the imposition guideline. It was agreed that the team will let her know once we have revised dates for the research.

1.8 Elaine Freer also asked whether district judges and magistrates would be in the same focus groups for the imposition research. She suggested that they should be in separate groups as the different participants may use the guideline very differently, which would affect findings. It was agreed that separate focus groups would be held for magistrates and district judges.

Statistics team

1.4 Charlotte updated the subgroup on the current work in the team and upcoming projects. The statistics team currently includes Charlotte, Sharmi, Lauren and Erica, who has recently joined the team as part of her placement year. Amber and Caroline are currently on maternity leave and Jenna is due to be returning in April from a career break.

1.5 The team are currently working to support policy colleagues across multiple offence specific guidelines, most of which are pre-consultation: the revision of the imposition guideline, and several evaluations, including for the intimidatory offences and bladed articles and offensive weapons guidelines. The team have also recently published the robbery data collection data, which was used for the robbery evaluation which was published a few years ago (permitting access to this was one of the Council's strategic objectives). In future, we hope that evaluations and their supporting data collections will be published closer together in time for better transparency and more timely use of the data.

1.6 The team are also transforming their working practices to be more cloud based and are becoming more self-serving in terms of accessing data from the Ministry of Justice (MoJ). This will be particularly helpful for accessing data sources the MoJ do not currently publish, including data on, for example, secondary disposals. They are also exploring more opportunities to

access additional data - for example on probation - to help us better explore the impact of our guidelines on probation resources.

1.7 In the coming months the statistics team will be working to improve the methodology which produces pre-guilty estimates, alongside guideline development work for the non-fatal strangulation, housing and planning, wildlife offences and protest offences guidelines. The next evaluation lined up is for arson and criminal damage, which will also have data collection evidence data to draw on.

1.8 Emma highlighted to the subgroup that work on the Common Platform continues to be explored, but this has been a challenge. Exploring new options continues to be a priority as data collection response rates from the most recent collection were lower than hoped for. Jo King offered to check the contacts she had been engaged with on the Common Platform to ensure that we are able to discuss options with the appropriate contacts in HMCTS.

Action: Emma Marshall to discuss Common Platform contacts with Jo King

1.9 Emma also flagged a concern that has arisen around whether our plans to embed a link in the Common Platform is the most appropriate approach for future data collection (on the basis that feedback has suggested that not all sentencers regularly access the platform). Simon Drew said that it is often court clerks that fill in information for the Common Platform in the Crown Court, rather than the sentencer. Jo King confirmed that in the magistrates' courts this would be the legal advisor. Emma highlighted that ideally the person filling in the form would be the sentencer, due to the nature of the information collected (e.g., culpability and harm information, aggravation and mitigation).

1.10 Further consideration of how to collect data in the future is needed as the low response rate on the recent data collection means that some of the actions from the equality and diversity work have not been able to be progressed.

2. RISK REGISTER AND TERMS OF REFERENCE FOR THE SUBGROUP

2.1 Emma Marshall talked the subgroup through changes to the risk register. Discussion focussed on the controls, actions, and risk ratings for the two main risks to consider from an analytical perspective.

2.2 The first covers the risk that guidelines are not informed by evidence and that the impact to guidelines is unknown. The controls in place include obtaining quantitative data through bespoke data collection exercises, as well as qualitative data through research exercises with sentencers. Emma briefed the subgroup that responses to the 2023 data collection exercise were lower than anticipated and that there is a backlog of data collected which is yet to be cleaned and analysed due to staff resources, although Erica will be taking forward the outstanding criminal damage data cleaning.

2.3 In relation to work to address this risk, the team is committed to exploring how it can access demographic data and is in discussions with MoJ and HMCTS to explore what could be obtained from the Common Platform (see also paragraph 1.9). The team is also scoping work on consistency in sentencing which should assist in this area. The subgroup were asked to consider if the risk rating was currently correct and due to the issues with data collection and demographic data asked to raise the impact score from 2 to 3.

2.4 The second risk concerns data protection breaches. The impact of such breaches could potentially be high, but many actions have already been taken to minimise this risk and bring it down to an overall 'low' rating. Actions include a dedicated team in the Office for data security and assurance, mandatory staff training and appropriate documentation (privacy policy and data retention schedule). Council members are also reminded of their responsibilities under GDPR at periodic intervals. The subgroup agreed that the Office were aware of the risks of data breaches and were well placed to handle these. No changes were suggested for this risk.

2.5 No comments or concerns were raised in relation to the subgroups' terms of reference.

3. UPDATE ON DOMESTIC VIOLENCE REVIEW

3.1 Harriet Miles updated the subgroup that we have recently commissioned Nottingham Trent University to conduct a review of the Overarching principles: domestic abuse guideline. At the time of discussion, the inception meeting is imminent, and the contract is in process of being signed. The agreed completion date for the project is mid-May 2024.

3.2 The review will focus on how the guideline is used in sentencing, sentencers' understanding, interpretation, implementation, application and thoughts of the guideline, as well as the impact of the presence of domestic abuse on the sentence.

3.3 The University will specifically be looking into: understanding how the guideline is being used in practice, whether there are any reported or observed impacts of the guideline on sentencing behaviour; exploring whether sentencers are content with how the guideline works in practice (including the format/functioning of the guideline itself as well as in conjunction with other guidelines); whether there are any reported issues with equality and diversity; what type of sentences are being imposed and to understand when custodial sentences are given as opposed to domestic abuse programmes; and the factors that are considered when deciding an appropriate sentence.

3.4 Nottingham Trent has proposed that the research takes a mixed-method approach, which includes the following strands:

- a survey (sample TBC)
- up to 40 qualitative interviews using hypothetical scenarios (sample TBC)
- thematic analysis of sentencing transcripts
- analysis of various data collection datasets (assault, criminal damage, stalking and harassment, and breach of a protective order)

3.5 Jo raised that the survey size, scope and sample would likely need some thought given the issues with response rates for the data collection. Emma noted non-data collection surveys have not necessarily run into the same recruitment issues, so it is possible that this will not be a significant concern for this project. However, it will be kept in mind during the design process.

Action: Harriet Miles to discuss sample characteristics for the survey and interviews in the inception meeting with Nottingham Trent University, as well as discuss ways to maximise response rates.

4. UPDATE ON OFFICIAL STATISTICS REVIEW

4.1 Charlotte Davidson updated the subgroup with regards to our statistics publications and how they are labelled. Official statistics are statistics produced by bodies and organisations listed within an official statistics order, which includes the Sentencing Council. Official statistics must comply with a legal framework - the Code of Practice for Statistics - which is framed around the principles of trustworthiness, quality, and value. As government statisticians, the team must comply with the Code of Practice in all work. Compliance to this protects the reputation of the Council and provides the public with confidence in our published statistics. Examples of official statistics produced by the team include our statistical bulletins and tables, which are sent to the A&R subgroup members prior to publication.

4.3 Some of the publications produced by the statistical team are not considered to be official statistics due to their data sources and methodologies, which mean their quality cannot be assured consistently. This includes our resource assessments and evaluations. We do not currently formally acknowledge this distinction, so we will shortly be publishing a written statement - a statement of voluntary compliance - which will apply to these publications.

4.4 The practices within the team will not be changing, as the team always work to the Code of Practice. However, given the importance of the analytical work and frequency with which the Council's work is in the public eye, the statement of voluntary compliance will provide clarification to the users of the data about the quality and methods of the team's publications.

4.5 To further ensure compliance with the code, the team will need to move towards pre-announcing their official statistics publications. This means we can demonstrate fair, open orderly release of information, so that no one group is granted beneficial access, and that data can be released without external interference. It has been agreed with the regulators that the team can pre-announce as close to 1 day before publication, (the recommendation regarding pre-announcement is 4 weeks). Previously, most work (with the exception of evaluations) was not pre-announced to avoid drawing focus away from the guidelines and consultation, where relevant.

4.6 The statistics team will be updating the Council website pages which cover our research publications, as it is also currently not acknowledged that the Sentencing Council is an official statistics producer.

5. PAPER AR23(OCT23) PROPOSAL FOR PROJECT TO LINK COUNCIL DATA TO CREATE FURTHER OPPORTUNITIES FOR ANALYSIS

5.1 Charlotte Davidson talked the subgroup through a proposal to link the Council's data collections to Ministry of Justice's linked datasets through the Data First project, funded by Administrative Data Research UK (ADR UK). This is an innovative project looking to make better use of the wealth of data within government. The linked data are then made available to fully accredited researchers who have undertaken training on data confidentiality and protection, in a trusted research environment.

5.2 Charlotte outlined the key benefits to the Council, which would include allowing both the Council and external researchers to conduct a wider range of analysis, particularly on offender demographics, for which there is currently a lack of robust data available and which is not collected through our data collections.

5.3 It is also hoped the Council would be able to consider potentially widening the types of factors considered within its analysis/evaluations by linking to and utilising data sources we have previously not been able to access, for example prisons and probation data. There is also likely to be a reputational benefit from showing that the Council is open and transparent about these data, and it would help to fulfil our strategic objective to work more with academics.

5.5 Charlotte reassured the subgroup that a robust governance process will be in place once the data is linked, allowing the Council oversight and approval of any projects submitted by researchers who wish to access our data. The exact details of such a process will be discussed at a future meeting and the Council will be asked to approve this work when we have final plans.

5.6 The main risk identified was that this project would have some resource implications since the data would need to be uploaded and linked to the courts data by analysts in the team. Emma assured the team would consider work priorities and suggested that we undertake this project over a longer period of time in order to help balance all priorities in our workplan.

5.7 Subgroup members agreed to pursue this project with MoJ data, subject to the appropriate data security and safety approvals.

Action: A&R to progress governance arrangements, draw up the necessary documents and update the subgroup on progress at a future meeting.

6. DISCUSSION ON GUILTY PLEA FIELDS IN DATA COLLECTION

6.1 Lauren Maher raised an issue seen in the findings from the Council's past data collections that has been uncovered during data cleaning. A proportion of sentencers (10 per cent in harassment and 7 per cent in bladed articles) had responded that a guilty plea was entered but the reduction given for that guilty plea which was selected by the sentencers was 'None'.

6.2 Ruth Pope has advised that there may be some exceptional circumstances in which no reduction for a guilty plea may be given, for example, if the plea was entered very late, but these would be expected to be rare. However, we have checked the data collections and it seems that in most of the cases, the plea was entered at the first hearing.

6.3 The discussion focussed on suggestions for possible reasons as to why this question may have been responded to in this way:

- the sentencer may have forgotten what the reduction was by the time they came to complete the form, or not yet known it if the form was being filled in in advance; 'None' may have been selected in lieu of 'Unknown' as this option was not included in these data collections
- Confusion related to the fact that the question did not explicitly cover a reduction in fine amount

- That the 'None' option may have been interpreted/used in lieu of 'None of the above', if the reduction they applied did not come under the other options provided in the question
- That the sentencer may have suspended the sentence to account for the guilty plea and there was no option included for suspension (sentencers may have interpreted the option 'Dropped down threshold' to not include suspension as a suspended sentence is still a custodial sentence)

Johanna suggested that the team could sense check the findings by comparing the sentences recorded pre- and post-guilty plea. For future data collections, Johanna also recommended that the sentencer is asked to provide a reason in a free text box if they do utilise the 'None' option.

Actions for future data collection survey design:

- **clarify the percentage reduction option to include reference to a reduction in fine amount**
- **rename the 'None' option to 'No guilty plea reduction'**
include additional options for 'Unknown' and an explicit response for suspension of a custodial sentence as a result of the plea
- **include a follow up question asking the sentencer to provide a reason in cases where a guilty plea is entered but no reduction is given**

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