

# **Investigation of Sentencing Data in Magistrates' Courts**

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**NatCen Social Research**

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## **Acknowledgements**

We are grateful to Sarah Poppleton and Emma Marshall and key stakeholders from the Office of the Sentencing Council for their advice, support and assistance for the duration of this research.

We would like to thank the participants, who kindly gave their time to take part in this research, for sharing their views.

We would especially like to thank the staff of HMCTS and magistrates' courts that provided their time to assist with the recruitment of participants and the retrieval of case files for this research.

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# Contents

<b>Disclaimer</b>	2
<b>1 Introduction</b>	12
<b>1.1 Background and context</b>	12
<b>1.2 Aim of the overall study</b>	12
<b>1.3 Overview of the research</b>	13
<b>1.3.1 Court visits</b>	14
<b>1.3.2 Survey of magistrates' courts</b>	15
<b>1.3.3 Review of previous magistrates' court data collection</b>	16
<b>1.4 Report structure</b>	17
<b>2 Collecting sentencing data in the magistrates' courts: current practice</b>	18
<b>2.1 Day-to-day work in magistrates' courts</b>	18
<b>2.1.1 Volume of cases</b>	18
<b>2.1.2 Provision and uptake of digital ways of working</b>	19
<b>2.2 Making sentencing decisions</b>	20
<b>2.2.1 The decision-making process</b>	20
<b>2.2.2 Legal support in the decision-making process</b>	21
<b>2.2.3 The evidence base for decision-making</b>	22
<b>2.3 Recording sentences and factors</b>	23
<b>2.3.1 Responsibility for recording sentences and factors</b>	23
<b>2.3.2 Extent of recording</b>	25
<b>2.3.3 What is recorded</b>	27
<b>3 Options for future data collection</b>	31
<b>3.1 Overview of the options and considerations</b>	31
<b>3.2 Survey approach</b>	33
<b>3.2.1 Option 1: Paper-based survey</b>	33
<b>3.2.2 Option 2: Electronic survey/PDF</b>	41
<b>3.2.3 Option 3: An online survey</b>	41
<b>3.2.4 Option 4: Digital survey linked to platform</b>	42
<b>3.2.5 Questionnaire options for an online or digital questionnaire</b>	45
<b>3.3 Routine, census approach</b>	47
<b>3.3.1 Option 5: A paper-based census</b>	47
<b>3.3.2 Option 6: A platform-based census</b>	48
<b>4 Conclusions and recommendations</b>	49
<b>4.1 Conclusions</b>	49
<b>4.2 Overall recommendations</b>	50
<b>4.3 Survey recommendations</b>	52

<b>4.4 Digital recommendations</b> .....	53
<b>4.5 Summary table for sentencing factor data collection approaches</b>	54
Appendix A: Methodology .....	60
Appendix B: Summarised topic guide for court visits.....	64
Appendix C: Description of roles .....	66
Appendix D: Survey questionnaire .....	67
Appendix E: Survey tables .....	77
Appendix F: Assault data collection survey .....	86

# Executive Summary

## Background

The Office of the Sentencing Council (OSC) commissioned NatCen Social Research to explore what is currently available and what is potentially available in the way of sentencing information in magistrates' courts. While there was some understanding that sentencing data may already exist in the courts, the OSC required a more comprehensive view of how sentencing data is collected, recorded and used in magistrates' courts in order to support the future development, monitoring and evaluation of sentencing guidelines.

## Methodology

The research comprised three strands (detailed below) and applied a multi-methods approach, combining qualitative, quantitative and desk-based research methods. It was conducted with attention to the current digitalisation programme for the criminal justice system – the Ministry of Justice's (MoJ) commitment to shift from a paper-based environment to a digital way of working in courts and the wider criminal justice system – and so each method took account of the shifting context as digitalisation is rolled out. In addition to the approaches set out below, five telephone interviews were conducted throughout the lifespan of the project with stakeholders involved in the digitalisation of the magistrates' courts for orientation purposes.

- 1) **Court visits:** Case study visits to seven courts, one from each of the Her Majesty's Courts and Tribunals Service (HMCTS) regions. Each visit comprised between two and four interviews and a review of between seven and 12 court case files<sup>1</sup>. A total of 21 interviews were conducted with legal advisers, legal managers, deputy justices' clerks, justices' clerks, magistrates and district judges<sup>2</sup>. A total of 59 case files were reviewed on-site to examine what data was being recorded on factors which may contribute to a sentencing decision.
- 2) **Survey of magistrates' courts:** Based on initial findings from the *court visits*, NatCen designed and administered an online survey to gather data on court specifics<sup>3</sup>, current practice in recording sentencing decision-making and opportunities to collect sentencing data in the future. The invitation to complete

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<sup>1</sup> A case file may include a range of documents. The minimum would be the charge sheet, a statement of finances and any previous convictions. Additional documents could include a bail sheet, legal adviser notes, warrants, character references or preparation for effective trial sheet.

<sup>2</sup> A summary of the topic guide used in these visits can be found in Appendix B.

<sup>3</sup> This included details of the responding court and their involvement in pilots in relation to court digitalisation. The full questionnaire can be found in Appendix D.

the survey was targeted toward individuals working in case management roles. A total of 109 responses were received from 79 different magistrates' courts, predominantly from legal advisers and legal managers.

- 3) ***Review of previous magistrates' court data collection:*** As part of the desk-based research, five telephone interviews were conducted with stakeholders to provide context and learning around a recent data collection in the magistrates' court, commissioned to establish users' views of the structure, wording and practice of using the Assault Guideline. A review of this data collection exercise was conducted to inform any future data collection methods which the OSC may wish to employ, to maximise efficiency in administration, maximise response rates and understand the level of potential burden that it may place on court staff<sup>4</sup>.

### **Research findings**

Understanding current practice around how data is recorded and used is essential when considering how data capturing processes are to be introduced. This research provides an important insight into areas of good practice, possibilities and constraints on collecting sentencing data. This is particularly pertinent as the OSC looks to conduct data collection in magistrates' courts to inform guideline development and monitoring.

#### Sentencing data in current practice

Interviewees expressed the view that if sentencing data is to be recorded as standard practice, the aim should be to attain national conformity and consistency across courts. Legal advisers and deputy justices' clerks have a role to brief and advise magistrates of the relevant case information and ensure that they are adhering to the sentencing guidelines. Their role is key in the use, collection and updating of information relating to the sentencing of cases.

Interviews with individuals occupying these roles revealed that currently, there is no national or local consistent approach to capturing sentencing data. Whilst sentencing decisions are recorded in a systematic way for every case, factors which led to that sentencing decision are not. Reasons for this include restrictions on time, burden, questions around how the information would be used, and the fact that such records are not required for magistrates' courts. Interviewees explained the requirement that sentencing factors be recorded for cases given a custodial sentence, a sentence that departs significantly from the guidelines, and sentences increased to reflect hate/racial

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<sup>4</sup> Since this time, further data collection has been undertaken in magistrates' courts to explore selected offences in the theft and drugs guidelines.

aggravation aspects of an offence. However, analysis of the case file review data showed that despite this, sentencing factors are not always recorded in these cases.

Further analysis of the case files showed that the key information about a defendant, the charge, sentence and whether credit for a guilty plea had been given were regularly recorded on the court folder<sup>5</sup>, which contributes to the larger composite case file. Other documents which could be found within the case file typically included a combination of legal adviser notes, charge sheet, bail sheet, statement of finances, pre-sentence report (PSR), character references and warrants, however this list is not exhaustive.

### Options for future data collection

The *survey of magistrates' courts* was useful in identifying the current level of digitalisation across different courts. The survey found take-up of Wi-Fi in court and retiring rooms was the furthest advanced element of digitalisation at this time. Uptake of other aspects of digital working, including the use of digital files and iPads or tablets, and the use of E-judiciary email accounts by magistrates varied considerably. There are various elements to consider in the roll-out of a digital approach, including hardware, software, security, Wi-Fi stability and IT capabilities<sup>6</sup>. Currently, magistrates and district judges have little direct contact with case files and there is no expectation that this will change with digitalisation although there were suggestions that these roles may be best placed to record sentencing factors in the future as they make their decisions. Whilst the process of implementing digitalisation across courts will take time, the suitability of different roles to collect any data on sentencing factors should be considered at this early stage.

The *review of previous magistrates' court data collection* highlighted the important points that any future data collection strategy should incorporate a robust sampling method, a reasonable period of time for data collection, employ a user-friendly method of completion, consider the format and routing of questioning to allow easy navigation, contain specific and clear instructions which have been cognitively tested, and explicitly communicate the reasons behind the data collection exercise in order to encourage engagement.

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<sup>5</sup> A court folder comprises four sides of text boxes (spread across both the inside and outside of the cardboard cover) onto which key information may be recorded. The information includes: defendant's personal details, basic offence details, dates of hearings, the recording of the sentence outcome and details (such as specific orders, fines or duration).

<sup>6</sup> It was noted that legal advisers may take time to get to the speed required for annotating digital records during the court session, as is expected with the introduction of digital mark-up (DMU).

## **Key recommendations**

The combined research elements indicate that in due course the optimal route to gathering sentencing decision data may be to capture it from an embedded digital system. This may be via 'sentencing factors' tabs in the system or from embedded online survey links that could be completed as part of the case administration at the point of sentencing, or near to it. The benefits of using such a system to administer this data collection include the embedding of the practice into everyday processes (rather than having to design and implement bespoke survey operations) and the ability to link to the wider range of contextual data.

Such an embedded digital system remains a somewhat distant ideal as digitalisation is still being rolled out. The design of the data capture interface, provision of hardware and knowledge of who will be in place to submit the data are currently unclear. The OSC may be well-placed to inform decision-making about the data capture tool design, but the other issues fall beyond its scope.

Evidence in this study also suggests that the routine collection of detail for every case would be a substantial additional burden for staff and may not provide additional analytical options for the OSC. A sampling approach linked to case characteristics is likely to be required which aligns with the OSC's analytical strategy.

In the shorter term, conducting periodic surveys to gather data on a specific offence type over a set period are most likely to be the optimal means of data collection. There are considerable sampling and process issues for the OSC to consider in conducting surveys. The *review of previous magistrates' court data collection* indicates that a paper-based survey may only offer a partial solution due to limited information with which to plan sampling and issues with response. Therefore, paper forms currently represent the most likely mode due to the limitations of access to email and Wi-Fi and the complexities and expense introduced by providing multiple modes. Electronic (PDF) versions of the paper form could be used, although this is unlikely to add to response whilst adding to the complexity of procedures to be implemented.

Our recommendation to the OSC is therefore to engage with the planning for digitalisation to determine how any case administration process data capture tool could be tailored to incorporate the needs for data monitoring and evaluation. Basic case information could be used for sampling and electronic capture in 'Sentencing Factors' tabs or via online surveys which could then be used to capture more detailed sentencing factor information for selected cases.

## **Glossary**

### **Assault Definitive Guideline**

The Sentencing Council's 'Assault Definitive Guideline' applies to all offenders aged 18 and over sentenced on or after 13 June 2011, regardless of the date of offence.

### **Bench Solution**

Bench Solution is the programme to provide the hardware to support the Criminal Justice System (CJS) efficiency programme (see below).

### **Case file**

Refers inclusively to the full set of documents linked to a case and the court folder in which any paper documents are held.

### **CJS efficiency programme**

The CJS efficiency programme focuses on building tools to facilitate digital sharing of case-related materials, documents and evidence between the police, the Crown Prosecution Service and courts. This programme aims to make the process of recording sentencing data completely paperless.

### **Common platform**

The common platform is a single case management system which will allow the sharing of evidence and case information across the CJS, with all relevant parties able to access common data digitally.

### **Court folder**

Refers to the hard-copy folder within which paper files about the case may be held and onto which some data is recorded during court hearings.

### **Court Store**

A digital drive which will be rolled-out as part of digitalisation. The drive is essentially an electronic filing facility for storing evidential files attached to a case.

### **CREST**

The Crown Court's case management system.

## **Digital mark-up (DMU)**

Digital mark-up is a provision for digital records to be annotated and updated whilst the court is in session.

## **E-judiciary**

The E-judiciary project will provide all magistrates with Office 365 package and their own email address (name@ejudiciary.net)

## **Libra**

The electronic case management system used in magistrates' courts to record information about cases.

## **Survey of magistrates' courts**

The survey about recording of sentencing data that NatCen conducted as Approach 2 of this research.

## **Abbreviations**

CCSS	Crown Court Sentencing Survey
CJS	Criminal Justice System
GAP	Guilty anticipated plea (court): 'Anticipated guilty plea' cases are listed within 14 days of charge, with the aim of dealing with them in one hearing
GSR	Government Social Research
HMCTS	Her Majesty's Courts and Tribunal Service
LJA	Local Justice Area
MoJ	Ministry of Justice
NGAP	Not-guilty anticipated plea (court): 'Anticipated not guilty' plea cases will be listed 28 days after charge, allowing time for review and preparation before the first hearing
OSC	Office of the Sentencing Council
PSR	Pre-sentence report
REC	Research Ethics Committee

# **1 Introduction**

NatCen Social Research was commissioned by the Office of the Sentencing Council (OSC) to establish what forms of information on sentencing (sentencing data) are or could be available in magistrates' courts and also to explore options for data collection. Sentencing data includes information used in making sentencing decisions, as well as information about the sentence given, such as the reduction in sentence given for a guilty plea.

## **1.1 Background and context**

The Sentencing Council was set up in 2010 and produces guidelines for all members of the judiciary. Analysis and research are integral to the Council's work, and are used by the OSC both in developing the sentencing guidelines and then in monitoring and evaluating them.

To date the OSC has concentrated its quantitative data collection and analysis efforts within the Crown Courts – through a primary data collection exercise (the Crown Court Sentencing Survey; CCSS); information collected by the Ministry of Justice (MoJ) from the Crown Court CREST system, and the purchase and analysis of sentencing remark transcripts. Some, but limited, quantitative data has been obtained from magistrates' courts for analysis – through small surveys with magistrates and district judges – and interviews and observation of sentencing hearings has provided some qualitative data. The OSC is now also looking to gather more systematic sentencing data from the magistrates' courts, and the research presented here was commissioned to assist it in this development.

## **1.2 Aim of the overall study**

The research was conducted to identify the most appropriate ways for the OSC to engage with magistrates' courts in gathering more systematic sentencing data for both developing and reviewing sentencing guidelines. Its work on guideline development requires information relating to guideline starting points and ranges, levels of harm and culpability and aggravating and mitigating factors. In order to review guidelines, the OSC requires information on how sentencing factors are used to assess offence seriousness and to inform sentences handed down, and also information on the level of reduction in sentence given for a guilty plea. This information about sentencing factors in the magistrates' courts is not available in existing published datasets or data held elsewhere within the Criminal Justice System (CJS).

The specific aims of the project were three-fold:

- to profile the sentencing data currently held in magistrates' courts;
- to identify what potentially could be captured from magistrates' courts; and
- to outline the advantages and possible consequences of gathering the data in different ways.

The ultimate objective of the research is to provide clear, evidence-based recommendations to the OSC on the optimal way(s) to collect sentencing data from magistrates' courts. The recommendations take into consideration the accessibility and quality of the data, the burden or ease of its collection, and the demands that collection may place on the OSC itself.

It is important to note that this development is taking place in the context of significant changes to the landscape of magistrates' courts and the digitalisation<sup>7</sup> of their operation. Digitalisation of the courts incorporates many different elements, which are all at varying stages of development, implementation and roll-out. The recommendations provided seek to take account of the ways in which digitalisation could influence the collection of sentencing data, but note that this is a developing arena.

### **1.3 Overview of the research**

The study involved three different strands bringing together: *court visits* comprising interviews and case file reviews in selected magistrates' courts (Approach 1); a *survey of magistrates' courts'* current practice and potential future options (Approach 2); and a *review of previous magistrates' courts data collection* which was a previous small data collection exercise on assault (Approach 3). The methodology of each are summarised here and detailed in Appendix A. The research was conducted between July 2015 and March 2016.

The research strands were requirements of the OSC commission, but their exact form was refined as the project developed. Insights from one strand informed the scope and conduct of others. Each strand was subjected to approval from the NatCen Research Ethics Committee (REC) prior to commencing. The NatCen REC follows the principles set out by Government Social Research (GSR). The three research strands were contextualised by brief interviews with OSC staff and stakeholders who detailed specific aspects of magistrates' court processes, plans for and implementation of court digitalisation and the recording of sentencing data from magistrates' courts to date.

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<sup>7</sup> <http://www.justice.gov.uk/about/criminal-justice-system-efficiency-programme/>

### 1.3.1 Court visits (Approach 1)

The aim of Approach 1 was to provide detailed insight into the current practice of making and recording sentencing decisions in magistrates' courts and to inform the key considerations in setting out the realistic options for gathering sentencing data in the future. Fieldwork took place between October and December 2015.

The strand involved research in seven courts, one from each of Her Majesty's Courts and Tribunal Service (HMCTS) regions. Courts were chosen by the OSC as being one of the main courts in their respective regions. In each court, the research entailed interviews with two to four people delivering or supporting the delivery of justice (legal advisers, legal team managers, deputy justices' clerks, magistrates and district judges) and a content analysis of seven to 12 case files (from a sample of 15 per court selected by the OSC from MoJ management data). A bespoke topic guide was developed in consultation with the OSC; Appendix B is a summarised version of the topic guide (probes and prompts were used in response to the discussion). The data provided insight into what is being recorded, perspectives on how and why only some details are recorded, and reflections on what is expected to change with digitalisation and what may be possible for data collection and monitoring in the future.

Twenty one interviews were conducted across the seven courts. As Table 1 below shows, 12 were with legal staff (legal advisers, legal team managers and deputy justices' clerks) and nine with the magistracy and judiciary (including Bench Chairmen<sup>8</sup> and district judges). These roles are central to sentencing within magistrates' courts; each role is outlined in Appendix C.

Legal staff	No.	Magistracy and judiciary	No.
Legal advisers	7	Magistrates	5
Legal team managers	2	(of whom Bench Chairmen)	(2)
Deputy justices' clerks	3	District judges	4
<b>Total</b>	<b>12</b>		<b>9</b>

<sup>8</sup> Bench Chairmen are elected annually by all magistrates on their bench; they keep magistrates informed about changes and engage with other agencies: <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/bench-chairmen/>

The overall sample of 105<sup>9</sup> case files was selected by the OSC to include a range of offence types, pleas and sentences. From this sample, 59<sup>10</sup> in total were reviewed (on site in each case) using a pro-forma approved by the OSC. In this report, ‘case file’<sup>11</sup> refers to the full set of documents linked to a case, whether paper or digital documents. Each case file includes a ‘court folder’<sup>12</sup>, a hard-copy folder within which paper files are held and onto which some data is recorded.<sup>13</sup> The case files reviewed for this study included some which were entirely held on paper and some which were partly held as digital files. Table 2 below shows the number that were paper and part-digital, and the range of offence types included in the sample reviewed.

Table 2. Case file reviews conducted for Approach 1

Type of file	No.	Type of offence	No.
Paper-only	42	Interpersonal (e.g. domestic abuse, assault, harassment)	16
Part-digital	17	Drugs	4
		Driving	10
		Theft	4
		Other (e.g. excess alcohol, unnecessary obstruction, breach of Probation Order)	11
		Not recorded	14
<b>Totals</b>	<b>59</b>		<b>59</b>

### 1.3.2 Survey of magistrates’ courts (Approach 2)

The interim findings from the courts in Approach 1 contributed to the design of a survey of all magistrates’ courts. The survey was conducted to provide an overview of how the courts are currently gathering sentencing data, and to gather views on future options. It

<sup>9</sup> This equated to the researchers reviewing up to 15 case files at each of the seven courts.

<sup>10</sup> The researchers were provided with a sample of 15 case files at each court and reviewed as many as possible within the time constraints of the court visit. Due to varying levels of file content, this equated to 59 files being reviewed across the seven courts.

<sup>11</sup> A case file may include a range of documents. The minimum would be the charge sheet, a statement of finances and any previous convictions. Additional documents could include a bail sheet, legal adviser notes, warrants, character references or preparation for effective trial sheet.

<sup>12</sup> In a very few number of cases, no court folder was present, as these were considered minor offences such as non-payments of fines, and so the case file in its entirety consisted of only one or two documents.

<sup>13</sup> A court folder comprises four sides of text boxes (spread across both the inside and outside of the cardboard cover) onto which key information may be recorded. The information includes: defendant’s personal details, basic offence details, dates of hearings, the recording of the sentence outcome and details (such as specific orders, fines or duration).

was developed in consultation with the OSC; a copy can be found in Appendix D. The survey included questions on the following topics:

- **Background:** respondent's court and role;
- **Digitalisation:** availability and take up of digital resources;
- **Current practice in recording sentencing decisions:** whether and how sentencing factors and detailed decision-making are recorded; and
- **Opportunities for data collection:** how any future data collections can be made as efficient as possible.

All 224 magistrates' courts were to be sent a link to the short online survey via justices' clerks in early December 2015. The distribution process proved to be uneven across courts and as a result some courts may not have received the link. The survey was open for six weeks and 104 responses were received from 79 different courts. Some respondents had replied on behalf of several courts and this was taken into account in the weighting of the data. Table 3 below shows that most surveys were completed by legal advisers (around one third) or legal team managers (around one third). As the number of participating courts was low, the resulting data should be interpreted as indicative only.

Table 3. Survey respondents' roles, across the 79 individual courts participating	
Respondents' roles at the court	%
Legal adviser	37
Legal team manager	37
Justices' clerk	20
Deputy justices' clerk	5
District judge	1
<b>Total</b>	<b>100</b>

### 1.3.3 *Review of previous magistrates' court data collection (Approach 3)*

Approach 3 involved investigating the lessons to be learnt from a previous data collection in the magistrates' courts looking at the assault guideline, conducted in 2015. The data collection exercise was designed to provide the OSC with insight into how the guideline is being used in magistrates' courts and whether any changes are required. Such data was already available covering Crown Courts from the CCSS, including detail not available elsewhere on culpability, harm, aggravating and mitigating factors. As no such information on the nature of decision-making was available for cases sentenced in

magistrates' courts, the OSC commissioned a small exercise similar to the CCSS with a sample of assault cases (common assault, assault on police constable, assault with intent to resist arrest, assault occasioning in bodily harm). The survey ran for six weeks from 5<sup>th</sup> January to 13<sup>th</sup> February. In total, 339 responses were received. A copy of the data collection instrument can be found in Appendix F.

The assault data collection provided potential insights into how sentencing data could be gathered in the future. Therefore it was included as an additional source of information for this research. Five interviews were conducted with individuals from magistrates' courts and the OSC who had been involved in the survey and the survey documentation was reviewed. Additionally, written feedback on the process from the contractor was made available to the research team. The purpose of the *review of previous magistrates' court data collection* was four-fold, to determine:

- What changes may be needed to run a similar exercise in a more efficient way;
- What burden the exercise may put on magistrates/district judges and court staff;
- The best way to maximise response rates; and
- The likely value of collecting primary data over and above utilising existing data.

The *review* informed the development of the topic guide for the Approach 1 *court visit* interviews, as well as the *survey of magistrates' courts* content. It also informed the overall recommendations on options for future data collection.

## 1.4 Report structure

**Chapter 2** presents the combined findings from the *court visits*, the *survey of magistrates' courts*, and the *review of previous magistrates' court data collection*. It starts by outlining the flow of cases in magistrates' courts, and then proceeds to outline the order of sentencing procedures before setting out how data is currently gathered. **Chapter 3** discusses the options for future data collection. It includes methodological considerations as well as approaches that could be adopted. Recommendations and conclusions are summarised in **Chapter 4**.

## 2 Collecting sentencing data in the magistrates' courts: current practice

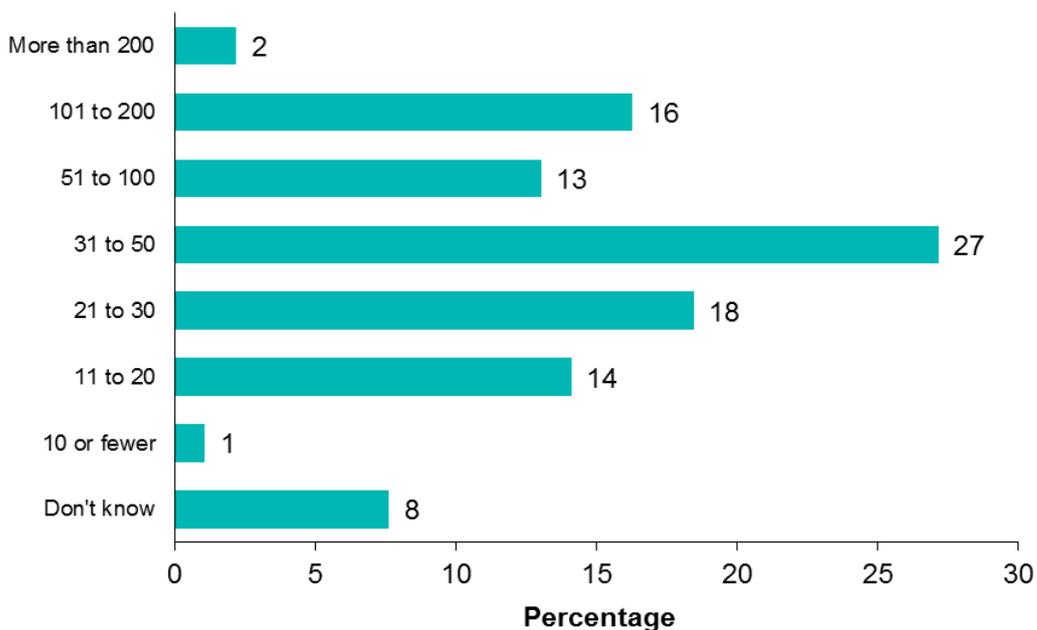
This chapter combines the findings from the three research strands on current practice. It shows the volume of cases heard by courts, how sentencing decisions are made, what is recorded on sentencing factors, and how digitalisation influences practice.

### 2.1 Day-to-day work in magistrates' courts

#### 2.1.1 Volume of cases

Courts reported considerable variation in the volume of cases they hear in a day; some cases are heard and sentenced, others heard and adjourned and others sent for trial. In the *survey of magistrates' courts*, courts reported hearing between 10 and over 200 cases a day; although the most common report was of between 31 and 50 cases (27% gave this response). The range is shown in Figure 1; note that given the small number of courts responding, this is only indicative of the volume of cases courts process.

Figure 1. How many cases each court hears in a typical day



Unweighted base: 79

Weighted base: 92<sup>14</sup>

<sup>14</sup> The survey data has been weighted. The purpose of these weights is to allow the analysis to be adjusted to better represent the population. The unweighted base shows the total number of cases in the variable before any weighting has been applied.

The number of cases heard per day is partly determined by the nature of the court (for example whether a large metropolitan court or smaller court serving a semi-urban area) and the purpose of session. Three types of session were identified by interviewees: guilty anticipated plea (GAP)<sup>15</sup> courts dealing with cases for which guilty pleas are anticipated; not guilty anticipated plea (NGAP)<sup>16</sup> courts; and dedicated traffic courts<sup>17</sup>. As hearings are typically very brief for traffic courts, they hear considerably more cases per session. As hearings are expected to be more brief with a guilty plea than a non-guilty plea, listings for GAP courts (averaging 30 cases) are reportedly longer than for NGAP courts (averaging 10), according to interviews conducted as part of the *court visits*.

### 2.1.2 Provision and uptake of digital ways of working

As part of the government's commitment to digitalisation of the CJS, an extensive programme of digitalisation is being rolled out across magistrates' courts.<sup>18</sup> The *survey of magistrates' courts* asked respondents to estimate the provision and uptake of key aspects of digitalisation. The courts are evidently at very different stages of digitalisation, and it will take time before all will be familiar with the systems.

One element of digital working which was reported at the time of the survey as being more uniformly advanced across courts is the provision of Wi-Fi in courtrooms and retiring rooms. The aim is to support the wider digital infrastructure (i.e. the E-judiciary software<sup>19</sup> and the Bench Solution provision of tablets)<sup>20</sup>. At the time of the survey (late 2015) over half (54%) of survey respondents reported that they had Wi-Fi access in the courtroom and retiring room, and another 18% in the courtroom only (Appendix E. Table 10).

The use of secure hardware was reported to vary more widely. When asked about the use of iPads, tablets or laptops in their court, 40% of survey respondents said all district judges use them, whilst 34% said that none were using them and 16% did not know (the remaining 10% gave a range of estimates about the prevalence of use; Appendix E. Table 9). When asked about their use among magistrates, 79% of respondents estimated

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<sup>15</sup> See Glossary for definition of GAP court.

<sup>16</sup> See Glossary for definition of NGAP court.

<sup>17</sup> <https://www.gov.uk/government/news/traffic-courts-in-every-area>

<sup>18</sup> Digitalisation is here being used as intended by the Ministry of Justice: "By digital we mean internet-enabled: such as desktop, laptop, tablet, mobile or digital devices not yet invented. We also include video and non-networked digital devices such as kiosks."

<http://open.justice.gov.uk/digital-strategy/>

<sup>19</sup> The E-judiciary programme will provide all magistrates with the Office 365 package and their own email address (name@ejudiciary.net) so they can work digitally with appropriate security.

<sup>20</sup> The Bench Solution programme will provide the hardware for the wider efficiency programme.

that either up to a quarter or up to half of magistrates use them, and none thought all were using them (Appendix E. Table 8). As the Bench Solution programme of secure hardware is in the early stages of roll-out in a small number of courts (at the time of this research), it is understood that at least some magistrates are currently using their own personal devices.

The E-judiciary project aims to give magistrates the Office 365 package and their own court email address, which they have not traditionally had as volunteers. A fairly small proportion of survey respondents, 15%, reported all or most magistrates were using an E-judiciary email for court business. Nearly half (48%) said some of them use it, while nearly a third (30%) did not know how many use it (Appendix E. Table 6).

Digital mark-up (DMU) is a provision for digital records to be annotated and updated whilst the court is in session. It was being trialled at two of the seven courts included in Approach 1 (*court visits*).

## **2.2 Making sentencing decisions**

This section details the process by which sentencing decisions are made, the support given by legal advisers and the evidence base on which the decisions are made.

### **2.2.1 The decision-making process**

The sentencing process is fundamentally equivalent for any defendant found or pleading guilty as it is led by the sentencing guidelines. However, the exact process for decision-making, its evidence base and speed can vary depending on the type of court session in which the case is heard. The three court types repeatedly referenced in this research are GAP (guilty anticipated plea), NGAP (not guilty anticipated plea) and traffic courts.

When sentencing, the prosecution sets out the case, the defence outlines any factors they consider should be taken into account in sentencing, and a pre-sentence report is presented if requested. Legal advisers explained that they may add to this if they think relevant detail in the case file has not been mentioned, or if the significance of a factor has been overstated or misrepresented. Magistrates may ask questions about the case, or ask the legal adviser for their guidance, and will then discuss their decision.

The more straightforward a case is considered to be, the quicker the decision-making process and less extensive the evidence base on which it is determined. Interviewees explained that a high proportion of cases heard by traffic courts, for example, are not attended nor contested by the defendant, and the sentencing can be particularly quick.

Similarly, where a defendant pleads guilty at or before a GAP hearing, less evidence is typically considered by the magistrates in determining their sentence than at an NGAP hearing where a fuller set of evidence is available. Examples of differences included additional witness statements and photographic evidence not usually being provided at GAP hearings – although there may be exceptions to this in any individual case.

Sentencing may be conducted by a different bench to that which heard the original evidence, especially in NGAP cases but also in some GAP cases. This reportedly occurs if, for example, a written Pre-Sentence Report (PSR) needs to be prepared over a few days. There were differing views on whether this presents issues for decision-making. One view was that the sentencing bench may not have a sufficiently detailed picture of relevant factors to tailor the sentence precisely to the defendant and their offence(s). This could motivate magistrates/district judges to ensure they sentenced cases they heard and they could do this by reserving the sentencing hearing for themselves. A contrasting view was that there would be sufficient information from the prosecution and defence in their summary before sentencing and the sentencing bench could still ask questions of both parties if they did not feel the picture was clear enough.

### **2.2.2 Legal support in the decision-making process**

Magistrates or district judges are responsible for deciding on the appropriate sentence, but are supported in making the decision by legally-trained staff: legal advisers; court associates; deputy justices' clerks; and legal team managers (all roles are described in Appendix C). Legal staff may work across a Local Justice Area (LJA), but at least one will be present in court. As magistrates are not legally qualified, legal advisers sit with magistrates; court associates sit with district judges. Justices' clerks have a broader role so are less directly engaged in facilitating decision-making in individual court cases.

The research found that legal staff have closer engagement with the case files than magistrates/district judges. Legal advisers hold the court folder and will also have access to any digital file components. Magistrates/district judges by contrast will have only the charge sheet and a list of any previous convictions. At the time of the research, it was reported that even magistrates who used a personal digital device cannot access the files on it as they are not secure, court-issued devices. Where requested, a written PSR will also be given to the magistrates, but most PSRs will be presented orally in open court, if requested at all.

In some courts, it was reported that legal advisers have around half an hour before the morning court starts to brief the magistrates on cases being heard that day. In other

courts, interviewees said that there is no time for a briefing, although legal advisers may review cases ahead of court. In either setting, the focus of attention is on unique or complex cases, checking the sentencing guidelines and identifying the key sentencing factors in the case.

Legal advisers and deputy justices' clerks have a role in advising the magistrates and district judges of the relevant sentencing guidelines. Although magistrates will access these themselves, legal staff may be able to provide a more detailed interpretation of the guidelines or may be more familiar with guidelines for unique or complex offences. When the bench is making its sentencing decision, the legal adviser or deputy justices' clerk can play an active role – guiding magistrates as to where the starting point might be for such a case, asking magistrates to explain why they are considering departing from the guidelines or reminding magistrates of constraints on particular sentences (for example, unpaid work cannot be given to someone on Disability Living Allowance). In the interviews, legal advisers reported that they do indeed challenge the bench to explain or reconsider their decision if it departs from the guidelines or is not legally appropriate.

### **2.2.3 The evidence base for decision-making**

Interviewees reported that the sentencing guidelines provide the core basis for decision-making on all sentences. Their introduction was described as a significantly positive step for decision-making by encouraging consistent and uniform sentencing practice. However, it was appreciated that sentencing can still depart from the guidelines as long as the reasoning can be explained.

The sentencing decisions are informed by factors outlined in the sentencing guidelines – culpability and harm, aggravation and mitigation – but the offence type was described as also influencing the extent to which magistrates can interpret sentencing guidelines. A minor traffic offence, for example, was described as straightforward in its sentencing, with offences involving interpersonal violence providing more scope for judgement.

Magistrates and district judges described their sentencing decisions as being based on the verbal presentation and discussion of the case, either at trial or sentencing hearing, including oral PSRs. In a trial, this may be supplemented with images of evidence and written witness statements, but legal staff explained that magistrates will not see the full case file so rely on the evidence of the case as it is presented to them in the session. The exception would be where a written PSR is provided, as this would be read by the bench before sentencing. A PSR will typically include risk assessments, evidence of aggravating and mitigating factors and sentencing recommendations, specifying the options to be

considered if the bench is interested in achieving a particular outcome or concerned to avoid a particular risk. An example from the case file review was a PSR recommending a community sentence with a very specific electronic tagging regime so the offender could continue their work/studies.

Written PSRs could be a valuable source of sentencing data, as interviewees explained that the recommendations are typically accepted by the bench. However, written PSRs are rare and becoming more so according to interviewees. The PSR also only makes a recommendation and it may be that the bench chooses to sentence differently and take other factors into account.

The case file review also showed that a number of other documents could be included in the paper or digital files. The documents included character statements in support of defendants, case management forms, warrants and movement notices from prisons or remand and drug test results. Although it was unclear how regularly these were used to inform sentencing, legal advisers described informing magistrates about other factors included in the full case file to add to their understanding of a case at sentencing, or to challenge the interpretation of evidence as presented by the prosecution or defence.

## **2.3 Recording sentences and factors**

This section explains how the sentencing decision is recorded: who records it; what information is retained; and in what format(s). It also highlights what the research found on the availability, and the informal and formal recording, of sentencing factors.

### **2.3.1 Responsibility for recording sentences and factors**

Sentencing decisions are recorded through a two-step process and underlying reasons for the sentence may or may not be recorded as part of this. The first part is performed by the legal adviser, deputy justices' clerk or court associate after the decision. They annotate the hard copy court folder (even in courts which also use digital files) with key categories (details of the defendant, charge, plea, hearing, sentence outcome, financial information and credit for guilty plea) and may add explanatory information. Magistrates or district judges may separately note their decision-making to use with the pronouncement card (a way of structuring the sentence to be announced to the defendant and court) but any note they write is not a formal court document and, if produced at all, is typically disposed of after sentencing. The case file review found handwritten notes but no basis for their retention.

The second part of the process is conducted outside of the courtroom by court 'resulters': administrative staff who log the key details of a case and outcome on the Libra case management system<sup>21</sup>. There are some time limits operating in some courts for resulting a case: custodial cases must be resulted within an hour, cases involving domestic violence (regardless of the sentence) must be resulted within the day in order that the police can be quickly informed of the outcome, and any driving disqualification sentences must be resulted within 24 hours. Otherwise, if a legal adviser is to complete their notes later in the day, the resalter may input the information onto Libra at the end of the day or the following morning.

This means that there are currently two main locations for recording sentencing data. The ultimate and most accessible record is the Libra case management system which HMCTS draws on for monitoring information about cases and sentences. It does not hold data on sentencing factors as these are not resulted even where written down.

The more comprehensive but less accessible record is the court folder onto which legal staff write sentence details and may record sentencing factors. Key court folder content is resulted in Libra but sentencing factors are not. Digitalisation may introduce a digital folder but had not done so where digital mark-up was being trialled (two of the seven courts in this research).

There is also an additional location – specific offence forms. These are forms used to record or make note of sentencing factors on all or specific offences, but are less used. A small minority of courts used what they described as a 'national form' for magistrates, district judges or Bench Chairmen to record sentencing factors. Others said such a form had been used to capture this data but that currently there is no standard form used in their court to record sentencing data, nor were they using any local forms for this purpose.

Digitalisation is expected to bring digital mark-up into the courtroom, so legal advisers will annotate records digitally when the court is in session. There were concerns that this will slow down the court process. Magistrates and district judges have little direct contact with the case files, and there was no immediate expectation that they will have a role in updating or contributing to the records directly.

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<sup>21</sup> See glossary.

### 2.3.2 Extent of recording

In discussing how sentencing decisions are recorded, interviewees emphasised that, as magistrates' courts are not a court of record,<sup>22</sup> neither the recording infrastructure nor routine practice of court administration retain a great deal of sentencing data. The Libra case management system does log key data at the end of a case: on offence(s), defendant, sentence for each offence, and whether credit was given for a guilty plea. However, the factors contributing to the sentencing decision, the reduction in sentence given for a guilty plea, and the stage of plea are not routinely logged on Libra.

Interviewees reported that the reasoning for the sentence does not need to be recorded as a matter of course, but the research identified situations in which the reasoning should be explained and recorded on the court folder: custodial sentences; sentences that depart significantly from the guidelines; and sentences increased to reflect hate/racial aggravation aspects of an offence. A range of views were expressed by interviewees as to whether they considered the recording of sentencing factors in these situations to be a legal requirement or a personal choice. There may also be other situations in which magistrates and district judges choose to note sentencing factors, but these were not identified as a requirement. The case file review indicated that recording of the reasons for the sentence is inconsistent - sometimes sentencing factors that are not specifically required are recorded, and in other cases factors which should be recorded and noted on the court folder (such as for cases with custodial sentences or hate crime elements) are not.

Of the 59 files reviewed, 23 included mention of key sentencing factors, but only for 10 files were these factors recorded on the court folder rather than referenced in the case file (for example, in a PSR). The 23 case files (and the sub-set of 10) included cases which fit the conditions for recording to be required: a sentence was extended to reflect a hate crime element or a custodial sentence had been given. As the court folder did not include explanations of why sentencing factors were being recorded, it was not possible to identify sentences which departed significantly from the guidelines. The 23 case files also included those where sentencing factors were recorded even though they did not meet the conditions for recording to be required. Of the 36 files which did not include mention of key sentencing factors, either within the case file or on the court folder, some did have grounds for recording sentencing factors – specifically, for three custodial sentences the sentencing factors were not stated.

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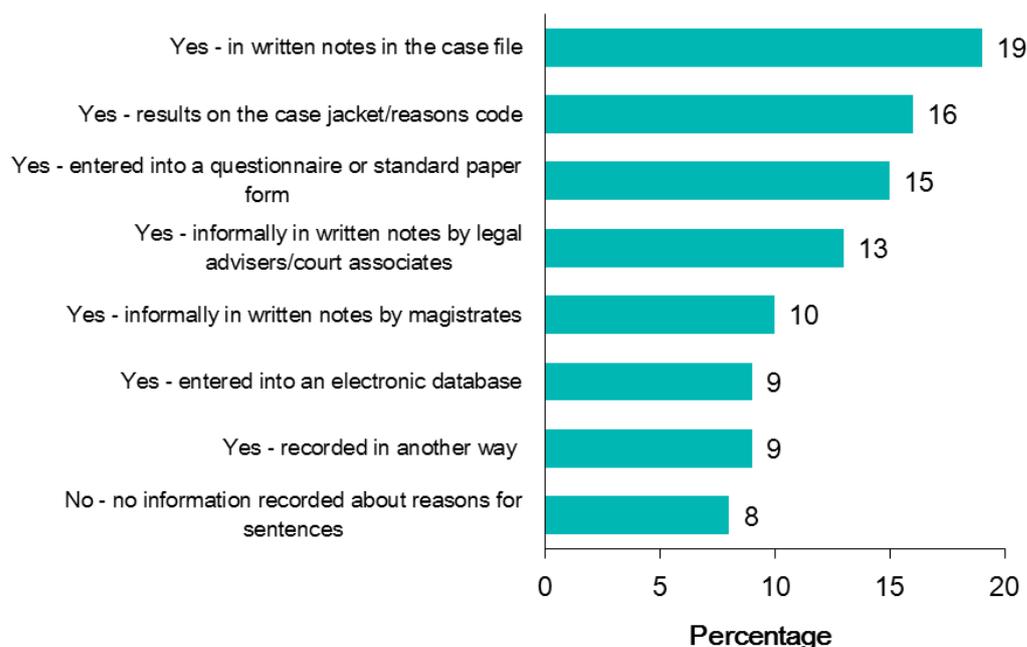
<sup>22</sup> A court of law in which the court proceedings as well as the judgements are recorded.

Similarly, the *survey of magistrates' courts* found that those responding reported that sentencing factors are captured but not consistently. Most respondents (92%) said sentencing factors were captured. Twenty per cent said factors were recorded in all cases, 56% said it varied, and 23% said this data was captured only in specific circumstances (Appendix E. Table 13).

Asked in what specific circumstances, sentencing factors are recorded, 36% said for custodial sentences, 34% when a sentence deviates from guidelines and 25% for community sentences. Legal staff interviewees also noted that it could happen if an appeal was considered particularly likely – although it was noted that if a case was appealed, it would be re-heard from the start so would not necessarily require the file to be revisited to examine sentencing factors.

The *survey of magistrates' courts* also indicated if and where sentencing factors might be captured. The vast majority (92%) of respondents said that sentencing factors are captured one way or another. Figure 2 shows how: almost a fifth (19%) said in written notes within the case file and a further sixth (16%) said on the court folder (referred to in the survey as the case jacket or reasons codes). Fewer than one in ten (9%) described using an electronic database to record this information, reaffirming that the sentencing factors rarely make it onto Libra.

Figure 2. Whether and how sentencing factors are recorded



Unweighted base: 79

Weighted base: 92

### **2.3.3 What is recorded**

The research found differing perceptions of what is recorded on sentencing outcomes and decision-making factors. In part, perceptions varied with people's roles in the court – legal staff were closer to the process of recording than were magistrates. The research also found clear indications that practice varies, even within a single court. The case file review as part of the *court visits* and the *survey of magistrates' courts* provide the clearest evidence of practice.

The case file review evidence reports on the court folder rather than the documents in it as there is no other way to determine which aspects of the case file were actually used in deciding on the sentence. However, the OSC may consider the wider set of 'potential factors' contained in a case file (paper or digital) of use in monitoring or evaluating the guidelines, to see if potentially relevant factors are set aside or the relative importance of others overvalued. It is worth noting that more information in general was recorded on court folders and held in case files with a digital element than paper-only case files – although not necessarily more detail on sentencing factors.

#### ***Credit for guilty plea***

Interviewees reported that a plea would routinely, as part of the case management process, be recorded on a court folder. However, where this is a guilty plea, the reduction in sentence given for the plea may not be recorded. There was some suggestion that it could be calculated by using the stage at which the guilty plea was entered, but opinions varied on how straightforward such a calculation would be.

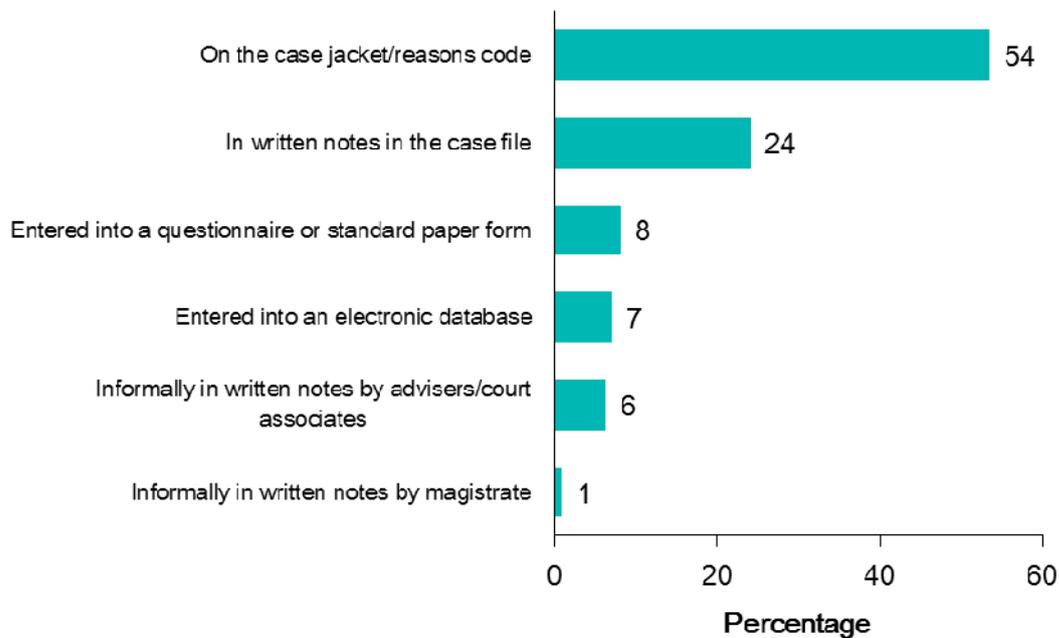
This was supported by the case file review, where the factor recorded most routinely was where credit had been given for a guilty plea. This was indicated on 36 of the 41 'guilty plea' court folders, as the 'Credit for Guilty Plea' box had been ticked (a further 18 court folders related to cases where the defendant did not plead guilty). However, the amount of reduction in sentence given for a guilty plea was not recorded on any of the court folders, even where the fact of a reduction in sentence was. Furthermore, the stage at which the guilty plea was entered was not always recorded on the court folder. This supports the finding from interviews that to calculate the amount of reduction given for a guilty plea would not necessarily be a straightforward process, given that the information required about the stage at which a guilty plea is entered is not routinely recorded.

In the *survey of magistrates' courts*, 54% of respondents said that the stage at which a guilty plea is entered is recorded. Just over a third (33%) also said that the level of sentence reduction is captured, a finding which does not concur with findings from the

case file review, as described above. A further 9% said that neither of the aforementioned is captured, and 4% did not know (Appendix E. Table 15). Over one in ten (13%) said that no information is captured on guilty pleas or they did not know of it being captured. This is surprising given the requirement for this to be recorded on the court folder and onto Libra.

Amongst those who responded that guilty plea information *is* captured, the majority (54%) reported that information about guilty pleas is recorded ‘on the case jacket/reasons code’ (here referring to the court folder and tick boxes on the front of the court folder, respectively). Additionally, 24% said that this is done in written notes in the case file (Appendix E. Table 16). Further detail on the ways in which guilty pleas were said to be captured can be seen in Figure 3 below.

Figure 3. How information about guilty pleas is captured



Unweighted base: 60

Weighted base: 73

### **Sentencing decision-making factors more evident in the case file records**

Factors relating to aggravation were noted on a number of court folders for a variety of different sentencing outcomes. Some explained why these factors had contributed to a greater sentence; for example, where an attack was unprovoked, part of a pattern of violence, or motivated in part by hate towards an ethnic or religious group. Others outlined why aggravating factors had been set against claims for mitigation; as one

example, explaining that a pattern of driving offences led the bench to discount claims that a driving ban would inconvenience community groups.

Factors relating to mitigation were noted on some court folders. The range of mitigation factors noted were neither as wide-ranging nor as clearly recorded as for aggravation, although offenders' sense of remorse could be noted. These included a number in which first-time offenders were given lesser sentences, taking into account their lack of previous offending and sense of remorse.

### ***Sentencing decision-making factors less evident in the case file records***

Information on other sentencing factors was limited. There was little specific reference to culpability factors. The one sub-set of files in which it was noted was those for defendants with co-defendants. Here, the culpability of the defendant could be recorded to spell out their individual responsibility for the offence but without reference to any specific level, either in terms of general degree or level as set out in the sentencing guidelines.

Factors related to harm were included in a few case files. Only those where the offence included interpersonal violence made reference to harm, such as cases involving an attack on women in front of their children and an attack on a security guard in public. Here references to harm were made in relation both to the main victim and to others who witnessed the attack, even in the absence of victim statements by those people. These references did not, however, explain the specific level or degree of harm considered in determining the sentence.

The sentence starting point and range available for each offence were not noted in the records. In cases involving hate crime, reference was made to the way in which the sentence had been extended to take this into account (as noted above on aggravating factors), and the records showed what the sentence would have been without this element. No other cases showed the same level of detail, as standard practice (for all offences other than those involving hate crime) appears to be to record only the final sentence outcome on Libra and on the case file.

### ***Differences by offence type***

The case file review showed that more information tended to be held or recorded in cases relating to interpersonal offences (including assault) compared to other offences<sup>23</sup>.

However, this additional coverage did not necessarily extend to decision-making sentencing factors; only nine of the 16 interpersonal offence case files held information on sentencing factors (six on the court folder, three in the case file). Driving offence files could hold a lot of information<sup>24</sup>, although again this was not reflected in the amount of information held or recorded on sentencing factors (three of ten driving offence cases held information on sentencing factors; two within the file and one on the court folder). However, it should be noted that driving offences are often relatively simple, so sentencing factors may not be very relevant to these particular offences.

Varied amounts of information were held in drugs offence cases. Some drugs cases held several additional documents of information within the case file, including drug test forms, interview transcriptions, statement of finances, charge sheets and PSRs. However, the content of other drugs case files was minimal in comparison and contained none of the aforementioned additional information. Only one drugs court folder recorded any sentencing factors and that was a mitigating factor. This was the only part-digital file in the drug offence sample so the digital element could account for the increased recording of information, but the wider research indicates that having a digital file does not equate to more being recorded on the court folder itself. Theft cases were consistent in terms of how much data was held, and all were rather minimal. No sentencing factors were recorded for theft cases.

### ***Custodial sentences***

As mentioned before, there is an understanding that sentencing factors will be recorded in all cases where a custodial sentence is given, so that this can be resulted onto Libra. The court folder is structured to allow legal advisers to specify why the offence(s) were 'so serious that' custody was given. However, the case file review showed that sentencing factors were not recorded in all custodial cases. Of the 13 cases in which custodial sentences were given, only seven had sentencing factors recorded on the court folder. A further three held sentencing data on documents inside the case file. Even where core sentencing factors were noted for custodial sentences, the explanations could be quite limited.

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<sup>23</sup> Information commonly held in interpersonal cases, but less so in other cases include: photographs of injuries, witness statements, details of restraining orders, defendant's statement, arrest warrants, character references.

<sup>24</sup> Documents held in driving offence files included DVLA enquiry report, Driver Record Response Form, CPS guidelines on alcohol and driving, Statement of Fitness for Work.

## 3 Options for future data collection

### 3.1 Overview of the options and considerations

Having set out what current practice can provide, this chapter gives options for future collection of sentencing data: through a survey; or for every case as part of a routinised case administration process (census). It describes what each option offers and highlights issues to be considered in assessing the options. This detailed consideration of options and factors leads to the guidance and recommendations given in Chapter 4.

In essence, there are two methods which could be used to collect data and different modes for each of the methods. The methods for gathering data are through a survey requiring a sampling approach and through a routine census process, completed for every case. The modes of data collection are paper, electronic, online and digital.

Survey options requiring a sampling approach are:

- **Option 1: paper-based survey:** This approach has already been tested in practice as part of the assault data collection and other current evaluation work.<sup>25</sup> Courts would be sent copies of paper surveys for completion and return by secure, internal post for processing.
- **Option 2: electronic survey:** A PDF form which can be completed offline and emailed back to a contractor.
- **Option 3: online questionnaire:** An online questionnaire delivered to the respondent manually by a link in an email from either the OSC or court staff.
- **Option 4: digital survey linked to the platform:** Digital data capture for a sample of cases via the common platform<sup>26</sup>. Sentencing factor information would be recorded as part of the routinised case administration process.

There are a number of considerations when putting in place a survey. Each of the considerations below is discussed extensively in relation to the paper-based survey; however they should be considered relevant for all of the above options:

- **Sampling and selection of courts:** a clear strategy and reliable source for sampling information is needed to enable targeting of the right courts and cases.

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<sup>25</sup> At the time of writing the OSC had recently undertaken a paper-based data collection exercise on selected theft and drug offences across 81 magistrates' courts, in order to feed into an evaluation of these guidelines.

<sup>26</sup> See glossary for definition.

- **Survey instrument:** the survey instrument must be fit for purpose and take account of various issues relating to its layout and the way in which data is recorded.
- **Timetable:** regardless of the mode selected, the project timetable requires careful consideration.
- **Cognitive testing:** all of the data collection modes mentioned above would benefit from thorough cognitive testing in order to ensure they are as easy as possible to complete.
- **Pilot and soft launch:** conducting a pilot and soft launch is strongly recommended as part of any of the survey options requiring a sampling approach. This allows for problems to be addressed at an early stage.
- **Administration of survey in courts:** consideration needs to be given regarding who would be best placed to administer the process and when this would be best done.
- **Stakeholder engagement:** it is important that everyone involved in the data collection is clear on their role in data collection and feels engaged in the process.
- **Communication during and after fieldwork:** good communication can make a significant difference in participation which should be taken into account in all of the options above.
- **Weighting:** weighting of the data should be considered for all of the survey options to improve representativeness.

The routine census approach options consist of:

- **Option 5: Paper-based census:** this would entail the collection of sentencing factors for all cases, similar to the approach adopted in the CCSS.
- **Option 6: Digital platform-based census:** census-type data collection via a platform would look similar to a sampling-based survey conducted via the common platform (option 4) with the difference that sentencing factors would be recorded for all cases as part of case administration.

Each of the above options will need to be assessed against several core considerations: the possible time and resource burden on courts and individuals; technical issues of when and how data should be recorded; and issues around the quantity and quality of data that will be delivered. The ultimate concern for the OSC is whether the data itself is of sufficient quality and quantity to contribute to guideline development, monitoring and evaluation.

## 3.2 Survey approach

As stated above, the following considerations are discussed extensively in relation to the paper-based survey; however, they are relevant for all of the survey options presented here.

### 3.2.1 Option 1: Paper-based survey

For the first time, the OSC used a paper form to collect data from magistrates' courts in early 2015 as part of reviewing their assault offence guidelines. The purpose of the data collection was to gather quantitative data on which factors magistrates and district judges take into account when sentencing assault cases. Since then, the OSC has carried out another paper-based data collection exercise in a selection of magistrates' courts where the focus was on gathering sentencing information on selected theft and drug offences.

In terms of the assault data collection, after the court was selected to participate, the fieldwork process ran broadly as follows:

- Batches of paper forms were sent to the courts;
- Those coordinating the survey in the courts informed others about this and made sure that everyone involved in the process knew what to do;
- The forms were made available to the magistrates, district judges and legal advisers to complete;
- Magistrates, district judges and/or legal advisers completed the form (or parts of the form) if a relevant case was brought in;
- Those responsible for coordinating the survey in the courts gathered the forms afterwards or they would be dropped off at an agreed drop-off point in the court;
- The forms were returned to the contractor by post for scanning and processing.

A similar process was undertaken for the recent theft and drugs data collection exercise.

The paper based option is the only mechanism so far to have been tested in practice<sup>27</sup>. The *survey of magistrates' courts* found that many of the 79 courts which responded had collected sentencing data in this way using a form as part of an ad-hoc data collection. Over half (53%) of all respondents said the court had collected sentencing factor information using forms within the last two years. Of those, 80% had collected the information on theft and drugs offences for the OSC and 12% for the assault data collection<sup>28</sup>. This indicates a level of familiarity with the process across many courts.

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<sup>27</sup> The option of completing a PDF form was also offered, but few used this in practice.

<sup>28</sup> A further 6% mentioned other purposes, and 1% did not know.

Around a third of all respondents (32%) said the court had never completed any forms and 15% were not aware of any such data collection (Appendix E. Table 17).

Conducting data collection on paper does not require an IT or digital infrastructure to be in place, and is therefore fairly convenient for magistrates and district judges to complete. The process of administering a paper-based survey was not described as particularly onerous. However, those who had collected data through a paper survey fed back that despite the form being relatively easy to complete, the process overall was considered time-consuming and cumbersome and could slow down court procedures. For both the OSC and the courts this option is rather resource-intensive as it requires ongoing staff administration such as the distribution of batches of paper forms to the courts, the distribution and collection of forms in courts, and postal return of completed forms by the courts.

### ***Likely costs of running a paper survey***

The paper approach remains the most costly option, both for the OSC and courts (at least in terms of daily operation). There are costs of printing and mailing the questionnaires and their return on completion, and for data entry and editing - which do not apply to the digital, electronic or online options. Further, more staff time is required to set up and maintain systems for all parties (given the need to physically distribute the paper forms, collect and return them for example), in addition to time required to ensure an understanding of survey progress. Costs also increase in the paper context if errors to the data collection instrument are made as this would require reprinting and re-distribution of questionnaires.

### ***Selection of courts***

The first stage of the sampling process should aim to select a manageable subgroup of courts to be contacted. For this to be done, it would be important to have up-to-date information about the volume of cases at court level in a central database. Having this information available would enable efficient selection of participating courts and the targeting of data collection of the courts that are more likely to come across certain types of offences.

### ***Selection of cases within courts***

Rather than focusing on census-level surveys, the OSC has moved towards a targeted, bespoke and proportionate approach to their future data collections, for example by focusing on specific offences and samples of courts. As part of the assault data collection there was an attempt to introduce rules that would limit the number of cases included in the study to one case per bench only in order to reduce participant burden

and prioritise rarer types of offence (assault occasioning actual bodily harm and assault with intent to resist arrest). There were two implications for the design that resulted from this decision. One was that it could no longer deliver the intended number of cases for analysis within the period. Second, it will have led to the sample of cases no longer being representative of the total assault caseload.

It would have also meant rarer cases were over-represented in the sample compared to all assault offences, and in a way that was not measureable (an unknown number of cases would have been considered in each sitting and of unknown types of offence). Courts with a lower flow of assault cases could also be over-represented, as one per bench per sitting will represent a higher proportion of their total assault cases.

To understand how representative the achieved set of cases during a data collection period is, up-to-date information about the flow of cases would be essential to obtain. If it was the case that the sampling approach focused on rarer offences or only a specific type of offence, it would be desirable to develop a weighting approach to reflect the oversampling of rarer offences. If no such information is available of the numbers and types of offence going through each court this would be difficult to implement convincingly (it would need to be based on administrative data available in a subsequent period).

### ***Survey instrument***

The form used for the assault data collection was modelled on the form used in the CCSS. A copy of the scanned paper form can be found in Appendix F. Whilst the form was overall seen as clear and easy to complete, the following recommendations were specifically noted as part of the *review of the previous magistrates' court data collection* that would be applicable in designing any future data collections using paper questionnaires:

- The layout of the questionnaire should be ordered in a way that follows the court procedures. The data quality is likely to suffer if respondent has to go back and forth within the survey instrument.
- The routing should be made as easy as possible to navigate to find the sections that need completing. There is a pressure for the form to be as concise as possible without running the risk of being too condensed for individuals to fill it in accurately, which underlines the importance of clear signposting.
- The cover sheet should clearly state on which offences the survey is gathering data, as the *previous review* interviewees noted this was not always clear.

- Instructions should be cognitively tested with a pilot before the survey roll-out to ensure that enough detail is captured whilst maintaining clarity. It is worth keeping a record of all queries for any future data collections.

Having a prompted list of factors is more likely to provide a positive answer about whether a specific factor was taken into account (and reduces the cognitive effort for a respondent) and provides clear cut answers which are easy to process. However, it runs the risk of acting as a checklist that actually changes behaviour. This is a particular problem where the survey approach is used to support an evaluation of guideline changes, as it may not provide an accurate snapshot of the usual sentencing process.

Therefore other approaches could be considered for monitoring and evaluating guideline changes. These alternative approaches could include asking more open questions instead of a closed list. Open questions about the mitigating or aggravating factors that were present in the case without prompting the respondent could help in capturing the details without leading the respondent. This approach would require careful testing to ensure that the correct information is recorded. Subsequent check questions could potentially be built in to ensure correct routing has been followed and information is consistent throughout – an approach more effectively administered with a digital questionnaire that does not provide all questions in one form. A disadvantage of this is that open-ended questions would require coding into meaningful categories for statistical analysis which is likely to add a level of complexity and additional cost.

### ***Timetable***

The type of data collection exercise that is conducted for a finite, relatively short period relies heavily on everyone remembering to do what is being asked; having enough time for setting up processes and briefing everyone becomes extremely important. Unlike the census approach used for the CCSS, the assault data collection was conducted on an ad hoc basis which is likely to result in a slightly lower response given the need for time to set up and communicate before the process runs smoothly.

Consideration should also be given to the fieldwork period. Courts must be completely ready to start from the outset and robust systems for monitoring numbers of returns should be in place. For a pilot and soft launch to be feasible (discussed in more detail below) more time would be required for the process.

### ***Cognitive user-testing***

For any future data collections, the survey instrument and the accompanying instructions should be the subject of cognitive user testing as part of the developmental stage of the research process. Cognitive user testing would investigate the way in which people understand, mentally process and respond to the instrument, and whether the question, response options and accompanying instructions are interpreted in the intended way. Even if this were not possible, best-practice design principles could be applied to make what is quite a busy-looking form clearer and less prone to data quality issues. This stage should be taken into account in the timetable, allowing enough time for it to take place.

### ***Pilot and soft launch***

As part of the *previous review of magistrates' data collection* it was noted that no pilot was conducted as part of the project. Time was presumably a factor here, but some confidence may have been provided by the fact that the contractor was familiar with delivering the CCSS to a similar design. However, that survey was very well established in courts, and much of the aim of a pilot for a survey of magistrates would be to ensure that procedures become embedded in the selected magistrate courts. For this reason, small scale piloting may be followed by a 'soft launch' where all selected courts try out the procedures in order to ensure problems are ironed out before fieldwork proper begins.

### ***Best placed person to administer a survey on paper or electronically***

The *survey of magistrates' courts* contained four questions aimed at gauging who would be best placed to administer data collection and brief magistrates and district judges on the task. In the case that this would be undertaken as a paper-based exercise, court administrators were seen as the best placed to administer (i.e. receive, distribute and return forms) by the majority (73%; Appendix E. Table 21). If the data collection was to be done electronically, over half of respondents thought the OSC would be the best placed to distribute the survey via E-judiciary (Appendix E. Table 23). In terms of briefing and reminding magistrates and district judges about the data collection, legal advisers were perceived to be the best people to manage this, regardless of whether this was done on paper or electronically (Appendix E. Table 22 and Table 24). However, it is possible that with digitalisation of the courts, legal advisers may be better placed to collect the data (see below).

The best placed person to record the data was also discussed in the interviews conducted as part of the *court visits*. When asked who would be best placed to record sentencing data, interviewees raised two main issues that would influence their suggestion – time and IT skills. It was widely suggested that legal advisers and court

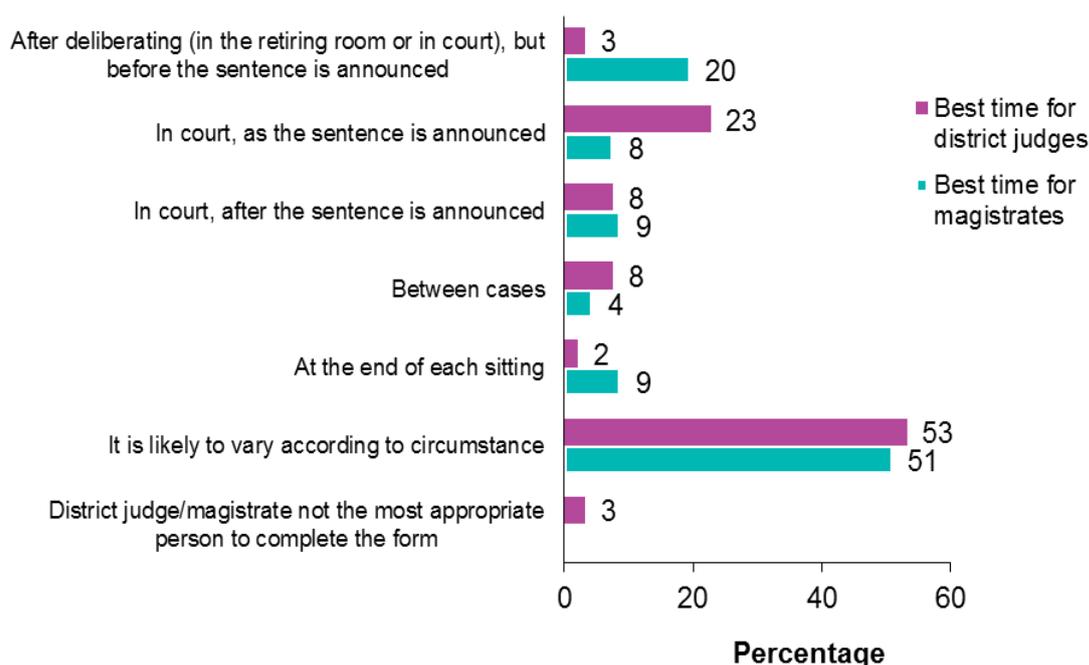
associates would be best placed to record the data, alongside their own notes of the case. They are perceived to possess high levels of computer literacy and speed of typing would be an essential contributing factor to the efficient recording of sentencing data digitally. However, the anticipated additional burden that this would create for individuals in such advisory roles caused concern, where workload was already perceived to be particularly heavy and where multi-tasking was already taking place. However, with the right skills, and the time allowed, it was felt by interviewees that legal advisers would potentially be able to take on this role. However, the ability for legal advisers to record this information relies on the sentencer having openly discussed their decision in the retiring room, passing on a written account of their reasons for sentencing or verbally announcing the factors at the time of sentencing which have led to their decision. Although it is acknowledged that it is good practice for the latter occur, interviewees reported that this does not always happen, due to individual differences in approach, style of magistrates, or time constraints.

As magistrates and district judges already take into account sentencing factors when considering the sentencing decision, an alternative suggestion was that once the Bench Solution is implemented, they would be better placed to make a record of the reasons behind their decision, whilst pronouncing the sentence. This could be done on a paper form in the interim, but shift to recording on digital devices (such as tablets or iPads) when the court goes digital. There was a feeling among legal team managers that it would not be acceptable to ask volunteers (magistrates) to upskill their IT capabilities. However, interviews with members of the magistracy showed that they would be open to increased use of computers, if they receive appropriate and timely training.

### ***Best time for recording data***

The *survey of magistrates' courts* included questions that were specifically aimed at understanding when would be the best time for magistrates and district judges to fill out a form as part of a survey, whether on paper or electronically. For both magistrates and district judges, the best time was deemed to vary according to circumstance (over half for each group; see Figure 4). No further questions were included to enquire about what the specific circumstances might be. After deliberating (in the retiring room or in court), but before the sentence is announced, was then seen as the best time for magistrates by 20%. In the case of district judges 23% of respondents mentioned that the best time would be in court as the sentence is announced (Appendix E. Table 18 and Appendix E. Table 19). The full detail of the responses is shown in Figure 4.

Figure 4. When would be the best time to fill in a form (either on paper or electronically)



Unweighted base: 79

Weighted base: 92

### **Stakeholder engagement**

The response to a data collection exercise is likely to be higher when stakeholders at all levels are well engaged.

At a senior level, communications should aim to ensure:

- the data collection is prioritised appropriately amongst other work;
- people are well informed about the process and what is required of them;
- people understand the aim and importance of the study and are committed to it.

At an operational level, the main goal is to ensure processes are understood and adhered to throughout the fieldwork period, resulting in good quality data.

### **Communication during fieldwork**

Systematic attempts to follow-up with the courts on how the data collection process is progressing is strongly recommended during fieldwork. The courts should be informed about the total of number of cases that are expected to be returned from each court.

Establishing the number of returns that are expected up-front is likely to help the courts in planning the administration of the task better and increase their motivation. Updates on

their progress, reminders and communication, ensuring the courts are progressing smoothly with the data collection are likely to contribute to a higher response rate. Feedback from the *survey of magistrates' courts* suggested that having contact from OSC during a recent data collection exercise was very helpful and, via communication, minimised the amount of work the court staff had to do.

### ***Communication after data collections***

Interviewees from both the *court visits* and *review of previous magistrates' court data collection* suggested that periodic communication about the uses of data would be welcomed. To understand more about the nature of the information individuals would find interesting, the *survey of magistrates' courts* asked what type of feedback respondents would like to see from the OSC. Over half (57%) of all respondents suggested a one-page e-mail as the most desirable format of feedback. Just over a quarter (28%) also expressed interest in receiving a link to a research report when published. Only 5% would like feedback through a presentation at a regional event, and 2% suggested a blog post. A further 8% said that they are not interested in getting any feedback about the uses of data (Appendix E. Table 25).

The *court visit* interviews revealed that feelings about additional data collection could be rather negative as the justification for recording sentencing data was not immediately clear to interviewees. Strong views were expressed around how useful the data would be, for anyone, and how the OSC would use the data. The purpose of collecting sentencing data should be made explicit from the implementation of the requirement and results of data analysis should be regularly fed back to stakeholders. Interviewees suggested that if individuals are fully informed of the reasons why they are being asked to collect data and are made aware of how it is being used, they will be more motivated to collect it (if the requirement was optional) and may otherwise assume that it is being stored and not acted upon.

### ***Weighting***

Consideration should be given to whether the data should be weighted in a future survey. In the event of a lower than expected response level it is likely that weighting would improve representativeness. It would certainly be required if the same sample design was used as for the *previous magistrates' court data collection*. It systematically over-represented smaller courts and less common offences.

### **3.2.2 Option 2: Electronic survey/PDF**

In the assault data collection the paper questionnaire was accompanied by an electronic version in PDF form. The take-up of this was rather low, reflecting experience in other settings where the paper option is completed in preference where this is provided.

Providing an offline electronic option that needs to be emailed and then saved and returned by email probably adds little to response rates whilst adding complexity and potential uncertainty to the overall process. Whilst the costs of printing and mailing are minimal, having this option included as an additional element would add to costs overall and would not have the benefits of an online questionnaire approach which enables complex routing and checks.

In comparison to a survey that would sit fully online, the process of administration may be cumbersome but would require similar IT infrastructure to be in place. Therefore the use of electronic form as a stand-alone option is not recommended at this stage.

### **3.2.3 Option 3: An online survey**

Paper forms discussed above inevitably provide quality issues to be dealt with during processing, including to correct routing errors and inconsistencies that would be avoided with a computer-assisted approach (see section 3.2.5 for a more detailed outline of the potential questionnaire options).

An alternative may be an online questionnaire operated by a survey agency (or potentially internally if the expertise exists). It may, for instance, be possible to embed survey links into the common platform. It is likely to be the most cost-effective option for data collection in the near future: online questionnaires provide a more flexible tool and can be developed relatively cheaply (potentially in-house). They also offer the potential for better quality data through use of routing and consistency checks.

The question arises, however, of how to ensure an online questionnaire would be seen by the correct individual at the appropriate point in time. If it was possible to embed the survey link in the common platform, there would need to be a way for the correct individual to have access to the link at the right time. One option is to include an 'add sentencing reasons' button in the relevant place, where it would be seen by the court staff member resulting the case.

If this is not possible, there may need to be an email approach. How this would be managed would need some consideration. It is possible that emails could automatically be generated behind the platform, with unique survey links that contain a reference to the

case being considered sent to the relevant administrator or magistrate. If automation cannot be achieved, the process would require more manual intervention, with magistrates remembering/being reminded to go to a generic survey link (potentially on their desktop or favourites in their browser) and complete sentencing information as they complete cases.

### **Value for money considerations**

Despite some of the development issues, online and digital approaches in general should be a cost-effective option for the OSC to consider. Relatively cheap to develop, even with an external agency's involvement, they should involve few direct costs beyond this.

Depending on the degree of automation in the solution for notifying magistrates of the need to complete the survey, staff time may be limited (with a manual approach there would still be a need to brief the courts involved about what was required and for them to have their staff manage the process). Data processing would be considerably more streamlined than with a paper approach where editing would often be required.

### **3.2.4 Option 4: Digital survey linked to platform**

Issuing questionnaires for a survey raises a number of particular sampling issues but these may be reduced in the context of a digital survey, if the digital aspect is linked to data collection already taking place in courts, and where the system can provide key sampling information. The introduction of a common platform across courts therefore represents a major opportunity for improved data that can feed into statistical monitoring and survey work. To fully realise the benefits of the system for research purposes, at least some data items should be available centrally from across courts at the case level. Having a good understanding of flows of cases at each court and for specific offences would provide opportunities for planning research and subsequent weighting – and potentially for the actual sampling of cases for survey work if the data was available centrally in a short time-frame.

Court digitalisation may provide for this, but the calculation of the best approach here hinges on the nature and speed of the planned roll-out. There was little detailed information that could be obtained at the time of the research about the nature of the platform to be developed or its ongoing management and this makes it difficult to develop specific proposals for optimal data collection. What can be achieved will depend on the ability of the OSC to influence its design, the platform's flexibility, ongoing support/maintenance and the analytical capabilities of those operating the database. However, orientation interviews with stakeholders who were able to comment on digitalisation revealed that the common platform is currently being built according to the

courts' needs, and that it is hoped that the system could be adapted in the future to integrate new facilities; therefore flexibility may exist as to what is designed. To this end, interviewees were positive about the common platform's capabilities to hold additional sentencing data.

Courts were aware of the move toward digitalisation and therefore suggested that any future method of data collection would have to be digital, as the understanding is that the court system will become a completely paperless environment. This focused the discussion around the format that such recording may take.

Interviewees suggested that a 'sentencing factors' tab may be added to a digital court file to enable clear navigation to the appropriate page. Further sub-tabs representing different offence types could also be a potentially useful tool, in order that sentencing factors displayed could be tailored towards the specific guidelines for that offence.

Were it possible to fully customise the tool, it may be preferable to include all relevant information within the platform (OSC would need basic data about the defendant, including a reference number, for quality checking purposes) to obviate the need to collect quantitative sentencing information from other sources. Holding the data in a single accessible database would have significant benefits, assuming the OSC could arrange access to data or specify analysis.

However, it seems unlikely that this will extend to recording a full set of sentencing factors (it seems likely that the coverage of the paper questionnaire used in recent reviews could not be fully accommodated in a case management platform) without a significant impact on the work of the court - interviewees made reference to the assault data collection, with some describing it as "vast" and suggested that many people chose not to complete the survey for this reason. As time is so limited in the court, interviewees highlighted that any future data collection tool would need to be shorter and require less information to be entered and the required information would need to be easily accessible (for example, not require reference numbers). Interviewees thought that digital approaches linked to a platform have the potential to reduce the time needed for completion given that some of the defendant information could be fed through automatically. It also may not be possible to record sentencing data for every case and some felt it would not be worthwhile recording for the 'bulk list' (comprising traffic offences, TV licence offences, for example) as courts which process these types of offences typically have a throughput of up to 200 per day, so there would not be the time to record additional data. Furthermore, reasons for sentencing are not routinely articulated in such cases.

Given that there was also an expectation that the recording of any information on a digital platform would take longer than on a paper file, the recording of additional data would add to this. Reasons for the anticipated additional time required include: varying speeds of typing among court staff, the amount of time a file may take to load, recording extra information that would not normally be captured, Wi-Fi instability, transferring information onto hardware devices and navigating between different screens and systems. In support of this, stakeholder interviews with those involved in digitalisation highlighted that potentially legal advisers would have three applications<sup>29</sup> open on their computer and running simultaneously at the time of sitting in court, suggesting that any additional application for recording sentencing data would inevitably slow court proceedings. In addition, if the system did not tolerate any oversights (i.e. you would not be able to move onto the next screen/stage of recording information until the current screen had been fully completed), this would compromise current common practice whereby court staff return to complete case file notes later in the day when there is a need to quickly move onto the next hearing. It seemed that such a function would force immediate and thorough completion, which would make it “inevitable” that the number of cases heard in one day would be substantially reduced<sup>30</sup>.

Linked to this were the concerns about the capabilities of a digital system to hold the amount of information suggested for each case or to be modified in the future. There was concern over slowing the system or causing it to crash, highlighting the point that any future system would need be robust and ‘fit-for-purpose’ to avoid situations where court staff have to revert back to paper files. Further, if it is likely that the measures/questions that the OSC is interested in will change or expand over time, the platform may present a barrier if this cannot easily be accommodated.

Finally, it is also important to note that even if the system was able to have the fields available for court staff to complete, it does not necessarily mean that they would do so unless they see the value of it or need it for some other purpose. If real-time data was available centrally, cases flowing into courts could be selected in line with given rules and the OSC’s needs (that may reflect the number of cases required against the number

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<sup>29</sup> Firstly, Court Store (see glossary) for viewing documents attached to the case; secondly the DMU for resulting the case; thirdly Libra (for example if the case should be adjourned, DMU lacks the capabilities to record this, so it would be recorded in Libra, then DMU would need to be updated).

<sup>30</sup> However it was positively highlighted that a system that does not tolerate oversights limits the chance of omitting important information.

estimated to be flowing through courts in a given period). If live case data was only available at a local level, rules could be set for cases to be selected locally.

### **Value for money considerations**

Data collection via a sample of offences on the common platform would present the most cost effective option for the OSC given that all development and amendment would presumably be handled by the platform owners (assumed to be HMCTS). Analysis would be simplified by having all data in one place, and platform data managers may be able to provide the requested data. Some additional data management and cleaning may be required compared with an online option where routing can be more effectively employed.

#### **3.2.5 Questionnaire options for an online or digital questionnaire**

Having a logical routing in an online or digital data collection instrument could help make the navigation through easier, if well planned. Collecting the data in this way in a digital format would also enable clearer instructions to be included throughout the instrument where relevant. However, the infrastructure as well as IT and typing skills of those completing the forms will need to be ready for this.

Three modes of digital data collection were proposed in the interviews:

- I. A tick box list;
- II. Free text comments box;
- III. A combination of both.

Whilst these modes could potentially be applied to any generic data collection, digital or paper-based, these findings are based on interview discussions which focussed on a digital method of data collection.

Advantages and disadvantages of each were discussed in the interviews and the combination of a tick box list and free text box was widely thought to be the most appropriate, based on user friendliness, potential burden and time taken to complete. The tick box list would be directly informed by the current sentencing guidelines, which lists harm and culpability factors and potential mitigating and aggravating factors; users should be able to tick as many as were applicable. It was felt that a tick box list would not encompass all of the possible factors which have led to a sentencing decision, so an 'other' box would be welcomed, which would prompt the opening of a free text box to enable users to provide details of any additional factors taken into account when sentencing, which are not represented by the list. Interviewees reported concern around this which stems from a previous data collection exercise where a similar format was

presented and people would select 'other' and record all information in the free text box rather than completing the tick boxes.

Possible approaches	Pros of approach	Cons of approach	Considerations
A tick box list only	<ul style="list-style-type: none"> <li>* General factors will be present in most cases</li> <li>* Set up would be easy – it would mirror sentencing guidelines, with a tick box next to each factor</li> </ul>	<ul style="list-style-type: none"> <li>* Difficult to navigate to relevant boxes when competing with time pressures</li> <li>* Individual differences of defendant cannot be encompassed by a pre-defined list of factors</li> <li>* Could act as an <i>aide memoire</i> and not provide accurate snapshot of thinking</li> </ul>	<ul style="list-style-type: none"> <li>* System capability to cope with sentencing guidelines embedded into everyone's file</li> <li>* Sentencing guidelines contain a long list of factors – it is difficult to read these quickly and decide which apply</li> </ul>
Free text comments box only	<ul style="list-style-type: none"> <li>* Facility to record anomaly factors which are not included in sentencing guidelines</li> <li>* Easy to use</li> </ul>	<ul style="list-style-type: none"> <li>* Difficult to analyse the data</li> <li>* Reliant on proficient and speedy typing skills</li> <li>* Lack of consistency in detail and on specific areas of analytical interest</li> <li>* Additional time and cost of coding the data for statistical analysis</li> </ul>	<ul style="list-style-type: none"> <li>* System capability to accommodate potentially vast amounts of written data on many individual case files</li> </ul>

A combination of both tick box list and free text comments box	* Eliminates the “straightjacket” nature of being restricted to tick boxes and allows individual circumstances to be recorded	* Would have to be ‘other’ box at end of list to open up free-text box. This may be overused	* Tick box element to mirror current sentencing guidelines  * Character limit on free text box
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Anything implemented on the common platform would need effective user-testing given the wide roll-out and the likely difficulty of making changes. This may be something that is already built into the common platform development process. There is also a question here of whether the exercise would be useful for the courts in monitoring their own activities - data recorded on the platform may need to have a visible purpose for court staff to complete it diligently.

### 3.3 Routine, census approach

This section sets out the research on gathering sentencing data routinely. It starts with the paper-based approach, reflecting on examples of using a paper form mentioned by interviewees. It then details what the prospective digital approach may offer.

#### 3.3.1 Option 5: A paper-based census

As noted in Chapter 2, offence forms are not widely used to record sentencing factors or decisions. A small minority of courts used a ‘national form’ to record such data and others mentioned these and said they had been (but were no longer being) used. Courts referred to other forms which allow recording of sentencing data, including a ‘decision-making form’, ‘sentencing form’ and ‘PSR request form’, but their completion tended to be sporadic rather than systematic and little evidence of the use of these forms was found in the case file analysis exercise. There were mixed views around whether or not an offence form would be at all useful to anyone, taking into account the value of collecting such data as well as the time burden of completing an additional form.

An alternative to collecting data using an existing court form, is to design a specific form for data collection purposes, as was the case with the CCSS. Collecting the data for all cases in this way would offer the OSC a significantly larger sample for analysis and enable finer analysis on rare offences. However, using a paper-based approach option would be very resource intensive in terms of set-up, administration and data processing.

Taking into account the limited resourcing, the absence of any legal requirement for recording sentencing factors for all cases, and the number of cases going through the magistrates' courts in any one year, it seems unworkable and costly to adopt a census-approach.

As discussed earlier the OSC has recently employed a new research strategy that has shifted from 'census-type' continuous data collection to more sporadic, bespoke and targeted sample approaches. Therefore, the option of recording sentencing data for every case conflicts with the OSC's desired strategy.

### **3.3.2 Option 6: A platform-based census**

This option would be similar to Option 4, but with all cases subject to data recording as opposed to a sample. Some sentencing information would be picked up as part of the case recording undertaken by courts for their own administration. The system could pick up basic sentencing information straight from the common platform, thus avoiding having to find this information from multiple sources. A prompt on the platform would remind the sentencer and/or legal adviser to record the information at the right time as part of the general case administration. The platform could include details of sentencing decisions, or could facilitate the completion of an online questionnaire for all cases.

As the interviews with court staff and magistrates revealed, there are doubts over whether collecting this data for low-level offences would be meaningful or practical. Although the administration costs are likely to be lower using a digital tool, the set-up costs for systematic digital submission are likely to be considerable. The process also heavily relies on the platform to be easy to use and able to cope well with large amounts of data. The practical issues mentioned previously in relation to the digital survey linked to a platform would also apply to this option.

## 4 Conclusions and recommendations

Having detailed the current practices of recording sentencing data, and the prospective options for gathering such data, this concluding chapter summarises the findings and sets out the recommendations for the OSC in achieving its aim.

### 4.1 Conclusions

The research was commissioned to identify what is currently being recorded within the magistrates' courts in relation to sentencing and what could be recorded and gathered to assist the OSC in developing and monitoring sentencing guidelines. Sentencing data includes sentences themselves, factors considered in making decisions and reductions in sentence given for a guilty plea.

The research combined a review of past practice to establish how users within the magistrates' courts find a set of guidelines, visits to courts to interview members of the magistracy, judiciary and legal staff and to review case files, and a *survey of magistrates' courts* to establish current practice in the context of digitalisation. In addition, a number of brief 'orientation' discussions were held with key stakeholders within the OSC and HMCTS who were able to provide insights into development and monitoring of guidelines and the progress and plans for digitalisation.

The research found that current practice in the recording of sentencing decisions and factors varies greatly, between courts and even within courts depending on the nature of the case being heard, the extent of the evidence base considered and the individual practice of the legal adviser who records the key details on the court folder. It is clear that there is no system currently in place for recording sentencing data within the courts which would provide the consistent information required for the OSC's monitoring and development needs. The information which is resulted onto Libra excludes most factors related to sentencing and does not record the level of reduction in sentence given for a guilty plea (although it does generally record whether or not a guilty plea was entered) – and the court folders on which such information may more commonly be recorded are not readily accessible other than to the legal staff operating within an individual court.

Furthermore, it is clear that there is no 'off the peg' system which could rapidly be used to record such information. Therefore, in the short term the OSC will need to continue to conduct bespoke periodic data-gathering exercises; over the longer term it may be able to contribute to the development of a digital interface which could gather sentencing data as

more of a routinised case administration process (albeit on a sample basis). The options and recommendations are discussed below.

## 4.2 Overall recommendations

It is likely to be some time before a digital platform is rolled out that could be used as the basis for routinely recording sentencing data; therefore the evidence from this study suggests that the **optimal short-term approach is survey-based data collection at the point of decision-making using a paper-based approach**. Electronic versions of the paper form could be used, although this is unlikely to generate additional responses, but would likely add to the complexity of the procedures to be implemented.

In the medium term, as email and Wi-Fi access and use become standard, web survey options are likely to improve data quality and reduce costs. Even with the implementation of a common digital platform in future, a routine census approach is unlikely to be a suitable approach, given the resource implications of recording detailed sentencing decisions for large volumes of cases with very short hearings, and the OSC's new approach in their analytical strategy. At present, there is no single point at which sentencing data can be gathered as a matter of course, without adding considerably to the burden on court staff and thereby potentially slowing court proceedings. For this reason, it is currently optimal to adopt a sampling approach to cases within selected courts to provide the bespoke data required for monitoring and developing particular guidelines whilst not over-burdening the magistrates' courts system or individuals within it.

Below are some recommendations on the specific options covered within this report:

### Option 1: Paper-based survey

In the near term, a paper-based approach to collecting the sentencing data may be the primary route, as digitalisation has not progressed far enough to provide sampling information to support a survey process nor to give reliable access to online surveys.<sup>31</sup> Using paper forms for a survey can present issues where there is limited information on which to sample and issues with responses, but it is understood that these have been addressed by the OSC in its recent magistrates' courts data-collection exercise.

### Option 2: A combination of options 1 and 2: Paper and electronic pdf survey

It may also be that a paper-based approach can be supplemented by the use of electronic engagement in the form of a PDF-style form. However, there is some evidence

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<sup>31</sup> Once the digitalisation has progressed further option 3 would be the optimal approach.

that giving participants both options can result in a better response to the paper version – in which case it may be more efficient to consider only the paper version.

#### Options 3 and 4: Online surveys and digital capture using a common platform

Once the digitalisation programme is more advanced and the roll-out of secure email, Wi-Fi and hardware is complete, it would be advisable to offer only the online survey option for engaging with the survey. In the medium-term, this could be through an emailed survey (option 3). With the introduction of a digital platform in the longer term, links to online surveys may be embedded in the platform screens, or it may be possible to collect the data through ‘sentencing factors’ tabs in the platform itself. This could be accessed by the bench or legal adviser as the sentence is given. In this approach, data collection becomes part of the administrative process, but not for all cases (option 4).

Such an embedded digital system is distant as digitalisation is still being rolled out and the design of the data capture interface, provision of hardware and knowledge of who will be in place to submit the data are currently unclear. It is recommended that the OSC take opportunities to inform decision-making about the data capture tool design, but the other issues fall beyond its scope.

#### **Routine (Census) data collection**

##### Option 5: Paper-based census

The research indicates that there is not an option long-term for any ongoing paper-based census. Processing paper forms on an ongoing basis would place too great a burden on court staff, would not make the best use of the digital working environment that is currently being rolled out and is contrary to the OCS’s current analytical strategy.

##### Option 6: Data collection via a digital platform

In the future, some sentencing data could be potentially collected as part of the general case administration for every case. The case information could be picked from the common platform, avoiding having to retrieve this information from multiple sources.

However, given the absence of a legal requirement to record sentencing factors for every case, there are doubts over whether collecting census data would be meaningful or practical. As noted with the paper approach, detailed capture of sentencing reasons for all cases would present too great a burden on staff with the current level of resourcing, even with a somewhat more efficient digital platform and is not part of the OSC’s analytical strategy.

### 4.3 Survey recommendations

If a paper-based survey approach were to be retained, there are a number of ways in which it could be improved and it is understood that many of these considerations have already been taken into account in the recent data collection exercise undertaken by the OSC. This section therefore suggests a range of improvements that might be made, based on the *previous review of magistrates' court data collection*:

- Early notice should be given to the courts about data collections to ensure there will be enough time to brief magistrates, district judges and legal advisers fully.
- Cognitive user testing, piloting and soft launch are recommended to be incorporated in the developmental phase of project. Given the volume of cases dealt with day-to-day and the subsequent time pressures in magistrates' courts, it is essential that the research instrument is as easy to fill in as possible. A full pilot before the start of the fieldwork period in a small number of courts would enable testing the process in real-life conditions. Conducting a soft launch at the start of the fieldwork period would allow the research team to make sure that the data collection is running as it should. If any problems were to occur at this stage, the process could still be adjusted.
- A longer timeframe for the work to accommodate the developmental process would be helpful. The additional quality control measures would require flexibility in terms of the time allocated to the developmental stage of the survey. This should be taken into account when planning the project.
- Better monitoring systems to ensure speedy solutions to response problems should be put in place. The response rate should be monitored on at least a weekly basis, so that enough time is allowed for addressing difficulties in achieving the target numbers. Consideration should be given to communicating progress to the courts more frequently, so that they can direct their efforts in capturing the right amount and type of information for the OSC.
- There should be improved communication at the start of, and during, fieldwork to ensure adherence to procedures. Best practice tips to aid each court in planning the survey administration so that it runs as smoothly as possible could be disseminated.

- Information about flows of cases from the courts/LJAs during the fieldwork period should be captured. Further knowledge of the flow within each court would help in targeting future monitoring efforts in the right places and at the right times.
- A weighting approach with the data should be considered. Weighting the data has the potential to improve representativeness and counter any sampling limitations.

The OSC has a number of options to consider in deciding how to gather sentencing data in the near and more distant future. These options and the considerations are set out in the final table, which also notes the relative costs/burden and ease/benefits.

#### **4.4 Digital recommendations**

If digital data capture (either via an online survey or via the platform and through either a sample or a census) is to be developed for monitoring and evaluation purposes, there are a number of considerations which should be incorporated into its design and use:

- It should provide a combination of lists and free text boxes.
- The system will need to be user friendly and intuitive to minimise the burden on staff or magistrates/district judges in completing it and to reduce time delays. It should have instructions embedded, and clear routing. It should be comprehensively tested to ensure that it is 'fit for purpose' for users as well as effective at delivering the required information. It may be that this testing should include both court staff and sentencers, to determine which group are best placed to enter the information.
- Training should be provided. The interviews showed that this was seen as particularly important to magistrates if they are to enter data given that their skills were not always perceived as advanced.
- The OSC should provide clear communication about the purpose of this extra data capture to encourage data collection and maintain momentum.

## 4.5 Summary table for sentencing factor data collection approaches

The following table is a summary of the different data collection options discussed in the preceding sections of the report. It is split into two sections; the first relates to the options involving a sampling approach, and the second census approaches.

The detail of how each option might be implemented is discussed in the preceding sections – the table demonstrates the different pros and cons and key design differences of the different options rather than providing a complete blueprint. The order of the table matches the order of the discussion in Chapter 3, starting with survey approaches and what is currently being delivered (Option 1) moving down to Option 4 which requires the common platform to be fully in place. Options 1 to 4 are not mutually exclusive and could be used in combination with one another. Options 5 and 6 relate to census approaches, both paper-based and digital.

Sampling options				
Approach	Design considerations	Pros of approach	Cons of approach	Ranking on 'VfM'
<b>Option 1: Paper-based survey</b>	<p>Courts would be sent batches of paper surveys for completion and for return by post for scanning and processing</p> <p>Could be completed by:</p> <ul style="list-style-type: none"> <li>a. Sentencer during or outside session (key administrative data could be pre-filled by staff)</li> <li>b. Court staff with guidance from those sentencing</li> </ul>	<p>A tried and tested approach that can be delivered in all courts until the stage when Wi-Fi is universally rolled out</p> <p>Does not depend on digital infrastructure to be in place</p> <p>Familiarity and previous experience of completing forms in paper in courts</p> <p>Convenient for magistrates and district judges to</p>	<p>Requires considerable initial setup and resource intensive – requires ongoing staff administration</p> <p>Experience from <i>assault data collection</i> has shown response rates can be lower than expected (although potential response rates are untested for the other mechanisms and CCSS achieved a response rate of</p>	<p>Optimal in near term if Wi-Fi is not universally available in magistrates' courts</p> <p>Most costly option, both for the OSC and courts in terms of initial set up and ongoing delivery (daily staff operation as well as printing, mailing, data editing, monitoring)</p> <p>No costs to courts for development of IT systems</p>

	<p>Administered by court staff</p> <p>Different questionnaires developed for each offence – procedures for their distribution needs to be developed in line with sampling approach</p> <p>Likely to require court staff to prompt completion (by email or in person) as no platform-based prompt</p>	complete	<p>64% in 2014)</p> <p>Difficult to monitor and manage response rate given the time required for returns to be processed</p> <p>Data quality issues due to routing not being followed/ missing items</p> <p>Key identifying data will need to be found and entered manually alongside the sentencing factors</p> <p>Requires sentencer to be reminded to fill in a form</p>	
<p><b>Option 2: Electronic survey (PDF template) either as a standalone option, or administered alongside paper questionnaires to allow respondents to choose whichever option they prefer</b></p>	<p>Court staff receive a PDF form which can be completed offline and emailed back</p> <p>Could be emailed by court staff to magistrates and district judges, or left as a template on a computer desktop</p> <p>Could be completed by:</p> <ul style="list-style-type: none"> <li>a. Sentencer inside the courtroom or outside session;</li> <li>b. Court staff inside or outside session; with guidance from those sentencing as communicated to the legal staff at deliberation plus key</li> </ul>	<p>Likely to result in fewer data quality issues compared with paper (limited routing/data checks can be implemented)</p> <p>Cost-effective option (no printing costs)</p> <p>Does not depend on constant access to Wi-Fi (but does require an IT set up and email)</p> <p>Some improvement on timeliness of monitoring information compared to paper (though manual recording of returns still required)</p>	<p>May be confusing to administer alongside paper – harder to monitor locally</p> <p>Requires a system for saving the electronic forms/storing in an organised manner to ensure smooth administration process</p> <p>Data quality issues remain - does not allow for full routing and checks</p> <p>Unclear if offers significant benefits over paper approach – experience suggests not likely to increase response if offered alongside paper option</p> <p>Key identifying data will need</p>	<p>Low cost to set up, but likely to need to be administered alongside paper given the current IT setup, so an additional mode. May reduce overall costs if reduces number of paper questionnaires substantially</p>

	<p>data from case file</p> <p>Likely to require court staff to prompt completion (by email or in person) as no platform-based prompt</p> <p>Currently likely to be delivered alongside a paper approach due to potential IT constraints</p>		<p>to be found and entered manually alongside the sentencing factors</p> <p>Requires sentencer to be reminded to fill in a form</p>	
<b>Option 3: Online survey</b>	<p>Flexible online questionnaire with routing and validation checks set up. This would be delivered to respondent manually by link in email from court staff (or via shortcut on respondent's computer)</p> <p>Could be completed by:</p> <ul style="list-style-type: none"> <li>a. Sentencer outside session or during the session if time and technology allowed as the sentencer would need access to their email</li> <li>b. Court staff outside session, with guidance from those sentencing as communicated to the legal staff at deliberation plus key data from case file</li> </ul> <p>If done by the legal staff, the</p>	<p>Very cost-effective option; low set-up and delivery costs</p> <p>Flexible to administer</p> <p>Better data quality through questionnaire routing (for instance in relation to the specific offence) and consistency checks</p> <p>Easy to monitor real-time response centrally at OSC</p>	<p>Requires a functioning digital infrastructure in all courts</p> <p>Requires some basic computer skills, including use of email</p> <p>Completing in court session could delay proceedings</p> <p>Key identifying data will still need to be entered alongside the sentencing factors, and this may take time to find and add</p> <p>Requires sentencer to be reminded to fill in a form</p> <p>Might require having to enter the defendant details separately for each case</p>	<p>Optimal (in near term), as long as Wi-Fi is universally available in magistrates' courts</p> <p>This option is likely to offer best value for money once the required IT infrastructure and stable access to Wi-Fi is in place</p> <p>The development and operational costs are likely to be low</p> <p>Still requires manual administration – prompting to complete in person or via email</p>

	<p>survey could be completed:</p> <ul style="list-style-type: none"> <li>a. Just after the sentence is given</li> <li>b. Or as the case is resulted during or after the session</li> </ul>			
<b>Option 4: Digital survey linked to the platform</b>	<p>Sentencers or court staff would record sentencing factor information during the case administration in the common digital platform – either on tabs within the platform itself or (more likely) via a link to an online questionnaire embedded in the platform</p> <p>Selection of cases to be included in the sample could be automated</p> <p>Could be completed by:</p> <ul style="list-style-type: none"> <li>a. Sentencer just after the sentence is given</li> <li>b. Court staff with guidance from those sentencing, at the sentencing or resulting time</li> </ul> <p>If done by the sentencer, the survey could be completed:</p> <ul style="list-style-type: none"> <li>a. Just after the sentence is given</li> </ul>	<p>Once set up (centrally), no manual administration required</p> <p>This could pick up basic sentencing information from the platform in the online survey – OSC can receive sentencing data without needing access to platform</p> <p>Should give best quality data if completed by sentencer at the time of decision-making</p> <p>Online questionnaire would be flexible</p> <p>Prompt embedded in platform (i.e. ‘add sentencing factors’) – becomes a standard part of the process</p> <p>Reminders could be generated automatically via email</p> <p>Easy to monitor real-time response</p> <p>Data from platform can be</p>	<p>Requires a fully functioning and easy to use digital platform across all courts</p> <p>Not clear whether OSC could influence the development of the platform initially and on ongoing basis</p> <p>Development costs linked to the digital platform may be considerable</p> <p>Requires some confidence in engaging with digital interface and core IT skills to complete</p> <p>Completing in court session could delay proceedings</p> <p>Sentencers will have clearer insight into sentencing factors than legal staff as they are the decision makers, but may have less time to complete survey as reporting (resulting or other data entry) on a case is not part of their role</p> <p>Dependent on the flexibility of the platform, OSC’s ability to</p>	<p>Optimal in long term</p> <p>Assuming costs of system development are wrapped up with courts modernization, may be minimal costs to OSC. But development costs may be high and some may be passed on</p> <p>Ongoing maintenance and analysis costs, but likely to be lower than ad hoc survey development of other options</p> <p>Where an online survey used to collect data, these costs still apply</p>

	<p>b. Before next case is heard</p> <p>c. Using own decision factors plus key data from case file</p> <p>If done by the legal staff, the survey could be completed:</p> <p>a. Just after the sentence is given</p> <p>b. Or as the case is resulted during or after the session</p> <p>c. Using sentencers' decision factors as communicated to the legal staff at deliberation plus key data from case file</p>	<p>used to plan sampling</p> <p>Could be linked to existing data on courts and specific cases</p>	<p>influence its design, ongoing support and maintenance as well analytic skills of those operating it</p> <p>Stability required in Wi-Fi and hardware (e.g. tablets update)</p>	
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## Routine (census) options

Approach	Design considerations	Pros of approach	Cons of approach	Ranking on 'VfM'
<b>Option 5: Paper-based census</b>	<p>Paper questionnaire completed for all cases (as with Crown Court Sentencing Survey)</p> <p>Same design issues as for sampling option for paper</p>	<p>As with paper approach with a sampling design</p> <p>Certainty of approach for courts – over time, procedures would become embedded and response rates would rise</p>	<p>As with paper approach with a sampling design</p> <p>Resource intensive over the long term</p> <p>Long term reduction in time available for hearings</p>	<p>Very high set up and ongoing costs when staff time is factored in</p>

	questionnaire.	Larger sample for analysis – can focus on rare offences	Unworkable with current and planned resourcing. Census approach conflicts with Sentencing Council approach to analysis and research Requires sentencer to be reminded to fill in a form	
<b>Option 6. Ongoing data collection via the common platform</b>	As Option 4, but all cases required to have sentencing factors recorded a part of general administration Possible to use routing to include more information for specific types of offence	All the advantages of Option 4 Routine completion will improve response over time (if process maintained) Larger sample for analysis – can focus on rare offences	All the disadvantages of Option 4 Doubts over whether it's meaningful to collect this information for more trivial cases Burden of data collection for every case – will tie up resource without adding analytical power to the resulting data for analysis for most offence types (e.g. CCSS provided a larger sample than was needed for most analysis) Census approach conflicts with Sentencing Council approach to analysis and research	As with Option 4 Considerable costs associated with completion of full information for all cases

## Appendix A: Methodology

In addition to the three core data collection approaches outlined below, five telephone interviews were conducted with stakeholders involved in the digitalisation of magistrates' courts who were identified through a snowballing method as able to provide insight into the opportunities for gathering sentencing data. The purpose of these interviews was for orientation, which provided context to some of the findings around digitalisation.

### Approach 1: *Court visits* (interviews and case file reviews)

Interviews were conducted with people in a range of roles including the magistracy, judiciary and legal staff who advise them. In each court we interviewed at least one legal adviser and/or deputy justices' clerk and at least one magistrate and/or district judge (we had intended to interview justices' clerks but none were available in any region); we also interviewed legal team managers in two courts. The interviews were conducted using a bespoke topic guide<sup>32</sup> developed with the OSC, and lasted a maximum of 45 minutes to limit the burden on interviewees. All those who engaged with us had opted into the research, having been informed about it by a senior member of court staff who acted as our Court Lead in arranging the *court visits* (and had volunteered for this role). All potential interviewees were given a leaflet explaining the study aims, what would be involved in an interview and how to opt in if they were interested. Most interviews were conducted face-to-face during a court visit, but some were conducted by telephone if this was more convenient for the participant.

We conducted 21 interviews across the seven courts. As Table 1 shows, of the 21 interviews, 12 were with legal staff (legal advisers, legal team managers and deputy justices' clerks) and 9 with the magistracy and judiciary (including Bench Chairmen and district judges).

Legal staff	No.	Magistracy and Judiciary	No.
Legal Advisers	7	Magistrates	5
Legal Team Managers	2	(of whom Bench Chairmen)	(2)
Deputy Justices' Clerks	3	District judges	4
<b>Total</b>	<b>12</b>		<b>9</b>

<sup>32</sup> See Appendix B for summarised topic guide.

During each of the *court visits* the research team also reviewed up to 12 case or court files. The case files were selected by the OSC to include a range of offence types and sentence outcomes and the Court Lead was informed of the relevant codes via secure email from OSC. The researchers reviewed the files using a pro-forma developed with the OSC. The pro-forma captured the type of information contained in each case file, building up a detailed picture of what tends to be included, what is often absent and which types of case files hold more information. It did not record identifying information nor did it detail the content of individual documents such as a Pre-Sentence Report, but it did outline what was included in each file and, if relevant, why additional documents or notes had been included. As the sample is small it is indicative rather than statistically representative, but still a useful adjunct to the interviewees' perspectives on what sentencing data is recorded or not and why/why not.

A total of 59 case files were reviewed across the seven courts, including part-digital and paper files. None of the courts operated with digital only files, but some were using a combination of paper-based and digital filing. Table 2 shows the numbers of each, and the proportions relating to four key categories of offences (interpersonal - including hate crime and violence/abuse in any form, drugs, driving, theft – and 'other' which was a disparate group including offences such as breach of Probation Order and excess alcohol).

Type of file	No.	Type of offence	No.
Paper-only	42	Interpersonal (e.g. domestic abuse, assault, harassment)	16
Part-digital	17	Drugs	4
		Driving	10
		Theft	4
		Other (e.g. excess alcohol, unnecessary obstruction, breach of Probation Order)	11
		Not recorded	14
<b>Totals</b>	<b>59</b>		<b>59</b>

## **Approach 2: Survey of magistrates' courts**

The interim findings from the courts in Approach 1 contributed to the design of a survey of all magistrates' courts. The survey was conducted to establish how sentencing data is being collected and used via sentencing forms. A short online survey was designed and directed to the relevant members of staff who have responsibility or are familiar with the management of cases in their court and with the process of decision-making around sentencing. The survey aimed to provide basic information on the key areas of interest for the OSC in relation to gathering data on sentencing factors as the magistrates' courts currently operate.

NatCen created a generic survey link to a short 10 minute online survey. The first stage of recruitment was for the HMCTS business sponsor on this project to contact justices' clerks who work across 22 courts and inform them about the research project.

Following from this, the justices' clerks were asked to forward the cover email and survey link to 224 courts targeting the email to a legal adviser or other relevant member of staff in each court. The questions were developed by NatCen in consultation with the OSC team. A copy of the questionnaire can be found in Appendix D.

The data collection period started on 3rd of December 2015. It was anticipated that the survey would remain open for completion for two weeks, but due to a lower than expected response the survey remained open until 18th January 2016. A reminder was sent to a list of 44 contacts on 14th January. In total, 104 full responses were received. Duplicate responses from the same courts were randomly removed to improve the representativeness of the data. Some respondents had responded on behalf of various different courts and this had to be accounted for by weighting. After editing was complete, 79 responses from distinct courts were taken through to analysis.

Most often legal advisers and legal team managers took part in the survey; 37% of all of those who participated were legal advisers, 37% legal team managers. A further 20% said they were justices' clerks, and 5% deputy justices' clerks. Only 1% said they belonged to the 'other' category. This case turned out to be a district judge (Appendix E. Table 1).

Given the low number of courts who participated in the survey, the resulting data should be interpreted as indicative.

### **Approach 3: *Review of previous magistrates' court data collection***

NatCen conducted five interviews with stakeholders in various positions in September 2015 who had been involved in a previous assault data collection. The OSC assisted with the recruitment by contacting individuals who had been involved in the survey and gaining consent for their contact details to be passed onto NatCen. The final interviewees were selected from amongst these contacts based on initial, short telephone conversations between the individual stakeholders and NatCen. This selection was based on the individual's willingness to share their views, availability and experience and knowledge of the survey. As diverse a range of views and experiences as possible was sought for the full telephone interviews. All stakeholders interviewed had either been closely involved in overseeing the survey administration in court or were able to contextualise findings.

In addition, the relevant documentation available was reviewed. This included the data collection instrument (Appendix F), feedback from the contractor and OSC and a spreadsheet outlining the level of response that was expected and received from each participating court. There was no technical report or analysis of the final data available for this review and it was not possible to observe the data systems available at this stage.

## **Appendix B: Summarised topic guide for court visits**

Aim: Interviews with key stakeholders to understand what sentencing data is held by magistrates' courts and how it could be gathered to inform the development and monitoring of Sentencing Guidelines

**1. About the participant**

**2. Overview of sentencing decisions**

**3. Case file familiarity [for use in interviews with legal advisers/justice's clerks]**

*Aim: to establish what familiarity the participant has with case files, whether they primarily use them or contribute to them, how often and on which cases*

**4. Sentencing decisions: Case files [for use with legal advisers/justices' clerks]**

*Aim: to identify which elements of a case file are key to sentencing decisions*

**5. Sentencing decisions: Offence forms (*likely to be local - keep this part brief*)**

*Aim: to identify whether and how any kinds of offence forms have been used*

**6. Sentencing decisions: Other data**

*Aim: to explore where else sentencing factors are drawn from, and how they are recorded as part of the sentencing decision*

**7. Gaps in what is recorded**

*Aim: to identify whether anything useful is missing from what is recorded*

**8. Recording sentencing decisions**

*Aim: to identify how the sentencing decisions are recorded*

**9. Consistency of records [this section is for legal advisers/justices' clerks only]**

*Aim: to establish how much data is currently collected, in what detail, how complete it is and in what circumstances proxy data may be recorded*

- 10. Location of records [this section is for legal advisers/justices' clerks only]**  
*Aim: to map the process for the storage and retrieval of any collected data*
  
- 11. Rationale for collecting data**  
*Aim: to identify views on collecting sentencing data*
  
- 12. Future strategies for collecting**  
*Aim: to identify future options for collecting sentencing data*
  
- 13. Any other observations**  
*Aim: to gather any further insights*

## Appendix C: Description of roles

**Legal advisers** reported their role as being to advise the magistrates about procedure, practice and law regarding sentencing decisions, ensuring that magistrates' decisions are within the Sentencing Guidelines, and to record sentencing decisions and other data onto the case files. Their overall responsibility is to ensure that the court functions smoothly.

**Court associates** (who were not interviewed or surveyed) sit with district judges. Their role is to record sentencing decisions and other data onto the case files, as would a legal adviser. The court associate role differs from the legal adviser role in that they are not legally qualified so do not have an advisory responsibility.

**Legal team managers** described their role as primarily supervisory, managing a team of legal advisers. However, they must sit in court for a set number of hours per year, where they perform the same role as a legal adviser.

**Deputy justices' clerks** described their role as to ensure that magistrates receive the correct legal advice, both through training and in the courtroom. This is achieved by managing a team of legal advisers and legal team managers across geographical regions. Additionally, they occasionally sit in court to advise magistrates and record decisions, as per the role of a legal adviser.

**Magistrates and district judges** defined their role as sitting in courts and making sentencing decisions, after consideration of the Sentencing Guidelines. Magistrates who were Bench Chairman reported sitting on a bench of three magistrates who collaboratively made the sentencing decision.

**Bench Chairman** A bench consists of three magistrates sitting together in order to decide if the defendant is innocent or guilty: in other words, has the case been proved or not. The magistrate who sits in the centre is the Chairman of that particular court and is also responsible for addressing the court on behalf of his/her colleagues. On either side of the chairman sit the two 'wingers'. A Bench Chairman will often, but not always, take the Chairman role in court: on other occasions, they will sit as a winger. Bench Chairmen act as ambassadors for their bench at judicial and civic events.<sup>33</sup>

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<sup>33</sup> Courts and Tribunals Judiciary website, <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/bench-chairmen/>, accessed on 25<sup>th</sup> February 2016

## Appendix D: Survey questionnaire

### Web survey landing page

Welcome to a survey about the recording of sentencing data in the magistrates' courts commissioned by the **Sentencing Council** and conducted by NatCen Social Research.

The survey should take no more than **10 minutes** and should be completed by a member of court staff who is familiar with the management of cases in their court and with the process of decision-making around sentencing.

The survey aims to establish what information, if any, is collected about the reasons for sentencing decisions in magistrates' courts and to explore possible options for data collection in future. It is part of a wider piece of research that includes more detailed discussion with staff in a small number of courts.

Participation is entirely voluntary but we hope that you will be able to help us with this research. Your responses will be held securely and confidentially. The information you provide will be shared with the Sentencing Council research team. Your court (but not your job role) will be identifiable to the Sentencing Council research team but will not be available to anyone outside of this team. Courts will not be identified in any published report.

If you have any questions or comments please get in touch with the NatCen research team:

Katriina Lapanjuuri and Martin Wood

OSC.study@natcen.ac.uk

020 7549 7007

[www.natcen.ac.uk](http://www.natcen.ac.uk)

### Background questions

[ASK ALL]

#### CrtName

First we would like to ask some questions about your court house and your role. Please note, if you have responsibility for more than one court house, please fill out a questionnaire for each of these.

Please record the name of the court house you are telling us about.

STRING [250]

[ASK ALL]

**CrtRole**

What is your role at the court?

1. Legal adviser
2. Legal team manager
3. Court associate
4. Justices' clerk
5. Deputy justices' clerk
6. Delivery manager
7. Other (please write in)

[ASK ALL]

**CrtSpec**

Are there any types of criminal cases that this court does **not** deal with?

MULTICODE

1. No – all cases dealt with
2. Assault cases
3. Traffic/motoring
4. Domestic violence
5. Youth
6. Other (please write in)

[ASK ALL]

**CrtHear**

How often does this court house sit (excluding Saturdays)?

1. Every day every week
2. 2-4 days per week
3. Less than two days per week

[ASK ALL]

**CaseDay**

Approximately how many criminal cases does this court house hear in a typical day, when it is sitting?

1. 10 or fewer
2. 11-20
3. 21-30
4. 31-50
5. 51-100
6. 101-200
7. More than 200

[ASK ALL]

### **CrtPilot**

Has this court house been involved in any pilots in relation to digitalisation (the introduction of electronic devices/case management) or efficiency in the courtroom within the last year?

1. Yes
2. No

[IF CrtPilot=Yes]

### **WhatPilot**

Which pilots in relation to digitalisation or efficiency in the court house has this court been involved in within the last year? *Please write in*

STRING [250]

## **Digitalisation**

[ASK ALL]

### **EJudic**

Now turning to the use of digital resources in this court house.

Approximately what proportion of the magistrates who sit regularly at this court use an **official, e-judiciary email address** for court business?

1. All of them
2. Most of them
3. Some of them
4. None of them
5. Don't know

[IF EJudic=2. Most, 3. Yes, some of them or 4. No, none of them, 5. Don't know]

### **EJudExp**

When, if at all, do you think all magistrates who sit regularly at this court will be using their **official, e-judiciary email address** for court business?

1. In the next month
2. In the next three months
3. In the next six months
4. In the next year
5. More than a year
6. Don't know the timeframe
7. Don't anticipate that all magistrates will use official e-judiciary emails

[ASK ALL]

### **MagTab**

Approximately what proportion of **magistrates** who sit regularly at this court use an **iPad, tablet or laptop** (including personal devices) in court (e.g. to access guidelines electronically)?

1. None of them
2. Up to a quarter
3. Up to a half
4. Up to three-quarters
5. More than three-quarters, but not all magistrates
6. All of them
7. Don't know

[ASK ALL]

### **DJTab**

Approximately what proportion of **district judges** who sit regularly at this court use an **iPad, tablet or laptop** (including personal devices) in court (e.g. to access guidelines electronically)?

1. None of them
2. Up to a quarter
3. Up to a half
4. Up to three-quarters
5. More than three-quarters, but not all district judges
6. All of them
7. Don't know

[ASK ALL]

### **CrtWiFi**

Does your court have Wi-Fi internet access which is usable in the court room or retiring room?

1. Yes – usable in both
2. Yes – usable in the court room only
3. Yes – usable in the retiring room only

4. No

[IF CrtWifi=No]

### **WiFiWhen**

When do you expect to receive Wi-Fi internet access?

1. Within the next six months
2. Within the next year
3. A year or more
4. Don't know

## **Current practice in recording sentencing decision making**

[ASK ALL]

### **SentCap**

The next questions are about whether and how sentencing factors and detailed decision-making are recorded at this court (e.g. factors that magistrates and district judges take into account when sentencing and the stage at which a guilty plea is made).

Does anyone at this court capture any information about sentencing factors (for instance aggravating or mitigating factors) at the moment? Please include situations where information is only recorded sometimes or in some cases.

MULTICODE

1. Yes - in written notes in the case file
2. Yes - results on the case jacket/reasons code
3. Yes - informally in written notes by magistrates
4. Yes - informally in written notes by legal advisers/court associates
5. Yes - entered into a questionnaire or standard paper form
6. Yes - entered into an electronic database
7. Yes - recorded in another way (please write in)
8. No - no information recorded about reasons for sentences

[IF SentCap=1-7 Yes, information is being captured]

### **CapFreq**

Is this done for all cases, or only in specific circumstances?

1. All cases
2. In specific circumstances
3. It varies
4. Don't know/unsure

[IF CapFreq=2 or 3 or 4]

## **RecCircu**

Under what circumstances might this information be recorded at this court?

MULTICODE

1. Where custody is involved
2. Where the sentence is a community order
3. Where only a fine is issued
4. Where the sentence deviates from guidelines
5. Other (please write in)

[ASK ALL]

## **PleaCap**

Does anyone at this court capture information about the stage at which guilty pleas are entered or the level of sentence reduction? Please include situations where information is only recorded sometimes or for some cases.

MULTICODE

1. Yes – stage guilty plea entered
2. Yes – level of sentence reduction
3. Neither

[IF PleaCap=1 or 2]

## **PleaHow**

How is this recorded?

MULTICODE

1. In written notes in the case file
2. On the case jacket/reasons code
3. Informally in written notes by magistrates
4. Informally in written notes by legal advisers/court associates
5. Entered into a questionnaire or standard paper form
6. Entered into an electronic database
7. Recorded in another way (please write in)

## **Opportunities for data collection**

[ASK ALL]

### **OppsIntro**

In order to assess the implementation and impact of sentencing guidelines, the Sentencing Council occasionally needs to undertake data collection using a form-based survey in courts, to collect information about factors taken into account in sentencing. The next questions will help the Sentencing Council understand how this process can be made as efficient as possible.

[ASK ALL]

**SrvExp**

Has this court collected sentencing factor information using a data collection form in the last two years?

1. Yes
2. No

[IF SrvExp=Yes]

**SrvType**

Please tell us what this data collection/survey was about and who it was for.

MULTICODE

1. Currently collecting data on theft and drugs offences for the Sentencing Council
2. Collected data on assault offences for the Sentencing Council
3. Something else (please write in)

[IF SrvExp=Yes]

**SrvComm**

If you have any comments about the implementation of the survey, for instance the process of administration or the ease of completion of the form, please tell us here.

OPEN

No answer

[ASK ALL]

**MagForm**

For this court, when would be the best time after sentencing for **magistrates** to fill out a short paper or electronic form in your court?

1. After deliberating (in the retiring room or in court), but before the sentence is announced
2. In court, as the sentence is announced
3. In court, after the sentence is announced
4. Between cases
5. At the end of each sitting
6. It is likely to vary according to circumstance
7. Magistrate not the most appropriate person to complete the form

[IF MagForm=7 Not magistrate]

**MagWhoO**

Who would be the most appropriate person to complete a form?

STRING [250]

[ASK ALL]

### DJForm

For this court, when would be the best time after sentencing for **district judges** to fill out a short paper or electronic form in your court?

1. After deliberating (in the retiring room or in court), but before the sentence is announced
2. In court, as the sentence is announced
3. After the sentence is announced
4. Between cases
5. At the end of each sitting
6. It is likely to vary according to circumstance
7. District judge not the most appropriate person to complete the form

[IF DJForm=7 Not DJ]

### DJWhoO

Who would be the most appropriate person to complete a form?

STRING [250]

[ASK ALL]

### FormInf

The first part of the form is likely to capture some data which is personal to the defendant (e.g. Libra number, gender, name, sentencing date). Who would be best placed to provide this information in your court?

1. Legal adviser/court associate
2. Magistrate/district judge
3. Other court administrator

[ASK ALL]

### FrmAdm

If a **paper form** is used, who is best placed to **administer** this type of data collection exercise (i.e. receive, distribute and return forms) in your court?

1. Legal adviser/court associate
2. Other court administrator

[ASK ALL]

### FrmBrief

If a **paper form** is used, who is best placed to **brief and remind** magistrates and district judges in your court to fill this out?

1. Legal adviser/court associate
2. Bench chairs for the local area
3. Other court administrator
4. The Sentencing Council, via e-judiciary

[ASK ALL]

#### **ElecAdmin**

If an **electronic form** is used, who is best placed to distribute this to magistrates and district judges in your court?

1. Legal adviser/court associate
2. Other court administrator
3. The Sentencing Council, via e-judiciary

[ASK ALL]

#### **EForm**

If an **electronic form** is used, who is best placed to brief and remind magistrates and district judges in your court?

1. Legal adviser/court associate
2. Bench chair for the local area
3. Other court administrator
4. The Sentencing Council, via e-judiciary

[ASK ALL]

#### **FdBck**

What type of feedback on how the Sentencing Council uses this information would you like to see?

MULTICODE

1. Blog
2. Link to research report when published
3. Emailed one-pager
4. Presentation at regional event
5. None

[Final screen]

**Thank**

---

Many thanks for your help! Please click 'Next' to complete the survey.

If you have any questions or comments please get in touch with the NatCen research team:

Katriina Lapanjuuri and Martin Wood

[OSC.study@natcen.ac.uk](mailto:OSC.study@natcen.ac.uk)

020 7549 7007

[www.natcen.ac.uk](http://www.natcen.ac.uk)

## Appendix E: Survey tables

Table 1 Role at the court	
<i>Base: All respondents</i>	
	%
Legal adviser	37
Legal team manager	37
Justices' clerk	20
Deputy justices' clerk	5
Other	1
Total	100
<i>Unweighted base</i>	79

Table 2 What cases not dealt with in the court	
<i>Base: All respondents</i>	
	%
No - all cases dealt with	76
Traffic/motoring	14
Domestic violence	5
Other	5
Total	100
<i>Unweighted base</i>	79

Table 3 How often does court house sit (excluding Saturdays)	
<i>Base: All respondents</i>	
	%
Every day every week	88
2 to 4 days per week	12
Total	100
<i>Unweighted base</i>	79

Table 4 How many criminal cases courts hear in a typical day	
<i>Base: All respondents</i>	
	%
10 or fewer	1
11 to 20	14
21 to 30	18
31 to 50	27
51 to 100	13
101 to 200	16
More than 200	2
Don't know	8
Total	100
<i>Unweighted base</i>	79

Table 5 Whether the court has been involved in any pilots in relation to digitalisation	
<i>Base: All respondents</i>	
	%
Yes	21
No	72
Don't know	8
Total	100
<i>Unweighted base</i>	79

Table 6 Proportion of magistrates who use an official, e-judiciary email address for court business	
<i>Base: All respondents</i>	
	%
All of them	3
Most of them	12
Some of them	48
None of them	7
Don't know	30

Total	100
<i>Unweighted base</i>	79

Table 7 When, if at all, respondent thinks all magistrates who sit regularly at this court will be using their official, e-judiciary email address for court business	
<i>Base: All respondents</i>	
	%
In the next month	11
In the next three months	27
In the next six months	26
In the next year	6
More than a year	1
Don't know the timeframe	25
Don't anticipate that all magistrates will use official e-judiciary emails	4
Total	100
<i>Unweighted base</i>	79

Table 8 Proportion of magistrates who use an iPad, tablet or laptop in court	
<i>Base: All respondents</i>	
	%
Up to a quarter	43
Up to half	36
Up to three-quarters	7
Over three-quarters, but not all magistrates	5
Don't know	9
Total	100
<i>Unweighted base</i>	79

Table 9 Proportion of district judges who use an iPad, tablet or laptop in court	
<i>Base: All respondents</i>	
	%
None of them	34
Up to a quarter	3
Up to a half	4
More than three-quarters, but not all district judges	2
All of them	40
Don't know	16
Total	100
<i>Unweighted base</i>	79

Table 10 Proportion of courts with Wi-Fi internet access in the court or retiring room	
<i>Base: All respondents</i>	
	%
Yes - usable in both	54
Yes - usable in court room only	18
No	23
Don't know	4
Total	100
<i>Unweighted base</i>	79

Table 11 When expect to receive Wi-Fi internet access	
<i>Base: All respondents who did not have Wi-Fi internet access in the court or retiring room</i>	
	%
Within the next six months	76
Within the next year	10
Don't know	14
Total	100
<i>Unweighted base</i>	21

Table 12 Whether sentencing factors are currently captured	
<i>Base: All respondents</i>	
	%
Yes - in written notes in the case file	19
Yes - results on the case jacket/reasons code	16
Yes - entered into a questionnaire or standard paper form	15
Yes - informally in written notes by legal advisers/court associates	13
Yes - informally in written notes by magistrates	10
Yes - entered into an electronic database	9
Yes - recorded in another way (please write in)	9
No - no information recorded about reasons for sentences	8
Total	100
<i>Unweighted base</i>	79

Table 13 Whether sentencing factors captured in all cases or only in specific circumstances	
<i>Base: All respondents</i>	
	%
All cases	20
In specific circumstances	23
It varies	56
Don't know	1
Total	100
<i>Unweighted base</i>	79

Table 14 In what circumstances sentencing factors would be captured	
<i>Base: All respondents who captured information about sentencing factors</i>	
	%
Where custody is involved	36
Where the sentence deviates from guidelines	34
Where the sentence is a community order	25
Where only a fine is issued	2

Other (please write in)	4
Total	100
<i>Unweighted base</i>	54

Table 15 Whether information about guilty pleas captured	
<i>Base: All respondents</i>	
	%
Yes - stage guilty plea entered	54
Yes - level of sentence reduction	33
Neither	9
Don't know	4
<i>Unweighted base</i>	79

Table 16 How information about guilty pleas captured	
<i>Base: All respondents who captured information about guilty pleas</i>	
	%
On the case jacket/reasons code	54
In written notes in the case file	24
Entered into a questionnaire or standard paper form	8
Entered into an electronic database	7
Informally in written notes by advisers/court associates	6
Informally in written notes by magistrate	1
<i>Unweighted base</i>	60

Table 17 Whether court has collected sentencing factor information using forms in the last two years	
<i>Base: All respondents</i>	
	%
Yes	53
No	32
Don't know	15

Total	100
<i>Unweighted base</i>	79

Table 18 When would be the best time after sentencing for magistrates to fill out a short paper or electronic form	
<i>Base: All respondents</i>	
	%
It is likely to vary according to circumstance	51
After deliberating (in the retiring room or in court), but before the sentence is announced	20
In court, after the sentence is announced	9
At the end of each sitting	9
In court, as the sentence is announced	8
Between cases	4
Total	100
<i>Unweighted base</i>	79

Table 19 When would be the best time after sentencing for district judges to fill out a short paper or electronic form	
<i>Base: All respondents</i>	
	%
It is likely to vary according to circumstance	53
In court, as the sentence is announced	23
After the sentence is announced	8
Between cases	8
After deliberating (in the retiring room or in court), but before the sentence is announced	3
District judge not the most appropriate person to complete the form	3
At the end of each sitting	2
Total	100
<i>Unweighted base</i>	79

**Table 20** Who would be the best placed to provide information personal to the defendant (e.g. Libra number, gender, name, sentencing date)

<i>Base: All respondents</i>	
	%
Other court administrator	61
Legal adviser/court associate	39
Total	100
<i>Unweighted base</i>	79

**Table 21** Who is best placed to administer this type of data collection (i.e. receive, distribute and return forms) form to magistrates and district judges if a paper form is used

<i>Base: All respondents</i>	
	%
Other court administrator	73
Legal adviser/court associate	27
Total	100
<i>Unweighted base</i>	79

**Table 22** Who is best placed to brief and remind magistrates and district judges if a paper form is used

<i>Base: All respondents</i>	
	%
Legal adviser/court associate	80
The Sentencing Council, via e-judiciary	13
Bench chairs for the local area	7
Total	100
<i>Unweighted base</i>	79

**Table 23** Who is best placed to distribute an electronic form to magistrates and district judges

<i>Base: All respondents</i>	
------------------------------	--

	%
The Sentencing Council, via e-judiciary	51
Legal adviser/court associate	30
Other court administrator	18
Total	100
<i>Unweighted base</i>	79

**Table 24** Who is best placed to brief and remind magistrates and district judges if an electronic form is used for data collection

*Base: All respondents*

	%
Legal adviser/court associate	59
The Sentencing Council, via e-judiciary	33
Bench Chair for the local area	5
Other court administrator	3
Total	100
<i>Unweighted base</i>	79

**Table 25** What type of feedback on how the Sentencing Council uses this information

*Base: All respondents*

	%
Emailed one-pager	57
Link to research report when published	28
Presentation at regional event	5
Blog	2
None	8
Total	100
<i>Unweighted base</i>	79

## Appendix F: Assault data collection survey

**Magistrates' Court Sentencing Survey**  
OFFICIAL WHEN COMPLETE

# Assault & Public Order

[PRINCIPAL OFFENCE ONLY]

**Form Details**

Form ID	<input type="text"/>
Issued	<input type="text"/>

Please refer to guidance on completing this form overleaf  
**COMPLETE FOR THE PRINCIPAL OFFENCE ONLY**

**Assault Definitive Guideline Review**

This form is to be completed as part of the Sentencing Council's Assault Definitive Guideline Review to understand how the current Guideline influences sentencing in Magistrates' Courts. Forms should be completed for all assault offences sentenced or committed for sentence during the review period.

**Part A: To be completed by the sentencing Magistrate/District Judge or Court Clerk**  
**PLEASE COMPLETE IN CAPITALS**

**Case Details**

Sentence date	<input type="text" value="Day"/>	/	<input type="text" value="Month"/>	/	<input type="text" value="Year"/>				
CREST case ID	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Offender Details**

Offender name	Surname	<input type="text"/>			
	Forename	<input type="text"/>			
Offender DOB	<input type="text" value="Day"/>	/	<input type="text" value="Month"/>	/	<input type="text" value="Year"/>
Offender gender	<input type="checkbox"/> Male	<input type="checkbox"/> Female			

If you have any queries when completing this form or on the Magistrates' Court Sentencing Survey in general, contact Rebecca DeMarco at Opinion Research Services: [rebecca.demarco@ors.org.uk](mailto:rebecca.demarco@ors.org.uk) or 01792 535300.

**1. Offence details** SEE NOTES OVERLEAF

- Single offence
- Multiple offences - ANSWER FOR THE PRINCIPAL OFFENCE ONLY

What was the principal offence?

- 5.47 Assault occasioning actual bodily harm
- 5.38 Assault with intent to resist arrest
- 5.89 Assault on a police constable in execution of his duty
- 5.39 Common assault

Was this a 5.29 offence?

- Yes  No

Was the case sentenced or committed for sentence at the Crown Court?

- Sentenced - ANSWER SECTIONS 2 TO 7
- Committed for sentence - ANSWER SECTIONS 3, 4 AND 5 ONLY

**2. Sentence outcome (for the PRINCIPAL OFFENCE ONLY)**  
SEE NOTES OVERLEAF, TICK ALL THAT APPLY

(a) Custodial Sentence

- Determinate
- Hospital Order

(b) Suspended Sentence Order or Community Order

- SSO

Requirements of Suspended Sentence Order or Community Order  
TICK ALL REQUIREMENTS GIVEN

- Supervision
- Unpaid work
- Curfew
- Activity

- Prohibited activity  Mental health treatment
- Exclusion  Drug rehabilitation
- Residence  Alcohol treatment
- Foreign travel prohibition  Alcohol abstinence and monitoring (pilot scheme)
- Attendance centre
- Programme(s) (please specify in box below)

(c) Other outcome

- Fine
- Conditional discharge
- Absolute discharge

RECORD COMPENSATION, CONFISCATION & COSTS IN SECTION 7

**3. Definitive guideline - Step 1**

- (a) Factors indicating greater harm
- Injury/fear of injury which is serious in context of the offence
  - Victim particularly vulnerable
  - Sustained or repeated assault on same person

- (b) Factors indicating lesser harm
- Injury/fear of injury which is less serious in context of the offence

(c) Factors indicating higher culpability

Statutory aggravating factors

Offence motivated by/demonstrating hostility to:

- Race/religion  Disability  Sexual orientation  Transgender identity

Other aggravating factors

- Significant degree of premeditation
- Threatened/actual use of weapon/equivalent
- Intention to cause more serious harm
- Deliberately causes more harm than necessary
- Targeting of vulnerable victim(s)
- Leading role in group or gang
- Offence motivated by/demonstrating hostility to age or sex

(d) Factors indicating lower culpability

- Subordinate role in group or gang
- Greater degree of provocation
- Lack of premeditation
- Mental disorder/learning disability where linked to the commission of the offence
- Excessive self defence

**4. Offence seriousness**

- Category 1  Category 2  Category 3

**5. Definitive guideline - Step 2**

(a) Factors increasing seriousness

Statutory aggravating factors

- Previous relevant convictions:  1-3  4-9  10+
- Offence committed on bail

Other aggravating factors include

- Location
- Timing
- On-going effect on victim
- Offence against those in the public sector/service to public
- Presence of others
- Gratuitous degradation
- Victim compelled to leave home (domestic violence in particular)
- Failure to comply with current court orders
- On licence
- Attempt to conceal/dispose of evidence
- Failure to respond to warnings/concerns
- Offender was under the influence of alcohol/drugs
- Abuse of power/trust
- Exploiting contact arrangements
- Established evidence of community impact
- Steps taken to prevent reporting/assisting prosecution
- TICs
- Other factors (please specify in box below)

(b) Factors reducing seriousness or reflecting personal mitigation

- No previous relevant convictions
- Single blow
- Remorse
- Good character/exemplary conduct
- Determination/demonstration to address addiction/behaviour
- Serious medical conditions
- Isolated incident
- Age/lack of maturity affecting responsibility
- Lapse of time not fault of offender
- Mental disorder/learning disability where not linked to the commission of the offence
- Sole/primary carer for dependent relatives
- Other factors (please specify in box below)

**6. Indication of guilty plea** SEE NOTES OVERLEAF

Was guilt indicated at police station?

- Yes  No  Don't know

Was a guilty plea entered for the principal offence?

- Yes  No

Where was guilty plea indicated in the court process?

- At first hearing
- At subsequent hearing
- At/after day of trial

Was the guilty plea entered at the first reasonable opportunity?

- Yes  No

What was the sentence outcome before you applied a discount for any guilty plea?

- Custodial Sentence  Fine
- Suspended Sentence Order  Conditional discharge
- Community Order  Absolute discharge

Approximately what reduction for guilty plea was given?

- %

SEE NOTES OVERLEAF

**7. Additional factors**

Were any of the following other factors present or stated to have influenced the sentence imposed?

DO NOT INCLUDE ANYTHING THAT IS COVERED ELSEWHERE ON THIS FORM

- Multiple defendants  Confiscation Order
- Ancillary Order  Costs
- Compensation Order

Other factors that you stated and are relevant to the sentencing decision (please specify in box below)

## Assault Definitive Guideline Review

This form is to be completed as part of the Sentencing Council's Assault Definitive Guideline Review to understand how the current Guideline influences sentencing in Magistrates' Courts. Forms should be completed for all assault offences sentenced or committed for sentence during the review period.

## GENERAL COMMENTS ON COMPLETION OF THE FORM

The form is designed to record the basis upon which the Magistrate/District Judge approached the task of passing sentence; fundamental to the principles of open justice. Magistrates may therefore find it helpful to complete the form and use it as a checklist when passing sentence. The majority of the information for Part A will be contained in or on the front of the case file.

- You should complete only **ONE** form for the **principal offence** where more than one offence appears on a single indictment in a sentenced case (including committal for sentence cases). However, if on a single sentencing occasion you have more than one indictment for unrelated cases, complete a form for the principal offence on each indictment.
- If an offender is being sentenced for more than one offence, the principal offence will be the offence which attracts the **highest** sentence.
- If there is more than one offence attracting the highest sentence, the principal offence should be the one for which the highest maximum penalty exists.
- If the offences have the same maximum penalty you are asked to (randomly) select one as the principal offence.
- If there are **multiple offenders** in a case a form must be completed for the principal offence for **each offender**.

## ASSAULT & PUBLIC ORDER

### GUIDANCE ON COMPLETION

#### Section 1: Offence details

Tick the relevant box to reflect the **principal offence** for which the offender is being sentenced. Tick the relevant box to indicate whether you sentenced the case or committed the case for sentence at the Crown Court. If the case was sentenced, complete all sections of the form. If the case was committed for sentence, you should only complete sections 3, 4 and 5.

#### Section 2: Sentence outcome

Tick the relevant box to reflect the sentence/s imposed. In all cases where a length, term, extension period etc. is given, please ensure that the measurement is also included e.g. hours, days, weeks, years. If a programme requirement was given, please specify what the specific accredited programmes were. If you impose a curfew, specify the length of the curfew only, do not provide the time of day for which the curfew is in force.

If you have imposed an Ancillary Order, Compensation or Confiscation Order this should be recorded under Section 7 'Additional factors'. Please record the actual sentence imposed without taking into account the period credited for remand time.

#### Section 3: Guideline Step 1 - Factors indicating greater or lesser harm and higher or lower culpability

Tick all the relevant factors for step 1 that you took into account on reaching the sentence imposed.

#### Section 4: Offence seriousness

Tick the box relating to the category of offence seriousness that you stated in your sentencing remarks.

#### Section 5: Guideline Step 2 - Factors increasing and reducing seriousness or reflecting personal mitigation

Tick all the relevant factors for step 2 that you took into account on reaching the sentence imposed. Any additional factors (not listed) should be inserted under 'Other factors' and specified. 'Previous convictions' is now a guideline step 2 factor. If you tick this box please also indicate the number of previous convictions you took into account. Tick the box '1-3' for 'few', '4-9' for 'many' and '10+' for 'substantial'.

#### Section 6: Indication of guilt/guilty plea

Tick the relevant box to reflect whether there was an indication of guilt at the police station and if a guilty plea was entered for the principal offence. If a guilty plea was entered, tick the relevant box to indicate; at which proceedings it was entered and whether it was entered at the first reasonable opportunity. Tick the relevant box to indicate the type of sentence you arrived at after taking any aggravating and mitigating factors into account but before making an adjustment for any guilty plea. Write the percentage reduction that was in mind for the guilty plea only, and ignore any other discounts applied. Where a percentage reduction is not appropriate given the nature of the sentence/s imposed (for example, community order), please write in 'Full credit' or 'Not applicable'. If a guilty plea was not entered, only answer the first two questions in this section.

#### Section 7: Additional factors

A number of other factors may have been present in the case or have influenced the final sentence imposed, if so tick all of the boxes that apply to those stated in your sentencing remarks. You should use this section to record compensation and confiscation orders and any costs imposed. Any additional factors (which have not been specified or could not be included elsewhere on the form) that you stated and which you think were relevant should be inserted under 'Other factors'.

If you have any queries when completing this form or on the Magistrates' Court Sentencing Survey in general, contact Rebecca DeMarco at Opinion Research Services: [rebecca.demarco@ors.org.uk](mailto:rebecca.demarco@ors.org.uk) or 01792 535300.