

## Public opinion and understanding of sentencing

Feilzer, Martina

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**Written evidence submitted by Martina Y Feilzer, Professor Criminology and Criminal Justice, Bangor University (OUS0012)**

Headline submission responding to the Committee questions

- Public knowledge of sentencing processes and practices is low - this is a well-established, fairly consistent, and longstanding finding of research and is unsurprising.
- Information on individual sentencing decisions is accessed in the main through mainstream and other forms of media; few members of the public will access information on sentencing patterns and trends; a significant proportion of members of the public have first-hand experiences of crime and criminal justice which may include sentencing processes.
- Barriers to public knowledge are lack of interest and complexity of information on sentencing, any discussion of transmission of knowledge begs the question of the aims of raising awareness and of what? I.e. sentencing patterns, sentencing processes, long-term sentencing trends.
- It is difficult to assess to what extent public knowledge and understanding of sentencing affects confidence in the whole criminal justice system or simply reflects measurement effects, see below. In relation to sentencing and sentencers research suggests that:
  - Trust in judges to tell the truth remains high among members of the public; the public in England and Wales value equal treatment by the courts as the most important feature of democracy, and express considerable support for the normative questions of principles of judicial independence.
  - Nevertheless, there is an indication of a trust deficit among minority ethnic people of equal treatment in the courts.
- Public opinion on sentencing has been assessed based on two main approaches:
  - General questions about appropriateness of sentencing which a poor measure of public opinion as it allows respondents to fall back on recent unusual and 'extreme' cases of sentences – this measure shows a consistent
  - Scenario based approaches which allows respondents to choose appropriate sentences for specific offences and offence and offender characteristics – this research suggests there is much more agreement between members and the public and the judiciary than generally assumed

Extensive research evidence is available on public opinion of aspects of criminal justice including sentencing and sentencers and the factors that influence public opinion. The suggestion that the public express views on the judiciary's leniency in sentencing in England and Wales is supported by survey evidence since at least the 1960s. This is supported by measures included in the British Crime Survey/ Crime Survey for England and Wales which shows that these attitudinal trends have been relatively stable, despite significant and, at times, dramatic changes to sentencing practices in England and Wales over the past 40 years. These changes include the introduction of sentencing guidelines, the introduction and abolition of Indeterminate Sentences Imprisonment, increases in the lengths of average sentences of imprisonment, a reduction of the use of community sentences and many more.

Public attitudes seem remarkably impervious to actual changes in sentencing practices and patterns, which raises important questions about how these could be influenced.

In the early 2000s a number of experimental studies looked at the role of public knowledge in influencing public opinion and results differed depending on the methodology of the research and how knowledge was conceptualised, transmitted and measured. One important finding related to the importance of survey design and questions used to ascertain public opinion of criminal justice matters. For example, survey research designed to elicit specific attitudes about sentences which locates sentences within the specifics of individual cases through vignettes, rather than global ones (is sentencing too lenient, too harsh or about right, demonstrates that the public's sentences in such vignette cases are much closer to actual judicial practice than expected, closing what has been called the 'punitiveness gap'. Such research assesses public opinion by providing sentencing data on comparative cases or indicating that a sentence is 'high' or 'low' for comparable cases, means that by anchoring respondents' attitudes to real- life examples and data, a more accurate assessment is possible. This suggests that the cognitive deficit model may reflect methodological problems in survey research that uses global questions that are insufficiently sensitive to respondents' attitudes and are simply inaccurate as indicators of public views of sentencing.

Improving public understanding of sentencing is a difficult undertaking due to the complexity of the sentencing system and as stated above the need to be clear which aspects provision of information should cover and to what end. It would be possible to issue all sentencing decisions and particularly those for high profile cases and crimes with some information on sentencing trends and processes, however, how this would be registered and retained by members of the public is unclear. Just providing information without context or purpose is unlikely to have any significant effect on members of the public. The Sentencing Council has done work to take public opinion into account when considering new sentencing guidelines and this work could be extended into other spheres.

The difficult question for sentencers is the extent to which they should be beholden to public opinion and research suggests that the public trust sentencers and value the independence of the judiciary most highly. There is no suggestion that the public have a desire to tie sentencers to public opinion. Additionally, research suggests that a lot of the 'punitiveness gap' which policy makers have been trying to narrow is due to methodologically poor measures of public opinion which misrepresents public attitudes to sentencing.

Finally, the current crisis in criminal justice, the under-resourcing of courts, is likely to cause more damage to public opinion and trust in the access to fair and equal justice. There are areas of need for reform – legal aid, under-representation of certain groups in the judiciary, etc – which should be prioritised over concerns of sentencers following public opinion.

*July 2022*

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I have published extensively on the matter and conducted experimental research on public knowledge and public trust in criminal justice and am very happy to offer further evidence in person should this be of interest to the committee. For some additional references, see:

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