

## **ADVICE RELATING TO ETHICS COMMITTEE BRIEFING NOTES**

### **Issue**

1. I have been asked to provide legal advice regarding a proposed project by the data analysis team, which focuses on violent crime outcomes and the purpose of which is to gain a better understanding of why a large number of victims of violent crime do not support a prosecution from the outset. When considering and delivering this advice I will seek to take account of human rights considerations as well as the issues of necessity and proportionality in light of proposed operational use, which is for law enforcement purposes.

### **Background**

2. In order to conduct the proposed project various data sets already held by WMP will be analysed and where necessary I will refer to the methods, which will be used and applicable legislation. In addition I will consider the lawfulness of the activity as well as the right to a private life, which may be interfered with if it is in accordance with the law, and such interference is necessary and proportionate.

3. When considering all of these matters in the context of human rights and data protection legislation, it will be noted that WMP processes information in accordance with the Law Enforcement Directive for law enforcement purposes. These purposes include preventing, investigating, detecting or prosecuting criminal offences or the execution of criminal penalties.

4. The briefing note for this project indicates that a preliminary assessment has revealed that 67% of violent crime victims did not support a prosecution from the outset. As such the purpose of the project is to establish why this is and whether or not there are any processes or mechanisms that the Force could adopt or adjust, to better meet the needs of victims, improve outcomes and improve trust. This activity would therefore be in direct support to law enforcement purposes.

5. As part of this process two different outcomes will be identified and considered by the team, namely when the victim has supported the case through to a successful outcome and also when the victim withdraws their support from the case.

### **Analysis**

6. In order to identify what has influenced outcomes with regard to the victim supporting (or not supporting) an investigation the project will make use of exploratory data analysis (EDA) from data gathered during the day-to-day investigative work of WMP. Whilst crime data regarding individuals would be processed, no personal details would be provided in the outputs. As such it is unlikely that the privacy of individuals would be affected to any greater degree than would occur in normal policing activity.

7. Aside from this the material that will be analysed is already in the possession of WMP having been collected in the course of law enforcement operations. Further, any activity undertaken would be in accordance with the DCMS Data Ethics Framework 2018.

8. Beyond the means and methods detailed above the project must demonstrate that in order to make use of that information it must be strictly necessary and for judicial and statutory purposes, namely for reasons of substantial public interest.

9. The project has been proposed on the basis that the majority of victims of violent crime do not support a prosecution. It is currently unclear why this is and in particular what actions of WMP may influence a victim and in addition what steps WMP should take in order to address this issue.

10. The proposed project would address this knowledge gap, and permit WMP to identify the best means and methods to ensure victim support to an investigation and hence directly impact upon detecting or prosecuting criminal offences. It may therefore be considered that such a model would meet the criteria of being in a substantial public interest.

11. With regard to the issue of being strictly necessary, (namely relating to a pressing social need, and one cannot reasonably achieve it through less intrusive means) the briefing note has identified the pressing social need contained within the intent and purpose of the project.

12. Turning to the issue of using a less intrusive means it is apparent that WMP already holds the material to be reviewed and made use of. Further, this material was recovered in the course of lawful police operations. If a proposal was made to recover this material by other means this would duplicate actions that had already been completed. In addition as WMP already hold the required material it may be considered that such activities were more intrusive as the required material is already held.

13. The other matters which need to be addressed with regard to this project relate to the issues of proportionality and in particular four questions that should be considered and answered relating to this project.

*Is the legislative objective sufficiently important to justify limiting a fundamental right?*

14. Whilst an individual has a right to a private life, that privacy may be interfered with in accordance with the law. WMP is able to process personal data and will rely on legislation to do so. The purpose of the activity within the project is to identify the best means and methods to support victims of violent crime to ensure a successful outcome, which is a significant part of law enforcement. The Ethics Committee may agree that such a project would be so important as to limit the right to a private life.

*Are the measures which have been designed to meet it rationally connected to it?*

15. The relevant legislation that WMP will rely upon provides a means whereby personal data may be processed and is also subject to strict controls. In addition the processing of personal data to properly support victims of violent crime is directly related to law enforcement purposes.

*Are they no more than are necessary to accomplish it?*

16. The "strictly necessary" test addresses this as well as the fact that there is a pressing social need to identify the best means and methods to support victims of violent crime to ensure a successful outcome.

*Do they strike a fair balance between the rights of the individual and the interests of the community?*

17. Whilst everyone has a right to a private life that right is not absolute. It may be interfered in accordance with the law for various reasons including investigating and detecting crime.

18. In considering the balance to be struck between an individual's right to privacy, against ensuring that victims of violent crime are properly supported and to deliver successful outcomes it may be rightly assessed that a fair balance would be struck when conducting the proposed project.

## **Conclusion**

19. The purpose of this project is to make use of lawfully retained material in order to support law enforcement operations and identify what processes or mechanisms that the Force could make use of to better meet the needs of victims, improve outcomes and improve trust.

20. When considering the rights of any individual against the purpose of the project and taking account of necessity, proportionality and the balancing act to be applied, it is my assessment that the project has met the necessary criteria and WMP would be justified in conducting the proposed analysis.

Scott McDonnell

Assistant Director

Joint Legal Services

16 Sept 2021