

SENTENCING

A) Sentencing is the decision of what penalty should be imposed on a person who is guilty of a criminal offence. In making this decision, the judge takes into consideration four key points: the significance of the offence; information about the defendant, including whether he has previous convictions for similar offences; any mitigating circumstances and finally sentencing aims. There are four main types of sentencing: custodial sentences, community sentences, fines and discharges.

Custodial sentences are punishments that involve taking away the offender's liberty. The Criminal Justice Act 1991 (s1) states that a custodial sentence should not be passed unless the court either decides that the offence was so serious that only a prison sentence is adequate; or if a violent or sexual offence has been committed and prison is the only sentence that would protect the public sufficiently. In Byron's case he may not have committed a serious enough offence to give him a custodial sentence but the court may find that any previous convictions, the failure to respond to previous sentences or the fact that the offence was committed while on bail for another offence a frustrating issue and consequently making the offence more serious. As Byron is aged 22, the custodial sentence would be served in a prison, not in a detention and training unit if he was under 21. A crime such as theft falls into the category of triable either way offences, but the magistrate's powers are limited to a 12 month sentence. If the magistrate wishes for an increased sentence it may then be sent to the Crown Court.

Community sentences affect a defendant's liberty but are served outside prisons and other establishments. They are only given if the offence is serious enough to warrant it, they are suitable for the offender and a restriction of liberty is proportionate with the seriousness of the offence. There are four types of community sentence: probation order; community service order; combination order and curfew order. A probation order places the offender under the supervision of a probation officer for a period of three months to three years. If Byron were to be given this sentence, during the time set he would have to keep in regular contact with the officer and agree to other set conditions such as, attending a probation centre and requiring the offender to live at a certain address. The main aim of a probation order would be to rehabilitate Byron, however, figures suggest that it has a weak success rate with 60 per cent of those placed on probation being reconvicted within two years. A community service order demands Byron would have to work for between 40 to 240 hours on an appropriate scheme organised by the probation service. Although the re-offending rates for community service orders are lower than other community sentences they often encounter mediocre attendances. A combination order is made up of up to 100 hours community service and a probation order. Byron would have to complete the required number of hours of community, and keep

to the terms of the probation order. Finally with a curfew order the offender can be ordered to remain at a fixed address for between two and twelve hours in any twenty-four hour period. This can last for up to six months and be put into effect with electronic tagging. Courts can only pass such an order if there is an arrangement for monitoring curfews in that area. The cost of tagging is estimated at £675 per offender per month, relatively inexpensive compared to the estimated cost of keeping a person in prison at £1,555 per month.

A fine is the most frequent way of sentencing a case at the magistrates. Although, the magistrates maximum fine is £5,000, if they felt Byron's offence exceeded this amount it would be put up to the Crown Court where there is no limit. The last key method of sentencing are discharges. A discharge may be either conditional or absolute. A conditional discharge means that the court discharges an offender on the circumstance that no further offences are executed during a set period of up to three years. This is extensively used in magistrate's courts for first time minor offences. An absolute discharge essentially means that no penalty is imposed; they may be legally guilty but morally blameless. If a discharge were to be placed for Byron it would almost certainly be a conditional discharge, if any.

B) When a judge or magistrate pass a sentence they will not merely look at the sentences, but they will additionally have to decide what they are trying to achieve by the punishment they are going to give. There are six central aims of sentencing. These are: retribution; denunciation; incapacitation; deterrence; rehabilitation and reparation. All are very distinctive and give different arguments.

Retribution is based on punishment. It does not seek to reduce crime or change the offender's future conduct. It is therefore only connected with the offence that was committed and making sure that the punishment caused is in comparison to that offence. This idea can be seen in the guide lines set out by the Court of Appeal, for some offences, such as theft, where different levels of sentence are suggested according to the type and expense of theft involved. This may not be suitable to Byron, as he has committed a theft not a highly serious offence such as murder that can easily be used in retribution, unless there were any odd factors surrounding the offence.

Denunciation should reflect society's disapproval of the crime. It reinforces the moral boundaries of acceptable and unacceptable behaviour and can mould public perception of certain conduct. For example, drink driving has become less acceptable as the law imposes severe penalties for this crime. Although denunciation is important in the interest of society I do not deem it to be an effective or imperative target for the court to come to a decision on.

Incapacitation or protection of the public is one of the major justifications claimed for punishment. For example, imprisonment leads to the incapacitation of offenders so that they are prevented (at least temporarily) from offending against the public at large. Three ways incapacitation can be effected are the death penalty for murder (abolished in 1965 and a mandatory life sentence was introduced in its place), a long prison sentence or electronic tagging (curfew order). The last time the Commons debated the issue of a more general reintroduction to the death penalty in 1994, it was rejected by 403 votes to 159, a majority of 244 MPs against. James Hanratty, aged 25, was one of the last people to be executed before the abolition of capital punishment in the UK after he was convicted in 1962 of shooting dead scientist Michael Gregsten in Bedfordshire. Naturally the execution of an offender will obviously protect the public from that offender, and imprisoning an offender will prevent him from committing crimes against members of the public. However, the situation is not that simple. Prisons may become a criminal university and the experience of prison may be such that the offender is more likely to re-offend after release, and perhaps to commit more serious crimes. If this is so, crimes are not prevented, but merely deferred and some prisoners continue to commit offences, including serious assaults and murder, while in custody. Nevertheless, the incapacitation of an individual offender, who poses a danger to the public, can protect the public from that particular offender, e.g., a mass murderer or a serial rapist. A curfew order may include the requirement of electronic monitoring of the offender's whereabouts during the curfew period. I am to believe that, along with retribution, incapacitation is that most reliable of all the aims of sentencing. On the other hand, in Byron's situation, such a widespread criminal pastime may not necessitate for a long prison sentence as the use of rehabilitation will be small and he may possibly just gain knowledge of further methods of theft.

Deterrence is the belief that punishment for crime can deter people from offending. There are two forms of it; Individual deterrence is concerned with punishing an individual offender in the expectation that he will not offend again and general deterrence is related to the possibility that people in general will be deterred from committing crime by the threat of punishment if they are caught. These are put into action by a prison sentence or a heavy fine. However, imprisonment, the most serious punishment in the UK, does not always deter further offending, according to a Home Office study, 58% of all sentenced prisoners discharged in 1995 were reconvicted of a serious offence within two years of being released. Among young offenders, 76% were reconvicted. In some situations deterrence may work but in most cases it fails to do so.

Rehabilitation involves offering an offender help to overcome problems that he faces, thereby attempting to make it easier for him or her to avoid future offending. This can include various types of assistance provided in prison or in the course of a probation order, which are intended to help the offender to improve his social skills, his employment prospects, or his capacity to obtain

welfare benefits. Rehabilitation principles can be seen in the official terms of reference of some of those dealing with offenders after conviction; The duty of the Prison Service is to treat inmates "with humanity and to help them lead law abiding lives in custody and after release" and probation officers should 'advise, assist and befriend clients'. As with deterrence rehabilitation can have some negative aspects. A Home Office study found that there was no noticeable difference between reconviction rates for custody and community penalties. 56% of offenders who commenced community penalties were reconvicted within two years in comparison with 58% of all sentenced prisoners. A short rehabilitation period may be suitable for Byron as he is only 22, but there is the possibility that he may re-offend.

Reparation is most likely the most conventional manner in crimes such as theft. Under s.35 of the Powers of the Criminal Courts Act 1973 it states that courts can make an order that the defendant pay a sum of money to his victim in compensation. Also the courts can put into effect a restitution order, which is when if the defendant still has the assets obtained from the victim, then they can make him return the goods to the rightful owner, this notion additionally applies to society as a whole. Mainly in the purpose of Community Service Orders. It also has been known for to bring offenders and victims together, to make direct reparation. If it is Byron's first offence and he has sufficient financial circumstances if he no longer has the property then reparation may possibly be a worthy format.