

# Sentencing

Magistrates = max two terms of six months. £5000 fine

Crown = No limits.

- Murder is mandatory life.
- All crimes have maximum sentence.
- Theft max 7 yrs.
- No minimum sentences.
- The Crime (sentences) Act 1997 – min sentences for persistent offenders.
- C(S)A 1997 imposed mandatory life or second violent / serious crime.

## 1. Aims of Sentencing

- Passing sentence J looks at sentence available + what they are trying to achieve in giving a particular sentence.

The 6 aims and objectives are:

1. **Retribution:** punishment because they deserve it. Revenge. An eye for an eye. Retribution today based on idea each crime has a set tariff. A band which crimes fit into. A sentence is imposed within correct band. Bad because doesn't take into account mitigating factors.
2. **Denunciation:** this is a way of showing a particular crime or crime in general is considered heinous by society. E.g. drink driving.
3. **Incapacitation:** punishment serves a useful purpose. Prevents offender, re offending. E.g. death, loss of limbs, long prison sentences, tagging, curfew. Used to protect the public.
4. **Deterrence:** individual or general. Individual E.g. prison. May deter future actions. Though only if criminal thinks about consequences before committing. Usually drunk etc so do not. General deterrence hopes to deter others from following. Perhaps least fair way and least effective as few think about others situation. Also example sentence is a little unfair. E.g. mobile phone crime. Punishment does not fit crime.
5. **Rehabilitation:** forward looking. Aim to reform offender. Hope offender's behaviour will be altered by sentence imposed. E.g. drug testing and treatment orders, probation. Pre sentence report taken into consideration, school reports etc. important with young offenders. Sentences are individual ones, not at all like tariffs. Criticised as being inconsistent and discriminating against those from poor backgrounds. **The Power of criminal Courts (sentencing) Act 2000** states, considering seriousness of offence court may also take into consideration any previous failure to respond to previous sentence.

6. **Reparation:** Compensating victim, or society. E.g. returns stolen goods, Community service. Under POCCSA 2000 says courts are under duty to provide reason if they do not impose compensation order. Can be used in conjunction with other sentence.

## **2. Sentencing Practice in the Courts**

- Court usually considers both offence and background of offender as well as the AIMS of sentencing.
- To do this if guilty plea, prosecution outline the facts of case. Defendant asked if agrees. If not Newton case held. If not guilty plea facts are heard during case. Facts of crime effect sentencing.

### **2.1 Facts Surrounding Offence**

- Important to look at:
  - How serious was it for its type. E.g. theft, how much stolen. & Was defendant in position of trust?
  - In assault, what injuries, & was it premeditated. Was victim particularly vulnerable (elderly) or racially motivated?
  - Premeditated usually considered worse than spur of moment.
  - Being in position of trust also worse.
- Where several defendants convicted for same crime court try to find who planned it and who played greater part.
- Also remorse taken into account. At what stage plead guilty. Up to 1/3 off.
- In 2001 L chief Justice said effects on victim can be taken into account.

### **2.2 The Offenders Background**

#### **Previous Convictions**

- Court want to know if any previous convictions.
- May take into account failure to respond to previous sentence.
- Past record may determine if have to receive minimum sentence or life imprisonment.
- Was crime committed on bail? The Powers of Criminal Courts (Sentencing) Act 2000 if this the case it will be treated as aggravating factor.

#### **Pre Sentence Reports**

- Prepared by probation service.
- Court usually but not has to consider this before passing custodial sentence.
- Before giving community sentence the report is important to indicate how effective it may be.

#### **Medical Reports**

- If medical or psychiatric probs, court usually ask for report by doctor.
- Report useful in deciding best sentence.

### **Financial Situation of Defendant.**

- If fine, financial situation must be taken into account.

### **2.3 Sentencing Guidelines**

- Sec 80 Crime and Disorder Act 1998, places Court of Appeal's sentencing guidelines on a statutory basis.
- When COA hears appeal against sentence by defence of attorney general (for lenient one) the court shall decide if to frame guidelines or if they already exist.

If Court has to make guidelines, it must have regard to:

- Need for consistency
- Sentences from other courts for similar offences
- Cost of different sentence and relative effectiveness in preventing re-offending.
- Views of sentencing advisory panel.

### **Sentencing Advisory panel**

- Under Crime and Disorder Act 1998, sentencing Advisory panel set up by L Chancellor.
- If C O Appeal Decide to revise guidelines must notify panel.
- Panel have power to advise guidelines be made or revised for particular offence.

## 3 Types of Sentences

Four main types of sentence available to courts:

1. Custodial
2. Community
3. Fines
4. Discharge

Have additional such as compensation orders and confiscation of driving licence.

### **3.1 Custodial Sentences**

- Age important. Young only get custodial in exceptional circumstances.
- The PoCC(S)A 2000, states custodial only passed if:
  - Offence so serious only custodial can be justified
  - Or case involved sexual or violent & only prison adequate to protect public.
- When considering seriousness, court take into account previous convictions, failure to respond to previous sentence and if committed on bail. For another offence is aggravating factor and makes it more serious.
- Court must state reason for custodial.
- Magistrates' must write reason on warrant of commitment and enter it into register.

### **Prison Sentences**

- Prison only for over 21's.
- For murder has to be life but judge can recommend a minimum of years. Home Secretary will then set a tariff.
- For other crimes things like, maximum for particular crime, previous record and seriousness of crime, are taken into account.
- Don't serve their entire sentence.
- If less than 4 yrs automatically released after half.
- Over 4 yrs released after 2/3 or after 1/2 on licence.
- Behaviour in prison determines exact length served unless under 1 yr.
- All are supervised after release.

### **Home Detention Curfew**

- Crime and Disorder Act 1998 allows early release if curfew included.
- Longer sentence longer curfew.
- Each prisoner is assessed as to viability.
- If not given HDC then must serve half sentence to be released on licence.
- Benefits it prevents re offending, reduces prison population.

### **Extended Sentences**

- Sec 85 of POCC(S)A 2000 gives sentencing court power to extend sentences for violent or sexual crimes.

- The offender is given custodial sentence plus further extended period up to ten years, which they are out on licence.
- They must register with police.

### **Suspended Prison Sentence**

- Adult may get suspended prison sentence, up to 2 yrs, 6 mths in Mags.
- If no re offends then sentence is not served, if re offends then added to new sentence.
- Not used when offence is so serious that an immediate custodial one would have been appropriate.
- Can be combined with fines or compensation orders.
- Often viewed as soft option by offenders. Many re offend.

### **3.2 Custodial Sentences for Young Offenders**

Argued custodial sentences for under 15 is bad, university of crime. Stance on this has changed a lot in recent yrs. Many different custodial sentences which can be given. Depending on offence, age and has offended before.

#### **Young Offenders Institution**

- 18-20 can go to YOI as custodial sentence.
- Min is 21 days, max is max allowed for sentence.
- If reach 21 inside get moved to adult prison.

#### **Detention and Training Orders**

- Crime and Disorder Act 1998, created new custodial sentence called detention and Training order for young offenders.
- Sentence must be specified and be between 4 & 24 mths.
- Can be given to 12 – 31 yr old. But only for persistent if under 15.
- Power for home secretary to extend to aged 10&11 if court says necessary to protect public.

#### **Detention for Serious Crimes**

- For Serious Offences, court can order longer periods of detention.
- For 10 – 13 yr olds available if max sentence for crime at least 14 yrs [adult], or is offence of indecent assault on woman under sec 14 sexual offences act 1956.
- 14 – 17 yr olds also available causing death by dangerous driving, drink, drugs.
  1. Length of detention no longer than maximum available for adult custodial sentence to boy, 13 raped girl, 12

#### **Detention at Her Majesty's Pleasure**

- 10 – 17 guilty of murder ordered to be detained during her majesty's pleasure.
- Thos si an intermediate sentence which allows offender to be released when suitable.

- Judge recommends minimum number of yrs before release considered.

### **3.3 Community Sentence**

- POCC(S)A 2000 set out 5 community sentences to be used for over 16's.
  1. Community Rehabilitation Orders
  2. Community Punishment Orders
  3. Community Punishment & Rehabilitation Orders
  4. Curfew Orders
  5. Drug treatment & Testing Orders
- Addition Criminal Justice and Courts Services Act 2000 created 2 more
  1. Exclusion Orders
  2. Drug Abstinence Orders

#### **Community Rehabilitation Order**

- Under supervision of probation officer for between 6-mths & 3 yrs
- Must lead industrious & honest life & be in contact with officer.
- Court can impose other conditions:
  1. Residence order
  2. Cant do specific activities up to 69 days
  3. Attends probation ctr
  4. Treatment with drug, alcohol or mental people.
- Main aim is to rehabilitate. Though 60% re offend in 2 yrs.

#### **Community Punishment Order**

- Requires to work between 40 – 240 hrs on suitable project.
- Time fixed by court. Usually 8 hrs a day. Usually weekends. Eric Cantona taught kids footie.
- Criticised as too short. Other countries give longer.
- Much less re offending rate than other community schemes.

#### **Community Punishment and Rehabilitation Order**

- Combination of two.
- Up to 100hrs on community punishment and must meet terms of rehabilitation order.
- Gives courts more flexibility in what they can impose.

#### **Curfew Orders**

- At fixed address must stay between 2 – 12 hrs a day.
- Last up to 6 months. Can use tagging.
- Only possible if arrangement for monitoring curfews in the area.
- Tagging is a third of prison cost. And in 1<sup>st</sup> 2 yrs 80% completed successfully.

#### **Drug Treatment and Testing Orders**

- Sec 52 –58 POCC(S)A 2000 sets out rules for 16+ to use this scheme.
- Lasts between 6 months + 3 yrs.
- Possible if convict agrees.
- Residential or not, court must set min number of tests each month.
- Reviews must be attended by offender and written reports made.
- Though only small no given order. It did help.

### **Exclusion Orders**

- Bans going somewhere at specific time. E.g. shoplifter to certain shops.
- Up to 2 yrs for 16+. Up to 3 months 15 -.

### **Drug Abstinence Orders**

- Only made if have dependency on drugs or they tend to trigger the crime they commit.
- Must abstain from specific A class drugs. Enforced by testing.
- Between 6 months + 3 yrs. 18 + only.

### **3.4 Fines**

- Most common way in Magistrates'. Less common in Crown.
- Up to £5000 personal + £20000 business. Magistrates. Unlimited crown.

### **Unpaid Fines**

- Many do not pay. Makes sentence ineffective and waste of money when jailed.

### **3.5 Discharges**

- Either conditional or absolute.
- Conditional can impose don't re commit up to 3 yrs.
- Used when other sentence thought unnecessary. Used widely in Mags for first time minor offences. Can be brought up if re offends.
- Absolute is effectively no penalty imposed.
- Used if technically guilty but morally blameless. E.g. tax disc fell onto floor. As some penalty would have to be imposed they could give a C discharge.

### **3.6 Disqualification from Driving**

- If charged with driving offence court can confiscate licence.
- For 1<sup>st</sup> drink driving min is 12 months disqualification. 3yrs 2<sup>nd</sup> time.
- Courts can use this for anyone who uses a vehicle to commit crime. Not often.

### **3.7 Other Powers Available to the Courts**

- Court have other powers to compensate victim or make sure offender doesn't benefit.

### **Compensation Orders & Restitution Orders**

- Max in Mags £5000. must give reason why if don't use if have power to do so.
- Restitution is property if still there is returned to victim.

### **Deprivation and Forfeiture Orders**

- Court can take property used to commit a crime, e.g. car.
- The Proceeds of Crime Act 1995 allows courts to take all proceeds up to 6 yrs prior to conviction.

### **Deferred Sentences**

- If judge believes defendant's circumstances are about to change court can defer sentence up to 6 months. Only done if change will make punishment unnecessary or lesser sentence is more suitable.



## **4 Young Offenders**

- Under 21. Though different ages have different sentences available. Main aim is rehabilitation & reformation. 18- usually dealt with in youth court.

### **4.1 Available Sentences**

- All four still available but with differences.
- 16+ can get same community as adults. E.g. drug, community punishment etc.
- 16- cannot have these except curfew which is 10+
- Some other orders for young offenders:

#### **Attendance Centre Orders**

- 10-21 attendance at centre from 2 – 36hrs a week. Times vary for age.
- Centres under supervision of probation service. Leisure activities.
- Order cannot be made if already served period of detention.

#### **Supervision Orders**

- 18- supervision up to 3 yrs under: social services, probation officer, youth offending team.

#### **Action Plan Orders**

- sec 69 of Crime & Disorder act 1998, new community order called APO.
- 18- includes reparation, rehabilitation, and punishment.
- Puts them under supervision. Can include requirements:
  - Participate in activities.
  - Present himself at time and place.
  - Attend attendance centre.
  - Avoid centre places.
  - Comply with education arrangements.
  - Make reparation.

#### **Fines**

- 10-13 £250, 14-17 £1000, 18 normal magistrates £5000.

#### **Reparation Orders**

- 18- not in conjunction with custodial, community, combination, supervision or action plan order.
  - To persons who were victims or affected.
  - Community at large.
  - Max 24hrs completed in 3 months.

#### **Discharges**

- Any age, usually young, first time, minor offence.
- Cannot conditionally discharge in following circumstances:
  1. If have been warned within past 2 yrs. Exceptional circumstance to be explained in court.
  2. If in breach of anti social behaviour order

3. In breach of sex offender order.

### **Reprimands & Warnings**

- Not sentences passed by court, but police before bringing case to court.
- Must be evidence of crime and admission. Must be satisfied it would not be in public interest to prosecute.
- Only possible if no previous convictions.
- Different stages. Only reprimand if no previous reprimands or warnings.
- Warned if never warned before or 2yrs previous.
- Youth offending team must be informed and arrange rehabilitation scheme.

### **4.2 Parental Responsibility**

- If parents agree a time is set to control kids. If fail they forfeit money, max £1000
- If unreasonably refuse court has power to force fine.
- Parents also can be bound over to ensure child complies with community order.
- If 16- parents must pay fine. Income taken into account.

### **Parenting Orders**

- Help for parent to change kids offending behaviour. Training and counselling.
- Three months max 1 a week.
- Can also be forced to comply with conditions: escort child to school, ensure responsible adult at home on evenings.
- Court can make a parenting order where:
  - Court makes a child safety order
  - Court makes anti social behaviour order
  - Child is convicted of offence.
  - Parent convicted of offence under Truancy Act 1996
- Only made if desirable in interest of preventing conduct, which gave rise to order.
- If 16- court must make parenting order unless can state why it is not desirable in the interest of preventing the conduct, which gave rise to the order.

### **4.3 Youth Offending Teams**

- Crime & Disorder Act 1998 makes local authorities set up 1 or more YOT's.
- Main idea is to build cooperation between agencies involved, social & probation.
- These teams coordinate provisions of youth justice in an area.
- Must contain probation, social and police worker. Local health education and others can join.
- Remember anyone warned must be referred to YOT.

## **5 Mentally Ill offenders**

- Law says mentally ill not punished but treated, as far as possible.
- Courts can issue all four above + extras.
- Such as placing them on probation as long as they attends for treatment, makes hospital order or makes restrictions orders under sec 41 of the Mental Health act 1983.
- Probation order with treatment order only done if court satisfied mental condition is treatable and no need to make a hospital order.
- Some cases though where protection of public is key: in this case the offenders with severe mental problems who are considered a danger to the public under sec 41 of the MHA 1983, can be sent to secure hospital for a set or undefined time. If undefined only home secretary or mental health tribunal can release them.

## **6 Penal Policies & their Affects**

- Sentencing policies greatly effect prison population.
- U.k higher % prison pop than rest of Europe.
- Policies changed, first to get less people for minor crimes in, then to get more in to be the party, 'hard on crime'.

### **Minimum Sentence**

- The Crime (Sentences) Act 1997 introduced automatic life for 2<sup>nd</sup> violent/sexual conviction for 18+.
- Judge still can decide on min time before considered, + not give life if exceptional
- Min sentence for 18+ 3x dealing class A of 7yrs.
- Min sentence for 18+ 3x robbery residential 3yrs.
- Judges can give less if exceptional.

### **Home Detention Curfews**

- Since 98 tagging meant early release. Available for sentences 4months – 3yrs.
- Only when offender does not pose risk to society.
- E.g. John Aitkin, perjury.
- Did reduce population for a bit.
- Woolf said in 2001 courts shouldn't send people to jail unless really necessary. Must also think if sentence could possibly be less.

### **6.1 Prison Population**

- Considerable increase in prison population during 2<sup>nd</sup> half of 20<sup>th</sup> century.
- This increase made a re appraisal of sentencing policy necessary.
- Community based sentences managed to reduce numbers.
- The numbers are still rising however.
- In 2000 there was slight decrease due to early release & home curfew, but it hit all time high in 2001.
- A report said there were many who could have been dealt with in non-custodial ways. 70% of women and 25% of men.

### **6.2 Prison Riots**

- Worst 1990 @ Strangeways. Independent public inquiry headed by Woolf found out causes, poor physical conditions, poor sanitation, overcrowding, food, treatment, and hrs of lock up.
- Criticisms about insufficient constructive activities. High rate of re offence shows more need to be done.

### **6.3 Racism in Sentencing**

- Ethnic minorities over represented in prison population.
- Could be because sizable no are in for drug smuggling or immigration.
- Still high regardless. Could be racism or not.

- Study by Hood in 1992 said 80% was because they did more serious crimes and went to crown. Remaining 20, some (more) pleaded not guilty and got longer sentences. Only 7% was deemed racist.
- In 1990's racial awareness is part of judges training.
- A test was done on 5 areas on types of sentence, no evidence found except more community sentences given to blacks.

#### **6.4 Women & Sentencing**

- Much less than men. Also commit fewer offences than men. This can show that women are treated more harshly than men.
- Other studies say women more favourable than men.
- Hard to say as women do less serious, violent crime. Hard to compare.
- It is thought those not in traditional women role, mother etc are treated less favourably.
- A lot of women prisoners do have children.