

Sentencing

Section 1 Aims of Sentencing

When passing sentence, judges and magistrates take into consideration a number of factors. The first of these is the purpose of their sentence. In other words, what are they hoping to achieve by selecting one sentence rather than another? There are a number of possible purposes, or aims, which they might have in mind.

Exercise

Match the aims below with the headings at the bottom of the page.

1. The aim is to punish people for breaking the rules. It is supported by the natural instinct for revenge i.e. to make offenders suffer themselves for having caused their victims to suffer. In ancient times it was regarded as “an eye for an eye, a tooth for a tooth”.

2. This aim is intended to make the offender make some form of compensation for the harm he has caused. It is intended to make the offender aware of the harm he has caused.

3. This aim is designed to provide protection for people from wrongdoers. This is particularly appropriate when the offenders are violent or a danger to the community.

4. The aim is to discourage people from committing offences. This is aimed not just at the offender himself, but also at everyone else in society who might be tempted to commit a crime. They will see the sentence being imposed and be put off from committing crime.

5. This aim is to help the offender realise what he has done and to reform him so that he won't re-offend. It is a process of re-educating him so that he can become a valuable member of society again.

Reparation

Deterrence

Public Protection

Retribution

Rehabilitation

Section 2 Sentencing Practice

To help judges or magistrates come to a decision, they go through a series of stages.

1. Consider the Tariff for the Offence

The judges or magistrates will start by considering the **normal tariff for the offence** committed. For example, a person driving a car while banned would normally expect to receive three or four month imprisonment.

2. Consider the Seriousness of the Offence

The court will consider how serious the offence was. For example, abh could be a scratched knee, or it could be a pair of black eyes and heavy bruising around the face. It will also consider any **aggravating factors** (these make the offence more serious), and any **mitigating factors** (these make the offence less serious). Examples of aggravating factors for abh might include: the use of a weapon, joint enterprise (a gang), the offence was racially motivated, the attack was planned. Examples of mitigating factors for abh might include: severe provocation, the attack was on the spur of the moment, nobody else was involved.

3. Consider any Factors relevant to the Offender

The court will now examine the circumstances of the offender. If a prison sentence is being considered, the probation service will be asked to write a **pre-sentence report** about the defendant. This will include details of his family life, financial circumstances, previous convictions, medical problems etc.

The court will also consider mitigating and aggravating factors.

Mitigating factors might include: an early plea of guilty (this will normally reduce the sentence by one third), signs of genuine remorse, co-operation with the police, any particular medical conditions, family responsibilities.

Aggravating factors could include: previous convictions for similar offences, being on bail at the time of the offence, resisting arrest, or showing no remorse.

Exercise

Read the passage below and follow the instruction underneath it.

Fred is 75 years old. He comes originally from Hungary. For years his neighbour, Jack, has kept him awake at night with loud music and barking dogs. During the day Jack is abusive towards Fred, mocking his accent and taunting him about the noise. One day Jack opens the gate into Fred's beautiful garden and allows his dogs to run amok. Fred is distraught. He bangs on Jack's door and, after a heated argument in which he is racially abused and pushed aside by the stronger, younger man, Fred, who has a bad temper, loses control and hits Jack over the head with a spade, causing him a fractured skull.

Identify what the court will consider when sentencing Fred.

- 1. Normal tariff** For such a violent example of grievous bodily harm a person could receive a prison sentence of up to 5 years.

- 2. Identify any aggravating or mitigating factors concerning the offence.**

Aggravating factors

Mitigating factors

- 3. Identify any aggravating or mitigating factors concerning the offender, Fred.**

Aggravating factors

Mitigating factors

- 4. Decide your sentence.**

Section 3 Types of Sentences

Under the Powers of Criminal Courts (Sentencing) Act 2000 there are four main types of sentences available to the courts. These are:

A. Custodial Sentences

Under the PCCSA 2000, a custodial sentence should only be passed if the offence is so serious that there is no alternative, or if the offence is of a violent or sexual nature and the public needs to be protected. Prison sentences can only be passed on anyone aged 21 or over. Normally the judge or magistrates are free to choose the length of the sentence, but for murder the judge has to give a life sentence. A life sentence will usually be at least 14 years. Some murderers, such as Ian Brady and Ian Huntley, are likely to serve a full life sentence.

An offender may also be given a suspended sentence. The sentence may be suspended for up to two years. This means that he does not have to serve the sentence unless he re-offends within the two years.

B. Community Sentences

Under the Criminal Justice Act 2003, the courts can impose a community order. This may contain any number of requirements from an available list. These include an unpaid work requirement, where the offender will work for between 40 and 300 hours on a project identified by the probation service as suitable. He may be given a curfew requirement, forcing him to stay at home between certain hours of each day, or a supervision requirement placing him under the supervision of a probation officer for a period up to three years. He may also be given a drug rehabilitation requirement, or an alcohol treatment requirement to help him overcome any addictions.

C. Fines

Answer these questions.

Fines are rarely given as punishments in the Crown Court because the offences are too serious. The maximum fine in the magistrates' court is £5,000, but this is always related to the ability to pay. However, a high proportion of fines are never paid, which can lead to many offenders being given short prison sentences instead. To try to overcome this problem the courts can order that the money be paid directly from the offender's wage or benefits.

D. Discharges

There are two types of discharge, conditional and absolute. A conditional discharge allows the convicted offender to leave the court a free man on condition that he does not re-offend for up to three years. If he does so, the court can impose a harsher or longer sentence the next time. This is a common sentence in Magistrates' Courts for first-time offenders. An absolute discharge means that no penalty is imposed. This is only likely to occur where the offender is technically guilty, but not blameworthy.

Explain how the magistrates will decide an appropriate sentence for Alec.

Alec is a 19 year old student who has been found guilty of driving while disqualified. He was stopped by the police on the M1 on his way back to Leeds from visiting his sister in hospital in London. It is nearly two months since he was given a one year ban for drink driving. On this occasion he was not over the limit. His examinations are in 4 weeks time.

Which aim/s of sentencing would the court consider here?

What aggravating or mitigating factors would the court consider?

The maximum sentence for this offence is 3 months in prison but the court could also consider community sentence, a fine or a discharge. What sentence do you think is appropriate? _____

Research Task:

Look up the current prison population on the internet. You should be able to find it by searching for ‘prison population UK’. Try to find out both male and female population.

Find a recent article on prisons in the UK. Write a brief summary of what the article states.

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