

# Law

**Subject level**     A-level

**Resource site**     [www.wqe.ac.uk/tasteractivities](http://www.wqe.ac.uk/tasteractivities)

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## Sentencing Aims



## Introduction to Sentencing

If someone pleads guilty or is found guilty after a trial then the magistrates or judge, depending upon where the case was held, must decide what will happen next. The courts have a range of options open to them including sending an offender to prison or requiring them to pay a fine. The option that is chosen will be based on many factors including the type of offence, the minimum/maximum sentence available, the circumstances of the offence, the age of the defendant, their background and the aims of sentencing. Often, the court will order a pre-sentencing report to be compiled by the probation service which looks at the offender and their crime in greater detail.

## Aims

The aim/purpose of a sentence is what the judge hopes it will achieve.

**Criminal Justice Act 2003 s.142** lists the main aims of sentencing (aged 18 and over) as:

- Punishment of offenders
- Reduction of crime (including deterrence)
- Reform and rehabilitation of offenders
- Protection of the public
- The making of reparation of the offenders to persons affected by their offences

Denunciation of crime is also an aim of sentencing.

**Young offenders – s.142A** states that as well as these aims, the principal aim for young offenders is to prevent offending or reoffending. Consideration must also be given to the welfare of the offender.

## Retribution/Punishment

The aim of a retributive sentence is to punish the offender. The idea is that if a person has knowingly done wrong, they deserve to be punished and society expects that they are. This aim of sentencing does not seek to reform the offender although it could be argued that threat of a severe punishment could act as a deterrent.

The crudest form of retribution can be seen in the old saying 'an eye for an eye, a tooth for a tooth, and a life for a life'. The punishment is seen as vengeance (revenge) for the offender's acts. This was a factor used to justify the death penalty for murder.

Another form of punishment is denunciation. Society expresses its outrage at the behaviour of the individual and condemns it. This is sometimes used in America as convicted shop-lifters are made to stand outside the shop that they stole from with a sign proclaiming that they are a thief. Local newspapers also feature sections 'naming and shaming' those who have been convicted.

### **Tariff sentences**

In today's society retribution is based on the idea that each offence should have a certain tariff or level of sentencing. The Sentencing Council produce the guidelines for all the main categories of offence. Judges should refer to these guidelines and shouldn't really give a lower sentence than that set out in the guidelines.

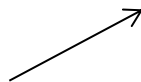
### **Reduction in crime (deterrence)**

This aim is to reduce crime by dissuading people from offending or reoffending.

#### **There are two different types of deterrence:**

1. Individual deterrence - aims to punish the offender in such a way that he will never repeat similar crimes in future because of fear of future punishment. E.G. through long prison sentences, and heavy fines. **HOWEVER** prison doesn't seem to deter as about 55% of adult prisoners re-offend within 2 years of release. With young offenders, custodial sentences have even less of a deterrent effect. Over 70% re-offend within 2 years.

**Probably least effective and least fairest way of sentencing**



2. **General deterrence** – aims to punish offenders so severely so that other potential offenders are deterred from committing similar offences. Potential offenders are rarely deterred by severe sentences passed on others. **HOWEVER**, courts occasionally make an example of an offender in order to send out a warning to potential offenders of the type of punishment they could face.

E.g. Sentences imposed on those involved in rioting in summer of 2011. Custodial sentences were given for minor thefts which occurred during looting of shops in the riots. This sent a clear message to others.

General deterrence is in conflict with principle of retribution because it means giving an offender a harsher punishment than is deserved for the specific offence. Therefore not very fair as pointed out above.

## Reform & Rehabilitation

An offender is helped to solve the issues that lie behind his/her criminal behaviour. The intention is that if the problems are solved then the offender will avoid committing further offences. It is a forward-looking strategy that hopes that the offender's behaviour will be altered because of the penalty imposed. Community orders with requirements are used, e.g. drug testing and treatment orders.

A drug addict who steals to fund their habit may be assisted to overcome their addiction thereby removing the need to steal in future. A person who reacts aggressively and commits acts of violence may be sent on an 'Anger Management' course. Other offenders may be helped to develop their social skills and some may undertake training to improve their chances of employment.

Individualised community sentences are often used to help rehabilitate the offender in the hope that this will reduce the chance of reoffending in the future. The probation service will often be involved to help the offender deal with the issues that have resulted in their offending.

Reformation is considered most important when dealing with young offenders but is also used for some adult offenders. Persistent offenders are less likely to be seen as suitable for this type of sentence. Court will be given information about the D's background, usually through a pre-sentence report prepared by probation service. Court may also consider other factors if relevant, e.g. school reports and medical problems.

## Protection of the public

This aim is frequently used as a strong general justification for punishment and imprisonment in particular. It is argued that the public need protection from dangerous criminals who commit violent or sexual offences. Imprisonment removes these criminals from the public domain by restricting their liberty. In physically restraining offenders, it protects the public, albeit temporarily from becoming the victims of further acts of crime.

The **Criminal Justice Act 2003** states that where someone has committed a serious offence and the court is of the opinion that there is a significant risk to the public of serious harm being caused in future, D't must be sent to prison to protect the public.

An extended prison sentence can impose an extra period of custody when there is a significant risk of serious harm to the public.

The public can also be protected from offenders who are given other sentences. For example, a drink driver will be disqualified from driving. Offenders who are subject to a curfew or electronic tag will restrict their movements and therefore, reduce their contact with the general public.

## Reparation

This is aimed at compensating the victim of the crime usually by ordering the offender to pay a sum of money to the victim or to make restitution, e.g. by returning stolen property to its rightful owner. This can also include doing unpaid work for the community. The courts are required to consider ordering compensation to the victim of a crime, in addition to other penalties they deem appropriate. There are also projects that bring D's and victims together, so that direct reparation can be made.

The concept also includes making reparation to society as a whole. This could be done through a community order for unpaid work to clean graffiti or clean up a playground, and is usually completed under the supervision of the probation service.

## Denunciation (mentioned above)

This is society expressing its disapproval of criminal activity. A sentence should indicate both to the offender and other people that society condemns certain types of behaviour. It shows people that justice is being done and reinforces the moral boundaries of acceptable conduct. E.g. Society's views in relation to drink driving have changed as the vast majority of people deem it to be unacceptable behaviour.

### Factors in sentencing

Courts will consider following matters:

- the offence
- sentencing guidelines
- offender's background

### Aggravating Factors in sentencing

**S 143 (1) of the Criminal Justice Act 2003** - Court will consider **HOW SERIOUS THE OFFENCE WAS**. In considering seriousness of offence, the Act states that the culpability (blameworthiness/fault) in committing the offence and any harm which offence caused, or was intended to cause or might reasonably foreseeably have caused must be considered by the court.

Act also gives aggravating factors like for example racial or religious hostility, any relevant previous convictions and if the offence was committed whilst on bail.

CJA 2003 gives other aggravating features for offences. E.g. Where D has committed an assault, aggravating factors include:

- a pre-meditated attack
- if the victim was particularly vulnerable
- if the victim was a public servant. E.g. nurse.

If there is an aggravating factor or factors, court will give a more severe sentence.

Magistrates and judges have a copy of the guidelines issued by the Sentencing Council which provide a starting point for an offence, depending on certain factors, in particular whether magistrates should give a custodial sentence or a community order. Guidelines also give a sentencing range.

### **Mitigating factors in sentencing**

The court will take these into account and they may mean that the offender receives a more lenient sentence than they would have done. Mitigating factors may relate to the offender and can include previous good character, personal circumstances and the fact that they have shown remorse.

### **Reduction in sentence for a guilty plea**

The Sentencing Guidelines Council has suggested that the reduction for a guilty plea at the first reasonable opportunity should attract a reduction of up to 1/3 (only 20% if evidence of guilt very strong). A plea of guilty after trial has started would only be given a 1/10<sup>th</sup> reduction. The above are guidelines the judge has a discretion as to giving the full reduction.

## **Background of the offender**

### **Previous convictions**

If D't has previous convictions for same or similar offences, then D't is likely to receive a heavier sentence. D't with no previous convictions is likely to be treated more leniently.



### **Reports**

The court may also look at **Pre-sentence reports** that are prepared by the probation service. It doesn't have to but will usually do so before imposing custodial sentences, and community sentences.

**Medical reports** – Where the offender has a medical or psychiatric problem, the court will ask for a report.