

## **A) Describe the different aims of sentencing.**

### Introduction

Whenever a person pleads guilty, or is found guilty of an offence, the role of the court is to decide what sentence should be imposed on the offender. When Judges or Magistrates pass a sentence they will not only look at the sentences available, they will also have to decide that they are trying to achieve by the punishment they give. Section 142 of the Criminal Justice Act 2003 sets out the purposes of sentencing for those aged 18 and over saying that a court must have regard to:

- The punishment of offenders
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public and
- The making of reparation by offenders to persons affected by their offences.

Punishment is often referred to as retribution. In addition to the purposes of sentencing given in the 2003 Act, denunciation of crime is also recognised as an aim of sentencing. I will now examine each of the aims in turn.

### Retribution/Punishment

Retribution is based on the idea of punishment because the offender deserves punishment for his or her acts. It does not seek to reduce crime or alter the offender's future behaviour. This idea was expressed in the 19<sup>th</sup> century by Kant in *The Metaphysical Elements of Justice* when he wrote: 'Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime'. Retribution is therefore concerned only with the offence that was committed and making sure that punishment is in proportion to that offence. The old form of retribution is the old saying 'an eye for an eye and a tooth for a tooth'. This was one of the factors used to justify the death penalty for the offence of murder. Retribution today is based more on the idea that each offence should have a certain tariff or level of sentencing. The Sentencing Guidelines Council produces guidelines for this. However, according to some theories of ethics, punishment is self-contradictory in the sense that "Two wrongs don't make a right". Also, some hold that the motive behind the Christian sanction for interpersonal relations ("turn the other cheek" before seeking retribution for a wrong), and the motive behind the sanctions for social magistrates conflict.

### Deterrence

This can be individual deterrence or general deterrence. Individual deterrence is intended to ensure that the offender does not re-offend, through fear of future punishment. General deterrence is aimed at preventing other potential

offenders from committing crimes. Both are aimed at reducing future levels of crime.

Individual deterrence –

There are several penalties that can be imposed with the aim of deterring the individual offender from committing similar crimes in the future. These include a prison sentence, a suspended sentence or a heavy fine. However, prison does not seem to deter as about 55% of adult prisoners re-offend within two years of release and with young offenders, custodial sentences have even less of a deterrence effect; over 70% re-offend.

It has been argued that deterrence is ineffective at achieving its ultimate goal. Critics of specific deterrence argue that offenders do not pause to consider the possible punishment for a crime they are about to commit, especially in the heat of the moment, and when drugs or alcohol are involved. Another criticism is that the more the legal process distances the punishment from the crime - either in time, or certainty - the less effective a deterrent the punishment will probably be.

It is also pointed out that fear of being caught is more of a deterrent than the actual punishment itself. Fear of deterrence has been shown to be a powerful deterrent by the success rate of closed circuit televisions used for surveying areas. In one scheme on London's District Line of the underground system there was an 83% reduction in crime in the first year that surveillance cameras were used.

General deterrence-

General deterrence is aimed at preventing other potential offenders from committing crimes. The value of this is even more doubtful as potential offenders are rarely deterred by severe sentences passed on others. However, the courts do occasionally resort to making an example of an offender in order to warn other potential offenders of the type of punishment they face. General deterrence also relies on publicity so that potential offenders are aware of the punishment they can expect. This was seen in the case of R v Whitton (1985), where a football hooligan was sentenced to life imprisonment, this warned other football hooligans of the consequences their actions may have on them.

General deterrence is in direct conflict with the principle of retribution, since it involves sentencing an offender to a longer term than is deserved for the specific offence. It is probably the least effective and least fair principle of sentencing. General deterrence has also been heavily criticised for relying on publicity of heavy punishments.

### Reform/rehabilitation

The main aim of the penalty is to reform the offender and rehabilitate him or her into society. It is forward-looking, with the hope that the offender's behaviour will be altered by the penalty imposed, so that he or she will not offend in the future and therefore aims to reduce crime.

An offender is helped to solve the issues that lie behind his or her criminal behaviour. The intention is that if the problems are solved then the offender will avoid committing further offences. For example, a drug addict who steals

to fund his or her habit may be assisted to overcome his or her addiction, therefore removing all need to steal in the future. Also, a person who acts 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 come may undertake training to improve their chances of employment. They are helped to overcome their problem and to reform their life to one without crime. Reformation is a very important element in the sentencing philosophy for young offenders, but it is also used for some adult offenders. When considering rehabilitation as a form of sentencing the court will be given information about the defendant's background and decide whether rehabilitation would be most suited to the offender.

Where the court considers rehabilitation, the sentence used is an individualised one aimed at the needs of the offender. This is in direct contrast to the concept of tariff-sentences in the aim of retribution. One of the criticisms of this approach is that it leads to inconsistency in sentencing. Offenders who have committed exactly the same type of offence may be given different sentences because the emphasis is on the individual offender. Another criticism is that it tends to discriminate against the underprivileged. Therefore, offenders from poor home backgrounds are less likely to be seen as possible candidates to reform.

#### Protection of the public

The public need to be protected from dangerous offenders. For this reason life imprisonment or a long imprisonment are given to those who commit murder or other violent or serious sex offences.

Under the Criminal Justice Act 2003 a defendant can be sentenced to imprisonment for the public's protection. This is given when the court is in the opinion that there is sufficient risk to members of the public of serious harm being caused by the defendant in the future. Extended sentences can also be given if a court believes that it is necessary to protect the public.

For less serious offences there are other ways in which the public can be protected. For example, dangerous drivers are disqualified from driving. Another method is to include an exclusion order as a requirement in a community order. This will ban the offender from going to places where he is most likely to commit an offence. This use of banning order is shown in R v Winkler (2004). In this case the defendant committed an affray in Manchester when attending a football match in which Oldham Athletic, who he supported, was playing. The judge banned him from going into Oldham town centre on home match days and also banned him from approaching within half a mile of any football stadium. Both bans were for a period of six years.

Another method of protecting the public is a curfew order where they are monitored by an electronic tag. This is a cheaper method as tagging will cost about £4,000 a year compared with £24,000 a year for a prison place.

However people argue that the money spent on electronic tagging would be better spent on constructive options such as community rehabilitation orders, which work to change offenders' long-term attitudes toward offending.

### Reparation

This is aimed at compensating the victim of the crime by usually ordering the offender to pay a sum of money to the victim or to make restitution. The idea that criminals should pay compensation is one that goes back to the Anglo-Saxon courts. In England today, courts are required to consider ordering compensation to the victim of a crime in addition to any other penalty. Under s 130 of the Powers of Criminal Courts (Sentencing) Act 2000 courts are under a duty to give reasons if they do not make a compensation order. The concept of restitution also includes making reparation to society as a whole. This can be seen mainly in the use of unpaid work requirement where offenders work on a community project under the supervision of the probation service.

### Denunciation

This is society expressing its disapproval of criminal activity. A sentence should indicate both to the offender and to other people that society condemns certain types of behaviour. It shows people that justice is being done. Lord Denning when giving written evidence to the Royal Commission on Capital Punishment said that 'Punishment is the way in which society expresses its denunciation of wrong doing; and in order to maintain respect for the law it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them'. Denunciation also reinforces the moral boundaries of acceptable conduct and can mould society's views on the criminality of particular conduct.

### Conclusion

In conclusion it is never clear as to which aims are used consistently, there is room for change. However, the one aim that has remained constant is the idea that one must pay for ones crime; the idea of retribution.

**B) Illustrate the ways in which different sentences may be used to support different aims of sentencing.**

Introduction

Theories of sentencing are all well and good to philosophize over, but there do need to be practical methods of sentencing. It is through the Judges or Magistrates that the theories of sentencing are put into practice with sentences and punishments.

Custodial Sentences

Within the UK the most serious sentence that can be passed, is the custodial sentence. There are various types of a custodial sentence, ranging from “weekend” sentences to a life sentence. The different types of custodial sentence are: mandatory and discretionary life sentences, fixed term sentences, custody plus, intermittent custody and suspended sentences. Under Section 152 of the Criminal Justice Act 2003 custodial sentences must be the last resort of punishment, after all possible avenues of reform and punishment have been tried and failed. All the reasons must be stated for the imposing of a custodial sentence. Prison is in place to act as a deterrent as well as a place for rehabilitation, but this is not always the case. If you were to look at the rates of re offending then the effectiveness of the prison does not seem so effective, with over 55% of adult offenders committing another crime within 2 years.

Mandatory life Sentences

This would be the case for an offender of a murder; a life sentence is the only option open to a Judge for this crime. It falls within the boundaries of retribution and incapacitation, as well as denunciation. This is because of the fact that the offender is paying for their crime; whilst society shows its disapproval of the action and whilst incarcerated the offender cannot commit more crimes.

Discretionary life Sentences-

It is not the case then, for any other offences, to have an automatic life sentence as the punishment. But it is well within the powers of the Judge to reattribute society and incapacitates the offenders of such crimes such as: rape, robbery and manslaughter. It is at the discretion of the Judge as to the severity of the punishment.

Fixed Term Sentences

The length of a sentence will depend greatly on the specifics of the case, as well as other factors such as medical history and social reports. Previous criminal convictions also play a part in the deciding on the appropriate punishment.

When there is a set amount of time for the sentence, months or years, this is called a “fixed term sentence”.

### Home Detention Curfew

An early release from prison under the Crime and Disorder Act 1998 details the need for a home curfew. The curfew period is flexible depending on the length of the sentence. The exact location of the offender can be found using the electronic tagging systems put in place today. Rehabilitation is the main aim of this sentence, which greatly encourages the offender to structure their time and with the return to prison as an incentive to stick to their curfew. There are advantages and disadvantages to this sentence. One main advantage is that it allows the offender to integrate back into society whilst still under the watchful eye of the police. However, people argue that the money spent on electronic tagging would be better spent on constructive options such as community rehabilitation orders, which work to change offenders' long-term attitudes toward offending.

### Young Offenders

It is controversial to sentence young offenders; there has been a lot of debate over whether the young should be given custodial sentences. Government policy has fluctuated greatly on this matter, constantly changing and adapting. It has been argued that young offenders need help to reform and rehabilitate not the incapacitation and retribution that does not alter future behaviour.

#### Young Offenders Institutions-

Youth offenders between the ages 18 and 20 when given a custodial sentence are sent to a Young offender's institution. The aim of a Young Persons Institution is to keep the young separate from older, and more experienced criminals. When sent to a Young Offenders Institution the offender must serve a minimum of twenty one days and a maximum of what allocated by the Judge for a particular offence.

#### Detention and Training Orders-

The Crime and Disorder Act 1998 set up a new type of sentence for young offenders, called a detention and training order. This is geared greatly towards the rehabilitation and reforming of offenders in giving them qualification so when they finish their sentence they can integrate back into society. The minimum for this type of sentence is 4 months and the maximum being 24 months. With the minimum age of the offender given this type of sentence is 12 years old, to the maximum age of 21. The Home Secretary can extend the detention and training order to children age 10-11. If this was to be the case, it would have to be at the courts discretion that the order would be in the benefits of the offender.

With deterrence and retribution also being some of the aims of sentencing here.

#### Detention for Serious Crimes-

The courts now have additional powers to detain an offender for a longer period of time; this can only be used if the crime committed is one of a very serious nature. The law for this was changed in 1994, and extends to 10-13 year olds. The maximum sentence that can be passed down is 14 years imprisonment.

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

This is a sentence that is passed on anyone aged 10-17 for the crime of murder.

It is an indeterminate sentence, meaning that when it is deemed suitable, the offender can be released.

### Community Sentences

Community sentences came into use after the Criminal Justice Act 2003; prior to this the sentences were very individualized and would normally be combined with other sentences. After the 2003 act there was only one community order which the courts can combine any requirements with and to. This was to cut down on all the different community sentences that were in existence for adult offenders, it simplifies the process and allows the courts much more flexibility with the sentencing. It is within Section 177 of this Act that a wide range of options are made available to those that are sentencing, these include exclusion requirements, drug rehabilitation and unpaid work.

#### Unpaid Work Requirement-

With the Unpaid Work Requirement the offender must spend between 40 and 300

hours on a project that is suitable for the offenders circumstances, this will be organized by the probation service. This fits the aim of retribution; this is because of the offender repaying his/her debt to society through their contribution to local projects. There will also be slight elements of denunciation and deterrence in the aims as well, as society voices its opinion on the crime and there will be, through the hard work put in, a deterrence to commit crime again.

There are many different schemes that the offenders can take part in. These can range from painting school walls to installing security locks on gates and setting up CCTV cameras. The punishment is always proportionate to the crime, much fitting the aim of retribution. For example, someone who was found guilty of criminal damage would be required to clear the damages and to repair them.

It has been shown that the re-offending rates from his type of punishment are low, this shows that it acts as a rehabilitating service as well.

### Curfew Requirements-

It is with the curfew requirement that the offender must remain at a fixed address for between 2 and 12 hours in a 24 hour time period. This can last for 6 months and the enforcement can be through the use of electronic tagging, only if this is found to be necessary. The tag would notify the police if the offender where to leave their designated area after the hours they have set to be at home. If the offender where to leave within their designated time to be at home, a police officer will check to see where they are and further punishment will be administered for breaking the order.

This fulfils the aims of an incapacitating sentence because if the offender is within a certain area at any time they cannot commit any further crimes. Someone cannot steal their own property, or assault anyone from their front room. However there is no physical barrier to keep the offender from straying from their house, unlike prison. However it is a lot cheaper than incarceration, so for minor offences it is seen to be the better option. An exclusion requirement is much the same, but it works in the other direction. Instead of not allowing an offender to leave a certain place. The exclusion requirement does not allow offenders to enter a certain area. This is another incapacitating punishment, because of the fact you cannot steal if you are not allowed into any shops.

### Supervision Requirement-

This requirement places the offender under the supervision of a probation office for up to 3 years. Within the time given by the courts the offender must attend regular meeting with the supervising officer to keep a tab on their activities and monitor their rehabilitation. It is said in the Criminal Justice Act 2003 that the supervision order is a sentence aimed at the rehabilitation of the offender primarily. It states that the order is “promoting the offender’s rehabilitation”. However, 60% of offenders placed under this order will re offend, so it is not a very effective punishment.

### Fines

Fines are a punishment that can be used by any court, as a single punishment or as a combined sentence. It is the Magistrates Court though that uses fines as its most common form of punishment. This is because they deal with the less serious offences, such as parking fines or graffiti. A fine is a fixed sum of money that has to be paid to the court in a fixed amount of time. If it is not paid to the court further action can be taken, such as further fines, repossession or even heavier sentences such as prison.

There are different tariffs, or levels of fines: Level 1: £200; Level 2: £500; Level 3: £1,000; Level 4: £2,500; Level 5: £5,000. This is for the Magistrates Court, because in the Crown Court there is no limit on the amount the offender can be fined. With the level system the gravity of the offence affects the level of the fine. So the more serious the offence the higher the fine will be.

Reparation is the main aim of this sentence, with the offender literally paying for their crime. Another aim could be seen to be deterrence, with the fines being high, or even unlimited, it might make people think about how much they really want to commit a crime if they have to end up paying a lot of money.

### Discharge

The courts can decide to discharge an offender based on previous records, character of the offender, nature of the crime and many other factors. A discharge is a nullification of punishment for that crime; another possible reason would be if they thought a punishment would not be necessary. There are two types of discharges, Absolute discharges and conditional charges. Absolute discharges is where the court will take no further action against the crime, either because of it is of minor nature or because of the situation of the offender.

Conditional discharges are where the offender is released on the condition that no further crimes are committed in the next 3 years.

### Driving Disqualification

If an offender is found guilty of drink driving, or caught too many times speeding, the courts can take away the offenders driving license. The length of the disqualification will depend on the seriousness of the driving offence and whether the defendant has previous convictions any other driving offences. This is an incapacitating offence because the offender cannot commit any more driving offences if they cannot drive.

### Conclusion

There are many different aims of sentencing and many circumstances of different offences. Therefore it becomes clear, when looking at the different aims and types of Sentencing, that a Judge or Magistrate must look extremely closely at what will be beneficial as a punishment. However one thing remains constant throughout sentencing, the fact that if someone breaks the law, they must be punished for it. Retribution is constant.