

## a) Describe the different aims of sentencing

### Introduction:

There are many varieties of sentences that can be applied when the defendant has been found guilty in court. Magistrates not only need to look at the many different types of sentencing available, but also what they plan to achieve with the sentence that they pass. Under section 142 of the '**Criminal Justice Act 2003**'<sup>1</sup> the aims of sentencing are set out.

### Aims of sentencing under the 'Criminal Justice Act 2003':

Section 142<sup>2</sup> of this Act lists what aims are to be achieved by certain sentences and that they must be considered carefully before being passed onto offenders. It states that for offenders aged 18 and over, the Magistrates must have regard to a number of factors, such as the punishment of offenders, how to protect the public and how it can help reduce crime. There are six main aims of sentencing, each with their own suitable punishment to help fulfil their aims.

### Retribution:

This is also referred to as punishment and the punishment should be proportionate to the offence committed by the defendant. The main idea behind this theory is that the offender should be punished as they deserve it due to their actions. This aim does not try to reform the offender or reduce crime; it merely attempts to make the offender pay for their actions. This is done by tariff sentences which are set out by '**The Sentencing Guidelines Council**' and they set the minimum of months custody that has to be served by the offender as well as the sentencing range (what it can go up to) depending on the type of offence and its nature, for example, if robbery has been committed and a weapon has been used to threaten and injury to the victim has resulted, the offender will receive 2-7 years custody. This aim of sentencing is also used as an argument supporting capital punishment, as those who kill or seriously harm, should be punished exactly, through being killed themselves (as seen in the Bible 'An eye for an eye, a tooth for a tooth')

### Denunciation:

This aim of sentencing is where society expresses its disapproval of criminal activity and punishes the offender because of their actions. The sentence given should show not only the offender, but also the rest of the public, that society disapproves and condemns criminal behaviour, thus deterring other possible offenders as they do not want to be condemned by society. Denunciation can also help influence and shape society's views on what is socially and morally acceptable within communities. An example of this is drink-driving, which is frowned upon by society and the media also enhances the disapproval of dangerous and criminal behaviour. This is done through ad campaigns and by publicly humiliating the offender by printing their cases (with some privacy, such as changing of names) and helping society to realise that certain behaviour is not only illegal but is also disapproved by society. This aim not only reinforces society's morals, but also helps

<sup>1</sup> OCR Law for AS, Jacqueline Martin, page 83

<sup>2</sup> LAS7 by Sebastian Birch (March 2008)

publicise the criminality of such behaviour, as more people now know that there are harsher sentences for crimes such as drink-driving.

### **Incapacitation/Protection of the public:**

This aim can be either a short term or long term solution depending on the sentence and aims to protect the public by making the offender incapable of re-offending. Under the '**Criminal Justice Act 2003**'<sup>3</sup> the offender, once found guilty, can be sentenced to imprisonment to protect the public; this is done through long sentences for the most serious crimes such as murder, rape, manslaughter etc, which will get a life sentence, meaning that the offender will be in prison for at least 14 years. This is to protect the public from the offender harming more members of society in the future; however, this is only done where there is a significant risk of this occurring. Other examples of incapacitation are the tagging of criminals (short-term solution) to monitor the offenders behaviour, however, the public is not completely protected, whereas if the offender was in prison they would be, as tagging doesn't prevent crime, there has to be hope that the offender will comply with the tagging conditions and will not go on to commit more crimes. Another example is through banning the offender from doing certain things or going certain places, such as a driver being banned from driving, or as seen in the case of '**R v Winkler**' (2004)<sup>4</sup>, the offender was banned from going into Oldham town centre on home match days and approaching within half a mile of any football stadium for six years as he committed affray at a football match.

### **Deterrence:**

Deterrence aims at reducing levels of crime in the future in two ways<sup>5</sup>; individual and general. Individual deterrence is where the offender is made to fear future punishment and it is hoped that they will not re-offend. This can be done in a number of ways, such as imprisonment, suspended sentence or heavy fine. It is hoped that once an offender has been punished, they will not want it to happen again and will therefore not commit another crime. However, this aim of sentencing has been greatly criticised as approximately<sup>6</sup> 55% of adult offenders re-offend in the first two years of release, and even higher for young offenders, as 70% re-offend. Also, many crimes are committed on the spur of the moment, usually under the influence, and it is therefore unlikely that they will be deterred as they will most probably not think about the consequences of their actions before committing the offence. It has been found that the fear of getting caught is greater than the fear of the consequences of being caught and therefore the theory of deterrence through sentencing is considered less effective. This is due to the high success rates of CCTV and how it helps detect crime, helping to prevent it more so than the fear of facing punishment. General deterrence aims to deter other potential offenders from committing crimes by fearing the same punishment which they see criminals receiving. This is criticised even more so than individual deterrence as it relies strongly on publicity to highlight what will happen to offenders when they commit crimes. The idea of deterrence is to give a harsh punishment, contradicting the aim of retribution where the punishment reflects the offence committed, as longer sentences or heavier fines are given in a bid to deter potential offenders.

<sup>3</sup> OCR Law for AS, Jacqueline Martin, page 85

<sup>4</sup> OCR Law for AS, Jacqueline Martin, page 85

<sup>5</sup> OCR Law for AS, Jacqueline Martin, page 83-84

<sup>6</sup> OCR Law for AS, Jacqueline Martin, page 84

## **Rehabilitation/Reform:**

This aim of sentencing tries to reform the offender in the long-term by changing their behaviour so that they do not re-offend in the future and can be rehabilitated back into society. The penalty imposed will try to alter the offender's behaviour and also tries to reduce crimes by preventing offenders from wanting to commit crimes in the future. The courts also use reformation primarily for young offenders as they attempt to curb the young offender behaviour so that they will not commit crimes later on in life. The court will be given information about their background <sup>7</sup>in the form of a pre-sentence report. However, this is criticised as it discriminates against the underprivileged as it is deemed that those from such backgrounds are unlikely to reform. However, medical reports, school reports and job prospects are also taken into account when trying to reform the offender. As many offenders are under the influence of drugs when they commit crimes, there are testing and treatment orders that are enforced on the offender to help them get off drugs while imprisoned. This attempts to rehabilitate addicted drug users. Also, when rehabilitation is considered by the courts, individualised sentences may be passed to suit the individual's needs, however, this leads to an inconsistency in sentencing as the same offence may get a different sentence as there is a substantial emphasis on the individual offender.

## **Reparation:**

Courts apply this when they feel that the victim should be compensated by the offender. This can be done by the offender paying money to the victim or to make restitution<sup>8</sup>. This, for example, may mean that stolen goods will be given back to the offender. This theory can also extend to the society, not just the individual(s) affected. This is done through the offender carrying out work with no pay, under the supervision of a probation officer and therefore giving back to society. Under s 130 of the '**Powers of Criminal Courts (sentencing) Act 2000**' the courts have to explain why they do not impose a compensation order to the victim.

## **Conclusion:**

In conclusion, there are many aims of sentencing, however, some are criticised for numerous reasons, such as their effectiveness. It is vital that the magistrate's consider what they are trying to achieve before passing a sentence on an offender, such as if they want the offender to be punished, to be reformed or to protect the public. These factors are necessary to help make the most out of sentencing and to make it as effective as possible in reducing crime.

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<sup>7</sup> OCR Law for AS, Jacqueline Martin, page 85

<sup>8</sup> OCR Law for AS, Jacqueline Martin, page 85

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

### **Introduction:**

There are many aims of sentencing, which the magistrates and judges must consider before enforcing a sentence. The courts can sentence in four main ways<sup>9</sup>; custodial sentences, community sentences, fines and discharges. There are also additional powers that the court has, including compensation orders, disqualifications etc. The various sentences that may be imposed can support some of the different aims of sentencing, such as retribution, deterrence and rehabilitation.

### **Custodial sentences:**

This type of sentence can be used to support many of the different aims of sentencing. This type of sentence should only be used for the most serious offences and as a last resort or young offenders. Under section 152<sup>10</sup> of the '**Criminal Justice Act 2003**', it is stated that a custodial sentence should only be passed if the offence "was so serious that neither a fine alone nor a community sentence can be justified" and when a custodial sentence is passed, the Magistrates' Court must state why in written form. Custodial sentences range from mandatory and discretionary life sentences, fixed-term sentences, short-term sentence (custody plus) and suspended sentences lasting a matter of weeks to life imprisonment. Custodial sentences will be carried out in prison, and it is this fact which makes the sentence meet many of the aims of sentencing. Prison can act as retribution, as the offender is being punished for their crime(s), as a deterrent, as it puts other potential offenders off from committing crimes as they will know that for certain crimes they will receive a custodial sentence, as well as rehabilitation and reform as prison allows room for change and offenders can detox here to kick their drug addictions which may have led them to crime in the first place. However, custodial sentences can be criticised due to the reasonably high standards of living which prisoners have (such as having televisions) and the high rates of re-offending (55%).

Mandatory life sentences are for murder offences only and must be imposed by a judge. The judge can, however, state the minimum number of years that must be served before they can apply for parole (usually 15 years). For murders which come under certain categories, such as killing a police officer on duty or a murder that is racially or religiously aggravated, a minimum of 30 years must be served. Aggravating factors can also add to the minimum sentence such as if the victim was vulnerable. This type of custodial sentence supports the aims of sentencing which deter offenders. This type of sentence also denounces criminals as they know that society disapproves of their actions, acts as retribution as they are being punished for their crimes and incapacitates the offender as they are unable to commit further crimes while in prison.

Discretionary life sentences are applied to crimes such as<sup>11</sup> manslaughter, robbery and rape, which are deemed serious enough for a life sentence, yet the judge does not

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<sup>9</sup> OCR Law for AS, Jacqueline Martin, page 90

<sup>10</sup> OCR Law for AS, Jacqueline Martin, page 90

<sup>11</sup> OCR Law for AS, Jacqueline Martin, page 91-92

have to impose it; it is up to them if they want to give a lesser sentence such as a fine or discharge. Fixed term sentences depend on certain factors within the case such as the seriousness of the crime and will last a number of months or years, however, they do not serve the whole sentence; after they have served half the sentence, they are released. Both these type of sentence share similar aims of sentencing as mandatory life sentences. However, home detention curfews tend to focus mainly on rehabilitation, by slowly easing the offender back into society but are still being monitored by the police. The **'Crime and Disorder Act 1998'**<sup>12</sup> allows prisoners to be released early, on the provision that they under curfew once released, meaning that between certain times they have to remain at a fixed address. This also meets the aim of incapacitation, as the public are still being protected at certain times and the offender is less likely to re-offend, however, there is nothing stopping the offender from doing so, they should be deterred from doing so by knowing that they will be caught due to electronic tagging if they do re-offend.

### **Community Orders:**

Under the **'Criminal Justice Act 2003'**,<sup>13</sup> those passing the sentence onto offenders can combine requirements to meet the needs of the offender such as an unpaid work requirement, curfew, drug rehabilitation etc.

Unpaid work requirements require the offender to work 40-300 hours on a project under the probation service. This meets the sentencing aim of retribution, as the offender is being punished by not getting paid for the work they are carrying out. It also meets reparation as the offender is repaying the community by doing work for free and in places which will help the community, such as youth centres, removing graffiti etc. It may also reform the offender by changing their character as they are doing free work, which they would not usually do. This type of sentencing shows low re-offending rates and can act as individual deterrent as it puts the offender off from re-offending again as they do not want to be punished in this way again.

Offenders may also be prohibited from certain activities to try to prevent the offender from re-offending, by carrying out a crime similar to that of which they have just committed. They may be banned from a certain area as seen in of **'R v Winkler'** (2004)<sup>14</sup>, the offender was banned from going into Oldham town centre on home match days and approaching within half a mile of any football stadium for six years as he committed affray at a football match. This can be seen as incapacitation as the offender is unable to commit a similar crime in the same area as they are forbidden from going there and may act as a deterrent as they may want to go the prohibited area, and will therefore not do it again in the future. Curfew requirements also prevent the offender from leaving a fixed address at certain times, such as 6pm-6am, whereas an exclusion requirement does not allow the offender to enter a certain area where they are likely to commit another crime. These may also deter and incapacitate the offender and can be seen as effective methods of sentencing to support the aims of sentencing.

Offenders may also be subject to a supervision requirement where a probation officer monitors them for 3 years and they have to attend regular meetings in order to try to reform

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<sup>12</sup> OCR Law for AS, Jacqueline Martin, page 92

<sup>13</sup> OCR Law for AS, Jacqueline Martin, page 94

<sup>14</sup> OCR Law for AS, Jacqueline Martin, page 85

their behaviour. The 'Criminal Justice Act 2003'<sup>15</sup> states that it is 'promoting the offender's rehabilitation' yet 60% of offenders re-offend if punished this way, and therefore does not act as a very good deterrent or very effective as a sentence.

## **Fines:**

These are mostly implemented by the Magistrates' Court as they deal with less serious crimes and can only fine a maximum of £5,000. They can be imposed as a single punishment, or combined with another sentence, such as a community order. Tariff sentences are a fixed sum of money which the court requires to be paid within a certain time period and if this is not done, further action can be taken such as an increased fine or even imprisonment. There are levels within the tariff sentences, from one to five; however, this only applies to the Magistrates' Court as the Crown Court can impose an unlimited fine on an offender; level one is £200, level 2: £500, level 3: £1,000, level 4: £2,500 and level 5: £5,000. Fines have the main sentencing aim of reparation as the offender literally is paying the community, as well as deterring themselves from committing an offence again, and similarly deterring others who do not wish to pay for their crimes.

## **Discharges:**

There are two types of discharges; conditional and absolute. Conditional discharges mean that the punishment sentenced for an offenders crime is annulled on the condition that they do not re-offend in the next three years. Absolute discharges on the other hand is where no penalty is imposed, as the offender is guilty of a crime but is blameless morally<sup>16</sup>, such as someone being charged for not having a tax disc, but it has fallen out of view. However, this sentence does not really meet any of the sentencing aims, but it could be said that reform is met in one way, as conditional discharges are putting trust into the offender, with the hope that they will not re-offend and in a way may deter them from re-offending as a harsher penalty may be imposed as a result of them re-offending.

## **Disqualification:**

Offenders may be disqualified from driving for a certain period of time if charged with a driving offence, by having their licence taken away. Depending on the seriousness of the crime and if it is a repeat offence, the length of disqualification will vary. This punishment can also be made in conjunction with a fine. This sentence meets the aim of deterrence as themselves and others may be put off from committing such an offence as they do not want to lose their licence. It also acts as incapacitation as the public are protected from the offender as they are unable to drive a car and therefore cannot commit a similar offence for a set period of time.

## **Young Offenders:**

For all offenders under the age of 21, special sentences are available for youth offenders. Their main aim of sentencing is to reform and rehabilitate them to prevent them from committing crimes in the future; also, they are put in young offenders' institutions so that they do not mix with hardened criminals in adult prisons. It is also felt that young offenders should not be placed in prison as it is deemed that prisons incapacitate and retribute

<sup>15</sup> LAS7 by Sebastian Birch (March 2008)

<sup>16</sup> OCR Law for AS, Jacqueline Martin, page 96

offenders and do not reform or rehabilitate, which is needed to alter their behaviour in the future once released. However, it may be that if young offenders are put in prison, it may act as a deterrent as they will not want to go to such a tough place compared to a young offender's institute. Although, if the offender becomes 21 while serving their sentence, they will be transferred to an adult prison. They can also be detained for a longer sentence if the crime they committed was so serious and was one that an adult offender would receive a minimum of 14 years for. The 'Crime and Disorder Act 1998'<sup>17</sup> set up detention and training orders in order to meet the sentencing aims of rehabilitation and reform, by giving the offenders qualifications so once released, can merge back into society and will hopefully be reformed. There are also other forms of punishment for young offenders to meet other sentencing aims, such as fines (with maximum limits of £250 for 10-13 year olds and £1000 for 14-17 year olds), reprimands and warnings, supervision orders, attendance centre orders, discharges and parental responsibility(have to control their child for a set period of time)

## **Conclusion:**

In conclusion, there are many different sentences which reflect the different aims of sentencing. Their effectiveness is questionable; however, it is down to the judge or magistrates to choose a relevant sentence that will support the aim(s) of sentencing which will benefit the individual offender the most. However, it is criticised that it leads to an inconsistency in sentencing and varies for individual offenders, with little or no benefits to them or a reduction in crime.

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<sup>17</sup> LAS7 by Sebastian Birch (March 2008)