

SENTENCING PRACTICE

When deciding the type of sentence and amount, magistrates and judges (the court) will consider a number of factors. Note that the relevant law has now been consolidated in the Powers of Criminal Courts (Sentencing) Act 2000.

1. THE SERIOUSNESS OF THE OFFENCE

The court will make an initial assessment of the seriousness of the offence. If the defendant pleaded guilty, the prosecutor will outline the facts of the case to the court. If the defendant contested the charge, ie, pleaded not guilty, then the magistrates or judge would have noted the facts during the trial. When imposing a community sentence or custodial sentence:

- The court must take into account all such information about the circumstances of the offence(s) including any aggravating or mitigating factors as is available to it: ss36 and 87(4).

If the offence was racially aggravated, the court shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence): s153.

2. THE DEFENDANT'S RECORD

The magistrates or judge will then consider the defendant's previous convictions, if any. This information will have been recorded in a police antecedent statement. In addition, the PCCSA 2000 provides that in considering the seriousness of any offence:

- The court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences: s151(1).
- The court must treat the fact that an offence was committed whilst on bail as an aggravating factor: s151(2).

Minimum sentences may now be imposed in certain situations:

- Where a person is convicted of a second serious offence, the court shall impose a life sentence unless there are exceptional circumstances relating to either the offences or to the offender which justify its not doing so (serious offences are murder, attempted murder, soliciting murder, manslaughter, wounding/gbh with intent, rape, attempted rape, intercourse with a girl under 13, firearm offences and robbery with a firearm): s109.
- Where a person is convicted of a third Class A drug trafficking offence, the court shall impose a custodial sentence of at least seven years except where there are specific circumstances relating to the offences or offender and would make the sentence unjust in all the circumstances: s110.
- Where a person of the age of 18 or over is convicted of a third domestic burglary, the court shall impose a custodial

sentence of at least three years except where there are specific circumstances relating to the offences or offender and would make the custodial sentence unjust in all the circumstances: s111.

An appeal against such a minimum sentence can be made if a previous conviction is set aside: s112.

3. PLEA IN MITIGATION

The defendant's lawyer (or even the defendant personally) will make a plea in mitigation. This is an opportunity to explain to the court why the offence was committed, the defendant's personal circumstances and that the defendant feels remorse. The PCCSA 2000 provides that:

- Nothing shall prevent a court from mitigating an offender's sentence by taking into account such matters as, in the opinion of the court, are relevant in mitigation of sentence: s158.

4. REPORTS

If the defendant is to be imprisoned or a community sentence passed, the court must obtain a Pre-Sentence Report unless it is of the opinion that it is unnecessary (ss36 and 81). The purpose of a PSR is to provide information to the court about the offender and the offences so that the court has sufficient relevant information to enable it to decide a suitable sentence. It will be prepared by a probation officer after an interview with the defendant and will contain:

- (a) an assessment of the offending behaviour;
- (b) an assessment of the risk to the public; and
- (c) a clear and realistic indication of the action which can be taken by the court to reduce re-offending.

For further details see s81.

It may also be necessary to obtain a medical report on the defendant's physical or mental health. For mentally disordered offenders see s82.

5. SENTENCE

This is a two-stage process.

(a) *The court must decide which type of sentence to pass:* (i) a custodial sentence, (ii) a community sentence, (iii) a fine, or (iv) a discharge. Other sentences may also be available depending on the type of offence committed or the age of the defendant. Some guidance has been provided on deciding the type of sentence by the PCCSA 2000:

- A court may not pass a custodial sentence unless the offence(s) was so serious that only such a sentence can be justified; or if a violent or sexual offence, that only custody would protect the public from serious harm from him: s79(2).

- A court may not pass a community sentence unless the offence(s) was serious enough to warrant such a sentence; and it is suitable for the offender: s35.

(b) *The court must then decide the tariff, ie how much?*

The Magistrates' Court Sentencing Guidelines give starting points for offences which magistrates deal with regularly in adult courts. They list the kind of aggravating and mitigating factors which might make either a more or less severe sentence appropriate in an individual case.

The Court of Appeal provides sentencing guidelines for judges in the Crown Court. For example, guidelines were given for the offence of rape in *R v Billam* (1986) 82 Cr App R 347. The Sentencing Advisory Panel, which began work in July 1999, provides objective advice and information to the Court of Appeal when it formulates or revises sentencing guidelines.

Otherwise, some general guidance has been provided by statute:

- A custodial sentence must be commensurate with the seriousness of the offence(s); or if a violent or sexual offence, for such longer term as is necessary to protect the public from serious harm from the offender: s80(2).
- When imposing a custodial sentence for a sexual or violent offence, if the court believes that if the offender were to be released on licence and the licence period would not be adequate to prevent re-offending and securing his rehabilitation, the court may pass an extended sentence of ten or five years, respectively. During this "extension period" the offender will be subject to a licence: s85.
- Community sentences must be suitable for the offender and the restrictions on liberty placed by a community sentence must be commensurate with the seriousness of the offence(s): s35(3).
- Before fixing the amount of a fine to be imposed on an offender, the court must inquire into his financial circumstances: s128.

There may be a reduction in sentence for guilty pleas, under s152:

- The court will take into account the stage in the proceedings at which the offender indicated his intention to plead guilty and the circumstances in which this indication was given. If as a result, the court imposes a punishment which is less severe than it would otherwise have imposed, it must state in open court that it has done so.