

# Chapter 1: Principles and Purposes of Sentencing

- 1.1. Sentencing is critical to legitimising the rule of law and maintaining society's confidence in its justice system. It has to be effective to meet society's expectations and should be commensurate with the offence. Everyone has a perception of what sentences should be and should do, but views vary widely.
- 1.2. In Northern Ireland there is no comprehensive statement of the principles and purposes of sentencing. Instead, these are extrapolated from guideline cases; the Court of Appeal's sentencing guideline judgments;<sup>1</sup> and the concept of proportionality in the use of custodial sentences which runs through the Criminal Justice (Northern Ireland) Order 2008.
- 1.3. Section 142 of the Criminal Justice Act 2003, which applies only in England and Wales, sets out a more complete legislative statement of the purposes of sentencing. It states:

'Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing:

- a) the punishment of offenders;
- b) the reduction of crime (including its reduction by deterrence);
- c) the reform and rehabilitation of offenders;
- d) the protection of the public; and
- e) the making of reparation by offenders to persons affected by their offences.'

- 1.4. The Review considers that it would be desirable to have a clear understanding of the principles and purposes of sentencing in Northern Ireland. Such an understanding would:
  - improve awareness, understanding and clarity in how sentencing decisions are reached;
  - provide a definitive benchmark of the qualities that all sentences should incorporate and reflect; and
  - ensure compliance with international obligations.

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<sup>1</sup> The sentencing guideline judgments are published in an online Compendium by the Judicial Studies Board at: <https://judiciaryni.uk/sentencing-guidelines-northern-ireland>

- 1.5. Our current 'piecemeal' approach impedes transparency and may contribute to undermining public confidence in sentencing and the justice system. Improved clarity could facilitate consistency in the sentencing process.

## Principles of Sentencing

- 1.6. The judicial process recognises the unique nature of sentencing, taking account of the individual circumstances in each case to produce sentences that are just and appropriate. Recognising the importance of judicial discretion, sentencing principles reflect established expectations, law and jurisprudence, providing an inclusive framework within which sentencing decisions are made.
- 1.7. Principles are required to determine the punishment that can be justified in each case and must be capable of equal application to every sentence passed. They should remain constant to facilitate predictability and proportionality in the sentencing process, ultimately contributing to society's confidence in the justice system.
- 1.8. Principles inform and guide the judiciary. As well as ensuring justice and fairness, they provide transparency and the rationale behind sentencing decisions. They should ensure that sentencing is not only fair but seen to be fair.
- 1.9. On examination of principles of sentencing in place nationally and internationally, a level of commonality is found in the type and nature of principles recognised in many jurisdictions.
- 1.10. Although there are overlapping features, each principle is important in its own right, reflecting a distinctive aspect of a just sentencing system. Based on these considerations the Review proposes the following principles of sentencing.

## Proportionality

- 1.11. Punishment should be proportionate to the seriousness of the offence and reflect the degree of responsibility of the offender for it.
- 1.12. All jurisdictions reinforce the importance of this principle. It is also set out in the Criminal Justice (Northern Ireland) Order 2008,<sup>2</sup> which highlights the importance of proportionality when considering the use of incarceration.

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<sup>2</sup> Criminal Justice (Northern Ireland) Order 2008, Articles 5 (2) and 7 (2): <http://www.legislation.gov.uk/nisi/2008/1216/part/2/chapter/2>

## **Fairness**

- 1.13. The concept of fairness is difficult to define precisely, but is central to what the justice system seeks to achieve. The victim, offender, and society all desire that sentencing is fair.
- 1.14. Fairness requires sentencing to respect the rights of victims, offenders and their families. It ensures that the victim's voice is heard; seeks to take account of the personal circumstances of the offender; and provides for an appropriate balance between these factors in the determination of a sentence.
- 1.15. Fairness should ensure that all people are treated equally without discrimination, and that their treatment is human rights compliant.

## **Use Punishment Sparingly**

- 1.16. The principle that punishment should be used sparingly reflects the increasing understanding that harsher punishment does not necessarily help to address offending behaviour. It reflects society's move towards a more rehabilitative and therapeutic approach rather than a punitive one.
- 1.17. This principle is supported by the findings of worldwide research,<sup>3</sup> which indicates that it is not the severity of punishment that contributes to deterring offenders, rather it's the certainty of punishment.

## **Transparency**

- 1.18. Sentencing decisions should be taken openly and with reference to standards and other principles applied by the courts. The principle of transparency promotes clarity, consistency and predictability, and assists the public to understand sentencing decisions.
- 1.19. The application of the principle, for example seen through publicly provided judgments, can help to explain how a sentence was determined, thus minimising the potential for criticism, which can arise from inaccessibility of relevant information; and it can promote fairness.

***Please see Consultation Questions: No. 1 - 2***

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<sup>3</sup> Wright, V. Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment. 2010. The Sentencing Project, Research and Advocacy for Reform.

## Purposes of Sentencing

- 1.20. The purposes of sentencing can be considered to be the aims or desired outcomes which a judge is seeking to achieve in discharging the law. In determining the basis of a sentence the judge should ensure that the principles of sentencing are reflected in the sentencing decision. Depending on the specific circumstances of the offence, a sentence may have one or several purposes.
- 1.21. Across many jurisdictions the purposes of sentencing involve meeting the legitimate public desire to punish wrongdoing and to discourage the offender and other members of the public from committing similar offences in the future. In addition to securing redress and denunciation of the wrongdoing, sentencing also seeks to: address the causes of offending behaviour; provide opportunity for the offender to reform and make amends; and protect the public.
- 1.22. The Review proposes the following purposes of sentencing.

## Punishment

- 1.23. Whichever option the court considers appropriate, a sentence is normally intended as some form of penalty or loss to the offender.
- 1.24. Punishment also expresses the denunciation of the offender's criminal behaviour and represents retribution for society; it makes clear society's disapproval of the offender's behaviour; and reinforces respect for the law and for each other.

## Protection of the Public

- 1.25. Sentencing has an important role in protecting the public by one or more of the following: removing the offender from society, where necessary; deterring others from offending; holding the offender to account through supervision in the community; and taking actions to divert or otherwise prevent the offender from reoffending.
- 1.26. This purpose takes into account the wider needs of society.

## Deterrence

- 1.27. Sentencing aims to deter further offending by punishment and making the consequences of criminal behaviour clear to individuals and society.

## **Rehabilitation**

- 1.28. Rehabilitation can be defined as restoring a person to normal life. Its focus is on changing an offender's behaviour to prevent future offending and to reduce crime.
- 1.29. Rehabilitated offenders acknowledge and move away from their offending behaviour. Often this is achieved through therapeutic and practical support.
- 1.30. Research shows that rehabilitation is an effective way to reduce reoffending (therefore reducing the number of victims) and also assists in the reintegration of offenders into society.

## **Reparation**

- 1.31. Reparation can help meet the needs of both the offender and victim, by acknowledging the harm caused and allowing an opportunity to redress the offence.
- 1.32. Reparation can engage restorative justice practice, providing the victim with a greater voice and opportunity for a sense of closure, while at the same time, importantly, providing offenders with the opportunity to make amends for the harm caused and to give something back.

***Please see Consultation Questions: No. 3 - 4***

## **Prioritising Purposes**

- 1.33. The Review has considered whether any of the purposes of sentencing should be given more weight than the others. Following discussion during pre-consultation engagement, the view was taken that prioritisation is not appropriate, as it could unduly constrain the judiciary, possibly distorting the balance and fairness sought by the principles of sentencing.

## **Merits of a Single Definition**

- 1.34. A single, coherent definition of the principles and purposes of sentencing would enhance sentencing policy. It would make clear the foundations upon which every sentencing decision is built and, consequently, aid the wider public's appreciation of sentences imposed by the courts.
- 1.35. Research indicates that a single definition can help society to understand variations that can arise when sentencing for broadly similar offences, and informs the public on what is taken into account.

- 1.36. Having clarity around the principles and purposes that underline sentencing can also make the process more transparent and support a consistent approach. This, in turn, can improve understanding of the fairness and appropriateness of sentences.
- 1.37. In summary, a clear articulation of the principles and purposes of sentencing should:
- improve awareness, understanding and clarity in how sentencing decisions are reached;
  - facilitate consistency and predictability in the sentencing process; and
  - reinforce public confidence regarding sentencing and the justice system.

### **Maintaining the Principles and Purposes of Sentencing**

- 1.38. A statement of the principles and purposes of sentencing could be set out in legislation or embedded in a justice policy. The Review is conscious that policies can change quickly and that policy language can be subject to gradual evolution, with the potential to undermine the clarity which is sought.
- 1.39. In contrast, statutory definitions are generally more accessible, certain and enduring. Placing a statement of purposes and principles in legislation would ensure that the statement has maximum impact and is subject to the rigor provided for through the legislative process.

***Please see Consultation Question: No. 5***