

Sentencing Policy Review: Terms of Reference

Introduction

The justice system has clearly defined roles in dealing with the investigation and prosecution of crime and also in the sentencing of those convicted of offences. It is the role of Government to determine the legislative framework for sentencing and to ensure that there is a sufficient range of sentencing disposals available to enable the judiciary, which is wholly independent of Government, to pass the most appropriate sentence in individual cases.

It is the responsibility of government to keep the sentencing framework under review. This is a transparent process, encompassing the legislation establishing offences and penalties, subject to public consultation and scrutinised and debated by elected representatives in the Legislative Assembly.

Determining the appropriate sentence in individual cases, within that legislative framework, is the responsibility of the independent judiciary, taking into account all relevant considerations, including: the nature of the offence; the history of the offender; any aggravating or mitigating factors; considerations of public protection; and the impact of the crime on the victim.

The courts deal with a large volume of criminal cases each year. In 2014, cases involving 27,898 adult defendants were disposed of in the Magistrates' Courts; 2,045 in the Crown Court. Very few of these cases are considered newsworthy or come to the attention of the public. Media coverage understandably focuses on high profile, or particularly emotive cases, and it is against this background that perceptions of sentencing, and public confidence in it, are formed.

Background to the Review

Over the past few years some issues have been a focus of media and public concern, with a consequent negative impact on confidence in sentencing. These issues include:

Unduly Lenient Sentences

A number of cases have featured prominently in the media where there are concerns, both at community level and in the political arena, at the perceived leniency of the sentences handed down by the courts. There is a process by which sentences for serious crimes which are considered unduly lenient by the Director of Public Prosecutions (DPP) can be referred to the Court of Appeal for review. However, in the cases which featured in the media, the sentences could not be referred for reconsideration – only specified offences are referable and these particular cases involved offences which were not listed. This had a subsequent negative impact on

public confidence in sentencing which led to calls for the extension of the unduly lenient appeal provisions to include a wider range of offences.

In response, in February 2015 the Department issued a consultation on the Law on Unduly Lenient Sentences.¹ Interim proposals from that consultation recommended that a number of specific offences of particular and immediate concern should be added to the list of referable offences. These have been legislated for in the Justice Act (Northern Ireland) 2016. However, there is also a view that we need to consider, within the broader remit of sentencing policy, whether more fundamental change to the unduly lenient regime is appropriate or necessary to further enhance confidence in sentencing.

Particular Categories of Crime

Crimes against older and vulnerable people

In June 2015, the previous Assembly debated draft legislation to introduce minimum sentences for crimes against those aged 65 and over. The proposal was introduced against a long-standing perception that the sentences being handed down in the courts are not a sufficient punishment for those convicted of such crimes, nor a sufficient deterrent to those who might commit such crime in the future.

Causing death by dangerous driving

The appropriateness of the maximum penalty available for this offence has been raised as an issue of concern following recent cases.

Hate Crime

Sentencing for hate crime was raised as an issue of concern during the consultation on the Law on Unduly Lenient Sentences.

Offences against those providing a public service

There is a prevalent view that the level of sentencing for attacks against those providing a frontline public service, particularly in hospitals, does not reflect the gravity of the offence nor act as a sufficient deterrent.

Life Sentence Tariffs

Following the sentencing in 2012 of two people convicted of the murder of Constable Stephen Carroll, political and wider public concerns reflected a view that the tariffs handed down in that case were inadequate. In response to these concerns a commitment was made to review the law on the determination of tariffs where the mandatory life sentence for murder has been imposed. This commitment was made subject to the outcome of the Court of Appeal's review of the tariffs imposed in that case. In its judgment, the Court of Appeal upheld the sentencing guidance used by the

¹ [http://www.dojni.gov.uk/index/public-consultations/archive-consultations/the-law-on-unduly-lenient-sentences-a-consultation-paper-february-2015 .pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/the-law-on-unduly-lenient-sentences-a-consultation-paper-february-2015.pdf)

courts in the determination of tariffs. The Court also increased the tariff imposed on one of the accused while leaving the tariff in the case of the other unchanged.

Community Sentences

In the previous mandate, the then Justice Committee issued a report titled 'Justice in the 21st Century', which considered innovative approaches for the Criminal Justice System in Northern Ireland. It concluded that the underlying problems and root causes of offending behaviour must be tackled if reoffending rates are to be addressed.

In the context of the draft Programme for Government, the review will consider the effectiveness of community disposals in meeting the complex needs of offenders and providing for reduced reoffending.

Sentencing Policy Review

The fundamental issue in all these cases is that the sentences imposed should be appropriate, fair, consistent and effective and that the sentencing process should be transparent and understood. A lack of information about sentencing practice means that views are often formed without any real knowledge of the factors or processes involved.

In the lead up to the devolution of responsibility for justice, the Hillsborough Agreement (February 2010) recognised the importance of public confidence in sentencing by the inclusion of a commitment to consider the establishment of a Sentencing Guidelines Council for Northern Ireland. To meet this commitment, in October 2010 the Department issued a consultation paper which considered options for a sentencing guidelines mechanism and concluded that an effective mechanism should:

- promote public confidence in sentencing;
- provide greater transparency in the sentencing practice;
- enhance community engagement in sentencing issues; and
- promote consistency in sentencing for similar offences committed in similar circumstances.

Decisions on the way forward were influenced by two main factors: a separate judicial initiative, unique to Northern Ireland; and concerns, reflected in the consultation responses, about whether establishing a new sentencing guidelines mechanism would represent good value for money.

A separate judicial development saw the Lord Chief Justice (LCJ) initiate a Programme of Action on Sentencing, which contained a number of measures to ensure consistent and fair sentences. These included: the establishment of a judicial Sentencing Group to oversee the development of sentencing guidelines for the Magistrates' Courts and the Crown Court; and public consultation on offences for which guidelines should be developed.

In 2012, it was announced that the LCJ's initiative would form the basis of a sentencing guidelines mechanism for Northern Ireland, with the addition of enhanced community engagement to include lay members on the Sentencing Group. There was also a commitment to review the mechanism within two years. The current Review will meet

this commitment and will provide an opportunity to carry out a comprehensive and strategic review of sentencing policy.

Purpose of the Review

The purpose of the Review is to:

- consider the extent to which current sentencing arrangements meet the objectives of an effective sentencing guidelines mechanism;
- consider the appropriateness and effectiveness of the current legislative framework governing:
 - the referral of sentences for review on the grounds of undue leniency;
 - sentencing for particular categories of crime including: crimes against older and vulnerable people; offences causing death, including by dangerous driving; offences against those providing frontline public service; and hate crime.
 - the determination of tariffs following the imposition of a life sentence for murder;
- consider possible alternative approaches to securing public confidence in sentencing; and
- where appropriate, make recommendations for reform.

Where the review suggests that changes to the current sentencing arrangements are appropriate, the proposals will be subject to public consultation.

Sentence Review Core Reference Group

Chair:	Brian Grzymek	Deputy Director, (Criminal Justice Policy and Legislation Division)
Members:	Louise Cooper	Deputy Director, DoJ (Reducing Offending Directorate)
	Geraldine Hanna	Chief Executive Officer, Victim Support Northern Ireland
	Prof. John Jackson	University of Nottingham
	Olwen Lyner	Chief Executive Officer, Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)
	Dr. Geraldine O'Hare	Acting Director of Rehabilitation, Probation Board Northern Ireland
	David Smith Q.C.	Retired County Court Judge
	Prof. Cyrus Tata	University of Strathclyde

Stakeholders Pre Consultation Engagement *

Academics	NI Retail Consortium
Action on Elder Abuse NI	NIACRO
Age Sector Platform	NICRE
CJINI	NIVCA
Commission for Victims and Survivors	NIPS
Commissioner for Older people	PBNI
Core Reference Group	PCSP members
Cornerstone Off Road Motorcycle Academy	Police Federation
CVSNI	Prison Healthcare
Dept. of Infrastructure	PSNI
Dept. of Justice	PSNI Road Safety
Extern	Public Prosecution Service
Families of Victims	Restorative Justice Forum
Law Society of Northern Ireland	Service Users
MENCAP	Support after Murder and Manslaughter NI (SAMM)
MLA	Ulster Farmers Union
NI Courts and Tribunals Service	Victim Support NI
NI Human Rights Commission	Young Solicitors Association

*Stakeholder Engagement comprised a mix of workshops and individual meetings

Offences Against the Person Act 1861 – Summary of Assault Offences

The Offences Against the Person Act 1861 makes provision in Northern Ireland for, *inter alia*, the following general assault offences:

- Assault or battery (common assault) (section 42) – summary offence with a sentence of up to 6 months imprisonment and/or level 3 fine (£1000);
- Common assault (section 47) – indictable offence with a sentence of up to two years imprisonment and/or an unlimited fine;
- Assault occasioning actual bodily harm (section 47) – indictable offence with a maximum penalty of 7 years and/or an unlimited fine*;
- Wounding or causing grievous bodily harm (section 20) – indictable offence with a maximum penalty of 7 years and/or an unlimited fine*;
- Wounding or causing grievous bodily harm (GBH) with intent to cause GBH or to resist apprehension (section 18) – indictable offence with a maximum penalty of life imprisonment and/or an unlimited fine.

*The indictable offences under sections 47 and 20 may also be tried summarily, with the consent of the prosecutor and defendant (Articles 45 and 46 Magistrates' Courts (NI) Order 1981). The maximum penalty then is 12 months and/or a fine not exceeding the statutory maximum (£5,000).

s.42 (Common Assault) (maximum 6 months)		
Nature of Offence	Starting Point	Sentencing Range
Assault where no injury is caused or where injury is minor and non-permanent (e.g. bruising)	Community Order* +Compensation Order	Fine to Community Order** +Compensation Order
Assault resulting in more serious injury but not amounting to actual bodily harm	2 months Custody* + Compensation Order	Community Order to 6 months Custody + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	4 month Custody* +Compensation Order	Community Order to 6 month Custody + Compensation Order

s.47 Assault Occasioning Actual Bodily Harm (Summary maximum 12 months)		
Nature of Offence	Starting Point	Sentencing Range
Assault resulting in relatively minor injury but amounting to actual bodily harm	3 months Custody* + Compensation Order	Community Order to 6 months Custody** + Compensation Order
Assault resulting in relatively serious injury OR Assault involving the use of a weapon	4 months Custody* + Compensation Order	Community Order to 9 months Custody** +Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	6 months Custody* + Compensation Order	Community Order to 12 months Custody + Compensation Order

s.20 Inflicting Grievous Bodily Harm (Summary maximum 12 months)		
Nature of Offence	Starting Point	Sentencing Range
Non-premeditated brief assault	4 months Custody* + Compensation Order	Community Order to 8 months Custody** +Compensation Order
Premeditated assault OR Sustained assault OR Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	8 months Custody* + Compensation Order	4 - 12 months Custody + Compensation Order

Police (NI) Order 1998, s.66(2) (Summary maximum 6 months)		
Nature of Offence	Starting Point	Sentencing Range
Assault where no injury is caused or where injury is minor and non-permanent (e.g. bruising)	Community Order + Compensation Order	Fine to Community Order +Compensation Order
Assault resulting in more serious injury but not amounting to actual bodily harm	2 months Custody +Compensation Order	Community Order to 6 months Custody + Compensation Order
Assault involving gratuitous violence (e.g. kicking or stamping victim when on the ground) OR Assault was motiveless	4 month Custody + Compensation Order	Community Order to 6 month Custody + Compensation Order

General Assault Offences				
	Northern Ireland	England and Wales	Scotland	Ireland
Common assault and battery	6 months/ 2 years	6 months	Life (common law)	6 months
Assault occasioning actual bodily harm	7 years	7 years	Life (serious assault) (common law)	12 months/5 years
Assault with intent	n/a	n/a	n/a	5 years
Wounding or causing grievous bodily harm	7 years	7 years	Life (serious assault) (common law)	Life
Wounding or causing grievous bodily harm with intent	life	life	Life (serious assault) (common law)	Life

Overview of Occupation-specific Assault Offences

Occupation Specific Assault Offences				
	Northern Ireland	England and Wales	Scotland	Ireland
Assault on immigration officers	6 months	6 months		
Assault on HRMC	6 months	51 weeks		N/A
Assault on traffic officers		51 weeks		
Assault on officer of the county court		3 months		
Assault on prison and secure training centre custody officers		6 months		
Assaulting or impeding a constable in the execution of his duties	6 months/2 years	6 months	12 months	
Assaulting or impeding a fire and rescue officer in the execution of his duties	6 months/2 years			
Assaulting an ambulance worker	6 months/2 years			
Assault on emergency workers. Includes		6*/12 months/statutory aggravating factor Inc: police, NCA officers, prison officers, custody officers, fire service personnel, search and rescue services and providers of NHS health services, or services in support of same (including ambulance staff).	12 months Inc: constables, fire-fighters, ambulance workers, registered medical practitioners, registered nurses and registered midwives); prison officers, members of HM Coastguard, and crew members of vessels operated by the Royal National Lifeboat Institution or other water rescue services; social	12 months/7 years Inc: a person providing medical services at or in a hospital; a person assisting such a person; Garda Siochana; Prison Officers; Defence Forces; Ambulance personnel; and Fire brigade personnel. Inc. Doctors, dentists, psychiatrists, nurses, midwives, pharmacists, health

			workers and mental healthcare workers); a person who is assisting someone acting in one of the capacities set out in sections 1 or 2 Registered medical practitioner, nurse, midwife or ambulance worker while in a hospital or on land adjacent to a hospital.	and social care professionals or other persons in the provision of treatment and care for persons at or in a hospital, or Persons acting under direction of those persons
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*6 months until s.154 of the Criminal Justice Act 2003 commences

Adult Sentencing Options in Northern Ireland

DEFERRAL, DISCHARGES AND BINDING OVER		
1.	Absolute Discharge	The offender is released unconditionally as a penalty is not seen as appropriate.
2.	Conditional Discharge	No penalty is imposed on condition that no other offence is committed within a specified period, which can be up to 3 years. If there is a further offence the offender may be sentenced for the original offence.
3.	Binding Over	A recognisance, usually termed 'binding over' is an undertaking whereby a person agrees, for example, to be of good behaviour. In the event of a breach of that undertaking the offender must pay a sum to the Court. Sureties (guarantors) may also be sought who will likewise enter into a bond for a certain sum, for the performance of obligations by the offender.
4.	Deferred Sentencing	Sentencing can be deferred for up to 6 months to allow improvement in behaviour or restitution to be made, after which the sentence is passed.
FINANCIAL PENALTIES		
5.	Fine	Fines are unlimited in value in the Crown Court, or subject to a maximum (set in legislation) in the Magistrates' Courts. They can be imposed alone or alongside other sentences. The court must enquire into the financial circumstances of the offender. Time is normally allowed to pay and there can be imprisonment in the default of payment.
6.	Offender Levy	<p>An offender levy is a sum of money that offenders have to pay when they are given certain sentences at court, or when offered particular fixed penalties by the police, as an alternative to prosecution.</p> <p>The money collected is distributed into a dedicated Victims of Crime Fund that is used to provide services for victims and witnesses of crime.</p>

7.	Costs	Offenders can be ordered to pay the prosecution costs of their case.
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COMMUNITY SENTENCES

8.	Probation Order	<p>This involves a restriction of the offender's liberty and requires his/her consent. The order will last for between 6 months and 3 years, and may include additional requirements to help address offending behaviour, such as:</p> <ul style="list-style-type: none"> ▪ attending an alcohol or drug rehabilitation programme; ▪ attending a Day Centre; and/or ▪ receiving any other medical treatment or counselling.
9.	Community Service Order	Consists of unpaid work in the community. The offender must consent to the order being made and must be deemed suitable by the Probation Board. An Order can be for between 40 hours and 240 hours and must be completed within a year.
10.	Combination Order	Is a combination of community service and probation supervision. The community service part of the Order can last between 40 hours and 100 hours and the supervisory part between 12 months and 3 years.

CUSTODIAL (PRISON) SENTENCES

11.	Suspended sentence of imprisonment	A sentence of imprisonment for 2 years or less may be suspended for a specified period meaning the offender is not imprisoned, unless he/she commits another imprisonable offence (during the period of suspension).
12.	Determinate Custodial Sentence of less than 12 months	Is used where legislation provides for a sentence of less than 12 months, or the court considers a custodial sentence of less than 12 months to be appropriate. Prison Rules provide for the offender to be released on remission of up to one half of the sentence for good conduct. This is the only type of sentence that attracts remission.

13.	Determinate Custodial Sentence of 12 months or more	<p>These sentences include a custodial period and a further period to be spent on licence, as specified by the court to protect the public and prevent further offending. The licence term may include curfew requirements or electronic monitoring. The custody element of the sentence cannot be greater than half of the overall sentence.</p> <p>During the licence period an offender is liable to recall to custody if they breach their licence conditions. If recalled, an offender may have to serve the rest of their sentence in custody.</p>
14.	Extended Custodial Sentence (ECS)	<p>Is a public protection sentence which can be imposed when an offender has committed certain violent or sexual offences (listed in the Criminal Justice (NI) Order 2008). The court must be of the opinion that the offender is likely to commit further similar offences in the future.</p> <p>The sentence comprises the appropriate custodial term (at least 12 months) and an additional period of release under licence conditions (the extension period). The court will set a fixed period of custody proportionate for the offence and will then add the extension period to this. The total sentence cannot exceed the maximum sentence permitted in law for the offence. The offender may be considered for release after serving at least 50% of the custodial period and may be released to serve the remainder of the sentence supervised on licence in the community provided any risk to the public does not require continued detention.</p>
15.	Indeterminate Custodial Sentence (ICS)	<p>An ICS is a public protection sentence for specified serious sexual or violent offences where the court believes that the offender is likely to commit similar offences in the future.</p> <p>No release date is given for an ICS. Offenders serving an ICS will be given a 'tariff' date which is the earliest date that they may become eligible for consideration for release by the Parole Commissioners for Northern Ireland. The tariff is a minimum of 2 years.</p> <p>An ICS can be imposed where the offence carries a maximum penalty of Life imprisonment but the court does not consider the risk of further similar offences requires a life sentence to be imposed to protect the public.</p> <p>The court must consider whether an ECS is appropriate. , If the court deems that an ECS would not be adequate for the</p>

		<p>purposes of protecting the public, it can impose an ICS for that offence.</p> <p>An ICS prisoner will remain in custody until they have demonstrated to the satisfaction of the Parole Commissioners that they can be released safely into the community.</p>
16.	Life Sentence	<p>These are mandatory for murder and discretionary for a number of other offences like manslaughter and rape where they are the maximum sentence available. A minimum period of imprisonment (the 'tariff') is set by the court after which release on licence is with the approval of the Life Sentence Review Commissioners who consider the issue of risk. Prisoners released are on licence and subject to recall to prison for life.</p>
ANCILLARY ORDERS		
17.	Electronic Monitoring	<p>Offenders are fitted with an electronic monitoring device (tag) that continuously monitors that the individual remains at an approved address during a curfew period.</p>
18.	Anti-Social Behavior Order (ASBO)	<p>Used to order anyone aged 10 or over from harassing or causing alarm or distress to other people who are not part of their household. If they breach the terms of the order they can be fined, receive a community sentence, or may even face up to five years in prison.</p>
19.	Forfeiture Order	<p>Used to deprive offenders of their rights in any property used in the commission of any offence.</p>
20.	Financial Reporting Order	<p>Made in conjunction with sentences for fraud or criminal lifestyle offences where there is a risk of similar offending. Requires the offender to make periodic reports of their finances.</p>
21.	Confiscation Order	<p>Requires the proceeds of crime to be confiscated from the offender.</p>
22.	Compensation Order	<p>Requires the offender to pay compensation for any personal injury, loss or damage resulting from a particular offence.</p>
23.	Restitution Order	<p>Requires the offender to restore stolen goods to their owner or to pay a sum that is equal to the value of the goods.</p>
24.	General Prevention Order	<p>Used where a corporation is convicted of corporate manslaughter. To require the improvement of safety and/or to publicise its breach.</p>

25.	Serious Crime Prevention Order (SCPO)	Used to protect the public by preventing, disrupting or restricting the involvement of the offender in serious crime in NI. The SCPO may contain prohibitions, restrictions or requirements and terms, such as place of residence, travel, financial etc. and lasts for a specified period up to 5 years.
DEPORTATION		
26.	Deportation Order	May be used for non-UK/British citizens who are over the age of 17 and convicted of an imprisonable offence.
27.	Automatic Deportation	Is used for non-UK/British citizens who are over the age of 17 and convicted of specified serious offences or sentenced to at least 12 months imprisonment for any offence.
SEX OFFENDERS		
28.	Sexual Offences Prevention Orders	Used for offenders who are convicted of specified sex and violent crimes to protect the public or particular members of the public from serious sexual harm. These orders prohibit the offender from doing anything described in the order for a fixed period of time (not less than 5 years) or until further order.
29.	Foreign Travel Orders	Used when police believe it necessary to prevent an offender convicted of certain sex offences from travelling abroad. The order may last for a fixed period and is intended to protect children generally or any child from serious sexual harm by the offender
30.	Risk of Sexual Harm Orders (RSHO)	Used to protect children in Northern Ireland from certain sex offenders. The Order prohibits the offender from doing anything described in the order for a specified period (not less than 2 years) or until further order.
31.	Disqualification from working with children	Used for offenders convicted of specified serious offences against children. The order disqualifies the offender from working with children.
32.	Special Provisions for Sex Offenders	Supervision while released on licence – used for sex offenders who have been released on licence with conditions attached. The court may require the offender to be supervised from the date of release until the date the full sentence would have ended.

MENTALLY III/DISORDERED OFFENDERS

33.	Hospital Order	<p>Commits an offender for admission to hospital, if the court is satisfied on the evidence of two medical practitioners that the offender is suffering from a defined mental illness or severe mental impairment which warrants detention in a hospital for medical treatment.</p> <p>A hospital order with restriction order may also be made for a person charged with an offence before the Crown Court who is found unfit to plead the charge or not guilty by reason of insanity.</p>
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ROAD TRAFFIC OFFENCES

34.	Disqualification and Suspension of Licences	Used where a motor vehicle was used in the commission of specified serious offences.
35.	Penalty Points or Disqualification	Used where a person is convicted of certain motoring offences.
36.	Extended Driving Test	Can be ordered before a disqualified driver can be entitled to drive again. Often used where the person was convicted of dangerous driving offences or other offences involving mandatory disqualification.

TERRORIST OFFENCES

37.	Notification and Foreign Travel Restriction Orders	Used for offenders convicted of specified terrorist offences. The offender is automatically subject to a requirement to notify the police of their address details and may the court may also impose a foreign travel restriction order.
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