

Reconceptualising the effectiveness of sentencing: four perspectives

Dr Jay Gormley (University of Glasgow)

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The author

[Dr. Jay Gormley](#) is an ECR Fellow at the University of Glasgow, specialising in criminal justice and sentencing. He has collaborated with guideline-creating bodies and critical policy influencers across various jurisdictions. These include the Scottish Sentencing Council, the Sentencing Council of England and Wales, the Sentencing Academy, Community Justice Scotland, and the Sentencing Guidelines and Information Committee of the Judicial Council of Ireland. He is an experienced empirical researcher who has worked with a wide range of criminal justice participants, including judges, lawyers, prosecutors, and defendants. His work consists of theoretically driven empirical research that scrutinises and evaluates critical aspects of sentencing, data, and case processing.

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1. Summary

The Sentencing Council for England and Wales promotes a clear, fair, and consistent approach to sentencing by issuing sentencing guidelines and explanatory materials. In 2022, a literature review ([‘the 2022 Review’](#)) was commissioned by the Council to facilitate work and thinking on the effectiveness of sentencing (Gormley, Hamilton and Belton, 2022). The specification of that review entailed a key focus on reoffending and cost, which was widened to encompass contemporary developments in related matters such as desistance, rehabilitation, and reintegration. At the time of writing this report (January 2024) the main findings of the 2022 Review remain relevant.

This review synthesises key implications from the evidence base to assist work on the effectiveness of sentencing. The review engages the research literature on sentencing and perspectives of sentencing in a number of domains. It examined relevant academic and library databases, including Westlaw, LexisNexis, HeinOne, JStor, PubMed, Scopus, and The British Library’s catalogue. This search was guided by keywords and terms derived from the Sentencing Council project specification and in consultation with the Office of the Sentencing Council. In line with the project’s aim to examine the current state of knowledge, the focus is on the most recent literature up to 2023 (although other older sources are drawn on where appropriate). The review also examined government sources for reports and publications (such as the House of Commons Justice Committee) and other reputable sources of citations such as SSRN and Google Scholar. The review strongly focused on literature in England and Wales, though research conducted in other countries was considered to the extent it could be informative or illustrate questions that future research might address in England and Wales. The review also relied on knowledge of the field and consulted with academic experts (thank you to them).

One challenge in this review is the expansive range of matters that are relevant to the effectiveness of sentencing. Thus, a novel way to usefully broaden the scope, while keeping the review manageable, was needed. Here, the broader scope is achieved by using the perspectives of four key groups as a means to consider a wider range of issues relevant to effectiveness: offenders (specifically with regard to deterrence); the public; victims; and sentencers (judges and magistrates). This broader scope is better able to recognise that in reality sentencing is a complex, dynamic, and social process (Tata, 2020). This recognition creates new possibilities for meaningful debate and reform.

While it is hoped this review will be informative, it does not intend to imply anything about the merits of sentencing options for specific cases or types of cases. No general claim is implied about if/when any specific disposal might be needed. Indeed, that will depend upon the specific facts and circumstances of the case and is beyond the scope of this review. The points here are general considerations, applicable to a wide range of offences, and should be understood in that light.

The various functions of an effective sentence

A theme from this review is that while reducing reoffending is an important aim with potentially immense benefits, an effective sentence must also serve to communicate to society that justice has been done, that wrongdoing has been censured and denounced, and that, ultimately, offenders have been held accountable. Traces of this theme are seen in all four of the perspectives noted here. Whether these aims are perceived to be met may, in part, depend on how sentencing is communicated and understood.

Consequently, what makes a sentence effective from these perspectives is more complex than it might first appear. While sentences themselves matter for a range of reasons, it is also vital that, as far as possible, all feel the harm done to victims has been recognised, the offender has been held to account, and that victims and society have been listened to. Meeting these aims depends on more than just the sentence itself and more severe sentences in and of themselves will not necessarily better achieve them. Indeed, a relatively less severe sentence that manages these aims could be better received than a more severe sentence that does not (such as if the more severe sentence is perceived as perfunctory). The key point here is that factors beyond the disposal matter and that sentencing has a social and communicative function worth considering.

Offender perspectives and the effectiveness of deterrence

The [Sentencing Act 2020](#) sets out five purposes of sentencing sentencers must have regard to. These purposes are listed without a hierarchy or an indication of when a given purpose might be relevant or not. While, depending on the case, some purposes may overlap and some may conflict, here the decision was made to focus on evidence relevant to “the reduction of crime (including its reduction by deterrence).” However, deterrence is not defined in the Sentencing Act 2020 and there are different conceptions of deterrence: including the idea, held by some that ‘deterrence’ may be a way to say that a given conduct is harmful and should be criminalised. Most of the recent research on offenders does not focus on deterrence, but on key questions such as desistance, rehabilitation and reintegration. However, given the statutory relevance of deterrence, further research could be conducted on deterrence.

One concept of deterrence is ‘marginal deterrence.’ Here the question is how the severity of a sentence affects offenders’ decision-making (such as by asking whether more or longer prison sentences would deter offending). Generally, there is not robust evidence that increasing sentence severity provides greater marginal deterrent effects. The reasons for offending or desisting from offending are complex and simple assumptions about offenders’ ‘rational choices’ to offend/desist are fraught with difficulty. Additionally, how offenders experience a given disposal is also complex.

Future research on deterrence might examine offender experiences of community or suspended sentences. It would be helpful to better understand whether there might be a special deterrent effect in some cases from the looming threat of further punishment in the event of breaching the requirements of an order. Moreover, research might explore whether some types of offences or offenders might be more susceptible to deterrent effects in certain contexts (such as offences not committed in ‘the heat of the moment’ or that entail financial benefits: like some health and safety offences, environmental offences, fraud, hare coursing, fly tipping, misconduct in Public Office, firearms importation, and modern slavery). Finally, future research could explore how offenders perceive different disposals in terms such as punitiveness, censure and denunciation, and accountability. For example, a range of disposals - such as fines or community orders with stringent requirements - may already be experienced as highly punitive by some. Further evidence on this could be useful to communicate with the public and inform policy debates.

Public perspectives about the effectiveness of sentencing

The Council has a statutory duty to consider the “need to promote public confidence in the criminal justice system” (Coroners and Justice Act 2009 sections 120 and 128) and several of its [strategic objectives](#) depend in some way upon public confidence. Moreover, public opinion may be a factor in law-making that affects sentencing. Thus, both in its own

right and indirectly, public opinion has important implications for the effectiveness of sentencing (Freiberg, 2021).

There is a substantial body of research examining public opinion on sentencing. However, one challenge is the heterogeneity of the public and the need to capture complex variations in views. For example, views may vary depending on the offence being discussed. Thus, more research is needed to focus on specific areas.

Another challenge is that public understanding of sentencing disposals, trends, guidelines, and the factors considered in the sentencing process can be limited. Research needs to understand these limits because there is evidence suggesting that, while not a panacea, better public understanding of sentencing and the existence of guidelines can contribute to improved confidence (Marsh et al., 2019; Singer and Cooper, 2009; Hough and Roberts, 1998). For example, it is possible that greater understanding may help counter misconceptions and enable the public to know how sentences might achieve desirable aims. Indeed, research with the public suggests that they may not simply be reflexively punitive (Roberts and Hough, 2011). This has implications for law-making and sentencing policy in terms of promoting the effectiveness of sentencing. For the public, outcomes such as perceiving offenders to be held to account and censuring wrongdoing may be desired. For this reason, exploring and promoting the public understanding of sentencing remains one of the most profound challenges facing the sentencing field (and sentencing councils).

Victim perspectives about the effectiveness of sentencing

Victims (here the term victim refers to both ‘victims’ and ‘survivors’) are a sub-group of the public and many of the above points apply. However, victims also warrant special consideration given their distinctive experiences of crime. Indeed, as [a Sentencing Council article](#) notes, “victims are central to sentencing guidelines” (Sentencing Council of England and Wales, 2017). Therefore, the Council’s work concerning the effectiveness of sentencing must continue to consider victim perspectives.

Victims are not a homogeneous group. However, research with victims in a range of jurisdictions has highlighted some broad trends. One of the key trends concerns the importance of the perceived fairness of the process (such as having a voice; being listened to; and being treated with humanity, dignity, and respect). While this is not to say that the final disposal/sentence is unimportant to victims, it does raise the importance of victims’ wider experiences (Newlove, 2023). Thus, what may also matter is the role of courts and sentencing as potentially cathartic: because victims feel that justice has been done, they have been listened to, the harm done has been recognised, and that there has been accountability and censure.

Relatedly, victims need to be able to understand sentences and whether/how these meet their needs. For example, the various requirements of community orders or ancillary orders may not be clear. Likewise, sentences of imprisonment, especially release provisions and supervision on licence, may not be well understood by all.

Thus, ongoing research with a range of victims (such as victims of different offences and from different backgrounds) is important going forward. It also seems that research could fruitfully examine how victims understand the sentencing process and how communication with victims about sentencing could be improved (both before and after sentencing). This could be via post-sentence debriefs, public legal education, or some other means.

Sentencers' perspectives about the effectiveness of sentencing

Research in England and Wales concerning the views of sentencers is tremendously valuable. While sentencers follow the law and (where applicable) guidelines, professional discretion remains vital. As a complex legal and social process, there is more to sentencing than a technocratic exercise. Whether and when sentencers, in their professional capacity, believe a disposal to be effective or ineffective (and in what ways) is likely to affect the sentence selected within the bounds of professional discretion. Thus, both to understand sentencing practice (including the factors which influence the sentences imposed by courts) and to create sentencing policy that is meaningful to and respected by sentencers, their views (and professional experiences of sentencing) need to be understood.

Research focused on the views and experiences of sentencers is relatively sparse. There would be several benefits to further research. For example, existing evidence suggests that inadequate communication with sentencers about provisions available in the local community and/or practical issues with delivery might adversely impact confidence in community sentences (Kennefick and Guilfoyle, 2022; Justice and Home Affairs Committee, 2023). Such issues have key implications for the effectiveness of sentencing and only through research can these, and other issues, be identified and remedied.

2. Introduction

2.1 Background

The Sentencing Council for England and Wales promotes a clear, fair, and consistent approach to sentencing by issuing sentencing guidelines and explanatory materials. Guidelines aim to provide clear structures and processes for sentencers (judges and magistrates) to use in court. Guidelines also aim to promote awareness and understanding of sentencing among victims, witnesses, offenders (for simplicity, the term offender here is used widely to include those accused of an offence or who may commit an offence), and the public. All guidelines can be accessed from the [Sentencing Council website](#). Most guidelines are offence specific and many of the most common offences are now covered by guidelines. Additionally, nine overarching guidelines cover matters potentially relevant to a range of different offences: such as the [Reduction in sentence for a guilty plea](#); considerations for [Sentencing children and young people](#); and considerations for [Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#). The creation and monitoring of guidelines entails a substantial degree of work (such as consultation and impact analysis) and each guideline is considered in light of the specific matters relevant to it.

The Council has a number of direct and indirect obligations. As part of its statutory duties, the Council must have regard to a range of matters such as: cost and reoffending; the impact of sentencing decisions on victims; the need to promote public confidence in the criminal justice system; and promoting awareness. These duties (as well as others) appear in the Coroners and Justice Act 2009. Moreover, the Council must inevitably take into account other non-statutory matters in creating and monitoring guidelines, including the extent to which sentences hold offenders to account, and censure and denounce wrongdoing (thereby expressing disapproval and upholding societal values). All these factors can have a bearing on the effectiveness of sentencing in a given case.

The Council has included issues related to the effectiveness of sentencing in [its public strategic objectives for 2021-2026](#) which detail the Council's priorities and actions for the coming years. As part of this, the Council has committed to publishing work in the area of sentencing effectiveness and has an overarching objective to "consider and collate evidence on the effectiveness of sentencing." Points related to the effectiveness of sentencing were also highlighted in [Professor Sir Anthony Bottom's report](#) on how the Council can best exercise its statutory functions (Bottoms, 2018).

In 2022, a literature review was commissioned by the Council to facilitate work and thinking on the effectiveness of sentencing (hereinafter '[the 2022 Review](#)'). The specification of that review entailed a key focus on reoffending, which was widened to encompass key developments in related matters such as rehabilitation and reintegration. At the time of writing this review (January 2024) the main findings of the 2022 Review remain relevant.

However, while the 2022 Review covered several key areas, its scope did not (and could not) cover everything relevant to considerations about the purposes and effectiveness of sentencing and guidelines. In general, the more research can engage with factors relevant to real world sentencing, the more likely it is to be respected by and meaningful to sentencers and policymakers. While reoffending is important there are other considerations for sentencing (sometimes linked and sometimes distinct). Therefore, this

2024 review seeks to advance how the effectiveness of sentencing is conceptualised in academic and policy discourses.

While this review aims to better reflect a range of functions of sentencing and further inform the work of the Council, a prominent challenge in this task is the expansive range of matters that are relevant. Thus, a novel way to usefully broaden the scope, while keeping the review manageable, was needed. The solution was to consider factors that may influence the perceived effectiveness of sentences by focusing on effectiveness from different perspectives. In other words, the review seeks to consider the evidence around what makes a sentence effective in terms of:

- offenders (specifically with regard to deterrence)
- the public
- victims/survivors
- sentencers (judges and magistrates)

These perspectives are vital to consider because, for instance, while cost and reoffending can be important aspects of the effectiveness of sentencing (with tremendous implications for victims and the public), they are not the only aspects of an effective sentence. Sentencing is not just a technocratic or mechanistic endeavour. An effective sentence must also be just and fair and be seen as such. Through considering research illuminating the perspectives of these groups, it is possible to shed new light on how the effectiveness of sentencing could and should be understood. For example, while some theoretical approaches to sentencing and/or punishment might focus only on consequentialist outcomes like reoffending/risk, for many a sentence must also censure and denounce wrongdoing and hold offenders to account (in other words, the wrongdoing must be felt to be properly recognised and the offender felt to be held accountable in legal, moral, and social terms) to be seen as effective (discussed later in this review). Thus, incorporating these perspectives within this review serves to recognise that sentencing is a complex, dynamic, and social process (Tata, 2020). This recognition creates new possibilities for meaningful debate and reform.

While it is hoped this review will be informative, it does not intend to imply anything about the merits of sentencing options for specific cases or types of cases. No general claim is implied about if/when any specific disposal might be needed. Indeed, that will depend upon the unique facts and circumstances of the case and is beyond the scope of this review. The points here are general considerations, applicable to a wide range of offences, and should be understood in that light.

2.2 Methodology

This review synthesises key implications from the evidence base to assist work on the effectiveness of sentencing. The review engages the research literature on sentencing and perspectives of sentencing in a number of domains. It examined relevant academic and library databases, including Westlaw, LexisNexis, HeinOne, JStor, PubMed, Scopus, Google Scholar, Open grey, and The British Library's catalogue. The review also examined government sources for reports and publications (such as the House of Commons Justice Committee) and other reputable sources of citations such as SSRN.

This search was guided by keywords and terms initially derived from the Sentencing Council project specification and in consultation with the Office of the Sentencing Council. These terms included multiple ways to describe the groups focused on here:

judge/sentencer/magistrate; offender/accused/defendant/convicted person; public/people/population/polity; victim/complaint/survivor. These terms were adapted as the search progressed and combined using complex search criteria (such as Boolean operators like AND/OR/NOT) and wildcard characters that can stand in for unknown characters (to cover terms such as sentence, sentences, and sentencing simultaneously). The review also relied on knowledge of the field and consulted with academic experts and our anonymous external reviewer (an academic in the field of sentencing and who is familiar with the aims and objectives of the Council). Thank you to them.

In line with the project's aim to examine the current state of knowledge, the focus is on the most recent literature up to 2023 - although older sources are drawn on where appropriate or seminal (especially if not covered in detail in the 2022 Review). The review strongly focused on literature in England and Wales and used more complex search criteria to achieve this focus (such as by specifying England and Wales in searches). However, the review also considered research conducted in other countries to the extent it could be informative or illustrate questions that future research might address in England and Wales.

A familiar challenge from the 2022 Review was the expansive scope of what is potentially relevant to the effectiveness of sentencing. To identify sources in search results for further consideration, abstracts were reviewed to determine whether they might be relevant. If a source was considered potentially relevant, then its quality was considered. When considering whether the quality of a source was sufficient to be included, the review took into account various factors: such as looking at the credentials of the author(s); whether the work is peer-reviewed; official statistics with appropriate quality controls, observing if there is a match between credentials and the research design employed; reviewing if the methodologies used are appropriate to the research question(s) posed; assessing the overall rigour of the research; considering if there is any reason for the author(s) to have any biases or conflicts of interest; scrutinising the reasonableness of conclusions based on the evidence provided; and evaluating the overall transparency of the source. In total, about 160 sources have been cited in this review.

The literature review began by focusing on research related to various topics seen in the 2022 Review: such as factors associated with reoffending and desistance; sentencing factors associated with effects on the rates of reoffending; the (direct and indirect) costs of different types of sentences currently available in England and Wales; and how sociodemographic characteristics impact the foregoing issues. This revealed new studies and developments (see Section 3), but overall did not suggest anything that would substantially affect the main conclusions of the 2022 Review, which was still relatively recent. Rather than produce a derivative review that would not reveal anything new to assist the Council, it was decided that it would be more productive for the current review to focus on matters not covered previously or (such as in the case of deterrence which was identified by the Office of the Sentencing Council as a matter of interest) focus on additional aspects of a given matter. Accordingly, thereafter, the review targeted research relevant to the effectiveness of sentencing from the four perspectives noted above.

3. Ongoing developments

The 2022 Review analysed evidence and trends concerning the effectiveness of different sentencing disposals. At the time of writing, the points made in 2022 and the conclusions reached remain valid. However, this is not to say that the sentencing landscape has remained unchanged. Rather, a great deal is ongoing at the moment and this section will briefly highlight five key matters.

Firstly, there is continued monitoring of how the criminal justice system (and society generally) recovers from coronavirus (COVID-19) backlogs. Secondly, there are also potential new issues and questions that will arise from socio-economic changes. For example, while the relationship between economic performance and crime is complex, the ‘cost of living crisis’ has been discussed as a factor that may influence some offending behaviours (Fetzer, 2023; Scottish Government, 2023a). There may also be matters that become more prominent in media coverage and/or public debate. For example, Gibbs highlights that negative media coverage of shoplifting offences has been seen (such as that concerning organised gangs) and that this may prompt debates (Gibbs, 2023). However, Gibbs also highlights that while there has been adverse media attention on shoplifting, this may not always accurately reflect offending trends. Factors such as these may have various implications for perceptions of sentencing.

Thirdly, a major contemporary debate concerns the prison population in England and Wales. While the debate over the size of the prison population is not new, it has arguably become more prominent in policy developments since the 2022 Review was conducted. Prison capacity issues have affected operations in profound ways. For example, in late 2022 Operation Safeguard was announced (allowing people to be held in police cells) (Prison Reform Trust, 2023). By the end of 2023, the English and Welsh prison estate was operating at 99 per cent capacity with over 88,000 people imprisoned (Jones and Lally, 2024). While predictions are difficult for several reasons (including due to the COVID-19 backlog), in early 2023 the MoJ estimated that without intervention the prison population could reach up to 106,300 by 2027, with a central estimate of 93,100 (Ministry of Justice, 2023). If borne out, these numbers would mean the demand for prison places could significantly outstrip the prison estate’s capacity.

Presently, it seems possible that legal and policy changes may result from this penal “crisis” (Annison and Guiney, 2023). As of the end of 2023, there are three Bills that, to some extent, are motivated by these challenges: the Sentencing Bill; the Criminal Justice Bill; and the Victims and Prisoners’ Bill (Bowen and Brown, 2024; Jones and Lally, 2024) (the Victims and Prisoners Bill received Royal Assent on 24 May 2024). If these Bills, or other measures, such as changes to release provisions or a presumption against short sentences are implemented, then there is the potential for this to affect sentencing in several ways. Such developments may fundamentally change the types of sentences issued or how they operate. For example, courts have been willing to consider the impact of imprisonment on offenders and the conditions in which prisoners are confined. Recently this has specifically included overcrowding and Operation Safeguard (for example, see *R v Ali* [2023] EWCA Crim 232. See also *R v Foster* [2023] EWCA Crim 1196 para 42; *Tonstate Group Ltd v Wojakovski* [2023] 12 WLUK 265; *R. v Monk* [2023] EWCA Crim 518; and *Dermamed Solutions Ltd, Re* [2023] EWHC 1224 (Ch)).

Fourthly, it can be noted that the evidence base generally continues to suggest the efficacy of non-custodial sentences in terms of recidivism rates compared to short

custodial sentences. It also fails to provide robust evidence that (longer) prison sentences better reduce recidivism. Indeed, this is not limited to England and Wales and, for a comparative perspective, recent research in the Netherlands might be highlighted where “findings indicate that being sentenced to prison rather than a non-custodial sanction increases the prevalence of recidivism” (Wermink et al., 2023).

Finally, the research evidence continues to signal the complexity of reducing reoffending (including understanding what happens during a prison sentence or other types of sentence) and that this area raises both practical and normative questions (Lavazza, Levin and Farina, 2023, p. 2430). For example, a recent review of evidence-based sentencing in the US (also known as risk-based sentencing) noted that complexities include variables around sentence implementation and competing goals of sentencing, and highlighted the need for further research (Martínez-Garay, 2023, p. 10). Other work also signposts the complexity of research in criminal justice contexts generally and it remains the case that ‘what works’ evidence drawn from evaluation studies has serious limitations, and that it must be supplemented with evidence from explanatory studies that explore how and why people desist from crime” (McNeill et al., 2012, p. 36).

4. Offender perspectives relevant to the effectiveness of sentencing as a deterrent

Research on offender perspectives can improve our understanding of the effectiveness of sentencing in several ways. For instance, how offenders perceive or experience sentencing may have implications for reducing offending. Additionally, research on offender perspectives can be of use beyond instrumental concerns about reoffending and aid our understanding of broader performative and normative functions of sentencing (such as ways of holding offenders to account). Indeed, given that sentencing is a complex social process, it is hard to conceive of an effective sentence that would not be concerned with how offenders perceive and experience it (Tata, 2020):

Even if (and perhaps especially if) engaged in denunciatory sentencing, court professionals are interested in how defendants react before, during, and after sentencing. For example, from judges to lawyers, to clerks, to ushers, all court workers (and members of the public) invariably observe the person at the moment of sentencing and immediately afterwards as she leaves the courtroom, checking for signs of defiance or acceptance. (Gormley and Tata, 2022, p. 51)

This need to understand the offender and how they react to a sentence is exemplified in a range of situations, including the controversy that occurs when an offender refuses to attend their sentencing hearing. As Watson explains, “following each high-profile refusal, we witness a resurgence in public and political opposition to it” (Watson, 2023). Attending or not attending a sentencing hearing is not instrumental in that it does not change the sentence given. However, it can affect how groups are able to perceive censure, denunciation, and accountability. Thus, the effectiveness of sentencing must in some way consider offender perspectives.

In terms of the purposes of sentencing an adult, the [Sentencing Act 2020](#) sets out five purposes sentencers must have regard to (Von Hirsch and Roberts, 2004, p. 642). These purposes are listed without a hierarchy or an indication of when a given purpose might be relevant or not. While, depending on the case, some purposes may overlap and some may conflict, here the decision was made to focus on evidence relevant to “the reduction of crime (including its reduction by deterrence).”

Not only is deterrence a statutory purpose of sentencing for adults in England and Wales, additionally judgments and guidelines, in various jurisdictions, also refer to deterrent purposes of sentencing: including England and Wales and Scotland (Scottish Sentencing Council, 2018). Consequently, whether a sentence might deter people from offending is one characteristic that may be relevant to an effective sentence. For this reason, consideration is given to whether/how offenders may be deterred by having experienced a sentence (known as specific deterrence since it would specifically affect that offender) or others may be deterred more generally by sentences they have not experienced (known as general deterrence). Related to this, there is also a brief consideration of evidence concerning offenders’ perspectives of punitiveness.

However, it should be highlighted that while the focus here is on deterrence as understood in the sentencing literature, there are different conceptions of ‘deterrence.’ Additionally, much of the evidence base focuses more broadly on matters such as desistance and rehabilitation and reintegration. Moreover, it has been argued that “we are on the brink of a

shift in criminal justice strategizing from deterring crime to supporting desistance; linking theory, research, policy, and practice is critical” (Bersani and Doherty, 2018, p. 329). Thus, while the focus here is on punitive deterrence, much of the evidence base looks at broader matters (although, it could still go further in terms of empirically exploring questions of denunciation and censure and accountability).

4.1 Deterrence overview

Deterrence as a concept is not defined in the Sentencing Act 2020. In criminal justice scholarship, deterrence tends to refer to using some sort of external threat or coercion to dissuade people from offending. This notion of ‘punitive deterrence’ tends to make assumptions based on the belief that offenders will make a rational choice about the advantages and disadvantages of a possible criminal course of action (Piliavin et al., 1986; Petrosino et al., 2013; Wortley and Sidebottom, 2017).

As noted in the 2022 Review, there is evidence that the perceived likelihood of apprehension or conviction may have implications for deterring offending. Yet, in the sentencing literature, the focus is often on what is called ‘marginal deterrence.’ Marginal deterrence is the extent to which changes in punishment/sentencing can dissuade offending. From this perspective, the likelihood of apprehension/conviction is not the variable of interest as this would be more relevant to the investigative stages of the criminal process than the sentence itself (although the likelihood of conviction does interact and complicate being able to identify marginal deterrence because offenders first have to be convicted to be sentenced). For an example of attempts at deterrent-based sentencing, in several jurisdictions, initiatives have been “designed to deter with the threat of imposing substantial terms of imprisonment” on the assumption that this will affect the calculation of risk to reward - thereby dissuading a rational person from offending (Perry, 2016, p. 170). Deterrent sentencing aims have also been suggested as a factor in imposing increasingly severe sentences: notably, high uses of custodial sentences and longer custodial sentences over time in several jurisdictions such as the USA (Dole, 2023). Other deterrent-based sentence rationales have focused on short custodial sentences for a “deterrence-based ‘short sharp shock’” (Johnston and Godfrey, 2013, p. 434).

Within the context of criminal justice, potential deterrence is a complex process given the range of offences and offenders that may be encountered and the circumstances in which decisions are made. Deterrence via sentencing would require several elements that we do not always have robust information about. In their review of deterrence, Perry argues that we lack the necessary evidence on offender decision-making to draw safe conclusions about the presence of deterrent effects. The missing information includes data about offenders’ knowledge of sentencing and if/how this factors into the decision of whether or not to offend:

Deterrence requires the would-be criminal to possess some degree of reflective capacity before the crime is committed, at least enough reflection to consider the possible consequences of violating the law if caught. Since many crimes are committed during “the heat of the moment” when an individual’s reflective capacities are severely compromised, most observers agree that some crimes simply cannot be deterred. Individuals who commit crimes for the thrill of “getting away with it” and outwitting law enforcement officials probably cannot be deterred either. The biggest missing area of research in this area includes the absence of a systematic inquiry into the extent of that awareness...Without such information it is difficult to draw

valid inferences concerning the marginal deterrent effects of changes in sanction levels. (Perry, 2016, p. 189)

Additionally, a review in England and Wales suggested that, while evidence is limited, defendants may not fully understand the sentencing process (Goldring, 2021).

The implications of the uncertainty about what offenders know and understand about sentencing and how this impacts their decision-making raises problems. It cannot be assumed that perceptions of sentencing and guidelines match reality (Kleck, 2016) and it is these perceptions that are important for deterrence (Lochner, 2007). Indeed, “many people do argue that credible research must take account of offenders’ personal values and norms, of their knowledge of sanctions and sanction changes, of the considerations and circumstances that shape offenders’ choices, and of the nature and extent of implementation of legal or policy changes” (Tonry, 2008, p. 306).

Thus, while there is evidence about what deterrence theoretically requires, more information is needed to understand what those targeted for deterrence-based sentencing know and understand, (and do not know and do not understand), about sentencing. This includes what they know about guidelines and sentencing practice; what they experience from specific sentencing options (for example, how punitive are community orders or fines felt to be); and how perceptions of sentencing might influence offending decision-making in the real world.

4.2 Evidence on the effectiveness of sentencing disposals as punishment

Given that deterrence in sentencing theory relies on some sort of threat or coercion, it is important to understand offenders’ views of the punitiveness of different sentence types. Where a sentence is felt to be punitive there is the potential for some deterrent effect in theory. Additionally, if some disposals are experienced as more or less punitive than expected, this could have implications for deterrence. Moreover, delivering proportionate punishment is a relevant function of the criminal justice system when sentencing adults (Sentencing Act 2020, section 57(2)(a)), and something the public may expect from an effective sentence, which is another reason to examine the perceived punitiveness of sanctions.

In law, the usual way to conceptualise the hierarchy of sentencing options in terms of punitiveness is with immediate imprisonment as the most serious disposal (see the [Sentencing Council’s explanation of sentence types](#)). However, there are important questions concerning how offenders subjectively experience disposals and if/when various disposals might secure the appropriate punishment. In part, this question can be furthered by drawing on research concerning offender experiences of different sentences. For example, research on offender experiences of supervision and work such as that by Hayes on the ‘pains’ offenders experience has proven valuable (Uggen and Stewart, 2014; Hayes, 2015, 2016, 2018, 2023; McNeill, 2017; Durnescu et al., 2018). Work such as this reveals that there are many aspects of the criminal justice system that are (even if unintentionally) experienced as highly punitive.

Even the process of being prosecuted and convicted can, in and of itself, be perceived as punitive. Indeed, it has long been noted that for many “the process is the punishment” (Ashworth, 1988; Feeley, 2017). Furthermore, upon conviction, there is also the punishment of a criminal record, which may affect future prospects. Consequently, even

without formal punishment or sentences with deterrent intentions, there may be a lot that offenders experience as punitive (in some cases, this may justify discharges).

In terms of sentencing disposals, one key area where there is limited research is offender experiences of fines and how these may be perceived as punitive. A fine is one of the most common principal disposals used in England and Wales and the Sentencing Council's explanation of sentence types notes that fines "are given for lower-level offences." However, the Centre for Justice Innovation has carried out research that suggests fines can be subjectively experienced as highly punitive for some offenders (Centre for Justice Innovation, 2024). Thus, while a fine is typically used for less serious offences, it may still be experienced as highly punitive in some contexts. Indeed, fines are a priority debt and can have serious implications for those who fail to pay or cannot pay. For example, bailiffs may be used in the event of non-payment which can be highly distressing, and it is also possible to be imprisoned for failing to pay a fine (Gormley, 2022). Fines may also be accompanied by ancillary orders such as compensation orders and disqualification from driving: there are a wide range of ancillary orders that may accompany other disposals (see the [Sentencing Council explanation of ancillary orders](#)) and these may promote goals such as public protection (for example, [sexual harm prevention orders](#)). These ancillary orders may also increase the subjectively experienced punitiveness of the sentence.

4.3 Limits to marginal deterrence

It may seem self-evident that those who might be considering committing an offence will consider the risks of punishment and that more severe punishments, such as imprisonment or longer lengths of imprisonment, would provide greater deterrent effects. However, the causes of crime are complex and a myriad of factors (such as the varied pathways into offending, offenders themselves, and broader societal issues) interact to play a role. This complexity means that what may seem like common sense assumptions about how to deter offending may not be accurate in reality.

There is not robust evidence to show that harsher sentences generally produce greater marginal deterrent effects. For example, immediate imprisonment is widely considered the most severe disposal a court in England and Wales has available. Therefore, it might be assumed that greater use of imprisonment could provide marginal deterrent effects. Yet, as noted in the 2022 Review, a lack of robust evidence on this point is seen in several jurisdictions. Of course, this is not to say that imprisonment may not have some effects in terms of incapacitation (although people may still offend within prisons and most prisoners will be released at some point) and be used for "individuals otherwise out of social control" (Berger and Scheidegger, 2022, p. 16). However, this is a different matter from the one focused on here.

Perhaps the most obvious question arising from research showing the limits of marginal deterrence is why more severe sentences, such as imprisonment, do not result in notable deterrent effects and how (if at all) deterrent effects can be realised. Where research has been undertaken some interesting possibilities are raised regarding both general and specific deterrence.

In terms of general deterrent effects (such as the ability of more severe sentences to prevent the general public from offending), there are questions about how much the public knows about sentences and how this influences their perceptions of the risks of offending. Possible limitations to public knowledge of sentencing in England and Wales are

discussed in Chapter 5 (research from jurisdictions such as the USA may also be informative although, generally, research focused on England and Wales is preferable here (see Kleck et al., 2005; Kleck, 2016)). More broadly, research highlights the importance of reasons (other than criminal sentences) why some people do and do not offend. While this cannot be covered in detail here as it is beyond the scope of the review, it is notable that there are, as will be discussed in Section 4.4, factors such as the perceived likelihood of apprehension by the police. There is also evidence which suggests a range of social and other factors (such as the perceived legitimacy of the law) play a role in law abiding behaviour (Ewick and Silbey, 1998; Tyler, 2003). There are also a range of factors linked to desisting from offending (such as maturing and employment) that are not linked directly to sentencing (Weaver and McNeill, 2010; Weaver, 2015; Graham and McNeill, 2017; Bersani and Doherty, 2018). For reasons such as these, a decision to offend or not offend may depend on factors beyond threats of more severe criminal sentences.

Research examining specific deterrence (whether a person who receives a sentence will be deterred from future offending) has also provided useful insights to possibly explain the limits of marginal deterrence. For instance, in 62 interviews with men and women imprisoned in Scotland, it was found that sentences of imprisonment had little comparative deterrent effect beyond first-time effects:

Other negative experiences were related to drugs and alcohol withdrawal while in prison for the first time, but on the whole, people adapted quickly to their sentence, including long-term sentences.... Even the most difficult conditions were not experienced as effective deterrents, as participants tended to feel afterwards that, given that such conditions had not broken them, the justice system had nothing left in its arsenal to scare them with. (Schinkel, 2021, p. 8)

Research such as this suggests that people may adapt to imprisonment, and this reduces the deterrent effect. Moreover, in several jurisdictions, some people may even prefer prison or find it less onerous than other disposals such as supervision in the community (Crank and Brezina, 2013; Yule et al., 2023; Wodahl, Alarid and Bowman, 2022; Richter, Ryser and Hostettler, 2021; and May, Williams and Wood, 2008). Similarly, some may find treatment programmes too onerous and prefer to withdraw (O'Hare, 2018; see also Section 4.2 above). Of course, this is not to suggest that all people simply become inured to the pains of imprisonment (or punishment) or that the effects of imprisonment are trivial. Indeed, the effects of imprisonment are complex and profound and there can be undesirable outcomes (for an overview see Liebling and Maruna, 2005 - especially Chapter 1).

Recent research on more severe sentences for attacks on emergency workers focused on “violence or abuse towards emergency workers by people with mental health conditions, cognitive impairments and/or who are neurodivergent” (following the Assault on Emergency Workers (Offences) Act 2018 and later the Police, Crime, Sentencing and Courts Act 2022) did not find a marginal deterrent effect from the more severe sentences. The research suggested that limitations to marginal deterrent effects included that those committing the offences often lacked the requisite degree of reflective capacity and the offences were not pre-planned as part of a rational choice to offend (Alexandra, Ratcliffe and Gibbs, 2022). While the research focused on a subset of offenders, people with mental health conditions, cognitive impairments and/or who are neurodivergent are overrepresented in the offender population compared to the general population. Moreover,

the broad themes of the research align with other research suggesting limitations to deterrence generally (Kleiman, 2009; Nagin, 2013; Chalfin and McCrary, 2017).

Overall, this is a tremendously complex area with many variables. There is not robust evidence to suggest there are typically greater comparative deterrent effects (either general or specific) from using more severe sentences. Simple theories of rational choice and deterrence do not necessarily apply to real people in real world contexts: some people may have 'rational' reasons to offend (such as shoplifting to feed your family; stealing to buy drugs and avoid drug withdrawal; or being coerced into offending); and some people may have conditions, or be in conditions, that impact the ability to make rational judgments. Thus, while research provides some valuable insights (revealing that there are several possible reasons for the limitations of marginal deterrence) further research (such as qualitative research with offenders) is needed to fully understand the mechanisms at work and whether/when sentencing can effectively provide marginal deterrent effects. Moreover, while it may be argued that deterrence simply must work for some people in some cases (such as the portion of offending that is rooted more in economic rationality), given the consequentialist paradigm in which the justification of deterrence is based, one must also consider then whether the costs (such as the costs of increased use of imprisonment) really outweigh the benefits, given that actual evidence of 'success' is so scarce.

As a final point, in terms of the role of perceived legitimacy in offending or not offending (noted with regard to general deterrence above), it is worth highlighting that offenders (while having done wrong) do not inherently inhabit a different "moral universe" (Jacobson, Hunter and Kirby, 2015, p. 171). Their perspectives are often comparable with other normative values. Thus, matters such as the perceived legitimacy of the criminal justice process and sentencing may also play a role in influencing behaviour. As a result, it would appear desirable that sentencing (as well as to the public and victims) also communicates censorship, denunciation, and accountability to offenders (Schinkel, 2014). Research on this matter would seem complementary to interests in deterrence. Similarly, further research examining how offenders experience sentences as punitive would also be complementary. Such research could, perhaps, draw upon insights from work examining means for supporting the rehabilitation and reintegration of offenders. Among other things, this work suggests that recognising offenders' agency (such as by working with offenders, rather than just doing things to offenders) may be beneficial and that it may be also beneficial if the public/communities can feel offenders have been held to account and allowed to re-join the conventional social world (McNeill, 2006).

4.4 Other deterrent effects

While the evidence is complex, Tonry argues that "no one seriously doubts that the system as a whole has some deterrent effects, compared with a hypothetical situation in which there were no criminal penalties" (Tonry, 2008, p. 293). There is a reasonable body of evidence supporting absolute deterrent effects: "Absolute deterrence refers to the difference in the crime rate between the status quo level of sanction threat, and a complete (or near) absence of sanction threat" (Nagin, 2013, p. 235). Absolute deterrence is distinct from the marginal deterrence focused on in the 2022 Review (for the pragmatic reason that sentencing is more relevant to the latter). However, here we can highlight absolute deterrence as one way in which the existence of sanctions appears to have a deterrent effect.

Another factor that may affect deterrence is the likelihood of punishment. Several reviews in various jurisdictions have concluded that “a consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect” (Ritchie, 2011). This was also noted in the 2022 Review and remains an accurate synthesis of the evidence from multiple jurisdictions (Nagin and Pogarsky, 2001; Ritchie, 2011; Chalfin and McCrary, 2017; Braga, Weisburd and Turchan, 2018). For instance, in the context of New South Wales, Bun et al. (2020) found that:

The results of our analysis show that criminal activity is highly responsive to the prospect of arrest and conviction, but much less responsive to the prospect or severity of imprisonment, if at all. This provides support to the idea that the consequences of being arrested and found guilty of a criminal offence include indirect sanctions imposed by society and not just the punishment meted out by the criminal justice system. In particular, a convicted individual may no longer enjoy the same opportunities in the labour market and so the cost of social stigmatization can already be substantial in the event of conviction... This indicates that imprisoning more criminals or imprisoning them for longer, is not as effective [as a deterrent] as increasing the risk of apprehension or conviction once arrested. In other words, criminal activity seems to be highly responsive to the prospect of arrest and conviction, but less responsive to the prospect or severity of imprisonment. (Bun et al., 2020)

Thus, deterrent effects from the criminal justice system do exist but perhaps not in line with simple expectations based on rational choice frameworks. Indeed, perhaps if seeking such deterrent effects, there may be an argument that sentencing is not the best stage of the process to focus on. For example, it may be more beneficial to focus on increasing crime detection rates.

4.5 Special deterrent effects

Does a sentence other than immediate imprisonment, with the threat of being sent to prison if requirements are breached, have some ‘special deterrent’ effect? This question is not new but it remains important and modern data and statistical analyses may offer new opportunities to seek answers (Bottoms, 1981).

The special threat posed by suspended sentences has been called the ‘Sword of Damocles’:

The Sword of Damocles generally refers to any ever-present peril hanging over the head of a person. The existence of an ever-present peril is an important element of minimally sufficient deterrence. (Braithwaite, 2018, p. 89)

It might be wondered whether such a looming threat could be influential for some offenders in some contexts: such as those who have not received custodial sentences before, or those who would suffer other collateral consequences from imprisonment (for example, loss of employment and housing, and problems with caring for dependants). Notably, as above, if one issue with imprisonment for deterring offenders is that its use means “the justice system had nothing left in its arsenal to scare them with” (Schinkel, 2021, p. 8), suspended sentences may avoid this risk while also (as noted in the 2022 Review) potentially transforming the prospect of an immediate custodial sentence from an easily discounted future possibility to a very present reality.

The 2022 Review found that non-custodial or suspended sentences could be associated with less reoffending than short custodial sentences and that they may better support rehabilitation and reintegration. Special deterrence may play some role in this. Interestingly, research (utilising statistical controls that aim to account for differences between cases) in England and Wales has suggested that “suspended sentence orders were associated with a statistically significant reduction in reoffending” compared to community orders (Eaton and Mews, 2019, p.11). This parallels other research and analyses (Mews et al., 2015; Hillier and Mews, 2018; Curzon and Roberts, 2021). Again, it might be wondered if special deterrence plays some role in this.

Research on topics such as rehabilitation and reintegration has continued to develop and suggest similar trends (Andersen and Telle, 2022; Bunce, 2023). For example, in New South Wales, Australia, research has also found that “as a means of reducing the risk of further offending, suspended sentences are as effective as, if not more effective than, a sentence of full-time imprisonment” (Lulham, Weatherburn and Bartels, 2009, p. 13). While these effects may not be due to deterrence, some research on good behaviour bond length (a type of court order) for conditional sentences has suggested:

The fact that the effect [a small but notable reduction in offending] is present for unsupervised as well as supervised bonds [supervision is to reduce the risk of reoffending] tentatively suggests that at least some of the reduction in risk of re-offending arises from the deterrent effect of a long bond rather than any rehabilitative effect. (Poynton, Weatherburn and Bartels, 2014, p. 39)

Thus, while there is not conclusive evidence, there are still important questions concerning if/how/when special deterrent effects may arise.

Further work would be useful as this is a tremendously complex area and caution is needed when relying on data from other jurisdictions or making broad generalisations: if deterrent effects exist this may be in specific offences/circumstances. Additionally, caution is needed as the complexities of the sentencing process and how it is experienced make assumptions fraught with difficulty. As Braithwaite cautions, “deterrence fails when it rejects complexity in favor of simple theories such as rational choice” (Braithwaite, 2018, p. 69). Similarly, Tonry has argued:

[There is a] need for much more precise delineation of deterrence questions than to ask globally whether changes in sanctions lead to changes in criminal behavior. Whether people engage in particular actions in particular places at particular times depends on their circumstances, characteristics, and predispositions; the criminal opportunities and precipitants they face; and the perceived consequences to themselves and others. (Tonry, 2008, p. 297)

Indeed, this question of particular offences, offenders, and circumstances raises questions that cannot be answered at present. Work to address these questions, it is suggested, would almost certainly need a mixed methods approach as statistical data can only go so far to explain deterrence and more must be known about how offenders perceive and experience the relevant sentences.

4.6 Conclusions on deterrence

There is not robust empirical evidence to suggest that, in general, more severe sentences provide greater marginal deterrent effects. While this does not mean that the criminal

justice system will never deter offending (see the points concerning absolute deterrence and special deterrence above), it does raise important questions about the role of deterrence as a consideration in the sentencing process.

Of course, there are still knowledge gaps to be addressed and questions that cannot yet be answered. For example, Perry reviews studies on sentencing and deterrence and finds that “overall the evidence on the application of deterrence theory using experimental studies in the CJS is lacking” (Perry, 2016, p. 186). The need for more research is to be expected given the complexity of the issues raised here. To address questions about deterrence, further research is needed on the effects of sentencing and sentencing guidelines in various contexts.

The questions that need to be considered around deterrence mean that a range of mixed-methods research is likely to be critical. In simple terms, while quantitative data may indicate what is happening, qualitative data might indicate why behaviours like desistance happen and, for example, whether deterrence plays a role:

Understanding that change occurs is not the same as understanding how or why change occurs. Qualitative research is making notable inroads in this area and continues to elucidate the diverse contours and challenges encountered across the life course that impact the desistance journey. Whereas quantitative research laid a strong foundation demonstrating that change happens across the life course, it has lagged behind in explaining how and why change happens...The tempering of quantitative insight as it relates to the study of mechanisms is in part due to the fact that mechanisms are unobservable and therefore difficult to capture quantitatively (Wikström and Sampson, 2006). Despite this challenge, we hazard that quantitative methods can inform inquiry into mechanisms and, in combination with qualitative research, advance understanding of the process of desistance. (Bersani and Doherty, 2018, p. 325)

Thus, while the literature has engaged with offender perspectives, there are still gaps that could be explored in even more detail.

In sum, with regard to deterrence, some questions to explore might include whether and how there may be variations for sub-groups of offenders (such as children and young people; female offenders, persistent offenders; offenders with ‘mental disorders, developmental disorders, or neurological impairments’; and violent/non-violent offenders) and for different types of offences. Indeed, there might be particular value in conducting research exploring whether offences that often entail planning (such as health and safety offences, environmental offences, fraud, hare coursing, fly tipping, misconduct in Public Office, firearms importation, and modern slavery) rather than occurring ‘in the heat of the moment’, might be more deterrable by sentencing means.

Finally, it is noteworthy that some research uses the term deterrence more broadly, such as in the sense of deterring recidivism. This broader term more closely aligns with aims such as supporting rehabilitation and reintegration. Additionally, a broader view of ‘deterrence’ may understand it to encompass deterrence via denunciation, censuring wrongdoing, and holding offenders to account (for example, by expressing societal disapproval of offending). As Robinson notes, with regards to “deterrence speak”:

It is possible to give too much meaning to the ubiquitous use of deterrence rationales, for much of the use of deterrence as a justification may be... the

standard vocabulary that modern criminal law theorists and lawmakers have come to use to express themselves. Instead of saying that ‘conduct X is harmful or evil’ and, therefore, should be criminalized, it may have become common to say ‘conduct X should be deterred.’ (And instead of saying that ‘the conduct was involuntary’ and, therefore, should be exculpated, one might refer to it as ‘nondeterrable.’) (Robinson, 2011, p. 83)

Therefore, while marginal deterrence is important, there may also be scope to conceptualise the ‘reduction of crime (including its reduction by deterrence)’ more broadly. If so, then we might further explore how offenders, and others, perceive sentencing.

5. Public perspectives on the effectiveness of sentencing

The broader conception of effectiveness explored in this review allows for recognising that public confidence in sentencing is an important aspect of its effectiveness. The importance of public perspectives is exemplified in the Council's statutory duty to consider the "need to promote public confidence in the criminal justice system" (Coroners and Justice Act 2009 sections 120 and 128) and the Council's strategic objectives that depend upon public confidence. The Council has also engaged in a range of public consultations and research with the public in recognition of the importance of public perspectives (discussed below).

More generally, an informed public with confidence in sentencing is a key part of its effectiveness given the role that sentencing fulfils in society (such as denouncing wrongdoing and affirming societal values). Indeed, the public aspect of sentencing is so important that in criminal cases sentencing remarks can be published and since 2022 some have been televised and reported on extensively (these are not available in the magistrates' court). These statements do not just set out the legal and technical aspects of the sentence (though that is a key function) but they also express more, such as censure, denunciation, and accountability.

From a policy perspective, an awareness of public opinion can allow for increased representation of public views in sentencing and policy development. Additionally, in the context of analysing sentencing councils' and public views, Freiberg has argued:

Public confidence is crucial to the effective operation of the criminal justice system as it influences the relationship between the public, victims, offenders and the law. It is said to be a requirement of the legitimacy of judicial authority in democracies and is emblematic of broader issues, such as trust in government and its legitimacy.

In the case of courts generally, and the sentencing of those convicted of offences against the criminal law, in particular, loss of confidence can lead to legislative interventions in the judicial process. These often take the form of restrictions on decision-makers' discretion and an undermining of their independence. (Freiberg, 2021)

Thus, for these and a myriad of other reasons, public perspectives of sentencing should be understood as part of work to support the effectiveness of sentencing. As such, it is vital for those with responsibility for sentencing policy/guidance/practice to have access to reliable and accurate research regarding public opinion/confidence.

While public perspectives are relevant to a range of issues around the effectiveness of sentencing, they were not within the scope of the 2022 Review. Thus, this section will first provide a brief overview of the research landscape concerning public opinion. Next, it will explore overall public views of sentencing before providing vital information on public knowledge and understanding that can be used to interpret the overall views. Finally, this section will explore data on how the public perceives the effectiveness of different disposals and provide context to help interpret this evidence.

5.1 Research on public perspectives

What the public thinks about sentencing, how sentencing practices impact public confidence, and what sentencers and policymakers should do about public opinion are complex questions (Tonry, 2023). Recent years have seen a range of research work undertaken with regard to public perspectives of criminal justice and sentencing. In England and Wales, recent research on public perspectives of sentencing has been commissioned by the Council itself: this was published in 2019 and 2022 respectively and included the results of an online survey of approximately 2,000 adults (Marsh et al., 2019; Archer et al., 2022). Indeed, before the Scottish Sentencing Council's work as part of its own guideline development, the (English and Welsh) Sentencing Council was the main guideline-issuing body to extensively "consult and engage with the public to a significant degree since none of the US-based sentencing councils conducted original public opinion research when constructing their guidelines" (Gormley and Roberts, 2024). The findings from work undertaken by the Scottish Sentencing Council may also help to inform our understanding of public perspectives in England and Wales (Black et al., 2019; Biggs et al., 2021). Additionally, in 2019 the Sentencing Academy was established. This is a charitable organisation dedicated to improving the understanding of sentencing in England and Wales and informing public debate. The Academy has produced and continues to produce leading research concerning public opinion about sentencing in England and Wales, which is available on the Sentencing Academy website. Moreover, in September 2023 the House of Commons Justice Committee published its report on public opinion and understanding of sentencing, which included input from various academic stakeholders and noted the relevance of public perspectives to the work of the Council on the effectiveness of sentencing (Justice Committee, 2023).

Consequently, there is a sizable body of recent literature about public opinion regarding sentencing. However, the public is a diverse group and sentencing is complex. It can be difficult to disaggregate how opinions held by sub-sets of the population may vary and how specific issues or offences may lead to different views. Thus, while research (by bodies such as the Sentencing Academy, the Council, and the Scottish Sentencing Council) has provided information on views from a broadly representative sample of the population, given the complexity of sentencing, and the challenges the existing research highlights, there is still much more work to be done. Indeed, even setting aside the methodological nuances about how to gather and interpret data on public opinion (whether by focus groups, deliberative polling, workshops, in-person surveys, phone surveys, online surveys, individual interviews, or other means), there is the issue that what the public (or sections of the public) think they know about sentencing practice may not match reality. This means that determining what the public would think of actual sentences if they were aware of all relevant factors (such as guidelines, what the sentence entailed, aggravating and mitigating factors, impact on victims, and the offender's background) is an area in need of further research.

5.2 Overall public perceptions of sentencing

Overall, public opinion research in England and Wales by the Council tends to show that when asked about sentencing in general in surveys, the public responds that sentences are too lenient – although it is notable that in qualitative follow-ups, views can be more mixed (Marsh et al., 2019; Archer et al., 2022). In Scotland, when approximately 5,520 adults were asked if they believed the justice system "gives sentences which fit the crime", the result was that 41 per cent of respondents were confident and 54 per cent of respondents were not confident (Scottish Government, 2023b, p. 105). In the same study,

61 per cent were confident and 30 per cent not confident that the system “adequately takes into account the circumstances surrounding a crime when it hands out sentences” (Scottish Government, 2023b, p. 105).

More recently, a Sentencing Academy survey asked approximately 1,300 people, “In general, do you think the sentences handed down by the courts in England and Wales are too tough, about right, or too lenient?” (Sentencing Academy, 2024). Most (61 per cent) said sentences were either “a little too lenient” or “much too lenient”, and a fairly large proportion (17 per cent) said “don’t know.” These results have parallels with the prior research by the Council noted earlier.

The surveys are informative in suggesting that, on this metric, a large proportion of the public may not find sentences effective in terms of severity or punitiveness. However, they also raise several key questions. Crucial questions raised are (1) when/why the public gives this response and (2) whether it is based on accurate knowledge and understanding of sentencing practice and guidelines. Therefore, public knowledge and understanding of sentencing is a key interpretative point.

Additionally, before going further, it is worth noting that there are also questions about what the public believes the aims of sentencing should be. Recent research in Scotland with the public suggests that they desire a range of aims from sentencing (Gormley, Roberts and Tata, 2024). The aims identified included:

- delivering proportionate punishment
- rehabilitation and addressing the causes of offending
- deterring people from offending
- holding offenders accountable
- facilitating offenders facing up to the wrongfulness of their conduct and reflecting on their life choices
- showing victims justice has been done
- repairing harms
- providing closure (for victims, offenders, the public, and others)

Notably, several of these aims pertain to broader functions of sentencing beyond punishment. Several also emphasise earlier points about the importance of sentencing in terms of providing denunciation, censoring wrongdoing, and holding offenders to account. Indeed, it is possible that part of the reason many survey respondents report dissatisfaction with sentencing (including that it is too lenient) may be that they are not always convinced it achieves these broader aims (Tata, 2020, pp. 154–155). As such, talk of sentences being ‘too lenient’ or the desire for more ‘punishment’ or more ‘deterrence’ may partially be a proxy for dissatisfaction about how a range of broader aims are, or are not, perceived to be met. If so, then longer or harsher sentences in and of themselves will have a muted impact if it is these broader aims that are desired but not perceived to be met. This possibility is perhaps something that future research should consider as a priority.

5.3 Knowledge and understanding of sentencing

Questions about knowledge and understanding of sentencing are one of the key challenges when it comes to public opinion research. These questions must be understood to properly interpret results such as those from the surveys noted above. This leads to some profound tasks for work on the effectiveness of sentencing: determining what the public wants from sentencing; what the public knows of sentencing (including misconceptions); understanding what an informed public would think of current sentencing practice; what influences public views about the effectiveness of a sentence (such as whether/when guidelines do or do not play a role); providing a means for public legal education about sentencing; and determining what sentencers and policymakers should do in light of public opinion (Tonry, 2023).

In terms of the public's knowledge of sentencing, there are various indications that misconceptions exist and that this might affect responses to research such as surveys. For example, the Sentencing Academy probed how (approximately 1,300) respondents rated their knowledge of prisons in England and Wales. Seventy-three per cent responded with "not very much" or "nothing at all" (Sentencing Academy, 2024). Other research has suggested that people may not accurately gauge their knowledge of sentencing matters. When examining self-reported knowledge of sentencing using qualitative methods the Council's research suggested that people can overestimate their self-reported knowledge of sentencing: meaning members of the public may not be aware of some of the gaps in their knowledge (Marsh et al., 2019; Archer et al., 2022). There were also suggestions that the public may poorly understand the functions of having offenders on licence (for example, in terms of reducing reoffending risk) and that even the terms used to describe various disposals (for example, life sentences or being on licence) could be misunderstood by the public (Archer et al., 2022). More broadly, issues around terminology that was unclear or had negative connotations appear to have been problematic in Scotland in terms of the impact on public opinion (Tata, 2016). Points such as this highlight the importance of managing the challenges of public communication (Hastings, 2002). When sharing information on sentencing with the public it is important to ensure the information is explained as clearly as possible. This requires actively exploring and researching whether the intended messages are getting through clearly to lay audiences.

There are other areas where public misconceptions may be problematic. Of particular relevance to the perceived effectiveness of sentencing is the public's perception of crime rates and their relationship to sentencing. To the extent that the public desires sentencing to reduce reoffending as one of its aims, then perceived increases in crime rates may be something that the public could use to infer sentencing is ineffective. Of course, the causes of offending are multifaceted and go beyond sentencing. However, perceptions of crime rates may nonetheless be a factor in public opinion about sentencing's effectiveness.

Research by the Sentencing Academy has found that the public believe crime rates have increased over time. Compared to 1996, 30 per cent of respondents believed that "crime rates are a lot higher across the country now" and 32 per cent believed that "crime rates are somewhat higher across the country now" (Roberts et al., 2022, pp. 4–10). Despite the majority of respondents' perceptions, most metrics show crime rates have remained about the same or declined since 1996. Simultaneously, the same study found that many respondents underestimated sentence severity and custody rates. In particular, while average sentence lengths have increased since 1996, 56 per cent (25 per cent said they did not know) believed that prison sentences had become shorter with one in five thinking

that “average prison sentences are a lot shorter now” (Roberts et al., 2022, p. 8). Similar issues can be seen in Scotland where respondents believed crime rates had increased when estimates suggested that the actual overall level of crime in Scotland had stayed the same or declined (Scottish Government, 2023b).

Overall, misconceptions of the reality of sentencing appear to be longstanding issues (Hough et al., 2013). One implication of this is that the reality of sentencing severity and crime rates will have a limited impact on public opinion if public perceptions differ from reality. Indeed, on several metrics, sentences have become more severe over time but knowledge of this does not appear to have filtered through to the public and public opinion exists (to a degree) independently of what actually happens (Roberts et al., 2022,). Thus, more severe sentences (or more severe sentencing guidelines) seem highly unlikely to promote public confidence in the effectiveness of sentencing or in overcoming misconceptions. This point has implications for considerations around future policy development for the effectiveness of sentencing, which may seek to improve public communication. Such research may well benefit from methods that allow the public to consider matters in detail: such as focus groups or, as has not occurred for some time in England and Wales and may now be warranted, deliberative polling (on deliberative polling see Hough and Park, 2002).

5.3.1 Sources of information

It is worth briefly noting that accurately but concisely communicating sentencing practice to the public is an ongoing challenge. As a result, the media may also play an important role as a source of information. While this can have some advantages, Kearon (2012) has analysed how prisons are portrayed in the media and concluded:

The assumption that a more punitive approach would solve the crime problem if only it was tried cannot really cope with the possibility that in many respects this punitive approach has already been implemented. As a result, the punitive ideal has to be represented as a desired future alternative to an existing prison regime, which is routinely constructed and presented in these popular news media narratives as stereotypically permissive and ineffectual. (Kearon, 2012, p. 9)

If public opinion is (to some extent) based on media reports where, for example, anything other than immediate imprisonment is characterised as ‘walking free’ and tougher (prison) sentences are touted as the solution to problems of criminality (despite average sentences already being longer than in the past) then public confidence issues can emerge (Justice Committee, 2023).

Public education about the reality of sentencing options seems likely to be part of the solution to improving the perceived effectiveness of sentencing. For example, as noted above, while a sentencing option such as a fine, community order or suspended sentence means an offender walks out of court, it also means that they walk into a different (but still difficult) situation that for some may be perceived as more onerous than what members of the public might regard as a more serious sanction of immediate imprisonment. Yet, this difficult situation may be one the public is less familiar with and less able to visualise (including envisioning how it holds the offender to account and censures the wrongdoing). While the public may be able to imagine imprisonment (for example, a person sitting in a cell behind bars), the public may be less able to visualise other sentences. Indeed, research has found that:

To a considerable degree, public support for custody as a sanction reflects the familiarity of imprisonment as a response to crime: once a non-custodial alternative is made salient, a significant number of people move away from custody – or will tolerate the imposition of a community penalty in its place. (Roberts and Hough, 2011, p. 194)

Thus, work aiming to “address the relative invisibility of supervision [that is people under penal control] in academic, policy and public debate” and the reality of sentencing disposals may be beneficial (McNeill, 2017, 2019, p. 214).

5.4 Statistics on public perceptions of sentencing disposals

Surveys provide a means to gather quantitative data on public perceptions of different sentencing disposals and can complement qualitative insights already noted. Recent surveys are those commissioned by the Sentencing Academy and those published by YouGov. As these are the most recent data at the time of writing, key points will be highlighted below.

It is worth noting that the YouGov surveys focus on the same question over time. While simple, such questions can provide information on trends about specific topics. YouGov is a well-known source of insight into public attitudes. Responses to YouGov questions can be found on their website. The Sentencing Academy research is typically focused on a particular theme or area (such as views of imprisonment) and it asks numerous questions to explore this in more detail. On several occasions, the Academy has commissioned YouGov to run its surveys.

In terms of comparing disposals, the YouGov biannual (twice yearly) surveys provide some information on public views of different sentence types. The surveys involve, approximately, 1500-1800 online participants from England, Scotland and Wales. By asking similar questions over time, the surveys also provide some data on trends about how the public responds to these questions over time and enable comparisons to be drawn.

The last YouGov surveys were completed on 1 January 2024. The questions about sentencing effectiveness asked “How effective, if at all, do you think the following sentences are at reducing crime in the future?” for fines, community service, and prison sentences. Overall, 18 per cent felt fines were effective (either fairly effective or very effective) at reducing crime and 46 per cent felt this for prisons (YouGov, 2024b, 2024c). For community sentences, 27 per cent of respondents said that they felt they were effective (YouGov, 2024d). These proportions have been fairly consistent since October 2019. In terms of imprisonment, the Sentencing Academy surveyed approximately 1,300 people via YouGov. They asked a similar but more nuanced question: “How effective, if at all, do you think prisons are at rehabilitating offenders and preventing them from re-offending?” Most respondents (73 per cent) thought prison was not effective (Sentencing Academy, 2024).

In terms of perceived punitiveness, another recent YouGov survey asked, “In your opinion, are living conditions for people serving sentences in prisons too easy, about right, or too harsh?” Overall, 27 per cent of respondents said they did not know, and 45 per cent said conditions are too easy (YouGov, 2024a). The results here are also comparable with those of the Sentencing Academy which asked a similar question. In this instance, 49 per cent responded, “too easy.” The Academy also found that only 37 per cent of respondents felt

prison was effective in punishing offenders – although self-reported knowledge of prisons was low (Sentencing Academy, 2024).

Taken together, these findings suggest that even imprisonment as the most severe disposal may not always be one that the public has confidence in to be effective. However, there are several points to note from the surveys reviewing public perceptions of the effectiveness of disposals.

Firstly, most people did not think any of the disposals were effective at reducing crime. There were also interesting findings about conditions in prisons. This is something that qualitative research should explore further - especially in light of the limited levels of self-reported knowledge found by the Sentencing Academy and the findings of research commissioned by the Sentencing Council (Archer et al., 2022; Marsh et al., 2019).

Secondly, the YouGov survey on the effectiveness of disposals in terms of reoffending asked a broad question without context such as the types of offending to be considered. As a result, care should be taken about what can be inferred from the results (YouGov do not make any claims). Without context, more serious offences (such as those reported commonly in the media) may dominate the minds of respondents. In reality, fines are not likely to be considered instead of imprisonment in the same case since each disposal typically operates at different ends of the sentencing spectrum (although fines may be used alongside a custodial disposal (Gormley, 2022)). It would be interesting for future research to compare perceptions of different disposals in a range of specific contexts where each might be used. For example, a suspended sentence could be compared to imprisonment since (in some cases) an offence may straddle the threshold where each disposal is appropriate.

Thirdly, the Sentencing Academy asked a range of questions that were broad to specific (Sentencing Academy, 2024). Using different types of questions can provide a useful point of reference and may assist statistical analyses by allowing testing of whether answers to some questions are correlated with answers to other questions (for example, whether answers to general questions about the perceived severity of the justice system correlate with answers to specific sentencing scenarios). Broad questions can also allow for comparisons over time between survey groups. This is something that future research interested in public perceptions of the effectiveness of sentencing may wish to consider.

Fourthly, research has found that while the public ‘talk tough’ in forums such as opinion polls, their views may be sensitive to a range of considerations. For example, consideration of cost savings may, particularly for non-violent offences, improve support for community sentences; and, especially for sentences near the custodial threshold, public views may be influenced by mitigating factors when they are provided with more context about the offence and offender (Roberts and Hough, 2011). Moreover, any possible preference for imprisonment seen in forums such as opinion polls may partly be due to a perceived familiarity with imprisonment and less knowledge about other disposals and what they entail (Roberts and Hough, 2011).

Fifthly, Roberts and Hough (2011) have also argued that perhaps the “most important conclusion is that members of the public react thoughtfully to questions relating to sentencing – and not simply with reflexive punitiveness” (Roberts and Hough, 2011, p. 195). Similarly, qualitative focus group research with the public on drug offences (commissioned by the Sentencing Council to inform the development of a guideline) suggests the public is not necessarily always more punitive than real sentencing practice:

The study found that participants were not punitive in their attitudes towards less serious offences... In fact their preferences for medium-scale importation offences were often more lenient than current practice. Nevertheless, participants tended to favour sentences that were more punitive than current practice for offences at the more serious end of the spectrum. (Kirby and Jacobson, 2014).

Such findings might suggest that work on the effectiveness of sentencing should continue to engage in detailed explorations of public views about the reality of sentencing (including mitigating factors).

A lack of simple reflexive punitiveness among the public was also signalled by findings from a survey covering Scotland. While Scotland is a different jurisdiction with its own sentencing system, and caution should be taken because of this, the results are still informative (Gormley et al., 2021). The Crime and Justice Survey 2021/22 (a survey of around 5,520 adults aged 16 or over living in private households in Scotland) found that 82 per cent of respondents felt that “people helping their community as part of a community sentence is an appropriate response for a minor offence rather than a short prison sentence” (Scottish Government, 2023b, p. 108). However, it is also worth noting that when probed about their views of whether people who serve community sentences put the public at risk of crime, 24 per cent of respondents felt that they did (Scottish Government, 2023b). While these perceived risks may not materialise (for example, in a review of the evidence in Scotland the authors note that no studies showed “short prison sentences were associated with reduced reoffending when compared to community disposals” (Sapouna et al., 2015, p. 5)), the perception of risk may be problematic. Public perceptions of risk and confidence in the effectiveness of sentencing could be improved by enhancing public knowledge and understanding. More research is needed.

5.4.1 Sentencing guidelines and public confidence in the effectiveness of sentencing

One function that sentencing councils and their guidelines may serve is to aid public understanding of sentencing and improve public confidence in sentencing (Freiberg, 2021). As noted earlier, public confidence is one factor that must be considered as part of the effectiveness of sentencing. This section will briefly explore what data exists that is relevant to understanding and if and how guidelines achieve these aims.

In terms of public perspectives, the fact that guidelines are known to exist can improve confidence. However, not all members of the public know guidelines exist and even those who do may be unfamiliar with their content. Research commissioned by the Sentencing Council found that about two-thirds of respondents reported they were aware of the existence of guidelines: with those over 35 and with prior involvement with the criminal system being most likely to be aware (Marsh et al., 2019). Similar results were found in follow-up research commissioned by the Council in 2022:

Respondents surveyed who previously have had personal involvement in a criminal court case were more likely than those who had not to say they had heard of guidelines before answering the survey (73 per cent compared with 62 per cent)... Furthermore, those who had been in contact with the criminal courts (78 per cent) were more likely than those who had been in contact with the police or Victim Support (71 per cent and 67 per cent respectively) or those with no contact at all (60 per cent) to say that they had heard of sentencing guidelines prior to the survey. (Archer et al., 2022, p. 29)

It was also found that “most of the public (67 per cent) said that knowing sentencing guidelines existed improved their confidence in the fairness of sentencing ‘at least a little’ (Marsh et al., 2019, p. 34). Reasons given included that guidelines could promote consistency.

Thus, knowing that guidelines exist may be helpful for public confidence in the effectiveness of sentencing. However, while many reported they were aware of the existence of guidelines, qualitative follow-ups suggested a limited understanding of their content. The implication of this is that unless the public can also be educated about specific guidelines and their content, then the details contained within guidelines (for example, sentence ranges) may have muted effects on confidence.

Related to the above, an important question about guidelines since their inception has been whether informing people (the public or victims) about guidelines anchors and frames their expectations about what an appropriate sentence is in a specific case. One way to explore this question could be through research using a split-sample methodology: splitting respondents into groups and giving each group different information/questions. This method could help to assess, for example, if/when providing respondents with information about guidelines influences what they think the appropriate sentence is. Indeed, a similar approach was used in the previous research commissioned by the Sentencing Council (noted above). Research such as this potentially provides a means to examine if/how guidelines may impact public views.

As an aim for future research on this aspect of the effectiveness of sentencing, it would seem useful to know more about whether/when/to what extent guidelines might bring public views into line with real sentences and thereby improve public confidence. For example, it is possible that if the public knows guideline ranges, then this may provide a psychological anchor about what a sentence should be in their view. Guidelines may also highlight key factors relevant to the sentence and it would be useful to know if/how this affects public opinions about what makes a sentence effective. However, it is also possible that guidelines may have a limited effect or only have an effect in some circumstances, and this too would be worth knowing (Archer et al., 2022).

5.5 Conclusions on public perceptions

Public confidence in sentencing is a relevant factor when considering the effectiveness of sentencing. Yet, there is evidence that sentencing is not always well understood by the public. Presently, one notable issue is that the public (and victims, as discussed later) can be unsure about various aspects of sentencing. In particular, the public may have a limited understanding of what community based sentences entail and how these can fulfil sentencing objectives (Roberts and Roach, 2004).

The literature on public views suggests that the greater the degree of knowledge the public has about sentences then the more likely they are to have confidence in the effectiveness of sentencing (Chapman, Mirrlees-Black and Brawn, 2002; Hough and Park, 2002; Mirrlees-Black, 2002; Singer and Cooper, 2008, 2009; Cuthbertson, 2013; Grimmeliikhuisen and van den Bos, 2021; Archer et al., 2022). In part, this may be because some of those who feel sentences are too lenient also have a less accurate understanding of the practice and tend to underestimate sentence severity or overestimate the relative risks of reoffending. Notably, Roberts et al. (2022) found that:

A clear relationship emerged between attitudes to sentence severity and knowledge of key sentencing indicators. Respondents who believed that sentences were too lenient were significantly less accurate in their estimates of current sentencing practice. More specifically, they were less accurate in the direction of underestimating the use of imprisonment. (Roberts et al., 2022, p. 14)

Indeed, perhaps it is because public opinion is not necessarily tied to the reality of sentencing practice that historical trends show more severe sentences (or lower or stable rates of reoffending) do not seem to be an effective way to promote public confidence. Consequently, public legal education about sentencing rather than changes to sentencing practice appears needed.

Accordingly, if presented with information about real cases and sentencing practices (such as through deliberative polling or focus groups), the public may find that the reality of sentencing bears more resemblance to what they feel it should be. Additionally, if provided with more information about various disposals and the sentencing process, the public might be more supportive of community sentences in a wider range of circumstances. In this regard, evidence about how offenders may experience a range of disposals (such as fines, community orders, suspended sentences, and ancillary orders) as punitive or as holding them to account, and evidence on outcomes (such as cost-effectiveness and reoffending) could be useful tools for public education.

Of course, more public legal education is not a panacea to solve all issues related to public perspectives, but it does appear to be important that misconceptions are addressed (Justice Committee, 2023). Thus, finding ways to educate the public about the realities of various sentencing disposals (such as fines when combined with other orders, and the various requirements that may be attached to community and suspended sentences) appears to be a vital area for work to improve public confidence in the effectiveness of sentencing overall. In the meantime, as above, research using focus groups or deliberative polling may be a useful way to investigate better informed public opinion.

In sum, as noted by the Justice Committee and the Sentencing Academy, public perspectives are vital to the effectiveness of sentencing and sentencing policy, but they may also be based on limited knowledge of real sentences or misconceptions. The lack of informed public opinion creates serious issues, including that public opinion based on misconceptions about sentencing is not the same as public opinion about real sentencing practices (for example, opinions on whether sentencing is too lenient). Therefore, this is an area for ongoing examination.

6. Victim perspectives on the effectiveness of sentencing

In this review, the term ‘victim’ is used to refer to both victims and survivors because this is the most commonly used legal term for this group – for example, [Victim personal Statements](#) and the [Victims and Prisoners Act 2024](#). However, it is noted that the terminology here is complex. Different people may have their own preferred terminology and may feel each term has different connotations (Sexual Assault Kit Initiative, 2020). Thus, the importance of the terminology and the questions it raises are highlighted for the Council’s consideration (for example, if/when people could be asked if they have a preferred term).

Victims are a sub-group of the public. As such, many of the points raised previously will apply. However, victims have had a distinct experience with the justice system. Additionally, law and policy have made attempts to meet victims’ needs and in doing so, the extent to which they have achieved this is another key aspect of the effectiveness of sentencing. For example, the [guilty plea reduction guideline](#) has partly explained reductions on the basis that they may reduce the impact of offending on victims (Sentencing Council of England and Wales, 2017), and, as [the Sentencing Council article](#) notes, “victims are central to sentencing guidelines” (Sentencing Council of England and Wales, 2022). The importance of victims’ views is also recognised in various other jurisdictions. For example, in Scotland, the Lord Justice-Clerk and Chair of the Scottish Sentencing Council has stated:

The impact of crime on victims is central to every sentencing decision... It is vital that we continue to learn about the experiences of victims in our ongoing work (Scottish Sentencing Council, 2023, p. 4).

Thus, victims are an important consideration in terms of reflecting on the effectiveness of sentencing.

This section will cover key points from the research evidence about what makes a sentence effective from the perspective of victims. One of the key implications of the evidence base is that it points to the significance of how the process is perceived and that in a range of criminal justice matters, “people’s reactions to legal authorities are based to a striking degree on their assessments of the fairness of the processes by which legal authorities make decisions” (Tyler, 2003, p. 284). One of the key trends of this ‘procedural justice’ concerns the importance of the perceived fairness of the process such as: having a voice; being listened to; and being treated with humanity, dignity, and respect (procedural fairness such as via active listening and explaining decisions is also noted in the [Equal Treatment Bench Book](#)). Readers such as legal practitioners may wish to note the distinctive sense in which ‘procedural justice’ is used in this context to mean perceptions of procedural fairness.

6.1 What makes an effective sentence for victims?

With regard to research on victims’ perspectives it is important to note that, like the public, they are a diverse group. Relatedly, victimisation may have a diverse range of effects and different people may be affected in different ways (Shapland and Hall, 2007). Additionally, there is a wide range of crimes that people may have been victimised by, such as fraud,

non-sexual crimes of violence, and sexual crimes. This diversity means that broad generalisations come with caveats. For example, work related to restorative justice (facilitating communication between victims and offenders to repair harms and seek productive ways forward) may give specific consideration to the unique contexts and issues raised by different types of offences - such as offences involving death (Walters, 2015). There are also various physical and psychological harms that may have been suffered.

As such, while there may be overarching trends from the literature, the broad summary of the evidence here should be caveated by noting that no one-size fits all. What makes an effective sentence for one victim may not be effective for another. For example, Iganski and Lagou (2015) found that for victims of hate crime there were general trends but also variations between victims:

Although the data indicate that hate crimes hurt more in the respect that as a victim group, victims of racially motivated crime are more likely to report experiencing an emotional reaction to the crime compared with victims of parallel crimes, and they are more likely to experience internalized reactions, or a combination of externalized and internalized reactions, it is clear that not all victims react in the same way. (Iganski and Lagou, 2015, p. 1706).

Similarly, Murphy and Barkworth discuss the possible variation between victims in terms of the prioritisation of procedural justice (Murphy and Barkworth, 2014). Such variation is one reason why some research on victim perspectives may focus on specific offences: for example, ongoing research in Scotland is examining the views of victims and survivors of rape and sexual assault, and, separately, of domestic abuse in advance of guidelines (Scottish Sentencing Council, 2024; Brooks-Hay, Burman and Glinski, 2024).

To the extent that generalisations can be made in terms of what a victim will deem effective, perhaps the most profound point to make is that while an appropriate sentence is an important factor, victims' views about whether the outcome is just and fair depend on more than sentence type and length/quantity (Pemberton, Aarten and Mulder, 2017). Indeed, meeting the needs of victims can relate to areas beyond sentencing. For example, matters such as the investigative stages of the criminal process and delays can be important to victims' perceptions of the fairness and justice of an outcome. Of course, this does not mean sentencing is unimportant to victims (Brooks-Hay, Burman and Bradley, 2019). In some cases, meeting victims' needs may involve a severe or custodial sentence. However, what it does mean is that meeting victims' needs can be more complex than just providing the 'right' sentence. Meeting victims' needs can require a sentence plus something else (such as passing the sentence in a particular way - possibly with an explanation that is understood by the victim and demonstrates that the harm done to them has been recognised).

Understanding sentencing can be an issue for many victims. As noted with regard to the public, the sentencing process and the terminology used is not generally well understood and this is problematic. In the latest Victims' Experience Survey in England and Wales, 500 victims were asked to agree or disagree with the statement "when the perpetrator was convicted, the sentence was clearly explained to me." Less than half (42 per cent) agreed, 27 per cent neither agreed or disagreed, and 30 per cent disagreed (Newlove, 2023, p. 10). This lack of understanding may be one factor influencing victim confidence in the effectiveness of sentencing. More generally, the Victims' Experience Survey continues to suggest the

importance of procedural justice to the satisfaction of victims rather than a sole focus on sentencing disposals.

A recent evaluation (commissioned by His Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) to support a joint inspection with His Majesty's Crown Prosecution Service Inspectorate (HMCPPI) and His Majesty's Inspectorate of Probation (HMIP)) made similar points. The evaluation found that victim perspectives could be impacted by a range of procedural justice elements beyond just sentencing outcomes:

Perspectives will need to shift in terms of what 'success' looks like for the CJS. Currently, success tends to be considered in terms of a 'CJS outcome' i.e. primarily a conviction and sentence. However, this approach to – and framing of – success, is from the perspective of the system, and the agencies involved, rather than from the perspective of the victim. It may be that 'success' for a victim means the victim feels able to engage, well-supported, heard, safer, more resilient, less at risk of being a repeat victim, and better able to manage their trauma. These aims barely feature in the current version of the CJS. (Rolfe, Brown and Cunningham, 2023, pp. 63–64)

The evaluation also found that some participants expressed a need/desire for a follow-up to explain what a sentence meant and for better communication from the justice system generally. This includes information about the parole system, which victims may find difficult to understand (Padfield et al., 2022). Thus, again, there are themes around the importance of knowledge and understanding. Indeed, finding novel ways to explain sentence outcomes (such as via a post-sentence meeting or debrief) might help some victims be more confident in their effectiveness.

Other evidence has suggested that some victims need sentences that provide safety and reduce the risk of reoffending. For instance, research with male victims of domestic abuse in Scotland found that “for the majority of respondents, the most desired outcome of going through the criminal justice system would have meant, in order of the most common responses: feeling in control of their lives, feeling safe, and feeling their children were safe” (Scottish Government, 2023c, p. 22). Depending on the individual case, these are objectives that may be achieved by imprisonment, a community sentence, or an ancillary order. For example, in Scotland, non-harassment orders may accompany custodial or non-custodial sentences in domestic abuse offences (the operation of non-harassment orders is beyond the scope here, but has been analysed elsewhere (see McPherson, 2022)). Research into offences under the Domestic Abuse (Scotland) Act 2018 has suggested that a key reason some victims prefer custodial sentences is protection. Yet, the research also found that ancillary orders could provide “a sense of protection” – with some of the view that the protection of the ancillary order may outlast the protection offered by custodial sentences (Houghton, Morrison and Tisdall, 2023, pp. 65–66). The implication is that a sentence that victims feel has considered the aims they prioritise might be more likely to be thought effective – particularly if it is explained how the sentence will achieve the aims. In some cases, this could entail explaining a custodial sentence. In other cases, it could entail explaining how, with an ancillary order, a custodial or non-custodial sentence can provide protection.

Another way to examine what victims want from the sentencing process is by understanding their reasons for participating by choosing to give Victim Personal Statements. These give victims an opportunity to explain how the crime has affected them, physically, emotionally, psychologically, financially or in any other way. As Roberts notes,

there can be different purposes sought by different victims when giving a statement and these include non-punitive, expressive, and communicative aims (Roberts, 2009).

While some victims may have punitive aims, many are not entirely motivated by punitive goals of increasing sentence severity:

Victims who do submit a statement often have multiple reasons for participating. The desire to communicate a message to the court and the offender is the most frequent reason given; however, some victims wish to influence the severity of the sentence imposed. (Roberts and Manikis, 2011, p. 3)

More recently, a review of Victim Personal Statements (VPS) noted that “5% of victims reported that they had made a VPS for cathartic or therapeutic reasons alone; 51% of victims reported making a VPS so that the full impact of the crime could be heard by the court; a further 14% of victims said that they wanted the offender to be made aware of the impact of the crime” (Newlove, 2015, p. 24).

Additionally, Scottish research concerning reasons for making a victim impact statement also suggests the complexity of victim needs and what they seek from an effective sentence. In Scotland, the most common reason reported for making a statement was “to express my feelings/get my point of view across” (34 per cent of respondents). Fourteen per cent made the statement to “make the accused think about what he/she had done” and 10 per cent for “therapeutic/for own benefit.” Indeed, 61 per cent reported making the victim statement made them feel better (Chalmers, Duff and Leverick, 2007, p. 45). Only 5 per cent said they made a victim statement “to influence sentencing” (Chalmers, Duff and Leverick, 2007, p. 40). It is also notable that 23 per cent said they made a statement “to influence the outcome of trial/help the case” and the report authors suggest this may indicate “a certain level of misunderstanding of the victim statement scheme” (Chalmers, Duff and Leverick, 2007, p. 40).

Of course, the above does not imply that victims (or the public) never need/desire that offenders be punished or that they will never need/desire a particular sentence. However, it does mean that meeting victims’ needs is complex and entails more than just a particular disposal. For example, in some cases, a custodial sentence may meet a victim’s needs. In other cases, it may matter more that victims feel the harm done to them has been recognised, they are believed, that the offender has been held to account, and they have been listened to. None of this is necessarily synonymous with a severe/custodial sentence. Indeed, it is possible that in some cases a non-custodial sentence that manages the latter may be better received by some victims than, for instance, a short custodial sentence that does not (such as if it is perceived to be perfunctory). The key point here is that factors beyond the disposal matter – no general claim is implied about any specific disposal (that will depend upon the specific facts and circumstances of the case and is beyond the scope of this review).

6.2 Victims’ perspectives of sentencing

Some research on public perceptions of sentencing has sought to analyse victims as a subset of the population and explore if and how victims’ views may differ from other sections of the public. This was the case in research for the Sentencing Council, which included data on those who had been victims of crime as well as the general public (Marsh et al., 2019; Archer et al., 2022). This research found that there could be variations in victims’ views of sentencing depending on the offence they suffered:

For those who reported being a victim of crime, there were some variations in how these respondents viewed overall sentencing. Those who had been a victim of theft were more likely to say that sentences are too tough (18 per cent) compared with those who had not been a victim of any of the offences listed in the survey (8 per cent). However, those who had been a victim of assault were more likely to say that sentences were too lenient (73 per cent) compared with those who had not been a victim of any crime (63 per cent).

No significant differences were observed between those who said they were aware versus not aware of sentencing guidelines before participating in the survey. The 2018 discussion groups revealed a limited understanding of sentencing guidelines, even when participants reported that they had been aware of them prior to participating in the research, and this may also be behind the findings of the 2022 survey. (Archer et al., 2022, p. 26)

As noted in the discussion of public opinion data, while these findings are informative, without further detail it is hard to know the reasons underlying these responses.

As with public opinion, one potential limitation to understanding victim perspectives of sentencing options is that the options may not always be well understood. Even prison sentences may cause confusion with periods spent on licence and parole not being well understood in terms of their existence or purpose. Such issues of complexity may be exacerbated in the context of suspended sentences and community sentences (where multiple requirements may be imposed), or fines with ancillary orders (Gormley, 2022).

Additionally, dissatisfaction with sentencing may relate to matters beyond the decision of a judge/magistrate. For example, qualitative research into the Domestic Abuse (Scotland) Act 2018 provided suggestions that dissatisfaction with sentence outcomes was linked to matters relevant to procedural justice: perceptions of plea negotiation (and Crown charging decisions more generally); the legal definition of offences, and uncertainty about sentencing outcomes (Lombard, Proctor and Whiting, 2022; Houghton, Morrison and Tisdall, 2023). In other contexts, views about release provisions or parole may also affect answers to questions about sentencing. Factors like this (or confusion about them) could make victims feel there are issues such as offenders not being properly held to account.

Importantly, research with victims shows that it is not inevitable that victims will always need a sentence of imprisonment as the outcome of their case. In England and Wales, research has suggested that victims can be supportive of community sentences and their aims in some cases. However, as a point for future work, there are also concerns that research suggests could be addressed through better explanations:

If victims' concerns about community sentences are to be addressed it is vital that community sentences are effective and seen to be effective. Awareness and understanding of the real nature of community sentences must be raised among both victims and the wider public if misconceptions are to be tackled and confidence increased. (Victim Support, 2012, p. 7)

Here some parallels may be drawn with points noted earlier about censure, denunciation, and accountability. Indeed, the type of disposal victims prefer may be linked to their views about what they hope the sentence will achieve. Thus, in several ways, what makes a sentence effective in the eyes of a victim may depend on factors other than the final disposal in isolation.

6.3 Conclusion on victims' perspectives

In sum, victim-specific considerations at sentencing are clearly a key consideration in both law, policy, and guidelines. Few would argue that sentences that fail victims are effective. However, victims' perspectives and what makes a sentence effective for them are also tremendously complicated and may vary depending on factors such as the victim, the offender, the circumstances of the offence, and the harm they suffered. For this reason, caution should be exercised when making broad generalisations about how victims may perceive different disposal options in general or in relation to their specific case. Furthermore, given the number of variables, this is also an area where future sentencing research may seek to target specific areas.

Still, while broad generalisations should be caveated for the reasons noted above, the evidence on victims' perspectives suggests a number of themes about what victims may feel makes a sentence effective. Perhaps the key theme is that for many victims to feel confident in the effectiveness of a sentence, they must feel that the process is fair; they have a voice; they are listened to; and that they are treated with humanity, dignity and respect. Sentence disposals can contribute to these aspects of fairness but as noted, there are also aspects of communication that are relevant. Additionally, sentences should be understood and explained. Indeed, if victims do not fully understand a sentence and the reasons for it, then they are less likely to feel it can meet key aims such as recognising the harm done to them, punishment, denunciation, holding the offender to account, and rehabilitation.

If such features are what many victims, at least in part, seek from a sentence then to an extent their views about an effective sentence are not limited to outcomes in terms of sentence type and severity. Indeed, Tata argues that "the repeated complaint of witnesses, victims and offenders is not that the sentence is wrong, but they have not been allowed a genuine opportunity to participate and feel processed like an object" (Tata 2020, p.155; see also Jacobson et al. 2015). The implication of this for policy is that how sentences are communicated and explained to victims is a key issue as much as the sentence itself. Better communicating sentences to victims may require several different strategies.

One way to promote confidence could be through improved public legal education. Indeed, the Council (and others like the Sentencing Academy) do a lot in this area: such as outreach work and the creation of accessible websites. Yet, sentencing is very complex and perhaps more could be done. More specifically to guidelines, terminology and presentation matter and consideration could be given to how understandable terms are and what connotations they have. More generally, work on restorative justice could be a useful evidence base to consider given this is a strong area for scholarship about victims' views and communication.

Finally, one potential way to better communicate sentencing with victims could be via a post-sentence debrief. While a debrief would require resources, it may be a cost-effective means to promote confidence in sentencing (perhaps more cost-effective than increasing sentence severity). If it were possible to provide debriefs, who could/should do this and when is beyond the scope here. Options might include suitably trained police officers, the Crown, court personnel, or a legal adviser (in the distinct context of evidence in sexual offence prosecutions, the [Law Commission consultation](#) discusses some aspects of independent legal advice/assistance for complainants and how it may improve their understanding of the process). Moreover, in some cases, a debrief with a judge (the

symbolic embodiment of justice) might help some victims feel the harm done to them has been recognised, the offender has been held to account, and that they have been listened to. Certainly, work with offenders in problem-solving courts suggests that interactions with judges can mean something (O'Hare, 2018). Also, who better to explain a sentence than the person who passed it? Certainly, recent research in Scotland has suggested that knowledge of sentencing for rape offences among victims/survivors can be low and that the tone and comments of judges are important to a sense of justice (Brooks-Hay, Burman and Glinski, 2024). However, these are complex questions that are beyond the scope of this review. Likewise, if debriefs were possible, it is beyond the scope to speculate if/how they might, as a practical measure, be targeted to those victims in cases that were complex or sensitive, or where the victim had additional needs (although it should not be assumed that 'minor' cases are seen as trivial by victims).

7. Sentencers' perspectives on effectiveness

A long line of research has highlighted that while law and policy matter, the actions of decision-makers in applying these are at least as important. These decision-makers include but go beyond sentencers (Portillo and Rudes, 2014; Gilson, 2015; Biland and Steinmetz, 2017). Therefore, research about sentencers' real-world experiences with sentencing law and policy, guidelines, and disposals is vitally important. Additionally, it has been argued that understanding judges' views "is critical for several practical and political purposes, including bridging the gap between academic discourse and sentencing practice, in order to transform sentencing practice into a research-based approach" (de Castro Rodrigues et al., 2019, p. 172). Indeed, part of the reason this review considers a broader range of factors relevant to effectiveness is to make the academic discussion more relevant to actual sentencing practice where such factors are vital.

In terms of sentencers' perspectives, some insight can be gained from legal sources such as publicly available judgments and sentencing remarks (both have been noted earlier). However, overall, accessible information that can inform researchers about sentencers' views on the effectiveness of sentencing is limited. By their nature, judgments and remarks are not focused on generating information on perspectives on the effectiveness of sentencing. Additionally, there is a need for much more data focused on the magistrates' courts. Thus, further research is needed (such as bespoke research with sentencers), and this section will highlight some areas where research with judges and magistrates could be valuable.

In the context of sentencing guidelines, it is paramount that these "are respected by and meaningful to those who are responsible for their implementation in practice" (Gormley et al., 2023, p. 12). One way to ensure guidelines remain respected is to conduct research with sentencers whether by interviews or other methods. For instance, research with judges and decision-makers on sentencing and related matters in various jurisdictions has used vignettes (Maguire, 2010; Maguire et al., 2015; Yan and Lao, 2022). This is an area where the existence of a sentencing council can be highly beneficial. Recently, the Council has published the results of user testing of the sentencing guidelines generally in terms of usability (Miles, 2023; Rahal et al., 2023, p. 2). This reveals some interesting points such as the areas that are most important: for example, step 1 (concerning culpability and harm) and step 2 (concerning the starting point and category range) were felt the most useful by some respondents. The Council has also published research examining the views of judges and magistrates about guidelines generally (Cardale and Lock, 2021). However, the utility of researching sentencers' views can extend beyond this.

Research with sentencers can be informative about the issues encountered in sentencing real cases and applying guidelines (including where and why departures might be made). Already, some research has also sought to understand sentencing patterns and follow-up research with judges directly would be beneficial to better understand potential trends (Dhami et al., 2020). Indeed, qualitative research could be tremendously helpful in understanding evidence gathered from surveys. For example, the most recent judicial attitudes survey noted that "almost every salaried judge said that the time to discuss work with colleagues (94%) and training (91%) were important working conditions for them" (Thomas, 2023, p. 46). From a guideline monitoring and development perspective, it would be beneficial to know if/how guidelines and sentencing matters are features of these discussions and whether further assistance or clarity might be felt beneficial in some areas. Additionally, previously, the Sentencing Council's Crown Court Sentencing Survey

(CCSS) could provide insights into questions such as the use of departures from guidelines in the Crown Court. For example, research examined assault offences in the CCSS and found compliance to be high and identified areas for further inquiry (Pina-Sánchez, Brunton-Smith and Li, 2018). Currently, there is no substitute for the CCSS data in terms of large-scale statistics on sentencing and given resource constraints it seems unlikely to return. However, presently the Council conducts periodic, bespoke data collections at both magistrates' and Crown Court levels. Such work would seem to be a necessary part of collecting sentencing data, which requires both depth and breadth, and could be used to gather information relevant to the effectiveness of sentencing.

Research with sentencers could also shed light on a range of other matters relevant to sentencing. For instance, deterrence is a topic of interest in this review. An important point made based on the evidence about deterrence is that the process of being prosecuted and/or convicted can be in and of itself very onerous for some defendants. Indeed, questions over the process itself may be even more important given the effects of COVID-19 and backlogs (Casey et al., 2021; Maycock, 2022). This is something sentencers themselves may have a perspective on based on their experience. Moreover, there are countless other areas where research with sentencers (themselves or in combination with others such as victims and offenders) would be valuable. Of course, this is not to suggest that the views of sentencers provide an unmediated account of the experiences of others: research directly with members of various groups is essential. However, we need to know what sentencers think. Firstly, the views of sentencers may signal key issues. Secondly, we need to know what sentencers and other groups think in order to know if/when views differ and draw attention to this.

For future research agendas, further work exploring sentencers' perspectives is sorely needed. In particular, further work examining perceptions of the availability and suitability of different disposals would be beneficial. For instance, decisions around sentences for cases on the custodial threshold (such as whether or not to imprison) are complex and have potentially tremendous ramifications. To make decisions about custodial sentences, sentencers must both receive and consider information on matters such as the prospects of rehabilitation and reintegration and the risk of reoffending. Research could examine perspectives on the provision of this information and where/when/why certain sentences are determined to be effective or ineffective. Such work might also examine the views of others whose input may affect the sentencing process (such as pre-sentence report writers who provide information to sentencers). Indeed, as Tata highlights, sentencing is a collaborative process that is the culmination of the work of various professionals who must all have confidence in the disposals (Tata, 2020). Consequently, empirical research is needed to understand the complexities of producing effective sentences and this research must include the perspectives of sentencers (and others).

Existing evidence has suggested that communication with sentencers about community sentences could be strengthened to promote greater awareness and confidence in the disposals and that awareness and confidence are linked (Kennefick and Guilfoyle, 2022). Strengthening communication inherently requires understanding sentencers' views. Additionally, views have been expressed by the Magistrates' Association in oral evidence to the Justice and Home Affairs Committee (given by Tom Franklin based on a survey of members) on 23 May 2023. Here it was noted that magistrates have concerning issues with community sentences "to do with their confidence in the options available to them" and that "there was a difference between what was available in theory and what was available in practice" (Justice and Home Affairs Committee, 2023, pp. 2–3). The oral evidence cited a survey of 500 magistrates which found that 41 per cent of respondents

did not think that community sentences were consistently available in their local area. It is unclear whether and to what extent the matters noted by Franklin result from communication issues or the availability of options. This is a matter central to the effectiveness of sentencing and again shows that research on the realities of sentencing (including the perspectives of sentencers) in England and Wales could be taken further (Whitehead and Ely, 2018; Birkett, 2016; Magistrates' Association, 2018).

Contemporary research with sentencers in England and Wales might also be useful to allow comparative insights. Such comparative sentencing research could allow for a number of benefits (Gormley et al., 2021). These benefits include enabling the exploration of questions (such as those concerning the effects of guideline structures) in ways that are not possible in a single jurisdiction. Indeed, now that Scotland has guidelines on offences also criminalised in England and Wales (under the Road Traffic Act 1988) there is a novel opportunity to explore sentencing guidelines, which vary in structure between the two jurisdictions. For instance, it is not feasible for England and Wales to remove starting points from guidelines to see what, if any, effects they have. However, research between Scotland (where guidelines do not have starting points) and England and Wales could allow insights into the effects of starting points and how guidelines influence sentencing. Any findings would inform guideline development in both jurisdictions.

Comparative work incorporating the perspectives of sentencers could also aid our understanding of sentencing disposals. For instance, due to the Sentencing Act 2020 section 208(10), [the Sentencing Council website](#) notes that (save for “exceptional circumstances” under section 208(11)) with community orders “at least one requirement MUST be imposed for the purpose of punishment and/or a fine imposed in addition to the community order.” It is not possible to issue some community orders without this punitive element to explore if/how this impacts the effectiveness of community orders. However, the closest comparable Scottish disposal (the community payback order) does not require a punitive element. Thus, a comparison between community orders and community payback orders could provide a way to examine if/how punitive requirements impact effectiveness. The same may be true for other differences in disposals between the two jurisdictions. Indeed, previous work has sought to draw on research with judges in Scotland and England and Wales to examine questions around the use of custodial sentences in a way that research focused on a single jurisdiction could not (Millie, Tombs and Hough, 2007).

In sum, research with sentencers in England and Wales may shed light on a range of questions pivotal to the effectiveness of sentencing. For instance, in Portugal, research has sought to examine judicial views about the causes and justifications of crime (de Castro Rodrigues and Sacau, 2015). This has potential implications in terms of what might be thought most likely to make a sentence effective and when/how often a given disposal might be used. Research with sentencers may also highlight more generally when and why certain disposals are felt suitable or not suitable and perhaps suggest avenues for development: such as whether punitive elements to community orders have an effect or whether/when presumptions against short sentences would be effective or not. Relatedly, research may highlight issues with the availability of disposals: whether perceived availability is due to communication issues or actual availability due to issues in practice. Finally, research with sentencers is perhaps the only way to better understand how guidelines are used and how they can influence the effectiveness of sentencing.

8. Conclusions

Sentencing is one of the most important tasks the criminal justice system undertakes. It can have profound implications for the approximately 1.3 million people who have their case disposed of each year, for victims of crime, and for society more generally. Additionally, sentencing is among the most complex tasks the justice system must undertake. Sentences must be both individualised and consistent. In disposing of a case there are multiple statutory objectives to consider: such as punishment, the reduction of reoffending (including through deterrence), and the protection of the public. Additionally, at the same time, sentencing must always perform crucial social and normative functions in dispensing justice by, for example, denouncing wrongdoing and holding offenders to account. To achieve these aims, sentencers might use a range of disposals (custodial and non-custodial). These disposals may be used alone, or a sentence may be crafted that seeks to combine disposals and/or use various requirements or ancillary orders. Consequently, given these complexities, to better analyse the effectiveness of sentencing this review has considered the perspectives of four key groups: offenders (specifically with regard to deterrence); the public; victims; and sentencers. Examining these perspectives reveals matters that are vital to the effectiveness of sentencing.

The four perspectives considered further illustrate the wide range of matters that real-world sentencing practice must account for when disposing of a case. For example, offenders, the public, victims, and sentencers are diverse groups. While there are some broad themes that the evidence base usefully highlights, there is often a need for nuance and caveats as generalisations can only go so far. Indeed, while the evidence base is vast, the multifaceted issues that arise from understanding the effectiveness of sentencing from four distinct perspectives mean that there is a need for further work (quantitative and qualitative) on specific areas. This research is needed to recognise the contingent nature of the answers to many of the questions concerning effective sentencing - since answers may vary based on factors such as the type of offence, the offender, or the harm inflicted.

8.1 The various functions of effective sentences

The analysis of research into offender, public, victim, and sentencer perspectives repeatedly draws attention to the broader functions of sentencing such as providing censure, denunciation, and accountability. These are vital functions that need to be considered in addition to others such as reoffending. These are also features that a narrow focus on punishment might neglect since meeting these aims may require more than a type and quantity of disposal and may necessitate consideration of the perceptions of sentencing from various perspectives.

The importance that various groups attach to the process itself (not just the outcome) highlights the role of courts and sentencing as potentially cathartic and validatory because they can allow all to feel justice has been done: that victims and society have been listened to; the harm done to victims, society, and the legal order has been recognised; and that there has been accountability and censure. Indeed, even offenders themselves, while perhaps not enthusiastic about being personally sentenced, may still “believe that the laws they violated were good laws and that the acts they performed are deserving of punishment” (Casper, 1978, p. 18).

Thus, an effective sentence may need to punish depending on the case, but it may also need to do more:

It is of course absurd to think that punishment annuls the crime in the sense of making it the case that the crime never happened or now goes away. What does go away, however - and is thus annulled - is the message of disrespect for the victim and, I would say, disrespect also for the legal order of the relevant moral community. Punishment can thus be seen as a social ritual in which... the message of contempt for the victim - a message that the victim is of less than equal value with the wrongdoer - is emphatically repudiated, and another message - that of the full value of the victim as an equal citizen - is emphatically asserted. (Murphy, 2011, p. 35)

Similarly, views about the importance of the process in terms of providing censure, denunciation, and accountability might also explain why, for example, some might wish to see offenders attend their sentencing hearings. Attending or not attending a sentencing hearing does not change the sentence given. However, it might affect how groups are able to perceive matters such as censure, denunciation, and accountability.

While this does not imply that there is not a need to punish offenders or for severe sentences in some cases, it does mean that what makes a sentence effective from these perspectives is more complex than it might first appear. For example, in some cases, only a custodial sentence may meet a victim's needs, satisfy the public, and be what sentencers themselves regard as the appropriate disposal. Yet, in other cases, it may matter more that these groups feel the harm done to victims has been recognised, the offender has been held to account, and that victims and society have been listened to. None of these aims are necessarily synonymous with a severe/custodial sentence. Indeed, it is possible that a non-custodial sentence that manages the latter could be better received by some than, for instance, a short custodial sentence that does not (such as if it is perceived as perfunctory). As a result, the key point here is that factors beyond the disposal (such as if/how people feel victims have been listened to, how the harm done has been recognised, and how the offender has been held to account) matter and that sentencing has a social and communicative function. No general claim is implied here about if/when any specific disposal might be needed in a given case. Indeed, that will depend upon the specific facts and circumstances of the case and is beyond the scope of this review.

In sum, depending on the circumstances of a case, there are a range of outcomes that may be sought and aims such as censure, denunciation, and accountability can be fundamental among these. Many of these desired outcomes are not dependent solely on a specific sentence but on the process through which the sentence is perceived to be derived. In this sense, there is a larger social and normative function to sentencing to also consider (Duff, 2022). This raises key questions that could be explored further. For example, there are questions about the role offenders could/should play (such as whether they should be present at sentencing or how they should respond to victims/sentencing); how victims, offenders, and the public perceive these aspects of sentencing; and whether sentencing remarks might be published more systematically.

8.2 General points from the four perspectives

Firstly, in terms of marginal deterrence, overall the evidence does not suggest that increasing custody rates or the length of custodial sentences has greater general or specific deterrent effects. The 'decision' to offend, not offend, or desist from offending is tremendously complex and assumptions based on simple rational choice theories for deterrence may not be met in reality. For example, prison sentences may not always be

experienced by offenders as more punitive than other disposals, such as community orders with stringent requirements. Thus, further research is needed to explore if/when some types of offence/offender combinations may be deterred by sentencing policy. Another research area that could be of interest to the Council is research seeking to understand if/when a suspended sentence might offer special deterrent effects. This potential special deterrent effect of suspended sentences might be significant if it raises the perceived risk of more severe punishment (particularly if the suspended sentence can protect factors associated with reduced reoffending – such as productive familial/caring relationships, employment, and housing stability). More generally, the Council may wish to explore how the public and others understand and use the term deterrence since it may take on a different meaning in normal usage than in scholarship.

Secondly, research suggests that the public may have limited knowledge and understanding of sentencing. Unless and until this knowledge gap is closed, the extent to which sentencing practice can influence public perceptions and confidence will be muted. Thus, it is important to distinguish between uninformed public perceptions of sentencing and public views about real sentencing practice. Research needs to examine both matters further. Existing research has suggested that when provided with greater information about cases (such as mitigating factors) or sentencing, the public is not as punitive as they might appear in some contexts. Research also suggests a range of outcomes the public may feel make an effective sentence. The key implication of this is that more severe sentences will not necessarily satisfy the public.

Thirdly, what might influence whether and to what extent victims feel a sentence is effective or ineffective is complex. While outcomes are not unimportant, victims may view an effective sentence to be one that is potentially cathartic in allowing them to feel justice has been done: because they've been actively listened to; the harm done has been acknowledged; they have been believed; and there has been accountability and censure. Such perceptions may depend on more than a specific sentence. Thus, in part, addressing the effectiveness of sentencing from the perspective of victims could entail greater communication (such as through guidelines, discussions before sentencing, and/or debriefs after) about what a sentence means and why it has been chosen.

Finally, the perspectives of judges and magistrates about sentencing have profound implications for work on the effectiveness of sentencing. For example, work with sentencers may highlight unknown barriers to the use of some disposals in practice and shed new light on a range of areas where improvements might be made. Existing work has already raised notable areas for further enquiry concerning communication with sentencers and (potentially significant) issues about the availability of community sentences. However, there is a relatively limited amount of research on the perspectives of sentencers in England and Wales to assist with work on the effectiveness of sentencing. This gap in the evidence is unfortunate given the wide range of issues where insights from sentencers would be extremely beneficial. Additionally, at present, there appears to be a novel opportunity for comparative research to improve our knowledge and understanding of sentencing practice and how guidelines are used by sentencers.

8.3 Final remarks

In sum, this review has aimed to shed new light on how 'the effectiveness of sentencing' is conceptualised and to highlight matters that may be of assistance in developing sentencing policy. While the topic of effectiveness is vast, it is suggested that the four perspectives approach allows for a useful way to structure an analysis and could be

applied to more specific areas. Indeed, given the extent of matters relevant to sentencing, every aspect cannot be covered here in detail. If there are future iterations of this review, they may wish to focus on particular areas in more detail. For example, there are additional sentencing issues to consider (such as incapacitation for serious offenders); more could be explored in relation to specific groups of offenders (such as children and young offenders; female offenders; violent/non-violent offenders; those with 'mental disorders, developmental disorders, or neurological impairments'; or persistent offenders); different victim sub-groups could be explored in more detail; and the effects of sentencing for particular issues (such as violence against women and girls) might be considered.

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