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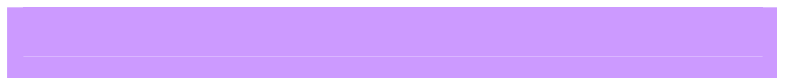
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RESEARCH REPORT – 6

Public Attitudes to the Principles of Sentencing

by ICPR and GfK NOP



The Sentencing Advisory Panel is an independent advisory and consultative body which provides fully researched, objective advice to the Sentencing Guidelines Council, to assist the Council when it frames or revises sentencing guidelines. This research report is published by the Sentencing Advisory Panel.

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Sentencing Advisory Panel

Research Report – 6

Public Attitudes to the Principles of Sentencing

BY

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June 2009

*The views expressed in this report are those of the authors,
not necessarily those of the Sentencing Advisory Panel*

Foreword

The Sentencing Advisory Panel commissioned the Institute of Criminal Policy Research and the GfK NOP to undertake research, on its behalf, into public attitudes to the overarching principles of sentencing. This report contains the findings.

Later this year, the Panel will submit its advice on the same topic to the Sentencing Guidelines Council. In line with standard practice the Panel has consulted widely on a range of proposals; the findings have given the Panel a reliable understanding of public views and help to inform the Panel's advice.

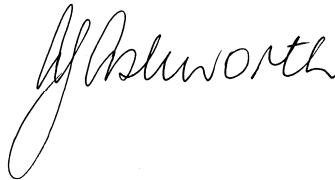
The research examines public attitudes to a number of issues related to sentencing including the purposes of sentencing, the impact of common aggravating and mitigating factors relating to the offence and the offender and whether the relative costs of custodial and non-custodial sentences should impact on sentence selection.

The research demonstrates the thoughtfulness with which the public considers these issues. The public places a high level of importance on all five statutory purposes of sentencing. There is also a good understanding of how individual aggravating and mitigating factors may impact on an assessment of offence seriousness, albeit to varying degrees. In cases assessed as being "on the cusp" of a custodial or community sentence, the public mostly could evaluate the impact of individual factors but found it difficult to assess their combined effect.

In the past, when the Panel has commissioned research to augment a consultation process the research report has been published at the same time as the Panel's advice. On this occasion, the report is being published separately and in advance of the advice, so that findings can be made available to others currently undertaking research into similar issues.

Over the next few months, the Panel will consider carefully the findings from the research alongside the responses it has received to its consultation. The research (and the advice, in due course) can be found at: www.sentencing-guidelines.gov.uk .

The Panel is extremely grateful to all the members of the public who took the time to participate in the research.



Professor Andrew Ashworth
Chairman of the Sentencing Advisory Panel

Acknowledgements

This research was commissioned by the Sentencing Advisory Panel and was conducted jointly by the Institute for Criminal Policy Research, King's College London, and GfK NOP. Particular thanks are due to the Sentencing Advisory Panel Steering Group who oversaw the project, and to members of the Panel secretariat. Special thanks are due to Nita Bhupal for her tireless and efficient support. We would like to thank Colleen Norton and the staff at Plus Four for assembling the focus groups, and the focus group and survey participants themselves for taking part in this study.

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Summary

Background

The Sentencing Advisory Panel (SAP) was asked by the Sentencing Guidelines Council (SGC) to review two guidelines issued in 2004. *Overarching Principles: Seriousness* and *New Sentences: Criminal Justice Act 2003*. In relation to the former, the SAP published a consultation paper, *Overarching Principles of Sentencing*, in July 2008. This is a substantial document which sets out a wide range of issues that are pertinent to the development of sentencing guidelines based on the principles of proportionality and consistency. This report presents the findings of research into public attitudes to sentencing which was conducted to support the *Overarching Principles* consultation.

Aims and methods

The overall aim of the study was to investigate the views of the public on the kinds of factors which increase or decrease the seriousness of an offence, and the factors that make an offence sufficiently serious to warrant a custodial sentence or community order. The study focused on the sentencing of *adult* offenders. More specifically, the study examined public attitudes to:

- the purposes of sentencing;
- the circumstances that make an offence serious enough for custody to be justified;
- the features of a case that would tend to make a community order inevitable;
- the relative weight that should be attached to individual factors relating to the offence and offender;
- the interaction of factors relating to the offence and offender (for example whether offender mitigation can ever outweigh an aggravating factor);
- the extent to which the costs and comparative effectiveness of custodial and community sentences should impact on sentence selection; and
- the relative seriousness of different types of offence, and approaches to 'ranking' seriousness.

There were two elements to the research: focus groups and a quantitative survey. Eight focus groups involving a total of 69 participants were conducted in London, Liverpool, Birmingham and South Wales. The groups were structured by age and social class, with young, mixed and older groups. Four of the groups were single-sex and four mixed; and groups broadly reflected the ethnic mix of areas from which they were drawn. In total, each focus group session lasted around two hours. For the quantitative component of the research, face-to-face in-home interviewing was conducted using a representative quota sample of 1,023 adults aged 18+ in England and Wales. A 30-minute questionnaire was administered via CAPI (Computer Aided Personal Interviewing).

Key findings

Sentencing Objectives

The survey respondents were asked to rate the importance of sentencing purposes¹, both in general and then separately for low and high seriousness crimes. Responses demonstrated that members of the public see different objectives applying to crimes of low and high seriousness. In keeping with findings from surveys conducted in other jurisdictions, the public move towards the more punitive objectives of punishment and deterrence when considering the sentencing of serious crimes of violence. It is significant that support for rehabilitating offenders remained high, even for those convicted of serious crimes of violence. Thus four out of five respondents provided a high importance rating for rehabilitation when asked in the context of offenders convicted of serious crimes of violence. The focus group participants viewed all five purposes of sentencing identified in the Criminal Justice Act 2003 as highly important, but seemed to place particular weight on punishment, and valued reparation somewhat less than the others. There was qualified but widespread support for rehabilitation as a purpose of sentencing.

¹ As set out in section 142 of the Criminal Justice Act 2003.

Aggravating Factors

Respondents were asked to state whether a number of factors increased the seriousness of a crime. People viewed some factors as very relevant to crime seriousness, others less so. The differentiated response to the factors suggests that the public react thoughtfully to the sources of aggravation. For example, if the offender used a weapon, almost nine out of ten respondents believed that this always increased the seriousness of the offence. At the other end of the spectrum only one respondent in five thought that theft from the state (rather than an individual) always increased crime seriousness. Factors related to the offence, particularly those involving the vulnerability of the victim, were seen as the most likely to increase offence seriousness.

The public clearly saw previous convictions as increasing the seriousness of the offence. This emerged strongly from the focus groups as well as the survey. Support for imposing a term of custody was much higher when the offender had previous convictions, particularly if the prior convictions were related to the current offence. Thus, in the survey, the preferred custody rate rose from 11% to 65% if the offender had two prior, related convictions and then to 83% if the offender had four priors. The public appeared less sensitive to the recency of prior convictions.

Mitigating Factors

Among both the survey respondents and the focus group participants, views on mitigation were more mixed than views on aggravation, and more weight was given to aggravating than to mitigating factors overall. In the survey, two-thirds of the aggravating factors were seen as enhancing the seriousness of the offence in all cases by a majority of respondents. In contrast, only a single mitigating factor was seen as justifying a more lenient sentence in all cases by at least one quarter of the sample. In the focus groups, there was little consensus about the significance of specific mitigating factors, but most participants viewed at least some factors as potentially pulling a sentence back from custody. The focus group participants differed widely not only in the significance they accorded to specific mitigating factors, but also in the rationales they deployed for according them significance.

Why is there wider agreement among the public about the significance of aggravating factors compared to mitigating factors? There are several possible explanations for this.

First, it may reflect a degree of simple punitiveness on the part of the public – particularly with respect to offenders who have previous convictions and, as a consequence, are almost universally viewed as meriting severe punishment. Second, it may reflect the fact that most aggravating factors are offence- rather than offender-related, and hence may be seen as more generally applicable (as a matter of principle) to sentencing decisions than offender-related mitigating factors which by definition are highly contextual. Third, there may be some cynicism on the part of the public towards some claims for leniency on behalf of the offender. The public may not believe that many of the claims for mitigation – for example, claims on the grounds of an offender’s remorse - are genuine.

A sophisticated analytic technique known as Conjoint Analysis was used, as part of the survey, to explore the possibility that interaction effects may exist – such that the influence of some sentencing factors may be affected by the presence of other factors. A straightforward survey approach is unable to test for interaction effects, as all respondents are simply rating the importance of a list of factors presented to them. In the event, no clear interactive effects emerged: members of the public were using an additive model, where the weight of a given factor at sentencing did not appear to change as a result of the introduction or removal of other sentencing factors.

Offences lying near the custodial threshold

The survey respondents were asked to consider examples of three relatively serious offences (burglary; assault; fraud) and asked whether all, almost all, most, only some or no offenders convicted of these crimes should be imprisoned. The public did not see these offences as either always requiring custody or never requiring custody. We interpret responses to this question to demonstrate the flexibility of members of the public: people take the view that the decision to imprison should be affected by many aggravating and mitigating factors – not simply the nature of the offence. This finding is consistent with another outcome. The public seem to be reluctant to accept that the presence of a given circumstance would *always* result in a more lenient sentence. This suggests that respondents were more comfortable with allowing a court to consider whether a factor should result in a more lenient sanction – rather than having an inflexible rule.

Costs of Disposals

The question of whether courts should consider the costs of different sentences was addressed in both the focus groups and the survey. Although findings were somewhat different in the two methodologies, we would conclude that the public believe that courts should consider the costs of sanctions, particularly for less serious cases. For the most serious crimes, the public clearly believe that courts should impose sentence without regard to the cost of different sanctions.

Acceptability of community based sanctions

When people who favour imprisoning an offender are asked about the acceptability of a community order, substantial numbers find a community order to be acceptable. For example, over one-third of respondents who initially favoured imposition of custody for a case of assault found a community penalty to constitute an appropriate alternative sanction. It was clear that the acceptability of an alternative (non-custodial) sanction depended upon the seriousness of the offence: as the offence becomes more serious, the acceptability of an alternative to imprisonment declines.

Conclusions

This study has aimed to identify and explore the sentencing principles that are held by the general public, or are embedded in their attitudes towards sentencing. The survey and focus groups demonstrated that members of the public react thoughtfully to questions relating to sentencing – and not simply with punitiveness. When asked to propose an appropriate sentence for a given case, the public consider the weight and relevance of a range of specific sentencing factors before reaching a decision. However – and unlike the courts – they tend not to consider the interactions between these factors.

Is there a need to achieve a better alignment between the principles underpinning the SGC guidelines and public opinion? Our research suggests that there are differences at the margin, rather than a fundamental mismatch. It is questionable whether an exercise in fine-tuning would help improve the legitimacy of the courts however – leaving aside the specific merits of any changes that would be entailed. People are misinformed about the extent to which the courts use custody, and their perspectives on sentencing are

shaped by the mistaken belief that the courts are lenient. Any attempt to accommodate public opinion on sentencing principles will achieve little until these misperceptions about current practice are addressed.

Chapter 1

Introduction

The Sentencing Advisory Panel (SAP) was asked by the Sentencing Guidelines Council (SGC) to review two guidelines issued in 2004 on the principles of sentencing, *Overarching Principles: Seriousness* and *New Sentences: Criminal Justice Act 2003*. This report is concerned with overarching principles of sentencing. The SAP commissioned the study as part of the consultation process which it is required to undertake whenever it prepares advice for the SGC. Although a great deal of research has been conducted into public attitudes to sentencing in this jurisdiction, to date, research exploring public opinion with respect to the objectives of sentencing or the factors which determine the seriousness of an offence has been limited. The SAP published a consultation paper, *Overarching Principles of Sentencing* in July 2008. This substantial document sets out a wide range of issues that are pertinent to the development of sentencing guidelines based on the principles of proportionality and consistency. In reviewing the guidelines on sentencing principles, the SAP's key concerns are with determining the factors that can and should be taken into account in sentencing decisions; that is, the factors integral to courts':

- assessment of the seriousness of an offence (both with respect other cases of the same crime as well as other categories of crime);
- decision on whether a custodial or community sentence is justified;
- decision as to the length of a determinate custodial sentence or the requirements of a community order;
- determination of the factors personal to the offender that should significantly affect the sentence.

It is quite straightforward for the SAP to consult with professional bodies and special interest groups on such matters. Even if the issues are complex, the processes for inviting comments are straightforward and work well. By contrast, it is inherently difficult to seek the views of the general public by publishing consultation documents and awaiting responses. Most people have neither the time nor the inclination to contribute to consultation processes of this sort and those who do so are unlikely to be representative of the wider public. Survey research provides an alternative way of finding out what the

general public thinks about sentencing – and, of course, the subject of sentencing is well-researched. However, surveys have rarely tried to canvass public views on *principles* of sentencing in any depth. This reflects the complexity of the subject, coupled with the fact that it is hard to conduct public surveys on sentencing issues pitched at a high level of generality or abstraction, such as:

- the relative importance of different functions of punishment
- the role of criminal history in sentencing
- the factors that should aggravate or mitigate.

We doubt that most people will have thought about these issues in any depth. Few will have a coherent conceptual framework within which to articulate principles that should apply at sentencing. However, people certainly have well-developed views about sentencing, and embedded in these attitudes are latent or implicit attitudes about sentencing principles. It is these latent attitudes that this study aimed to explore.

Sentencing principles

The development of a system of sentencing guidelines necessarily involves reference to sentencing principles. The consultation document states that: ‘The principles enshrined in the *Seriousness* guideline are framed around values of proportionality and consistency.’ The SAP and the SGC have a statutory duty to promote consistency in sentencing², and the pursuit of consistency is such a central function for the two bodies that we have not gauged public opinion about this³. The principle of proportionality, on the other hand, is at the heart of this report’s concerns.

Proportionality

The principle of proportionality can appear deceptively simple and uncontroversial: everyone knows that ‘the punishment should fit the crime’, and sentencers are required

² Under Section 170 of the Criminal Justice Act 2003.

³ One could argue the case for highly localised justice, where geographic variation in sentencing practice was tolerated or even encouraged; but it is hard to see how such a system could ever be compatible with national guidelines systems.

by statute to ensure that the sentence they pass is commensurate with the seriousness of the offence.⁴ In practice, the concept of ‘just deserts’ is more elusive. Few members of the general public are comfortable with the narrowest form of desert-based sentencing, where punishment is proportional to the harm done by an offender – and to nothing else. A considerable body of research has demonstrated that a range of factors unrelated to the harm inflicted is considered by the public at sentencing. For example, whether the offender expresses remorse for his crime, and apologises to the victim does not affect the seriousness of the offence. However, numerous studies have shown that the expression of remorse decreases the severity of sentences recommended by the public (e.g., Robinson, Smith-Lovin and Tsoudis, 1994; Robinson and Darley, 1995; Scher and Darley, 1997 and Roberts and Hough, 2005, pp. 134-135 for a review). In addition, research on actual sentencing decisions has shown that remorseful offenders are sentenced more leniently (e.g., Harrel, 1981).

The *lex talionis* principle of an eye for an eye might not seem so deeply flawed if there were a closer relationship between our intentions and the consequences of our actions. A single punch delivered in a flash of anger can sometimes result in death⁵; and a well-planned intention to murder can sometimes come to nothing. In general, the public want the justice system to be responsive to not only to *harm done*, but also to the *culpability* of the offender – the degree to which the offender may be deemed blameworthy⁶

Precisely how different systems of justice define and assess harm and culpability is what tends to give each system its unique character. Sentencing systems in different jurisdictions use different mitigating and aggravating factors. There are difficult questions about evaluating the harm threatened or inflicted by a crime. Assessing blameworthiness is arguably even more complex. Is youth an excuse? Is low intelligence? Is being drunk an aggravating factor or a mitigating factor? In other words, assessing the seriousness of the offence requires sentencers to make a complex synthesis of the different weights that should be attached to a wide range of factors relating both to the crime and to the offender. Other things being equal, there should be some consistency between judicial and public views about what should count as aggravating and mitigating factors in the

⁴ see section 170 of the Criminal Justice Act 2003

⁵ The SAP consultation document cites *R v Coleman* 95 Cr App R159 and *R v Hughes* 10 Cr App (S) 169 as examples.

⁶ See Robinson (2006) for a useful discussion of public vs. legal models of sentencing.

process of 'moral accountancy' that is involved in weighing the seriousness of any given case⁷ (see discussion in Robinson and Darley, 1995; Freiberg and Gelb, 2008) . If judicial reasoning became seriously at odds with public opinion, public trust in justice could suffer. An important focus of this study was to investigate how people understand proportionality by examining what they regard as aggravating and mitigating factors.

The purposes of sentencing

The Criminal Justice Act 2003 (CJA) requires courts to have regard to a number of different sentencing purposes in deciding what sentence to pass. Section 142 requires courts to have regard to the following purposes of sentencing:

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

The implication of Section 142 is that considerations of proportionality can sometimes be moderated (or even trumped) by other principles, such as public protection. One of the aims of the study was to assess public views on the purposes of sentencing. As will emerge, this was not straightforward. The five sentencing aims are sometimes complementary, and sometimes in conflict. For example, punishing an offender in a way that is commensurate with the seriousness of his or her offence may simultaneously provide adequate protection for the public and a means of deterring or rehabilitating the offender. On the other hand, protection of the public might sometimes require a severity of sentence that is incommensurate with the seriousness of the offence under sentence.

As many moral philosophers have debated (see Duff, 2001; Nozick, 1981),⁸ there may also be something odd – indeed circular – about offering punishment as a purpose of

⁷ Of course other things are rarely equal. A clear example of a decision not to be led by public opinion is the principled way in which Parliament decided to abolish capital punishment in the face of considerable public support for the death penalty.

⁸ A useful discussion of this debate can be found in Walker (1991).

sentencing. Criminal justice systems are, in essence, systems of deterrent threat whereby the state promulgates a set of legal rules and states that those who violate the rules will be punished. There may *on occasion* be reasons for not imposing the threatened punishment, but it is inconceivable that punishment should not be the default response to the violation of criminal laws. Punishment is what the courts do. That punishment is an important purpose of sentencing is of course the thesis of retributivism. Retributive sentencing theorists would argue that retribution – or state-imposed vengeance – can by itself justify punishment, in contrast to utilitarians, who would look for some social benefit to flow from punishment, such as deterrence or rehabilitation or public protection. The best way of resolving these philosophical puzzles, first proposed by Herbert Hart (1968), is to distinguish between questions about:

- the general justifying aim of systems of punishment;
- the distribution of punishment – who should be punished and with what severity;
- the selection of a particular punishment, once decisions about proportionality have been made.

In relation to the general justifying aim of our system of criminal law, most people would probably look to utilitarian principles – although some may regard retribution or vengeance as a fundamental justification for punishment. On questions about the distribution of punishment, most of us will appeal to deserts or retributive principles about harm, culpability and proportionality. On questions of sentence selection, utilitarian considerations may again enter the picture, where a specific sentence of a given weight may be selected to achieve a particular purpose, such as deterrence or rehabilitation or reparation. According to this perspective, the best way of interpreting the Section 142 provisions on the purposes of sentencing is that punishment is an axiomatic purpose: the sentencer always sets out with the intention of imposing punishment. The main choices facing the sentencer are between punishment alone, and punishment in combination with other sentencing purposes.

Previous convictions

After the seriousness of the crime, the offender's previous record is the most important determinant of the sentence imposed. First-time offenders usually receive a less severe sentence, while people who have lengthy criminal records are sentenced much more

severely (for reviews of research, see Roberts, 1997; 2008). The *Criminal Justice Act 2003* directs courts to consider each previous conviction as aggravating the seriousness of an offence, if it is reasonable to do so. The *Criminal Justice Act 2003* identifies three critical dimensions of previous offending: the number, nature and 'recency' of prior convictions. These dimensions all affect the extent to which an offender's previous convictions enhance the seriousness of the offence and hence the severity of the sentence. How do the public consider these dimensions? In law, with the passage of time, previous convictions become less relevant for the purposes of sentencing, and ultimately extinguish. This is true in England and Wales (see Ashworth, 2005) as well as other common law jurisdictions (Roberts, 1997).

Costs of Disposals

A further issue on which the SAP desired to have systematic information was public attitudes to the costs of sentencing, and whether people thought that sentencers should be cost-sensitive in their choice of sentences. Courts may impose a variety of different sentences on offenders, ranging from relatively mild dispositions such as community orders with minimal conditions to lengthy terms of custody. Relative to community penalties imprisonment is an expensive penal option – particularly in England and Wales (Carter, 2007; Matrix, 2007). This is one reason why effective alternatives to a custodial order are important. The question arises of whether, and to what extent, a court should take the costs of different disposals into account when considering the sentencing options in any given case.

The 'public information deficit'

However one might go about measuring public views on sentencing principles, one factor that has to be taken into account is that people's views are formed against a backdrop of misinformation about the realities of court practice. Our research and that of others has demonstrated that people systematically overestimate the leniency of the courts (see Roberts and Hough, 2005, for a summary). Thus their attitudes tend to be formed amidst a misplaced cynicism about sentencing. For example, those people who underestimate the courts' use of imprisonment are likely to think that the courts are too lenient, and by extension they may believe that the system places insufficient weight on punishment as a sentencing goal. One needs to take this into account in interpreting patterns of responses.

Research aims

The overall aim of the study was to investigate the views of the public on the kinds of factors which increase or decrease the seriousness of an offence, and the factors that make an offence sufficiently serious to warrant a custodial sentence or community order. The study focused on the sentencing of *adult* offenders. More specifically, the study examined public attitudes to:

- the purposes of sentencing;
- the circumstances that make an offence serious enough for custody to be justified;
- the features of a case that would tend to make a community order inevitable;
- the relative weight that should be attached to individual factors relating to the offence and offender;
- the interaction of factors relating to the offence and offender (for example whether offender mitigation can ever outweigh an aggravating factor);
- the extent to which the costs and comparative effectiveness of custodial and community sentences should impact on sentence selection; and
- the relative seriousness of different types of offence, and approaches to 'ranking' seriousness.

Research Methods

Our approach to the task was informed by two basic principles. First, we regarded it as essential to combine qualitative and quantitative methods. We needed to be able to generalize from our research samples to the population as a whole, which places a quantitative sample survey at the heart of the project's methodology. But we also needed to get a qualitative 'feel' for the way that people think and talk about the issues under investigation. This was partly to help us develop a survey instrument that actually reflected the categories and concepts that people use when talking about punishment, and partly to help us interpret the quantitative results. We therefore used a strategy of conducting eight focus groups, followed by a survey of 1,023 members of the general

public. In both the focus groups and the survey we kept our questions focused as much as possible on the *specific* and on the *concrete*. In this field, it is preferable to derive implicit general attitudes from responses to a set of specific question than to ask general questions directly. Answers to general questions are hard to interpret, as they can easily reflect respondents' misperceptions more than considered opinion (Roberts et al., 2003; Roberts and Hough, 2005).

Focus Groups

Eight focus groups involving a total of 69 participants were conducted in London, Liverpool, Birmingham and South Wales. The groups were assembled by a specialist company, Plus Four, and were structured by age and class, with young, mixed and older groups. Four of the groups were single-sex and four mixed; and groups broadly reflected the ethnic mix of areas from which they were drawn. The participants were socially diverse – ranging in terms of their occupations from professional/managerial to semi-skilled and unskilled manual. Ten participants were black, seven Asian and three described themselves as of mixed race/ethnicity, and all others were white. In total, each focus group session lasted around two hours, and all participants received an incentive payment of £40. We treated the first focus group as a pilot, but as it turned out, there was no need to modify our approach.

At the outset of each session, participants were asked to complete a short written questionnaire. This was designed partly to get respondents thinking about the topic, and partly to settle them into the task whilst everyone assembled. It asked about attitudes to sentencing, and for estimations of the proportions of convicted offenders who are sent to prison for various offences. The discussion then opened with the facilitator asking participants what they regarded as the main purposes of sentencing; they were then asked to rank the five CJA s. 142 purposes in order of importance. Participants were asked to consider the weight that sentencers should attach to the costs of sentences, and then to discuss offence seriousness. The second half of each session was given over to discussion of two sentencing vignettes. Participants were asked to pass sentence on each of the cases, and then to consider the impact of various changes to the core scenarios.

Quantitative Survey

For the quantitative component of the research, face-to-face in-home interviewing was conducted using a representative quota sample of 1,023 adults aged 18+ in England and Wales. A 30-minute questionnaire was administered via CAPI (Computer Aided Personal Interviewing). (Further information is provided in Appendix A.) The questionnaire was developed by GfK NOP in close collaboration with ICPR and the Sentencing Advisory Panel. A copy of the complete questionnaire, showing frequencies, can be found in Appendix B of this report. The questionnaire began with questions about the purposes of sentencing. This was followed by a series of questions on crime seriousness, aggravating and mitigating factors and the custody threshold. Then respondents were asked about the impact of previous convictions on sentencing. This was followed by questions on the acceptability of community orders as an alternative to custody. The final part of the survey comprised the Conjoint methodology.

The *Allocation-Based-Conjoint* method was used to assess the relative weight that the public assign to various mitigating and aggravating factors. Allocation Based Conjoint (ABC) analysis has been firmly established in the healthcare industry for many years. It was considered that an ABC methodology would be well suited for this research as it is capable of measuring the impact of different factors alone and in combination. Each respondent was shown eight different versions of a sentencing vignette, each with a different combination of aggravating and mitigating factors. For each version of the vignette, the respondent was asked to select a sentence. (The exercise was then repeated with a second vignette, involving a different offence type.) The analysis permits the researcher to manipulate a number of factors and establish the ‘weight’ of each factor independent of the influence of other factors (see Appendix A). The survey findings are based on a sample, and estimates are thus subject to sampling error. As a rule of thumb, subgroup differences of less than seven percentage points should be ignored unless they are part of a wider pattern⁹.

⁹ Purists would argue that testing for statistical significance is inappropriate with quota samples such as ours. However it is common practice within the survey industry to calculate sampling error for quota samples by treating them as if they were probability samples.

Structure of the report

In Chapter 2, we present findings from the focus groups and survey on the purposes of sentencing, while Chapter 3 looks at perceptions of offence seriousness. Chapter 4 discusses respondents' views on aggravating factors; Chapter 5 views on mitigation; and Chapter 6 the results of the conjoint analysis. Chapter 7 presents findings on the custody threshold and on the weight that should be given by sentencers to the costs of different sentences. Chapter 8 draws together the various findings and discusses their relevance. Where substantive differences emerged between demographic and other sub-groups – for example between tabloid and broadsheet readers – these are noted throughout the text.

Chapter 2 The purposes of sentencing

Before deciding on sentence a court must identify the purpose of sentencing the offender. Sentencing objectives are therefore critical to the determination of sentence. This chapter reports findings on public support for different sentencing objectives. Polls in other jurisdictions have measured the level of public support for the objectives of sentencing (e.g., Paulin et al., 2003; Canadian Sentencing Commission, 1987; Flanagan and Longmire, 1996; and see Roberts and Hough, 2005, Chapter 4 for a review). In addition, the Home Office Sentencing Review (Home Office, 2001) published findings from a survey of the public which asked respondents to rank seven purposes of sentencing. That survey found the highest level of support for rehabilitation (see p. 109). The present survey is the first study since the Criminal Justice Act to address public attitudes to these issues in England and Wales.¹⁰ The subject was explored both in the focus groups and in the large-scale survey.

Focus group findings

The first question asked of the focus group participants what they felt the main purposes of sentencing *should be*. Initially, participants were not prompted by any mention of the five purposes set out in section 142 of the Criminal Justice Act 2003. In six of the eight groups, punishment was mentioned as a purpose of sentencing: for example, *'Just for there to be seen to be punishment ... that if you are doing something wrong, it will be recognised, so people know there are boundaries to behaviour.'* Rehabilitation - *'some kind of ... period of reflection so the person who committed the crime would not decide to do it again'* - was mentioned in five groups, as was individual and/or general deterrence. Public protection was mentioned in four groups: *'Make the community safer.. and just get people off the streets.'* Among other comments, participants referred to the need for sentences to be *'fair'* and fit the crime; to the need for tough sentencing; and the importance of courts *'sending out the right message'*. The suggestion that offenders be made to do something *'useful'* for the community, like cleaning the streets, was the

¹⁰ In 2003 MORI conducted a survey which asked respondents to rate the importance of different "aspects of the work that the courts do", a rather different question. For older research, see Walker and Hough (1988).

closest to an unprompted mention of reparation: *'Better than them all being in prison, locked up, doing nothing – isn't it.'*

We then asked participants to rank the importance of the five CJA purposes of sentencing. This was generally found to be a hard task. Participants tended to stress that all five were important – and also emphasised the inter-relationships between them. None of the purposes emerged from this exercise as obviously more or less important than the others, in the eyes of the respondents; however, reparation probably received least weight overall – reflecting the findings of our quantitative survey. Perhaps the clearest finding to emerge was that the purposes of sentencing varied from case to case: 'it depends' was a theme that frequently emerged.

Views on rehabilitation

The focus group participants generally saw rehabilitation as an important purpose of sentencing, among others. In an attempt to gain further insight into their views on rehabilitation, we asked whether the passing of a community order can be justified in term of its likely impact on the offender's behaviour. Participants found this difficult to answer in the abstract, and tended to say that it would depend on the seriousness of the offence. Further views on rehabilitation emerged when we asked participants to consider the range of requirements that can be attached to a community order. Here, we found that most respondents were broadly positive about the 'menu' approach to community orders, whereby the sentencer can select whatever combination of requirements would seem to be most suited to the individual and offence before him. At the same time, there was considerable scepticism about the value of many of the specific requirements – particularly those, such as curfews and unpaid work, which are essentially punitive. This scepticism was mainly rooted in the widespread perception that they are poorly enforced – or not enforced at all. Some argued as well that poor enforcement encourages offenders, and particularly young offenders, to view these so-called punishments with contempt: *'They wear shorts, and they're showing off the tag - it's like a trophy.'* In contrast, however, many participants appeared to be more favourably disposed towards those requirements that are specifically rehabilitative in orientation – such as drug or alcohol treatment or activities such as education and training:

These are the things that help people actually change.

You've got to break the social cycle ... Give them education so that they have the tools to move on.

Survey findings

The survey explored views about sentencing purposes from several directions. The first question asked all respondents to rate the importance of the five sentencing objectives found in the Criminal Justice Act 2003. People were asked to use a 10-point scale where 1 was 'not at all important' and 10 'most important'. Table 2.1¹¹ shows the results, which reproduce the pattern generally found in other countries: all purposes are rated as being high in importance by most respondents. All five statutory objectives received a rating of 8, 9 or 10 on the ten point scale from at least two-thirds of the sample. However, some differentiation did emerge: 'Protection of the public' attracted the highest level of support (96% of sample rating this objective as high in importance). Reparation attracted the lowest level of support (66% rated it as 8, 9 or 10).

Table 2.1 Ratings of the importance of sentencing purposes 'in general'

	High Importance (8-10 on scale)	Average Importance (4-7 on scale)	Low Importance (1-3 on scale)
1. Public protection	96%	5%	<1%
2. Preventing crime	86%	12%	<1%
3. Punishing offenders	85%	16%	1%
4. Rehabilitation	73%	21%	5%
5. Reparation	66%	29%	3%

Question: 'I am going to read these purposes to you, and I would like you to rate the importance of each purpose in general, using a 10 point scale where 1 means not at all important and 10 means most important. How important is: *Punishing offenders for their crimes; Preventing crime – for example by deterring offenders and potential offenders; Reforming and rehabilitating offenders; Protecting the public; Reparation, i.e., getting offenders to make amends to the victim and/or the community*'. Base: 1,023 respondents.

The primacy of public protection over other objectives such as reformation or reparation can be explained by previous survey findings in Britain and elsewhere. When asked about sentencing, most people have serious offences in mind, committed by repeat offenders (e.g., Roberts and Hough, 2005; Doob and Roberts, 1983; Indermaur, 1987).

¹¹ For almost all the questions the number of respondents who responded 'don't know' was 2% of the sample or less. For this reason we exclude these respondents from most tables. When the percentage of 'don't know' responses was 3% or higher, they are presented in the table.

So our respondents probably had the more serious cases in mind, and this may have directed them towards certain objectives. For this reason, subsequent questions explored public support for sentencing minor and serious offences.

Comparing minor and major offences

A split sample methodology was used to measure how attitudes to the purposes of sentencing differed according to the seriousness of the offence. Half the sample was asked to rate the same sentencing objectives first with respect to ‘minor property crimes like shoplifting or theft’, and then ‘serious financial crimes such as major frauds in large financial institutions’. The other half was asked to rate the sentencing objectives first with respect to offenders convicted of ‘less serious crimes of violence such as assault where the victim does not need medical treatment’, and then with respect to ‘serious crimes of violence like an assault where the victim needs hospitalization’. Tables 2.2 and 2.3 summarize the results.

Table 2.2 Ratings of the importance of sentencing purposes, minor property crime and serious financial crimes

	High Importance (8-10 on 10-point scale)	Average Importance (4-7 on scale)	Low Importance (1-3 on scale)
<i>Minor Property Crimes</i>			
Public protection	75%	21%	2%
Preventing crime	77%	22%	1%
Punishing offenders	72%	25%	2%
Rehabilitation	66%	28%	5%
Reparation	66%	29%	4%
<i>Serious Financial Crimes</i>			
Public protection	80%	16%	2%
Preventing crime	84%	14%	2%
Punishing offenders	84%	16%	1%
Rehabilitation	65%	28%	7%
Reparation	75%	21%	3%

Q: 'Now, thinking of offenders convicted of minor property crimes like shoplifting or other theft / offenders convicted of serious financial crimes such as major frauds in large financial institutions, such as banks or insurance companies. For crimes such as these, how important is': (same list as Table 2.1). Base: 495.

Table 2.3 Public ratings of the importance of sentencing purposes, minor and serious crimes of violence

	High Importance (8-10 on scale)	Average Importance (4-7 on scale)	Low importance (1-3 on scale)
<i>Minor Crimes of Violence</i>			
Public protection	80%	18%	2%
Preventing crime	75%	22%	3%
Punishing offenders	70%	25%	3%
Rehabilitation	67%	30%	3%
Reparation	62%	32%	5%
<i>Serious Crimes of Violence</i>			
Public protection	95%	4%	<1%
Preventing crime	89%	8%	<1%
Punishing offenders	92%	7%	<1%
Rehabilitation	80%	17%	2%
Reparation	77%	19%	4%

Q: 'Turning now to offenders convicted of less serious crimes of violence like an assault where the victim does not need medical treatment/ offenders convicted of serious crimes of violence like an assault where the victim needs hospitalization. For crimes such as these, how important is..' (same list as Table 2.1). Base: 528.

First, all sentencing objectives receive higher ratings of importance in response to the more serious forms of offending, whether involving property or violence. Punishment in particular becomes more important to respondents asked to consider the more serious crimes, reflecting the greater public concern about these crimes. Thus 70% of the sample provided a high rating of this objective for minor crimes of violence; the proportion assigning this level of importance rose to 92% with respect to serious violent crime. Second, ratings of public protection were highest for the sub-sample asked about serious violent crime. Third, support for rehabilitating offenders remained high, even for those convicted of serious crimes of violence. Thus four out of five respondents provided a high importance rating for rehabilitation when asked in the context of offenders convicted of serious crimes of violence (Table 2.3). Finally, reparation is regarded as an important sentencing purpose for serious crimes (whether involving financial offences or violent crime) – but this is regarded as less important for less serious offences.

It is clear from these results that the level of public support for different sentencing purposes changes according to the nature and seriousness of the offence category

under consideration. In this respect the public in this country are responding to the issue of sentencing purposes in much the same way as people in other jurisdictions, and indeed the courts as well. Section 142 of the *Criminal Justice Act 2003* does not assign any particular weight to the purposes of sentencing, and nor does it suggest that any single purpose is more important than another. For the purposes of comparison, Appendix C presents findings from surveys of the public in two other common law jurisdictions, where similar shifts in support for sentencing objectives, according to offence nature and seriousness, are apparent.

Variation between sub-groups

Surprisingly, perhaps, there was little variation across different sub-groups. We paid particular attention to any possible differences between victims and non-victims of crime. Overall, just over a quarter (26%) of the survey sample reported having been a crime victim over the past year. The views of victims were not appreciably different from those of non-victims. For example, in response to the question which asked respondents to rate the importance of punishment as a sentencing purpose, the average importance rating for victims was 9.15 compared to 9.00 for non-victims. Hence the issue of sentencing objectives does not appear to be sensitive to respondent characteristics.

Implications

One of the aims of the research was to *consider whether any one statutory purpose of sentencing is more important than another*. What emerged most clearly from the focus groups and the survey was that sentencing objectives vary from case to case. From the perspective of the public, the nature of the case appearing for sentencing determines the relative importance of the various sentencing purposes. This is consistent with the way in which our survey respondents placed high value on four out of the five sentencing purposes – reparation being the one that secured least support, with the exception of serious financial crime.

Public protection emerged as the sentencing purpose to which the highest proportion of people attached primacy. As we have noted, these findings echo those emerging from public opinion surveys in other jurisdictions. Taken together, they suggest that no single

sentencing objective can be singled out as attracting significantly higher levels of support than others. In our view the findings also demonstrate the need – from the perspective of the public at least – to have multiple sentencing objectives so that these may be tailored to the specific circumstances of individual cases.

Chapter 3 Crime Seriousness

In a sense, this entire research project was an exploration of public views on crime seriousness – the factors which increase or decrease crime seriousness, and, by inference, sentence severity. This chapter discusses findings relevant to some specific questions about crime seriousness. We begin by summarizing discussions in the focus groups with respect to the determinants of seriousness. Participants were asked to rank six offence types according to their seriousness. We did not place these questions on the survey, partly due to limited space in the questionnaire and partly because of the evident difficulty that participants had in undertaking this kind of ranking.¹²

Determinants of offence seriousness

The focus group participants were asked what makes an offence ‘serious’. In all eight groups, harm caused to individuals was described as the main criterion of offence seriousness. The relevance of emotional or psychological damage caused to victims (including fear), as well as physical harm, was mentioned in several groups. Several participants emphasised what another referred to as ‘*duration of impact*’; someone else, similarly, spoke of ‘*the impact on the victim for their future life – say someone’s badly injured – I think that’s really serious.*’ It was explicit or implicit in much that was said that harm in the form of financial loss is less important than physical, emotional or psychological harm; and some emphasised that acquisitive crime is serious when it has a personal dimension:

To go into somebody’s house, who’s worked really really hard for what they’ve got to go into somebody’s house and ransack it, and take whatever you can ...

If someone robbed from my house, I don’t think I’d be able to go back there again – knowing that someone’s been there ... touched all my stuff...

¹² There is, of course, an extensive research literature on public rankings of offence seriousness (e.g., Wolfgang et al., 1985 and Roberts and Stalans, 2000 for a review). The fact that respondents will comply with a ranking exercise does not necessarily justify it as a valid approach.

In half the groups, there were unprompted mentions of culpability, usually expressed in terms of 'intent' or 'premeditation'. When specifically asked if culpability or intention is a factor in seriousness, most participants agreed. The meaning and implications of culpability were not explored in any depth, although in one group there was a vigorous debate about whether a drunk driver who kills someone on the road could be said to have committed a premeditated offence.

Ranking offence types

In addition to asking participants about offence seriousness in general terms, we presented them with three pairs of offences and asked them to compare the seriousness of each pair, and then to rank all six. Participants' views varied considerably in how they rated and conceptualised seriousness for this exercise – but several also commented on the difficulty of comparing the seriousness of such broad offences or offence types.

1. Criminal damage and social security fraud

In two of the focus groups, participants were unanimous that criminal damage is more serious; in the other groups, views on the relative seriousness of these two offences were mixed. Those who saw criminal damage as more serious did so on the grounds of its possible impact on individuals (*'Spray-painting an old lady's house could be devastating...'*), while fraud was seen as more serious in terms of scale and pre-meditation (*'[fraudsters] are very, very clever'*).

2. Possession with intent to supply class A drugs and assault causing grievous bodily harm (GBH)

Several participants regarded GBH as more serious, while others placed a greater emphasis on the drugs offence, and yet others argued that both are equally serious. The seriousness of GBH was said to lie in the harm caused to individuals, which was contrasted with the *'self-inflicted'* harm suffered by those who buy drugs. On the other hand, many spoke of the long-term and wide-scale damage that the supply of drugs can do to whole communities: *'it has so much of a knock-on effect on so many other things'*.

3. Sexual assault (involving inappropriate touching) and dangerous driving

Participants were equally divided on the question of whether sexual assault (in terms of its impact on individuals) or dangerous driving (because of its *potential* to cause death) is more serious. Some raised the issue of culpability rather than harm – arguing that sexual assault is more intentional and hence more serious. One commented: *'I think most of us drive dangerously one time or another; few of us grope women at random.'*

Overall ranking of all offences

Most participants selected supply of class A drugs and/or GBH as the most serious of all six offences; several argued that dangerous driving should also be deemed 'most serious'. Social security fraud was frequently identified as one of the least, or *the* least, serious; with smaller numbers of participants also selecting dangerous driving, criminal damage or (more rarely) supply of class A drugs as 'least serious'.

Implications

The focus group findings point to the frailty of ranking exercises when these are applied to *disparate* categories of crime and to *broad* categories of crime. It is well-established that people will comply with such exercises and that they have some surface validity. However, people clearly found it difficult – and arbitrary – to say whether, for example, the diffuse and long-term harms done by drug dealing were more or less serious than the very specific harms done to an individual victim of GBH.

Chapter 4 Aggravating factors at sentencing

Crime seriousness is determined in large measure by the number and nature of aggravating and mitigating factors present. In fact, issues relating to aggravation and mitigation lie at the heart of this study. This and the next chapter present findings separately on public attitudes to potential source of aggravation and mitigation. Chapter 6 then presents the findings of our conjoint analysis, which explored the ways in which these factors operate in combination with each other.

Focus group findings

Participants were asked to ‘sentence’ the offender described in two vignettes (see Box 4.1). Once they had done this, they were presented with a number of potential aggravating factors and asked to consider their significance and, more specifically, their impact on sentence. These factors mostly related to offence seriousness, but some (namely, that the offence was committed on bail and the existence of previous convictions) were offender-related.

Box 4.1 The focus group vignettes

CASE 1: House burglary:

The offender entered the house through an open first-floor window. He took a laptop and a handbag containing £30 cash and credit cards. No damage to the house was caused. The victims were not at home at the time. The offender is aged 25 and has no previous convictions. The offender pleaded guilty to the offence in court.

CASE 2: Assault occasioning actual bodily harm:

The offender and victim got into an argument in a pub where they had both been drinking. The offender punched the victim in the face three times, leaving the victim needing six stitches to a cut on his chin. The offender is aged 25 and has no previous convictions. The offender pleaded guilty to the offence in court.

Offender-related aggravation

Previous convictions proved especially important to participants. In particular, when presented with the scenario of a burglar with many recent and relevant convictions, participants unanimously favoured tough custodial sentences, in contrast to the non-custodial sentences most had selected for the burglar with a clean record. Sentencing

severity declined as the recency, relevance and number of previous convictions reduced. These findings are not unexpected: and they were mirrored in the results of the survey. What is more interesting is the way that participants' unanimity on sentencing dissipated as soon as gaps in offending history were introduced. Many participants expressed an interest in the background and individual 'story' of the offender. Hence, when asked about a recidivist burglar who re-offended after five crime-free years, some participants stated that he merited the same sentence as if he had had no break in offending (that is, a tough custodial sentence), while others considered the five-year gap to be significant and wanted to know more about why he had begun to offend again.

He shouldn't be over-punished for what might be a minor slip.

He's tried – there's got to be a reason for the gap.

Views were similarly mixed on the ABH offender when it was indicated that he had convictions for two other offences of violence dating back eight and ten years. One participant stated that this offender should be punished severely because the pattern of offending demonstrated that '*he has violence in him*', while another argued against this, saying, '*I think he's trying to work on it, but it just keeps rearing its ugly head... The gaps are getting longer and longer.*'

A large majority of participants believed that if the offence of burglary was committed when the offender was on bail, this was a significant aggravating factor. For many, this pushed the offence over the custody threshold:

If the threat of going to jail for something he did or didn't do ... hasn't been a deterrent, then I think I'd be inclined to say he deserves to go to jail.

Total disregard for any rules whatsoever.... Kind of making a conscious decision not to obey the law.

Some, however, were uncertain about the implications of offending on bail and wanted to know more about the case in relation to which the offender had been bailed; it was also suggested by some that it would be more appropriate to remand the offender in custody than to change the sentence for the burglary conviction.

Offence-related aggravation

Six scenarios involving offence-related aggravating factors were presented to the focus group participants:

- ABH involved an elderly and frail victim;
- ABH caused a greater level of injury to the victim;
- Burglary involved a breach of trust (the burglar had known the victims);
- ABH had a homophobic motivation;
- Burglar had taken jewellery in addition to other items;
- Victim of the ABH suffered anxiety attacks after the assault.

Participants tended to view the first two factors as the most serious of the offence-related aggravating circumstances. For most participants, these factors were significant enough to push the offence over the custody threshold; and the 'elderly victim' factor, in particular, led to almost unanimous and vociferous calls for custody. A clear majority of participants also deemed breach of trust and homophobia to be significant aggravating factors; but most did not think that they necessarily warranted custody. Views were more mixed on the implications of the ABH victim's anxiety attacks and the burglar's stealing of the jewellery: many argued that these factors did not increase the seriousness of the offence, while others viewed them as clearly aggravating but did not, for the most part, suggest that they merited a custodial rather than non-custodial penalty. Most of the offence-related aggravating factors gave rise to differing *interpretations* of their significance, as well as differing *weightings* of significance. Notwithstanding their tendency to prioritise harm when talking in general terms about offence seriousness, many participants spoke primarily about intention (or what we might term offender culpability) rather than harm when they assessed specific aggravating factors. Others, in contrast, remained much more focused on harm. For example, breach of trust relating to the burglary was deemed to be an aggravating factor by some on the grounds that the victims suffered more (increased harm) because the crime was '*more personal*' and a '*worse invasion*'. But others argued that the breach of trust was aggravating because it indicated that the burglar had involved '*real intent and planning rather than opportunity*'.

Similarly, when asked if the offence was more serious if the burglar took jewellery in addition to other items, some said it was because of the impact on the victims, especially

if the jewellery had sentimental value (increased harm). One participant spoke of how devastated she would be if her late mother's wedding ring was stolen. Some, however, said that the offence was more serious because the burglar had evidently spent longer in the house hunting for valuable items (increased culpability):

He's obviously gone rummaging to find the jewellery...

It's more professional.

Yet others, in contrast, argued that there was no impact on offence seriousness because, notwithstanding the greater loss suffered by the victims, the criminal action of the offender in entering the house and stealing property remained the same (culpability unaltered):

If he's took a teapot or a 2 grand ring – he's still broken into your home and stolen it. It shouldn't really matter, the value of the property.

It's not the value. It's the principle.

Survey findings

Survey respondents were presented with 15 factors or circumstances which might increase the seriousness of the offence. They were given a show-card and asked whether each factor 'always, often, only sometimes or never makes a crime more serious'. Table 4.1 shows that people clearly differentiated among the factors, seeing some as increasing the gravity of the criminal conduct in all or almost all cases, while others are seen as being far less important to the determination of crime seriousness.

Table 4.1 Public perceptions of factors increasing crime seriousness

	Always increases seriousness	Often increases seriousness	Sometimes increases seriousness	Never increases seriousness	Makes no difference to seriousness
1. Offender used a weapon	88%	6%	2%	<1%	3%
2. Victim was a child	80%	9%	5%	1%	5%
3. Crime was committed in the presence of children	69%	16%	7%	1%	7%
4. Crime victim was elderly	68%	16%	6%	1%	8%
5. Offender planned the crime some time in advance	67%	16%	7%	1%	9%
6. Offender was the ring-leader	66%	19%	5%	<1%	9%
7. Offender has prior convictions	65%	17%	6%	1%	11%
8. Victim attacked for religion/ race	58%	16%	7%	1%	18%
9. Offender abused position of trust	53%	22%	15%	1%	9%
10. Offender part of gang	52%	25%	9%	1%	13%
11. More than one victim	47%	25%	12%	2%	14%
12. Victim was a relative or spouse of the offender	40%	19%	19%	3%	17%
13. Offender has prior, unrelated convictions	38%	22%	22%	2%	16%
14. Offender was drunk at time of crime	24%	26%	20%	4%	25%
15. Theft was from the State rather than an individual victim	21%	18%	22%	7%	32%

Q: 'In general, some circumstances of a case make the crime more serious. I am going to read you a list of circumstances. Please take your answers from this show-card: **Always** makes a crime more serious; **Often** makes a crime more serious, **Sometimes** makes a crime more serious or **Never** makes a crime more serious. Or does this **make no difference** to the seriousness of the crime.' Base: 495.

The most important factor was whether the offender used a weapon to commit the crime. Almost nine out of ten respondents stated that this circumstance *always* increased the seriousness of the offence, and another 6% that it *often* increased crime seriousness. Other factors that the sample believed always or often increased crime seriousness

included 'the victim was a child'; 'crime was committed in the presence of children'; 'victim was elderly'; 'offender planned the crime some time in advance'; 'the offender was the ring-leader in the commission of the offence'; and 'the offender has previous convictions'. All these circumstances were identified as always increasing crime seriousness by at least two-thirds of respondents (see Table 4.1).

These findings demonstrate the coherence of public reactions to sentencing factors. Two important general concerns emerge from Table 4.1: harm and culpability. The three factors which were seen as increasing seriousness by the highest proportions of respondents were harm-related: whether the offender used a weapon (thereby increasing the threat to life) and whether the harm was increased because the victim was vulnerable, or because the offence caused harm to others. The next three factors are all related to culpability: the existence of premeditation, the fact that the offender was the ring-leader and the fact that the offender had prior convictions.

Variation between sub-groups in perceptions of aggravating factors

Some variation in attitudes to aggravating factors emerged as a function of respondent characteristics. For example, female respondents were more likely to regard the offence as being serious if the victim was a child (85% compared to 75% of males); if the victim was a relative or spouse (45% compared to 34%); if the crime was committed in the presence of children (73% vs 64%); if there was more than one victim (52% vs 41%). No systematic differences emerged between victims and non-victims regarding the factors which could make an offence more serious. Compared to broadsheet readers, tabloid readers tended to regard almost all the potentially aggravating circumstances as increasing the seriousness of the case. For example, 77% of tabloid readers but only 46% of broadsheet readers believed that the victim being elderly increased the seriousness of the crime in all cases.

Effect of Previous Convictions on crime seriousness and sentence severity

A number of questions in the survey explored the relevance of previous convictions to public perceptions of crime seriousness and public sentencing preferences. Previous research has demonstrated the importance of previous convictions to public sentencing preferences (see Roberts, 2008, chapters 8 and 9), although the exact nature of public reaction is only now emerging clearly. Before reviewing responses to experimental

questions in which sub-samples of respondents were asked to sentence offenders with different records, we note findings from some related, more general questions. First, two items on the list of potential aggravating factors are related to previous convictions. 'Offender has previous convictions' was seen as always increasing crime seriousness by 65% of the sample. A further 17% believed that previous convictions 'often' increased the seriousness of the crime. This demonstrates the link between previous convictions and crime seriousness in the public mind, and suggests that section 143 of the *Criminal Justice Act 2003* is not inconsistent with community views¹³.

Second, another item on the same question asked about an offender who had prior unrelated convictions. It is interesting to note that the percentage of the sample that saw this as always increasing crime seriousness was much lower: 38%. Thus whether the previous offending was related to the current offence is clearly of interest to members of the public. This is also consistent with the Criminal Justice Act 2003: section 143 identifies the relationship between the current and previous offending as one of the considerations for a court determining whether the prior offending is relevant for current sentencing purposes. Further evidence of the relevance of an offender's history of compliance with the law emerges from the question in which respondents were asked to state whether a list of factors should result in a more lenient sentence. If the offender had *no* prior convictions, around a quarter of the sample believed that this should result in a more lenient sentence in all or most cases. A further 52% believed that this should result in a more lenient sentence in some cases. Of 13 factors explored by this question, the absence of prior convictions was the second most popular item justifying a lenient sentence. A similar pattern emerges with respect to the issue of deciding between community and custody. When asked about a case of assault, the most important factor tipping the balance in favour of a community order (over custody) was that the offender had no previous convictions. Around 70% of the sample believed that this circumstance probably or definitely justified the imposition of a community order rather than a term of imprisonment. Clearly, the public see first offenders as different from recidivists, and this justifies more lenient treatment for the former.

¹³ Views are consistent with this section in that people regard previous convictions as important; however the findings do not suggest that people think that the impact of previous convictions is cumulative, in the way that the section might suggest.

Impact of previous convictions on custody rates

One of the research aims was to explore the factors affecting crime seriousness. The Criminal Justice Act 2003 explicitly identifies previous convictions as an aggravating circumstance, where those previous convictions are sufficiently recent and relevant to the current offence (see section 143(2)). To explore public views on previous convictions in more detail we divided the sample randomly into thirds. Each sub-group was asked to sentence the same crime but under a different criminal history description: the offender had no previous convictions, two related convictions, or four previous related convictions. Respondents were asked to choose between imposing custody, a community order and a fine. Those who chose to impose a term of custody were further asked to identify a specific term of imprisonment.

The results are summarized in Table 4.2 from which it may be seen that even a relatively short criminal record had a dramatic impact on the severity of sentences assigned by the public. The custody rate (percentage of the public favouring custody) rose from 11% for the first offender to 65% for the offender with two prior convictions, and then to 83% for the offender with five related previous convictions. The sample also made a greater distinction between the first two conditions than the second and third. This is consistent with previous research which found that the public make a greater distinction between first and repeat offenders than between recidivists with different criminal histories (Roberts, 2008, pp. 176-178).

Table 4.2 Sentencing preferences and number of related prior convictions

	% choosing Prison (median number of months)	% choosing a Community Order	% choosing a Fine
Offender has no prior convictions (base: 154)	11% (6 months)	64%	24%
Offender has two related prior convictions (base: 178)	65% (12 months)	26%	8%
Offender has four related prior convictions (base: 163)	83% (12 months)	13%	4%

Q: 'Now, please consider the following case of assault. The victim, who was assaulted while they were walking home, suffered minor bruises. The offender has [no previous convictions for any offence/two previous convictions for assault/four previous convictions for assault]. Which of these sentences would you consider the most appropriate for this offender?'

This point emerges even more clearly when one examines the average length of custodial term selected. The median sentence for the first offender was 6 months. This rose to 12 months for the offender with two previous convictions – a significant escalation in sentence severity. However, in the condition with four previous convictions, the median sentence length was unchanged at 12 months. This result suggests that the public do not subscribe to a sentencing model according to which the severity of sentence escalates continuously with each additional conviction. This 'public' approach to the use of priors is at odds with the provision in the CJA which suggests that each additional conviction should increase sentence severity, if it is considered relevant.

Effect of 'Recency' of Prior Convictions on Sentencing Preferences

Respondents were asked to sentence an offender guilty of fraud under one of three descriptions: the offender had previous, related convictions from two, five or eight years ago. People were again asked to choose a sentence from among prison, a community order or a fine. The custody rates emerging from the three conditions were 68%, 66% and 58% respectively, indicating that people were less punitive towards the offender convicted eight years ago, but with respect to the decision to imprison at least did not distinguish between convictions occurring two and five years previously (Table 4.3). The median sentence length imposed was shorter for the offender convicted two years ago compared to the individual with prior convictions five years earlier (18 vs. 24 months).

This is a paradoxical result: one would expect the average term of custody to be higher for the offender with the more recent previous convictions, but this was not the case (see Table 4.3). This pattern suggests that unlike the courts, the public were not consistently using the dimension of recency of previous convictions.

Table 4.3 Effect of recency of previous convictions on sentencing decisions

	% choosing Prison (median number of months)	% choosing a Community Order	% choosing a Fine
Prior convictions occurred 2 years ago (base: 158)	68% (18 months)	20%	10%
Prior convictions occurred 5 years ago (base: 197)	66% (24 months)	18%	15%
Prior convictions occurred 8 years ago (base: 173)	58% (24 months)	27%	13%

Q: 'Now, please consider this case of fraud. The offender has been convicted of defrauding their employer of £10,000. The offender in this case has two previous convictions, one for theft and one for fraud. The two previous convictions occurred two/ five/ eight years ago'.

Variation between sub-groups in views on previous convictions

Tabloid readership made a difference to perceptions of the relevance of previous convictions. For example, 69% of tabloid but only 50% of broadsheet readers believed that the presence of previous, similar convictions always made a crime more serious. Similarly the tabloid readers were more likely to believe that prior, unrelated crimes made a crime more serious in all cases (41% vs 32% of broadsheet readers). Tabloid readers were also more punitive in sentencing offenders in the question which varied the number of previous convictions. Thus in the group asked to consider the case of an offender with two previous, related convictions, three-quarters of the tabloid reader sub-sample but only slightly over half the national broadsheet readership favoured incarcerating the offender. Victims, too, were more punitive: 74% favoured incarceration compared to only 62% of non-victims. The differences between readers of different newspapers carried into the question about the recency of previous convictions, with tabloid readers being consistently more punitive. For example, for the case of an offender with prior convictions eight years ago, 60% of tabloid but only one-third of

broadsheet readers still favoured custody. Differences between victims and non-victims were minimal, however.

Implications

Overall, there are three factors that stand out from our research as being significant. Carrying a weapon is one of these, reflecting evidence of intent (or culpability) and the potential for inflicting high levels of harm. Victim vulnerability is also clearly important: crimes committed against young, old or frail victims were clearly viewed as more serious than others. Thirdly, the findings confirm the importance of previous convictions to the public. People were prepared to make allowances for those with 'previous good character', but once this discount had been squandered, views hardened significantly. Participants in the focus groups seemed to be more sensitive to recency effects than survey respondents. Finally, consistent with previous research, there was evidence from this survey that the public would nevertheless place limits on the aggravating power of previous convictions.

Chapter 5 Mitigating factors at sentencing

In the focus groups we adopted the same strategy for exploring mitigating factors as we did for aggravation: participants considered two vignettes in which a range of mitigating factors were introduced. In the survey, respondents were asked whether a range of factors should be treated as mitigating.

Focus group findings

A wide range of potential mitigating factors – all of them personal mitigation – were presented to the participants in relation to both sentencing vignettes (see Box 4.1). There was little consensus about the significance of any of these factors, but it is possible to group them according to the overall weight that the participants gave them, as follows:

Factors accorded high levels of significance overall:

- Offender a single parent of young children (burglary and ABH);
- Offender being treated for depression at time of offence (burglary and ABH);
- Burglar is young: aged 18;
- ABH offender has learning disabilities.

Factors accorded moderate levels of significance overall:

- Offender has expressed genuine remorse (burglary and ABH);
- Burglar acted under intense pressure from uncle;
- Burglar voluntarily entered and wishes to continue drug treatment;
- ABH offender was severely abused as a child.

Factors accorded low levels of significance overall:

- ABH offender is older: aged 64;
- ABH offender is suffering from chronic physical illness;
- Offender is employed and will lose his job if imprisoned (burglary and ABH);

- Burglar committed the offence when in considerable debt;
- Burglar has voluntarily paid compensation to the victims.

The extent to which participants viewed the above factors as sufficiently important to pull a sentence below the custodial threshold was not easy to assess, especially since most participants selected a non-custodial sentence for the two vignettes in their original form (that is, without any aggravating or mitigating factors). However, it was evident that all factors except the offender's physical illness and, possibly, his older age were viewed as potentially pulling a sentence back from custody by some participants. The factors in the first of the above three groups produced the most calls for this kind of leniency in sentencing, and the factors in the third group produced the least. Only the single parent status of the offender was viewed by the overwhelming majority of participants as justifying a non-custodial sentence when otherwise custody would be considered.

Mitigation and culpability

Although there is no very obvious pattern to the ranking of mitigating factors in terms of their significance, culpability is an issue which comes to the fore. The most significant factor – single parent status – stands alone in its focus on the possible impact of imprisonment on people other than the offender – in this case their children. But the next three most significant factors – the offender's depression, youth and learning disabilities – all have a bearing on culpability in the sense that they can be said to make the offender less than fully responsible for his actions. These were, in fact, the terms in which some participants spoke about these particular forms of mitigation – especially the depression and the learning disabilities:

If it's clinical depression, he won't have so much control over it – if that is the reason ... It's not all his fault. [ABH scenario]

He's got less awareness of his actions. [Learning disabilities – ABH vignette]

Arguments *against* taking specific mitigating factors into account were usually framed in terms of culpability: that is, it was said that the given factor had no bearing on the offender's level of responsibility for the offence. Of the five factors that had the least significance for participants, none (with the possible exception of the offender's debt) had an obvious link to culpability. Indeed, several participants suggested that the

offender being 64 years of age or in employment (two of the 'least significant' factors) might even be considered aggravating rather than mitigating on the grounds that such an offender would be *more* responsible for his actions than a younger or unemployed man. In three different groups, participants said '*he should know better*' of the 64-year-old ABH offender; and in a fourth group, it was said that '*he should be a bit more sensible*'. Typical comments about the employed burglar were:

You knew that risk when you did the crime.

If he had a job, why's he burgling?

Differing rationales for mitigation

Notwithstanding the emergence of culpability as an important theme, assertions of the significance of individual mitigating factors were grounded also in other rationales. As we have already observed, this was true also of the aggravating factors - although personal mitigation, by its very nature, allows for a wider range of interpretations. For example, while three of the four most significant mitigating factors for participants (depression, learning disabilities and youth) were associated with reduced culpability, other rationales also emerged, often alongside the concerns with culpability. Many participants referred to the depressed, young or learning disabled offender's need for help, and the scope to make this help available through sentencing – thereby articulating what can be described as a rehabilitative rationale for mitigation:

Therapy. Needs some sort of help programme [burglar with depression]

He's got to have a certain kind of treatment for that. [offender with learning disabilities]

He needs to learn a trade, get some respect for himself ... this is where he needs help. [18-year-old burglar]

Some participants with a view to rehabilitation and/or the need to avoid imposing disproportionately harsh punishment emphasised the potentially damaging effect of prison on offenders who are depressed, learning disabled, or young. Talking of the burglar with clinical depression, one participant commented that prison would '*push him over the edge*'. The 18-year-old burglar was likely to '*turn ... into a hardened criminal*' if sent to prison, said another. A third argued that:

Sending someone with learning difficulties to prison is exacerbating the problems – ... he's going to be totally abused while he's in there; at the very best he's going to be made fun of, mocked...

Mitigation and individualised sentencing

While there was wide variation in how the participants responded to the mitigating factors, all appeared to believe that at least some factors should have a bearing on the sentencing decision. This reveals a general attachment to individualised sentencing, whereby the sentence reflects aspects of the offender's background, circumstances and response to the offence as well as the seriousness of the offence itself. In other words, the participants were willing to view the offence, for the purposes of sentencing, as part of a bigger story of the offender's life and not simply as an isolated event. And sometimes, as we also heard comments about previous convictions suggesting that people wanted more details of that bigger story.

It depends if you see them as a criminal, and then imagining if it was a friend or a colleague who got themselves into a situation they didn't mean to, and it all went a bit wrong ... [Remorse – burglary vignette]

I'm not sure now ... Has something happened?... Like my Dad was 64 when he lost my Mum. ... To go 64 years of being a good lad – I think it's different to being 25 ... I think there's more to it. [64-year-old offender – ABH vignette]

Survey findings

Respondents were asked first about two crime-related factors that might reduce the seriousness of offences, and then about a number of offender-related factors that might lead to less severe sentencing.

Crime-related factors that diminish seriousness

Respondents were asked about characteristics of the crime which might decrease the seriousness of the offence. Two factors were presented: provocation by the victim, and a crime in which there was no serious harm inflicted on the victim. Around a quarter of the sample held the view that provocation by the crime victim always or often made the crime less serious. Half responded that it 'sometimes' made the crime less serious while

11% responded that it never made the crime less serious (13% responded that it made no difference). If the crime did not result in any serious harm, around one in five respondents believed that this always or often reduced the seriousness of the crime. Forty-three percent of the sample believed this sometimes reduced crime seriousness, 16% said that it never reduced seriousness and 21% believed that this circumstance made no difference (see Table 5.1).

Table 5.1 Public reaction to factors which may make crime *less serious*

	Always decreases crime seriousness	Often decreases crime seriousness	Sometimes decreases crime seriousness	Never decreases crime seriousness	Makes no difference to crime seriousness
1. Victim provocation	6%	17%	51%	11%	13%
2. No serious harm to victim	5%	13%	43%	16%	21%

Q: 'In general, some circumstances of a case may make a crime less serious. I am going to read you a list of circumstances. Please take your answers from this show-card: **Always** makes a crime less serious; **Often** makes a crime less serious; **Sometimes** makes a crime less serious; **Never** makes a crime less serious; Or does this **make no difference** to the seriousness of the crime?'. Base: 528.

Offender-related factors that justify a more lenient sentence

Respondents were asked to read a list of potentially mitigating circumstances, and to decide whether these factors justified a more lenient sentence than would otherwise be imposed in all, most or some cases. (The other response options included 'should never result in a more lenient sentence' and, as with all questions, 'don't know'). Table 5.2 shows considerable public support for considering a wide range of mitigating circumstances. For 12 of the 13 factors over half the sample believed that it should result in a more lenient sentence in all, most or some cases. Only one factor – the fact that the offender was only 18 years of age – was rejected as a mitigating factor by more than half the respondents. This table suggests that courts using many of these factors to mitigate sentence will be sentencing in a manner consistent with community views. Public responses to this question also demonstrate the strong public support for a degree of individualization: the most popular response categories were 'most' and 'some' – respondents were clearly unwilling to accept that extreme or absolute position that the factors listed in this table should *always* or *never* result in a more lenient sentence.

Table 5.2 Reaction to factors which might result in a more lenient sentence

	Should result in more lenient sentence in all or most cases	Should result in more lenient sentence in some cases	Should never result in more lenient sentence	Don't know
1. Crime was committed in an emergency	24%	52%	18%	5%
2. No prior convictions	24%	52%	22%	1%
3. Offender played a minor role in crime	24%	59%	15%	1%
4. Offender shows remorse	21%	56%	23%	1%
5. Offender has assisted police	20%	57%	22%	1%
6. Offender receiving medical care	18%	57%	23%	1%
7. Offender 'led on' by others	15%	51%	33%	1%
8. Offender treated for depression at time of offence	15%	61%	23%	1%
9. Offender is elderly	14%	43%	41%	1%
10. Offender was abused as a child	14%	51%	33%	2%
11. Offender is the main carer for an elderly relative	13%	48%	37%	1%
12. Offender is a single parent with 2 children	11%	47%	41%	1%
13. Offender is young (18)	10%	33%	57%	1%

Q: 'In the previous question I asked you about things that made the crime less serious. Now I would like to ask you about the offender. Some characteristics of the offender may justify a more lenient sentence. I am going to read out some statements about the offender. Should this result in a more lenient sentence in all, most, or some cases? Or should it never result in a more lenient sentence?' Base: 528.

Five factors were endorsed as justifying a more lenient sentence by at least one-fifth of the sample: if the crime was committed in an emergency; if the offender had no prior convictions; if the offender played a minor role in the commission of the crime; if the offender showed remorse for the crime; and if the offender had assisted police in the prosecution of other offenders. Less support emerged for factors related to what might

be termed the vulnerability of the offender – whether he: had been depressed at the time of the offence; was elderly; was currently receiving medical treatment; was a single parent with children.

The relatively low level of support for depression and single parent status is inconsistent with the findings from the focus groups. In general, the survey respondents appear to have reasoned that these circumstances did not reduce the culpability of the offender – while, as we have seen, the focus group participants were inclined to consider other rationales, alongside reduced culpability, for taking mitigating factors such as these into account. This may reflect the greater opportunities provided by the focus group methodology for reflecting on the issues at hand.

Gender as a mitigating factor?

The research also aimed to measure differences to attitudes to the sentencing of men and women. Respondents were randomly assigned to read a description of an offence and were then asked to impose sentence. The two offences (benefit fraud and theft of stolen property) were selected to be 'gender neutral'. The offence descriptions were as follows:

A man aged 38 has been convicted of collecting benefits illegally. He has been claiming a disability benefit for three years, although he was only unable to work for three months of that time. He claimed that he needed the money to support his three children. It has been confirmed that he does indeed have 3 children whom he supports financially.

A woman aged 38 has been convicted of collecting benefits illegally. She has been claiming a disability benefit for three years now, although she was only unable to work for three months of that time. She claimed that she needed the money to support her three children. It has been confirmed that she does indeed have 3 children whom she supports financially.

A man aged 29 has been convicted of the theft of personal items worth £3,000 from a van. He is currently employed and has two previous convictions for similar offences.

A woman aged 29 has been convicted of theft and possession of stolen goods worth £3,000. She is currently employed and has two previous convictions for similar offences.

Respondents were asked to choose between a term of custody, a community penalty or a fine. Table 5.3 summarises responses. As can be seen, there was a tendency for the

respondents to sentence more leniently when the offender was female, even though the facts of the case were the same. Thus the percentage favouring custody was nine percent lower for female offender in the theft case, and 5% lower in the benefit case.

Table 5.3 Effect of offender gender on sentencing, benefit fraud and theft

	% choosing Prison	% choosing a Community Order	% choosing a Fine
Male Offender, Benefit fraud (base: 269)	13%	61%	24%
Female Offender, Benefit fraud (base: 253)	8%	68%	22%
Male Offender, Theft (base: 250)	56%	31%	12%
Female Offender, Theft (base: 251)	45%	42%	12%

Q: 'Now, please consider this case. A man aged 38 has been convicted of collecting benefits illegally. He has been claiming a disability benefit for three years, although he was only unable to work for three months of that time. He claimed that he needed the money to support his three children. It has been confirmed that he does indeed have 3 children whom he supports financially. Which of these sentences would you consider the most appropriate for this offender? *Be sent to prison; (ii) Receive a community order (iii) Be ordered to pay a fine*'. The same question was asked for a female offender.

Variation between sub-groups

It is interesting that no significant differences emerged as a function of respondent characteristics. For example, with respect to the remorseful offender, 21% of tabloid readers and 20% of broadsheet readers responded that this factor justified a more lenient sentence in all or most cases. Victims and non-victims responded to this and other potential sources of mitigation in the same way.

Implications

Some differences emerged between the focus group and the survey findings, as well as many consistencies. In general, there was less consensus among respondents about

mitigating factors. In addition, mitigators tended to carry less weight than three key aggravating factors discussed in the previous chapter, although both the focus group participants and the survey respondents clearly attached weight to most mitigating factors. Comparison of Tables 5.2 and 4.1 reveals the asymmetry in public perceptions. Over half the aggravating factors listed in Table 4.1 were seen as enhancing the seriousness of the offence in all cases. In contrast, only a single mitigating factor was seen as justifying a more lenient sentence in all cases by at least one quarter of the sample.

There was greater agreement among the public about the significance of aggravating factors compared to mitigating factors. There are several possible explanations for this. First, it may reflect a degree of simple punitiveness on the part of the public – particularly with respect to offenders who have previous convictions and, as a consequence, are almost universally viewed as meriting severe punishment. Second, it may reflect the fact that most aggravating factors are offence- rather than offender-related, and hence may be seen as more generally applicable (as a matter of principle) to sentencing decisions than offender-related mitigating factors which by definition are highly contextual. Third, there may be some cynicism on the part of the public towards some claims for leniency on behalf of the offender. The public may not believe that some of the claims for mitigation such as an offender's remorse are genuine.

Chapter 6 Aggravation and mitigation: the conjoint analysis

There are two ways of determining the nature and relative importance of factors that people regard as aggravating or mitigating. One is to ask directly whether 'Factor x' makes a crime more (or less) serious, and the results of this approach have been presented in the previous two chapters. This method has the advantage of clarity and simplicity, but has the disadvantage of being rather abstract. A more sophisticated approach involves providing respondents with different versions of a core sentencing vignette, in each of which different combinations of aggravating and mitigating factors are presented. Respondents are asked to sentence the offender in each version, and the degree to which the severity of sentence changes as the factors are introduced provides a measure of the power of the factors to mitigate or aggravate sentence. The advantage of this method of gauging public reaction to sentencing factors is that people answer the question with a specific, concrete case in mind. The questions are designed and the answers analysed using conjoint analysis. The objective of conjoint analysis is to determine what combination of a limited number of attributes is most influential on respondent choice or decision-making. The particular value of the conjoint analysis is that it allows us to examine whether individual factors carry different weight when they exist in different combinations.

Our conjoint analysis examined the independent influence of a total of nine mitigating factors and seven aggravating factors. Respondents were first presented with a brief description of one of a pair of property offences, and invited to select a suitable sentence for the offender. Each respondent was then asked to consider eight scenarios in which different aggravating and mitigating factors were systematically varied. The process was then repeated for one of a pair of violent offences. Box 6.1 presents the pair of property offences and the aggravating and mitigating factors that were used for this pair of offences. Box 6.2 presents the same information for the pair of violent offences. Most of the factors were the same for each pair of offences, but some needed to be tailored to the specific offences. (For further information about conjoint analysis see Appendix A.)

Box 6.1 The pair of property offences

Burglary – base offence

The offender entered the house through an open upstairs window. He took £2,000-worth of jewellery and a laptop. No damage was caused to the house. The victims were not at home at the time. The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court

Insurance fraud – base offence

The offender obtained an insurance pay-out of £40,000 for a false claim that his high-value car had been stolen. The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

Mitigating factors

- The offender has a **serious illness** that causes much physical discomfort and requires long-term medical treatment.
- The offender has voluntarily entered **treatment for his long-running drug problem** and wants to continue the treatment.
- The offender has voluntarily **paid £500 to the victims** since his arrest [BURGLARY VERSION]
- The offender has voluntarily **paid £5,000 to the insurance company** since his arrest. [FRAUD VERSION]
- The offender was in great financial **debt** and struggling to make repayments at the time of the offence.
- The offender had been strongly **pressurised by his uncle** to undertake the offence.

Aggravating factors

- The offender was **on bail** for another offence (for which he is currently awaiting trial) at the time of the offence.
- The offender had **known the victims** for many years and had occasionally done baby-sitting for them. [BURGLARY VERSION]
- The offender was an **employee of the insurance company** from which he made the claim. [FRAUD VERSION]
- The total value of the property stolen was **£5,000** rather than £2,000. [BURGLARY VERSION]
- The value of the fraudulent claim was **£80,000** rather than £40,000. [FRAUD VERSION]

Box 6.2 The pair of violent offences

Assault occasioning actual bodily harm – base offence

The offender picked a fight with a stranger in a pub. The offender punched the victim in the face several times, leaving the victim needing twelve stitches to cuts on his chin. The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

Robbery – base offence

The offender attempted to grab the victim's mobile phone, while the victim was talking on it. When the victim resisted, he was pushed by the offender and fell to the ground, but was not injured. When the victim was on the ground, the offender ran off with the phone and a laptop bag that the victim had been carrying. The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

Mitigating factors

- The **offender** was being treated for a **mental illness such as depression** at the time of the offence.
- The **offender** is currently **employed**, and will lose his job if he receives a prison sentence.
- The **offender** had been severely **physically abused by his stepfather**, over many years, when he was a child.
- The **offender** has expressed deep and sincere **remorse**.

Aggravating factors

- The **offender** made **insulting comments** about the fact that the **victim was gay**, at the time of the assault. [ABH VERSION]
- The **offender** made **insulting comments** about the fact that the **victim was gay**, at the time of the robbery. [ROBBERY VERSION]
- The **victim** was **frail and elderly**.
- The **victim** needed **25 stitches** rather than 12, and suffered **mild concussion**. [ABH VERSION]
- The **victim was in fact injured** when he fell to the ground – he suffered a severe bruising to his hands, knees and a hip. [ROBBERY VERSION]
- The **victim** has had **anxiety attacks** since the offence, and now finds it difficult to go out on his own.

The measure that we have used to assess the impact of each factor is the change that occurs in the proportion choosing custody when the factor in question is introduced or removed. This measure has the virtue of simplicity but the drawback of being insensitive to changes in preferences that do not actually involve a change in type of punishment. For example the measure does not capture the effect of an aggravating factor for those respondents whose initial preference was custody.

Table 6.1 summarises the results. It shows the (modelled) percentage of respondents selecting a prison sentence under four conditions. It can be seen that support for custody was very low for all four offences when all mitigating factors were presented, and no aggravating factors (first column). When neither aggravators or mitigators were presented (second column) support for custody rose. It rose further when respondents were presented with all the aggravating factors, counterbalanced by all the mitigating factors (third column). The final column shows support for custody in the most serious version of each vignette, when all aggravators are present, but no mitigators.

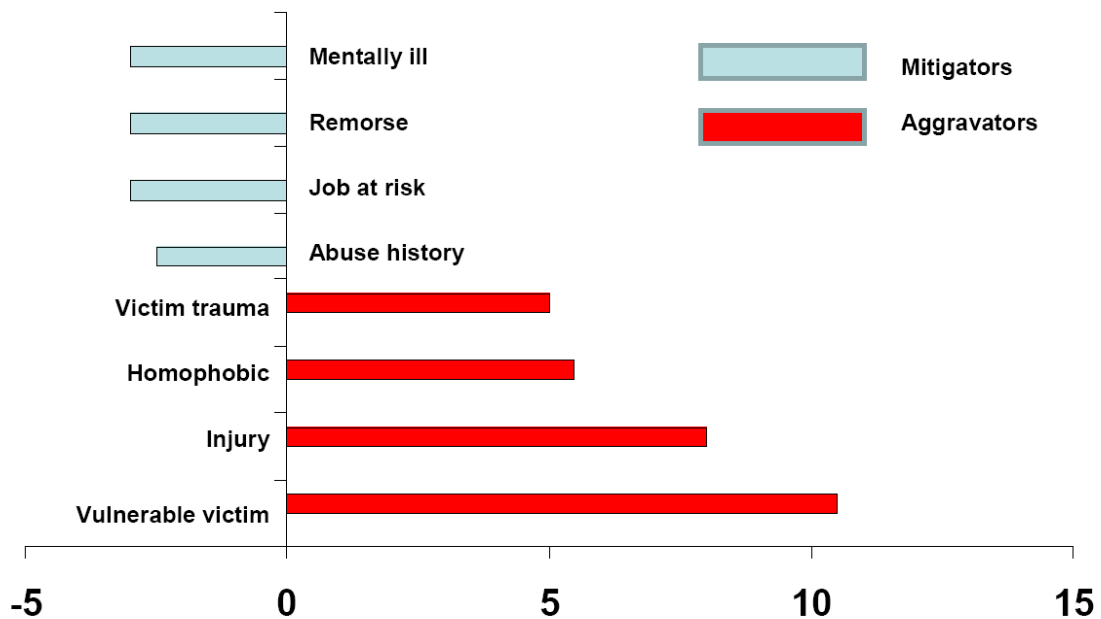
Table 6.1 Percentage of sample favouring custody

Offence	All mitigators on All aggravators off	All mitigators off All aggravators off	All mitigators on All aggravators on	All mitigators off All aggravators on
Burglary	22%	36%	41%	56%
Fraud	31%	47%	49%	66%
Robbery	29%	36%	51%	64%
ABH	26%	39%	51%	67%

Whilst Table 6.1 reveals wide variation in support for the use of custody, depending on circumstances, it is striking that even the most serious version of the vignettes commands, at most, two thirds support for prison. Only 56% of the sample supported prison for the burglar who, while on bail for another offence, stole £5,000 of goods from victims for whom he used to baby-sit. The pattern of findings suggests that the aggravating factors had more power to change the sentence imposed than the mitigating factors. This may well be the case, but this trend may also reflect the specific aggravating and mitigating factors selected for inclusion in the survey.

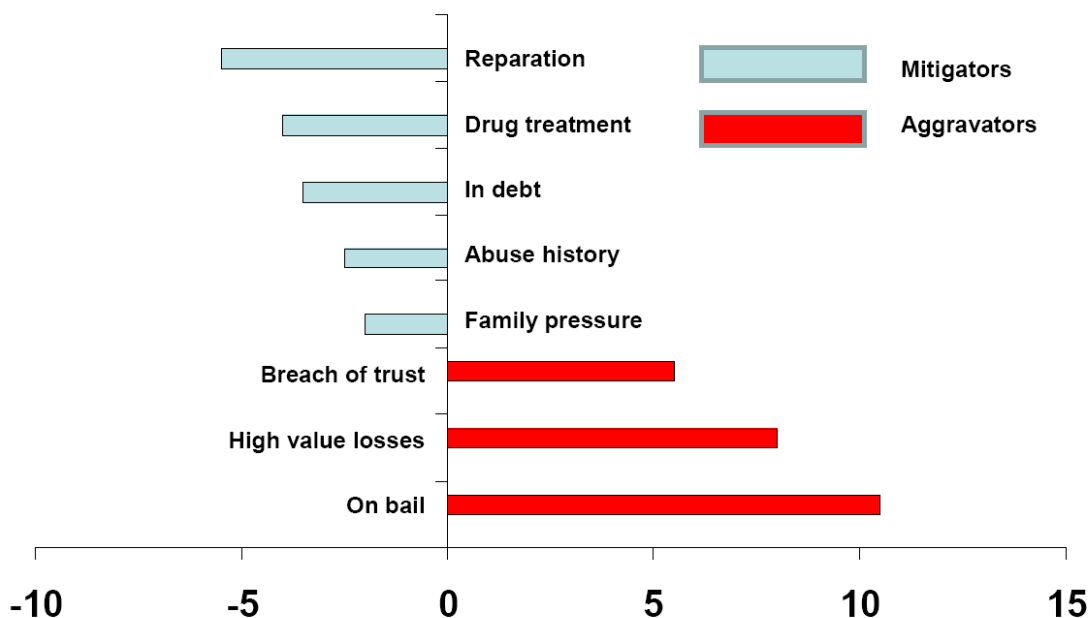
While Table 6.1 shows the range of variation in responses to vignettes, it does not show the weight attached to individual factors. These are shown in Figure 6.1 and 6.2. We have averaged the weight of factors for each pair of offences, because the weight assigned by the model to each factor did not vary much within offence pairs. This simplifies presentation of the findings.

Figure 6.1 Percentage point difference made by each factor to proportion wanting custody: robbery and ABH offences



Base: robbery – 520; ABH - 484

Figure 6.2 Percentage point difference made by each factor to proportion wanting custody: burglary and fraud offences



Base: burglary – 484; fraud - 511

The two figures show the percentage point change in the (modelled) proportion of the sample supporting custody when the factor in question is introduced into the vignette. Thus 36% and 39% of the sample supported custody for the 'base offence' of robbery and ABH respectively; these percentages rose by nine and twelve percentage points (to 45% and 51% respectively) when the victim was described as frail and elderly. So the pooled percentage point shift in Figure 6.1 is 10.5. The figures show that the aggravating factors tended to carry more weight than the mitigators, and that two aggravating factors carried a great deal of weight: the victim being vulnerable (Figure 6.1) and the offence being committed whilst the offender was on bail for another offence (Figure 6.2).

Interactions between factors

One of the objectives of the research was to explore the interactions between aggravating and mitigating factors. Did mitigating factors still carry weight when they were counterbalanced by aggravating factors, for example? And was the effect of factors

cumulative, or were there 'ceiling' and 'floor' effects which limited the overall weight of several factors in combination? The models suggested that both aggravating and mitigating factors were – largely – additive in their effects, with only marginal floor and ceiling effects. Thus in the robbery vignette, the base offence attracted 36% support for custody. When one aggravating factor was added – victim vulnerability – support rose to 46%. When a second factor – injury – was added, support rose to 54%. When a third factor was added – victim impact – support rose to 59%; when the fourth was added – homophobic motive – support reached 64%. The four factors in combination thus added 28 percentage points to the proportion supporting custody. If one sums the percentage point shift that each factor makes by itself, the total is 29 percentage points. The same principle applied when aggravating and mitigating factors were combined: each mitigating factor reduced support for custody by roughly the same amount, regardless of the combinations of other aggravators and mitigators with which it was presented.

This finding is unexpected. Our initial hypothesis was that people would apply some sort of 'totality principle' where aggravating and mitigating factors had an impact that was constrained within boundaries set by the overall nature of the offence type in question; and we also expected that some mitigating factors would have a reduced impact when accompanied by aggravating factors. This appears not to be the case.

Variation between sub-groups

Consistent with the other survey findings, there were only small differences between demographic groups, but with some consistent patterns of difference. Table 6.2 provides a breakdown by age and sex in the proportions favouring custody for the most serious variant of the four vignettes – that is, with all aggravating factors present and no mitigating factors. In general, older people were a little more punitive than younger – with the clear exception of the case of robbery – and men were consistently tougher than women.

Considering the least serious variant of the four vignettes (no aggravators and all mitigators present), there were less marked differences by age and sex, though the anomalous age effect for the robbery offence remained: 36% of those aged 18-34 wanted to imprison the robber, compared to 24% of those over 55.

Table 6.2 Percentage favouring custody, by age and sex: most serious variant of four vignettes

	Robbery	Actual bodily harm	Burglary	Fraud
Aged 18-34	70%	63%	54%	65%
Aged 35-54	63%	65%	56%	64%
Aged 55 +	59%	72%	57%	68%
Male	66%	71%	57%	73%
Female	62%	63%	55%	59%
TOTAL	64%	67%	56%	66%

Table 6.3 presents findings, again for the most serious variant of each vignette, for level of educational attainment, class and newspaper readership. Patterns of difference are clearer and more consistent here, with better-educated respondents and white collar respondents (with the single exception of burglary) tending to be more lenient than others. Similar patterns of findings for these three variables emerged for the least serious variants of the four vignettes.

Table 6.3 Percentage favouring custody, by education, class and newspaper readership: most serious variant of four vignettes

	Robbery	Actual bodily harm	Burglary	Fraud
More educated	61%	63%	53%	64%
Less educated	69%	73%	60%	69%
White collar	60%	64%	57%	63%
Blue collar	68%	69%	54%	69%
Tabloid readers	60%	71%	60%	63%
Broadsheet	70%	60%	55%	70%
TOTAL	64%	67%	56%	66%

Table 6.4 presents the proportions favouring custody for the four most serious variants of the vignettes, according to victim status. For two of the most serious vignettes, victims were more punitive. Similar patterns emerged for the least serious variants.

Table 6.4 Percentage favouring custody, by victim status: most serious variant of four vignettes

	Robbery	Actual bodily harm	Burglary	Fraud
Non victims	60%	67%	57%	63%
Victims	70%	67%	53%	70%
TOTAL	64%	67%	56%	66%

Implications

In order to keep within time constraints and to ensure that the vignettes presented to respondents were not overly complex, the conjoint analysis incorporated a limited number of factors. It is possible that a different pattern of results would have emerged had we used a different set of factors. However, we believe that this is unlikely, and that the following conclusions may reasonably be drawn. The first relates to the absence of complex interactive effects of the factors on probability of imprisonment. Compared to courts, the public have a simpler model of sentencing, one which does not necessarily consider Factor X in light of Factor Y. Sentencers probably take into account the impact of one variable when considering the weight of another. For example, an offender may get less credit for expressing remorse if the victim of his crime was particularly vulnerable – courts may see the former as being ‘the expected conduct’ for such an offender. On the other hand, remorse can be a powerful mitigating factor for other kinds of offences. This means that there is an interaction effect involving the two factors at the level of sentencing practice. The public appear to weigh the effects of specific factors independently when deciding whether imprisonment is appropriate. However, it would be a mistake to over-simplify the public’s model of sentencing. This survey also demonstrated that when considering sentencing objectives the public reject a ‘one size fits all’ approach, and instead pursue different sentencing goals as the seriousness of the offence changes.

Chapter 7 The custody threshold and the costs of disposals

This chapter explores reactions to circumstances affecting the decision to imprison in cases which are near the custodial threshold in the sense that they could conceivably result in a term of custody or a community order. We also explore public reaction to another factor which may affect the custodial threshold, or the decision to imprison: namely the costs of different sentencing options. In order to understand the nature of public reaction to cases at or near the custody threshold, the survey respondents were given an offence description to read, and were asked if all, most, only some, or no offenders convicted of this type of crime should be sent to prison.

Three offence categories were used, with respondents being assigned to read one of the following crime descriptions. The crimes described were ones that would, in practice, lie near the custody threshold:

A: Now I would like you to consider an assault where the victim suffered many cuts and severe bruising after being punched in the face several times by the offender. Looking at the show-card, which of these statements comes closest to your opinion? Should all, almost all, most, only some or no offenders convicted of this type of assault be sent to prison?

B. Now I would like you to consider a domestic burglary where the offender broke into someone's home, upturned drawers, and stole some cash and other items of value. Looking at the show-card.....?

C: Now I would like you to consider a case of fraud where the offender has defrauded their employer of £10,000 over a six month period. None of the money has been recovered. Looking at the show-card.....?

As can be seen in Table 7.1, across the three offence categories, around one respondent in five believed that only some or no offenders convicted of these crimes should be sent to prison. In light of the fact that these are serious cases, it is surprising that only around a third of respondents endorsed the view that all such cases should be imprisoned. This is further evidence of a theme running throughout our findings. People seem unwilling to take an inflexible position about sentencing offenders; rather, they seem to wish to keep a degree of flexibility to reflect, presumably, relevant aggravating

and mitigating factors. It is the nature and presence of these factors that determines whether the case attracts a term of custody or a community order.

Table 7.1 Public Reaction to Cases near the Custodial Threshold

	All offenders should be imprisoned	Almost all offenders should be imprisoned	Most offenders should be imprisoned	Only some offenders should be imprisoned	No offenders should be imprisoned
Burglary (base: 375)	37%	18%	24%	18%	2%
Assault (base: 312)	33%	23%	27%	15%	2%
Fraud (base: 336)	33%	22%	21%	20%	2%

Variation between sub-groups

Consistent with the findings of previous research, newspaper readership was related to responses to this question: tabloid readers tended to be more punitive. Thus 57% of tabloid readers but only 44% of broadsheet readers believed that all or almost all offenders convicted of the assault should be sent to prison. No significant differences emerged between victims and non-victims. Similarly with respect to the domestic burglary, two thirds of tabloid readers but only one third of broadsheet readers believed that all or almost all offenders convicted of the burglary should be sent to prison.

Factors which justify imposition of a community order

Another approach to exploring public opinion regarding the custody threshold is to explore public tolerance of non-custodial sentences for cases which are on the cusp of custody. Respondents were asked to consider one of two offences, either an assault or a serious fraud. They were then asked whether a number of factors definitely or probably justified the imposition of a community order, or definitely or probably did *not* justify a community order. Before being asked to consider factors that would justify the imposition of a community sentence (rather than custody) it was necessary to provide all

respondents with a definition and description of a community order and a term of custody. Respondents were therefore given a show-card with the following information:

A community order is a sentence that is served by the offender in the community, under the supervision of the probation service. A variety of different requirements can be attached to a community order in any combination. For example, an offender may be required to do unpaid work for up to 300 hours, to attend drug or alcohol treatment, or to take part in a program such as an anger management course that tackles the causes of the offending. An offender can also be prohibited from doing something, or can be put on a curfew which requires them to stay at home for certain periods of the day or night.

A prison sentence is served half in prison and half on licence in the community. While on licence offenders may be recalled to prison if they commit another offence or do not comply with licence requirements.

Assault

The assault was described in the following terms:

Imagine a court has decided to impose a prison sentence on an offender convicted of assaulting a member of the public. The victim sustained cuts and severe bruising for which medical treatment was required, and was off work for three weeks.

Respondents were asked to consider six factors. As can be seen from Table 7.2, all of these were seen as definitely or probably justifying a community order by at least half the sample. The absence of previous convictions emerged as the most powerful justification for a community penalty: around 7 out of 10 respondents agreed that this definitely or probably justified the imposition of a community penalty. This finding illustrates the importance of the offender's criminal history in shaping public views (see previous sections of report). It is striking that the first offender status was regarded as an important justification for a community penalty, even though the assault was quite serious in nature.

An equally noteworthy finding is that 63% of the sample believed that the victim's wish for a community penalty definitely or probably justified the imposition of a community order. This finding reflects the strong appeal of victims' interests to members of the public. The factor that attracted the lowest level of support as a justification for a community order was the fact that the offender was only 18 at the time of the offence. However, even for this factor, respondents were more likely to support than oppose it:

56% believed to some degree that it justified a community penalty while 44% responded that it probably does not, or definitely does not justify imposition of a community order.

Table 7.2 Public reaction to factors which justify a community order, assault

	Definitely justifies a Community Order	Probably justifies a Community Order	Probably does not justify a Community Order	Definitely does not justify a Community Order	Don't Know
1. Offender has no prior convictions	25%	44%	16%	14%	<1%
2. Victim doesn't want custody	25%	38%	21%	15%	1%
3. Victim provoked offender	21%	48%	18%	10%	3%
4. Offender caring for small children	21%	44%	18%	16%	1%
5. Offender remorse, apologized to victim	19%	45%	21%	15%	<1%
6. Offender is young (18)	19%	37%	23%	21%	<1%

Q: 'Now I would like you to consider an assault where the victim suffered many cuts and severe bruising after being punched in the face several times by the offender. Should all, almost all, most, only some or no offenders convicted of this type of assault be sent to prison?' Base: 495.

Serious Fraud

The serious fraud was described in the following terms:

Imagine a court has decided to impose a prison sentence on an offender convicted of a serious fraud against his employer valued at £20,000.'

Table 7.3 shows parallels with public responses to the assault. Significant numbers of respondents perceived the factors to definitely or probably justify the imposition of a community penalty. Once again the views of the victim – in this case the offender's employer -- were seen by many to justify the imposition of a community order. Thus almost 70% of the sub-sample responded that this consideration definitely or probably justified the imposition of a community order rather than custody. The fact that the offender was caring for small children was as relevant to respondents in this group as those who considered the assault: two-thirds believed that this probably or definitely justified a community penalty. The fact that the offender was only 18 at the time of the crime was the only factor across the two groups of subjects which was seen by a slim

majority not to justify the imposition of a community penalty. The findings presented in Tables 7.2 and 7.3, particularly with respect to the personal mitigating factors of care for young children, remorse, and youth, reinforce the finding reported in Chapter 5 that the public tend to attach weight to personal mitigation, even if they are disinclined to regard specific factors as universally applicable.

Table 7.3 Factors which may justify a community order, serious fraud

	Definitely justifies a Community Order	Probably justifies a Community Order	Probably does not justify a Community Order	Definitely does not justify a Community Order
1. Employer (victim) does not want offender imprisoned	26%	43%	18%	13%
2. Offender is caring for small children	21%	45%	19%	14%
3. Offender has no prior convictions	19%	45%	20%	16%
4. Offender is remorseful, has apologized to employer	15%	38%	27%	19%
5. Offender is young (18)	15%	33%	25%	26%

Q: 'Now I would like you to consider a case of fraud where the offender has defrauded their employer of £10,000 over a six month period. None of the money has been recovered. Looking at the show-card, which of the following statements comes closest to your opinion?' Base: 528.

Acceptability of Alternative Sanctions

When most members of the public think about sentencing, imprisonment is the disposal that usually comes to mind. Indeed, one of the barriers to the greater use of community penalties has been the lack of public knowledge of what these disposals involve. The survey included questions designed to test the hypothesis that the public will accept community penalties if they are made aware of them. The design involved asking respondents to sentence an offender, and then seeing whether those who chose prison as a sanction would subsequently find a community penalty to constitute an acceptable alternative.

Respondents were randomly assigned to impose sentence in one of two relatively serious cases: a theft or an assault. The two case descriptions were:

Theft: the offender has been convicted of shoplifting electronic equipment worth £3,000. The offender has five previous convictions for theft.

Assault: The offender has been convicted of assaulting a man in a pub. The victim was left with blurred vision for several weeks and was afraid to go to places where there were groups of people. The offender has two previous convictions, one for theft and one for assault. The offender is currently employed.

Theft

Respondents who read the theft description were asked the following question: ‘Which of the following sentences would you consider the most appropriate for this offender?’. The options were: (a) be sent to prison; (b) receive a community order; (c) be ordered to pay a fine. Once they had chosen one of the three options, respondents who chose custody were asked the following question:

You said that the most appropriate sentence for this offender is prison. Supposing the courts decided to impose the following sentence: an order to pay compensation of £500 to the victim, and a community order involving probation supervision and 300 hours unpaid work. Would you accept this as an acceptable alternative to sending the offender to prison?

The specific response options were: definitely accept this as an alternative to sending the offender to prison; probably accept this as an alternative; probably not accept this as an alternative; definitely not accept this as an alternative. Table 7.4 shows that in response to the first question, around three quarters of the sample favoured imposition of a term of custody. Once they had been provided with the alternative (Table 7.5), however, almost half (47%) of these respondents indicated that they found the alternative acceptable.

Assault

A similar procedure was followed for the assault case. Respondents were first asked to choose a sentence from among three disposals: (i) prison for six months; (ii) a community order; (iii) a fine. In response to this choice, almost four fifths of the sample chose custody (Table 7.4). Respondents choosing imprisonment were then asked this follow-up question:

You said that the most appropriate sentence for this offender is prison. Supposing the courts decided to impose the following sentence: a community order involving probation supervision and 300 hours unpaid work. Would you accept this as an acceptable alternative to sending the offender to prison?

As with the other condition, respondents were asked to express their opinion in the form of definitely accept, probably accept, probably not accept or definitely not accept this as an alternative to sentencing the offender to prison. Thirty-nine percent of the respondents who initially favoured incarceration now reported finding the community penalty to constitute an acceptable alternative to imprisoning the offender. The percentage finding the alternative acceptable is lower for the assault case - presumably as a result of its higher level of seriousness.

Table 7.4 Public acceptance of substitutes for custody: initial sentencing preferences

	First sentence: Prison	First sentence: Community Order	First sentence: Fine
Shoplifting (base: 495)	73%	18%	9%
Assault (base: 528)	79%	15%	14%

Q: The offender has been convicted of shoplifting electronic equipment worth £3,000. The offender has five previous convictions for theft. Which of these sentences would you consider the most appropriate for this offender? /The offender has been convicted of assaulting a man in a pub. The victim was left with blurred vision for several weeks and was afraid to go to places where there were groups of people. The offender has two previous convictions, one for theft and one for assault. The offender is currently employed. Which of these sentences would you consider the most appropriate for this offender?

Table 7.5 reveals a relatively high degree of public acceptance of an alternative to imprisonment. It should be noted that these are relatively serious cases: the offender convicted of theft was appearing for sentencing for the sixth time, while the assault was serious, and the offender in that case also had a related prior conviction. This finding – of a significant level of acceptance of alternative sanctions – is consistent with earlier research conducted for the Sentencing Advisory Panel (Hough et al., 2008; Roberts et al., 2008) as well as research in other jurisdictions (e.g., Doob et al, 1998).

Table 7.5 Public acceptance of alternative to imprisonment

	% of respondents choosing prison who then find alternative probably or definitely acceptable	% of respondents choosing prison who then find alternative probably or definitely not acceptable
Shoplifting (base: 360)	47%	53%
Assault (base: 419)	39%	61%

Q: 'You said that the most appropriate sentence for this offender is prison. Supposing the courts decided to impose the following sentence: a community order involving probation supervision and 150 hours unpaid work. Would you accept this as an alternative to sending the offender to prison?'

The costs of disposals

One factor which might affect the decision to choose a community sanction over custody is the relative costs of the two sanctions. Cost is a recurring issue in the international sentencing literature. Should a court be sensitive to the cost of different dispositions? The question raises a number of complex issues that cannot easily be explored in a public opinion survey. For example, there may be disagreement over the actual costs associated with different sanctions. Should the cost of a community penalty include the costs of dealing with offenders who breach their conditions? If different sanctions generate different recidivism rates, should the costs associated with these sanctions reflect this? In the present research we simplified the issue by providing participants with specific cost estimates and then asking them to consider whether this should affect the determination of sentence. The findings should be seen, therefore, as a preliminary exploration of public reaction to a complex question regarding the determination of sentence. We explored this issue in the focus groups, and on the basis of the results included one related question in the survey. As we shall see below, the results were somewhat contradictory, with focus group participants expressing much more doubt about the relevance of costs to sentencing decisions.

A number of researchers have provided respondents with information about the costs of community sanctions and then asked them to sentence offenders described in vignettes (e.g., Doble Research Associates, 1995). Doble and Klein (1989) asked a sample of US

respondents to sentence 23 offenders in the absence of any information about sentencing alternatives or the relative costs of different sanctions. After imposing sentence participants were provided with information about their relative costs, and asked to sentence the same cases a second time. Doble and Klein (1989) found that support for custody declined significantly, and this may have been a consequence of the costing information. Finally, Doob (2000) found that when respondents in Canada were provided with information about the costs of imprisonment support was lower for incarcerating the offender. The difference in incarceration rates between respondents with costing information and others not provided with this material was not great, however. In the present survey we explored the possibility that people would be more sensitive to the costs of disposals for crimes of violence rather than crimes involving property.

Focus group findings

We asked the focus group participants if they believed that the costs of a sentence to the taxpayer should be taken into account in passing sentence. In all eight groups, the dominant view – often expressed with particular force – was that cost is not a valid consideration in sentencing:

I don't think that [costs] should come into it at all. I really don't. I think a crime's a crime and it should be punished.

It will weaken the outcome, if they think too much about the cost – because the job's to punish them-- isn't it?

The views expressed by the large majority of focus group participants appear at odds with those of the survey respondents who were more likely to support the consideration of costs at sentencing (see below). However, although this was not explored in depth in the focus groups, a number of participants indicated that they would be willing for cost to be considered in the sentencing of minor offences. Hence the apparent discrepancy between the focus groups and the survey responses could lie in the fact that the focus group participants had in mind the most serious levels of offending when they answered the general question about costs. Moreover, in three of the focus groups there were individuals who strongly dissented from the majority view that costs should not be a consideration in sentencing – for example: *'I totally disagree. I think cost should totally be up there. It should all be about return on investment.'* In one group a participant

asserted that ‘*On my behalf, I would argue for some [cost] sensitivity – on my behalf as a tax-payer, I’ve got a vested interest in this*’; and a lengthy discussion ensued about the parallels between rationing within the national health service and cost-sensitive sentencing in the criminal justice system. It was suggested that an equivalent body to the National Institute for Clinical Excellence should be set up in order to assess the cost implications of sentencing practice.

Survey findings

The sample was split in half, with one group of respondents being asked about a case of assault and another about a fraud. Both groups were told the costs of community and prison sentences. Two clear trends emerged in responses to this question (see Table 7.6). First, respondents were twice as likely to support as to oppose the consideration of costs at sentencing. Thus across the two offences, around a third of respondents stated that courts should never consider costs. Second, people were less likely to respond that courts should consider costs for the case of assault. Thus 40% of the sample asked about the social security case believed that costs should be considered in all or most cases of this crime. Only 29% of the sample asked about the assault believed that costs should be considered in all or most cases of that crime.

Table 7.6 Consideration of the costs of dispositions when imposing sentence

	Should consider costs in all cases	Should consider costs in most cases	Should consider costs in some cases	Should never consider costs
Assault (base: 495)	11%	18%	28%	42%
Social Security fraud (base: 528)	17%	23%	30%	28%

Q: ‘As you may know, some sentences cost more than others. For example, sending an offender to prison for a year costs the taxpayer approximately £37,000, while supervising an offender on a community order, typically for 12 to 18 months, costs about £3,000 to £5,000. *Version A:* For a crime of violence such as assault, where an offender is convicted of assaulting a member of the public causing cuts and bruising for which medical treatment was required; Do you think the courts should take the cost to the taxpayer of different sentences into account, or should courts not consider the cost of sentences when deciding what sentence someone should get for committing this type of crime?’ *Version B:* For a crime like social security fraud, valued at around £20,000; Do you think the courts should take the cost to the taxpayer of different sentences into account, or should courts not consider the cost of sentences when deciding the sentence that someone should get for committing this type of crime?’

We interpret these findings as suggesting that the public are sensitive to the relative costs of different disposals. Although we asked about only two offences, it seems likely that the public will become less sensitive to costs as the seriousness of the offence increases, and in particular for the more serious crimes of violence. We would conclude that the public believe that the courts should consider costs, but not for the more serious cases. A sentencing system which allowed courts to impose sentences without any consideration of their relative costs would appear to be inconsistent with public opinion.

Chapter 8 Conclusions

This study has aimed to tease out the sentencing principles that are held by the general public, or are embedded in their attitudes towards sentencing. Implicit in our objectives was the assumption that there should be as good a match as possible between the principles that underpin sentencing guidelines and public views about sentencing. And indeed there is a substantial research literature to justify this. Procedural justice theory suggests that systems of law command greatest public compliance when people believe that the law operates according to fair and just procedures (Tyler and Huo, 2002; Tyler, 2003, 2007; MacCoun, 2005). In order for systems of justice to work effectively, there must be an adequate level of trust in justice.

The overall picture to emerge from this study is of a reasonable level of congruence between the sentencing principles applied by the SAP and SGC and those expressed or embedded in the views of our samples. At the same time, it was very evident from our focus groups that most people are angry about crime and cynical about sentencers and sentencing. We do not have to look far for some of the reasons: people are seriously misinformed about sentencing practice, and believe that the courts are much more lenient than they actually are. There is nothing new about this finding, of course. The British Crime Survey and other surveys have documented it over a period of years (e.g. Hough and Roberts, 1999; Mattinson and Mirrlees-Black, 2000 and Roberts and Hough, 2005, for a review). However, we concluded each focus group by doing something which to the best of our knowledge has not been done in previous focus group research: we fed back to participants the correct answers to the questions on sentencing practice that had been included in the pre-discussion questionnaire. (The questionnaire responses are to be found at Appendix D.) Reactions ranged from surprise to astonishment when participants received information about the proportions of convicted adult burglars and robbers that get sent to prison, and of average sentence lengths.¹⁴ People had clearly expected sentencing practices to be more lenient.

¹⁴ We originally decided to reveal the correct answers at the end of the session largely as a courtesy to our participants. However, the process served both as a useful check that BCS respondents correctly understand the similar questions which they are asked, and as confirmation that the mismatch between public beliefs and the reality of sentencing practice is not a trivial issue.

Perhaps the most important conclusion to be drawn from this study, therefore, is this: attempts to achieve a better alignment between the principles underpinning the SGC guidelines and public opinion will achieve very little, so long as the majority of the population believes that sentencers are too lenient. And we can be confident that the problem is one of perception rather than practice. Both this study and previous ones demonstrate that the ‘centre of gravity’ of public sentencing preferences is not, in fact, grossly out of kilter with sentencing practice. Whilst these conclusions will come as no surprise to the SAP, we think it very important to state them as a preface to a discussion of our central findings.

The purposes of sentencing

One of the aims of the research was to consider whether any single statutory purpose of sentencing is more important than another. This study gives a clear answer. People recognize that the different purposes of sentencing are conceptually and empirically intertwined in ways that make it difficult to rank them. Our focus group participants said this explicitly. Our survey respondents placed high value on four out of the five sentencing purposes – reparation being the one that secured least support. Public protection emerged as the sentencing purpose to which the highest proportion of people attached primacy. As we have noted, these findings echo those emerging from public opinion surveys in other jurisdictions. Taken together, the findings suggest that no single sentencing objective may be singled out as attracting significantly higher levels of support than others across all offence categories. Public protection achieved the highest ranking – but this should not necessarily be taken as public support for indeterminate preventative sentencing. There is clear support, also, for rehabilitative sentencing. In our view the findings also demonstrate the need – from the perspective of the public at least – to have multiple sentencing objectives so that these may be tailored to the specific circumstances of individual cases.

Crime seriousness

One of the research aims of the project concerned the characteristics of an offence/offender that should generally result in imposition of a custodial sentence. This issue was approached from a number of perspectives, including asking people to identify factors which increased seriousness (and hence the probability of custody) as well as to sentence cases falling near the custodial threshold. The following factors would appear to be important to the public's determination to imprison:

- Evidence of non-compliance: this takes the form of previous convictions, particularly if related to the current offence, or the offender's status at the time of the offence (i.e., on bail);
- Evidence that the threat to victims was high;
- Evidence that the offender was a professional offender, including premeditation;
- Crimes committed against vulnerable victims such as the elderly and the young.

The study confirms our belief that deriving survey-based rankings of the severity of different crime types will be of limited value when these are applied to *disparate* categories of crime and to *broad* categories of crime. It is well-established that people will comply with such exercises and that they have some surface validity. However, people clearly found it difficult – and arbitrary – to rank very different forms of harm and culpability on a single ladder. Whatever the justifications may be for incorporating seriousness scales into systems of sentencing guidance, the way that the general public thinks about crime seriousness is clearly not one of these. In talking about crime seriousness, our focus group participants tended to construct narratives about possible criminal histories and motives which implied that severity of the *criminal case* has to be assessed by reference both to features of the offence and the offender. They tended to argue that the physical or psychological harm caused to individual victims is the key criterion of offence seriousness, although an emphasis on offender culpability – inferred from features of the offence – emerged in much of what was said about the sentencing vignettes.

Aggravating factors

Overall, there are three factors that stand out as being powerfully aggravating. Two of these relate to the offence, rather than the offender: carrying a weapon, and committing a crime against a vulnerable victim. The third relates to previous convictions. The responses to the survey and comments from the focus group participants clearly demonstrated that the public regard previous convictions as an important aggravating circumstance. People were prepared to make allowances for those with 'previous good character, but once this discount had been squandered, views hardened significantly. On the question about the relevance of *recency* of criminal convictions, the focus groups and survey pointed in different directions. Focus group participants seemed to be more sensitive to 'recency effects' than survey respondents – being willing at least to consider giving credit for a gap in the offender's history of offending – perhaps because they had more time to think through the implications and discuss them.

Mitigating factors

Some differences emerged between the focus group and survey findings, as well as much consistency, in attitudes to mitigation. In general, views on mitigation were more mixed than views on aggravation, and more weight was given to aggravating than to mitigating factors overall. However, most focus group participants and survey respondents clearly regarded mitigation as potentially significant. Two of the strongest factors to emerge from the focus group research – offender's single parent status and youth – were given the least weight by survey respondents. In their responses to the aggravating and mitigating factors, most focus group participants displayed an attachment to individualised sentencing. This was manifest both in their willingness to take at least some personal factors into account in passing sentence, and in their frequent comments that more information was needed about the offender and circumstances of the offence in order to decide on sentence. The focus group participants also articulated a range of different rationales for taking specific aggravating and, particularly, mitigating factors into account.

The research considered in what circumstances, if any, and to what degree the requests for leniency from a victim (or victim's family) might influence the sentence imposed. The survey suggests that there is strong public support for considering an appeal for leniency on behalf of the victim. If the crime victim wished to spare the offender custody this was seen as justifying a community penalty by high percentages of respondents (see Tables 7.2 and 7.3 and accompanying text). Aggregated across two offences, this circumstance was the factor most likely to be cited as justifying a community order rather than a term of custody.

The conjoint analysis

The conjoint analysis was carried out to examine how people thought about the interaction of different aggravating and mitigating factors. Our working hypotheses included the idea that some mitigating factors would be counterbalanced by the presence of aggravating factors, and that some might be neutralized by the presence of aggravating factors. The conjoint findings suggest that compared to courts, the public have a simpler model of sentencing: one which does not necessarily consider Factor X in light of Factor Y. Sentencers probably take into account the impact of one variable when considering the weight of another. For example, an offender may get less credit for expressing remorse if the victim of his crime was particularly vulnerable – courts may see the former as being ‘the expected conduct’ for such an offender. On the other hand, remorse can be a powerful mitigating factor for other kinds of offences. This means that there is an interaction effect involving the two factors at the level of sentencing practice. Our findings suggest that people weigh the effects of specific factors independently when deciding whether imprisonment is appropriate. The impact of different aggravating factors appears to be additive, as does that of mitigating factors. However, it would be a mistake to over-simplify the public's model of sentencing. This survey also demonstrated that when considering sentencing objectives, the public reject a ‘one size fits all’ approach, and instead pursue different sentencing goals as the seriousness of the offence changes.

Offence vs Offender Characteristics

Another issue explored from both methodological approaches was the relative weight of characteristics relating to the offender or the offence. Here we would conclude that the primary emphasis of the public's model of sentencing is upon the characteristics of the offence. There was considerable consensus among survey respondents about the characteristics of the case which would make the offence more serious. In comparison, there was far less agreement on factors associated with the offender that might warrant some mitigation or justify a community order rather than custody. When the public think about the seriousness of a particular case, they appear to mean the seriousness of the offence – the extent of injury to the victim, and any aspects of the crime which might aggravate the harm to the victim.

However, this is not to suggest that offender-related factors are generally viewed as unimportant by the public. The public are highly sensitive to one offender characteristic in particular: namely, his criminal past. For the survey respondents, previous, related convictions were a more powerful determinant of the seriousness of a case than some important offence characteristics – such as whether the victim had been targeted as a result of his or her race or religion, or indeed whether there was more than one victim. There was also a substantial increase in severity – as measured by the custody rate – when the offender had prior convictions compared to when he was a first offender. For the focus group participants, likewise, previous convictions proved to be a powerful aggravating factor. Although, as noted above, there was less consensus among the survey respondents and focus group participants about the significance of offender-related mitigating factors, there was widespread support for taking such factors into account on a case-by-case basis. Hence even if the details of the offence are viewed as – necessarily – setting the parameters of the sentencing decision, there appears to be recognition on the part of the public that the background, circumstances and individual 'story' of the offender are critical factors that should feed into the decision.

The costs of disposals

In combination our findings suggest that the public are sensitive to the relative costs of different disposals – but within limits. Although we asked about only two offences in the

survey, it seems likely that the public will become less sensitive to costs as the seriousness of the offence increases, and in particular for the more serious crimes of violence. To return to the research aims of the project, one of which involved the extent to which the costs of custodial versus community penalties are relevant at sentencing, we would conclude that the public believe that the courts should consider costs, but not for the more serious cases. A sentencing system which allowed courts to impose sentences without any consideration of their relative costs would appear to be inconsistent with public opinion.

In conclusion

Finally, perhaps our most important conclusion relates to the ensemble of findings from the survey and the focus groups. It is clear from the results that members of the public react thoughtfully to questions relating to sentencing – and not simply with thoughtless punitiveness. A coherent model underlies public responses to the questions raised in this research – even if this model is at times at odds with current practice or the law and theory of sentencing. The public consider the weight and relevance of specific sentencing factors when deciding upon the appropriate sentence in any specific case. Gauging public reaction to issues on which sentencers are provided with guidance is therefore a fruitful enterprise.

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Appendix A: Survey Characteristics

A quota sample was used for this research, with 85 sampling points selected from a stratified list of all Census Super Output Areas in England and Wales, the list being stratified by region, urban/rural nature and number of cars in household as a socio-demographic indicator. Points were then selected probability proportional to size, and all addresses in that SOA issued to the interviewers. Each sampling point was controlled by interlocking quotas on age, sex and working status. Although social class is likely to be a prime determinant of attitudes to sentencing it was not deemed feasible to set quota controls on social class given the small sampling points being used. The achieved sample was nationally representative in terms of class. GfK NOP conducted a small pilot of 16 respondents, prior to the main fieldwork. This – in conjunction with the initial findings from the qualitative focus groups – gave sufficient insight to determine whether the questionnaire content was appropriate.

Additional Information about Conjoint Analysis

Conjoint analysis is more often used in commercial than social research, though it is used quite widely in research to aid transport planning. The fundamental principle is that while it would not be possible to show respondents every possible combination of potential elements of a new product or service – or in this case of aggravating and mitigating factors – because of the sheer volume involved (in this particular survey there are 256 possible combinations in which each of the mitigators and aggravators can be on or off), it is possible to show a smaller set of options to each respondent, with each respondent seeing a different set from the previous one. By controlling the different combinations systematically we can calculate not only the effect of each set of factors shown to respondents, but also the effect of each individual factor, and of every other possible combination of factors. There are many different forms of conjoint but not all were suitable for this project. Choice Based Conjoint, Conjoint Value Analysis and Adaptive Conjoint Analysis would all allow us to measure the importance of each factor in determining between a custodial and non-custodial sentence, but would not allow us to measure the impact of each factor on the length of sentence.

Appendix B: Survey Instrument and frequencies

A sample of 1,023 adults was interviewed across England and Wales. Interviews were conducted face-to-face in a respondent's home. Fieldwork took place between 31 October and 17 November 2008. An (*) denotes a small cell number.

SCREENER QUESTIONS: Firstly I need to check a few details with you ...

S1. CODE GENDER

<i>Base (1023)</i>	%
Male	48
Female	52

S2. Please could you tell me your age.

RANGE 18 – 99

<i>Base (1023)</i>	%
18-34	28
35-54	38
55+	34

S3. Are you currently working, either full-time or part-time?

IF WORKING, CHECK WHETHER FULL OR PART TIME. SINGLE CODE

<i>Base (1023)</i>	%
Full time	44
Part time	16
Not working	39

INTERVIEWER - CHECK RESPONDENT IS IN QUOTA BEFORE CONTINUING

PURPOSES OF SENTENCING

ASK ALL

Q1. Under the law there are a number of purposes of sentencing offenders. How important is:

	Punishing offenders for their crime	Preventing Crime	Reforming & Rehabilitating offenders	Protecting the Public	Reparation
<i>Base (n):</i>	1023	1023	1023	1023	1023
	%	%	%	%	%
1 - Not at all important	1	*	2	*	1
2	*	*	1	*	1
3	-	*	2	*	1
4	1	1	1	-	2
5	4	2	5	1	8
6	4	3	5	1	8
7	7	6	10	3	11
8	12	13	18	7	18
9	9	10	12	9	10
10 - Most important	64	63	43	80	38
Don't know	*	1	*	*	1

Mean	9.05	9.14	8.37	9.61	8.09
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ASK ALL - half version A, half version B

Q2A.1 Now, thinking of offenders convicted of minor property crimes like shoplifting or other theft.

For crimes such as these, how important is:

	Punishing offenders for their crime	Preventing Crime	Reforming & Rehabilitating offenders	Protecting the Public	Reparation
<i>Base (n):</i>	495	495	495	495	495
	%	%	%	%	%
1 - Not at all important	*	*	2	*	2
2	1	*	1	1	*
3	1	1	2	1	2
4	2	1	1	3	2
5	5	4	7	7	8
6	7	6	7	3	7
7	11	11	13	8	12
8	15	17	18	12	17
9	11	11	11	9	11
10 - Most important	46	49	37	54	38
Don't know	-	*	-	-	*
<u>Mean</u>	8.39	8.60	7.97	8.51	8.03

Q2A.2 Now, thinking of offenders convicted of serious financial crimes such as major frauds in large financial institutions, such as banks or insurance companies.

For crimes such as these, how important is:

	Punishing offenders for their crime	Preventing Crime	Reforming & Rehabilitating offenders	Protecting the Public	Reparation
<i>Base (n):</i>	495	495	495	495	495
	%	%	%	%	%
1 - Not at all important	1	1	3	1	2
2	-	*	2	*	*
3	-	1	2	1	1
4	1	1	2	1	2
5	3	3	8	4	5
6	4	4	7	3	5
7	8	6	11	8	9
8	14	15	16	10	15
9	12	13	13	11	12
10 - Most important	58	56	36	59	48
Don't know	-	*	1	*	*
<u>Mean</u>	8.94	8.87	7.87	8.83	8.44

Q2B.1 Turning now to offenders convicted of less serious crimes of violence like an assault where the victim does not need medical treatment.

For crimes such as these, how important is:

	Punishing offenders for their crime	Preventing Crime	Reforming & Rehabilitating offenders	Protecting the Public	Reparation
<i>Base (n):</i>	528	528	528	528	528
	%	%	%	%	%
1 - Not at all important	1	1	1	*	2
2	1	1	2	1	1
3	1	1	*	1	2
4	1	*	2	1	2
5	5	6	8	5	7
6	7	4	7	4	9
7	12	12	13	8	14
8	13	16	20	11	17
9	10	13	13	11	11
10 - Most important	47	46	34	58	34
Don't know	1	1	1	*	*
<u>Mean</u>	8.40	8.52	8.05	8.83	7.88

Q2B.2 Now thinking of offenders convicted of serious crimes of violence like an assault where the victim needs hospitalisation.

For crimes such as these, how important is:

	Punishing offenders for their crime	Preventing Crime	Reforming & Rehabilitating offenders	Protecting the Public	Reparation
<i>Base (n):</i>	528	528	528	528	528
	%	%	%	%	%
1 - Not at all important	*	*	1	-	2
2	-	-	1	-	1
3	*	*	*	*	1
4	-	*	1	-	2
5	2	1	2	1	3
6	2	2	4	1	5
7	3	5	10	2	9
8	9	10	15	7	16
9	10	12	11	10	9
10 - Most important	73	67	54	78	52
Don't know	*	1	*	1	1
<u>Mean</u>	9.42	9.32	8.76	9.60	8.58

ASK ALL - half version A, half version B

(version A).

Q3.A In general, some circumstances of a case make the crime more serious. I am going to read you a list of circumstances. Please take your answers from this show-card

CAPI Rotate statements:

	Base	%	Always makes a crime more serious	Often makes a crime more serious	Sometimes makes a crime more serious.	Never makes a crime more serious	Make no difference to the seriousness	Don't know
The victim was a child	495	%	80	9	5	1	5	*
The victim was a relative or spouse or partner of the offender	495	%	40	19	19	3	17	1
The crime was committed in the presence of the offender's children	495	%	69	16	7	1	7	-
There was more than one victim of the crime	495	%	47	25	12	2	14	*
The victim was an elderly person	495	%	68	16	6	1	8	-
The offender stole money from the state rather than from a private individual	495	%	21	18	22	7	32	*
The victim was attacked because of his or her race or religion	495	%	58	16	7	1	18	-
The offender was drunk when they committed the offence	495	%	24	26	20	4	25	*
The offender abused a position of trust	495	%	53	22	15	1	9	*
The offender has previous convictions for the same crime	495	%	65	17	6	1	11	*
The offender was the ring-leader in the crime	495	%	66	19	5	*	9	*
The offender was part of an organized crime gang	495	%	52	25	9	1	13	*
The offender planned the crime some time in advance	495	%	67	16	7	1	9	*
The offender has previous convictions but for different crimes	495	%	38	22	22	2	16	-
The offender used a	495	%	88	6	2	*	3	-

weapon								
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(version B).

Q3B.1 In general, some circumstances of a case may make a crime less serious

	Base	%	Always makes a crime less serious	Often makes a crime less serious	Sometimes makes a crime less serious.	Never makes a crime less serious	Make no difference to the seriousness	Don't know
The victim did something to provoke the offender	528	%	6	17	51	11	13	1
The offence did not result in any serious harm to the victim	528	%	5	13	43	16	21	1

(version B).

Q3B.2 In the previous question I asked you about things that made the crime less serious. Now I would like to ask you about the offender. Some characteristics of the offender may justify a more lenient sentence.

I am going to read out some statements about the offender. Please take your answers from this show-card e.g **So the first statement, if...**

	Base	%	All cases	Most cases	Some cases	Never result in more lenient sentence	Don't know
The offender played a minor role in the crime	528	%	6	18	59	15	1
The offender committed the crime in an emergency	528	%	7	17	52	18	5
The offender has no previous convictions	528	%	8	16	52	22	1
The offender was led on by other individuals	528	%	4	11	51	33	1
The offender is genuinely remorseful	528	%	6	15	56	23	1
The offender is elderly – an old aged pensioner	528	%	5	9	43	41	1
The offender is currently receiving medical treatment for a serious condition	528	%	6	12	57	23	1
The offender was a victim of abuse in childhood	528	%	3	11	51	33	2
The offender has assisted the police in prosecuting other offenders	528	%	4	16	57	22	1
The offender is a single parent caring for two children	528	%	3	8	47	41	1
The offender was being treated	528	%	4	11	61	23	1

for depression at the time of the offence							
The offender is the main carer for an elderly relative	528	%	3	10	48	37	1
The offender is young – 18 years old	528	%	3	7	33	57	1

ASK ALL – one third receive version A, one third B one third C

(Version A)

Q4A. Now I would like you to consider an assault where the victim suffered many cuts and severe bruising after being punched in the face several times by the offender. Which of these statements comes closest to your opinion?

<i>Base (312)</i>	%
All offenders should be sent to prison	33
Almost all offenders should be sent to prison	23
Most offenders should be sent to prison	27
Only some offenders should be sent to prison	15
No offenders should be sent to prison	2
Don't know	1

(Version B)

Q4B. Now I would like you to consider a domestic burglary where the offender broke into someone's home, upturned drawers, and stole some cash and other items of value. Which of these statements comes closest to your opinion?

<i>Base (375)</i>	%
All offenders should be sent to prison	37
Almost all offenders should be sent to prison	18
Most offenders should be sent to prison	24
Only some offenders should be sent to prison	18
No offenders should be sent to prison	2
Don't know	1

(Version C)

Q4C. Now I would like you to consider a case of fraud where the offender has defrauded their employer of £10,000 over a six month period. None of the money has been recovered. Which of the following statements comes closest to your opinion?

<i>Base (336)</i>	%
All offenders should be sent to prison	33
Almost all offenders should be sent to prison	22
Most offenders should be sent to prison	21
Only some offenders should be sent to prison	20
No offenders should be sent to prison	2
Don't know	1

ASK ALL - half version A, half version B.

In this part of the questionnaire, we will be talking about prison sentences and community orders.

A community order is a sentence that is served by the offender in the community, under the supervision of the probation service.

A variety of different requirements can be attached to a community order in any combination. For example, an offender may be required to do unpaid work for up to 300 hours, to attend drug or alcohol treatment, or to take part in a programme such as an anger management course that tackles the causes of the offending.

An offender can also be prohibited from doing something, or can be put on a curfew which requires them to stay at home for certain periods of the day or night.

A prison sentence is served half in prison and half on licence in the community. While on licence offenders may be recalled to prison if they commit another offence or do not comply with licence requirements.

Q5A. I would like to ask you about circumstances which may make the difference between whether a court imposes prison sentence or a community order. Please take your answers from this show-card.

SHOW CARD 8

Imagine a court has decided to impose a prison sentence on an offender convicted of assaulting a member of the public. The victim sustained cuts and severe bruising for which medical treatment was required, and was off work for three weeks.

(Version A)

e.g So the first statement, if...

In your view, do you think that this definitely, probably, probably does not, definitely does not justify the court imposing a community order instead of a prison sentence?

	Base	%	Definitely	Probably	Probably does not	Definitely does not	Don't know
The offender is very remorseful and has apologised to the victim	495	%	19	45	21	15	*
The victim does not wish to see the offender sent to prison	495	%	25	38	21	15	1
The offender has no prior convictions	495	%	25	44	16	14	*
The offender is caring for small children	495	%	21	44	18	16	1
The victim did something to provoke the offender	495	%	21	48	18	10	3
The offender is young – 18 years old	495	%	19	37	23	21	*

(Version B)

Q5B. I would like to ask you about circumstances which may make the difference between whether a court imposes a prison sentence or a community order. Imagine a court has decided to impose a prison sentence on an offender convicted of a serious fraud against his employer valued at £20,000.

In your view, do you think that this definitely, probably, probably does not, definitely does not justify the court imposing a community order instead of a prison sentence?

	Base	%	Definitely	Probably	Probably does not	Definitely does not	Don't know
The offender is very remorseful and has apologised to their employer	528	%	15	38	27	19	1
The employer does not wish to see the offender sent to prison	528	%	26	43	18	13	1
The offender is caring for small children	528	%	21	45	19	14	1
The offender has no prior convictions	528	%	19	45	20	16	1
The offender is young – 18 years old	528	%	15	33	25	26	1

ASK ALL - half version A, half version B

Now moving on to a different issue...

Q6A. Show-card 10

As you may know, some sentences cost more than others. For example, sending an offender to prison for a year costs the taxpayer approximately £37,000, while supervising an offender on a community order, typically for 12 to 18 months, costs about £3,000 to £5,000.

For a crime of violence such as assault, where an offender is convicted of assaulting a member of the public causing cuts and bruising for which medical treatment was required; Do you think the courts should take the cost to the taxpayer of different sentences into account, or should courts not consider the cost of sentences when deciding what sentence someone should get for committing this type of crime? (Version A)

<i>Base (495)</i>	%
All cases	11
Most cases	18
Some cases	28
Never	42
Don't know	1

Q6B. Show-card10

As you may know, some sentences cost more than others. For example, sending an offender to prison for a year costs the taxpayer approximately £37,000, while supervising an offender on a community order for 12 to 18 months, costs about £3,000 to £5,000.

For a crime like social security fraud, valued at around £20,000; Do you think the courts should take the cost to the taxpayer of different sentences into account, or should courts not consider the cost of sentences when deciding the sentence that someone should get for committing this type of crime? (Version B)

<i>Base (528)</i>	%
All cases	17
Most cases	23
Some cases	30
Never	28
Don't know	2

ASK ALL – Half version A, and half version B. Of those who get version A, a third get version A1, a third get version A2 and a third get version A3. The same applies for version B.

Q7A.1 Now, please consider the following case of assault. The victim, who was assaulted while they were walking home, suffered minor bruises. The offender has no previous convictions for any offence.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (154)</i>	%
Prison	11
Community order	64
Fine	24
Don't know	1

ASK IF Q7 A1 = 1

Q7A.1(ii) How long do you think the prison sentence should be for?

**Please allow entry for years or months min 1 year – max 99 years
CAPI allow 0 months and 0 years**

<i>Base (17)</i>	%
1 month	18
3 months	18
6 months	35
12 months	18
18 months	6
48 months	6
<u>Mean</u>	8.82

Q7A.2 The victim, who was assaulted while they were walking home, suffered minor bruises. The offender has two previous convictions for assault.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (178)</i>	%
Prison	65
Community order	26
Fine	8
Don't know	1

ASK IF Q7 A2 = 1

Q7A.2(ii) How long do you think the prison sentence should be for?

Please allow entry for years or months min 1 year – max 99 years

CAPI allow 0 months and 0 years

<i>Base (115)</i>	%
1 month	3
2 months	2
3 months	11
6 months	19
9 months	1
11 months	2
12 months	23
15 months	1
18 months	4
24 months	16
30 months	1
36 months	5
42 months	1
48 months	2
60 months	8
96 months	1
Over 100	2
<u>Mean</u>	38.73

Q7A.3 The victim, who was assaulted while they were walking home, suffered minor bruises. The offender has four previous convictions for assault.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (163)</i>	%
Prison	83
Community order	13
Fine	4
Don't know	1

ASK IF Q7 A3 = 1

Q7A.3 (ii) How long do you think the prison sentence should be for?

**Please allow entry for years or months min 1 year – max 99 years
CAPI allow 0 months and 0 years**

<i>Base (135)</i>	%
1 month	4
2 months	2
3 months	9
4 months	1
6 months	17
9 months	1
11 months	1
12 months	24
18 months	1
24 months	13
36 months	7
48 months	3
60 months	7
72 months	1
80 months	1
Over 100	5
Mean	40.19

Q7B.1 The offender has been convicted of defrauding their employer of £10,000. The offender in this case has two previous convictions, one for theft and one for fraud. The two previous convictions occurred two years ago.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (158)</i>	%
Prison	68
Community order	20
Fine	10
Don't know	1

ASK IF Q7 B1 = 1

Q7B.1(ii) How long do you think the prison sentence should be for?

**Please allow entry for years or months min 1 year – max 99 years
CAPI allow 0 months and 0 years**

<i>Base (1023)</i>	%
2 months	1
3 months	3
6 months	15
9 months	5
12 months	23
18 months	5
20 months	1
24 months	23
30 months	1
36 months	11
48 months	2

60 months	8
84 months	2
Over 100	1
Mean	23.81

Q7B.2 Now, please consider this case of fraud. The offender has been convicted of defrauding their employer of £10,000. In this case, the offender has two previous convictions, one for theft and one for fraud. The two previous convictions occurred five years ago.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (197)</i>	%
Prison	66
Community order	18
Fine	15
Don't know	1

ASK IF Q7 B2 = 1

Q7B.2(ii) How long do you think the prison sentence should be for?

**Please allow entry for years or months min 1 year – max 99 years
CAPI allow 0 months and 0 years**

<i>Base (131)</i>	%
3 months	2
6 months	11
8 months	2
9 months	2
10 months	1
12 months	21
18 months	2
20 months	1
24 months	24
36 months	10
48 months	3
60 months	17
72 months	1
84 months	1
Over 100	3
Mean	32.31

Q7B.3 The offender has been convicted of defrauding their employer of £10,000. In this case, the offender has two previous convictions, one for theft and one for fraud. The two previous convictions occurred eight years ago.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (173)</i>	%
Prison	58
Community order	27
Fine	13
Don't know	2

ASK IF Q7 B3 = 1

Q7B.3(ii) How long do you think the prison sentence should be for?

**Please allow entry for years or months min 1 year – max 99 years
CAPI allow 0 months and 0 years**

<i>Base (101)</i>	<i>%</i>
3 months	3
6 months	11
12 months	29
18 months	3
24 months	21
30 months	1
36 months	13
48 months	2
54 months	1
60 months	9
72 months	1
84 months	1
96 months	2
Over 100	4
<u>Mean</u>	30.27

ASK ALL – Half version A, and half version B

(Version A)

Q8A (i) Moving on to the next scenario. The offender has been convicted of shoplifting electronic equipment worth £3,000. The offender has five previous convictions for theft.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (495)</i>	<i>%</i>
Prison for 3 months	73
Community order	18
Fine	9
Don't know	*

ASK IF Q8 (i)= 1

Q8A (ii) You said that the most appropriate sentence for this offender is prison. Supposing the courts decided to impose the following sentence: a community order involving probation supervision and 150 hours unpaid work.

Would you accept this as an alternative to sending the offender to prison?

<i>Base (360)</i>	<i>%</i>
Definitely	14
Probably	33
Probably not	21

Definitely not	32
Don't know	1
<i>Positive</i>	<i>47</i>
<i>Negative</i>	<i>53</i>

(Version B)

Q8B.1 The offender has been convicted of assaulting a man in a pub. The victim was left with blurred vision for several weeks and was afraid to go to places where there were groups of people. The offender has two previous convictions, one for theft and one for assault. The offender is currently employed.

Which of these sentences would you consider the most appropriate for this offender?

<i>Base (528)</i>	%
Prison	79
Community order	15
Fine	4
Don't know	1

Q8B(ii) You said that the most appropriate sentence for this offender is prison. Supposing the courts decided to impose the following sentence: a community order involving probation supervision and 300 hours unpaid work.

Would you accept this as an acceptable alternative to sending the offender to prison?

<i>Base (419)</i>	%
Definitely	9
Probably	30
Probably not	24
Definitely not	37
Don't know	*
<i>Positive</i>	<i>39</i>
<i>Negative</i>	<i>61</i>

ASK ALL – quarter version A, and quarter version B etc

(Version A)

Q9A. A man aged 38 has been convicted of collecting benefits illegally. He has been claiming a disability benefit for three years, although he was only unable to work for three months of that time. He claimed that he needed the money to support his three children. It has been confirmed that he does indeed have 3 children whom he supports financially.

Which of these sentences would you consider the most appropriate for this offender?

	Total	Male	Female
<i>Base (269)</i>	%	%	%
Prison	13	11	15
Community order	61	63	59
Fine	24	24	24
Don't know	1	1	2

* The difference between men and women was not statistically significant.

(version B)

Q9B. A woman aged 38 has been convicted of collecting benefits illegally. She has been claiming a disability benefit for three years now, although she was only unable to work for three months of that time. She claimed that she needed the money to support her three children. It has been confirmed that she does indeed have 3 children whom she supports financially.

Which of these sentences would you consider the most appropriate for this offender?

	Total	Male	Female
<i>Base (253)</i>	%	%	%
Prison	8	13	4
Community order	68	65	70
Fine	22	20	24
Don't know	2	3	1

* The difference between men and women saying prison was statistically significant.

(Version C)

Q9C. A man aged 29 has been convicted of the theft of personal items worth £3, 000 from a van. He is currently employed and has two previous convictions for similar offences.

Which of these sentences would you consider the most appropriate for this offender?

	Total	Male	Female
<i>Base (250)</i>	%	%	%
Prison	56	60	52
Community order	31	25	35
Fine	12	14	11
Don't know	1	1	1

* The difference between men and women was not statistically significant.

(Version D)

Q9D. A woman aged 29 has been convicted of theft and possession of stolen goods worth £3,000. She is currently employed and has two previous convictions for similar offences.

Which of these sentences would you consider the most appropriate for this offender?

	Total	Male	Female
<i>Base (251)</i>	%	%	%
Prison	45	46	45
Community order	42	43	41
Fine	12	11	12
Don't know	1	-	2

The difference between men and women was not statistically significant.

CONJOINT

When deciding on an appropriate sentence, a court will assess the seriousness of an offence by considering the factors present in each case. Some factors may result in the sentence being increased or reduced.

Q10.

The next section has been designed for you to complete yourself. It will begin by describing an offence to you. You will be asked to choose, from a list, what sentence this offender should get.

Following this, the same scenario will be described but with a number of different factors that would be taken into account if this offender was taken to court. For each of these cases, you will be asked to choose the sentence you think this offender should get, taking each of the different factors into account.

Some factors will come up in more than one scenario. Please only consider the factors which are being shown for that particular case.

I'm now going to pass the computer over to you.

Interviewer note: pass the machine to the respondent, show them how to answer and move on to the next question.

If respondent does not want to complete this section self completion, please read out the first scenario. On the next screens, please read out the differing factors.

Please do this slowly so that the respondent is able to respond to each scenario

CAPI PLEASE ADD A SCREEN HERE SAYING 'please press next to see the first scenario'

PAIR ONE

A Residential burglary

The offender entered the house through an open upstairs window. He took jewellery and a laptop which were worth £2,000 in total. No damage was caused to the house. The victims were not at home at the time.

The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

B Insurance fraud

The offender obtained an insurance pay-out of £40,000 for a false claim that his high-value car had been stolen.

The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

CAPi please add a screen between base case and 1st iteration of factors saying 'The next few screens will show you the same scenario as you have just seen but with additional factors. Please take these into account when choosing what sentence you think this offender should receive'

- The offender has a **serious illness** that causes much physical discomfort and requires long-term medical treatment.
- The offender has voluntarily entered **treatment for his long-running drug problem** and wants to continue the treatment.
- The offender has voluntarily **paid £500 to the victims** since his arrest [BURGLARY VERSION]
- The offender has voluntarily **paid £5,000 to the insurance company** since his arrest. [FRAUD VERSION]
- The offender was in great financial **debt** and struggling to make repayments at the time of the offence.
- The offender had been strongly **pressurised by his uncle** to undertake the offence.
- The offender was **on bail** for another offence (for which he is currently awaiting trial) at the time of the offence.
- The offender had **known the victims** for many years and had occasionally done baby-sitting for them. [BURGLARY VERSION]
- The offender was an **employee of the insurance company** from which he made the claim. [FRAUD VERSION]
- The total value of the property stolen was **£5,000** rather than £2,000. [BURGLARY VERSION]
- The value of the fraudulent claim was **£80,000** rather than £40,000. [FRAUD VERSION]

PAIR TWO

CAPI – Add a screen saying ‘Now, please press Next to see the second scenario’

A Assault occasioning actual bodily harm

The offender picked a fight with a stranger in a pub. The offender punched the victim in the face several times, leaving the victim needing twelve stitches to cuts on his chin.

The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

B Robbery

The offender attempted to grab the victim’s mobile phone, while the victim was talking on it. When the victim resisted, he was pushed by the offender and fell to the ground, but was not injured. When the victim was on the ground, the offender ran off with the phone and a laptop bag that the victim had been carrying.

The offender is aged 25 and has no previous convictions. He pleaded guilty to the offence in court.

CAPI please add a screen between base case and 1st iteration of factors saying ‘The next few screens will show you the same scenario as you have just seen but with additional factors. Please take these into account when choosing what sentence you think this offender should receive’

- The **offender** was being treated for a **mental illness such as depression** at the time of the offence.
- The **offender** is currently **employed**, and will lose his job if he receives a prison sentence.
- The **offender** had been severely **physically abused by his stepfather**, over many years, when he was a child.
- The **offender** has expressed deep and sincere **remorse**.
- The **offender** made **insulting comments** about the fact that the **victim was gay**, at the time of the assault. [ABH VERSION]
- The **offender** made **insulting comments** about the fact that the **victim was gay**, at the time of the robbery. [ROBBERY VERSION]
- The **victim** was **frail and elderly**.
- The **victim** needed **25 stitches** rather than 12, and suffered **mild concussion**. [ABH VERSION]
- The **victim was in fact injured** when he fell to the ground – he suffered a severe bruising to his hands, knees and a hip. [ROBBERY VERSION]
- The **victim** has had **anxiety attacks** since the offence, and now finds it difficult to go out on his own.

1. A Fine
2. Community Order – Low – for example unpaid work for 40-80 hours
3. Community Order – High - for example: Unpaid work for 150-300 hours and/or a curfew of up to 10-12 hours per day for 4 -6 months
4. Prison – under 1 year
5. Prison – 1 -3 years
6. Prison – 3+ years

CAPI After the final iteration, please add screen 'Thank you, please pass the computer back to the interviewer who will complete this interview'.

Q11. Which, of these newspapers, if any do you read nowadays?

CODE ALL THAT APPLY.

<i>Base (1023)</i>	All respondents %
None	24
Daily Mirror	12
Daily Star	4
The Sun	23
Daily Mail	20
Daily Express	8
The Times	8
Financial Times	2
The Guardian	8
The Daily Telegraph	9
The Independent	5
The Daily Sport	1
Other regional morning papers (e.g. Yorkshire Post, Western Daily Press)	5
Evening paper (e.g. Evening Standard)	18
DON'T KNOW	1

Q12. Thinking back over the past year, have you been a victim of any of these crimes or do you feel that you have been a victim of crime in any other way?

<i>Base (1023)</i>	%
Someone broke into my home and stole or tried to steal something	4
Someone vandalised my home	3
Someone stole or damaged something outside my home	6
Another type of crime has happened in or around my home	4
Someone stole a vehicle or cycle belonging to my household.	3
Someone stole something from a vehicle or cycle belonging to my household.	3
Someone damaged a vehicle or cycle belonging to my household.	10
Another type of vehicle crime has happened to my household	2
I have been mugged, pickpocketed or been the victim of a snatch-theft (including attempts)	2
Someone has stolen something of mine at work or somewhere else away from home.	2
I have been the victim of fraud (including identity theft).	3
I have been physically attacked or threatened with violence.	5
I have been sexually assaulted	*
Another type of personal crime has happened to me	1
Another crime has been committed against me that is not listed	2
None of these	67

Q13. What is your highest qualification?

<i>Base (1023)</i>	All respondents
None / no educational qualifications	19%
Entry level [e.g. City & Guilds cert, BTEC cert]	8%
Level 1 [GCSE D-G, 2 CSEs or less, GNVQ / GSVQ Found; BTEC First, SCOTVEC CERT, NVQ/SVQ L1, Less than 5 GCSE A-C]	10%
Level 2 [5 GCSE A-C, GCE O LEVEL, CSE Grade 1, GNVQ / GSVQ Int., BTEC Int / Diploma. NVQ /SVQ L2, SCOTVEC Diploma, 1 A Level, 3 or less AS Levels, 1 or 2 Scottish Highers]	19%
Level 3 [2 or more A Levels, 4 or more AS Levels, 3 or more Scottish Highers, GNVQ/GSVQ Adv., BTEC Nat., NVQ/SVQ L3, SCOTVEC Nat]	16%
Level 4 [Degree, PGCE, HND, NVQ/SVQ L4, SCOTVEC Higher]	18%
Level 5 [Doctorate, Masters, Postgraduate Diploma, Postgraduate Certificate]	8%

Don't know	*
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14. To which of these ethnic groups do you consider you belong?

<i>Base (1023)</i>	All respondents
White	
01. British	87
02. Any other white background	5
Mixed	
03. White and Black Caribbean	*
04. White and Black African	*
05. White and Asian	*
06. Any other mixed background	*
Asian or Asian British	
07. Indian	*
08. Pakistani	1
09. Bangladeshi	*
10. Any other Asian background	*
Black or Black British	
11. Caribbean	1
12. African	2
13. Any other Black background	*
14. Chinese	*
15. Any other ethnic group	1
16. Don't know	-

15 **OCCUPATION OF CHIEF INCOME EARNER**

CODE SOCIAL GRADE:

<i>Base (1023)</i>	All respondents %
A	4
B	22
C1	28
C2	21
D	13
E	12

Q16. **Interviewer CODE region:**

<i>Base (1023)</i>	All respondents %
North East	4
North West	14
Yorkshire / Humberside	8
East Midlands	8
West Midlands	10
East of England	10
London	12

South East	18
South West	10
Wales	6

Appendix C: Public support for sentencing objectives in other common law jurisdictions

Table C1 Public Support for the Purposes of punishment for specific offences (New Zealand)

	Fraud	Assault	Smuggling Heroin	Possession of Cannabis
Incapacitation	7%	14%	14%	1%
Individual deterrence	18%	17%	20%	28%
Retribution	17%	19%	22%	9%
Rehabilitation	8%	31%	16%	39%
General deterrence	8%	2%	15%	6%
Denunciation	12%	13%	12%	14%
Restitution	30%	4%	<1%	<1%
	100%	100%	100%	100%

Source: adapted from Paulin et al. (2003)

Table C2 Public Rankings of the Importance of Sentencing Purposes (Canada)

	Minor Offenders	Serious Offenders
Individual deterrence	1	3
General deterrence	2	6
Provide proportional punishment	3	2
Provide restitution	4	7
Denunciation	5	5
Rehabilitation	6	4
Incapacitation	7	1

Source: adapted from Canadian Sentencing Commission (1987)

Appendix D: Results of focus group questionnaire

1. In general, would you say that sentences for violent crimes like assault/property crimes like theft and fraud are

	Violence		Property	
	No.	%	No.	%
Much too severe	2	3%	0	0%
Too severe	0	0%	4	6%
About right	12	17%	18	26%
Too lenient	42	61%	36	52%
Much too lenient	12	17%	10	14%
D/K or no response	1	1%	1	1%
	69	100%	69	100%

2. How do you think that the prison population has changed over the past 15 years?

	No.	%
Decreased by 50%	1	1%
Decreased by 10%	0	0%
Stayed the same	2	3%
Increased by 10%	10	14%
Increased by 50%	26	38%
Doubled	22	32%
Tripled	8	12%
D/K or no response	0	0%
Total	69	100%

3. Approximately what percentage of offenders convicted of robbery/receiving or handling stolen goods/burglary are sent to prison?

	robbery		receiving/handling		burglary	
	No.	%	No.	%	No.	%
0%	1	1%	5	7%	2	3%
10%	12	17%	33	48%	19	28%
20%	12	17%	8	12%	19	28%
30%	17	25%	10	14%	13	19%
40%	8	12%	7	10%	6	9%
50%	6	9%	1	1%	4	6%
60%	5	7%	2	3%	3	4%
70%	6	9%	0	0%	0	0%
80%	0	0%	0	0%	2	3%
90%	1	1%	0	0%	0	0%
100%	1	1%	1	1%	1	1%
D/K	0	0%	2	3%	0	0%
Total	69	100%	69	100%	69	100%

4. What do you think is the average length of prison sentence for offenders convicted of robbery/receiving or handling/burglary who are sent to prison?

	robbery		Receiving/handling		burglary	
	No.	%	No.	%	No.	%
0-3 mths	5	7%	14	20%	10	14%
3-6 mths	19	28%	20	29%	13	19%
6-12 mths	15	22%	17	25%	20	29%
1-2 yrs	15	22%	10	14%	16	23%
2-3 yrs	12	17%	4	6%	7	10%
3-4 yrs	3	4%	1	1%	1	1%
4-6 yrs	-	-	-	-	-	-
6-9 yrs	-	-	-	-	-	-
9+ yrs	-	-	-	-	-	-
D/K	-	-	3	4%	2	3%
Total	69	100%	69	100%	69	100%