



## **Transform Justice response to Justice Committee call for evidence on public opinion and understanding of sentencing**

**Submitted July 2022**

### About Transform Justice

Transform Justice is a criminal justice research and campaigning charity that advocates for a fair, humane, open and effective justice system in the UK. Our research covers issues such as the over-use of remand, the under-use of out of court disposals and the implications of digital justice for the fair trial rights of suspects and defendants. We have also produced guides on how to communicate about progressive criminal justice policies in a way that builds public support and acceptance.

### Overview

We know from several studies of public opinion and sentencing that the public, when polled, believe sentencing is too lenient. However they also underestimate the severity of current sentencing practice. Furthermore, the level of public concern about sentencing leniency is independent of actual sentencing practice. We also know that for many crimes, when given particular cases to consider, the public make similar decisions to sentencers (if anything they are more lenient), and that members of the public with a more accurate picture of current sentencing practice are less likely to say sentencing is too lenient.

Improving public confidence in the criminal justice system is a legitimate aim. Based on the above evidence, increasing sentence severity won't boost public confidence in sentencing. Since those who feel sentencing is too lenient are also most likely to underestimate actual sentencing severity, improving public knowledge of sentencing would help increase public confidence. There should also be a focus on boosting awareness of alternative sentencing options to custody, ways to resolve crimes without going to court, and the effectiveness of different court and non-court outcomes.

However, there are other ways to increase public confidence in the criminal justice system besides improving public understanding of how sentencing works. Research has found that public support of (and therefore confidence in) criminal justice policies can vary depending on how the policy is framed and communicated. The current rhetoric from the two main political parties around crime and justice positions greater punishment as the way to reduce crime, despite evidence showing the opposite. Research also shows tougher sentences will not improve public confidence anyway, because most people remain unaware of changes in sentencing policy. The government and others can improve public confidence in the criminal justice system by championing evidence-based policies for addressing crime, communicated in a way that is proven to build public support and acceptance. Given the many negative consequences of increasingly longer sentences for individuals and society, and the fact that longer sentences aren't restoring public confidence in the justice system, the justice committee and others should do more to challenge the introduction of any further un-evidenced and harmful punitive measures.

### Evidence on public opinion on sentencing

Research into public opinion of sentencing has consistently found that the majority of the public, when polled, believe sentences are too lenient. The government's primary response to this has been

to increase the severity of sentences. But we know this won't work to appease the public, because public opinion on the suitability of sentencing is not correlated with actual sentencing practice.

When polled, the public underestimates the severity of actual sentencing practice. The majority of survey respondents in the Sentencing Academy study<sup>1</sup> believed crime rates have increased in the past decades, when actually they have decreased. They believed average prison sentence lengths have decreased, when actually they have lengthened. They also estimated the average custody rate (proportion of those prosecuted given prison sentences) of specific offences to be much lower than in actuality.

So trying to address negative public opinion of sentencing by increasing sentence severity will not be effective because, as the Sentencing Academy says in its report, "most people simply do not notice uplifts in sentence severity." We are concerned that sentences could continue to increase in perpetuity, chasing improvements in public opinion which are unlikely to materialise.

### Improving public understanding of sentencing

We agree with the Sentencing Academy report conclusion that there is a need to increase public understanding of sentencing through better information provision and reporting of cases. This aligns with evidence that better informed respondents are more satisfied with sentencing. For example the Sentencing Council's survey of 2,000 adults found that two thirds of the public think sentencing in general is too lenient, but this perception lessened when the public were presented with actual scenarios and sentences. This correlates with earlier research by Professor Mike Hough<sup>2</sup> which found that when considering a specific case of burglary, public respondents suggested a similar sentence to that given by the magistrates in the actual case (if anything the public were a little more lenient). This was despite most of the respondents saying sentencing was in general too lenient.

This necessitates finding better ways to communicate actual sentencing practice, to bridge the gap between what people think sentences are, and what they actually are. Research by the Sentencing Council found that while most public survey respondents said they understood terms like "life sentence" and "statutory maximum sentence", qualitative discussions showed that "actual understanding lagged behind perceived understanding". Sentencing is technical and it is not realistic to expect members of the public to have an in-depth knowledge of how the system works. However there are some steps that could be taken to build understanding. This could include a review of terminology to identify opportunities to simplify language used by the criminal justice system, to make the process more accessible to the public. It could also mean targeted work to challenge and correct common misunderstandings in sentencing practice, as argued by Rob Allen in his report on the Sentencing Council for Transform Justice.<sup>3</sup>

The Sentencing Council's current strategy sets an objective to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing. However its planned approach centres on promoting the existence of its technical sentencing guidelines and raising awareness of the process by which the guidelines are developed. Improving public understanding of sentencing is

---

<sup>1</sup>

<https://sentencingacademy.org.uk/wp-content/uploads/2022/01/Public-Knowledge-of-Sentencing-Practice-and-Trends.pdf>

<sup>2</sup>

[https://www.researchgate.net/publication/249716400\\_Sentencing\\_Trends\\_in\\_Britain\\_Public\\_Knowledge\\_and\\_Public\\_Opinion](https://www.researchgate.net/publication/249716400_Sentencing_Trends_in_Britain_Public_Knowledge_and_Public_Opinion)

<sup>3</sup> The Sentencing Council and criminal justice: leading role or bit part player?

[https://www.transformjustice.org.uk/wp-content/uploads/2020/12/TJ\\_November\\_2020\\_IA\\_3.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2020/12/TJ_November_2020_IA_3.pdf)

important and the Sentencing Council is supposed to be one of the key organisations responsible for this. This requires a greater focus by them on outreach (both public and parliamentary), media engagement, and accessible information about how sentencing works and evidence of its impact.

Efforts to build public understanding of sentencing should include improving awareness of alternatives to prison sentences. Mike Hough's research found that limited public awareness of many non-custodial sentencing options was having an impact on attitudes towards sentencing. He gave half of the respondents a menu of sentencing options (including community sentences, compensation, fines and conditional discharge) and the other half an open text box in which to propose their suggested sentence. Respondents who had to choose a sentence without the benefit of a "menu" of sentencing options were more likely to favour imprisonment. Respondents provided with a list of options were more likely to favour a suspended sentence, probation and community service. Support for compensation was also higher when respondents were aware that it was an option: almost half (44 per cent) of the "menu" group chose compensation, compared with 22 per cent of the "non-menu" group. This indicates that improving public awareness of alternative sentencing options could contribute to improving public confidence in sentencing.

By extension, public confidence in the criminal justice system as a whole could be improved by increasing public awareness of alternatives to prosecution. Currently public discourse focuses on prosecution rate as an indicator that the police and CPS are being effective. The Ministry of Justice and the Home Office, in their communications, should highlight other ways that crimes can be effectively resolved without going to court, such as out of court disposals and diversion. Public awareness of these options is low but our research found that, when explained, the majority of the public support them.<sup>4</sup>

Public confidence can also be increased by building understanding of the effectiveness of difference sentences and other non-court options. What impact do they have on the likelihood of reoffending? Does this vary by offence type, or other variables? The Ministry of Justice does have data on reoffending, and the Sentencing Council is supposed to inform the public about the effectiveness of sentencing. This needs to go beyond simply explaining how the current system works. The Justice Committee has previously said the Sentencing Council should be more proactive in publishing information and analysis on sentencing relevant to public debates on sentencing. Much more could be done in this area to improve public understanding of the effectiveness of sentencing.

#### Improving public confidence in the criminal justice system by better communication of evidence based policy

Increasing public understanding of any technical area such as criminal sentencing is a significant challenge and, even if successful, it will only increase public confidence so much. We can also increase public confidence in the criminal justice system by changing how we communicate about criminal justice, using reframed messaging to talk about evidence-based policies in a way that builds support and acceptance.

The UK public hold deep beliefs about crime and justice. These beliefs include that people act rationally, weighing up the pros and cons of an action (such as committing a crime) before they carry it out. Therefore punishment (a "con") acts as a deterrent to crime, meaning the main role of the criminal justice system is punishment. There is little evidence that harsher punishments work

---

4

<https://www.transformjustice.org.uk/wp-content/uploads/2021/07/Resolving-crimes-without-going-to-court-a-messaging-guide.pdf>

effectively as deterrents to reduce crime. Nevertheless, these beliefs are strong and deep-seated. The public also holds other beliefs about crime and justice; that crime has societal causes, and that one purpose of the criminal justice system is to rehabilitate people. This was evident back in 1996 when Mike Hough found that the public did not consider harsher sentencing to be the only, or even the best, way to prevent crime. Respondents ranked employment higher than tougher sentences as a way to prevent crime.

Research conducted by the Frameworks Institute on behalf of Transform Justice, the Criminal Justice Alliance, Clinks and the Alliance for Youth Justice shows that the public can be supportive of (and therefore have confidence in) non-punitive criminal justice policies. It just relies on these policies being communicated effectively. This means using language which triggers some beliefs (rehabilitation) and avoiding engaging with others (punishment). The research also finds that talking about our criminal justice system as something that should reduce crime and help people to achieve their potential and contribute to society was effective in building support for non-punitive policies. Other arguments, such as that prisons are not cost-effective, were actually counter-productive in building public support for non-prison options (possibly because people consider public safety to be more important than cost).<sup>5</sup>

Further research conducted by Transform Justice into public attitudes towards ways of resolving crime without going to court found that the majority of the public are actually supportive of options other than prosecution and prison. This and the Frameworks research counters a common view perpetuated in the media that the public are not ready to support non-punitive criminal justice policies. This support can be increased by how these options are communicated.

Lack of public confidence in the criminal justice system is a problem but it is the responsibility of politicians and policy makers not to exploit this by using it to drive up sentencing further, especially when evidence shows that more severe sentences will not boost confidence anyway. Unfortunately the government, and the main opposition party, is actually reinforcing unhelpful beliefs in how it talks about crime and justice – prioritising punishment and prison and leaving other, more effective ways to deal with crime out of the narrative. There is no evidence that harsher criminal sanctions deter people from committing crime nor that most sanctions play any role in rehabilitation. Instead criminal sanctions and heavy policing increase and entrench social and racial inequality.

Our research shows it is possible to champion progressive policy on criminal justice while boosting public confidence in the system. We urge the committee to challenge policy makers who support un-evidenced and harmful punitive measures, and to recommend training for policy makers in the evidence of what works and how this can be communicated in a way that boosts public confidence.

### Recommendations

The Justice Committee should:

1. challenge the government's introduction of any further un-evidenced and harmful punitive measures, based on the fact that it will not improve public confidence in sentencing

---

<sup>5</sup> The research is summarised in a handy guide here

[https://www.transformjustice.org.uk/wp-content/uploads/2017/02/Reframing-crime-and-Justice-a-handy-guide\\_Transform-Justice.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2017/02/Reframing-crime-and-Justice-a-handy-guide_Transform-Justice.pdf) and the more detailed Frameworks research is here

[https://www.transformjustice.org.uk/wp-content/uploads/2016/08/UKCJ\\_MM\\_July\\_2016\\_Final-1-2.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2016/08/UKCJ_MM_July_2016_Final-1-2.pdf)

2. recommend training for policy makers in the evidence of what works and how this can be communicated in a way that boosts public confidence, using reframed arguments based on messaging research
3. call on the Sentencing Council and others to do much more to improve public awareness of the range of sentencing and non-court options available and their effectiveness in reducing crime and providing satisfaction for victims