The Future of Deferred Sentencing

SENTENCING ACADEMY

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Executive Summary

Two previous reports published by the Sentencing Academy in 2022 explored the origins and current use of deferred sentencing in England and Wales. This updated report, in association with the Centre for Justice Reform, comes at a time of renewed interest in alternative sentencing options to short immediate prison sentences.

Research suggests that short custodial sentences are ineffective at reducing re-offending; that they disrupt housing, work and family networks; and that they are much more costly than noncustodial sanctions. In the 2020 White Paper, 'A Smarter Approach to Sentencing', the Government indicated an approval of deferred sentences, particularly for women. The Government's Female Offender Strategy (2018) and the Delivery Plan (2023) argued that fewer women should be sentenced to custody, especially on short-term sentences. The Independent Sentencing Review (2025) endorsed increasing the use of deferred sentencing and recommended extending the limit of the period for which a sentence may be deferred from six to 12 months. It remains to be seen whether this recommendation will be part of the sentencing legislation which the Government has indicated it will introduce in September 2025. Deferred sentences offer an opportunity to meet these important policy priorities, particularly with respect to female offenders.

Short prison sentences have been further called into question as a result of the straining capacity of prisons. The Court of Appeal in *R v Ali* [2023] therefore made clear that the prison population and prison conditions are exceptional factors which can properly be taken into account by sentencing courts. For those borderline cases on the cusp of immediate custody, sentences should be suspended on account of the high prison population.

The deferred sentencing provision was introduced in 1973 in England and Wales. Under this provision, sentences may be deferred for up to six months. Deferment of sentence enables the court, when dealing with an offender, to have regard to the offender's conduct after conviction and to any change in the offender's circumstances. However, deferred sentences continue to be under-researched. This report explores the examples set in other jurisdictions of deferred sentences, and in particular the problem-solving approaches often accompanying them. Across jurisdictions, deferred sentencing is used as a method of encouraging and assessing compliance with stipulated actions, such as with rehabilitation programmes or treatment plans. Many of these examples illustrate the benefits of focusing on certain categories of offences or offenders, such as women. Female offenders are a distinct category of offenders with often complex needs, and deferred sentences can provide another opportunity to divert offenders from immediate custody.

This report concludes by calling for more comprehensive guidance surrounding deferred sentencing and noting key issues and priorities, including the use of deferred sentences for women.

Chapter 1

Introduction

In common law jurisdictions, courts generally proceed to sentencing expeditiously following conviction. For example, section 720 (1) of the Criminal Code of Canada states that: 'A court shall, as soon as practicable after an offender has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed'. In England and Wales, Rule 1.1 (2)(f) of the Criminal Procedure Rules includes 'dealing with the case efficiently and expeditiously' as one of the attributes of 'dealing with a case justly'. There are several reasons for this approach. Postponing sentencing requires a separate court date which may inconvenience all parties involved in the case. Offenders usually wish to move on with their lives and to begin serving their sentence. Yet there may also be sound reasons for deferring sentence. In fact, many countries allow courts to defer sentencing for a specific purpose.

The most common justification for deferral is to allow the offender time to complete a treatment or rehabilitation programme or otherwise demonstrate progress towards desistance and rehabilitation. For example, again in Canada, a statutory provision of the Criminal Code (section 720 (2)) states that: 'The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to attend a treatment program approved by the province under the supervision of the court such as an addiction treatment program or a domestic violence program'. Sentence deferral is also a flexible option in the Australian state of Victoria. Originally aimed at young offenders aged 17 to 25, sentence deferral for up to 12 months is now available to defendants of any age (see Freiberg, 2014).

Sentence deferral is likely to be particularly useful for responding to the specific needs and particular circumstances of young adults – those individuals whose personal and professional circumstances are most likely to be in transition and evolving in ways that have significant consequences for the sentencing decision. Deferral of sentence may also be particularly useful in responding to the needs of female offenders.

Overview of Report

This report is a follow-up to two previous reports exploring deferred sentencing in England and Wales published by the Sentencing Academy.[1] Those reports documented current trends in the use of deferred sentences and identified key issues and research gaps. The current report updates the statistics on deferred sentencing and widens the scope of the review.

[1] Available here: https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/The-Use-of-Deferred-Sentencing-in-England-and-Wales.pdf and here: https://www.sentencingacademy.org.uk/wp-content/uploads/2023/08/Deferred-Sentencing-August-2022.pdf.

Origins and Purpose of Deferred Sentencing

The statutory power to defer sentencing came into force in 1973 as a result of section 1 of the Powers of Criminal Courts Act 1973. The provisions are modelled on the power exercised by Scottish courts.[2] The English regime was proposed by the 1970 Advisory Council on the Penal System (hereafter 'Advisory Council'). This panel reviewed the experience with deferred sentencing in Scotland and concluded:

> 'We are firmly of the opinion that there is a definite place in the penal code for the deferment of sentence to provide the offender with an opportunity to show good behaviour, to repay money which he has acquired dishonestly, to pay compensation for damage which he has caused maliciously, or to perform some other act which would indicate ability to stay out of trouble.' (Advisory Council, 1970, p. 28)

In the words of the Advisory Council, deferment involved 'postponing sentence for a period to see if the offender carried out some stipulated action' (Advisory Council, 1970, p. 22). The Advisory Council conceived of deferred sentencing as a means '(a) to ensure future good conduct or to enable the court to await the happening of an event (e.g., employment or the return of the offender to his family home; and (b) to await the outcome of the offender's undertaking to make reparation to his victim' (Advisory Council, 1970, p. 25). Deferral offers the offender a final opportunity to avoid immediate imprisonment.

More recently, in recognition of the need to support restorative justice initiatives, the deferred sentencing provision has acquired a wider remit. Schedule 23 to the Criminal Justice Act ('CJA') 2003 expanded the objectives of deferred sentencing by adding reparative activities to the list of requirements. The CJA 2003 broadened the conduct of the offender to include consideration of the extent of compliance with requirements, and 'greatly improved the effectiveness of deferment of sentence as a tool for testing an offender's will and capacity to reform' (Baker, 2014, p. 54).

Distinguishing Deferred Sentencing from Adjournment

Deferred sentencing differs from a simple adjournment in several respects. First, adjournment is normally only for a few weeks, whereas a sentence may be deferred up to six months. Second, in the vast majority of cases a court adjourns in order to secure additional information, usually in the form of a Pre-Sentence Report (PSR). In contrast, deferment may be ordered for a wide range of reasons which go far beyond collecting professional reports or gathering further information. Third, adjournment has no direct consequences for the offender, beyond obliging him or her to return to court at a later date for sentencing. In contrast, when a court defers sentence, the offender is obliged to comply with any requirements during a longer period (up to six months). Upon return to court, they will be expected to demonstrate positive changes to their life circumstances. In this sense, deferred sentencing actively engages the offender in the sentencing process. This engagement does not arise in the context of a simple adjournment.

[2] See Scottish Advisory Council on the Treatment of Offenders (1960). Scotland created the power to defer sentence a decade earlier in section 47 of the Criminal Justice (Scotland) Act 1963. Courts in Northern Ireland also have the power to defer sentencing. The regimes vary, with the Scottish courts having widest powers. For example, the deferral period in Scotland is unlimited.

Distinguishing Deferred Sentencing from Deferred Prosecution

Deferred sentencing is ultimately a sentencing option post-conviction, rather than an out-of-court disposal, or an alternative to prosecution. Nonetheless, examples of deferred prosecution enjoy similar features to deferred sentencing, particularly with regards to compliance and conditions.

A Deferred Prosecution Agreement (DPA) is one example of deferred prosecution. It is a court approved agreement between a prosecutor at the Crown Prosecution Service or Serious Fraud Office, and a company, partnership or unincorporated association that would be convicted of a crime, to suspend prosecution proceedings pending successful compliance with certain conditions. DPAs were introduced on 24 January 2014 via Schedule 17 to the Crime and Courts Act 2013. Just as deferred sentencing obliges the offender to comply with requirements, the DPA requires an organisation to fulfil certain conditions, such as making full reparation for criminal behaviour. For example, a company might pay compensation and co-operate with future prosecutions of individuals within the company in order to avoid prosecution. A DPA has the additional benefit of allowing companies to avoid the collateral damage of a conviction. In contrast, the deferred sentencing option can only be used after conviction. [3]

Deferred prosecutions have also been piloted by the Metropolitan Police Service in Brent, Harrow and Barnet after being adopted by West Midlands Police ('Operation Turning Point') and Durham Constabulary ('Checkpoint'). 'Chance to Change' is another deferred prosecution scheme piloting in West Yorkshire and London. These schemes address low-risk offenders (particularly children and young people). Just as with DPAs, such prosecutions require offenders to meet specific conditions – such as accessing support services – which, if met, mean that prosecution is not proceeded with.

Initial evaluations of these programmes have been positive; according to a randomised control trial evaluation of Checkpoint in Durham between 1 August 2016 and 31 March 2018, the results indicate that the Checkpoint treatment cohort achieved a 10.3% reduction on the basis of prevalence and a 30% reduction on the basis of risk of reoffending than the control cohort (Weir *et al*., 2021). In the review of the Chance to Change pilot, deferred prosecution is reported as supporting and incentivising engagement, both with enforceable and non-enforceable conditions, such as mental health services referrals and education (Kinsella, Williams and Wong, 2023). For deferred sentencing, it is the threat of more severe punishment – rather than the threat of prosecution itself – that is expected to have a focused effect on encouraging compliance amongst offenders.

As with deferred prosecution, deferred sentencing may enable young offenders to avoid a custodial sentence whilst address the root causes of their offending through access to valuable support and services. In a qualitative exploration of the attitudes of young people to sentencing in Scotland, Miller and Anderson (2021, para. 9) observed that social isolation was identified as one of the most damaging things for young people to experience, with staying in the community one of the best options. They therefore concluded that community sentences and deferred sentences both 'allow for young people to change within the community, giving young people

[3] The Serious Fraud Office is currently updating its guidance to corporates on DPAs, which is expected to be published later in 2025.

time to consider the consequences of their actions and make positive changes within their lives' (Miller and Anderson, 2021, para. 114). They also note that deferred sentences enable offenders to build skills, relationships or experience that might assist with securing employment (Miller and Anderson, 2021, para. 189). Deferred sentences create opportunities for voluntary interventions such as mentoring or counselling. They can 'help to 'build meaningful relationships, provide help with needs, and build strengths' (Miller and Anderson, 2021, para. 181).

Therefore, whilst deferred sentencing does not go so far as to avoid criminal prosecution altogether (as in deferred prosecution), it provides another valid option for sentencing courts to address offenders with complex needs.

Deferred Sentences and a Suspended Sentence Order

Some scholars have suggested that the imposition of a suspended sentence order ('SSO') can serve the same purposes as deferral – without the need for a delay and a second hearing.[4] Yet deferred sentences are clearly distinguishable from SSOs. A court imposing an SSO is definitively marking the seriousness of the offence with a custodial sentence, albeit one which is suspended for a specified period of time. As the Sentencing Council's Imposition guideline makes clear, before imposing an SSO, a court must be satisfied that the custody threshold has been met. Only if this is the case will a court proceed to determine if the sentence may be served as an SSO. The decision for a court prior to imposing an SSO is whether there are reasons why the term of immediate imprisonment may be suspended (Sentencing Council, 2017a).

A wide range of circumstances may affect the offender in a way that is relevant for the purposes of sentencing. The offender may be engaged in a professional, academic or a therapeutic course, the outcome of which is currently unknown. They may be in the midst of paying compensation to the victim, or they may be beginning or continuing to participate in a restorative justice programme. The personal circumstances of the offender's dependents might be changing in significant ways that a court may wish to consider at sentencing. One distinction, therefore, between individuals being sentenced immediately or shortly after conviction and deferred sentence offenders is the dynamic nature of their life circumstances. If a court has all necessary information relevant to the sentencing decision, no adjournment is necessary; if the offender's life circumstances (including his or her possible participation in a restorative justice initiative) are static and stable, deferral is equally unnecessary.

Another distinction is that the offender must consent to deferral of sentence. In *R v Fairhead* [1975], an early judgment relating to deferred sentences, the Court of Appeal noted that it was of the greatest importance that the accused should be personally asked whether he consented to the deferment (see Bennun, 1976). This requirement does not apply to either sentencing adjournments or sentencing options, such as the imposition of an SSO.

Finally, the length of the operational period for a deferred sentence is limited to a maximum of six months. In contrast, the operational period of a suspended sentence is limited to a maximum of two years. The Law Reform Commission (2020, para. 2.10) in Ireland has suggested, in light of this, that the suspended sentence should be located higher on the hierarchy of penalties.

[4] See Roberts (2022) for a summary of scholarly commentary regarding deferred sentencing.

Reports from sentencing judges in Scotland reveal a desire to 'keep tabs on the situation' through using the deferred sentence option (Jamieson, 2019). The deferred sentence therefore helps to establish what has been described as a 'therapeutic relationship' between sentencers and offenders (Jamieson, 2019). This relationship, alongside rehabilitative support and 'legal leverage' is capable of improving procedural fairness, de-escalating contact with the criminal justice system for offenders and thus reducing reoffending (Centre for Justice Innovation, 2020).

These differences suggest that the deferred sentence cannot simply be replaced or substituted for the SSO. Deferred sentences are particularly appropriate for offenders with complex needs or in periods of transition. They offer a sentencing option that engages more closely with the behaviour of the offender after conviction than the suspended sentence. The offender does not merely avoid immediate custody but also is empowered to change their behaviour. Through a deferred sentence, the offender's actions – whether through improved behaviour or compliance with addiction or mental health programmes – have a tangible impact on the sentence that they receive.

Chapter 2: Insights from other Jurisdictions

We begin by describing the experiences with deferred sentencing in Scotland.

1. Scotland

Under section 202 of the Criminal Procedure (Scotland) Act 1995, a court may 'defer sentence after conviction for a period and on such conditions as the court may determine'. If such a deferment includes a structured intervention managed by justice social work services (such as support with housing, mental health, and drugs and alcohol), it is known as a Structured Deferred Sentence ('SDS'). SDSs are the most common form of sentence deferral in Scotland, used across fifteen of the thirty Local Authorities.

Three pilot SDS schemes were introduced in 2005 – 2008 in Lanark and Hamilton in order to address perceptions that 'low tariff' individuals were presenting high levels of need when being sentenced, with social work support frequently unavailable to them (Scottish Government, 2021a). In September 2019, 33% of all deferred sentences in Scotland were reported to have been young people (Miller, Abercrombie and McLellan, 2019, p. 19), although recent data points to more universal usage.[5] Miller, Abercrombie and McLellan, in their evaluation of the pilot schemes on young people, found that the 'sentencing outcomes, re-offending rates and social improvements for young people were overwhelmingly positive' (2019, p. 16). They therefore concluded that an SDS should be the first consideration for the sentencing for young people as it 'has the ability to down tariff young people within the criminal justice system' (Miller, Abercrombie and McLellan, 2019, p. 16). Following the successful pilot, SDSs have since been used in many other areas.[6]

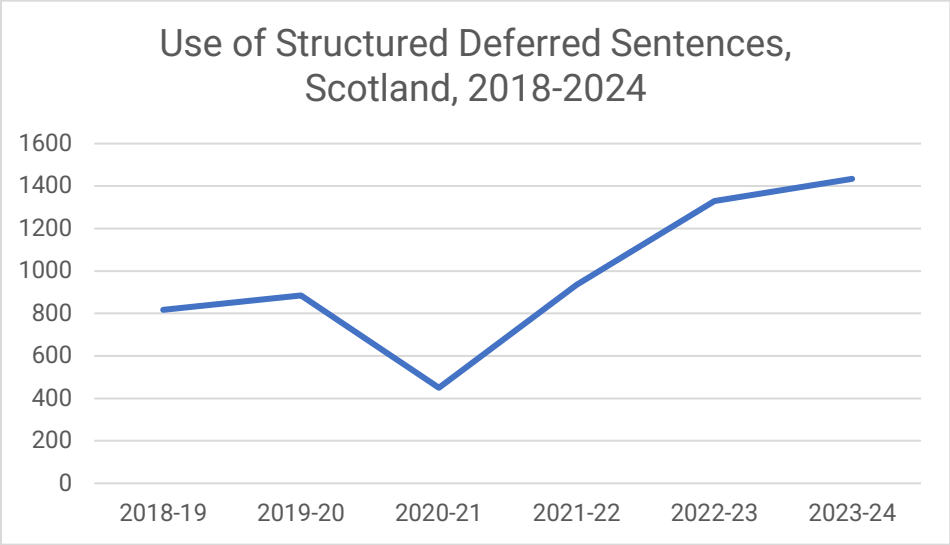
Data published by the Scottish Government confirms the increasing use of SDSs across Scotland (Scottish Government, 2024). Other than the sharp dip in usage during the COVID-19 pandemic, there has been a steady increase in the use of this disposal, as can be seen in Figure 1.

[5] See Scottish Government (2024) for key statistics for 2023 – 2024 for Structured Deferred Sentences. Those over the age of 40 accounted for the highest proportion of those receiving an SDS (29%).

[6] See the report to this Appendix for Local Authority data.

Figure 1:

Use of Structured Deferred Sentences, Scotland (Scottish Government, 2024)



As already indicated, recent Scottish data reveal a broader picture of usage beyond young offenders. Data confirms that the vast majority of offenders who receive an SDS are aged 31 and above (approximately 50% of the overall figures). Approximately 30% of all SDSs are handed to women. Most of those undertaking SDSs are unemployed, and most are white. The majority of SDSs are six months or less.

The Scottish SDS model is primarily aimed at 'low tariff' individuals. These disposals are used to complement the range of community disposals across Scotland, as well as a way to assess the ability and motivation of individuals to comply with court orders and supervision. The Scottish data (Scottish Government, 2024) reveals that very rarely (in approximately 5% of all cases) will the outcome of an SDS be a period in custody. The most common outcome in the Scottish context, by far, is admonishment.[7] The second most common outcome falls into the category labelled as 'other', which includes fines. The third most common outcome is a Community Payback Order (the closest to the Community Order in England and Wales).

Sentence de-escalation is core to the Scottish deferral model which places offender agency at the heart of the process. This mode of working appears to pay off. The most recent figures published by the Scottish Government confirm a 90% completion rate in 2023-24. This is particularly impressive given that this was the biggest uptake of the SDS in Scotland to date. In comparison, national completion rates for Community Payback Orders finished in 2023-24 was 71% (Scottish Government, 2025).

[7] An admonition is where an accused person found guilty of a crime is warned not to offend again. It is recorded as a conviction and appears on their criminal record. No other penalty is given.

There are also examples within Scotland of the use of deferred sentencing for high tariff individuals, and therefore as an alternative to custody. In Falkirk, sentences may be deferred for individuals who have been assessed to be unable to comply with requirements of a Community Payback Order for reasons such as substance use. SDSs therefore provide a period within which that substance use can be addressed, and the individual can be prepared to engage with a Community Payback Order. In Glasgow, in the specialist drug and alcohol courts, SDSs are offered to individuals with complex needs, such as women and people with mental health difficulties, in order to assess and aid compliance with future statutory orders. Perth's SDS scheme, 'Right Track', is aimed at people aged 16-26 at immediate risk of custody, providing a programme that includes regular court reviews and one-to-one appointments (Scottish Government, 2021b). Aberdeen's problem-solving court, which is discussed further below, provides another example of SDSs being used for individuals at risk of custody.

Nonetheless, the Scottish model centres on the use of deferred sentencing for 'low tariff' individuals, who are therefore not at immediate risk of custody. The Scottish data certainly presents a compelling picture of the successful use of deferred sentences as an early-stage intervention to prevent individuals from being drawn further into the criminal justice system. However, there is limited data and research completed which relates specifically to the effectiveness of deferred sentences as an alternative to custody in Scotland. More targeted research could usefully be conducted in order to assess this use of deferred sentences, which more closely aligns with the present formulation of deferred sentencing in England and Wales.

2. Northern Ireland

Belfast's substance misuse court, which has been running at Belfast Magistrates Court since April 2018, is a problem-solving court that uses deferred sentences to encourage compliance. It is aimed at those who commit crimes related to their drug or alcohol abuse. The sentences of eligible offenders are deferred until completion of the treatment programme, which probation officers, psychologists, and Addiction NI counsellors have worked together to formulate. During the period of deferment, the offender is subject to court bail conditions and the judge monitors progress through attend review hearings. The programme may be terminated – but if it is successfully completed, the judge will preside over a final review where sentence is passed, taking into account the offender's engagement with the programme (Centre for Justice Innovation, 2020).

The use of sanctions and incentives as well as judicial continuity and progress reviews within this model of deferred sentencing is thought to support dialogue between offenders and multi-agency teams (UK Parliament Post, 2023). Results were positive in an initial evaluation in March 2020. In November 2021 a second evaluation of the substance misuse court further expanded on these results (though it must be noted that the findings in this evaluation are based on a small sample). The second evaluation reported 'statistically significant decreases in … drug and alcohol misuse and reoffending scores were evident, as were statistically significant increases in self-efficacy and life satisfaction' (Northern Ireland Courts and Tribunals Service and Northern Ireland Statistics and Research Agency, 2021, p.24).

The Department of Justice in Northern Ireland undertook a public consultation on various aspects of local sentencing policy between October 2019 and February 2020, including the potential for a new Structured Deferred Sentence, as currently operates across Scotland. The Department subsequently published 'Sentencing Policy Review Consultation: Way Forward' in April 2021. However, it concluded that further work was needed on the potential new sentencing options before concrete decisions could be made (Northern Ireland Audit Office, 2023).

3. The Republic of Ireland

While the Criminal Justice Act of 2006 (s.100) made formal provision for Irish courts to defer a prison sentence for up to six months, it has only been used in a small number of cases since enactment. The *practice* of sentence deferral is, however, widespread across the Republic of Ireland. Evolving judicial practice has led to the increased use of a non-statutory form of supervised community sanction, officially known as 'Supervision During the Deferment of Penalty'. More commonly referred to as 'adjourned supervision', the practice of probation supervision without a formal sentence mirrors the model used in Scotland. Unlike Scotland, adjourned supervision is used for both lower-tariff and higher-tariff individuals (including cusp of custody cases). The preference for a less-formal option is a clear reflection that the Irish Courts favour a judicial-led 'testing period' (see Riordan, 2009). Carr and Maguire (2017) have highlighted the 'doing justice on a case by case basis' nature of sentencing in Ireland; unsurprising since Ireland is one of the only common law countries in the world that does not have statutory sentencing guidelines. Indeed, it has become a mainstay in the Irish courts, used in approximately thirty per cent of cases involving probation supervision (Probation Service Annual Report, 2023).

Despite its prevalence, data pertaining to the effectiveness of adjourned supervision is not made publicly available. A research summary by Maguire (2018) indicated that completion rates for Community Service Orders in the Republic of Ireland are between 80% and 85%. This figure is not directly comparable (as a community service order is not the same as Supervision During the Deferment of Penalty), based on a number of small-scale studies and now largely out of date. It does, however, provide an indication of the overall commitment to and effectiveness of probation supervision in the Republic of Ireland. It is clear that more research is needed in to understand why the statutory option of deferred sentencing is seen as unattractive when compared to a non-statutory alternative. Research should also examine the offending histories and characteristics of those on adjourned supervision, alongside data on completion rates.

4. Victoria, Australia

Under the Sentencing Act 1991 (Vic), sentences may be deferred for up to 12 months if the court is satisfied that the deferral is in the defendant's best interests and if they agree to deferral. Sentence deferrals are commended for giving people 'the opportunity to demonstrate their commitment to rehabilitation, backed by the right support services, and ultimately to avoid a prison sentence and entrenchment into the system. (Madeline Ryan, Regional Managing Lawyer at Victoria Legal Aid, 2022). If the offender makes sufficient progress during the period of deferral, they may benefit from receiving a community order instead of a prison sentence.

In Victoria, the Assessment and Referral Court (ARC) works with individuals due to go to court on bail who have been assessed for eligibility by an ARC case manager. The accused person must also benefit from receiving services as part of an individual support plan, which may include psychological services, health services, and other services that aim to reduce the risk of re-offending. Sentencing is deferred whilst the person participates in their individual support plan and meets regularly with their case manager. They are brought back regularly before the same judge to check on their progress. The support plan is regularly reviewed with 'the magistrate, the prosecution, support staff, the accused person and their family sit[ting] at the same table' (Centre for Justice Innovation, 2020). If the court is satisfied with the individual's progress, the accused person may be discharged without any finding of guilt. Results for the ARC reveal that 43% of participants did not re-offend two years' post-completion (Centre for Justice Innovation, 2020). The Centre for Justice Innovation (2020) highlights that '[c]rucial to this model is the clear expectation that when individuals successfully access and engage with services, their compliance will materially change the court's decision.'

Victoria Legal Aid's submission to the State Sentencing Advisory Council (December 2022) concluded that deferrals are underused and inconsistently applied. They note that deferred sentences can provide 'an important tool to address the disproportionate impacts of the criminal justice system'. Their recommendations to address this problem include improving access to support services, especially in rural and regional areas; boosting workforce training; and expanding the legislative purposes eligibility criteria.

In 2024, the Sentencing Advisory Council published a report into the use of sentence deferrals in Victoria. This report summarises the Council's review of the deferred sentence and made 10 recommendations for reform. Several of these recommendations expanded the purposes for which deferral may be appropriate. For example, the Council recommended that deferral may be an option 'to consider or reflect the best interests of the offender's unborn, newborn or dependent child' (2024, p. xi). In addition, the Council recommended increasing the potential length of deferral. As noted, at present, courts may defer for up to 12 months. The Council recommended that the government amend the relevant section of the Sentencing Act to permit a court to extend a sentence deferral for an additional period of up to six months.

5. New Zealand

In New Zealand, under section 25 of the Sentencing Act, judges have the ability to defer sentencing for a variety of purposes. This includes 'to enable a rehabilitation programme or course of action to be undertaken' (s. 25(1)(d), Sentencing Act 2002). This provision has been the legislative basis for the operation of specialist courts in New Zealand, such as the Alcohol and Drug Treatment Court (Te Whare Whakapiki Wairua). This court sits at Waitakere, Auckland and Hamilton District Court. Offenders must be facing up to three years imprisonment, be charged with offending driven by alcohol and drug dependency, have a high risk of reoffending and present a risk to self and others. Sentencing is deferred whilst offenders undertake a treatment plan designed and monitored by the court, which may take between one to two years to complete. After 'graduation', participants are sentenced to either supervision or intensive supervision within a community-based sentence (Klinkum, 2019, p. 5).

This Court been described to 'provide a pathway to better outcomes for offenders and their communities' (Klinkum, 2019, p. 25). An evaluation published in June 2019 found that this form of deferred sentencing led to large reductions over all the reoffending measures (New Zealand Ministry of Justice, 2019). Within two years after graduating from the court, participants were 23% less likely to reoffend for any offence and 25% less likely to be imprisoned because of their reoffending. Where subsequent offending occurred, it was likely to be less serious offending (New Zealand Ministry of Justice, 2019, p. 22).

Another use of the deferment of sentence in New Zealand involves restorative justice (Centre for Justice Innovation, 2020). This is reflected in section 25(1)(b) and (c) of the Sentencing Act 2002. A local co-ordinator will explore whether the victim and offender are both willing to participate, and then a trained community-based facilitator is assigned. Pre-conference meetings with both the victim and the offender separately, and then a conference with both, take place. A restorative outcome plan is attempted to be made, which is then considered by judges when the case returns to the sentencing court. The latest data (which covers both police and court referred cases) shows that:

> 'The reoffending rate for offenders who participated in restorative justice was 15% lower over the following 12-month period than comparable offenders and 7.5% lower over three years. Offenders who participated in restorative justice committed 26% fewer offences per offender within the following 12-month period than comparable offenders (20% fewer offences within three years).' (New Zealand Ministry of Justice, 2016, p. 1)

An amendment to the Sentencing Act in 2014 has given further impetus to restorative justice; it requires all cases that meet certain criteria to be adjourned prior to sentencing for consideration of whether restorative justice is appropriate. This increased sharply the number of cases referred for a restorative justice assessment (from 4,000 in 2014 to over 12,000 in 2015) (Centre for Justice Innovation, 2020).

Chapter 3: Female Offenders and Deferred Sentencing

Evidence suggests that there are fundamental differences between male and female offenders that suggest a distinct approach is needed for sentencing. The Corston Report (2008) made several observations that distinguish the offending of women from that of men. For example, women who offend have a lower involvement in serious violence, criminal damage and professional crime, and drug addiction plays a disproportionately significant part in female offending. Women's needs are also distinct: women who offend are more likely to have experienced trauma; more likely to be primary carers of young children; and more likely to suffer with mental health problems and self-harm in prison compared to the male prison population.

In 2022 women made up 29% of all self-harm incidents in prison, despite making up only 4% of the prison population (Prison Reform Trust, no date). Given that female offenders make up a small proportion of the prison population, there are fewer women's prisons – and therefore women tend to be located further from their homes than male prisoners. Custodial sentences for women therefore have a particularly disruptive impact on maintaining family ties, receiving visits and resettlement for female offenders and their families. An estimated 17,000 children are affected by maternal imprisonment every year (Prison Reform Trust, no date).

These findings have generally been accepted. The Government's Female Offender Strategy (2018) included priorities that fewer women are put in custody, especially on short-term sentences, and that a greater proportion of women are managed successfully in the community. This was reaffirmed in the Government's Female Offender Strategy Delivery Plan (2023). At least in part in deference to the Female Offender Strategy and Delivery Plan, the programme to expand the women's prison estate by 500 new prison places was paused in April 2024. The establishment in early 2025 of the Women's Justice Board reflects a strategic commitment to continue this agenda. Initial priorities include increased diversions, more community solutions and improvements for pregnant women and mothers of young children.

Despite this government focus, over half (58%) of prison sentences imposed on women in 2022 were under six months, and the latest prison population figures predict an increase in the number of female offenders in prison (Prison Reform Trust, 2024). Analysis of local court area data published in October 2023 shows that 'theft from shops' was the most frequent offence for which women are imprisoned, accounting for more than a third of women's prison sentences of less than six months in 2022 – compared to just 16% of men's prison sentences (Prison Reform Trust, 2024)

Deferred sentences present a useful sentencing alternative for women to address these issues. Both the Aberdeen problem-solving court and the Belfast substance misuse court illustrate the strength in incorporating deferred sentences with problem-solving approaches. This would provide for the use of deferred sentences in a similar way to other community sentences at the court's discretion, a broader application of this form of sentencing than currently operating in England and Wales.

The 2020 White Paper, 'A Smarter Approach to Sentencing', thus indicated an approval of deferred sentences, in particular for women:

> 'Where the court has the capacity, we want to encourage them to use existing legislation on deferred sentences, and existing services available to them such as Liaison and Diversion or community advice and support services, to divert vulnerable offenders into services and away from further involvement in the criminal justice system, especially vulnerable women who are likely to benefit from referral to a women's centre. The majority of women sentenced to custody receive sentences of less than 12 months, often for persistent low-level offences, and there is a higher prevalence of reported needs among women in custody, including around substance misuse, trauma and mental health. The greater use of deferred sentencing will also provide opportunities for restorative justice practices to be deployed.' (Ministry of Justice, 2020)

In 2020, the Ministry of Justice announced its intention to pilot five new problem-solving courts – including one which would specifically focus on the distinct needs of women who offend. In June 2023, three Intensive Supervision Courts (courts with 'problem-solving components') were launched by the Ministry of Justice, including one specifically for female offenders in Birmingham (Ministry of Justice, 2023). Another court was launched in Bristol in June 2024.

An interim evaluation of the first three Intensive Supervision Courts (Ministry of Justice, 2024) found that stakeholders and offenders found the order requirements set fair and appropriate, and not an 'easy option' (p.2); that they enable diversion from custody (p.4); and that overall, there appears to be good engagement with order requirements. Some individuals accessed mental health treatment for the first time (p.2).

The Centre for Justice Innovation's review (2016) of the evidence on problem-solving concluded that a 'problem-solving court for female offenders who have complex needs or are at risk of custody has the potential to reduce reoffending and address criminogenic needs' (p.22). The Centre for Justice Innovation briefing on deferred sentences (2020) highlights the crucial role they play in encouraging compliance with rehabilitative support and thus reducing reoffending.

While we stress the distinction between problem-solving justice and deferred sentencing, it is the case that both approaches adhere to similar, therapeutic principles. These include being: evidence-based, needs-led and outcomes focused, individualised, responsive and flexible, trauma-informed and established with consent (Scottish Government, 2021a). Such factors are consistent with long-established best practice in the field of women's justice.

Scottish data is promising. The Angiolini Commission on Women Offenders of 2012 led to the establishment of the current problem-solving courts attended by women in Aberdeen and Forfar. Although small-scale, a recent evaluation of the problem-solving court in Aberdeen revealed moderate success in re-offending rates, although the report authors acknowledged that the small sample made it difficult to derive clear conclusions (Eunson *et al.,* 2018). The Aberdeen approach is interesting as it combines SDSs with problem-solving techniques. Unlike other SDS schemes, used to prevent further involvement in the criminal justice system at an early stage, this approach mostly targets defendants with considerable offending histories and those considered to be at risk of custody. Such deferred sentences thus provide an opportunity to divert female offenders away from disruptive short prison sentences. This approach also has the added persuasive strength of the prospect of having an impact of the sentence at the end of the process and therefore aids compliance with requirements and orders.

More recent figures published by the Scottish Government provide a compelling case for a greater uptake of SDS for women. The following table shows the high successful completion rates for women.

Table 1: SDS completion rates for women, Scotland, 2020-2024

Year	**2020-2021**	**2021-2022**	**2022-2023**	**2023-2024**
Total number of SDS	129	280	388	472
Total number of SDS completed	105	197	299	419
Successful completion rate	81%	70%	77%	89%

Source: Scottish Government (2024).

Data from the Republic of Ireland is regrettably incomplete. Published data does, however, reveal that approximately one third of probation supervision for women comes under 'Supervision During the Deferment of Penalty'.[8] This means that approximately one third of women being supervised by probation are unsentenced. It reflects a clear commitment from the Irish courts and demonstrates the suitability of adjourned supervision for many women.

[8] See Probation Service Annual Report (2023) for the latest figures. All figures pertaining to the number of 'Supervision During Deferment of Penalty' disposals for women are available in previous Annual Reports. The figure of 30% is an average taken from 2015-2023.

Chapter 4: Current Guidance for Courts

Statutory basis for Deferral

By section 3 of the Sentencing Code, deferment of sentence means deferring passing sentence until a specified date in order to enable the court, when dealing with an offender, to have regard to the offender's conduct after conviction (including, where appropriate, reparations made by the offender) and to any change in the offender's circumstances. By section 5(1), a court may make a deferment order only if the offender consents (and in the case of restorative justice activities, the other participants consent); the offender undertakes to comply with any deferment requirements the court proposes to impose; and the court is satisfied that deferment is in the interest of justice. The court can defer passing sentence for up to six months (s.5(2)).

1. Court of Appeal Guidance

Much of the case law generated by the Court of Appeal in this area has related to procedural matters surrounding deferment. The leading case of *George* (1984)[9] itself deals with both procedural matters and the substantive question of whether an offender can expect a non-custodial sanction in the event that she or he complies with the terms of the deferment. In the case's first appearances before the Court of Appeal, on the 4th and 14th of May 1984, the Court set out clearly what the purpose of deferment was:

> 'The purpose of deferment pursuant to section 1 of the Powers of Criminal Courts Act 1973, as amended, is to enable the court to take into account the defendant's conduct after conviction or any change in circumstances and then only if it is in the interests of justice to exercise the power. However, great care should be exercised by the court when exercising that power, for it is not to be used as an easy way out for a court which is unable to make up its mind about the correct sentence.' (pp. 26-27)

Thus, it has been made clear the deferment should be a considered decision taken on the basis that there is likely to be new information which will assist the court in making a sentencing decision. Usually that sentencing decision will be a choice between either an immediate custodial sentence, or a sentence that is (initially, at least) to be served in the community. Thus, a defendant who has complied with the terms of a deferred sentence would usually expect to receive either an SSO or a community order.

The effect of Sentencing Council's guideline (as extracted below), along with principles established in case law, is that deferment should be sparingly used (*R v Blackadder* [2024]; *R v Swinbourne* [2023]).

In the more recent case of *Blackadder* [2024], the Court of Appeal considered the principles applicable to deferment of sentencing. It cited the July 2022 Sentencing Academy report, whilst observing the lack of Sentencing Council guideline in relation to deferment of sentence in the Crown Court (para 32). The Court also drew attention to the case of *R v Swinbourne* [2023], and

[9] The defendant in this case had pleaded guilty to assault occasioning actual bodily harm.

its summary of the principles relating to deferred sentences. At paragraph 21 of the judgment in *Swinbourne*, William Davis LJ said that the guideline provides that sentence should only be deferred:

> '… in a small group of cases, at either the custody threshold or the community sentence threshold, where the court may be prepared to impose a lesser sentence provided the defendant is prepared to adapt his behaviour in a way clearly specified by the court. When passing sentence, the court should indicate the type of sentence it would be minded to impose if the defendant does not comply. Deferment can only be appropriate if a sentence other than one of immediate custody will follow in the event of compliance.'

Davis LJ went on to explain that sentence may not be deferred if there is no indication that a non-custodial sentence will be imposed in the event of compliance with specified conditions. He noted that deferment may be appropriate in a case where the minimum term provisions apply, but that the court must be able to say that exceptional circumstances apply at either the date of deferment, or if the defendant meets the conditions of the deferment.

In *Blackadder,* the Court of Appeal also endorsed the observations of Harris and Walker (2020) in their commentary on *Swinbourne,* that 'it is vital for sentencers to consider whether the lesser sentence, which is expressly or implicitly offered as an alternative disposal, is in fact a realistic possibility.' It also approved of the consequent observation that if a sentence is not able to be suspended (because a custodial sentence of two years or less 'could never be justified for the offending'), a decision to impose a deferred sentence will 'always be improper' (*R v Blackadder* [2024] EWCA Crim 318, para. 37).

In *Swinbourne*, William Davis LJ stated that '[d]eferment of sentence is not to be used where the court cannot state in clear terms what the sentence will be if the defendant complies' (para.22)

It is also crucial that the person consents to the deferral, this being one of the important principles highlighted by *L* [1999]. If the offender's consent was not given under the 1973 Act, then the sentence that had been imposed amounted to an error of law by the Judge as to their sentencing powers.[10] This confirmed the position in *McQuaide* (1974)*,* where the Court of Appeal urged courts to be 'meticulously careful' when deferring sentence to ensure that all procedural requirements were met (p. 241). As the requirement for an offender's consent remains in the Sentencing Act 2020, along with a number of other procedural details, it is likely that errors such as a failure to obtain the offender's consent would still amount to an error of law in the sentencing process, making it susceptible to appeal. In *Blackadder*, consent was described as a 'necessary condition of deferment' (para. 43). In that case, the fact that the offender was never asked whether she consented to deferment was a reason that deferment was not a course which would properly be taken. The Court also provided further detail as to why consent is necessary, observing that it provides an 'opportunity for reflection' on both why deferred sentencing is being proposed and the precise requirements with which the offender must undertake to comply (R v Blackadder [2024], para. 43).

It is necessary, therefore, to ensure that sentencers receive training on the use and procedure of deferred sentences as part of their training, to ensure confidence and precision in their use, and

[10] Under section 36(2) of the Criminal Justice Act 1988.

also to ensure that sentencers properly consider them as part of the sentencing armoury, especially when sentencing a young person or young adult.

The reasons for which a sentence can be deferred are restricted to those set out in the legislation. In *Sinclair* [2020], the defendant was serving a sentence of imprisonment when he came before the court to be sentenced for further offences. His barrister argued that the Judge should defer sentence, as in the period of the deferment the defendant was due to be released from prison, and therefore on the deferred date would be eligible for a suspended sentence. The Court of Appeal made clear that this would not have been a valid reason for deferring the sentence, and the Judge was right not to do so (*R v Sinclair* [2020], paras. 8-9).

Giving the parameters of possible sentences after a deferment, the Court of Appeal in *Davis* [2020] stated:

> 'Nor is [this] a case where a sentence of imprisonment could have been suspended but, because the judge was not quite sure whether suspension was appropriate, deferral was a suitable course. In such cases deferral may be appropriate and useful but deferral is really there for cases where a community order is at least a realistic possibility if the judge were to pass sentence on that day.' (para. 42)

It has, however, been established that a defendant should not understand a deferral to mean that they will get a community order instead of an SSO – and a Judge deferring a sentence creates no legitimate expectation of a non-custodial, as opposed to non-immediate custodial, sentence (*R v Woodward* [2018], paras. 20 and 27). Neither should a deferral of sentence be taken to indicate that the offence is not so serious as to justify immediate custody.[11]

For all these reasons, the Judge should be precise about what is being done and why, both when deferring, and when they conclude the sentencing exercise after the period of deferment:

> 'First the purpose of the deferment and any requirement imposed by the deferring court must be ascertained. Secondly the court must determine if the defendant has substantially conformed or attempted to conform with the proper expectations of the deferring court, whether with regard to finding a job or as the case may be. If he has, then the defendant may legitimately expect that an immediate custodial sentence will not be imposed. If he has not, then the court should be careful to state with precision in what respects he has failed.' (*George* (1984), p. 213)

It should also be noted that during the period of deferment the defendant is not on bail – rather they are subject only to the conditions of the deferment. Therefore, no questions of failure to surrender when the case is listed for sentence after the deferment period arise (*Mizan* [2020]). However, a failure to attend court without a good reason on the sentencing date might well be seen by a Judge as a breach of the general principle that the deferment period was an opportunity for the defendant to demonstrate a pro-social and responsible attitude. Furthermore, if an offender is required to abide by a curfew during the deferment period, that does not stop the Judge then imposing the maximum permitted curfew[12] under a community order where that is

[11] For the purposes of section 1(4A)(c) of the Criminal Justice Act 1982, now repealed, which stated that an offender qualifies for a custodial sentence if 'the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified': *Bray* (1990-91) 12 Cr. App. R. (S.) 705.

[12] As specified at that time in section 204(3) of the CJA 2003.

the eventual sentence passed on the deferred date (*SA* [2011]). This principle can be assumed to also apply to SSOs, as the Court's rationale was that anything required under the deferment was 'history' by the time the sentence was passed on the deferred date and therefore did not 'count' towards the eventual sentence passed (*SA* [2011], para. 19).

Sentencing judges must also take care to ensure that when deferring sentence, they are not indicating an unduly lenient sentence if the deferment conditions are abided by. Case law is clear that the act of deferring a sentence itself can be unduly lenient – but such undue leniency arguments are usually predicated on the fact that the sentence indicated if the deferment is complied with would be unduly lenient. For example, in *Blackadder* [2024], given the background of the offender (including previous court orders, sentences and repeated breaches), the Court of Appeal held that the sentencing judge 'rightly approached sentencing on the basis that nothing less than a custodial sentence could be sufficient to mark the seriousness of the latest offending', and that the overall sentence would 'inevitably be well in excess of the range which would permit consideration of suspension' (*R v Blackadder* [2024], para. 40). Crucially, therefore, if a suspended sentence were ever imposed in that case, it would be unduly lenient. These circumstances were therefore well outside the category of case for which deferment might be appropriate.

It is not the case that a first instance Judge's decision to defer sentence on some co-defendants and not others will necessarily make the deferrals unduly lenient. Although not the point on appeal, in *Warden and Nicholls* [1998], the Court observed that the Judge had given an explanation that, by implication, the Court of Appeal found acceptable. The Court noted that there were two co-defendants 'of similar ages [to the appellants]' who the judgment says were 12 at the time of the offence, and 13 and 14 on the appeal date (*Warden and Nicholls* [1998], p.66). His rationale for that decision was that, in the case of defendants so young, even where their offence deserved the same punishment but where there had been even tentative signs of improvement, the Court ought to endeavour to encourage it.

In *R v Haslam* [2024], the Court of Appeal considered, and dismissed, His Majesty's Solicitor General Reference of deferred sentences imposed for three counts of possession of class A drugs, with intent to supply, and one count of possession of criminal property. The Solicitor General considered those sentences to be unduly lenient. In the circumstances of that case, it was common ground that Mr Haslam should have received a minimum custodial sentence of seven years before discount of a maximum of 20% for a guilty plea, unless there were exceptional circumstances. Given the sentencing judge's finding of fact that Mr Haslam was functioning as a juvenile, and developmentally a child, the Court of Appeal considered that it would be disproportionate to impose a mandatory minimum sentence of seven years (less 20%) on Mr Haslam. The Court further observed that the sentencing judge was entitled to find that there were exceptional circumstances to enable him to defer the sentence.

In *L* [1999], a case decided when deferred sentences were governed by section 1 of the Powers of Criminal Courts Act 1973, the Court of Appeal held that any appeal against deferring a sentence as being in itself an unduly lenient approach should be brought immediately on the sentence being deferred. In other words, if the prosecution concluded that the very deferring of sentence was unduly lenient, then the time for it to appeal was immediately after the Judge had deferred the sentence, not at the later point when the Judge then imposed the final sentence. Counsel for L sought to argue that deferment was not a 'sentence' within the meaning of section 50 of the Criminal Appeal Act 1968, as applied to section 36 of the Criminal Justice Act 1988, and therefore

could not be the subject of a reference by the Attorney General for being unduly lenient. This reasoning was not accepted on the policy ground that it was in the interests of the public and all parties that there was a mechanism for prompt challenge of an order deferring sentence.

The Court ruled that the decision to defer did fall within the meaning of 'sentence' and thus the Attorney General could challenge such a decision for being unduly lenient. The justification for this position was that the word 'sentence' in section 35(6) of the Criminal Justice Act 1988 was stated to have the same meaning as 'sentence' had under the Criminal Appeal Act 1968, which defined 'sentence' as '[…] in relation to an offence, includes any order made by a court when dealing with an offender'.

This was thought to be the case following the earlier decision in *Attorney General's Reference No. 22 of 1992*,[13] but in that case the issue had not been fully argued. *L* [1999] resolved the issue conclusively, confirming the Court's approach in *Attorney General's Reference Number 22 of 1992* and *Attorney Generals' Reference Numbers 36 and 38 of 1998*. Lord Bingham explained the decision in the following way; that although the court 'has made and announced a decision not to pass sentence on that occasion, it has in practice committed itself to a sentencing strategy any departure from which, in breach of the understanding indicated, would found a successful appeal by the defendant' (*L* [1999], p. 10). The fact that a deferred sentence is a sentence which may be the subject of a Reference was clearly confirmed in *R v Ferreira* [2021]. In that case, the court also confirmed that the court has jurisdiction to consider an application to refer a sentence as unduly lenient even after the period of deferment had expired – though it held that such jurisdiction should be exercised sparingly in the interests of justice. In the particular circumstances of that case, including the fact that it was a very short period of deferment and there were no specific requirements, it was in the interests of justice to exercise that jurisdiction (*R v Ferreira* [2021], para. 25).

As with any sentence, the eventual sentence imposed on the defendant after a period of deferment can be appealed by the defendant on the grounds that it was wrong in law or manifestly excessive. This applies whether the defendant abided by the conditions of the deferment and received the lower sentence or did not do so and was consequently sentenced to the longer term indicated when sentence was deferred (as in *Smith* [2020], where the longer term was held to be manifestly excessive and reduced).

The recent case of *R v Ali* [2023] brings the consideration of deferred sentencing into sharpened focus. The Court of Appeal held that sentencing courts can properly consider the current high prison population as a relevant factor when deciding whether to impose suspended sentences. It is suggested that deferred sentences also provide a relevant alternative to immediate custodial sentences that should be considered by magistrates and judges.

2. Updated Guidance from the Sentencing Council

The Sentencing Council is the other principal source of guidance for courts in England and Wales. There is a short section in the explanatory materials to Magistrates' Guidelines (Sentencing

[13] Also sometimes known as *Thomas* (1993) 97 Cr. App. R. 275 – the offence in that case was one of wounding with intent to do grievous bodily harm, contrary to section 18 of the Offences Against the Peron Act 1861.

Council, no date), and a pronouncement card providing guidance for magistrates explaining the deferment of sentence in court (Sentencing Council, 2023a). As observed in *Blackadder* [2024] by Holroyde LJ, '[t]here is at present no Sentencing Council guideline in relation to deferment of sentence in the Crown Court' (para. 33). The Equal Treatment Bench Book (ETBB) refers to deferred sentencing and associated offender needs such as addiction, but there is no such mention in the Criminal Procedural Rules, Criminal Practice Directions, or the Better Case Management (BCM) Handbook.

The Council has recently included guidance on deferred sentencing in its revised guideline: 'Imposition of Community and Custodial Sentences' (Sentencing Council, 2025):

'A deferment order is available to a magistrates' court or the Crown Court. It delays the passing of a sentence until a date specified by the court which must be within 6 months. The court may impose deferment requirements as to the offender's conduct during the period of deferment.

Deferring sentencing may be particularly appropriate for young adults (typically 18-25 years of age) or those who are in transitional life circumstances.

If you are considering a deferment order, see further guidance here

The court may impose any conditions during the period of deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, restorative justice activities or requirements that are drawn more widely. Requirements and/or conditions attached to a period of deferment should be specific and measurable and should not involve a serious restriction on the offender's liberty.

The purpose of a deferment order is to enable the court to have regard to the offender's conduct after conviction or any change in their circumstances, including the extent to which the offender has complied with any requirements imposed by the court.

The following conditions must be satisfied before sentencing can be deferred:

1. *the offender must consent (and in the case of restorative justice activities the other participants must also consent);*
2. *the offender must undertake to comply with requirements imposed by the court; and*
3. *the court must be satisfied that deferment is in the interests of justice.*

Deferring sentencing will be appropriate only in limited circumstances. A deferment order should only be made if the court considers that a specified period (which enables the court to have regard to the offender's conduct or any change in the offender's circumstances) will allow for a different sentence to that which would otherwise be imposed on that day. A deferment order is likely to be relevant predominantly in a small group of cases close to either the community or custodial sentence threshold.

When deferring a sentence, the court should specify to the offender what ***type*** *of sentence will be imposed:*

- *if the offender complies with all the requirements and/or conditions attached to the period of deferment; and*
- *if the offender does not comply with all the requirements and/or conditions attached to the period of deferment.*

*If the offender **does** comply with the requirements and/or conditions of the deferment, the sentencing court should impose the sentence specified for successful compliance with the requirements and/or conditions of the deferment.*

*If the offender **does not** comply with the requirements and/or conditions of the deferment, they can be brought back to court before the end of the deferment period and the sentencing court can impose any sentence that could have been imposed on the date of deferment. The magistrates' court also retains the power to commit the offender to the Crown Court after a period of deferment, if relevant.*

For the statutory provisions on deferment, please see sections 3-13 of the Sentencing Code 2020.

Magistrates: Consult your legal adviser if you are considering deferring a sentence.' [14]

This guidance derives from earlier advice published by the Sentencing Guidelines Council ('SGC') in 2004. The SGC took the view that the expanded use of the SSO as a result of the CJA 2003 (which removed the requirement for 'exceptional circumstances' to be found in order to suspend a sentence) meant that deferral was 'likely to be used in very limited circumstances' (SGC, 2004, p. 14; Irwin Rogers and Roberts, 2019). This report has noted the decline in the use of deferral at sentencing, but this preceded the expansion of the use of suspended sentences after 2003.

3. The Crown Court Compendium

We note one final resource for courts, namely the Crown Court Compendium (Judicial College, 2025). This important document is produced by the Judicial College and usefully supplements the Council's guidance. S2.4 Deferment Order of the Compendium provides the following guidance:

'1. The purpose of deferring sentence is to enable the court to have regard to D's conduct after conviction; in particular to see whether any positive change of circumstances is maintained and, if appropriate, any reparation is made. The circumstances in which such an order will be appropriate are relatively rare. The relevant factors are reviewed in Swinbourne and Blackadder

(1) The court must identify the need for, and the purpose of, a deferment of sentence.

(2) Deferment cannot be ordered without D's consent. Before seeking D's consent the court must explain to D the purpose of deferment and any requirements that are to be made of him/her in the intervening period.

(3) The requirements that may be made of D may include residence in a particular place and the making of reparation.

(4) The court may also impose conditions of residence and co-operation with the person appointed to supervise D.

(5) D must consent to deferment and undertake to comply with any requirements in the intervening period.

[14] Imposition of community and custodial sentences – Effective from 1 September 2025 – Sentencing

(6) Sentence should not be deferred unless the sentencer is prepared to pass a sentence that does not involve immediate custody if D complies with the requirements of deferment.

(7) The date to which sentence is deferred must be specified and be within six months of the order for deferment.

(8) The court may appoint a probation officer or any other person the court thinks appropriate to supervise D during the period of deferment.

(9) If D fails to adhere to the requirements or commits a further offence, D may be brought back before the court and sentenced on a date before that originally fixed.

(10) A transcript must be ordered of the reasons given for, and the terms of, deferment; copies to be provided to D and the supervising officer.

(11) The court should order a report upon D from the supervising officer or, in the absence of supervision, the probation service for the date of sentence.

(12) The judge or recorder who defers sentence must make arrangements to hear the case on the date set for sentence; it is wrong for a sentencer to "release" such a case.

(13) Imposing the deferment. The court must:

(a) Explain the reasons for deferment.

(b) Identify clearly the requirements with which D would be expected to comply.

(c) Obtain undertakings and consent from D personally.

(d) Set the date for the deferred sentence.

(e) Direct that a short progress report should be written by the person supervising D.

(f) Explain the consequences of compliance with, or failure to comply with, the undertakings given.

(g) Direct that a transcript of the court's remarks must be prepared [within 14 days] and be served on D [via solicitor], on the court and on any person supervising D.'

The Compendium also provides a useful template to guide a court with respect to the wording of a deferral order. This information should be made available to sentencers in the magistrates' courts since, as noted, the vast majority of deferrals take place at that level of court.

Chapter 5: Conclusions and Recommendations

A number of conclusions that can be drawn from this report on deferred sentencing in England and Wales.

1. Further Sentencing Council guidance

Deferred sentencing could be used more often. As noted by Freer (2022, p. 12), without deferred sentences being readily used in England and Wales, there is limited research into the use of deferred sentences – which in turn may lead to a reluctance to use them. Whilst additional research is needed to obtain a fuller understanding of the potential usefulness and application of the deferred sentencing option, further and more comprehensive guidance would facilitate the use of deferred sentencing by sentencing courts.

There is no Sentencing Council guideline for deferment of sentence in the Crown Court, and limited guidance in the explanatory materials to Magistrates' Guidelines. It is positive progress that the Sentencing Council has amended the 'Imposition of community and custodial sentences' guideline and has included updated guidance on deferred sentences. We welcome the clarification of the test for when sentence can properly be deferred; the increased accessibility of the guideline, with specific guidance for courts contemplating deferral; and the reference to certain cohorts of offenders for whom deferred sentences might be particularly effective – such as young adults and those in transitional life circumstances. The potential success of targeting young offenders is illustrated by the experience and use of deferred prosecution to address their complex needs.

We propose the following recommendations in order to further assist sentencing courts in relying on deferred sentences when appropriate.

Factors indicating when deferral is appropriate

The Council could usefully consider identifying factors indicating when it may be appropriate (or inappropriate) for a court to defer sentence. This may empower sentencing courts to defer sentences when appropriate. The Council has issued 'factors indicating' guidance with respect to the related question of whether it is possible to suspend a sentence of custody (Sentencing Council, 2017a, p. 8), and it could do the same for deferred sentencing.

Further, whilst the 'Imposition of community and custodial sentences' guideline has been updated, its sentencing flow chart has not. The flow chart includes the use of suspended sentences, community orders, immediate custodial sentences and fines and discharges, but contains no mention of deferred sentencing (Sentencing Council, 2017a and Sentencing Council, 2025).

This flowchart includes a stage at which the court, having established that the custody threshold has passed, is now to determine whether the sentence of imprisonment may be suspended. The guideline asks: 'Can the sentence be suspended?' (Sentencing Council, 2017a, p. 10). To answer the question, the flowchart directs courts to consider additional guidance on the factors indicating when it would be appropriate or inappropriate to suspend sentence. At this point courts could be directed to consider whether deferral is an option, and additional text might provide

factors suggesting that deferral is appropriate. The text could at this point flag the categories of offenders for which deferral of sentence might be particularly appropriate, such as female offenders or young offenders.

Female offenders

Courts would benefit from greater guidance regarding the kinds of offenders for whom deferral is appropriate. Specifically, we would encourage the Sentencing Council to consider including women as another cohort of offenders for whom deferral may often be appropriate. In relation to the Structured Deferred Sentences model in Scotland, the Scottish Government suggests that deferral might be most appropriate for certain individuals such as 'women in the justice system, young people who have offended, those with lower-level substance use, people experiencing poor mental health, and those with a limited offending history who may pose a low/medium risk of re-offending (sometimes referred to as 'low tariff' SDS) (Scottish Government, 2021a). Deferred sentences provide an option to respond distinctly to female offenders, divert them from disruptive short prison sentences and prevent re-offending. They would therefore meet the policy priorities as highlighted in the Female Offender Strategy and Delivery Plan and the Women's Justice Board.

Conditions of deferment

Once a court has taken a decision to defer, there remains the question of which conditions to impose. Courts have wide discretion in this area and have imposed a wide range of requirements. The Sentencing Compendium offers examples of appropriate requirements (Judicial College, 2021), but the range of potentially useful conditions is wide. Conditions may include non-association/no contact; curfews possibly with tagging; writing of letters of apology/explanation – to name a few. The court would need to consider the number and onerousness of these conditions when imposing the final sentence. These examples could helpfully be provided in the Compendium itself. Further, the information provided in the Compendium should be made available to sentencers in the magistrates' courts, where the vast majority of deferrals take place.

Procedural requirements

Guidance could also address some key procedural aspects of the decision. For example, Harris and Walker argue that it is important for courts to give reasons when deferring sentence in the more serious cases (2020, p. 141). Clear reasons help forestall uninformed commentary that may arise in response to particular cases covered in the media. The question of whether to defer, for how long, and with what kinds of requirements is likely to be fact-specific. Nevertheless, some general principles of application might assist courts. In addition, guidance could help a court determine the kinds of requirements pertinent to deferral. All community orders must carry a requirement for the purpose of punishment, unless there are exceptional circumstances which would make it unjust to do so.[15] In contrast, any requirements imposed during a deferment period are not imposed to be punitive, or imposed *for* the purposes of punishment.[16] Rather, they should guide and assist the offender and assist the court's evaluation of whether the offender's conduct during the period of deferment justifies significant mitigation of sentence.

[15] Section 208 of the Sentencing Act 2020.

[16] At least that appears to be the state of play at present. A thorough examination of the procedure may see some merit in the imposition of punitive requirements, to ensure some degree of punishment at the same time that the offender is working towards rehabilitation. This would align the deferral period with the community order.

Outcomes of deferment

The Sentencing Council could provide advice regarding the question of how much to reduce (or whether to change) the sentence in the event that the offender completes the period of deferment in full compliance with the requirements imposed. In contrast to the SGC's advice in 2004, the Council's guidance says nothing about this issue. The earlier guideline noted that 'if the offender complies with the requirements, a different sentence will be justified at the end of the deferment period' (SGC, 2004, p. 15). The SGC had in mind a step down in the hierarchy of disposals, noting 'this could be a community sentence instead of a custodial sentence, or a fine instead of a community sentence' (2004, p. 15). This direction suggests a methodology by which a court might identify the sentence envisaged at the time of deferral and thus also the sentence below this on the scale of sanctions which would be imposed if the offender successfully complies with requirements over the deferment period.[17]

In our view, there should be a very strong presumption that following compliance with requirements during the deferment, the sentence identified at the time of deferment should be imposed. In addition, the sentence ultimately imposed should be an SSO or a sanction lower on the hierarchy of sentences. The offender needs an incentive to comply, and the incentive should be awarded following compliance with the requirements of the order. Furthermore, the imposition of an immediate custodial sentence following the successful completion of a deferment period may undermine the progress made during this period. At present, there is insufficient clarity with respect to the effect of a successful deferment. Worral and Hoy, for example, note that there is 'no guarantee of the nature of the eventual punishment' (2005, p. 7). A guarantee is necessary to incentivise the offender.

The outcome of the deferment will not always be a straightforward success or failure. In some cases, the offender may have partially complied with the requirements set down at the time of deferral. When this occurs the court's decision will be more complicated. It would be overly simplistic to simply deny the offender the mitigated sentence promised at deferral in the event of full compliance. Rather, courts should consider, in an individualised manner, the degree of compliance, and the reasons why the offender failed to achieve full and complete compliance. In the interests of consistency across courts, guidance on this aspect may be useful.

2. Expansion of the use of deferred sentences

Deferred sentencing is a useful alternative sentencing option at the court's disposal. In England and Wales, sentences can be deferred for those cases at the cusp of the custody threshold. The potential of deferred sentences is highlighted by the impressive completion rates of SDSs in Scotland compared to Community Payback Orders. These two sentencing options may involve similar requirements on the offender, but the SDS allows the court to track progress, maintain a dialogic relationship between the courts and the offender, and provide a persuasive incentive for

[17] The SGC guideline suggests deferment may 'rarely enable a custodial sentence to be suspended rather than imposed immediately' (2004, p. 15). It is hard to see why an SSO would not be a natural replacement for an immediate prison sentence. The SGC may have wished to preserve the view that an SSO is a prison sentence and therefore represents no change from an immediate prison sentence. However, this is at odds with the impact of these two forms of imprisonment.

compliance by the offender due to the prospect of having a positive impact on the final sentencing outcome. Deferred sentencing therefore can provide an effective sentencing option for those at risk of custody.

SDSs are being utilised more widely, for more people, and with great success in Scotland. We suggest that their success in Scotland merits consideration of use of deferred sentencing in a similar way in the context of England and Wales, as not only an alternative to custody but also an appropriate early-stage intervention. They can be used as a way of addressing the root causes of offending behaviour for those at risk of custody with complex needs, as demonstrated by deferred sentencing models in Aberdeen, the Republic of Ireland and New Zealand. Again, more research is needed in order to assess the effectiveness of these applications of deferred sentencing. In light of a burgeoning crisis on the prison estate, this broadened application of deferred sentencing should be helpfully considered to be made available to the courts in England and Wales.

Consideration should be given to increasing the maximum duration of deferral, currently fixed at six months. Deferred sentence regimes in other jurisdictions have higher maximum terms, 12 months being common. Raising the ceiling on the period of deferral would expand the range of cases which could potentially be deferred and a one-year deferral would permit the offender to complete training or educational programmes which exceed a few months in duration.

Problem-solving and specialised courts

Finally, whilst examples of deferred sentencing in practice are limited in England and Wales, lessons can be learned from other jurisdictions. In particular, we note the apparent success of deferred sentencing in Victoria (Australia), New Zealand and Northern Ireland. It is observed that in each of these jurisdictions, specialised courts have been used alongside deferred sentencing. In New Zealand, there is the Alcohol and Drug Treatment Court (Te Whare Whakapiki Wairua); in Victoria, the Assessment and Referral Court and in Northern Ireland, the Belfast Substance Misuse Court. We must consider the use of problem-solving and specialised courts more closely when considering the expansion of deferred sentences in England and Wales. Whilst problem-solving courts have been piloted by the Ministry of Justice, it should be considered whether deferred sentencing could usefully be incorporated into these models in order to divert offenders away from the criminal justice system and reduce reoffending.

Conclusion

One of the goals of the recent Independent Sentencing Review headed by David Gauke was to devise ways of reducing the current reliance on imprisonment as a sanction. Deferred sentences offer an opportunity to meet these important policy priorities, particularly with respect to female offenders. The Independent Sentencing Review (2025) endorsed increasing the use of deferred sentencing and recommended extending the limit of the period for which a sentence may be deferred from six to 12 months. It remains to be seen whether this recommendation will be part of the sentencing legislation which the Government has indicated it will introduce in September 2025.

Increased use of deferral has the potential to contribute to an overall approach to ensuring that admissions to prison remain within the capacity of the prison estate. Deferred sentencing is likely

to be of particular utility for certain profiles of defendants, including female offenders, young offenders and others whose offending occurs during a critical life period.

Although research has yet to explore public attitudes towards deferred sentencing, it is likely that the concept will attract considerable support, at least for cases that do not involve serious violence. The public may well see merit in reducing the sentence from a custodial sentence to a community order in cases where the offender has taken the necessary steps to reduce the likelihood of re-offending. Victims may also support the use of a noncustodial sanction if the offender has faithfully completed the requirements of the deferral order and reduced the risk of further offending.

In order for deferred sentencing to achieve its full potential as an option for sentencing courts in England and Wales, a number of steps are necessary. First, a comprehensive analysis of the experience in Scotland is needed. Elements of the Scottish regime will likely prove useful in amending the deferred sentencing legislation and guidance in England and Wales. Second, in order to increase the visibility and status of deferral, the guidance for sentencers should again be revised. Third, the six-month legislative ceiling on the period of deferral is anomalous in terms of international experience. Parliament should consider increasing the maximum period to 12 months.

As the prison crisis provokes temporary measures such as 'Operation Safeguard', the potential of deferred sentencing to reduce the burden on the prison estate, address the complex needs of offenders and reduce reoffending is promising. Further research and guidance are necessary in order to better understand and effectively use this sentencing option.

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