
DEFERRED SENTENCING

A review of practice

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EXECUTIVE SUMMARY

- Deferred sentences are available to any judge or bench of magistrates sentencing a defendant in the magistrates' court or Crown Court. They have been available in England and Wales since the Criminal Justice Act 1972. They are currently found in section 3 of the Sentencing Act 2020.
- They allow the sentencer to defer the sentencing decision for up to six months (but no longer) with the defendant required to abide by specified conditions during that period. The sentencer must specify when deferring the sentence both what the sentence will be if the defendant does abide by the conditions of the deferment, and what it will be if they do not abide by the conditions.
- Usually the sentence will be immediate imprisonment if the defendant does not abide by the conditions, whereas it will be suspended imprisonment or a community order if the defendant does abide by the conditions.
- Deferring sentence is usually seen as especially suitable for defendants who have had a significant change in personal circumstances between the date of the offending and the date of sentence, where these may realistically mean that their risk of re-offending has already been much reduced.
- They are also commonly used where the defendant has crossed the custody threshold but there is potential for the sentence to be suspended – with the sentencer indicating a non-immediate custodial sentence if the defendant abides by the conditions, as opposed to an immediate custodial term if they do not. Similarly, where a defendant is on the cusp of the custody threshold, the sentencer may indicate a non-custodial sentence (i.e. a community order) if the defendant abides by the conditions, as opposed to a custodial sentence (whether immediate or not) if they do not abide by the conditions.
- There is little research on the use or effectiveness of deferred sentences although a recent report published by the Sentencing Academy found that the use of deferred sentences appears to have fallen significantly since the mid-1970s.

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1. INTRODUCTION

When a defendant has pleaded guilty or been convicted after trial, the sentencing process must follow, to determine what the appropriate sentence is. Any sentencing court has a number of options to reflect the varying seriousness of offences. A court can impose an absolute or conditional discharge, which are not recorded as convictions, at the lowest end. They might impose a fine, a community order, or give a period of imprisonment (either immediate or suspended). As a general rule, sentencing follows soon after conviction, if all necessary information (including any pre-sentence reports) is available to the court. However, a number of countries permit courts, if certain conditions are met, to defer sentencing for a limited period of time, referred to as a 'deferred sentence'. Scotland has had such a power since 1963,¹ whilst it was introduced into English and Welsh legislation in 1972.

This is usually done to allow a defendant time to demonstrate to the sentencing court that they have mended their ways, or are making progress in tackling whatever circumstances led them to offend. This deferral, which can last up to six months in England and Wales, may carry benefits for the offender as well as the crime victim and the State. When a sentence is deferred, the offender will have to agree to abide by certain terms. If they do so, then often the sentencer will sentence them to a community-based sentence of either a community order or a suspended sentence order. If they do not abide by the terms of the deferment then they will usually receive a sentence of immediate imprisonment.

Scope of Review

This review describes the current law and practice surrounding deferred sentences. A sentencer can defer sentence for up to six months from the date on which the sentence hearing was originally listed. During that time, the defendant must comply with a set of conditions imposed by the sentencer. When the sentencer defers sentence, they will state what sentence they would have imposed had they sentenced the defendant on that day (usually immediate custody), and what sentence they will impose, on the 'return date' after the deferment, if the defendant has complied with the conditions (often a suspended sentence order, or occasionally a community order). Statistics on their use are sparse, and there is no published research examining their outcomes; i.e. how many defendants who are given deferred sentences abide by the terms of the deferment and thus receive the lower sentence promised? Do defendants feel incentivised to abide by the conditions by the prospect of a lower sentence? Are re-offending rates lower amongst those who received deferred sentences? Are sentencers in favour of deferred sentences? All of these aspects could usefully be the focus of empirical research to properly evaluate the deferral of sentencing, and consequently to enable the use of deferred sentences to be better targeted at those defendants who will benefit from them the most.²

1 Section 47 of the Criminal Justice (Scotland) Act 1963.

2 For a fuller review of the use of deferred sentences and the gaps in knowledge see Roberts et al. (2022).

2. DEFERRED SENTENCES IN PRACTICE

Deferred sentences are a tool that have been around for many years. Whilst currently found in section 3 of the Sentencing Act 2020, prior to that they have appeared in a similar guise in in-force legislation since their introduction in section 22 of the Criminal Justice Act 1972.

In short, a deferment allows the court to assess whether the defendant is committed to a change in lifestyle to move away from criminality, with the encouragement of the ‘Sword of Damocles’ hanging over them in the form of a more severe sentence if they do not comply with the conditions. This is not to be confused with an adjournment, which can be without limit of time (in theory) and is imposed without specific conditions, except any conditions that are imposed as part of bail. Bail conditions play no part in a deferred sentence because at the point of deferment, bail ends, and the defendant is subject only to the conditions of the deferment.

There are no Sentencing Guidelines to assist a court in deciding when a sentence should be deferred, although the Council’s ‘explanatory materials’ emphasise that ‘Deferred sentences will be appropriate only in very limited circumstances’.³ The sentencer will need to weigh up a) whether this is a defendant who might benefit from a deferment, and b) calculate, using the substantive offence’s Sentencing Guidelines, what the sentence would ordinarily be, and then what could be justified in light of personal mitigation, after a deferment. The Court of Appeal has made clear that if even outstanding behaviour during deferment would not prevent an immediate custodial sentence, then it is inappropriate to defer sentence.⁴

Understanding surrounding the use of deferred sentences, their strengths and weaknesses for different types of offenders, and empirical evidence about what proportion of them are ‘successful’ (defined as the offender abiding by the conditions imposed at deferment, leading to the less severe sentence indicated by the sentencer) is currently missing from the body of academic knowledge on sentencing (see Roberts (2022) and Roberts et al. (2022)).

What is a deferment?

A sentencer may defer sentence (through a ‘deferment order’) for two purposes: to have regard to the offender’s conduct after conviction (including, where appropriate, the offender’s making reparation for the offence),⁵ or any change in the offender’s circumstances.⁶ This deferment must be for no more than six months.⁷

A deferment order may impose requirements (“deferment requirements”) as to the offender’s conduct during the period of deferment,⁸ which can include requirements as to the residence of the

3 Available at: <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/deferred-sentences/>. See Roberts et al. (2022) for a fuller discussion of the guidance currently available to sentencers in relation to the use of deferred sentences.

4 *Attorney General’s Reference No. 101 of 2006 (R v P)* [2006] EWCA Crim 3335, at para. 17.

5 Section 3(1)(a) of the Sentencing Act 2020.

6 Section 3(1)(b) of the Sentencing Act 2020.

7 Section 5(2) of the Sentencing Act 2020.

8 Section 3(2) of the Sentencing Act 2020.

offender during all or part of the period of deferment,⁹ and restorative justice requirements.¹⁰ Where, as a condition of deferral, the offender is required to abide by a curfew, this does not reduce the maximum curfew period that can then be imposed as part of a community order or suspended sentence order when the offender is sentenced after the deferral.¹¹

A deferment can only be made once in respect of each sentence,¹² and cannot be made where the magistrates' court is required by section 85(1)(a) of the Sentencing Act 2020 to impose a referral order on a young person under 18 who has pleaded guilty to an imprisonable offence and has not got any previous convictions.¹³

A court can only make a deferment order if the offender consents¹⁴ and agrees to comply with any deferment requirements the court proposes to impose.¹⁵ This can occur through the defendant's counsel, they do not need to be asked personally by the sentencer (Bennum 1976). If the court decides to impose a restorative justice requirement¹⁶ then the court must be sure that all the necessary participants to that activity consent.¹⁷ Finally, the court must be satisfied, bearing in mind the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to make the order.¹⁸

When the offender comes back before the court for sentencing after the deferment period, the court can consider the offender's conduct after conviction,¹⁹ or any change in the offender's circumstances.²⁰ The court is directed by the legislation to particularly consider whether the offender has made any reparation for the offence if this is possible,²¹ and the extent to which the offender has complied with any deferment requirements.²²

Where a sentence is deferred, this is qualitatively different to it being adjourned. During an adjournment, the defendant is subject to bail, and the only conditions are those attached to their bail for the appropriate purposes.²³

9 Section 3(3)(a) of the Sentencing Act 2020.

10 Section 3(3)(b) of the Sentencing Act 2020.

11 SA [2011] EWCA Crim 2747.

12 Section 4(1)(b) of the Sentencing Act 2020.

13 Section 4(2) of the Sentencing Act 2020; Section 85(2)(a)-(c) of the Sentencing Act 2020.

14 Section 5(1)(a) of the Sentencing Act 2020.

15 Section 5(1)(b) of the Sentencing Act 2020.

16 Defined by section 7(1) of the Sentencing Act 2020 as:

(a) where the participants consist of, or include, the offender and one or more of the victims,

(b) which aims to maximise the offender's awareness of the impact of the offending concerned on the victims, and

(c) which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.

17 Section 5(1)(c) of the Sentencing Act 2020.

18 Section 5(1)(d) of the Sentencing Act 2020.

19 Section 6(1)(a) of the Sentencing Act 2020.

20 Section 6(1)(b) of the Sentencing Act 2020.

21 Section 6(2)(a) of the Sentencing Act 2020.

22 Section 6(2)(b) of the Sentencing Act 2020.

23 To guard against interfering with witnesses, commission of further offences, or failing to attend court – the statutory exceptions to bail as found in the Bail Act 1976.

If sentence is deferred, the defendant is no longer on bail (meaning that no questions of failure to surrender when the case is listed for sentence after the deferment period arise).²⁴ Neither can the defendant be remanded in custody.²⁵ This makes logical sense – a defendant cannot demonstrate their commitment to a change in their lifestyle or circumstances and a cessation of offending if they are remanded in custody. If, however on the date set for sentence after the deferment period,²⁶ the defendant does not attend court for the hearing, the court can issue a summons requiring the offender to appear before the court at the time and place specified in the summons on pain of arrest if they do not,²⁷ or issue a warrant for the offender's arrest which requires the offender to be brought before the court at the time and place specified in the warrant.²⁸

Deferred sentences vs suspended sentence orders

Suspended sentence orders (SSOs) differ from deferred sentences in a key aspect. When an SSO is imposed, the defendant has been sentenced to a term of imprisonment, but is not required to spend that time in prison unless they commit further offences or breach any requirements that have been attached to the SSO. The term of imprisonment is decided by reference to the relevant Sentencing Guideline for the offence. If the appropriate sentence is 24 months or less, then the sentencer has to consider whether to exercise their discretion to suspend it or not. In making that decision, they will be guided by the Sentencing Guideline on the Imposition of Community and Suspended Sentence Orders.²⁹

SSOs are provided for by section 277 of the Sentencing Act 2020, and the requirements that can be attached to an SSO are found at section 287 of the 2020 Act. Breaching an SSO by committing further offences or not complying with a requirement is an offence in its own right. This is in contrast to a deferred sentence, where if the conditions of deferral are broken by an act that is not itself a criminal offence, there can be no punishment for that. However, the sentencer would view the deferment conditions as not abided by and would therefore impose the more severe sentence that they had indicated would be passed if the deferment conditions were not met.

Whilst a deferred sentence will often lead to an SSO if the conditions imposed on the deferment are abided by, they are two separate types of sentence and should not be confused. Where an SSO has been imposed there will be no further sentencing hearings as the sentence has been imposed. Where sentence has been deferred, the final sentence has not yet been imposed and there will have to be another hearing inside six months.³⁰

²⁴ *Mizan* [2020] EWCA Crim 1553.

²⁵ See section 5(4) of the Sentencing Act 2020.

²⁶ Section 6(3) of the Sentencing Act 2020.

²⁷ Section 6(4)(a) of the Sentencing Act 2020.

²⁸ Section 6(4)(b) of the Sentencing Act 2020.

²⁹ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Imposition-definitive-guideline-Web.pdf>

³⁰ Deferred sentences must also be distinguished from deferred prosecution agreements (DPAs). A deferred sentence is a sentencing option available to a judge once a human defendant has been convicted of an offence, and the court is deciding what sentencing outcome is appropriate. Conversely, a deferred prosecution agreement can only be entered into between a prosecuting authority (presently only either the Crown Prosecution Service or the Serious Fraud Office) and a company; not a human. The further significant difference between a deferred sentence and a DPA is that a DPA is used as an alternative to prosecution – if the company agrees to a DPA on terms that both the company and the prosecuting agency agree, then the company will not be prosecuted for the offences alleged against it if it complies with the terms of the DPA.

Deferred sentences vs adjourned sentences

An adjournment is different from a deferred sentence or an SSO. If a sentencer adjourns sentence they are simply putting off the sentencing hearing until another day. This may be because there is not time to complete the hearing, or because the sentencer needs more information before they sentence the defendant. The defendant will not have to do anything specific before the next sentencing date unless the sentencer explicitly requires them to do so by making an order – perhaps to meet with probation or to provide evidence of a job offer or medical treatment to the court. If the defendant is on bail then their bail conditions continue to apply.

Why defer?

The reasons for which a sentence can be deferred are restricted to those set out in the legislation. In *Sinclair*,³¹ 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.³²

When an offender is sentenced after a deferment, the court has the same sentencing options as it would have done had it passed sentence on the day that it made the deferment order.³³ This applies whether the deferment has been successfully completed,³⁴ or whether there has been a failure to comply³⁵ or the original court,³⁶ or another court,³⁷ is sentencing after convictions for new offences.

Giving the parameters of possible sentences after a deferment, the Court of Appeal in *Davis* 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.'³⁸

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 sentencer deferring a sentence creates no legitimate expectation of a non-custodial, as opposed to non-immediate custodial, sentence.³⁹

In its September 2020 White Paper 'A Smarter Approach to Sentencing', the Ministry of Justice noted that more and better use needed to be made of deferred sentences, especially for those

31 [2020] EWCA Crim 1805.

32 [2020] EWCA Crim 1805 at paras. 8 and 9.

33 Section 11(2) of the Sentencing Act 2020.

34 Section 11(1)(a)(i) of the Sentencing Act 2020.

35 Section 11(1)(a)(ii) of the Sentencing Act 2020.

36 Section 11(1)(a)(iii) of the Sentencing Act 2020.

37 Section 11(1)(b) of the Sentencing Act 2020.

38 [2020] EWCA Crim 1701 at para. 42.

39 *Woodward* [2018] EWCA Crim 1563 at para. 20 and 27.

offenders who were vulnerable, and particularly for women (Ministry of Justice 2020, paras. 150-160).⁴⁰

Dame Runciman (2008) has written in support of the use of non-custodial sentences for those addicted to drugs, pointing out that imprisonment has a seriously destabilising effect on those with addictions. She notes that the modest amount of research evidence available suggests that imprisonment offers no meaningful reduction in re-offending as compared to community-based sentences. In the context of problem-solving courts, Bowen (2020) has also advocated for their use. More generally, writing in America, Colgate Love (2009) observes that a deferred sentence may help offenders avoid some of the collateral consequences of conviction. ‘Collateral consequences’ are identified by Hoskins (2018) as matters such as problems gaining employment, social housing, insurance and access to benefits or services.

Sentencers must also take care to ensure that when deferring a 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 in 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 (see discussion below).

Deferment supervisors

If a court defers sentence with requirements attached, then it can appoint someone to supervise the offender.⁴¹ This can be either a probation officer,⁴² or another person that the court thinks is appropriate and who consents.⁴³ The supervisor must monitor the offender's compliance with the deferment requirements,⁴⁴ and provide the court which sentences the offender after the deferment period with any information that the court requires about the offender's compliance with the deferment requirements.⁴⁵

40 A notable example of deferred sentencing in practice was the case of the University of Oxford student, Lavinia Woodward, in 2017. As a result of underlying mental health problems, she abused Class A drugs and alcohol and under such influence, during a period of mental breakdown, she stabbed her boyfriend with a kitchen knife. She pleaded guilty to one offence of wounding contrary to section 20 of the Offences Against the Person Act 1861 (which carries a maximum sentence of five years' imprisonment). Before sentencing, progress had been made in tackling her alcohol and drug addictions and on the basis of psychiatric reports prepared for sentencing, the Judge deferred sentence on 12th May 2017 until the end of September. He noted that progress had been made in becoming drug and alcohol free and he wanted to see if given more time that could be sustained – in other words, consistent with the legislation, he was taking account of a change of circumstances since the commission of the offence – her abstinence from drugs and alcohol and her engagement with psychological therapy. The terms of the deferment were not further offences and for her to remain free of drugs or alcohol. He indicated that if she did this, he would not send her to prison to serve an immediate term of imprisonment. When she returned for sentence on 27th September 2017, she had abided by those conditions. Updated psychological reports showed very good progress, but that more therapeutic treatment was needed. Having abided by the terms of her deferred sentence, the Judge imposed a sentence of 10 months' imprisonment suspended for 18 months rather than an immediate custodial sentence. See *Woodward* [2018] EWCA Crim 1563.

41 Section 8(1) of the Sentencing Act 2020.

42 Section 8(1)(a) of the Sentencing Act 2020.

43 Section 8(1)(b) of the Sentencing Act 2020.

44 Section 8(2)(a) of the Sentencing Act 2020.

45 Section 8(2)(b) of the Sentencing Act 2020.

If the deferment supervisor reports to the court that the offender has not complied with any of the conditions,⁴⁶ then the court may issue a summons for the offender to appear before the court,⁴⁷ or a warrant for their arrest.⁴⁸ Where the offender comes before the court having allegedly failed to comply with a requirement, and the court is satisfied that the offender has failed to comply as alleged,⁴⁹ the court can sentence the offender on that occasion – the court does not have to wait until the end of the deferment period.

Where the offender commits a further offence during the period of deferment, the powers of the court depend on whether the offender appears before the court that deferred the sentence in the first place, or another court which is dealing with the ‘new’ offences committed during the deferment.

If the court that deferred sentence wants to sentence the offender before the end of the deferment period due to the offender having committed further offences⁵⁰ it can issue a summons for the offender to attend the court at a date and time specified,⁵¹ or it can issue a warrant for the offender’s arrest.⁵² If the offender is being sentenced by a different court for the new offences committed during the period of deferment,⁵³ that court can sentence the offender for the offence for which the deferred sentence was given, as well as the new offence.⁵⁴ However, the court sentencing for the new offence cannot also sentence for the deferred sentence offences if that court is a magistrates’ court and the deferment order was made by a Crown Court.⁵⁵

Undue leniency and deferred sentences

A deferred sentence is a sentence within the meaning given by section 36 of the Criminal Justice Act 1988; this means that the Attorney General can appeal the sentence to the Court of Appeal on the basis that it is unduly lenient in the circumstances of the case. That a deferred sentence can be referred in this way was established in *Attorney General's Reference No. 22 of 1992*,⁵⁶ which concerned whether deferred sentences as enacted under section 1 of the Powers of Criminal Sentencing Act 1973 could be referred by the Attorney General under the 1988 Act. It based this decision on the basis that whilst the 1988 Act excluded interim hospital orders from consideration for undue leniency, it did not exclude any other types of interim order.⁵⁷ Section 50(1) of the Criminal Appeal Act 1968 provided the definition of a ‘sentence’ – nowhere did the legislation say that it had to be a final order, with no further hearings for the purpose of sentencing to follow. Therefore, the Court held that this enabled reference for undue leniency whenever a court made an order dealing

46 Section 9(1) of the Sentencing Act 2020.

47 Section 9(2)(a) of the Sentencing Act 2020.

48 Section 9(2)(b) of the Sentencing Act 2020.

49 Section 9(3) of the Sentencing Act 2020.

50 Section 10(2) of the Sentencing Act 2020.

51 Section 10(3)(a) of the Sentencing Act 2020.

52 Section 10(3)(b) of the Sentencing Act 2020.

53 Section 10(4) of the Sentencing Act 2020.

54 Section 10(5) of the Sentencing Act 2020.

55 Section 10(6)(a) and (b) of the Sentencing Act 2020.

56 Also known as *Thomas* (1993) 14 Cr App R (S) 435.

57 Section 35(6) of the 1988 Act.

with an offender. In that case the Court did allow the reference, made after the deferment but before the final sentencing decision, ruling that deferring sentence in itself was unduly lenient, as the lowest possible sentence was one of 30 months' imprisonment. As no sentence longer than 24 months' imprisonment could be suspended, this had to be immediate custody.

The Court's approach in *Attorney General's Reference No. 22 of 1992* was confirmed as correct in the later reference of *Attorney General's Reference Nos. 36 and 38 of 1998*.⁵⁸ 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.'

It was also noted by the Court in *L and Jones* that, where there was an argument to be made that the deferment was unduly lenient, it was better for everyone involved in the case that that argument was dealt with sooner (i.e. as soon as the deferment was known) rather than later (i.e. once the six months' deferment had passed, and the final sentence was imposed).

Furthermore, there was a procedural error in the case of *L*, as for a judge to validly defer sentence, the offender must consent to the deferment. That had not occurred in *L*. This needed correcting, and therefore it was a logical conclusion that there had to be a way for the Attorney General to correct that. Section 36(2) of the 1988 Act allowed for a reference for undue leniency in a case where there had been an error concerning the Judge's powers in the sentencing exercise. The Court ruled that such an error had occurred in this case.

In *Attorney General's Reference No. 118 of 2004*,⁵⁹ the Court held that the proper time for the reference of an unduly lenient deferred sentence was within 28 days of the deferment decision, not 28 days of the imposition of the final sentence. This was justified because it was on the date of the original deferment that the Judge tied their hands to a non-custodial disposal. Leave to appeal was therefore refused, though the Court commented *obiter* (and therefore not binding on later courts) that whilst the sentence was lenient, it was not unduly lenient because the Judge had justifiable reasons for the leniency displayed.

Where a referral is made more than 28 days after the deferment, however, the Court still has jurisdiction to consider the referral. The sentence passed on the date at the end of the deferral period is still within the meaning of section 36 of the 1988 Act, and therefore the Court can consider whether it is in the interest of justice for it to exercise its jurisdiction to hear a reference.

In *Ferriera*⁶⁰ the Court considered that it was in the interests of justice because the deferment period was very short (around five weeks) and had no conditions attached to it. The Court found that the deferment, and the consequent suspended sentence order in a case where the defendant had been running a 'county lines' drug supply chain, was unduly lenient and substituted a sentence of four years' imprisonment.

⁵⁸ Also known as *L and Jones* [1999] 1 W.L.R. 479.

⁵⁹ Also known as *Barrett* [2004] EWCA Crim 3220.

⁶⁰ [2021] EWCA Crim 537.

Appeals against deferred sentences by the defence

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 more severe sentence indicated when sentence was deferred (as in *Smith*,⁶¹ where the longer term was held to be manifestly excessive and reduced).

3. RESEARCH GAPS AND PRIORITIES

As highlighted by the recent report by Roberts et al. (2022), there is limited research into the use of deferred sentences in England and Wales. A chicken and egg situation may be to blame – with limited understanding of deferred sentences may come a reluctance to use them. Limited understanding will not improve if no research is done into deferred sentences. But a research impetus is missing because they are a rarely-used tool compared to other sentencing options. Meanwhile, academic research into the final outcomes of a deferred sentence (i.e. immediate custody or a non-custodial sentence of suspended sentence order or community order) is much more common because those sentence types are imposed on much larger number of offenders every year.

For this reason, it is easy to see why deferred sentences have not featured on the research agendas of criminologists or lawyers. However, as they do not, it is impossible to know whether they are an effective tool. It is not known how many of those offenders complied with their conditions of deferment, and how many did not. Not enough is known about the offenders who are made the subject of deferments to know whether there are certain demographics or offence types for which deferred sentences may be particularly effective. Nothing is known about whether a deferment is more likely to be abided by if it has certain types of conditions. Nothing is known about how many conditions, or of what type, sentencers use on deferred sentences. It is not known whether there are regional variations in the usage of deferred sentences.

A number of questions need to be answered, including the following:

- What percentage of offenders who received a deferred sentence complied with their conditions of deferment?
- What kind of conditions are imposed upon offenders receiving a deferred sentence?
- Which specific conditions, or types of condition, are most likely to be breached?
- Are there particular profiles of defendant for whom a deferred sentence is particularly appropriate or effective?
- Are there regional variations in the usage of deferred sentences?

⁶¹ [2020] EWCA Crim 1820.

- How familiar are defence advocates with the deferred sentence provision? One explanation for the low volume of deferred sentences is that advocates seldom consider making submissions seeking a deferred sentence.
- What role, if any, does, and should the victim of the offence play in the court's decision-making?
- What is the judicial view of, and approach to, deferred sentence?
- To the extent that public reaction is an issue, is deferred sentencing likely to attract public support or opposition?

4. CONCLUSION

There can be no doubt that the power to defer sentence is a valuable one. It allows a 'second chance' for those offenders who have had a change of circumstances, or substantial delay during which they have not offended, between conviction and sentence. Rehabilitation from offending may be encouraged by hanging the threat of a more severe sentence over the head of the defendant for a set period of time. As a 'safety net' the decision to defer is open to the same challenge by the prosecution for being unduly lenient as any other type of sentence. The sentence that is eventually imposed after a period of deferment can also be challenged – either by the Prosecution as unduly lenient, or by the defence as manifestly excessive or wrong in law. What is not known, however, is what, if any, longer term effects deferred sentences have.

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