

SENTENCING EXPLAINED

ABSOLUTE AND CONDITIONAL DISCHARGES

Which sentences lie at the lowest end of the spectrum for court-imposed sentences? When might they be imposed and what are the consequences of these sentences?

This explainer considers the two lowest forms of sentence that a court can impose: absolute and conditional discharges.

What is a discharge?

At the bottom of the sentencing hierarchy, in terms of court-imposed sentences, sits the discharge, which can take the form of an absolute discharge or a conditional discharge. The absolute discharge is the least severe sentence a court can impose upon conviction as it does not require anything from the offender and nor does it impose any restrictions on their future conduct. A conditional discharge, on the other hand, requires that the offender should not commit any further offences during the specified period, which may be up to three years. The power to impose an absolute or conditional discharge comes from sections 79 and 80 of the Sentencing Code respectively and a court may impose either an absolute or conditional discharge ‘if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—(a) the nature of the offence, and (b) the character of the offender.’¹

Absolute discharges are the rarer of the two forms and are reserved for cases where the offence is very minor or where there are particular factors relating to the defendant, or other surrounding circumstances, which justify the imposition of an absolute discharge. A conditional discharge may be imposed where a court is prepared to impose no sanction for an offence on the condition that the offender commits no further offences during the specified period. For the purposes of the Rehabilitation of Offenders Act 1974, a conviction for which an absolute discharge has been imposed becomes immediately spent (and therefore does not usually have to be disclosed when asked about convictions for criminal offences) and a conditional discharge becomes spent upon the expiration of the specified term.

¹ See section 79(3) of the Sentencing Code for this provision in relation to absolute discharges and section 80(4) of the Sentencing Code for conditional discharges. For the history of absolute and conditional discharges, see the discussion in *Clarke* [2009] EWCA Crim 1074.

What happens when an offender is convicted of a further offence during the specified period of a conditional discharge?

If an offender is convicted of a further offence during the specified period of a conditional discharge they can be re-sentenced for the offence for which they received the conditional discharge. The offender can then be sentenced for the original offence in any way that would have been possible if they had just been just convicted of it (and will also be sentenced for the new offence).

Other orders in combination with absolute and conditional discharges

Although a discharge in itself imposes no sanction for an offence, it can be combined with a number of other orders should a court consider it appropriate. When imposing an absolute discharge, the court can also combine it with orders for any of the following: a compensation order; a deprivation order; a restitution order; any disqualification order; recommendation for deportation; costs; a confiscation order; an exclusion order under the Licensed Premises (Exclusion of Certain Persons) Act 1980; or, an unlawful profit order. A conditional discharge can be combined with any of the orders available when imposing an absolute discharge plus any of the following: a football banning order; a criminal behaviour order; or, a serious crime prevention order.

How frequently are absolute and conditional discharges imposed?

The absolute discharge is a somewhat unusual sentencing disposal as it delivers no sanction for the offence for which the offender has been convicted and does not impose any restrictions on their future behaviour; if the offender is convicted of a further offence shortly after they have received an absolute discharge then the decision not to impose any sanction for the previous offence cannot be re-visited. Many cases that are so minor as to warrant an absolute discharge will not reach the courts as the offender might accept a caution for the offence or the Crown Prosecution Service may conclude that it would not be in the public interest to prosecute the offence as the likely penalty will be nominal. It is, therefore, to be expected that absolute discharges will be used comparatively rarely – and very rarely indeed in response to more serious offences. For the most serious category of cases, indictable only (which can be tried only in the Crown Court), there were 5 absolute discharges and 46 conditional discharges imposed in the year to June 2019.² Unsurprisingly, discharges are used much more frequently in response to the less serious summary offences (which can be tried only in the magistrates' courts) with 2,106 absolute discharges and 20,222 conditional discharges imposed for non-motoring summary offences in the year to June 2019.³

The conditional discharge is a less unusual sentencing disposal in the sense that it, in effect, serves as a 'sword of Damocles' hanging over the offender during the specified period. As such, it is perhaps the more useful sentencing option of the two discharges and accordingly we would expect that it is imposed more frequently than absolute discharges.

² Ministry of Justice (2019) *Criminal Justice System statistics quarterly: June 2019*, Table Q5.1.

³ Ministry of Justice (2019) *Criminal Justice System statistics quarterly: June 2019*, Table Q5.1.