



You be the Judge: **Notes for teachers**

www.cjsonline.gov.uk/ybtj

This document includes advice to support teachers using the You be the Judge website (YBTJ). The following guidance has been compiled based on feedback from a number of educators including citizenship teachers, law lecturers, and other individuals working with young people (youth clubs, scouting, organisations, etc.)

I) TIPS ON USING YOU BE THE JUDGE IN CLASS

Many of our respondents have used YBTJ as a basis for class discussion. Questions pop up between each video to highlight the kind of factors a sentencer (judge or magistrate) would generally consider and assess. Feedback from teachers suggests these are good times to pause and discuss in class.

The questions are formulated in a way which elicits debate – there are no simple answers. In part III, you will find notes that will help you guide a discussion for each of the questions.

Technical tips:

- ***I am having trouble with the volume:***
The way the website is programmed means that the volume button which appears below the video resets every time a new video is launched. If you find the volume too soft or too loud for your class, we recommend you adjust it on the computer rather than on the site.
- ***I can't get to the homepage/intro video anymore:***
The site is set up to only play the intro video on the homepage once. This is so viewers don't have to watch it every time they complete a case. If you want to restart from the intro video, close the site down and wait half an hour – the site is programmed to reset itself after half an hour of inactivity.

- **The videos aren't playing properly (image or sound):**
The size of the videos can make the site resource-intensive. Try pausing the video and allowing it to buffer. Once the videos are completely uploaded, they should play fine.
- **The site isn't loading properly:**
The interactive and content-rich nature of the site requires a significant amount of processing power from your computer. As a result, computers that are two years old or more might not be able to show the website correctly. If that is the case, you may want to try viewing it on another computer.

II) USEFUL FACTS ABOUT SENTENCING

- **Where is the case heard:** Criminal cases generally begin in a magistrates' court. Most will be heard and sentenced by a bench of three magistrates, some will be dealt with by a district judge (a legally trained professional judge). The more serious offences are sent to the Crown Court, where they will be tried by a judge sitting with a jury.
- **What are sentencers' roles:** A criminal court has to establish first whether the offender is guilty. Then, if they *are* found guilty, the sentencer must decide on the appropriate sentence. In magistrates' courts, magistrates decide on both the question of guilt/innocence and the appropriate sentence. In the Crown Court, guilt is usually decided by the jury (made up of 12 people), and the judge decides on the sentence.
- **What should sentencers consider:** When considering a sentence, sentencers will first consider the seriousness of the offence. They will consider any relevant sentencing guidelines. Then they consider any aggravating and mitigating factors which will influence the sentence upwards or downwards. To assist them in making these decisions sentencers may ask the probation service for a pre-sentence report, which will provide background information on the offender and the risks of re-offending. Sentencers will also consider whether the offender should receive some credit for making an early guilty plea. (To find out more about the sentencing guidelines, visit the Sentencing Council's website - www.sentencingcouncil.org.uk)
- **What should sentencing achieve:** Although the media tend to focus on punishment and public protection when discussing sentences, there are also other purposes to sentencing. In all, the law lists five purposes that sentencers should have regard for. In no particular order, they are:

- to punish offenders;
- to reduce crime;
- to reform and rehabilitate offenders;
- to protect the public;
- to provide reparation for the victims.
- **What types of sentences are there:** Broadly speaking there are four types of sentence:
 - discharges (when the court decides someone is guilty, but decides not to punish them at this time);
 - fines;
 - community sentences; and
 - custodial (prison) sentences.

For further information on the different options, visit the 'Crime and justice' section on Directgov - www.direct.gov.uk

III) NOTES ON THE CASES AND THE QUESTIONS

Criminal Damage

Recommended Sentence

This offence would fall under the 'significant damage up to £5,000' and 'damage caused as part of a spree' categories in the sentencing guidelines. The sentences recommended by the sentencing guidelines for this kind of criminal damage start at a medium-level community sentence, and up to three months in prison. A custodial sentence is only given if the sentencers consider the offence so serious that only a prison sentence is justified. In Robert's case, it is very unlikely a sentencer would consider a custodial sentence to be the only recourse.

Q1 Do you think Robert's previous conviction is significant?

Sentencers are required by law to consider any relevant and recent previous convictions as an aggravating factor. In Robert's case his previous conviction may be relevant (being for the *same* offence), but he has only one previous conviction and it may not be recent enough to merit aggravating the sentence.

Q2 Do you think the fact that Robert was drunk is significant?

Adults are considered to be responsible for their actions. Since being drunk is a self-inflicted loss of control, it is regarded as an aggravating factor. Whatever the reason for being drunk was, it cannot be used as a defence, though it may be taken into account at the sentencer's discretion. In Robert's case, the break-up of his relationship was taken into consideration because his criminal behaviour was uncharacteristic.

Q3 Would the prospect of the defendant losing his job influence your sentence?

The prospect of the defendant losing his job would be considered by sentencers, especially if the case was on the cusp between a short custodial sentence and a community sentence. The loss of a job would add to the punishment, and the effect this could have on the offender's rehabilitation – one of the purposes of sentencing – could mitigate the sentence. In Robert's case, it was deemed that making Robert lose his job would not be in the interest of justice or society.

Sentence given

High-level community sentence: 200 hrs unpaid work + 4 mths curfew + weekly supervision (option 3)

Burglary

Recommended sentence

For a third offence of domestic burglary, the law requires a judge to give a minimum three year prison term, other than in exceptional circumstances. There is nothing in Alex's circumstances to suggest he has exceptional circumstances to consider.

Q1 Will the fact that the victims were at home at the time of the break-in affect your sentence?

Sentencers will consider the fact that the victims were at home at the time of the burglary to be an aggravating factor. This is because the offence will be considered more serious as more harm may be caused by the offence when the victims are present. The impact of the burglary on the victims – in particular the fact that Mrs Parker won't stay in the house on her own since the burglary – will be considered as an aggravating factor. The fact it was carried out late at night is also an aggravating factor in itself.

Q2 Do you think the fact that an item of sentimental value was taken is significant?

The question here is what constitutes value – is it strictly monetary, or is sentimental value recognised in a court of law? Recent case law says that it's not just the monetary value of goods that should influence the sentence given, but also their value to the victim.

Q3 Would a genuine commitment from Alex to come off drugs affect your sentence?

Beating a drug addiction can be the first step towards rehabilitation, which is one of the purposes of sentencing. In Alex's case, although his commitment to come off drugs is commendable, it is unlikely to constitute a significant mitigating factor for such an offence. It will be more significant if the offender is on the cusp between a community sentence and a prison sentence.

Sentence given

Prison: 3.5 years (option 2)

Robbery

Recommended sentence

Although often called "mugging" the offence committed here is robbery. A robbery of this seriousness is likely to result in a prison sentence. In Andrew's case, the offence would fall within the mid category of the robbery guideline, and as a result the starting point would be 4 years.

Q1 Will the fact that the robbery was committed at night affect your sentence?

Sentencers will consider the fact that the robbery happened at night as an aggravating factor. In Andrew's case, this would definitely count towards his sentence, as would the fact it was committed in an isolated place and with the use of a weapon.

Q2 The fact that Andrew pleaded guilty saved his victim from re-living her experience in court. Will this affect your sentence?

The question here is, should the fact that the offender pleaded guilty make any difference to the sentence? On the one hand an offender may be seen

to be benefiting from an early guilty plea when the evidence against him is overwhelming. On the other hand, an early guilty plea will mean that the victim will not have to relive their experience in court. The current practice allows sentencers to use discretion to discount a sentence by up to a third for an early guilty plea. Andrew pleaded guilty from the very start, and as a result got the full discount (4 years rather than 6).

Sentence given

Prison: 4 years (option 3)

Threatening Behaviour

Recommended sentence

This case involves the public order offence of 'threatening behaviour'. The sentences recommended by the sentencing guidelines start at medium-level community sentence, and up to three months in prison. A custodial sentence is only given if the sentencers consider the offence so serious that only a prison sentence is justified. In Chris's case, it is very unlikely a sentencer would consider a custodial sentence to be the only recourse.

Q1 Will the fact that Mrs Dixon is elderly influence your sentence?

Sentencers will consider as an aggravating factor any offence directed at an elderly or vulnerable victim. Mrs Dixon would definitely fall in that category. They would also be expected to take account of the impact of the offence on the victim.

Q2 Do you think the fact that Chris was provoked is significant?

Provocation in some cases may amount to a partial defence or mitigate a sentence. In Chris's case however, the level of provocation (if any) is very limited and would not make a significant difference to his sentence.

Q3 Does the fact that Chris pleaded guilty from the start affect your sentence?

This is the same as in the robbery case above. Current practice allows sentencers to discount a sentence by up to a third for an early guilty plea. As Chris pleaded guilty from the earliest opportunity, he received the full discount (i.e. 80 hours unpaid work rather than 120). The discount, however, doesn't apply to the payment of compensation or court costs, which Chris will have to pay in full.

Sentence given

Medium-level community sentence: 80 hrs unpaid work + £100 compensation + £90 costs (option 2)

We hope this helps!

You be the Judge team