



The Sentencing Guidelines Committee

Sentencing Offenders with Mental Disorders and Impairments

General approach

1. This guideline applies when sentencing offenders who at the time of the offence and/or at the time of sentencing have any mental disorder, neurological impairment or developmental disorder (see examples listed below).
2. The fact that an offender has an impairment or disorder should always be considered by the court but will not necessarily have an impact on sentencing.
3. There are a wide range of mental disorders, neurological impairments and developmental disorders and the level of any impairment will vary between individuals. Accordingly, in assessing whether the impairment or disorder has any impact on sentencing, the approach to sentencing should be individualistic and focused on the issues in the case.
4. Sentencers should note the following:
 - some mental disorders can fluctuate and an offender's state during proceedings may not be representative of his or her condition at the time the offence was committed;
 - care should be taken to avoid making assumptions. Many mental disorders, neurological impairments or developmental disorders are not easily recognisable;
 - no adverse inference should necessarily be drawn if an offender had not previously either been formally diagnosed or been willing to disclose an impairment or disorder;
 - offenders may be unaware or unwilling to accept they have an impairment or disorder and may fear stigmatisation if they disclose it;
 - it is not uncommon for people to have a number of different impairments and disorders. This is known as 'co-morbidity';

- drug and/or alcohol dependence can be a factor, and may mask an underlying disorder;
 - difficulties of definition and classification in this field are common. There may be differences of expert opinion and diagnosis in relation to the offender or it may be that no specific disorder can be identified;
 - a formal diagnosis is not always required; and
 - where a formal diagnosis is required, a report by a suitably qualified expert will be necessary.
5. It is important that courts are aware of relevant cultural, ethnicity and gender considerations of offenders within a mental health context. This is because a range of evidence suggests that people from black and minority ethnic communities may be more likely to experience stigma attached to being labelled as having a mental health concern, and may be more likely to have experienced difficulty in accessing mental health services and in acknowledging a disorder and seeking help.
 6. In addition, female offenders are more likely to have underlying mental health needs and the impact therefore on females from black and minority ethnic communities in particular is likely to be higher, given the intersection between gender and race.
 7. In any case where the offender is or appears to be mentally disordered at the date of sentencing, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law, unless, in the circumstances of the case, the court is of the opinion that it is unnecessary. A report may be unnecessary if existing, reliable and up to date information is available.
 8. If considering making a hospital detention order, or interim order, the court can request information about a patient from the health service.
 9. Where a custodial sentence is passed the court should forward psychiatric, psychological, or other medical reports to the prison along with any other information relevant to the offender's physical and mental health. This will ensure that the prison has appropriate information about the offender's condition and can ensure his or her welfare.
 10. Courts should always be alive to the impact of an impairment or disorder on an offender's ability to understand and participate in proceedings. Courts should ensure that offenders understand their sentence and what will happen if they reoffend and/or breach the terms of their licence or supervision. Courts should also ensure that any ancillary orders, such as restraining orders, are capable of being understood and fulfilled by the offender. Courts should therefore put the key points in a clear and straightforward way. Clarity of explanation is also important for victims in order that they too can understand the sentence.

Assessing culpability

11. Culpability may be reduced if an offender, at the time of the offence, was suffering from an impairment or disorder (or combination of impairments or disorders).
12. The sentencer should make an initial assessment of culpability in accordance with any relevant offence-specific guideline, and should then consider whether culpability was reduced by reason of the impairment or disorder.
13. Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour. In some cases, the impairment or disorder may mean that culpability is significantly reduced. In other cases, the impairment or disorder may have no relevance to culpability. A careful analysis of all the circumstances of the case and all relevant materials is therefore required.
14. The sentencer, who will be in possession of all relevant information, is in the best position to make the assessment of culpability. Where relevant expert evidence is put forward, it must always be considered and will often be very valuable. However, it is the duty of the sentencer to make their own decision, and the court is not bound to follow expert opinion if there are compelling reasons to set it aside.
15. The sentencer must state clearly their assessment of whether the offender's culpability was reduced and, if it was, the reasons for and extent of that reduction. The sentencer must also state, where appropriate, their reasons for not following an expert opinion.
16. Courts may find the following questions a useful starting point. They are not exhaustive, and they are not a check list as the range of offenders, impairments and disorders is wide.
 - At the time of the offence did the offender's impairment or disorder impair his or her ability:
 - to exercise appropriate judgement,
 - to make rational choices,
 - to understand the nature and consequences of his or her actions?
 - At the time of the offence, did the offender's impairment or disorder cause them to behave in a disinhibited way?
 - Are there other factors related to the offender's impairment or disorder which reduce culpability?
 - Medication. Where an offender was failing to take medication prescribed to them at the time of the offence, the court will need to consider the extent to which that failure was wilful or arose as a result of the offender's lack of insight into his or her impairment or disorder,

- “Self-medication”. Where an offender made his or her impairment or disorder worse by “self-medicating” with alcohol or non-prescribed or illicit drugs at the time of the offence, the court will need to consider the extent to which the offender was aware that would be the effect,
- Insight. Courts need to be cautious before concluding that just because an offender has some insight into his or her impairment or disorder and/or insight into the importance of taking his or her medication, that insight automatically increases the culpability for the offence. Any insight, and its effect on culpability, is a matter of degree for the court to assess.

Determining the sentence

17. Impairments or disorders experienced by the offender are factors which sentencers are required to consider.
18. Impairments or disorders may be relevant to the decision about the type of sentence imposed, in particular a disposal involving treatment,
19. Impairments or disorders may be relevant to an assessment of risk.

Fines/discharge

20. Many offences committed by an offender with an impairment or disorder may not require any therapeutic intervention or the offence may be so minor that the appropriate disposal is a fine or discharge.

Community orders

21. When passing a community order (only available if the offence is imprisonable), it will be important to ensure that the conditions of any order are bespoke to the offender, taking account of any practical barriers to compliance that his or her condition or disorder may create. Community orders can fulfil all the purposes of sentencing and consideration should be given to all of the options for community orders, including treatment.
22. For offenders with mental health issues, such orders may result in reductions in offending compared with short custodial sentences. Where the offender’s culpability is reduced by his or her mental state and/or the public interest is served by ensuring they receive appropriate treatment, a community order may be more appropriate than custody. Even where the custody threshold is crossed, a community order may be a proper alternative to a short or moderate custodial sentence. A community order is not suitable for an offender who is unlikely to comply with the requirements, for example if he or she has a chaotic lifestyle.
23. Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order may be a proper

alternative to a short or moderate custodial sentence. Courts should be mindful that where an offender has failed to comply with an order in the past, that does not necessarily mean that he or she will fail now. Courts will need a thorough assessment about the offender's current motivation and ability to tackle his or her addiction in a pre-sentence report.

Custodial sentences

24. Where an offender is on the cusp of custody or detention, the court may consider that the impairment or disorder may make a custodial sentence disproportionate to achieving the aims of sentencing and that the public are better protected and crime reduced by a rehabilitative approach.
25. Where custody or detention is unavoidable, consideration of the impact on the offender of the impairment or disorder may be relevant to the length of sentence and to the issue of whether any sentence may be suspended. This is because an offender's impairment or disorder may mean that a custodial sentence weighs more heavily on them and/or because custody can exacerbate the effects of impairments or disorders.
26. As with cases of physical ill-health, impairments or disorders can only be taken into account in a limited way so far as the impact of custody is concerned. Nonetheless, the court must have regard both to any additional impact of a custodial sentence on the offender because of an impairment or disorder, and to any personal mitigation to which his or her impairment or disorder is relevant.

Main classes of mental disorders and presenting features

27. In order to assist sentencers, Annex Four sets out some of the main classes of mental disorders and presenting features.