

Sentence deferred – a useful psychiatric recommendation?

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Although the power to defer sentence has been available to the criminal courts in England and Wales since 1973 there has been little discussion of the psychiatric aspects of this disposal. This article considers the legal development of deferment of sentence, the guidelines that have been recommended for its use and the sort of situations in which a deferred sentence might appropriately be considered by psychiatrists preparing a court report.

What is a deferred sentence?

Deferment of sentence is a power that both magistrates and crown courts can use after conviction to postpone passing sentence for up to six months. During the period of deferment the offender will be in the community and will know that at some future specified date he will return to court and sentence will be passed.

Legal background

The background to the deferred sentence lies in the report of the Advisory Council on the Penal System (Wootton Committee) entitled 'Non-custodial and Semi-custodial Penalties'.¹ Having considered the existing powers that the courts used to withhold imposition of sentence and having heard about the use of deferment in Scotland, the Wootton Committee decided that "there is a definite place in the penal code for the deferment of sentence." The Committee felt that the major advantage for the courts was to allow it to "stay its hand" and to be able to see if the offender intended to make a fresh start or make reparation for his offence and in doing so allow the court to "more readily gauge the right penalty" for the offence. The Government incorporated the power to defer sentence into the 1972 Criminal Justice Act but did not accept all the Wootton Committee's recommendations. The Committee did not comment in their report on whether psychiatric treatment might be offered during the period of deferment despite the fact that this was occasionally done in Scotland and was mentioned by Smith in her article on deferment of sentence in Scotland.²

Research reports

Few studies have been published concerning defer-

ment considering this option has been available for the last 14 years and its frequent use by the courts – over 8,000 people had their sentence deferred in 1981 (Criminal Statistics 1981). None of the studies have looked at the use psychiatrists have made of deferment. Simpson^{3,4} looked at the use of deferment in the London area in 1973 and commented that "some of the offenders convicted of offences involving drunkenness or drugs were expected to receive medical treatment" during the period of deferment. The subsequent studies of Corden & Nott⁵ and Jones⁶ did not report that any of the sample had been offered or received any form of psychiatric help during the period of deferment. As these are the only papers that have been published on deferment the research says little that may help the psychiatrist decide when to use this recommendation. Different practices appear to apply in different areas but where deferment has been considered it appears mostly to be recommended for offenders with drug and/or alcohol problems.

Guidelines from the Court of Appeal

A source of information that psychiatrists can turn to for guidance are the judgments given in the Court of Appeal, especially the guidelines given by the Lord Chief Justice after the case of *R v George*.⁷ The guidelines can be summarised under the following points:

- (1) that the person must consent to having his case deferred
- (2) that there must be a possibility of real change in attitude, behaviour or personal circumstances
- (3) that it must be in the interests of the court and in the interests of justice that sentence be deferred
- (4) that an immediate probation order or other sentencing option is not the most suitable disposal
- (5) that should the offender not re-offend during the period of deferment he should not be given a custodial sentence.

Advantages and disadvantages

For the psychiatrist, deferment has the advantage of allowing treatment to be offered on a voluntary basis

and the period of deferment can be used to see how the person responds. This will allow the psychiatrist to gauge what he might recommend when the person returns to court. For the offender, deferment has an advantage as it does allow him a chance to demonstrate that he can alter his behaviour and he will probably be aware that a non-custodial sentence is likely if he complies and does not re-offend. The court may also find deferment attractive if it is considering avoiding a custodial sentence.

There are disadvantages: for the court it means extra time has to be set aside to deal with the case on another occasion. The offender has to face the stress of another court appearance with the uncertainty of final sentence still present. The psychiatrist may have to spend additional time in order to prepare a second report.

Comparison with probation

In some cases a probation order may be a more appropriate recommendation. The probation order does protect the offender from a custodial sentence provided that he complies with the conditions of the order and there is the statutory involvement of the probation service and access to facilities such as probation hostels. Deferment puts the onus squarely on the shoulders of the offender, although there may be voluntary contact with psychiatric or probation services. There is the option under the probation order to bring the offender back to court if the order is not working; with deferment there is no power to return the person to court before the date set by the deferring court. This may not be detrimental in many cases as the mere fact that the offender will return may be a sufficient incentive to keep out of trouble. For offenders with an alcohol or drug problem, a brief period of heavy use may follow the court appearance (especially if they have been on remand) and might constitute grounds for considering that they had breached the conditions of his probation. As the offender cannot be returned to court at an earlier date deferment gives the offender the chance to demonstrate that he can gain control over his alcohol or drug abuse.

Practical implications

Two main questions still remain:

- (1) does deferment merit consideration?
- (2) on whom might the psychiatrist recommend deferment?

The fact that deferment is already used by the courts themselves, even it has not been recommended in any reports as indicated by Corden & Nott⁵ and is used on thousands of occasions each year, suggests that it does merit consideration. In addition, looking

at courts in the North East of England when a psychiatrist recommended a deferred sentence in a series of 64 cases, this was accepted in 56% overall and excluding those cases where a custodial sentence was passed this recommendation was accepted in 85%.⁸

The question regarding on whom should deferment be considered is more difficult as there is no clear consensus – with lawyers, magistrates and probation officers having different opinions. Even Crown Court judges appear unable to agree when deferment should be used.⁹ Psychiatrists too will have different views, perhaps influenced by the attitudes of local courts and probation services. The published research and my personal experience is that people with alcohol and drug abuse problems are the group on whom psychiatrists will most commonly recommend deferment. Considering the guidelines of the Lord Chief Justice it will be unlikely that deferment would be appropriate for a person with an acute functional or organic psychiatric illness, but it might be an option to consider in certain cases if the person had a personality disorder and where there was a possible major change in attitude, behaviour or circumstances. The nature of the offence should also be considered. A recommendation of a deferred sentence is more likely to be used when the offence is sufficiently serious that the court may consider a custodial sentence but where it is thought that the court may look at the alternatives. As in all forensic work, careful discussion with the probation service (if it is involved) will be essential in order to clarify what recommendation it may make and to see how the psychiatrist and probation officer can work together. Categorical statements about the uses of deferment cannot be made but the following circumstances are ones where I would consider a recommendation of a deferred sentence when an offender, charged with an offence which can be related to his alcohol/drug abuse, expresses willingness to have psychiatric help for his problem:

- (1) where the person is already on probation and has not complied well and subsequently reoffends
- (2) where the person has a long history of previous custodial and non-custodial sentences and where the person has not made good use of the occasions they have received probation before
- (3) in similar circumstance to (2) but when the person is on remand and hence where there is little chance to assess his motivation and ability to change
- (4) where there is doubt about a person's motivation and ability to change and where there is concern that an immediate probation order is not the most applicable option to recommend.

Every case will have to be considered on its merits. Deferment of sentence is a complex area but it is only when the psychiatrist has an understanding of the guidelines that the courts will follow coupled with knowledge of existing research and knowledge of the local views of the court and probation service that he can assess when to recommend this option.

References

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