

Public Knowledge of Sentencing Practice and Trends

Research Report

SENTENCING
ACADEMY

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Executive Summary

This report describes findings from a survey of the general public conducted in 2021. The research contributes to the well-established and still growing literature on public opinion and sentencing. Unlike most surveys, however, the primary focus here is upon what the public *know* about sentencing: the knowledge which underpins their attitudes. Specifically, public estimates of custody rates and average prison sentence lengths were compared to the latest sentencing statistics. In addition, several questions tested respondents' knowledge of changes in the use of imprisonment over the period 1996-2021. Sentencing practices have become more severe in recent years, as reflected in increases in the use of imprisonment and in average custodial sentence lengths. One aim of the survey was to determine whether the public was aware of this trend.

First, respondents were asked whether crime rates were higher, lower or about the same now, compared to 1996. Most respondents believed that crime rates are higher now than 25 years ago: 30% chose 'a lot higher', 32% 'somewhat higher'. In fact, although rates have been stable over the past three years, they are still lower than in 1996.

While the average prison sentence length has increased since 1996, most respondents were unaware of the increase in sentence lengths over this period. Over half (56%) endorsed the view that sentences are *shorter* now (19% 'much shorter'; 37% 'somewhat shorter').

Similarly, while the average minimum term for murder increased from around 12 to 20 years over the same period, only 2% of respondents chose the correct option. Over half the sample endorsed the view that the amount of time served by offenders convicted of murder was shorter today.

In 2019, 96% of men aged 21 or over convicted of rape received terms of immediate imprisonment. The majority of the public under-estimated the custody rate for this offence, many by a considerable margin: 42% of the sample estimated the custody rate to be 25% or less. A significant minority of the public believe that at least three-quarters of adult men convicted of rape receive a sanction other than an immediate custodial sentence.

Approximately 80% of men aged 21 or over convicted of domestic burglary were sentenced to immediate custody in 2019. The public also under-estimated the custody rate for this offence; three-quarters of the sample estimated the custody rate for burglary to be 50% or less.

In addition to under-estimating custody rates, respondents also under-estimated the average prison sentence length for both offences. Although the average sentence for rape is currently over nine years, the average public estimate was 5.5 years. The average prison sentence for burglary is around 29 months; the average public estimate was 15 months.

These findings are consistent with findings from previous surveys going back 40 years. For example, the 1996 British Crime Survey found that only approximately one-fifth of respondents provided a roughly accurate estimate of the custody rate for rape. Although the imprisonment rate for rape was around 95% at that time, over half the respondents estimated the rate to be under 60%. For residential burglary, 61% of offenders convicted of the crime were imprisoned at that time, but the vast majority of respondents (70%)

estimated that the burglary imprisonment rate was less than 50%. Twenty-two per cent of respondents provided an 'about right' answer.

The 2021 survey asked respondents whether they believed sentencing was too severe, too lenient or about right. Approximately two thirds (65%) of respondents endorsed the view that sentencing was too lenient. The percentage choosing this opinion rises to 76% if we exclude 'don't know' responses – findings that differ very little from those in the 1996 British Crime Survey. Another YouGov survey in 2019 found that 70% of the sample endorsed the view that sentences were not harsh enough.

The survey also asked if people thought that judges and magistrates were in touch with the public. More than half the sample, almost six in 10, believed that judges were out of touch with what the public think. Perceptions of magistrates were little different: approximately half of the respondents believed that magistrates were out of touch.

A clear relationship emerged between attitudes to sentence severity and knowledge of key sentencing indicators. Respondents who believed that sentences were too lenient were significantly less accurate in their estimates of current sentencing practice. They were more likely to under-estimate the use of imprisonment.

The trends documented in this report underscore the need for greater public education on sentencing. Reasonable people may well disagree about the appropriate sentencing response to crime. It is important, however, that views of sentencing rest upon an accurate understanding of current sentencing practices.

Contents

Introduction.....	1
I. Previous Research Findings.....	2
II. Public Knowledge of Sentencing Trends in 2021.....	4
III. Estimates of Current Sentencing Practices: The use of imprisonment	10
IV. Conclusion	15
References	17

Introduction

The views of the public are relevant to sentencing, and sentencing councils and commissions around the world incorporate public views in different ways. Members of the public sometimes serve as members of these organisations. For example, the Sentencing Advisory Panel (a predecessor body to the Sentencing Council in England and Wales) included members of the public, as do US sentencing commissions. Before issuing new guidelines, the Sentencing Council of England and Wales holds consultations on draft guidelines to enable public participation in the guideline production process. Councils and Commissions also conduct surveys of the public to ‘take a sounding’ of community views on key issues at sentencing. The Sentencing Council of England and Wales has published several public opinion surveys in recent years. The views of the public as they emerge from such surveys then contribute to the development of guidelines.¹

This research report contributes to the well-established and still growing literature on public opinion and sentencing. Unlike most research, however, the primary focus here is upon the knowledge which underpins their attitudes. Specifically, we measured the accuracy of perceptions of current sentencing practices. A sample of members of the public was asked to estimate the custody rate and the average prison sentence length for specific offences. We also included questions about historical trends in sentencing practices. The survey was conducted for the Sentencing Academy by YouGov in September 2021.²

Recent Changes in the Use of Imprisonment in England and Wales

The 2012 Crime Survey of England and Wales was the last survey to measure public knowledge of sentencing practices (Hough et al., 2013). Since then, sentencing practices for a range of offences have become more severe, as can be seen in the following indicators.

* The Average Custodial Sentence Length (ACSL)³ has increased steadily for over a decade now, from 13.8 months in 2009 to 18.9 months in 2019, an increase of 37%.⁴

¹ For example, prior to issuing its 2017 guideline on sentence reductions for a guilty plea, the Sentencing Council commissioned research to establish the level of public support for different levels of reduction. In 2019, the Sentencing Council published an analysis of public knowledge of various aspects of sentencing.

² The total sample size was 2,020 but the findings reported here are the results of a sub-sample of 1,844 adults living in England and Wales as the research is focused on sentencing in this jurisdiction. A copy of the complete survey instrument is available from the Sentencing Academy.

³ The ACSL refers to the total sentence, not the time actually served in prison which will normally be less than the ACSL. The ACSLs have been calculated from the Ministry of Justice’s ‘Outcomes by offence data tool’. Although data are available for 2020, they are likely to be anomalous in light of the pandemic, so we generally use 2019 as our terminal date for the offence-specific statistics.

⁴ The increase in ACSL has been gradual, and cumulative over the period (see Pina-Sánchez et al., 2019). This suggests it is not due to some sudden upsurge in offending. In fact, the Crime Survey of England and Wales recorded a significant decline in the rate of crime from 2008 to 2017.

* The ACSL for rape was 100.5 months in the first two years of the decade (2010/11), rising to 123 months in 2018/19, an increase of 22%.

* The ACSL for assault causing bodily harm rose during this period from 11.5 to 14 months, also a 22% increase.

* The ACSL for aggravated burglary sentences increased by 62% during this period from 58 months to 94 months in 2018/2019, while the ACSL for domestic burglary increased by 26% (from 23 to 29 months).

* The average minimum term to be served for a life sentence for murder increased from 12.5 years in 2003 to 21.3 years in 2016, an increase of about 70%.⁵

One reason for measuring levels of knowledge now was to know whether the public was aware of these trends in the use of imprisonment.

Overview of Report

Part I provides a summary of previous research findings. Research documenting public knowledge of sentencing trends goes back almost 50 years, and emerges from a diverse range of jurisdictions including England and Wales, the United States; Barbados; Canada, and New Zealand. The Crime Survey of England and Wales (formerly the British Crime Survey) has been the primary source of information about public knowledge and opinion in this country. Part II summarises findings from the survey commissioned by the Sentencing Academy in 2021. Part III draws some conclusions.

I. Previous Research Findings

Although the vast majority of public opinion research explores attitudes to sentencing and sentencers, far fewer studies have evaluated the nature and limits of public knowledge. Previous research has documented public levels of awareness of statutory penalties; current and historical sentencing trends; sentencing purposes and principles as well as the nature and effects of the principal sentencing options.⁶

The following findings have been replicated across independent samples of the public over time and in different jurisdictions:

* The Crime Survey of England and Wales (formerly the British Crime Survey) has demonstrated low levels of public accuracy regarding sentencing trends, although the most

⁵ Bromley Briefings Prison Factfile, Winter 2019, p. 8.

⁶ Reviews of the literature can be found in Gelb (2008); Roberts and Stalans (1997); Indermaur (1987).

recent sweep to include knowledge questions is almost a decade old now (Hough et al., 2013).

* The general finding is that people under-estimate the severity of sentencing. This is usually demonstrated by comparing, for specific crimes, public estimates of the custody rate with actual practice. Alternatively, public estimates of average prison sentences imposed are compared with actual practice. Fifty years ago, surveys of the public in the US found that many respondents estimated prison sentences to be shorter than they were (Gibbons et al., 1972). Similar results emerged from representative surveys of the public in Australia and Canada in the 1980s (Indermaur, 1987; Doob and Roberts, 1983). Finally, surveys of the British public beginning in 1996 (discussed later in this report) also found that most people under-estimated the imprisonment rate and average sentence for selected offences (Hough and Roberts, 1998).

* Knowledge of community-based sentences and release arrangements for prisoners is poor. The public are often confused about the nature of requirements imposed and the consequences of noncompliance. As with the use of imprisonment, low levels of knowledge of sentences and sentencing have been documented in other jurisdictions.⁷

More recent research explored levels of knowledge as disclosed by the public. One such study conducted for the Sentencing Council suggested that the public may over-estimate their levels of knowledge. For example, over three-quarters of the sample were very or fairly confident that they understood the meaning of a life sentence. Yet when their understanding of the life sentence was probed in qualitative research, few participants were aware that offenders serving a life sentence would remain on licence for the rest of their life. Similarly, survey respondents stated that they were aware of the Council's guidelines, but qualitative research revealed important limits on this awareness. Levels of confidence varied; less than half expressed confidence that they understood the term 'on licence' (Sentencing Council, 2019).

There is a subjective element to asking people to report how well they understand aspects of sentencing. For this reason, in the research conducted for this report, rather than asking people how well they thought they understood aspects of sentencing, we posed questions to which there was an unequivocally 'correct' answer.

⁷ Most publications exploring public opinion focus on attitudes, but reviews of research exploring public knowledge can be found in Roberts and Hough (2005) and Roberts (1992).

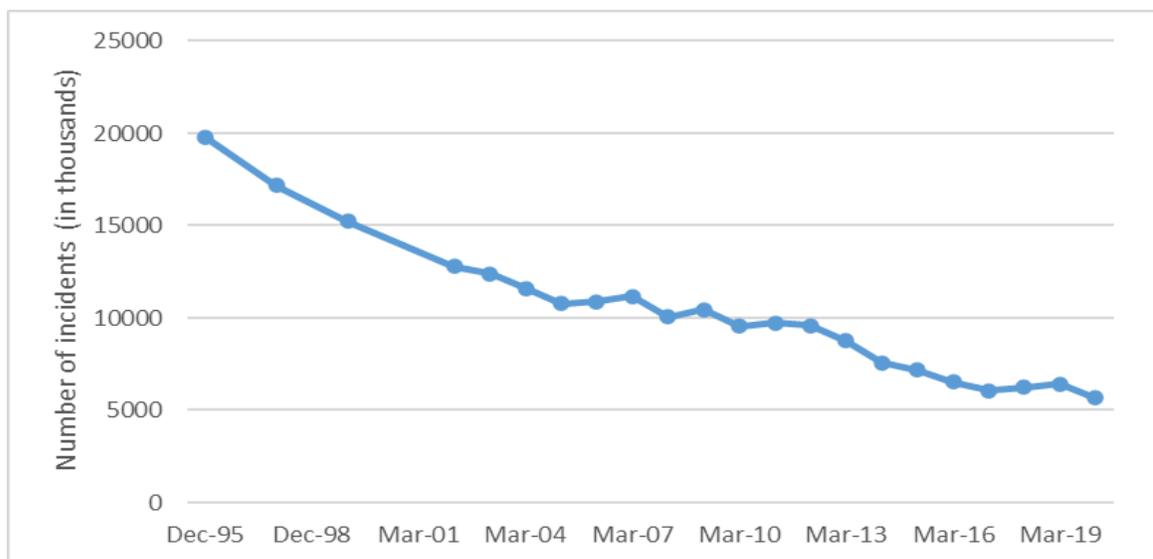
II. Public Knowledge of Sentencing Trends in 2021

Since a primary function of sentencing is to prevent crime, attitudes to sentencing (and sentencers) may well be affected by perceptions of trends in crime rates. Accordingly, before the questions about sentencing trends, respondents were asked to state whether the crime rate across the country had changed over the past 25 years. The survey also explored perceptions of sentence severity, and the extent to which sentencers are in touch with what the public think.

Perceptions of Trends in the Crime Rate since 1996

There is no single index or measure of crime. However, the Crime Survey of England and Wales (CSEW) is generally considered the most reliable source of crime trends. As can be seen in Figure 1, crime rates have been relatively stable in recent years, but the longer-term trend has been downwards from 1995.⁸

Figure 1: Crime Trends, 1995-2019



Source: *Crime Survey of England and Wales*

In contrast to the trend displayed in Figure 1, most respondents believed that crime rates are higher now than 25 years ago: 30% chose 'a lot higher', 32% 'somewhat higher' (see

⁸ Crimes measured by the CSEW have fallen from a peak of 19.8 million in 1995 to just over 5.6 million by the year ending March 2020. This fall has been offset to some extent by new—and less well measured—crimes, especially cybercrimes. However, even when these new crimes are included, the total of 10.2 million crimes is still well below the 1995 figure.

Table 1). Excluding those who responded 'don't know', 69% believed crime rates were higher today.

Table 1: Perceptions of Crime Rates compared to 1996⁹

Crime rates are a lot higher across the country now	30%
Crime rates are somewhat higher across the country now	32%
Crime rates are about the same across the country now	17%
Crime rates are somewhat lower across the country now	9%
Crime rates are a lot lower across the country now	1%
Don't know	12%
	100%

Question: How do you think crime rates across the country as a whole have changed over the last 25 years (i.e., since 1996)? (Please select the option that best applies). Correct answer: crime rates are lower now than 25 years ago.

These trends are consistent with previous research a decade ago. Hough et al. (2013) report findings from the 2010/11 Crime Survey of England and Wales: over two-thirds of respondents believed then that the crime rate nationally had increased 'over the past few years' when in fact it had been stable.¹⁰

Perceptions of Sentence Severity

The question '*Are courts too harsh, too lenient, or about right?*' has been used repeatedly as an index of public punitiveness, albeit one with limitations. The principal limitations are (i) when responding to such questions, most people are thinking of the worst crimes and offenders;¹¹ and (ii) a survey does not allow people sufficient time to consider the "evidence" on the question, and may measure only an intuitive, 'top of the head' response.

⁹ Percentages in this and all subsequent tables are rounded and may not sum to 100%.

¹⁰ This and previous surveys have found that public perceptions of crime trends in the respondents' local area were more accurate. The authors attributed this difference to news media coverage of crime (see Hough et al., 2013, p. 18; ONS, 2015, p. 2).

¹¹ When respondents are asked to identify the offenders that they had in mind when answering the question about sentence severity, most cited violent or repeat offenders (Doob and Roberts, 1983).

However, the imperfections of the question are constant over time making it a useful barometer of the public mood. The public response to this question has remained the same over the years. For example, 25 years ago, 79% of the 1996 British Crime Survey sample endorsed the view that sentencing was too lenient (Hough and Roberts, 1998). Earlier¹² as well as more recent surveys have found the same pattern, with approximately three-quarters of the public expressing the view that sentencing was too lenient (Hough et al., 2013).

A similar result emerges from our 2021 survey: approximately two-thirds (65%) of respondents endorsed the view that sentencing was too lenient. The percentage expressing this opinion rises to 76% if we exclude 'don't know' responses.¹³ Finally, it is worth noting that the public in most western nations share the view that sentencing should be more severe (see Duffy et al., 2008, p. 50).

Table 2: Public Attitudes to Sentence Severity

Much too tough	1%
A little too tough	4%
About right	16%
A little too lenient	29%
Much too lenient	36%
Don't know	14%
	100%

Q: In general, do you think the sentences handed down by the courts in England and Wales are too tough, about right, or too lenient?

Perceptions of Whether the Judiciary is 'in touch' with the Public

Repeating a question from earlier surveys, we measured respondents' views about the judiciary. The specific question was the following: *Do you think judges and magistrates are in touch, or out of touch with what the public think?*¹⁴ First, judges. *Are judges generally in touch or out of touch with what the public think?* The question was then repeated for

¹² A Gallup survey in 1981 found that two-thirds of respondents believed that sentences were too soft (cited in Hough and Moxon (1985, pp. 161-162)).

¹³ Another YouGov survey in 2019 found that 70% of the sample endorsed the view that sentences were not harsh enough; 14% endorsed the option that courts 'get the balance right' at sentencing; 3% thought that sentences were too harsh and 13% responded 'don't know' (YouGov, Fieldwork September 2019).

¹⁴ In order to ensure respondents were aware of the different jurisdiction of the two branches of the judiciary, respondents were first informed that judges deal with the most serious offences while more minor offences are sentenced in the magistrates' courts.

magistrates. As can be seen in Table 3, almost six in 10 believed that judges were out of touch with what the public think. Perceptions of magistrates were little different: approximately half of the respondents believed that magistrates were out of touch.

Table 3: Public Perceptions of Whether the Judiciary is in Touch with the Public

	Judges	Magistrates
In touch with what the public think	17%	22%
Out of touch with what the public think	59%	52%
Don't know/prefer not to say	24%	26%
	100%	100%

Q: Do you think judges/magistrates are in touch, or out of touch with what the public think?

Comparisons with the 1996 survey suggest little has changed in terms of this key perception of the judiciary. Excluding those who answered 'don't know', 78% of respondents who expressed a view in our survey thought judges were out of touch with the public and 70% thought that magistrates were out of touch; this compares to 82% and 63% respectively in the 1996 survey (Hough and Roberts, 1998, p. 18).

Knowledge of Trends in the Use of Imprisonment

We compared public estimates of custody rates and average sentences with current practice.¹⁵ First, however, respondents were asked about sentencing trends over the past 25 years.

1. Public Perceptions of Overall Trends in Sentence Lengths

We asked the following question: *In your opinion, over the past 25 years (i.e., since 1996), has the average prison sentence become longer, stayed the same or become shorter?* As discussed in the introduction, the correct answer is that sentence lengths are longer now than in 1996.

Table 4 shows that most respondents were unaware of the increase in sentence lengths over this period. Over half (56%) endorsed the view that sentences are *shorter* now (19% 'much shorter'; 37% 'somewhat shorter'). About one in 10 believed it had remained the same, and one quarter of the sample responded 'don't know'. Excluding respondents who

¹⁵ The data on custody rates and average sentence lengths are derived from the Ministry of Justice's 'Outcomes by offence data tool'.

answered 'don't know', 75% believed that sentences had become shorter, the opposite of actual trends.

Table 4: Public Perceptions of Changes in Sentence Length since 1996

Average prison sentences are a lot longer now	2%
Average prison sentences are somewhat longer now	6%
Average prison sentences are about the same now	11%
Average prison sentences are somewhat shorter now	37%
Average prison sentences are a lot shorter now	19%
Don't know/prefer not to say	25%
	100%

Q: In your opinion, over the past 25 years (i.e., since 1996), has the average prison sentence become longer, stayed the same or become shorter? Correct answer: the average custodial sentence is longer now than in 1996.

2. Knowledge of Minimum Terms for Murder

Although murder carries a mandatory sentence of life imprisonment, the time offenders spend in prison is largely determined by the minimum term imposed by the sentencing judge. Sentencing for murder has become more severe since changes to the sentencing framework were introduced by the Criminal Justice Act 2003.¹⁶ As noted in the introduction, the average minimum term imposed for murder (the period the offender must serve in custody before release can first be considered) has increased greatly in recent years. Respondents were asked whether offenders sentenced to life imprisonment for murder spent more, less or the same amount of time in prison in recent years.

¹⁶ Schedule 21 to the Criminal Justice Act 2003 introduced higher starting point sentences for different profiles of murder. These starting points have an important influence over the minimum term ultimately imposed (Roberts and Saunders, 2020).

Table 7: Perceptions of Trends in Sentencing for Murder since 2001

Those convicted of murder spend a lot longer in prison now before being released on licence	2%
Those convicted of murder spend somewhat longer in prison now before being released on licence	4%
Those convicted of murder spend about the same length of time in prison now as they did 20 years ago	13%
Those convicted of murder spend somewhat shorter in prison now before being released on licence	31%
Those convicted of murder spend a lot shorter in prison now before being released on licence	26%
Don't know/prefer not to say	25%
	100%

Q: Now thinking about offenders convicted of murder. Do you think that the average number of years that such offenders serve in prison before being released on licence has become longer, shorter, or is it about the same now as it was 20 years ago? Correct answer: offenders convicted of murder now spend more time in prison before release.

Two per cent of respondents chose the correct response. Only 6% considered that minimum terms for murder had increased over the past two decades. Of those expressing a view, three-quarters considered that sentencing levels for murder had gone in the opposite direction.

Perceptions of Comparative Sentencing Trends

An alternate approach to measuring perceptions of sentence severity involves international comparisons. It is hard to draw definitive conclusions about the relative severity of sentencing across jurisdictions, as many variables influence sentencing outcomes. However, two common indicators of severity are the imprisonment rate and the Average Custodial Sentence Length (ACSL). Using these measures, sentencing appears to be tougher in England and Wales. In the most recent whole year for which data are available, the ACSL in England and Wales was 20.4 months (Ministry of Justice, 2021). The ACSLs in Italy, France and Germany were, 15.7, 10.9, and 8.0 months respectively (Council of Europe, 2020, Table 3).

Respondents in our survey were asked the following question: *We would like you to consider sentences for serious crimes in other Western countries such as France, Germany and Italy. Do you believe that sentences for serious crimes are more severe, less severe, or about the same in these countries when compared to England and Wales?*

Unsurprisingly, almost half the sample (42%) responded 'don't know' to this question. When respondents endorsed a view, they were more likely to believe that sentencing was more lenient in England and Wales than the other countries. Thus 24% endorsed the option that

sentencing was less severe here, against 11% who believed sentencing was more severe. Approximately one quarter of the sample (22%) responded that sentence severity was 'about the same' across the countries.

Table 6: Perceptions of Sentence Severity in Different Countries

More severe in countries such as France, Germany and Italy	24%
About the same	22%
Less severe in countries such as France, Germany and Italy	11%
Don't know	42%

Q: For the following question, we would like you to consider sentences for serious crimes in other Western European countries, such as France, Germany, and Italy. Do you believe sentences for serious crimes are more severe, less severe, or about the same in these countries when compared to England and Wales?

III. Estimates of Current Sentencing Practices: The use of imprisonment

Estimates of Offence-Specific Sentencing: Rape and Burglary

Estimates of Custody Rate and ACSL for Rape

Replicating earlier research, we posed the following question: 'Of all men aged 21 or over who are convicted of rape, what percentage do you think are sent to prison?'. In 2019, 96% of men aged 21 or over convicted of rape received terms of immediate imprisonment. Table 7 reveals that the majority of the public under-estimated the custody rate for this offence: 42% estimated the rate to be 25% or less.¹⁷

¹⁷ One can speculate that these large under-estimates reflect a public awareness that only a small proportion of rape cases reported to the police are prosecuted, and that an even smaller proportion result in conviction.

Table 7: Public Estimates of Custody Rate for Rape

25% or less	42%
26%-50%	19%
51%-75%	12%
76%-100%	18%
Don't know/prefer not to say	8%
	100%

Q: Of all men ages 21 or over who are convicted of rape, what percentage do you think are sent to prison? Correct answer: 96%.

Respondents were also asked to estimate the average prison sentence length imposed on men over 21 who have been convicted of rape. In March 2021, then Secretary of State for Justice, Robert Buckland, reported that the average sentence for rape was currently 9 years 9 months.¹⁸ Table 8 shows that respondents to our survey significantly under-estimated the average sentence length: almost half thought that the average sentence was four years or less.

Table 8: Public Estimates of the Average Prison Sentence for Rape (in years)

Two years or less	23%
3-4 years	22%
5-6 years	27%
7-8 years	9%
9-10 years	6%
More than 10 years	5%
Don't know/prefer not to say	10%
	100%

Q: Of all men aged 21 or over convicted of rape who are sent to prison, what do you think is the average prison sentence they receive in years? (Length of sentence, rather than the length of time they actually spend in prison). Correct answer: 9-10 years.

Domestic Burglary

In 2019, approximately 80% of men aged 21 or over convicted of domestic burglary were sentenced to immediate custody. As can be seen in Table 9, the public also under-estimate

¹⁸ <https://twitter.com/RobertBuckland/status/1371562189522399241>.

the custody rate for this offence; three-quarters of the sample estimated the custody rate for burglary to be 50% or less.

Table 9: Public Estimates of Custody Rate for Burglary

25% or less	51%
26%-50%	24%
51%-75%	9%
76%-100%	5%
Don't know/prefer not to say	10%
	100%

Q: Of all men aged 21 or over who are convicted of burglary of a private residence, what percentage do you think are sent to prison? Correct answer: 80%.

Table 10 summarises public estimates of the average prison sentence for burglary and reveals a similar pattern to the estimates of rape sentences: most respondents underestimated the average sentence length. The ACSL for domestic burglary in 2019 for men aged 21 or over was 29 months. Of those who provided an estimate, 90% chose a length below the correct range of 25-36 months.

Table 10: Public Estimates of the Average Prison Sentence for Burglary (in months)

Six months or less	35%
7-12 months	25%
13-24 months	20%
25-36 months	5%
More than 36 months	4%
Don't know/prefer not to say	11%
	100%

Q: Of all men aged 21 or over convicted of burglary of a private residence and who are sent to prison, what do you think is the average prison sentence they receive in months? Correct answer: 29 months.

Combining Imprisonment Rates and Sentence Lengths: The Imprisonment Index

Finally, the gap between public perception and current practice can also be illustrated by a single statistic which incorporates the rate of imprisonment and the length of sentence. We calculated an '**Imprisonment Index**' by multiplying the proportion of cases receiving an

immediate custodial sentence by the average sentence length. For rape, the Index based on the latest statistics is 112 (117 months X 0.96 (probability of custody), and for burglary it is 23 (29 months X 0.8).

The corresponding indices based on the public estimates are 32 for rape (65 months X 0.49) and 6 for burglary (15 months X 0.38). The comparable gap between public perceptions and actual practice for both offences suggests a general level of inaccuracy rather than a trend specific to one offence.¹⁹

Comparisons with Previous Surveys

We can compare these trends in public estimates of sentencing practice to findings from 25 years ago, when the same questions were included in the 1996 British Crime Survey.²⁰ The responses are broadly similar: only approximately one-fifth of respondents in 1996 provided a roughly accurate estimate of the custody rate for rape. Although the imprisonment rate for rape was around 95% at that time, over half the sample provided estimates under 60%. For residential burglary, 61% of offenders convicted of the crime were imprisoned, while a large majority of respondents (70%) estimated that the burglary imprisonment rate was below 50%. Twenty-two per cent of respondents provided an 'about right' answer.²¹ The median public estimate of the rape custody rate was 50% in 1996 (Hough and Roberts, 1998, p.13) and 25% in 2021. Similarly, for burglary, the median estimate in 1996 was 35% (Hough and Roberts, 1998, p.14) and 38% in 2021.

Minimum Terms for Murder

Respondents were asked to estimate the average number of years that offenders convicted of murder must serve in prison before becoming eligible to apply for release on licence. Since minimum terms for murder are not routinely published, an exact figure for the average minimum term is unavailable. An approximation from 2016 suggests that the average minimum term for murder was around 20 years.

Approximately one-quarter of respondents were broadly accurate, providing an estimate in the 17 to 25 year range. Public estimates generally under-estimated the severity of minimum terms: one-third by a significant margin (10 years or less), while one-quarter estimated between 11 and 16 years. An earlier survey conducted by Mitchell and Roberts in 2010 also asked the public to estimate the average number of years served in prison by offenders convicted of murder; almost half the national sample (42%) provided an estimate of 10 years or less (Mitchell and Roberts, 2012, Table 5.4, p. 84).

¹⁹ The public Imprisonment Index is 29% of the actual Index for rape, while the burglary Index is 26% of the actual Index.

²⁰ Hough et al. (2013) found the same trends in responses to the 2010/11 CSEW. Approximately 90% of respondents under-estimated the custody rate for rape and around half under-estimated the custody rate for domestic burglary.

²¹ For discussion of the findings from the 1996 survey, see Hough and Roberts (1998).

Table 11: Public Estimates of Average Minimum Term for Murder

10 years or less	33%
11-16 years	24%
17-25 years	26%
26 or greater	7%
Don't know/prefer not to say	10%
	100%

Q: All offenders convicted of murder are sentenced to life imprisonment. Most will be released from prison to serve the remainder of their life sentence in the community on licence, meaning they would return to prison if they were to violate the conditions of their release. On average, how many years do you think offenders convicted of murder must serve in prison before being eligible to apply for release on licence? Correct answer: approximately 20 years.

Attitudes to Sentence Severity and Knowledge of Key Sentencing Indicators

The final table (12) contrasts the estimates of people who believed sentence severity was 'about right' with those who thought sentencing was 'much too lenient'. A clear relationship emerged between attitudes to sentence severity and knowledge of key sentencing indicators. Respondents who believed that sentences were too lenient were significantly less accurate in their estimates of current sentencing practice. More specifically, they were less accurate in the direction of under-estimating the use of imprisonment.

Table 12: Attitudes to Sentence Severity and Knowledge of Key Sentencing Indicators

	Sentences are about right (16% of sample)	Sentences are much too lenient (36% of sample)
Time served in prison on 12-month sentence (correct response: 6 months)	6.9 months	6.2 months
Custody rate for rape (correct response: 96%)	49%	37%
Custody rate for burglary (correct response: 80%)	38%	21%
Average Custodial Sentence for rape (correct response: 10 years)	5.5 years	5.1 years
Average Custodial Sentence for Domestic Burglary (correct response: 29 months)	15.3 months	12.6 months

IV. Conclusion

The trends in public knowledge are clear and consistent across different indicators and over time. Most people under-estimate the severity of current sentencing practices, and this has long been the case in England and Wales and other countries (See Chapter 4 in Roberts and Hough, 2005). In all likelihood, these misperceptions shape public attitudes to the courts: people express the opinion that sentences are too lenient in part drawing upon their limited knowledge of current practice. Once the opinion is established, the effect may operate in both directions: when asked to estimate sentence lengths or custody rates peoples' estimates are influenced by their opinion that the system is generally lenient.

The general conclusion we draw is that knowledge of certain aspects of sentencing is poor, and this could be for several reasons. First, the sentencing process is complex, and sanctions are often poorly understood.²² Second, sentencing and release provisions change relatively frequently, and the public cannot be expected to keep up with these changes. Third, media coverage of sentencing focuses on cases which attract exceptional or controversial sentences. An apparently lenient sentence which triggers an Attorney General Reference for undue leniency is newsworthy in a way that the vast number of sentences imposed are not.

²² The suspended sentence order, life imprisonment and extended sentences are examples of complex sanctions which cannot be captured in a simple phrase.

The consistency in the pattern of responses over time suggests that public knowledge of sentencing patterns, and their attitude to the courts, are independent of severity levels observed in sentencing statistics. As documented earlier in this report, sentencing has become tougher in recent years, particularly for certain offences. This trend appears to have escaped the attention of the public. It would be naïve to think that improving public knowledge of sentencing practices alone would significantly reduce public criticism of the courts. Yet better dissemination of sentencing trends and information may contribute to improving public confidence in the courts. The alternative response by politicians of both main parties has been to try to close the ‘legitimacy deficit’ arising from negative public opinion about sentencing by increasing sentence severity.²³ Our findings show that this approach is very unlikely to have the desired effect. Most people simply do not notice uplifts in sentence severity.

Research published by the Ministry of Justice in 2008 found that when members of the public were provided with information about sentencing, three changes occurred: first, public estimates of custody rates were more accurate; second, people were less likely to regard sentencing practices as too lenient, and third, the public expressed more confidence in criminal justice (see Singer and Cooper, 2008). Some academic studies have also demonstrated that providing information about sentencing increases knowledge and reduces punitive attitudes (e.g., Grimmelikhuijsen and van den Bos, 2021; Cuthbertson, 2013).²⁴

The trends documented in this report underscore the need to improve public knowledge and understanding in this area. Reasonable people may well disagree about the appropriate sentencing response to crime. It is important, however, that views of sentencing rest upon an accurate understanding of current sentencing practices. Information and education campaigns may go some way to achieving this, but it is equally important that political and media debate about crime and punishment should not exploit public misunderstanding. We appreciate that the necessary self-restraint is not easy to adopt in the face of public anger about sentencing leniency.

23 Most recently, the Government’s impact assessment for the sentencing provisions in the Police, Crime, Sentencing and Courts Bill recognised (at paragraph 77) that the measures were unlikely to affect crime rates. The Government offered the alternative justification that the public believes that judges are too soft on crime, and judges need to toughen up if they are not to lose their legitimacy.

24 Other studies have failed to demonstrate an increase in public knowledge levels after people had been given information (see Salisbury, 2004).

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Public Knowledge of Sentencing Practice and Trends

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