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# TOPIC 1.1

## Evaluate the effectiveness of the roles of personnel involved in criminal investigations

### Getting Started

Working in small groups, imagine you are a member of the public at the scene of a suspicious death. What would you do and what do you think the procedure would be to deal with this scene? You could consider the following:

1. What is your first action?
2. Who would you expect to arrive at the scene?
3. What would the personnel who attend the scene be doing?

## The key personnel in criminal investigations

In this Topic, we look at the key personnel involved in investigating crimes and the roles they perform, and we examine the strengths and limitations of each of them.

The following personnel are the ones most closely involved in criminal investigations:

- **Police officers** are usually first on the crime scene and they secure it for investigation. Police detectives lead the investigation into the crime.
- **Crime scene investigators** gather and preserve evidence from crime scenes for use in investigations.
- **Forensic scientists** examine, analyse and interpret crime scene evidence using their specialist knowledge and skills.
- **Forensic pathologists** specialise in establishing the causes of suspicious deaths.
- **The Crown Prosecution Service** makes the decision about whether to charge and prosecute a suspect.

### Police officers

A police officer is usually the first person called to a crime scene and they have a vital role at the start of the investigation. Officers need to safeguard the public and attend to anyone seriously injured at the scene, for example by calling an emergency ambulance. If possible, they need to arrest the suspect, though in many cases they will have left the scene.

However, as far as the investigation is concerned, the police officer's key job is to secure the crime scene in order to conserve the evidence. As far as possible they should avoid contaminating the scene by moving furniture, opening doors etc.

#### ACTIVITY Media

Police officers

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By carefully analysing the crime scene, it may be possible to identify the type of offender and their likely characteristics, such as their personality, lifestyle, relationships and motives. The profiler therefore gathers all the available information about the crime scene, the victim and the forensic evidence.

Typological profiling divides crime scenes and offenders into two types: organised and disorganised. The table uses the example of murder cases to show the difference between the two types.

Type of murder	Likely characteristics of the murderer
<b>Organised crime</b> <ul style="list-style-type: none"> <li>• The crime is planned, e.g. murderer takes weapon and restraints to the crime scene</li> <li>• Attempts to control the victim</li> <li>• Leaves few clues at the crime scene (removes evidence)</li> <li>• The victim is a targeted stranger.</li> </ul>	<b>Organised murderer</b> <ul style="list-style-type: none"> <li>• Above average intelligence (but possibly an underachiever)</li> <li>• Manipulative, cunning, outwardly normal, concealing sadistic personality</li> <li>• Socially and sexually competent</li> <li>• Usually living with a partner</li> <li>• Angry/depressed at time of the attack</li> <li>• Follows media coverage of the attack.</li> </ul>
<b>Disorganised crime</b> <ul style="list-style-type: none"> <li>• Spontaneous – little planning or preparation, e.g. weapon improvised at the crime scene</li> <li>• Random, disorganised behaviour</li> <li>• Minimum use of constraint</li> <li>• Little attempt to hide evidence at the crime scene, e.g. leaves murder weapon behind.</li> </ul>	<b>Disorganised murderer</b> <ul style="list-style-type: none"> <li>• Lives alone, near to the crime scene</li> <li>• Sexually and socially inadequate</li> <li>• Suffers severe forms of mental illness</li> <li>• Physically or sexually abused in childhood</li> <li>• Frightened and confused at time of the attack.</li> </ul>

The profile can then be used by police to identify likely suspects and narrow down their search. It can also be used to predict the likely future behaviour of the offender, such as whether and where they might strike next.

Typological profiling was originally developed in the 1970s in the USA by the FBI. Since then, further typologies have been developed to classify rapists, based on their behaviour when offending. For example, the 'power assertive' type uses rape to assert his masculinity, while the 'power reassurance' type is motivated by fear of sexual inadequacy. Other types include 'anger-retaliatory' and 'anger-excitement' rapists.

## Evaluation of typological profiling

The investigative psychologist David Canter makes several criticisms of this approach:

- Information available at the crime scene may be quite limited and not collected under strict conditions.
- Speculations about the offender's likely personality, relationships or motives are not much help to police in finding them.
- The profile is based on the profiler's subjective opinion about which evidence is important, so different profilers might produce completely different profiles of the same case.
- The typology is based on interviews that the FBI conducted with just 36 convicted serial killers and rapists. This is a very small sample, and the offenders may be untypical of those who are not caught, as well as being manipulative and dishonest.

However, typological profiling has helped to solve some high-profile crimes in several countries. It can also help police to predict the likelihood of future crimes.



*"Wherever the offender steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. It is factual evidence. Physical evidence cannot be wrong, it cannot be wholly absent. Only human failure to find it, study and understand it can diminish its value."*

## ACTIVITY Media

Locard's principle

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## Collecting, transferring and storing physical evidence

Different types of physical evidence need to be collected, transferred (e.g. to a forensics laboratory) and stored in order to preserve them and to prevent contamination. Most contamination occurs by handling items without gloves or by breathing, sneezing or coughing over them.

In the case of serious crimes (e.g. rape, murder or arson), investigators wear protective clothing when collecting materials, to avoid contamination and sometimes to protect themselves from hazardous substances. This includes a mask, a hooded 'scene suit', overshoes and two pairs of gloves. For less serious crimes, only a mask and gloves are required.

## Bodily fluids and tissues

Bodily fluids such as blood, semen and saliva, and tissue such as skin flakes and hairs, can provide important identification evidence, because DNA can be extracted from them and



Belfast, 2013. A fully-suited CSI gathers evidence after pipe bombs were thrown at police.

## Plea bargaining

A plea bargain is an agreement between the prosecutor and defendant (and sometimes also the judge), where the defendant agrees to plead guilty in return for some concession from the prosecutor. A plea bargain may therefore have been struck before the case goes to court.

There are three main types of plea bargain:

- **charge bargaining**, where the defendant pleads guilty to a less serious charge, and therefore receives a lighter sentence.
- **count bargaining**, where the defendant pleads guilty to one charge, in return for others being dropped
- **sentence bargaining**, where the defendant pleads guilty to the original charge, in return for a more lenient sentence.

Plea bargaining may offer the defendant an incentive to plead guilty and will avoid a potentially lengthy trial. However, critics argue that unregulated plea bargaining can apply undue pressure to defendants and undermine their right to a fair trial. For example, the prosecution may file additional or more serious charges, with the aim of bluffing or frightening the defendant into agreeing to plead guilty to a lesser offence.

### ACTIVITY Research

Plea bargaining

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Cuts to legal aid mean many defendants are no longer eligible, despite being on relatively low incomes.



## Trial by media: the tabloid press

In law, the accused is innocent until proven guilty after a fair trial. In a fair trial, the jury or magistrates must only consider the evidence presented to them in court. It would be unfair if a juror's verdict was prejudiced by media reports they had seen about the case.

Certain high-profile cases attract a great deal of media interest and sensationalised reporting, often with extremely negative coverage of the defendant's character or private life, and this may make a fair trial impossible.

In effect, the media have already found the accused guilty and their blanket coverage of the case before the trial will most likely have been seen by the jurors, potentially prejudicing them against the defendant.

For example, Cheryl Thomas found that a fifth of jurors serving on high-profile cases said they had found it difficult to disregard pre-trial media coverage of the case. They were more likely to recall the defendant being portrayed as guilty than as innocent.



Tabloid libelling of Jefferies could have prevented a fair trial if he had been charged.

### Case study Trial by media

#### The character assassination of Christopher Jefferies

A disturbing example of trial by media is the case of the retired teacher Christopher Jefferies, who was arrested and questioned by police for the murder of his tenant Joanna Yeates in 2010.

The tabloid press ran highly prejudicial articles about Jefferies. For example, the *Sun* claimed he had been 'branded a creepy oddball by ex-pupils, a teaching colleague and neighbours', had invited pupils to his home, was domineering and was believed to be gay. The paper went on to describe him in these words:

*"WEIRD 'Strange talk, strange walk'; POSH 'Loved culture, poetry'; LEWD 'Made sexual remarks'; CREEPY 'Loner with blue rinse hair'."*

Other papers joined in. The *Daily Mirror* claimed Jefferies was a Peeping Tom; the *Daily Star* described him as a foul-tempered angry weirdo. Most of the quotes about him were from unnamed sources. The papers published photos of him shabbily dressed and with unkempt hair (in fact the clothing had been given to him by police after they had taken all his own clothes for forensic analysis).

However, subsequent police investigations revealed that in fact the killer was a neighbour, Vincent Tabak. The *Sun* and the *Mirror* were found guilty of contempt of court for publishing articles that could have prejudiced a fair trial, since it would have been virtually impossible to find a jury who had not been exposed to the tabloids' character assassination. Jefferies received damages for libel from the papers and has since become a campaigner for privacy.

**Exemption** Those selected for jury service are legally required to attend court. However, it is possible to be excused on medical and other grounds, such as a holiday you have already paid for.

### ACTIVITY Media

The role of a juror

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## Strengths of the jury system

### Jury equity

Unlike judges, jurors are not bound by what a law says or by precedents (verdicts reached previously in similar cases). As ordinary members of the public, they are free to decide a case based on what they feel is fair or morally right, regardless of the law or how the judge might direct them to apply it to a case. This is called jury equity.

### Case study The trial of Clive Ponting

A good example of jury equity is the acquittal of the senior civil servant Clive Ponting. During the Falklands War with Argentina in 1982, the British navy sank the Argentinian cruiser, the *General Belgrano*, with the loss of 323 lives. Britain had declared an exclusion zone around the Falkland Islands and said that any Argentinian ship inside it would be attacked. The *Belgrano* had been outside the exclusion zone when it was sunk and was only attacked after a top-level government decision to change the British navy's rules of engagement.

Three years later Ponting leaked secret government documents about the sinking to an MP and was subsequently charged with breaching the Official Secrets Act 1911. Ponting did not deny his action (he had admitted it even before he was arrested) but argued in his defence that he had acted in the public interest by revealing the facts.

The judge ruled that Ponting had no defence and directed the jury to convict him as he had clearly contravened the Act by leaking official secrets. The jury nevertheless acquitted him.

1 May 1982: the *General Belgrano* is sunk. Life rafts saved many but 323 died in what some critics described as a war crime.



Vigil outside Tottenham police station after the inquest found Mark Duggan was lawfully killed.

## Law reports

Law reports are reports of decisions made by courts. They are published on a regular basis – many of them weekly. Their purpose is to inform lawyers and judges about important judgements in the courts and to prevent two courts reaching differing decisions on identical facts.

A report contains the following sections:

- the case header: the names of the parties involved, the date, the court and the judge
- the key words relating to the case (e.g. hearsay evidence) and the key issues involved
- the headnote: a summary of the facts, the court's decision and any case law considered
- the judgement: a transcript of the exact words used by the judge to explain his or her reasoning.

## The principle of precedent

Only about 2% of all cases are reported in law reports. These are the cases that set a precedent – that is, they lay down a new principle of law.

In England and Wales, the principle of precedent governs how courts reach many of their decisions. Precedent involves following the decisions that have been made in previous similar cases. Where the point of law in the present case and a previous one is the same, the court should follow the decision of the previous case.

Following precedent promotes consistency and fairness between similar cases, and it also provides certainty – people can know what to expect in a case, given the decision that was reached in a similar previous case.

## Why are law reports important?

The courts can only follow precedent if they actually know what the previous decision was and the reason for it. It is therefore vital to have details of the earlier case, and this is the role of law reports. A report provides a full and accurate record of all the relevant information. This means the court can rely on it as an authoritative statement of the legal principle on which the case was decided. This enables the court to see whether the earlier case sets a precedent for the one they are currently dealing with.



## Stephen Lawrence

The racist murder of Stephen Lawrence in 1993 also gave impetus to the campaign to change the double jeopardy rule. The police investigation had been incompetent and racist, and did not result in prosecutions of any of the five suspects (two were initially charged but the charges were later dropped).

Stephen's parents brought a private prosecution against three of the suspects. However, they were acquitted after the judge ruled that identification evidence given by Duwayne Brooks was inadmissible. Duwayne had been with Stephen when he was murdered.



'New and compelling evidence': Dobson's jacket was found to have tiny flakes of Stephen Lawrence's blood on it.

## The Macpherson Report

In 1999 the Macpherson Report into the case called for the removal of the double jeopardy rule. In 2003 the Criminal Justice Act amended the law so that a second prosecution could be allowed for very serious crimes if 'new and compelling' evidence is uncovered. Even then, the Director of Public Prosecutions (the head of the CPS) must personally agree that re-opening the case is in the public interest. Only one re-trial is permitted.

**Just verdicts** In the Lawrence case, the change led to the re-trial and conviction of one of the five suspects, Gary Dobson, in 2012. Another of the original suspects, David Norris, who had not been tried previously, was also convicted. It could therefore be said that a just verdict had finally been reached, but only after 19 years and only in the case of two of the suspects.

### ACTIVITY Media

The Stephen Lawrence case

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## Jury equity or jury nullification

Sometimes the law may seem unjust. In these situations, to bring about a just verdict, a jury may deliberately reject the evidence and decide to acquit a defendant who has broken the law – even when the judge has directed them to bring in a guilty verdict. This is known as jury equity (see [Topic 2.5](#)) or jury nullification, because the jury nullifies the law. That is, they ignore the letter of the law to reach what they believe is a just or equitable verdict.

Juries sometimes do this when they believe the existing law or the punishment for breaking it is unfair, inhumane or immoral. They can do this because a jury's verdict to acquit is unassailable (cannot be challenged). If juries consistently refuse to convict defendants charged under a particular law, this may send a signal to lawmakers that the law needs changing.

There are some famous cases of juries nullifying a law and acquitting defendants in the interests of justice.

## Capital punishment

In early 19<sup>th</sup> century England, the theft of items worth more than forty shillings (two pounds) carried the death sentence, but juries were often unwilling to condemn petty thieves to death and they either brought in not guilty verdicts or even – in one case involving the theft of £20 – found the defendant guilty of stealing only 39 shillings (£1.95) instead, which saved him from the gallows.

## Moral panic

One possible reason for the stiffer sentences is the moral panic that surrounded the riots, with widespread calls from the media and politicians for a crackdown on those involved. For example, in the wake of the riots, Her Majesty's Courts and Tribunals Service, which oversees the courts, advised magistrates to consider custodial sentences for riot-related offences that would normally be punished less severely.

A similar pattern of harsh sentencing has accompanied other moral panics, such as the mods and rockers in the 1960s. Stanley Cohen notes that magistrates routinely refused bail, so that young people with no previous convictions and charged with only minor offences were remanded to prison, in some cases for several weeks. Magistrates also sentenced more people to detention centres for first offences.

## Penal populism

Critics argue that sentencing has become increasingly politicised: politicians have advocated tougher sentencing as a way of gaining popularity with the voters. This is known as 'penal populism' and it has resulted in longer sentences.

For example, the Crime (Sentences) Act 1997 introduced mandatory minimum sentences for certain crimes. One effect of tougher sentences has been a sharp increase in the prison population over the last 30 years, at a time when crime rates have generally been falling. (For more on penal populism and prison, see *Criminology Book One*, Unit 2, Topic 4.1.)

### CONTROLLED ASSESSMENT PREPARATION

#### What you have to do

Using your notes from Topic 3.2, draw objective conclusions from information on criminal cases in relation to the following:

- safe verdict
- miscarriage of justice
- just verdict
- just sentencing.

You should show the skills needed to analyse the information in order to draw conclusions based on reasoned evidence.

#### The assignment brief scenario

Where relevant, you should make reference to the brief in your answer. To reach the top mark band, you must include reference to the brief.

#### How it will be marked

11-15 marks: Draws objective conclusions on criminal cases (including reference to the brief), using evidence and clear reasoning/argument in support of conclusions.

6-10 marks: Draws some objective conclusions on criminal cases, using some evidence and reasoning in support of conclusions.

1-5 marks: Draws conclusions on criminal cases. Conclusions may be mainly subjective, with limited evidence used in support.



# Preparing for the Unit 3 controlled assessment

When you have completed Unit 3, you will sit the controlled assessment. This section gives you some guidance on how to prepare for it.

## What does it involve?

The controlled assessment involves a set of tasks covering the eleven Unit 3 Assessment Criteria (ACs) and you must address them all in your answers. They are dealt with in the eleven Topics covered in this book.

**Using the brief** You will be given a brief, which is a scenario describing a criminal case. Think of it as a prompt to remind you about some of the ACs that you need to deal with in your answers. You should make reference to the brief in your answers, but only where it is particularly relevant to do so. However, for AC 3.1 and AC 3.2, you *must* make reference to the brief in order to score in the top mark band.

## Prepare your file in advance

Before you sit the assessment, it is essential that you have thoroughly prepared your notes for all eleven ACs, because you will need to take them with you into the assessment.

On the next page is a checklist of what you need to do for each AC. Use this to make sure you have written your notes on all of them so that you have everything covered *before* you sit the assessment. For help making notes on each AC, refer back to the Topic with the same number.

## On the day of the assessment

On the day of the controlled assessment, make sure you bring all your Unit 3 materials and have your file in good order.

You are allowed to have access to your class notes and to information sources, but you are not allowed to access the internet. You can't take in any electronic documents or devices. Everything you need must be on paper, so if you have any electronic notes you must print them off if you want to take them into the assessment.

## Use your headings!

When completing your controlled assessment task, it's a very good idea to use the eleven ACs as headings and write about each one in turn, so that you make sure you have covered everything and maximised your marks.

AC	What you need to do	Max. mark
<b>In all ACs, link your answer to the brief where it is relevant.</b>		
1.1	Evaluate the effectiveness of the roles of personnel involved in criminal investigations. A clear and detailed evaluation of a range of personnel is needed. Include strengths and limitations and give examples of relevant cases. You should consider cost, expertise and availability when evaluating each role's effectiveness.	10
1.2	Assess the usefulness of investigative techniques in criminal investigations. Include a range of techniques and give a clear and detailed assessment of each one. Give examples of cases where possible and focus on how effectively or ineffectively the techniques were used in those cases.	20
1.3	Explain how evidence is processed. Include both physical and testimonial evidence. Give a clear, detailed explanation of how evidence is processed. Include the collection, transfer, storage and analysis of evidence, and the personnel involved, e.g. CSIs collect and transfer evidence from the crime scene; forensic scientists analyse it. Include examples of physical evidence from the brief and other cases.	6
1.4	Examine the rights of individuals in criminal investigations. Include the rights of suspects, victims and witnesses. Give a clear explanation of each one.	6
2.1	Explain the requirements of the Crown Prosecution Service for prosecuting suspects. Give a detailed explanation of the CPS's role in prosecuting suspects in criminal trials. Explain the tests that must be passed for a prosecution to take place. Use examples to support your points.	4
2.2	Describe trial processes. Describe all the stages of the trial process in detail, including the roles of the different personnel involved.	4
2.3	Understand rules in relation to the use of evidence in criminal cases. Explain the rules concerning evidence used in court. Refer to examples and cases.	4
2.4	Assess key influences affecting the outcomes of criminal cases. Assess the following influences: evidence, witnesses, legal teams, the judiciary, political factors and the media. Give examples of cases.	10
2.5	Discuss the use of laypeople in criminal cases. Give a detailed discussion of the strengths and limitations of using juries and magistrates to try criminal cases. Give examples of cases.	6
3.1	Examine information for validity. Examine the following information sources in detail: evidence, trial transcripts, media reports, judgements and Law Reports. Consider the validity of these sources in terms of bias, opinion, circumstances, accuracy and currency (whether it is up-to-date). Make a judgement about the validity of each source. Support your points with examples of valid and invalid verdicts in criminal cases. Make reference to the brief in your answer.	15
3.2	Draw conclusions from information. Draw objective conclusions on criminal cases, supported by evidence and clear reasoning/argument. Consider safe verdict, miscarriage of justice, just verdict and just sentencing. Make reference to the brief in your answer.	15
<b>TOTAL</b>		<b>100</b>

# UNIT 4

## CRIME AND PUNISHMENT

### Overview

This Unit is about social control – that is, about how society seeks to control our behaviour and ensure that we obey the law. It focuses on the criminal justice system and its efforts to achieve social control.

We begin by looking at how the law is made by Parliament and by the decisions of judges. We then go on to examine how the criminal justice system is organised to uphold the law and punish those who break it. This involves looking at how agencies such as the police, Crown Prosecution Service, the courts, prisons and probation service fit together.

We also look at the different values on which a criminal justice system can be based. For example, it can emphasise the need to protect the rights of the accused against the power of the state, such as the principle that you are innocent until proven guilty. Or it can focus on protecting the public by suppressing crime, even at the cost of some innocent people being wrongly convicted.

Next we look at punishment and what it is for. For example, should the aim of imprisonment just be to protect the public by taking offenders off the streets? Or should it be about rehabilitating criminals so that they 'go straight' and lead a crime-free life? As we shall see, the justice system uses punishment to try to achieve several different aims.

But do the prisons, police and other agencies of the criminal justice system actually succeed in achieving their aims? For example, does prison succeed in preventing people re-offending? When you have completed this Unit, you will be in a position to evaluate how effective the different agencies are in achieving social control and ensuring that society's members obey the law.

## NOW TEST YOURSELF

## Practice Question

How does the government make laws in the United Kingdom?

## Answer by Sophie

The government makes laws through Parliament. These are called Acts of Parliament or statutes. This involves several stages. First it publishes a Green Paper to stimulate discussion about the issues that the law will deal with, e.g. knife crime. This is followed by a White Paper with its detailed proposals for the new law, e.g. to prevent sales of knives to under-16s.

Next there are a series of stages in the House of Commons. The first reading of the bill (the proposed law) is a formal announcement. The second reading is where MPs debate the bill's main principles. If they vote for the bill, it goes to the committee stage, where a small committee of MPs examines it line by line and may propose amendments to the bill. The committee reports back to the whole House and MPs debate and vote on any amendments, e.g. they might raise the minimum age for buying knives to 18. The third reading usually follows immediately, where MPs debate the bill as a whole and vote to pass or reject it.

It's important to note that the government can usually get a majority of MPs to support its bills. This is because normally a majority of the MPs belong to the same party as the government. But if it is a minority government, like Mrs May's Conservative government after 2017, it may find that the Commons rejects some of its bills, e.g. Mrs May's bill to withdraw from the EU.

Once the Commons has passed a bill, it goes through a similar process in the House of Lords. Finally, it goes to the monarch for signing – known as the Royal Assent. At this point it becomes an Act of Parliament – the government has made it the law of the land.

## Questions

Using Sophie's answer and the material in this Topic, answer the following questions.

1. What is a bill? How many stages (readings) must a bill go through in the Commons?
2. At which stage does the Commons debate a bill's main principles?
3. Why can a government usually get its bills passed in the Commons?
4. On what principle is judicial precedent based?
5. What are the two exceptions to precedent?
6. What is the literal rule and why might it cause problems?
7. What does the mischief rule allow the courts to do?

# Describe the organisation of the criminal justice system in England and Wales

## TOPIC 1.2

### Getting started

Working with a partner, complete the following:

1. Using Unit 3 Topic 1.1, write a brief summary of the role of the police in the criminal justice system.
2. Using Unit 3 Topic 2.2, write a brief summary of the stages of the trial process, including the roles of the personnel involved.

You will find that what you learned in **Unit 3** about the different stages of the trial process and the agencies involved, such as the police, CPS and courts, is relevant to this Topic.

### Overview of the criminal justice system

The criminal justice system in England and Wales is made up of a number of interconnected organisations and agencies. As a starting point, we can divide the system into the following main parts:

- **law creation and administration**: the passing of the criminal laws by Parliament and the running of the justice system by government departments
- **law enforcement** by the police
- **the courts** (including prosecution and defence) decide the outcome of criminal cases
- **punishment of convicted offenders** by the prisons and probation service.

From this overview of the system, we can now look in a little more detail at its parts and how they work. We shall do this by taking a journey through the system, from the creation of criminal laws through to the punishment of offenders.

## The main agencies of the criminal justice system

### Law creation

As we saw in **Topic 1.1**, Parliament and judges make the laws dealing with crime.

- **Parliament** passes Acts (legislation or statute law).
- **Judges** create law by setting judicial precedents that other courts then must follow, and by interpreting the meaning of statutes (statutory interpretation).

**Administration of the system** Two government departments oversee most of the justice system and are responsible for its smooth running: the Ministry of Justice and the Home Office.

### The police

The police are responsible for enforcing the criminal law. They investigate crimes, collect evidence, and arrest, detain and question suspects. In minor cases, they may issue a caution

**ACTIVITY Media**

Relationships between agencies

Go to [www.criminology.uk.net](http://www.criminology.uk.net)**HM Prison Service**

The Prison Service has relationships with:

- **the courts:** carrying out the custodial sentences that the court has imposed on offenders; supervising defendants who have been remanded into custody (refused bail) by the court; facilitating visits from defence lawyers to their clients in prison.
- **the police:** facilitating interviews with prisoners involved in ongoing police investigations.
- **the National Probation Service:** liaising when a prisoner is to be released from prison on licence.

Other parts of the justice system include:

**Voluntary organisations:** e.g. Victim Support is a charity that liaises with the police, courts and CPS to support victims throughout the stages of an investigation and trial. Other voluntary organisations include Nacro, Women in Prison and Women's Aid.

**Campaigns** to change the justice system, e.g. the Howard League for Penal Reform, the Prison Reform Trust and INQUEST have relationships with the courts, prisons, police, the Ministry of Justice and the Home Office.

**ACTIVITY Research**

The work of INQUEST

Go to [www.criminology.uk.net](http://www.criminology.uk.net)**NOW TEST YOURSELF****Practice Question**

Describe the relationship of the prison service with other agencies in the criminal justice system. (6 marks)

Source: *WJEC Criminology Unit 4 examination 2017*

**Advice**

You need to describe the relationship between the prison service and agencies such as:

- The courts: prisons hold prisoners attending court, pending transfer/return to prison. They arrange video links for prisoners giving evidence from prison.
- The police hold prisoners after arrest and transport them to prison if the court remands them in custody. They arrest and return prisoners recalled to prison. Prisons facilitate police interviews with prisoners. Police work with prisons to manage child sex offenders.
- Judges decide the sentence, including the term of imprisonment and whether it is concurrent (one term follows on from another) or consecutive (two terms are served simultaneously).
- The probation service works with prisons to prepare prisoners for release to ensure a smooth transition into the outside world, and supervises them after release. It liaises with prison if the offender has to be recalled due to breaching their order.
- Charities work with prisons to provide support services for inmates and following release.
- Defence solicitors may visit prisons to consult with their clients.
- The Ministry of Justice funds the prisons, via HM Prison and Probation Service.

## The two models and the UK justice system

How far do the two models describe the system of justice in England and Wales? We can see examples of each model by looking at two areas:

- **the rules governing the working of the justice system** Do the rules protect the rights of the accused, or do they favour the prosecution?
- **the way the system works in practice.** Do the police, prosecutors and judges actually follow the rules and procedures as they should?

### Rules governing the working of the justice system

There are many due process rules in place to protect the individual's rights during an investigation and trial. For example, in [Unit 3, Topic 2.3](#) we saw that illegally obtained evidence may be ruled inadmissible in court. This includes things such as a confession obtained by using torture or degrading treatment. This could be said to support the due process model, since it protects the defendant's rights.

However, the judge has the power to admit illegally obtained evidence (for example, evidence found during a search conducted without a warrant) if he or she believes it will help to establish the truth. This could be said to support the crime control model, since it may lead to a conviction.

In the table below, we can see how some rules within the English legal system support the due process model and individuals' rights, while others may support the crime control model by helping to secure convictions.

Some rules governing the working of the justice system	
Rules favouring due process	Rules favouring crime control
The suspect's right to know why they are being arrested.	Police rights to stop, question, search and arrest. The right to stop and search without giving a reason in some circumstances.
The right to remain silent when questioned by police and in court – based on the principle that it is the prosecution's job to prove guilt, not the accused's job to prove their innocence.	The court may draw negative inferences (conclusions) if the defendant remains silent when questioned by police or fails to testify in court without good reason.
The right not to be detained indefinitely without charge.	Extended police detention is allowed for questioning on suspicion of indictable offences (36 + 96 hours) and terrorist offences (14 days).
The right to legal representation when questioned by police and in court.	Extended period before access to a lawyer is allowed (for serious offences). Restrictions on the availability of legal aid.
The right to trial by a jury of one's peers.	Jury trials are only for serious cases. Magistrates are more likely than juries to convict. Juryless trials are allowed if jury tampering is suspected.
The right to appeal against conviction or sentence.	Appeal rights are not always automatic. Some are only allowed on a point of law, not of evidence.
The right not to be re-tried for the same offence once acquitted.	Change to the double jeopardy rule allows a second prosecution if 'new and compelling' evidence emerges (for serious offences only).
Rules governing the admissibility of evidence in court; e.g. hearsay, entrapment and forced confessions are not admitted.	Evidence of bad character/previous convictions is permitted in certain circumstances.
The prosecution has a duty to disclose evidence against the defendant in advance of the trial.	Public-interest immunity certificates may allow the prosecution to avoid disclosing evidence.



## Due process and crime control in practice

We can see from the table how different rules of the justice system might support each of the two models. But we also need to look at how the system works in practice. For example, are the rules that protect suspects' and defendants' rights followed in reality, in the police station and the courtroom?

It may be that in most cases, police, prosecutors and judges respect the due process rights of the accused and follow correct procedure. For example, only a small proportion of defendants who are convicted of an offence seek to appeal against either their conviction or their sentence, which could indicate that most are reasonably satisfied with the way their case was processed by the justice system.

### Miscarriages of justice

However, there have also been miscarriages of justice as a result of the police, prosecution or judges failing to follow correct procedures and in some cases even breaking the law themselves. These cases point to the fact that in practice the justice system does not always operate according to the principles of the due process model. Relevant cases include the following:

**Colin Stagg** was the victim of attempted entrapment following the murder of Rachel Nickell. Despite lacking any evidence against him, the police became convinced that he was the killer and tried to use a 'honey trap' to trick him into confessing to the crime.

**Sally Clark** was wrongly jailed for the murder of her two baby sons partly as a result of the Home Office pathologist and prosecution witness Alan Williams failing to disclose relevant information to her defence lawyers.

**The Birmingham Six** were wrongly convicted of 21 murders after police fabricated evidence against them, deprived them of sleep and food, and used violence and threats to extract confessions. The judge wrongly deemed the confessions admissible as evidence while excluding defence evidence, and the prosecution presented dubious and unreliable forensic evidence against the six.

The police have the power to stop, search and arrest. Do they use it fairly?

## NOW TEST YOURSELF

## Practice Question

Discuss reasons why individuals abide by the law.

(9 marks)

Source: WJEC Criminology Unit 4 examination 2018

## Answer by Anthony

People abide by (i.e. obey) the law because of the effects of social control. There are two types of control: internal and external. Internal control is where we choose to obey the law without being compelled to do so, e.g. our conscience tells us what is right. According to Freud, our conscience or superego is an internal 'nagging parent' making us feel guilty if we even think of breaking norms.

Good start – defines internal control. Useful link to theory.

We acquire our conscience through socialisation, where we learn society's moral code from institutions like the family and religion. For example, the Ten Commandments teach believers that it is a sin to steal. Socialisation also teaches us our cultural traditions and the behaviour expected, e.g. Muslims must fast during Ramadan. We internalise rules and traditions as part of our personality and conscience. We can then work out for ourselves what is right and wrong and what society deems acceptable, and act accordingly.

Relevant examples and concepts applied.

People also abide by the law because of external social control, where agencies like those in the criminal justice system use coercion (force or threat of it) to make us obey the law, e.g. police can arrest and detain us, magistrates can fine us, prisons can lock us up. Likewise, parents, peers and teachers use negative sanctions (punishments) to make us conform to their rules. External control works through fear of punishment (deterrence): we obey the law for fear of prison etc. Deterrence can be individual (where experiencing punishment deters the offender from re-offending) or general. General deterrence reflects Bandura's social learning theory: seeing others punished for deviance deters us.

External control clearly explained, plus more concepts, examples and theory.

Control theorists like Reckless see both internal and external control as necessary to ensure people obey the law. He argues that socialisation produces 'internal containment' by teaching us self-control to resist temptations to offend, while controls like parental discipline produce 'external containment'. Feminists like Heidensohn argue that women's low rate of offending is due to external control over them by patriarchal society.

Uses theory to round off the answer.

## Overall comments

This is a Band Three (top band) response. Anthony deals with a range of reasons why people abide by the law, which he organises into internal and external forms of social control. He uses relevant specialist vocabulary, including socialisation, superego, moral code, norms, cultural traditions, internalisation, coercion, sanctions, deterrence, and internal and external containment. He links some of these ideas to theories (Freud, Bandura, Heidensohn and Reckless) and he applies examples to illustrate his points.

# Discuss the aims of punishment

## TOPIC 2.2

### Getting started

Working with a partner, discuss the following:

1. Why does society punish criminals? Suggest as many reasons as you can.
2. From your knowledge of criminological theories in Unit 2, what types of punishment do you think the following would favour?
  - a) biochemical theories
  - b) cognitive theories
  - c) right realism.

### What are the aims of punishment?

Many people believe that punishment is an effective way to prevent or reduce crime. Others argue that offenders deserve to be punished anyway, regardless of whether or not this reduces crime.

In this Topic, we shall discuss the different aims or purposes that punishment can have. These are:

- **retribution** – expressing society's outrage at crime
- **rehabilitation** – making offenders change their behaviour
- **deterrence** – discouraging future offending
- **public protection** from offenders
- **reparation** – making good the harm caused by crime

**Theories** We shall also look at how these aims of punishment link to some of the criminological theories that you studied in [Unit 2](#).

### Retribution

Retribution literally means paying back. It involves inflicting punishment on an offender as vengeance for a wrong or criminal act.

#### 'Just deserts'

Retribution is based on the idea that criminals should get their 'just deserts': offenders deserve to be punished and society is morally entitled to take its revenge. The offender should be made to suffer for having breached society's moral code.

#### Proportionality

Punishment should fit the crime – it should be equal or proportionate to the harm done, as in the idea of 'an eye for an eye, a tooth for a tooth, a life for a life'. This is why some people argue that murderers should suffer the death penalty.

The idea of proportionality leads to a 'tariff' system or fixed scale of mandatory (compulsory) penalties for different offences: so many years' jail for armed robbery, such-and-such a fine for speeding and so on.

**Functionalists** such as Durkheim argue that 'restitutive justice' – reparation to put things back to how they were before the crime was committed – is essential for the smooth functioning of complex modern societies.

## Criticisms

- Reparation may not work for all types of offence. Compensation for damage to property or minor offences may be fairly straightforward, but can reparation be made for sexual or violent crimes? A rape victim may not want to face or forgive the rapist. And by definition, reparation to homicide victims is impossible.
- Some regard reparation as too soft a form of punishment that lets offenders off lightly.

### NOW TEST YOURSELF

#### Practice Question

Discuss retribution and rehabilitation as aims of sentencing.

(9 marks)

*Source: WJEC Criminology Unit 4 examination 2018*

#### Advice

Deal with each of the two aims separately. Divide your time roughly equally between them.

First define retribution, using key terms such as proportionality, letting the punishment fit the crime, 'just deserts', 'an eye for an eye' or revenge. Note that unlike rehabilitation, retribution doesn't aim to change the offender's future behaviour, but just to punish in proportion to the severity of the offence. Give examples of sentences that aim to achieve retribution. These could be the death penalty for murder, the idea of an 'uplift' (a longer sentence) if a crime is racially motivated, and the idea of a fixed tariff of specific penalties for specific crimes. Link retribution to a theory such as functionalism (Durkheim). Note criticisms of retribution as an aim, e.g. imprisoning large numbers of offenders is costly; recidivism rates are high.

Then define rehabilitation, using key terms such as reform (or reformation), changing the offender's way of thinking/mind set, or removing the causes of the offender's offending (e.g. unemployment, addiction). Note that unlike retribution, which punishes *past* misbehaviour, rehabilitation is forward-looking, aiming to improve *future* behaviour. Give examples of sentences that aim to achieve rehabilitation, e.g. prisons and community sentences may offer anger management courses; education and training so offenders can find work; Drug Treatment and Testing Orders to treat addiction. Rehabilitation may be more effective on young or first offenders. Link rehabilitation to a theory such as left realism or cognitive theories. Note criticisms of rehabilitation, e.g. programmes are often costly and may be seen as a 'soft option'.

# TOPIC 2.3

## Assess how forms of punishment meet the aims of punishment

### Getting started

1. In a small group, using what you already know about imprisonment, discuss how far you feel that it meets each of the five aims of punishment described in the previous Topic. (These were retribution, rehabilitation, deterrence, public protection (incapacitation) and reparation.)
2. Make brief notes of your conclusions and feed back to the rest of the class.
3. As a whole class, discuss the usefulness of imprisonment as a form of punishment. You might like to think about this in relation to different types of offence or offender.

## The aims of sentencing

As we saw in the previous Topic, punishment can have several different aims. In this Topic, we look at how far the sentences handed down by the courts meet these different aims of punishment.

The Criminal Justice Act 2003 sets out five aims of sentencing:

- the punishment of offenders (retribution)
- crime reduction, including through deterrence
- rehabilitation of offenders
- protection of the public (incapacitation)
- reparation to victims.

Any or all of these aims may be relevant in a given case and it is for the judge or magistrate to decide how they apply.

### The sentencing framework

There are four basic types of sentence that the courts can use to punish offenders. These are: imprisonment, community sentences, fines and discharges. We shall look at each of these in turn.

#### ACTIVITY Research

Type of sentence

Go to [www.criminology.uk.net](http://www.criminology.uk.net)



## Imprisonment

Prison sentences are handed down by courts for the most serious offences, or when the court believes that the public must be protected by removing the offender from society. For example, almost half of all prisoners in the UK were convicted of sex or violence offences.



- They are from the higher classes. 74% of judges were privately educated and the same percentage went to Oxford or Cambridge. Two-thirds of judges are former barristers.

This may mean that judges are biased towards people from similar backgrounds to themselves, or against people who are different from themselves. However, although there are examples of male judges showing a lack of empathy for female victims of sexual assault, it is hard to demonstrate a clear pattern of bias. Likewise, most offenders are young, so it is hard to know if age makes a difference in a judge's sentencing decisions.

## Evidence of gender bias

Gender bias is clearly present in certain cases. For example, in 1989 Judge James Pickles sentenced a man to probation after he was convicted of sexually assaulting a six-year-old girl. Later that year, he jailed a woman for contempt of court for refusing to give evidence against her ex-boyfriend, who had assaulted her. In 1990 he sentenced a 19-year-old single mother with a ten-week-old baby to six months on a charge of theft. He commented that getting pregnant was no reason to escape custody.



Women and ethnic minorities are under-represented among the judiciary.

## Currency

While there have been cases of gender bias in the judiciary such as Pickles, these seem less common today than in the 1980s or 90s and may be less a cause of current concern. However, class bias continues to be current in some sentencing decisions, as the case study suggests.

### Case study Class bias in sentencing

In 2017, 24-year-old Lavinia Woodward was convicted of stabbing her boyfriend. Woodward was an Oxford University medical student and aspiring heart surgeon. She had attended a prestigious international school and was able to afford a top criminal lawyer.

Sentencing Woodward, Judge Ian Pringle QC told her that a jail term could damage her prospects of a medical career. Instead he gave her a suspended sentence.

The judge said that prison would be too severe a punishment because it would 'prevent this extraordinarily able young lady from following her long-held desire to enter the profession she wishes to.' He described her as having an emotionally unstable personality disorder, an eating disorder, and drug and alcohol dependence.

The journalist and barrister Afua Hirsch argues that Woodward's treatment contrasts sharply with that of other women in the criminal justice system. Like Woodward, many young women who come before the courts have similar problems, but with two differences: unlike Woodward, they usually come from deprived backgrounds and they often receive custodial sentences.

Hirsch also notes how White offending is treated differently by the media. When one Black youth stabs another, the media call it 'Black on Black crime'. Both Woodward and her victim are White, but no headlines described it as 'White on White crime'.

## Are judges out of touch?

Media stereotypes of judges often portray them as out of touch with mainstream modern society and especially with the public's views on sentencing. The most notable example is perhaps Judge Pickles, who famously once asked, 'Who are the Beatles?'

there has been a series of lesser incidents. In 2018 there was serious disorder at several prisons, including The Mount, Long Lartin and Bedford. The chief inspector of prisons warned of a 'complete breakdown in order and discipline' at Bedford, described as rundown and rat-infested.

## After release: the evidence on re-offending

Although rehabilitation is a primary aim of the prison system, many ex-prisoners re-offend and quickly find themselves back in the criminal justice system. For example, within one year of release:

- 36% of all ex-prisoners re-offended
- among ex-prisoners with many previous convictions (11 or more), nearly half re-offended
- 64% of those on short sentences (less than 12 months) re-offended
- around 37% of juvenile offenders re-offended.

## Conclusion: the evidence on prisons

Overall, the evidence shows that the prisons are ineffective both in achieving social control over offenders while they are *in* prison, and that they are ineffective in rehabilitating them so that they lead a crime-free life after they have *left* prison.

### ACTIVITY Research

Does prison work?

Go to [www.criminology.uk.net](http://www.criminology.uk.net)



December 2016. Police arriving at HMP Birmingham after rioting broke out.



## Preparing for the Unit 4 exam

Now that you have completed Unit 4, you need to revise and prepare for the exam. This section will help you to get ready to tackle it. It contains some advice on preparing yourself, plus two past WJEC exam questions for you to try.

There is also advice on how to answer the questions, though you might want to try doing them without looking at the advice first.

### Get organised!

The first thing to do is to get your file sorted out.

1. Make a list of all ten Unit 4 Topics to give you a framework for your revision.
2. Organise your notes, activities and homework for each Topic. Use the subheadings in each Topic as a guide to how to organise them. You could work with others and share your work or fill in any gaps you have together.
3. Make a list of the main issues covered in each Topic. Using these issues, go to your notes and textbook to find the material you need in order to understand them. Make any additional notes you need.
4. From your notes and textbook, list the key ideas needed for each Topic. Link these to the issues.

### Practise, practise, practise!

Once you have your file in order, the best way to prepare for the exam is by practising the skill you're going to be tested on – the skill of answering exam questions. You wouldn't think of taking a driving test without doing any driving beforehand, and it's the same with exams. Here are some ways you can practise:

**Familiarise yourself with possible questions** by looking at those in the *Now test yourself* sections at the end of each Topic and the ones in the practice questions on the next page.

**Improve the answers you've already done.** If you didn't get full marks on an assignment, re-write it, taking your teacher's comments on board, plus the advice in the *Now Test Yourself* section in the relevant Topic.

**Answer any questions that you skipped earlier.** You may not have done every assignment you were set. Do the ones you missed now. Your teacher might even mark them for you! If not, get a friend to give their opinion (and return the favour).

**Study the student answers** that appear at the end of some Topics and read the comments that go with them.

**Answer past papers** that you will find on the WJEC website (and while you're there, look at the mark schemes too).

## End of Unit Practice Questions

Below are two questions from a past WJEC Criminology Unit 4 examination paper for you to answer. You will find advice on how to answer them on the next two pages. However, before looking at the advice, you might like to try making brief plans on how you would answer the questions. Alternatively, you can answer the questions first and then compare your answers with the advice afterwards.

### QUESTION 1

#### Scenario

Sarah is 21 years old and is currently serving a three-year prison sentence having been found guilty of grievous bodily harm at the local Crown Court. She stabbed the victim with a knife during a fight. Her lawyer has told her she should appeal the unsafe conviction as it was investigated using the crime control model.

- (a) (i) Identify who would have found Sarah guilty in the Crown Court. (1 mark)
- (ii) Identify who would have imposed the prison sentence. (1 mark)
- (b) Briefly describe the crime control model of criminal justice referred to by Sarah's lawyer. (4 marks)
- (c) Briefly describe **one** behavioural tactic used by prisons to achieve social control. (4 marks)
- (d) Discuss the aims of the prison sentence imposed on Sarah. (6 marks)
- (e) Discuss how theories of criminology have influenced the aims of sentencing. (9 marks)

*Source: WJEC Criminology Unit 4 examination 2019*

### QUESTION 2

#### Scenario

A local secondary school is having a careers information evening. A police officer, a crown prosecutor and a prison governor will all be attending to inform students about their work. These guest speakers will be answering questions from students about their role in achieving social control.

- (a) Briefly describe what a crown prosecutor would say about the role of the Crown Prosecution Service in the organisation of the criminal justice system. (4 marks)
- (b) Discuss the role of the police service in achieving social control. (6 marks)
- (c) Examine how crime committed by those with moral imperatives is a limitation in achieving social control. (6 marks)
- (d) Evaluate the effectiveness of the police service and the Crown Prosecution Service in achieving social control. (9 marks)

*Source: WJEC Criminology Unit 4 examination 2019*

## Advice on answering the practice questions

### Advice on answering Question 1

- (a) For (i) it is the jury who found her guilty. For (ii) the judge imposed the prison sentence.
- (b) Describe some key features of the model. These include the idea that repression of crime is the key function of the justice system, because crime threatens people's freedom. It starts from a presumption of guilt: it assumes police and prosecutors are skilled at investigating, gathering evidence and identifying the guilty. It believes the system should operate like a conveyor belt, moving the guilty quickly to punishment. It emphasises rights of victims and society, rather than the suspect's. Use specialist terms in your answer. You can include an example of a relevant legal rule, e.g. extended police detention for questioning terrorist suspects.
- (c) You could write about token economies, prison rules or the incentives and earned privileges scheme. If you choose token economies, include concepts like behaviour modification and selective reinforcement. Describe how a token economy works: good behaviour earns tokens that can then be exchanged for rewards such as phone calls and TVs. Prison management decides what behaviours to encourage and rewards these with tokens. This increases control by making inmates more manageable and reducing conflict. Use relevant specialist terms.
- (d) Discuss aims of the sentence: deterrence, retribution, incapacitation (public protection) and rehabilitation. For example, for deterrence, discuss both individual (imprisoning Sarah to deter repeat offending for fear of going back to prison) and general deterrence (sending a message to potential offenders that they risk prison). Note that deterrence is an aim of punishment according to the Criminal Justice Act 2003. For incapacitation, as Sarah was convicted of a violent crime, she is a potential danger to others and imprisonment means she is incapable of harming the public further. Use relevant specialist terms and make reference to Sarah or to her three-year sentence.
- (e) This is a synoptic question requiring you to apply knowledge of theories from Unit 2 (see also Unit 4, Topic 2.2). Discuss at least two theories and two aims. For example, you could discuss the aim of retribution. Use the concept of proportionality ('just deserts'). Link retribution to right realism, which sees criminals as rational actors who consciously choose to offend and so must suffer society's outrage for their choice. It also links to functionalism: retribution expresses society's outrage and reinforces the boundaries. Note criticisms, e.g. that offenders deserve a chance to reform, not just punishment. You could also choose deterrence, for example. Link general deterrence to social learning theory: Bandura argues that if would-be offenders see a model being punished for offending, they will be less likely to imitate the behaviour. Link individual deterrence to operant learning theory: if a particular behaviour is punished, this is likely to lead to its extinction.

### Advice on answering Question 2

- (a) The CPS decides the charge in all but minor offences. It decides which cases should be prosecuted, based on the evidential and public interest tests, and keeps all cases under continuous review. It advises the police on lines of enquiry and decides the appropriate charges in serious cases. It prepares and presents cases at court, using its own prosecutors or self-employed lawyers. It provides information and support to victims and prosecution witnesses. It is based on a philosophy of independence, openness, professionalism and inclusion. It is organised in 14 regional teams plus CPS Direct.

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