

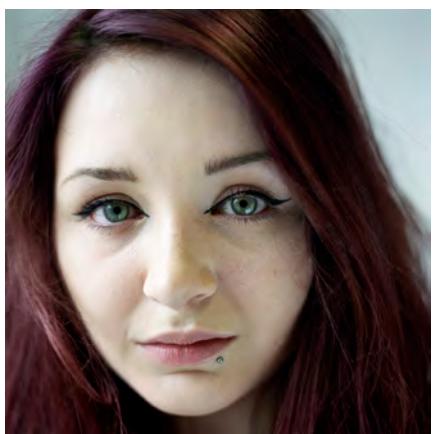


Victims' justice?

What victims and witnesses
really want from sentencing



find the strength



About Victim Support

Victim Support is the national charity for victims and witnesses of crime in England and Wales. We aim to:

- provide the best possible help to victims and witnesses of crime, free and confidentially
- be a strong national voice for victims and witnesses.

Each day we speak with more than 1,500 new victims of crime, assess their needs and give the help they require. We help 700 new witnesses in new trials, guiding 400 around their court to explain what will happen, and make sure they are comfortable with giving evidence. We send over 1,000 letters and make more than 2,800 telephone calls to and on behalf of victims. We also help many victims to apply for compensation, securing more than £27m in total last year for those affected by violent crime.

Our policy work is based on the direct experiences of victims and witnesses of crime across England and Wales, and it is informed by the expertise of thousands of volunteers and hundreds of specialist staff working in the criminal justice system.

Executive summary

The voices of victims and witnesses of crime are essential to the proper functioning of the criminal justice system. Yet they are often marginalised by the process with serious consequences. Without the participation of victims and witnesses the system would be unable to operate effectively.

We welcome the renewed focus by ministers on the place of victims at the heart of the justice system. This report shows how victims and witnesses have been historically marginalised when it comes to sentencing, and shows that there is still a long way to go to reverse this trend.

New analysis by Victim Support shows that only 16 per cent of victims feel that their views on how a crime affected them were taken into account by the court. There is no obligation to explain sentences to victims in the same detail that courts must use with defendants. Sentences themselves seem to be based on little evidence of effectiveness so victims wonder why billions of pounds are spent on prison and community orders that do not stop reoffending.

The rule of law demands that victims do not dictate justice or sentencing. But their experience of the criminal justice system must be better understood and taken into account.

We believe that the current political and economic situation provides a chance fundamentally to reform the criminal justice system with the needs and views of victims in mind. We are committed to working with the police, the judiciary and penal reformers to help this happen.



Introduction

Sentencing policy has been singled out by the coalition Government as a priority for reform. The coalition's *Programme for Government* pledges to conduct a 'full review of sentencing policy' to ensure that it is effective in carrying out its functions.¹ This review gives everyone involved in the criminal justice sector the chance to influence the future of sentencing policy - a chance that is long overdue.

The main motivation for the sentencing review is the new economic reality facing Britain after the 'credit crunch'. Previously the justice system enjoyed large funding increases, with spending rising by over a third, to more than £22 billion.² Today we face an unprecedented era of fiscal tightening, a structural deficit of £155 billion,³ and across-the-board spending cuts of £81 billion.⁴ Spending on the criminal justice system now faces a protracted period of contraction.

Within the total criminal justice budget, over £4 billion is set aside for the National Offender Management Service (NOMS),⁵ which is responsible for prisons and probation. Tackling the high cost of these back-end functions of the justice system will be fundamental to reducing overall justice spending and could reap large rewards for the Treasury.

Getting sentencing policy right is crucial to reducing criminal justice spending because the enormous cost of prison and probation is largely dictated by sentencing practice. As well as being the 'root cause' of wider costs to the justice system, sentencing is also an important function of the justice system in its own right. Dispensing justice through the right and proper

¹ HM Government Cabinet Office (2010), '*The coalition: our programme for government*'.

² The Howard League for Penal Reform (2009), '*Do better do less: The report of the Commission on English Prisons Today*'.

³ Office for Budget Responsibility (2010), '*Pre-budget forecast*'.

⁴ HM Treasury (2010), '*Spending review*'.

⁵ House of Commons Justice Committee (2009), '*Cutting crime: the case for justice reinvestment*', Vol. 1.

sentencing of offenders is at the heart of our court system, and one of the principal duties of the judiciary. Over 1.3 million people receive a court sentence in England and Wales each year.⁶ That is equivalent to more than 3,700 people a day.

Sentencing's role as the fulcrum of the offender management system, and the primary determinant of spending on criminal justice disposals, makes it the crucial target for reform. But, unlike other aspects of the justice system, sentencing policy is an area that has largely escaped scrutiny in the recent past. Relatively minor reforms were made under the Labour administration, such as expanding the range of community sentences available and the introduction of the indeterminate sentence of imprisonment for public protection (IPP), and the control order. But while these reforms added to the range of disposals available, they did not change the intrinsic nature of the system.

Now that unprecedented spending cuts are due to be imposed on the criminal justice system, fundamental reform is not only possible but necessary. This presents the criminal justice community with an important chance to re-examine sentencing policy from scratch, and to have a full and frank debate about what the purposes of sentencing should be, how they can be achieved and how much we are prepared to pay for it.

What is sentencing for? Recalibrating the debate

The sentencing framework has escaped significant reform in recent years because it is a difficult and complex area, and one that it has not been politically expedient to change. It has therefore survived as one of the few areas of public expenditure that has not been subject to proper scrutiny in terms of the effectiveness of its activities or value for money.

In particular, the lack of clarity about what sentencing is for makes it very difficult to hold the system to account. Indeed, few efforts have been made to even assess what 'value for money' means in the context of the justice system. When compared to the rigour with which, for example, treatments in the NHS are assessed, the lack of concern for the cost-effectiveness of sentences is an anachronism.

The thorny question of what sentencing is 'for' was tackled by the *Criminal Justice Act (CJA) 2003*, which codified for the first time the principles and purposes of sentencing, and put them into statute.⁷ The purposes set out in the Act are:

- (a) the punishment of offenders
- (b) the reduction of crime (including its reduction by deterrence)
- (c) the reform and rehabilitation of offenders
- (d) the protection of the public; and
- (e) the making of reparation by offenders to persons affected by their offences.

It is these purposes which courts must consider when determining the correct disposal to hand down to an offender. However, as some critics of the Act have observed, these purposes are so all-encompassing as to be almost meaningless. As a Centre for Social Justice policy report observed, "while these are all recognised as worthy objectives of

⁶ Ministry of Justice (2010), 'Sentencing statistics: England and Wales 2008 statistics bulletin'.

⁷ Criminal Justice Act 2003, Part 12, s.142 (1).

sentencing, merely reciting this list of ‘purposes’ does little to guide the court in practical day-to-day sentencing decisions”.⁸

While the purpose of sentencing thus remains somewhat vague and unclear, Victim Support believes there is at least one very clear deficiency in sentencing policy as it stands: **it disenfranchises the party that has a major interest in the effectiveness of the criminal justice system – the victim of crime.** At present, victims can be marginalised by the criminal justice system. They have little or no say in how their case is conducted, and indeed, it is not even their case, but a case brought against the accused by, and on behalf of, the state.

The lack of involvement of the victim in the justice process goes some way to explaining why victims of crime are less satisfied with the criminal justice system than the general population.⁹

The objectives of a new sentencing policy must address this shortcoming while delivering better value for money for the taxpayer in general. This cannot be achieved without asking some fundamental questions – what should sentencing policy aim to achieve, and how much are we prepared to pay for it? It is time to reshape the debate and set new parameters for sentencing policy.

Why austerity and coalition governments promote criminal justice reform

There is strong international evidence to show that circumstances like those Britain now faces provide an ideal breeding ground for reform. Across the developed world it is often the economy, and not ideology, that dictates criminal justice policy.

Finland, for example, twice reshaped its criminal justice policy, leading to significant reductions in its prison population. It did not do this because of an ideological zeal to move away from imprisonment, but because of the Finnish Treasury’s refusal to fund the expanding population of inmates.¹⁰ Similarly, Canada reformed its criminal justice policies, achieving an 11 per cent reduction in its prison population, as it sought to dig itself out of a financial hole in the mid-nineties.¹¹

Significantly, in the Finnish example, the fact that the country was governed by a coalition has been cited as one of the factors that made reform of sentencing policy possible. Sentencing tends to be a high profile and controversial area of public policy across the western world. However, in Finland the consensus politics of the coalition took the political heat out of the debate and made sentencing reform more politically viable.

Evidence from other countries therefore points to both restricted public finances and coalition governments as being catalysts for criminal justice reform.

The current pairing of the Conservative and Liberal Democrat parties has the potential to combine the historic credibility on law and order of the former, with the innovative ideas of the

⁸ The Centre for Social Justice (2009), *‘Order in the courts: restoring trust through local justice’*.

⁹ John Flatley *et al.* (eds.) (2010), *‘Crime in England and Wales 2009/10: findings from the British Crime Survey and police recorded crime’*, Home Office.

¹⁰ House of Commons Justice Committee (2009), *‘Cutting crime’..*

¹¹ Lord Carter’s Review of Prisons (2007), *‘Securing the future: proposals for the efficient and sustainable use of custody in England and Wales’*.

latter. For much of the last 20 years the Conservative Party has been seen as the best party on crime,¹² commanding the confidence of people in this area. This puts the Conservatives on strong ground to engage with people on the issue. The Liberal Democrats have been one of the few parties to have historically argued for a change in criminal justice policy to move towards effective sentencing. This partnership provides the best chance in recent history for sentencing reform and this chance should not be thrown away.

Secretary of State Ken Clarke recognised this opportunity in a speech he gave to the Centre for Crime and Justice Studies earlier this year when calling for root and branch reform: "We need to reconcile drastic and necessary cuts in public spending with positive policy-making...mere salami-slicing of budgets can cause unintended damage to the public good."¹³



¹² B. Duffy *et al.* (2010), 'Closing the gaps: crime and public perceptions', MORI.

¹³ Justice Secretary Kenneth Clarke (30 June 2010), speech to the Centre for Crime and Justice Studies.

The criminal justice system in context: recent history and trends

In order to reshape sentencing policy, as the coalition government has pledged to do, it is important first to understand the current policy context. The criminal justice arena has been characterised by two trends over the past two decades: first, the crime rate in England and Wales has reduced dramatically since the mid-nineties; and second, the sentences imposed on offenders have become longer and more severe (and consequently more expensive).

This fall in crime is a relatively uncontroversial success. Despite a few vocal sceptics,¹⁴ the vast majority of academic opinion agrees that it has indeed taken place, is best measured by the British Crime Survey¹⁵ (rather than police recorded crime figures) and is unprecedented since at least the early 1960s.¹⁶

Explanations of the fall are far more controversial. Opinion is split between a host of factors including: the importance of sustained economic growth; investment in public services; new methods of ‘designing out’ crime that are now more widely used (such as the immobilisers that have dramatically reduced opportunities for car theft); low youth unemployment; a rising prison population; longer sentences; and more effective policing. Most agree that the economy has played a large part (and the Home Office’s volume crime prediction model relies heavily on economic forecasts). But opinion on the relative importance of other factors differs widely and few credit reforms to the criminal justice system with making a serious impact on the volume of crime.

However, despite 15 years of falling crime rates, England and Wales are still in many ways burdened with the legacy of rising crime in the 1980s and early ‘90s in terms of our attitude to crime. Labour chose ‘Tough on crime, tough on the causes of crime’ as their maxim, which was championed by Tony Blair during his time as Shadow Home Secretary.

Public perceptions of crime

The high level of concern about crime among the British marks us out from our European, and even American neighbours. International studies show that over two in five (43 per cent) of the UK population consider crime and violence to be one of the most worrying issues in their lives, which is more than double the level in Germany (21 per cent) and significantly higher than in America (27 per cent).¹⁷

Evidence suggests that the gap between true crime rates and people’s perception of crime is largely driven by the media. When people who reported that they believed crime was increasing were asked why, 57 per cent said it was because of what they saw on television and almost half said it was because of what they read in the newspapers.¹⁸ Simple content

¹⁴ Norman Dennis & George Erdos (2005), ‘Culture and crimes: policing in four nations’, Institute for the Study of Civil Society (London: Civitas).

¹⁵ The British Crime Survey asks randomly selected respondents about their experience of crime over a 12-month period. It is a useful tool in exposing the true extent of crime as latest figures suggest that 59% of crime does not come to the attention of the police. However, it does not provide a full picture as it omits certain crime types and until recently has not included crime against victims under 16 years of age. While both the British Crime Survey and police recorded crime figures have limitations, it is widely accepted that the falling crime rate has been a clearly observed and measurable reality.

¹⁶ Roger Matthews & Jock Young (2003), *The new politics of crime and punishment* (London: Willan Publishing).

¹⁷ B. Duffy *et al.* (2010), ‘Closing the gaps: crime and public perceptions’, MORI.

¹⁸ *ibid.*

analysis of news stories goes a long way to explaining this. For example, 65 per cent of crime reporting deals with personal violent crime, while this crime type makes up just 6 per cent of all crime.¹⁹

People who read tabloid newspapers are almost twice as likely as those who read broadsheets to think that the crime rate has increased 'a lot'.²⁰ But this finding may reflect the age and the socioeconomic status of tabloid readers who may be more likely to have experienced crime directly.

It is not surprising then that, up until now, politicians have been overly influenced by public concern about crime as reflected through the media and have wanted to be seen as tough on crime. It has taken an economic crisis and a coalition government to make Conservative politicians dare to try a different direction and to find that views of the victims and people in general are less punitive and more nuanced than they might have assumed. If they are to retain public confidence, they know that they will have to make even more efforts to make sure that the criminal justice system is fair and seen to be fair.



Tough on crime, tough on infrastructure

Between 1998/9 and 2007/8 the Labour Government increased spending on law and order from £17.9 billion to £32.5 billion, a 46 per cent increase in real terms.²¹ This was the equivalent of half a percent of GDP, taking UK spending in this area up to 2.5 per cent of GDP, more than any other OECD country.²²

¹⁹ Sentencing Advisory Panel (2010), 'Advice to the Sentencing Guidelines Council: overarching principles of sentencing'.

²⁰ B. Duffy *et al.* (2010), 'Closing the gaps: crime and public perceptions', MORI.

²¹ The Centre for Social Justice (2009), 'Order in the courts'..

²² Rob Allen (2008), 'Better dealt with in a different way?', in *Advancing opportunity: routes in and out of criminal justice*, The Smith Institute.

Much of the increased spending was ploughed directly into the Prison Service and the Probation Service, which enjoyed real-term funding increases of 40 and 60 per cent, respectively.²³ However, in exchange for vastly increased budgets these services had to contend with record numbers of offenders serving both custodial and community sentences.

The increase in prisoner numbers has perhaps been the most high profile and visible result of the form of penal populism that has dominated British politics since the late 1980s. Prisoner numbers have more than doubled since 1992,²⁴ and the prison population in England and Wales currently stands at a record high of 85,393 in England and Wales.²⁵ This is a direct result of changes to the sentencing landscape brought about by both the Conservative and Labour governments, characterised by a substantial ratcheting up of sentence length and severity. Between 1995 and 2006 the number of immediate custodial sentences handed down by the courts increased from 79,538 to 96,017, an increase of 21 per cent. During the same period the average length of a custodial sentence in the Crown Court increased by 20 per cent, from 21 to 25 months.²⁶

As a direct result, the prison system is running at over 96 per cent of useable operational capacity. In order to try to reduce the number of prison sentences, the last Government turned to other solutions to manage the population downwards, such as more robust and credible community sentences. A new, flexible Community Order was accordingly introduced by the 2003 Act and remains a significant element of the sentencing landscape today.

²³ Helen Mills, Arianna Silvestri & Roger Grimshaw (2010), *Prison and probation expenditure: 1999-2009*, Spending briefing series, Centre for Crime and Justice Studies.

²⁴ House of Commons Justice Committee (2009), 'Cutting crime:'...

²⁵ National Offender Management Service, Ministry of Justice (2010), 'Prison Population and Accommodation Briefing – 19th November 2010'.

²⁶ Lord Carter's Review of Prisons (2007)..



What do victims think sentencing should do?

In a study conducted for the Probation Service, 94 per cent of victims of crime said that the most important thing to them was that the offender did not commit the crime again.²⁷ The same study found that 81 per cent would prefer an offender to receive an effective sentence rather than a harsh one.

This is supported by new evidence from a Victim Support research study, which found that - regardless of whether they would give more stress to punishment, protection, or reform and rehabilitation - there was a common view that the desired outcome was that the offender not commit the crime again.²⁸

Victims and witnesses commonly considered punishment of the offender and protection of people to be the most important of the several factors that judges have to balance when passing sentence:²⁹

Punishment for offenders [should be the number one priority] because they need to pay for what they did. Protection of the public [should be the second priority] because the public suffers as a result of crime [and] so we feel safe at home and on the street.
(Victim Support user)

However, this does not necessarily mean that victims are opposed to alternatives to custody or to less punitive approaches to reform and rehabilitation of offenders. This was shown clearly in the same Victim Support research, in which some participants expressed clear support for less punitive approaches:

²⁷ Ministry of Justice (16 November 2007), 'Victims of crime want punishment - but not always prison'. Available at: <http://www.probation.homeoffice.gov.uk/output/Page391.asp>

²⁸ Victim Support (forthcoming), 'Seeking the views of victims and witnesses'.

²⁹ The factors were based on the principles set out in the Criminal Justice Act (CJA) 2003, ie punishment of offenders, reduction of crime (including reduction by deterrence), reform and rehabilitation of offenders, protection of people and making reparation by offenders to the victim.

I'd rather see a system where they may not go to prison but you're damn sure that they're made aware of the effects that whatever they've done has had on the victim. If that's more productive than sticking them in a room full of other people that are just as bad if not worse, and that makes them even worse... You should be aiming to punish these people, but you should be punishing them in the most effective way.

(Victim Support user)

I mean if people are reoffending with the punishment they receive -after the punishment they receive -then something's not going right.

(Victim Support user)

Victims have also told us that they oppose short custodial sentences- and their opposition may be based either on a view that they do not represent sufficient punishment or that they do not allow sufficient time for rehabilitation:

If you give someone a shorter sentence and they go out and re-offend, then they might not have got the chance to rehabilitate inside.

(Victim Support user)

These reactions show that victims keenly appreciate the need to make sentencing decisions on the basis of what is found to work.

Recommendation 1

If we are to continue sending people to prison, victims want to be sure that this is both an appropriate punishment and one that also prevents reoffending. Effective rehabilitation has to be at the heart of the prison system.

Victims on cost effectiveness

In our research, victims were also asked whether cost should be a consideration in sentencing. Although they were told of the considerably higher cost of prison over community sentences, there was a common view that if it was a question of justice being done, cost considerations should not come into the equation:

If someone deserves to go to jail, they should go to jail. Cost should not be a factor.

(Victim Support user)

However, our research also shows that, while they (understandably) do not want cost savings to be a consideration in individual cases, victims do want sentencing to be cost effective overall.

If someone is to be sent to prison, it should be shown whether this is cost effective. If they are likely to reoffend, perhaps another form of punishment should be devised.

(Victim Support user)

Recommendation 2

Though victims accept that any reforms have to be cost-effective, if individual sentencing decisions are seen to be motivated by concern for cost more than justice, they will not inspire the support of victims or the general public.

Does prison work?

Whether prison fulfils its aims is a very important question currently under examination by the Government; this shows that current Conservative thinking is very different from both the last Labour Government's and that of previous Conservative administrations.

The coalition Government has signalled its intention to move away from prison as part of the 'rehabilitation revolution' soon to be formally set out in a Green Paper. While no formal plans to reduce the use of short custodial sentences have yet been announced, Secretary of State Ken Clarke has made a number of remarks suggestive of this approach, including commenting in June 2010 that prison often turns out to be "a costly and ineffectual approach that fails to turn criminals into law-abiding citizens".³⁰

The evidence tends to suggest that he is right. The reoffending rate post-custody (the percentage of offenders who are proven to reoffend within one year) is high compared with other disposals.³¹ While the overall reoffending rate across all disposals is 40 per cent, the reoffending rate post-custody is almost 50 per cent, meaning that approximately half of all offenders sentenced to prison will go on to commit a further offence.

This is a significant problem given the extent to which prison is still used as a sanction: in 2008 a total of 99,500 offenders received an immediate custodial sentence.³² Custody is used across the whole gamut of offence types, from murder and serious violence to criminal damage. As demonstrated by our research,³³ it is profoundly important for victims too.

³⁰ Alan Travis (21 June 2010), 'Prison bosses call for end to short-term sentences', *The Guardian*.

³¹ Ministry of Justice (2010), 'Reoffending of adults: results from the 2008 cohort, England and Wales'.

³² Ministry of Justice (2010), 'Criminal statistics: England and Wales 2008 statistics bulletin'.

³³ Victim Support (forthcoming), 'Seeking the views of victims and witnesses'.



Short sentences: a particular failure

The failure of prison to reform offending behaviour is particularly acute in relation to short-term sentences, which account for the majority - over 70 per cent- of prison sentences.³⁴

While the 50 per cent rate of reoffending within a year for general custodial sentences is worrying enough, it rises to over 60 per cent for those offenders receiving a prison sentence of 12 months or less.³⁵ Over 70 per cent will reoffend within two years.³⁶ 75 per cent of prisoners given short sentences have been in prison on at least one previous occasion,³⁷ and nearly half of adults sentenced to custody have already been in prison three times.³⁸

On release from prison after short sentences, not only do offenders have a high likelihood of reoffending, but that offending is likely to be prolific. Such prisoners commit an average of five further offences within a year of release.³⁹ Critics have argued that the repeated use of short prison sentences has resulted in a ‘revolving door’ for many offenders, where one custodial sentence is followed by another in quick succession. At any one time, prisoners serving short sentences are taking up 20,000 prison places.⁴⁰ The cost of rising prisoner numbers (many of them prisoners serving short sentences) is an important reason behind total penal expenditure rising from £2.843bn in 1995 to £4.325bn in 2006.⁴¹

There are two reasons why short prison sentences are failing: Firstly, short sentences do not provide enough time to address the needs of offenders or make any serious attempts at

³⁴ Courts and Sentencing Working Group (2009), ‘*Order in the courts: restoring trust through local justice*’, The Centre for Social Justice.

³⁵ Ministry of Justice (2010), ‘*Reoffending of adults: results from the 2008 cohort England and Wales*’.

³⁶ Ella Pickover (21 June 2010), ‘Reoffending warning on prison sentences’, *The Independent*.

³⁷ National Audit Office (2010), ‘*Managing offenders on short custodial sentences*’.

³⁸ House of Commons Justice Committee (2010), ‘*Cutting crime: the case for justice reinvestment*’.

³⁹ National Audit Office (2010), ‘*Managing offenders on short custodial sentences*’.

⁴⁰ Local Government Information Unit (2009), ‘*Primary justice: an inquiry into justice in communities*’.

⁴¹ Lord Carter’s Review of Prisons. (2010).

rehabilitation. While short prison sentences are defined as those of 12 months or less, in reality the majority of short custodial sentences last less than three months. As prisoners serving such sentences are automatically released at the mid-point, most serve less than six weeks in jail.⁴²

Secondly, the knock-on effects of going to jail can also have severe consequences for offenders and result in additional problems in what are often already chaotic and difficult lifestyles. As observed in a Smith Institute report, “the collateral damage of imprisonment is considerable -a third of prisoners lose their home while in prison, two-thirds lose their job, over a fifth face increased financial problems and more than two-fifths lose contact with their family”.⁴³ In addition, a spell in custody can entrench criminal behaviour by limiting future employment opportunities and bringing offenders into contact with others from whom they can learn new skills, thus becoming ‘better’ criminals.

Payment by results

Given the poor performance of short sentences in relation to rehabilitation, we should not be surprised that these are the first prisoners to be targeted by the new Government trialling of ‘payment by results’. The premise of payment by results is that private and voluntary sector organisations would be given scope to test and develop different ways to support rehabilitation of offenders, and be rewarded for success, i.e. (ex-)offenders getting support not reoffending. This is a new approach for criminal justice agencies, although it has been applied elsewhere, for example in ‘welfare to work’.

A number of payment-by-results pilot schemes are planned, and one is already under way. The pilot scheme will target offenders serving community sentences and those released from prison, and young offenders. A further set of pilot schemes, to be developed in partnership with the Department of Health and other government departments, will target offenders with drug problems. The pilot schemes will be funded in two ways:

- the ‘social impact bond’ (SIB) - a financial tool allowing commercial investors or foundations to fund initiatives that aim to produce social outcomes and receive return on their investment depending on the extent to which those outcomes are delivered
- paying local, private sector and voluntary sector providers by results (in a similar way to how providers such as Reed in Partnership or A4E are funded to deliver welfare-to-work support to benefit claimants).

The scheme currently underway works with prisoners serving short sentences in Peterborough Prison. It is jointly run by the MOJ and Social Finance (an ethical investment bank), using the SIB funding model. Specialist delivery organisations have been contracted to deliver support. This involves prisoners being given mentors on release to help them find jobs and housing. Investors will get a return on their investment if the providers manage to cut reoffending by at least 7.5%.

There may well be potential for payment by results to genuinely contribute to tackling the high reoffending rate by stimulating innovation in the justice sector around rehabilitation of offenders. However, there are a number of potential difficulties inherent in this model that

⁴² National Audit Office (2010), *‘Managing offenders on short custodial sentences’*.

⁴³ Wilf Stevenson (2007), ‘Preface’, in Carolyne Willow (ed.), *‘Advancing opportunity: children, human rights and social justice’*, (London: Smith Institute).

need to be fully considered and tested if the opportunities are to be realised and the very real potential pitfalls avoided.

Clearly, the effectiveness both of the Peterborough scheme and the SIB approach very much still remains to be seen. More generally, developing effective measures of success and payment structures for providers in payment-by-results programmes is notoriously complicated, and measuring reductions in reoffending is challenging. At present, reoffending is measured against a baseline of ‘predicted reoffending rate’ which may be somewhat spurious. Unless carefully calibrated, systems can easily lead to such undesirable phenomena as ‘cherry picking’, which, in this context, would mean providers giving most support to offenders closest to being rehabilitated in order to get good outcome rates, with those who are ‘harder to help’ and, in fact, most in need of support being neglected.

These and other concerns arose in recent Victim Support research in which victims and witnesses were asked for their views on the payment-by-results proposals.⁴⁴ In what was a mixed response, several points were made about measurement difficulties, including the fact that many offences are not reported. This could result in a participant on the scheme being counted as a ‘success’ despite reoffending. Other doubts and concerns revolved around the fact that offenders are subject to influences from their environment, background etc and may reoffend despite the best efforts of people working to stop them. There was also a view that existing hard work and commitment from rehabilitation workers might be undermined by a scheme so focused on outcomes. Nevertheless, there were also some positive responses, with some research participants considering that the scheme may act to incentivise and motivate, as well as highlight instances of sloppy or ineffective practice.

Recommendation 3

Victim Support supports the reduction in short-term prison sentences, but wants evidence-based alternatives that will stop re-offending to be put in their place before they are abolished. Given the poor return on current efforts at rehabilitation of offenders, payment by results may be ‘worth a try’, as one Victim Support research participant put it. However, given the high stakes and potential pitfalls, it is vital that payment-by-results schemes be fully and rigorously piloted, evaluated and monitored.

Do community sentences work?

A Community Order can include one or more of 12 possible requirements, including unpaid work, curfew, mental health treatment, drug rehabilitation, alcohol treatment and supervision tailored around the needs of the offender.⁴⁵

After the new provisions were introduced in 2005, the number of community penalties imposed by the courts increased by 44 per cent between 1996 and 2006, from 132,637 to 190,837.⁴⁶ By 2008, community sentences accounted for 14 per cent of all sentences, an increase of 10 per cent over the decade.⁴⁷

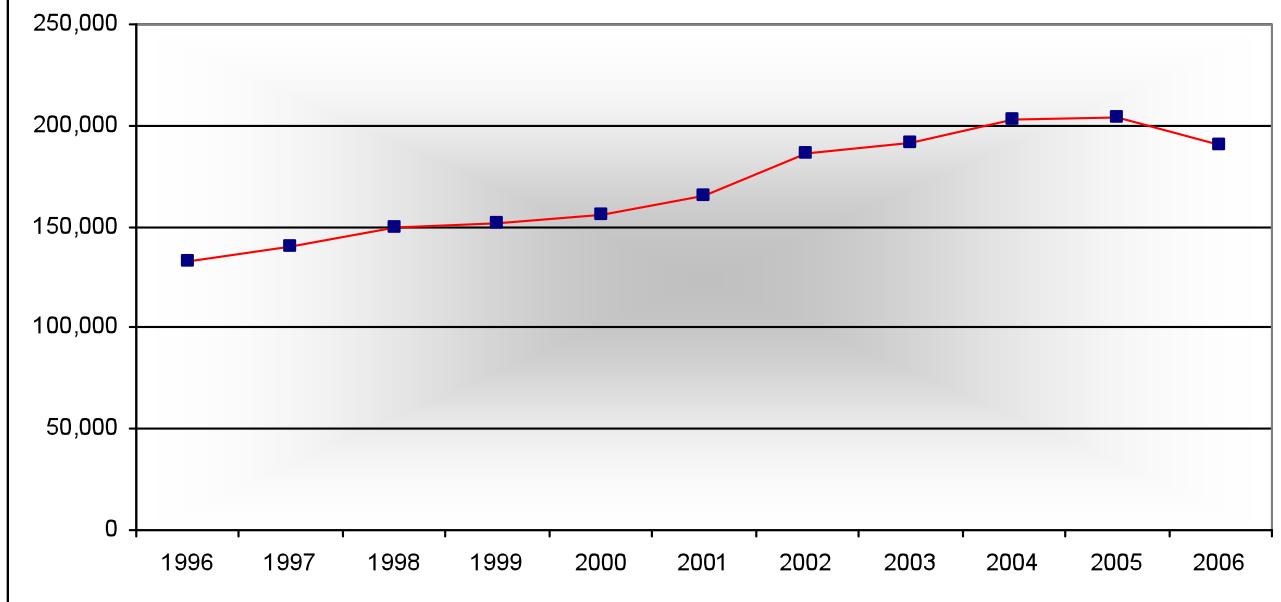
⁴⁴ Victim Support (forthcoming), ‘*Seeking the views of victims and witnesses*’.

⁴⁵ Enver Solomon (2008), ‘Making the most of community sentences’, in Rob Allen (ed.), *Advancing opportunity: routes in and out of criminal justice*, (London: Smith Institute).

⁴⁶ Ministry of Justice (2006), ‘*Statistical bulletin: sentencing statistics 2006, England and Wales*’.

⁴⁷ Enver Solomon (2008), ‘Making the most of community sentences’, in Rob Allen (ed.), *Advancing opportunity: routes in and out of criminal justice*, (London: Smith Institute).

Figure 1: Number of offenders sentenced to community sentences across all courts



Source: Ministry of Justice (2006), 'Statistical bulletin: sentencing statistics 2006, England and Wales'.

This increase was matched by a drive to make community sentences more visible to people. The initiative, led by Louise Casey, then the Government's 'respect tsar', involved renaming unpaid work 'community payback' and making offenders undertaking the work wear orange jackets thus enhancing the "public's understanding and appreciation of the contribution made by unpaid work to the well being and safety of local communities".⁴⁸ More recently, the public has also been given the chance to suggest jobs that offenders might carry out.

There is still a widespread view within the criminal justice arena that community sentences are underused, especially as an alternative to short-term custodial sentences which are viewed as both less effective at preventing reoffending and far more expensive to administer. This viewpoint is summed up by recent comments by the Prison Governor's Association: "It is difficult to understand why scarce and expensive prison places are being blocked by short-term prisoners when they could be dealt with more cheaply and effectively [through community sentencing]".⁴⁹

While political support for community sentences may be on the increase, the case for expanding their use is far from conclusive. In terms of reoffending, community sentences do appear to perform better than prison. The reoffending rate for offenders within a year of completing a community order is 36.8 per cent, compared to an overall reoffending rate post-custody of 49.4 per cent.⁵⁰ It is not advisable, however, to make a direct comparison between the relative effectiveness of prison and community sentences, because the offender (and offence) characteristics differ between those sentenced to custody and those who receive community orders. It is therefore very difficult to draw conclusions about which intervention is more effective in terms of reducing reoffending.

⁴⁸ ibid.

⁴⁹ Alan Travis (21 June 2010), 'Prison bosses call for end to short-term sentences', *The Guardian*.

⁵⁰ Ministry of Justice (2010), 'Reoffending of adults: results from the 2008 cohort, England and Wales'.

It is easier to find evidence for the cost-based argument for increasing the use of community sentences. Analysts have concluded that using a community sentence rather than prison could save the taxpayer between £3,000 and £88,000 per sentence, depending on the nature of the intervention.⁵¹ For some, the cost element alone is enough to justify a move towards community sentencing, not to mention the saved labour costs from unpaid work which were £45million in 2009/10.⁵²

While there are clear advantages to community sentences over short prison sentences in some respects, the fact remains that community orders have failed to reach their full potential.

Recommendation 4

Community sentencing should be applied as a meaningful and effective alternative to custodial sentences. Community sentences must be suitably demanding and robustly enforced, and there must be consequences for offenders who fail to comply with a community order. If alternatives such as drug or alcohol treatment programmes or treatment for mental health problems, are ordered, they need to be adequately funded and prevent reoffending.

Understanding how sentences are decided

Public knowledge of the reality of sentencing is sketchy. As Roberts and Hough have asserted, “most people know little about the statutory framework of sentencing, the range of sentencing options or actual sentencing practice”.⁵³ Indeed, almost half of respondents to a MORI poll on sentencing said that they knew ‘not very much’, ‘hardly anything’ or ‘nothing at all’ about the courts.⁵⁴

Research carried out for the now-superseded Sentencing Advisory Panel found that people “systematically overestimate the leniency of the courts” and that their views on sentencing do not reflect the reality of sentencing practice.⁵⁵ For example, around six in ten people reportedly believe that sentences are too lenient.⁵⁶ However, when people are presented with all the facts of a case and asked to decide for themselves what an appropriate sentence would be, they tend to suggest sentences that are no more severe, and in some cases less severe, than those handed down by the courts.⁵⁷

Government ministers have recognised this. Secretary of State Ken Clarke said: “Sentencing needs to be consistent, honest and transparent for the public, for victims of crime and people

⁵¹ Carol Hedderman (2008), *‘Building on sand: why expanding the prison estate is not the way to secure the future’*, Centre for Crime and Justice Studies.

⁵² Directgov *‘Crime and justice: community payback’*.

Retrieved November 2010 from:

http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/PrisonAndProbation/DG_182080,

⁵³ Julian V. Roberts & Mike Hough (2005), *Understanding public attitudes to criminal justice*, (London: Open University Press).

⁵⁴ ibid.

⁵⁵ Mike Hough et al. (2009), *‘Research report 6: public attitudes to the principles of sentencing’*, Sentencing Advisory Panel.

⁵⁶ Julian V. Roberts & Mike Hough (2005), *Understanding public attitudes to criminal justice*, (London: Open University Press).

⁵⁷ Sentencing Advisory Panel (2010), *‘Advice to the Sentencing Guidelines Council: overarching principles of sentencing’*.

working in the system...the current legal framework is overcomplicated, confusing and disingenuous".⁵⁸

With all this in mind, we welcome the explicit aim of the Sentencing Council to "promote greater transparency" in this area;⁵⁹ Victim Support is in fact already working with them on awareness mechanisms such as a DVD to be shown to witnesses and victims before a trial.

We believe that there may well be a role for our own staff and volunteers to give information to the victims and witnesses on how sentencing works; we will explore this possibility as a new dimension to the services our Witness Service currently provides.

Recommendation 5

Sentencing needs to be much more transparent; the principles involved must be put more forcefully into the public domain, in comprehensible language. The Sentencing Council must continue to strive for clarity in consultation with the public and, specifically, victims and witnesses.

Understanding specific sentences

Our research found that victims are often left without a full understanding of the sentence given to the perpetrator of their crime.⁶⁰ This can be a source not only of confusion but of anger, despondency and frustration, particularly when the victim has understood that the perpetrator will serve a longer sentence than is actually likely to be served. Evidence from our service-users shows that discovering that the sentence understood to have been passed is not the one that is actually served can cause not only personal anger and upset, but damaging loss of confidence in the system:

He got nine months but only served four months. This really angered and upset me considering the trauma and stress I was put through. I feel like the criminal. The perpetrator should do the full sentence that he or she has been given...If I knew how soft the justice system was, I would not have reported the [crime] that I suffered.
(Victim Support user).

We believe that this is not because the public are not capable of understanding what sentences mean in practice, but a failure of the criminal justice system to explain it to them. If a sentence of five years really means three years spent in prison, victims would rather know that.

Victim Support's Witness Service has a role in ensuring that victims and witnesses receive an explanation of individual sentences. We also believe, however, that statutory agencies must take responsibility in this area. The 2003 Act lays down a specific duty on the sentencer to explain the sentence to the defendant:⁶¹

⁵⁸ Justice Secretary Kenneth Clarke (30 June 2010), speech to the Centre for Crime and Justice Studies.

⁵⁹ Sentencing Council (2010), '*About the Sentencing Council*', available at:

<http://www.sentencingcouncil.org.uk/about-us.htm>

⁶⁰ Victim Support (forthcoming), *Seeking the views of victims and witnesses*.

⁶¹ Criminal Justice Act 2003, Part 12, s.174.

(1) Subject to subsections (3) [where the sentence is fixed by law] and (4) where the Secretary of State exercises the power to prescribe cases where this section does not apply, any court passing sentence on an offender:

(a) must state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed; and

(b) must explain to the offender in ordinary language:

(i) the effect of the sentence

(ii) where the offender is required to comply with any order of the court forming part of the sentence, the effects of non-compliance with the order

(iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence; and

(iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.

It is notable that victims, where present, are not included in this duty. Furthermore, there is no corresponding detail in the current duty on Witness Care Units to explain the sentences to victims, taken from the Code of Practice for Victims of Crime, which is as follows.⁶²

The joint police/CPS Witness Care Units must explain to victims the meaning and effect of the sentence given to the offender in their case, and respond to any questions the victim may have. If the joint police/CPS Witness Care Unit is not able to answer the questions asked by the victim, they should refer the victim to the CPS.

Recommendation 6

Victim Support believes that victims should have sentences explained to them as clearly and as simply as courts do to defendants. The current Code of Practice for Victims of Crime does not specify this explicit duty. Its absence means that many victims are left with an incomplete understanding of what the sentence passed actually means. This poor communication and lack of transparency serves to undermine victims' confidence in the ability of the justice system to handle cases effectively and their seeing that justice is done.

⁶² Home Office, 'Code of Practice for Victims of Crime', s6.8.

Taking the impact of crime into account

Last year just over one in five people in England and Wales had the misfortune to become a victim of crime. For some, this was a minor inconvenience, quickly forgotten. However, the evidence suggests that the vast majority of victims, almost nine in ten, are emotionally affected in some way by their experience.⁶³

The most common responses to victimisation are anger and annoyance. However, a significant minority of victims will experience more severe symptoms such as depression, panic attacks and difficulty sleeping as a direct result of what has happened to them.⁶⁴ For some victims the effects of victimisation last months or even years.⁶⁵

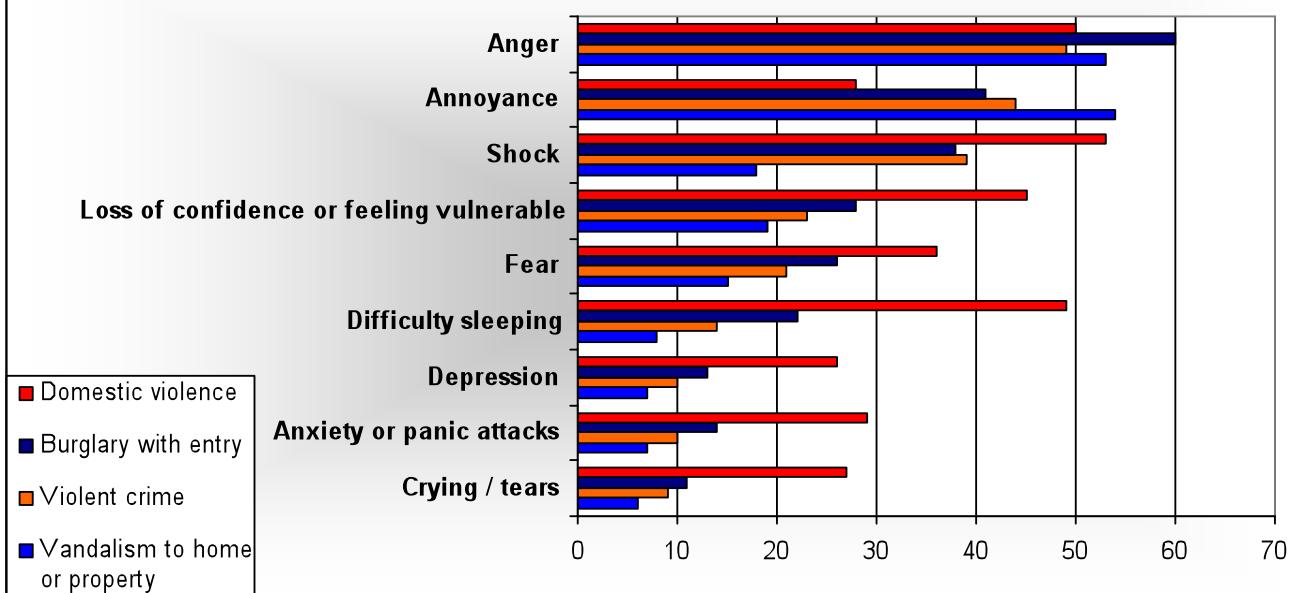


⁶³ John Flatley et al. (eds.) (2010), '*Crime in England and Wales 2009/10: findings from the British Crime Survey and police recorded crime (2nd ed.)*', Home Office statistical bulletin, 12/10.

⁶⁴ Alison Walker et al. (eds.) (2009), '*Crime in England and Wales 2008/09: findings from the British Crime Survey and police recorded crime (2nd ed.)*', Home Office Statistical Bulletin, 11/09 Vol.1.

⁶⁵ Mike Dixon et al. (2006), '*Crime share: the unequal impact of crime*', Institute for Public Policy Research.

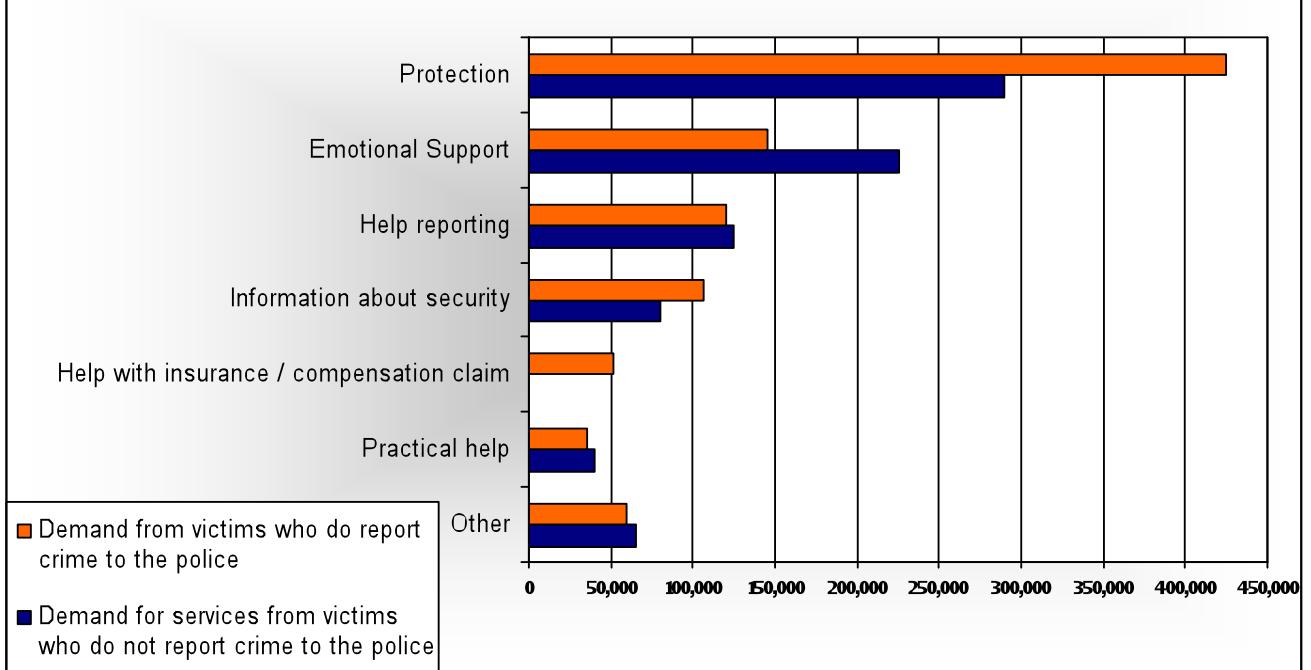
Figure 2: Emotional impact of crime on victims 2008/9



John Flatley et al. (eds.) (2010), 'Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime (2nd ed.)', Home Office Statistical Bulletin, 12/10.

Our analysis of British crime survey data shows that crime in England and Wales creates over 1.8 million individual needs for support services, ranging from protection, to emotional and practical support, to help with claiming insurance and compensation.

Figure 3: Total support needs - by whether victim reported crime



John Flatley et al. (eds.) (2010), 'Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime (2nd ed.)', Home Office Statistical Bulletin, 12/10.

Despite the profound effects that criminal acts can have on victims, the criminal justice system does not do enough to respond to their needs. While this is a problem throughout the justice system, from the point of reporting crime through to investigation and charge, it is

particularly marked in relation to the most important task of the justice system – sentencing offenders.

Victims of crime in England and Wales have no role to play in the sentencing of offenders. This is a necessary concession to the rule of law but, as the recently appointed Victims Commissioner has argued, since the victim is asked to ‘step aside’ from the process, “there is an obligation to repay that with an effective response on their behalf”.⁶⁶ The fact that, in the eyes of the law, the crime has been committed against the state and not the individual, holds little weight with a victim whose life has been changed by what they experienced -crime is deeply personal.

Research recently carried out with victims to investigate aggravating and mitigating factors in cases has shown similar results to those found in a previous similar study carried out among the general public.⁶⁷ The studies found that both groups are likely to consider certain factors related to the offence as increasing its seriousness. The vulnerability of the victim (e.g. their being elderly or having special needs) appears to be seen as an aggravating factor among both victims and the wider public. Perhaps unsurprisingly, victims may place particular weight on the impact of the crime on the victim, such as whether they suffered physical harm and/or experienced longer term effects. Overall, both victims and the wider public appear to place more weight on aggravating factors than on mitigating factors. Nevertheless, the evidence suggests that victims and the wider public do consider certain factors to justify a more lenient sentence (albeit there is a lack of consensus over what those factors are). In research with victims mitigating factors cited included it being the offender’s first offence, the age of the victim and whether the crime was premeditated – all factors which are currently taken into consideration by the courts.

Victims can also give a victim personal statement (VPS) before their case goes to court. This is a chance for the victim to set out formally the impact of the crime upon them; it is seen by all the agencies that have a role in supporting the victim through the case, and is accepted in court. If a defendant is convicted, it can be taken into account in the sentencing decision insofar as it highlights the consequences of the crime upon the victim.

VPSs do not and should not dictate sentences, but should allow more intelligent sentencing decisions. The information in VPSs should be available for magistrates and judges as they determine the most effective and appropriate sentence, and appropriate levels of compensation. For example, if a victim’s wallet has been stolen and it had photographs in it, then it is likely to be more of a loss than something else of comparative monetary value.

Unfortunately victim personal statements are used far too rarely and victims feel their views are not taken into account as intended even when they are used. New analysis by Victim Support shows that only 16% of victims both recall being offered the opportunity to give a victim personal statement and felt their views were taken into account when they took up this offer⁶⁸.

⁶⁶ Commissioner for Victims and Witnesses (2010), ‘*The poor relation - victims in the criminal justice system*’.

⁶⁷ Sentencing Advisory Panel (2009) and Victim Support (forthcoming). Research participants were presented with different ‘case study’ crime scenarios and asked what an appropriate sentence would be. The research with victims used a selection of the same case studies used with a sample of the general public in the earlier study.

⁶⁸ Internal analysis to Victim Support; data used for analysis has been sourced from the Witness and Victim Experience Survey 2009/10 (WAVES, Ministry of Justice). All figures within this dataset are based on survey data, and are therefore subject to the limitations of data collection exercises of this nature. Details can be found online: <http://www.justice.gov.uk/criminal-justice-system-performance.htm>

There are also large regional variations in their use. More information is available in the Annex to this report.

Victim Support North Wales: victim personal statements

Victim Support in North Wales ran a six-month pilot in which trained volunteers helped victims of burglary to write victim personal statements. The result of the trial was that both the quality and number of statements submitted rose markedly, but also that the need for police to make the availability of the VPS better known to victims was highlighted.

We would be keen to explore options for our staff and volunteers to help victims develop their VPSs nationwide, but also feel that it should be made as much a police and/or CPS priority as gathering evidence for the trial.

Recommendation 7

Every victim should be helped and encouraged to make a victim personal statement (VPS) so that all victims have an equal opportunity to formally state the impact of crime upon them. We should aim to make sure there are VPSs in the majority of cases that come to court. It may be the case that it would prove cheaper and more effective if a charity such as Victim Support were to take over responsibility for this from the police.



Compensation: too little, too late

The Ministry of Justice Business Plan for 2011-15 includes a specific commitment to "ensure better reparation to victims",⁶⁹ which dovetails with reparation being one of the main purposes of sentencing in the 2003 Act:

⁶⁹ Ministry of Justice (2010), '*Business plan: 2011-15*'.

*(e) the making of reparation by offenders to persons affected by their offences.*⁷⁰

Some form of court-ordered compensation has been available since 1972, and is an important element of sentencing for victims, removing the need to pursue a separate civil suit once an offender is convicted. Compensation Orders are made to offer some recompense for injury, damage or loss incurred as a result of crime. In 2009, 48,176 offenders were ordered to pay compensation, which equates to 14.7 per cent of all those sentenced, with an average amount awarded of £605.⁷¹

There are problems, however, with the effectiveness of court-ordered compensation as it currently operates. As with all financial penalties, the amount must be set with regard to the offender's circumstances, including his or her ability to pay. And victims can only get an award once the offender has paid it into court.

Unsurprisingly, then, many victims' compensation payments are severely delayed, or even not paid at all. A recent report by the Judicial Policy and Practice Committee of the Magistrates' Association found that the amount of compensation paid within the same year it is ordered stands at just over 40 per cent, and that the total outstanding amount is increasing by nearly 20 per cent a year.⁷² With others over the years including Victim Support, they have proposed a statutory scheme through which victims are to be paid all or some of their compensation upfront from a central government compensation fund.

From our work with victims and witnesses, we know that late and non-payment of compensation is a source of real dissatisfaction for victims who are affected:

I still have not received any compensation after a year and a half.
(Victim Support user)

...you have to keep going and be persistent with any claims for compensation that you feel you deserve. Why should you be a victim twice?
(Victim Support user)

This can go hand in hand with a general sense of being forgotten by the system once the case has been heard, which can leave victims feeling that they are lacking 'closure':

I was awarded compensation, which has not yet been received as the criminal has not paid anything to the court. Since the case was deemed closed by the court I have not received any updates on the outstanding compensation or general information regarding the case. I feel that communication from someone at the court...would have been a good way to finalise events.
(Victim Support user)

Where defendants do pay, they mostly do so in instalments. As a result, many victims receive their compensation in very small amounts over a long period of time, which not only dilutes its usefulness but may act as a constant reminder of the crime committed against them. The Magistrates' Association report identified significant shortcomings in HMCS' records of how compensation and other financial awards are paid, including how often this

⁷⁰ Criminal Justice Act 2003, Part 12, s.142 (1).

⁷¹ Ministry of Justice (2010), 'Sentencing statistics: England and Wales 2009 statistics bulletin', Chapter 4, Table 4.2.

⁷² The Magistrates' Association Judicial Policy and Practice Committee (April 2010), 'Compensation fund'.

happens in the form of a lump sum, suggesting that “the victim is the last person to be considered by those who manage the payment of compensation orders”.⁷³

Victim Support believes that compensation should be a meaningful way for defendants to make some degree of reparation to victims. Victims of crime should not have to bear the financial burden of any reparations that the Government fails to enforce or retrieve from the offender. With the total amount of compensation awarded in 2009 standing at approximately £29.1million,⁷⁴ this is not an onerous liability for the state. In fact, this amount represents just 0.3 per cent of the total Ministry of Justice spend for 2009/10, which was £9.2billion.⁷⁵

Recommendation 8

We want to see a compensation fund created so that the Government bears the cost, rather than individual victims, if the defendant is financially incapacitated or absconds. Compensation should not be a way for offenders to deny victims their rights again after a trial is over.

State-funded compensation

Problems compensating victims extend beyond court-ordered compensation; the Criminal Injuries Compensation Authority (CICA), which compensates victims of violent crime separately from the criminal litigation process, currently owes nearly £600 million to victims in outstanding awards.⁷⁶ If the Government wishes to pursue effective reparation for victims of crime, we believe that they must also address this scheme as a priority. We know that victims can face severe financial hardship after a crime, and this is a way of the state compensating victims where an offender is not charged or convicted, but it needs to be made more efficient and cost effective.

Recommendation 9

The Criminal Injuries Compensation Authority can be of great value for victims. Ways should be found to administer it more efficiently and cost-effectively. The support role of voluntary sector organisations needs to be developed and they should be encouraged to give advice, help and, in cases of the most vulnerable, offer a free representation service to victims.

Restorative justice

Another way for reparation to be made to victims is through ‘restorative justice’. This can take many forms but can be broadly defined in the following way:

“Restorative justice seeks to address the harm caused by crime, balancing the concerns and rights of the victim and the community with the need to reintegrate the offender into

⁷³ The Magistrates’ Association Judicial Policy and Practice Committee (April 2010), ‘Compensation fund’.

⁷⁴ Calculated from number of awards made and average amount, from Ministry of Justice (2010), ‘Sentencing statistics: England and Wales 2009 statistics bulletin’ as above.

⁷⁵ Ministry of Justice (2010) ‘Resource Accounts 2009-10’ (For the year ended 31 March 2010)

⁷⁶ House of Commons Hansard, Written Answers for 9 November 2010. Available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101109/text/101109w0002.htm>

society. It is a process whereby all the parties with a stake in a particular offence have the opportunity to communicate to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”⁷⁷

Out-of-court restorative justice disposals

Restorative justice approaches can be used throughout the criminal justice system. Many police forces are experimenting with, and finding success in using, restorative justice approaches with police cautions and other summary offences.

A restorative justice approach used by Thames Valley Police was their ‘retail theft initiative’. Under this voluntary initiative, shoplifters were given the chance to see the consequences of their actions and to apologise to the victim. In such cases, the presence of the shop owner enabled the offender to see that they did not commit a ‘victimless crime’. Upon meeting for an in-depth interview, the victim, offender and a police officer would agree how to proceed to the next stage. At this point, for example, the offender could meet with a youth worker, careers service or Prison Service group session (to give the offender an insight into the realities of youth custody and problems offenders can face after release). At the final stage of the initiative, young offenders received a final warning or official police reprimand while adult offenders received a police caution. The entire process would be reviewed with the offender to make sure they had received adequate help and support, to put them in touch with other agencies where appropriate and to reiterate the consequences of reoffending.⁷⁸

This form of restorative justice enables the police to deal with very minor offences in an immediate and appropriate way outside of the traditional court system. In many cases, these swift interventions can be an effective solution for rehabilitating young and first-time offenders.

⁷⁷ Tony Marshall (1999), ‘*Restorative justice: an overview*’, p.5, Home Office: Research, Development and Statistics Directorate.

⁷⁸ Thames Valley Police (2010), ‘*Restorative justice*’.

Retrieved from: <http://www.thamesvalley.police.uk/aboutus/aboutus-watch/aboutus-watch-retail.htm>



Restorative justice in a court sentencing context

The use of restorative justice in more formal, court-based sentencing is less well developed in England and Wales, particularly compared to other jurisdictions such as Northern Ireland. In essence, the approaches involve the victim and the offender having contact with each other in a controlled and supportive environment, either indirectly through a mediator or face-to-face. Restorative justice gives victims of crime the chance to explain to the offender how they have been affected by a crime and to ask any questions they may have about the incident. The offender must have pleaded guilty and, in most cases, will offer an apology during the process. The restorative justice process is entirely voluntary and takes place when all parties have given their informed consent. Offenders thus have the chance to understand the impact of their crime and take action to repair the harm caused.

VOICE project, South Wales: Victim Support in partnership with Her Majesty's Prison Cardiff

This is a pilot restorative justice programme with victims and perpetrators of domestic violence, carried out by experienced practitioners. It is part of a wider project called SORI (Supporting Offenders through Restoration Inside) led by HMP Cardiff together with Victim Support staff and volunteers and local community services, which aims to offer restorative justice to all victims of crime in South Wales where appropriate.

In its first four years, the SORI project engaged with 145 victims and 244 prisoners using a range of restorative justice approaches, e.g. victim-offender groups, direct mediation and youth mentoring.

One of the obvious benefits of restorative justice is the extremely high levels of satisfaction among victims who take part. This is especially the case where victims take part in the 'conferencing' model of restorative justice where a direct meeting takes place between the

victim and offender with their respective supporters. Research commissioned by the Home Office found that 85 per cent of victims participating in the conference model were satisfied with their experience, while almost nine out of ten would recommend the process to other victims.⁷⁹

Taking part in restorative justice can help victims move on from the experience of victimisation. Over half of victims said that taking part had given them a sense of closure - most said it had helped to reduce the negative effects of the offence and almost 40 per cent said that they felt more secure after taking part.⁸⁰

I'd like to have confronted them....It's quite threatening when you know, when your flat's been broken into and you don't know who's done it. I mean, it would give me peace of mind to see them. I'm all for the idea [of restorative justice].

(Victim of crime)

Participation can also mitigate the health impacts of victimisation, such as reducing the fear, anxiety and anger which victims often feel. Moreover, restorative justice has been shown to be highly effective for victims of serious crime where the process can go some way to alleviating post-traumatic stress symptoms.⁸¹ This is particularly pertinent given that victims suffering from trauma are less likely to seek help for the potentially long-term damage caused by victimisation. Restorative justice can provide a way for victims to get access to meaningful support and make positive and constructive steps towards getting on with their lives.⁸²

Victim Support restorative justice project in West Sussex

- Restorative justice project with young offenders (aged 10-17 years) who have pleaded guilty to a first-time offence and been sentenced to a Referral Order.
- Offender meets with youth offending panel to discuss reasons for their behaviour and to discuss actions for the future.
- Victims can also attend to talk to the offender about how they have been affected by the crime.
- Face-to-face meetings can have a powerful effect on the offender, as well as giving the victim a chance to ask questions and come to terms with their experience of crime.
- Young offender forms a contract with the panel to agree a way forward, which can include repairing the harm caused to the victim or the wider community as well as addressing the causes of their behaviour to help prevent future offending.

The high levels of satisfaction with restorative processes translates into increased satisfaction with the criminal justice system as a whole. Victims who have taken part in restorative justice processes are more likely to be satisfied with the justice system and more likely to feel that they had been treated fairly.⁸³ Interestingly, victims were also more likely to

⁷⁹ Joanna Shapland et al. (2007), 'Restorative justice: the views of victims and offenders. The third report from the evaluation of three schemes', Ministry of Justice Research Series 3/07.

⁸⁰ ibid.

⁸¹ Lawrence W. Sherman and Heather Strang (2009), 'Restorative justice as a psychological treatment: healing victims and reintegrating offenders', in Towl and Crichton (eds.), *Handbook of forensic psychology* (Amsterdam: Elsevier).

⁸² Lawrence W. Sherman and Heather Strang (2007), 'Restorative justice: the evidence' (London: Smith Institute).

⁸³ Mark S. Umbriet et al (2006), 'Restorative justice dialogue: evidence-based practice', Centre for Restorative Justice and Peacemaking.

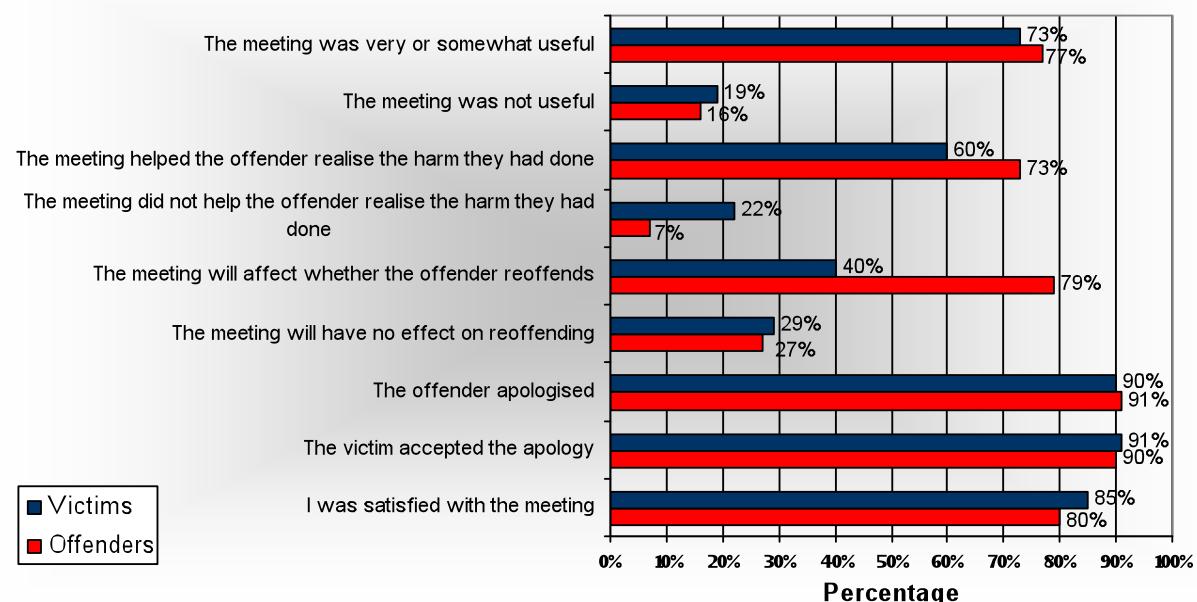
think that the sentence received by the offender was fair.⁸⁴ Ultimately, bringing victims to the fore through restorative justice -rather than seeing them as a postscript to the traditional offender-centred criminal justice process -helps restore and boost confidence, making victims feel they have a real stake in the system.

Indeed, there is evidence to suggest that offenders participating in restorative justice, like victims, have very high levels of satisfaction, with 80 per cent reporting in one study that they were very or quite satisfied with the restorative conferencing model.⁸⁵ Offenders also said that restorative justice had helped them to get a sense of closure and take steps to resolve the problems caused by the offence.

[Restorative justice] is a good idea, to find out why [offenders] did it and then they can understand how much it hurt, what you've been through.

(Victim of crime)

Figure 4: Participants' reactions to restorative justice meetings



Source: Ministry of Justice (2006), 'Statistical Bulletin: Sentencing Statistics 2006, England and Wales.'

Restorative justice and reoffending

Perhaps even more significant is the impact that restorative justice can have on the rehabilitation of offenders and the reduction of recidivism. Research commissioned by the Ministry of Justice found that, when compared to offenders who did not take part in a restorative justice process, 27 per cent fewer offences were committed by the group of offenders who had experienced the conferencing model of restorative justice.⁸⁶ This is underpinned by the views of offenders themselves who were very optimistic about the impact

⁸⁴ Joanna Shapland et al. (2007), 'Restorative justice: the views of victims and offenders. The third report from the evaluation of three schemes', Ministry of Justice Research Series 3/07.

⁸⁵ ibid.

⁸⁶ Joanna Shapland et al. (2008), 'Does restorative justice affect reconviction?', Ministry of Justice.

of the restorative process on future offending, with 79 per cent believing it would reduce the chance of them reoffending.⁸⁷

Strikingly, contrary to conventional wisdom, restorative justice processes have been shown to be highly beneficial in reducing reoffending rates after violent crime. Research by the Smith Institute saw a 25 per cent reduction in recidivism among violent offenders after participation in restorative justice processes.⁸⁸ These findings are consistent with the fundamental idea of restorative justice -that a meeting between victim and offender on a personal and emotional level can amplify an offender's feelings of remorse which become the motivation for reducing repeat offending. Moreover, research shows that many victims of serious crime would be willing to take part in restorative justice, with 70 per cent saying they would participate in the conferencing model and have a face-to-face meeting with the offender.⁸⁹

Restorative justice and cost effectiveness

The nature of victimisation means that it is very important that restorative justice processes are carefully managed and thoroughly explained to victims and that they are well-supported by fully trained facilitators so that they get the most from the process. This can only be achieved through sufficient investment in a system where both victims and offenders are fully prepared and cases are followed up after restorative conferencing in a timely manner.

While meaningful investment in comprehensive restorative justice may seem inconvenient and challenging in the current economic climate the cost savings to the criminal justice system would be considerable alongside the substantial benefits set out above.

The savings that flow from the contribution made by restorative justice to reducing reoffending rates are impressive; crime by former prisoners costs society more than £11 billion per year,⁹⁰ while restorative justice can deliver cost savings of up to £9 for every £1 spent.⁹¹

For example, if restorative justice were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system -as a result of a reduction in reconviction rates -would amount to at least £185 million over two years.⁹²

⁸⁷ ibid.

⁸⁸ Lawrence W. Sherman and Heather Strang (2007), '*Restorative justice: The evidence*' (London: Smith Institute).

⁸⁹ Joanna Shapland *et al.* (2007), '*Restorative justice: the views of victims and offenders. The third report from the evaluation of three schemes*', Ministry of Justice Research Series 3/07.

⁹⁰ Prison Reform Working Group (2009), '*Locked up potential: a strategy for reforming prisons and rehabilitating prisoners*', The Centre for Social Justice.

⁹¹ Joanna Shapland *et al.* (2008), '*Does restorative justice affect reconviction?*', Ministry of Justice.

⁹² Based on conservative modelling estimates – Assumption number 1: only 40% of victims take up the offer of restorative justice; Assumption number 2: no economies of scale in delivery.

Table 1: Cost savings where restorative justice is offered to all victims of burglary, robbery and violence

Number of offenders	Number of RJ interventions (40% take up)	Net cashable CJS savings over 2 years	of which Police	of which Prisons	of which Legal Aid	Net cashable NHS savings	Non-cashable net savings
75,000	29,000	£185m	£65m	£56m	£14m	£55m	£741m

Based on Victim Support / Restorative Justice Council modelling

Furthermore, trials of restorative justice conferences have been shown to give sentencing magistrates and judges better information about effective sentencing options. Working with the Restorative Justice Council we estimate that it could also generate a saving of 11,000 full-year prison places - the equivalent to saving £410 million of the prison budget (this calculation is based on: a 23 per cent diversion from custody rate; a randomised, control trial funded by the Ministry of Justice; the experience in Northern Ireland; and the Appeal Court cases where case law now states that taking part in restorative justice is a mitigating factor; as well as an assumption that those diverted have the average sentence length).

Table 2: Cost savings where restorative justice conferencing is used to divert some custodial sentences

	Number diverted from immediate custody	FTE 1 year prison places saved	Saving to prison budget from diversion
TOTAL	6,540	11,000	£410m
Violence against the person	3,000	4,400	£166m
Burglary	2,300	3,300	£124m
Robbery	1,200	3,200	£120m

Based on Victim Support / Restorative Justice Council modelling

In short, the £59 million it would cost to offer restorative justice conferencing only to those 75,000 victims of burglary, robbery and violence against the person pales in comparison to the savings that could be made if a comprehensive restorative justice system were put in place - a system where the benefits to both victims and the wider community are substantial.⁹³

Recommendation 10

Restorative justice should be a victim-led process where different methods are trialled throughout the UK in partnership with voluntary organisations. However, it is vital that such trials receive adequate investment to ensure that restorative justice is carried out by appropriately trained and qualified practitioners working to agreed occupational standards. This is necessary to ensure that both victims and offenders alike get as much as possible out of the process.

⁹³ Lawrence W. Sherman and Heather Strang, with Dorothy Newbury-Birch (2008), 'Restorative justice', Youth Justice Board.

Early guilty pleas: further research needed

Victim Support is helping to find victims to take part in current research by Ipsos MORI for the Sentencing Council to determine the impact of late guilty pleas on victims. Currently, sentencing guidelines recommend a sliding scale of reductions, from one-third where a guilty plea is given at the ‘first reasonable chance’ to one-tenth where this takes place ‘at the door of the court’ or even after the trial has already begun.⁹⁴ It is estimated that 60 per cent of trials that ‘crack’ on the day do so because of a last-minute change of plea,⁹⁵ and so later pleas are also a possible focus for intervention on cost grounds.

Analysing the impact of the current practice in this area on victims and witnesses is difficult because of the breadth of opinion and experiences that they are likely to have. For some, the fear of giving evidence may be such that even a very late guilty plea, given after they have turned up to court but still relieving them of the need to take the stand, is to be welcomed. For others, the stress involved in rearranging their lives in order to attend court unnecessarily might negate any benefit. Still others may value the chance to have their day in court, and may consequently find a late guilty plea deeply frustrating.

Victims may also be concerned if incentives for early guilty pleas are greatly increased. Increasing the discount on an offender’s early guilty plea from 30 per cent to 50 per cent might not be in the interests of justice or transparency.

It is possible that some last-minute guilty pleas may be used to intimidate the victim, as recently highlighted by the Victims’ Commissioner.⁹⁶ This would be especially of concern in cases involving a complex power dynamic or pre-existing relationship between the victim and the defendant, such as a sexual or domestic violence offence. The current sentencing guidelines provide that the available reduction should be very little where “the not-guilty plea was entered and maintained for tactical reasons (such as to retain privileges while on remand)”;⁹⁷ one possible recommendation would be that a similar limit should be applied in cases where the purpose or effect has been to intimidate witnesses.

⁹⁴ Sentencing Guidelines Council (2007), ‘*Reduction in sentence for a guilty plea: definitive guideline*’.

⁹⁵ HMIC (2010), ‘*Stop the drift: a focus on 21st century criminal justice*’.

⁹⁶ Commissioner for Victims and Witnesses (2010), ‘*Ending the justice waiting game: a plea for common sense*’.

⁹⁷ Sentencing Guidelines Council (2007), ‘*Reduction in sentence for a guilty plea*’.

Conclusion:

A new approach to sentencing seems to be the obvious outcome of current economic and political considerations, given the unsustainable level of public spending up to this point on sentences that do not work to reduce reoffending. New research by Victim Support reveals, however, that one group in particular stands to benefit from a renewed emphasis on effective rehabilitation: victims and witnesses of crime.

The priority for victims and witnesses is not only that justice is seen to be done, but that it is seen to work. This is why Victim Support is calling for a strong evidence base to be developed for both custodial and community sentences, with innovative ways of achieving this such as payment by results.

But the confidence of victims and witnesses cannot be recaptured solely by a change of sentencing outcomes. They are still excluded from the process in a way that fundamentally harms its legitimacy; neither their input nor their understanding is currently prioritised and greater progress must be made towards both. We applaud the work that is already being done in this area but recommend more effort to integrate victims into the progress of individual cases, including through victim personal statements and a duty on public bodies to fully explain sentencing decisions to victims.

Finally, reparation to victims and witnesses must be taken more seriously; neither court-ordered compensation nor the state-funded Criminal Injuries Compensation Scheme is delivering adequately, and victims have a right to expect better. Restorative justice has the potential to offer victims a more thorough form of reparation, and also has its own contribution to make towards lower reoffending rates. It is essential, however, that restorative justice, and indeed the criminal justice system as a whole, is developed in concert with victims and witnesses.

Victims and witnesses must be a part of a reformed sentencing agenda if the failings of the past, which have been costly both in financial terms and in public confidence, are not to be repeated.

Recommendations

1: If we are to continue sending people to prison, victims want to be sure that this is both an appropriate punishment and one that prevents reoffending. Effective rehabilitation has to be at the heart of the prison system.

2: Though victims accept that any reforms have to be cost-effective, if individual sentencing decisions are seen to be motivated by concern for cost more than justice, they will not inspire the support of victims or the general public.

3: Victim Support supports the reduction in short-term prison sentences, but wants evidence-based alternatives that will stop reoffending to be put in their place before they are abolished. Given the poor return on current efforts at rehabilitation of offenders, payment by results may be ‘worth a try’, as one Victim Support research participant put it. However, given the high stakes and potential pitfalls, it is vital that payment-by-results schemes be fully and rigorously piloted, evaluated and monitored.

4: Community sentencing should be applied as a meaningful and effective alternative to custodial sentences. Community sentences must be suitably demanding and robustly enforced, and there must be consequences for offenders who fail to comply with a community order. If alternatives such as drug or alcohol treatment programmes or treatment for mental health problems are ordered, they need to be adequately funded and prevent reoffending.

5: Sentencing needs to be much more transparent; the principles involved must be put more forcefully into the public domain, in comprehensible language. The Sentencing Council must continue to strive for clarity in consultation with the public and, specifically, victims and witnesses.

6: Victim Support believes that victims should have sentences explained to them as clearly and as simply as courts do to defendants. The current Code of Practice for Victims of Crime does not specify this explicit duty. Its absence means that many victims are left with an incomplete understanding of what the sentence passed actually means. This poor communication and lack of transparency serves to undermine victims' confidence in the ability of the justice system to handle cases effectively and their seeing that justice is done.

7: Every victim should be helped and encouraged to make a victim personal statement (VPS) so that all victims have an equal opportunity to formally state the impact of crime upon them. We should aim to make sure there are VPSs in the majority of cases that come to court. It may be the case that it would prove cheaper and more effective if a charity such as Victim Support were to take over responsibility for this from the police.

8: We want to see a compensation fund created so that the Government bears the cost, rather than individual victims, if the defendant is financially incapacitated or absconds. Compensation should not be a way for offenders to deny victims their rights again after a trial is over.

9: The Criminal Injuries Compensation Authority can be of great value for victims. Ways should be found to administer it more efficiently and cost-effectively. The support role of voluntary sector organisations needs to be developed and they should be encouraged to give advice, help and, in cases of the most vulnerable, offer a free representation service to victims.

10: Restorative justice should be a victim-led process where different methods are trialled throughout the UK in partnership with voluntary organisations. However, it is vital that such trials receive adequate investment to ensure that restorative justice is carried out by appropriately trained and qualified practitioners working to agreed occupational standards. This is necessary to ensure that both victims and offenders alike get as much as possible out of the process.

ANNEX: Use of victim personal statements in England and Wales.

Victim Support's analysis of data from the Government's Witness and Victim Experience Survey shows that in 2009/10⁹⁸:

- **44% of victims in England and Wales did not recall having been offered the opportunity to make a VPS.**
- Victims living in London were *less than half as likely* to be offered this chance as those living in Northumbria (29% as compared with 63%).
- Of the victims in London who did make a VPS, only 65% felt that it was taken into account by the court when they passed sentence.
- London, Gwent, South Wales, Nottinghamshire and the West Midlands are the *five worst places* to be a victim if you want to make a Victim Personal Statement
- Northumbria, Staffordshire, Warwickshire, Gloucestershire and Humberside are the *five best places* to be a victim if you want to make a Victim Personal Statement.

Victim Support's analysis also shows that:

- **68% of the victims who recalled having made a VPS felt that their views were taken into account by the criminal justice process as a result**
- Victims living in Warwickshire were 19% less likely to feel their views had been taken into account than those in Avon and Somerset
- The top five places that victims feel their views are taken most into account are Avon and Somerset, Cleveland, Wiltshire, North Yorkshire and the West Midlands
- The six places that victims feel their views are taken *least* into account are Warwickshire, Essex, Bedfordshire, Leicestershire and Cambridgeshire and South Yorkshire (jointly).

⁹⁸ Data has been sourced from the Witness and Victim Experience Survey 2009/10 (WAVES, Ministry of Justice). All figures within this dataset are based on survey data, and are therefore subject to the limitations of data collection exercises of this nature. Details can be found online: <http://www.justice.gov.uk/criminal-justice-system-performance.htm>



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