

REPORT

# EVERYDAY JUSTICE

MOBILISING THE POWER OF VICTIMS, COMMUNITIES  
AND PUBLIC SERVICES TO REDUCE CRIME



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# INTRODUCTION

Crime is both a cause and a consequence of a breakdown in relationships. A lack of positive family and wider social relationships very often lies behind offending behaviour: 30 per cent of boys in custody, for instance, have been brought up in care; 76 per cent of children in custody have had an absent father; and 53 per cent of women and 27 per cent of men in custody have experienced physical, emotional or sexual abuse as a child (Prison Reform Trust 2013). Crime itself damages relationships, harming victims and fostering fear and mistrust within communities.

Yet our criminal justice system does very little to repair the relationships that are damaged by crime and social exclusion. Rather than providing for direct reparation between the victim and the offender, the system is set up as a confrontation between the state and the accused. Rather than involving the community, the system gives local residents very little role in achieving justice and tackling the causes of crime. Rather than providing the kind of consistent relationships with professionals that would aid rehabilitation, the system passes offenders between a range of different agencies, with too many falling between the cracks.

This report argues that the way in which the criminal justice system deals with victims, communities and offenders needs to be reformed, so that the everyday relationships that are damaged by crime and social exclusion can be repaired and strengthened.

First, we need greater direct reparation from offenders to their victims. This would improve victims' confidence in the system, while at the same time helping to reduce reoffending by bringing home to the offender the damage they have caused. In practical terms this would mean giving every victim a right to restorative justice when an offender accepts guilt and consents to the process, starting with low-level offences. This could be in the form of a face-to-face or written apology, alongside financial compensation or a form of unpaid work in the community agreed with the victim. This restorative process could either sit alongside or replace a formal sanction such as a caution.

For first-time, low-level offences such as shoplifting or vandalism, restoration could take place on the street with the police brokering the apology and reparation. For offences attracting a caution, a restorative conference could – if the victim wants it – be organised, resulting in a conditional caution with reparative conditions attached. For more serious offences, where an offender is charged and goes to court, a restorative meeting could be arranged in between conviction and sentencing.

Second, we need to foster greater community involvement in the justice system. As things stand, the public lacks confidence in the courts' ability to deliver appropriate penalties, despite the fact that judges and magistrates are often more punitive than the public think. There is strong evidence that public confidence in the justice system would improve if the community were more involved in it. We propose establishing neighbourhood justice panels in every part of the country, whereby local residents would be directly involved in restoration and punishment for low-level antisocial behaviour and low-level crime. We also need much greater community participation in helping ex-offenders to desist from crime. In practical terms, we propose establishing a new social enterprise to train and employ ex-offenders, and to secure placements for them with employers.

Third, we need to provide offenders with the kind of stable and consistent relationships with criminal justice professionals that the evidence tells us are likely to promote desistance from crime. These kinds of relationships are only possible in a joined-up justice system. The lesson from the youth justice system is that consistent relationships between offenders and those charged with their rehabilitation are facilitated by integrating different services under one roof, with key workers allocated to each offender. As a first step, all young adult offenders aged 18–21 should be placed under the responsibility of the local youth offending teams (YOTs), which are the most locally integrated and successful part of our offender management system.

Funding and incentives also need to be restructured in order to encourage local areas to invest in effective community-based alternatives to custody, which have been shown to be both more successful at reducing reoffending and less costly to the taxpayer. To facilitate this we propose progressively devolving custody budgets for offenders under the age of 21 to city regions and local authorities.

This report brings together these ideas under the banner of ‘everyday justice’ for two reasons. First, we are primarily focusing on the kind of high-volume but relatively low-harm offences that make up the vast majority of crime. Second, in order to tackle these everyday crimes, we are seeking to mobilise the collective power of all relevant actors and institutions, both inside and outside the formal system, to ensure reparation for harm done and rehabilitation for the offender.

# 1. RESTORATIVE JUSTICE

Our criminal justice system is structured around the relationship between the suspect, who is accused of committing a crime, and the state which prosecutes them. This is because in a system of public law, while wrongs may be done to people, *crimes* are committed against the law itself. This has many benefits: it takes punishment for wrongdoing out of the private realm, where it can be arbitrary and unjust, and locates it within a public and impartial system of justice.

However, it also tends to displace the victim from the justice process: once victims have reported a crime, they often hear little back. According to the charity Victim Support, crime victims are kept updated about what is happening with their case to a satisfactory level in only around half of all reported incidents; in one-third of incidents, victims hear nothing more from the authorities after they first report a crime to the police (Victim Support 2011). Beyond providing statements to the police or appearing as a witness in court, victims play little role in the system. A survey by the Ministry of Justice (MoJ) found that in 2009/10 only 43 per cent of victims whose cases were taken to court (so those involving the most serious offences) recall having been asked to make a victim personal statement (MoJ 2013a).

Crime harms people and damages relationships between them. Punishment should be, at least in part, about restoring those broken relationships between offenders and victims. This first chapter does four things.

- It briefly explores the different goals of punishment and considers how these can be reconciled.
- It makes the case for a greater role for restorative justice.
- It describes the role that restoration currently plays in our system.
- It recommends a major expansion of the role of restorative justice in England and Wales.

## 1.1 Theories of punishment

Why do we punish offenders? What does it mean to say that a punishment fits a crime? Can a 'just' punishment sometimes conflict with the need to rehabilitate offenders? If so, which of these two goals should be prioritised?

Major penal theories differ over what the purposes of punishment should be. The retributivist school argues that criminals deserve punishment in proportion to the crimes they have committed. By this account, punishment ought to be purely backward-looking and should have no regard for future consequences: in other words, the sentencer should look at what the offender has done and then punish in proportion to the wickedness of the act.

We do not have the space here to go into all the pros and cons of retributivist theory, not least because there are so many different variants of it. However, most agree that this theory has the benefit of proportionality: the punishment should fit the crime. This distinguishes retributivists from utilitarians, who care mainly about the wider social consequences of punishment. To the retributivist this makes utilitarians insensitive to the need to 'punish' the guilty and to do so only in proportion to what they have done.

Nevertheless, deciding what a proportionate punishment is or should be is a question fraught with difficulty: it is far too simplistic to simply assert the biblical maxim of ‘an eye for an eye, a tooth for a tooth’. It is also too easy to argue that the offence should be punished in proportion to its wickedness. The relationship between the law and morality is not straightforward. For instance, a crime without a victim – such as driving a little over the speed limit – may not necessarily be wicked or actually harmful, yet it might still justify punishment (Brooks 2012).

In contrast to the retributivist school, there are those who argue that the main purpose of punishment should be deterrence. Whereas retributivists look backwards to the crime itself, these theorists look towards the future consequences of punishment. Some argue that the public threat created by tough punishments such as imprisonment or capital punishment contributes to lower crime levels and that this overall effect therefore justifies these sentences. Others make the case for imprisonment on the grounds of incapacitation – that is, as a means of ‘keeping criminals off the streets’. However, one of the main problems with the deterrence view is that the evidence does not suggest that offenders are put off by the severity of the prospective punishment. Surveying the existing empirical research on this question, Daniel S Nagin has concluded that more severe punishments – including the death penalty – do not have a major deterrent effect, that prison has no greater a deterrent effect than community sentences, and that more visible policing has a greater deterrent effect on criminals as it heightens the risk of apprehension (Nagin 2013). To address the incapacitation argument, while imprisonment might take people off the streets, it often does so for only short periods of time.

There are also those who argue that the aim of punishment ought to be the rehabilitation of the offender. This is because, on utilitarian grounds, harm reduction is what matters most – and if a punishment, such as a short spell in prison, simply makes someone more likely to offend, then it is irrational to impose it. However, while few doubt the importance of rehabilitation, this perspective is often insensitive to the need for victims to see justice done by ensuring that the offender experiences some proportionate loss (Brooks 2012).

Finally, some argue that the aim of punishment should be to ‘restore’ the relationships damaged by crime. Advocates of restorative justice argue that the victim and the community should have a much greater role in the justice system than they currently do. This report will explore the way in which restorative approaches work in greater detail below, but typically they involve something like a restorative conference in which the offender accepts guilt and responsibility for the harm they have done. Some form of recompense is then agreed, whether direct to the victim or to the wider community, so that at the end of the process shared bonds of association are restored.

The main flaw with each of these general theories of punishment is that they attempt to reduce the justification for punishment to a single goal. A theory of punishment that better reflects both the public’s instincts and everyday judicial practice would recognise that punishment in a system of public law has multiple goals, even if there are sometimes conflicts between them.

Recognising this, Thom Brooks makes the case for a ‘unified theory of punishment’ that incorporates each of the above goals, building on the work of Hegel and British idealists such as T H Green (ibid). This unified theory can be summarised as follows.

- The role of the criminal law is to protect the individual’s legal rights, which support substantive freedoms worthy of protection.
- Crimes are violations of those rights and punishment is a response to those crimes.
- The aim of punishment is therefore to protect the individual’s legal rights.

- Crimes should be punished differently depending on the importance of the rights violated.
- Punishment can and should restore the rights that have been damaged. Restoration is best achieved through the idea of the ‘stakeholder society’. A fundamental cause of crime is the feeling among some members of society that they have no stake in it. Properly involving all the different stakeholders in the penal process rebuilds that shared understanding that everyone has a stake, and strengthens common bonds of association.
- Rehabilitation and deterrence do not directly justify punishment but they can play a second-order role in justifying sentencing. The particular form of punishment imposed may meet deterrent or rehabilitative penal goals insofar as they can contribute to the restoration or protection of rights within proportional limits.

This unified theory is an attractive way of bringing some theoretical coherence to the various justifications for punishment, while at the same time reflecting the nuanced instincts that most people have about the purposes of punishment. In particular, it manages to link the retributivist desire for proportionality and desert with an argument for restoration to victims and the community.

In practice, however, restorative justice has remained at the margins of the formal justice system and the role of victims continues to be sidelined. While maintaining a commitment to the other penal goals set out above, we now turn to the argument for putting this right.

## 1.2 Restorative justice

Restorative justice establishes communication between those who have been harmed by crime and those who are responsible for it, so that the offender can fully understand the impact of what they have done, apologise and make amends. Research shows that offenders who have been through a restorative justice process are 14 per cent less likely to reoffend, and that 85 per cent of victims who take part are satisfied with the process (RJC 2011).<sup>1</sup>

Despite its promise, restorative justice has remained at the margins of our justice system, which continues to be structured around the idea that crimes are offences against the crown rather than against people. As such, victims have tended to be marginalised in the justice process, offenders have not been sufficiently held to account for their actions, and communities have not been sufficiently involved in the rehabilitation of offenders.

Various forms of restorative justice have existed for centuries – they played an essential role in ancient Greek, Roman and Arab civilisations. Indeed, the criminologist John Braithwaite has called restorative justice ‘the dominant model of criminal justice throughout human history for perhaps all of the world’s peoples’ (Braithwaite 2002).

Restorative justice approaches have persisted in modern times in many indigenous communities in the Americas, Africa, Asia and the Pacific, often operating in conjunction with retributive blood feuds as responses to offences against individuals or the community at large. In Europe, by contrast, restorative justice approaches began to be sidelined following the Norman conquest of much of the continent, when offences came to be seen more as ‘a matter of fealty to and felony against the king’, rather than as ‘wrong done to another person’ (ibid).

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<sup>1</sup> It should be noted that these success rates were achieved with a cohort of offenders who had committed serious offences, including robbery, burglary and violent offences. However, the police have also reported high levels of victim satisfaction with their deployment of restorative justice in response to lower-harm offences (Shewan 2010).



In recent decades there has been a resurgence in restorative justice in parts of Europe, the US, Canada, Australia, South Africa and elsewhere. Restitution was 'rediscovered' in the 1960s, with the notion that 'paying back the victim could be a sensible criminal justice sanction' (Van Ness and Strong 1997) gaining currency. Then the 1970s saw the rise of 'alternative dispute resolution' solutions and 'informalist' critiques of the justice system. One of the most influential early texts in this revival of restorative justice was Nils Christie's 1977 essay 'Conflicts as Property', which contended that criminal justice institutions were 'stealing conflicts' from victims (Christie 1977). Howard Zehr's 1990 book *Changing Lenses – A New Focus for Crime and Justice* was one of the first to articulate a modern theory of restorative justice, and explained that under a restorative justice framework, criminal offences should be viewed as violations of people and relationships rather than of the state (Zehr 1990).

The 1990s saw a proliferation of restorative justice practices, building on the victim-offender conferences that had been developed during the 1970s and 1980s. After apartheid, South Africa's Truth and Reconciliation Commission made prominent use of restorative justice approaches even for violent offences, providing offenders with an amnesty in exchange for disclosure, acceptance of accountability, acts of restitution and apologies.

Many commentators have suggested that restorative justice could represent a useful 'third way' that would allow practitioners to escape the politicised dichotomy between responses to criminal offences that emphasise the imposition of punitive losses on the offender and those that focus on rehabilitative provision. Restorative justice approaches are both less formally punitive than the tough 'law and order' school and more victim-empowering than most 'welfarist' approaches.

Modern approaches to restorative justice can take several different forms, including victim-offender mediation (which can occur either face-to-face or indirectly), restorative conferencing (which includes others connected to both the victim and the offender, as well as other community members in some cases) and family group conferencing (which often includes wider extended family as well).

### 1.3 Restorative justice in the UK

Although restorative justice has tended to remain at the margins of our criminal justice system, there are areas (particularly in the youth system) in which it has started to be deployed more systematically.

#### Northern Ireland

Restorative justice approaches are integrated into the work of both community-based and statutory organisations in Northern Ireland, affecting youth and adult offenders. Many of these initiatives were established for political reasons in the wake of the Good Friday agreement in 1998 – the first referrals to restorative justice schemes came from paramilitary organisations. However, these initiatives have become less politicised, particularly after Sinn Fein expressed public support for the police service. Referrals from paramilitary organisations have since fallen to negligible levels.

A wide range of groups now employ restorative justice approaches in Northern Ireland, using a wide range of techniques – conferencing (including both youth conferencing and family group conferencing), mediation, circles, restitution, community service and other processes.

Restorative justice is deployed systematically in Northern Ireland's youth justice system. Aside from diversionary disposals, youth conferencing is the means by which a large proportion of young people's offending is dealt with, either through a

diversionary youth conference directed by the prosecutor for less serious offences or through a court-ordered conference. Each year youth conferencing services receive around 1,800 referrals (15 per cent of all young offenders), of which about half come from the prosecution service (YJRT 2011).

Youth conferences are led by a skilled facilitator who will spend time with all the participants beforehand to make sure that the conference will run properly. In the conferences, the offender talks about the crime and why they did it. They are encouraged to confront the impact their behaviour has had on the victim or on the community, and to explore how to make amends. A plan is then drawn up which includes an apology to the victim, some form of 'payback', such as community work or work for the victim, and a programme to address the underlying causes of the crime.

The outcomes of youth conferences have been impressive.

- Victim satisfaction is at 75 per cent.
- While in 2007 and 2008 the one-year reoffending rates for young offenders who received community-based disposals were 44 per cent and just under 50 per cent respectively, the equivalent rates for those who received court-ordered youth conferences were 38 per cent and 42 per cent, and for diversionary youth conferences 22 per cent and 20 per cent respectively (YJRT 2011).

Having observed these results, many commentators called for a similar approach to be adopted in England and Wales.

### **England and Wales**

Restorative justice has also been expanded in recent years in England and Wales, although it is deployed less systematically than in Northern Ireland.

#### *Referral orders*

Where a first-time offender pleads guilty, youth courts – which deal with 10–17-year-olds – must make a referral order whereby the young person has to attend a youth offender panel. These panels consist of a member of the local youth offending team and two volunteers from the community. They talk to the young person, his or her parents and (where possible) the victim of the crime, to agree a tailor-made contract aimed at putting things right. The contract might include sending a letter of apology to the victim and undertaking some useful local work such as removing graffiti or helping clean up an area. It could also include activities to prevent further offending, such as getting back into school and help with alcohol or drug misuse. These contracts are supervised by the youth offending team and reviewed at regular panel meetings. The conviction is spent when the order is successfully completed. If the young person fails to comply, the case is sent back to court and a different sentence may be given.

#### *The youth restorative disposal*

The youth restorative disposal (YRD) is intended to be a quick and effective means for dealing with low-level, antisocial and nuisance offending, offering an alternative to arrest and formal criminal justice processing. A YRD can be applied to 10–17-year-olds who have not previously received a youth caution.<sup>2</sup> A young person can only receive one YRD, with any further offences receiving a formal sanction. YRDs cannot be applied to serious crimes, such as weapons, sexual or drug offences. Both the victim and the offender need to agree to participate in a restorative process facilitated by a police officer or police community support officer (PCSO) trained in restorative techniques.

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<sup>2</sup> Youth cautions were introduced in 2012 to replace the old system of reprimands and final warnings.

Following successful pilots in a number of police force areas – where YRDs have been used mainly for offences such as shoplifting, common assault (not causing serious injury) and criminal damage – they are now in use in most police force areas. An evaluation of the initial pilots found that victims were generally happy to participate as they often did not want to see the offender criminalised and simply wanted an apology and an assurance it would not happen again. The use of YRDs has been found to save the police time. Prior to the introduction of the youth caution, the reprimand system involved an arrest and time in custody, and took up an estimated 11 hours of police time; in contrast, a street YRD is estimated to take just an hour on average, while a restorative conference takes on average two and a half hours (Rix et al 2011).

North Wales Police have termed their YRDs ‘restorative resolutions’ and have trained both their officers and staff in other services in the local area. They conducted an evaluation of restorative resolutions over a 12-month period and found that they saved an estimated 3,363 hours or, in financial terms, a reinvestable cash equivalent of £94,602. Of the victims surveyed, 90 per cent said they would recommend participation in restorative resolution to other victims (HMIC 2012).

Restorative justice can also be included as part of other kinds of orders or as part of youth offending team intervention plans. HM Inspectorate of Constabulary (HMIC) has found that restorative justice is now deployed in around 12 per cent of all police disposals in England and Wales (ibid).<sup>3</sup>

#### *Restorative cautions*

In 1998, Thames Valley Police launched a major initiative deploying ‘restorative cautions’. Whenever a caution was to be used by an officer, the victim was to be offered a restorative conference involving the police, the offender and the victim. Police officers used a script to facilitate a discussion about the harm the offence had caused and how that harm could be repaired. In most cases the victim chose not to attend, but the victim’s views were relayed by the police officer to the offender and in 16 per cent of cases there was a face-to-face apology. An evaluation of the programme (JRF 2002) found that it enjoyed high levels of victim satisfaction and led to lower levels of reoffending, although we should note this was not a controlled trial.

#### *Pre-sentence restorative justice*

More recently, the 2013 Crime and Courts Act<sup>4</sup> has been amended to allow sentencing to be deferred after a guilty plea in order to allow a restorative justice conference to take place – this may then inform later sentencing decisions, although it will not occur in lieu of the traditional sentencing process. This decision to enable greater use of restorative justice approaches before sentencing arose in large part from research undertaken by the Ministry of Justice and the Centre for Criminological Research at the University of Sheffield. The study used pre-sentence restorative justice conferences in roughly half of test cases and found that 72 per cent of victims reported that the restorative justice intervention had come at ‘about the right time’ and 22 per cent of victims who participated wished the option had been offered sooner (Shapland et al 2007). A later government analysis of the same data in that study found that restorative justice led to a 14 per cent reduction in the likelihood of reconviction (RJC 2011). Significantly, all these cases concerned serious crimes, such as burglary, robbery and violence.

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3 See <http://www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice>

4 See chapter 22 of the legislation: <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

On 19 November 2013, the Ministry of Justice announced that £29 million collected from offenders through fines and confiscations would be used to ‘boost’ restorative justice programmes over the next three years. Under this plan, £5 million of ringfenced funding was provided for restorative justice over the final six months of the 2013/14 fiscal year, followed by £10 million in 2014/15 and at least £14 million in 2015/16 – which is a significant increase on the £1 million spent by the Ministry of Justice on restorative justice in 2012/13 (BBC News 2013a).

### *The Victims’ Code*

The 2013 ‘Victims’ Code’ contains a relatively weak entitlement to information about restorative justice where it is locally available, stating that:

*‘If the offender is an adult, you are entitled to receive information on restorative justice from the police, including how you could take part. This is dependent on the provision of restorative justice in your local area... If the offender is under the age of 18, you are entitled to be offered the opportunity by your youth offending team to participate in voluntary restorative justice activities where appropriate and available.’*

MoJ 2013b

## 1.4 Expanding the use of restorative justice

As we have seen, there is strong evidence that the use of restorative justice can both reduce reoffending rates and improve victim satisfaction (Shapland et al 2007, RJC 2011). The most robust published evidence largely concerns more serious crimes that have been taken to court, but reports from police forces around the country, including a forthcoming randomised trial, indicate high levels of victim satisfaction where restorative justice is used to deal with lower-level offences (Neyroud and Slothower 2014 forthcoming, Shewan 2010).

We recommend a major expansion in the use of restorative justice throughout the criminal justice system in England and Wales. This means that in all criminal cases where an offender accepts guilt and consents to participate, the victim or victims should be offered restorative justice. This entitlement should be enshrined in the Victims’ Code, and could form part of a new Victims’ Law, as has been proposed by former director of public prosecutions Sir Keir Starmer (Bowcott 2014).

This entitlement is of course a qualified one: for reparation to be achieved, the offender needs to accept that they committed the offence and must consent to apologise and repair the damage. However, there are powerful incentives for an offender to comply: where restorative justice accompanies an out-of-court disposal, should the offender not consent, the police could simply move to charge the offender, with a potentially more serious penalty in prospect.

Currently, offenders can be brought to justice in one of two ways – either through an out-of-court disposal, where guilt is not contested and the offence is low-level or first-time; or, for serious offences, repeat offences and contested cases, through prosecution in court. To put our recommendations in context, table 1.1 below shows the range of out-of-court disposals currently available to the police.

**Table 1.1**  
Out of court disposals currently available to the police

Disposal option	Offence type	Evidential standard	Admission of guilt required?	Consultation/agreement with agencies required?	Offender's explicit consent required?	Rehabilitation available?	Restorative justice/repair available?	Punitive measures available?	Forms part of a criminal record?
<b>Community resolution</b>	Low level crime or incident	Reasonable suspicion, may deal with non-criminal matters	Yes: acceptance of responsibility	No	Yes	Yes	Yes	No	No, but may be disclosed as part of enhanced DBS check
<b>Cannabis warning</b>	First-time cannabis possession for personal use	Reasonable suspicion	Yes	No	No	No	No	No	No, but may be disclosed as part of enhanced DBS check
<b>Adult PND (penalty notice for disorder)</b>	Defined list of low-level disorder offences	Reason to believe a penalty offence has been committed	No	No	No	No	No	Yes	No, but may be disclosed as part of enhanced DBS check
<b>Adult simple caution</b>	Any offence	Realistic prospect of conviction	Yes	CPS should authorise if indictable only	Yes	No	No	No	Yes
<b>Youth caution</b>	Any offence	Realistic prospect of conviction	Yes	CPS should authorise if indictable only	No	Yes	Yes	Yes	Yes
<b>Youth and adult conditional caution</b>	Any offence in principle but some exceptions in guidance	Realistic prospect of conviction	Yes	YOTs for any offence CPS must authorise if indictable only YOTs for youth	Yes	Yes	Yes	Yes	Yes

Source: Adapted from the Ministry of Justice's 'Out-of-Court Disposals National Framework'. <https://www.justice.gov.uk/downloads/oocd/national-framework-oocd.pdf>

Out-of-court disposals, such as cautions, have been criticised for being insufficiently robust, and concerns have been raised about their possible overuse (Press Association 2013). However, they save both time and money for the police and the wider justice system, and if used properly can prevent first-time offenders from getting sucked into the criminal justice system. Offering victims a restorative process as part of every out-of-court disposal where the offender accepts guilt and consents would represent a significant strengthening of out-of-court sanctions, and would, the evidence suggests, improve victim satisfaction and reduce reoffending.

The right to restorative justice could involve one or both of the following two elements.

1. An apology either in writing or face-to-face.
2. Some form of reparation, either financial or in kind. For example, if the offender admits they kicked down someone's fence they could agree to fix it or pay for it to be fixed.

In the following sections we set out how the right to restorative justice would operate at three different levels of offences. This is summarised in table 1.2 below.

### **Level one: an informal restorative resolution for low-level, first-time theft and criminal damage offences**

In the case of some low-level criminal offences where such an offence has not been committed in the previous two years ('first time' in this instance) an informal restorative resolution should be deployed. An informal resolution should be limited to the following low-harm, first-time offences – minor theft (such as shoplifting, bike theft and theft from a vehicle) and criminal damage (vandalism). An informal resolution should not be deployed for repeat offences. Nor should one be deployed for violent, sexual, weapons or drugs offences, or for more serious theft offences such as burglary or robbery.

Such a disposal should be used in two ways.

1. **Street restoration:** where it is a relatively straightforward case it could be a simple on-the-street disposal, used by a police officer or PCSO, in which the offender apologises to the victim and, where practicable, agrees to make amends in some way. This is comparable to the existing youth restorative disposal.
2. **Neighbourhood resolution:** for cases where low-level offending has had a significant impact on a community and involved a number of victims, it could be referred to a local neighbourhood justice panel (see chapter 2). Those matters currently channelled through the existing 'community resolution' disposal (see table 1.1 above) would be incorporated through this channel.

This change would build upon the existing youth restorative disposal by encompassing first-time offenders over the age of 18, and by expanding its use across every police force area.

As with the YRD, both the offender and the victim would have to agree to participate in an informal restorative resolution of this kind. However, if the offender did not agree, the police could simply charge the suspect with the offence. This provides a strong incentive to cooperate.

### **Level two: restorative conditional caution**

Where the police feel that a case merits a youth or adult caution, where there is a personal victim, and where the offender accepts guilt and consents to the process, the victim should be offered some form of restoration in the form of a face-to-face or written apology and, where appropriate, either financial compensation (where feasible) or unpaid community work. The result would be a conditional caution with reparative conditions attached. If these conditions were not complied with, the offender would be charged with the original offence. If

the offender chose not to consent to the conditions, then they could simply be charged, which would provide an incentive to cooperate.

We should be flexible about exactly how any restorative conference is to work, so long as it follows a clear restorative justice script and there is proper training for those facilitating the process. For most cases, face-to-face restoration would take place at the police station following the arrest; for others where the offence has had a significant impact on the community (that is, with a number of victims) it would be more appropriate for it to be referred to a restorative conference delivered through a local neighbourhood justice panel. We explore how such panels would operate in chapter 2.

To facilitate this reform, and to save time, we should consider removing the requirement for the Crown Prosecution Service to authorise conditional cautions.

### **Level three: restorative justice in between conviction and sentencing by a court**

As we have seen, for more serious cases that have gone to court there is also some scope to deploy a restorative process. Currently, young offenders pleading guilty at a youth court for a first-time offence are referred automatically to a youth offender panel involving the YOT, community volunteers and, sometimes, the victim.

The 2013 Crime and Courts Act already permits courts to defer sentencing after a conviction in cases where a restorative conference is deemed appropriate. However, this should be extended to include a presumption across the system that every victim should be offered a restorative process where the offender has been found guilty. This should happen in between conviction and sentencing. In cases in which an offender is likely to receive a community sentence, suggestions for reparation to the victim or the community could be discussed during that restorative conference and then imposed as part of that community order or youth rehabilitation order.

In cases where the offender does not consent, such as when guilt remains contested, a face-to-face restorative conference would be pointless and probably counterproductive. However, with the offender having been found guilty by the court, the victim should be asked to suggest forms of reparation, whether financial or in kind, which can then be taken into consideration at sentencing.

Because this reform would cause delays in the court system, we propose that we start by introducing the entitlement at levels one and two, and bring in the level-three entitlement later. We discuss the resource implications of this below.



**Table 1.2**

How the right to restorative justice would work

Offences to which it can be applied	What happens now?	What would happen?	Is an admission of guilt required?	Whose consent is required?	Forms part of a criminal record?	Authorising agent	How many cases would be covered? (assuming 20% take-up, 2013 recorded crime figures)*	Resource implications
<b>Level 1: informal restorative resolution</b>	The following first-time minor criminal offences: minor theft and criminal damage; consideration should also be given to including common assault (without injury). In all cases these must be offences with a personal victim.	For adults either a PND (penalty notice for disorder) or arrested and given a caution. For young people in participating police forces, a youth restorative disposal in some cases.	Yes	Victim and offender. If the offender does not consent the police may then move to level 2 DBS check, which results in a criminal record or charge.	No, but may be disclosed as part of enhanced DBS check.	Police or referral by police to a neighbourhood justice panel.	6,511 cases currently dealt with by caution could have been dealt with by informal resolution. If common assault (without injury) included within remit assault offences were a further 8,516 cases could be dealt with in this way. 4,705 PND cases would have to include a restorative element.	47,383 hours of police time could be saved if the police save 8 hours for each caution replaced by an informal resolution. If common assault offences were included, an additional 8,516 cautions would be replaced by an informal resolution, saving a further 68,126 hours of police time.
<b>Level 2: restorative conditional caution</b>	Any offence with a personal victim which the police deem appropriate for a youth or adult caution or conditional caution.	Offender is arrested and given a youth or adult caution or conditional caution.	Yes	Victim and offender. But if the offender does not consent the police may charge, providing incentive to comply.	Yes	Police or referral by police to neighbourhood justice panel. To facilitate the process we should consider removing the need for CPS approval for conditional cautions.	21,951 restorative conferences from a pool of 109,754 relevant cautions.	Assuming 2.5 hours extra per conference, 54,877 extra hours of police time.
<b>Level 3: in court in between conviction and sentence</b>	Any offence where the victim requests a restorative process.	There is no restorative moment in between conviction and sentence.	Conviction establishes guilt but if the offender disputes the outcome a conference would not be meaningful. In that case reparative conditions suggested by the victim could be included in the sentence by the judge or magistrate.	Victim and offender. But if offender does not consent, the court can still impose reparative conditions in the sentence following discussion with the victim.	Yes	Magistrates' or crown court. The probation service manages the restorative process.	From a pool of around 270,000 convictions, 54,000 restorative conferences.	This number of conferences would slow down the court system. We therefore propose delaying introduction and exploring whether remote technology and other procedural reforms could facilitate implementation.

Note: All data taken from Criminal Justice Quarterly Statistics covering the 12 months to December 2013; <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>. \*20 per cent take-up is based on the take-up of the youth restorative disposal and the experience of Thames Valley Police with restorative cautions. Offences included are those that are judged to involve a personal victim. Offences without a personal victim, such as crimes against society, motoring offences, drug offences and possession of weapons offences, are excluded. Fraud cases are excluded due to likely complexity.



## 1.5 Implications

Clearly a shift towards the more systematic use of restorative justice throughout our system has resource implications. In the short term, we will need to invest in our capacity to deliver this new offer for victims. However, the more widespread use of restorative justice as an informal disposal, in place of arrests and cautions, should save the police time and money. Moreover, evidence about the use of restorative justice in more serious cases suggests that it will lead to lower reoffending rates and therefore save money in the longer term (Shapland 2008).

We anticipate that the main resource implications would be as follows.

### **Dealing with more low-level, first-time cases through informal resolution rather than a formal sanction will save the police time and money.**

Diversion away from the formal system through the more widespread use of restorative resolutions for first-time, low-level offences such as minor theft and criminal damage should save time. An on-the-street informal resolution of this kind is much less time-consuming and costly than arresting someone and issuing them with a caution, which involves extensive processing and paperwork at the police station. If more of the offences that currently receive cautions were to be dealt with in this way, there would be a resource saving to the police.

Police forces report the following levels of savings from replacing formal sanctions with a restorative disposal.

- The main savings come from the fact that it takes significantly less time to deliver an on-the-street restorative disposal than it does to arrest someone and impose a formal sanction. As referred to earlier in this report, an evaluation of the youth restorative disposal pilots found that while it took on average 11 hours to issue a reprimand, it took two and a half hours to deliver a restorative conference, and just an hour to deliver a street YRD. Reprimands did not only take longer, they also involved officers of a more senior rank (Rix et al 2011).
- An Association of Chief Police Officers (ACPO) survey of police forces deploying restorative justice found that in Hertfordshire a street YRD cost £15.95, compared to a cost of £149.79 for a reprimand. Meanwhile, in Cheshire, an on-the-street restorative disposal cost just £20.21, which saved £157.09 per case relative to an offender having been arrested and brought into the station for formal sanctioning. Cheshire projected an annual saving from the use of restorative justice of £497,000 per year (Shewan 2010).

The time saved by deploying a restorative resolution as opposed to a formal sanction varies across forces. In the case of the YRD there was a 10-hour time saving where a reprimand was replaced with a level 1 disposal and an eight-and-a-half-hour saving where a reprimand was replaced with a restorative conference. For the purposes of our calculations we conservatively assume an eight-hour time saving for street-level restorative justice.

So, how much time would be saved if a restorative resolution were rolled out along the lines we suggest? The only available data comes from the YRD process evaluation, where roughly 30 per cent of the fall in the use of reprimands over an 18-month period can be attributed to their replacement by YRDs (Rix et al 2011). If 20 per cent of cautions for minor theft and criminal damage offences over the 12 months to December 2013 had been replaced by restorative resolutions, that would have translated into 6,511 fewer cautions. If each of those saved the police

eight hours in administering a caution, 52,088 hours of police time would have been saved.<sup>5</sup>

However, in some cases of vandalism and retail theft, penalty notice for disorders (PNDs) are often used by the police. If a restorative offer had to be made in these cases, this would be more time-consuming than simply issuing a PND. In the year to December 2013 there were 23,524 PNDs issued for retail theft and criminal damage offences.<sup>6</sup> If an on-the-street resolution taking an additional one hour was deployed in 20 per cent of these cases, this would mean an extra 4,705 hours of police time. On balance, therefore, we conclude that 47,383 hours of police time could be saved as a result of the right to restorative justice being introduced at level one.

### **Offering reparation where a caution is deployed would require additional resources.**

Offering a restorative conference in cases where a caution would normally be deployed clearly has resource implications for the police and other agencies. However, the costs do not appear prohibitive.

- Officers would need to be trained in restorative techniques. However, many forces already incorporate restorative justice into existing officer training, and ACPO has estimated that 18,000 constables and PCSOs have already been trained in restorative justice techniques (Shewan 2010). The costs of additional training are likely to be relatively modest.
- In the YRD pilots it was estimated that a restorative conference took two and a half hours of police time to deliver. Not every victim will choose a face-to-face conference – in the case of restorative cautions in the Thames Valley, 16 per cent chose to do so. If we assume 20 per cent of offences where there was a personal victim and which attracted a caution in the 12 months to December 2013 required a restorative conference, this would require an extra 54,877 hours of police time.<sup>7</sup> As much as 86 per cent of this would be covered by the time saved by deploying restorative disposals in place of formal sanctions at level one. Further time could be saved if we expanded the range of offences at level one to include, for example, assault without injury, as is done by some police forces with the YRD.<sup>8</sup>
- There will need to be much stronger and more systematic victim liaison.
- We will need a proper system of quality assurance to ensure that the restorative interventions deployed are carried out to a high standard. The College of Policing should work with the Restorative Justice Council on setting standards, accrediting training providers and monitoring practice.
- In cases where reparation requires compensation or unpaid work this will require monitoring and sign off by the YOT or the probation service.

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5 There were 32,555 cautions for minor theft and criminal damage offences in the 12 months ending December 2013 (see <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>). A 20 per cent reduction would have meant 6,511 fewer cautions that year. If each restorative disposal takes eight hours less than a caution does, that would have translated into a saving of 52,088 hours of police time.

6 See out-of-court disposals table at <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>

7 There were 181,017 cautions issued in the 12 months to December 2013. If we exclude the 6,511 offences that we calculate could have been dealt with at level one, and a further 64,752 offences that we assume lack a personal victim (some summary non-motoring, drugs, possession of a weapon and miscellaneous crimes against society offences), that leaves 109,754 cautions. If we assume that 20 per cent would have required a restorative conference which would have taken 2.5 hours each, that translates into 21,951 restorative conferences taking 54,877 extra hours of police time (see outcomes by offence tables at <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>).

8 There were 42,579 cautions issued for common assault in the 12 months to December 2013. If restorative disposals had been used instead of a caution in 20 per cent of these cases, this would have translated into 8,516 fewer cautions and saved a further 68,126 hours of police time (see outcomes by offence tables at <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>).

However, schemes can be designed in such a way that the onus is put on the offender to demonstrate compliance, which would help to hold down costs (Neyroud and Slothower 2014 forthcoming).

### **Greater use of neighbourhood resolution will require increased capacity.**

We recommend that this expansion of restorative justice should be supported by the development of neighbourhood justice panels throughout the country. These should be modelled on the existing youth offender panels and the recently piloted neighbourhood justice panels. We discuss the rationale for such a system and the cost implications in chapter 2. However, it should be noted that because this is a volunteer-led process, the upfront costs are not large. Furthermore, most participants in recent pilot schemes expected the panels to save the police time by preventing multiple callouts to deal with antisocial behaviour, neighbour disputes and other low-level matters.

### **More systematic use of restorative justice between conviction and sentencing would mean it would take longer to process a case through court.**

In cases where the offender accepts guilt, providing victims with the right to a restorative conference in between conviction and sentencing would clearly have an impact on the time it takes to process a case through court. We calculate that in the 12 months to December 2013 there were around 270,082 indictable and summary convictions for offences that are likely to have a personal victim and should in principle be suitable for restorative justice. If victims chose to exercise their right to restoration in 20 per cent of these cases, that would require 54,016 restorative conferences.<sup>9</sup> As things stand, this is likely to slow down the court process and therefore before bringing in this level-three entitlement we should consider whether it could be simplified through the use of remote technology and procedural changes. Where a physical conference is required, the process would often have to take place in custody, and would therefore have to be facilitated by the probation service or the YOT and the prison service, with support from the police, as appropriate. The national probation service or the relevant YOT should be the lead agency in delivering restorative justice in these cases.

## **1.6 Conclusion**

This chapter has made the case for a radical expansion of restorative justice in our criminal justice system. The evidence suggests that it would both improve victims' confidence in the criminal justice system and reduce reoffending. A right to restoration for all victims, in cases where an offender accepts guilt and consents, could be introduced as part of the Victims' Code or a new Victims' Law. It would operate at three levels: replacing the use of formal sanctions such as cautions and PNDs for a number of lower-level, first-time offences; running alongside existing youth and adult cautions; and taking place between conviction and sentencing in the case of more serious crimes that have gone to court. We suggest that a level-one and level-two entitlement be introduced first. Further work is required to look at the practicability of the entitlement at level 3. For lower-level offences, restoration should be delivered mainly on the street by a police officer or PCSO. In more complex cases and in cases where an arrest and caution is deemed appropriate, there should be a restorative conference either at a police station or at a neighbourhood justice panel involving members of the community.

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<sup>9</sup> See conviction tables at <https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>

## 2. PARTICIPATORY JUSTICE

In chapter 1 we described how victims can feel disconnected from our criminal justice system, and how an expansion of restorative justice would give victims a stronger voice and more direct reparation for harm. In this chapter we explain how crime damages a further relationship – that between offenders and the community in which they live – and how the criminal justice system perpetuates this by removing the community from any real role in either punishment or desistance. We call for greater community participation in both areas. First, there should be an expansion of the role of community justice in England and Wales through the establishment of a network of neighbourhood justice panels in every part of the country. These panels would give local residents much more involvement in facilitating resolutions between conflicting parties, in helping to decide reparation for harm through restorative justice, and in encouraging offenders to desist from crime. Second, there should be a greater mobilisation of the resources in the community to help offenders get their lives back on track. In particular, we recommend the creation of a new social enterprise that would be responsible for placing ex-offenders in jobs with employers.

### 2.1 Community justice

#### Public confidence in the criminal justice system

The public lack confidence in our current system of criminal justice. According to the *Crime in England and Wales 2010/11* survey:

- only 43 per cent of respondents were confident that the criminal justice system is effective overall, with 57 per cent not confident
- 73 per cent of respondents were not confident that courts are effective at giving punishments that fit the crime
- 56 per cent lacked confidence that courts are effective at dealing with cases promptly
- 71 per cent lacked confidence that prisons are effective at punishing offenders
- 80 per cent lacked confidence that prisons are effective at rehabilitating offenders
- 77 per cent lacked confidence that the probation service is effective at reducing reoffending (Chaplin et al 2011).

The only aspects of the system in which most people have confidence were the ability of the police to catch criminals (76 per cent are confident) and in the effectiveness of the Crown Prosecution Service (CPS) at prosecution (51 per cent are confident). This amounts to a wholesale lack of confidence in the criminal justice agencies to appropriately punish offenders and tackle reoffending.

Many experts believe that this lack of confidence in the system is in part caused by a knowledge gap. Tellingly, most people significantly underestimate the severity of sentencing.

- Sentencing statistics published by the Ministry of Justice for 2011 show that 71 per cent of all males aged 21 or over who were convicted of burglary were given an immediate custodial sentence – however, 86 per cent of the public in the 2010/11 Crime Survey (Chaplin et al 2011) thought that the custody rate was lower than that.
- The Ministry of Justice's 2011 sentencing statistics show that 99 per cent of convicted rapists are sent to prison, but almost half (48 per cent) of the public thought the custody rate was lower than that (Hough et al 2013).

The Ministry of Justice recently conducted an experiment online called ‘You be the Judge’, in which members of the public were given information about a real court case, were asked to pass their own sentence, and were then shown the actual sentence given by the judge (see MoJ 2013c). Extraordinarily, given the views highlighted above, this found that from its launch in March 2010 to 31 December 2012, of all complete user experiences (74,000):

- 45 per cent resulted in the user selecting a less severe sentence than the judge and 39 per cent resulted in the user selecting the same sentence as the judge; only 16 per cent resulted in the user selecting a more severe sentence
- 52 per cent started with the view that sentencing is ‘about right’, but 72 per cent ended with that view
- 41 per cent started with the view that sentencing is ‘too lenient’ but only 13 per cent ended with that view.

There are therefore strong grounds for concluding that increasing public knowledge of and participation in the criminal justice system is critical to improving public confidence in it.

### **Experiments in community justice**

Community justice seeks to ‘involve citizens in the processes of social regulation and control that are essential to crime prevention and justice’ (Fagan 2003). Community justice is distinct from restorative justice, although the latter may be deployed in community justice models. It is also distinct from the notion of ‘problem-solving courts’, which seek to widen the scope of judicial involvement in the management of the offender and the prevention of reoffending – although community justice institutions do often deploy a problem-solving approach. Community justice is about establishing ‘legal institutions that bring citizens closer to legal processes’, thereby creating the ‘prospect of mutual accountability between courts and the community’ (ibid).

One of the most influential international examples of community justice in practice has been the Red Hook Community Justice Center in Brooklyn, New York. At Red Hook a single judge presides over all cases, which would previously have fallen under the separate jurisdictions of family, civil and criminal courts. The judge is able to impose a range of unconventional sanctions, from restorative justice conferences to community service projects, and also sees offenders in follow-up hearings throughout the duration of their sentences. The centre provides various support services outside of the criminal justice system and also houses a youth court in which young people deal with offences committed by their peers. The goal of the centre is to create a ‘one-stop shop’ for community members to engage with the justice system.<sup>10</sup>

This approach to community justice was introduced to the UK in 2005 with the establishment of the North Liverpool Community Justice Centre. As with Red Hook, the North Liverpool Centre used a single judge to address a range of offences in a multi-jurisdictional court and hold follow-up hearings; it organised restorative justice conferences and community payback contracts, and housed numerous service providers from outside of the criminal justice system. Victims and community members could be consulted on suitable responses to offences, and were also invited to report local problems confidentially (RJC 2004).

The record of the North Liverpool Community Justice Centre is highly contested. The court was closed in 2014 after the government concluded that its volume of work had decreased to a level that could not justify the cost (BBC News 2013b). While supporters of the centre have noted that crime rates in North Liverpool fell by 7.2 per cent from 2005 to 2010, a higher rate than elsewhere in Liverpool,

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<sup>10</sup> See <http://www.courtinnovation.org/project/red-hook-community-justice-center>

sceptics have countered that these reductions do not prove that the community justice centre was any more successful than a traditional magistrates' court.<sup>11</sup>

Although it is true that the magistracy in England and Wales – which involves around 22,000 community volunteers – is one of the oldest forms of community justice in the world, there is a great deal more that could be done to reform the role of the magistracy. In particular, magistrates should get out of traditional court settings, adopt problem-solving approaches, and integrate their work with the local services that are critical for offender rehabilitation (Bowen and Whitehead 2013, Chambers et al 2014). A number of magistrates' courts have been experimenting with reforms along these lines – for instance, the Salford Community Justice Centre (Berman and Fox 2009).

### **Neighbourhood justice panels**

In 2011 a two-year pilot project for neighbourhood justice panels (NJPs) was set up in 15 areas in England and Wales. A panel meeting typically consists of local volunteers who are trained in facilitating restorative conferences, the offender and the victim, a local NJP coordinator and the referring agencies – generally the police but potentially the local authority or registered social landlord.

NJPs take cases which are suitable for informal resolution, such as non-criminal activity like neighbour disputes and antisocial behaviour. They are not permitted to cover indictable cases, domestic abuse or domestic violence, hate crime, dishonesty offences, assault or instances of behaviour where a more formal out-of-court disposal is required.

Panel meetings are conducted by community volunteers, who use a restorative justice script as a prompt. These scripts cover ground rules, a description of the incident, a discussion of how each party felt at the time and how they feel at the meeting, an exploration of what needs to happen to make things right and some actions agreed as to how both parties can move forwards. A written agreement is normally signed by both parties and the NJP coordinator monitors compliance, alongside the police and other referral agencies.

A recent evaluation of the panels (Ministry of Justice 2014d) came to the following conclusions.

- By the end of September 2013 around 300 cases had been referred to NJPs across the six case study areas studied in depth, and around 120 cases had resulted in an NJP meeting.
- The police were responsible for around two-thirds of referrals into the NJPs across the 15 test areas.
- The number of volunteers recruited varied from 10 to 29. The areas that had recruited fewer volunteers tended to be smaller in size or had had fewer referrals. Operational staff were generally pleased with the level of interest from volunteers.
- The types of cases referred to an NJP included young people involved in antisocial behaviour; graffiti; damage to or theft of public property; abusive language; street drinking; and occasionally out-of-scope cases such as assault and theft. The intention was that early intervention would help stop these behaviours escalating.
- Staff and volunteers felt that neighbour disputes (including noise disturbances, dangerous dogs, dog-fouling and parking issues) made up a high proportion of NJP cases. However, in some areas, they considered long-running disputes unsuitable for NJPs and felt that mediation might be more appropriate.
- The panels were perceived to have effected a large number of successful resolutions that dealt with a problem. NJPs were perceived to facilitate behaviour change by creating a controlled environment where panel users could listen to

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11 See <http://www.itv.com/news/granada/2013-10-29/liverpool-mp-blasts-closure-of-community-justice-centre/>



each other's views and accounts. Staff felt that NJPs helped to stop behaviours escalating without the negative and stigmatising impacts that come from having a criminal record. Emotional effects were reported, such as relief at being able to put one's side of the story and see a situation resolved; feelings of improved safety also arose from panel users becoming acquainted with the perpetrator.

- It was felt that NJPs could offer efficiency savings for the police and other referral agencies, who would otherwise have to spend more time dealing with antisocial behaviour and neighbour disputes, often with multiple callouts and expense.
- The costs of the NJPs were modest and included set-up, the cost of an NJP coordinator, restorative justice training for volunteers and staff, volunteer expenses, marketing and room hire. No government funding was provided and areas met the cost from existing funds. The main cost was the employment of the NJP coordinator whose job involves receiving referrals, carrying out risk assessments, liaising with panel members before and after the meetings, recruiting and coordinating volunteers, and promoting and marketing the NJPs, particularly to partner agencies.
- Training of volunteers generally took two or three days at weekends, which included restorative justice theory and practice at facilitating restorative conferences.
- Strategic support from the police was vital given their role in the referral process.

### **Expanding neighbourhood justice**

As we have shown above, the public lacks confidence in the justice system, but greater public knowledge and involvement could improve confidence. We have also presented evidence of the proven benefits of engagement in restorative justice processes, particularly in terms of high levels of victim satisfaction and lower rates of reoffending. All of this leads us to conclude that there should be a major expansion of community involvement in delivering restorative justice throughout the country. Given the successful trials of neighbourhood justice panels, we recommend a major expansion in the number and scope of these panels.

### **We recommend that every unitary or district authority be required to establish neighbourhood justice panels in their area.**

Every panel hearing would consist of two community volunteers who are trained in restorative justice techniques. They would chair and lead the discussion and be accompanied by either the offender and the victim or, in cases where this is not clear, the various parties to the dispute. Also present will be the local neighbourhood justice coordinator and the public body referring the case – typically the police, but this could also be the local authority or registered social landlord.

The following types of case should be referred to the NJP at the discretion of the police or other referring agency:

- low-level antisocial behaviour or neighbour disputes
- level one criminal offences: a first-time, low-level offence where the police feel a neighbourhood resolution is appropriate (for example, where there is more than one victim)
- level two criminal offences: low-level offences attracting a restorative conditional caution and where the police judge that neighbourhood-led restorative justice is appropriate.

In order to facilitate this, every unitary or district authority would have to employ a neighbourhood justice coordinator, who would be responsible for taking referrals, building partnerships with local agencies, recruiting and training volunteers, organising the panel meetings, and monitoring compliance with agreements reached between the parties.

A number of attendant matters should be left to local discretion:

- whether the NJPs will encompass or sit alongside the existing youth offender panels, which have a similar structure but currently principally deal with referral orders from youth courts
- whether there should be a single pool of volunteers covering a whole local authority area, or whether that area might be divided up into a smaller number of panels corresponding to local identities or district and parish council areas (issues of impartiality and risk of intimidation, for example, mean it may not be appropriate for panel members to be recruited from the same estate or ward as the offender)
- the format of the panel session and the form of restorative facilitation employed
- methods for recruiting volunteers
- the venue for the NJP
- the precise mix and number of offences dealt with, within a scope set out by the Ministry of Justice, will ultimately be left to the discretion of the local referral agencies – in most cases the police – as and when they feel confident an NJP infrastructure is in place to take on the requisite caseload. This will allow the NJPs to be built up over time as local agencies become confident on matters such as the quality of the volunteers, the level of training and the capacity of the coordinator and administrative staff to handle the caseload.

### **Neighbourhood justice panels: resource implications**

The upfront costs of establishing NJPs are not large: they include set-up, the cost of an NJP coordinator, restorative justice training for volunteers and staff, volunteer expenses, and marketing and room hire. The principal cost is employing a member of staff to coordinate the project with administrative support. The test areas managed to do this without any dedicated additional funding from the Ministry of Justice. However, we must bear in mind that we envisage the NJPs taking on larger case loads, including a proportion of low-level criminal offences where the police judge neighbourhood resolution to be appropriate. If each of the 326 unitary and district authorities were to be given an additional £150,000 a year to run the NJPs, the cost to the exchequer would come to around £50 million.

## **2.2 Community participation in desistance**

Desistance from crime<sup>12</sup> is known to be facilitated by a number of interconnected factors: preventing homelessness, helping offenders get skills and jobs, tackling physical and mental health problems, dealing with addiction, strengthening family relationships, tackling poverty and debt, and improving personal attitudes and behaviour. These factors are all the responsibility of numerous different parts of the public service landscape (education providers, the NHS, Jobcentre Plus, and so on).

However, the role of the wider community in encouraging desistance could be much greater. There are some promising initiatives. For instance, the government is rightly seeking to promote the recruitment of adult volunteers to mentor ex-offenders. Mentors can help to provide a role model for an offender and demonstrate that they can lead a successful life without crime. They are often more widely trusted by offenders than paid professionals such as social workers, the police or probation officers (Fletcher and Batty 2012).

One area that is particularly ready for greater public involvement is helping ex-offenders to find work. We know that getting a person into a job is one of the most effective ways of improving desistance. A recent Ministry of Justice study found that P45 employment in the year after release from prison lowered the reoffending rate

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12 Desistance from crime means the long-term abstinence from criminal behaviour among those for whom offending had become a pattern of behaviour (McNeill et al 2012).



by 9.4 percentage points among those who had served a sentence shorter than a year, and by 5.6 percentage points among those who had been in prison for a year or more (MoJ 2013d).

The employment rate among ex-offenders, however, is dire: in 2012–13 only 26 per cent of ex-prisoners found a job on release, and after 12 months 49 per cent of ex-prisoners were on out-of-work benefits. There are numerous barriers to employment for ex-offenders. One is very poor skill levels: it is estimated that 48 per cent of prisoners are at or below GCSE level (grades D to G) in reading, 65 per cent are below that level in numeracy, and 82 per cent in writing (PRT 2013).

Another barrier is the attitudes of employers towards taking on ex-offenders. A 2010 survey found that only 12 per cent of employers said they had employed someone with a criminal record in the last three years, while 37 per cent say they deliberately exclude those with criminal records when recruiting (ibid). Small firms are the most likely not to employ ex-offenders (CfBT 2011).

It is clear that employers perceive taking on an ex-offender to be a risk. The challenge is therefore to overcome negative attitudes and make the process as clear, straightforward and worry-free as possible for employers.

This area is ripe for institutional innovation – and there is a model to follow. To overcome barriers to small and medium-sized businesses taking on apprentices, who are also seen as a risk, the government has created Apprenticeship and Training Agencies (ATAs). ATAs are businesses whose main functions are to source employers and candidates interested in apprenticeships. Apprentices are employed by the ATA but hired out to host employers who provide productive work. The ATA delivers the training as part of the apprenticeship. There are currently around 40 ATAs operating in England.<sup>13</sup>

We recommend that the government set-up a social enterprise, modelled on the existing ATA model. Its role would be to employ and place ex-offenders or young adult offenders into jobs and apprenticeships. It would focus on those leaving custody as they are likely to face the highest barriers to work.

We envisage that this social enterprise would:

- directly employ ex-offenders
- provide a period of basic education in reading, writing and numeracy to raise skill levels, alongside training in soft and interpersonal skills
- hire these ex-offenders out to a network of employers
- provide ongoing training as part of apprenticeships
- bear the risk if the employer is dissatisfied and wishes to terminate the arrangement
- work with the ex-offender to help them stay in work or training after the placement.

This new agency would start by taking small numbers of offenders, but we should aim for growth. In particular, it could be feasible to eventually offer a place to all those under 18 leaving custody – there were 2,780 under 18-year-olds sentenced to custody in 2012/13 (MoJ 2014a).

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13 See <http://www.apprenticeships.org.uk/employers/steps-to-make-it-happen/gta-ata.aspx>

## 2.3 Conclusion

This chapter has argued that the community has been locked out of the criminal justice system. Although the magistracy represents an important reservoir of criminal justice volunteers, magistrates' courts are remote from the neighbourhoods damaged by crime. To foster greater public involvement in the system, we argue that every local authority should establish neighbourhood justice panels to deal with low-level crime and antisocial behaviour. This chapter has also argued that community participation represents a huge untapped resource with which we can meet the challenge of promoting desistance from crime. In practical terms we recommend the establishment of a social enterprise to broker employment for offenders leaving custody.

## 3. JOINED-UP JUSTICE

Strong and consistent relationships between offenders and those charged with supporting their rehabilitation are a critical tool in achieving desistance from crime. However, our current offender management system, rather than facilitating this consistency, provides only limited contact between offenders and probation officers. Moreover, offenders tend to get passed around an array of local agencies, which operate without either a holistic view of their needs or a clear responsibility for preventing reoffending. Although the government's probation reforms are intended to create a stronger focus on desistance, in reality they make matters worse by fragmenting probation support between a national probation service and centrally commissioned 'community rehabilitation communities'.

In order to address this failure, in this chapter we make the case that we should look to the most successful part of our offender management system: the youth offending teams (YOTs). At their best, YOTs provide personalised and intensive support through key workers, who have the time to develop a relationship with a young person and understand their needs. Because YOTs bring together different local agencies and professionals under one roof, they are able to look at a young person's problems in the round. We call for the remit of the youth offending teams to be extended to include all offenders under the age of 21. This should help to establish more consistent relationships and holistic support for young adult offenders, at precisely the time when they are most likely to reoffend. This should be accompanied by devolving budgets and commissioning powers for custody places for those under the age of 21 to enable investment in more intensive and effective alternatives to custody.

### 3.1 Desistance

Desistance from crime means long-term abstinence from crime among those for whom offending has become a pattern of behaviour (McNeill et al 2012). In addition to punishment, restoration and deterrence, it is one of the core goals of our criminal justice system.

A review of the existing evidence on desistance highlights the following conclusions (O'Neill et al 2012).

- There is an interplay between structural and societal factors and personal and subjective factors in achieving desistance.
- Maturation clearly plays an important role, given that peak offending occurs in the late-teens, but it is a complex one which encompasses biological ageing, social transitions and life experiences.
- The bonds connecting the individual to society and its institutions are important: for adolescents they are cemented, or otherwise, by family, school and peer groups. Sampson and Laub (1993) argue that it is when these bonds and relationships are weakened or broken that offending is likely to occur. Particular life events such as marriage, employment and child-rearing play a critical role.
- Maruna (2001) emphasises the importance of self-identity: desistance among ex-offenders normally requires the development of a positive self-identity. Ex-offenders, it is understood, go through a process in which they first recognise a need to change, then have an opportunity to act upon that

change, there is consequently a change in the way they see themselves. This encompasses the interplay between structure and agency.

- There are a number of implications from the literature for the practice of criminal justice social work (O’Neill et al 2012):
  - it is vital that professionals display an interest in the lives of ex-offenders, which then allows strong relationships to develop
  - probation officers should support ex-offenders with housing, employment and health issues, although this is very often not done and so offenders often have to rely on their own social networks
  - desistance is not a linear process – there will be setbacks and reversals – and officers should be prepared to act to get things back on track
  - it is a deeply personal and therefore complex process – there is no standardised blueprint
  - it is important to generate a sense of hope
  - relationships between offenders and professionals, and between offenders and the wider community including family and friends, matter
  - there should be a focus on building up offenders’ positive capacity to desist
  - a sense of agency needs to be nurtured: ‘rehabilitation’ is not something that can be done to someone
  - there should be an emphasis on developing new positive identities: ‘father’, ‘worker’, and so on
  - there should be a move away from identifying people as ‘offenders’, associating them with a negative past.

Studies in England and Wales have found that our probation system does not provide enough of this kind of positive practice (McNeill et al 2012). There are a number of reasons for this.

- The probation service is under-resourced – compared to the youth offending teams, certainly – and so probation officers have less time available to spend with offenders, which results in low-intensity relationships.
- There has been a shift away from casework – in which a probation officer takes holistic responsibility for progress, corraling different agencies to meet complex needs – and towards ‘case management’, in which the probation officer is reduced to managing referrals to other agencies. The relationship between the offender and their probation officer has been downplayed (Burnett and McNeill 2005).
- Probation has not been integrated properly with the work of other local public services. As we shall see, this is likely to get worse when the current government’s planned reforms are rolled out.

## 3.2 ‘Transforming rehabilitation’: the wrong reforms

### The government’s reforms

The government’s plans for reforming the rehabilitation of offenders are set out in the consultation paper *Transforming Rehabilitation: A Strategy for Reform* (MoJ 2013e). The plan starts from the correct premise that the level of reoffending by offenders going through the criminal justice system has remained unacceptably high for too long.

The reforms contain five major elements.

1. The probation service is being broken up and new providers brought in to take responsibility for the rehabilitation of low- to medium-risk offenders. The country has been divided into 21 contract package areas, and private and voluntary sector providers have been invited to put in bids. At the time of writing, 30 providers, including large private firms, charities and employee

mutuals, have successfully passed the first stage of the bidding process (MoJ 2013f).

2. These providers will be paid partly 'by results', which in this case depends on their success in preventing reconvictions. As well as being rewarded if an offender is not reconvicted over a 12-month period, they will also be rewarded for reducing the overall number of reconvictions within the cohort of offenders for whom they are responsible. This is intended to mitigate against the dangers of providers simply focusing on the easier cases and 'parking' the more complex cases, who are harder to work with and may therefore consume more resources.
3. A publicly funded national probation service will remain in place, but in a slimmed-down capacity. It will be tasked with making risk assessments, providing advice to the courts and to the Parole Board, the allocation of all offenders on community sentences, sentence enforcement and supervision, and the management of high-risk offenders.
4. The government is expanding statutory rehabilitation support – to be delivered mainly by the new 'community rehabilitation companies' (CRCs) – to all 50,000 offenders sentenced to less than 12 months in custody (the group most likely to reoffend), most of whom currently receive no statutory support.
5. It is intended that there will be end-to-end rehabilitation support for offenders, creating much greater continuity of support 'through the prison gate'. This will be achieved by designating 70 prisons as resettlement prisons, whose inmates will mainly be moving into the surrounding local area upon release. Those on short-term sentences are likely to spend all their time in custody in a local resettlement prison, whereas longer-term prisoners will move into a resettlement prison for the last three months of their sentence. The local CRC will in many cases work with offenders upon their induction into prison, during the term of their sentence and upon their release. The governors of resettlement prisons will be expected to facilitate the CRC's engagement with prisoners.

### **The problems with the government's approach**

There is much to welcome in this package of reforms, in particular the extension of probation support for those who have been in prison for short periods. However, there are a number of problems with the government's approach, most of which specifically relate to the reorganisation of the probation service.

First, this reform further entrenches the divide between probation work and the work of other local public services. The providers who win the contracts will lack influence over most of the factors that affect whether or not somebody reoffends (notably the offender's family life, employment status, health and housing situation). As with the Work Programme, contracting-out service delivery silos on a national basis undermines the ability of local providers to integrate and coordinate provision around the individual user, which is essential for tackling complex problems such as reoffending, and developing the strong relationships between offenders and practitioners that the literature on desistance tells us are required. As we shall see, the success of the youth justice system has been based on a different locally integrated approach.

Second, the reform fragments services between a public probation service, which retains various enforcement functions, and contracted-out providers who have responsibility for the case management of most offenders. Fragmentation inhibits the exchange of information between the different local agencies and creates huge risks that people will 'fall between the cracks'. It is well known that many offenders, for instance, move frequently between high and medium risk, and whenever organisational divisions are created in this way there is a greater risk of things getting missed. With medium- and high-risk offenders living in the community, the consequences of such bureaucratic delays and oversights could be very serious indeed.

Third, the 21 contracts are too big, and this means that it is generally large private sector companies that will win them. As we have seen with the government's Work Programme, large payment-by-results contracts of this kind – which require cash up front and bidders who can take a substantial financial risk – push out the third sector and favour large multinational companies. Among the 30 companies who have made it through the first phase of the competition, there are a number of voluntary sector providers and some probation officer mutuals. However, there are also a number of large multinational companies such as A4E, Ingeus UK, Sodexo, Capita and Amey. If, in probation services, this process follows the same pattern as the Work Programme, it is very likely that the large private providers will take on the role of 'prime provider' in most areas.

The dominance of big private sector 'primes' is problematic for a number of reasons.

- They have less experience of working with offenders with complex needs than many local third sector organisations. The experience of charities on the Work Programme has been that they often feel pushed aside once bids are won and promised referrals do not materialise (see Taylor 2013).
- Their dominant role restricts the very competition and innovation that ministers want to introduce.
- Large, nationally commissioned contracts are also likely to be unresponsive to local needs and circumstances, as was found recently with contracts for the electronic monitoring of offenders (Gash et al 2013).
- They will generally lack the knowledge of existing local partnerships required to tackle reoffending, and may inhibit the multi-agency coordination necessary to deal holistically with reoffending.

Fourth, there are concerns about the funding for the new system. The government has claimed that these reforms can be implemented without spending additional money (Justice Committee 2013a). Indeed, overall funding for rehabilitation will fall. The Coalition government's two spending reviews have committed the Ministry of Justice to a budget reduction of £2.25 billion by 2014/15, relative to 2010/11. Of that reduction, £1.12 billion is to come from the National Offender Management Service (NOMS), whose total annual budget (departmental expenditure limits plus annually managed expenditure) will fall from £4.23 billion in 2010/11 to £3.11 billion in 2014/15. These reductions equate to 26 per cent of NOMS's annual budget by 2014/15, using 2010/11 as the baseline.<sup>14</sup>

The government is proposing to expand statutory services to those serving less than 12 months in prison while reducing the resources available, with the mainly private contractors taking the risk and bearing the upfront cost. In testifying before the Justice Committee on 2 July 2013, Richard Johnson, an independent consultant, noted that the Ministry of Justice 'has made it clear that it is looking for a cost saving of around 30 per cent through this procurement'. As he explained, 'If we take... a typical probation area that is being outsourced in this way, they currently spend about £30 million on their services as defined by the court orders. The ministry is looking for somebody to bid at around £20 million for delivery of those services, including the addition of the under-12-month supervision orders' (ibid).

There is clearly a risk that this could go wrong. Indeed the Ministry of Justice's risk register for the proposed reforms – unpublished despite several freedom of information requests, but leaked to the *Guardian* and *The Times* – stated that 'the cost will be dependent on the outcome of competition' and that there was an 80 per cent risk of the cost savings not being met.<sup>15</sup>

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14 IPPR calculations, using Ministry of Justice departmental report and accounts. See <https://www.gov.uk/government/publications/ministry-of-justice-annual-report-and-accounts-2012-13>

15 See <http://www.theguardian.com/politics/2013/jun/24/probation-privatisation-warning-chris-grayling> and <http://www.thetimes.co.uk/tto/news/politics/article3799474.ece>

### 3.3 The success of the youth justice system

Rather than gambling on a reform that is based on the struggling Work Programme model, we argue that ministers would have done better to learn from the aspect of the offender management system that has been most successful in recent years: the youth justice system. In what follows we describe the reforms to the youth justice system over the last decade and explain why outcomes, in particular in terms of diversion and a big drop in the numbers in custody, have improved faster than for adult offenders. This is, in part, because the way the youth justice system is organised promotes the kind of relational practice that is best placed to aid desistance.

#### **An overview of the youth justice system**

The Crime and Disorder Act 1998 first established a separate criminal justice system for youth offenders, with the principal aim of ‘preventing offending and reoffending among children and young people’ (MoJ 2013g). Young offenders are defined as those between 10 years old, the age of criminal responsibility in England and Wales, and 17 years old. This separate youth justice system is overseen centrally by the Youth Justice Board (YJB), a non-departmental public body now under the purview of the Ministry of Justice.

The local administration of the youth justice system is overseen by youth offending teams, which are composed of representatives from various agencies – with at least one representative from the local police, probation, social, educational and health services. As of September 2013, there are 161 YOTs across England and Wales. While the structure and work of youth offending teams often varies from one area to another, their ‘key tasks’ include:

- ‘assessing risks and needs of young offenders’
- ‘making recommendations to sentencers about the type and content of sentences’
- ‘delivering community-based sentences and ensuring compliance’, and
- ‘undertaking preventative work to reduce the number of first-time entrants’ (NAO 2010).

About 40 per cent of youth offences are addressed outside of the court system, through police youth cautions – these cases largely consist of first-time and less serious offences (ibid). The more serious and repeat offences are addressed through the court system. The majority of these cases result in various forms of community supervision, classified as youth referral orders or youth rehabilitation orders. After a court sentences a young person to a youth referral order, the offender is then referred to a youth offender panel, which consists of two community volunteers, the young person, the young person’s parents or carers, a YOT worker, and the victim as appropriate. Together the panel develops a contract for the young person’s behaviour, which should include reparative measures to address the harm done to the individual or community and interventions designed to address the risk of offending. Youth rehabilitation orders (YROs) are a more severe sentence, roughly analogous to community orders in the adult justice system. There are 18 different requirements which can be attached to a YRO, ranging from curfews to mental health treatment, from intensive supervision and surveillance to unpaid work (MoJ 2012).

Of those young offenders receiving court sentences, the percentage placed in custody has remained below 10 per cent each year for the last decade. Most custodial sentences are detention and training orders, which involve spending half the length of the sentence in custody and the other half under community supervision. A small proportion of youths receive longer-term sentences for very serious crimes or public protection, and other young people enter custody on remand. Custody for young offenders entails detention at secure children’s homes, secure training centres, or youth offender institutions (YOIs), depending on the age of the offender and the nature of the offence.



While the MoJ and the YJB are responsible for youths in custody, the local youth offending teams are responsible for community sentences and community supervision after custody, and also maintain contact with youth offenders during their time in custody.

In addition to their 'targeted work' with proven offenders, the preventative work of youth offending teams varies across local areas but typically involves targeting high-risk young people, such as those living in 'problem neighbourhoods', siblings of proven offenders, and perpetrators of antisocial behaviour (NAO 2010). The government's 2010 review of the youth justice system noted that this preventative work is not 'straightforward', given that around 20 per cent of young people exhibit risk factors for offending but only 2 per cent ultimately become young offenders (ibid).

The precise breakdown of the YOTs' sources of funding also varies across local authorities, but grants from the Youth Justice Board usually constitute around one-third of any given YOT's funding (Justice Committee 2011).

### **Outcomes**

Youth offending teams are held to account for delivery against three outcomes: diverting first-time entrants out of the criminal justice system to prevent them from getting stuck in a life of crime; reducing the numbers of young offenders in custody; and reducing reoffending. Against these metrics, YOTs have far outperformed the adult probation service.

#### *First-time entrants*

- The number of first-time entrants into the youth justice system fell by 67 per cent between 2002/03 and 2012/13, from 83,312 to just 27,854. From a peak in 2006/07 to 2012/13 the number of first-time entrants fell by 75 per cent.
- The number of young people being proceeded against in a magistrates' court fell by 60 per cent between 2002/03 and 2012/13.
- The number of young people sentenced to immediate custody fell by 61 per cent between 2002/03 and 2012/13.
- The number of young people on community sentences rose between 2002/03 and 2007/08 by 13 per cent but then fell by 55 per cent between 2007/08 and 2012/13.
- The number of young people sentenced overall rose by 3 per cent between 2002/03 and 2005/06 but then fell by 55 per cent between 2005/06 and 2012/13 (MoJ 2014a).

Specifically comparing the numbers in the adult system with those in the youth system we find the following.

- The number of first-time entrants in the adult system (18 and over) rose by 15 per cent between 2002/03 and 2006/07, but then fell by 31 per cent between 2006/07 and 2012/13; while the number of first-time entrants in the youth system rose by 25 per cent between 2002/03 and 2006/07, but then fell by 75 per cent between 2006/07 and 2012/13.
- The numbers of adults sentenced to immediate custody fell by 11 per cent between 2002/03 and 2012/13, compared to a fall of 61 per cent for juveniles.
- The number of adults receiving community sentences fell by 19 per cent between 2002/03 and 2012/13, compared to a fall of 48 per cent for juveniles.
- The total number of adults sentenced fell by 13 per cent between 2002/03, compared to a fall of 53 per cent among juveniles (MoJ 2014a).

#### *The numbers in custody*

One of the most dramatic trends in recent years has been the fall in the number of young people under the age of 18 in custody (all data MoJ 2014a). We should note



that young people only make up a small proportion of the custody population: at the end of June 2013 there were 1,249 under-18s in custody, compared to 6,272 young adults (18–20) and 76,704 adults aged 21 and over.

The contrast in the trends in the youth custody and adult prison populations is notable.

- The number of people under the age of 18 in custody fell by 49 per cent between 2002/03 and 2012/13, with the steepest decline coming after 2008/09, compared to a rise in the total average prison population between 2002 and 2012 of 18 per cent (MoJ 2014a, Berman and Dar 2013).
- Although we have seen a fall in the adult prison population in the last year of 2 per cent (June 2012 to June 2013), we have seen a much more dramatic fall in the youth custody population of 37 per cent for under-18s and 20 per cent for young adults over the same period.
- As a result while the prison estate overall is estimated at 14 March 2014 to be 12.7 per cent above certified normal accommodation (the level at which prisoners can be held in safe and decent conditions), the youth custody estate was operating in 2012/13 at just a 70 per cent occupancy rate (Howard League 2014, MoJ 2014a).

### *Reoffending*

Overall, reoffending in England and Wales has fallen slightly in recent years, but it remains high, particularly for those who spend short spells in prison.

‘Proven reoffending’ is defined by the Ministry of Justice as ‘any offence committed in a one year follow-up period and receiving a court conviction, caution, reprimand or warning in the one year follow-up. Following this one-year period, a further six-month waiting period is allowed for cases to progress through the courts’ (MoJ 2014b: 7). It should be noted that ‘true reoffending’ is likely to be higher given that only a proportion of offences are reported or detected.

Among adults, proven reoffending rates have fluctuated between 25 and 28 per cent since 2000, with there being a slight decrease overall of 0.9 per cent between 2000 and 2012 (MoJ 2014b). Among juveniles the reoffending rate is 35.5 per cent, showing an overall increase of 1.8 per cent between 2000 and 2012 (ibid). However, this increase is likely to be due to the dramatic fall of 49 per cent in the size of the youth reoffending cohort between 2000 and 2011/12. As the size of the cohort has shrunk, the average number of previous offences per offender in the cohort has risen every year since 2006/07, from 1.59 to 2.51 in 2011/12, an increase of 58 per cent. This strongly suggests that the youth offending teams are dealing with a smaller but more prolific cohort of offenders.

### **Explaining the success of the youth justice system**

As shown above, outcomes from the youth justice system have far surpassed those for adult offenders, most importantly in terms of the drop in the numbers of first-time entrants and the numbers held in custody. There has been less success in terms of reducing reoffending, but this is largely because the numbers entering the system have fallen so dramatically that those who remain represent more prolific and challenging cases.

It is not of course necessarily the case that diversion means less crime: it might simply mean fewer crimes being sanctioned by the criminal justice system. However, the justice committee argued in its report on the youth justice system that a growing body of evidence suggests that diverting children from formal criminal justice processes is ‘a protective factor against serious and prolonged reoffending’ (Justice Committee 2013b). The Office of the Children’s Commissioner argued that ‘a large minority of children and young people will “offend” at some stage; most of these offences will not be detected and most children will “grow out of crime” without any formal intervention. Coming into the formal system and

acquiring a criminal record can have a significant impact on a child's life and is ineffective in terms of reoffending' (ibid). Longitudinal research involving 4,100 children and young people concluded that the more enmeshed they became in the criminal justice system, the more harm was done and the less likely they were to desist from offending (Maara and McVie 2007). On this basis, it is very likely that the diversion of first-time entrants leads to less crime.

What explains the success of the youth justice system in reducing the number of young people getting brought into the criminal justice system?

#### *Changes to the accountability framework*

Prior to 2007, the government set the police targets for increasing the number of offences which received a formal sanction (NAO 2010). As a result, police officers were incentivised to issue out-of-court disposals and make arrests for relatively minor matters in order to meet their targets. As a consequence, many thousands of people were sucked into the formal justice system unnecessarily. The abandonment of that target in 2007/08 unquestionably led to a huge drop in the numbers of first-time entrants.

However, the fact that the number of first-time entrants in the adult system fell by 31 per cent between 2006/07 and 2012/13, while the number of first-time entrants in the youth system fell by 75 per cent over the same period, show that the scale of the change has been much greater in the youth system. Moreover, ever since 2006/07 there has been a sustained year-on-year fall, that the justice committee concluded could be ascribed to the work of the youth justice agencies (Justice Committee 2013b).

#### *The diversionary and preventative work of YOTs*

The diversionary and preventative work of the youth offending teams has been crucial. Although there has not been a robust evaluation of the effectiveness of different interventions, IPPR conducted interviews with YOT managers from around England. On the basis of those interviews and examining the literature on the youth justice system we can highlight the following key factors.

- **The key worker:** in all of the YOTs we looked at, each young person had a lead caseworker, plus other specialist staff who could become involved depending on the assessment of the young person's needs. A strong and consistent relationship between the young person and the key worker was felt by YOT managers to be critical, which is supported by the evidence on desistance cited above.
- **Multiagency teams:** different partner agencies second their staff into the youth offending team, meaning that staff who were, for example, focused on health issues sat alongside social workers, police officers and others within the YOT. They were effectively full-time employees of the team, under one line manager. Embedding a mixed team of professionals with different skills within the local authority brought together the relevant different agencies, which YOT managers reported had facilitated holistic approaches to problems which have multiple causes. The locally integrated approach stands in marked contrast to the government's proposals to 'contract out' probation to community rehabilitation companies.
- **Triage:** first developed in 69 local authorities as part of the 2008 Youth Crime Action Plan, the triage approach has played an important role in diverting lower-level and first-time offenders away from the formal justice system. As part of triage programmes, YOT workers assess young people within police suites, to better inform charging decisions and ensure that young people have access to the requisite support even before any court appearances.

- **Restorative justice:** in the youth justice system, restorative justice has been integrated into the process of diverting low-level offenders away from formal prosecution. The youth restorative disposal is one diversionary option available to police officers. Referral orders also involve the offender making reparation to the victim or the wider community.

#### *Custody as a last resort*

The dramatic reduction in the use of custody reflects a deliberate policy decision to divert young people away from custody except as a last resort. The reduction of the numbers of young people in custody is of course closely correlated to the falling number of first-time entrants. However, as Rob Allen notes, the number of youths sentenced to custody fell at a faster rate than the number of youths appearing before courts, so we cannot entirely attribute changes in custody to reductions in first-time entrants. There has been a growing recognition among sentencers, the YJB, YOTs and the government that custody should be the very last resort for youth offenders. Reflecting this shift in attitude, there have been changes in sentencing frameworks, additional alternatives to custody have been developed, and sentencers have shown increased confidence in these alternative options.

In its February 2013 report, the justice committee wrote that it was ‘greatly impressed’ by the collaborative efforts from the YJB, YOTs, and judiciary to reduce the number of young people in custody since 2008. Allen has argued that the YJB has become more effective at pushing for reduced use of custody behind the scenes, even if its explicit commitment to reducing custody rates was dropped from its 2008–11 corporate plan.

In testifying before the justice committee, John Bache, chair of the youth courts committee of the Magistrates’ Association, also suggested that one of the major factors in determining whether custody is used today is the quality of the relationship between courts and YOTs: if courts trust the quality of a pre-sentence report, they are likely to follow its suggestions for alternatives to custody. Sentencing guidelines for youth offenders (a definitive version of which was published in 2009) ensure that custodial sentences are not mandatory even when the custodial threshold has been surpassed, and sentencers must determine that a custodial sentence would be more effective at preventing offending than the alternative.

There has also been a concerted effort to reduce the number of young people in custody on remand, and remand budgets have now been devolved to local authorities as a means of encouraging the use of alternative options.

### **3.4 A new approach to young adults in the criminal justice system**

The greatest successes in our criminal justice system have been with offenders under the age of 18, where a focused, multiagency and preventative approach has been taken to divert first-time entrants and reduce the use of custody. There are strong grounds for extending this approach more widely throughout the criminal justice system.

It makes sense to do this gradually: it would be a huge step, for example, to take the caseload of 230,736 offenders that currently sit with the probation trusts and simply hand them over at once to local authorities (MoJ 2014c). Moreover, the government is in the middle of implementing a radical overhaul of the probation service, which however misguided must be given time to bed in, given that additional radical organisational upheaval would be likely to have a detrimental impact on the service. This does not mean standing still, however. We believe that a more locally connected multiagency approach is essential, but that such reforms should be implemented gradually.

For this reason we believe it makes sense to start by extending the remit of the YJB and the YOTs up to the age of 21, so that young adult offenders aged 18 to 20 would be managed by the YOTs rather than the national probation service or the new community rehabilitation companies.

### **The case for change with young adult offenders**

There are two main reasons for prioritising young adult offenders for a new approach.

First, young adults are a group in transition, with special needs which require a more specialised approach. Scientific evidence shows that young people mature at different biological ages. Adolescent brain studies show that ‘the frontal lobe areas, which affect organisational and reasoning skills, and the ability to understand cause and effect and to avoid being put in difficult situations, develop through to the early 20s. The process of maturation is often extended by trauma or disruptive change’ (Justice Committee 2013b). This means that missteps at this stage will have particularly harmful effects, while the right support can make a huge difference.

However, it is during this heightened period of vulnerability that youth services stop, and young adults no longer receive any specific focus in the criminal justice system. In its review of the youth justice system published in February 2013, the justice committee stated: ‘The transition between youth and adult provision is a period of high risk for 18-year-old offenders. We would like to see earlier planning, better information sharing and a smoother transition between youth offending teams and probation trusts, and between the youth and adult secure estate’ (Justice Committee 2013b).

Second, young adults are the age group most likely to commit a criminal offence and so place a huge demand on the criminal justice system. Managing them more effectively would have a particularly beneficial impact on the rest of the system, in terms of saving money and unlocking capacity. Young adults aged 18–25 constitute 10 per cent of the population but one-third of those in custody and one-third of those on community sentences (T2A 2012). Young adults also constitute the group with the highest rates of reoffending and, according to the Transition to Adulthood Alliance (T2A), account in large part for the ‘much-lamented “churn” of the criminal justice system’ (T2A 2009a). The ‘peak age’ for offending is 19 (T2A 2012) and although young adults are the age group most likely to commit an offence, they are also at a formative stage in their lives and if given the right interventions there is evidence that they can desist from offending and ‘grow out of crime’ (ibid).

Despite these reasons for regarding young adults as a distinct group with its own specific needs, there is very little bespoke provision for young adults. Indeed, while young adults are often considered a priority group for early intervention and preventative work in other government departments – as a means of saving long-term costs – this is not the case in the criminal justice system (T2A 2009a). In the words of Dame Anne Owers, former HM Chief Inspector of Prisons, young adult offenders are a ‘lost generation’ (T2A 2009b).

The Ministry of Justice itself has recognised that the transition between the youth and adult justice systems is not well managed. In 2012 it found that the transition process ‘did not always receive sufficient attention’ from local youth offending teams or probation trusts (Criminal Justice Joint Inspection 2012). In recognition of the fact that not everyone has the same level of maturity on their 18th birthday, the government has brought in changes to sentencing guidelines. From 2011 the guidelines have included maturity as a potential mitigating factor, and the specific sentencing guidelines for assault, drug and burglary offences now include ‘age and/or lack of maturity where it affects the responsibility of the offender’ as a factor ‘reducing the seriousness’ of an offence or ‘reflecting personal mitigation guidelines’ (T2A 2014).

There have been some important local innovations, such as the intensive alternatives to custody (IAC) orders, piloted from 2008 and designed for those who would otherwise spend short spells in prison. These involve supervision, alongside constant engagement with offenders to prevent them drifting into past patterns of behaviour. The Manchester IAC pilot was focused specifically on young adult offenders between the ages of 18 and 24 and involved tailored interventions for each offender, intensive supervision, enhanced monitoring, 30 hours per week of activity, a curfew, accredited programmes, unpaid work, court reviews of progress and swift sanctions for non-compliance.

Of an initial pilot cohort of 350 young men aged 18–24:

- 27 per cent found employment, which is more than double the national rate of 13 per cent for ex-prisoners
- there was a 52 per cent reduction in the number of offences committed by the cohort in the 12 months after intervention compared to the 12 months before
- offenders receiving an intensive community order committed 10 per cent fewer offences than those offenders receiving short-term custody.

Greater Manchester estimates that wider implementation of the approach would see a potential return of £183 million on a £12 million investment over five years (LGITF 2014). A process evaluation by the Prison Reform Trust reported that the average cost of an IAC was around £5,000 a year compared to almost £40,000 a year for a place at a young offender institution (PRT 2012).

### **A new system for managing young adult offenders**

Based on the lessons learned from the youth justice system, we argue that a similar focus should be brought to bear on young adult offenders with the explicit aims of reducing the number of first-time entrants through effective desistance, reducing the numbers in custody and reducing reoffending.

In order to achieve this we recommend the following three changes.

#### ***1. Extend the remit of the Youth Justice Board and the youth offending teams up to age 21***

We should extend the remit of the Youth Justice Board and the local youth offending teams to young people up to the age of 21. The YOTs should be responsible for preventing first-time entry through effective triage, reducing the numbers in custody and rehabilitating young adult offenders by providing holistic support both in the community and in prison. Such a move would have the following principal benefits.

- It would mean that there is no longer a sudden break in support and critical relationships at the age of 18 for young offenders.
- The key worker system developed in the YOTs should create more consistent support for young adults.
- It would enable the complex needs of this age group to be met more effectively via the successful multiagency structure of the YOTs.
- Young adults who encounter the criminal justice system for the first time would be subject to the effective triage measures undertaken with the under-18s.

There are some logistical questions that need to be addressed to facilitate this shift.

First, there are resource implications: the success of the youth offending teams has been achieved with a greater resource per head than is available within the adult probation service. The NAO in 2011 estimated that the unit cost per offender in the YOTs in 2008/09 was £1,469, while the unit cost per offender in the same year in the probation trusts was just £357. Based on these official estimates, there is therefore an additional £1,112 spend per offender supervised by the YOTs (excluding overheads). The number of young adult offenders between the ages of 18 and 20 under probation

supervision in 2012 was 9,898 (MOJ 2014c). We therefore calculate additional funding of around £11 million is required if the YOTs are to take on this additional population and work with it to the same standard.

Second, in light of the government's current reforms there is the question of how one could transfer the caseload once those reforms have been implemented. Although there would have to be a renegotiation of contracts, a proportion of the caseload will rest with the national probation service, and at any rate these offenders represent the harder cases (with higher reoffending rates), whom the new community rehabilitation companies may find it advantageous to pass on to the YOTs.

### ***2. Intensive alternatives to custody orders should be used systematically for those 18–20-year-olds likely to be sentenced to custody***

There should be a new community sentence specifically tailored to the 18–20 age group, which would provide a more effective alternative to short prison sentences. This could be based on the successful intensive alternatives to custody model, whereby sentencers can apply a more intensive community-based sentence on those young adults deemed to be at risk of a custodial sentence of less than 12 months.

Based on the experience of the Manchester IAC, sentencers could choose from a menu of intensive supervision requirements, enhanced monitoring requirements, 30 hours per week of required activity, curfew requirements, accredited programmes, unpaid work requirements, as well as tailored interventions for each offender, with reviews of progress in court and swift sanctions for non-compliance (PRT 2012). Typically these IAC orders will involve intensive work and numerous relationship-building meetings in the first few weeks, with the level of contact with the probation officer/key worker tapering off over time as there is greater confidence the offender is on the right path.

The IAC pilots were estimated to cost on average £5,000 per offender, with the cost varying between £7,000 and £4,000 in different areas (MoJ 2011). However, the direct resource cost to the IAC team (excluding referrals to other agencies) in the Manchester pilot that dealt specifically with young adults is estimated to be just £3,500 per offender (Matrix 2012). This compares favourably to the cost of a prison place for a year which is estimated to be around £40,000 including overheads, or stripped of overheads £2,367 a month or £28,404 a year according to the NAO's figures (Matrix 2012, NAO 2011).

If local areas were to invest those kinds of sums in IACs, over time there would be a saving to the exchequer. At the moment, however, local authorities have no incentive to invest in such measures, because they do not receive any of the money saved in reduced use of custody, which goes to the Ministry of Justice. It is for this reason that we should take a further step and devolve custody budgets for all those under the age of 21 to local authorities and combined city regional authorities.

### ***3. Custody budgets for those under 21 should be devolved to the local level***

So-called justice reinvestment involves creating financial mechanism whereby resources currently locked into the prison estate can be recycled into intensive and preventative alternatives in the community. This cannot take place while custody places are funded and commissioned nationally, when the work needed to reduce the use of custody through community-based alternatives needs to be funded and commissioned locally.

To incentivise local authorities to invest in alternatives to custody for young people the budget for youth custody should be devolved to the local level as well. This should facilitate a transfer of resources out of custody and into more effective interventions in the community.



This has already been rolled out with remand places. Since April 2013, local authorities have been required to pay the costs whenever a court orders a child under 18 to be placed in pre-trial detention. Since this move, we have seen a fall in the numbers of young people remanded in custody: from 308 in April 2013 to 261 in September 2013. In 2012, the same six-month period saw a rise from 308 to 397 (Allen 2014).

A logical next step would be to make local authorities responsible for the cost of all detention and training orders for young offenders under the age of 18, in addition to remands. Budgets for the forthcoming year could be devolved to the local authority then charged back for each place used. They should be able to keep any surplus from the budgets that have been devolved to them, which they could reinvest in alternatives to custody (ibid).

Devolving custody budgets for under-18s is the first step to creating the right financial incentives for local authorities to invest in alternatives to custody. The next step would be to devolve custody budgets and commissioning powers for young adult offenders aged 18 to 20 as well, who are currently held in YOIs or in the youth wings of adult prisons.

This would require some regional or city regional architecture, given that not every local authority area contains a YOI or prison. Given the wider push towards devolving more powers to new city regional combined authorities – such as now exists in Greater Manchester – combined authorities covering the core cities and the surrounding areas could take over custody budgets for young adults. If these budgets were sufficiently long term, this would provide local areas with the confidence to bring money forwards to invest in measures such as IACs, on the understanding that this will pay off significantly once they are in a position to close institutions or wings.

This process will need to take place gradually, simply because YOIs are dispersed in all sorts of areas around the country. For this system to work we would need to ensure that local offenders within a particular city region were allocated to a local YOI under the control of the relevant combined authority. Currently, for example, it is likely that the following YOIs could be devolved to the following city regional bodies: Hindley YOI could be devolved to the Greater Manchester Combined Authority, Feltham YOI could be devolved to the Mayor of London, and Deerbolt YOI could be devolved to the North East combined authority. In addition, a number of youth wings of adult prisons could be commissioned by the nearest city region: the Liverpool and Merseyside Combined Authority could commission places at Altcourse, and the North East combined authority could commission places at Durham.

There are others that fall outside the boundaries of existing or putative combined authorities, but which are likely to contain a large proportion of offenders from an adjacent core city. Work would have to be carried out on the allocation of offenders to particular institutions, but the fall in the youth custody population should facilitate this. YOIs that cannot be straightforwardly placed with a particular combined authority would, for the time being, remain commissioned and funded by the Youth Justice Board.

### 3.5 Conclusion

This chapter has argued that desistance is aided by criminal justice social work that fosters consistent and deep relationships between offenders and probation officers. This practice is best enabled by organisational structures that bring together professionals from across different disciplines, allocate key workers and take a holistic view of complex problems. Instead of fragmenting the existing probation system, the government would do better to look to the example of the youth justice system, which through the youth offending teams has worked in an

integrated multiagency way to provide stronger interpersonal support for young offenders. This, alongside changes to the performance management system for the police, has contributed to a dramatic fall in the number of first-time entrants and the number of young people in custody.

We recommend extending the remit of the YOTs up to the age of 21, in order to provide more consistent and more intensive support and supervision for young adult offenders, both in prison and in the community. This should be accompanied by a drive to divert more young adults out of the criminal justice system when they encounter it for the first time, and the development of intensive alternatives to custody where a young adult is expected to receive a custodial sentence. The resources for this could be unlocked, at least in part, through the devolution of custody budgets for those under the age of 21 to councils and combinations of local authorities in the core cities.



## 4. CONCLUSION

This report has argued for a strengthening of relationships at three different levels in our criminal justice system: between offenders and their victims, between offenders and the communities in which they live, and between offenders and those professionals charged with helping them get their lives back on track.

Victims are too often sidelined in our system, with many not hearing anything back after reporting an incident. A right to restoration should be introduced, which means that wherever there is a crime with a personal victim and the offender accepts guilt, that offender should be required to apologise and in many cases agree some form of financial or in kind reparation, depending on the gravity of the offence. The process of forcing offenders to face the victim has been shown to bring home to them the true consequences of their actions. Restorative justice of this kind also achieves both higher levels of victim satisfaction and lower levels of reoffending than traditional sanctions.

The right to restoration would operate at three levels: restoration could take place 'on the street' in place of a caution; it could run alongside a caution where the victim requests it, either in the police station or at a neighbourhood meeting; and it could take place for more serious crimes in between conviction and sentencing. We propose that we start by introducing the entitlement at levels one and two.

The community has long been locked out of the criminal justice system. The remoteness of the justice process means that the public have very little confidence in it, believing it to be much less punitive than it actually is. To foster greater public involvement in the system we argue that every local authority should establish neighbourhood justice panels to deal with low-level crimes or antisocial behaviour so that more of these would be dealt with under neighbourhood resolution. In addition, the panels could facilitate restorative conferences in cases that would attract a caution and where the victim requests a restorative process. There should also be much greater community participation in promoting desistance from crime. In practical terms, we recommend the establishment of a new social enterprise to broker employment for ex-offenders.

Desistance is aided by criminal justice social work that fosters consistent and deep relationships between offenders and probation officers. This practice is best enabled by organisational structures that bring together professionals from across different disciplines, allocate key workers and take a holistic view of complex problems. Instead of fragmenting the existing probation system, the government would do better to look to the example of the youth justice system, which through the youth offending teams has worked in an integrated multiagency way to provide stronger interpersonal support for young offenders. This, alongside changes to the performance management system for the police, has contributed to a dramatic fall in the number of first-time entrants and the number of young people in custody.

We should extend the remit of the YOTs up to age 21, in order to provide more consistent and more intensive support and supervision for young adult offenders, both in prison and in the community. This should be accompanied by a drive to divert more young adults out of the criminal justice system when they encounter it for the first time, and the development of intensive alternatives to custody where a young adult is expected to receive a custodial sentence. The resources for this could be unlocked, at least in part, through the devolution of custody budgets for those under the age of 21 to combinations of local authorities in the core cities.

Crime harms victims and communities, and the criminal justice system currently does too little to directly repair that damage. This report has shown that we can both improve public confidence and reduce reoffending by putting victims and communities at the heart of the system, while at the same time delivering a more holistic approach to how we manage offenders in the community. It is time to mobilise the collective power of all relevant actors and institutions, both inside and outside the formal justice system, to achieve reparation for harm done and rehabilitation for offenders.

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