

HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

CRIME REDUCTION POLICIES: A CO-ORDINATED APPROACH?

TUESDAY 25 FEBRUARY 2014

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GIBBS

Evidence heard in Public

Questions 450 - 499

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Oral Evidence

Taken before the Justice Committee

on Tuesday 25 February 2014

Members present:

Sir Alan Beith (Chair)

Steve Brine

Jeremy Corbyn

Mr Elfyn Llwyd

John McDonnell

Examination of Witnesses

Witnesses: **Richard Monkhouse**, Chair, Magistrates' Association, **Phillip Bowen**, Director, Centre for Justice Innovation, **Adam Pemberton**, Assistant Chief Executive, Victim Support, and **Penelope Gibbs**, Director, Transform Justice, gave evidence.

Chair: Good morning and welcome. We are very glad to have your help with our inquiry. I think of it as “Justice Reinvestment”—returning to a subject that the Committee previously reported on—but there is a longer title.

We have with us Phillip Bowen, who is director of the Centre for Justice Innovation; Penelope Gibbs, director of Transform Justice; Mr Pemberton from Victim Support in place of Javed Khan; and Richard Monkhouse, chair of the Magistrates' Association. Welcome to you all. I am going to ask Mr Brine to open the questioning.

Q450 Steve Brine: There are some familiar faces on the panel. I will start with Mr Monkhouse and then ask the rest of you to chip in. I have met Mr Monkhouse before and I know he has many views on many things.

Some of the respondents to our inquiry said that Government policy on crime reduction, while there, is incoherent, exists in different parts and maybe does not add up to the sum of its parts. To get us started, what is your overall view of the coherence of a cross-Government strategy on crime reduction?

Richard Monkhouse: Part of it is almost informed by the media and is pushed in one direction, and that is in a more punitive direction. It concentrates almost solely on the top end. If you look at magistrates courts, we send 4% of our defendants, our offenders, to prison, and we give about 25% of them community orders, but the rest of them, many of whom have significant problems, are dealt with purely by fine and discharge, which on its own does very little to change offending behaviour. That is the thing that is not really put together particularly well, because the concentration is always on the top end. Concentration is on supervision following a short custodial sentence, and, yes, we know that those who have a short custodial sentence tend to reoffend more, but then, they have been through the system an awful lot longer and it is almost a way of life. We have to deal with those, but if we do not deal with the people at the bottom end we are simply going to have a churn of people who are going to get to that level. That is why we had quite a campaign against out-of-court disposals, because many of them were doing nothing. Cautions were simply saying, “Don’t do it again,” and people were getting caution after caution after caution. That is not doing anything to

change the offender's behaviour. Thankfully that is now being addressed and it is a very welcome move.

I do not think it is all put together, because people who are offending—if you disregard motorists—in the main have significant familial and domestic problems which, if we are going to stop people offending, need to be addressed. They are not going to be addressed by the justice system. The justice system is almost the last resort—“If you don't behave, this is what is going to happen to you.” I think there is a lot more that could be done further up front across other Departments to deal with troubled families and those who are likely to offend.

Q451 Steve Brine: Penelope Gibbs, could you add to that? Looking at the cross-Government strategy, how does that manifest itself in the management of the courts, for instance, and sentencing?

Penelope Gibbs: There is a huge problem with crime reduction. As Richard said, the levers to reduce crime are mainly outside the criminal justice system. As we have it, the Ministry of Justice does not really have very deep connections with other Departments. Practically the only programme I can think of which is about crime reduction that is outside the MOJ is the Troubled Families programme, but that is about reducing anti-social behaviour, rather than necessarily crime. I would come back to what my colleague Rob Allen said: until we get an incentivisation structure across Government, which gets people outside the justice system to help and support those people who are at risk of getting into it, or are in it, we will never reduce crime properly.

My fear is that the Ministry of Justice, and particularly Her Majesty's Courts & Tribunals Service, is getting further and further away from the rest of Government and how it works. There needs to be more movement in Whitehall of people between Departments. I personally think that every single civil servant should have training in how local government works and what it does, and how they could better engage with local government services and health services. That will help a bit, but we need an incentivisation structure.

Q452 Steve Brine: Can I pick you up on what you said about the Troubled Families programme? You said it was about reducing anti-social behaviour and not about reducing crime. Surely the whole point of the Troubled Families programme is to deal with issues before they become involved in the criminal justice system. Look at your work with children and young people.

Penelope Gibbs: Yes. In that way, it is good; it has some indicators for which you get a payback. There is an anti-social behaviour indicator but not, to my memory, a crime indicator. That is what I am saying.

Q453 Steve Brine: Because it is very hard to prove that you have stopped something happening that might have happened.

Penelope Gibbs: Sure, but then I would come back to justice reinvestment in financial terms. If you can incentivise local agencies to prevent people from getting into court or, for that matter, getting into prison, you can incentivise the behaviour and the support services which are going to stop crime.

Q454 Steve Brine: Mr Bowen, you have worked in the civil service at the Home Office and the MOJ. Did you have a thorough understanding of local government?

Phillip Bowen: I do not think I did. Penelope is absolutely right to say that civil servants need to get out on to the front line and into more local delivery structures. I think that

is absolutely right. There is not enough of that. Just doing cross-Government work at Whitehall level does not quite cut it.

There are two or three things I want to say about the Government's crime reduction policy. Two are interesting points of continuity, which is linked to support, and one is, for me, the biggest inconsistency. In terms of continuity, the continuity of work around violence against women and girls that was started under the last Labour Administration and has been carried forward is a positive thing; I am glad that we have seen that. I also think this Government's commitment to restorative justice has been very positive. For a long time, when I was in the Ministry, it was, "Should we do restorative justice or not?" This Government has really put its eggs into that basket.

The biggest inconsistency for me is that, on the one hand, you have a Home Office which has decentralised and democratised policing through the PCCs; on the other hand, you have a Ministry of Justice that is looking to marketise probation and prisons but is adopting, I think, a very national structure around that. It is the Ministry of Justice that will make the purchasing decisions. I wish there had been more scope for decentralising those decisions, maybe down to PCCs or local authorities. One of the things I think about my experience in Whitehall is that we are often making decisions on pretty imperfect information. I think it was Ian Mulheirn who said to the Committee a couple of weeks ago that it is the front line that have the expertise, not people in Whitehall. I totally agree with that. I wish we were pushing more of the decision making downstream. I see this inconsistency between the Home Office approach and the Ministry of Justice approach.

Q455 Steve Brine: One of the reports you have written is "Better Courts: cutting crime through court innovation," because you are obviously the Centre for Justice Innovation. One of the things it says in my note is that you say: "Courts are more than just an instrumental institution, concerned only about processing cases. Our courts are public institutions which can reduce crime by treating victims and offenders fairly and working with them to ensure that they never return to court." Are you aware of the work of the problem court—or the Star court as it is called—in Texas which this Committee visited last year? Do you see any glimmer of that working here; or any chance of its doing so?

Phillip Bowen: My organisation was set up by the US Centre for Court Innovation. That is our origin. I saw that the Committee had visited Austin, so I asked the centre in New York to give me something.

Q456 Steve Brine: So you know all about the Right on Crime initiative.

Phillip Bowen: Indeed. I also worked for 18 months in a problem-solving court in the Bronx in New York in 2006, so I know that model quite well. One of the purposes of writing "Better Courts" was to try to see what practice looks like at the moment in England and Wales and what is the international evidence. What we have seen is the legacy of some of the problem-solving court movement that happened in this country after the set-up of the North Liverpool Community Justice Centre. Some of that has survived, grown and thrived; some of it has not. The point of "Better Courts" was to lay out that new vision of how this could happen. I certainly think there are a couple of things that could happen in this country relatively easily to promote that agenda. In particular, the use of sentencer reviews to bring people back into court for compliance reviews would be very useful. We already see it in drugs cases. We see it in the West London drug court, where they try to make sure that the same sentencer is present at the compliance hearing. We have also seen it in Wales under a programme called the intensive community order programme, where they have simply just arranged for those offenders to come back for a probation supervision appointment in court, and done it within existing resources. It is possible. There are barriers to it, and I can talk

about what some of those barriers are, but it is a very positive development and it is evidence based. We know that it works.

Q457 Steve Brine: Would you also support what we saw in the Star court, which was all the offender's peers sitting there and being almost a part of their collective? Presumably you have seen that happen in the Bronx as it did in Texas.

Phillip Bowen: It did not happen in the Bronx, but it does happen in some of the other New York city problem-solving courts. We know that peer influence can be a very destructive process, but also a very positive one. One of the projects we are helping to support at the moment is down in Hampshire, looking at how we can involve young people who are either ex-offenders or are on the margins of crime help to support people who are having a current case. That is known as a peer court idea. The positive power of peer influence is a very important one, and I do not think we use it enough.

Q458 Steve Brine: Mr Pemberton, with respect to Victim Support you have called on police and crime commissioners to put victims at the heart of their work. Someone was listening, because they will assume responsibility for commissioning services later this year. To what extent do you feel that PCCs have sought to promote a victim-centred approach to their work?

Adam Pemberton: Where we are right now is that that picture is emerging. PCCs are getting to grips with the challenges of commissioning services. It is quite a complex and technical subject; it is not straightforward. Victims' needs are not simply determined by the type of crime they have suffered, and victims do not live their lives by neat PCC area boundaries. Ensuring that in the move to local commissioning there is still high-quality support available for victims, determined by victims' needs and not by some arbitrary set of formulas, is going to be absolutely critical.

We know that people who come into contact with the criminal justice system have less confidence in it than those who have not. That continues to be the case. The criminal justice system cannot function without victims having confidence to come forward and tell their story. It is clear what victims want. They want offending to stop. They want appropriate punishment and they want to be kept informed about what is happening to them.

The phrase "putting victims at the heart of the criminal justice system" is a bit overused. The proof of the pudding is in whether or not that is actually happening and whether we are thinking about these issues—whether we are actually thinking about it from the perspective of the victim and the experience they have gone through. It is never going to be a happy experience, but at the moment it causes too much trauma and distress. We are moving in the right direction and there are positive steps, but we need to move faster and really think a bit more radically about how you get that victim dimension into thinking about criminal justice reform.

Q459 Steve Brine: Presumably the best way for victims to interact with the criminal justice system is for them not to come into contact with the criminal justice system and not be victims, which is why we are trying to reduce crime.

Adam Pemberton: Absolutely.

Q460 Steve Brine: Mr Monkhouse, do you have anything to add? You can always think of something after we have been to you, and then we move on and you think, "I wish I had said that."

Richard Monkhouse: Adam is absolutely right about victims being within the system, but if you do not change offenders' behaviour it is going to lead to more victims. It is getting

to that and balancing that. It is reducing the expectation that some victims may have about sentence. We have to be very careful about that. Judicial independence is not irrelevant. It does mean something different from the magistrates to the judiciary—the uniformed branch, as it were. Unless we stop offenders at a very early stage, that is going to lead to more. The concentration at the top end has always almost ignored those who are next year’s offenders.

Q461 Chair: In the debate in the House yesterday on the criminal justice Bill we gave quite a bit of attention to the concerns of the Magistrates’ Association about out-of-court disposals. I understand that concern because it relates, for example, to consistency and to public knowledge of what have been the outcomes. Is there not a danger though that, if you demonise out-of-court disposals, you close the door on some really quite exciting and innovative things which are seen to be effective in some cases, including the most basic forms of restorative justice?

Richard Monkhouse: You have to differentiate diversion and out-of-court disposals; you have to distinguish which is which. I said before that simply giving somebody a caution, and that’s it, has very little effect on their behaviour. Restorative justice and other diversions are very good. We have seen in the Youth court the vast reduction in the number of youths coming into court by means of diversion rather than simply out-of-court disposals.

The main problem we have seen is that there are 43 chief constables, so there are 43 ways of handling it. That is the difficulty. There is no guidance. I know scrutiny panels are setting up, but, even there, there is quite a bit of difference between one area and another. Some are doing a lot of good work; some are almost paying lip service to it. That does nobody any good at all.

It is consistency across the board and it is understanding why we are doing it: why a caution is appropriate in some circumstances and not in other circumstances. That is the balance. We do not want to demonise out-of-court disposals, because they are efficient and, where appropriate, they are absolutely right. But there are many cases in the past where they have been used inappropriately. I heard of one yesterday where somebody was punched in the face on a bus. By the end of the day, an RJ conference had taken place. You think, “Actually, isn’t this a little bit hurried and shouldn’t there have been more thought about this?” The police were really quite pleased about it: “Aren’t we good? Haven’t we done a good job?” Yes, they have ticked a box, but have you prevented that offender from doing it again? Time will tell. It is consistency that we are after.

Q462 Chair: Presumably from the victim’s standpoint the concern is to be sure—precisely as Mr Monkhouse says—that something is being done which makes it likely for it not to happen again.

Adam Pemberton: Absolutely. That is one thing that victims will tell us time and again. As well as seeking punishment for what has happened to them, they want to be sure it does not happen to anyone else again. That is very important.

On the point about restorative justice, we think it is very good for victims as long as it is victim-centred RJ. There has been a tendency in the past for it to be focused on what is right for the offender, and for the victim to be treated as a bit of an afterthought in the process. Victims should be offered restorative justice in all circumstances, but it has to involve them and respect their wishes. While it is good to see that kind of prompt justice, what you don’t know is whether it denies the victim the opportunity to have their voice and have their say. That is a very important part of the process for helping victims cope and recover after being victims of crime. There is always a balance to be struck, but the general message about RJ is that it can work for victims in cases where it is centred on them, and they are treated as equally in that process as the interests of the offender.

Q463 Chair: Could magistrates' concerns be allayed to some extent if magistrates were involved more in some of the out-of-court disposals?

Richard Monkhouse: Absolutely; before, during and after. At the moment we live in that box of the courtroom. There is so much more that could be done in advance of the process and after the process. Phil mentioned case reviews. We think those would be a really good idea, because they add that continuity of interacting with the offender. We have seen how well they work in drugs cases, although those are now becoming few and far between. They are not used as much as they used to be. It is an efficiency problem. "Is this going to mean another hearing? Is this going to mean another sitting? Well, let's not do it, because it is going to cost money." Justice is more important than that. Again, you have to strike that balance between economy and justice.

Q464 Chair: In our 2010 report, we recommended that sentencers receive more systematic feedback on the outcomes of their sentences, so that they have an idea about when the sentences are effective. Do you share that view and do you see any sign of it happening?

Penelope Gibbs: I think it is essential. I used to sit as a magistrate myself. I am ashamed now of how little I knew, but that was not just my personal responsibility; it was the system as well. I had no idea about the statistics on effectiveness and about different things I could do. It was like a tick-box exercise. You had your bench book and you had somebody in front of you. I was a winger.

The key for me is more feedback in the broadest sense. Magistrates' training needs to involve more about the basic knowledge of what desistance is, about what causes offenders to stop offending and about the effectiveness of sentences, particularly about the ineffectiveness of short prison sentences and so on. If you could get magistrates at that early stage of initial training to have at least that picture of what works and what does not, you have the framework on which to have more information sent to them.

The more important thing is that they understand, in the broadest sense, what their sentences might do. If we can also do individual case reviews, all the better; but I think there is a first step of getting the information, which, can I tell you, does not happen? Magistrates do not even know, most of the time, when their own cases have been appealed. They do not know what the results of that appeal are. In most cases, they do not even get feedback on the cases where their decisions have been overturned.

Phillip Bowen: I would agree with all of that. What I would add is the idea of building in case feedback loops through structured sentencer reviews. We are helping to run a project in Swindon, a restorative justice panel looking at anti-social behaviour and low-level crime that is not going to court, that does not need to go to court. We are constructing a feedback loop so that the people who sit on the panel get to know what has happened to Bob, who was sitting in front of them two months ago. Has his behaviour stopped or changed, and what has happened to the victim? That strikes me as something we are trying to do at a relatively low-level panel that is pre-court, but it does not happen for magistrates. That seems strange to me.

One of the other things I would say about having more structured sentencer reviews is that not only does it give you information on a case-by-case basis, but it can also help sentencers to understand where the gaps in service provision are. They can see that Bob has not received his alcohol treatment and ask why that is. Certainly in America, in the problem-solving courts there, judges and the courts have become advocates for looking at the reality of the service delivery and how they can help to change it. I do not think that happens here in that dynamic way. That is one of the other benefits of having more sentencer reviews.

Q465 Chair: Do magistrates feel they have any input into the availability of crucial services like mental health services or alcohol dependency services?

Richard Monkhouse: At a Magistrates' Association national level, yes. We are well involved with an awful lot of groups, but that does not happen at bench level. It is almost deterred at bench level. The probation liaison groups that used to be statutory are no longer statutory. Some areas still have them and in some areas it still happens. That link with the probation service—to know what has actually happened—is still very useful, but in an awful lot of other areas, again because of economies, it just does not happen.

I think it starts in the courtroom. It starts with a degree of engagement with the offender rather than treating them like manufacturing a motor car. They are individuals. They are people who have got into the criminal justice system for various reasons, some of them deliberately and some of them accidentally. We need to signpost many of them away from their offending behaviour, but you can only do that if you can engage with them. It is not going to happen on every occasion. We do it in our court on a regular basis. We have our own panel—it is just so useful. We can identify somebody we are going to fine because they have been shoplifting, but we know they are shoplifting for a reason. We can address that reason by signposting them to a local organisation. That is put on their case papers so that the next time they are in court—even if it is not the same panel—we will at least know that that person has been signposted in a particular direction. Again that encourages engagement—“What happened? What have you got out of it? Has it affected your behaviour? Are you now less reliant on drink than you used to be?” and so on. Without that engagement, if you just treat them like a spare part, nothing is going to change.

Q466 Chair: I know it is a sore point with magistrates, but what happens in a situation where you have a district judge—we used to call them stipendiary magistrates—handling quite a lot of the business? Does that mean that he is likely to get more continuity in cases of the kind that we are talking about?

Richard Monkhouse: Absolutely. Magistrates have to be rotaed. We sit once every two or three weeks. District judges sit all the time. We do not see district judges as a problem; we need to work with them. I think we could work more together with them if there was more sitting of magistrates with district judges on a bench of three. That would educate magistrates much more in a number of things—engagement in the court, but also case management. For all these things, it would be advantageous for magistrates to sit with district judges. You are not going to do it on every occasion, because a DJ is paid a lot of money and we are not. You are not going to deliberately increase the expense, but where the situations arise it should be done an awful lot more. We know that in certain areas it is not. I suspect it is down to personalities.

Adam Pemberton: I want to pick up one point. I do not disagree with what Richard said, but if anyone feels like a spare part in the criminal justice system it is victims—or not even a spare part, but a part that does not get used and is left on the side as an afterthought. Barely 16% of victims we work with tell us that they feel that they have had their voice listened to.

One of the things that is moving in a positive direction is the increased use of victim personal statements, so that the voice is there. It is really important that victims are made more aware of their right to make one of those statements, and now to have it read out in court if they wish. A greater take-up of that will really help victims. This is not an either/or choice, but it is important to recognise that, while we are talking about the system and how the system operates, victims feel very much on the sidelines as an afterthought in this. We need to address that.

Richard Monkhouse: We still see victim personal statements as rather like hens' teeth; they rarely occur. Good magistrates and good chairmen will ask for them, but they do not come with the rapidity or the frequency that they come in Crown court.

Penelope Gibbs: To come back to the continuity point you were making about district judges and magistrates, I do not think it is insuperable with magistrates at all. I know that the MOJ has huge problems with IT services, but this issue of who is sitting when and can you join up people is not a big IT problem. It should be pretty straightforward to match people with the people they have seen before, if you get a good software programme. They know in advance when magistrates are going to sit; in some cases, it is known weeks and months in advance. People are told in advance of their court appearance. I think that is an excuse.

Richard Monkhouse: A new rota system is being developed and we would like to see it in place, but I think it is going to be a while yet. We are not holding our breath.

Q467 Chair: But case listing and the rota system need to be matched to each other, don't they?

Richard Monkhouse: It is being built on the common platform and that is a step in the right direction, but it is a step we are quite a bit away from.

Phillip Bowen: We are releasing a report next week on domestic violence courts. There are 137 courts which, since their creation in 2005, have done a great job in terms of trying to help victims feel safer and so on. One of the problems we have identified is that simply listing cases in domestic violence courts that are already flagged as domestic violence is not happening in certain courts. We are trying to get to the bottom of that; we have not been able to do it in the report that is coming out next week. From a systems perspective it sounds relatively easy, but it is obviously not happening as much as it should do. I do not know if there is a tension between that and the fact that HMCTS have had to save 30% of their budget. We have certainly seen in that report that some of the systems are becoming weaker because there are not as many people on the ground to do that work.

Q468 Mr Llwyd: To what extent do the courts and sentencers see crime reduction as "an intrinsic part of their mission," as advocated by the Centre for Justice Innovation?

Phillip Bowen: It is a very good question. In theory, the courts see it as their job to pass sentences that are effective. The five purposes of sentencing are punishment, reform, rehabilitation and the like. As we were saying earlier, I do not think they are in a position where they can know whether the sentences they pass are effective, because they are not given consistent information on cases or on the evidence. I do not think you have an incentive in quite the right way, to make them know whether they are reducing crime.

I think there is also a genuinely difficult issue as to how far the judiciary goes in working with executive agencies in doing partnership work on crime reduction. When I was in the Government I helped to set up integrated offender management schemes. The court was a relatively absent partner in that, because they said, "We shouldn't be getting involved." I understand that, but I certainly felt that there could at least have been more information provision. Even that was quite a difficult thing to sell to the courts. They said, "We don't want any information on who the top 10 prolific offenders are in the area because that would prejudice the cases." That was not really the conversation we wanted. We wanted a conversation about, "When they come in front of court what is the most effective disposal?" There is a real tension there.

Q469 Mr Llwyd: But it is not exclusively a matter for the magistrates. The Crown courts are just the same. Judges in the Crown courts are desperate to know whether what they are handing down does actually work.

Phillip Bowen: Absolutely.

Penelope Gibbs: Part of it is the tension that Phil talked about. It is about what they are allowed to do. I personally think that this move to judicial independence has meant it has got more extreme and has a more puritan approach to it, which means that magistrates and judges have been disconnected from the forums where they might have conversations with people.

A piece of paper is all very well, but a conversation is much more powerful. For instance, if you look at community safety partnerships, magistrates were originally allowed to sit on them but then it was decreed that they were not allowed to for judicial independence reasons. Even now the court staff are not participating very much in community safety partnerships. If people are not around the table discussing what is going on in the criminal justice system in their area, how can they effectively reduce crime?

Phillip Bowen: One of the really interesting things, in contrasting here with the States, is that a lot of the problem-solving courts that were set up in the States were set up in the late 1980s and early 1990s after the rise in crime because of the crack epidemic. A lot of the time it was the court saying, “We keep on seeing the same people come through and we don’t know what to do with them. It is our job to do something about it.” In our system, it is hard for courts to step forward in that way because of some of the barriers that Penelope described. It is still very much seen as entirely an executive function. There are issues around judicial independence that are raised by the court being a more active player, but I think that is a discussion to be had rather than no discussion at all.

Q470 Mr Llwyd: What are the main barriers to any of the real innovation about which we are all talking? People seem to be in silos, don’t they? “That is the job I am doing; this is the job you are doing” and so on. Surely we need to break down those barriers.

Phillip Bowen: To go back to my earlier comments, there is something in that, and there is also something in having a highly centralised system. In Penelope’s report on magistrates committees, it used to be a locally owned and locally driven service. It is not any more. We have a very centralised HMCTS. When I think of the contrast between here and the States—I am not holding the States up as this glorious example of great criminal justice but just as a contrast—it is much more local there, and courts are able to work in that local framework in a much more flexible way.

Q471 Mr Llwyd: That brings me to my next question, which first of all is for Ms Gibbs. You said it is questionable how innovative courts can be when they are run centrally. Do you agree that central control leads to a culture of conformity and obedience to bureaucracy? How could this be overcome? Part one. Part two of the question is, how do you respond to the Lord Chief Justice’s fears about postcode justice stemming from having a more local approach?

Penelope Gibbs: I heard the Lord Chief Justice’s speech. What I would say is that we already have postcode justice in our system. If you look at the rates of diversion from court, but also specifically at the use of custody, it is still very different on different benches in different areas. I saw this when I worked on reducing the use of imprisonment for under 18-year-olds: Merthyr Tydfil, for about eight years, used custody for under 18-year-olds far, far more than Newcastle, which stayed low. We have a postcode justice system. I don’t approve of it. I don’t think court innovation has to make it any worse than it is already. There are other mechanisms: transparent information about this postcode justice system would help; monitoring, feedback and all that kind of stuff would help with it. Meanwhile, you have a very centralised system where very few decisions can be made at local level. It is simply about approaching the process in a different way. Yes, you need monitoring from the centre,

to make sure that it does not make postcode justice any worse than it is now, but if our appeals system worked properly, which it does not, that is another mechanism to make sure that the decisions are the right ones at every point.

What we are talking about, and what all of us in this movement are saying is that innovation can happen if organised centrally, but the evidence from centralisation of the court system is that it has not fostered innovation. In fact, the innovative things that have happened have mainly been closed down by the centre. Maybe the problem with them was that they started in the centre in the first place rather than being an idea that came up from the bottom. Under MCCs, postcode justice was no worse than it is now. There were magistrates courts committees which managed local magistrates' courts. The magistrates' courts were owned by their local authority and managed by the magistrates. I do not want to go back to that system. It would be radical, but I personally think that it would be easier to get innovation if people did not have to go through a huge hierarchy if they have an idea at the bottom. The evidence from the staff survey of HMCTS is that people don't think it is very easy to get new ideas through.

Q472 Mr Llwyd: Isn't postcode justice a rather pejorative term for local justice?

Penelope Gibbs: Local justice is good if it is about different ways of approaching the process. In the end, I am passionate that nobody should have a greater likelihood of going to prison for roughly the same thing in one area than another. Justice, in terms of the punishment, has to have some kind of consistency.

Q473 Mr Llwyd: But surely that very issue—about whether you are likely to be imprisoned or not—must be partly driven by local circumstances and the prevalence of that offence in that locality. I will give you a very brief snapshot from when I was a young solicitor, more than a year or two ago. It was known in north Wales and Cheshire, for example, that if you defended a farmer who was late sending in his VAT returns, at the magistrates in Chester they would consider sending him to prison. If you went along the coast to Llandudno, they would give him a fine; in Bangor they would give him a fine; when you reached Pwllheli magistrates, they would give him a conditional discharge. That is a fact. How you explain it I am not sure, but it seemed to work.

Chair: If I can throw in a supplementary, is it not also the fact that in any given area the alternatives available to custody will be different?

Mr Llwyd: Exactly; yes.

Phillip Bowen: I am absolutely sure, and I think the Lord Chief Justice was right in his comments at our event, that there does need to be consistency in sentencing. Often what you see in the problem-solving courts is a different way of delivering the service. It is not changing the law. When New York State set up its problem-solving courts it did not actually change the law; it just said, "How can we use the sentencing framework better?" That is a really important point to make. It is not about ruining the consistency of sentencing. It is about saying, "If you are a young black man in the Bronx, what is an effective sentence? Are we going to give you two days' jail or a fine or a walk, or do something creative that might support you in the process of change?" It was not about legislation; it was about making sure the court could draw on the resources of the community and understand what was available.

When I was working in the Bronx we did not have a lot of mental health treatment to channel people into. That was just a fact and a reality. It then became an issue and judges lobbied other service providers and said, "That is something we want to do something about."

Q474 Mr Llwyd: I want to move back to something that has been touched upon: restorative justice. How has the increase in numbers of neighbourhood panels affected the

whole restorative justice scenario in terms of crime reduction, and also victims' views about the balance of the criminal justice system?

Adam Pemberton: I would need to come back to you specifically on the view about the impact of neighbourhood panels on victims. There is now a set of pathfinder projects on restorative justice. There are about 10 around the country which Victim Support is involved in and helping to deliver. They will build on what we already know, which is very high satisfaction rates from victims. About 85% of victims involved in victim-led RJ say that they are satisfied with the result and that it has made them feel more secure. The evidence is all there that RJ, when done well—that is the critical part, that it is done well—will have a positive impact on victims and is a good solution for them.

I would like at some point to come back on the point about innovation, but do you want to stick with this point for now?

Q475 Mr Llwyd: Would you like to do it now before we ask Mr Bowen?

Adam Pemberton: Innovation is absolutely good and necessary, but it is equally important that we monitor and implement the victim's rights that are already there. To give you one specific example, there are pilots going on right now of pre-recorded video evidence for vulnerable and intimidated witnesses. Those pilots are going on now but that legislation was passed 15 years ago. There are all sorts of rights that already exist for victims that are on the books—the new victims' code—and it is really important that we see those through.

The other point about innovation is that a cautious approach would be all very well and justifiable if the system was working well now and working well for victims; but it isn't. The evidence is there that it is not, so taking some opportunities to push this forward is critically important.

Q476 Mr Llwyd: Thank you for that. Mr Bowen, you wanted to say something?

Phillip Bowen: Yes; just on the justice panel stuff. We are helping the police and crime commissioner in Wiltshire to expand the Swindon neighbourhood justice panel to be a county-wide system of panels. The panels are intended to take problematic cases and things that are beginning to escalate. It is not for first-time entrants but for people who are about to escalate and for whom we think that if they are bound for court they are probably going to end up in the 70% of conditional discharges and fines, so can we do something more effective?

We think that is a very positive thing. Victim satisfaction rates in Swindon for last year were about 84% or 85%, very similar to the numbers that were just quoted. One of the issues for the neighbourhood justice panel movement is the volume it can take. In Swindon, 50 cases were heard last year. We are not talking about that many cases. When you think that about 70% of magistrates' cases are conditional discharges and fines, you are not siphoning off that many people.

I would also want to put the panels in the context of out-of-court disposals. One of the things we know, especially for young people, is that a simple caution can be the most effective disposal. We know that several longitudinal studies show that if we over-criminalise young people, we actually create more crime. What we are trying to do with the panels is to be very clear about who this is appropriate for. It is not only who it is appropriate for, in terms of should these people even be coming near the panel at all, but who should, frankly, just be going straight to court. While I am cautiously optimistic about the neighbourhood justice panels, I think there are a number of questions about who they are targeted at and how much volume they can take. There were definitely more than 50 anti-social behaviour incidents in Swindon last year. That is just to give you a sense of the dynamics and the volume.

Q477 Mr Llwyd: My final question is about the Sentencing Council's approach. In the guidelines, they say there must be regard to the cost of different sentences and their relative effectiveness in preventing reoffending. How should the information be made more systematically available to sentencers? I suppose this is a question for Mr Monkhouse, to start with at least.

Richard Monkhouse: We have touched on that in terms of outcome. If we do not know the outcomes of various types of sentences, we are never going to know how effective they have been, and therefore how much the cost-benefit balance is. We do not know that.

There are some issues with the Sentencing Council guidelines, in that they can be a little bit prescriptive and they can lead to a bit of risk averseness. I will come back briefly to restorative justice. One of the issues that we have is that restorative justice works well pre-sentence and it works well post-sentence. Why can't it work well within a sentence? Restorative justice is not just about the option, "You have RJ or you go to court." RJ could and should be part of a sentence that magistrates' courts can give. But we do not see that, apart from in one or two specific areas; in Thames Valley, particularly, where Sir Charles Pollard has led restorative justice. He was chief constable there, so no wonder it works there. We do not see it in the rest of the country, yet the combination of a fine or a discharge, or even a low-level community order, together with restorative justice might be the switch that turns that offender off. But we do not have the option for doing that. We also suspect—some evidence is beginning to creep out—that even during the pause before actual sentencing the police are beginning to say, "Well, if we identify RJ, that is not going to court." It has become or is becoming—

Mr Llwyd: —an either/or.

Richard Monkhouse: It is in danger of becoming an either/or thing. That is missing a very good trick. We need to have all of those options.

You touched on the ability of each area to have the required disposals. We know that that does not happen. We know that until relatively recently even in an area like Greater Manchester, when I sat in a court, we were given by the probation service the suggestion of conditional discharge for a domestic violence incident that was drink-related, simply because they did not have the drink option available in our part of Greater Manchester. That just seems nonsensical—completely nonsensical. I believe that has now changed, but if that is happening in one part of the country it is also happening in a lot of other parts of the country.

We need to have the standard options which are going to have an effect on the offender. That is going to mean fewer victims, particularly in domestic violence. We have done an awful lot in domestic violence cases, but we can only pursue that and reduce the effect on the victims if it is consistent throughout the country, treated consistently through the police service and treated consistently in the courts rather than somebody else saying, "We will give them a bit of RJ and that will mean we don't have to prepare the paperwork to go to court." We are beginning to hear of those things. If you have a system that has all the options there, that system should be used rather than diverted.

Q478 Mr Llwyd: The Committee went to Northern Ireland a few months ago. It is slightly different there, of course, because the RJ element is imposed in a court setting, albeit with all the agencies around the table. That seems to be a good way forward.

Richard Monkhouse: Yes.

Q479 John McDonnell: Like you, the Committee has looked at the use of sentencing review powers and problem-solving courts. We got very excited with a trip to Texas and more excited when we went to Manchester.

Richard Monkhouse: Of course; why wouldn't you?

Q480 John McDonnell: I was feeding you the line, Richard. I was going to ask what your assessment was, but from what you have said this morning I am working on the basis that you were virtually unanimous that, although sentencing review powers are as important, problem-solving courts are the way to go. Some of you are trying to develop that at the moment. The Government are reluctant about that. Why do you think that is the case? If it is the case, in the face of Government reluctance, how can we go about achieving the development of this form of justice?

Richard Monkhouse: Penelope and Phil have both touched on it. You could allow for a little bit more innovation at local level. I do not want to go into this too deeply, but the morale of the magistracy is very low at the moment. These are the sorts of things that would help to boost it. It is about trust. It is about trusting magistrates to do the right thing in the right circumstances given the right options. If you have all of those things in place, you have a really powerful 23,000 people who want to do the right thing. They have guidelines and processes to help them do the right thing, yet time and time again it seems like we are not trusted. For example, we have been arguing for 12 months' custody for some time and we will carry on doing that. The response is generally such that it comes back to us, "We don't trust you not to send loads more people to prison." We have two years' custody for youths. We do not send any more youths to prison than we do adults.

Penelope Gibbs: We send less.

Richard Monkhouse: We send fewer, not less.

Penelope Gibbs: Sorry, fewer.

Richard Monkhouse: I am sorry; I am a bit picky about that.

With youths, we are seeing the more serious cases because there is more diversion before court. That is the point. The less serious cases are not coming to court. We are seeing more serious offenders, yet we are sending fewer people into custody. Why is there that lack of trust? It would be so much of a boost to the magistrates courts to say, "The Government trust you." We do not know what the reason is for that. We are doing some research, with the help of the MOJ, on why that is happening. We will be very interested to see what that research throws up. We guess that it is risk averseness again. "Let's not do it in case." I think we can be trusted.

Q481 John McDonnell: Richard, you mentioned earlier the drug courts and that there has been a decline in the use of sentencing review. Is that anecdotal or a statistic?

Richard Monkhouse: Where there is an order that is more than six months' long there is a built-in review. Probation services, over the last two, three or four years, have been saying, "Can we restrict them to six months?", so there is not the automatic review built in. It is now left to magistrates to say, "Actually we would like to build in that review." Again it is down to confidence and efficiency—that means another sitting. We understand the financial pressures. Absolutely. But we think there are other ways to go about that.

Q482 John McDonnell: It is a resource-driven step backwards then.

Richard Monkhouse: We think it is resource driven, yes.

Phillip Bowen: I think there are two reasons—probably three—why HMCTS are probably reluctant around problem-solving courts. One is obviously that they have to deliver budgetary savings, which has become their big obsession, and I empathise with them. It is a drastic reduction in their budget and they need to cope with that.

The second thing is worrying about how to get the volume out of the court. Third is the question about evidence. There are some questions that HMCTS are wrestling with. If we are proposing more sentencing reviews, to whom and why? What is the evidence behind

doing that? That is a genuine question. One of the things we are going to be doing with our partners in the new economics foundation over the next year is, if you want to introduce sentence reviews for more cases, which of those cases and where is the evidence as to what that is affecting?

Q483 John McDonnell: The evidence is mixed at the moment, isn't it?

Phillip Bowen: The evidence is mixed at the moment. Internationally, it is not. The evidence to date in the UK has been that we do not have enough cases on which to do the evidence. I should also be clear that there are other elements of the problem-solving court principles which can be applied here and now; for example, we are supporting a project down in Plymouth called the Plymouth Community Advice and Support Service, which targets most of its problem-solving approach at people in the conditional discharge and fine community. It is voluntary engagement, so you do not necessarily have that process of structured court reviews, but you do have a place where people can go and access the social services that we used to offer in the Bronx.

There are a number of questions around cost that organisations like mine need to address, because I think those are the questions that are in HMCTS's mind: "Does this work? Is it worth the bang for the buck? Who is it for?" Having been a civil servant, I understand the pressures on them at the moment. I also think, frankly, that they are doing other things. They are doing digitalisation and they are doing court closures. That is a lot to be getting on with. To introduce problem-solving courts at the same time is an additional pressure.

The last thing I would say is that in the examples that we gave in "Better Courts" and for some of the people we are working with at the moment, good local HMCTS managers and good local magistrates and sentencers are engaging with us and a number of providers. I do not want this Committee to take the view that it is all disastrous and that no one is engaging with it, or thinking about how to do more crime reduction in the courts. I just think that sometimes it is done in spite of the top-down system rather than because of it.

Penelope Gibbs: I would say it comes back to where we started, which is the disconnect between the Ministry of Justice and HMCTS and the rest of Government. The thing about problem-solving courts is that they may appear to be more expensive, but, presumably, if they work, the savings are accrued by somebody else in Government. From the point of view of HMCTS, where is the benefit for them? You get back to the financial incentivisation structure; if you had a more local system with delegation of budgets, there would be a reason for those courts to be supported, if they worked.

Phillip Bowen: There was a recent evaluation of the Brooklyn-based Red Hook Community Justice Centre, which showed that less people who go through that court go to prison than would be the case in the Brooklyn downtown court. Who saves that money? It is the New York city mayor who saves that money. He also sponsors the Red Hook Community Justice Centre, so he has a direct line: "If I invest in this, I save people going to my jail, so I accrue the saving." As you explored in your 2010 report, the MOJ spends money on X and it is a very long loop before it starts saving money in prisons.

Penelope Gibbs: There is almost a conflict sometimes between the incentivisation structure for HMCTS and what would benefit the rest of Government. For instance, if you go for a very speedy process, if you look at remand, sometimes the speediest way of dealing with somebody in remand if you do not have much information is simply to imprison that person. Nobody around the court is going to pay that cost. It is paid by somebody else somewhere else. Sometimes if you could slow that down, and say for an under 18-year-old, "Can you go and find out more information about this child and we will delay it to the afternoon?", yes, there is a process cost, but in the end the prison cost is much, much lower.

Q484 John McDonnell: It comes back to this issue of the Sentencing Council guidelines about taking the economic factors into account within the broadest range possible.

Penelope Gibbs: They need all the factors, not just the top-line cost. They need the total cost, which is much greater.

Phillip Bowen: It is not just cost; it is cash. That is important. We can show cost-benefit reductions on all sorts of programmes, but where is the cash now? Certainly when I was working for a time on spending reviews at the Treasury, cash now was rather more important than benefit later.

Jeremy Corbyn: It never changes.

Q485 John McDonnell: We've all been there; don't worry.

If there is to be an expansion of the problem-solving courts, do you think it requires section 178 of the Criminal Justice Act 2003 to be brought into force now?

Richard Monkhouse: Yes.

Phillip Bowen: We have briefed Government on this. My understanding of section 178 at the moment is that by Order in Council there are 10 courts designated to operate community orders. My view is that that power should be available to all courts. That does not mean that every community sentence should be getting a sentencer review; not at all. In some cases it would be an inappropriate use of resources. It may not be the most effective thing to do. The evidence from the States and from Australia would suggest that there are particular types of cases where that might be useful. In particular, domestic violence courts are beginning to see that that process of review helps keep victims safer. It makes them feel safer that something is being done and, when combined with perpetrator programmes, it can actually reduce the propensity of the perpetrators to reoffend. While I would want that power to be opened up to all courts, I would also want MOJ, HMCTS and organisations like us to be involved in what we think the next cohort of people who should come under that regime should look like.

Q486 John McDonnell: People are creatively working their way around it at the moment, aren't they?

Richard Monkhouse: Yes, but to involve magistrates as well. It comes back again to trust. We are not going to overuse these things; we know what is sensible and we are all trained and appraised. We all go through that. I just wish there was a little bit more trust in the system.

Q487 Chair: Mr Pemberton, do you think sufficient regard is paid to patterns of victimisation and repeat victimisation, either in geographical areas or in sections of the community and society, in informing the direction of crime reduction policy?

Adam Pemberton: The short answer is no, I do not think enough attention is paid. One issue of particular importance is around unreported crime. There are substantial numbers of people who are victims of crime who never report the crime. They are victims of repeat crime. Anti-social behaviour is a good example of this. People can go through repeated incidents of anti-social behaviour that do not reach a level that can be deemed a crime. Nevertheless, in their personal experience it is hugely impactful on their lives, and they are in need of support. There can often be an escalation of that, which leads to crime.

There is something about understanding that it is not just about the numbers of people who are reporting crime; it is actually being able to get to a lower level and, as you say, understand the map of offending locally that sometimes sits below the radar, so that sufficient interventions can be made, and, as well as that, making sure that support is available for people who are victims of crime. At Victim Support, we are currently commissioned to

provide services, but those are for people who have reported crime. We run a national helpline for people who want to contact us. If someone contacts us who feels they have been a victim but it has not been deemed a crime or they have not reported it, we will provide support. We have a wealth of information across England and Wales, but it is about using that information to really understand the various patterns and cross-cutting trends to inform crime reduction efforts. This is a big challenge. PCCs are still getting to grips with it as part of taking up their responsibility for victims. We have a long way to go.

Richard Monkhouse: I would add to that. Certainly in our area, the magistrates and the community unit have been working with Greater Manchester police in their attempt to understand hate crime. We have been having sessions. I know that at senior levels there have been sharp intakes of breath regarding judicial independence. They have been so positive. We have been getting groups of people in and showing them what the process is about reporting crime, what happens involving Victim Support, and involving them and showing them how the court system works and how magistrates work. It has been such a positive thing. Greater Manchester police are over the moon about it, but we know that if we tried to expand it in the country we would get a firm, “You shouldn’t be doing this because it interferes with judicial independence.” That is again an issue, but there is so much more we can do at a local level involving all the groups. Separation of powers does not mean that we don’t talk to each other. Separation of powers means we don’t do each other’s jobs. Simply put, that is what it is. I think there is a lack of understanding of that, so there is more that we can do.

Q488 Chair: We asked when we were in Greater Manchester, “How have you managed to persuade the magistrates of this?” and the answer was, “They have been involved from the start.”

Richard Monkhouse: Yes, but it was a push. We had to really push at it.

Q489 Chair: If either of you have any examples of either very good practice or lack of good practice in this area we would be quite interested, if only to illustrate what we are trying to explain when we come to report on the issue.

Adam Pemberton: We will write to you with some examples.

Q490 Mr Llwyd: This is a question for the panel with the exception of Mr Monkhouse; it might be slightly invidious as we are treading on some political ground here. The then Government response to this Committee’s report on justice reinvestment stated that the Government could not then set a clear direction to reduce the use of custody as an end in itself. It appears that the current Government shares that view. Why do you think that consecutive Governments do not consider reducing levels of imprisonment to be a legitimate policy goal?

Penelope Gibbs: I think they would like to, but they are afraid of the media. In the end, they know that prison is very expensive and quite ineffective in a huge proportion of cases, but our dynamic conversation about criminal justice means that they think only by pushing the punitive buttons. Are they going to get good media? I think they may be right in saying, “In this climate, if we say we want to reduce prison numbers, we may get savaged by the media.” It is a sad situation, but I can understand where they are coming from.

Q491 Mr Llwyd: Can I interrupt you for a moment? You say “in this climate.” This climate is the prevalent climate over the last 50 years, isn’t it?

Penelope Gibbs: No. Under Thatcher, criminal justice was quite under the radar. I have not analysed the media coverage at the time, but under Douglas Hurd and so on she played a clever media game in a sense, whereby that side of the press was fed by agendas

other than criminal justice. Do you see what I mean? There was the welfare agenda and so on. In that period, there was some progressive stuff happening on criminal justice. Prison numbers, certainly for children, went way down. It is since post-Thatcher that it has got much worse. There is a kind of constant at the moment. Clearly as a penal reformer, I would love them to say, "Let's have a commitment to reduce prison numbers," but in a sense I do not think they need to. I come back to the point that, if they could change the financial incentivisation structure to delegating custodial budgets, they do not need to say anything. With under 18-year-olds in custody, remand has gone down with the delegation of budgets. In Pathfinders, where they delegated the whole budget, custody has gone down. They would not need to actually state it as a policy, but they would get that outcome.

Q492 Mr Llwyd: That is interesting. What we found on our much vaunted visit to Texas was that the political right and the political left came together because there was an understanding about the relative cost, efficiency and efficacy of these sentences. In other words, custody does not always work; quite the reverse. They were closing prisons down and even the right-wingers said, "Yes, fine, because we're spending less money and getting better outcomes." Surely if the public got to thinking in that way, we could do away with this tabloid drumbeat that seems to undermine everything.

Penelope Gibbs: Absolutely. The question is how we get there, but I agree with you.

Q493 Mr Llwyd: Mr Bowen may have an idea of how we can get there.

Phillip Bowen: There are three reasons why Governments do not commit to reducing the prison population. Ben Page was talking at the Committee a couple of weeks ago, saying that the public consistently say they are happy to lock people up even though they know it does not reduce reoffending.

Secondly, the financial incentive on the Treasury is relatively weak. I am not saying it is weak, but it is a relatively weak one. If you look at the States and the justice reinvestment movement, in California 11% of their budget was spent on prisons. When we look at our spend on prisons, it is £3.6 billion. In the grand scheme of things it is not that much money, even though for the criminal justice system it is that much money. The problem with saving money in prisons is that you have to get to a point where you are shutting down whole prisons and getting rid of staff. One of the things the justice reinvestment movement has done effectively in the States is to stop the growth of prison. I am not necessarily sure how effective it is going to be in reducing the overall levels of incarceration.

A disincentive towards saving money on prison places is that people have a right to expect that punishment happens when someone breaks the law. When we were doing our work on domestic violence courts and speaking with independent domestic violence advisers, we asked, "What are victims' views on the sentences the courts pass?" They were mostly saying, "I want that bastard to go to prison." It is hard to argue them down from that. Explaining community sentencing is much more difficult.

One of the ways in which a Government might be able to reduce the overall size of the prison population is not necessarily talking about it, but saying, "How do we use prison more effectively?" There is a really interesting area of practice that is emerging in the States around what is called "swift and sure probation," which is, "How do we use the least amount of prison for the maximum amount of effectiveness?" There is, for example, a project in Hawaii called the Hope probation programme that has drug misusing offenders on probation supervision. When they test positive, they get a day's worth of jail. Overall those people are getting consistent doses of jail swiftly and certainly, but there is an overall reduction in the use of jail, because you are not just saying, "Right, we're done with you now and you're getting a long prison sentence." I think there is possible scope in this country for looking at

maybe not directly saying, “Let’s reduce the size of the prison population” but at how we use prison or other sanctions more effectively. I do not think we do that well enough at the moment.

Adam Pemberton: I would challenge what Phil says a little bit. We make assumptions about what victims want from sentencing. We have day-to-day contact with victims across the board and do lots of research on this. Four out of five victims tell us that they would prefer an offender to receive an effective sentence rather than a harsh one. Their priority is about making sure that the offending stops. It is about effectiveness. Sometimes we make assumptions that victims will always want to push right to the top end of the scale. I do not think it is true. Their priority is around punishment—appropriate punishment—but really it is about it not happening to someone else. It is important to recognise that diversity of view.

Q494 Mr Llwyd: I do not disagree with what you have just said, but clearly victims per se are ahead of the game in terms of the people that the tabloids are aiming at. Isn’t that right?

Penelope Gibbs: There is an unfortunate cycle whereby the tabloids pick up on punitive messages from Government. They feed any punitive feelings in the population and it just goes round in a circle at the moment.

Q495 Chair: Of course, it also involves the assumption that prison is more punitive than some other sentences, which is manifestly not the case.

Penelope Gibbs: I would always come back to restorative justice, both for victims and trying to get something effective which will also get popular support. When I have done local radio about restorative justice, nearly everybody agrees that it can be as punitive in its broadest sense as prison, because it actually makes people face up to what they have done. They talk about shame management in Northern Ireland. You need the management, but the shame can be productive.

Phillip Bowen: That is right. One of the interesting things that we are exploring in this area of “swift and sure” is does it need to be going to jail for two days or can it be other non-custodial sanctions? What seems to be emerging from the evidence is that it is not about the severity of it but whether it happens with certainty and does it happen swiftly? Once a breach has happened, does the system do what it says it is going to do, which is, “You’re not playing by the rules; we’re going to do something”? Increasingly in the States they have been reducing the size of the dose of punishment they give, down to three hours or a night in jail rather than extended lengths. I think there is something in it.

Just to clarify my comments about victims, I absolutely agree with what you have said. I do think there are, in particular, vulnerable victims who at the end of the day want to be protected. One of the easy ways for them to feel protected is when that person is no longer on the streets. I just think we should deal with the reality of that. I take the point that when you talk constructively with them they will say, “I just don’t want this to happen to anyone again,” but I do not have confidence that, if they get a 26-week probation programme, it is necessarily going to change their behaviour, even though the evidence might suggest it does. I just think we need to deal with that reality.

Adam Pemberton: That is true too. The difficulty here is trying to separate views on sentencing from victims’ experience of the criminal justice system as a whole. We did a piece of work in “Make Justice Work” looking at the views of victims of community sentencing called “Out in the Open.” What was telling about that was that people could grasp that this was a tough sentence and it was meaningful, but their experience of having gone through the criminal justice system left them so distressed that they were not open to it as an actual remedy. It is very important not to try and distinguish sentencing entirely from the broader

issue of how victims feel involved in the criminal justice system. One inevitably influences the other.

Q496 Mr Llwyd: Could I bring Mr Monkhouse back in? What are your impressions of the impact of some provisions in the LASPO Act relating to remand for women offenders and young offenders? Has this prompted the development of alternative local provision in which sentencers can have confidence in their decisions not to remand in such cases?

Richard Monkhouse: There are some that have set up. Most of the good ones have been set up for a while. We have not seen a lot of evidence that more are being set up, but they are essentially a good thing.

If I come back to the media, one of the tabloid journals got in touch with me recently because they had found out about a women offenders' programme in a particular part of the country. They were desperate for me to say that they are an evil thing and that everybody needs to be treated exactly the same. I didn't, so there was no reporting of it. That is one of the problems. You would like this to expand.

We have done a lot of work in the MA on women offenders, and we see the need for this. The difficulty at the moment is the Transforming Rehabilitation programme, which has almost put a stop to everything pending the launch, now on 1 June. That has held everything back. Once that happens we would like to see those, and even men only set-ups for dealing with male-orientated problems—and there are. We know, for example, that when there is a football match in Manchester, the domestic violence rate goes up afterwards because one side has lost. That is an effect. It is almost all male orientated. We need to be starting to address this.

Penelope Gibbs: On under-18 remand I have not heard, through my other hat as Chair of the Standing Committee for Youth Justice, that it has fuelled a great amount of innovation. What I think it has done is improved practice. That is a good in itself.

Q497 Mr Llwyd: Mr Pemberton, what impact has the victim surcharge made to victims of crime?

Adam Pemberton: The victim surcharge will now mean that there will be increased funding for victim services. It is one of the very few areas where I think there will be additional resources available. In that respect it is very welcome. Clearly there is an issue around collecting it and then distributing it in a way that it can be useful. I cannot speak for how well that is going. The principle that offenders pay for some services to help future victims of crime is a welcome one. It is one that victims welcome. Certainly, as I have tried to get across to you today, there is much more we can do for victims, so the additional resources that are available to commission those services is welcome.

Q498 Mr Llwyd: I do not disagree with the principle, but I rather question the issue of somebody who is convicted of a speeding offence paying an impact surcharge. I wonder who the victim is really.

Adam Pemberton: It is probably not for me to defend the policy of the victim surcharge.

Mr Llwyd: It is just a nasty personal matter—perhaps we should move on.

Adam Pemberton: Perhaps I should not intrude on this private matter.

Q499 Mr Llwyd: What are your observations on the Government's proposals to administer a charge to convicted offenders—in other words, to meet part of the HMCTS administration of court costs? Perhaps I should declare an interest on this as well.

Richard Monkhouse: Many of the people we see are on benefits and many do not have very much to rub together. So now we have fine; we have a victim surcharge, which has gone up; we have prosecution costs; we have court costs; and we possibly have compensation. We know the hierarchy, but you are dealing with people who have no resource. The people who are going to be most affected are motorists—again—because the motorist is not normally in that situation. The motorist is normally somebody who has just committed a speeding offence or whatever but normally has the resources. It is going to hit the motorist more than it is going to hit anybody else.

I can understand where it is coming from, but you are starting to impose more and more on that single individual who has no resources. Part of his or her problem lies in the fact that they have no resources, so you are actually making it worse. We would like to see that as discretionary. We know it is not in the Bill as discretionary but we would like to see it as discretionary. If we are engaging properly with the offender, we need to know what is going to make matters worse and what is not going to make matters worse, fully understanding that they have committed an offence and that they need to be punished for it.

Phillip Bowen: I agree with all those comments. That population of people cycle through the fine, community and conditional discharge area of courts. When we were writing about the courts, we sat for about 200 hours doing courtroom observations. Consistently we saw people like street drinkers coming through and getting fines. We thought, “This person is never going to pay.” The question is what do you do with that person? Obviously there needs to be an element of punishment, but there also needs to be an element of help. I certainly think the work that has been done under the Plymouth Community Advice and Support Service is that combination. How do we help this person? When we have got them in court, how do we help this person, but also how do we begin to suggest that the court might do something more creative in terms of disposals? I think we are seeing some encouraging things.

I agree with Richard. I think the burden will fall on people who cannot pay at the moment, so I don’t know why we expect them to pay in the future. They cannot pay their fines at the moment, so how does £50 extra help?

Penelope Gibbs: I have not read the detail of the Bill. The bit that I am particularly concerned about, if it is there and it does happen, is any loading of costs on to appeals. Transform Justice did a short paper looking at the barriers to appeals. One of them is about money. If you lose your appeal from the magistrates to the Crown, you can already be faced with paying £250. An appeal that works is a fundamental part of our justice system in order to correct all this other stuff. If somebody who is on the edge in terms of their means is faced with huge costs for appealing their sentence or their conviction, that is a disincentive which I think is bad for the justice system, if you increase it from where it is now.

Chair: Thank you very much to the four of you. We are very grateful. It has been a very interesting session, which we much appreciate.