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Perceptions of Summary Criminal Justice in Scotland

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PERCEPTIONS OF SUMMARY CRIMINAL JUSTICE IN SCOTLAND

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EXECUTIVE SUMMARY

Introduction

There has been little qualitative work in Scotland to date that has specifically explored the attitudes, views and expectations of lay members of the public with regard to the justice system. The preference instead has been for canvassing public views as part of large scale surveys (most notably via the Scottish Crime and Justice Survey). This report seeks to fill some of the gaps in existing knowledge and to bring up-to-date our understanding of what the public knows, perceives and wants of the justice system in Scotland.

In July and August 2011, three deliberative research workshops were held with members of the public in Scotland: one each in Ayr, Livingston and Aberdeen. This was part of a wider evaluation to explore the impact of Summary Justice Reforms (SJR) on victims and witnesses, as well as to gauge public perceptions of the summary justice system, and the reforms overall.

Although main findings from the workshops were incorporated into the earlier evaluation report[1], the purpose of the subsequent analysis, which is presented here, was to further explore people's understanding, perceptions and expectations of the Summary Criminal Justice System in Scotland; present wider messages around how people view justice per se; and discuss what could be done to improve or maximise public confidence in the system.

Methods

Deliberative research is used for exploring how people feel about issues of which they have little or no previous knowledge. It gathers both uninformed and informed views on a given topic, in this case, the summary criminal justice system. Members of the public were recruited at random on the street and door-to-door in the summer of 2011. A total of 20 people were recruited to each group, with 56 participants taking part overall.

While the recruitment for the workshops sought to achieve a broad mix of demographics across a spread of geographic areas, the findings presented here cannot be considered as representative of the communities from which the workshop participants were drawn and instead only provide indicative insight into the local communities' views. Those with direct recent experience of the justice system were deliberately not recruited to the groups because views of victims, witnesses and accused were being canvassed separately.

Main Findings

Overall, when exploring knowledge and understanding of the summary justice system, all of the participants demonstrated little or no knowledge or

[1] MVA Consultancy (2012) Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/0038/00386764.pdf

understanding of it. The main reasons given for this were a lack of direct involvement or engagement with the system. People's main direct contact with the justice system had been either as a result of being called for jury service, as a witness (often not actually resulting in an appearance at court) or as a witness to a minor crime, which was reported to the police but proceeded no further. Whilst TV programmes and newspapers were cited as main sources of knowledge, participants also stressed that they were unsure about the factual accuracy of the programmes they viewed.

There was, in particular, a lack of awareness of the different levels of court (High Court, Sheriff and Jury, Sheriff Court and Justice of the Peace (JP) Courts). The notion of JP courts, although not well understood, was something the participants seemed to engage well with and view as a reasonable way of administering localised, community sensitive disposals.

Although participants did not feel sufficiently well informed to comment on the efficiency of the system they quite confidently expressed that the system was not fair, effective, quick nor simple despite having little or no direct personal experience of it. This was largely because they perceived victims and witnesses were often treated unfairly, that re-offending rates were increasing (despite statistical evidence to the contrary) and that cases took too long to progress through court. The use of antiquated legal jargon in the system was also perceived to make it inaccessible to lay members of the public. Overall, there was a general agreement between, and within, groups that lay members of the public would like to know more about the system.

When provided with factual information about how the summary justice system works, one of the main feelings expressed was disappointment at the lack of information provided at key stages throughout the justice process to victims and witnesses. This was coupled with strong views that more support should be made available routinely to victims and witnesses at all stages of the court journey. Current perceptions that victims and witnesses were not well treated by the system were seen as potentially deterring people from coming forward to the police to report crimes.

The consensus amongst participants at the workshops was that the system needed to be equally fair to all three parties: accused, victims and witnesses – but not many participants felt that this was currently the case. Instead, they felt that the system currently favoured accused over victims. There was also a perception that the current protocol allowed offenders to 'work the system' to their own advantage. One area of particular concern was persistent failure to appear at court among accused and their general demeanour in court, both of which were perceived to be demonstrative of a lack of respect for the law. Several discussions revealed that some participants also perceived the offender bias to be supported by facets of the system which allowed them to reduce their sentence. These include discounts for early pleas and early release from prison, the first of which was discussed with participants in relation to the recent summary justice reforms which were designed to encourage early guilty pleas.

Although the workshops did not have a primary focus on sentencing, many of the discussions generated comments from participants about what they perceived characterised current sentencing practices and outcomes. It is important to note that most of the views expressed reflected participants' priorities for sentencing and in many cases bore no relation to how the system currently operates in practice.

Regardless of the types of disposals discussed, there was a shared empathy across the group discussions that victims would probably wish to have a say in the sentencing of those who perpetrated crimes against them, and that their voice should play a part in the sentencing process, if they desired. There was also a shared view among a large number of participants that offending histories should be taken into account both when determining guilt and during sentencing.

Across almost all groups, sentiments were expressed about the potential positive value of making offenders return to the scenes of their crimes to repair criminal damage, in order to provide direct compensation to the individuals and communities who had been affected by them. There was also a view expressed that greater visibility of community service work may give it greater credibility as a punishment in the eyes of both the public and the offender.

There was some cynicism about whether fines presented a credible punishment option and whether, therefore, they presented a real deterrent to offending. The main issue was the value of using fines for people where it was quite clear repayment would not occur (either because they 'could not' or 'would not' pay). Where people genuinely could not pay, there was a strong preference for community service over short-term custodial sentences for low level offences since, on balance, community work disposals were perceived to be more visible, less attractive to offenders and potentially more likely to offer rehabilitative value and thus be a greater deterrent to re-offending.

Discussions around custodial sentences usually provoked one of two types of responses: either that everyone should be 'locked up', as it was the most serious deterrent, or that prisons were simply not effective. In particular, it was suggested that existing prison conditions were too 'comfortable' and that this meant that prison was not seen as a real deterrent (despite little knowledge of what actual conditions were like).

Overall, the view that was expressed was that, whilst prison sentences needed to be fair and consistent, they also needed to be sufficiently tough that offenders would not commit further crimes. Interestingly, this view, which was quite widespread among participants, is not reflected in the research evidence which shows that tough treatment is less impactful on re-offending or recidivism than dealing directly with offenders' criminogenic needs (including, for example, tackling their social attitudes, changing their social circles, tackling drug and alcohol addiction problems, etc.) Indeed, a small number of those who took part in the workshops did recognise that punitive treatment in prison would not have any rehabilitative value, and so tough prison conditions were seen as potentially useful only if accompanied by access to, and

rehabilitative work with, specialists (e.g. social workers or drug specialists) who could help to explore the roots of offending behaviour.

Across the groups, there appeared to be quite strong support for the notion of making punishments more visible to the public, in order to act as a deterrent to future offending i.e. 'naming and shaming' or public humiliation. Such views again, however, are not supported by the research evidence which instead shows that the likelihood of punishment, and not its severity, is more likely to act as a deterrent.

There was consensus that a fair justice system needed to ensure that any person accused of a crime or offence should have access to a fair trial and the right to be heard, and that, overall, the assumption that people are innocent until proven guilty was a principle to be upheld. The only exception to this was repeat and prolific offenders for whom there was less desire to apply an assumption of innocence.

Finally, among the participants, there was a recognition that wider social change would be required, rather than tackling the system alone in order to reduce crime and anti-social behaviour in its entirety. Restoring and improving social values of respect for justice and authority overall was seen as a key underlying challenge to reducing re-offending in the future. There was no suggestion, however, that responsibility for this should necessarily sit with the justice system.

Conclusion

In conclusion, the work has shown that, at least among these participants, people know little but would like to know more about criminal justice in Scotland and, in particular, there is an appetite for factual knowledge about the system and how it works. A system that is seen as being designed and delivered with the public in mind seems to be fundamental to what people expect and ensuring that the system is end-user-led also seems to be key.

1 BACKGROUND AND INTRODUCTION

Background

1.1 In July and August 2011, three deliberative research workshops were held with members of the public in Scotland: one each in Ayr, Livingston and Aberdeen. The work was carried out as part of the previously published Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation[2]. Although some of the main findings to emerge from the workshops were reported as part of the earlier report, this report seeks to provide a fuller and more detailed analysis of the data.

Aims of the Work

1.2 The main aims of this report are to use the data from the workshops to:

- explore people's understanding, perceptions and expectations of the Summary Criminal Justice System in Scotland;
- present wider messages around how people view justice per se; and
- discuss what could be done to improve or maximise public confidence in the system.

1.3 In doing so, both the solicited and unsolicited views of the participants are presented.

Policy Context

1.4 One of the Scottish Government's five strategic objectives[3] that underpin its core purpose is to create a Safer and Stronger Scotland. Two legislative changes have been introduced in recent years which seek to contribute to achieving this objective.

1.5 In 2007, the **Criminal Proceedings etc. (Reform) (Scotland) Act** set out a package of changes or 'reforms' to summary justice in Scotland collectively known as 'Summary Justice Reforms' or 'SJR'. A number of these changes were independently evaluated over a period of three years[4], and the findings emerging from each of these evaluations were used to inform the development of the new Making Justice Work (MJW) programme[5].

1.6 The MJW programme has a broader remit than SJR, covering both civil and criminal justice. Developed to pull together a range of current and potential reforms, the five projects focus on:

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[2] MVA Consultancy (2012) Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/0038/00386764.pdf

[3] A Scotland that is Wealthier and Fairer, Smarter, Healthier, Safer and Stronger and Greener.

[4] Information on the separate evaluations is available at: http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/19008/monitoringandevaluation

[5] Further information is available at: http://www.scotland.gov.uk/Topics/Justice/legal/mjw

- Delivering efficient and effective court structures - to create a cost effective, proportionate court structure in which cases and appeals are heard by the right court in both civil and criminal cases, reserving the use of the highest courts for the most serious and complex cases;

- Improving procedures and case management - to improve the procedures of the justice system and to introduce active and effective management of cases, in order to minimise delays and adjournments to ensure the most cost effective use of court time;

- Widening access to justice - to develop mechanisms which will support and empower citizens to avoid or resolve informally disputes and problems wherever possible, and to ensure they have access to appropriate and proportionate advice, and to a full range of methods of dispute resolution, including courts and tribunals where necessary, and appropriate alternatives;

- Co-ordinating IT and Management Information - to provide the strategic platform for the development of IT, data management and management information to ensure all justice organisations have access to the data and information that they need, with efficient administrative processes supported by appropriate technology; and

- Establishing a Scottish Tribunals Service - to establish an efficient and effective Scottish Tribunals Service by merging the administration of devolved tribunals and through the devolution of reserved tribunals to Scotland.

1.7 The vision statement of the MJW programme is that "The Scottish justice system will be fair and accessible, cost-effective and efficient, and make proportionate use of resources. Disputes and prosecutions will be resolved quickly and secure just outcomes." The five projects within the programme together seek to address National Outcome 15, namely, to ensure that public services are high quality, continually improving, efficient and responsive to local people's needs. One of the main programme benefits will potentially be improving both the user experience and public confidence in the system.

1.8 Making Justice Work is one of four justice outcomes change programmes, the others being Reducing Re-offending; Building Safer Communities and Reassuring the Public. The latter of these is still in development and is focussing specifically on how to achieve low levels of fear, alarm and distress; and high confidence in the justice system. This report will contribute to that programme by providing insight into contemporary public views regarding confidence in the justice system.

1.9 The second piece of legislation, the **Criminal Justice and Licensing (Scotland) Act 2010**, also contained within it a number of changes to the law. These included changes which aspired to make sentences served in the community more robust, immediate and visible through the creation of the Community Payback Order and introduce a presumption against short prison sentences of 3 months or less as well as the creation of a Scottish Sentencing Council to try to ensure greater transparency and consistency in the sentencing process. The Act also sought to help the courts and prosecutors

through a number of reforms to the criminal law and court procedures - ensuring the interests of justice could be served whilst trying to protect the rights of victims and witnesses involved in the system.

1.10 A Victims and Witnesses Bill is also in early development, the central objective of which is to improve the experience of victims and witnesses within the criminal justice system. A consultation paper was issued in May 2012[6] which identified six objectives for victims and witnesses policy and a number of key proposals for system change, the feedback from which will be used in moving the Bill forward.

Wider Research Context

1.11 Although the research presented in this report was driven largely by the Summary Justice Reform programme, the findings themselves contribute more widely to what is a relatively sparse body of evidence regarding the views of the Scottish public on justice.

1.12 Although some insight into the attitudes, views and expectations of lay members of the public with regard to the justice system in England and Wales and further afield is available, the recently published literature review The Public and the Justice System: Attitudes, Drivers and Behaviour (Wilson, 2012)[7] showed that there has been little qualitative work with members of the public in Scotland, with a preference instead for canvassing public views as part of large scale surveys (most notably via the Scottish Crime and Justice Survey).

1.13 Wilson's review also showed that, whilst findings from the Scottish Crime and Justice Survey provide insight into public attitudes towards the justice system and notably the police across several indicators, there has, to date, been no published analysis combining these indicators to provide an overall indicator of public perceptions of justice. The review notes an absence, in particular, of views on the courts and parts of the justice system other than the police.

1.14 In the last ten years, two prominent pieces of qualitative research have been undertaken with members of the Scottish Public in relation to Justice; Nicholson's (2003) Summary Justice Review: Public Views on Key Issues[8], published for the Review Committee and the Report of the Summary Justice Review Committee: Supplementary Research[9], published in 2005. Designed

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[6] Scottish Government (2012) Making Justice Work for Victims and Witnesses: Victims and Witnesses Bill – A Consultation Paper, Scottish Government, Edinburgh available at: http://www.scotland.gov.uk/Resource/0039/00393452.pdf

[7] Wilson, C. (2012) The Public and the Justice System: Attitudes, Drivers and Behaviour, A Literature Review, Scottish Government, Edinburgh available at: http://www.scotland.gov.uk/Publications/2012/06/6767

[8] Nicholson, L. (2003) Summary Justice Review: Public Views on Key Issues, Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/925/0008782.pdf

[9] MRUK Research (2005) Report of the Summary Justice Review Committee: Supplementary Research Final Report, Scottish Executive, available at http://www.scotland.gov.uk/Resource/Doc/925/0016786.pdf

to provide a pre-reform insight into public opinion on summary justice, these projects together found:

- limited previous knowledge of the infrastructure of summary justice;
- inaccurate public perceptions of summary courts and greater familiarity with Sheriff Courts than lower level courts;
- people's top priorities for the summary justice system were offender focused: with a need for appropriate punishment, deterrence, making sure offenders were not 'let off' and consistency in sentencing; and
- respondents welcomed the expansion of reparation to victims or community schemes and were generally strongly in favour of a "right to reply" for victims of minor crime within the court system.

1.15 Recognising the importance of public views in shaping the future of justice, and the lack of primary qualitative research, the current research sought to fill some of the gaps in knowledge and to bring up-to-date our understanding of what people know, perceive and want of the justice system in Scotland.

Methodology

1.16 The report draws on the data from three deliberative workshops attended by members of the public who had been recruited on the street and door-to-door in the summer of 2011.

1.17 Deliberative research is a technique that is useful for exploring how people feel about issues of which they have little or no previous knowledge. It is usually conducted on a larger scale than a focus group and is characterised by gathering both uninformed and informed views on a given topic. Either at, or before, the event initial views on the subject matter are collected and are compared to those given after knowledge has been imparted. The event itself is a mixture of discussion and informing of the audience by 'experts'. In this case, a number of Summary Justice experts were invited to attend the events, to provide information to attendees and to answer questions that arose on the night. Experts included police officers, solicitors, Procurators Fiscal and victim support workers among others.

1.18 The workshop events were structured as follows:

- Completion of a pre-event questionnaire to collect information about people's awareness and understanding of (i) the summary criminal justice system, (ii) the reforms and (iii) attitudes towards its objectives. Questions were also asked about what people wanted from the summary criminal justice system in order to have confidence in it.
- A short presentation by the researchers to define summary criminal justice followed by mini-group discussions focussing on understanding of the system, sources of information about the system, the summary justice reform

objectives and what people wanted from the system in order to have confidence in it.

- Further short presentations by the researchers and expert panellists on the nature of summary criminal justice, the case process journey, the reforms and impact of the reforms to date.

- Further mini-group discussions using plausible but hypothetical case study examples of how certain types of cases may be dealt with in the system both pre- and post-reform, as well as case studies to highlight some of the process changes that had been made. Views were sought from participants on overall perceptions of the changes, whether they were perceived to be for the better or worse, if they were considered to be fair to victims, witnesses and accused, if they would help to reduce re-offending or not and if they perceived that further changes were required.

- Completion of a post-event questionnaire which again captured information about people's awareness and understanding of the summary criminal justice system, the reforms and attitudes towards the overarching objectives of SJR.

1.19 A total of 20 people were recruited for each group and the attrition rate was low, with 56 attendees (demographics can be found in Appendix A).

1.20 All of the workshop sessions were digitally recorded and transcribed, and these transcripts were used during analysis to extrapolate shared views expressed across and between the groups.

1.21 The analysis of this data is set out in this report.

Research Caveats

1.22 While the recruitment for the workshops sought to achieve a broad mix of demographics across a spread of geographic areas, the findings presented here cannot be considered as representative of those of the communities from which the workshop participants were drawn and instead only provide indicative insight into the local communities' views. The make-up of the groups was broadly similar, with a mix of ages and genders in each group.

1.23 Given that the views of victims and lay witnesses were canvassed separately for the overall SJR Victims, Witnesses and Public Perceptions Evaluation, and that justice professionals and accused had also been interviewed as part of the wider evaluation programme, recent direct exposure to the justice system was controlled for when recruiting for the workshops. Firstly, only people who had not been involved in the criminal justice system in the previous five years as either a victim, witness or accused were recruited. Secondly, neither the participants, nor a member of their immediate family, who worked in the criminal justice arena (for example, as a police officer, member of court staff, solicitor, etc.) were recruited.

1.24 Previous work has also shown that people from different walks of life and locations share remarkably similar views on the underlying principles of

summary justice. Therefore, the small differences in the demographic profiles of participants between areas were not considered as being a source of potential bias in the research.

1.25 It is also important to note at the outset that, whilst the report relates mainly to people's 'perceptions' of summary criminal justice in Scotland, in some cases, this title may be misleading since the report also covers experiences, attitudes and understanding of different components of the system, each of which are discretely different. Whilst experiences usually relate to specific reference points, attitudes in some cases were linked to direct or vicarious experience and in other cases were not, and perceptions too were sometimes experientially informed and other times not. This is noted, where appropriate, in the report.

1.26 Further, although the design of the workshops relied on obtaining uninformed and then informed views of the system, the analysis of data here has not been structured in such a way as to compare differences in views before and after information was imparted, but simply to extract emerging themes that occurred at any stage in the workshops. This means that, in some cases, attitudes and perceptions are reported which are based on factual information and other times represent only what people 'perceived' the system to be or how it worked. This is made clear where it occurs in the report.

1.27 Finally, although the original remit for the research was to explore views exclusively in relation to summary justice and recent reforms, it became apparent early on in the workshops that there was considerable confusion between the tiers of justice and so, in some cases, the comments that were made should be considered as relating to 'justice' per se, rather than necessarily reflecting the public's views of summary justice alone. This need not be problematic and, in some cases, provides additional insight into how the system is seen through the eyes of the public it is intended to serve.

2 KNOWLEDGE AND UNDERSTANDING OF THE SYSTEM

General Understanding and the Tiers of Justice

2.1 There was an overwhelming declaration among participants that they knew little or nothing about Scottish Summary Criminal Justice. Even when the question was widened to include all tiers of criminal justice (solemn and summary), knowledge and understanding was limited for all those who attended:

> "There's a court case, someone is prosecuted, someone is charged as a result, end of the system as far as I'm concerned." (Livingston)

> "I'm not aware of any of the details. I wasn't even sure of the difference between this [Summary Justice] and Solemn." (Ayr)

2.2 The main reasons given for this were a lack of direct involvement or engagement with the justice system:

> "I think unless you've had first-hand experience of it, you don't know anything about it at all." (Aberdeen)

> "In general, nobody's gonna really have an opinion until it affects you." (Ayr)

> "I think unless you're actually involved, you wouldn't know." (Livingston)

2.3 Instead, people stated that much of their information or knowledge was based on the experiences of others, and the resulting second-hand tales of what the justice system involved:

> "I don't have any understanding at all. … I have no experience whatsoever. It's all hearsay." (Livingston)

2.4 People's main direct contact with the justice system had been either as a result of being called for jury service, as a witness (often not actually resulting in an appearance at court) or as a witness to a minor crime, which was reported to the police but proceeded no further.

2.5 There was, in particular, a lack of awareness of the different levels of court (High Court, Sheriff and Jury, Sheriff Court and Justice of the Peace (JP) Courts). While some people thought that all court cases were heard in front of a judge and jury of their peers, others knew that some were heard in 'lesser' courts, but were unable to define or otherwise explain their understanding of what such courts might be:

> "I didn't realise that all of the lesser crimes were dealt with without juries and in a different kind of court. I just simply didn't know that." (Livingston)

> "'Cause sometimes when you get called for jury duty, they say, "Oh, you can all go away 'cause he's pleaded guilty", so I just assumed that everyone else went to a jury. That's what I thought." (Livingston)

> "You know there's a difference, but you don't know what they're all called." (Aberdeen)

2.6 When the differences between solemn and summary justice were explained, some people expressed surprise at the level of seriousness of some cases that were classified as 'summary', including dealing in Class A drugs and serious assault. There was particular surprise that such types of cases did not involve a jury.

2.7 The type of court that people knew least about was JP courts, and there was also no clear awareness that Justice of the Peace (JPs) positions were non-paid, publicly filled posts and were open for non-legally qualified members of the public to apply:

> "You never hear about any of these [JPs], about how they started. I had read something about Children's Panels, but I've never heard about this [recruitment of JPs]. (Livingston)

2.8 None of those who took part had a good understanding of the presence and role of JPs.

Raising Awareness of JP Courts

2.9 Given the lack of awareness of JP courts generally, it was suggested by some participants that there might be scope for greater public awareness of JP courts, including education around the types of disposals that they could hand out, and the increase in the sentencing powers that took place under the Summary Justice reforms. Indeed, that was considered especially important in order to reassure the public that JP courts would deal seriously with crime:

> "I think people need to be aware that it's not a lesser court. You know, it's still the justice system. "Well, I'm only going to 'baby criminal justice', rather than Sheriff's court", but they might just think, "Well, I'll do it anyway 'cause I'm only going to that one." (Aberdeen)

> "I think there is a great danger that you would think it wasn't being taken seriously if you were the victim. It's when you see the sentence. If it becomes a soft option, and it becomes known that it is a soft option, then it would infuriate you. But, if you know that JPs will treat it seriously, then that would be fine." (Ayr)

2.10 Given the greater movement of a wider range of low level offences to JP courts, it seems likely that increasingly more members of the public may become aware of their existence and role over time. This may be either due to being cited themselves or through the experience of others cited to attend

such courts[10]. Raising their profile among the public was suggested by a small number of those who took part in the workshops, since they felt that there may be public appetite for such knowledge.

2.11 There was a feeling among a small number of participants that JPs may be particularly credible sentencers for some low level community based offences, when JPs were seen as being representative of their communities, and thus likely to empathise with those involved in the case:

> "I think the other positive thing about Justices of the Peace is that cases that go to these courts versus more serious cases that are heard by a jury, it's introducing the element of an ordinary member of the public, advised by a legal adviser. But again, rather than a Sheriff, a Justice of the Peace is an ordinary member of the public and it's moving somewhat towards not a professional, legal person and that to me is fairer. It's the same principle as being tried by a jury. A jury of your peers." (Livingston)

2.12 Others contested this view and stressed this would only be true if the JP appointment process worked as intended. Some participants were concerned that the voluntary nature of JPs meant the exclusion of those who have to work for a living (perceived to be the majority), leading them to question the 'worldliness' of some people who choose to put themselves forward as potential JPs:

> "[JPs need to be] people who know what's going on in their own street. Not someone who just lives in a posh house." (Livingston)

> "The altruistic side of giving yourself for no reward, invariably falls for those with time, which supports the 'life experience' element...but it precludes those who, out of necessity and I for one, have to go to work to earn money" (Livingston)

2.13 Thus, it seems that reassurance about the selection criteria for ensuring fitness-for-purpose was crucial to some of the participants' acceptance of a system that relies upon volunteers, assisted by legal advisors, for administering justice. Overall, however, the notion of JP courts, although not well understood, was something the participants seemed to engage well with and view as a reasonable way of administering localised, community sensitive disposals.

Sources of Knowledge

2.14 Data from the pre-event questionnaires provided a summary of the main sources of information that informed participants' knowledge and

[10] It is important to note, however, that while the nature of cases appearing at JP courts may have changed post-SJR, the reforms aimed to maintain the proportion of cases going to JP courts, not increase them. Considering an overall drop in the number of cases going through the courts over time, it may equally be the case that fewer people have direct or vicarious contact with JPs.

understanding of the justice system. Table 2.1 below shows the main sources of information that were cited. It is important to reiterate that those with direct recent experience of the justice system were deliberately not recruited to the groups.

Table 2.1 Sources of Information about the Summary Criminal Justice System[11]

Source	Number of Responses
TV – factual programmes such as the news or documentaries	32
Newspapers	29
TV – drama, e.g. Taggart	9
Friends'/family's experience	9
Own personal experience	6

Base: 56

2.15 Although many people cited TV programmes as a main source of knowledge, they also stressed that they were unsure about the factual accuracy of the programmes they viewed:

> "You get information from TV dramas but you don't know how exaggerated that really is." (Ayr)

2.16 For example, when the word 'bail' was mentioned, participants thought this referred to a sum of money that was paid by the accused for their temporary freedom - based on televised American films or dramas – rather than a means of protecting victims, witnesses and the public through the setting of special conditions placed on the accused, or restricting their liberty through standard bail conditions.

2.17 The second main source of information was newspapers, both local and national:

> "I don't really know much about it, just stuff you read about court in the papers, the 'Evening Express' and stuff like that." (Aberdeen)

2.18 Again, there was some suspicion that the media was responsible for wrongly presenting the justice system, and presenting a negatively biased view of the justice process and outcomes. This included presenting all young people as

[11] Given that most respondents had not heard of 'summary' criminal justice, these responses are more likely to refer to sources of knowledge about criminal justice *per se*.

deviant, and only ever reporting cases where the accused was found guilty, instead of cases where accused were found not-guilty:

> "I think it would be good to publicise when people are not guilty, so you know that they are not guilty. All you hear about in the press is that they are guilty." (Aberdeen)

2.19 Some people suggested that media reporting of 'good deeds' would help to provide a more balanced view. As one of the expert panellists explained:

> "You don't get the 'Robin Hoods', you just get the 'Hoodies'." (Aberdeen)

2.20 Such one-way media reporting was viewed as having a role in fuelling public concern about crime, and even to create an impression of rising crime rates, and overall perceptions that the majority of crime was of a more serious nature than is the case. This was evident from comments that were made by many of the participants once factual information had been presented to them at the events:

> "Quite surprised that the crime rate has dropped, I thought it was getting worse. And I didn't know that the High Court dealt with such a small percentage of cases. I thought that serous crime was perhaps a higher percentage." (Ayr)

2.21 Several views were also expressed which suggested that they felt that media publicising of high profile cases were unfair to both victims and accused:

> "I think it maybe should be kept confidential in terms of for the victim and the offender. Again, he [the accused] may not be guilty and the victim may not want it all through the papers. I think it should be kept more confidential than it is until the outcome of the case. I don't think it should be written about every day, what has happened." (Aberdeen)

> "I don't think they should be reporting on cases that are still being heard and things….I don't think the press should be able to report things when they're still being investigated. (Ayr)

2.22 Interestingly, therefore, whilst there seemed to be an interest in factual crime and justice information, and a hunger to learn about the system, there was also an expressed preference for cases only to be reported on conclusion, in fairness to victims and witnesses, and to be more balanced in terms of their reporting, such that 'good news' also reaches the wider public.

Assumptions about Effectiveness, Efficiency and Fairness

2.23 Discussions with participants had a specific focus on the extent to which people considered the system to be fair, effective, efficient and quick and simple. Overwhelmingly, people did not convey feelings that they perceived

the system to be fair, and this was mostly because their knowledge base was informed by 'bad news' stories and vicarious experience of poor treatment in court, where people had no direct court experience themselves. The system itself was seen as largely inaccessible and, in some cases, operating at a bureaucratic level rather than to serve the ends of justice:

> "When you learn that someone has been let off because of the process, as opposed to they did or did not do the crime". (Livingston)

2.24 Similarly, people generally did not express views that the system was effective, and this was largely linked to perceived high levels of re-offending:

> "There isn't a day that you don't open a paper and you see that people have re-offended again." (Livingston)

2.25 This is interesting because reconviction rate data held by the Scottish Government[12], which can be used as a proxy for re-offending rates, shows that there has, in fact, been a decline in reconvictions over the past seven years. This 'real' change was not reflected in people's perceptions, which seemed almost unanimously to be that repeat offending was on the increase. Indeed, the 'revolving door of re-offending' was taken as evidence that the system as it currently stands is not effective:

> "If the system was effective there wouldn't be any re-offending." (Aberdeen)

> "Effective, to show something is effective would be that people are not re-offending because re-offending is minimal, I guess." (Livingston)

> "'Cause, you do hear about people getting 20, 30 convictions and they keep getting more and more and what happens to them? How long does it take before they do something about it? Do they just keep letting them add up?" (Aberdeen)

2.26 Despite a lack of knowledge, there was an assumed efficiency of the system, with most people stating that they knew that the system was 'in the background' and simply trusting that it was working:

> "Thousands of cases must be heard successfully every week, month, you know. So, it must be working in the background or else it would be total anarchy." (Livingston)

> "Probably, I think it's like a lot of these things that, in the background you know it's there and it works, but if you don't have personal experience, unless you're really bored you never think, "I think I should

[12] Available at: http://www.scotland.gov.uk/Publications/2011/08/29151240/9

find out more about the criminal justice system" but you want it to be there and working just in case you ever do need it." (Livingston)

2.27 On quick and simple, there was again limited awareness of how long cases would take to progress through court yet there was a shared desire for case processing to be quicker than was perceived to be the case at present.

2.28 When informed of typical duration between incident and day in court, many participants were surprised. Perceived slowness of the justice process eroded their confidence in the system, and they thought that the (seemingly) protracted process must be a further burden on victims and witnesses. There was speculation that slowness must play into the hands of the accused, as it meant victims had to put up with the pressures for longer, as well as making it harder for the witness to remember what had happened:

> "If cases fail either because: the victim walks away, the accused is able to find a method of getting out of it, or the witnesses forget, it would be interesting to discover how many cases fail in those three areas. And then note if we run on for six or more months, we invariably lose it because the victim is unwilling to carry on with the pressure or the witness fails to remember, we would then get better results by contracting the duration" (Livingston)

> "Maybe just to be quicker, short time between the offence and the actual outcome of it. 'Cause, it seems to take an awful long time, you read about things that have happened and it seems to be quite a long time after it. I'm not sure why it takes that long for it to get through court to be honest." (Aberdeen)

> "It seems to be a problem generally. You go to court and they plead guilty/not guilty, and they defer the case for two months, three months, whatever, till they appear again, and it seems a waste of resources - police time, court's time, solicitors' time. Just a waste of resources." (Aberdeen)

2.29 That said, most people also did not want to see speed at the cost of effectiveness, as the following discussion among two Livingston participants highlights:

> P1: "I just read quick and simple and I think "cheap and cheerful" and I don't want that. If someone was to say, "The Scottish Summary Criminal Justice is quick and simple", it's a bit negative is it not? It's just the use of words. It just triggers my blood. "Quick and simple", it's like a ready-made meal."

> P2: "The only thing is that we live nowadays in an awful instant world, and people are wanting answers right away… You can't get quick and simple answers as to why something happened. 'Cause that can tend

> to mean that we're sitting in this society where you press a button on a computer and you get an answer right away, and we've kind of evolved into a society like that, and everything isn't quick and simple." (Livingston)

2.30 The main message therefore, seemed to be that, although almost all participants did not feel sufficiently well informed to comment on the efficiency of the system they quite confidently expressed that the system was not fair, effective, quick or simple despite having little or no direct personal experience of it.

Appetite for More Knowledge and Accessible Justice

2.31 Overall, there was a general agreement between, and within, groups that lay people would like to know more about the system:

> "But, don't you think the overall combination of what we're talking about is that if the general public knew the details of what was going on they would appreciate and accept the JP system, the Sheriff Court and the High Court system. I would say, at the moment, 90% of people wouldn't know. So, people need to be informed." (Livingston)

2.32 Indeed, people asked for more accessible sources of information about the system, other than those that are currently available, and more proactive awareness-raising of the system in communities, to counteract some of the perceived biases presented by the popular press.

2.33 In order for people to achieve a greater understanding, participants stressed that there was a need to remove the antiquated terms and existing technical language that create barriers for the public in terms of understanding how the system operates. As it stands, existing sources of information were considered inaccessible:

> "Before I came here I went online to have a read about it and I was really surprised. It was too difficult to understand." (Aberdeen)

> "Please would you translate the word 'diet'?" (Livingston)

2.34 Continued use of jargon that has no use anymore in the outside world was seen as ensuring that barriers would remain between the lay person and the legal profession. Many of the participants perceived the use of jargon to be precisely for this purpose (i.e. to make it difficult for 'ordinary people to understand'). Participants found it difficult to see how anyone could justify the use of antiquated terms, such as: 'Procurator Fiscal'; 'diet'; 'Summary'; and 'Solemn' in this day and age. There was no direct support for the continued use of such terms among those who took part.

2.35 Use of 'ordinary language' and proactive awareness-raising would, it was suggested, result in a more transparent and open system and, therefore, one which was perceived to be more fair and meeting the needs of the public:

> "…everybody that is involved in it, victims and accused as well, people need to understand the process, without them using complicated jargon that people will not necessarily understand. Just an uncomplicated process." (Livingston)

2.36 Overall, when exploring knowledge and understanding of the system, all of the participants demonstrated a shared and level footing of having relatively little or no knowledge or understanding of the system. Ideas for improving its transparency were also uniform.

2.37 The following chapter goes on to explore the particular types of information that people expressed a desire for as well as their perceptions of the current system based on the limited exposure that they had had, and the information presented to them during the workshop events.

3 RESPONSES TO INFORMATION ABOUT THE SYSTEM

Information Provision to Victims and Witnesses

3.1 Half-way through the workshop discussions, participants were provided with information on how the Summary Justice System works. Based on these expert insights, and their own more limited experience of the system, one of the main feelings that was expressed was disappointment at the lack of information provided at key stages throughout the justice process to all those who needed it:

> "But when you are not told anything, you don't know why 'X' is happening, you don't know why your court date has been put back, you don't know why you are being called as a witness, then you're not, then you are again, and then you don't know why that's gonna be cancelled again. Nobody is telling you anything, that's the frustrating bit. If people know how the whole process is working. It's the not knowing." (Aberdeen)

3.2 The lack of information for victims and witnesses in particular was something which seemed to be compounded by a perception that their adversaries (the accused), in some cases, have an unfair advantage of knowing the system, especially if they have been involved with it before:

> "Even letting somebody know that it was gonna take four weeks or six weeks, even letting someone know what stage of the process it's going through cause, I mean, the people at the other end [the accused] know what they did bad and how the process works, but normal people don't have access to knowing what's going on and how it works." (Aberdeen)

> "There's a system they've been through [the accused]. They know how to work it." (Livingston)

3.3 Without exception, participants wanted victims and witnesses to feel that they were the most important element in the process (i.e. the 'customer' that the system was there to serve), and so felt that they must be kept informed. It was suggested that, with modern technology and efficient administration processes, there could be no excuses for not keeping key people informed of case progress:

> "The worst communication is silence. The best communication I would think is a regular call from the Case Officer to say it's moving ahead – however slowly. Because if they're not telling me anything and I see the guy [the offender] out in the street I have to assume he's been let off, and I'm still going to have to mend my car, or whatever it happens to be". (Livingston)

> "The problem is just getting the admin sorted out. They need to say "Okay, we've got to let Peter know every 5 o'clock on a Friday what the

situation is regarding his case". Now it might be that in the system there is a method of sending a text message, just as they do in schools for parents of children playing truant, saying "Case number 73 – progressing". Now it might not be a lot but at least you know you've not been forgotten or lost in the system. Silence doesn't help!" (Livingston)

3.4 It was suggested by one participant that even basic communication, once a week would be sufficient to ensure victims and witnesses did not feel that no-one cared, or that their case might have been forgotten, or fallen through.

The Public Court Experience

3.5 In addition to lack of information, and perceived delays in the system of administering justice, almost all participants expressed views that the public court experience was one which was potentially very daunting.

3.6 Some of the strength of feeling amongst participants followed personal accounts expressed by individuals during the group discussions:

> "My family were a witness to a crime and the way our family is, straight away 999, it's just an automatic thing….And the problems we had! They [accused] tried to burn our house down…I feel for victims and witnesses – there's not enough protection!" (Ayr)

> "We had a business. And some girls… came into the shop and were stealing…So it went to court and it finished up costing us money and time. We went into court one at a time. My husband got such a tough time that, in the end, he said 'I'm not the accused, I'm the innocent party', but the way he was treated was as if he was the guilty party." (Ayr)

> "My friend was called as a witness recently and he's really not looking forward to it. He feels really intimidated by the whole process…. and I guess he feels like he's gonna say the wrong thing…He's having to deal with that [appearing at court], it seems to be taking a long time to go through and he's not done anything. He was just in the wrong place at the wrong time." (Aberdeen)

3.7 Perceptions that witnesses may find the experience daunting as a whole were often influenced by perceptions that prosecution and defence agents made appearing as a witness an uncomfortable experience:

> "The victims and witnesses system is, I think, pathetic actually. 'Cause they intimidate witnesses…the prosecution." (Aberdeen)

> "I personally think they'll feel like they have committed a crime." (Ayr)

> "I used to work in retail management and I was in court all the time because of shop-lifting cases. I was surprised at what an 'eye-opener' it was. 'Cause I always felt that, even though you were the one giving evidence, you felt like the accused, because you could only answer the question that you were asked. And you couldn't say, "Ah, but", because, "No, no, you're not allowed to say that", and it's so frustrating." (Livingston)

3.8 One group of participants were incredulous when informed that the older court buildings made it difficult for court staff to keep separate the accused from victims and witnesses. The fact that the state of the building dictated the experience of victims and witnesses, increasing their stress and fear, led to participants concluding that such buildings could not be considered fit-for-purpose:

> P1 [Expert]: "Most of them [courts] are listed buildings, with single entrances which you can't do anything about. After that, perhaps we should say that if you are a Crown witness, you should go to a separate area [i.e. away from the accused]?"
>
> P2: "You are actually saying that the building is ruling some of the down-sides for witnesses being with the accused. … Who is monitoring these witnesses non-appearing and the delays?"
>
> P1 [Expert]: "This is why this [workshop with the public] is really valuable because, how can I ask the witnesses why they don't come if they don't come? Once I get there [to court] they can tell me why they come; but those that don't come, I've got no way of finding out why?" We've tried on numerous occasions to find out the genuine reasons why they don't come." (Livingston)

3.9 Overall, the victim and witness court experience was not one that was positively viewed by anyone, and people felt that more could be done to make the experience more pleasant for anyone unfortunate enough to become involved.

3.10 Moreover, there was strong and sometimes emotional appeals for greater understanding of the victim or witness position. It was perceived that fundamental aspects of fairness and effectiveness are currently jeopardised if/when the public perceive that victims and witnesses are treated badly in court. Indeed, many participants felt that such unpleasant treatment of victims and witnesses must put off some from attending court, thereby undermining confidence in the system – since justice cannot possibly be being served in such circumstances.

The Perceived Offender Bias

3.11 The consensus amongst those at the workshops was that the system needed to be equally fair to all three parties: accused, victims and witnesses – but not many participants felt that this was currently the case:

> "It should be [fair], but I don't think it is. I think the victim gets the worst [treatment], and the accused gets the best." (Livingston)

3.12 Even after being informed about the way in which the summary justice system operates, and the processes for administering justice at various stages in case trajectories, there remained a strong sentiment among most participants that the system favoured accused over victims:

> "It's disgusting, the way they treat victims…they are having to protect the accused's human rights and it makes it appear that the criminal is being looked after." (Livingston)

3.13 The main driver behind such views was a perception that offenders are currently treated too leniently in the system:

> "I think it's more for the accused than the victim. That's what you read in the newspapers and that. And people seem to get off lightly." (Ayr)

> "Sometimes the accused get away lightly with things. That's just my opinion." (Aberdeen)

> "I think probably people think that they [the accused] are sometimes treated too fairly. I think if you think of yourself as a law abiding citizen, then you maybe think it's lenient." (Livingston)

3.14 Indeed, among a number of participants, there was suggestion that the system was currently seen as laughable by some accused:

> P1: "They know what the punishment is gonna be when they do it, but it doesn't put them off."

> P2: "They know they're gonna get a slap on the wrists…And these guys are laughing at the system." (Livingston)

3.15 Views were expressed that the relaxed attitudes of some accused to their court proceedings could be seen in their demeanour:

> "If it was me and I had to go to court I would be terrified. But for these people [accused], it's an everyday experience." (Aberdeen)

> "I was in court once. It's amazing the different people, their attitude towards the whole thing, some people had obviously been through the

system a lot. Even how they dress for the event, whether they were paying attention, coming in-and-out and laughing. It was amazing." (Aberdeen)

"A lot of the people I work with, it's a big part of their life, "Look at me, I'm going to court." It's like a status symbol." (Livingston)

3.16 Such behaviour was seen as a visible sign of defiance and lack of respect for the law. There was also a perception that the current protocol allowed offenders to 'work the system' to their own advantage. One area of particular concern was persistent failure to appear at court among accused:

"I mean, they fair get away with not turning up at court. And they are having it pretty easy in that respect because they, of all people, should be there. If everybody else has made the effort to be there then they should be [the accused]. There should be system or way to get them there and make sure that they turn up, rather than just trusting them to, 'cause I mean…?" (Aberdeen)

"All the legal people turn up, and the person who has been charged with the crime doesn't turn up. All of these legal people still need to be paid." (Livingston)

3.17 Suggestions for improving attendance rates included tagging, or escorted travel to court from home along with stiffer penalties for failure to appear to incentivise compliance:

"It's not just about the waste of time either, it's the money. Everyone who goes to court that day gets their expenses. A police officer or someone to physically go and get the accused and bring them there on the morning. Would that be more cost effective? Probably, it's a funny thing, it probably would be more cost effective. But, is that taking away someone's human rights? The more you think about it, you can talk yourself into a corner." (Livingston)

3.18 In the same way that participants seemed to desire greater policing of failure to appear at court, and the introduction of strategies to improve appearance rates, there was also a desire expressed for better monitoring of accused when released on bail because they perceived that those on bail were currently given too much freedom:

"Sometimes, people are given a bit too much freedom on bail as well. I think if you are on bail for a crime, a more serious crime, I think, I don't know what they do just now, but I think they could do a wee bit more, knowing exactly where that person is, what they are doing all the time. 'Cause, they're roaming the streets [accused]. I know you're not guilty until proven, but…" (Aberdeen)

> "I think if they breach bail [accused], and they're not turning up at court, it's a waste of money. It makes witnesses feel bad as well. They know that the person probably won't turn up." (Ayr)

> "It's like saying to a kid, "If you do that you won't get your sweetie", and then they do it and they get the sweetie anyway. It won't work." (Livingston)

3.19 One group were vocal in their calls for a fixed penalty fine for failure to appear such that all accused were incentivised to appear when asked, even recognising that accused are innocent until proven guilty. Others suggested that use of tagging for accused on bail may make victims, witnesses and the public feel safer. In essence, people felt that more needed to be done to monitor bail so that accused were not perceived to be roaming free and without restraint in the period awaiting their court appearances.

3.20 Having summarised perceptions of the system overall for the main lay actors involved (victims, witnesses and accused), the following chapter goes on to discuss in more detail participant perceptions of the range of sentencing options that are available, including community payback, financial penalties and prison sentences.

4 VIEWS ON SENTENCING

4.1 Although the workshops did not have a primary focus on sentencing, many of the discussions generated comments from participants about what they perceived characterised current sentencing practices and outcomes. It is important to note that most of the views expressed reflected participants' priorities for sentencing and in many cases bore no relation to how the system currently operates in practice. The views were often uninformed and so should be taken as indicative of participants' views only, rather than being accurate discussions of the system as it currently stands.

Giving Victims a Voice

4.2 Regardless of the types of disposals discussed, there was a shared empathy across the group discussions that victims would probably wish to have a say in the sentencing of those who perpetrated crimes against them, and that their voice should play a part in the sentencing process, if they desired:

> "I think it would be good to discuss with the victims to say, "Right, these are the options here". (Aberdeen)

> "Possibly give the victim a chance to give any evidence, so that if he wants to, he can, and he's given a specific time to give that evidence, and if he's not in there, he doesn't get another chance to give it." (Ayr)

> "I think everyone should be allowed to give an opinion on stuff, not just maybe some of the witnesses but even the victim should be able to say what they've got to say as well." (Livingston)

4.3 Many participants recognised that not all victims would want to appear at court, since it might be a daunting experience and may mean facing the accused. That said, for more serious cases, participants, for the most part, felt that the court experience, including an opportunity for the victim to speak would provide more closure than penalties being handed out which did not allow the victim's perspective to be publicly heard:

> "There's times when it's good to go through the court process. Just there's more finality, and peace of mind to realise that everyone else has heard the seriousness of what happened… because one of the basic needs of human nature is the need to be heard." (Livingston)

4.4 Only a small number of participants felt that the stress of appearing at court would outweigh this desire to be heard in such serious cases.

The Importance of Offending History

4.5 Regardless of the severity of cases and the type of disposal that was likely to be imposed, there was a shared view among a large number of participants that offending histories should be taken into account both when determining guilt (which is not currently the case) and during sentencing (as is indeed currently the case).

4.6 For quite a notable number of participants, there seemed to be some doubts about whether innocence should always be presumed, especially for those with long offending histories:

> "If we knew that someone who has committed ten thefts before then, and he's probably guilty, it's just a waste of time. If he says, "No, I didn't do this", but if he's got a huge string, then he's likely to have done it." (Ayr)

4.7 Such views were expressed by at least one group of participants across all workshop sessions and seemed to relate mainly to serious or prolific offenders from whom there was no real desire to see innocence assumed.

Community Payback and Personal Compensation

4.8 Across almost all groups, sentiments were expressed about the potential positive value of making offenders return to the scenes of their crimes to repair criminal damage, in order to provide direct compensation to the individuals and communities who had been affected by their crimes:

> "I would like to see victims being compensated…. I think it's appropriate that people should be made to tidy up their mess." (Ayr)

4.9 It was felt that this kind of community payback may also act as a means of making clear to offenders what the true impact of their crimes had been and was, therefore, a better option (in some cases) than paying financial compensation or fines:

> "It would maybe help people realise what they've actually done as well, if they go back to the crime, and see what they've done and try and fix it and then maybe they'd realise, "I've done wrong". But, if they just got a fine or something, they would just pay it and that would be it." (Livingston)

4.10 There was also an expressed view that greater visibility of community service work may give it greater credibility as a punishment both in the eyes of the public and the offender:

> "But mostly, we are unaware of who is doing community service. I've never seen anyone." (Aberdeen)

> "There must be some sort of programme that they can do, to do community work properly. When you think years ago, gravelling, and things. It would be far better if they were in doing things that would benefit the public." (Aberdeen)

4.11 Despite strong calls for greater use of community service work as a means of paying back the community, there remained some scepticism about whether some accused would actually complete the work and whether such work was appropriately monitored:

> "If they get community service they [the accused] couldn't care less. The shoplifter, the alcoholic, they don't complete it." (Aberdeen)

4.12 Interestingly, several people stressed a particular liking for the notion of community service or payback for young people :

> "I think, young children who commit vandalism and things, they should be made to clean it up and that way, that might teach them a lesson rather than their families having to pay back the money, which isn't gonna come out of their pockets, it's gonna come out of their families." (Aberdeen)

> "I don't understand in our current justice system why, if you're a child and you go out and you smash somebody's window, then the punishment for that should be that you go and help in some way do some kind of service to that person who you wronged…It's about the payback to the community to fit the crime… I think they should be back putting right what they did wrong and that's a form of, what's the word? A form of restitution, or something like that." (Livingston)

4.13 Importantly, it was viewed that young people were most likely to learn from engaging in community payback and that it may help towards rehabilitating young people before they got caught in a cycle of re-offending.

4.14 There were other perceived advantages of community service sentences too. Firstly, it was viewed that they affected all offenders the same, regardless of how much money they did/did not have (unlike fines); and secondly, it could potentially be managed such that the end result was better than before the crime (i.e. enhancement not simply repair). For example, if the perpetrator of a vandalism had to paint the bus shelter/fence/wall such that it looked better than prior to the damage. In this way, it was suggested that the victim and the community would jointly be the benefactors of the restitution or payback for the crime:

> "If there was community service, I think that'd be a good thing and would benefit the people who were affected by the crime, doubly so by improving it – better than it was before." (Ayr)

4.15 A chance for offenders to revisit crime scenes and learn more about the consequences of their actions was seen as something which might be doubly effective if the victim also had a chance to convey the impact of the crime on them directly to perpetrators:

> "I think the law has to be much more towards compensating victims properly… These people [offenders] should be back on the streets, and they can, you know, repay their victims personally in some way. And I think generally we need a culture of victims being compensated for the harm that's been done for them. And also a chance for confrontation with the perpetrator of the crime as well. I don't mean confrontation in a conflictive way, I mean, being aware of the harm that they've done to the victim." (Livingston)

> "Um, if it's from the victims perspective, that they get an opportunity to say what the consequences have been to them, all the sort of 'wider consequences'. I think, quite often they don't get that opportunity to put that across." (Aberdeen)

4.16 The principles of community payback and restorative justice are not new, and recent policy developments in both areas reflect awareness that these issues are important to members of the public, to victims and witnesses. The new Community Payback Order was introduced in Scotland in February 2011. The Order allows the court to require offenders to carry out hours of unpaid manual work in the community, to be supervised and meet specific conduct requirements, to pay compensation to victims and to participate in rehabilitative activities or interventions to tackle some of the factors underlying their offending behaviour. The Order also allows for tough sanctions to be applied for non-compliance. The workshops show that there is indeed support for such types of Orders.

Fines and Financial Penalties

4.17 There was some cynicism about whether fines presented a credible punishment option and whether, therefore, they presented a real deterrent to offending:

> "It depends if you want it to be a deterrent or if you just want things to get through the system quicker. I don't think it's much of a deterrent, paying £40 and that's it." (Aberdeen)

> "There's no real, um, they are not put out any by these fines…It's just like, "Well, I have no money", so for people who don't work, for them it's no punishment there as far as I'm concerned. You know, pay back £2 a week or whatever." (Livingston)

> "It seems a bit strange that somebody can be fined and say, "Well, stuff you, I'm not gonna pay it" and basically just walk away from it. It just makes an 'ass of the law'. Obviously, if they fail to respect the law, they should be taken to task." (Aberdeen)

4.18 Similarly, it was felt that the fines system may not be equitable for accused of different financial means and, therefore, fixed penalties had a greater negative impact for some than others:

> "Is there a way that they could make it more equitable? 'Cause, a £100 fine to a poor person is gonna be very different to a £100 fine for a rich person doing the same crime. So, make it a percentage of income. Just to keep it kind of 'means fair' or anything so that it's not just the richer ones who are getting away with it." (Aberdeen)

4.19 As discussed above, this was perhaps one reason why community service may be perceived as a 'fairer' option for all accused, since financial standing does not play a part.

4.20 Discussions around fines also provided some contradictory opinions. Generally, people were supportive that, for low level crimes, one of the best punishments was financial, as this was seen to be something that accused would resent:

> "I guess the way to hit people is in their pocket." (Aberdeen)

> "Short prison sentences don't work. I don't think prison sentences work at all, I think you need to hit them [offenders] where it hurts – in their pocket. Always." (Livingston)

4.21 That said, however, there was also little confidence that the current fines system was working, or that fines actually got paid. This was either because people were unwilling or unable to pay:

> "Some people are not gonna pay no matter what." (Livingston)

> "I think, for me, there are people that just cannae afford payment." (Ayr)

4.22 It was suggested that the fines system could be better 'oiled'. One participant compared the robustness of the response by a private sector company when someone commits a very small offence (i.e. is unable to pay a bill) with that of the justice system when someone commits a much higher level offence (e.g. assault) and is fined. The law seemed, to some participants, to be entirely on the company's side in such scenarios and allowed them to resort (quickly) to strong-arm tactics, such as bailiffs, to get their money, which was perceived as being very successful. The formal justice system seemed to be laboured in comparison, based purely on people's limited experience and understanding of it. The justice system was perceived as placing all the

burden of proof onto the victim with, often, the accused being let off because of the need to presume innocence until found guilty, instead of being directed by the evidence:

> "You can happily break that non-written contract to behave well with your fellow man - in the pub. Nobody will hold you to account for your offensive behaviour. Whilst if you sign a contract with a credit card company, they'll hound you to death. They'll hand you over to the debt collectors. They'll threaten you and get what they want. They don't have to have the evidence or plough through witnesses, and all that sort of thing". (Livingston)

4.23 There was some split in opinion about what should be done to tackle the issue of non-payment of fines. Some people were strong supporters of ensuring that financial penalties were paid, regardless of what this meant to offenders. Some participants expressed a desire to see loss of wages or even seizing of property to ensure that fines were paid[13]:

> "I think they should be strict. They should arrest wages, and take people's benefits, as long as their children have got clothes, and been fed, then they should enforce it." (Ayr)

> "As I said earlier, if you've got a 40-inch plasma sitting on the wall and you can't pay the fine, then, take it away and sell it. "Sorry, we'll sell that to pay for your thingy."" (Aberdeen)

4.24 Others advocated community service as an alternative to fines for those who 'could' not afford to pay:

> "They should be made to do something. They should have to do community service or something." (Ayr)

> "I mean, if they don't pay their fines, they should do community service or something." (Aberdeen)

4.25 The main issue with fines as a sentencing option, however, was the value of using fines for people where it was quite clear repayment would not occur (either because they 'could not' or 'would not' pay):

> "I think, thinking about the financial penalties again, something I get fed up with reading in the paper is somebody's got to pay a fine, and it's a £1 a week. And I think, "What does that actually mean to the person?" (Ayr)

[13] Seizure of property in Scotland is currently only possible via a Seizure of Vehicle Order, a sanction that is available to Fines Enforcement Officers. See http://www.scotcourts.gov.uk/payyourfine/svo.asp for further details.

> "I still think, if it's a case that the person can't afford it, what else can be done? 'Cause, 50p a week is just not gonna teach someone a lesson." (Aberdeen)

> "There's a lot of people who are given these financial penalties who won't have the money to pay for it. It's just creating another problem there, chasing up the money, and so on and so forth." (Aberdeen)

> "Well the outcomes of it, if all we are ending up doing is getting people further in debt, nicking things, petty crime, then that's not efficient. Not cost efficient, not 'any' efficient." (Livingston)

4.26 Where people genuinely could not pay, there was a strong preference for community service over short-term custodial sentences for low level offences since, on balance, community work disposals were perceived to be more visible, less attractive to offenders and potentially more likely to offer rehabilitative value and thus be a greater deterrent to re-offending. There was no suggestion among participants that an inability to pay should mean that punishment should not be meted out.

Prison and Repeat Offending

4.27 Discussions around custodial sentences usually provoked one of two types of responses: either that everyone should be 'locked up', as it was the most serious deterrent, or that prisons were simply not effective. In particular, it was suggested that existing prison conditions were too 'comfortable' and that this meant that prison was not seen as a real deterrent:

> "You hear the stories about prison, the PSPs [PlayStation Portable computer game] and all that." (Aberdeen)

> "This business of going to prison for two years and you get a plasma TV and a Slumberdown mattress and all that." (Livingston)

4.28 The following discussion between two participants in Ayr also reveals how participants viewed the use of prison for repeat offenders:

> P1: "You get fed up of hearing about people who have done 10, 20 and maybe 50 crimes, and they still are not getting the jail, or maybe they've only been there once. And, I think jails are easy too."

> P2:"Yes, it seems like they're staying in 5 star hotels."

> P1: "There shouldn't be re-offenders. They should be really punished when they are in jail, so that they don't do it again." (Ayr)

4.29 Interestingly, however, prison was also cited by a large number of attendees as being the only thing that would help to prevent and reduce re-offending rates:

> "Because, the only things that's gonna affect re-offending is putting people in jail." (Ayr)

4.30 Whilst prison sentences were welcomed, therefore, especially for repeat offenders, it seems that there was some appetite among participants for conditions of custodial sentences to be tougher than is currently perceived to be the case (although there was no evidence that any of the respondents had any factual knowledge of what actual conditions may be).

4.31 Overall, the view that was expressed was that, whilst prison sentences needed to be fair and consistent, they also needed to be sufficiently tough in the first instance that, on completion of the sentence, offenders would not commit further crimes:

> "Once is more than enough, as far as I'm concerned. I mean, it's just that should be it. It shouldn't be three, four times or whatever." (Aberdeen)

4.32 This view, which was quite widespread among participants, does not reflect what the research evidence shows. Indeed, tough treatment has been shown to be less impactful on re-offending or recidivism than dealing directly with offenders' criminogenic needs. This may include, for example, tackling their social attitudes, changing their social circles, tackling drug and alcohol addiction problems, etc. Thus, although lay public representatives may perceive that a strong punitive approach is likely to have a deterrent effect, this is not supported by the evidential base. Indeed, a small number of those who took part in the workshops did recognise that punitive treatment in prison would not have any rehabilitative value, and so tough prison conditions were seen as potentially useful only if accompanied by access to and rehabilitative work with specialists (e.g. social workers or drug specialists) who could help to explore the roots of offending behaviour.

Proportionate Sentencing

4.33 There was a clear split in views between groups and between areas about whether sentencing should be more consistent and rigidly applied or whether flexible sentencing should be the norm. For some, there were arguments for treating all offenders the same, regardless of the personal backgrounds:

> "For me, it means taking into consideration all cultures. I mean, you often hear because you are a poor family, you get treated less than a rich family. You should get treated the same… No matter who you are." (Aberdeen)

> "The punishment should match the crime. Whatever they've done, they should all be dealt with the same, 'cause it's the same crime." (Livingston)

4.34 These feelings in favour of fixed frameworks and punishments to ensure consistency were contrasted with some desire for a flexible system that took into consideration individuals' personal circumstances:

> "Not just that 'one size fits all'." (Aberdeen)

4.35 In particular, it was viewed that the system needed to be sufficiently flexible to accommodate those who made genuine 'mistakes' or one-time errors which landed them in a court scenario:

> "Sometimes people do it once and then realise how stupid it was and don't do it again which is fair enough." (Aberdeen)

4.36 Similarly, people did not want to see too severe sentences handed out purely to make a point:

> "Fair to the crime, it's got to fit the crime. If someone's breaching the peace, you don't want to see them doing two years in the jail, do you? It's got to be fair to the crime." (Ayr)

> "I feel it has to be a deterrent but not too harsh. You can't cut people's hands off for thieving." (Livingston)

4.37 The only area where almost all participants agreed that 'different' sentences should be used was for repeat offenders who, as discussed above, participants wanted to see treated more harshly than first time accused.

4.38 The participants demonstrated a tolerance for some lower level one-off offences and genuine mistakes, but a 'last stop' was also required:

> "But, there should be such a thing as a last chance." (Ayr)

4.39 Finally, it seems that, for some, the effectiveness of sentencing was undermined by perceptions that sentences were different in different regions; and that such inconsistencies could not be fair:

> "Consistency in sentencing is needed. Is the punishment given out in Glasgow… the same in Edinburgh? Dundee?" (Livingston)

Early Pleas, Discounted Sentences and Early Release from Prison

4.40 Several discussions revealed that some members of the public perceived the offender bias to be supported by facets of the system which allowed them to reduce their sentence. These include discounts for early pleas and early release from prison, the first of which was discussed with participants in relation to the recent summary justice reforms to legal aid. There was a view

that, in some cases, sentencing might be perceived as 'dishonest' since the punishments handed out and publicised did not match the actual punishment as experienced by the offender:

> "If someone is sent to prison for, say, fifteen years, but they only ever serve half of what their sentence is, I don't get why they are not just sentenced for seven and half years? Why are they sentenced to double when you're only gonna serve half?" (Aberdeen)

> "I just don't like the idea of a discounted sentence. It's like rewarding them. Why should they be rewarded, they've committed a crime. They shouldn't be rewarded." (Livingston)

> "That's what I meant earlier about accused being treated better than victims. They seem to get away with it. 'Cause they plead guilty." (Aberdeen)

4.41 Concerns about reduced sentences compounded concerns about the lack of effectiveness of short-term prison sentences and again led to overall perceptions that the system was currently inadvertently favouring the accused. That said, a minority of participants also felt that rewarding offenders through reduced sentences may assist in their longer term likelihood of recidivism:

> "I would say that if somebody pleads guilty to something, it's almost like the first step on their rehabilitation so perhaps that's the reason for rewarding them with a lighter sentence, is that there is already a recognition of the fact that they've done something wrong." (Livingston)

4.42 Indeed, as a general rule, alternatives to short-term sentences were seen as being necessary since short custodial stays were not being seen as long enough to be a sufficient deterrent nor allow rehabilitative work to be undertaken:

> "I mean custody is all very well but some people will come out and they will just go and commit the same crime again. I think some people it's more beneficial to them to get, not counselling, but proper sort of care so they won't do the same thing when they come out. Rather than a year in jail and they come out and do the same thing again." (Aberdeen)

> "But, evidence has shown that short prison sentences don't rehabilitate someone. Either give them longer prison sentences, or a different type of sentence." (Livingston)

Visible Punishment

4.43 Finally, across the groups, there appeared to be quite strong support for the notion of making punishments more visible to the public, in order to act as a deterrent to future offending i.e. 'naming and shaming' or public humiliation:

> "I've often thought if we published in one of the local papers, everybody who commits a crime, name, address, and if everybody was aware that that was going to happen to them before they actually committed a crime, it would certainly put, hopefully for people who cared, that 'shame factor' before they actually went there [offended].… 'Cause I think there's a lot of people who commit crimes and they think there's not really a price to pay because the public don't really get to know unless you are reading the paper." (Aberdeen)

> "If you could make them do something that makes them stand out, embarrassment of people knowing that they have done a crime - that would work." (Ayr)

4.44 Again, this was perceived as being likely to be particularly effective for repeat offenders and links closely with peoples' strong support for community service or payback. Making it publicly known who had committed various offences, as well as making their punishment be served in public seemed to appeal to many of the participants who took part. It again, however, is not a view that is supported by the research evidence which instead shows that the likelihood of punishment, and not its severity, is more likely to act as a deterrent.

5 OTHER EMERGING ISSUES

Protecting Victims and Witnesses

5.1 As discussed earlier, there was an appetite amongst participants to see more information provided to victims and witnesses as part of their court experience. This was coupled with strong views that more support should be made available routinely to victims and witnesses at all stages of the court journey. Current perceptions that victims and witnesses were not well treated by the system were seen as potentially deterring people from coming forward to the police to report crimes:

> "I think a lot of the times, people who are witnesses maybe wouldn't report things, because they're scared. More support for witnesses would maybe make them come forward. I think they would be more likely to report then. If they were protected." (Ayr)

> "Witnesses are left very much to their own devices now. …. If there's a gang of lads smashing things up, and you get called as a witness, you know that you're gonna get targeted. And you tell the police and they say they can't do anything until something actually happens." (Livingston)

5.2 Some participants also expressed views that victims and witnesses may not come forward to report crimes if they perceived that they would not be properly dealt with, in terms of punishments or disposals:

> "Victims will be affected by the way that the system treats the accused as well. You know, they won't want to come forward if they think that accused won't be treated in the way that they should be." (Ayr)

5.3 Sentiments of surprise and incredulity were expressed that some victims and witnesses have to share public spaces in court with the accused and their supporters:

> "Many, many years ago I had to go as a witness… but I was surprised that there were people in the same room that were witnesses, people giving evidence, victims, all mixing about in the same room, and I thought, "Surely there would be some kind of protection for these people from each other". Not just about getting to know who they are but also about prejudicing the case in advance, before it even opened. I find that a really strange situation, and I don't know if that still goes on, but if it does, it should be stopped." (Livingston)

5.4 Indeed, participants across all workshops felt that there was an inherent need for support and protection at all stages of the court journey (pre court, during court and post court), but confidence in whether this was currently in place was varied:

> "I think in most cases they are treated okay [witnesses], but you would think there could be more support, cause I know that witnesses can be intimidated very easily in this day and age so, more support definitely." (Aberdeen)

> "I know someone who went to court, and they really needed the support, to be given information about the courts and things. They couldn't have got through it without it." (Ayr)

> "I can't really comment on the way that the victims and witnesses are treated, 'cause I don't know. I would hope that the criminal justice system provides some form of support. I know that there are organisations like Victim Support, and that's great. I would hope that they are supported and steered through the criminal justice system." (Livingston)

5.5 As a minimum, participants felt it essential that victims routinely receive case outcome information without having to attend court in person:

> "I think if the victims have to go to court in order to have to find out what's happened to somebody, they're then going to have to run a gauntlet of the supporters of the person who committed the crime. So, that's probably a good reason why they wouldn't be there, in a court to find that out." (Aberdeen)

5.6 The potential for coming into contact with accused and their supporters when attending court to find out the case result, was cited as yet another facet of the current system that made it appear daunting to members of the public.

Protecting the Rights of Accused

5.7 Overwhelmingly, there was consensus that a fair justice system needed to ensure that any person accused of a crime or offence should have access to a fair trial and the right to be heard:

> "Even if someone is guilty, there are also circumstances, you have to look at circumstances as well, whatever that may be. So, absolutely, they have to be given their voice. As far as I'm aware, I don't think they are treated badly, or unfairly." (Livingston)

5.8 Where there was less agreement was on whether the system had, over time, become too sensitive to the rights of the accused, something that was perceived to be associated with changes in Human Rights legislation over the years:

> "It's almost like the accused are victims these days. Even the government talks about them that way." (Ayr)

> "They're not frightened of their parents, they're not frightened of anyone. At the moment, if the police arrest someone for assault and the policeman puts their hands on someone, they say, "They've breached my human rights." And you need to get rid of human rights legislation before you can tackle any of this." (Livingston)

5.9 Similarly, views were expressed that the current system may protect people too much because of the need to be treated as innocent until proven guilty, although it was recognised that this was an inevitable part of a fair system:

> "They used to say, innocent until proved guilty, but a lot of the time, you can see these people on CCTV and things, so you know they're guilty. So, that doesn't work anymore. You know they're guilty, so they should go to jail." (Ayr)

> "I think, just frustration that you [the witness] can only answer the questions. But then that's the nature of advocacy, the solicitor has to defend their client… the accused needs to have a fair trial as well or else the whole system just isn't fair." (Livingston)

5.10 There was also some strong feelings put forward that the identities of accused persons should be protected in case they were later found to be not guilty, and that even guilty people should have the right to a degree of anonymity. The following discussion between three participants at the Aberdeen workshop highlights this case:

> P1: "I don't think people should be named until they are actually proven. I mean, sometimes you see papers and there's a name. I wouldn't want to be named if I'd not done it."

> P2: "And sometimes it will name them and give their address. And you just think, even if you are guilty and you've done something horrible, they should never put your address. It's a breach of confidentiality. Depending what it is, you just wonder what the repercussions are of putting the address."

> P3: "The victim is not gonna know the name and address of who did it, but once their family read that, if they read it in the paper, it may cause more trouble which would be another court case." (Aberdeen)

5.11 Comments such as these related mainly to widespread public knowledge of accused/offender's personal details, and were not necessarily related to the fairly limited, yet still public, details about accused that can be found in public court records. Nonetheless, this presents an interesting comparison to views presented about people found guilty, for whom there was an appetite for 'public punishment', or greater visibility of guilt and prosecution (discussed above).

Social Attitudes Towards Punishment and Authority

5.12 Among the participants, there was a recognition that wider social change would be required, rather than tackling the system alone in order to reduce crime and anti-social behaviour in its entirety:

> "I think it's something to do with society in that, 20 years ago when I was younger going out, the streets weren't awash with pee. And now, they are putting urinals on the street on a Friday and Saturday night. There was no more or less toilets now than there were 20/30 years ago. So, we're just less respectful, and there's less fear about what will happen and it's just, "Pee where you like!" Why have attitudes changed so much?" (Aberdeen)

5.13 Suggested strategies for restoring social order included work with parents and carers to make them responsible for the actions of children:

> "You can't do things with some of the young people, but you could deal with the parents." (Ayr)

> "They should make parents more responsible for what happens as well." (Livingston)

5.14 While there was widespread support for more visible policing, and many people said that high visibility policing offered them considerable reassurance, there was also a resignation that, for some, a lack of respect for the law included a lack of respect for the police and this was something that also needed to be tackled:

> "I think it would be better if there were police out and about and it would be a lot more reassuring. Nobody's got any morals any more. People just walk all over them [the police], just like they walk over everybody else." (Ayr)

Cost Effective Justice

5.15 As with wider knowledge and understanding of the system, people felt generally unaware of the costs of administering justice in Scotland. That said, they did express little confidence that public money was currently being spent wisely:

> "They go, shoplifters, who go to court and get a slap on the wrists and they do it again. A hundred times, they show up a hundred times. They go to the court, a £10 fine, a £20 fine, £200 fine. It's nothing to them. That's wasting of time." (Aberdeen)

> "There's so much money and time. So, one parking ticket could cost the country a £100,000 pounds for a £60 parking ticket. Just write the thing off!" (Livingston)

5.16 Interestingly, showing a somewhat pre-emptive insight into one of the main aims of SJR, several people commented that they perceived that money could be saved by removing some lower tariff offences from the courts:

> "I think it could be a lot more cost effective. In the cases that they could do, it probably would be financially beneficial to take them out of court." (Aberdeen)

> "I think a lot of things that go through what is classed as a 'small court' is a waste of time and money. I would say they are more suited to an on the spot fine. Some of the cases that are going through are a waste of time and resources." (Aberdeen)

> "And, they probably get a £100 fine or something. It costs more to put them through the court." (Aberdeen)

5.17 When advised that many cases had indeed been removed from the courts as part of SJR, people showed initial support but, as the earlier chapters have shown, there was also comment that fines may not really act to deter offending and, as such, savings in court time may be countered by increasing costs to society caused by future offending.

5.18 Finally, participants generally felt that the police were doing a good job in the face of budget cuts and already stretched resources, and comments were made in discussions around various different aspects of the system that the police were generally reliable and steadfast. Comments were made that the police perhaps also bore the brunt of public criticism of the system, not because of any wrongdoing on their part, but because they were the most visible representatives of the law. Overall, however, there was little perception that the police did anything wrong, and this supports the views that were put forward by victims and witnesses who had had direct contact with the police, as reported in the earlier SJR evaluation report. It also supports the findings reported by Wilson (2012) that people tend to be more confident in the police than in other parts of the system, like the courts.

6 DISCUSSION

Main Findings

6.1 The main findings from the work are that:

- There was limited and often inaccurate knowledge of the criminal justice system in Scotland among people involved in this research, for both summary and solemn procedures. There was also, however, an appetite to know more about the system.

- People's perceptions and understanding of the system were based largely on media and popular television presentations of justice, especially in the absence of direct personal or vicarious experience. People acknowledged, however, that such sources may provide factually inaccurate accounts of justice.

- Although not well understood, lay justice was something participants seemed to engage well with and view as a reasonable way of administering localised, community sensitive disposals.

- Participants did not feel sufficiently well informed to comment on the efficiency of the system, yet quite confidently expressed that the system was not fair, effective, quick or simple despite having little or no direct personal experience of it. This was largely because they perceived that victims and witnesses were often treated unfairly, that re-offending rates were increasing and that cases took too long to progress through court. The use of legal jargon in the system was also perceived to make it inaccessible to lay members of the public.

- Both before and after receiving factual information about the justice process, people wanted to see greater respect for victims and witnesses in the system, including better treatment at court and the receipt of case progress information at all stages of the justice process.

- The public court experience was perceived to be intimidating and not easy to understand, and this was compounded by perceptions that professionals working within the court system (including defence and prosecution agents) were unsympathetic to how daunting the experience may be for members of the public.

- Participants perceived the current system to be skewed in favour of the accused, and people shared the view that the court and prison system was not taken seriously by some offenders. This was evidenced in some offenders' public behavioural displays of contempt for justice when at court, as well as in their perceived failure to comply with court orders. In contrast, participants perceived that the current system treated victims and witnesses with less respect than they deserved.

- People's views on sentencing were complex and few people expressed a desire for a 'one size fits all' approach. Most people wanted to see

proportionate sentencing that takes into account previous offending history as well as the personal circumstances of the offender. Being able to use community sentences as an alternative to fines where they could not be paid was something that participants proffered and generally supported.

- Community sentences and community payback were generally well supported by all participants as a means of delivering 'visible justice', which directly benefited those affected by the crimes. Views on custodial sentences were more varied, with some people perceiving prison as the ultimate sanction, and others questioning its current effectiveness.

- Restoring and improving social values of respect for justice and authority overall was seen as a key underlying challenge to reducing re-offending in the future. There was no suggestion, however, that responsibility for this should necessarily sit with the justice system.

Findings in Context

6.2 The research revealed relatively little understanding of the justice system in Scotland, and this concurs with self-report data from the most recent Scottish Crime and Justice Survey in which most people expressed that they knew 'not very much' or 'nothing at all' about the Scottish Criminal Justice System[14]. This research also supports the Crime Survey data with regard to people knowing even less about the Crown Office and Procurator Fiscal service. Indeed, this was perhaps the area that respondents knew least about, along with lay justice and Justice of the Peace courts. Similar lack of understanding of this component of the system was also reported by victims and witnesses in the earlier SJR Victims, Witnesses and Public Perceptions evaluation report[15], along with the common misunderstanding that Fiscals were personal advocates for victims.

6.3 As Wilson's (2012)[16] literature review revealed, in the absence of personal experience of the justice system, people often make judgements about the system from other sources of information available to them, such as the media. This research has shown that the media may, indeed, play a key part in informing some peoples' perceptions of the system and also their understanding – although many people recognised that they may in fact 'misunderstand' the system, due to what they perceived as skewed or inaccurate media reporting of actual court cases. The fact that those recruited to the focus groups were deliberately screened to ensure that they had no recent personal experience of the system is likely to mean that the impact of the media for these research participants was even greater than in the wider

[14] Scottish Government Social Research (2011) 2010/11 Scottish Crime and Justice Survey: Main Findings, available at: http://www.scotland.gov.uk/Publications/2011/10/28142346/0
[15] MVA Consultancy (2012) Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/0038/00386764.pdf
[16] Wilson, C. (2012) The Public and the Justice System: Attitudes, Drivers and Behaviour, A Literature Review, Scottish Government, Edinburgh available at: http://www.scotland.gov.uk/Publications/2012/06/6767

population. The work also supports Wilson's observations that vicarious experience can also be influential in directing views of the system and this was apparent from the many anecdotal accounts of friends', families', colleagues' and neighbours' experiences of the justice system that emerged during the events.

6.4 This work showed that some people do not think that offenders take the system seriously. This was linked to offenders' perceived behaviour at court as well as non-appearance at court. In essence, people felt that more needed to be done to ensure that accused complied with Orders from the court, including better monitoring of bail. This concurs with evidence from the recently published SJR Bail Evaluation[17] which showed that professional staff involved in the justice system view that, for some, bail conditions would always be breached and would never be taken seriously (and, indeed, a rise in breach rates may suggest that bail conditions are not being taken seriously). Participants in that research suggested that there may be a need for different strategies for dealing with repeat offenders other than those already set out. Whilst supervised bail may provide one way of achieving this for some offenders, Wilson and Perman's (2012)[18] evaluation of supervised bail in Scotland shows that the uptake of this service has declined in recent years. They report that, despite good compliance rates and a reported positive influence of supervised bail on encouraging desistance from future offending, more needs to be done to achieve buy in from the judiciary and wider social work and third sector partners to maximise its potential. At the time of writing, this is something that is now being explored by the Scottish Government.

6.5 This report also supports earlier evidence that, perhaps more than anything else, people want a system that is fair, neutral and respectful (Wilson, 2012). Fairness, as described by the participants in this research, includes the provision of tailored information for victims and witnesses at all stages of the justice process, but especially at verdict and sentencing stages. People want to see protection of victims and witnesses at all times, and respectful treatment by all criminal justice professionals, with cases progressed in a timely fashion. Most of all, delaying tactics by the accused should not be allowed and sentences should flexibly reflect crimes.

Attitudes Towards Sentencing

6.6 It is difficult to draw any conclusions about attitudes towards sentencing in its totality and, as with previous research, the workshop participants demonstrated a wide range of complex attitudes towards sentencing. Participants here did express views that sentencing per se seemed to be too lenient, especially for repeat offenders and many existing sentencing options

[17] MVA Consultancy (2012) Impact of Bail Reforms on Summary Justice Reform, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/0038/00389437.pdf

[18] Wilson, C. and Perman, J. (2012) Supervised Bail in Scotland: Research on use and impact, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/0039/00390604.pdf

were not seen as credible. Wilson's (2012) review similarly reported evidence on public sentencing attitudes and preferences, showing that people have nuanced sentencing preferences but that they do generally underestimate sentencing practice. At the workshops, even when information had been imparted about the respective sentences that might be imposed for different types of offences, people felt these were not sufficient. This perhaps suggests a need for further exploratory work to enable better management of expectations in relation to sentencing, and thus avoid public feelings of undue leniency.

6.7 What the work was clear on was that participants wanted to see repeat offenders treated differently from first time offenders. This supports the earlier findings from Anderson et al (2002)[19] whose work showed that more severe sentences were preferred by members of the public for repeat offenders. People wanted to know what proportion of summary justice offences were committed by re-offenders and there is perhaps mileage in making re-offending rates more publicly accessible. Whilst prison sentences were perceived to be too lenient by some, and prison conditions too comfortable, re-offending was seen as being quite significant and rising. As discussed above, actual reconviction rate data, which can be used as a proxy for re-offending, shows that there has in fact been a decline in reconviction rates over the previous seven years and so the sources and roots of this conjecture perhaps need further exploration. Again, popular media depictions of justice may be responsible, and this was one aspect of media reporting that people seemed to accept without question.

6.8 Also on sentencing, Nicholson's (2003)[20] work showed that half of respondents were in favour of sentence discounting for early pleas; 38% were against. A less favourable view seems to have been expressed in these workshops, with almost all respondents viewing discounting as threatening the credibility and likely punitive impact of sentences.

6.9 The messages revealed here regarding community sentencing also concur with previous research in the field. In 2002, surveys and focus groups were undertaken with members of the public as part of a project specifically to explore attitudes towards sentencing and alternatives to imprisonment (Anderson et al, 2002). This showed support for community based sanctions. Focus group research specifically exploring attitudes to community sentencing in Scotland, carried out in 2007[21], also showed that people wanted tougher sentences for criminals whilst also recognising that punishment alone would not facilitate offenders' re-entry into society. This previous research also showed a need for public reassurance that short-term community and societal benefits were being achieved from community service, and there were calls for greater visibility of community service work being done. The current

[19] Anderson, S.; Ingram, D,; Hutton, N (2002) *Public Attitudes Towards Sentencing And Alternatives To Imprisonment* Scottish Parliament Paper 488 session 1 2002 HMSO: Edinburgh

[20] Nicholson, L. (2003) Summary Justice Review: Public Views on Key Issues, Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/925/0008782.pdf

[21] TNS System Three (2007) Community Sentencing: Public Perceptions and Attitudes, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Resource/Doc/203436/0054193.pdf

research shows that there is still notable support for community sentencing as an alternative to custodial sentences for lower-tariff offenders, and especially as an alternative to fines where fines cannot be paid. The participants expressed a desire for community service to be more visible. One of the main changes brought about by the Criminal Justice and Licensing (Scotland) Act 2010 was to make sentences served in the community more robust, immediate and visible through the creation of the Community Payback Order. The strong support for community sentences that was expressed here suggests that the introduction of community payback is timely and publicly supported.

6.10 It is difficult to draw any real conclusions about participants' overall preferences in terms of fines compared to community sentences. Some participants thought that community service was a better way than financial penalties to punish people, and that it would hit offenders harder, act as a visible deterrent and potentially lead to rectifying the social damage, thus leaving victims and society better off than before. Others thought that fines were the best way to go for offenders – 'hit them in their pockets'.

6.11 In terms of prison sentences, the participants who took part considered that a lengthy jail term was the ultimate penalty, but only if it acted to rehabilitate offenders. The biggest concern was that short-term sentences do nothing to break the cycle of offending, and that the conditions of prison are not sufficiently off-putting to make it seem a real punishment. Another of the changes introduced by the 2010 Act was the presumption against short prison sentences of three months or less. The views expressed by participants who took part in the workshops shows support for such measures because short-term prison sentences were perceived to have no inherent rehabilitative value.

6.12 The establishment of a Scottish Sentencing Council under the Act, to ensure greater transparency and consistency in the sentencing process, also seems to be something that is timely. The public consulted here expressed some views that the current sentencing process may not be consistent or open, especially in respect of geographical variations and differential treatment for first-time and repeat offenders.

6.13 Overall, it seems that, alongside fairness, participants also wanted to see effectiveness and this can be most clearly achieved by the system in terms of its sentencing. They wanted to feel that all evidence has been made available to the court, including the victim's voice, that the appropriate verdict was thereby made and that the offender's history (and wider social circumstances) are taken into account when sentencing. Participants also want punishment to be visible as they considered that this was likely to be a deterrent to re-offending and to offer reassurance to victims, witnesses and the public that punishment had been handed out. A system which reduces re-offending to its barest level is one which would be considered (cost) effective.

Increasing Public Confidence

6.14 In revisiting this general public workshop data, it was hoped that core messages could be extracted to shed light on those things that are most likely to give or increase people's confidence in the justice system.

6.15 It seems clear from the discussions with these participants that there is an absence of 'good news' in relation to justice, and no-one who took part could recall a recent situation or media story where thought that 'justice was served'. Although this is perhaps more a reflection of the nature of media reporting, it does perhaps highlight a need for alternative ways of reaching the public to ensure that more balanced and rounded depictions of justice are conveyed.

6.16 Although few people who had taken part in the groups had direct experience of going to court as either a victim or witnesses, almost all felt that they could comment on previous contact with the police or vicarious contact with the police. Few negative sentiments were expressed with regard to police contact and, in most respects, the participants seemed to endorse the experience of victims and witnesses as reported in the SJR evaluation report, that responses from the police were speedy, efficient and generally positive. The way in which the police initiate and maintain regular contact with victims in the pre-court stages of justice may be taken as an example of good practice which could, ideally, be replicated by other criminal justice organisations.

6.17 Indeed, although little mention was made specifically of interactions with police as part of this work, there was implicit in a number of discussions the notion that the police provided a stable source of access to justice for the community and still remain perhaps the most widely understood and visible part of the system for members of the public. Findings from the Scottish and British Crime surveys have also shown increasing public confidence in the police over time.[22] This perhaps suggests that lessons may be learned from exploring police practice in relation to interactions with the public which could be applied to other parts of the system, including the courts and Procurators Fiscal service, such that members of the public feel that they too are accessible. The research shows that members of the public perhaps currently feel intimidated by the courts and Procurators Fiscal service, primarily because they do not understand them.

6.18 Achieving greater public awareness of the different components of the justice system, and ensuring that those who do become involved with the system have direct personal contact (including written correspondence) from named and designated individuals who represent different justice agencies may increase public confidence and trust in the system. Indeed, research in England has shown that direct communication between the police and the

[22] Scottish Government Social Research (2011) 2010/11 Scottish Crime and Justice Survey: Main Findings, Scottish Government, Edinburgh, available at: http://www.scotland.gov.uk/Publications/2011/10/28142346/0
Scribbins et al (2010) Public perceptions of policing, engagement with the police and victimisation: Findings from the 2009/10 British Crime Survey, Home Office, London

community is something which may increase confidence or reassurance (Charlton, 2010)[23] and there is no reason to believe that the same principles would not apply to other agencies. It would, it seems, create a greater connectedness between people and the justice system which at present seems to be isolated at the front-end, with police-public interactions. This may also reduce the risk of the police being wrongly viewed by some members of the public as responsible for justice in its totality, simply because they are visible representatives of the system.

6.19 The current work has revealed that communication at all stages of the justice process was important to informing people's perceptions of whether the system was supportive to lay members of the public who became involved with it as victims, witnesses or accused. What the work also suggests is that communication need not be written; face-to-face or telephone contact with justice professionals, at key stages in the justice process (from reporting a crime through to court appearance or post-sentencing) is also welcomed. The main desire is for victims and witnesses to be told of what to expect from the system, case progress and case outcomes. Further, it seems that people want such communication to be proactive and automatic, i.e. victims in particular should not have to go looking for information themselves.

6.20 The research has also shown perceptions that some sentencers (Sheriffs and Judges) may lack empathy with the general public experience of crime. Because of this, the idea of Justices of the Peace, who may be more representative of their communities, was welcomed by these participants. This is not new, and research in Scotland by Anderson et al (2002)[24] also showed that people felt that Judges and Sheriffs were generally out of touch with what ordinary people think, something which they associated with the age and social background of sentencers. Knowing, therefore, that Justices may have shared empathy with 'ordinary people' seemed to evoke feelings of confidence among some participants.

6.21 Arguably, the strongest message to emerge from the workshops is that people need to feel that the system is user-led, rather than being process-focussed, and that members of the public see victims, witnesses and society as the end users of the system as well as accused or professionals working within it. At present, it seems that people do not perceive the system as being designed in such a way that it serves the public and, in fact, to the contrary, people expressed beliefs that it was tailored to be flexible to offenders, and constrained by bureaucracies and protocols of criminal justice agencies. Perhaps the ultimate iniquity committed by the system in the eyes of the participants is when the process appears to let victims down. In short, participants wanted victims and witnesses to feel that they were the most important element in the process in order to restore confidence in the system.

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[23] Charlton, Michelle (2010*) Public attitudes towards neighbourhood policing: Results from an opinion poll*, London: Home Office

[24] Anderson et al (2002) Public Attitudes Towards Sentencing And Alternatives To Imprisonment, Scottish Parliament Paper 488, Session 1: 2002, HMSO: Edinburgh

6.22 Finally, one of the unprompted messages to arise from the workshops was a feeling among participants that the justice system could not be isolated from wider social patterns in terms of social cohesion and respect for authority. Work by Van de Walle and Raine (2008)[25] and Jackson and Sunshine (2006)[26] has also shown that attitudes towards the justice system are embedded in a wider set of attitudes towards public institutions and government. For this particular group of respondents, a perceived declining lack of respect for authority in general and a need for wider social encouragement of respect for authority and the law, especially among parents, was seen as something that was necessary to address before confidence in the justice system could be maximised.

Conclusion

6.23 In conclusion, the work has shown that, at least among these participants, people know little but would like to know more about criminal justice in Scotland and, in particular, there is an appetite for factual knowledge about the system and how it works. A system that is seen as being designed and delivered with the public in mind seems to be fundamental to what people expect and ensuring that the system is end-user-led also seems to be key.

[25] Van de Walle, S. and Raine, J. (2008) Explaining attitudes towards the justice system in the UK and Europe, Ministry of Justice Research Series 9/08, London: Ministry of Justice

[26] Jackson, J. and Sunshine, J. (2007) Public confidence in policing: a neo-Durkheimian perspective, British Journal of Criminology 2007 (3), v.47 (no. 2), p214

Appendix A – Workshop Participant Demographics

Gender	Total
Male	28
Female	28
Total	**56**

Age	Total
18-24	11
25-34	13
35-44	10
45-54	9
>54	13
Total	**56**

Employment Status	Total
Full-time	31
Part-time	6
Student	3
Unemployed	6
Retired	7
Other	3
Total	**56**

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