

# **‘Communicative Sentencing: Exploring the Perceptions of Young Offenders in the Community’**

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## **Abstract**

The purpose of this thesis is to investigate young offenders' first-hand views of community punishment within the context of the extant literature on communicative theories of sentencing. Fuelled by the traditional marginalisation of young offenders' views of penal interventions, and drawing upon the qualitative information yielded by fifty semi-structured interviews with 16-18 year old offenders, the study purports to enhance our understanding of the penal messages that punishment communicates to those who experience it. This research initiative is premised on the belief that an empirically-driven research project of this nature can contribute to an improved understanding of the relationship between the youth justice system's preventive and rehabilitative aims and how offenders themselves perceive the communicative dimensions traditionally attributed to punishment. The Introduction contains the genesis of this investigation and establishes the parameters of the inquiry. Chapter Two analyses the available literature on offenders' views and argues the case for further research. The third chapter examines the literature on communicative sentencing and anchors the project firmly within the relevant academic debate against which the study's findings are analysed. Chapter Four contains a detailed account of the methodology employed and prefaces the analysis of findings. While Chapters Five and Six examine the penal messages offenders perceive during sentencing, Chapter Seven explores conceptual issues relating to the communicative functions interviewees ascribed to hard treatment and censure. The next chapter takes cognisance of how offenders conceptualise the penal messages that are transmitted to them during the administration of their sentences. The Conclusion examines the implications of the study's findings for theory and policy, and proposes a cultural shift from an overly sceptical perspective which does not always afford much value to offenders' viewpoints, to the creation of a new framework which will allow for greater offender participation. (293 Words)

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## **Chapter One: Introduction**

The purpose of this thesis is to investigate young offenders’ first-hand views of community punishment within the context of the extant literature on communicative theories of sentencing. Fuelled by the traditional marginalisation of young offenders’ views of penal interventions, the study is premised on the belief that an empirically-driven research project of this nature might contribute to a better understanding of the communicative dimensions traditionally ascribed to punishment. Drawing upon the qualitative information yielded by fifty semi-structured interviews with young offenders, the study purports to enhance our understanding of the penal messages that punishment communicates to those who experience it.

### **1.1 Setting the Context: Young People and the Culture of Participation**

The last three decades have seen the emergence of an influential international movement which recognises that children and young people should be actively engaged in making decisions which affect them. The philosophical tenets of this movement are embedded in the United Nations Convention on the Rights of the Child (1989), which according to Flekkøy (1991:17), “represents a turning point in the international movement on behalf of children’s rights.” Central to the

concerns of this research project is Article 12(1) of the Convention, which provides that:

State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The movement towards increased engagement with young people has “been a theme running with increasing strength through government policy in recent years” (NACRO, 2008a:1). As Cree *et al.* (2002:47) point out:

Both the 1989 Children Act in England and Wales and the Children (Scotland) Act of 1995 demonstrate this new concern for children’s views being heard and being taken into account in social work and legal decision-making processes.

Drivers towards increased engagement with young people identified in the academic literature include the growing influence of the consumer, the children’s rights agenda, as well as new paradigms within social science that have increased our understanding of the child as a competent social actor (Hazel, 1995; Kirby *et al.*, 2003; Sinclair, 2004; Mischna *et al.* 2004). The last decade has seen “a growing interest in highlighting the issues considered important by the young people themselves” (Hazel *et al.* (2002:8). The importance of listening to the voice(s)<sup>1</sup> of children and young people to inform service delivery is one of the key principles enshrined in the *Framework for Inspection of Children’s Services* (Ofsted, 2005).

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<sup>1</sup> ‘Voice(s)’ is used in the literature as an umbrella term: “For some, it is synonymous with people simply expressing their point of view on a subject; for others it is a much more involved act of participation where people engage with the organisations, structures and communities that shape their lives” (Hadfield and Haw, 2001:488).

Other government campaigns, such as *Every Child Matters*<sup>2</sup> and discussion papers on how to foment a culture of participation<sup>3</sup> are also illustrative of the manner in which policy-makers are attempting to engage with the views of children and young people. These campaigns have one clear objective:

The Government wants children and young people to have more opportunities to get involved in the design, provision and evaluation of policies and services that affect them or which they use (Children and Young People's Unit, CYPU, 2001:2).

To date, research into young people's views on criminal justice-related issues include studies which have explored their perceptions of motor vehicle crime (Spencer, 1992); their views on the range and quality of services and activities provided for them by their respective communities (Edwards and Hatch, 2003), and their views on gun and knife crime (NCH, 2008). There also exists a series of surveys on broad crime and criminal justice issues (MORI, 2000; 2001; 2002; 2003; 2004; Flood-Page *et al.*, 2000), as well as the Offending, Crime and Justice Survey (Budd *et al.*, 2005a, 2005b; Home Office, 2006, 2008), a self-report survey which asks young people in England and Wales about their experiences and attitudes towards offending. More recently, it is significant that the government's Youth Crime Action Plan (HM Government, 2008) has not only been informed by the professional views held by established frontline practitioners and academic researchers, but also by the views of young people themselves.

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<sup>2</sup> [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

<sup>3</sup> On participation, see also Ahmad *et al.* (2003); Kirby *et al.* (2003); Davis and Edwards (2004); NACRO, (2009a).

Although initiatives such as these are most welcome, the fact remains that they are relatively rare. At a time when engaging with young peoples' views is deemed to be a socio-political priority, and notwithstanding the aforementioned corpus of research, it is surprising to find that what they think about criminal justice-related matters has not elicited greater academic interest than it has to date. An argument could be made that the culture of participation which the government is intent on establishing in education and youth training programmes has as yet to be more fully developed in the criminal justice arena. If Davis and Edwards (2004:103) are correct in their assertion that "the participation of children and young people is a 'good thing'", the criminal justice system's somewhat limited ability to engage more fully with the views of young people is a notable oversight.

## **1.2 The Traditional Neglect of Young Offenders' Views**

Notwithstanding the fact that juvenile delinquency has been recognised as an enduring social problem and a sensitive political issue, young offenders' views of punishment have traditionally not been taken into account:

As research subjects, offenders have been frequently ignored or marginalised as active participants in the process of both the study of offending and the evaluation of penal measures (Morgan, 1995:1).

A close inspection of the literature will reveal that while academic analyses and evaluations of community penalties are very extensive (McIvor, 1992 and 2000; Freburger and Almon, 1994; Sigler and Lamb, 1995; Worrall, 1997; Gainey and

Payne, 2000; Bottoms *et al.*, 2001 and 2004; Harrison, 2006), the traditional neglect of offenders' views in the field of criminal justice is evident (Frost *et al.* 1989; Mair and Nee, 1990; Morgan, 1995; Mair and May, 1997; Ford *et al.* 1997; Brown, 1998; Gibbs, 1999; Barry, 2000; Searle *et al.*, 2003; Hill *et al.*, 2004; Rex, 2005; Abrams, 2006).

While in education the child-centred curriculum has for decades recognised the need to listen to and learn from the views of young people, it is only relatively recently that a similar approach is beginning to take root in the field of criminal justice. Traditionally, policy-makers and academics have tended to concentrate more generally on public perceptions of community penalties (Sigler and Lamb, 1995; Hough and Roberts, 1998; Gainey and Payne, 2003). The attitudes held by criminal justice agents such as probation officers, prosecutors, magistrates, jurors and court personnel towards community penalties have also been the subject of considerable academic attention and debate (Erickson and Gibbs, 1979; May, 1997; Whitehead and Lindquist, 1987; Johnson *et al.*, 1989; Sigler and Lamb, 1995; Walter *et al.* 2001; Bateman and Stanley, 2002; Mathews *et al.*, 2004).

In the past, policy-makers have been inclined to view young offenders in the context of a social problem that warrants a political solution. In adopting this stance, they may have ignored the potential contribution that young offenders can make to their search for an effective means with which to reduce juvenile crime. If, as Bosworth (2001:439) believes, "one must study punishment in order to understand and change it", it seems reasonable to suggest that offenders' views on

punishment are important. It is the contention of this study that while young offenders represent a significant problem to law enforcement agencies, their first-hand experiences of punishment are valuable (Medlicott, 2000; Lane *et al.*, 2002; Chui, 2003; Peterson-Badali *et al.*, 2001; Byrne and Trew, 2005) and could be drawn upon to improve existing service provision, as Barry (2000); Abrams (2006), Chui (2003) and Johnson and Rex (2002) advocate. In sum, “it is only through listening and taking account of the views of service-users that the full potential of monitoring and evaluation of services and programmes can be realised” (NACRO, 2008a:1).

How far young offenders’ views of community punishment can be taken into account is a question that the youth justice system will have to consider. But there are two key concerns that merit the prompt attention of policy-makers and criminal justice agents which will be explored in this study. The first of these must be the development of a more comprehensive understanding of how community punishments are perceived by offenders before policy-makers and other interested parties can ascertain their effectiveness *vis-à-vis* sentencing objectives. Their second concern must be to ensure that young offenders have been empowered with an understanding of the processes and outcomes in which they find themselves involved. As will be discussed later, these two critical issues might necessitate a fluent two-way system of communication between criminal justice personnel and offenders.

### **1.3 The Need to Develop a New Perspective**

History and tradition might well account for society’s unwillingness to listen to those who are outside the pale of the law, and it may be that the traditional neglect of young offenders’ voices in particular, stemmed from a shared perception that their views could not be trusted (Chui, 2003; Searle *et al.*, 2003). While the veracity of offenders’ accounts about punishment may be open to question, the fact remains that all research initiatives which aim to explore the views of any given sample are beset with impression management problems. The *a priori* difficulties that ‘credibility-critics’ consider inherent to any work involving offenders can, to some extent, be circumvented through the use of a methodologically sound research strategy that is supported by meticulously designed information-gathering tools. The fact that a study of this nature might prove difficult and must operate within the confines and limitations of the methodology employed, does not mean that it is not worthwhile, however.

What is required is a cultural shift away from an overly sceptical attitude with regards to the views of individuals who have been punished by the state: “the views of those, who, in a sense, constitute the raw material of the criminal justice system should not be ignored and are just as relevant as those of any others” (Mair and Nee, 1990:52). There is a clear need for a change in the outlook of a youth justice system which, while sensitive to the concerns and opinions of the general public, and to objective, statistically-driven performance indicators, has traditionally been reluctant to listen to the opinions of offenders themselves.

Having made this point, the study has identified a number of initiatives that have already been taken towards engaging with young offenders’ views. Some Youth Offending Teams (YOTs), such as Bridgend and Wrexham (NACRO, 2009a), for instance, are piloting the use of software from the company “Viewpoint” in order to collect young people’s views on the interventions they receive systematically, and a recent Youth Justice Board conference, *Consulting Young People*, suggests that this approach is being built into performance measures. Seeking feedback from young people is increasingly becoming an integral dimension of YOTs’ service delivery programmes. The National Standards for Youth Justice (Youth Justice Board, 2010a:41), for instance, provides that YOT practitioners should “[a]t a minimum invite the young person to complete the *Asset – What do YOU think?* self-assessment form at the beginning and end of the intervention”. The intention behind this self-assessment resource is to capture the young person’s perspective and to give him/her a “clear and explicit opportunity...to state their views and to help practitioners take account of these perspectives in their assessments” (Moore *et al.*, 2004:54). The recommendations to be found in the *Joint Inspection of Youth Offending Teams Annual Report 2006/2007* are also significant: “children and young people should be consulted about improvements in service and be able to see that their suggestions can make a difference to the quality of service provision” (HM Inspectorate of Probation, 2007:82).

Contemporary research-based evaluations of interventions of the youth justice system have also included young offenders’ views as part of a wider project

(Hazel *et al.*, 2002; Müller and Hollely, 2003; Moore *et al.*, 2004; Gray *et al.*, 2005; Jamieson, 2005; NACRO, 2006; 2009b), as well as questions relating to why they believed they started or desisted from offending (Graham and Bowling, 1995; Barry, 2006; Haigh, 2009; Paton *et al.*, 2009). Young offenders’ views of their custodial experiences have been documented extensively in the available research literature (Light *et al.*, 1992; Cope, 2000; 2003; Dimond *et al.*, 2001; Ogilvie and Lynch, 2001; Lane *et al.*, 2002; Peterson-Badali and Koegl, 2002; Wilson and Moore, 2003; Challen and Walton, 2004; Halsey, 2006; Ashkar and Kenny, 2008; Parke, 2008; Tye, 2009; Commission for Children and Young People and Child Guardian, 2009). Research into the more specific area of young offenders’ views of community based sentences is perhaps less extensive, though significant nonetheless (Mair and May, 1997; Newburn *et al.*, 2002; Hoyle *et al.*, 2002; Crawford and Newburn, 2003; Moore *et al.*, 2004; Gray *et al.*, 2005; Lennings *et al.*, 2006; Hine, 2007; Pamment and Ellis, 2010).

Such developments might suggest that there is now an embryonic movement towards engaging with young offenders’ perspectives. While it is true that “[s]eeking the views of offenders subject to various forms of community supervision is fast becoming an essential feature of [service] evaluation” (Mantle and Stephens-Row, 1995:160), as will be seen from the literature to be reviewed in Chapter Two, the more specific issue of how young offenders perceive the penal messages communicated to them throughout the punishment process has received little academic attention.

## 1.4 The Aims and Objectives of this Study

Research into young offenders' views of the communicative dimensions of community punishment is a very specific area of criminological interest, one that requires a focused and discerning approach. Although numerous academics and practitioners have made inroads in the field of young offenders' views more generally already, it is this study's contention that, *prima facie*, there is still a pressing need to develop a sophisticated understanding of the manner in which penal messages are perceived by young offenders serving community sentences.

This thesis is premised on the belief that a research-based, evidence-driven understanding of young offenders' views of punishment is critical to an evaluation of the effectiveness with which the youth justice system engages with young offenders. Morgan (1995:14) is categorical on this matter:

active participation is necessary if the meaning of offending behaviour and of offender responses to a variety of sentences is to be adequately understood.

At a time when service-user research is being advocated within the academic community, relatively little is known about the kinds of penal messages that these sentences communicate to those serving youth justice dispositions. To date, the notion that punishment is a communicative process remains "intuitively very natural and attractive" (Hampton, 1984:216) and has drawn the attention of a long line of penal theorists. According to Zaibert (2003:676), "[m]any authors, going as far back as Plato, endorse, albeit in different ways, expressive theories of punishment."

Some academics advance the view that punishment by its very nature serves an expressive function, whether to express the community’s disapproval of the offender’s conduct (Feinberg, 1970), to communicate censure (von Hirsch, 1993) or to teach the offender a moral lesson (Ewing, 1943; Morris, 1981; Hampton, 1984). Deterrence theory is also contingent on punishment serving a communicative function: the overt message to the recipient and to society in general, is that those who engage in criminal behaviour will be made to pay the consequences.

And while it is true, as Sparks *et al.* (2000:202) point out, that “[t]he idea that punishment is a communicative arena is scarcely news to penal theorists”, the fact remains that very little is currently known about what young people who are serving these sentences make of the penal messages conveyed to them throughout the punishment process. Academic failure to engage with the empirical reality of the messages that punishment conveys to sentence recipients means that pure normative theory could be little more than a top-down theory which may have little practical application and fit. While Rex’s (2005) empirical research on the communicative dimensions of punishment is a notable exception, her contribution to the field can be faulted, however, on the grounds that she used a small sample of adult offenders.<sup>4</sup>

The present study can therefore be seen as a response to the fact that empirical research corroborating the *kinds* of messages that punishment is said to

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<sup>4</sup> Rex (2005:54) interviewed 13 offenders, and supplemented these interviews by administering questionnaires to an additional 143 offenders. For a more in-depth critique of Rex’s work see Worrall (2006).

communicate has yet to be undertaken at the level of young offenders within the domain of community-based sentences. The aim of this thesis is not to 'test' communicative theories of sentencing, but to encourage a bottom-up conceptualisation of punishment, and to go some way towards filling the gap in the academic literature by providing a detailed empirical analysis of first-hand qualitative information on what young offenders think about the sentences they are on. By listening to offenders' views and taking cognisance of their interpretations of penal messages, the thesis aims to contribute towards a better understanding of the punishment process.

This study was particularly interested in exploring the extent to which young offenders understand the dual intentions of a youth justice system that aims to be both punitive and rehabilitative in its intentions. A close analysis of the field of youth justice will reveal that while youth crime "has been an enduring source of anxiety in England and Wales" (Crawford and Newburn, 2002:477), the manner with which governments have dealt with the problem of juvenile offenders is anything but consistent. As Hagell and Newburn (1994a:6) rightly point out, the "last hundred years of juvenile justice have been characterised by dual tendencies best described as 'punishment' and 'welfare'". The debate revolves around "the purpose and values of youth justice; the balance between care and control; the intersection of risk, welfare and rights; methods of assessment; multi-agency working; and how best to engage young people" (Baker, 2010:33). According to Prout (2003:12), "[p]ublic discussion [and arguably the youth justice system itself] seems to struggle with an ambiguity about childhood, caught between two different

but equally problematic images of childhood: children in danger and children as dangerous.” Similarly, politicians “do not really know whether to scare or care, whether to segregate or try to reintegrate, whether to use the carrot or the stick, whether to adopt a punitive or a humanitarian philosophy, whether to pursue retributive or utilitarian goals” (Fattah, 1998:393).

Concerns have already been voiced about potential problems stemming from the fact that retributive, reintegrative, reparative and other philosophies of punishment still remain influential in the youth justice arena (as per s.9, Criminal Justice and Immigration Act 2008). In her review of New Labour’s policies on criminal justice, for instance, Fionda (1999) concludes that the government’s legislation “indicates a melting pot of contradictions, ideas and ideologies which may militate against each other rather than serving the notion of clear and consistent sentencing”. If according to Duff (2002) punishment should serve a ‘communicative purpose’, the messages conveyed by the youth justice system in its attempt to address simultaneously all of these philosophical aims seem unclear and full of contradictions. The pursuit of different philosophies of punishment leads to uncertainty as to the messages which the system is seeking to communicate. Given this uncertainty, it seems clear that attention to the manner in which offenders perceive punishment might offer insights which could help resolve some of the confusion stemming from these essentially bipolar functions of sentencing.

It would seem logical to assume that the communicative value of the punishment process, and the extent to which punishment generally, and community penalties in particular are punitive, rehabilitative or deterrent in their effects depends not only on how they are conceived by penal theorists but almost just as importantly on how they are perceived and assimilated by those individuals experiencing them. The current investigation was therefore motivated by a need to find out more about the purposes which young offenders ascribed to punishment generally and to their own sentences in particular. The study was also interested in testing whether some of the hypothetical assumptions about the severity associated with different forms of punishment would be challenged by the empirical information gathered for this project.

Another dimension at the heart of the investigation was to find out more about the extent to which young offenders felt they understood the processes they had been immersed in, and whether they perceived their sentences as fair and legitimate. The study was equally interested in how young offenders rated the communicative processes established by different criminal justice actors during the imposition and administration of their respective sentences. If the intention is to prevent future offending, ultimately through reform and reintegration, it seems unlikely that these laudable aims can be achieved unless young offenders are taken on board through a structured process that seeks to support, communicate and inform, and which is perceived as fair. Failure to do so could mean that sentencing might serve little purpose other than to contain them for the duration of their respective sentences.

## **1.5 Outline of the Thesis**

The next two chapters aim to anchor the research project firmly within the context of relevant academic debate and policy issues prior to reporting on the analysis of the empirical information gathered. Chapter Two will analyse the available literature on offenders' views, looking in particular at research undertaken specifically on young offenders' views of community punishment. It will also carry out a critical assessment of the case for employing offenders' perspectives in research and evaluations of penal interventions. Chapter Three draws heavily upon the academic literature available on communicative theories of sentencing, in particular, those advanced by von Hirsch (1993) and Duff (2001) in order to establish the theoretical backdrop against which the qualitative findings of this study will be analysed.

In its drive to secure a scholarly and well-documented report on the empirical work undertaken, the first part of Chapter Four contains the rationale for the chosen methodology, as well as a critical assessment of the ethical issues that conditioned the shape of the study. The second part of the chapter provides a detailed account of how the research instrument was developed and how the qualitative information yielded by the interviews was processed and subsequently analysed. Finally, the chapter will also discuss the limitations inherent in research of this nature by exploring the difficulties concerning the reliability of memory-based accounts as well as the semantic problems intrinsic to the analyses of opinions, views and perceptions.

Set in the context of the extant literature on communicative theories of sentencing, the next four chapters form the core of the thesis and contain the analysis of the qualitative information gathered. For the sake of organisational convenience, and in order to mirror the manner in which offenders would normally experience the criminal justice process, the 'communicative enterprise' of punishment will be analysed from the perspective of three distinct, yet inter-related stages: the imposition of the sentence; the sentence itself, and finally, the subsequent administration of the sentence.

Chapters Five and Six deal with the first of these three stages. Chapter Five examines the implicit and explicit penal messages perceived by young offenders during sentencing. Chapter Six turns to the analysis of the roles and influences acting upon defendants as the intended recipients of the court's communication.

Chapter Seven moves on to review and discuss offenders' experiences during the second of the three stages identified above. It explores a broad range of conceptual sentencing issues such as the communicative functions interviewees ascribe to censure and hard treatment.

Chapter Eight focuses on the penal messages communicated to young offenders during the administration of their respective sentences. While academic reports tend to concentrate almost exclusively on the communication exercise which takes place between the two main actors, the state and the offender within the courtroom setting, this study purports to carry out a more wide-ranging analysis of

punishment as a 'communicative enterprise'. It is this study's contention that the 'communicative environment' is far broader than is traditionally assumed, and must be extended beyond the imposition of the sentence to take cognisance of offenders' perceptions of the messages that are transmitted to them during the administration of the sentence itself. This 'communicative environment' must also include other parties, and this study has concerned itself with the communicative roles fulfilled by Youth Offender Panels (YOPs), YOT workers and offenders' parents/carers as potentially influential actors during the administration of defendants' sentences.

Chapter Nine concludes the thesis. It will examine the theoretical and policy implications of the study's findings within the confines of the limitations of the study itself. The conclusion will seek to propose a cultural shift from an overly sceptical perspective which does not always afford much value to offenders' viewpoints, to the creation of a new framework which will allow for greater offender participation. Finally, the chapter will also identify areas meriting further research.

## **Chapter Two: The rationale for listening to young offenders and exploring their views of community penalties**

### **2.1 Introduction**

The desire to explore young offenders’ perceptions of punishment stems from this researcher’s concern regarding the extent to which our current knowledge of how punishment affects these individuals is accurate. To date, punishment has been primarily perceived and understood from the perspective of academically-informed criminal justice agents, a media-driven public opinion and policy-makers with a keen eye on the ballot box (Johnson *et al.*, 1989; Sigler and Lamb, 1995; Hough and Roberts, 1998). Empirical research into punishment has traditionally disregarded the views of the offender as one of the key participants in the criminal justice process (Whitehead and Lindquist, 1987; Erickson and Gibbs, 1979; Walter *et al.* 2001; Lane *et al.*, 2002; Gainey and Payne, 2003; Halsey, 2006; Apena, 2007). While this lacuna is being gradually addressed by research devoted to exploring young offenders’ views, this gap in knowledge remains significant and merits academic attention for, as Furnham and Alison (1994:46) assert, it is “inadequate to study the implementation of punishment without some understanding of offenders’ attitudes towards it.”

This chapter seeks to adopt a fresh approach to the traditional assumptions underpinning punishment by taking cognisance of offenders’ views within the context of community-based sentences. It will also carry out a critical examination of the current state of knowledge regarding what offenders themselves think about the processes they find themselves immersed in by reviewing the available literature on young offenders’ views of community penalties. Building on these issues, the final section of the chapter will analyse the numerous rationales and the benefits to be derived from listening to young offenders’ views within the broader framework of the communicative theories of punishment which have already been outlined in the Introduction and which will be discussed in greater depth in Chapter Three.

## **2.2 Punishment in the Community**

Historically, perceptions of what ‘punishes’ have been based on the “norms and living standards of society at large” (Petersilia, 1992:23), and not on the views of offenders themselves. Public assumptions regarding the role of punishment have hinged on a ‘quick-fix’ approach to crime, one which often values deterrence and retribution over rehabilitation and reintegration (Nagin *et al.*, 2006). Sentences other than imprisonment are often not perceived as credible punishments:

The belief that community sanctions are too lenient implies that no matter what conditions probation or parole impose, remaining in the community is categorically preferable to imprisonment (Petersilia, 1990:23).

This widely-held perception about imprisonment can perhaps be attributed to the centrality of prison in the criminal justice landscape, a sentence which, as Garland (1990b:260) succinctly points out, is “as much a basic metaphor of our cultural imagination as it is a feature of our penal policy”. When reviewing the literature for this study, it became apparent that there is a shared perception between offenders and the general public when it comes to contextualising the severity of any given punishment. Both groups, it seems, compare any penalty with the ‘gold standard’ punishment that imprisonment has become: “inside a prison, life would be worse” (Roberts, 2004a:99). This is certainly a finding which is reported by McDonald (1986) who found that some offenders “engaged in ‘syllogistic thinking’: prison is equated with punishment and since community service is not prison then it cannot be a punishment.” In their research with incarcerated adolescent males, Ashkar and Kenny (2008:593) discovered that many “evaluated their experiences of incarceration in relative terms, based on their perceptions of adult corrections”. Although it is doubtful, as the available literature on offenders’ views illustrates, that community penalties are not perceived as punishment at all, there nonetheless remains an inevitable comparative exercise which both offenders and the public engage in. While any form of judicial punishment might be perceived as punitive *per se*, its punitive value can, it seems, only be comparative and remains relative to the individual and the range of other judicial punishments available.

In contrast to custodial sentences, therefore, community penalties are often presented by the media as ‘soft punishments’ and their ‘punitive bite’ is regularly

called into question: “Are community sanctions punitive enough to convince the public that the ‘punishment fit[s] the crime?’” (Petersilia, 1990:23). To borrow Feinberg’s (1970) term, community penalties are often said to lack the ‘symbolic significance’ of more severe penalties like imprisonment. Notwithstanding the fact that imprisonment and its “limitations as a penal tool [have become] more apparent” (Roberts, 2004a:2) and that community penalties have proliferated in recent years, an oft-cited criticism against the latter is that they “fail to offer concrete assurance of delivering punishment” (Zedner, 2004:198).

## **2.3 Community Penalties and the News Media**

The news media is arguably a key player in feeding the public’s misperception that community penalties are not credible punishments both in instrumental terms by failing to reduce reoffending, and in expressivist terms, by failing to communicate public disapproval in a forceful manner. Selective news media portrayal of community penalties as lesser and softer punishments may be one of the reasons why “most members of the public subscribe to a number of misperceptions about juvenile crime and justice” (Roberts, 2004b:495).

The criminal justice system may be at pains to disseminate information concerning crime, policing, sentencing and victim services, amongst other issues, to

the general public, by diverse means such as the distribution of information leaflets or through the Home Office and Ministry of Justice websites.<sup>5</sup> Initiatives to engage the public more fully and disseminate criminal justice-related information have also been taken up by numerous police forces in the UK, such as, Thames Valley Police, Sussex Police and the Leicestershire Constabulary, who make use of the internet to keep the public abreast of current news items by updating their respective websites and/or twitter accounts with the latest events. While these initiatives are to be welcomed because they “may help clear up misconceptions and allay concerns” (Moore *et al.*, 2010:1), the pervasive influence of the media still remains, and according to O’Connell (1999:206), “media portrayal is a major determinant of a distorted public perception of crime”.

The media-inspired public perception is that youth crimes are often committed by an identifiable minority of persistent young offenders who seem to be beyond the control of a criminal justice system that is too soft. Given that the media frequently focuses on violent juvenile crimes and reoffending rates, it should perhaps come as no surprise that while the public overestimates these (Hough and Roberts, 2004) it continues to underestimate the severity of sanctions imposed by the courts. It is significant that in their research, Tufts and Roberts (2002:47) have noted that “the

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<sup>5</sup> “We already publish information about criminal justice performance in aggregate form and we are making it easier for the public to find out about the outcomes of court cases. In July 2008, the Government announced that magistrates’ courts would no longer charge newspapers a fee for copies of court registers. In September 2008, the Secretary of State for Justice announced that the outcomes of court cases would be made available through a publicly accessible website....But we need to do more. We must communicate more effectively with the public” (Ministry of Justice, 2009: paras.175-176).

percentage of people who believe that sentences are too lenient is greater for juvenile offenders than adults.”

## **2.4 The Politicisation of Punishment**

Being soft on crime is no longer an acceptable political option, and interventions for young offenders must be seen in the context of successive government initiatives aimed at appearing tough on crime and restoring public confidence (Petersilia, 1990; Sparks *et al.*, 2000; Piacentini and Walters, 2006; Cabinet Office, 2008). It is widely believed that the increased politicisation of crime, criminal justice and sentencing matters has had significant consequences for penal policy development which has taken a “punitive turn” (Hutton, 2005). The criminal justice system is certainly on a mission to prove that community penalties have a punitive bite (Mair, 1998; Johnson and Rex, 2002). The Youth Justice Board has, for instance, made it a ‘key objective’ for the ISSP programme to “demonstrate that supervision and surveillance are being undertaken consistently and rigorously, and in ways which will reassure the community and sentencers of their credibility and likely success” (Youth Justice Board, 2000, quoted in Moore *et al.*, 2004:24). The decision to rename community service orders to community punishment orders (Criminal Justice and Courts Act 2000, Section 44(3)), might also have been underpinned by a desire to demonstrate their ‘punitive bite’. This view is shared by Mair (1998) who believes that “the various ‘soft options’ have been stiffened up by

a change of name in the hope that this would persuade the public and the courts to regard them as punitive and to make use of them more often.”

In this climate of populist punitiveness, community penalties are often criticised by the public for failing to be effective deterrents, with the public mistakenly subscribing to the assumption that there exists a corollary between the severity of a punishment, and its deterrent effect. According to Roberts and Stalans (1997:33), “[t]he public have accepted an attractive but false syllogism of punishment”. While more severe sentences might appease those who claim that sentences are soft and lack the necessary reprobative value, the fact remains that there is no sound criminological research evidence to support this view.<sup>6</sup> This is indeed, a classic case of misunderstanding breeding further misunderstanding. Ashworth and Hough (1996:787) define the process as a “melancholy cycle of misinformation, misunderstanding, and mistaken policies”.

The increased importance afforded to public opinion in penal policy thus remains a cause for concern given that the public is often, though not necessarily always, misinformed about criminal justice issues. In the eyes of the general public, punishments are often placed on a tariff scale of severity which ranges from fines at one end, to custodial sentences on the other. As Crouch (1993:67) has observed:

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<sup>6</sup> See further von Hirsch (1999).

[This] hierarchy of sanctions not only is the basis for penal codes but also operates in the minds of citizens on juries or in voting booths and directly affects how prosecuting attorneys apply the law to offenders.

This tendency to rank penalties in terms of perceived levels of severity without taking on board the views of offenders themselves, has encouraged the widely-shared assumption that community-based punishments not only fail in instrumental terms to reduce reoffending, but that they also fail in expressivist terms to communicate public disapproval effectively.

The assumptions that community penalties are a soft option have, however, been challenged by some academics who have demonstrated that offenders view these punishments as onerous and punitive (Petersilia, 1990; Mair and Nee, 1990; Crouch, 1993; Petersilia and Deschenes, 1994; Spelman, 1995; Heggie, 1999; Gainey and Payne, 2000; Hazel *et al.*, 2002). In their research, for instance, Searle *et al.* (2003:88) discovered that “a significant minority of offenders would prefer to serve a short custodial sentence than either a fine or a sentence of periodic detention”. The general public would certainly be, as Roberts (2004a:100) points out, “surprised to learn that offenders will on occasion choose prison over an intermediate sanction, but this surprise is founded upon the notion that prison is always and everywhere more punitive than its alternatives.”

The reasons for what may seem to be an anomalous choice to citizens may lie in the fact that “it is far harder to face up to the consequences of offending and

what may have led to it than simply 'doing time'" (Scottish Executive, 2002).

Roberts (2004a) offers a more detailed psychological explanation for offender behaviour in this context. In his view,

prison creates a passive environment; prisoners react and respond to instructions from the institutional authority. In contrast, a community custody sentence is a far more active disposition; the offender can (and should) actively take steps towards rehabilitation and restoration (2004a:101).

In their research on female offenders aged under eighteen who were serving Detention and Training Orders (DTOs), Bell and Owers (2004) cast light upon another dimension often underpinning the juxtaposition of custodial and community-based punishments. Participants reported that "the custodial part of the DTO provided a time of respite...in a relatively safe and 'secure' environment", while perceiving the "community aspect of the DTO [as being] fraught with risk...[as it] did not provide them with sufficient structure or support to cope with personal problems or help them to progress to further education, training or employment" (2004:8).

Viewed against the commonly held public perception that community penalties are soft and non-punitive, the picture which is starting to emerge from the analysis of empirically-based research into offenders' views is that there is a clear disjuncture between the two: "in the minds of offenders, community-based sanctions can be severe" (Petersilia and Deschenes, 1994:8). A similar finding is reported by Hazel *et al.* (2002). The importance of these discrepancies highlights the need for policy to be informed by an empirically-driven understanding of the

gradations of punishment and their deterrent effect. The influence of public opinion on decisions involving the suitability of a particular penalty must therefore be handled with caution. There is a need for balance, and policy must always be evidence-driven. In this context, one of the strongest rationales for listening to offenders' views of community punishment is that, as Searle *et al.* (2003:iv) note, "it tests assumptions that criminal justice policy makes about the punitive nature of those sentences, and their likely deterrent effect and rehabilitative potential."

## **2.5 Offenders' Perceptions of Punishment: A Review of the Literature**

A search strategy was formulated in order to develop a thorough and extensive understanding of the present state of knowledge in the field of offenders' views of penal interventions. This strategy drew upon a wide range of publications which included academic texts, journals, conference papers and reports on offenders' views of punishment. The initial focus was on the sources this researcher was already familiar with from earlier work undertaken for an MSc in Criminology and an M.Phil thesis. As a means with which to search through a wide range of academic publications, the use of electronic journals or e-journals (including, but not limited to *The Howard Journal*, *Journal of Research in Crime and Delinquency*, *Journal of Offender Monitoring*, *British Journal of Criminology*, *Criminology*, *Youth Justice*) expedited the research process. Electronic databases, such as, Criminal Justice Abstracts; National Criminal Reference Service; Sociological

Abstracts; Social Services Abstracts, and the Oxford Libraries Information System (OLIS), were also extensively used. These databases and the Youth Justice Board, Home Office, and Ministry of Justice websites, were searched using one or a combination of several key terms, such as 'young offender', 'youth justice', 'community penalties', 'offender opinion', 'service-user feedback'. Search engines ('Google' and in particular 'Google Scholar') were also used to a lesser extent with varying degrees of success.

Selected publications were reviewed manually to determine their relevance to the main concerns of this study. Bibliographies were a valuable source of information from which additional publications were identified. Extensive discussions and consultation with my supervisor also proved invaluable to the selection of additional sources of information.

The review and analysis of individual sources of information was carried out in a systematic manner. A coding system was devised in order to denote whether the publication had been read ('R'), annotated *in situ* ('A'), whether the bibliography had been checked for other relevant sources ('B'), whether separate notes had been made ('N'), and finally, whether the item had been included in the software package Endnote ('E'), which came into its own as a bibliographic reference tool.

The search strategy employed was effective in revealing the present state of knowledge in the field of offenders' views of penal interventions and processes. It also highlighted the value of research initiatives into their views of community punishment. The review of the literature revealed that most of the research carried out to date has tended to focus on adult offenders' views, in particular, their experiences and perceptions of imprisonment (Kratcoski and Scheijerman, 1974; Alpert and Hicks, 1977; Genders and Player, 1989; Blecker, 1990; Crouch, 1993; Petersilia and Deschenes, 1994; Keene, 1997; Medlicott, 2000; Chui, 2003; Chui *et al.*, 2003; Searle *et al.* 2003; Crawley and Sparks, 2006). The views held by adult probationers have also been explored at length by numerous academics (Davies, 1979; Day, 1983; Mantle and Stephens-Row, 1995; Mair *et al.*, 1995; Beaumont and Mistry, 1996; Ford *et al.*, 1997; Gibbs, 1999; Barry, 2000). Those studies that have set out to discover how offenders view community punishment have often done so as part of a wider project which is not always community-punishment specific (McDonald, 1986; Mair and Nee, 1990; Rubin 1990; McIvor, 1992; Gainey and Payne, 2000; Dodgson *et al.*, 2001; Gibbs and King, 2003; Roberts, 2004a).

The bias towards the study of experiences and views held by offenders in custody is also manifest in the literature available on young offenders' views: "Most studies of young offenders have involved offenders in detention"(Lennings *et al.*, 2006:427; see further: Light *et al.*, 1992; Lyon *et al.*, 2000; Challeen and Walton, 2004; Cope, 2000; 2003; Ogilvie and Lynch, 2001; Dimond *et al.*, 2001; Lane *et al.*, 2002; Peterson-Badali and Koegl, 2002; Wilson and Moore, 2003; Bell and Owers,

2004; Halsey, 2006; Ashkar and Kenny, 2008; Parke, 2008; Tye, 2009; Commission for Children and Young People and Child Guardian, 2009).

In the absence of accurately contextualised research accounts, the use of prison inmates to derive information about views of community punishment has implications for the conclusions extrapolated from these studies. Individuals who have been imprisoned may represent the more extreme end of the offending spectrum, and may therefore not be representative of the wider offending population. According to Searle *et al.* (2003:30), “[c]urrent imprisonment is likely to have a major impact on perceptions of sentences and may even reduce the severity with which it is perceived.” In their research, for instance, Gainey and Payne (2000:92) conclude that the positive views of community punishment were “not unexpected because the vast majority of the sample had spent some time in jail and recognized the dangers and the pains associated with such sanctions.” A similar result was obtained by Gibbs and King (2003:10), who found that “[d]etainees viewed their home confinement positively when compared to being in prison, though [they] believed that a short time in prison was important to help them appreciate home detention.” Likewise, Delens-Ravier (2003:157) makes the point that “[c]ommunity service is...most often initially greeted with a sense of relief at having avoided something worse i.e. confinement.”

Having noted the considerable number of custody-based research initiatives, the study has also identified a growing number of empirical investigations into young offenders' views on community-based sentences (Mair and May, 1997;

Peterson-Badali *et al.*, 2001; Hazel *et al.*, 2002; Newburn *et al.*, 2002; Moore *et al.*, 2004; Gray *et al.*, 2005; Lennings *et al.*, 2006; Hine, 2007; Pamment and Ellis, 2010). Drawing upon the wider literature on offenders' views more generally, it is to this body of research that this Chapter will now turn.

### **2.5.1 Offenders' Courtroom experiences**

Although there are dissenting voices on the matter,<sup>7</sup> the research literature is largely of the opinion that the court is not as institutionally effective as it could be when it comes to communicating penal messages to young offenders. In their research, Müller and Hollely (2003:74) report that “[j]uvenile offenders under the age of 18 were found to have very little knowledge of court procedures and the role of personnel involved in the process”. The knowledge which they did have, according to the authors, “is extremely peripheral and often misleading” (2003:74). Although the nature of the sample itself, which included young people aged 8-19, may to some extent account for these conclusions, these findings tally with those made by Hazel *et al.*, (2002:12) whose research sample consisting of 13-17 year old offenders “reported a lack of understanding of the legal proceedings or language, with events often only explained after court”. In their research, Hazel *et al.*, (2002:13) also report that “offenders were sometimes unable to understand what the magistrate or judge was saying to them”. A similar finding was made by Smith (1985:342-343) who discovered that “for the most part, their understanding of legal

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<sup>7</sup> Newburn *et al.* (2001b:viii) found that while offenders reported being very nervous about going to court, they nonetheless “understood what was going on”.

language is moderate and is confined to procedural terms. They do not understand technical terms” (1985:350) because “technical terms are part of the specialized vocabulary of the legal profession” (1985:350).

The alienating effects of legal language may well jeopardise the communicative and pedagogical dimensions traditionally ascribed to the punishment process, if the intended recipients of penal messages are unable to understand what exactly is being communicated by the court:

Since pedagogy is a primary motivating factor in juvenile justice, we must consider whether or not it is desirable to continue to have juveniles understand only selected legal terms. Does the court want simply to communicate procedure and technique to the juvenile or does it want to perform an educative function? (Smith, 1985:350)

The court’s inability to make its penal messages understood also means that in many instances, young offenders “will have to rely on probation officers [or other criminal justice agents] for an explanation” (Smith, 1985:350). The extent to which reliance is placed on these other actors to disseminate information to young offenders will become apparent from the analysis of the literature on the administration of community-based sentences.

### **2.5.2 Youth Offender Panels: An alternative forum for the communication of penal messages**

The introduction of referral orders in the youth justice system under the Youth Justice and Criminal Evidence Act 1999 has been met with increased

research attention being devoted to the views of young offenders subject to these orders. This community-based sentence caters for 10-17 year olds pleading guilty and convicted for the first time by the courts, and involves referring the offender to a YOP whose work is underpinned by the principles of restorative justice defined as "restoration, reintegration and responsibility" (Home Office, 1997a:31-32). Offender-participation in restorative processes is frequently championed as a means of holding individuals to account for their actions: "Restorative justice involves restoring responsibility to offenders for their offending and its consequences" (Gelsthorpe and Morris, 2002:243). According to some restorative justice advocates, a process that listens to offenders' views represents a notable improvement on the criminal justice process which "does nothing to encourage offenders to take responsibility to right the wrong they have committed" (Zehr, 2003).

The offender's inclusion in restorative justice is pivotal to a process that invites participation and that prides itself in its openness and fairness. As Sherman (2002:26) concludes, this "egalitarian, consensual procedure...creates more legitimacy in the eyes of both offenders and victims than the hierarchical, deferential process of sentencing by a judge." This perception is supported by the research available into the purposes ascribed by young people to a court hearing and a panel meeting: "Whereas 63 per cent of offenders believed that the main purpose of the court was to punish them, only 30 per cent felt that this was the main purpose of the panel" (Newburn *et al.*, 2001b:48). Participants generally felt that the panel was there "to help them get on with their lives, a purpose which less than half of

interviewees felt was the case in relation to their court appearance” (Newburn *et al.*, 2001b:48).

As an alternative medium through which penal messages are communicated to young offenders, the intention according to Earle and Newburn (2001:4-5), “is that the YOP will provide an informal forum where the young offender, members of his or her family, and where appropriate the victim, can consider the circumstances surrounding the offence(s) and the effect on the victim.” The involvement of community panel members within the panel is an additional innovative aspect of the YOP process which, according to parents interviewed by Newburn *et al.* (2002:38), is beneficial “particularly with regard to their impact upon the important human and interpersonal dynamics of panel meetings”. The more deliberative and engaging nature of YOPS as a forum within which to discuss the young person’s offending behaviour calls for an active and participatory role from the individual concerned during panel meetings:

YOPs adopt a conference-type approach to decision-making that is intended to be both inclusive and party-centered. As such, they mark a significant shift away from a court-based judicial model in which the parties are represented rather than speak for themselves (Newburn *et al.*, 2002:23).

Although there were initial misgivings as to the extent to which young offenders could be expected to engage with proceedings during panel meetings, the available “observation data suggest that many young people did play an active role in panel meetings” (Newburn *et al.*, 2002:26), a finding echoed in Earle and Newburn’s

research (2001:10). Newburn *et al.* (2001b:47-48) comment on the fact that the opportunity to explain events for themselves while being listened to by members of the panel was welcomed by many participants: “[n]inety per cent of respondents felt that they had been able to explain their side of things at the panel, while only 70 percent reported this to be the case at [court]”. A similar finding is reported by Hoyle *et al.* (2002:27-28) in their research on restorative cautioning when they note that:

[m]ost interviewees explained that they felt the process had been fair because they had been given the opportunity to say what they wanted to say. It was particularly important to a number of offenders that they were provided with the same opportunity to speak as everyone else, and that they were listened to with a degree of respect.

The ability to empower the respective parties must be seen as a notable improvement on the traditional criminal justice system which often fails to empower. In their research, Crawford and Newburn, (2003:239), conclude that YOPs “were...able to engage young people and their parents in a very different, and more positive, process of communication and reasoning from that found generally in the criminal courts”. A similar finding is reported by Rogers (2005:21) who notes that “[y]oung people who have gone before YOP, tend to compare them favourably with courts”. Overall, findings such as these might perhaps explain why participants report high levels of procedural satisfaction following their involvement with the YOPs.

Of critical importance to the communicative functions underpinning the punishment process is the fact that “[a]n overwhelming majority of young people agreed that they were treated with respect; that the panel members were fair; [and] that they understood what was going on at the panel” (Newburn *et al.*, 2002:37-38). While the significance of this latter finding will be discussed in greater detail in subsequent chapters, it is sufficient, for present purposes, to note that according to Newburn *et al.* (2002:vii) “[o]ver two-thirds of young people said they had a clearer idea of how people had been affected by their offence after attending the panel meeting”. The active participation of the offender also seems to have brought home the reality of their offending behaviour: “[s]ixty-nine per cent of young people said they had a clearer idea of how people had been affected by their offence after attending the panel meeting. This compares with 45 per cent who said the same after attending court” (Newburn *et al.*, 2002:38).

Researchers have expressed their concerns about the low level of victim participation within the panel meetings themselves (Earle and Newburn, 2001; Miers *et al.*, 2001; Holdaway *et al.*, 2001). Although young people themselves are divided as to whether they want the victim(s) present during the meeting (Newburn *et al.*, 2002:39), it is encouraging to find that the available research suggests that the presence of the victim(s) during the panel meeting also helps communicate to the young offender the seriousness of what they had done: “having a victim present at the panel added an extra dimension to the initial panel meeting and made the young people present more aware of the harm they had caused” (Newburn *et al.*, 2001b:51).

The discussion thus far would seem to lend weight to Newburn *et al.*'s (2001b:89) conclusion that:

[t]he informal setting of YOPs would appear to allow young people, their parent or carers, CPMs [Community Panel Members] and YOT advisers opportunities to discuss the nature and consequences of a young person's offending, as well as how to respond to this in ways which seek to repair the harm done and to address the causes of the young person's offending behaviour.

The innovative approach taken by the panel when engaging with young offenders also extends beyond the original panel meeting itself. As Newburn *et al.*, (2002:26) note, “[t]he panel is expected to hold at least one interim meeting with the offender to discuss progress – the first such review is recommended to be held after one month followed by at least one progress meeting for each three months of the contract.” The active and ongoing role adopted by the YOP in monitoring a young person's progress post-sentence must be seen as a significant departure from the approach traditionally adopted by the court.

### **2.5.3 Offenders' views of community-based sentences**

The opening chapter of this thesis already identified the value of research initiatives into young offenders' views as a means with which to gauge how community penalties are perceived and assimilated by those individuals experiencing them.

Numerous studies have sought to explore the views of offenders on sentences which involve an electronic monitoring component (Mair and Nee, 1990; Heggie, 1999; Gainey and Payne, 2000; Dodgson *et al.*, 2001; Roberts, 2004a; Moore *et al.*, 2004). The advantages singled out by offenders serving these sentences include being with the family and spending more time at home. Electronic monitoring is also seen as advantageous because the requirements of the sentence provide the offender with a stabilising influence, a structure to an otherwise unstructured life, and a good reason to avoid peer pressure (Roberts 2004a; Moore *et al.*, 2004). These positive influences may, in turn, encourage offenders to desist from crime and may also improve their relationship with their families.

While this may be the case, Gainey and Payne (2000:93), in their research into electronically monitored home confinement, discovered that offenders believed the "restrictive conditions [imposed] are not only a control, they are also intended as a punishment, and they are experienced as such". A similar finding is reported by Jones (2000). Writing about public assumptions of punishment in the context of community custody, Roberts (2004a:19) draws attention to the fact that "[f]ew members of the public stop to consider the impact of curfews and house arrest on the family of the offender." The use of electronic monitoring may overburden families who are already experiencing considerable socio-economic hardships. Payne and Gainey (1998) report that offenders in their sample experienced financial difficulties with regards the costs of having to pay for the electronic monitoring equipment. There is also widespread consensus that family relationships may be

negatively affected (Mair and Nee, 1990; Payne and Gainey, 1998; Dodgson *et al.*, 2001; Roberts, 2004a).

Considerable hardships are also experienced by offenders on community service. In her research with offenders serving this sentence, McIvor (1992:100) discovered that “[t]hree-quarters of those who were interviewed believed that community service was punitive because of the inconvenience it caused, the commitment it required, or the fact that the work was unpaid.” A similar finding was made in the research conducted by Mair and May (1997:52-53), who found that “[i]nconvenience was the most commonly mentioned bad point about CS [Community Service]” according to the offenders they surveyed. Although many offenders seem to have made reference to the “inconvenience” of being made to undertake “unpaid” labour, however, the research literature reveals an interesting undercurrent in offenders’ accounts.

While community service may have been perceived as ‘inconvenient’, the available research also suggests that offenders who had enjoyed their community service placements “found it difficult to conceptualise it in punitive terms” (McIvor, 1992:101). This is an interesting dichotomy which merits further comment and one which may be explained by the fact that “most offenders appear to have found community service to be a reasonably constructive and rewarding experience” (McIvor, 1992:84-85). This finding is also replicated in Delens-Ravier’s (2003) study. The evidence suggests that active engagement within a community punishment programme is viewed by offenders as a constructive response to their

offending. In their research with offenders, Mair and May (1997:52) discovered that when asked to comment about the 'good points' of community service, respondents mentioned the opportunity to do some kind of constructive work as well as the opportunity to learn new skills and gain experience.

These favourable accounts of community service, however, would likely seem to depend upon each individual's placement experience, for as McIvor (1992:86) concludes, offenders' views "appeared to be affected by whether or not they were able to perform the type of work they wanted". While it must be acknowledged that different experiences are likely to engender different views, this study was interested in exploring further what young offenders understood by the term 'punishment' and whether they conceived of their orders and the activities they had been asked to undertake as a punishment.

The Introduction identified the potential value of drawing upon offender views to inform and possibly improve existing service provision. The literature on offender views of community service casts light upon how, in their view, the sentence may be improved by:

providing a wider range of work; by being given more choice about what was to be done while on CS; by providing more equipment and resources; by being given some payment for the work; and by being given more help in finding a permanent job (Mair and May, 1997:52-53).

Research work might also inform current practices and dispel certain preconceptions about the psychology of punishment. In their work with young

offenders undertaking community service as part of their community orders, Pamment and Ellis (2010:26), for instance, discovered that the introduction of high-visibility uniforms “will not assist in managing young offenders through their orders and in reducing future recidivism”.

Parke's (2008:42) contribution to the debate on how to prevent youth crime is significant in so far as the offenders interviewed identified measures to stop themselves from offending which were extraneous to the criminal justice system itself. The most frequently cited response was getting a job, followed by 'having something to do that isn't crime' and 'staying off alcohol and drugs'." Some of the young offenders in Gray *et al.*'s (2005) investigation into the ISSP programme felt that their respective sentences served a preventive purpose by virtue of the fact that it kept them busy: "It's kept me out of trouble, kept me busy everyday" (Gray *et al.*, 2005:88). This research finding is substantiated by Spencer (1992:23): "the availability of more leisure facilities...might have prevented them [young people] from getting involved in... crime in the first place (see also Edwards and Hatch, 2003; Apena 2007; Margo and Stevens, 2008).

#### **2.5.4 Offenders' views of the administration of their sentences**

A review of the available literature reveals that academic and policy initiatives have long since emphasised the importance of a close working relationship between criminal justice practitioners and offenders themselves to

encourage desistance: “a key element in effective practice and effective interventions is the quality of the relationship between the worker and the child or young person” (NACRO, 2008a:4; see also Burnett, 2004). Young offender accounts would seem to lend weight to the aforementioned arguments. In their investigation into the ISSP programme, Gray *et al.* (2005:91) note that it was clear from:

the feedback from the parents and young people themselves, that the quality of the relationships staff developed with young people was essential in creating a trusting bond and establishing a basis from which to work.

In a similar vein, Barry's (2000:582) research highlights the “significance to offenders of the relationship with their supervising officer as someone: to whom they can talk easily; in who they can confide; and who can help them not only with practical problems, but often, more importantly, with emotional problems.” These research findings are supported by the work undertaken by both Moore *et al.* (2004) and Mair and May (1997:46), the latter noting that:

levels of communication between probation officers and offenders seemed to be impressively high: about three-quarters of the sample felt that they could always talk to their probation officer if they were worried about something, and they could be completely honest and frank with him/her.

One of the *leitmotifs* to emerge from the literature review undertaken was the central role fulfilled by YOT workers in terms of providing young offenders with information about their respective orders as well as the youth justice system more generally:

YOTs provide young people and families with information leaflets about programmes and interventions to help them understand the requirements of an order. Such information sets out expectations in terms of standards of behaviour, the requirements of engagement with the YOT, the importance of attending appointments and the consequences of noncompliance (NACRO, 2009a:11; see also: Newburn *et al.*, 2001b; Newburn *et al.*, 2002:35).

The quality of guidance and support provided to young offenders during the administration stage of their respective sentences is bound to be pivotal to the impact the sentence is likely to have upon the lives of those undergoing the sentences. Such was the perceived proximity of the nexus between probation officer and probationer, for instance, that Davies (1979:85) reports that “a quarter of the respondents saw their probation officer as more like a teacher than a social worker”. In their research, Bell and Owers (2004:10) found that “where good relationships had developed with education and prison stage, young women were encouraged and motivated to do well and to achieve at levels commensurate with their ability.” Gray *et al.* (2005:92) also found that the repercussions of the guidance and support provided could have further implications. In the words of one of their interviewees:

Young person (male, 17): ....It’s sorted out my temper problems. Now I can call [ISSP workers] and talk to them about it. It’s brilliant. I’m much better at talking with adults.

While highlighting the central importance of the supervisor-supervisee relationship, research undertaken by Mair and May (1997:35) draws attention to what they termed the ‘content of supervision’; namely, the issues which offenders

and probation officers discussed at their respective sessions. Their findings suggest that “[o]ffending behaviour was the most commonly discussed topic in previous sessions” (1997:35-36). While it was perhaps unsurprising to find that “there were relationships between the topics discussed at sessions and the characteristics of offenders” (1997:36), it is significant that offending behaviour should figure so prominently as an item for discussion during probation officer-offender sessions. This study was interested in exploring young offenders’ perceptions of the communicative roles fulfilled by YOT workers, and more specifically, whether the penal messages conveyed by these actors are in consonance with those that are transmitted to offenders while their respective sentences are being imposed.

## **2.6 Why we should Listen to Young Offenders**

For all the academic work which sets out to quantify public and professional perceptions of the severity of punishment, and for all of the existing objective measures of success, it is only by taking cognisance of the views of those being punished that we may come to a more comprehensive understanding of how punishment works. As Roberts (2004a:93) notes, “[a]n accurate idea of the true impact of any sanction can only be gained from understanding the perspective of those who experience it.” These are weighty reasons for listening to young offenders’ perspectives of community punishment, and justify the inclusion of subjective measures of success to complement criminology’s traditional concern with objective ones.

According to Chui *et al.* (2003:269), “one difficulty commonly encountered by evaluators is the task of defining and measuring the outcome indicator of effectiveness.” Wilcox (2003:21) seems to concur with this view and states that there is “often disagreement, in the complex world of human behaviour, as to what should count as evidence of effectiveness.” All too often, reconviction rates, for instance, are uncritically assumed to be an accurate and objective measure of success. According to Burnett and Appleton (2004: 113), however, “reconviction studies as a measure of ‘what works’ in reducing offending have serious limitations.” Given the high attrition rate in the criminal justice system, only a small proportion of offenders are ever convicted.<sup>8</sup> Reconviction rates are therefore problematic because they may misrepresent the situation:

If offenders become more successful in their criminal endeavours and do not get caught or there are significant changes in prosecution practice, then it may appear that there are fewer persistent offenders. This could be misleading if one is trying to measure behaviour (Soothill, *et al.*, 2003:406).

The critical point that is being made here is that reconviction statistics are context-bound. They can only be properly understood when they are interpreted against a wider context, in terms of the length of the follow-up period used in the study, and changes in sentencing or national trends which might also have had an impact. To this extent, as Spohn and Holleran (2002:332) point out, “recidivism data are necessarily incomplete.”

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<sup>8</sup> According to Ashworth (2005:29), for instance, “sentencers probably deal with just over two percent of actual offences in any one year”.

These facts cast considerable doubts on the validity of reconviction rates as an accurate measure of programme success. Equally flawed is the evaluation of the effectiveness of a sanction primarily in terms of its cost. According to Bagaric (2002:435), such an approach is “akin to evaluating the effectiveness of prescription drugs by their price, instead of how good they are at saving lives.” In this context, Moore (2004:170) fields the argument that: “Whatever emphasis is placed upon reconviction [and other objective indicia], further outcome measures are needed for a more in-depth analysis of effectiveness”. Valuable as they undoubtedly are, objective measures of success will not provide the researcher with a complete picture of punishment. While Daly’s (1994:4) assertion that “measures of punishment are unsatisfactory” is valid, the traditional criminological concern with objective measures need not preclude the use of subjective measures, such as offender views, as another useful ‘outcome measure’.

An analysis of the opinions of young offenders might therefore reveal an interesting complementary picture regarding the effectiveness with which the criminal justice system achieves not only its principal preventative goal, but also its wider aims and objectives. Interestingly enough, in their research findings, Hazel *et al.* (2002:11) note that in general, the young offenders interviewed believed their respective orders were primarily intended to serve a punitive function. The purposes of sentencing in relation to offenders aged under eighteen, as set out in Section 9 of the Criminal Justice and Immigration Act 2008, however, provide that sentences should, amongst other objectives, aim to punish, reform and rehabilitate offenders.

The importance of analysing how offenders' view their punishment is primarily grounded on the premise that the success of traditional utilitarian aims of sentencing, such as punishment, deterrence and rehabilitation, ultimately depends on the manner in which it is viewed by the person experiencing it. Imputing an almost 'objective', 'one-size-fits-all' assessment of the severity, rehabilitative and deterrent effects of punishment might mean that traditionally-held assumptions of punishment are flawed. In this context, Apospori *et al.* (1992:379) conclude that "persons are deterred, if at all, not by the objective properties of punishment but by their perceptions of the certainty and severity of legal sanctions." Because deterrence is a subjective phenomenon, as Roberts (2004a:54) asserts, "offender perceptions are therefore critical." Recognising the potential value of empirical research into offenders' views, Peterson-Badali *et al.* (2001:603) recommend that:

juveniles' subjective perceptions of the harshness of their disposition would also be important to gather in future if we are interested in making connections between how they experience their disposition and its effectiveness as a deterrent.

In their research, Erickson and Gibbs (1979:105) have noted that "[t]here is every reason to suppose that individuals differ appreciably in their perceptions of the severity of punishment" and Tittle and Logan (1973:387) conclude that "people from different groups will...have differing perceptions of the personal costs to them that would be entailed by different sanctions."

The inherently subjective nature of any assessment of punishment is thus not only extensively documented in the research literature, but also bound to carry critical implications for a deterrence doctrine that might be shown to be little more

than a perceptual theory (Waldo and Chiricos, 1972). If individuals differ considerably in their evaluations of what constitutes a severe punishment, it is not clear how an arbitrarily-set punishment can adequately satisfy the deterrence aim of sentencing. Similarly, research by Apospori *et al.* (1992) casts doubt on the widely assumed hypothesis that criminal sanctions are effective at communicating the threat of punishment to offenders. Their research findings demonstrate the existence of an ‘experiential effect’. Offenders with experience of having committed offences and not being caught report lower estimates of the certainty of punishment than those who do not offend. It is important to note in this respect that “[t]here has been an increasing recognition in recent years that what matters in the application of deterrent sentences is the subjective perception of them by potential or would-be offenders” (McGuire 2002: 159).

Any attempt to generalise or make assumptions about the severity or deterrent value of any given punishment without reference to the subjective perceptions of those being punished is perhaps inescapably flawed. In this context, Erickson and Gibbs’ (1979) work on the *perceived* severity of legal penalties can be seen as a notable attempt to suggest a way forward from a situation where *presumed* indicia of punishment were used widely. While Erickson and Gibbs’ (1979) contribution to the debate was full of potential, there is nonetheless a critical error in their analysis for it only includes the views of practitioners and the public. Having correctly identified the concept of *presumed severity* of punishment as being conceptually flawed, they fail to satisfactorily develop their proposed variable of *perceived severity* by excluding the offenders’ views from the process.

The work of Erickson and Gibbs (1979) once again brings to the fore the manner in which the research literature has paid heed to the views of the consortia of interested parties it is meant to serve but often failed to listen to the views of offenders themselves. In so doing, it may well have failed to capitalise on the potential benefits of participation, for juvenile offenders are invariably at a critical juncture in their lives. If the situation they find themselves in is mishandled, then an opportunity to reintegrate them into society as law-abiding citizens might be lost. An argument could therefore be made that given the profile and the high reoffending rates among certain juveniles, the need for research into how it is that they perceive penal messages has practical, and not only theoretical implications.

While the causal relationship between views and behaviour is open to debate (see Myers, 1993 and 1994; McGuire, 1969), there is consensus in the academic literature about the fact that punishment, when imposed in a manner that is perceived as unfair reduces future compliance with the law, rather than promote desistance (Braithwaite, 1989; Sherman, 1993; Paternoster *et al.*, 1997; Piquero *et al.* 2004; Tyler, 2006). Punishment, Ewing (1943:111-112) believes, "is a way of telling a man that he has done wrong; but if it is not just, it will not be telling what is true, and so will not bring home to him any moral lesson." Braithwaite (1989) in his seminal work *Crime, Shame and Reintegration*, argues that punishment can be imposed in such a manner as to promote desistance (through reintegrative shaming), or inversely, encourage offending (through stigmatic shaming). A similar point is discussed in Sherman's (1993:445) 'theory of defiance':

Procedural justice (fairness and legitimacy) of experienced punishment is essential for the acknowledgement of shame, which conditions deterrence; punishment perceived as unjust can lead to unacknowledged shame and defiant pride that increases future crime.

In the case of persistent offenders, repeat contact with the criminal justice system has seemingly failed to encourage desistance, and if labelling theorists such as Lemert (1951) are correct, may have in fact pushed them further in the direction of reoffending.

## **2.7 Conclusion**

If prevention is the overriding aim of the youth justice system, then a comprehensive study of offenders’ views of punishment, and how these relate to their future behaviour, is critical to the success with which recidivism can be reduced. While Tyler (2006:5) is of the view that “legitimacy in the eyes of the public is a key precondition to the effectiveness of authorities”, the literature reviewed for this chapter strongly suggests that such effectiveness will remain limited for as long as young offenders’ views are ignored.

Having analysed the literature on offenders’ views of punishment, and set out a case for employing their perspectives in research-based evaluations of penal interventions, the next chapter will examine the academic literature available on communicative theories of sentencing. The intention is to establish the theoretical backdrop against which the qualitative findings of this study will be analysed.

## **Chapter Three: Expressive and Communicative Theories of Punishment**

### **3.1 Introduction: The Communicative Value of Sentencing**

At a time when the expressive and communicative dimensions of punishment have become an increasingly central concern in penal theorising (Duff and Garland, 1994; Duff, 2005a), relatively little is known about how offenders themselves view their sentences and perceive the penal messages delivered to them by the criminal justice system:

*The reality of each criminal's punishment consists in the experience of that punishment. What actually happens to prisoners - their daily pain and suffering inside the prison - is the only true measure of whether the traditional concepts have meaning, the traditional goals are fulfilled, the traditional definitions apply. Only through the prisoners' experience can we test the categories, clarify these concepts and set priorities (Blecker, 1990:1152).*

The need for extensive empirical work on the communicative value of sentencing in all areas of the criminal justice system is becoming a *leitmotif* in the literature:

What does imprisonment, or a fine, or an order to undertake community service, or a probation order, say to the offender and to others about the offender, about her offence? This is a dimension of punishment that has not received enough attention from theorists (Duff, 2004:88-89).

This thesis has identified an important lacuna in the literature on offenders’ views. Given the relatively small body of empirical information available on offender perceptions of the communicative dimensions ascribed to punishment, it fully endorses Sparks *et al.*’s (2000:207) contention that the youth justice system “cannot properly presuppose its inherent communicative efficacy”.

### **3.2 Chapter Overview**

The primary aim of this chapter is to anchor the research project firmly within the context of the relevant academic debate on expressive and communicative theories of punishment in order to define the present state of theory-based knowledge in the field. The study does not purport to test these theories, and the intention of this chapter is to preface the analysis with the academic backdrop against which the study’s findings will be discussed. The first two sections will analyse some of the more pertinent contextual influences which have a bearing on the communicative efficacy of the punishment process. The chapter will then offer a selective review of the antecedents of contemporary communicative theories of sentencing as expounded by a number of influential expressivist theorists. The discussion will subsequently focus on the more recent academic developments in the field, in particular, the communicative theories of punishment advanced by von Hirsch (1993) and Duff (2001). The chapter concludes with an evaluation of the benefits that can be derived from the symbiotic relationship between purely normative accounts of punishment and empirical research.

### 3.3 The Communicative Function of Punishment in Context

Although “[t]he criminal law is a prime arena for the expressive function of law” (Sunstein, 1996:2044-2045), communicative and expressive theories of penal punishment can also be seen against a wider context, extending beyond the criminal justice landscape, where legislative enactments are taken to be expressive too. This much broader perspective, however, falls outside the province of this study.<sup>9</sup>

The messages communicated by punishment in the criminal justice sphere are so central to the task of penal theorising and to sentencing that some academics and philosophers conceptualise punishment in linguistic terms: “punishment is like a special language” (Ewing, 1927:302). The ascription of linguistic attributes to punishment is widespread among the academic community (Ewing, 1927; Gahringer, 1960; Primoratz, 1989; Clear, 1996). Durkheim (1925:176), for instance, speaks of punishment as a “palpable symbol”, “a notation, a language, through which is expressed the feeling inspired by the disapproved behaviour.”

According to Ewing (1943:116):

What punishment is suited to convey disapproval depends not only on the badness of the act to be punished, but also on the

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<sup>9</sup> Sunstein (1996:2044-2045), for example, is of the view that “[t]here are many areas in which law is used in an expressive way, largely in order to manage social norms”. On this issue, van Der Burg (2001) draws our attention to the expressive quality of anti-discrimination laws which he contends are “intended not only to provide remedies for individuals who are victims of discrimination, but are also introduced with a view to highlighting the message that discrimination on the grounds of gender, race and sexuality is wrong.” Wringer (2006:160) is of the view that the “best way of justifying our present practices of punishing war crimes” is by conceiving penal sanctions in expressive terms. Other academics, such as Anderson and Pildes (2000) and Brownlee (2007), have also devoted considerable attention to the communicative value of legislative enactments.

way in which the society in question is likely to interpret a given degree of punishment.

In this context, Duff and Garland (1994:34) advance a convincing argument that “punishment is a social institution which can be understood only within the social context which gives it practical meaning and determines its social effects.” A similar view is also advanced by Brownlee (2007). The critical point being made here is that the expressive or communicative nature of penal messages cannot be comprehended without reference to a particular context. As Anderson and Pildes (2000:1525) note:

Expressive meanings are socially constructed....Thus, to grasp the expressive meaning of an act, we try to make sense of it by fitting it into an interpretive context....The expressive meaning of a norm does not inhere in that norm in isolation, but is a product of interpreting the norm in the full context in which it is adopted and implemented.

If Sunstein (1996:2050) is correct in his assertion that “[t]he social meaning of law will constrain the legitimate or permissible content of law”, then there are weighty reasons for exploring the social context within which penal messages are being transmitted. This view is endorsed by Freiberg (2001:275) who offers a compelling argument for these considerations to be borne in mind. In his view, “successful penal reform must take account of the emotions people feel in the face of wrongdoing.”

The previous chapter has already identified the pervasive, although not exclusive, hold the media enjoys in relation to the public’s knowledge of crime and

criminal justice matters (Mathiesen, 1994; Sunstein, 1996). This selective media portrayal of crime has critical implications for the communication of penal messages through sentencing. According to Duff and Garland (1994:219), the effects are clear:

the filtering and focusing effects of the media - which pursue their own conceptions of what is newsworthy - distort the penal communication and give an inaccurate description of the realities of crime and punishment.

The ever-increasing importance afforded to public opinion in matters of policy development, and the impact of the increased politicisation of crime and criminal justice matters, means that “it is critical to examine both instrumental and expressive levels of criminal justice policies if they are to succeed in political or public spheres” (Freiberg, 2001:265). Many criminal justice interventions must therefore be seen in the context of successive government initiatives aimed at appearing tough on crime and restoring public confidence, by introducing sentences which the public considers credible both in instrumental terms by reducing reoffending, and in expressivist terms, by communicating public disapproval in a forceful manner. Failure to be sensitive to and aware of these affective issues, in Freiberg’s (2001) view, will hamper attempts towards effective penal reform. In this context, Marinos (2005:441) observes that “the expressive or symbolic purpose of punishment has been viewed as a specific reason for the relatively low success rate of decreasing the use of imprisonment, particularly with respect to public acceptability.” This view is shared by Kahan (1999) and endorsed by Sunstein (1996:2050), who believes that “[s]o-called intermediate sanctions for criminal

violations are often unpopular because they are taken to ‘mean’ something other than public opprobrium”.

The discussion thus far has sought to argue that the communicative function ascribed to sentencing is rendered difficult because of wider contextual influences ranging from, but not limited to, news media portrayal of crime and punishment and an increasingly influential, but often misinformed public. For all its attempts to disseminate information on crime and criminal justice matters (see Section 2.3), however, the communicative efficacy of criminal justice system is also arguably undermined by the cumbersome nature of what, to many individuals, remains an obscure, jargon-filled procedure. Although this will be an issue explored in greater depth later in this chapter, for present purposes it is sufficient to note that procedural and language-based factors will have critical implications for the transmission of penal messages:

Sentences issued only in writing, tacked on to dense, lengthy judicial decisions and unaccompanied by a public ‘ritual of manifest moral significance’ that expresses the reprobative judgments of the relevant community, cannot fulfil these [communicative] functions very effectively (Sloane 2006:61-62).

As with any expressive or communicative act, the effective transmission of penal messages is contingent upon the idiosyncratic medium through which these are transmitted:

For law to perform its expressive function well, it is important that law communicate well. Unfortunately, ‘law’ is not an agent

and it cannot speak. Statute books are rarely read and are barely intelligible when they are read (Sunstein, 1996:2050-1).

### **3.4 Communicative Efficacy and the Intended Recipients of Punishment**

Although there is a broad underlying consensus regarding the significance of the socio-political context within which penal messages are communicated, there are discrepancies regarding their intentions and their intended recipients. The debate can be synthesised in the following multi-pronged question: What implicit and explicit messages does punishment express, to whom and to what end?

An assumption is often made in the literature that the intended audience for penal messages is primarily the criminal or the potential criminal (Duff and Garland, 1994). If this is the case, there seems to be little empirical research into how these messages are interpreted by these individuals. There is also a widely shared belief that punishment communicates messages not only to offenders themselves, but to the community more widely:

When the state makes its criminal law and its enforcement practices known, it conveys an educative message not only to the convicted criminal but also to anyone else in the society who might be tempted to do what she did (Hampton, 1984:212; see also Amann, 2002).

In his work Andenaes (1977:216-17, as quoted in Mathiesen, 1994:221-2), fields the view that punishment delivers a preventative message: "The communication process from the legislator and the law enforcement agencies to the

public is therefore a central link in the operating of general prevention". Ewing (1927:302) is of the view that "punishment is like a special language required to express moral views both to the community in general and to the culprit who suffers it" (see also, Skillen, 1980, and Wringe, 2006). Some academics and penal philosophers believe that perhaps the most important message is one of reassurance addressed at the law-abiding public. The intention is to communicate to the general public that 'something is being done' about crime (Duff and Garland, 1994; Jamieson, 2005).

While not disagreeing with any of these hypotheses, it would seem reasonable to suggest that as the occupier of the most important position in the hierarchy of intended recipients, these messages should target the offender in a much more single-minded manner than it should target the rest of the population. As the central actor at the apex of the criminal justice system's concerns, it is important that penal theorists and practitioners should strive towards an empirically-grounded understanding of how these messages are perceived by offenders. In this context, it is encouraging to note that the need for greater empirical engagement with purely normative theorising is increasingly being advocated by some academics (Duff and Garland, 1994; Rex, 2005).

The transfer of meaning between interacting parties is central to the task of communication (Matthesen, 1994), and a more extensive research programme into what penal messages mean to offenders might translate into improved sentencing practices. One of the principal tenets of this thesis is that listening to offenders'

views adds a vital dimension to the development of a more informed appraisal of the traditional aims of sentencing:

Retribution, deterrence (general and specific), rehabilitation, and incapacitation represent overlapping and antithetical perspectives on why, when, and to what degree criminals should undergo pain and suffering through punishment. In order to evaluate these various definitions, justifications, and goals of punishment, therefore, we need to know whether and how prisoners do in fact suffer.... (Blecker, 1990:1156).

### **3.5 Review of the Literature: An Introduction**

Given the heterogeneous and philosophically intricate nature of expressive and communicative theories of punishment, every effort has been made to organise the ensuing discussion thematically. The structure is not always neat because the theories under consideration have not been developed in a chronologically linear manner, and because there is considerable overlap between the views expounded therein. For present purposes, however, it is worth reiterating the point already made in the Introduction that the thesis will be drawing primarily upon the theories of punishment advanced by von Hirsch (1993) and Duff (2001) as both academics afford communication a central role in their respective works.

A review of the literature will reveal that conceptualising punishment as a device for conveying penal messages is problematic. While most academics have identified hard treatment and censure as the two constituent elements of punishment (Narayan, 1993), there are conflicting opinions about the particular functions these

elements play in relation to the expression and communication of penal messages.

Skillen (1980:515) frames the issue thus:

[I]s it punishment that is said to be the ‘conventional symbol’ of disapproval, or is it the material embodiment or ‘form’ of punishment that is supposed to stand in this conventional relation to disapproval?

There is also academic debate regarding the resurgence of expressivist and communicative penal theories during the second half of the twentieth century. The move away from the traditional and often retributive penal theorising signalled a major shift in focus, for as Duff (2005a:131) points out, this new perspective means that “we are to attend not merely to punishment’s effects, to what it brings about, but to its meaning, to what it says (and to whom it says it).” This shift in focus has divided academics, and much of the extant literature focuses on the schism which separates expressivist and communicative theories of punishment.

### **3.6 Feinberg and Expressivist Theories of Punishment**

The resurgence of interest in expressivist theories is often attributed to Feinberg’s (1970) article ‘*The Expressive Function of Punishment*’ (Steiker, 1997; Adler, 2000; Harcourt, 2001; Zaibert, 2003; Wringe, 2006). Although Feinberg does not advance a complete justification for punishment, “his expressionist account is offered as a contribution towards a more comprehensive understanding of the practice” (Primoratz, 1989:188), one which had traditionally neglected the

expressive dimension of punishment and conceptualised it as something inflicted upon offenders.

Punishment, according to Feinberg (1970:98),

is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those ‘in whose name’ the punishment is inflicted.

Feinberg’s expressive account posits that any definition of punishment must be characterised by its reprobative function and its hard treatment element (1970:98). In his view, the reprobative function of punishment is critical. Punishment, according to Feinberg (1970:98), therefore, “has a symbolic significance”, an element of condemnation and disapproval, which is absent in other kinds of penalties such “parking tickets, offside penalties, sackings, flunkings and disqualifications” (1970:96) as these are “inflexions and deprivations which, because of different symbolic conventions, have no reprobative force” (1970:98).

In his theory, Feinberg posits the view that punishment is the conventional symbol of disapproval, and that the “degree of disapproval expressed by the punishment should ‘fit’...the amount of harm it [the crime] generally causes and the degree to which people are disposed to commit it” (1970:118). While this normative dimension to Feinberg’s theory may satisfy some, the fact remains that tailoring the degree of disapproval expressed by punishment remains problematic.<sup>10</sup>

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<sup>10</sup> This is not to say that there are no difficulties inherent in the task of tailoring the hard treatment element of punishment to suit the degree of disapproval which is sought.

Harcourt (2001:168-9), for instance, doubts “that the expressive dimension is easily amenable to engineering or manipulation. It is not clear to me that we could calibrate the moral message attached to punishment in the first place.”

Contextual and situational variables such as the perceived legitimacy of the punishment, as well as subjective perceptions of its fairness are also identified in the literature as being critical to the messages expressed by the penal process to society at large and to offenders themselves. In this context, Harcourt (2001:168-169) contends that “[t]he message expressed by punishments, especially the moral message, is likely to be shaped in large part by the perceived legitimacy of the criminal justice system”.

Feinberg has also come under heavy criticism for identifying moral condemnation as the *principal* expressive element of punishment. Bedau (2002:116-117), for instance, asks whether we should “embrace Feinberg’s idea that the essence of punishment lies in the moral condemnation of the offender it conventionally expresses?” While not denying the condemnatory role fulfilled by punishment, it would be difficult to defend his stance when he declares it to be the *essence* of punishment. Harcourt (2001:168-169) challenges the idea that morality is central to punishment’s expressive dimension, stating that “[p]unishment usually also communicates, importantly, political, cultural, racial and ideological messages. The meaning of punishment is not so coherent or simple.” These messages are all inextricably intertwined. To cite Harcourt (2001:168-169) once more, “Feinberg’s descriptive claim, in essence, may truncate a significant portion of what is expressed

in punishment.” In the light of these views, this study was interested in finding out the importance which young offenders ascribe to the expression of disapproval, and whether they perceived it to be the main expressive element of punishment.

In Feinberg's (1970:101-105) view, the expressive function of punishment serves four important social purposes which are all achieved by means of the expression of censure or condemnation that is typically linked to punishment. Punishment expresses authoritative disavowal of the crime committed; non-acquiescence of the crime as opposed to indifference by society; vindication of the law which has been broken; and finally, absolution of individuals who might have been considered suspects. Feinberg believes that those social purposes of punishment associated with the expression of censure may be achieved independently of the imposition of hard treatment:

One can imagine an elaborate public ritual, exploiting the most trustworthy devices of religion and mystery, music and drama, to express in the most solemn way the community's condemnation of a criminal for his dastardly deed (1970:116).

Underpinning Feinberg's theory lies the idea that punishment conceived in expressive terms makes hard treatment superfluous, for the key function attributed to punishment has already been fulfilled by the expression of censure. This stance seems idealistic for it presupposes a utopian view of human nature, one which conceives of man as a moral creature who, guided by rational thought alone, is capable of learning from the error of his ways. On his own admission, Feinberg concedes that his separation of the two elements of punishment at the conceptual

level was hard to defend: the “reprobative symbolism of punishment and its character as ‘hard treatment’... [are] never separate in reality” (1970:98). More importantly, he also recognises that “[g]iven our conventions...condemnation is expressed by hard treatment, and the degree of harshness of the latter expresses the degree of reprobation of the former” (Feinberg, 1970:118).

Feinberg’s illusory distinction serves little purpose other than to emphasise the inextricably complex nature of the messages entrusted to punishment. Given today’s socio-political climate and current penal practices, it seems unlikely that effective social disapproval can be expressed through reprobation alone without resort to hard treatment. This is a reasonable supposition to make, but one which is worthy of empirical study.

### **3.7 Punishment as an Expression of Public Anger**

While Feinberg identifies censure and disapproval as the main expressive function of punishment, other academics have singled out the expression of public anger as its main function: “a reaction to serious crimes that have alarmed public indignation and rage feelings” (van Stokkom, 2005:173). Analysing the issue from a broader sociological perspective, Durkheim advances the view that the punishment of crime could have a unifying effect by expressing and affirming the laws and boundaries of society. In his opinion, therefore, “[t]o punish is not to make others suffer in body or soul, it is to affirm, in the face of an offence, the rule

that the offence would deny” (Durkheim, 1925:176). In their independent analyses of punishment, both Stephen (1883) and Durkheim (1925) share the view that punishment expresses public anger and serves the purpose of quelling the vindictive feelings held by the public towards those who break the law.

The claim that punishment serves to quell feelings of revenge and hatred towards criminals still has currency today. The literature strongly suggests that when responding to crime there are still important emotional expectations that the general public anticipate state punishment will fulfil: “The penal process...must be seen as a means of evoking, expressing, and modifying passions, as well as an instrumental procedure for administering offenders” (Garland, 1990b:67). On the theme of public expectations of punishment, van Stokkom (2005:173) offers a cautious conclusion when he observes that it would be “a serious omission to give no attention at all to these negative feelings.”

### **3.8 Punishment as Education**

While Stephen (1883) and Durkheim (1925) give prominence to the notion that punishment is an expression of vindictive public desires, others conceive of punishment in educative or reformatory terms. Ewing (1943) and Morris (1981), for example, believe that punishment communicates a moral judgment which expresses society's moral condemnation of the individual's act. In their view, the aim is two-

fold: to teach offenders a moral lesson that will reform their character and to educate the general public.

Another leading proponent of the thesis that punishment is educative is Hampton (1984). In her opinion, “punishment is justified as a way to prevent wrongdoing insofar as it can teach both wrongdoers and the public at large the moral reasons for choosing not to perform an offense” (1984:213).<sup>11</sup>

While Morris (1981) is of the view that moral education cannot exclusively justify punishment, Hampton (1984:209) staunchly defends the view that “by reflecting on the educative character of punishment we can provide a full and complete justification for it.” Hampton’s argument that moral education should be the *raison d’être* of punishment carries with it certain problems, for as Shafer-Landau (1991:215-216) notes, “[t]he strongest criticism of an exclusive justification arises when considering instances in which the success of the attempted education is doomed from the start.”

Hampton (1984:214) justifies the inclusion of punishment within her philosophy of moral education “as a way to benefit the person who will experience it, a way of helping him to gain moral knowledge if he chooses to listen.” Duff (2001), among others, takes issue with Hampton’s philosophy on two major counts.

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<sup>11</sup> Hampton’s expressive theory of retributive punishment is contained in her 1992 piece entitled ‘An Expressive Theory of Retribution’. In brief, her main thesis is that punishment can be justified in expressive terms as a measured response to another expressive act, the wrong committed by the offender. The constraints of this study do not allow for a more extensive analysis of Hampton’s work. See Hampton (1984) and Gert *et al.* (2004).

Firstly, he refutes the implicit assumption in moral education accounts which portray crime “as manifesting some [moral, knowledge-based] defect in the offender” (Duff, 2001:89), where punishment is justified because it benefits the offender. Such a view, Duff believes, is “anathema to traditional liberals” (2001:90) who subscribe to Mill’s (1859) famous harm principle which posits that:

the only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant (Mill, 1859, as quoted in Duff, 2001).

Secondly, Hampton’s notion that punishment is morally educative implies that crimes are committed out of ignorance or error. This view, according to Duff (1996:47) “might seem strange”, for “to say that they [offenders] need ‘education’ suggests a paternalist view of them as rather like children who have not yet received the education they need” (2001:91). He challenges Hampton’s faith in the educative powers of punishment by arguing that most offenders are adults steeped in the norms and morality of their own culture who “know full well that they are doing wrong” (Duff, 1996:47) and “do not need education to teach them what they already know” (Duff, 2001:91).

While Duff downplays the morally educative role of punishment in the case of adults, this study considers it to be an important dimension in the context of young offenders, one that merited an empirically-driven evaluation with the sample selected for this research project. In their research with children, Sparks *et al.*, (2000) encountered the recurrence of certain ‘stock’, or formulaic expressions to

explain the functions of punishment. According to their findings, 'teach them a lesson',

is what children primarily take punishment to do, but precisely what this entails (and, for example, whether it is a deterrent, corrective or rehabilitative lesson that one learns) is a topic that repays close examination (2000:199).

As individuals who in most instances are still receiving a formal education and who are still going through their formative years, it might be a little harsh to rule out the educative role of punishment in favour of correction and persuasion through hard treatment as Duff (2001:92) does. Age and maturity-related considerations would seem to justify the conceptualisation of punishment in educative terms: "a more educational approach might be more appropriate and effective in expressing censure in ways which the young offender is capable of understanding" (Zedner, 1998:184). While not specifically addressing the subject of young offenders, Duff and Garland (1994:15) do make allowances for the nature of the recipient of punishment: "how the punishment is received, since the possibility of moral repentance and reform depends on how the offender understands and responds to the punishment". The position of this researcher is not compromised by subscribing to the view that young offenders are valid social actors (see Chapter Four) while at the same time arguing that these offenders are in the process of developing a fuller understanding of the effects of their actions and the moral responsibility that they should assume for them. Zedner's (1998:184) summative comment on the issue endorses this stance:

Far from taking such a form as to bypass the offender's status as a moral agent altogether, such punishment would address the young offender directly and in language more apposite than any formal judicial pronouncement. This model of punishment as a form of 'moral education' has been criticized when applied to adults on the grounds that 'we can 'educate' someone only if there is something she does not yet know or understand, which we aim to teach her...we must surely see that many criminals know full well that they are doing wrong' [Duff, 1996:47]. It is far less likely to be objectionable in the case of young offenders who may well not appreciate that what they are doing is morally wrong nor why.

### **3.9 Expressivist Versus Communicative Theories of Punishment**

For all the attention devoted to expressivist accounts of punishment, academic opinion regarding their value is mixed. To Anderson and Pildes (2000:1508), for instance, the notion that punishment is expressive represents a statement of the obvious: "Action, by definition, expresses intentions, and therefore always has expressive meaning." Skillen (1980:513) is more abrasive in his criticism, noting that "[i]t seems trivial to say that any conduct is expressive in the general sense". In his overview of expressive punishment, he draws our attention to the definitional issues plaguing expressivist accounts:

By this time anyone pondering on the issues raised by 'expressionism' may well be wondering whether it amounts to a single doctrine at all, let alone a coherent one. Such doubts are confirmed by reflection, not only on the slipperiness of the term 'expression', but on the way that slipperiness functions in preventing a firm critical grip from being maintained on its justifying role in punishment theory (Skillen, 1980:512-513).

It is Skillen's (1980:513) contention that the ambiguous nature of expressivist doctrine opens the door for academics to promote their own theoretical views on the functions of punishment: "Deterrence theory could, in this sense, be trivially formulated as the theory that punishment 'expresses' the desire to minimize crime; retributivism by a similar move becomes: 'punishment expresses the desire to repay'".

While recognising certain affinities with the expressive dimension of punishment, communicative theorists, such as, von Hirsch (1993) and Duff (2001), have sought to distance themselves from traditional expressivist postulates, and in so doing, added a new dimension to the theoretical debate on punishment. Briefly stated, von Hirsch (1993) concurs with the expressivist tenet that the central feature of punishment is the expression of censure or blame to the offender, the victim, as well as third parties. On a similar note, Duff believes that punishment serves a communicative purpose, one which "should communicate to offenders the censure they deserve for their crimes" (2001:xvii). Both academics, however, depart from expressivist mainstream ideas in their twofold contention relating to the status afforded to the individual in receipt of the penal message(s), and the belief held by many expressivist theorists that censure alone can account for the practice of hard treatment.

### **3.9.1 Status of the Offender as the Recipient of Penal Messages**

Von Hirsch (1993) and Duff (2001) do not subscribe fully to traditional expressivist theories because these tend to objectify and reduce the moral status of offenders, making them “the passive recipient[s] of public censure” (van Stokkom, 2005:174). The expressive act does not require an intended recipient as “expression requires only one who expresses” (Duff, 1996:32), and even when there is someone at whom the communication is directed at, “that object figures only as its passive recipient” (Duff, 1996:32). Viewing punishment in communicative terms overcomes these issues, according to Duff (1996:33), as this approach “focuses our attention on the offender, as the person with whom the communication is primarily or directly attempted; whereas if we talk only of expression, we may be accused of using the offender ‘as a means’ to expressing something to others”. It also addresses “the offender as a rational and responsible agent” (1996:33).<sup>12</sup>

It is Zaibert’s (2003:676-677) opinion, however, that this emphasis upon communicative processes involving engagement with offenders as rational and responsible agents “can hardly be seen as a major difference between Duff’s [and arguably von Hirsch’s] communicative punishment and classical expressive theories of punishment.” The extent to which parties on opposing sides of the debate have presented the issue in dichotomous terms may well lead analysts to reach the conclusion that the two theoretical standpoints are markedly different. A closer

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<sup>12</sup> Similar views are also advanced by von Hirsch (1993) and Narayan (1993).

analysis of definitional issues, however, will draw attention to the fact that both concepts share a complex relationship.

The expressive function ascribed to punishment does not guarantee its communicative intent as a corollary, and here lies one of the theory’s fundamental weaknesses and a point of contention in this study. The expressive function of punishment is of value in contexts which choose to ignore the offender as a rational moral agent. It depreciates in value, however, if it purports to communicate with the offender without affording the latter a participatory role:

Communication...is essentially a two-way rational activity. We communicate with another, who figures not simply as a passive recipient, but as a participant with us in this activity; our communication appeals to her understanding, not simply to her unreasoned feelings, and seeks a rational response from her. Communication, that is, addresses the other as a rational agent: expression need not address her at all, and might not address her as a rational agent (Duff, 1996:32).

Because an expressive act can exist as a unilateral initiative and a communicative one involves “a complex process of interaction between sender and receiver” (Mathiesen, 1994:222), it is reasonable to conclude that “[c]ommunicative acts are only a small subset of all expressive acts” (Anderson and Pildes, 2000:1565).

There is a subtle but significant difference between what punishment expresses and what it communicates. The communicative function of punishment

can only be fully understood when its expressive intent is viewed in conjunction with the perceptions of intended recipients:

To express a mental state requires only that one manifest it in speech or action. To communicate a mental state requires that one express it with the intent that others recognize that state by recognizing that very communicative intention (Anderson and Pildes, 2000:1508).

Effective communication does not take place in situations where the communicator limits the communicative act to expressing his intentions; talks *at* the addressee, and is not interested in feedback to confirm that what has been communicated has been understood: “the completion of the communicative act requires that the addressee understand what the speaker has said. Absent such an understanding, the speaker has not communicated anything” (Anderson and Pildes, 2000:1571-1572). Communication also fails to be effective in instances where the addressee misperceives, misunderstands or chooses to ignore the message. It is significant that in his work, Tudor (2001:596) identifies receptivity as a key aspect of “punishment as a mode of communicative interaction.” The construction of meaning is therefore only complete when what has been expressed and what has been understood are in consonance. This supposition carries powerful implications for any theoretical assumptions made by communicative accounts. It presupposes that offenders are not merely the passive recipients of scripted penal messages but that they are also actors who engage with and interpret these from the moment that the criminal justice process is set in motion.

The fact that communication involves a clear understanding of the relationship between what has been expressed by criminal justice actors and what has been understood by its intended audience, also means that the communicative efficacy of the system can only be fully comprehended by taking on board the views of all those involved in this dialogue, including the offender himself/herself. These are powerful reasons to justify and encourage research initiatives into how offenders perceive penal messages. The extent to which an act is premised upon either expressive or communicative theories, especially in the context of adolescent offenders who are still malleable and receptive to dialogue and learning, could also be a measure of the rehabilitative, reintegrative and retributive functions of punishment.

While von Hirsch's and Duff's censure-based accounts of punishment may conceive of the offender as "a rational moral agent" (Duff, 2003a:302) "capable of moral understanding" (von Hirsch, 1993:11), these stances according to Zedner (1998:183-184), are "open to considerable doubt in the case of the young and inexperienced." Building on her previously-cited arguments relating to educative theories of punishment (see Section 3.8 above), Zedner (1998:184) identifies age, maturity and cognitive ability as important *a priori* considerations in relation to the appropriateness of a communicative theory of sentencing for young offenders:

Whereas adult offenders may be more readily, though perhaps not universally, impressed by the majesty of the law, the drama of the court, and the solemnity of the judgment, young offenders are liable to be left merely intimidated and confused.

In her analysis, she is prompt to identify some of the difficulties inherent in communication-based accounts of punishment in relation to the sentencing of young offenders:

Those who are very young, immature, of limited intelligence or learning may not have the cognitive skills necessary to reflect upon and absorb the condemnation made of them or their peers. If they are incapable of reflecting upon their actions in such a way as to appreciate their wrongfulness, then the efficacy of the act of censure is severely diminished (Zedner, 1998:183-184).

If age, maturity and intelligence impact upon the receptivity of young people to the messages of censure and disapproval the punishment process seeks to convey, then these key variables must be considered in any normative account of punishment as a communicative enterprise. An analysis of the types of exchanges which take place during sentencing will reveal that these processes are language-bound and that receptivity is inextricably linked to the offenders' ability to comprehend the processes they find themselves immersed in.

Language, however, need not be the only stumbling block to communication in the penal context involving young offenders. The turn-taking rituals of proceedings might also obstruct communication. In his normative account of punishment, Duff (1996:32) describes an event in which "[w]e communicate with another, who figures not simply as a passive recipient, but as a participant with us in this activity". The high profile he ascribes to offender participation is arguably undermined in reality by the often exclusionary nature of penal processes themselves. Kalowski (2007:1-2) notes that "[t]he people central to the purpose of the court (the litigants) are required to speak in a limited and formalised way, and

often speak least of all.” Duff (1996:84) expresses concern about this issue in his analysis of current practices:

the offender all too often finds himself a passive and uncomprehending witness of an alien procedure that allows him no substantive or genuinely participatory role (and while this role in his punishment is substantive enough, it is too often still only passive).

Many offenders feel as if they are merely objects to be processed by a system that remains alien if not hostile to them: “You just feel like a catalogue delivery, like you’re nothing. ‘Here’s your delivery’, that’s it and you’re just given a number” (Lyon *et al.*, 2000:30). Such points of view are not uncommon, and are of particular relevance to the concerns of this study, as the analysis of the qualitative information obtained will later reveal.

The need for age, comprehension-level and maturity-related factors to be taken into account when assessing the communicative value of any given punishment imposed on a young offender should not, however, be seen as overly adult-centric. At sentencing the law already recognises the widely accepted assumption that juveniles are different from adults in terms of maturity, capacity to assess and appreciate consequences, and to resist peer pressure (von Hirsch, 2001). While there is considerable merit in Zedner’s (1998:168) idea that “to recognize their relative lack of capacity is not merely honest but more likely to promote justice than pursuing the fiction that they are rational moral agents when they are not”, the extent to which young offenders are able to appreciate the wrongfulness of their actions, and understand the nature of the censorious messages which punishment is

supposed to communicate, remains an issue that this study felt was worthy of empirical corroboration.

### **3.9.2 Can Censure Justify the Practice of Hard Treatment?**

A number of expressivist theorists (Ewing, 1927, 1943; Primoratz, 1989; Lucas, 1980; Kleinig, 1992) believe that penal censure can, in its own right, justify the practice of hard treatment. These academics also subscribe to the view that hard treatment is necessary to show disapproval where this is not expressed adequately through purely verbal or symbolic means:

The externally inflicted pain is only needed to impress the censure more on the mind of the offender and on others, where mere words would not impress it on them enough (Ewing, 1927:299-300).

In contrast to these expressivist theorists, von Hirsch (1993) and Duff (1991) argue that censure *alone* cannot account for, or justify, the practice of hard treatment. The two academics, however, premise their own arguments on entirely different assumptions regarding the nature of penal messages and the practice of punishment.

## **3.10 Von Hirsch's Censure-based Account of Punishment**

Von Hirsch (1993) refutes the central expressivist contention that the expression of censure alone justifies the practice of inflicting hard treatment upon

offenders. While in the theoretical model he advances “the blaming function has primacy” (von Hirsch, 1993:14), the reprobative function of punishment is coupled with crime prevention.

According to von Hirsch (1993:12) “[t]he criminal law seems to have preventive features in its very design”, and it is this dimension of punishment which he believes traditional expressivist theories have overlooked. In his opinion, the preventive element of punishment is so central that “[i]n the absence of a preventive purpose, it is hard to conceive of such [onerous] intrusions of having the sole function of showing that the state’s disapproval is seriously intended” (1993:12). A similar view is advanced by Narayan (1993).

Unlike purely consequentialist accounts of punishment which replace the law’s moral force with the threat of painful sanctions, von Hirsch (1993), like Narayan (1993), is adamant that the preventive features, which he postulates are intrinsic to any account of punishment, are not uncoupled from the message of censure. He argues that hard treatment “serves a prudential reason that is tied to, and supplements the normative reason conveyed by penal censure” (von Hirsch, 1993:13). According to this conceptualisation of punishment, the communication of censure remains the aim of punishment, resort being made to hard treatment as a supplement to dissuade those who remain deaf to the moral voice of censure.

Von Hirsch’s thesis has come under criticism from a number of quarters. According to Brownlee (2007:185), for instance,

[b]ringing in deterrence at the level of justification [for hard treatment] detracts from the law's engagement in a moral dialogue with the offender as a rational person because it focuses attention on the threat of punishment and not the moral reasons to follow this law.

Tasioulas (2006:286) goes further, however, and argues that von Hirsch's hybrid approach may have a greater impact upon the coherence of the account of punishment he advances, "since what is introduced as a supplement to censure [namely the appeal to prevention] threatens to subvert the fundamentally communicative character of his theory." Does hard treatment, therefore, subvert, as Tasioulas (2006) believes, the communicative character of von Hirsch's theory? Does it stand at odds with the concept of treating individuals as moral agents?

This study sought to find out more about how young offenders perceived these issues. It was interested in exploring the extent to which they assumed, or could be expected to assume, the responsibilities associated with moral agency. While von Hirsch's thesis recognises people as moral, responsible agents, "capable of taking seriously the message conveyed through the sanction, that the[ir] conduct is reprehensible" (1993:13), this study was particularly interested in finding out whether this could be empirically corroborated for the age sample under investigation. It also set out to identify those factors which young offenders felt had a telling effect on their willingness to desist or reoffend. The theoretical question underpinning this component of the study relates to whether the threat of hard treatment becomes the main reason for individuals in the sample to refrain from offending, or whether the law's moral appeal has currency in relation to desistance.

From a theoretical perspective, von Hirsch believes that the imposition of hard treatment is not irreconcilable with treating offenders as moral agents. The theory he advances takes account of the fact that human beings “are fallible, nevertheless, and face temptation” (1993:13), and in this sense, the hard treatment element of punishment is “a prudential reason for resisting the temptation” (1993:13), an approach which does not necessarily deny the principle of human agency. Writing about von Hirsch’s theory, van Stokkom (2005:168-169) thus notes that “hard treatment provides an additional reason for compliance to those who are capable of recognising the law’s moral demands, but who are also tempted to disobey them.” In relation to Brownlee’s criticism, therefore, the “supplementary prudential disincentive” (von Hirsch, 1993:13) supplied in the form of hard treatment only operates within, and not independently of, a framework of censure. In this context, Narayan (1993:180) observes that “the preventive function [of punishment is] ...an element that holds within a censuring framework.”

Von Hirsch (1993:13) is also aware of the issues Tasioulas (2006) highlights: “If penalty levels rise too high, the normative reasons for desistance supplied by penal censure could become largely immaterial; and the message becomes much more than supplementary to the censuring message.” For these reasons, he emphasises the need to establish a clear framework within which both the reprobative and preventive elements identified in punishment operate in relation to hard treatment. He believes that the “intertwining of punishment’s blaming and hard-treatment features is important for the rationale for proportionality” (von

Hirsch, 1993:14). Because von Hirsch upholds the view that the central function of punishment is to convey censure or disapproval to the offender, the severity of the sentence imposed must conform to, or be proportionate to the degree of disapprobation expressed: “[the] severity of a sanction expresses the stringency of the blame” (von Hirsch, 1993:15; see Narayan (1993) for a similar view). According to Sloane (2006:53), therefore, von Hirsch “offers a retributive conception of ordinal proportionality that is parasitic on the expressive function of punishment”.

Rather like von Hirsch, Duff’s account of proportionality recognises that “if punishment communicates censure, the severity of the punishment imposed will determine the seriousness of the censure that is communicated: a harsher punishment communicates a harsher censure” (2004:88). To Duff (1996:54), the communicative dimension of punishment is also inextricably linked to the concept of proportionality: “because punishment must communicate an appropriate judgment on the criminal’s offense, some principle of proportionality is thus intrinsic to this account.” Duff’s theory, however, does not afford proportionality as prescriptive a role as von Hirsch’s. In the words of Rex (2005:56), Duff’s aim “is to set strong constraints on sentencing, while leaving sentencers with a range of possible sentences from which to select”. The key issue, according to Duff (2004:88) “is to find a sentence that will be communicatively adequate to the offence and the offender”.

Given the centrality afforded to proportionality constraints in communicative theories of punishment, and in sentencing policy more generally, this study was interested in exploring the extent to which young offenders understood the relationship between their actions and what the sentence wanted to communicate to them about what they had done. The point has already been made, that proportionality and perceived fairness, according to the literature, are critical to the manner in which offenders view and respond to punishment. These are issues which will be explored in the Analysis chapters.

### **3.11 Duff: Punishment as a Communicative Enterprise**

Rather than developing an account which seeks a compromise between consequentialist and retributivist penal theories,<sup>13</sup> Duff’s theory of punishment is structured by a “unitary [communicative] aim” (2001:vxii), one which he believes “provides its *complete* justification” (2001:82). He claims that his theory offers a “third way” (2004:87) between the aforementioned competing philosophies of punishment doing “justice both to the retributive thought that punishment must be focused on and justified by a past crime [by censuring the offenders for what they did], and to the consequentialist concern that punishment must aim to achieve some good [by seeking to reform offenders through morally persuasive communication]” (2004:87).

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<sup>13</sup> These mixed theories of punishment must strike a balance between competing interests, and questions invariably arise as to how stable or meaningful such compromises can be (See further Duff, 1996:8; Wiejers, 1999).

Punishment, in Duff’s opinion, “should communicate to offenders the censure they deserve for their crimes” (2001:xvii). His communicative theory, however, does not stop at censure alone (Duff, 1996; 2001; Weijers and Duff, 2002; Rex, 2005), and is much more wide-ranging in scope than the theories forwarded by von Hirsch (1993) and Narayan (1993). In contrast to Duff, these two academics deal with offenders from an “external” point of view (von Hirsch, 1993:72) and believe that censure should not be engaged in eliciting particular moral responses from them. Penal censure “gives an individual an opportunity to respond in ways that are typically those of an agent capable of moral deliberation” (von Hirsch, 1999:69), but it is left up to the offender to make his/her own mind up about the message. Censure, von Hirsch (1993:10) argues, “is not a technique for evoking specified sentiments”, but should elicit some kind of moral response on the part of the offender: “an expression of concern, an acknowledgement of wrongdoing or an effort at better self-restraint [is expected]. A reaction of indifference would, if the censure is justified, itself, be grounds for criticizing him.” Narayan (1993) adopts a similar stance on the issue.

Duff’s (2001: xvii-xix) theory goes one step further, however, and posits that punishment ought to be understood “as a species of secular penance that aims *not just* to communicate censure but thereby *persuade* offenders to repentance and self-reform, and reconciliation” (emphasis added). In his view, punishment cannot be justified in terms of crime reduction benefits, however laudable these objectives may be. Instead, it should serve a morally persuasive function: “the aim internal to

censure is that of persuading the wrongdoer to recognize and repent his wrongdoing” (Duff, 2001:81).

The morally persuasive function which Duff believes punishment ought to serve is also supplied by hard treatment. Contrary to von Hirsch’s (1993) and Narayan’s (1993) account of penal hard treatment as a supplement to, though not a replacement for, the morally persuasive force of censure, Duff (1996:45) is of the opinion that “penal hard treatment can itself be justified as part of a communicative [and arguably persuasive] process that aims to bring the criminal, as a responsible agent, to reform her future conduct.”

According to Duff, hard treatment can be justified on the grounds that it makes it “harder for the offender to ignore the message that punishment aims to communicate: it is a way of helping to keep his attention focused on his wrongdoing and its implications” (2004:85). Such an approach overcomes difficulties with purely verbal denunciations of censure or symbolic punishments as these “are likely to be inadequate, since they are all too easily ignored or forgotten” (Duff, 2005a:138).

While Duff might hold the view that hard treatment ought to bring about a process of introspection in offenders by focusing their attention on what they have done, there is consensus in the literature that the process of punishment may in fact have the opposite effect. This counter-argument posits that “being subject to hard treatment is likely to distract attention from moral reflection on one’s wrongdoing”

(Narayan, 1993:178). This view is endorsed by Walgrave (2005), Claes and Peters (2005) and van Stokkom (2005:170-1), the latter arguing that with hard treatment, "the attention of the offender is concentrated upon his own suffering." Narayan (1993:176-177) is also highly critical of Duff's claim that hard treatment can be justified on the grounds that it forces the offender's attention onto his/her wrongdoing:

[it] seems to imply that the entire process of being subjected to trial, conviction, sentencing and censure would not suffice to force the offender's attention onto her wrongdoing, and that hard treatment is likely to be more successful in this regard.

While it remains an issue worthy of empirical investigation, the supposition in the literature that hard treatment has this effect and "makes the offender obstinate, incites anger or raises depressive feelings" (van Stokkom, 2005:170-171) has critical implications for those messages which the punishment process intends to convey to the offender. If according to Duff's conceptualisation of punishment as a communicative enterprise, hard treatment is justified by its capacity to encourage repentance, reform and reconciliation, the adverse reactions on the part of offenders to hard treatment noted in the literature are significant. The issue casts some doubt upon the communicative efficacy of a process which fails to make offenders reconsider and ponder over what they have done, and raises further issues as to whether hard treatment reinforces or hampers the communication of moral messages. Walgrave (2005:152), for instance, is highly sceptical arguing that "the *a priori* option for punishment in criminal justice interferes with effective and constructive communication." With these considerations in mind, the study sought

to explore whether young offenders considered that being subjected to punishment encouraged or dissuaded them from repentance, reform or reconciliation.

The second justification advanced by Duff for hard treatment is that it ought to persuade offenders to recognise their guilt and induce or reinforce their repentance. Punishment, he argues, "is a burden that the wrongdoer is required to accept or undertake in order to induce, deepen and confirm his own repentant recognition of the wrong he has done" (2004:87). While to von Hirsch (1993) and Narayan (1993), hard treatment is but a "prudential reason" (von Hirsch, 1993:13) to dissuade those who remain deaf to the law's moral appeal, hard treatment in Duff's account ought to serve as a penance which furthers the objectives of moral persuasion and communication which censure aims to achieve:

suitable hard treatment punishments can assist the process of moral self-reform which communicative punishment also aims to become: they can be vehicles through which offenders can come, and be helped to come, to see how they can so reform themselves as to avoid such wrongdoing in the future (Duff, 2000:420).

His justification for hard treatment, however, fails to take into consideration two instances where its persuasive function is rendered redundant by the stance taken by the offender vis-à-vis his/her offence. Where the penal messages have already been received, interpreted and acted upon by the offender, and the persuasive aim has already been secured prior to the imposition of the hard treatment, the question arises as to whether Duff's communicative theory can justify hard treatment. Van Stokkom (2005:166) is categorical on the subject: "If the offender shows regret or repentance hard treatment seems to be superfluous."

In his response to this criticism, Duff (1996:54) argues that the punishment of those who have expressed repentance is still necessary, “for some penance is still needed to reinforce that repentance and to manifest that sincerity to others.” Duff has come under criticism for failing to appreciate the importance and relevance of the offender’s repentance before sentencing. According to Tasioulas (2003:100):

When an offender demonstrates repentance prior to punishment, it cannot be disregarded in the determination of the appropriate response by the law. Since a key aim of punishment, on the communicative theory, is to lead the offender to repent her action and to reform her conduct, when the offender demonstrates prior to punishment that she does repent and has reformed, this gives the law reason to show mercy and to impose a lesser punishment on her than that which she deserves according to justice.

Skillen (1980:523) not only endorses this view but also adds the point that “if the [individual being] punished respects the rules and the punishing agent, punishment is expressively redundant.” In this context, the study was interested in exploring the importance young offenders ascribed to repentance, and whether they considered hard treatment redundant in instances where the intended recipient of the sentence had already expressed regret.

There are a number of policy reasons to explain why it is difficult to incorporate the offender’s repentance into the sentencing equation. Clear (1996:102) observes that, “[o]ne has no way of truly knowing that a person has repented,” and Hampton (1984:223-234) draws attention to the fact that,

a policy of suspending or shortening sentences for those who seem repentant to the authorities could easily lead the criminal to fake repentance before a court or a parole board...

While these policy reasons may seem valid, Duff's insistence upon the need to impose hard treatment in instances where the offender has already expressed repentance seems to be inconsistent with the communicative enterprise of punishment he envisages. If Duff justifies hard treatment on the grounds of the persuasive function it ought to serve, then a strong case could be made that it is rendered unnecessary when the objective of moral persuasion is achieved. If punishment, as he argues, is to be viewed as a communicative process, involving a dialogue in which "there should certainly be room...for the offender's voice to be heard: at her trial, in deciding her sentence...and through her response to punishment" (Duff, 2004:414-415), it seems odd that the offender's public and communicative act of contrition should have no bearing on the considerations leading up to sentencing. The practical consequences of Duff's position, according to Skillen (1980:523), are that punishment in these circumstances "merely expresses alien hostility [and] merely functions as a demonstration of strength."

The second instance in which Duff's theory of morally persuasive communicative punishment is deemed problematic relates to offenders who will remain unpersuaded or unrepentant. As with repentant offenders, there seems little reason to impose hard treatment in these instances as the persuasive function that Duff posits punishment ought to serve will never be achieved. His stance on the matter is quite clear, however. He believes that attempts should be made to communicate with offenders even if these are certain to fail from the outset and even if "we are sure that the offender will remain unmoved and unreformed, we owe

it both to the victim who has been wronged, and to the offenders as a moral agent and fellow citizen, to make that effort" (Duff and Garland, 1994:15).

Van Stokkom (2005) is critical of Duff's justification for hard treatment and finds the rationale he proffers "unconvincing" (2005:172), stating that by adopting such an approach "Duff leaves the door wide open for the troubles of making converts" (2005:172). Van Stokkom's critique is perhaps harsh, however, as Duff makes it clear that the aim of persuading offenders to repent and reform has boundaries. Whilst punishment, in Duff's view, "should aim to *persuade* him [the offender] to recognise and repent his wrongdoing, it must in the end be left up to him to attend or to refuse to attend to that moral communication, and to be persuaded by it or not" (2000:414).

In their overview of hard treatment, a number of academics remain sceptical of the persuasive function that Duff claims for it. Not only do they call into question the extent to which hard treatment can keep offenders focused on their wrongdoings and the implications that these may carry, but they also doubt its moral capacity to induce repentance and persuade offenders to take a moral stance that takes cognisance of their guilt:

Duff mistakenly presupposes that persons who must endure punishment, are receptive to reasonable arguments and moral learning.....In Duff's terms: burdensome tasks only serve the aims of the communicative enterprise when the offender is convinced that he was wrong and that he deserves punishment. If this is not the case then hard treatment does not at all contribute to more moral insight: suffering precludes concentration and the opening of the self that are necessary for learning (van Stokkom, 2005:171).

According to Claes and Peters (2005:14), “[t]he suffering involved in hard treatment cuts the offender off from the kind of opening up of the self which is necessary for self-reform.” In his assessment of hard treatment, van Stokkom (2005:177) observes that it not only “destroys trust and goodwill, and reduces opportunities for restitution, reconciliation, and augmenting self-respect”, but more importantly that,

[i]t is highly questionable if the moral communication and moral education he [Duff] aims at, will occur. Hard treatment is no reliable route to moral self-reform. Attention and support from others are more important (2005:172).

In his exploration of the differences between hard treatment and penances, Narayan (1993:177) offers a summative account of the reasons why he believes hard treatment stands in the way of moral reform:

Penances might well be capable of inducing moral reflection, repentance and reform *if* they are self-imposed. However, in self-imposed penances, the offender is already aware, to some degree, of her guilt and responsibility. Hard treatment imposed by third parties prior to such acknowledgement, seems as likely to result in anger and a hardening of the heart.

It is precisely because hard treatment “is imposed not negotiated” that Bagaric and Amarasekara (2000:173) express their doubts about the communicative qualities of the punishment process. This is one of the premises upon which van Stokkom (2005:166) critiques Duff’s “supposition that hard treatment and two-way communication are compatible”, arguing that,

communication goes by in implicit terms of dominance and submission. Dominating persons often fail to convey moral

authority. For this reason hard treatment tends to incite mistrust: the offender is anticipating hostile intentions, feigns conformity, resists or withdraws. At the same time it is improbable that submission or ‘being the subject of deliberative inflicting pain’ encourages moral reflection (van Stokkom, 2005:170-1).

Rather than facilitating the persuasive function which Duff presupposes hard treatment secures, Clear (1996:102) believes that its imposition takes place within “[a]n impersonal system of abstract forces and arcane procedures [that] fail to convey moral authority to the disciplined...and instead conveys domination.”

Although these arguments are quite convincing, it is important to recognise that there may be instances where, as Narayan (1993:177) points out, “[i]mposed penances might have the moral effects Duff envisages”. Impositions need not necessarily deny the communicative value of the intended message, and in this respect, there is a limited case for Duff’s (2000:414-415) argument that “what is imposed on a person can still constitute an attempt to communicate with her; it can still address her understanding and seek a response mediated by that understanding.” On this issue, Narayan (1993:177) turns to the following example to draw our attention to the importance of the contexts within which impositions are made:

An unreflective young monk whose abbot imposes penances on him for his moral and spiritual transgressions might be able to receive these penances with attitudes that enable him to come to accept these penances for himself, as Duff envisages happening.

The unreflective young monk, Narayan implies, seems to accept the imposed penance because of his relationship with the abbot:

In the absence of such special contexts, it seems uncertain at best that morally unreflective and recalcitrant agents will be moved to regard third-party impositions as self-imposed penances (1993:177).

Herein, lies the crux of the matter. The messages underpinning the imposition of hard treatment go beyond the nature of the sentence itself, and involve the complex web of relationships shared by all the actors who take part in the proceedings. This study was interested in the messages that young offenders perceived from institutional actors (the court; the YOP, and the YOT) and non-institutional ones (parents, guardians, relatives and peers). One of the aims was to establish whether there was a discernible relationship between the provenance, the interpretation, and the effect of the messages conveyed to offenders.

Numerous academics in the field have singled out the significance of the actor responsible for the communication of censure through hard treatment to offenders. Braithwaite (1999:39-40), for instance, highlights the fact that it “is not the shame of police or judges or newspapers that is most able to get through to us; it is shame in the eyes of those we respect and trust”.<sup>14</sup> In this context, Walgrave (2005:150) notes that often, “[m]orally authoritative persons without any power to punish are more effective in influencing moral thinking and behaviour than punishment.” This assertion is particularly relevant in the context of punishment, where many people often assume that sentences are imposed by judges who are out of touch with the community.

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<sup>14</sup> See also Harris *et al.*, (2004).

According to Narayan (1993:168), subjective interpretations regarding whether certain individuals, judges in particular, are deemed to have the requisite standing to censure offenders for their wrongdoing are important: “[w]hen censure is expressed by a person who lacks the authority to censure, the person censured has a grievance that takes the form ‘You have no business telling me off for my misconduct’.” Golash (2005:132) makes an interesting contribution to the debate:

I shall argue that the state, unlike the family, is not in a position to effect the kinds of emotional changes that are necessary to the improvement of moral character.....in order for punishment to change emotional attachments, the offender must also be emotionally attached to the punisher in a way that most offenders are not attached to the state.

This view is endorsed by Narayan (1993:178) who believes that Duff’s account: “seems to presuppose relationships between the offender and the officials communicating censure, and between the offender and the community, that do not routinely obtain in our sort of social context.” While there may be some mileage in Duff’s view that impositions can still be communicative, as demonstrated by Narayan’s example involving the young monk, there remains an even more potent argument that the power imbalances which pervade the criminal justice system and the imposition of hard treatment itself may well serve to deny the persuasive value which Duff ascribes to hard treatment.

The third argument advanced by Duff in his justification for hard treatment concerns his belief that punishment provides a vehicle for the expression of the

offender's repentance that can restore his bonds with the community. Duff (2004:86) believes that punishment involves:

the communication of apology from the offender to those whom she wronged- the direct victim and the wider community. The penal hard treatment gives material form, and thus greater moral force, to that apology.

He believes that undergoing hard treatment is synonymous with offenders having apologised and expressed their "repentant recognition" (2004:85) of their wrongdoing. Both Narayan (1993) and van Stokkom (2005) are highly critical of Duff and fail to be convinced by his argument that "we have to treat offenders who are punished as if they have apologised for themselves" (van Stokkom, 2005:172). Equating the undergoing of hard treatment with an apology from offenders is subject to the problems of "insincere apologies" which Duff (2004:86) rightly acknowledges:

Of course, we know that many - probably most - offenders who undergo punishment are not, at least initially, genuinely apologetic; in undergoing their punishment they are not expressing a genuinely repentant recognition of the wrong they have done. Criminal punishment is thus on this account a species of forced or required apology: the offender is required to apologize (i.e. to go through the motions of apology) even if she does not mean it.

For all of Duff's (2004; 2005a) emphasis upon the need for hard treatment to be burdensome to the offender ("if it is to serve its apologetic purpose" (2005a:138-139)), his account seems to be self-contradictory and remains unconvincing. Narayan (1993:177) remains sceptical about the sincerity of apologies, especially "where the perpetrator might have a lot to gain from expressing repentance, and

where the community as a whole has little acquaintance with the perpetrator and little else to go on in judging her sincerity.” Viewing the matter from the perspective of those at the receiving end of crime, van Stokkom (2005:172) raises the objection that “[t]he possibility that victims would experience this insincerity as cruel does not occur to him [Duff].”

Duff's second point is that the offenders can only restore their links with their respective communities by undergoing hard treatment as a form of apologetic reparation. Punishment, in his view is “part of a communicative enterprise in which the polity seeks to involve its citizens” (2003b:295), and which he believes,

can also help reconcile her [the offender] with those she has wronged: with her victim, with her fellow citizens, with her community. For it expresses her repentant acceptance of responsibility for her offense, her determined disavowal of that offense, and her desire to restore those relationships which her offense damaged (1996:53-54).

Viewing the issue from a broader sociological perspective, he argues that “[f]ar from excluding them (offenders) from the normative political community, punishment as thus conceived treats them as members of that community who are bound as well as protected by its values: for to censure someone is to treat them as a participant in our shared normative life” (Duff, 2005a:134). This view is open to contention for it is usually the case that the punishment process establishes a noticeable distinction, an “us” and “them”, between those who are within the pale of the law and those who have transgressed it. Questions also arise in relation to the

reconciliatory potential Duff ascribes to punishment. In Narayan’s (1993:177) view, for instance,

it is unclear to...what extent offenders in modern societies, who do not live in close knit communities, lose their bonds to the community by virtue of their offence. Given the adverse impact which the literature notes hard treatment has upon the lives of individuals, punishment seems an unlikely means through which the bonds of political community are to be repaired and strengthened.

Mathiesen (1994) too, finds very little mileage in the reconciliatory potential that Duff claims punishment ought to ideally provide, and subscribes to the view that punishment is in fact bound to alienate the offender.

### **3.12 Philosophical Accounts of Punishment and Empirical Research**

In his overview of his normative account of punishment, Duff (2000:415) provides a clear statement of his intentions:

(I have) always insisted that what I offer (as any normative theory of punishment offers) is an account of what punishment *ought to be*, not a comforting justification of the penal status quo.

If all that “any normative theory of punishment offers is an account of what punishment *ought to be*” and if these theories are “not offered as an explanation or justification of our existing penal practices” (Duff, 2000:415), what is the relevance and value of these accounts to the empirically-based nature of this research project?

These accounts are more than just instrumental to academic debate. They offer “a powerful critical tool for the identification of the major defects that vitiate our existing penal systems” (Duff, 2003a:298). As hypothetical models against which we can compare our existing penal policies, the conceptualisations of punishment which have been discussed in this chapter, can serve a catalytic function, encouraging the empirical researcher to investigate and to reassess current practices. Duff and Garland (1994:5) advance the view that a “crucial function of normative theories is to provide a critical standard against which actual practices can be measured - and found wanting”. In his defence of purely normative accounts, Duff (2000:416) argues that:

the ideal of punishment as an exercise in moral communication would have ‘practical relevance’: partly because it should, by reminding us of the radical imperfection of our penal practices, induce a salutary caution, humility and restraint, and partly because it should motivate us to work towards the kinds of radical moral and political change which would make it possible for punishment to become what it ought to be....however, my account would have the kind of ‘practical relevance’ that normative theories should have: as a basis not necessarily for justifying, but for judging, our existing practices; as a critical standard against which they must be assessed; and as an ideal to which we should in the end aspire.

Theoretical concerns identified in the literature should invite academics and practitioners to review existing penal policies. The identification of the formal and prescriptive nature of current criminal justice processes by a number of academics is a case in point. In their view, the system allows for very little room for the kind of communication that they envisage is central to punishment:

a communicative penal process of the kind I have argued for itself requires a much more open, and participatory, discussion than our criminal courts allow, if there is to be any genuine communication about the character and implications of the offender's conduct (Duff, 1996:84).

The shortcomings of existing penal practices have led Duff to suggest the possibility of replacing "such a formal, abstracting process by more informal processes in which the parties to the conflict could really participate, and discuss all the issues relevant to a proper understanding of, and an adequate response to, the offender's action" (1996:84). Similar arguments have been advanced by other academics like Zedner (1998) and Weijers (2002), the latter advocating a move towards the creation of criminal justice processes that are willing to engage with young offenders in a moral dialogue that is self-reflective and sensitive to their emotional and cognitive characteristics. This is just one example of the manner in which theory can stimulate empirical research. The main premise of this thesis is that the perceptions of the young offender as one of the key actors in the deliberations issued by the criminal justice system must be taken on board if we are to establish the kind of dialogue that the aforementioned academics have identified.

Evidently, there are limitations to, as well as parameters within which normative theories must operate. By the same token, critics of normative theory should limit themselves to critiquing these theorists for what it is they do (provide an insight into normative reflections) and not what they do not provide (a justification or explanation of existing penal practices). Normative theories have to bear some relation to current reality, however, for they "are not purely abstract" and

“they cannot deny empirical findings, nor can they be too distant from real feasibility considerations” (Walgrave, 2005:145). If such theories are to serve as critical reference points for judging, and evaluating the possible reform of penal practices, empirical engagement with the subject is a must. A certain degree of congruence is necessary between theoretical suppositions and existing criminal justice practices. Otherwise, what is intended to be a valuable comparative tool against which to measure current penal policy could become little more than a theoretical pursuit.

In the light of what has been discussed in this chapter, it could be argued that an informed understanding of expressive and communicative theories of punishment might enrich and add depth to the qualitative investigation of young offenders’ views undertaken in this project. Already, the Introduction has signalled this study’s intention to explore the information yielded by the interviews against the backdrop of these theoretical accounts. Prior to embarking on the analysis of the empirical information obtained, however, the next chapter will offer a comprehensive account of the methodology employed and the numerous ethical and methodological problems inherent in accessing and documenting young offenders’ views.

## **Chapter Four: Methods**

### **4.1 Introduction**

This chapter will offer a detailed account of the research methodology employed in this study. It will also provide a critical evaluation of the rationale behind the decision to opt for the semi-structured interview as the information-gathering tool. The chapter will also concern itself with a critical evaluation of the sampling techniques, recruitment strategies and the ethical issues that conditioned the shape of this study. Finally, the chapter will provide information about the manner in which the research instrument was developed, and how the information yielded by the fifty interviews carried out with offenders aged 16-18 was processed and subsequently analysed. For the sake of organisational convenience, the information about the methodology employed will be enmeshed with and embedded in an extensive discussion of relevant theoretical issues. The intention throughout is to offer a comprehensive account of the research experience and to discuss the mechanisms put in place in order to address difficulties and ensure procedural consistency.

## 4.2. Review of the Literature on Research Methodologies

A lucid understanding of the strengths and weaknesses of any given methodology should be an *a priori* consideration before embarking upon any field work. The following discussion summarises the main differences between quantitative and qualitative approaches to research. The intention is to situate this thesis within the research spectrum.

Briefly stated, a quantitative methodology may be defined as an approach to research which involves “the application of statistical procedures and techniques to data collected through surveys, including interviews and questionnaire administration [or other alternative means of data collection]” (Champion, 2000:137). According to Bodie and Fitch-Hauser (2010:47), quantitative research relies on:

- (a) [the] operationalization of empirical data which is (b) collected from a sample and translated into (c) numerical form that can then be (d) subjected to one or more statistical tests from which the data are (e) generalized to a larger population and (f) claims are made about the ‘true’ nature of the phenomenon under study.

Quantitative methods tend to be primarily deductive, allowing for statistical analyses to be carried out on numerically-based data in order to test pre-determined hypotheses “in a manner similar to the physical sciences” (Maruna, 2010:125).

For its part, the “diversity inherent” in the practices defined as ‘qualitative’ (Snape and Spencer, 2003:2) may perhaps explain why, according to Potter

(1996:14-15), “a great deal of work has gone into the task of defining qualitative [research].” Denzin and Lincoln (2005:3) succinctly define qualitative research as:

a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that make the world visible. These practices transform the world. They turn the world into a series of representations, including fieldnotes, interviews, conversations,.... recordings, and memos to the self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.

This widely accepted definition is frequently cited in the literature on qualitative research methodologies (Ritchie and Lewis, 2003; Hughes, 2003; Heppner et al., 2003; Flick, 2007; Ridenour and Newman, 2008; Merriam, 2009). A similar definition is advanced by Maruna (2010:125) who notes that qualitative research involves:

(a) Data collection techniques that involve observation/participation, textual analysis, and/or open-ended interviewing; (b) An analysis involving the discovery of patterns in the textual, language-based data collected, frequently with phenomenological aims (i.e., capturing the perspectives and experiences of others with careful attention to their social context).

For all the debate regarding the differences between qualitative and quantitative methodologies, both at a theoretical and practical level, it is evident that there is no such thing as a perfect information-gathering tool. Although numerous researchers remain firm in their contention that qualitative approaches are best suited to the investigation of subjective accounts (Mishna *et al.*, 2004; McCracken, 1998; Greene and Hill, 2005; Hanrahan *et al.*, 2005), the worth of any particular

methodology will ultimately depend upon its power to “bear upon the research question asked” (Kvale, 1996:69).

The decision to adopt a qualitative research methodology was informed by the literature. It was deemed that a qualitative methodology, to paraphrase Kvale (1996:69), would “bear upon the [interpretivist] research question[s] asked” in a more rewarding manner:

qualitative researchers use an emerging qualitative approach to inquiry, the collection of data in a natural setting sensitive to the people and places under study, and data analysis that is inductive and establishes patterns or themes (Creswell, 2007:37)

The fact that qualitative methodologies “are designed to capture social life as participants experience it, rather than in categories predetermined by the researcher [as in quantitative research]” (Schutt, 2006:17) made these research approaches particularly suitable to the concerns of this investigation because they would allow key themes and issues to emerge from the information obtained directly from young offenders themselves.

Although it was anticipated that numerical values would be included in the thesis, and that basic calculations would be undertaken in order to contextualise findings, strict adherence to a quantitative methodology was decided against on the grounds that such an approach was not well-suited to an investigative study which was interested in listening, first-hand, to the views of young offenders.

The research undertaken in this exploratory study would thus fall squarely within the numerous definitions of qualitative research proffered by the above-cited academics. The study and its findings can thus be legitimised within a genre of research that seeks “to enter the world of the research participant and to see and understand that world as the participant does” (Hanrahan *et al.*, 2005:251).

The next four sub-sections contain a critique of the mainstream methodologies that researchers advocate are well-suited to accessing subjective accounts, but which were nonetheless discarded for the purposes of this investigation. The critique will be followed by a fifth section on one-to-one interviews, which prefaces a literature-based rationale for the decision to employ semi-structured interviews as the research tool in this study.

#### **4.2.1 Ethnography**

Ethnographic research is not method-specific and is susceptible to “theoretical eclecticism” (Jordan, 1995:394; see also Hammersley, 2006). It is a form of qualitative research which focuses on accessing a subject’s interpretations of a particular phenomenon by ‘entering his/her world’. In order to access this ‘insider’s view’, ethnographers will rely primarily on participant observation to measure and record the subject’s verbal and non-verbal behaviour.

Ethnographic investigations require researcher ‘immersion’ in the field, in order to “gather valid and reliable qualitative data through the development of close

and continuing contact with those being studied” (Gold, 1997:388-389). Such a close interaction is not only “time and resource intensive” (Wilcox, 2003:26), but may also carry substantial implications when it comes to accessing research-subjects (Hammersley and Atkinson, 1995:54). More importantly, perhaps, such an invasive technique may compromise the validity of the findings by conditioning the subjects’ behaviour and by making the researcher become ‘part of the situation being studied.’

Ethnographic studies place a premium on the researcher’s ability to study, record and report observations accurately as they happen. The ethnographer must,

discriminate among different types of data and analyze the relative worth of one path over another at every turn in fieldwork, well before any formalized analysis takes place (Fetterman, 1998:2).

While supporters of ethnographic studies claim that this method “allows behaviour to be observed directly, unlike in survey research, which only allows behaviour to be inferred” (Bryman, 2004:165) critics challenge the higher level of fidelity and accuracy claimed by its proponents: “that field notes are data and reflect what ‘really’ happened.... is often an illusion, a lie, a deception of which we should be aware” (Fine, 1994:278).

Ethnographic approaches to research often begin with no preconceptions about subjects, and no expectations regarding their behaviour. The broadly shared

consensus among ethnographers is that “order should emerge *from* the field rather than be imposed *on* the field” (Silverman, 1985). Although ethnography might seem theoretically appealing, there seems to be an inherent contradiction in an investigative process that does not have an academically informed framework within a reasonably well demarcated area of investigation.

The practical difficulties to be found in an ethnographic approach to fieldwork are compounded by the “specific writing style” (Fetterman, 1998:1) of ethnographic write-ups. These are notably different to other forms of research reporting. The narrative structure adopted by many ethnographers to report their findings make for a dense body of primarily descriptive information that hardly lends itself to the extrapolation of clear findings, and there seems to be a conflict between the researcher’s dual function as ‘a good storyteller’ and ‘a good scientist’, to borrow Fetterman’s (1998:2) terms. In her review of ethnographic studies, Elliott-Sim (1993:2) notes how the “final results tend to be book-length descriptive stories, reflecting the complexity of the phenomenon being studied. Often they do not contain a single statistic or table”.

The dynamics of ethnography, its *in situ* analysis and potential ‘researcher effect’ on participant behaviour, might produce research findings that cannot stand up to rigorous probing. The primordial concern of this study is to investigate young offenders’ views, and the research effort does not require the behavioural corroboration that an ethnographic approach might offer. Thus, because it fails to

produce a critical and intensely focused investigation substantiated by comparative data, an ethnographically-conceived investigation was deemed methodologically inappropriate for the proposed study.

#### **4.2.2 Surveys**

As a research procedure commonly used within the social sciences, survey questionnaires provide the researcher with a flexible tool with which to ask questions in a systematic, structured and easy-to-analyse format. This “quantitative tool is valued for its documental nature, its scientific objectivity and its detachment from personal and bodily concerns” (Seymour 2001:157-158).

While other research methods are invasive and must overcome the problems of subject-access and formal consent, self-completion questionnaires are much more straightforward to administer and far less daunting to participants: “the data are not ‘coaxed’ out of the respondent; and the questions are not rephrased or reformed to elicit a specific response (Seymour, 2001:158).” In terms of practical viability, the fact that questionnaires can be filled in promptly and do not require the researcher to be present during any stage of their administration also means that they are less labour intensive. Within a remarkably short period of researcher-time, it is possible to gain access to a wide sample at a relatively cheap financial cost. Postal questionnaires are particularly advantageous in instances where the targeted sample is geographically widespread. Although low response-rates might be problematic,

an incomplete sample can be promptly dealt with by issuing the same number of missing returns to another group of potential respondents.

For all of its in-built versatility and ease of use, the questionnaire was discarded as a research tool on the grounds that it was not refined enough to explore the more subtle aspects of offender views that this study was interested in. There seemed to be an inherent contradiction in a research project that purported to listen to what offenders genuinely had to say, but which restricted their expression to a pre-determined set of responses. Even in instances where more sophisticated questioning strategies such as the Likert scale might be employed, it was considered that this approach might “fail to do justice to the complexity of the issues addressed” (Roberts, 1992:125). Rex’s (2005) use of questionnaires in her research, for instance, has come under heavy criticism from Worrall (2006:540) who wonders “whether it is actually possible to translate the complexities of Duff and von Hirsch’s arguments into large-scale survey questionnaires.”

### **4.2.3 Mixed Methods**

The use of multiple methodologies, or a ‘mixed methods’ approach to the empirical investigation of young offenders’ views of punishment was also given due consideration. The literature on the use of these ‘mixed’ approaches is extensive

(Johnson and Onwuegbuzie, 2004; Silverman, 2005; Bryman, 2007; Morgan, 2007;). Creswell (2003:18-20) defines a mixed methods approach to research as one in which:

the researcher tends to base knowledge claims on pragmatic grounds.... The data collection ... involves gathering both numeric information (e.g., on instruments) as well as text information (e.g., on interviews) so that the final database represents both quantitative and qualitative information.

One of the principal advantages academics agree upon is that in adopting these approaches to research, investigators stand to benefit from “both the insights that might be gained from a qualitative approach and the systematic comparison that might be achieved through quantitative analysis” (Rex, 2005:5). In her research, Rex (2005) has made use of ‘mixed methods’ to complement in-depth interviews with a reduced sample, with the administration of a questionnaire to a larger sample of participants. This combined research methodology might add weight to the validity and generalisability of the findings yielded by the information obtained. While acknowledging that a mixed methods approach incorporating information derived from courtroom or YOP-based observations, for instance, could have provided a benchmark against which offenders’ accounts of their respective experiences may have been analysed and contrasted, the decision not to proceed along these lines was a conscious one. The possibility of deploying a mixed methods approach was ruled out by the following considerations: the time constraints within which the project was being carried out; the procedural problems relating to issues of confidentiality and the practical difficulties of securing access to both comparable subjects and additional research sites.

#### **4.2.4 Focus groups**

A review of the literature would suggest that the most favoured qualitative methodology with which researchers access first-hand accounts is the interview (Kvale, 1996; McCracken, 1998; Crawley and Sparks, 2006).

As a group interview situation, focus groups might seem to be an appropriate methodology with which to access young offenders’ views of punishment, a critical analysis of this method prior to embarking upon the field research itself revealed its unsuitability for the current study.

A number of researchers consider that this method is “ideal for exploring peoples’ experiences, opinions, wishes and concerns” (Kitzinger and Barbour, 1999:4; see also Stewart and Shamdasani, 1990). Much is certainly made in the research literature of the ability of focus groups to “generate an environment in which respondents have the opportunity to reflect on the question posed, and can then discuss their reflections with other participants” (Roberts, 1992:106). Focus groups are believed to “effectively elicit information that cannot be obtained with techniques such as one-on-one interviews” (Hoppe *et al.*, 1995:102-103). This ‘safety in numbers effect’ might score over the traditional one-to-one research interview in reducing some of the pressure on the subject. However, Hoppe *et al.’s* (1995:102-103) claim that when individuals work together on a problem the outcome is enhanced because of a “synergistic effect not achieved in the usual interview situation” merits analysis.

While focus group discussions might generate interaction between subjects, this “synergistic effect” is not guaranteed. Age, gender, class and education, not to mention the research participants’ cognitive and linguistic skills are variables that will impact on group dynamics either as *catalysts* or *inhibitors* to participation. The research literature available on this ‘synergistic effect’ is limited. While not writing specifically about focus groups, Goffman (1981) analyses what happens when “a speaker obliges a number of persons to cite their answers to a problem or opinions on an issue” in a classroom setting:

second respondents will wait for [the] first respondent to finish, but second respondent’s reply will not be an *answer* to [the] first respondent, merely something to follow in sequence, resulting at most in a comparative array (1981:27-28).

Subject-generated responses need not therefore promote discussion. These might simply represent a sequence of individual responses conditioned by previous contributions and contributors within a ritualised turn-taking routine.

Another criticism that can be levied against focus group approaches to research is that they depend far too heavily on the aptitudes of the moderator. Unlike the traditional one-to-one interview, the moderator must allocate speaking turns, assert tactful control and keep participants on task in a process that could degenerate into who can speak over other participants the loudest (Bryman, 2004:353). In so doing, he/she could become as much of a critical variable as the participants themselves. The moderator might well denature the process by having a direct influence over what views are considered relevant and what topics are

considered important. Evidently the moderator is the lynch-pin of focus group research. An extensive knowledge of the field, a psychologically-astute understanding of the research subjects involved and a great deal of hands-on experience remain a *sine qua non* to the viability of this research method as a tool with which to tap into young offenders' views.

Focus groups were also deemed unsuitable because issues of authority and control within the context of a group-based methodology were believed likely to have a direct impact on depressing subject participation. Group dynamics and power imbalances between research subjects are likely to condition interaction in the focus group setting:

The views and opinions expressed individually to the group were shaped by expectations and fears of the group's response.....People in groups could act up to a group stereotype, even when they did not feel comfortable with it individually (Ahmad *et al.*, 2003:24-25).

Large age discrepancies and gender issues are also identified by Stewart and Shamdasani (1990) and by Hoppe *et al.* (1995) as potentially inhibitory factors to a free-flowing discussion. The research literature also identifies the effect of unknown group dynamics as another variable affecting focus group methodologies. In their research, Hoppe *et al.* (1995:106) found that "the children seemed to feel safer and were more willing to express their opinions in a group of children they already knew." The nature of this unknown relationship outside the framework of the group sessions might have a 'chilling effect' on the individuals' disclosure of information. The focus group session might also encourage role-play dynamics and

instances of impression management. In their research, Ahmad *et al.* (2003:24-25) report that “[the] experience of working in groups confirmed the enormous impact of peer pressure on young people”.

The qualitative information generated by this methodology is beset with problems, and the researcher is often left with the unenviable task of trying to “disentangle people’s private views from what they felt comfortable owning up to in public” (Ahmad *et al.*, 2003: 24-25). In her review of a large number of studies based on focus groups, Wilkinson (1998:112) discovered that most of the qualitative information was “commonly presented as if it were one-to-one interview data, with interactions between group participants rarely reported, let alone analysed.” Focus group research is also labour-intensive and expensive to conduct (Bryman, 2004). If one-to-one interviews ultimately proved difficult to organise through YOTs, organising group sessions where multiple offenders had to be present may well have been even harder. But while practical limitations might be overcome, there is an insurmountable stumbling block in a methodology that is too inexact and unreliable when it comes to distilling the viewpoint of the individual. This was certainly one of the fundamental reasons why focus group research was discarded.

#### **4.2.5 One-to-One Interviews**

One advantage noted by Chui *et al.* (2003: 267-269) in relation to individual face-to-face interviews is their “ability to capture the similarities, differences and

contradictions in perceptions and experiences by allowing people to speak freely and candidly”. The following are just a few examples of studies which have used this research method in the context of seeking offenders’ views on criminal justice-related matters: Leibrich, 1994; Peterson-Badali *et al.*, 2001; Ogilvie and Lynch, 2001; Hazel *et al.*, 2002; Hanrahan *et al.*, 2005; Sharp and Atherton, 2007; Apena, 2007; Ashkar and Kenny, 2008. Within the genre, there are numerous types of interviews, including those which are structured, semi-structured and unstructured. While these are governed by “the operation of rules of varying degrees of formality or explicitness concerning [their]... conduct” (Bryman, 2004:109), a key common feature is that the information is primarily obtained through the one-to-one interaction of the interviewer and the interviewee.

#### **4.2.6. The Semi-structured Interview as the Methodology of Choice**

Following a critical analysis of the methodologies available to qualitative research, especially those within the interview genre, the semi-structured interview was singled-out as the most appropriate tool with which to access offenders’ views and a total of fifty, one-to-one, semi-structured interviews were carried out as part of this investigation.<sup>15</sup> The first group of interviews (n=6) were carried out between late February and March 2008, wherein the interview schedule, to be discussed later in this chapter, and research methodology were fully piloted and tested. Following minor amendments to the schedule, the second group of interviews (n=44) was

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<sup>15</sup> Fifty-one interviews were carried out in total, but one had to be discarded because the audio-recording device malfunctioned.

carried out between late May and the end of July of that same year. A total of 1565.12 minutes (twenty-six hours, five minutes and seven seconds) of interviews were digitally recorded. The duration of interviews ranged from eighteen minutes and thirty-seven seconds,<sup>16</sup> to sixty minutes. Interviews lasted on average thirty-one and a half minutes.

The decision to use interviews as the information-gathering instrument was defined by three clear considerations. The first concern was to develop the most suitable tool with which to collect the information pertinent to investigate the interpretivist research issues already identified. The suitability of the semi-structured interview for the purposes of this investigation is extensively documented in the research literature. According to Barriball and While (1994:330), semi-structured interviews are “well suited for the exploration of the perceptions and opinions of respondents regarding complex and sometimes sensitive issues and enable probing for more information and clarification of answers.” They are more appropriate than structured interviews because the latter entail the close administration of a tightly scripted interview schedule. Structured interviews, according to Bryman (2004:110) have the advantage of “reducing error due to variation in the asking of questions and greater accuracy in and ease of processing respondents’ answers.” While this may be the case, the varied experiences of punishment that interviewees were anticipated to have, precluded the use of a standardised structured interview schedule which might not have been flexible enough to allow participants to voice their views more fully and freely.

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<sup>16</sup> The young person in this case had ADHD, according to his YOT worker, which might to some extent explain the relatively short duration of this particular interview.

The second concern was to develop an information-collection process which was purposefully designed for the target sample, one which young offenders would find engaging and stimulating, and one which they would want to participate in. The challenge in this context, according to Punch (2002b:325), "is how best to enable children to express their views to an adult researcher and how to maximise children's ability to express themselves at the point of data-gathering." The main concern in this respect was to develop a research instrument that was versatile enough to generate sufficient participant-based information with which to carry out an in-depth analysis of young offenders' views of punishment. Semi-structured interviews were considered particularly relevant because through them "it is possible to explore in depth processes, relationships and meanings that are usually inaccessible to the quantitative researcher's questionnaires and interview schedules" (Hilton and Mills, 2006:12).

Finally, the research method had to aim for an overall balance in the distribution of what could broadly be defined as the research effort, paying particular heed to the time and resources available for field research and the administrative demands required. The time-consuming nature of securing access and consent for each individual involved in the project, the interview sessions themselves, and the production and analysis of transcripts, were important considerations in the initial decision to make use of this methodology, as these tasks carry significant administrative and practical implications. In the interest of securing access to the sample, this research method would also make minimal demands on YOTs and their staff, and this fact proved to be a critical selling point

when it came to persuading managers to give a favourable consideration to this research project.

### **4.3 A Sentence-specific Approach?**

The research project was interested in seeking the participation of young offenders, aged 16-17, who were serving a community sentence at the time of the interview. Initially, the sample was to have been drawn from individuals serving three specific sentences, namely the community punishment order (CPO), community rehabilitation order (CRO), and finally, the community punishment and rehabilitation order (CPRO). One of the main reasons for initially focusing on these three sentences was that they specifically targeted the age-range this study was interested in. The study's original intention to seek sentence-specific subjects was premised on the idea that a more homogenous sample might yield information from which sentence-specific conclusions might be drawn.

The decision to relax the recruitment criteria for the study became apparent after contact with a number of YOTs in the South East Region was established. While expressing an interest in the project, many YOTs promptly pointed out that the number of individuals on the three specific orders for whom they were responsible was negligible, and that the sample was not viable. The original sentence-specific sample was too restrictive and its research value limited. Additionally, the CPO, CRO and CPRO have also been made redundant by the Government's recently enacted Criminal Justice and Immigration Act 2008 which

introduced a generic community sentence, the 'youth rehabilitation order'. The changing landscape of field research taught this researcher about the importance of remaining focused yet flexible. It also sharpened this researcher's awareness regarding the extent to which the practical difficulties of securing access to the research population can condition the shape of the research process.

While the exploration of participants' views of the specific sentences they were serving was still important, the manner in which the schedule was evolving suggested that this sentence-specific focus was not essential to the investigation of punishment as a communicative enterprise. The discussion of sentence-specific points was to some extent inevitably made secondary to the wider discussion of young offenders' views on punishment which could offer a far richer body of information.

#### **4.4 The Rationale behind the Age-range Selected**

The decision to focus on 16-17 year old offenders was prompted by this researcher's interest in discovering more about the views held by individuals who were experiencing the closing stages of a complex, sociologically engineered process. The choice of such a narrowly defined sample also intensified the focus of the study and defined the intention of this thesis which can be summarised as an attempt to answer the question: How have these young offenders, soon to be outside the remit of youth justice jurisdiction, interpreted and been affected by the penal messages emanating from the criminal justice process?

The sample had other virtues to commend it. It was reasonable to hypothesise from the outset that it was bound to contain individuals with an extensive experience of the criminal justice system. Finding out more about the messages that punishment might communicate to those individuals who are, notionally at least, according to adherents of cognitive and developmental theories, best placed to understand them could not only cast light upon the communicative efficacy of the youth justice system and its capacity to reform and reintegrate this particular age group. It could also offer a measure of the system's ability to engage with the other age-groups within the rest of the population of young offenders who are serving community sentences. While not denying the value of the views held by younger offenders, it seems reasonable to expect that individuals in the sample might, given the wealth of their experiences, offer a greater insight into the manner in which penal messages are perceived.

One other major advantage about this age-range was that it reduced the age differentials between the researcher and the sample group to a minimum. This was a significant move towards addressing the imbalances of power that are likely to have an effect on interview dynamics. Imbalances of power are bound to be a prominent feature in the context of an interview setting, especially if it involves a face to face encounter between an adult and a minor: "[the] research interview is not a conversation between equal partners" (Kvale, 1996:6).

The available literature suggests that "despite attempts to equalize the power between the researcher and those affected by the issue, there remains an inherent

power imbalance in which the researcher has a distinct ‘advantage’ in the relationship” (Mishna *et al.*, 2004:456). There is also consensus that while “the principle of empowerment is increasingly argued to be an essential component of qualitative research methods, it poses significant problems in work with those who break the law” (Morgan, 1995:14). A more detailed consideration of power imbalances and how they were dealt with in this research project will be discussed during the course of this chapter.

While the project did not wish to “downplay the significance of acknowledging parental responsibility to ensure children’s safety and well-being” (Munford and Sanders, 2004:473), the fact that 16 and 17 year olds are able to make many decisions on their own without consulting their legal guardians<sup>17</sup> represented another major advantage for it vitiated the need to secure parental consent prior to participation. This was one of the considerations identified during the preliminary stages of this project. Any attempt to interview young offenders under 16 would require parental consent, and given the very nature of the sample the study was interested in, this would be complicated.<sup>18</sup>

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<sup>17</sup> According to Walker (2001:52) “[p]arents may have to sign the research consent form until their child is 16 or 18 for medical research. But non-invasive social and educational research may not require parental consent because of the lack of harm.”

<sup>18</sup> In their feedback to my CUREC/2 submission and in particular on the issue of parental consent, the University’s research ethics committee stated that “it is often considered good practice, when doing research with children (under 18 year-olds) to secure both their consent \*and\* the consent of their parent or legal guardian”. In response to this request, attempts were made to obtain the consent of not only the participants, but also that of their parents/legal guardians with a view to complying with ‘good research practice’ (A copy of the Parent/Guardian consent form has been attached as an Appendix One). In any event, no Parent/Guardian consent forms were signed by the relevant parties notwithstanding the fact that these documents had been produced, disseminated to YOT workers and taken to the numerous research locations.

By focusing on the population of 'oldest' young offenders, and by not making parental consent a prerequisite for participation, it was anticipated that field work would proceed more smoothly. It is well evidenced in the literature that young offenders come from difficult backgrounds (Baker, 2010) and that there is a strong likelihood that many of them are estranged from their families and come from broken homes. By avoiding the need for parental consent, it was also felt that the project would encourage the participation of a more balanced sample consisting of many offenders who might have otherwise been less inclined to do so, had parental consent been obligatory.

It seems ironic that research investigations which aim to engage with and empower young people by listening to their views may ultimately fail to materialise because adult approval is designated a prerequisite for participation. While undoubtedly, these gatekeepers play an important role in safeguarding the rights and interests of young people, a case could be made that the notion of parental/legal guardian consent seems to stand rather oddly against the perception that young people are valid and competent social actors. The challenge, according to Munford and Sanders (2004:473), "is finding ways of balancing these two competing imperatives." For all the talk of young people as 'social actors', however, the research experience suggests that the participation of adolescent offenders in research initiatives of the kind undertaken here is delimited by an adult-generated framework. While young people may be considered competent in theory, hence the emphasis on seeking their informed consent to participate, practical realities and the increasingly influential research ethics movement suggest otherwise, as there seems

to be a progressive move towards exerting greater institutional pressure on researchers to seek the permission of adults before any research takes place.

## **4.5 Gaining Access to the Research Sample**

The fifty young offenders who participated in this study were under the supervision of the eight YOTs that took part in this project (Buckinghamshire, Canterbury and Swale, Maidstone and Ashford, Medway, Newbury, Slough, Swindon and Warwick). Practical and financial considerations limited the study to YOTs in the south of England, and it is important to recognise this fact as a potential weakness of the sampling method employed. The relatively contained geographical distribution of the sample must be borne in mind when considering the generalisability of findings inasmuch as densely populated urban areas with perhaps more serious types of offending behaviour remain unrepresented in this study. Fieldwork at YOTs operating in more urban catchment areas might have also provided an opportunity to access the views of a greater number of offenders from ethnic minority backgrounds. The academic literature seems to identify the existence of race-based factors affecting views of punishment (Berman, 1976; Alpert and Hicks, 1977; Sherman, 2002). While it is true that 10% of the study's sample came from BME backgrounds (Section 4.6.1.), an argument could be made that research involving inner city urban YOTs might have yielded a more evenly distributed sample in terms of ethnicity, which may have in turn, provided a more accurate body of qualitative information with which to remedy what Garland *et al.*

(2006:424) define as the “propensity to assume that the ‘white’ experience is the ‘normal’, ‘commonsense’ version of events”.

Initially, a total of twenty YOTs were contacted for the purposes of conducting this research project.<sup>19</sup> In order to obtain access to the sample, YOT managers and officers were furnished with the pertinent information relating to the study. Written dissemination of the project’s particulars was often followed by face-to-face meetings with YOT managers and their staff in order to discuss the project and its relevance to their services in greater depth. These self-initiated meetings offered the possibility of discussing the project with practitioners and confirmed the viability of my methodology and the value of my chosen area of investigation. As was to be expected, responses to my request were mixed, with YOTs like West Berkshire’s, for instance, signalling their enthusiasm for the project, and others, like Swindon’s, wanting to know the reasons why they had been chosen. While the Oxfordshire YOT turned down my request because it considered itself over-researched, Warwick was unable to accommodate my requirements until a later date. In an instance of role reversal, the picture that was beginning to emerge was that while this researcher had initially selected the YOTs to carry out field work, it was ultimately the YOT managers who elected themselves into or out of the project.

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<sup>19</sup> The following YOTs were contacted for this project: Bracknell Forest; Brent; Bromley; Buckinghamshire; Cambridgeshire; Gloucestershire; Leicestershire; Maidstone and Ashford; Medway; Oxfordshire; Peterborough; Reading; Slough; Surrey; Swindon; Telford; Wessex; West Berkshire; Windsor and Maidenhead; Wokingham.

The research effort to secure access to young offenders at this juncture was considerable. Accrediting the research project with all the requisite documentation and obtaining authorisation from YOT managers to access the sample, by way of written correspondence, face to face meetings and telephone conversations, proved lengthy and taxing. As the literature on research involving young subjects had suggested, procedural arrangements prior to gaining access to the interview subjects are difficult to put in place: "Recruiting children and young people, as research participants in their own right, can be a troublesome exercise" (Munford and Sanders, 2004:470).

In their research, Cree *et al.* (2002:49) noted that the problems they "experienced in maintaining participation in the study reflect the wider issue of access: how do researchers access children to carry out research?" Their conclusion draws attention to one of the key constraints on carrying out a research project into the views of young offenders: "The bottom line is that researchers can get access to children only with the co-operation of a number of different 'gatekeepers'; without this, there can be no research" (2002:50). Hammersley and Atkinson (1995:64) also express their concern on this issue:

Knowing who has the power to open up or block off access, or who consider themselves and are considered by others to have the authority to grant or refuse access, is, of course, an important aspect of sociological knowledge about the setting.

As far as this research project was concerned, the methodological difficulties of access were a recurring and time-consuming problem which had a direct impact

on the research effort and schedule. The problems were twofold: the first involved selling the project to YOT managers as a *sine qua non* to gaining access at an institutional level; and the second involved gaining access to the young offenders themselves. Similar experiences are reported by Barker and Weller (2003:213):

The 'politics of access' often requires a lengthy process of negotiation and compromise on the part of the researcher, as they liaise through entire complex networks of gatekeepers before asking a child whether he or she would like to participate.

The support of YOT managers, staff and practitioners was pivotal to the success of the study. As professionals entrusted with the management of community sentences for young offenders, their administrative wherewithal made them invaluable when it came to accessing and interviewing the research population. YOT officers were also of great value to this project when it came to the initial dissemination of the information and accompanying documentation to the sample. The use of YOT officers had been given a great deal of thought, and the first stage of proceedings could be faulted on the grounds that they may have been tempted to 'cherry-pick' those participants who were most likely to express positive views about their respective community sentences. This initial state of affairs was deemed inevitable given that the project had to be initiated and administered through YOT offices.

Contacting a relatively large number of young people on community sentences directly to participate in the project was not only practically impossible but just as importantly it would not have been an ethically viable option. Due to

confidentiality reasons, contact would have to be made through the YOTs. The original idea was to advertise the study at YOTs and wait for potential participants to contact this researcher, but this approach was not adopted on the advice given by YOT workers who felt that interviewing participants as and when they volunteered would be an inefficient recruitment strategy which was bound to produce a skewed sample. Instead, they suggested that the study should make use of their scheduled weekly contact sessions as a first point of contact during which potential interviewees could be given the opportunity to participate.

Confidentiality reasons also had some bearing on the possibility of establishing a random sampling procedure at the recruitment stage. While random sampling may have lessened concerns relating to sample bias, it remained an unlikely option. Given the practical difficulties encountered in securing access to the research population, it would not have been possible to obtain unrestricted access to relevant YOT documentation about those individuals in their care who satisfied the study's recruitment criteria. An argument could be made that direct access to these documents was not strictly a pre-requisite for random sampling to have taken place. An alternative approach would have entailed asking YOTs to select every  $n^{\text{th}}$  young person on their lists who satisfied the recruitment criteria. The YOTS, however, did not favour this laborious random sampling procedure. The fact that the individuals selected were unlikely to share the same dates for their pre-scheduled appointments with YOT workers meant that numerous trips to individual YOTs would have to be organised. This could prove taxing for them and

would seriously draw out the field work. Therefore, for obvious practical and financial reasons, this was not considered a viable research strategy.

Every attempt was made to ensure that field research trips to the participating YOTs were as productive as possible. Interview days were carefully planned with YOTs in order to maximise the number of potential interviewees who would, according to their records, be in attendance. The young people who were therefore interviewed were primarily those who turned up for their pre-scheduled appointments with their respective YOT workers; satisfied the study's recruitment criteria and who were willing to participate.

The sampling strategy was not perfect and remains open to a number of criticisms. The failure to return to YOTs to interview those who had failed to keep to their appointments with their YOT workers might be said to introduce an element of sampling bias. Absentees may perhaps have been less motivated about their respective sentences, or more disillusioned with their experiences within the youth justice system, and might have held different views to those who were interviewed. The omission of these individuals from the study must be recognised as a source of potential bias.

The sampling strategy employed is also open to the charge that YOT workers may have been tempted to 'cherry-pick' participants. Whether potential participants were screened by YOTs, or whether YOTs organised interview days in the knowledge that certain individuals would be excluded from the sample is

unknown. Even though this possible source of bias was pre-empted to some extent by making YOT staff very aware of the fact that the study was after a 'balanced picture, it must be conceded it could bear upon the generalisability of the study's findings. Having said this, it could also be argued that the composition of the sample and the mixed nature of the responses provided by interviewees might go some way towards addressing this concern. Further checks and balances were also put in place once access to interview the first group of offenders in each YOT was obtained, and this researcher was in a position to invite other subjects to participate in the project, including individuals who had turned up at the YOT without a pre-booked appointment.

## **4.6 Overview of the Sample**

Having delineated the numerous rationales and practical considerations regarding the choice of participants, the sample for the study can be broken down in the following ways.

### **4.6.1 Age, Gender and Ethnicity**

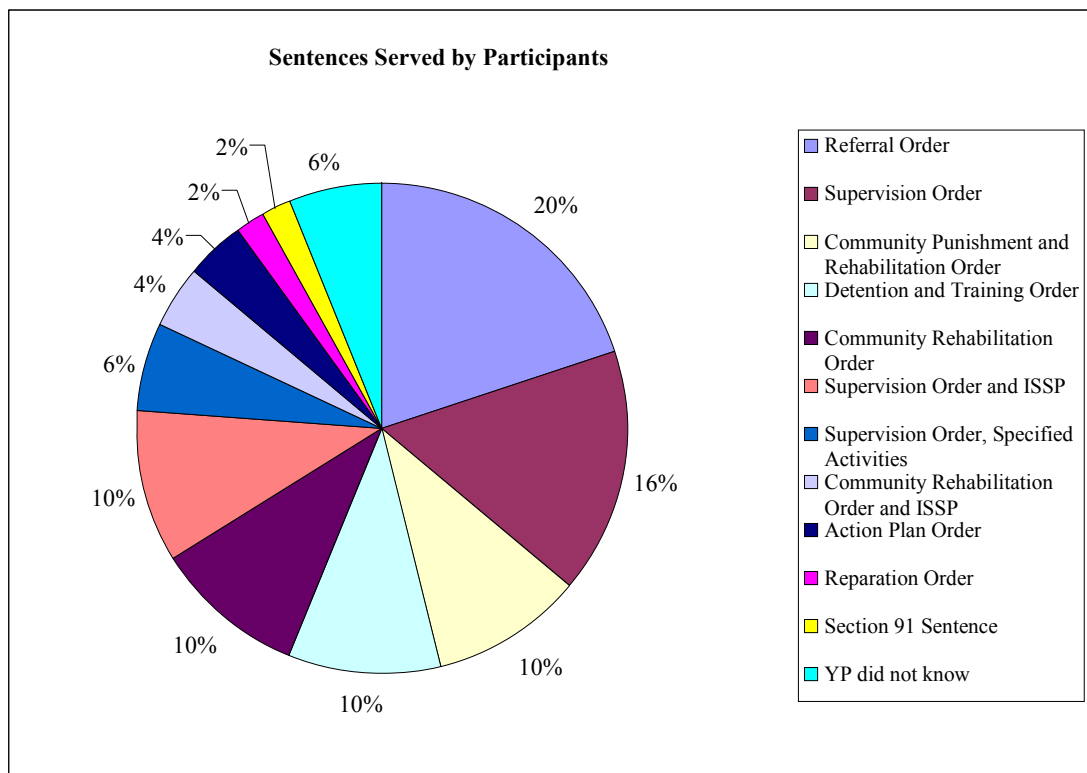
Out of the fifty semi-structured interviews that were carried out, thirty-nine were with young male offenders. The remaining eleven interviewees were females. In terms of the age distribution of the sample, there were twenty-three sixteen year olds; twenty-two seventeen year olds, and five eighteen year olds. The inclusion of this latter group in the sample represents an upwards deviation on age of the sample proposed. The relaxation of the recruitment criteria in these few instances can be

justified on the grounds that these individuals had been sentenced when they were seventeen and they were still under youth justice jurisdiction. Additionally, not interviewing these young people, who were available and willing to participate, would have been a missed opportunity to incorporate potentially experienced individuals into the sample. Deviations in the other direction, however, were unacceptable because admitting offenders under the age of sixteen would have been ethically unacceptable as well as administratively problematic, for their inclusion would have required written parental consent.

In terms of ethnicity, most of the offenders in the sample (90%) were white British. The remaining 10% of interviewees came from black minority ethnic (BME) backgrounds.

#### **4.6.2 Current Sentence and Offending History**

The average sentence length for the fifty offenders who were interviewed was twelve months. The breakdown of the sentences served by participants has been represented graphically in the following pie chart:



Gaining access to the respective sentencing histories of the individuals who participated in this study was not always straightforward, and there was no procedural consistency across the YOTs which partook of the project. The YOTs involved varied in their degree of helpfulness, and some were reluctant to grant access to the young people's sentencing histories, notwithstanding the fact that the participants had raised no objections to this. Some YOTs insisted that participants signed their internal release forms, while others did not have these documents within their centres and insisted that these be drawn up by the researcher (see Appendix Two). In the case of Medway YOT, where nine participants were interviewed, access was denied even after their request for a formal written submission had been met. Issues of data protection were clearly at the forefront of their concerns. Thus, in spite of all the efforts to secure access to these histories via reminder emails and phone calls, this researcher was only able to secure the data for

82% of the sample. Drawing upon the criminal sentencing histories obtained, the number of convictions for individual offenders ranged from 1 to 13, and it was calculated that each participant had an average of 4 previous convictions (For a more detailed overview of the composition of the sample please refer to the tables contained in Appendix Three).

The study may be criticised for the inclusion of six individuals within the sample whose names were forwarded by the YOTs as individuals who met the study's recruitment criteria, but who it transpired during interviewing were serving sentences that involved a custodial element. Five of these participants were serving detention and training orders (DTOs), while the sixth interviewee was on a Section 91 Sentence. As individuals on the more serious end of the sentencing spectrum, it was anticipated that their views on community-based sentences were bound to be coloured by their custodial experiences (Searle *et al.*, 2003; Gainey and Payne, 2000). Following an extended discussion with my supervisor, the decision to include these individuals in the sample was taken as they fell within the study's target age-range and were serving community-based sentences, notwithstanding their previous experience of incarceration on their current sentences. The decision was also grounded on the fact a sentence-specific focus was not essential to my research into punishment as a communicative enterprise (see Section 4.3). While it is perhaps impossible to isolate the 'custody' variable in an attempt to assess how this one factor impacts upon individuals' perceptions, this study has sought to preserve the integrity of its findings by identifying the specific qualitative

information obtained from these six interviewees, and presenting contextualised analyses of their input throughout the thesis.

The sample also includes young offenders serving a referral order. Although they would have been diverted from the youth justice system to sit before the youth offender panel, in the first instance, these individuals would have received their sentences from the court. While the interview schedule employed in this study contained a number of questions aimed at finding out as much as possible about young offenders' courtroom experiences, their views on their respective sentences, as well as their perceptions of their YOT workers, it failed to include specific questions which explicitly sought to elicit participants' views on their respective experiences of YOPs. This omission must be seen as an important limitation to the research undertaken. The failure to incorporate YOP-related questions became noticeable once the field research had been completed and the analysis revealed that twenty per cent of the sample was subject to this sentence at the time of interview. Having said this, the versatility of the semi-structured interview facilitated the use of a number of impromptu questions on YOPs. These produced a body of qualitative data which will be discussed later. YOP-specific questions were deployed with participants who confirmed that they were serving referral orders when other related thematic concerns were being discussed during their respective interviews:

**Interviewer:**  
say something in court?

[W]ere you given a chance to

- Interviewee 49:** Yeah.
- Interviewer:** Yeah, what did you say?
- Interviewee 49:** Well, I said I shouldn’t have done it and I regret it.
- Interviewer:** Hmm, right. And again the same question but now in relation to the panel. Did you say something during the panel?
- Interviewee 49:** Not really.
- Interviewer:** No, how come?
- Interviewee 49:** Well what I did, I said the same as in court I think [49/RO/6].

Other impromptu questions employed sought to explore participant perceptions of the following issues: whether the YOP had expressed censure directly;<sup>20</sup> whether there were any similarities between the messages communicated to individuals by the courts and by the YOPs;<sup>21</sup> whether the messages communicated by the YOP and the activities on the sentence were in consonance,<sup>22</sup> and whether the YOP had expressed an interest in the young person’s progress.<sup>23</sup>

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<sup>20</sup> “Did the panel itself tell you that what you did was wrong?” [Interview with 44/RO/4].

<sup>21</sup> “Now moving on to the youth offender panel, was that the same message that was being sent or was it a different message?” [Interview with 13/RO/12]

<sup>22</sup> “[T]he panel, when they were talking to you, can you see a link between what they were telling you and what you’ve been asked to do as part of your sentence?” [Interview with 29/RO/6].

<sup>23</sup> “The panel, have they taken an interest, have they shown an interest in your progress?” [Interview with 23/RO/6].

### **4.6.3 The Reliability of Memory and the Problems Associated with Subject-Recall**

There is consensus in the social psychology literature that subject-experience is susceptible to interpretational influences (Varela and Shear, 1999), and that subject-memory is selective, fallible and creative (Ainsworth 1999). According to Myers (1994:28), for instance, “[m]emories are not copies of experiences that remain on deposit in a memory bank”; a view endorsed by Cope (2003:162), who notes that memories fluctuate and “are continually reinterpreted to ensure their meaning in the present”.

This literature-based understanding of the problems associated with subject-recall informed this research project. Problems associated with subject-recall specifically conditioned the phrasing of a number of questions in the interview schedule itself.<sup>24</sup> Question 6(a), for instance, invited participants to comment on their most recent experiences in court. Delimiting possible interviewee responses to their most recent courtroom experiences was one strategy set in place in order to counter potential memory-recall issues.

The problem of subject-recall, and the impact this might have upon the accuracy of interviewees’ accounts was also taken into consideration during the collection and subsequent analysis of participants’ accounts. The desire to contextualise the study’s findings prompted the collection and collation of

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<sup>24</sup> For an in-depth account of the genesis, design and administration of the interview schedule, please refer to Section 4.9.

information on the time elapsed between the date of interviewees’ most recent conviction and the date of interview. This information was available for thirty-six young offenders, which represents 72% of the sample.<sup>25</sup> The time gap between current sentence and subsequent interview ranged from twelve days to one year, five months and three weeks. The average time elapsed between these two events was under four months.

From the outset, it had been hypothesised that the length of time elapsed between sentencing and interviewing might impact on the accuracy of interviewees’ accounts, and there were instances during the analysis where it became apparent that the some interviewees could not recall specific details about their respective penal experiences with certainty:

That I was sorry and that I, basically I can’t remember what I said, but basically I’m sorry and I wouldn’t do it again [31/RO/6].

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**Interviewer:** Did the court mention it at any time perhaps?

**Interviewee 25:** Um, they might have done, but I can’t remember [25/CPRO/12].

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The problems associated with memory-recall must be acknowledged as an inescapable dimension to any investigative piece seeking to explore individuals’

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<sup>25</sup> For a more detailed overview of the data being used here, please refer to the tables contained in Appendix Three, where an additional column for the time elapsed between the date of sentence and the interview has been added.

perceptions on any given phenomenon.. Although the possibility of reducing memory-related problems by interviewing only those individuals who had been recently sentenced in court had been given some thought, the idea was abandoned because this approach would have posed significant practical difficulties that would have protracted the research process. More importantly, the study was not exclusively interested in exploring participants' views on the communicative dimensions of the courtroom in isolation. It was also interested in finding out about the communicative dimensions underpinning the administrative stages of the punishment process. While recently convicted individuals might, theoretically at least, recollect their respective courtroom experiences with greater accuracy, they might not have been serving their orders long enough to be able to have formed an opinion on the communicative dimensions underpinning the administrative stages of the punishment process.

#### **4.7 Adolescents as Research Subjects**

Having established all of the contextual parameters regarding the composition of the sample, the point must be made that the process of carrying out research which involves adolescents<sup>26</sup> is methodologically challenging (Hazel,

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<sup>26</sup> The term child is employed in the literature as an umbrella term that includes young people: "if we consider these two international organisations (UNICEF and UNESCO) and the definitions embedded within their documents it can be interpreted from the discourse that 'child' could be a term inclusive of young people" (Skelton, 2007:166). The term is too wide-ranging and not accurate enough for the purposes of this study. Since it could refer to any individual between the ages of one and seventeen years of age, the term child remains problematic: "there is a danger that young people can become homogenised as a social category" (Valentine, Butler *et al.*, 2001:119). As Jones (2001:175) points out, "to talk of 'children' is to talk of a complex and densely varied class of people and to gloss over all that difference." Glossing over 'all that difference' is certainly an issue which the literature draws our attention to (Punch, 2002b; Young and Barrett, 2001). For these reasons, the terms child or children were deemed inappropriate when referring to the target research group. The term adolescent was considered a more accurate descriptor for the age-group under review.

1995a; Cree *et al.*, 2002; Kay *et al.*, 2003; Hill *et al.*, 2004; Sinclair 2004, Holt, 2004, Mauthner, 1997). Debates regarding the appropriateness of any particular methodological approach must, however, be situated within broader discourses about the nature and status of childhood. As Punch (2002b:324) points out, “[t]he researcher’s own assumptions about the position of children in society affects the methods chosen as well as the interpretation of the data generated”.

Indeed, the manner in which children are conceptualised as research subjects carries critical implications for a research project that aims to listen to young people’s views. According to Clark (2005:489-490) “[y]oung children may be viewed in different ways according to the ‘lenses’ adults use to see children and childhood.” Twentieth century Western notions of childhood have been dominated by developmental theories which implicitly perceive children as objects of socialisation, who because of their age, are considered ‘incomplete’ or ‘in process’ (Matthews, 2007) or as ‘human becomings’ rather than human beings (Qvortrup, 1994). Smith (2007:1-2) in this context notes that, “[c]hildren have been regarded as the passive recipients of adults’ teaching, protection and care, as objects to be shaped and socialized, as the properties of their families”.

Recent years, however, have seen “a paradigm shift” (Hill, 1997:171) in how children are conceptualised, marking an important departure from traditional developmental theories of childhood which conceptualised and treated children as objects of socialisation rather than engaging with them directly as legitimate

research subjects (James and Prout, 1990; Qvortrup *et al.*, 1994; Hill, 1997; McAuley, 1998; Matthews, 2007):

there has been a recent shift from viewing children as passive objects of study unable to directly provide information, to recognizing them as active and competent participants capable of speaking for themselves and of providing reliable information about their situation (Mischna *et al.*, 2004:451).

According to Skelton (2007:169) children and young people are now “understood to be competent and so entitled to have the right to participate in society and have a say in issues which affect their lives.” This recognition (James and Prout, 1990; Barker and Weller, 2003; Baker, 2005; Matthews, 2007) is of particular relevance to the concerns of this study which recognises children and young people as valid social actors who should be consulted and involved in decisions which affect them (Freeman, 1998; Mayall, 2000; Corsaro, 2005; MacNaughton *et al.*, 2007).

The reconceptualisation of children as competent social actors has other important ramifications for researchers (Thomas and O’Kane, 2000; Munford and Sanders, 2004). As MacAuley (1998:166) points out, “[r]esearch which assumes that children are subjects who, in turn, have the right to participate is immediately faced with a number of ethical and methodological issues.” While these issues will be dealt with later in the chapter, the important point to note for present purposes is that the discussion must be seen in its wider social, and ethically-charged research context, one which struggles with the fundamental question of whether research with children is the same or different from research with adults.

It could be argued that the tendency in the literature to present these two types of research in dichotomous terms is based on a flawed perception, one which fails to take on board the considerable overlap which invariably links research with adults and research with children. Punch (2002b:337-8) is correct in her assertion that "it is misleading to talk about 'child' and 'adult' research methods, since the suitability of particular methods depends as much on the research context as on the research subject's stage in the life course."

The transition phases from childhood to adulthood are evidently not neat. Yet "the notion of a developmental trajectory - a linear, chronologically sequential and normalized process by which children become competent decision-making adults," (Alldred 1998, as quoted in Edwards and Alldred, 1999) is often reflected in research ethics guidelines and reinforced by research ethics committees. Age-related gradations in terms of competence are arbitrary. As Alderson (2007:2273) notes, "contingencies such as experience and ability can be more salient than age to a child's competence." In this context, it is important to note that the assessment of whether an individual falls within the 'Gillick' criteria for competence is not age-specific.<sup>27</sup> The ruling did not pre-define an age upon which the individual attains competence, and therefore arguably takes on board the fact that "even at quite a young age, children can make informed decisions if given adequate information in

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<sup>27</sup> The case of *Gillick v West Norfolk & Wisbech Area Health Authority and Department of Health & Social Security* [1985] 3 All E.R. 402 at p.423 sets out the legal definition of a competent child, defining him/her as one who "achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed" and also has 'sufficient discretion to enable him or her to make a wise choice in his or her own interests'" (Alderson and Goodwin, 1993:304).

terms they can understand" (Edwards and Alldred, 1999:266). Thompson (1992:60) summarises the argument thus: "the child's competency to consent should not be regarded as an inflexible limitation deriving from the child's age, but rather an interaction of the child, the context, and the nature of the (decision-making) task." While not fully endorsing the fact that child-friendly methodologies must be employed in research projects of this nature, the fact remains that age-related considerations must be borne in mind at all times during the research process.

What the discussion has sought to demonstrate is that the uncertainty relating to the appropriateness of any particular approach is underpinned by the philosophical tenets of childhood to which particular researchers subscribe. Age-related considerations in research should not strictly be seen as undermining participatory methodologies entirely, but must be seen as part of any research process which targets a particular research population. In terms of the wider sociology of childhood literature, one important point made by Punch (2002b:338) is that "[p]erceiving children as competent social actors does not necessarily mean that research should be conducted in the same way as with adults." The use of specialised research techniques does not detract from the fact that young people have views and opinions which they can express, but merely recognises that there will be instances that because of the age of the participants involved, special considerations will have to be made in terms of both methodological and ethical issues.

While developmental arguments must not be assumed uncritically, it remains “difficult to argue that research with a 5-year-old is not at all different from research with a 16-year-old” (Punch, 2002b:324). This realisation has important methodological implications for as Hill (1997:171) asserts, “[a]pproaches that are suitable for young children may be inappropriate or unacceptable to teenagers, and vice versa.”

#### **4.8 The Role of the Researcher**

Young research subjects, however, are not the only participants who have a bearing on the methodological and ethical issues involved in a research project of this nature. The experience and competence of the researcher must also be taken into account during the design and subsequent evaluation of any project involving interview-based methodologies.

The interviewer’s personal and demographic characteristics, such as age, sex and class, for instance, might well condition the responses which interviewees provide. The researcher’s role and his relationship with the subjects involved are evidently bound to have a direct bearing on the methodology itself and the information obtained. The findings reported in the literature on the role of the researcher in qualitative research proved enlightening. They informed my research design and influenced my behaviour during the interview sessions.

On the role of the researcher, the literature seems unanimous in identifying the problems associated with “straddling two social worlds” (Burman *et al.* 2001:455). Research into private lives is carried out for public purposes. In so doing, “[t]here is always a tension for the individual researcher in making the effort to enter into the subject's world and then deciding how far to step into that world” (Kay *et al.*, 2003: Para.13).

Different methodologies call upon different levels of researcher involvement, and semi-structured interviews call upon a fairly high level of personal interaction with the subject. In comparison to the structured interview, with its scripted questions, the semi-structured interview makes the researcher as much a key actor in a research process that depends on a themed interactive dialogue as the participants themselves:

The role played by the interviewer, here and elsewhere, is critical. They (sic) hold the participant's experience of research in their hands. They are in a position to manipulate, exploit and create a negative experience, or to empower, enable and create a positive experience. They play a central role throughout people's experience (Graham *et al.* 2007:51).

And yet, given the centrality of the researcher *vis-à-vis* his investigative work, research write-ups traditionally ignore possible researcher-related variables and tend to report on qualitative research findings as objective, value-free information (Breuer *et al.*, 2002). Reports and academic findings are thus not always properly contextualised in terms of the impact which researcher-based and situational factors present during field research and how these ought to be borne in

mind in any analysis of the results obtained. This phenomenon is referred to as the “fiction of objectivity” by Breur *et al.* (2002), and is something that will be consciously avoided in this investigative piece. To paraphrase Denzin and Lincoln (1998), the intention throughout this thesis, especially in the Analysis, is “to write the researcher into the world (he) investigate(s),” (as quoted in Blackman, 2007:700) and to heed Mischna *et al.*'s (2004:463) recommendation:

qualitative researchers [must] acknowledge that study results are co-created by the researcher and participant[s] and, although they ideally represent participants' experiences, are represented through the lens of the researcher and influenced by his or her theoretical orientation and world-view.

As a central actor in the research process, the researcher's involvement must always therefore be explicitly described in the write-up, and this involves a “continual consideration of the ways in which the researcher's own social identity and values affect the data gathered and the picture of the social world” (Reay, 1996:60). This reflexive stance is central to qualitative research of the kind undertaken in this study (Rose, 1997; Davis, 1998; Nilan, 2002; Barker and Weller, 2003).

Already during the conceptual stages of its design, it was very evident that my research project would be beset with issues ensuing from the complexities of an adult-child relationship:

General methodological issues are refracted in unique ways in research with children, because of the particular social context of adult-child relationships, and most significantly the unequal

power dynamics that constitute these relationships (Barker and Weller, 2003:209-10).

Munford and Sanders (2004:479) sum up the problem thus: "There are no simple answers to the challenges of conducting research with children and young people because of the inevitability of adult involvement". Hazel (1995:2) draws attention to the fact that "the adult status of the researcher may cause problems in eliciting, collecting and interpreting [young people's] thoughts", and Punch (2002b:325) reports that "it is difficult for an adult researcher ever to totally understand the world from a child's point of view". Matthews' (2001b:118) advice is particularly relevant in this context:

as adult researchers of children and young people, we need to be clear about the baggage we carry with us and how our preconceptions or misconceptions may colour our interpretation of events and experiences.

While it is important for the researcher to promote a discussion and to maintain tacit control over the interview, there is a danger that through his/her approach the researcher may influence and condition what the respondent says. Asking the right questions and knowing how to field responses calls upon a whole range of higher order skills. As is the case with focus groups, extensive knowledge and experience in the field are a necessary prerequisite for the viability of using interviews to access young offenders' views of punishment. While Presser (2004:83) might be correct when he asserts that open-ended, unstructured interviews invite "more communication than other sorts of interviews", the fact remains that the interview situation *per se* is a formal construct, one in which an

interviewer with a well defined agenda has to make the research subject believe that the interview session is open and free-flowing. As with focus groups (see Section 4.2.4), the process offers little by way of guaranteeing consistency because much depends on the researcher's ability to maintain a delicately poised balance, one in which he/she must guide, but not stifle the subject's responses.

In this respect, the field work carried out tried to emulate the techniques and approaches that according to the literature on interviewing constitute good practice. This literature-based understanding of methodologically sound interviewing techniques was put into practice in a number of mock runs with one of my supervisors and fellow D.Phil. students from the University's Centre for Criminology. The feedback and the experiences developed from these exercises were conducive to a more refined approach to the task. A number of presentations at YOTs and the six pilot interviews that followed helped the study to develop a range of strategies with which to reduce those researcher-related influences that have been identified in this section. Above all, however, my biggest effort to overcome these problems went into the development of the interview schedule itself.

#### **4.9 Developing the Interview Schedule**

Critical to the success of any research project using semi-structured interviews as a research tool is the formulation of relevant and appropriately phrased questions for interviewees to discuss. A lack of attention to detail at this

juncture would impact negatively on the aims of the study and might yield information that would be hard to legitimise and of limited value to the investigation. This section will concern itself with the genesis, design and administration of the interview schedule (see Appendix Four).

The choice of areas to be explored during the interviews themselves was determined by the information derived from the literature on communicative sentencing and took cognisance of the research findings on offenders' views of sentences. Extensive discussions with my supervisor also proved invaluable to the process of developing the interview schedule. The study was particularly interested in exploring offenders' views on the communicative dimensions of three distinct, yet inter-related stages of the criminal justice process: the imposition of the sentence; the sentence itself, and finally, the subsequent administration of the sentence. The investigation of these three areas provided the overarching structure for the interview schedule.

The content of the questions themselves was primarily derived from a close reading of the communicative sentencing literature. The aim, once more, was not to test these communicative theories, but to draw upon them in order to explore young offenders' first-hand accounts of the kinds of penal messages that punishment communicates to them. Question 25, for instance, specifically sought to examine whether offenders thought that hard treatment can be justified because of the morally persuasive function which it serves as Duff (2001) believes, or whether

they considered that hard treatment was necessary in order to secure the preventive aim of punishment as von Hirsch (1993) argues.

Other questions in the interview schedule drew upon concepts explored more generally in the wider literature on offenders' views of punishment, such as, perceptions of fairness and sentence severity (Questions 18 to 20). Interviewees were also asked about the purposes they ascribed to punishment (Questions 4 and 9(a)) with a view to exploring the degree of congruence between what policy-makers and youth courts aim to convey through sentencing and punishment, and what defendants themselves perceived.

The inclusion criteria employed at the design stage of the interview schedule was informed by two important considerations. The questions had to be both relevant to the areas of interest identified by the study, and stimulating to participants. To this end, not only would the questions have to be subject-specific, but they would also have to be phrased in a clear, accessible and non-patronising language, avoiding the more abstract register with which issues regarding communicative theories of sentencing are often discussed.

At this stage, two conflicting undercurrents reported in the research literature came to the fore. The first of these involves the fact that "the language dilemma is mutual" (Punch, 2002b:328). The researcher as interviewer is bound to adapt his/her language to facilitate engagement with participants, while participants are likely to adapt their language to match the demands of the interview experience.

The second undercurrent is more complex, for if it is true that the researcher has come to the interview table with a specific agenda, the same can also be said for the young offender who will "have many motives for trying to control the impression...[the researcher] receive[s] of the situation" (Goffman, 1971:26).

Methodology analysts have identified the problems associated with "impression management" during interviews (van Heugten, 2004; Presser, 2004). They have also drawn attention to the implications that this kind of behaviour carries for the validity of any body of findings derived from interaction with research subjects

[s]ometimes the individual will act in a thoroughly calculating manner, expressing himself in a given way solely in order to give the kind of impression to others that is likely to evoke from them a specific response he is concerned to obtain (Goffman, 1971:17).

While it is true that the fact that interviewees might tend to overemphasise, exaggerate and play-up to stereotypes must be borne in mind during the analysis, it is also true that because contact with the criminal justice system can be a stigmatising experience, offenders might conversely downplay certain elements of punishment. In his study of offender behaviour, Delens-Ravier (2003:160) observed that in many instances the young research subject:

'pretends' to conform to what is expected of him or her, knowing full well what he or she must say and what attitude he or she has to adopt in order to rid him or herself of custodial restraint as quickly as possible while retaining a certain degree of control over the process.

In most instances, the subjects' desire to avoid negative consequences means that the researcher must offer them assurances that they can express negative views openly without fear of repercussions (Lobley and Smith, 1999:53). Chui's (2003:569) advice is also relevant here:

If a service is to reap the benefits of listening to offenders' views, it must be made clear to participants that their opinions are valid, whether complimentary or otherwise, and they will not experience any negative repercussions for answering honestly and openly.

Notwithstanding these reassurances and guarantees of confidentiality and anonymity, it would still be likely that, given their age and vulnerable situation within the criminal justice system, the views expressed by adolescent offenders might nonetheless be conditioned by a fear of negative consequences. Thus, manifestations of either defiance or submissiveness to authority need not always reflect the truth regarding a subject's views on punishment. The tendency to role-play must therefore become an important caveat to drawing firm conclusions from the analysis of interview transcripts.

The second undercurrent reported in the literature concerns the relationship between the researcher's choice of language and the sample's linguistic competence:

In any research with adults or children, when forming research tools and questions, clarity of language is vital. However, adult researchers tend to be more conscious of their use of language in research with children. This stems from adult perceptions of children as non-competent...or as having 'limitations of

language and lack of articulateness’ (Ireland and Holloway, 1996: 156).

Even though the academic literature available strongly suggested that the literacy level to be expected of the sample was five years below that of their chronological age (Audit Commission, 2004), the language considerations built into this schedule did not stem from any preconception regarding the competence of subjects when it came to verbalising their thoughts. The study was primarily concerned with gaining access to their views through the questions, and it was not testing their comprehension skills or their linguistic competence. This researcher wanted to formulate open-ended questions that were respondent-friendly and that would elicit spontaneous responses. If the questions were pitched at the right level, participation albeit with varying degrees of articulateness would logically follow, but without this first step, independently of the linguistic competence of the interviewee, participation would be depressed.

The principal challenge in this respect was to formulate questions in such a way as to allow for the interviewee to respond freely, while ensuring that the information which the project was interested in exploring was elicited. In this respect, the design of the interview schedule shared a number of aspirations with the research tool developed by Barriball and While (1994:332-333): “a key phase in the project was the development of an interview schedule which was both exploratory in order to elicit abstract conceptions such as perceptions and sufficiently standardized to facilitate comparability between respondents during analysis.” For

these reasons, a combination of closed, semi-closed and open-ended questions were included in the interview schedule.

The sequencing of questions was also critical to the effectiveness with which the interview could be conducted. Questions had to follow logically from one another, with one discussion topic leading to the next. While this structured approach was important, the flexibility inherent in semi-structured interviews allowed for the omission of questions to which the interviewees might have already provided a response in their engagement with an earlier question. This flexibility also allowed for the omission of questions on a given topic in instances where the interviewee provided a negative answer to the first question in the sequence. This fact explains why respondent numbers may vary from question to question. The possibility of repeating or rephrasing questions was an additional advantage to be found in this research methodology. A conscious effort was also made to avoid the systematic close reading of questions, or a repetitive turn-taking researcher-question, subject-response, researcher-comment. These techniques were invaluable primarily because they kept the exchanges natural and made for a more fluent and searching discourse. Every possible attempt was made to avoid the “mechanisation” of the interview experience.

The administration of the interview schedule was anticipated to take approximately half an hour. Given the nature of qualitative research, however, this was only a notional guideline, and the information relating to the duration of each interview reflects the need for a versatile research methodology. More importantly,

it would have been a contradiction in terms to have pre-empted the duration of an interview in a research piece that purports to listen to young offenders’ views. The arbitrary imposition of a time limit could also have the effect of transforming what should have been an empowering experience for participants into a disempowering one.

#### **4.10 The Vignette**

As part of the strategies developed to foster participation, the decision was taken to open interview sessions with a vignette designed for the purpose. Hughes (1998:381) defines vignettes as “stories about individuals and situations which make reference to important points in the study of perceptions, beliefs, and attitudes.” Guided by the findings in the research literature, the vignette served a number of purposes: it established an immediate focal point to the interview; set the tone for a research encounter that was interested in the individual views of participants, and proved a good point of departure for the discussion of young people’s views of punishment and the sentences they were on.

The vignette used consisted of a made-up story of a young offender appearing before a youth court. The story provided that:

*Before the youth court is a young person, John, aged 16 who has admitted to stealing money from a vending machine at the local*

*train station. John has had a tough time these past few months. Ever since his father left, he has had to look after his baby brother during the day, while his mum was at work. As a result, he has missed out on a lot of school. John is of good character, and he has never committed any offences in the past. He regrets what he did and says he is sorry.*

Academic consensus exists around the use of vignettes as a less invasive technique with which to initiate a discussion. Barter and Renold (1999) believe that vignettes in social research may be used for three purposes: "to allow actions in context to be explored; to clarify people's judgments; and to provide a less personal and therefore less threatening way of exploring sensitive topics." These views are echoed by Hughes (1998:383): "the context of a vignette provides respondents with an opportunity to discuss issues arising from the story from a non-personal and therefore less-threatening perspective." He also highlights their worth as exploratory devices: "Vignettes highlight selected parts of the real world that can help unpackage individuals' perceptions, beliefs, and attitudes to a wide range of social issues" (1998:384). The fact that the use of the vignette "offer[ed] the possibility of examining different groups' interpretations of a 'uniform' situation[s]" (Barter and Renold, 1999) facilitated the comparison of responses across the sample. Punch (2002b:330) views the use of these interactive strategies in terms of enabling children "to feel more comfortable with an adult researcher." She also reports that this approach "may lessen the problems of an unequal power relationship between the adult researcher and the child participant" (2002b:336-337).

In sum, the vignette was employed as an interactive opening strategy which would enable participants “to feel more comfortable with an adult researcher” and might “lessen the problems of an unequal power relationship between the adult researcher and the child participant” (Punch, 2002b:336-337). The use of the vignette was also integral to this study’s attempts at addressing power imbalances and reducing the impact of researcher-related influences to a minimum.

From the outset, the conflict of roles implicit in any research enterprise of this nature was apparent, for the researcher is both the seeker of specific knowledge and the interpreter of the knowledge that he/she claims to have found. The researcher’s academic inclinations, or personal interest and involvement with subjects must be subservient to the rigours of scholarly analysis and academic discourse. In the words of Burman et al (2001:455),

We want to remain true to the forms of knowledge that we gain in such private, personal settings but as researchers we also need to serve an academic audience, and beyond.

According to Barker and Weller (2003:223) the way forward lies in the use of “reflexive thought”. They conclude that this outlook towards qualitative research “enables us as researchers to gain glimpses, however partial, of the opportunities and connections, and the limitations and barriers, provided by our own situatedness as researchers” (2003:223).

The fact remains, however, that even when this “reflexive” stance is adopted, research involving the views of young people remains fraught with significant ethical issues and access-related problems (Mischna *et al.*, 2004:450; Wilson, 2006:186; Alderson, 2007, Young and Barrett, 2001:133).

#### **4.11 The Impact of Research Ethics Governance on the Design of this Study**

In recent years, according to the Social Research Association’s Ethical Guidelines (December, 2003:7), ethical considerations have “come to the forefront...partly [as] a consequence of legislative change in human rights and data protection, but also as a result of increased public concern about the limits of inquiry.” The primary function of research ethics is to ensure that participants are not harmed as a result of their participation in research (Gelling, 1999; Young and Barret, 2001; Lowman and Palys, 2001; Noaks and Wincup, 2004).

The effects of ethics governance upon research projects is thoroughly documented in the literature (Crow *et al.*, 2006; Alderson, 2007), and the development of prescriptive ethically-grounded research practices as a prerequisite to obtaining research ethics approval had a major effect on every aspect of this research project.<sup>28</sup>

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<sup>28</sup> For a fuller discussion of research ethics guidelines and their effects on research initiatives see Appendix Five.

One commonly cited complaint against seeking research ethics clearance, according to Crow *et al.* (2006:85) “relates to the...delay this can cause.” Securing approval from the University, Kent’s County Council Research Ethics Board and the Warwickshire’s County Council Research Governance Board, proved time-consuming and overly bureaucratic. While some overlap existed between the information that these bodies were requesting, there was no standardised format for submissions. Some of these institutional bodies also requested separate application procedures, original copies of all documents and clearance from the Criminal Records Bureau. A risk assessment also had to be submitted to the University before being issued with the relevant insurance indemnity forms.<sup>29</sup>

The bureaucratic demands made by ethics governance may increase research costs and deter researchers from investigating certain social groups. In effect, “the desire for clean research” might hamper researchers “from getting ‘up close’ and result in a failure to gain insight into the lives, motives and experiences of people on the margins, or in situations involving risk” (Alderson, 2007:2273).

#### **4.11.1 Informed Consent**

The principle of informed consent provides that potential research participants should be provided with “clear and unambiguous information about the

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<sup>29</sup>Risks in research must not only be considered from the point of view of participants. Due regard must also be paid to potential risks in relation to third parties, such as the supporting institution or other individuals. A discussion of this issue was considered to be outside the province of this study.

purpose and nature of the particular research study, in order that they can make choices about participation” (Edwards and Alldred, 1999:266).

In this study, consent to participate was documented following the format for consent forms suggested by the Central University Research Ethics Committee (CUREC).<sup>30</sup> The documents contained a brief outline of what the study was about, the recruitment criteria and what participants would be asked to do. As gatekeepers to the research population, the research ethics committee and the YOTs had their own requirements as to what the recruitment documents must contain, and played a major regulatory role in the manner in which the information sheets and recruitment posters were worded and presented. Apart from the title itself, for instance, CUREC also insisted that these documents had to have the University logo. This was a source of concern as the use of the University Logo could prove to be a double-edged sword, opening doors because of the project’s association with the University, and perhaps closing others by deterring potential participants precisely because it is an ‘Oxford University’ project.

Another source of concern was the possibility of overloading participants with information which they might have found daunting, especially given that according to the academic literature available, the literacy level for the sample would be five years below that of their chronological age (Audit Commission, 2004:81):

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<sup>30</sup> See Appendix Six.

The provision of information about a project is an important part of ensuring that prospective participants in research are informed enough to know what participation in a research project will entail while, at the same time, avoiding providing information in such a way that it would put people off participating (Wiles *et al.*, 2007: Para 3.1).

In the light of these considerations, the study's documentation had to be written in a jargon-free, easy-to-understand and non-patronising style.

Perhaps, however, the greatest source of concern stemmed from the joint effect on participant behaviour of the information sheets (see Appendix Seven), consent forms<sup>31</sup> and the ethically-approved *in situ* protocol which CUREC insisted had to preface the interviews. The preamble to the interview seemed to run contrary to the essence of the study which was to *listen* to young offenders' views. The procedural requirements imposed on this investigation, translated into a number of ponderous opening moves before interviewing could begin. At this juncture, the researcher, who is supposed to be seeking the knowledge, issues instructions, has all the answers and is in total control. The participants who possess the knowledge being sought after are restricted to a passive role in the turn-taking moves. Their contributions are almost inevitably reduced to monosyllabic responses, ticking boxes and head-nodding gestures to confirm that they are following what they are being told or asked to do.

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<sup>31</sup> As part of its drive for carefully documented research practices, ethics governance boards are increasingly expecting that signed consent will be obtained from participants. The perceived advantages of using signed consent forms, according to Wiles *et al.* (2007:Para.3.15.) are that "they increase the likelihood that participants understand what participation will involve and what their rights are in relation to participation and issues of confidentiality and anonymity." Another advantage is that they "protect the researcher from later accusations from study participants" (Wiles *et al.*, 2007:Para.3.15).

The pitfalls of obtaining informed consent are well documented in the literature (Wengraf, 2001; Crow *et al.* 2006). In their work, Miller and Boulton (2007:226) refer to “the increasingly complex, multi-faceted and messy dimensions of research encounters which cannot, and should not, be shackled by overly prescriptive informed consent requirements.”

In spite of the strategies put in place to avoid the effects of “what can seem unnecessarily bureaucratic procedures” (Crow *et al.*,2006:90) on these research encounters, introductory comments to secure informed consent were often met with a series of mechanical “Yeah, I know” type responses that did not suggest much by way of respondent-motivation at this juncture. Although none of the verbal responses were negative, body language and facial expressions often suggested a certain degree of apathy towards these initial proceedings. The reaction of some interviewees offers further empirical evidence of the research experiences reported by (Crow *et al.*, 2006:88) who report that “the development of the rapport necessary for the collection of authentic data; and that the quality of the data collected suffers as a result of the practical arrangements for gaining consent”.

#### **4.11.2 Confidentiality**

Having obtained consent, there were still issues of confidentiality which also shaped the information-gathering process. Although assurances must be given to

research participants about the confidentiality of the interview, ethics boards insist that the duty of confidentiality is not absolute:

there must be limits to any guarantee of confidentiality or anonymity in situations where child protection is an issue (Williamson *et al.* 2005:404).

As Feenan (2002) has noted, the potential for a conflict of interests regarding the information obtained is evident. It was therefore vital that the exceptions to assurances regarding confidentiality were made clear to participants from the outset. Had any of the interviewees forwarded information which could involve child protection issues, they would have been encouraged to discuss these matters with their personal YOT officers. All participants were given an information leaflet and additional details on sources of support and advice (see Appendix Eight).

#### **4.11.3 Ethical Considerations**

One of the preliminary steps taken to secure research ethics approval included an assessment of any potential risks to participants. The investigation of young offenders' views of community punishment could be an emotive and sensitive topic for participants, insofar as contact with the youth justice system can be a stigmatising experience, and some individuals may feel uncomfortable sharing their views on their respective sentence(s).

The risk of upsetting young offenders was a major consideration during the design stages of the interview schedule and only ethically approved practices were employed. The dissemination of the project's information documents, for example, minimised so-called 'potential by explaining the nature and purpose of the study to participants. They were also told about the confidential nature of the interview sessions and the anonymisation of findings. None of the subjects were coerced into participating, and all of them were repeatedly given the choice to decline responding to questions they might find disagreeable. Participants were also given the choice to withdraw from the study at any stage of the proceedings, and were reassured that there would be no adverse consequences should they decide to do so.

All the interviews were carried out in premises which were under the auspices of the eight YOTs that participated in this study. Paying heed to the recommendations made in the literature (Hazel, 1995; Hill, 1997, Barker and Weller, 2003) in relation to the setting(s) selected for fieldwork involving young people, every attempt was made to ensure that the interviews were conducted within open view of others, yet in a location which afforded the privacy needed for collection of confidential information.

All participants were individually thanked for their time and effort.<sup>32</sup> The importance of ending sessions on a positive note is documented in the literature

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<sup>32</sup> In order to attract participants and offer them a token recognition of their contribution (see Ward, 1997; National Children's Bureau, 1993), all interviewees were entered into a draw for HMV shopping vouchers. The decision to use incentives was grounded on the advice provided by the literature (Wiles *et al.*, 2007). Vouchers were handed out to winners once field research had been completed.

(Wengraf, 2001; Clark, 2005), and all participants were invited to add their own comments at the end of the interview. This proved to be an effective technique with which to address power imbalances. The analysis of the interview scripts revealed that this handing over of the turn-taking moves in the discourse elicited very interesting responses. This experience confirms Wengraf's (2001:205) observation that if the researcher avails the subject of this opportunity, he or she "may find a whole new area of information emerging quite at the end."

#### **4.12 Recording/ Taking Field Notes**

The use of a digital audio recording device freed the researcher from clerical duties and provided a permanent bank of reviewable information for subsequent analysis.<sup>33</sup> The audio recordings were complemented by field notes which contained relevant contextual information. Following Bryman's (2004:330) findings that "the use of a recorder may disconcert respondents, who become self-conscious or alarmed at the prospect of their words being preserved", the original hypothesis contained in my M.Phil thesis was that the use of audio recording devices might have a 'chilling effect' on verbal exchanges. This hypothesis has not been substantiated by the field work undertaken, and the research experience concurs with that reported by Hoppe *et al.* (1995) who found that the assumption that children might feel inhibited by the presence of tape-recording equipment was unfounded.

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<sup>33</sup> The audio quality of all but two of the forty-nine recorded interviews were considered very satisfactory. Even then, very little material from these two interviews was discarded.

Forty-nine out of the fifty individuals interviewed showed no signs of discomfort in either their verbal or non-verbal behaviour to my request for permission to record the interview.<sup>34</sup> Significantly, a number of them were quite interested in finding out more about the recording device itself, it being small and discreet. The research experience does not therefore tally with the findings of Wilson (2006:188) who found “a significant number of interviewees” within his sample of offenders refusing to have their conversations recorded perhaps as a result of their “negative experiences of being recorded in police stations, and other formal interview situations” (2006:188).

#### **4.13 Transcription**

All fifty interviews were personally transcribed verbatim. The total number of words transcribed amounted to 263,240, with each interview averaging approximately 5,265 words. The average time taken to transcribe each interview was approximately two hours and fifteen minutes.

Although time consuming and laborious (Bertrand *et al.*, 1992), the process of personally transcribing the interviews verbatim was prompted by a series of methodological concerns. This approach was deemed a more reliable and consistent

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<sup>34</sup> The young person's decision not to allow the interview to be recorded was accepted, and no attempt was made to coerce him to change his mind. Provisions had already been made for such an eventuality, and with the young person's permission, contemporaneous notes of what was said were taken with a view to having a body of reviewable information for later analysis.

approach than selective transcription of 'relevant' issues raised by interviewees. This wholesale recompilation of information avoided cherry-picking by the researcher and perhaps allowed for themes which might have initially gone by undetected to emerge from the transcripts.

The production of verbatim transcripts places the researcher in an advantageous position. In the case of this study, the process of reliving the content of the interviews enabled this researcher to develop a more in-depth understanding of the information obtained, and could be said to have constituted the embryonic stage of the analysis (Lapadat and Lindsay, 1999).

And yet the research literature often fails to engage critically with the issue of transcription in write-ups and reports beyond a brief statement to the effect that interviews were recorded and subsequently transcribed. In this sense, Lapadat *et al.* (1999:64) are correct in their assertion that "methodological and theoretical issues associated with the transcription have received scant attention in the research literature." This could be considered an important oversight, one which becomes more poignant when we consider that "all transcription is representation, and there is no natural or objective way in which talk can be written" (Roberts, 1997:167-168). According to Burman *et al.* (2001:454-456), therefore, "[f]or marginalized (and private) voices to be heard and communicated as public knowledge, there must be an engagement with the issue of interpretation." It is this researcher's view that the validity of any transcript-based interpretation acquires weight in proportion to the accuracy with which what was said is transcribed within its full context.

While every effort has been made to record transcripts faithfully and to interpret the content of all exchanges accurately, the fact remains that for all their literal accuracy, transcripts will never be able to capture the full experience of an interview session. Transcripts do not normally take into account the use of paralinguistic gestures and other kinds of body language which may have preceded and accompanied a particular utterance. If, as Seymour (2001:156) believes, “[t]he complex dimensions of voice production, facial movement and expression add deep layers of meaning to human communication”, most of this ‘deeper meaning’, will invariably be lost with the use of interview transcripts. Researchers must grapple with a series of issues during transcription, including the ones identified by Bird (2005:241): “the issue of two people talking at once, the interruption of one speaker by another, and the difference between a brief pause and a lengthy moment of silence by...a speaker”. Equally important is the issue of the tone in which an utterance is delivered. Tone is oftentimes critical to meaning, and in this respect, the researcher must strive to capture this, normally using square brackets, in order to document what the interviewee was trying to communicate.

In this respect, the risk that information acquired from interviews may be interpreted from a purely linguistic perspective is also a very real one. Kvale (1996:182) highlights the importance of context in any analysis of speech by urging researchers and readers not to conceive of interview transcripts as literal scripts, but as “living conversations”. Unfortunately, this is a feature which is often overlooked in analyses and the presentation of data acquired from interviews. Given the

importance that context has in both framing and shaping meaning, the use of quotations and excerpts in academic as well as other works such as the printed media seems inescapably problematic:

It is a central property of ‘well-formed’ sentences that they can stand by themselves. One can be pulled out at random and stuck on the board or printed page and yet retain its interpretability, the words and their order providing all the context that is necessary. Or so it seems (Goffman, 1981: 30).

The importance of contextual influences shaping understanding means that a de-contextualised statement may arguably acquire an entirely different meaning to that which was originally intended. In *Forms of Talk* (1981), Goffman refers to the widely held “assumption that bits of conversation can be analyzed in their own right in some independence of what was occurring at the time and place” (1981:32). He defines this as the “sins of noncontextuality” (1981:32). The importance of setting research findings in the wider context in which they were generated is critical if their validity and reliability are to be secured.

#### **4.14 Analysis**

The point has already been made in Section 4.13 that preliminary analytical work on the qualitative information obtained commenced while transcribing the interviews themselves. The subsequent manual coding of interviewee responses was followed by a systematic process involving the close reading and meticulous annotation of each individual transcript in preparation for analysis.

The very nature of the research questions underpinning this study, however, also necessitated a second level of analysis. The intention was to examine the qualitative information obtained on young offenders’ perceptions of the communicative dimensions of the three inter-related stages of the criminal justice process within the broader framework of relevant research findings and theoretical issues already identified in Chapters Two and Three.

In order to facilitate the process of collating and organising the information obtained, a qualitative computer software programme (QSR NVivo 7) was employed. Initial misgivings about the use of a software programme to process qualitative information were assuaged by extensive research into the use of these programmes;<sup>35</sup> attendance to an induction course on the use of the programme, and a prolonged trial period with preliminary material obtained from the piloting stages of the interview schedule.

The first wave of ‘electronic’ coding for this project involved the categorisation of question-specific responses under headings or nodes.<sup>36</sup> The use of NVivo facilitated the organisation of potentially important themes and patterns

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<sup>35</sup> There is an extensive debate regarding the appropriateness of using software packages to *analyse* qualitative information that is beyond the remit of this study (see for example Dohan and Sanchez-Jankowski, 1998; Richards, 2002; Welsh, 2002; Gilbert, 2002; Crowley *et al.*, 2002; Walsh, 2003; Bringer *et al.*, 2004; Wong, 2008). The use of software packages such as NVivo meets the approval of Wong (2008:14) who notes that “the use of software specifically designed for qualitative data management greatly reduces technical sophistication and eases the laborious task, thus making the process relatively easier.” In their research work, both Bringer *et al.* (2004) and Dohan and Martin Sánchez-Jankowski (1998) commend the use of these programmes in qualitative research.

<sup>36</sup> For the sake of clarity, nodes represent ideas and concepts which are present in the information being processed. Nodes may be linked together as tree nodes in order to categorise different ideas or concepts under the same heading.

which had already emerged from the two tier approach to the analysis of the interview transcripts outlined above. As an organisational aid, the software package helped to establish connections between phrases and *leitmotifs* which appeared in relation to specific questions contained in the schedule.

Interview responses were categorised thematically. Categories for the responses were pre-established in the case of closed questions which offered interviewees a range of predetermined responses. There were numerous instances, however, where interviewees refrained from using any of the pre-selected response options which were offered to them. This is an interesting finding as the intention behind pre-selected responses was to make answers easier for interviewees and to facilitate coding. A speculative explanation for respondent behaviour in these instances might lie in the fact that young people may have preferred, as Graham *et al.* (2007:33) discovered in their research “to give what they called their own views, to answer in their own words, to raise issues that were important to them and to elaborate and explain their response.”

For the purposes of this research project, no upper limit was set as to the number of potential sub-categories which responses to open-ended questions could have. While every attempt was made to create subsidiary node categories which were mutually exclusive, there were numerous instances where the textual analysis carried out meant that the responses provided could be categorised under two or more subsidiary nodes. In these instances, the relevant excerpt from the interview was coded at the different nodes where it could justifiably be placed. This approach

was adopted throughout the entire analysis, and as a result, the sum of the number of responses collected for each specific question need not always tally with the total number of interviewees who provided a response to that self-same question. On occasions, this meant that a particular response was coded at more than one node. The fact that the research project is exploratory and concerned itself with themes and trends emerging from the interviews, and in particular, how these relate to the wider communicative sentencing literature, means that numerical corroboration of the quantitative kind is not a strict prerequisite to the identification and analysis of these.

The use of the software package was advantageous not only as an organisational tool, but also because it expedited “complex Boolean (e.g., and, or, less, not) searches that would be extremely complicated, if not impossible, using manual methods” (Richards and Richards, 2000 as quoted in Bringer *et al.*, 2004:250). This approach allowed for the identification of similarities and differences emerging from interviewee responses and in this respect was critical as it enabled the analysis to adhere to what Silverman (2005:213) defines as the “constant comparative method”. According to Silverman this approach “involves a repeated to and fro between different parts of your data” (2005:214) and is one of the techniques he advances as a means “of thinking critically about qualitative data analysis in order to aim at more valid findings” (2005:212). Cross-comparisons between the transcripts had already been undertaken manually prior to the use of NVivo. The use of the software package allowed numerous checks for procedural consistency to be carried out in order to ensure that responses were being coded

uniformly and within the definitions assigned to each category. Cross-comparison of different node categories was undertaken with a view to examine possible overlaps between categories, and further refinement of the node names was also carried out.

Once collated into their respective node categories, the software package was used to track individual interviewee responses and to carry out sub-group analyses. Particular regard was paid to participant variables such as gender, race, current sentence and previous sentencing history. Specific interviewee responses within each of the different subsidiary nodes were analysed against the body of quantitative information obtained on each individual interviewee (see Appendix Three) in order to distil individual viewpoints and contextualise findings.

The exploratory nature of this research project and the fact that it was interested in ascertaining what young people themselves thought about their sentences and punishment more generally, disallowed the use of an automated software package. While the software facilitated the coding of the information, the automatic coding of interview transcripts was discarded on the grounds that it would lack the versatility to unpack the content of what were primarily opinion-based responses to open ended questions. Although well-suited to the identification of response-types and frequency counts, automatic coding was bound to ride roughshod over the very views that this study was interested in examining. These considerations informed my decision to employ the software package in a very selective manner. At all times, therefore, the basis of the analysis undertaken for

this study was dependent upon the systematic review of and manual engagement with the interview transcripts by this researcher as the sole investigator.

Although the use of the software package programme facilitated coding and paved the way for a structured approach to my analysis, it did not contribute to the analysis *per se*. Indeed, as Wong (2008:14-15) points out, “[c]oding and data analysis are not synonymous”, and “the computer does not do the analysis for the researchers” (2008:15). Helpful as a programme of this kind might be, its use in qualitative research remains limited:

The researcher must still interpret, conceptualize, examine relationships, document decisions, and develop theory. The computer can assist in these tasks but by no means does the computer analyse qualitative data (Bringer *et al.*, 2004:249).

#### **4.15 The Problem of Semantics**

A substantial volume of the criminological literature shies away from dealing with semantic and definitional issues involving hard to quantify and almost synonymous terms like views, opinions, perceptions. These terms define potential sources of knowledge that we all readily acknowledge, and yet, notwithstanding this fact, their definitions and boundaries remain vague, interpretational and contentious. A considerable degree of attention has been devoted by social psychologists to unpacking these concepts. The definitional analyses to be encountered in the literature, however, highlight the difficulties inherent in the

measurement of, and access to, subjective terms like attitude, for example. To Allport (1935:8), for instance,

[a]n attitude is a mental and neural state of readiness, organized through experience, exerting a directive or dynamic influence upon the individual's response to all objects and situations with which it is related.

Ajzen (1996:4), however, echoes Myers (1994:92) in defining an attitude as a "disposition to respond favorably or unfavorably to an object, person, institution, or event". This example serves to illustrate the relative futility of this semantic debate, for as Fishbein and Ajzen (1975:v) conclude, "despite the vast amount of research and the publication of countless books and articles on the topic, there is little agreement about what an attitude is". This is a view which continues to be valid, as attested by Manstead and Hewstone (2004).

The inconclusive nature of these semantic debates serves to confirm the continuing applicability of McGuire's (1969:241) conclusion that what these discussions create "is often confusion rather than clarification". This difficult task is not made any easier by the fact that perceptions, views, opinions, attitudes, and arguably experiences too, are non-observable phenomena that remain internal to the individual unless these are verbalised or written down in some form (Ajzen, 1996:2). Attempting to draw conceptual distinctions between virtually indivisible concepts like views, opinions, and perceptions seems little more than an academic exercise in semantics. These terms will therefore be used as synonyms throughout this study. The decision to proceed on this basis meets the full support of the

research literature. McGuire (1969:241) for instance, is of the view that “[u]sing attitudes as a contrast term to opinions, beliefs etc., scores poorly”. He concludes that distinctions between these terms “are to be made only in so far as they make a difference such that the distinguished variables relate differently to the variables of interest” (1969:241).

The difficulties identified in the semantic debate are compounded by the inherently subjective nature of offenders’ views and the elusive task of trying to capture the “authentic experience unmediated by interpretation” (Burman *et al.*, 2001:454). These problems may go some way towards explaining the neglect of their perspectives in the literature. Ainsworth (1999:162) is correct in his assertion that “perception is not an objective process but rather is a subjective and individual one”, and therefore investigative work into this area of research must come to terms with this fact. Undoubtedly, any attempt to grapple with elusive subject-generated information is bound to be problematic, and what is therefore required is an informed understanding of the processes and influences that have shaped the young offenders’ experiences.

#### **4.16 Static and Dynamic Influences on the Views People Hold**

Critical to any research initiative in the field is a clear awareness that offenders’ perceptions of punishment are inextricably context-bound. This section

will offer a brief account of the static and dynamic influences identified in the literature as correlates of young offenders’ views of punishment.

Age, for instance, has been singled out by academics as an important correlate of understanding (McIvor, 1992; Heggie, 1999; Dodgson *et al.*, 2001; May and Wood, 2005). If the compilation of views is a difficult task because these are neither immutable nor consistent through time, the complexities of carrying out qualitative research into young people’s views is compounded by their age: “Commonly referred to as adolescence, it is a period characterised by uncertainty” (Graham and Bowling, 1995:2). And while age offers a very convenient analytical framework within which to obtain and process data, chronological age does not correlate with subject-maturity. If experience and knowledge are the formative elements shaping an individual’s point of view, it would be reasonable to assume that variables such as the subject’s maturity and educational background could make identical experiences appear to be qualitatively different.

According to the literature, another correlate of understanding is personal experience with the criminal justice system (Morgan, 2002). According to Alpert and Hicks (1977:472-473), for instance, a “fairly strong relationship exists between prior criminality and attitudes toward law and the judicial system”.

Gender is also identified in the literature as another correlate of understanding (Gainey and Payne, 2000; Burman *et al.*, 2001; Smith, 2003). There is widespread recognition that “[f]or girls and young women, the experience of the youth justice system is, indeed, different” (Smith, 2003:123). With the exception of a number of studies on young female offenders (Burman, *et al.*, 2001; Geiger and Fischer, 2003; Bell and Owers, 2004; Sharpe and Gelsthorpe, 2009; Arnall and Eagle, 2009), little academic attention seems to have given to the more specific issue of how they perceive penal messages. To date, research into offenders’ views of punishment has tended to be gender skewed, a bias which is unsurprising because the majority of offenders are males: “while young women routinely commit minor offences, serious and persistent offending is an almost exclusively male preserve, among juveniles as among adults” (Graham and Bowling (1995, quoted in Lobley and Smith, 1999:47). Addressing this neglected area of offender-attitudes and delimiting research findings against a clearly defined gender-based context would make our current understanding of punishment far more accurate and discerning.

The effects of race-related variables have also been identified as a correlate of how punishment is viewed. Drawing from the wider literature, it is clear that discrepancies exist in relation to general perceptions of the criminal justice system, with “[w]hites express[ing] considerably more confidence in the police, local court system, and State prison system than blacks” (Sherman, 2002:2). A similar finding is reported by Alpert and Hicks (1977).

In its general analysis of attitudes towards punishment, the literature has also identified numerous socio-cultural factors, such as marital status, employment, social class and education as influential variables affecting offender perceptions (Toby, 1964; Petersilia, 1990; Petersilia and Deschenes, 1994; Gainey and Payne, 2000; Searle *et al.*, 2003; Delens-Ravier, 2003; Sullivan, 2004; Wood and Viki, 2004; May and Wood, 2005).

Although the literature reviewed has shown that offenders' views of punishment are subject to numerous different personal and social influences, any attempt to establish a causal relationship between influential variables affecting views and views themselves is fraught with difficulty. The point, however, has already been made in Chapter Two that subjective perceptions are critical to an improved understanding of punishment. In this context, the inevitable subjectivity of the indicia which can be used is not overly disadvantageous, and might be just what is required. A clear and informed understanding of the static and dynamic influences which shape offenders' views of punishment, and an awareness of the practical limitations of a study of this nature, remain critical to a scholarly attempt at understanding young offenders' views of punishment. In order to avoid reporting on the sample indiscriminately as if it were a homogenous group, and to explore the individual views of punishment held by participants, the study has sought to contextualise its findings by drawing upon the information available on each interviewee (see Appendix Three). It has also, where possible, undertaken subgroup analyses to explore how particular experiences may have perhaps shaped the participants' perceptions.

The next three chapters provide a detailed analysis of the information gathered from the 50 semi-structured interviews. These chapters will focus on what young offenders themselves have to say about penal messages and analyse these views in the context of the extant literature on communicative theories of sentencing. The 'communicative enterprise' of punishment will be analysed from the three distinct stages of the criminal justice process identified in the Introduction. Because of the thematic concerns of this study, the structure of the analysis did not always follow a chronological or sequential review of the questions in the order contained in the interview schedule.

## **Chapter Five: The Imposition of the Sentence, Part I**

This chapter examines the implicit and explicit penal messages perceived by adolescent offenders during the imposition of their respective sentences. The opening two sections analyse participant comments on their most recent courtroom experiences and the extent to which they had understood sentencing proceedings. Sections 3 and 4 explore interviewee perceptions of the penal messages issued by the court and their views on the censorious messages conveyed during sentencing. The discussion then focuses on the purposes participants ascribed to punishment. The intention is to explore the relationship between the penal messages communicated by the court and the aims which defendants believed their sentences served. The closing two sections of the chapter examine participant perceptions of the deterrence-based messages conveyed during sentencing, and their assessment of the quality and the clarity of the information provided by the court.

Throughout the Analysis chapters, the following referencing system will be adopted when including citations from individual interviewees: [YP Identification Number/Current Order/Length of sentence in months]. The table below shows the abbreviations used to represent the sentence(s) interviewees were serving at the time of interview.

**Table 1: Abbreviations used for sentences.**

<b>Abbreviations used for Sentences:</b>	
APO	Action Plan Order
CPRO	Community Punishment and Rehabilitation Order
CRO	Community Rehabilitation Order
CRO + ISSP	Community Rehabilitation Order and ISSP
DTO	DTO
RO	Referral Order
RepO	Reparation Order
SO	Supervision Order
SO + ISSP	Supervision Order and ISSP
SO with SA	Supervision Order with Specified Activities

## 5.1 The Courtroom Experience

Question 6(a) of the interview schedule was an open-ended question which invited participants to share their most recent experiences in court. Interviewees, however, did not always adhere strictly to the demands of the question, and often proffered an unprompted and almost chronological review of their previous courtroom experiences.

The most common court experience reported by seventeen of the forty-nine participants who provided a response to this question was fear. While some respondents noted that their fear during their hearing stemmed from an aversion to specific sentences, particularly imprisonment, most of the interviewees attributed this fear to not knowing what was going to happen to them:

Quite scary.....'Cause you don't know what you're going to get really [6/APO/3].

I get scared when I go to court, I admit it, because you do not know what's going to happen [47/CRO+ISSP/ 12].

Although seventeen respondents reported experiencing fear the last time they were in court, it is perhaps more significant that the remaining thirty-two participants who provided an answer did not. Sub-sample analyses of the available sentencing histories suggests that interviewees who experienced fear had fewer convictions than those who did not experience fear. While taking into account the fact that court-based appearances need not always result in a conviction, it seems reasonable to suggest that this finding might denote an 'experiential effect' which will likely impact upon the communicative dimensions underlying the punishment process. If deterrence is grounded on the principle that punishment, and arguably the process of its imposition, aims to discourage people from offending, the fact that 65% of respondents did not experience fear the last time they were in court may suggest that the process may be failing to transmit the serious messages it purports to communicate. Viewed from a broader sentencing perspective, this lack of fear suggests that either the court, or more to the point, the severity of its sentences, might not command the kind of weight and respect necessary to impress upon young offenders the seriousness of their actions and the gravity of the situation they might find themselves in.

The analysis of the interview transcripts suggests that when it comes to appearing in court, offenders are primarily concerned with the outcome and not the process:

You're under a lot of stress in there 'cause you don't know what's gonna happen to you. That's about it, that's all you think about [4/CPRO/12].

Faced with the prospect of a court-imposed sentence, it is perhaps natural that adolescent offenders should be concerned with the sentence they could be facing, but their exclusive focus on the final outcome could mean that the courts' ability to transmit penal messages might be restricted to the moment of sentencing. In other words, the didactic dimensions often ascribed to a court appearance could be limited to the verdict:

I didn't really listen sort of after I got my, after I got sentenced, like they said two months out and, like I've got two months in and two months out, they said you have to serve twice a week at YOT and that sort of thing. I just sort of, once I got that, I didn't want to listen [35/DTO/4].

The influence of the courts upon adolescent offenders might be further weakened by the fact that offenders' almost exclusively outcome-based interest is founded on a perception that the punishment might not accord with the sentence they expected. It is significant that in their accounts, ten respondents made reference to the fact that they had expected to receive considerably harsher sentences, and that not being sent to jail was viewed widely as "a bonus" [47/CRO/12]. An analysis of the characteristics of respondents within this sub-sample revealed that the average number of previous convictions (n=6) was higher than that for the overall sample of interviewees (n=4; see Section 4.6). While not necessarily significant in isolation, a close analysis of these interviewees' accounts

revealed a widely-shared perception that their behaviour had crossed the custody-threshold:

I really, really thought I was getting custody, I did. I thought I was 100% getting the custodial, but then when they come in and said do you realise how lucky you are, I was just happy [47/CRO/12].

The findings regarding the manner in which these young offenders view their punishments as benevolent in the light of the sentences they thought they could have received, are congruent with the literature reviewed in Section 2.5:

Um...they could have sentenced me further for what I'd done. They let me off lightly because I haven't had much trouble in the past and they just gave me one more chance before they do take it further [40/RO/6].

Yeah, I was expecting 8 months but I was told do 6, 'cause I had assault on a police officer, breach of ASBO twice, criminal damage, I had quite a few things on it. Then I got six months for each one, and then they run it current. So I was pissed at the end, but happy on the other side [21/DTO/6].

The second most frequently-cited experience noted by thirteen respondents to this question was that being in court was unpleasant: "It was horrible" [45/CRO/9]. Other, less frequently-cited responses dealt with issues concerning procedural matters during the imposition of the sentence with four respondents making reference to the fact that they felt the process was lengthy, and a further three interviewees reporting that they found the process boring. Having to wait around to be called into court was also singled out by two respondents as unpleasant, with a further two expressing anger at how their case kept on being re-adjudged to a later date:

I don't actually like going to court. It's like 'cause I was on trial for about six, seven months because they was thinking me of sending me to prison. So I was like always dressed smart, standing there, thinking 'oh no, what's going to happen'....I was scared about it [27/SO/12].

These subjective assessments of the nature of the courtroom process may have implications for the effectiveness with which penal messages are conveyed to adolescent defendants, especially if they find the process boring and unengaging: "Really, mostly you just sit there and let the solicitor do the work" [4/CPRO/12]. If such experiences are common, then the learning opportunities are likely to be minimal.

The findings yielded by the interviews on the effectiveness with which the act of appearing before the court implicitly communicated messages of either censure or disapproval to adolescent defendants proved interesting on a number of levels. Nine respondents (five males and four females) considered that their experience in court served to drive home the reality of what they had done: "It made you realise what you, what you've done" [46/CRO/6]. The courtroom experience may have, in some instances, set in motion a process of introspection:

I felt really intimidated when I was in court. Actually, it made me sort of realise what I had done. I didn't realise before, but until I went there [23/RO/6].

'Cause I hadn't been to court before um, and I knew that what I'd done was wrong and it was a serious offence and it just sort of shook me up a bit when I went into court [36/RepO/6].

Other responses to this question suggest that the courtroom experience might make defendants want to refrain from offending. Eleven respondents who, having been before the court signalled their intention not to reoffend, with some interviewees expressing their desire not to want to appear before the court again: “Not a very good experience. I’m definitely not going to do it again” [7/APO/3].

Although a favourable reading of these responses might suggest that appearing before the court may instil in offenders a sense of what they have done, and in some instances, encourage desistance, an objective review of the information obtained suggests a markedly different reality. Significantly, twenty-three respondents felt that appearing in court did not drive home the significance of what they had done, nor did it make them feel any more aware of their offending behaviour. Although they resented being put through the process, only three respondents, two of whom had only one previous conviction, admitted feeling intimidated by it:

It was not nice, I felt very intimidated because they read out like statements and things and they were very negative towards me and I didn’t feel that everything in the statement that was read out was true...[23/RO/6]

Offender responses also revealed that the intimidating effect of facing the courts diminishes considerably with every appearance:

First time, it was scary, ‘cause you stood in front of three magistrates and you don’t know what to say. But, I’ve been in court about six times [2/SO with SA/24].

Seven respondents reported that they had extensive experience of appearing in court (confirmed by an analysis of their respective sentencing histories) and referred to their most recent experience in routine terms because “[y]ou get used to it after a while” [34/SO+ISSP/9]. Five interviewees considered that their last time in court was “alright”. These findings suggested a very evident ‘experiential’ effect:

Oh, um, it was just normal really sort of thing, ‘cause I have been in court quite a lot so like, I’m used to it. When I first started going to court I was a bit nervous and that and then ‘cause I’ve been in court quite a load of times, so it’s just like another day really sort of thing [35/ DTO/4].

When you’re young, you get scared...you don’t know what’s happening. Like me, when I go to court now, I don’t care. But the first time I went in, I was shitting myself [47/CRO+ISSP/12].

These responses seem to confirm Zedner’s (1998) supposition that many young offenders may fail to be impressed by the majesty of the law. Whether this finding is the product of the individual’s age-related comprehension skills, as Zedner (1998) hypothesises, remains debatable. It is significant, however, that the information yielded by the interviews offers empirical evidence of the relationship between the participant’s degree of experience within the youth justice system, and the impact which appearing before the court has upon that individual. If the process of imposing the sentence upon adolescent defendants is intended to be communicative, those disseminating penal messages should be aware that the effectiveness of the process is greatly weakened in instances where the defendant has had previous experiences of the system.

There may be strong policy arguments in favour of the courts retaining responsibility for the imposition of sentences as in some instances this drives home to the young person the reality of what has occurred and may encourage desistance. These outcomes, however, only seem to have occurred in the minority of cases. In light of the evidence obtained, it seems that many adolescent offenders in the sample perceive the youth justice system as a judicial process that is cumbersome and that appears to afford defendants too many chances. While these will be important themes to emerge from responses provided by interviewees elsewhere, it is likely that the ‘experiential’ effect noted above will have a detrimental impact upon the effectiveness with which the sentencing process can impress upon young defendants the gravity of their conduct.

## **5.2 Making Sense of the Court’s Messages**

Having asked interviewees to comment on their most recent experience in court, question 6(b) sought to explore the extent to which participants had been able to understand what was going on during the imposition of their respective sentences. Already, the opening chapters of this thesis have highlighted the point that the “communicative efficacy” of the youth justice system, to borrow Sparks *et al.*’s (2000:207) term, rests upon a consonance between what is being expressed by criminal justice actors and what is understood by its intended audience. The key research question here may be formulated thus: Have adolescent offenders been

empowered with an understanding of the processes and outcomes in which they find themselves involved?

Of the forty-eight interviewees who provided a response to this question, forty claimed to have understood what was going on. Respondents in this category often limited themselves to providing 'yes' or 'yeah' responses to the question. Where lengthier statements were made, these revealed some interesting findings. It is worth noting, for instance, that the 'experiential' effect noted in Section 5.1 emerged as an important theme in relation to responses provided to this particular question. Repeat contact with the court often means that some individuals become familiar with proceedings. In the words of one interviewee with four previous convictions: "Yeah, 'cause like I've been before" [32/CPRO/12].

Other responses provided ranged from individual assessments of the complexity of proceedings, to comments about the manner in which the procedure and outcome of the hearing are explained to defendants before the court:

Yeah, it was like quite straight forward [7/APO/3].

Yeah, I understand everything. They explained it pretty well [47/CRO+ISSP/12].

Although it is encouraging that 83% (n=40) of respondents claimed to have understood proceedings, it is worth noting that "impression management" (van Heugten, 2004:215; Presser, 2004:93) concerns may have had a bearing upon participant responses. The very nature of a question which sought to explore levels

of understanding may well have prompted interviewees to convey a favourable impression of themselves. One interviewee, for instance, in a rather unconvincing attempt to show that he was undaunted by the prospect of facing the court, explained:

Yeah, yeah, yeah. I was understanding what was being said in court and everything, yeah. I understood pretty good. If I didn’t understand I would sort of like tell them I didn’t understand [9/CPRO/18].

It was interesting to find that, for all the claims made by three specific respondents to have understood courtroom proceedings, they were unable to name the specific sentence which they were on at the time of interview.

A number of interesting points may also be gleaned from the seven respondents who claimed they were only able to understand some aspects of their respective court cases.<sup>37</sup> While this group is small, the value of its contribution lies in the insight derived from the responses obtained. Participants reported that courtroom procedures were not properly explained to them. They also identified the language of the court as an obstacle to comprehension:

It’s just ‘cause the way they explain things and well, just don’t really understand what they’re saying [20/CRO/18].

Yeah, they are a bit adult-like you know...they don’t talk to you the way that you’d understand it. They say a lot of things in technical terms and you’re just like, you sit down and you’re like ‘What? I don’t understand that!’ [46/CRO/6].

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<sup>37</sup> In addition, one interviewee claimed that he was unable to understand proceedings.

The unfamiliar nature of the setting, the preponderance of adult actors and the “technical language [which] is regularly used and widely accepted as the norm” (Kalowski, 2007:4) are likely to impact directly upon the manner in which penal messages are conveyed to and understood by adolescent offenders (Smith, 1985; Hazel *et al.*, 2002; Müller and Hollely, 2003). On the alienating potential of technical language, Kalowski (2007:4) notes, “[j]udges’ use of language is crucial to ensuring litigants’ understanding of stages in the hearing.” These considerations might challenge the “two-way rational activity” that Duff (1996:32) presupposes during the imposition of the sentence.

The alienating effects of the court’s language have already been touched upon earlier in the review of the literature, and will become an important *leitmotif* in the findings of this study regarding the efficacy with which penal messages are communicated (Anderson and Pildes, 2000).

### **5.3 Identifying Penal Messages**

The vignette developed for this study (see Section 4.10) served a catalytic purpose and established a focal point for a discussion on penal messages. Drawing upon facts contained in the vignette, question 3(a) asked interviewees whether they thought the court was trying to convey a message to the defendant in the story. Question 3(b) then sought to establish exactly *what* messages participants thought were being conveyed. The primary aim of these two questions was to get participants

thinking about penal messages objectively, and to explore whether young offenders conceived of punishment in expressive terms. Questions 8(a) and (b) were deployed for the same purposes, but this time, interviewees were asked to reflect upon their own experiences. The degree of consonance found between the responses to question 3(a) and (b), and question 8(a) and (b) was such that interviewee accounts were analysed jointly and thematically.

The findings of this study confirm the broad underlying consensus identified by Sparks *et al.* (2000) regarding the fact that punishment is expressive. There was complete agreement among the forty-seven respondents to question 3(a) that the court was trying to get a message across to the defendant in the vignette. Significantly, the entire sample replicated this finding in response to question 8(a), with all fifty interviewees reporting that they were aware of the court's expressive intention in their respective cases. To date, academics like Anderson and Pildes (2000) and Skillen (1980) have argued that conceiving punishment in expressive terms represents a statement of the obvious, but their views have lacked the endorsement of empirical evidence. The importance of this research-based finding therefore resides not in its corroboration of the expressive nature of sentencing, but in the fact that it offers some empirically-generated evidence to substantiate the view that some young offenders perceive the process in these terms.

Responses provided to questions 3(b) and 8(b) regarding the penal messages communicated both to the individual in the vignette and to participants themselves can be summarised initially in tabular form. Table 2 contains the findings on the

penal messages identified by participants both in relation to the fictional scenario and *their* respective sentences.

**Table 2: Participant views of the penal messages communicated during the sentencing process (number of respondents/percentages).**

<b>Penal Message Identified</b>	<b>Question 3(b): Vignette (47 Respondents)</b>	<b>Question 8(b): Message(s) conveyed to Participants (50 Respondents)</b>
<b>To Stop Offending</b>	n=20 (43%)	n=20 (40%)
<b>To Stop Offending Or Else</b>	n=8 (17%)	n=14 (28%)
<b>Disapproval of Behaviour</b>	n=11 (23%)	n=12 (24%)
<b>No More Chances</b>	n=2 (4%)	n=3 (6%)
<b>One Last Chance</b>	n=0 (0%)	n=7 (14%)
<b>To help YP</b>	n=4 (9%)	n=5 (10%)
<b>To get help</b>	n=2 (4%)	n=2 (4%)
<b>To Teach a Lesson</b>	n=4 (9%)	n=4 (8%)
<b>Consequences to Actions</b>	n=3 (6%)	n=3 (6%)
<b>To Punish</b>	n=2 (4%)	n=1 (2%)
<b>To Behave</b>	n=2 (4%)	n=2 (4%)
<b>To scare YP</b>	n=1 (2%)	n=0 (0%)
<b>To make an example of YP</b>	n=0 (0%)	n=0 (0%)
<b>Depends on Sentence</b>	n=1 (2%)	n=0 (0%)

As can be seen in Table 2, twenty respondents who provided an answer to question 3(b) thought the message the court sought to convey to the individual in the vignette was “to stop what he’s doing” [20/CRO/18]. Regarding their specific experiences in court, twenty respondents to question 8(b) thought that the court was telling them to stop reoffending: “They don’t want you to do it again, do they?” [17/YP did not know/12].

Eight respondents to question 3(b) believed that the court was trying to convey a message to the offender in the fictional scenario which highlighted not only the need to desist, but also the consequences which would stem from further offending:

Yes, sort of warning him in a way that what he's doing is wrong and he needs to change if, otherwise he's going to get punished [40/RO/6].

Maybe trying to tell him that if he keeps doing it, he'll go to prison or something [27/SO/12].

Significantly, in their review of their own court experience, fourteen respondents to question 8(b) reported that the court sought to convey this joint preventive and deterrent message to them:

Basically that if I carry on doing crimes then it's going to be a lot worse than doing community service, go to prison and that [30/CPRO/24].

Yeah: Stop reoffending. Getting in trouble, or else they will put me away... [1/ SO with SA/18].

Although for some interviewees the preventive message was underpinned by a deterrent one, three respondents to both questions claimed that the sentencing process and the punishment itself illustrated to offenders that there were consequences to their actions:

Yeah, tell him that he can't get away with it no more and there's obviously repercussions of what he's done, consequences [30/CPRO/24].

Yeah, the courts were just trying to tell me that I what I did weren't acceptable...and they'd deal with it with harsh consequences [50/DTO/18].

These accounts seem to substantiate Narayan's (1993:181) stance on the imposition of hard treatment which he believes "serves also to remind other moral agents that these penalties are not 'empty threats'".

The importance which interviewees ascribed to preventive messages, such as, 'stop offending'; 'stop offending or else', and 'your actions will carry consequences', merits further elaboration. The qualitative information suggests the primary penal message conveyed during the imposition of the sentence by the court was a preventive one; a message which is often coupled with a deterrent threat. Given that the principal aim of the youth justice system is to prevent crime (as per Section 37, Crime and Disorder Act 1998), it is significant that those on the receiving end of the sentencing process should be cognisant of these preventive messages. This finding illustrates a degree of congruence between what policy-makers and sentencing courts aim to convey through sentencing and punishment, and what defendants perceive. Evidently, however, there is no guarantee that this awareness on the part of offenders will necessarily result in a reduction in offending. A less favourable interpretation of the findings on this issue suggests that the court enjoys only a limited degree of success in its endeavour to communicate its preventive messages. The fact that nineteen respondents failed to make reference to the implicit and explicit preventive messages underpinning the sentencing process suggests that there might be a need to revise some current practices.

The second most widely cited message which participants thought the court was trying to communicate was disapproval of the young person's behaviour. Eleven

respondents to question 3(a) felt that the court was expressing censure towards the offender in the vignette: "That committing crimes is wrong" [4/CPRO/12]. Disapproval was also identified by twelve respondents to question 8(b) as the key message the court conveyed to them personally:

Yeah, they was just telling me that I had done something really, really bad and they just basically said that my behaviour was inexcusable [23/RO/6].

Additionally, two respondents to both questions 3(b) and 8(b) thought that the penal message conveyed by the court moved beyond 'mere' disapproval, and specifically told the individual concerned to behave.

On balance, approximately one out of every five interviewees expressed the view that through sentencing, the court is expressing disapproval, and this finding goes some way towards offering empirical corroboration of the centrality which many academics afford censure within their respective conceptualisations of punishment.

Questions 3(b) and 8(b) also yielded interesting information regarding offenders' perceptions of the punitive intentions of the youth justice system. Forty-seven of the fifty participants did not perceive penal messages in punitive terms. In fact, six respondents to question 3(b) and seven of those who provided an answer to question 8(b) held the view that the court was engaged in conveying messages which aimed not to punish offenders, but to help them:

It's trying to make him into a better person [19/SO/6].

Yeah, the court was trying to tell me to get my life back on track...I think they could see that I'm...not the kind of girl that should be here [46/CRO/6].

Some other interviewees thought that the court was concerned about encouraging the young person to get help:

To tell him to probably like to get help to look after his brother so he's not getting so worked up himself, and he might not need to do what he did [43/RO/8].

It was to get me back into school, because I hadn't been to school for a year.... I have to go to school....otherwise I can get my order breached, and I'd get sent back to court [2/SO with SA/24].

Four respondents to both questions 3(b) and question 8(b) respectively identified the didactic dimension underpinning the messages conveyed by the court:

I think they're trying to help him and trying to tell him that he's done something wrong and make him learn from what he's done as well, and hopefully he should stop offending [23/RO/6].

Yeah. Like that it's about time to learn, that's why we keep on sending you to YOT and supervision orders, so I've got DTO, let's see if you like that [21/DTO/6].

This finding offers empirical corroboration of the theories advanced by Ewing (1943), Morris (1981) and Hampton (1984), insofar as some participants conceived punishment in educative terms.

The fact that overall, only three respondents perceived the penal messages during the sentencing process in punitive terms merits further commentary. On the one hand, it seems reasonable to hypothesise that when punishment and the court's

efforts are viewed by defendants as attempts to help and not just to punish them, this perception may well impact positively upon the effectiveness of the sentence. On the other hand, however, if this view is premised on a lack of respect for the court's authority, or worse still, a perception that very little will happen to them in the event of a repeat offence or a breach of their current order, then the findings discussed in this section may carry important ramifications for deterrence and desistance.

The final message identified by two respondents to question 3(b) and an additional three to question 8(b) was that through punishment the court seeks to convey an ultimatum, that the defendant will not be given any more chances. A further seven respondents to this latter question noted that the court informed them that this was their last chance:

That I've had too many chances. That is what they were trying to tell me, I've had too many chances and like, this is enough sort of thing [35/DTO/4].

They were trying to, they were giving like, it was almost as if they weren't letting me get away with it this time, as if I'd had too many chances. So yeah, they were trying to tell me that enough is enough, you can't carry on committing crimes, you will be punished [39/SO/6].

The three themes which emerged independently in response to one question, but not the other will be analysed briefly. Two individual interviewees claimed that the message conveyed intends to scare and make an example of the young person. Additionally, one interviewee expressed the view that the message communicated depends on the sentence:

Um, well, it depends what he got sentenced to. Like if he didn't get a custodial then they're obviously giving him another chance and they want him to get a court order to come to YOT and that, and they want him to get help to stop his offending [35/DTO/4].

With the exception of this interviewee, respondents to question 3(b) did not discriminate between the penal messages conveyed by the punishment process generally, and those transmitted by specific sentences. If Ewing (1943), Brownlee (2007), and Duff and Garland (1994) are correct in their assertion that the expressive or communicative nature of penal messages cannot be comprehended without reference to a particular context, then the findings noted above are important. Unlike legal theorists and practitioners who are conversant with the range of different penal messages which underpin different sentences, the contextual setting within which offenders perceive penal messages is one where all sentences ultimately draw upon a set of core penal messages which are not exclusively sentence-specific. In other words, that the penal messages identified by interviewees are not the exclusive preserve of any specific sentence, but are generic to all sentences.

The analysis which has been undertaken thus far illustrates what may be defined as a degree of thematic congruence between the messages identified by participants at a general level and those messages which had been directed at them while their cases were being heard in court.

## 5.4 The Expression of Censure as a Penal Message

I knew it was wrong anyway, but someone telling me, that’s higher than me telling me that it was wrong, I think it sunk in a bit more [46/CRO/6].

As noted throughout earlier chapters, the expression of censure is widely held in the literature to be one of the main purposes of punishment. Although the analysis of how participants conceptualise ‘punishment’ will be carried out in the next chapter, this section will engage with an issue which carries critical implications for any theory of punishment which draws upon or justifies punishment in expressive or communicative terms. Are adolescent offenders moral agents “capable of understanding others’ assessment of their conduct”? (von Hirsch, 1993:10). Are they receptive to the court’s censure-based messages, and if so, what impact, if any, do these have upon individual defendants? The ensuing analysis of the responses provided to questions 11(a), (b) and (c) will discuss the manner in which adolescent offenders perceive the censorious messages conveyed by the court. The leading question and sub-questions used in this section will be analysed in tandem not only because they are linked, but also because they were recorded and coded jointly for each individual respondent.<sup>38</sup>

Question 11(a) aimed to establish whether the court had explicitly censured the behaviour of participants. Ninety-four percent of the forty-seven respondents who answered this question claimed that the court had categorically told them that what they had done was wrong. Two respondents reported that the court had not

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<sup>38</sup> The next chapter examines the communication of censure from YOPs, YOT workers as well as parents/carers themselves.

expressed censure, and one interviewee expressed uncertainty regarding whether the court had told him that what he did was wrong.

These findings endorse the importance ascribed to censure in the academic literature reviewed earlier, and reflect the extent to which the courts engage with, and convey censure-based messages. Significantly, and perhaps more pertinent to the central concerns of this study, they also illustrate participant awareness of the messages of censure and disapproval being communicated by the courts.

Question 11(b) sought to investigate the effects of court censure upon participants. Does censure, as Duff (2001:81) postulates, serve a persuasive function by making “the wrongdoer...recognize and repent his wrongdoing”? Twenty-four of the forty-four interviewees who claimed to have experienced court censure reported that being told off in court had an impact on them. Nine respondents within this sub-group reported regret about what they had done; five claimed they felt bad; four said they felt sad and upset, and two expressed guilt. Six respondents who admitted that the experience of being censured in court affected them, felt that censure drove home the reality of what they had done:

It made me feel like it was wrong, for once because normally it's just like, 'Oh, that was wrong. I'm sorry!' Walk out of there with a smile on your face. But, this time it was like, it actually hit me, I know that I was doing wrong and all this and, so I just thought, 'I've got to start behaving' [48/CRO+ISSP/6].

I already knew it was wrong, but it just made me think about it a bit more in depth about what I did and how it affects people [30/CPRO/24].

Of the forty-four interviewees who claimed that the court had expressed censure, however, ten reported that the experience had not affected them. While three individuals within this sub-group limited themselves to stating that that the court's message had no effect upon them, the remaining seven noted that they felt no different because they were already aware of the wrongfulness of their actions:<sup>39</sup>

Um, didn't make me feel anything 'cause I knew I'd done wrong [41/SO+ISSP/24].

It made me feel the same 'cause I knew what I did was wrong [37/RO/6].

Already the discussion in relation to question 11(a) made the point that the majority of participants are at least notionally aware of the messages of censure and disapproval conveyed by the court. The picture that begins to emerge from the findings discussed in relation to sub-question (b) is one in which, in the majority of cases, censure-based messages impact upon and are assimilated by adolescent defendants.

These findings seem to go some way towards corroborating Duff's (2001) opinion that censure can serve a morally persuasive function. Sub-group analyses revealed an equally interesting finding in relation to how the issue of gender may impact upon the transmission of penal messages by the court. The study found that eight young female offenders reported that the act of being censured by the court

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<sup>39</sup> Additionally, three respondents to Question 11(b) claimed they were unsure about how they felt as a result of the court telling them that what they did was wrong, with one further interviewee failing to provide an account as to how he felt. In an attempt to perhaps convey a positive impression of themselves, two respondents reported that being told what they did was wrong made them realise just how out of character their behaviour had been.

had an impact on them, a figure which represents 73% of the overall sample of female offenders interviewed for this study. Given the relative overrepresentation of female offenders who claim to have been affected, tentative conclusions might be drawn which suggest that young female offenders might perhaps be more receptive and sensitive than their male counterparts to the censure-based messages conveyed by the court.

If the expression of censure is central to punishment, the findings identified in this section may also be indicative of the relative efficacy of the sentencing process when it comes to communicating disapproval. Only a minority of interviewees reported that they had not been affected by the court's censure-based message. In the majority of these cases this was because the young person was already aware of their wrongdoing. The study has noted that in many of these instances, the court's censure may serve the purpose of heightening defendants' awareness of their conduct. This awareness, however, as will be discussed later, might not necessarily translate into a change in offender behaviour. Some interviewees, for instance, resented being made aware of what they had done and expressed the view that the court's censure can at times be counterproductive:

It's when they start looking down their nose at you...I dunno, I can take being told off, but it's when people get snotty and arsy with you, and you already know what's done, and what you done was wrong, but they're still trying to drive it in [1/SO with SA/18].

Um, it should be but not all the way through, um like as in for me when I was in court they made me feel guilty and silly, but that was it. After that, I had to do my reparation. I still felt like an idiot, but not as much as I did in court [36/RepO/3].

Whether the courts should be concerned with eliciting the kinds of responses which participants affected by censure claim to have experienced is a question that warrants further commentary. Should the sentencing process, for instance, aim to elicit feelings of regret and guilt among young defendants? While Duff's (2001) communicative theory ascribes a persuasive function to censure, von Hirsch (1993) and Narayan (1993) believe that censure should not be engaged in eliciting particular moral responses from offenders. Question 11(c) probed interviewees further on this issue in order to ascertain whether defendants thought that eliciting the kinds of responses they identified should be part of the sentencing and/or punishment process. Of the thirty-one interviewees who provided a response to this question, twenty-eight were of the view that the manner in which they felt during proceedings should be part of the process. Within this sub-group, ten respondents, the majority of whom were serving Community Rehabilitation Orders, reported that being made to feel that what they had done was wrong was an integral part of the sentencing and punishment process:

Because it, it makes you, it affects you a lot more and then you can actually sit there and think, 'Oh, I wish I'd never done that. I ain't going to do that again', and stuff like this, so [48/CRO+ISSP/6].

Because you can't do something about your life and change your life if you don't know that what you do is wrong in the first place, so you need to be able to acknowledge what you've done is wrong before you can try and solve the problem [40/RO/6].

Seven interviewees claimed that the sentencing and punishment process should aim to make defendants feel sad and bad about themselves in order for them to learn from what they had done:

Well yeah, you should because you should learn from doing it, you shouldn't do it. Like if, not everyone, like everyone that goes through here knows the meaning from right from wrong. That's the first thing you get taught when you're born, it's right from wrong [47/CRO+ISSP/12].

I think it's right because it gave me another look on my behaviour and stuff and made me realise actually I am, I was in the wrong, what I did was, wasn't acceptable so yeah, maybe it does make people think when they hear it [50/DTO/18].

According to five interviewees, defendants should be made to regret what they did, with some of these participants recognising that this approach could also have crime preventive effects:

Yeah, it helped me not want to commit a crime [31/RO/6].

‘Cause you feel more like punished for it, you know it's going to be worse next time, so hopefully it will stop people from doing it [44/RO/4].

An additional three respondents believed that young defendants should be made to feel guilty during proceedings.

These findings suggest that the majority of adolescent offenders interviewed for this study are aware of and affected by the censure-based messages issued by the courts, at least in the short term. Undoubtedly, the age-range of the sample might account for the extent to which respondents are cognisant of these censorious

messages. This fact would seem to support Zedner's (1998) argument when she identifies age, maturity and cognitive ability as important *a priori* considerations in relation to the appropriateness of a communicative theory of sentencing for young offenders.

The accounts provided by the sample as a whole reveal a mature acceptance of the emotional effects that these censorious messages should have on the defendants. In identifying that the sentencing process ought to evoke certain responses, such as repentance and guilt, for instance, these young offenders have also come remarkably close to Duff's (2001) conceptualisation of punishment as a process which seeks to elicit specific sentiments from defendants. Contrary to von Hirsch's (1993:10) assertion that censure "is not a technique for evoking specified sentiments", the findings suggest that young defendants readily accept that one of the purposes of punishment is to elicit specific moral responses from offenders. Although this finding once again corroborates the relationship between the sample's age and its ability to understand the rationale behind these messages, it does not offer empirical evidence, nor does it imply that the defendants' ability to assimilate and understand the messages conveyed will necessarily impact positively on future behaviour.

## **5.5 The Purposes of Punishment**

It's almost...a test for me because...I don't want to commit crimes, I can almost use...this is the test, because I have to go to my appointments and if I don't, I'm breaking the rules....It's

about like, controlling yourself and if you can control yourself in one environment, then why not in another. So it is sort of a hidden lesson [39/SO/6].

The empirical work undertaken aimed to investigate the purposes participants ascribed to punishment. Drawing upon the facts contained in the vignette (see Section 4.10), questions 4(a), (b) and (c) invited interviewees to think objectively about the purposes of sentencing. By contrast, question 9(a) asked interviewees about the purposes they ascribed to *their* respective sentences. Already, the study has found some degree of consonance between the messages participants believed the court was trying to convey to the individual in the vignette and those communicated to them personally while in court. The responses to questions 4 and 9(a) on the purposes of sentencing also revealed a similar degree of consonance and for these reasons they will be analysed jointly and thematically.

Responses to questions 4 and 9(a) can be summarised in tabular form. Table 3 contains the findings on the purposes of sentencing identified by participants both in relation to the sentence in the fictional scenario and the purposes they ascribed to *their* respective sentences.

**Table 3: Participant views of the purposes of sentencing (number of respondents/percentages).**

<b><u>Purpose Identified</u></b>	<b><u>Question 4: Vignette (48 Respondents)</u></b>	<b><u>Question 9(a): Participant's Sentence (42 Respondents)</u></b>
<b>Prevention of Crime</b>	n=27 (56%)	n=14 (33%)
<b>General Deterrence</b>	n=5 (10%)	n=0 (0%)
<b>Specific Deterrence</b>	n=4 (8%)	n=7 (17%)
<b>To help</b>	n=15 (31%)	n=1 (2%)
<b>To keep offender busy</b>	n=2 (4%)	n=0 (0%)
<b>To teach a lesson</b>	n=6 (13%)	n=3 (7%)
<b>To Punish</b>	n=5 (10%)	n=1 (2%)
<b>To pay back for the offence</b>	n=3 (6%)	n=0 (0%)
<b>To convey disapproval</b>	n=2 (4%)	n=2 (5%)
<b>Consequences to actions</b>	n=1 (2%)	n=1 (2%)
<b>Protection of the public</b>	n=1 (2%)	n=1 (2%)
<b>Depends on the sentence</b>	n=2 (4%)	n=0 (0%)
<b>Rehabilitation</b>	n=1 (2%)	n=0 (0%)
<b>Last chance</b>	n=0 (0%)	n=5 (12%)
<b>No more chances</b>	n=0 (0%)	n=2 (5%)
<b>Because of previous convictions</b>	n=0 (0%)	n=3 (7%)
<b>Because offender was present when crime took place</b>	n=0 (0%)	n=1 (2%)
<b>Unsure</b>	n=0 (0%)	n=2 (5%)

As can be seen in Table 3, twenty-seven respondents to question 4 believed that the purpose of sentencing was primarily to prevent crime: "Just to try and stop him from offending really" [46/CRO/6]. This was also true with regards to fourteen respondents who provided a response to question 9(a): "Yeah, to stop me offending" [49/RO/6]. The identification of prevention as both the main penal message and purpose of sentencing is a finding that offers empirical corroboration to the central role which von Hirsch (1993) and Narayan (1993) ascribe prevention in their censure-based accounts of punishment.

Specific deterrence of the offender was another purpose which four respondents to question 4, and a further seven of those who answered question 9(a) ascribed to sentencing:

To like put him off committing a crime again 'cause there's a punishment... [41/SO+ISSP/24].

Um...so he thinks about it twice before doing it again [44/RO/4].

Yeah, they read it [the files] about a million times sort of thing, sort of saying, 'This is enough now, and enough is enough, and next time you do that you'll be straight in' [to custody] sort of thing. So that made me think like my actions before I do anything [9/CPRO/18].

Additionally, five respondents to question 4 subscribed to the view that individual punishment carried wider implications for general deterrence: "Make other people realise, 'cause if they ask him what he's got and they say, 'Oh, just for that', then they're going to not do it themselves and that" [47/CRO+ISSP/12]. In their review of the purposes underlying their own sentences, however, none of the respondents to question 9(a) identified this general deterrent effect.

Only a minority of interviewees ascribed a punitive purpose to sentencing. Of the responses provided to question 4, five respondents believed that the purpose of the sentence in the fictional scenario was to punish the protagonist for what he had done. A further three respondents to this question reported that the purpose of the sentence was for the offender "[t]o pay back what he took from the community" [33/CRO/24].

In contrast to the findings reported by Hazel *et al.* (2002) who found that the young offenders they interviewed believed their respective orders were primarily

intended to serve a punitive function, it was significant to find that with the exception of one interviewee serving a referral order, the remaining 98% of respondents to question 9(a) did not ascribe a punitive purpose to their individual sentences. Equally important perhaps is the fact that contrary to Denels-Ravier's (2003) finding that community punishment was seen by young offenders as 'reparation', none of the respondents believed the purpose of *their* sentence was to pay back the community for what they had done. Already, the analysis of responses to questions 3(b) and 8(b) in Section 5.3 revealed that only a small number (three interviewees in total), considered the messages conveyed by the court to have had a punitive intent. The pattern which begins to emerge is that only a minority of participants viewed the penal messages as punitive, and that only a few ascribed a punitive purpose to their respective sentences.

The findings yielded by responses to question 4 and 9(a) also cast light on the dual roles of a judicial system that claims to be both punitive and rehabilitative in its intentions. The academic literature on the subject (see Fattah, 1998; Crawford and Newburn, 2002; Prout, 2003) has already been reviewed in Section 1.4, but to date, the views of offenders themselves on these "dual tendencies" (Hagell and Newburn, 1994a:6) remain relatively unexplored. Only a minority of participants conceived the sentencing process and their respective orders in punitive terms, and it is significant that according to fifteen respondents to question 4, the purpose of the sentence imposed on the individual in the vignette was to help the offender:

Um to try and realign him and get him back on the straight and narrow rather than going off and reoffending and getting into even worse trouble then [40/RO/6].

It can help with his life all round basically, just help him become more of a man instead of a thief or criminal [36/RepO/3].

An additional two respondents also noted that the aim of the sentence in the vignette was to “keep him [the protagonist] out of trouble” [46/CRO/6] by keeping him busy:

Um,...probably to give him something to look forward to 'cause if, once he's got his order finished, then he can carry on with life and it says John has had a rough time in the past few months, when he's on his order, he'll be doing something and it'll keep him occupied... [46/CRO/6].

Although fifteen respondents felt that the purpose of sentencing was to help the individual in the fictional scenario, it is revealing that only one out of the forty-two respondents to question 9(a) ascribed this purpose to his own order. In the absence of a rationale from the interviewees, it is only possible to offer a hypothetical explanation to account for this dichotomous perception regarding the potentially helpful purposes of sentencing. The discrepancy between both sets of responses may perhaps be explained by the loss of objectivity on the part of respondents when it comes to considering the purposes of their respective sentences.

The study has already reported that participants believed penal messages to be educative in intent. A similar finding emerged when participants were invited to comment on the purposes they ascribed to punishment, with six respondents to

question 4, and three respondents to question 9(a) viewing sentencing in educative terms:

To teach him a lesson sort of...Like to show him that stealing like, aint the way forward sort of [37/RO/6].

To teach him that what he’s done is wrong so that he doesn’t do it again [39/SO/6].

Punishment as ‘a lesson’ is once again a *leitmotif* present in these interviewee accounts and is a theme which Sparks *et al.* (2000) identified in their research with children as “a topic that repays close examination” (2000:199). Their investigation, however, failed to provide an empirically-grounded argument as to “precisely what this [lesson] entails” (2000:199) beyond speculating that the lesson may be “deterrent, corrective or rehabilitative” (2000:199). Taken jointly and drawing upon Sparks *et al.*’s (2000) categorisation of the three-fold educative lesson implicit in punishment, the findings of this study suggest that offenders perceive *the lesson* to be primarily deterrent and corrective in nature.

The purpose of sentencing according to two respondents to questions 4 and 9(a) respectively, was to communicate censure and disapproval:

Making sure that he knows the fact that he’s done something wrong [23/RO/6].

The purpose of the sentence is to tell him that he’s done something wrong, by showing him he’s done something wrong, but in a way so that he can turn his life around and not do it again [25/CPRO/12].

Additional purposes of sentencing identified by a small group of participants included the desire to make the offender see the consequences of his/her actions, the protection of the public, and rehabilitation.

The six themes which emerged independently in response to one question, but not the other also merit a brief commentary. Two respondents to question 4 were reluctant to state which purpose the sentence imposed on the offender in the vignette would serve without qualifying their statements. They were of the view that the purpose of the sentence is largely contingent upon the specific order imposed: “depends on what sort of stuff they give to keep him out of trouble” [41].

As was the case with the penal messages identified by participants in relation to the vignette in Section 5.3, forty-six respondents to question 4 did not express an awareness of the relationship between the intended penal purpose of the sentence in the fictional scenario and the sentence itself. Conversely, forty respondents to question 9(a) manifested a very clear awareness of this relationship whilst reviewing the penal purposes attached to their own respective sentences. The point has already been made that the general perceptions held by some young offenders mirror those held by society at large. While conversant with their own respective sentences, interviewees might neither have the knowledge nor the wherewithal to understand how specific sentences serve well-defined penal purposes in circumstances other than their own.

The final penal purpose identified by seven respondents with regards their own sentences, but not the vignette, was to give them another chance, or to inform them that they would not be given any more chances. The responses to this particular question endorsed the general view elicited by a cross-section of questions that the courts afford offenders too many chances. The study has already noted how interviewees felt that in adopting this stance, the court might unwittingly undermine the deterrent impact of its penal messages. This perceived benevolence might also jeopardise the possibility of securing other penal purposes such as retribution, rehabilitation and prevention.<sup>40</sup>

## **5.6 Communicating Deterrence**

Without exception, the forty-nine respondents to question 26 demonstrated an awareness of at least one possible penal outcome should they fail to comply with their respective orders. Thirty-four respondents claimed that a failure to comply with their orders would result in either a possible or definite custodial sentence. Thirty respondents made reference to the possibility of being taken back to court, while another eighteen believed they would receive a harsher sentence. Other responses provided by four respondents included getting arrested, getting into trouble, and the belief that their lives would be made different.

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<sup>40</sup> Finally, three of the forty-two respondents to question 9(a) believed they were given their current order because of their previous convictions, with another respondent making reference to the fact he had been given the order because he was present when the offence took place. Additionally, two respondents to this question expressed uncertainty with regards the purpose of their sentence.

Question 26 was exploratory in nature and sought to investigate whether participants' awareness of the potential consequences of failing to comply with their respective orders encouraged compliance. The causal relationship between views and behaviour remains open to contention; a willingness to comply with the order is no guarantee that compliance will be forthcoming (see McGuire, 1969; Myers, 1993 and 1994). Rather than embarking upon the complex task of compiling attitudinal, sociological or other possible variables to compare against a dependent, outcome variable (compliance versus non-compliance), this dimension of the study was driven by the following research questions: Does an awareness of the consequences of breaching orders impact upon the individual's desire to adhere to its terms? Is this deterrent effect strictly the product of an aversion to the adverse consequences which would stem as a result, or are there other factors at play which encourage compliance?

Forty-two of the forty-four respondents (95%) to question 26(c) reported that knowing the consequences of failing to comply encouraged them to keep to the terms of their orders. Only one individual believed that his awareness of the potential consequences would not dissuade him, with another interviewee feeling unable to answer the question.

Within the majority sub-group, nineteen respondents reported that their compliance was grounded on the desire to avoid imprisonment:

'Cause you know if you don't do it [comply] then you know you've got a risk of going to prison, so you'd rather stick to it than go to prison wouldn't you [12/SO/6].

If I didn't turn up to an appointment, then I would have to go back and serve like in prison, and serve the rest of my sentence, and it aint really worth it for not coming to an appointment for half an hour, or an hour or whatever [35/DTO/4].

An analysis of the current sentences being served by each of the nineteen respondents within this sub-sample revealed that five interviewees were serving DTOs while another six were on Supervision Orders. To these individuals, the possibility of a custodial sentence in the event of a breach of their current orders was a source of fear and the main reason for compliance. Their views made the deterrent value of the sentence evident. This finding may have important implications for the deterrent value of other community-based sentences which offenders may, as the public frequently does, compare with the 'gold standard' punishment that prison has become. This issue will be discussed shortly in relation to the responses provided to question 41.

Seven respondents claimed that their compliance stemmed from not wanting to appear before the court again, with a further six arguing that they wanted to avoid a harsher sentence. These responses suggest that a fear of negative consequences may encourage individuals to keep to the terms of their orders and refrain from offending. These findings also support the view that knowledge is a pre-requisite to the effective operation of the deterrence doctrine, and underscores the importance of providing offenders with an *a priori* awareness of the adverse consequences which may result from engaging in criminal behaviour:

If you go out...with lots of people that like causing trouble, then you’ve probably got more chance of causing it. But if you think about what all these lot say [YOT]...then you’ll probably not cause trouble...’cause you know what’s going to happen [4/CPRO/12].

While most offenders reported complying with their sentences to avoid the adverse consequences resulting from a breach, two interviewees admitted complying with their orders if only to get the sentence ‘over and done with’, with another expressing resignation at there being no other option but to comply: “I may as well just go to it” [30/CPRO/24]. Significantly, only four respondents claimed that they would have complied with the sentence either in order to “change my ways” [39/SO/6], become “a better person” [23/RO/6] or as an act of contrition:

I would comply anyway ‘cause I know that what I’ve done is wrong and I’m willing to face the consequences of my actions which quite a lot of people can’t do [36/RepO/3].

The study was also interested in exploring the extent to which specific sentences were effective at conveying a deterrent message. All fifty interviewees responded to question 41 which invited participants to rank the effectiveness with which a series of different sentences ( Community Service,  Imprisonment,  Being told off in court,  Fine) could communicate a deterrent message. The results obtained are illustrated in tabular form:

**Table 4: Participant views of sentences/sentencing outcomes in order of their effectiveness at conveying a deterrent message (number of respondents/percentages).**

<b>Sentences/ Sentencing Outcomes</b>	<b>Rank Order of Effectiveness</b>			
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
<b>Imprisonment</b>	n=43 (86%)	n=3 (6%)	n=2 (4%)	n=2 (4%)
<b>Community Service</b>	n=5 (10%)	n=33 (66%)	n=11 (22%)	n=1 (2%)
<b>Fine</b>	n=1 (2%)	n=12 (24%)	n=33 (66%)	n=4 (8%)
<b>Being told off in court (Judicial Reprimand)</b>	n=1 (2%)	n=2 (4%)	n=4 (8%)	n=43 (86%)

Based on the information synthesised in Table 4, the ensuing analysis will concentrate on the more salient findings emerging from participant responses. According to forty-three of the fifty respondents, the most effective sentence at telling people not to offend was imprisonment. A very broad cross-section of these respondents considered it to be the most effective sentence primarily because it keeps offenders away from their families, and makes them confront the consequences of their actions:

...if you go to prison, your mind would change, the way you think about things, um, and obviously you wouldn't want to go back, so you'd stop [30/CPRO/24].

It would have to be prison because obviously it gives you a lot of time to think in there so, it gives you time to think about your actions. So that would be most effective [39/SO/6].

With the exception of one participant, all interviewees who had either served time in prison in the past (n=1), or whose current sentence involved a custodial element (n=6), ranked imprisonment as the most effective sentence at telling people not to

offend. It might seem reasonable to suggest that in these particular instances, their first-hand experiences of incarceration have served to drive home the deterrent value of the sentence.

Thirty-three out of the fifty respondents to this question identified community service as the second most dissuasive sentence primarily because of the lengthy hours of unpaid work the order entails:

...community service would be number two though, 'cause if you get told, that's it you've got to go and do how many hours of scrubbing benches, or scrubbing walls or that kind of thing, you're gonna think, oh my god I'm gonna be stood there for hours... [2/SO with SA/24].

I would think it would be community service because they're thinking 'Oh, I've got community service and I'm not getting paid for that, so I've got to work for nothing'. So that person back then thinks 'Oh, I could have a real job, and I could be getting good money' [13/RO/12].

According to another thirty-three interviewees, the fine was the third most effective sentence: "Fine [is] third because some people can't afford it and the thought of having to pay something else might knock them into not reoffending again" [40/RO/6]. The impression gleaned from these responses is that a considerable number of interviewees were not particularly daunted by this sentence. The potentially deterrent effect of being fined did not seem to be effective in instances where offenders had already considered this possibility as part of their risk assessment. Financial reparation did not seem to have the intimidating effect associated with either imprisonment or community service.

‘Cause some people they don’t really care if you fine them ‘cause they just know their parents will pay them and then if they don’t they knew they’d go back to court and they’ll give them something else. They just don’t really care [4/CPRO/12].

Well ‘cause the fine, the fine is not really anything at all, ‘here, pay this’, done, and get it all over and done with [31/RO/6].

The empirical evidence obtained here suggests that fining young offenders has a negligible deterrent effect on their behaviour. These findings resonate with public displeasure and have implications for the use of fines as part of the youth justice’s sentencing repertoire.

The inclusion of the final option, ‘being told off in court’, sought to explore the effectiveness of the court’s censorious messages when compared to how participants rated other possible sentences. It is significant that while some academics afford a central place to censure in their accounts of punishment, forty-three interviewees thought that being told off in court was the least effective means of communicating deterrence: “it doesn’t really do anything” [43/RO/8]. When viewed against the fact that forty-three participants identified custodial sentences as the most effective penal tool for communicating deterrent messages, this finding offers empirical evidence of the relatively small contribution that censure on its own can make towards securing the preventive aims of the youth justice system, and lends support to Duff’s (2005a:138) view that purely verbal denunciations or symbolic punishments “are likely to be inadequate, since these are all too easily ignored or forgotten.”

## **5.7 The dissemination of Penal Messages**

If punishment is intended to be communicative, it is important that offenders understand not only court proceedings, but also the nature of the sentence imposed and its constituent elements. Having discussed whether participants had been able to understand proceedings during their latest court appearance, questions 7(a) and (b) sought to explore interviewees’ assessment of the clarity and helpfulness of the information provided by the court. These questions invited participants to rate this information against a range of possible options ( Very clear  Clear  Unclear  Very unclear/  Very helpful  Helpful  Unhelpful  Very unhelpful). Sub-questions (c) and (d) were open-ended in nature and asked interviewees to comment on whether the court had provided them with all the pertinent details about their order, and whether this information had been supplemented by other parties.

Of the forty-three interviewees who provided a reply to question 7(a) concerning the clarity of the court’s information, five respondents claimed to have already been aware of what the order entailed prior to the court disseminating the sentence-specific information. Sub-sample analyses revealed that in many instances, this was because they had either served the order previously or had been on one with similar requirements: “Well, I had already been on one before so I already knew” [41/SO+ISSP/24]. More significantly, however, twenty-two

respondents rated the information that the court gave them about the order before they started it as ‘Clear’, with a further seven selecting the ‘Very Clear’ option:

They go into deep detail about this sort of thing, they tell you all the...you can’t do this, you can’t do that [5/SO/12].

They explain your sentence and what you will have to do and everything, then you get sent out then that’s it [13/SO/12].

By contrast, seven respondents categorised the information provided as being ‘Unclear’:<sup>41</sup>

Er, it was unclear a bit ‘cause all they said was that I had to attend youth offenders, didn’t say what kind of work I was going to be doing here and stuff like that [37/RO/6].

They said it was, they said that I had to go on an order and that, but I weren’t quite clear about the order until I come to the order and [YOT worker named] explained everything to me [27/SO/12].

Of the forty-two responses to question 7(b) which invited participants to rate the helpfulness of the information provided by the court, twenty-two respondents thought that the information was ‘Helpful’, with one interviewee finding the information ‘Very Helpful’: “Um, yeah basically I got the basic idea of what was going on” [41/SO+ISSP/24].

A further thirteen respondents considered the information provided ‘Unhelpful’, with one additional participant noting that the information was ‘Very

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<sup>41</sup> In addition, one interviewee considered that the information provided was ‘Very Unclear’.

Unhelpful’. Of these fourteen respondents, three claimed that no information had been provided to them by the court, while another three rated the information provided as ‘Unhelpful’ because “[i]t was just the basic minimum” [39/SO/6]. The failure of the court to provide helpful information in these instances might be indicative of its reliance on secondary parties providing offenders with the requisite information about their order, an issue which the literature reviewed in Chapter Two identified already (Smith, 1985; Newburn *et al.*, 2001b; Newburn *et al.*, 2002; NACRO, 2009a). In the words of one interviewee:

I just stood there and then the judge just says the sentence and I didn’t really understand it because, obviously my solicitor had ran through what the options were going to be, but the courts never. So, it was really down to my solicitors and my YOT workers to say, ‘Look, this is what might happen’, and that, instead of the court [50/DTO/18].

In the following example, the participant seems to have had little expectation of the court providing him with details about his order, and relied on the YOT to provide him with the information at a later stage:

I didn’t really need to know it ‘cause after you go to court you come straight over here and these tell you what’s going to happen anyway so [38/SO+ISSP/16].

Another interviewee drew attention to the fact that the information did not come from the court, but from the nature of the custodial sentence itself, and the information provided by a third party:

Well, I got a custodial sentence for eighteen months, so it was, it was all a bit like mind-blowing at first....But, they made it

clear like, when, after when my solicitor came and spoke to me and stuff and made it a bit more clearer [50/DTO/18].

These excerpts, when viewed alongside responses to question 7(b), serve as an introduction to a significant issue, namely the court’s dependence on secondary parties to provide details about sentences: “It was more YOT who told me....They just sentenced me in court” [18/SO+ISSP/24]. It was interesting to find that two respondents who had rated the information as ‘Helpful’ expressed the view that the onus of explaining the sentence in detail fell not upon the court, but upon legal representatives and YOT workers:

Like the magistrates explain some of it, but it’s mostly down to the youth offending team [12/SO/6].

This supposition was confirmed by responses to question 7(d) which sought to identify which other parties, if any, interviewees may have been dependent upon for further information relating to their orders. Ten of the forty-four respondents reported that they did not feel they needed any more information beyond that provided by the court.<sup>42</sup> This finding, however, does not imply that the remaining thirty-four respondents depended exclusively on other alternative sources of information but reflects those individuals who complemented their understanding of their sentence by drawing information from other sources. To this extent, the findings yielded by this question may be said to be limited, and only serve to cast light upon the different parties offenders rely upon for further information.

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<sup>42</sup> Sub-sample analyses revealed that in the majority of cases, those who claimed they did not need any information beyond that provided by the court had lengthy sentencing histories, which might account for their respective responses.

Thirty-one respondents to question 7(d) identified YOT workers as the agents who had provided them with further details about their respective orders. This finding casts light upon the important role which YOT workers play in terms of providing offenders on orders with the necessary information. Legal representatives were identified by eight respondents as disseminators of information. Finally, two respondents claimed that they relied upon the YOP to provide them with additional details, while another two reported that they relied upon their parent(s).<sup>43</sup>

The findings of this question were endorsed by the responses obtained for question 26(b) which sought to investigate which party or parties, if any, had been the most effective at providing participants with information regarding what could happen to them in the event of a failure to comply. Thirty-two of the forty-three respondents to sub-question (b) reported that YOT workers had been responsible for providing them with the pertinent information on this issue, with another thirty-one respondents reporting that they had been informed by the court.<sup>44</sup> Eleven respondents reported that their legal representative had informed them, and another five said that the information had come to them through either a parent or a family member. A further five respondents identified the panel as their source, while three claimed that their friends had informed them.

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<sup>43</sup> One interviewee claimed that he also relied upon those responsible for the maintenance of the electronic monitoring device to fill him in on further details.

<sup>44</sup> Additionally, one interviewee made reference to the fact that his probation officer had provided these details.

These findings reveal that the court and YOT workers are the most important players when it comes to disseminating information on compliance. While they highlight the key supporting role offered by YOTs to the courts in reinforcing its deterrent messages, they also throw into relief the relatively small contribution made by legal representatives. The study has noted that only eleven respondents reported that their legal representatives had discharged this responsibility. As individuals who are ideally placed and entrusted with the responsibility of informing offenders about the consequences of failing to comply, legal representatives could perhaps become more involved in the dissemination of the preventive messages of the youth justice system.

Fifteen of the thirty-three respondents identified the court as the most effective party when it came to conveying deterrent messages. Ten interviewees within this sub-group explained their choice on the basis that the court had the authority to deal with breaches and re-sentence offenders:

'Cause they're the one that will actually sentence you and if they want you to go to prison they can send you to prison [8/SO with SA/12].

Because they've got more power aint it. They're like the magistrates, they've got a lot more power, so you believe them [11/DTO/12].

Another two respondents within this sub-group justified their choice on the grounds that they did not want to appear before the court again, and a further two reported that the court's message had more clout. The remaining respondent claimed that the

court was most effective because it was the first to inform him of what would happen.

Of the thirty-three respondents to question 26(b), ten claimed that YOT workers had been the most effective at informing them about the consequences of failing to comply because of the regular contact maintained and the manner in which they explained things:

My YOT worker because she tells it like I can hear it properly. She makes me understand more 'cause she talks to me like one to one [46/CRO/6].

I don't know, 'cause you have to see them all the time, so they tell you over and over again. Courts you go there once, and they just tell you you've done wrong, go and do this. And you don't see them again [34/SO+ISSP/9].

YOT workers because I've spent a lot more time with them....I mean, once that I'd had my punishment, my solicitor went and I didn't see my solicitor any more. But then the YOT like have been there through my prison sentence and stuff to say, 'Look, when you get out, this is what you've got to do or you'll end up back in here.' The YOTs been more effective [50/DTO/18].

While three respondents felt that all the parties involved were equally significant, two selected their legal representatives, with another two selecting their parents as the most effective source of information regarding the consequences of failing to comply with their orders.

Taken jointly, the responses to these two questions suggest that in many instances, the courts only provide sufficient information for offenders to acquire a

rudimentary understanding of their orders. The views expressed by the thirty-eight respondents to question 7(c) on the extent to which the courts had provided defendants with all the necessary details about their respective order were evenly split.<sup>45</sup> The failure on the part of the courts to communicate effectively with nearly half of the offenders it is meant to address its penal messages at must be noted as a source of concern.

## **5.8 Conclusion**

The findings discussed in this chapter have revealed the close-knit relationship between the penal messages perceived by adolescent offenders during the imposition of the sentence, and the purposes which they ascribe to the sentence imposed. The degree of congruence noted between the two is not only indicative of the overlap between the two concepts, but it also validates theoretical standpoints which conceptualise punishment in expressive/communicative terms. The degree of consonance found between offenders' perceptions of the messages which the process purports to convey and their understanding of the purposes underlying their respective sentences, might also provide an important insight into how and why particular sentences are viewed either positively or negatively by the wider audience they are meant to serve.

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<sup>45</sup> An additional interviewee who provided a response to this question could not recall whether the court had provided with all the details about the order.

The chapter has also identified five key issues which might impact upon the communicative efficacy with which penal messages are conveyed to offenders during sentencing. These include the almost exclusively outcome-based interest displayed by a cross-section of participants; the perception that the courtroom process is boring and unengaging; and the ‘experiential’ effect which reduces the court’s capacity to intimidate. The chapter has also noted the court’s dependence on secondary parties to provide offenders with details about their respective sentences.<sup>46</sup>

The final key issue identified in this chapter is that participants often feel that courtroom procedures are not always properly explained to them, and that they find the language of the court is an important obstacle to comprehension. Both language and procedural issues will become an important *leitmotif* in the findings of this study regarding the efficacy with which penal messages are communicated to adolescent offenders. The next chapter will build on these issues by examining offender perceptions of the roles defendants assume during the imposition of their respective sentences.

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<sup>46</sup> The communicative roles fulfilled by these secondary actors will be analysed in greater depth in Chapter Eight.

## **Chapter Six: The Imposition of the Sentence, Part II**

This chapter turns to the analysis of the roles assumed by defendants and the influences acting upon them during sentencing. The first section explores the extent to which offenders are afforded a voice during proceedings. Sections 2 and 3 examine participant views on the communicative roles fulfilled by their legal representatives, and investigate how offenders themselves believe they are expected to act in court. Sections 4 and 5 analyse participant views on the courts’ intended audiences and the communicative value of sentencing in relation to victims and other parties. Based on participant feedback, Section 6 will evaluate potential obstacles to effective court communication. Finally, Sections 7, 8 and 9 will discuss how the court may improve its communicative efficacy and best secure offender desistance.

### **6.1 Speaking in Court: The Offender’s Contribution**

Don’t know, it’s just go in there, sit in there, listen to what they have to say. Stand up, say your name and date of birth and then that’s it [34/SO+ISSP/9].

If punishment is intended as a ‘communicative enterprise’ and communication, as the previous chapters have established, involves a reciprocally understood exchange of information then, whether offenders are afforded a voice

during court proceedings is significant. Question 13 consisted of five sub-questions which sought to investigate the issue further by inviting participants to comment on whether they had been given a chance to participate in court.

Forty-one of the forty-eight respondents (85%) who provided an answer to question 13(a) claimed that they had been given the opportunity to speak during the court session. While five respondents in this sub-group believed they did not have much to say, and a further two claimed to have only spoken to introduce their plea, or to confirm their personal details, the rest reported having made a conscious effort to make a personal contribution. Eighteen of those interviewees who were afforded a chance to speak in court availed themselves of their opportunity to apologise for what they had done:

They just asked me if I would like to say anything, and I just said basically I'm sorry for what I've done [41/SO+ISSP/24].

An additional thirteen respondents within this sub-group claimed that they used their opportunity to speak in order to get their stories across:

Er, yeah, I was given a chance to sort of put across why I did it, and where I was going to go from now. I told them that I wanted to, that I was very remorseful and that I had a lot of stress that year and that it all sort of built up to that, so I think they understood.... [10/RO/8].

During their oral contribution in court, eight respondents vouched that they were going to change and that they would refrain from offending in the future:

I’m sorry, it will not happen again. ‘Cause at the end they ask you if you want to say anything and then that’s when you get to stand up and say I’m sorry, it will not happen again, and then they think about your sentence. And I think because I stood up and said sorry, it will not happen again, I think that’s why they gave me the ISSP [48/CRO+ISSP/6].

Finally, of the forty-one respondents who claimed they were given a chance to say something in court, seven felt it an opportune moment to express regret, with an additional two interviewees going further than this by apologising and acknowledging their wrongdoing in public:

Um, I showed further remorse for my actions and just assured them that it wouldn’t happen again and er, I’ve got a life to lead and I want to do well for myself [40/RO/6].

I said that I regretted what I did, it’s not me, I don’t know what’d come over me. I just told them what I thought and what my feelings were at the time [46/CRO/6].

The analysis of responses to question 13(b) suggests that in instances where young defendants are afforded a voice, they will participate in the process and seek to make a contribution to proceedings.<sup>47</sup> The desire on the part of individuals to express an apology, regret, or provide assurances of desistance might be viewed with some scepticism as ‘impression management’ manoeuvres aimed at influencing either proceedings or the final outcome. This scepticism is also apparent in some of the responses provided by interviewees themselves: “you don’t know if he’s actually genuinely sorry and that, so...” [50/DTO/18].

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<sup>47</sup> Seven of the ten participants serving referral orders reported that they partook of that opportunity in the YOP meeting to apologise, express regret, and to provide responses to the questions asked of them. The qualitative information obtained would thus seem to corroborate Newburn *et al.* (2002) and Earle and Newburn’s (2001) research finding that many young offenders will avail themselves of the opportunity to engage in dialogue if it is offered to them.

The findings of this study regarding the veracity and the importance that should be ascribed to offender-initiated apologies are mixed. On the one hand, some interviewees were very conscious of the advantages to be secured from issuing an apology, albeit an insincere one:

It's better if they show that they're sorry, whether they are or not because it does make that sentence a bit more lighter.... I know, 'cause like from experience.... Just like at the end, if they don't even let you say anything, just basically, stand up and say, look, I'm sorry for what I've done, la la la, all that, and then they might change it... [24/DTO/6].

On the other hand, other interviewees were firm in their belief that offenders should only apologise when it is genuinely meant:

Not really, you only do it if you feel it, if not don't show it [14/Section 91 Sentence/60].

It depends on why you are saying sorry really...If you want to say sorry, and you're just saying it 'cause you've been told to, like I got told to....but I wouldn't 'cause there's...I'm not going to make a sorry letter to someone I'm not sorry about 'cause there's no point in that at all [2/SO with SA/24].

Of the forty-eight respondents to question 13(a), six claimed they had not been given the chance to speak in court. When specifically asked in question 13(d) whether they would have wanted to contribute to proceedings, three respondents within this sub-group stated that they would have liked to have had a say. One interviewee felt he had not been able to express his anger at having been sentenced to prison when he had been led to expect a community-based punishment

[24/DTO/6], and another two said they would have used the opportunity to apologise for their conduct and to express their points of view.

While some interviewees explained that they never tried to say anything, one individual felt that there was only a limited scope for a contribution to be made, and another reported that he did not speak because his “barrister did talk, sort of thing that I wanted them to do” [33/CRO/24].<sup>48</sup> The fact that six respondents played a passive, non-participatory, role during proceedings might imply that they were not engaged in a process of dialogue as exemplified by the following excerpts from the same interview:

They didn’t give me a chance. Like I didn’t get a chance to speak um, and they just, they didn’t want any background. They’d just seen the offence, they hadn’t seen my side of the story and they haven’t seen what I was really like and that. They only just properly stereotyping, is that the word? Like just because one person might have done that, a burglary or something, that person’s just as bad as that person ‘cause you know what I mean? [50/DTO/18]

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**Interviewee 50 [DTO/18]:** I would have just explained in a slightly smaller sense what I’ve been through and why it happened and how very sorry I was, just try to reassure them that it won’t happen again and that, um, just put my message across that I was sorry and stuff basically.

**Interviewer:** Okay. And why don’t you think you were given the chance to speak?

**Interviewee 50:** Because my solicitor said most of what I wanted to say. But it still would have sounded a bit better for me to stand there to say it in front of the court on my behalf, instead of someone else.

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<sup>48</sup> Additionally, one interviewee noted he was unsure as to whether he had been given a chance to speak in court.

The limited scope for offenders to make a contribution during court proceedings was one of the *leitmotifs* to emerge from the analysis of respondents' accounts of their experiences with the YOP:

It was more like comments coming to you and you'd respond to them, and they ask you questions and you respond to them, and you say what you would like to...not like to and everything, it was just basically having a conversation like we are now, it's just like that.... 'Cause court its... its more like people saying stuff then you get that little chance to say sorry, and that's it. That's your last say in it. That is your last say. Then the judges go off, speak about what you're gonna have done, come back, you come back in and you stand up, and they tell you what you got, you sit back down, other person stands up [case involved co-defendants], they tell them what they got, he sits back down, and judges stand up, you stand up with them, and they walk off and you walk out. And that's it....in a youth offender panel you can out speak your mind. In a court, you can't. You've just got to sit there and listen [13/RO/12].

When asked to compare the approaches adopted by the two bodies, one interviewee reported that the manner in which the Panel invited the young person to talk was a notable advantage over the traditional approach adopted by the court:

A better approach because I felt a lot more relaxed and I didn't feel like I had to um, feel uncomfortable or I couldn't talk or... I said what I had to say [23/RO/6].

## **6.2 Legal Representatives and the Adolescent Offender in Court**

Question 15(c) examined the role played by legal representatives in the dissemination of information. As providers of advice and guidance to young offenders, participants were asked to comment on whether they had been given any

directions on how to act or behave by their legal representatives. Of the forty-six respondents to this question, thirty-five (76%) noted that their legal representatives had provided some form of direction. Nine respondents reported not having received any guidance on how to act or behave, with another two claiming that they did not have legal representation.

Of the thirty-five interviewees who claimed to have been given directions by their legal representatives, twenty-six claimed that these had provided them with advice on how to behave in court. Four respondents within this sub-group reported being given guidance as to when to stand up and sit down in court, while a further two interviewees were briefed on the importance of showing respect and maintaining eye contact with the judge during proceedings. An additional four respondents recalled being told to behave, to be co-operative and to be polite.

Nine respondents to question 15(c) who were in receipt of advice described it as explanatory in nature. Within this sub-group, six respondents noted that these explanations involved guidance on how to plead. Other responses within this sub-sample included advice on what to expect and what was expected of the young person. Respondents felt that these items of information did much to dispel their anxiety regarding their court appearance.

The findings of this study suggest that defendants consider their legal representatives important in terms of the psychological support they provide. Four respondents welcomed being advised to remain calm, and an additional interviewee

noted her gratitude for being told to be herself in court. Having made this observation, it is interesting to note that legal representatives at times seemed to encourage a passive role for the defendant. Four respondents reported being told to speak only when spoken to and to listen to what they were being told in silence. Legal representatives also seemed to encourage 'impression management' during proceedings. Two respondents who had been given legal advice recalled being told to show remorse and seem contrite. A further three recalled being expressly told to apologise:

Yeah, he [the barrister] just told me to keep my head down, and that's that it, show some remorse, show that you're feeling sorry and that you're ashamed of what you did [33/CRO/24].

He just said look sorry and if they ask you what you think about it just stand up and say sorry for what I've done, so I did, and he got me off it [47/CRO+ISSP/ 12].

The fact that the advice provided should seek to engender certain desirable behaviours should come as little surprise given the numerous advantages to be secured: "It's better if they show that they're sorry, whether they are or not because it does make that sentence a bit more lighter" [24/DTO/6].

The didactic elements of a process that might bring about a change in the offender's conduct may be neutralised in instances where legal advisers encourage role-play in their young clients:

I got told by my solicitor from the start, when I first went to court, if they say something to you, sit there and nod your head,

and make it look...even if you don't understand what they're saying, make it look like you're understanding...[2/SO with SA/24].

It is significant that only three respondents in receipt of advice from their legal representatives mentioned that these had made specific comments about their plight, either to disapprove of their conduct [29/RO/6], to tell them to keep out of trouble [19/SO/6], or to convince the young person "not...to commit the offence again" [10/RO/8]. While case-load and management concerns may go some way towards explaining why some legal representatives advise young people to role-play and pretend to understand proceedings, there is a need to review this practice. As key players in the dissemination of criminal justice related information, it could be argued that legal representatives are not only well placed to inform, but also, if appropriate, to express censure and encourage reform in these young defendants.

### **6.3 Offender Behaviour in Court**

For all the attention devoted in the literature to the appropriateness of eliciting specific responses through censure and hard treatment (von Hirsch, 1993; Narayan, 1993; Duff, 2001), very little is known about how offenders themselves believe they are expected to act in court. The research question underpinning questions 15(a) and (b) may be formulated thus: How do young people believe they are expected to act and respond in court when the sentence is being imposed, and how far do these expectations match the emotional experiences identified in the extant literature?

Of the forty-eight interviewees who provided an answer to question 15(a), forty-six (96%) agreed that it was important for the defendant to show some response or reaction while their case was being heard. The remaining two respondents were unsure about how to answer the question and provided “don’t know” responses. These results lend support to von Hirsch’s (1993) and Narayan’s (1993) contention discussed earlier that a moral response on the part of the offender is expected.

Having ascertained that the majority of respondents considered that it was important to show some response or reaction, question 15(b) sought to establish the nature of the responses which interviewees thought were expected of them in court. Of the forty-six respondents, nine believed that defendants were expected to demonstrate remorse: “Yeah, some sort of remorse, like you’re really sort of sorry for what you did and everything yeah, you can’t sit there and like, laugh about it” [9/CPRO/18]. An additional nine respondents claimed that defendants were expected to be apologetic with five respondents in this sub-group reporting that defendants are expected to *be sorry*, with the remaining four believing that there is an expectation that the young person will *say sorry* for what he has done.<sup>49</sup> The differences between the two ‘types’ of responses identified by these two sub-groups are subtle but perhaps significant.

To feel sorry. Not to feel sorry like, to be sorry for what you’ve done and not do it again [47/CRO+ISSP/12].

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<sup>49</sup> Seven percent of respondents provided an “I don’t know” answer to the question.

To look as if they are sorry for what they’ve done, and not, ‘cause like yeah, yeah, if you’re sorry for what you’ve done, then say it and show it, but if you’re not, then just don’t, don’t sit there smiling or anything like that ‘cause the courts won’t like, the courts won’t like that [35/DTO/4].

Interviewee 35 ascribes great importance to issuing an apology only if it is genuine. He also draws attention to the idea that young people are expected “[t]o *look* as if they are sorry” (emphasis added). The significance of impression management, of *appearing* contrite and apologetic, is one of the *leitmotifs* underpinning a cross-section of accounts regarding how participants believed they were expected to behave in court:

Keep your head down, makes you like you feel sorry, um, make sure when the judge is like talking to you, make sure you acknowledge what he’s saying and that ‘cause you’re showing that you’re acknowledging what he’s saying... [33/CRO/24].

The problem of “impression management” in interviews is thoroughly documented in the literature (van Heugten, 2004; Presser, 2004). The scope for displays of emotions within the administration of criminal justice matters was evident in interviewee behaviour and in their responses to a broad cross-section of questions. Many of the interviewees showed that they could be particularly astute when it came to ‘impression management’ during the sentencing hearing. Role-play concerns seemed to inform the views of five respondents who believed that young people were expected to display emotions in court.<sup>50</sup> According to these interviewees, young defendants are expected to be nervous and scared.

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<sup>50</sup> Sub-sample analyses revealed that the average number of previous convictions (n=5) for these interviewees was marginally higher than that for the overall sample of participants (n=4, see Section 4.8). This finding might be interpreted tentatively as evidence of the ‘experiential effect’ already identified earlier in this thesis.

Well, if it's someone young like fifteen, fourteen, then you are expecting them to cry or something when the judge is looking at them... [38/SO+ISSP/16].

Having learnt the ropes, two respondents were of the view that displays of emotion could aggravate matters in court:

Well actually, usually if I, if somebody is saying something and I don't agree with, I shake my head, but they, they frown upon that, the magistrates, the magistrates don't like you. They just expect you to sit there, no sort of comments sort of under your breath, no like facial expressions, they just want you to sit there and listen [39/SO/6].

On the theme of 'impression management', it was interesting to note that thirteen respondents identified the advantages to be had from adopting a behavioural strategy which involved being quiet, well-behaved and respectful:

No, not really. Just like be quiet until the end and if they let you speak, just speak [12/SO/6].

Yeah, 'cause some youths just walk in there, they don't give a shit do they, they start laughing. They think it's a joke, and if you start laughing, then the judge will think alright then I'll just fuck you over [21/DTO/6].

Six respondents to question 15(b) were of the view that defendants are expected to be attentive during proceedings and to listen to what was being said. A further four respondents felt that defendants would be expected to get their points of view across, with an additional interviewee noting the importance of the defendant answering the questions which they are asked:

No, obviously they just want you to sit there so they wouldn't want you to...They sort of say it's the witness' turn now and then your turn's after, so if you've got any, anything you want to express, it's your turn when it's your turn to speak. But until then, you just sit there looking quite smart and professional. You just sit there and listen [39/SO/6].

Yeah, you've got to, you can't just sit there and pretend you're not listening because if you do, they'll think you just aint bothered really. You've got to say yeah to what they're saying and speak to them... [8/SO with SA/12].

Impression management concerns are also evident in the accounts offered by six respondents to question 15(b) who noted the importance of being appropriately attired when appearing before the court:

If you um...suit up really well...it's easier to come across as someone that's like more, like, regretting what you've done and all that. Whereas if you go in and just like in trackies and baggy T-shirt and that, and look pretty dirty, they're just gonna go he's a common criminal, he's not gonna stop, might as well give him a harsh punishment [5/SO/12].

It's like, if you dress smart and that, they put that into consideration.... I find that if you dress, like smart they like put, I think it helps you a bit. And like, if you speak politely when you're talking to them, it helps as well [22/SO/12].

Many respondents were also aware of the potential consequences of not appearing to be interested during court proceedings. In the words of one interviewee, "[t]hey'd sentence you a bit harsher than they would have if you was bothered if you know what I mean" [8/SOwith SA/12]. Interviewees also seemed to be familiar with the scripted nature and ritualised turn-taking moves of court proceedings: "The only time when you can speak is when the court asks you to

“speak, and that’s it” [13/RO/12]. This was another important expectation identified by seven of those interviewees who provided a response to question 15(b). It is worthy of note that ten interviewees in the sample used the phrase ‘speak when spoken to’ during their individual interviews. Talking about their respective experiences with the Youth Offender Panel and a YOT worker, two interviewees noted:

Yeah, well, in a youth offender panel you can out speak [speak out] your mind. In a court, you can’t. You’ve just got to sit there and listen [13/RO/12].

Well my YOT worker because I could ask questions about it. I couldn’t really ask questions about it in court because, I could only speak when spoken to... [49/RO/3]

In response to the question concerning impediments to the court’s message getting through to adolescent defendants, one interviewee made the following observation:

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**Interviewee 8 [SO with SA/12]:** You can’t speak without being spoken to so, if they don’t speak to you, you can’t tell them anything back anyway.

**Interviewer:** So there’s no dialogue then?

**Interviewee 8:** No. As they’re higher than you, you can’t speak to them without them speaking to you first.

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The paradox that is emerging from these findings is that it is not only the court that is trying to communicate implicit and explicit messages. There is an interesting ‘counteroffensive’ on the part of young offenders who draw upon a

range of role-play techniques with which to convey messages that they know the court expects them to have assimilated. Significantly, only five respondents made reference to the expectation that young defendants should tell the truth.

These insights are significant as they cast light upon how individuals who have experienced the imposition of their respective sentence believe they are expected to behave in relation to the courtroom dialogue. Working through the interview scripts, there is a powerful sense that with many offenders, particularly those who have extensive offending histories, experience has taught them how to engage in 'impression management'. The effective transmission of penal messages to those who have learnt how to play the system has been identified as one of the major challenges facing the court.

## **6.4 Identifying the Intended Audience**

The thesis has already noted that the literature often assumes that the intended audience for penal communication is the offender (Duff and Garland, 1994). The empirical work undertaken for this study was therefore interested in exploring the extent to which interviewees saw themselves as the primary recipients of the court's penal messages, and the importance they ascribed to having the courts communicating these messages to other relevant parties.

Question 12(a) offered participants a range of options from which to choose ( Offender  Victim  Public  Parents/Carer, an all inclusive  All four option and  Other).<sup>51</sup> A subsidiary question, 12(b), was also used to determine which of these groups were considered the most important addressees by participants.

The findings confirm the widely held perception that the primary audience which the court should target is the offender, with forty-four of the forty-nine respondents (90%) to question 12(a) selecting this particular option. Significantly, of the thirty-six recorded responses to Question 12(b) where one exclusive choice could be made, thirty of these respondents (83%) identified the offender as the most important recipient.

In response to question 12(a), fourteen respondents who had selected the ‘Offender’ option, viewed this party as the primary recipient “because they’re the ones that offended so, therefore they’re the ones that should pay the consequences” [49/RO/3]. An additional five respondents felt that the offender ought to be specifically targeted in the hope that this would have a crime-preventive effect:

Because he’s the one doing it and if you aint going to stop it, you aint going to stop him, he’ll just carry on doing it [47/CRO+ISSP/12].

It’s most important to give it to the offender so that he doesn’t do it again [36/RepO/3].

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<sup>51</sup> No respondents selected the ‘Other’ option.

Less frequently cited responses alluded to the idea of punishment as a lesson with two respondents stating that offenders should be the recipients of penal messages precisely because it is they who need to learn not to reoffend. A further two respondents believed that offenders should be addressed because they should not have done what they did. One interviewee noted that the offender should be targeted because it is the offender who “needs to sit down and think about it because it’s their lives they need to live” [40/RO/6].

In an attempt to broaden respondent choices beyond one particular category, a ‘catch-all’ option which allowed participants to select all four possible groups was included. This category proved to be the second most popular choice amongst interviewees, with fifteen respondents selecting this option. With hindsight, this fourth option should perhaps not have been included, for while it is true that some respondents may have considered it inaccurate to select just one group, it is also possible that they may have taken the easy option by avoiding a more closely-deliberated answer. The explanations advanced by participants for this choice option replicate those proffered by interviewees who had selected individual groups, and for these reasons have been incorporated into the main body of the discussion in this section.

Parents and carers were identified by thirteen respondents as parties the courts should address. The reasons provided by interviewees ranged from the positive impact which parents may have on their child’s behaviour and the crime-

preventive role parents may assume, to the importance of keeping parents abreast of what their children are doing:

So they know what their child is getting up to sort of [37/RO/6].

Because not in all cases, but in most cases, I would suggest that the parents or guardians will have some sort of influence, if not big, but some sort of influence over, over their child or person they're looking after, so there is a chance that it will have an impact on them [40/RO/6].

A small number of interviewees, however, felt that the court need not send a message to parents because they had little to do with the young person's offending behaviour:

You can't really have a go at his mum and dad 'cause they can't keep an eye on him twenty-four-seven, it's not their fault [47/CRO+ISSP/12].

It aint got nothing to do with the um, parents, so they can't stop kids from doing anything [34/SO+ISSP/9].

The general public was identified by nine respondents as a group which the court should address in its deliberations. These interviewees recognised the deterrent effect which punishment of the individual may have upon others, and how offending also affects other parties.

The need for the court to communicate with victims was only identified by five respondents, with some interviewees recognising that the victim ought to be informed by the court that "they're trying to tell them that they're sorting it"

[34/SO+ISSP/9]. One interviewee also noted the message the court should send victims concerned ways in which they could avoid becoming victims of crime in the future:

To the victim, to make sure that if they have done stupid like left their keys on a car, or left their sat nav on show or something, to tell them not to do it again...[36/RepO/3].

## **6.5 Messages communicated to the Victim**

While Rex’s (2005) research has gone some way towards exploring the communicative value of sentencing in relation to victims, empirical corroboration as to whether offenders themselves believe that the sentencing process communicates messages to victims is yet to be forthcoming. Building upon question 12, which invited participants to consider whether the court should attempt to convey messages to victims amongst other parties, questions 14(a) and (b) investigated whether interviewees thought the sentencing process communicated any messages to victims.

Sixty-four percent of the forty-five respondents to question 14(a) held the view that the sentencing process communicates messages to victims.<sup>52</sup> Within this sub-group of twenty-nine respondents, fifteen thought the sentencing process communicated to the victim that the offender was being punished for what they had done:

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<sup>52</sup> Two respondents provided mixed ‘Yes’/ ‘No’ responses, while another eight provided “don’t know” answers to this question.

Um, yeah well, it obviously lets them know that what's happened to them isn't going to go unpunished...[40/RO/6].

Er a little bit 'cause like, if something bad happened to me and the offender got like sent down for like three years or something I'd be satisfied 'cause it's like judgment innit [37/RO/6].

Taken jointly, these views endorse one of the expressive functions which Feinberg (1970) believed punishment served, namely non-acquiescence of the crime committed, as opposed to indifference.

Nine respondents claimed that the sentencing and punishment process would help victims by reassuring them and making them feel better:

I suppose some victims are really suffering so there, at least then they're letting them know that the people like of the world that have hurt you or your family or whoever, or committed a certain crime will be punished. So like it's quite reassuring for them to think they live in a safe place [39/SO/6].

Punishment of the criminal should make them feel safe. Yeah, they should be made to feel safe. And um...they should be satisfied with it, if they know they're going to be safe for the future, then they know they're not going to be a victim again [10/RO/8].

These responses reflect the interviewees' awareness of the complex purposes served by punishment, and would seem to support Duff and Garland (1994) in their view that one of the key messages conveyed by punishment is reassurance, to show that 'something is being done' about crime.

According to three respondents, the sentencing process communicates the offender's apology to victims, where this is forthcoming. Respondent accounts focused primarily on the production of letters of apology which is often undertaken as a requirement on some orders, and not a face-to-face apology. A further three respondents singled out the concept of compensation as the message which is transmitted to victims as a result of the sentencing process. While two participants emphasised the need to compensate the victim for the wrong that had been done to them [Interviewees 10 and 32], the third respondent seemed to accentuate the negative message which compensation to victims may send:

...it sort of sends the message, if I was getting compensation for having a fight after all like the scraps like young kids have, if I had just called the police every and said, 'Oh yeah blah, blah, blah,' I'd be loaded because I'd just get compensation, compensation [39/SO/6].

Three respondents expressed the view that sentencing taught victims, as well as the general public, not to pursue a life of crime, with another three claiming that sentencing included didactic messages to victims on how to avoid future victimisation:

Like, for instance, if someone's car got nicked, um, and they left their keys in the ignition, the criminal obviously would nick the car and drive off with it, and then the victim would be sent the message to say, 'Make sure you keep your car locked up properly and in a safe location, and don't keep your keys in the ignition' [36/RepO/3].

Finally, one respondent was of the view that the communicative value of the sentencing process for victims was contingent upon their presence in court. This observation was echoed by a further three respondents to question 14(a):

I’m not sure because I haven’t heard anything from the victim,  
I’m not even sure if they were in the court [18/SO+ISSP/24].

Other less frequently-cited messages which participants felt the punishment of the offender communicates to the victim are “that the police are doing their job” [48/CRO+ISSP/6], and that punishment constitutes evidence of institutionalised disapproval of the offender’s behaviour [29/RO/6]. These observations embody one of the expressive functions which Feinberg (1970) believed punishment served, namely authoritative disavowal of the crime committed. Finally, two respondents were of the view that the messages conveyed to victims varied according to the offence.

Of the six respondents who claimed that the sentencing process does not communicate messages to victims, four participants within this sub-group failed to provide a reason for their choices. One respondent reported that the sentencing process need not be communicative *vis-à-vis* victims because these had done nothing wrong:

Not really ‘cause like they’re just the victim. They didn’t do anything sort of thing. It’s not their fault, innit? It’s the offender’s fault [9/CPRO/18].

Having expected a custodial sentence and received a community-based sentence instead, the remaining respondent felt that the sentencing process failed to communicate messages to victims because sentences were often perceived to be lenient: “Some were angry, fuming. Mum was fuming, police was fuming, I could

just tell” [33/CRO/24]. Similar views were echoed by other participants in their responses to other questions:

Well like, if the offender gets away lightly or something, then they're [victims] going to be angry [42/SO+ISSP/12].

The perception that the offence is not being treated as seriously as it should be and that the sentence imposed is not deemed commensurate with the offence may lead not just the offender, but also the victim to misperceive the communicative dimensions of punishment.

## **6.6 Addressing the Victim**

Fact-finding questions 14(c),(d) and (e) were aimed at investigating whether participants had spoken to their respective victims in court. The results show that with the exception of one interviewee, the remaining forty-six respondents who provided an answer to question 14(c) reported they had not said anything to the victim in court:

Yeah, I had to stand up and talk and say why I did what I did, and um I had to say sorry to the person that I did it to and everything [27/SO/12].

Of the forty-six interviewees who claimed not to have spoken to their victim, twenty-nine reported that the victim was not present during proceedings.<sup>53</sup>

Participants offered the following reasons to explain victim absenteeism:

...there wasn't a trial, so that's why I don't think the victims were there... [18/SO+ISSP/24].

‘Cause I pleaded guilty, I didn't go on trial for it [21/DTO/6].

Victims are never there at court. Unless it's like a witness statement... [8/SO with SA/12].

While three respondents made it clear that they refused to speak with their respective victims, another three claimed that procedural obstacles, such as the victim appearing in court via video-link, did not permit them to communicate directly with their victims. Other reasons for not engaging directly with the victim included not getting “a chance to speak with the person” [16/YP did not know/12], safety concerns disallowing any direct communication [36/RepO/3] and the fact that the victim was a close family member [10/RO/8]. Thirteen respondents failed to provide a reason to explain why they did not address their respective victim(s).

Question 14(e) sought to explore whether participants would have, in retrospect, wanted to have said anything to their respective victims. Of the forty responses provided, twenty respondents claimed that they would have wanted to

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<sup>53</sup> Eight participants serving referral orders also reported that the victim was absent from their YOP meeting. This finding would seem to echo the concerns expressed by researchers about the low-level of victim participation in panel meetings (Earle and Newburn, 2001; Miers *et al.*, 2001; Holdaway *et al.*, 2001).

have said something, with fifteen respondents within this sub-group admitting that they would have taken the opportunity to apologise to the victim:

Um yeah, I would like to say I’m sorry to them and all that. I was a dickhead for what I did, but they weren’t there [41/SO+ISSP/24].

I think I would have liked to have said sorry to their face...because I think it would have been more polite to [43/RO/8].

Two respondents made reference to restorative justice meetings with victims which had either been undertaken already, or had been requested. A further two respondents would have liked to have made comments regarding the accuracy and veracity of their victims’ accounts. Finally, one respondent felt he would advise the person affected by his crime on how to avoid becoming a victim in the future by “keep[ing] everything locked up from now on” [24/DTO/6].

Of the remaining twenty respondents who claimed they would not have wanted to have spoken to their respective victims, five made reference to the fact that speaking to victims would have made things harder:

I wouldn’t have wanted to look at him ‘cause he is the victim of the crime I did [12/SO/6].

...when you get like taken to court for something,...you don’t really listen. But if you’re face to face with a person you’ve really hurt, that’s gonna hurt more than anything ‘cause I nicked something off my mum....and seeing my mum’s face when they was reading out the stuff that I had done, it hurts [2/SO with SA/24].

An additional five respondents within this sub-group were of the view that speaking to their respective victims in court would have perhaps aggravated the situation further. Two of those who claimed not to want to speak to their victims felt that they did not want to see them either. Of the two remaining participants, one expressed the view that he would not want to speak to the victim(s) for fear of his own safety, while the other argued that it depended on who the victim(s) had been.

## **6.7 Obstacles to Communication by the Court**

Questions 16(a), (b) and (c) explored whether interviewees could identify factors which could potentially impede the successful transmission of penal messages to adolescent defendants while their case was being heard in court. An open-ended format for the sub-questions was selected in order not to condition subject responses by intimating that there were *a priori* obstacles to the communication of penal messages.

The study found that forty-two of the forty-nine respondents (86%) to question 16(a) believed that there were potential obstacles to the court's messages getting through to young people. With the exception of one interviewee who expected the YOT and not the court to explain to him what was happening, the seven remaining respondents felt that there were no obstacles to communication.<sup>54</sup>

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<sup>54</sup>One additional interviewee admitted he did not know which answer to provide to the question.

Within the main sub-group of forty-two interviewees, twenty-five recognised that the successful transmission of penal messages is inextricably linked to the defendant’s attitude and outlook: “Depends on the person really. If the person is a little shit, then they’re not going to listen, I suppose” [17/YP did not know/12]. Potential attitudinal impediments affecting receptivity ranged from the young person not caring to not wanting to listen:

At the end of the day, there’s people that are going to do it. If they’re going to do it, then they’re going to do it ain’t they. If they want to stop then they’ll stop. But if they don’t want to, then they ain’t going to [47/CRO+ISSP/12].

Yeah, if they don’t want to listen, they don’t have to listen, that’s the offender. So, if the offender don’t want to listen to what the court’s got to say, they’ll just walk out of here laughing at them and they won’t be bothered, and that’s what a lot of people do [46/CRO/6].

The findings of this study suggest that peer-related factors may also have a bearing upon the transmission of penal messages during the imposition of the sentence itself. Having noted that he had been “sitting there laughing through the whole thing” earlier in the interview, Interviewee 24 reported that the presence of his peers in court had a detrimental effect upon how receptive he was to the court’s messages:

‘Cause my mate and his mum were in, like actually sitting in the court the same time that I was, so I reckon that was probably why the way I was. I weren’t doing it like intentionally just to show off to my mate, ‘cause I aint a show off. But... [24/DTO/6]

For all of the court’s attempts to convey penal messages to young offenders, the “communicative efficacy” (Sparks *et al.*, 2000:207) of the youth justice system, according to the majority of interviewees, ultimately depends upon how receptive the offender is to the messages being conveyed. Like the unrepentant offender in Duff’s account, if the young person is not willing to take cognisance of what is being said, then arguably the court’s message is expressive and not communicative. If the primary aim of the youth justice system is to prevent offending, ultimately through reform and reintegration, it seems of the utmost importance that these attitudinal factors influencing the offender are borne in mind by those who are responsible for the dissemination of penal messages.

Attitude-related problems are compounded by the complex, adversarial, jargon-filled nature of proceedings which nine respondents identified as a stumbling block to the court’s message.

Just they’re trying to trip you up really....They’ll ask you questions, and then when you’re answering, they’ll fire another one at you, and half way through answering that one, there’s another one, and another one. You don’t get a chance to talk properly.....They just talk over you [20/CRO/18].

Many interviewees echoed similar views as they expressed their frustration at the court’s failure to take them on board and explain to them what was happening: “Yeah, the way they say things. They don’t explain everything properly” [26/SO/12]. Underpinning some of the statements made by interviewees, there seemed to be a cultural divide which alienated them from the world of the court and those who work in it:

....the fact that most of them are very well spoken as well and they use like advanced vocabulary and some people might not be able to understand that.... so they should take that into consideration when they're speaking 'cause the words they use, some times I don't understand half of them. I can like still get the gist of what they're saying, but yeah [39/SO/6].

Two respondents reported that the problems already identified with communication during proceedings are exacerbated in instances where the defendant is facing multiple charges, or where co-defendants are being processed simultaneously primarily because there are “[t]oo many things going on at the same time” [11/DTO/12]. Commenting on a similar experience, another interviewee noted:

Like the first time I was in court I was in court with four other people, and that was pretty hard to understand....'cause I was listening to everybody else, as well as listening to the judges, so it's harder... [5/SO/12].

Expediency, and arguably procedural and due process concerns may explain why co-defendants are processed simultaneously through the criminal justice system. The fact that the young person in the extract above found the experience confusing and “hard to understand” casts doubt upon the communicative efficacy of an approach which subsumes a number of defendants within the same court session.

The findings discussed in this section suggest that a considerable number of participants feel culturally alienated in court. Their perception is that they are partaking of a world run by professionals who use a language that is sophisticated beyond their comprehension:

'Cause they're, like some of the judges and that are really arrogant and things like that, like they don't really want to speak to you, they just want to sentence you and things like that...they don't really get a message across, and they don't speak to you personally, they're speaking like, in terms that I don't really sometimes, I don't understand, and it's like if you don't understand it they just leave it for the YOT workers and that and for the solicitors and that to explain it to you after [35/DTO/4].

A number of interviewees serving referral orders endorsed the findings reported by Rogers (2005) by unfavourably contrasting their most recent courtroom appearances with their experiences before the YOP:

It was nicer than I expected, it was less formal than I'd expected, so it was ok yeah....The formality in court was much higher....I felt more comfortable in the panel meeting [40/RO/6].

you understand it more [49/RO/3].

Procedural considerations and ritualised turn-taking moves in the exchange of verbal information in court seem to contribute to a sense of confusion;

It's just the language generally that they use 'cause they use like all the proper words that we... we do hear, but we don't use regularly so we don't really understand what they are. So if they used more common words that we did understand, then it probably would be easier but I can't really see the magistrates sat there talking like we do [2/SO with SA/24].

Already, the point was made earlier that receptivity is linked to the offenders' ability to comprehend the processes they find themselves immersed in. The findings of this study highlight the value of listening to young offenders, and in

particular how they perceive the communicative processes established by different criminal justice actors, in this case, the court, during the imposition of the sentence. The comments made by some interviewees suggest that while the language used in the youth court may be perceived by adults as appropriate for the age-range, the accounts of these adolescent offenders reveal a different reality.

## **6.8 Identifying Messages to Promote Desistance**

[T]hey do give you loads of chances. They give you too many chances. If they were just a bit harsher from the start, I think it would stop a lot more people from offending [48/CRO+ISSP/6].

Although the debate among academics and policy-makers regarding how the court may best go about the task of encouraging young people not to reoffend is extensive, with the exception, perhaps, of the work carried out by Parke (2008), the views of young offenders themselves on this matter remain relatively unexplored. Question 16(d) invited respondents to identify and comment on the messages they thought the court ought to disseminate in order to encourage desistance.

Of the forty-three respondents who provided an answer to this question, five thought that the message to refrain from reoffending could be conveyed to young people simply by telling them, with some respondents emphasising a deterrence-based rationale which would highlight to the offender the consequences of reoffending: "I'd give them an order I suppose and then say to them like if you're in

court next time then it’d be heavier” [20/CRO/18].<sup>55</sup> The need for the court to emphasise the consequences of defendants’ actions was identified by a further seven respondents who also believed that the court should focus on possible future sentences and employment prospects.

Try and tell them what would happen to them if they did reoffend, and the seriousness of it, but obviously you can’t stop a young person from reoffending unless they sort themselves out [23/RO/6].

This last excerpt illustrates the importance interviewees attached to the courts delivering pre-emptive messages that emphasise the penal consequences of unlawful behaviour. It also echoes a previous finding, which identified the fact that in order for punishment to go beyond being expressive, and become communicative, it must be assimilated by offenders. This communicative endeavour calls upon the defendant’s willingness to co-operate:

It all depends on the young person as well, ‘cause like there’s a few young, young people, that it doesn’t matter what the courts say to them, what their parents say to them, they’re going to do it again, and again, and again....But there’s some kids, like me, who actually get the message and don’t do it again [36/RepO/3].

In their answer to what messages the courts could convey to encourage young people not to reoffend, six respondents identified two distinct concepts: the use of harsher sentences and a reduction in the number of chances currently being afforded to offenders:

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<sup>55</sup> Additionally, three respondents mentioned that they did not know what messages the court should send to encourage young people not to reoffend.

...they let you do about three, four offences before you get heavily come down on like. I think it should be after the first and second offence...I think they should start cracking down on them when they're young 'cause then they won't do it again [47/CRO+ISSP/12].

If you get a harsh sentence straight away, like what I've got at the moment, 'cause mine's quite hard to do, and there's quite a lot of meetings. If they give them one of them, then they're going to stay out of trouble. If they give them a little caution, a little slap on the wrist, they're going to keep on offending again aint they? [8/SO with SA/12]

I don't think they punish people enough. I think they give kids too many chances, like...I had loads and loads of chances before I actually got sent to prison. So obviously, if you get away with it once, you think you, and then you get away with it again, you think you'll get away with it again, and again, and again. So I just think they're a bit soft sometimes, and like punishing people, instead of um, trying to help them to like change [35/DTO/4].

While these responses are specific to question 16(d), they echo a common theme to be found across a broad range of comments provided by interviewees on why the courts might only be achieving a marginal measure of success when it comes to dissuading offenders. Taking the sample as a whole, interviewees felt that the courts gave too many chances and this perception acquires a particular significance when viewed in light of the broader policy changes announced by the New Labour government in its 1997 White Paper (Home Office, 1997a) with "the telling title" (Downes and Morgan, 2002:90) *'No More Excuses: A New Approach to Tackling Youth Crime in England and Wales'* and which were subsequently enshrined in the Crime and Disorder Act (1998). This policy document emphasised the need to remedy a situation in which young offenders were subject to repeat cautions (Audit Commission, 1996) and evinced the government's commitment to

holding offenders to account for their behaviours. Notwithstanding this fact, the findings of this study suggest that in the eyes of interviewees, the system still affords them too many chances. Aware that a breach of their current order or a further offending episode might not carry significant consequences, these offenders are not always easily dissuaded from reoffending. In these instances, the deterrent impact any sentence may have upon the individual is likely to be minimal at best if the offender perception is that they will be given another chance.

Another five respondents, two of whom had first-hand experiences of incarceration, felt that the court should “threaten them with jail” [48/CRO+ISSP/6], if it wanted to convey a desistance-promoting message effectively:

There should be more of a threat of a custodial sentence imposed because I think that would have an effect on some people, the thought of going to prison would have a greater effect. I think that should be imposed on people who are constantly reoffending, don't seem to be getting the message from the warnings [40/RO/6].

They should do that to some people, like quite a few people, give them a nice shock of prison and see what it's really like, and then you know what. 'Cause you don't really see what prison's really like until you've been in there for about two/three weeks [24/DTO/6].

Clearly there is a need for a delicate balancing act. While there remain clear policy reasons for maintaining a sliding scale of punishments which takes into account repeat offending as an aggravating consideration, the fact that some interviewees felt that young offenders are offered too many chances might call upon a policy review of the gradations between different sentences. Over-reliance on

disproportionately severe sentences like imprisonment in order to get the message across might well have adverse effects, and a zero-tolerance approach to transgressions may aggravate the situation:

Er, I don't know because they should be sent to jail and they shouldn't be sent to jail because if they're vulnerable they're just going to come out worse than they went in. And if they're not, they'll come worse anyway. I don't know [48/CRO+ISSP/6].

Contrary to the widely-held public assumption that there exists an inverse relationship between the severity of punishments and recidivism rates, it is significant that this study found that with the exception of two participants, respondents reported that an exclusively punitive approach would not encourage desistance. The views expressed in response to this question gave further substance to a number of implicit and explicit comments made by participants regarding what the courts could do to discourage repeat offending. In brief, interviewees identified three key areas that the court should address in order to create a support network for young offenders.

The first of these areas involved the orders themselves. A cross-section of respondents felt that the constituent elements of their respective sentences were repetitive, uninspiring and “just a waste of time” [34/SO+ISSP/9]:

...they could try doing things to help not like putting people on orders like this where you just have to come and sit in a room for an hour every other day, they should try and be doing things like make activities and that to keep people doing stuff, to keep them out of the trouble [34/SO+ISSP/9].

Seven respondents to the question under review expressed the conviction that the provision of more activities could keep young people away from offending, a finding which tallies with the views expressed in the literature (Spencer 1992; Edwards and Hatch, 2003; Apena 2007; Margo and Stevens, 2008). The lack of recreational facilities in their respective communities was also identified by a broad cross-section of respondents as one of the factors fuelling recidivism among young offenders. According to these interviewees, their offending behaviour is often the by-product of boredom: "Just a bit of fun for them at the end of the day innit?" [11/DTO/12]. In their view, the provision of more recreational activities would promote desistance by offering them some form of entertainment:

They should provide us more stuff that we can do so we don't end up offending because there aint a lot young kids can do these days [43/RO/8].

The second area the court should consider in its endeavour to promote desistance was identified by six respondents who recognised the importance of the court offering a support network. This would not only include the provision of recreational activities, but also the creation of employment opportunities, a measure which Parke's (2008) sample of young offenders also identified as a means of preventing offending behaviour:

If they're about my age, 16 to 17, they should help them find jobs if they don't got one, and just do activities with them, just keep them, keep them on activities...they would have no spare time to make trouble have they really so... [8/SO with SA/12].

The third area identified by respondents as meriting attention was succinctly expressed by one participant:

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**Interviewee 39 [SO/6]:** It should definitely not focus on their, their downfalls, and rather what they're good at, so showing a different side to them. Not saying this is bad, instead of saying don't do this, this is bad, they should like introduce new things and say this is good like, do this college, blah, blah, blah job like, sort of influence and give them a push in the right direction rather than sort of making it so negative.

**Interviewer:** Right, and how could that message be sent?

**Interviewee 39:** Yeah, like I said, just giving them the tools to show them the better side of life. Just encouragement, they need encouragement rather than being told off and told that you've been badly behaved and you've done this wrong, blah, blah, blah. Fair enough, let them know what they've done is wrong, but then after, it should be encouragement to go the right way and help to not carry on being bad, but to go, yeah.

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This excerpt touches upon a number of themes which are important *leitmotifs* to be discussed in the next chapter. For present purposes, however, the interviewee's comments suggest that a more positive outlook on the part of the courts may well serve to draw the important distinction made by Braithwaite (1989) in his theory of 'reintegrative shaming' between disapproving of the criminal act while treating the actor as essentially good.<sup>56</sup> The problem identified by a number of respondents, however, is that the actor often feels left out of the sentencing process. As one respondent observed, if the court actively seeks to encourage desistance, it is paramount that it engages with the defendant during proceedings:

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<sup>56</sup> The application of this distinction to persistent young offenders, however, presents numerous problems which must be highlighted. While a distinction may be 'easily' established between a first or second offence and the offender's good person, ensuring that the offence and not the offender is made the focus of condemnation, is far harder where the offender has committed numerous offences.

Er, I suppose, they could talk just straight to the offender other than talk through people....Yeah, cause you’ll listen to them more if someone’s talking to you rather than through other people [31/RO/6].

The study has already identified the failure to address defendants in court directly and in a language that they will understand as impediments to penal communication. The findings also suggest that in order to promote desistance, there is a need for a more robust but at the same time supportive approach to sentencing; an approach that is less adversarial in tone and that engages more directly with the defendant.

## **6.9 Improving the Communication of Messages**

Questions 17(a), (b) and (c) were open-ended in nature and interested in exploring how, if at all, participants believed the messages communicated to them by the court during sentencing could be improved. If punishment is intended to be communicative, then feedback from participants on this issue could provide a valuable insight into how the sentencing process is viewed first-hand, and could inform current practices during sentencing.

Twenty-six of the forty-three respondents (60%) to question 17(a) thought that the court could communicate more effectively: “Try to have them explain things a lot more as well. It’d be a lot easier. It’d be a lot better” [16/YP did not know/12]. Within this sub-group, eleven felt that there was room for improvement

in the court's choice of language and its ability to explain proceedings. Many participants' accounts of their experiences in court are heavily punctuated by the repeat identification of these two intricately related issues as barriers to communication and understanding:

Yeah, language is the main one 'cause they are using words that I've only read in the dictionary. And you don't really...if someone sat there and talked to you like I'm talking to you and you're talking to me, you'd understand a lot easier. But then, they're sat there on their big high chair, and like, I don't know what words they use, they use proper long words, I know that! And you're just, you just feel really little 'cause they're using these long words and you don't understand them and you're just like you just sit there and nod, and you're just...It does make you feel really little and small in court [2/SO with SA/24].

Sort of like changing the way they speak as well. Some people can't understand them sort of thing. I can't really understand some words they say. I've got to keep asking them like what do you mean by that sort of like...yeah [9/CPRO/18].

Significantly, and contrary to public perception (Roberts and Stalans, 1997), nineteen of the respondents who thought that the court could communicate more effectively seemed to attach little value to the relationship between harsher sentences and communicative efficacy. Only seven respondents who provided a response to question 17(a) felt that the courts ought to "increase the punishment" [41/SO+ISSP/24] if they wanted to improve the efficacy with which they communicate with offenders:

By giving out tougher sentences...It's the only thing that will make people think twice about what they're doing... [33/CRO/24].

The provision of more activities; the need to provide adequate aftercare and to focus on the positive qualities of the defendant, and the importance of emphasising the consequences of reoffending, were other less frequently cited responses to this question. The recurrence of these themes is indicative of their importance.<sup>57</sup>

In response to question 17(a), seventeen respondents thought that the courts’ messages could not be improved upon or made more effective. Of these seventeen respondents, six failed to provide an explanation for their views, while another six felt that the courts’ messages were “effective enough” [38/SO+ISSP/16]. Although quick to identify the courts’ responsibility in communicating penal messages, a number of interviewees also subscribed to the view that the successful transmission of these ultimately rests upon the receptivity of the defendant:

I think they did it in the best possible way they could to be honest. There’s not a lot more they could do unless they start shouting at you, but then most, you know, young offenders won’t listen to that and they’ll just go off even more because they don’t like being told what to do [23/RO/6].

This finding was also made in section 5.14.

Other less frequently-cited reasons why the court’s message could not be improved included the claim that penal messages are disliked by people already;

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<sup>57</sup> Additionally, two respondents expressed the view that the court’s message could be made more effective, but admitted not knowing how this could be achieved.

that changing these would make things worse, and that the court is not responsible for the administration of the sentence.<sup>58</sup>

No, because they sentence us, and then we don't have nothing to do with them, so we could just tell them fuck off, and then we lose respect for them [14/Section 91 Sentence/60].

This final reason merits further commentary. The analysis has already identified the court's dependence on secondary parties to provide details about the sentence. The study has noted that some participants made specific references to the limited role played by the court to explain why they felt the court's message could not be made more effective:

Again, it's not um, it's not the court, it's these people in here that makes it effective....The court gives you the order, it's these people who make it effective.... But when they're at court, they don't really do that. They just give you the right, not the right, but the order to do it [18/SO+ISSP/24].

According to these participants, the penal messages conveyed during the imposition of the sentence cannot be improved because of the marginal role played by the court. In their view, the court only comes into play again in instances where the young person has either breached the conditions of the order, or reoffended. Although this is an issue which will be discussed later in relation to question 36, it is significant that some interviewees felt that the effective communication of penal messages takes place beyond the imposition of the sentence. If this is the case, then secondary parties, such as YOT workers, who are responsible for the administration

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<sup>58</sup> One additional interviewee recognised that while the messages sent to him by the court could not be made more effective, that this aim could be achieved with regards the transmission of messages to others.

of young offenders' sentences, acquire a crucial role as disseminators of penal messages.

## **6.10 Conclusion**

The findings of this Chapter suggest that neither an exclusively punitive approach nor an increase in the severity of sentences will enhance the communicative efficacy of the punishment process. While the majority of respondents recognised that the successful transmission of penal messages by the court is inextricably linked to the defendant's attitude and outlook, it is evident that the clarity of the court's message is compromised by the complex, adversarial, and jargon-filled nature of proceedings. Respondents also felt that the court affords offenders too many chances; that it should make a more concerted effort to engage with defendants during proceedings, and that it should strive to build upon their positive personal qualities. The marginal post-sentencing role played by the court was also identified by participants as an area that the court should review in order to maximise its capacity to communicate messages aimed at encouraging desistance.

Another important finding discussed in this Chapter is that many offenders are aware of the value of employing impression management techniques such as *appearing* contrite and apologetic to influence courtroom proceedings. Although participants serving referral orders apologised for their conduct and expressed regret during their respective YOP sessions, the qualitative information obtained was

silent on whether these were underpinned by an ulterior motive. The discussion also lends support to Rex's finding that "[o]ffenders' own lawyers were seen as adept at 'playing the game': speaking on their behalf and translating their words into the appropriate legal jargon" (2005:128). The findings suggest that some legal representatives encouraged offenders to engage in impression management manoeuvres. The paradox that emerges is that while the court endeavours to communicate its messages to offenders, these draw upon an armoury of role-playing techniques with which to convey messages that they know the court expects them to have assimilated. In this respect, the study offers further empirical corroboration of Rex's (2005:128) finding that in the eyes of the offenders in her sample, "the [courtroom] process was seen as a game in which a certain amount of 'acting' was demanded."

## **Chapter Seven: Experiencing Sentencing and Punishment**

This chapter explores a range of issues which lie at the core of the sentencing experience. The opening two sections analyse factors identified by participants as influential sentencing considerations. The discussion will then focus on interviewees' conceptions of the term 'punishment', and whether labelling issues affect the way they perceive their sentences. Subsequent sections examine participant views on the impact of 'hard treatment' and 'censure', and whether sentencing is underscored by retributivist or consequentialist penal messages. This is followed by an in-depth analysis of offender perceptions of severity and fairness within the penal context. The closing sections investigate the introspective effect often attributed to punishment and whether participants can identify the relationship between the messages issued by the court and the activities they are made to undertake while on their respective orders. The final section explores offender comments on whether, and if so how, the communicative efficacy of sentences may be improved.

### **7.1 Identifying Sentencing Considerations**

[I]f he's been having a rough time recently, it's obviously going to have an effect on his thoughts and his actions [40/RO/6].

Empirical investigations into the factors considered by judges during sentencing are numerous and wide-ranging (Henham, 1990; Flood-Page and Mackie,

1998; Hough *et al.*, 2003; Mackenzie, 2005; Millie *et al.*, 2007; Solanki, and Utting, 2009), but research into adolescent offenders’ views on this subject is scant. Drawing upon the facts contained in the vignette (see Section 4.10), question 1 of the schedule invited interviewees to identify factors which they thought the court *would* give most weight to at the time of sentencing the defendant in the fictional scenario. Interviewees, however, used ‘would’ and ‘should’ as if they were synonymous terms. Participants rarely adhered to the strict wording of the question, and for most of the time intuitively identified factors which they thought the court *should* take into account. While this subtle shift might be construed as a reflection of participants’ lack of accurate knowledge regarding current sentencing practices, the intuitive responses they provided would suggest a sure-footed understanding of the court’s *modus operandi*.

Thirty-seven of the forty-nine respondents (76%) believed that the circumstances surrounding the crime should be the most pertinent consideration impinging upon the court’s sentencing decision. Within this sub-group, twenty-four respondents reported that the court ought to consider the fact that the offender in the story had to “look after his baby brother during the day” [vignette]. In their explanations these participants did not attempt to justify the crime committed, but advanced the argument that these circumstantial factors may offer causal explanations for the offending behaviour:

...it seems as if he was acting out, getting the money out of the vending machine to look after his baby brother ‘cause his father left [31/RO/6].

Many interviewees felt that looking after his baby brother was something to be commended and made much of the fact that “he’s doing good” [16/YP did not know/12] given the circumstances.

Fourteen respondents who reported that the circumstances surrounding the offence should be borne in mind at the time of sentencing reported that the court should consider the fact that the fictional defendant’s father had left. Another eleven respondents made specific reference to the fictional defendant’s absenteeism from school, while a further eight felt that the court should take into account the fact that the defendant has “had a tough time these past few months” [vignette].

Sixteen of the remaining respondents to question 1 believed that the fact that the protagonist did not have a criminal record should be taken into account by the court: “you can’t really go too tough on him if it’s his first offence innit” [41/SO+ISSP/24]. According to an additional two respondents, because the defendant “admitted to stealing the money...they might let him off a little bit” [5/SO/12]. Participants recognised the advantages to the defendant of admitting to the offence early on in the criminal justice process, and also demonstrated an awareness of the correlation between recidivism and sanction, as will be discussed in the next section.

With the exception of two interviewees, the remaining forty-seven respondents to question 1 did not consider that the defendant’s repentance in the fictional scenario should have a bearing on the court’s decision. As a sentencing consideration, ten respondents afforded greater weight to the offender’s apology than

to the fact that he regretted what he had done. Responses in this category also endorse the findings made earlier in Section 6.1 about the extent to which some interviewees were conscious of ‘impression management’ strategies and of the advantages to be secured by issuing an apology, albeit an insincere one because “that’s what they [the court] want to hear” [14/Section 91 Sentence/60].

Finally, nine respondents felt that the fictional defendant’s “good character” was an important factor which the court should bear in mind when sentencing him.

Only seven respondents identified the defendant’s age as an important consideration. None of the interviewees singled out either the protagonist’s gender, or the fact that the crime did not involve a direct victim (although the vending machine operator would ultimately be at a loss), as factors which the court should consider. The majority of respondents felt that the court should take the defendant’s wider socio-economic and personal factors into account at the moment of sentencing. As adolescent offenders themselves, many of them with similar socio-cultural backgrounds, most participants empathised with and found mitigating circumstances for the offender’s behaviour:

Well...when I was younger my dad left, and I think that’s what maybe sent me off the rails and that, but that’s my, that’s maybe why he went out and stole something because he don’t feel as though he’s got enough attention, ‘cause his mum’s at work all day and he has to look after a little one as well [27/SO/12].

Well, the bit about his father and that. That’s exactly the same as me, so I know what they like about it, and they do look into it quite well. And, he won’t get done that bad at all. I reckon he

would just have to pay the money back, and, he will just get a warning [24/DTO/6].

## **7.2 Criminal Histories as a Sentencing Consideration**

Having asked interviewees to identify factors from the vignette which they believed the court would consider important at the sentencing stage, questions 2(a) and (b) invited participants to consider whether a history of previous offending would have an impact upon the sentence imposed.

Of the forty-eight respondents to this question, forty-six (96%) considered previous convictions to have an aggravating effect upon any sentence issued by the court: “He would get something tougher...more serious because he’d done it so many times” [3/SO/6].<sup>59</sup> Within this sub-group, ten respondents made specific reference to the fact that the fictional defendant’s recidivism would aggravate the sentence precisely because the “courts take it more seriously if you’re a repeat offender” [36/RepO/3].

The remaining respondents proffered a range of other reasons which offer a valuable insight into why repeat offending was considered an aggravating factor. Thirteen respondents felt that the existence of more than one previous conviction suggests that the defendant is capable of offending again:

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<sup>59</sup> The remaining two respondents were of the view that having previous convictions would make no difference.

Just because he's done it before, and they'll think that well he's done it again, so what's stopping him from doing it again [7/APO/3].

Yeah, worse 'cause um he's done it before, and then he's done it again and there's a chance that he'll do it after that again [30/CPRO/24].

Reoffending, according to another five respondents suggests that the criminal behaviour is not a momentary lapse, but a pattern of behaviour: "he's doing it on a number of occasions which says that he's continuously going to do it" [50/DTO/18].

The responses yielded in relation to question 2(a) and (b) also endorse the educative undertones identified by participants at other points in their interviews. Seven respondents claimed that repeat offending would be considered an aggravating factor because it constituted evidence that the offender "hasn't learnt his lesson" [41/SO+ISSP/24]. According to an additional two respondents, it would make things worse for the individual in the fictional scenario because "he knows it's wrong, so he shouldn't do it in the first place" [44/RO/4]. Another less frequently-cited reason why previous convictions would have an aggravating effect concerned the claim that repeat offending casts doubts upon the genuineness of the defendant's apology.<sup>60</sup>

The two respondents who considered that previous offending would have no impact upon the sentence issued by the court, based their views on the mitigating circumstances contained in the fictional scenario:

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<sup>60</sup> Six respondents failed to provide a reason as to why they believed previous convictions would have an aggravating effect.

I don't know, it'd stay the same 'cause if he's not getting a chance to go out and earn money 'cause he's having to look after his baby brother, then what else is he going to do for money [34/SO+ISSP/9].

He's not stealing for like himself, he's stealing, he's stealing it for looking after his baby brother innit [33/CRO/24].

The need for wider contextual influences to be considered by the court was also noted by another four respondents who, notwithstanding their belief that previous convictions would have an aggravating effect, still felt that the court should adopt a more holistic approach at the time of sentencing by bearing in mind the wider social circumstances which may have led the defendant to reoffend. While it may seem somewhat idealistic on the part of some interviewees to believe that repeat offending would not be met with increasingly severe penal responses, these interview excerpts seem to endorse the view noted already in Section 7.1, that there are some participants who believe that the circumstances surrounding offending behaviour should be given greater importance. While participants wanted the court to take cognisance of the context in which the offence was committed, they did not want it to judge the offence against the defendant's criminal history. This dual stance might perhaps be explained by the strong feelings of empathy aroused by the vignette's protagonist. More significantly perhaps, it might reveal participants' subconscious attempts to protect their own personal interests.

### 7.3 Conceptualising Punishment

I'd say it's the consequence of your action. Everybody knows that...everything has consequences whether it's good or bad, but a punishment would be the consequence that you have to deal with after a bad move you've made [39/SO/6].

While academic debate as to what constitutes 'punishment' is longstanding (Ewing, 1943; Toby, 1964; Scheid, 1980; Honderich, 1989), there has been very little engagement with the subject from the perspective of offenders themselves. The thesis has already noted that perceptions of what 'punishes' have been based on the "norms and living standards of society at large" (Petersilia, 1992:23). Premised on Furnham and Alison's (1994:46) assertion that it is "inadequate to study the implementation of punishment without some understanding of offenders' attitudes towards it", question 24(c) invited participants to explain what they understood by the term 'punishment'.

Of the forty-eight respondents to the question under discussion, twenty-two conceived of punishment as a direct consequence of having offended or done something wrong:

Punishment is if you do something wrong you get punished for it [36/RepO/3].

Punishment is...that you've done wrong and you have to pay the punishment for what you've done [49/RO/3].

Central to the accounts offered by fifteen respondents was the concept of coercion. Through punishment, according to these participants, individuals are being forced to do something against their will:

Doing something you don't want to do, for a reason.....You've done something wrong, so you do something that you don't want to do. That's a punishment to me [47/CRO+ISSP/12].

It's like you've got to get punished, you've got to do stuff you don't want to do. Like if you get community service, you've got to do it, you can't refuse [44/RO/4].

The fact that the majority of respondents shared the view that punishment is meted out as a response to criminal behaviour, and that the act carries coercive undertones offers some empirical corroboration of two of the principal constituent elements of punishment identified by academics such as Honderich (1989), Matravers (2000), Walgrave (2001) and Ashworth (2002).

'Punishment', according to nine respondents, is conceived as a restriction upon behaviour and as something which "takes up all your time" [4/CPRO/12]. A cross-section of these participants also made specific reference to the idea that 'punishment' is something that is "not meant to be nice" [16/YP did not know/12] and others believed that its "[s]omething that's...difficult" [7/APO/3]. Seven respondents offered their specific sentences as concrete examples of what 'punishment' is: "Punishment is coming in once a, one day a week" [45/CRO/9].

The information yielded by responses to question 24(c) also cast light upon the close relationship between participant definitions of 'punishment' and the purposes which they believe sentences serve. Section 5.5 noted that none of the respondents to question 9(a) believed the purpose of their sentence was to pay back the community for what they had done. While this finding casts doubt upon

participants' perceptions of the reparative elements of their sentences, it was interesting to find that in relation to the definitions proffered by interviewees as to what constituted 'punishment', a minority of respondents to question 24(c), namely five male interviewees, conceived punishment in 'reparative' terms:

....to pay what you've done for the crime [19/SO/6].

...if you're given a reasonable punishment, then it's your duty to right your wrongs [18/SO+ISSP/24].

Implicit in the definitions offered by another four respondents, three of whom were female, was the idea that punishment is a device which conveys disapproval of the offender's criminal behaviour, a finding which offers some empirical corroboration of Feinberg's (1970) assertion that punishment is characterised by its reprobative function: "Something to tell you that you've done something wrong" [23/RO/6].

According to another four respondents, 'punishment' is something which teaches the defendant an important lesson: "they're making you do it to...teach you a lesson" [3/SO/6]. Finally, an additional three respondents were of the view that prevention is an integral part of the concept of 'punishment': "Punishment is something just to try to make you stop doing crime" [11/DTO/12]. These findings go some way towards offering some empirical corroboration of the theories advanced by Ewing (1943), Morris (1981) and Hampton (1984) who conceive of legal punishment in educative terms. They also lend support to the central role ascribed to prevention by von Hirsch (1993).

When asked whether they conceived of their orders and the activities they had been asked to undertake as a punishment, twenty of the forty-nine respondents to Questions 24(a) and (b) provided ‘mixed’ answers which generally followed an “I know it’s a punishment, but...” [30/CPRO/24] format. Nineteen respondents to the question felt that their sentences were a punishment, while the remaining ten felt that this was not the case.

Of the twenty respondents who provided ‘mixed’ answers to the question, eight made reference to the fact that their sentences were also trying to help them, while another three noted that their sentences were intended as a learning experience:

Yeah, they are a punishment in some way. But in other ways, they are more trying to change the person, trying to change you into a different person so you wouldn’t repeat [36/RepO/3].

Not as much as punishments, but just help really [8/SO with SA/12].

To a certain extent it does feel like a punishment but it’s very beneficial as well [39/SO/6].

The remaining nine respondents within this sub-group felt that their sentences were a punishment insofar as the requisite activities under the order encroached upon their time, but when it came to evaluating the activities themselves, they recognised that “it doesn’t feel like a punishment” [19/SO/6]:

Sort of. I think more the punishment is the taking up your time, not the activities they’ve given you because I don’t mind doing a bit of gardening here and there, a bit of wood work and all that. I think it’s more the fact that they take your time up [41/SO+ISSP/24].

In a way it is, but I suppose activities makes it less of a punishment....Um...it just takes time out of your time don't it like, like you know what I mean? [17/YP did not know/12]

The fact that twenty respondents provided ‘mixed’ answers to the question seems to endorse McIvor’s (1992) conclusion that while some offenders will readily acknowledge that their sentences are a ‘punishment’, that others will find “it difficult to conceptualise [their orders] in punitive terms” (1992:101).

Seven of the nineteen respondents to question 24(a) who were firm in their conviction that their sentences were a punishment, reported that they felt this way because the activities encroached upon their ability to do other things:<sup>61</sup>

‘Cause well, like I say, I ain’t got no time for nothing now. So it’s basically taken over my life [20/CRO/18].

Well, you got to come here everyday, waste your time aint you, but you did the crime you’ve got to do the time you know what I’m saying [12/SO/6].

Four participants considered that their sentences were a punishment precisely because they had been imposed on them as a response to their offending behaviour:

‘Cause it is a punishment really....‘Cause if hadn’t done, like if I hadn’t offended, I wouldn’t have this so [32/CPRO/12].

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<sup>61</sup> Additionally, five respondents within this sub-group failed to provide a reason for their choice.

This finding offers further empirical corroboration of the point which was made earlier in this section that some offenders conceive of punishment as a direct consequence of having offended.

Three respondents conceived of their orders as a punishment *per se* because the sentence is “put as a punishment because they give it for your punishment” [13/RO/12]. Another three respondents claimed that undertaking lengthy hours of unpaid work is what made their sentences a punishment:

Because it’s work effectively, and it’s not being paid whilst I could be out there getting paid for work, so in a way, I see it as that, as punishment [40/RO/6].

The point has already been made above that three respondents to question 24(c) were of the view that prevention is intrinsic to any definition of ‘punishment’. It was interesting to find that an additional two respondents to question 24(b) should have made reference to this concept in their accounts of why they considered that their respective sentences were a punishment: “It’s just punishment, they just want you to stop really don’t they” [11/DTO/12]. Others felt that their sentences were a punishment because they were forced to undertake activities as part of their orders. The final interviewee thought his sentence was a punishment because he had to “pay” [28/CRO/24] for what he had done.

Significantly, the study found that ten respondents to question 24(a) and (b) did not conceive of their respective sentences as a ‘punishment’. The explanations

offered by eight of the ten respondents comprising this sub-group suggest that these participants view punishment in didactic, constructive terms:

Not really, no...Because mainly they're just here to help, that's really all of your whole reason why [43/RO/8].

Not necessarily punishments, but more like...dunno, it's more trying to help young people, with like, give something back to the community and things like that, rather than punishments [5/SO/12].

I wouldn't really class it as a punishment. It's just like extra help I reckon. That's what I'd class it as really [22/SO/12].

Thus, while nineteen respondents view their sentences exclusively as punishments, the majority (n=30, comprising 20 respondents who provided 'mixed' answers, and the remaining 10 participants, who felt that the activities they had been asked to undertake were not a punishment) are appreciative of other more edifying dimensions to their respective sentences. Viewed in the context of how participants perceive penal messages and the purposes they ascribe to sentencing, these findings reflect the extent to which interviewees understand the dual roles of a youth justice system that is both punitive and rehabilitative in its intentions.

## **7.4 Punishment and Labelling**

It's just the same, just re-worded innit? [41/SO+ISSP/24]

The empirical work undertaken was interested in exploring whether the name assigned to any given sentence might affect how individuals perceive court-

imposed orders. Earlier in the thesis, it was noted that the criminal justice system is on a mission to prove that community penalties have a punitive bite (Mair, 1998; Johnson and Rex, 2002) and that this move was evident in the renaming of community service orders to community punishment orders (Criminal Justice and Courts Act 2000, Section 44(3)). In her discussion of the renaming of the aforementioned community orders, Rex (2005:11) makes the supposition that “[t]he new nomenclature will inevitably have had consequences for how these orders are perceived”. This supposition was considered worthy of empirical corroboration. Questions 38(a) and (b), which were analysed and coded jointly, were designed to explore whether the manner in which participants perceived their orders would be different if these were called punishments.

Thirty-three of the forty-one respondents (80%) to question 38(a) and (b) believed that the change of name would not make a difference. Within this subgroup, twenty-four respondents reported that the change of name would have no effect because the court-imposed order would ultimately still be the same:

‘Cause an order is something you’ve got to do really, and a punishment is something you’ve got to do. So like, you’re given an order and you’re given a punishment, they’re both the same I’d say [6/APO/3].

The remaining nine respondents claimed that the change of name from ‘order’ to ‘punishment’ would have no effect because they saw their respective orders as a punishment already: “No, because it is a punishment in my eyes so” [46/CRO/6].

While in the majority of cases, the change of sentence name would not make a difference to participants, the study also found that eight of the forty-one respondents to question 38(a) and (b) believed that the change of name would in fact make a difference to their views. Although this sub-group is small, the value of its contribution lies in the insight gleaned from the responses obtained.

Within this sub-group of eight respondents, four reported that the change of name would make the court-imposed sentence "sound a lot worse" [23/RO/6], while another three claimed that the change of sentence name would make the sentence imposed seem harder:

It would make it seem like harder, like they're putting a lot more pressure on you. Like...it's the name what changes it, innit, it's a punishment [11/DTO/12].

If it's like punishment, they think they've got to do like hard work and that like [44/RO/4].

The remaining respondent recognised that the change of name might impact adversely upon the person serving the sentence:

I don't like [the term] 'punishment', it makes a person feel worse I think. You're being punished for this, it's not an order, so [27/SO/12].

Having analysed whether a change in sentence name would impact upon offender perceptions of these, questions 38 (c) and (d) were deployed for the same purpose, but this time, interviewees were asked to reflect upon whether, in their

opinion, the change of sentence name would make a difference to the way their families viewed their court-imposed penalties.

Twenty-six of the forty-three respondents believed that the change of sentence name would make no difference to the way their families viewed their sentences. Within this sub-group, eleven respondents claimed that, in their view, their families would still see the sentence as “the same thing at the end of the day” [42/SO+ISSP/12], with an additional interviewee noting that the sentence would still have the same effect:

It’s mainly going to be the same thing even if it was a punishment [43/RO/8].

Because you’re still going to be doing the same things. It doesn’t matter what it’s called, does it? [24/DTO/6]

According to another seven respondents, the change of name would have no impact upon how their families viewed their orders because they already “think it’s a punishment anyway” [46/CRO/6]. One additional interviewee noted in her response that it did not matter to her what her family thought about her order as she ignored them.<sup>62</sup>

In contrast to the above, ten respondents to questions 38(c) and (d) claimed that the change of sentence name would impact upon the perceptions held by their

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<sup>62</sup> The remaining six respondents within this sub-group failed to provide a reason.

families, and a further seven recognised that it might have an effect.<sup>63</sup> Of the ten respondents who comprise the larger group cited above, four reported that the change of sentence name would probably make their orders sound worse in the eyes of their respective families:

[I]t sounds... a bit harsher than order doesn't it? ... It sounds a lot more serious. I mean, if you're in court and someone said we're going to give you a supervision punishment rather than a supervision order, it sounds a lot more like scary and probably shock quite a lot of people [5/SO/12].

It's the way people receive things like...and it sort of creates, the vocabulary, the words used creates an image in your head, so when you hear that it's a punishment, you automatically think it's worse than it is or you think more into it [39/SO/6].

According to three respondents, the change of name would influence their families' perceptions of the purposes which the sentence is meant to serve:

... 'cause they're older they'll think it's to help him, if it's like called punishment they'll see it [as] something I got to do like pay back [8/SO with SA/12].

An additional respondent felt that the change of name would lead to greater disapproval from her family while another individual recognised that this change could also make him feel worse about what he had done:

Yeah, my nan and granddad would just frown at me even more I think [27/SO/12].

[I]t makes me feel more guilty in a way, if someone was talking to me about it [36/RepO/3].

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<sup>63</sup> Additionally, one respondent was unsure about how to answer the question and provided a “Don't know” response.

Of the seven respondents who recognised that a change of name might have an effect on their families’ perceptions of their sentences, four made reference to the fact that it would make their sentences sound harder: “it sounds more formal and um, it sounds more serious” [40/RO/6]. The remaining respondents failed to provide an explanation for their views.

The study found that thirty-three respondents felt that the change of sentence name would have no impact on how they perceived their orders. In the case of the young offenders interviewed, the findings of this study do not support Rex’s (2005:11) supposition that changing the name assigned to any given sentence will impact upon how that order is perceived. The study did, however, find that, according to participants, a change of nomenclature would make a difference to the way offenders’ families view their court-imposed penalties. Thus, while offenders seem to be only marginally affected by the name of their sentences, they believe that their relatives are more susceptible to labelling issues.

## **7.5 Young Offender Views on Hard Treatment and Censure**

Just telling someone off doesn’t do nothing, they’ll just walk away and laugh. You need to punish someone. If... someone’s done something wrong, they need a punishment to make them see that they’ve done something wrong [46/CRO/6].

The literature reviewed earlier touched upon the academic debate regarding the complex functions and roles ascribed to hard treatment and censure by penal theorists (Section 3.9.2). If punishment is justified, or at least premised on the

notion that it expresses or communicates a particular message, do offenders think that censure alone can convey the messages intended, or do they think that the imposition of hard treatment is ultimately necessary to secure the communicative function of punishment? Other more wide-ranging questions concerned the justifications which offenders themselves might advance for the imposition of hard treatment. Is the expression of censure alone a sufficient justification for penal hard treatment as, Ewing (1927, 1943), Lucas (1980), Primoratz (1989), and Kleinig (1992) hypothesise? Do offenders, as Duff (2001) believes, think that hard treatment can be justified because of the morally persuasive function which it serves or do they think that hard treatment is necessary in order to secure the preventive aim of punishment as von Hirsch (1993) argues? These are some of the issues which question 25 sought to explore.

The study has already provided empirical evidence (Section 5.6) to suggest that censure alone can only make a relatively small contribution towards securing the preventive aims of the youth justice system. This finding is endorsed by the accounts provided by twenty-five of the forty-nine respondents (51%) to the question under review who felt that censure by itself could not convey disapproval to the offender adequately. These respondents identified a range of contextual factors which they felt would have to be taken into account when assessing whether censure alone could be sufficient to convey to defendants the wrongfulness of their conduct. Twelve respondents, all of whom were male, reported that the need to impose hard treatment ultimately depended on the person before the court:

I think everyone is different. I think some people would respond to a warning whilst others it would take a harder, a harder punishment just to get the message across to them [40/RO/6].

With different people, it’s different, different things ‘cause me personally, a telling off would have sorted me out, but other people obviously, it takes a lot more, a lot more, like prison or something like that to sort them out [31/RO/6].

To another ten respondents, the need to impose hard treatment ultimately rested upon the nature and seriousness of the offence:

Dunno, it depends on what the case is like really innit? Obviously, if it’s something bad, then you need something heavy. But if it’s something little, then you should just let it go unless they’ve done loads of little things really [20/CRO/18].

Depends on what you’ve done really. If you’ve done something stupid like rob a vending machine, then yeah, that’s still bad because it’s still stealing and it’s still against the law. But it’s not like you’ve gone out and killed someone. So it’s not a major offence. You should get punished for it, but not majorly and then like, harder punishment should be on people that have actually done something really badly wrong that have hurt a lot of people [2/SO with SA/24].

Finally, the remaining three respondents reported that although it was necessary for sentences to be hard, they also had to be fair and constructive: “Yeah, to be hard, but to also be helpful... ‘cause otherwise, if it’s just hard, then no one’s going to want to do it and then everyone is going to end up in prison” [34/SO+ISSP/9].

None of the respondents considered that the severity of the punishment should be determined by the preventive function of the sentence, a view that supports von Hirsch's (1993) theory of punishment. The responses provided to this question echo those offered in relation to the discussion that will follow shortly on participant perceptions of fairness (see Section 7.8) where respondents reported that it was important that sentences are commensurate with the offence which had been committed. The responses provided to question 25, however, suggest that the reprobative function of punishment is inextricably linked to the nature and seriousness of the offence, and that this, according to many interviewees, should be the main determinant regarding the severity of any hard treatment imposed.

The views of the remaining twenty-four respondents to question 25 who were firm in their conviction that the imposition of hard treatment was imperative if the aim is to drive the penal message through to the defendant are also worth considering. Within this sub-group, twelve respondents advanced the view that hard treatment is necessary to prevent and deter the defendant from offending again:

Nah, the punishment has to be tough. 'Cause if you say don't do it again, give them a slap on the wrist and send them off, they're just going to do it again [41/SO+ISSP/24].

Nah...If they just told them off all the time they'd always think they could get away with it wouldn't they, so they do need something like tough and hard to try and make them not to get into trouble again [12/SO/6].

It don't work like that...If someone just gets told off, someone gets told, if every time I've done a burglary someone told me off I'd be a millionaire by now [38/SO+ISSP/16].

The fact that twelve respondents felt that hard treatment can be justified for its preventive effect, goes some way towards corroborating one of the principal tenets of von Hirsch (1993) and Narayan's (1993) justification for hard treatment.

According to another six respondents, hard treatment is necessary in order to show offenders that there are real consequences to their actions:

You gotta have something tough and hard, 'cause the youths just think, fuck it, I got away with it, it's nothing, tell me not to do it gain, keep reoffending, and if they go to prison, they might keep on going back, but half the time they get sick of it [21/DTO/6].

I'd probably actually give them a punishment 'cause they have to do it, they have to pay the consequences for what they've done [49/RO/3].

Hard treatment was necessary according to another five respondents because it would not only convey disapproval of offenders' actions, but it would also help to make them realise that what they had done was wrong, a finding which offers some empirical corroboration of the morally persuasive function which Duff believes hard treatment ought to serve:<sup>64</sup>

I think that they should get the punishment just to make them realise that they've done wrong and hopefully stop them from doing it again [43/RO/8].

Just to show them what they've done is wrong 'cause if it's easy for them, then they'll just go out and do it again. The

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<sup>64</sup> Four participants within this sub-group failed to explain why they felt that hard treatment was necessary.

harder it is then the more it's going to make them think 'Oh, I don't want to go and do that again' [27/SO/12].

Von Hirsch's thesis has come under criticism from academics such as Brownlee (2007) for supposedly failing to engage with offenders as moral agents by introducing deterrence as the justification for hard treatment in his censure-based account of punishment. The findings of this study, however, suggest that interviewees readily accept the need for hard treatment. While the receptivity of individual defendants before the court and the nature and seriousness of their offences have been singled out as important factors by participants in determining whether censure alone could be sufficient to convey to defendants the wrongfulness of their conduct, the persuasive and preventive function of punishment, according to approximately half of the respondents (n=24) to question 25 suggest that these aims can only be effectively secured through the imposition of hard treatment. The responses provided reveal that participants view hard treatment as a necessary "prudential reason" (von Hirsch, 1993:13) to dissuade those who remain deaf to the moral voice of censure, and therefore support von Hirsch's (1993) contention that hard treatment operates within, and not independently of a censure-based framework:

I don't know, 'cause if you just give them a talking to it goes in one ear and out the other and they'll just go back out and do it again. But if people knock some sense into them, they won't do it again [45/CRO/9].

## **7.6 Sentencing: A Consequentialist or a Retributivist Message?**

Both of them 'cause like if you look at the person's past you see what they've already done and stuff they've already been through and then you look at what they're going to be doing, if they're not into the stuff that they've done before then they're just like a changed person, they've actually learnt from their experiences [37/RO/6].

Having explored participants' views on the complex relationship between censure and hard treatment, question 39 invited interviewees to comment on whether, in their view, sentencing should be backward-looking and offence-oriented, or whether it should focus on the defendant's future behaviour, and the impact which the sentence may have upon him/her. The open-ended nature of the question allowed for a 'middle' position to be adopted which accommodated both views.

Of the forty-seven interviewees who provided a reply to this question, twenty-two reported that the court should look at both the past and the future.<sup>65</sup> Thirteen respondents claimed that during sentencing, the court should focus exclusively on the defendant's future, while another ten felt the emphasis should be placed on what the defendant had done in the past.<sup>66</sup> The explanations advanced by participants for both choices replicate those proffered by interviewees who had made a single choice. Given the nature of the question and the overlapping responses obtained, the ensuing analysis will synthesise the reasons proffered by participants for their choices.

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<sup>65</sup> Sub-group analyses revealed that five female respondents (45% of the overall sample of female participants interviewed for this study) provided answers which fell into this category.

<sup>66</sup> The remaining 4% of respondents reported that the court's focus on the defendant's past or future should depend upon the offender's criminal history and the seriousness of the current offence.

The most commonly expressed reason why respondents felt the courts should look to the defendants’ future was in order to give these a chance to change their lives and learn from their mistakes:

‘Cause from the past you’ve already done it and you might have like, you might have just learnt from it and not do it again [29/RO/6].

I think future behaviour is more important because whatever has happened in the past, you’ve gone to court, if you can say, ‘look I’ve done something wrong’, fresh start and then move on from it, and if you behave well in the future, if you get yourself all sorted out, that’s the main thing [23/RO/6].

The perception among many participants that “you can change your future but you can’t change the past” [30/CPRO/24] underpinned their widely shared view that looking to the defendant’s future would be a constructive response to offending behaviour, one which would allow defendants a chance to change. Interviewee accounts seem to suggest that there is a window of opportunity at this juncture for behaviour modification which those responsible for the administration of the sentences should seize.

This perception is confirmed by the second most widely-cited reason why the court should look to the defendant’s future behaviour, which concerned the belief that any court-imposed sentence is likely to impact upon the future behaviour of defendants:

They do look at the future, like that’s why they’re giving you punishment ‘cause they want you to do well, get a job and that [32/CPRO/12].

Because what you're getting now it affects your future. If you stop doing it now, you'd have a good future, if you carry on doing it, your future is going to be the same as you're doing now sort of thing [47/CRO+ISSP/12].

From these accounts it may be inferred that young offenders are highly conscious of the important ramifications which being sentenced before the court may have upon their future lives.

The rationales advanced by those who felt that sentencing should be backward-looking primarily focused on the value and nature of the information to be gleaned by investigating the defendant's background. The most widely-cited reason in this category placed emphasis on the fact that looking at the past would allow the court to determine whether defendants had been in trouble before, and whether they had assimilated the penal messages from their previous sentence(s):

If they've been in court before in the past, then they should have learnt by that not to do the offence again, but obviously they've been in an offence again [45/CRO/9].

I think you've got to look at what they've done in the past 'cause obviously if what you're in for now is of a similar nature then it shows that you're repeatedly doing the same thing, that shows you're not changing from whatever punishment you've received for it from before [40/RO/6].

The responses cited above seem to tally with the findings made in Section 7.2 concerning the widely-held belief among participants that previous convictions are not only indicative of the fact that offenders have not learnt their lesson, but that they are also an aggravating factor because recidivism suggests that offenders are capable of offending again.

A similar concern was expressed by other respondents who also felt that sentencing should be backward-looking because the information obtained on the defendant would allow for a more complete character appraisal:

Yeah, but if you don't look at the past, you don't know what to expect for the future. You don't know what they're like [41/SO+ISSP/24].

They look at the past to see how you've grown up. If you've had a bad child life you're going to be naughty really aint you, but when you've been brought up good, you really shouldn't be naughty [8/So with SA/12].

The discussion has revealed that according to twenty-two of the forty-seven respondents to question 39, sentencing serves both a retributivist and consequentialist function. Respondents displayed a mature acceptance of the need for punishment as a response to offending behaviour and went beyond making their choice on the basis of self-interest.

## **7.7 Offender Perceptions of Sentence Severity**

For all the academic work which sets out to quantify public and professional perceptions of the severity of punishment, it is one of this study's contentions that it is only by asking those being punished, that we may come to a more comprehensive understanding of how punishment works. Question 18 invited interviewees to rate the severity of their respective sentences against a range of possible options ( Too Easy  Easy  About Right  Tough  Too Tough). Of the fifty interviewees who

provided a reply to this question, twenty-six reported that their sentence was 'about right', fifteen felt that it was tough and the remaining nine claimed that it was easy.

In spite of their sometimes blasé attitudes, only a minority of respondents felt that they could trivialise the impact of the order they were serving. Four respondents within this sub-group of nine interviewees thought their sentences were 'easy' because they felt they had not been asked to do much as part of their orders:

I think it's easy because I only have to come in once a week and that's it and all that I've got to do is sit there [45/CRO/9].

You don't do nothing, you just come in, talk for about ten minutes, go back to whatever you want to do again. And it's only twice a week as well, so.....They say it's supposed to help you. It aint really made a difference on me, it's just shown from how many orders I've gone through [24/DTO/6].

Sub-group analyses revealed that three of the respondents who felt their respective sentences were 'easy' were serving DTOs. Two of these interviewees made specific reference to the fact that the community-based elements of their sentences were considerably easier than their custodial ones:

'Cause it's a bit tough. Actually, I'll tell you it's easier actually. My license is easy yeah....That's all it is [easy] yeah. The only tough part was prison and like a little bit, and that's it [11/DTO/12].

Views such as these would seem to corroborate the research findings reported in the literature concerning the impact which offenders' previous experiences of incarceration will likely have upon their perceptions of the severity of their current

sentences (Gainey and Payne, 2000; Gibbs and King, 2003; Delens-Ravier, 2003). The value of this finding also lies in the fact that it brings to the fore the inevitably context-bound nature of offender perceptions of the severity of punishment and the need for research findings to be accurately contextualised.

The study has already noted the opinion shared by a cross-section of interviewees that recreational facilities in their respective communities are inadequate and insufficient. If many of these young people are bored, it seems reasonable to suggest that the activities enshrined in their respective orders might serve to break the monotony and give them something to do, as the following interviewee noted:

I find it quite easy really. It's missing, it's not making me miss anything in my life. I come in like on a Wednesday and a Friday and them times people are like always in school when I come into YOT anyways, so it's just like walking down the road for a bit, going to chat to new people and then coming home [37/RO/6].

The impact the sentence has upon individual offenders also seems to diminish considerably with the passage of time:

Sort of...mmm...I've been on it for over a year now. Nearly two years I've probably had YOT for [Yawning]...But...And what would you mean, am I finding it easy? Well, I am now because I've got used to YOT on Thursday.....When I don't go to school it's just like my timetable, so I'm used to coming in [1/SO with SA/18].

The assimilation by interviewees of their respective sentences as part of their daily lives is a *leitmotif* which was apparent across many of the interviews:

Yeah, it's just like eating. You have to eat. I have to do YOT, but it's just part of my routine now [2/SO with SA/24].

If being on the sentence is perceived in ordinary terms "just like eating" [2/SO with SA/24], for instance, then a strong case can be made that the transformative potential of the sentence may be minimal for nine respondents. The perception that the sentence is 'easy' and the fact that this perception is subject to the 'experiential effect' carries implications for the presumed communicative efficacy of these sentences.

The twenty-six interviewees who believed that their respective sentences came under the 'about right' category, provided a range of explanations for their views. Four of these respondents felt that the activities they had been asked to undertake were commensurate with the seriousness of the offences they had committed:

I think it's a good sentence for what I've done 'cause it makes me think and I have to do community service and things like that [27/SO/12].

Another four of these participants felt that it was only right that they should undergo some form of punishment for their criminal behaviour. A cross-section of these respondents recognised that punishment would enable them to repay the community for what they had done:

I think it's fair that I should go through some form of order for what I've done [40/RO/6].

Because er, you've done something wrong, so you should put something back into the community by doing the community service [30/CPRO/24].

A further four respondents thought that their sentence was 'about right' because of the general inconvenience caused by having to find time to undertake the activities they had been ordered to carry out:

The only difficult thing about it is trying to get it like to fit in with work [6/APO/3].

I don't find it difficult, but I don't find it easy either so, 'cause I've got an awful lot of appointments and all that sort of thing...[23/RO/6].

Another four respondents who believed that their sentences were 'about right' recognised that their assessment of the severity was dependent upon which stage of their sentence they were currently serving:

It's tough for the first three months 'cause its in like in a high intensity, but when it goes to low intensity, it's alright [12/SO/6].

A slightly smaller group consisting of three respondents considered that their sentence was 'about right' because being on the order had helped them stay away from offending:

I think it's alright, like coming here twice a week, just obviously 'cause they want to check up on you and make sure I aint come out and gone back into offending or something like that [35/DTO/4].

Just that I'm glad that I've got the referral order because it's helped me a lot. It's helped me sort out a lot in my life that I didn't like, cope with situations that I didn't know how to deal with before and I feel like I've got my life back on track [23/RO/6].

These findings endorse the fact that perceptions of sentence severity are context-bound and invariably subjective. According to another three respondents who believed that their sentences were 'about right', perceptions of severity are linked to the offenders' willingness to change and accept personal responsibility for their behaviour:

I think for any offender who's willing to make a change in their life, that yeah, it's reasonable....if you didn't want to reoffend again, then the tasks asked of you is easy enough [18/SO+ISSP/24].

Finally, two respondents within the 'about right' group felt that their perception was conditioned by their expectation of a harsher sentence:

Yeah, because I could've got a lot worse but I was just given an order. Once a week, you know. It's not hard, but at the end of the day, it still keeps me occupied from other things [46/CRO/6].

I've still got to go to, I'll be here a couple of times a week, but I don't think it's too much considering that I could be here every day of the week [39/SO/6].

Other, less frequently-cited responses to explain why respondents thought their respective sentences were 'about right' included the view that being on the order was a learning and enjoyable experience. Respondents within this category also

reported that their sentence was ‘about right’ because of the way things had been explained to them and because they felt they had been given another chance.<sup>67</sup>

Of the fifteen respondents who classified their respective sentences as ‘tough’, six admitted finding it difficult to keep to the terms of their orders:

I’m 17 years old. I’ve got to be in at half eight for the night time. I’ve got me Saturdays, when I’m working all week. I’ve got Saturday unpaid work and it just gets on top of you really after a while [20/CRO/18].

It’s hard really because I’m working and all, working and all,...if I don’t come down here, then I’ll get in front of the court and stuff like that [28/CRO/24].

It’s been hard in some ways, to keep my appointments ‘cause I’ve got a little girl, and it’s hard to get like someone to look after her all the time [3/SO/6].

Five respondents believed that their orders were ‘tough’ because they involved “too much work” [15/YP did not know/24]. Participants made reference to the specific activities they had been asked to undertake and the conditions they must observe:

I reckon it’s tough because to put me on it for six months, to be in at nine o’clock everyday for six months, to maybe do like sessions every day from like ten ‘til three, ten ‘til four something like that, that’s like nearly all my time taken up, so I can’t go out look for jobs and all that [41/SO+ISSP/24].

‘Cause I’ve got a year of YOT, fifty hours community service, and then I’ve still got my eight month ban left....out of the

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<sup>67</sup> An additional three respondents within this sub-group failed to provide a reason as to why they thought their sentence was ‘about right’.

eighteen months so...if I cause trouble basically within a year and eight months then, I could be going to prison [4/CPRO/12].

Finally, two respondents who classified their sentences as 'tough' also admitted that they had expected to receive a far more severe sentence.<sup>68</sup>

It's not too easy but um, it's quite intensive, but flipping, it's better than getting jail...[33/CRO/24].

I suppose it's easier than going to prison [2/SO with SA/24].

Taken jointly, the findings suggest that interviewees' assessments of the severity of their respective sentences do not take place within a vacuum. These perceptions can only be properly understood when they are interpreted against a wider context, which includes offenders' expectations *vis-à-vis* their respective sentence; their previous experiences within the youth justice system and their individual attitudes towards the messages communicated to them by the courts.

The fact that twenty-six respondents (52%) to question 18 considered that their sentences were 'about right' might, on the one hand, suggest that in more than half of the cases, the court's understanding of what constitutes an appropriate sentence concurs with the perception of offenders themselves.<sup>69</sup> On the other hand, according to 48% of respondents, the court seems to have 'missed the mark' in terms of the severity

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<sup>68</sup>The remaining interviewee failed to provide a reason as to why he felt his sentence was 'tough'.

<sup>69</sup> Sub-group analyses revealed that eight female interviewees considered their sentences to be 'about right', a figure which represents 73% of the entire female population in the sample. The analysis also cast light on the relative overrepresentation of interviewees from Black Minority Ethnic (BME) backgrounds (comprising 60% within this particular racial demographic) who also classified their respective sentences as 'about right'. While only speculative, these findings might suggest that both gender and race are important variables which impact upon how offenders assess the severity of their respective sentences.

of the sentence imposed. The question to consider at this juncture is whether the youth justice system feels it can achieve its sentencing objectives (desistance, deterrence, rehabilitation) by meting out sentences that only 52% of offenders considered to be 'about right'. If the aim of the system is to impart justice which accords with the offences committed, then the findings of this study suggest that, in the eyes of those on whom sentences are imposed, it is only effective at the task in half of the number of cases interviewed.

Whether offenders *should* perceive their respective sentences as 'tough', and whether this is something which the youth justice system should strive for is open to debate. Comparative research into programmes targeting young offenders which are 'merely punitive' and those which include a treatment component (for example, counselling; supervised activities) has revealed the former to be less effective than the latter at reducing recidivism (Petersilia and Turner, 1992; Corbett and Petersilia, 1994; Gendreau, Goggin and Fulton, 2000; Bonta *et al.*, 2000; Homes *et al.*, 2005; Paparozzi and Gendreau, 2005).

The study was also interested in testing whether offender perceptions accorded with some of the hypothetical assumptions about the severity associated with different forms of punishment. All 50 interviewees responded to question 40 which invited participants to rank different sentences according to their severity ( Community Service,  Imprisonment,  Being told off in court,  Fine). The results obtained are illustrated in tabular form.

**Table 5: Participant views of sentences/sentencing outcomes in order of severity (number of respondents/percentages).**

Sentences/ Sentencing Outcomes	Rank Order of Severity			
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
<b>Imprisonment</b>	n=46 (92%)	n=4 (8%)	n=0 (0%)	n=0 (0%)
<b>Community Service</b>	n=4 (8%)	n=26 (52%)	n=18 (36%)	n=2 (4%)
<b>Fine</b>	n=0 (0%)	n=19 (38%)	n=27 (54%)	n=4 (8%)
<b>Being told off in court (Judicial Reprimand)</b>	n=0 (0%)	n=1 (2%)	n=5 (10%)	n=44 (88%)

Grounded on the information synthesised in Table 5, the following discussion will concentrate on the more salient findings emerging from participant responses. According to forty-six interviewees, the most severe sentence was imprisonment primarily because it kept offenders away from their families and implied the loss of freedom:

Because it's not, like, it ain't nice to go inside, being away from your family and all that [22/SO/12].

Imprisonment, that is hard, that is hard because they're taking your freedom away. You have to do what they say, and I don't like being told what to do [47/CRO+ISSP/12].

Twenty-six interviewees ranked community service as the second most severe sentence primarily because of the lengthy hours of unpaid work the order entails, and the element of compulsion which underpins this work:<sup>70</sup>

<sup>70</sup> Sub-group analyses revealed that Interviewee 21, who was serving a DTO, ranked community service as the most severe penalty notwithstanding his previous experience of incarceration. This finding concurs with the research findings reported by Searle *et al.* (2003:88) who discovered that "a significant minority of offenders would prefer to serve a short custodial sentence than either a fine or a sentence of periodic detention".

It's annoying 'cause you have to do it sort of things, and it's working like, working for no money and it's a punishment innit? [35/DTO/4].

Community service, unpaid work, you don't really want to work for free, but it's not as if, you know, it's not as if you're doing voluntary work that you want to do. It's what they tell you to do [46/CRO/6].

Some interviewees who considered community service as the second most severe sentence saw the order in reparative terms:

[Y]ou're giving something back to the community [36/RepO/3].

Community service is just something where you can pay back, just basically a punishment [43/RO/8].

The fine was rated as the third most severe sentence by twenty-seven respondents, and as the second most severe by nineteen. This finding was a little surprising. While in Section 5.6 the study found that financial reparation did not seem to have the deterrent effect associated with either imprisonment or community service, it is significant that the margin which separates these three sentences is not as evident in relation to interviewees' perceptions of the severity of their own respective sentences:

I think possibly the fine. Obviously, the community service is going to be physically a struggle, but most people that, like the majority of youths that commit crimes, they come from like struggling families, so the for the fact of having to pay a fine is going to hurt a bit more than doing a bit of gardening or something [39/SO/6].

Such is the perceived severity of the fine, that a small number of interviewees reported their preference for a custodial sentence instead:

Because in my case, say if the courts decided to give me um, say a thousand pound fine or say two months in prison, I would rather do the two months in prison because I would struggle to pay the fine and end up back in court for non-payment [50/DTO/18].

Participant accounts also revealed a fear that their inability to pay for their fine could drive them to reoffend:

If you get fined and you ain't got no money then, what are you going to do? You're going to resort to crime to try and pay your fine innit [33/CRO/24].

The inclusion of the final option, 'being told off in court', sought to explore participants' subjective assessments of the severity of the court's censorious messages in comparison to other possible sentencing outcomes. Forty-four percent of the sample thought that being told off in court would be the least severe of the outcomes they were asked to rank. While a minority of these respondents thought that being told off in court would be hard, but comparatively easier than the other possible sentences offered, the majority were firm in their conviction that "that's really nothing, that's well, a slap on the hand and that's it" [13/RO/12]:

That's minor that is, that's nothing....I'd just laugh I would. Getting told off, that aint teaching you nothing [47/CRO+ISSP/12].

Being told off in court that wouldn't really mean much, you just, they'd say it, then you'd walk away and do whatever

you’re going to do, it wouldn’t really make an impact [30/CPRO/24].

It is also significant that some of the participants who felt that that being told off in court would not be severe claimed that this was the case because of the existence of a very evident ‘experiential effect’:

Because it’s just like getting told off by your parents, you get used to it [45/CPRO/9].

If you think you’re gonna to go to court every time and all they’re gonna do is go don’t do it again you’re gonna think well, why not do it again [2/SO with SA/24].

When viewed against the findings discussed in Sections 5.6 and 7.5, the fact that forty-four interviewees felt that being told off in court was not severe offers empirical evidence of the relatively small contribution that court-based censure on its own can make towards securing the preventive aims of the youth justice system.

The responses to questions 18 and 40 substantiate the point made earlier that there is a shared perception between offenders and the general public when it comes to contextualising the severity of any given punishment:

Yeah ‘cause if you’re in prison, you can’t really do nothing. The community service you can still do, like, still get along with your life and that [42/SO+ISSP/12].

Both groups, it seems, compare any penalty with the ‘gold standard’ punishment that imprisonment has become: “inside a prison, life would be worse” (Roberts, 2004a:99).

## 7.8 Perceptions of Fairness

It’s a tricky one innit? [48/CRO+ISSP/6]

A fair decision....Like, say you were in court, it’s the right sentence for the thing you’re up for. It’s not too harsh and it aint too soft sort of thing, it’s what you should get [35/DTO/4].

According to some of the academic writings reviewed earlier (Braithwaite, 1989; Sherman, 1993; Paternoster *et al.*, 1997; Piquero *et al.* 2004; Tyler, 2006), punishment which is imposed in a manner that is perceived to be unfair is unlikely to promote desistance. Notwithstanding this widespread consensus, there is little by way of research-based knowledge on offenders’ perspectives on fairness and how their perceptions might impact upon their assimilation of punishment. The empirical work undertaken was designed to explore two central issues on the subject of fairness. The first of these concerned itself with participants’ conceptualisation of the term ‘fairness’, and the second, sought to find out whether participants considered their own sentences to be fair.

Question 20 invited participants to reflect upon and generate a broad definition of the term ‘fair’ as they understood it within the penal context. Although fourteen of the forty-seven respondents (30%) made reference to the semantic, contextual and subjective difficulties inherent in the task (“it’s like quite a hard thing to describe” [5/SO/12]), and five felt unable to provide a definition, the responses obtained provide valuable insights into how offenders conceptualise the term.

According to fifteen respondents, for a sentence to be fair, it must be commensurate with the seriousness of the crime committed by the offender:

Something which would correspond to the actual crime itself so...[36/RepO/3].

Like something that matches the crime you did innit. So if it's like a high crime, give them a high penalty. But if it's not a very bad crime, give them a low penalty [12/SO/6].

Um a punishment that's, er just about right for what you've done. It was just, you do your crime for it, I think [50/DTO/18].

A further fourteen respondents believed that the idea of equality was implicitly embedded in the concept of 'fairness'. The responses provided often emphasised the need for sentencing decisions to be impartial. The principles of equality of treatment and equal application between different individuals were also central to these respondents' conceptualisations of 'fairness':

If like there's two people, then not taking one of the person's sides and sticking up for one person [42/SO+ISSP/12].

Both, that both people having the same amount of something, or like the same thing or fair as in sort of like you've done something wrong, your discipline you're going to receive is like to a standard of the same sort of severity sort of [37/RO/6].

Um, it's like, it's fair if like, if someone else has done it and you've done exactly the same thing, you've got to do it so it's like equal, so one don't complain like, he's got less than me, I've got more than him and then there won't be a big argument [44/RO/4].

Everyone having equal that is sort of fair, yeah [9/CPRO/18].

Six respondents believed that in order for a decision to be 'fair', there had to be consensus on the issue:

Er...I dunno really...um.. If I'm happy with it, and the like the court is happy with it, the YOT worker is happy with it and I'm happy with it, it's fair really...[8/SO with SA/12].

...something that everybody in general thinks that's suitable is fair [39/SO/6].

Other less frequently cited responses to the question conceptualised the term 'fair' as a measured response to having engaged in criminal behaviour: "basically if they've done the crime they might as well do the time kind of thing" [43/RO/9]. A small number of respondents also made reference to the idea of reciprocal treatment to define how they conceptualised 'fairness': "say if I was nice to you, you be nice to me, that's fair" [41/SO+ISSP/24].

The centrality afforded to the concepts of proportionality and equality, and the perceived need for there to be consensus for a decision to be considered 'fair', offers empirical evidence to suggest that these are key considerations regarding the ways that participants conceptualised the term 'fairness'. The complex task of attempting to determine whether perceptions of fairness have a bearing upon future behaviour was beyond the remit of this project. From the information yielded by responses to question 20, however, it is significant that 96% of respondents failed to make reference to the impact which perceptions of fairness may have upon the successful completion of the order. In the absence of a specific question which targeted the issue directly, it is only possible to hypothesise that while academics

may speculate as to the impact which perceptions of fairness may have upon offender-behaviour (Braithwaite, 1989; Sherman, 1993; Paternoster *et al.*, 1997; Piquero *et al.* 2004; Tyler, 2006), the evidence suggests that participants might not be as conscious of these issues beyond the logical assumption that “it’s easier to do if it’s fair innit?” [20/CRO/18].

Having set out how participants conceptualised the term ‘fairness’, question 19 was deployed in order to explore whether participants considered their own sentences to be fair. The study found that thirty-four of the forty-nine respondents considered their respective sentences fair, while the remaining fifteen felt that this was not the case.<sup>71</sup>

The findings suggest that the manner in which participants perceive the fairness of their respective sentences seems inextricably linked to their expectations of the final sentencing outcome. Fifteen respondents reported that their orders were considered fair in the light of the sentences they thought they could have been given:

‘Cause I thought I was going to jail. This is an alternative to custody. They didn’t have to give me this, they could have sent me to jail, so I thought it was fair what they were giving me [47/CRO+ISSP/12].

At the time, I was happy with it because I was. My solicitor was saying I was looking at a lot longer, so yeah, I would say it was fair [50/DTO/18].

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<sup>71</sup> Sub-group analyses revealed that with the exception of one female interviewee, all female participants considered their respective sentences to be fair.

Yeah, 'cause of all the things I've basically...they've let me off and not sent me to prison for, then, I think it is fair [4/CPRO/12].

An additional two respondents felt that their sentences were unfair precisely because their expectations regarding the sentence they would likely receive had not been met:

Pissed off really 'cause all day they were saying that they were just going to put me on tag, and then it weren't until the very last minute when they just decided they was going to bang me up. I was pretty annoyed about that [24/DTO/6].

These findings suggest that when offenders assess the fairness of their sentences they engage in comparative exercises wherein they weigh up the final verdict against other possible sentencing outcomes. In the absence of a specific follow-up question, however, it is difficult to determine whether interviewee responses were conditioned exclusively by their perceptions of fairness regarding their respective sentences, or whether they perceived their sentences to be fair because they felt they had been 'let off lightly'. The textual analysis of participant responses would seem to suggest that the latter view might be correct. Although fairness is a relative concept, it is one which is inextricably linked and contingent upon expectations of possible sentencing outcomes either being met or thwarted. It was interesting to observe that this comparative dimension was absent in some interviewees' attempts to provide an objective definition of the term 'fair', when the the need for the punishment to fit the crime was deemed to be a central consideration. It seems reasonable to suggest that the discrepancy between both sets of responses may perhaps be explained by the loss of objectivity on the part of respondents when it comes to considering the fairness of their respective sentences.

The responses provided by interviewees to question 19 also demonstrate the importance of proportionality to participants' conceptualisations of 'fairness'. Nine respondents, for instance, were of the view that their sentences were fair because they considered their orders to be commensurate with their offending:

I would just say, I got, like what I got was a one hundred and forty-six pound fine and six months YOT, I would say that was pretty fair for what I had done [29/RO/6].

'Cause of, 'cause like I said, I had loads of chances and things like that, so I thought, four months, I think that is quite fair [35/DTO/4].

The opposite view was held by four respondents who felt that their sentence was unfair because it was either disproportionate with regards to the offence committed or incommensurate with their level of involvement in the crime:

Cause I'd only done a little tiny thing, and I got all this, I got put on tag and everything [34/SO+ISSP/9].

'Cause the crime I got done for weren't really a serious crime and this is like the highest community penalty they can give, so I thought they is been a bit tight giving me this [12/SO/6].

It was also interesting to find that while only two respondents to question 20 defined fairness in terms of punishment being a measured and just response to having offended, eight respondents to question 19 should have referred to this concept in their assessments of how fair their respective sentences were:

I think it's fair that I should go through some form of order for what I've done [40/RO/6].

Yeah, because what I've done was wrong. You do the crime, you've got to do the time. It's like that innit? [1/SO with SA/18].

Because I've offended and it's fair that I should get the consequences for what I did [49/RO/3].

For another two respondents, however, doubts about the veracity and accuracy of victim statements led them to conclude that their sentences were unfair.

It seems apparent from the findings discussed here that perceptions of fairness are not only contingent upon participants' expectations of the final outcome or whether the sentence is seen as a proportionate response to offending behaviour. Perceptions of fairness are also linked to the young person's acceptance of the consequences that stem from their offending behaviour. Receptivity and willingness to assimilate what has transpired, it seems, may well be two important considerations which influence offenders' conceptualisations of fairness. This may explain why five respondents to question 19 reported that they perceived their sentences were fair because the court had given them another chance and a further three said that they felt as if they were being helped.<sup>72</sup>

Um, because it's given me another chance to sort myself out in a way. They're giving me all the support to stop me from reoffending [40/RO/6].

Because like, it is basically a second chance for me to stop reoffending, a referral order thing and I would rather have a second chance than go to like juvenile prison or something like that. I just saw it as a fresh start for me [23/RO/6].

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<sup>72</sup> Additionally, one interviewee who considered her sentence to be fair failed to provide a reason for her answer.

Finally, subjective assessments concerning the activities undertaken by offenders on their orders also seem to have shaped the manner in which young offenders viewed the fairness of their respective sentences:

‘Cause it helps me keep out of trouble really, ‘cause I’ve got so many activities to do, I aint got as much time to cause trouble and it helps me find a job, helps to find employment really [8/SO with SA/12].

In this respect, the findings of the study endorse McIvor’s (1992) conclusion that offender attitudes to their respective sentences varied according to their placement experiences. While two respondents to question 19 felt their sentences were fair because the activities undertaken “aint that bad” [19/SO/6], another seven reported that their sentences were unfair precisely because of the different constituent elements of their respective sentences. Frequent references were also made to the length and time taken up by the orders, as well as the general inconvenience of “being in early” [20/CRO/18] as a requirement of the curfew order:

Because six months being in at nine o’clock....if we put them, the court people on that, how would they feel? [41/SO+ISSP/24]

## **7.9 Punishment and Introspection**

I actually did nine months [in prison], which is quite a long time really... It gives you the chance to sit there, on your own and think back and realise what you did wasn’t right, and it makes you have, it gives you the chance to make decisions for the future, whether you’re going to come out and reoffend or you’re actually going to keep your head down and do well, or going to stay away from all the trouble and stuff so [50/DTO/18].

The empirical work undertaken sought to explore Duff's (2004:85) supposition that punishment seeks to bring about a process of introspection in offenders by focusing their attention on their "wrongdoing and its implications". The literature reviewed earlier (Narayan, 1993; van Stokkom, 2005, Walgrave, 2005 and Claes and Peters, 2005) casts doubt upon Duff's hypothesis, but empirical evidence to corroborate their criticisms, at least in the context of young offenders, has not been found.

The research questions underpinning this section of the interview schedule were informed by a close reading of the literature. Does punishment, for instance, as van Stokkom (2005:170-1) believes, focus the offender's attention "upon his own suffering"? Question 22(b) therefore sought to explore whether participants considered that being on their respective orders sets in motion a process of introspection which may ultimately result in a changed outlook towards crime. The question attracted a whole range of overlapping responses, and in instances where more than one answer was provided, these were coded at their respective nodes.

According to forty-two of the forty-six respondents (91%) to question 22(b), being on the sentence had made them think about what they had done and/or review the situations they found themselves in. The remaining four interviewees claimed that they were not affected with only one individual offering his extensive experience of the system as an explanation for his unresponsive attitude. The analysis of responses will therefore concentrate exclusively on the forty-two respondents who comprised the majority. Within this sub-group, seventeen

respondents reported that their time on their respective orders had made them not want to reoffend primarily in order to either avoid punishment or because they had developed a changed outlook towards crime:

Yeah, it helps because you are thinking about what you want to do in the future really, not go to prison, to keep you out of trouble. Helps you think about not offending again [8/SO with SA/12].

Yeah, it does really. Makes me feel like I don't want to go out and cause trouble no more [27/SO/12].

Another sixteen respondents expressed the view that being on the order had set in motion a process of introspection. A cross-section of these respondents reported that they had realised the wrongfulness of their conduct and expressed repentance for what they had done:

I already knew it was wrong, but it just made me think about it a bit more in depth about what I did and how it affects people [30/CPRO/24].

All my reparation work has made me think about what I did, and why I shouldn't have done it, and makes me regret it now [2/SO with SA/24].

An additional seven respondents made specific reference to the fact that the time they had spent on the order had made them think about the consequences of their actions:

[It] just makes me think about stuff more, about my action, if I do something I think about it more, the consequences and stuff like that [37/RO/6].

The responses discussed above offer some empirical corroboration of Duff's (2001) argument that hard treatment can be justified on the basis of its capacity to encourage reform and repentance. The findings yielded by this study, however, neither support nor disprove his third justification for the imposition of hard treatment, concerning the reconciliatory potential which Duff ascribes to the practice.

Finally, according to the remaining participants, their time on the order had made them think about their future and in particular their careers and what would happen next in their lives:<sup>73</sup>

I certainly think about er what I'm going to do with my life. Just sit around and bum around at home, or actually get a career [31/RO/6].

Yeah, it makes me think about getting a job and stuff and just staying out of, criminal life like, just getting a job. I've been offered a job at the youth offending team, funnily enough [48/CRO+ISSP/6].

The findings discussed in this section suggest that in the case of forty-two respondents (91%), punishment does indeed bring about a process of introspection. Although different in quality and degree from one participant to another, as the discussion has shown, punishment seems to foster a range of attitudes and beliefs that would seem to be consonant with the aims of sentencing. In this respect, it is important to note that the empirical evidence obtained goes some way towards substantiating Duff's hypothesis that hard treatment may encourage repentance and reform. It is significant that ten respondents within the aforementioned group made

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<sup>73</sup> The remaining three respondents failed to provide a reason for their answers.

specific reference to their own plights, and that, with the exception of three respondents, the remaining thirty-nine failed to mention that being on the sentence had made them think about their respective victims. Taken together, these two findings may go some way towards offering research-based evidence to substantiate van Stokkom’s (2005:170-1) concern that hard treatment will inevitably shift the offender’s attention “from the harmfulness of the criminal act to present hardships”. These findings strongly suggest that a very substantial proportion of participants view the consequences of their actions purely in reflexive terms, and support the findings of section 5.1 regarding the almost exclusively outcome-based interest displayed by interviewees during sentencing.

## **7.10 The Relationship between the Court’s Messages and Sentence Activities**

If punishment is intended to be communicative, it seems reasonable to suggest that the constituent elements of offenders’ sentences must bear some link to the penal messages issued by the court. Questions 23(a) and (b) which were analysed and coded jointly, were exploratory in nature and invited participants to comment on whether they saw a link between what the court was telling them, and the activities they had been asked to undertake as part of their sentences.<sup>74</sup>

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<sup>74</sup> A similarly worded question was also posed to five participants serving referral orders who were invited to comment on whether they saw a link between the messages issued by the YOP and the activities they had been asked to undertake as part of their sentences. The analysis of these responses revealed that all five participants were in agreement that the activities undertaken were in line with the penal messages communicated by the panel. Although these participants often failed to provide an explanation for their respective answers beyond identifying the aforementioned link, it was interesting to find that one of the *leitmotifs* uncovered earlier, namely the differing levels of formality inherent in the two institutions, emerged in the analysis of participant responses to this impromptu question: “Just again coming to the formality of it” [40/RO/6]. The recurrence of this theme is indicative of its importance.

Of the forty-three respondents to the question, thirty reported that they felt that the activities undertaken reflected the penal messages communicated to them by the court. Within this sub-group, eleven claimed that both the court and the sentences themselves aimed to keep defendants out of trouble and prevent them from re-offending:

In the court they try to keep you out of trouble really, and by giving me this sentence that I've got they're asking me to stay out of trouble as well really...[8/SO with SA/12].

Yeah, it's all linked in with stopping me from reoffending and trying to move me out of the zone where I'm going to go commit another crime [40/RO/6].

'Cause YOT workers they just go along with what the magistrates say in court, so what the magistrates say like, are you going to keep out of trouble and all this, that's all what the YOT worker says. So, they're just trying to sound the same way as the magistrate [45/CRO/9].

The last point made by this interviewee was also reported by an additional seven respondents who identified a link between the penal messages and the subsequent activities undertaken precisely because these had been dictated by the court:

Oh, it is linked, 'cause they're telling like the YOT workers, they're under the judge, so like, the court's telling them to tell me what to do [32/CPRO/12].

Another five respondents reported that both the court and the sentence itself were trying to help them:

Because the court told me to get my life on track and [YOT worker named] is helping me to do that, my probation officer [46/CRO/6].

Yeah, the court was telling me what I should do and the order was helping me to do so [18/SO+ISSP/24].

Only three respondents to question 23 who identified a link between what the court was telling them and the activities they had undertaken, made reference to any correlation between the activities undertaken and the specific offence which they had committed:

Well, we go to the EDGE [alcohol rehabilitation programme] and like, we look at some things that are like, drinking, we talk about drinking and that sort of things as much...What else do we do here...we do like questionnaires and ...things like that really [6/APO/3].

Just like, I wouldn't...'cause I've nicked the lead and then they like gave me cards, and I had to say like which I thought was me and stuff like that [29/RO/6].

Less frequently cited responses referred to the fact that the penal messages and the sentence itself aimed to teach the defendant a lesson ("It's basically teaching me a lesson" [16/YP did not know/12]); that they both demonstrated that there were consequences to the defendant's behaviour, and finally, that they made the defendant regret what he had done. One additional respondent who could see a link between the court's messages and the sentence imposed still felt that the connection could be made clearer: "there should be more um, more focused on what crime I did" [10/RO/8]. Finally, having identified that there was a link between the penal

messages issued by the court and their respective sentences, three respondents failed to provide any reason for their answers.

In contrast to the above, twelve respondents reported that there was no link between the penal messages issued by the court, and the activities undertaken while on the order.<sup>75</sup> Within this sub-group, five respondents claimed there was no link because the court had provided them with very little information about their respective orders:

They just give you the sentence and didn’t explain it, just gave me a pack so I had to basically explain it to myself [49/RO/3].

They didn’t tell me what I had to do, they just told me you’ve got to do twenty five hours a week and to be in at nine o’clock at night [41/SO+ISSP/24].

According to two respondents within the sub-group under discussion, there was a disjuncture between what they considered to be the damning messages underpinning the court’s sentence, and the YOT’s positive approach towards the administration of that self-same sentence:

‘Cause um, like I said, the court were just saying like how I was badly behaved and I should, I need to be punished, whereas here [at the YOT] they say, they look into why you’re badly behaved, like what have you done that, to make you commit that crime, like your hard life, like all the different aspects that, they look further into the reasons why....‘Cause if you’re told you’re naughty, you might not understand why you’re naughty [39/SO/6].

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<sup>75</sup> An additional respondent to question 23 provided a “don’t know” answer.

Less frequently-cited responses made reference to participants not being concerned about whether there was a link between what the court was telling them and their sentence-based activities. An additional respondent failed to see the link because he was going to start one sentence, but commenced another instead. Finally, two respondents within this sub-group failed to provide any reason for their answer.

An overview of the findings obtained in response to question 23 suggests a disjuncture between the messages issued by the court, the activities undertaken, and the nature of the offence itself. This disjuncture is likely to impact negatively upon how adolescent offenders perceive the relationship between what the court is saying, and what they have been asked to do. If sentences are intended to reinforce penal messages, the fact that only three respondents were able to identify a clear link between message, activity and offence suggests that there is room for improvement in the courts' communicative efficacy.

## **7.11 Improving the Communicative Efficacy of the Sentence**

Already in Section 6.9 the thesis examined participants' views on whether the penal messages communicated to them in court could be improved. Question 37 was deployed for a similar purpose, but this time, interviewees were asked to reflect upon whether there were any ways in which their respective sentences could be enhanced in order to make the messages conveyed more effective.

Of the forty-five respondents to question 37, thirty-one (69%) considered that the court could not communicate the messages underpinning their respective sentences more effectively. Within this sub-group, the majority (n=19), limited themselves to providing "No" answers to the question. Another four respondents provided marginally more detailed accounts, reporting that the messages communicated to them by their sentences could not be made more effective because these were already appropriate: "It seems to be alright the way it is" [43/RO/8].

According to another five respondents, their sentences could not be communicated more effectively because they felt that there was not much room left for improvement:

To be honest, I think I'm lucky. I don't think there's anything else that could be done. I think I've grabbed every opportunity like I could, like they offered me all this Connexions and everything and I took it all [39/SO/6].

Finally, three respondents made explicit reference to the idea that the communicative efficacy of their respective sentences could not be improved because "the message has got through" [32/CPRO/12].

The remaining eleven respondents were of the view that their sentences could have been more effective at communicating their penal messages.<sup>76</sup> Interviewees identified three key areas that the court should address in order to improve the communicative efficacy of sentences themselves. The first of these areas was

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<sup>76</sup> An additional three respondents to the question provided "don't know" answers.

identified by four respondents within this sub-group, and involved the activities undertaken on the orders themselves:

Er, maybe more activities....Because it's the same two things every two weeks basically. So it'd be first aid one week, and then next week it'd be pottery and then first aid, then pottery, the first aid [36/RepO/3].

Yeah, it could be giving more work to the people....Because I'm just coming in and saying hello to my YOT worker and everything, and then going straight out. But if they had like work to do for me, it would be more education for me [45/CRO/9].

A further two respondents made sentence-specific comments in relation to how the constituent elements of their sentences could be improved. Already, the analysis in Section 6.8 found that a cross-section of respondents felt that the constituent elements of their respective sentences were repetitive and uninspiring. If the communicative value of the sentences is to be improved, the findings suggest that the activities undertaken by young offenders as part of their respective sentences might need to be reviewed.

The second area was identified by two respondents who believed that the communicative efficacy of sentences would be improved by introducing a system of direct victim reparation:

...rather than just like community reparation and things like that because it's not actually directly for the person the person who's been the victim if you see what I mean....Whereas if it was actually for the....Say someone's in court for criminal damage for smashing someone's window or something, if they

then had to go back and do work at their house, then that'd make them, I think, make them realise a bit more [5/SO/12].

Another two respondents identified the use of harsher sentences as a means of improving the effectiveness with which sentences communicate penal messages to offenders:

If they sent me to jail, then it would have been a full effect I reckon.....Like full effect, like can't do this shit ever again and if you do, then you get fucked [33/CRO/24].

Um, not really any more, so I'm sorry for what I've done, but, um, I suppose they could have been a little bit harsher, just a little bit harsher [31/RO/6].

It is significant that in their responses to questions 17 and 37 respondents identified the need for harsher sentences and for activities undertaken by young offenders to be reviewed as ways for the court to improve its communicative efficacy. Yet, while the discussion in Section 6.9 revealed that twenty-six out of forty-three respondents considered that there was room for improvement *vis-à-vis* the penal messages issued by the court, only eleven respondents to the current question seem to have identified some scope for improvement in relation to the communicative efficacy of the sentences themselves. It is only possible to speculate as to why this is the case, but one possible explanation lies in the fact that, unlike the courtroom process, the messages contained in the sentence itself might be perceived as a non-negotiable 'regulatory act' of communication (Halliday, 1973).

## **7.12 Conclusion**

The chapter has found that the majority of respondents believe that the circumstantial factors surrounding criminal offences should be afforded a central role as a sentencing consideration. The findings also suggest that participants are only marginally affected by labelling issues, but that they are acutely aware of the aggravating effects of previous convictions as a sentencing consideration, and that they conceptualise punishment primarily as a coercive response to criminal wrongdoing. Somewhat surprisingly, they also seem to readily accept the need for hard treatment because of its persuasive and preventive functions.

The chapter has also shown that perceptions of fairness are not only subjective and context-bound, but that they are also coloured by perceptions of severity. Contrary to the adverse effects identified in the literature, the investigation found that in the majority of cases (n=42), punishment brings about a process of introspection in interviewees, a finding which offers empirical evidence to support Duff's hypothesis that hard treatment may encourage repentance and reform is correct. Finally, while the majority of participants believed there was little scope for improving the communicative efficacy of sentences themselves, the study has noted with interest the three areas that according to eleven respondents could conceivably be improved.

The findings of this chapter lend weight to the view that the communicative environment within which penal messages operate may be far richer than has

traditionally been assumed. At the level of academic theory, the communication exercise which takes place often focuses primarily on the influence of the two main actors, the state and the offender within the courtroom setting. The findings discussed in this chapter suggest that the communicative exercise that takes place in the courtroom is not always coherently embodied in the sentences which offenders are made to serve. They also suggest that the transmission of penal messages continues beyond the walls of the courtroom. The next chapter will concern itself with the exploration of adolescent offenders' perceptions of the penal messages communicated to them during the administration stage of their respective sentences.

## **Chapter Eight: The Communication of Penal Messages during the Administration of the Sentence**

This chapter investigates how offenders perceive the communicative roles fulfilled by the court, YOPs, YOT workers and their parents/carers during the administration of their respective sentences. The analysis begins with an examination of the post-sentencing roles adopted by the court and YOPs in relation to the messages originally transmitted during the hearing. This will be followed by an investigation into the penal messages conveyed to offenders by YOT workers. Finally, the closing four sections of the chapter will analyse the messages communicated to offenders by their parents/carers.

### **8.1 The Court's post-sentencing role**

Questions 36(a), (b) and (c) set out to explore whether the court had expressed an interest in the progress made by defendants since their previous court hearings, and the value that defendants ascribed to the court's post-sentencing involvement.

Of the forty-six respondents to sub-question (a), twenty-five reported that the court had expressed little or no interest in their progress, and another twelve claimed that they were uncertain about any post-sentencing involvement on the part of the court. Only nine respondents affirmed that the court had demonstrated an

interest. In sharp contrast, participant responses to an impromptu question directed at interviewees on referral orders, revealed an interesting picture regarding the active, ongoing role assumed by YOPs in monitoring a young person's post-sentencing progress. Six of the seven respondents on referral orders who were asked this question reported some degree of involvement on the part of the YOP in the post-sentencing monitoring of their progress, a figure which represents 60% of the entire interviewee population who were serving referral orders.

The majority of interviewees expressed the view that post-sentencing, the court had little to do with them, except in instances where they had reoffended or breached their order. The court's post-sentencing stance was criticised by some interviewees:

[T]he people sentencing you...should check up on you to see how you are doing, rather than just check up on you you've been bad...they only take interest when we fuck up basically, when like when we're naughty and like miss a session or something [41/SO+ISSP/24].

They don't really care. Obviously the only time they are being involved would be, is when I am breaking my order and I'd be taken back to them. But they don't really care....They're quick to like jump and want to see me when I've done something bad, but they're not going to bring me back in court and say, 'Oh yeah, very good girl' [39/SO/6].

The implications of these views will be discussed in the conclusion to this section.

Question 36(b) explored the importance which participants ascribed to the court taking an interest and whether this interest could have a positive post-

sentencing effect on them. Of the forty-seven respondents, twenty-nine claimed that post-sentencing involvement would make no difference to them. Within this sub-group, four explained that they just wanted to “get it [the order] over and done with” [49/SO/6],<sup>77</sup> a finding which is in-keeping with the responses from 26% of the entire sample who, at some stage during the interviewing process, expressed an identical viewpoint. To some, repeat contact with the court in order to report on the progress made merely reinforced negative feelings and reminded them of their wrongdoing:

It was horrible. I just wanted to get it over and done with and then ‘cause this is affecting me getting a job because of the criminal records and everything. So, when this is over I can actually start sorting my life out [45/CRO/9].

Within the sub-group of twenty-nine respondents who claimed that the court’s interest would not affect them, four believed that either the courts were not there to help them in the first place, or that expressing an interest in the defendant’s progress was beyond the remit of the court: “it’s just nothing to do with them no more is it?” [20/CRO/18]. Three respondents claimed that the court’s interest was of no consequence to them because they felt that they were only accountable to the YOT:

It don’t really bother me what they think. But it’s like ‘cause I’m on an order with the youth offending team, it’s not like an order with a judge. It’s like I really care about what these lot think, the youth offending team, ‘cause if they don’t think I’m doing very well, then they could breach me. When the judge don’t really know what’s going on, he can’t breach me [12/SO/6].

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<sup>77</sup> An additional three respondents failed to provide a reason for their answer.

According to another three respondents, if the court had been genuinely interested in them it would have shown that interest already. Finally, two respondents failed to see the need for the court to take an interest:

Because I can, I know I can sort of progress on my own. I don't need them to tell me that I'm doing well. I know if I'm doing well or not reoffending [40/RO/6].

In contrast to these views, eighteen respondents believed it was important for the courts to take an interest while they were serving their respective orders. An additional five interviewees serving referral orders also reported that it was important for the YOP to assume an active role in monitoring a young person's post-sentencing progress. Respondents identified a number of positive outcomes to post-sentencing court supervision:

Yeah, just 'cause then at least I'd know they're actually checking up on me and...they know I'm doing well and I'm going to carry on [doing well] [5/SO/12].

'Cause it shows that the people who are actually giving like punishment, actually understand what they're giving you fully, and like can see it with their own eyes, whether like, it's working or not [41/SO+ISSP/24].

Similar outcomes were also identified by participants in relation to the post-sentencing involvement of the Panel:

Yeah 'cause then I knew that everyone was communicating with each other, then I realised that they are helping me and that they do want to help me stop offending [43/RO/8].

Yeah because it would be nice, like for them to see how I've progressed 'cause I think I've progressed quite a lot and it's the whole thing has helped me [23/RO/6].

Responses to this question underscore the value of listening to young offenders and validate research initiatives of the kind undertaken here. An overview of the findings suggests that the post-sentencing role afforded by participants to the courts is significant to only eighteen respondents (38%). The analysis has also revealed the active role assumed by YOPs in monitoring the young person's progress post-sentence. The fact that the courts only expressed an interest in nine out of the forty-six interviewees' progress while they were serving their respective sentences, however, raises a series of policy issues. The findings of this study have identified an inconsistent approach in the manner in which the youth justice system deals with post-sentence supervision. As a central component of the youth justice system's communicative structure, a concerted effort on the part of the courts might reinforce the penal messages conveyed to the offender. The absence of a follow-up by the court means that the onus of sustaining the penal messages contained in the sentence falls upon other agents. It is to these complementary actors that we now turn our attention to in the sections that follow.

## **8.2 Young Offenders and their YOT Officers**

He's been quite important to me, made me realise more about the situation and how I'd go about stopping doing it if I got in the same situation [10/RO/8].

Question 27 invited participants to comment on their relationship with their YOT workers as a preface to a discussion on the penal messages delivered by these

criminal justice officials. There was unanimity among the forty-eight respondents about the positive relationship they enjoyed with their respective YOT workers, with eighteen of these describing their relationship as being 'alright', and another twelve reporting that it was 'good'. A further four respondents claimed that their relationship was 'very good'.

While four respondents resigned themselves to the fact that they had no choice but to deal with the YOT officer they had been assigned, thirteen reported that they felt very satisfied and comfortable with their YOT worker:

They're both really, really nice, they listen to me. I don't feel like, they're just talking over me all the time. I feel like they can listen to me, but then I can listen to them 'cause they'll try and guide me and advise me, and just sort of trying to help me sort of thing [23/RO/6].

I think it's a good relationship. I think I can open up to them 'cause I trust them and feel like they're just there, they are there for me and that [50/DTO/18].

An additional three respondents spoke enthusiastically about the close relationship they enjoyed with their YOT worker, a finding which is perhaps not that surprising given that these professionals offer the kind of structure and advice which is often lacking in the lives of many of these adolescents:

We're quite like buddies really 'cause I do talk to her a lot as well [43/RO/8].

I wouldn't say she's like a friend, but you can talk to her like you can a friend if you know what I mean. Um, it's quite good I'd say [30/CPRO/24].

With due regard to 'impression management' concerns which may have had a bearing upon participant responses, the findings discussed in this section are to be welcomed given the importance ascribed to a close working relationship between criminal justice practitioners and offenders themselves (Barry, 2000; Burnett, 2004; NACRO, 2008a; Mason and Prior, 2008). It seems pedagogically reasonable to assume that the effectiveness with which penal messages can be communicated to adolescent offenders will depend on the nature of the relationship enjoyed by both parties, and the emotional and psychological support which offenders are offered by YOT workers.

### **8.3 Communication between Young Offenders and YOT Officers**

She's more of a listener than anything. She'll want to talk to me and see if I've got anything to say which makes me feel at ease and make sure I know if there's anything like in my home life that I need to talk about, like talk to her about, I can [39/SO/6].

Question 28 sought to explore the kinds of issues which YOT workers discussed with offenders. The question yielded a wide range of responses which will now be analysed thematically. Where interviewees identified more than one topic of conversation, their responses were coded at their respective nodes.

The analysis of the forty-four responses provided by participants reveals an uneven distribution between issues discussed with YOT workers which were

classed as pastoral and welfare-related, and those which concerned the interviewee's offending behaviour. A general overview of the responses reveals that greater emphasis is often placed upon the former than the latter, with twenty-eight and nineteen respondents identifying these issues respectively.

The majority of respondents identified and were appreciative of the pastoral/welfare-related roles discharged by YOT officers. In their accounts, they highlighted YOT workers' concern for their welfare and their willingness to assist them with personal problems. The second most frequently identified subject of conversation involved discussions around the offender's education and future employment prospects. Participants also reported that YOT workers frequently made enquiries about the offender's family situation, and the quality of his/her accommodation. Health-related issues concerning drug/alcohol addiction, and anger management also figured prominently in participant accounts of the conversations they had with their YOT officers.

Offence-related issues which YOT workers discussed with offenders included the young person's criminal behaviour; the consequences stemming from such behaviour, and the impact which crime has upon victims:

[S]he just tells me what's going to happen, the consequences to your crime and she just makes me think...[29/RO/6].

Victim awareness, um, quite a few things, impact not just on the victim, but your family and their family, they're whatever, it's not just you and the person that it affects, things like that [30/CPRO/24].

Some participants also reported that YOT workers had expressed direct disapproval of their conduct; made enquires to see whether the offender had been “keeping out of trouble” [11/DTO/12], and specifically urged the young person not to reoffend.

The findings discussed in this section suggest that while YOT workers are professionally bound to address offence-related issues in their day-to-day work, greater emphasis is afforded to pastoral and welfare-related matters. This finding, however, must not be misconstrued as a criticism. The emphasis placed at YOT centres on personalised pastoral care can be justified on pedagogical and psychological grounds.

#### **8.4 Messages Communicated by YOT Officers**

Building on participant accounts of the communicative nature of the sentencing process, questions 29 and 30 sought to investigate whether offenders thought their respective YOT workers were effective in communicating what was expected of them while serving the sentence.

Forty of the forty-three respondents reported that their YOT workers actively sought to convey a penal-related message.<sup>78</sup> Within this sub-group, twenty-three respondents reported that the message was not to reoffend (“[t]o not do it again” [34/SO+ISSP/9]) and “to stay out of trouble” [11/DTO/12]. According to another

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<sup>78</sup> The remaining three respondents provided “Don’t know” answers to the question.

four respondents, YOT workers not only conveyed preventive messages, but they also highlighted the consequences stemming from reoffending:

...just don't reoffend and like they talk into you the consequences that'll happen and I know what will happen if I reoffend and stuff [50/DTO/18].

Just saying if you steal you'll be back on this and then if you keep doing this, your life is basically over [44/RO/4].

The second most widely cited message which participants thought YOT officers were trying to communicate was identified by thirteen respondents. These interviewees believed that YOT workers were engaged in conveying messages which aimed to help and support them:

She's trying to help me aint she, just to get my life back on track [46/CRO/6].

He's trying to just say you can talk, you can talk to us like if you need anything, say, you can talk to us and because if you think you're vulnerable at getting into trouble or anything like this, come out and say. It's confidential and all of this [48/CRO+ISSP/6].

In contrast to the findings reported in Section 5.3, many of the implicit and explicit punitive undertones surrounding the messages conveyed by the court during sentencing were absent in participant accounts of the penal messages conveyed to them by their YOT workers:

I think they're working with me.....It feels more like a discussion than being told to do something, so formality is lower [40/RO/6].

I think they're just trying to help me. It's not like I'm being told off, it's just so relaxed. I just am grateful that there's somebody to talk to that will listen to me and you know, and I feel like I'm getting helped [23/RO/6].

Anticipating a later question on whether YOT workers had disapproved of their behaviour directly, three respondents reported that their YOT workers had specifically disapproved of what they had done:

That message is, 'Look, I'm here for your benefit, do not mess this up for yourself, I'm here for your sake because you've done something wrong. If you hadn't done anything wrong, I wouldn't be here, you wouldn't be here. So, crack on with it, get it done and remember not to do an offence' [13/RO/12].

Other less frequently cited responses identified YOT officers in their capacity as providers of information either about the order or about offending behaviour and victimisation more generally. The remaining three respondents failed to specify which penal messages their respective YOT workers had conveyed to them.

Interviewee accounts reveal that the majority of YOT officers are conscientious about reaffirming the court's messages in their dealings with adolescent offenders. These accounts have also revealed that the primary penal message conveyed by YOT workers is a preventive one. When viewed against the finding made earlier in Section 5.3, the study has identified a very strong thematic congruence between the preventive messages issued by the court during sentencing and YOT officers during the administration of the sentence.

The study also found that according to nine of the ten interviewees who were serving referral orders, there were significant similarities between the penal messages communicated to individuals by the court and those who found themselves before the YOP, with many interviewees noting that they are both “the same really” [29/RO/6]. Significantly, in their review of their own YOP experiences, the majority of respondents reported that, like the court, the Panel conveyed preventive messages, ones which in many instances were underpinned by a deterrent threat:

[They] try and send people a message telling me that they shouldn't do it otherwise the next time you're in court it could get much worse" [49/RO/3].

A closer analysis of responses, however, revealed subtle differences between the manner in which these two bodies conveyed messages. According to some interviewees serving referral orders, YOPs were more willing to provide concrete help to adolescent offenders than the courts:

Mainly they're [the YOP] just telling you what they can help me with, how to stop me offending....It's because I know that they want to help me and I know they'll be able to help me because I know full well, so they're helping me and I haven't done anything wrong since I've been on so [43/RO/8].

Well, it was sort of different in a funny way because the messages in the court were very strict, like I was in a lot of trouble, but then um, the message that I got given when I was in the panel room was that they were trying to help me and I wasn't in that much trouble, they just wanted to stop me from doing it again [23/RO/6].

## 8.5 YOT Officers and Court-issued Penal Messages

It all comes down to the same message but it’s the way that it’s differently said....The courts would just say this is your punishment, go and do it. But, she [YOT worker] would like go into depth about why you’ve got to do it and different things, just explains it more....It’s just more in-depth and easier to understand and tells you more about it [30/CPRO/24].

Questions 31(a) and (b) invited participants to consider whether the penal messages issued by the court were being sustained by YOT workers during the administration of their respective sentences. Of the forty-one respondents, thirty-four reported that the messages issued by both parties were in consonance, while six claimed that the manner in which the messages were communicated by both entities were substantive enough as to make them seem different.<sup>79</sup> While not as radical as to consider these messages to be completely different, eighteen of the thirty-four respondents in the larger group who identified that the messages issued to the parties were in consonance, also identified a number of differences in the manner in which the two sets of messages were conveyed. According to a substantial number of these respondents, the court experience, with its complex, dense and jargon-filled language proved alienating:

...if I don’t understand something she [YOT worker] explains it, but in court they don’t really. Like you can’t say what does that mean in court can you? They’d think you’re taking the mick [22/SO/ 12].

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<sup>79</sup> The remaining respondent was unsure about how to answer the question and provided a “Don’t know” response.

Seven participants reported that YOT workers were more effective at communicating with offenders because they employed a less formal register during their regular and personalised contact sessions:

She’s oh, she’s saying it to me like I can understand it, like I said before. The courts just tell you and that’s it, then you go. But with my YOT worker I see her every week and she tells me that message across every week [46/CRO/6].

She’s like giving the same message but the court didn’t explain it as good as they should do, so I didn’t know what YOT was, so um, when they came, she explained it, what to do, when I’d do it and where I’d do it [44/RO/4].

An additional three respondents identified the different uses of language deployed by the court and the YOT workers. Borrowing the terms employed by Halliday (1973) in his seven-fold classification of the functions of language, the court tends to make exclusive use of “regulatory” language:

...in court, it’s like ‘cause you’re being punished they’re trying to control you, they’re telling you what to do...[37/RO/6].

In contrast, YOT workers make extensive use of “personal”, “interactional” and “heuristic” language:

It feels more like a discussion than being told to do something, so formality is lower...in court I was told, while its discussed with my, with my YOT worker [40/RO/6].

Like he don’t talk down to you. He talks to you like a person unlike the judges and whatever...it’s just, they [YOT workers] explain it to you and if you don’t understand it, they explain it again. And it’s just, like he’ll be straight up with you and he won’t talk down his nose, like down at you [20/CRO/18].

Another five respondents drew a clear distinction between the court's exclusive focus on their negative behaviour and YOT workers' predisposition towards a much more positive and edifying overview of their situation:

...it's different because like, the court always makes you like see the worse, the worser side of things whereas my youth worker, who told me like in a different perspective, so it don't seem very bad sort of thing, and he'll try and tell me, and it's probably like, it's not going to happen, but he'd just say something like that, so don't make me feel bad about myself or something [37/RO/6].

Well, she's still, she still gives the same message that what I'd done was bad, but she's sort of forgot that now and it's more about moving forward rather than still dwelling on the past....and now she's helping me move forward [39/SO/6].

It's like courts are just saying 'You've been bad, now go and do this order'. But these [YOT workers] is like, they're sending a message that you can change and all things like that, and not to do it again [34/SO+ISSP/9].

According to another three respondents, the messages issued by both the court and their respective YOT workers were qualitatively the same, but differed substantively in terms of effectiveness because the court had the authority to deal with breaches and re-sentence offenders:<sup>80</sup>

The same, but one's, you don't listen to much, you think yeah, who are you to decide, you can't tell me what to do and then the other one ....can decide so you listen to them [47/CRO+ISSP/12].

...the difference is the judge is saying you need to stop offending or I'm going to send you to prison and the YOT

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<sup>80</sup> The remaining respondent failed to provide a reason for his chosen answer.

worker is saying, you need to stop offending, otherwise you will go to prison. The difference is that the judge has got the authority innit? [38/SO+ISSP/16].

## 8.6 YOT Officers Expressing Censure

Well, in court they just say it, this is what you’ve done and this is what you’re going to get. But the YOT worker asks different questions and puts it in a different way as if to make you understand it better [30/CPRO/24].

Offender perceptions of the censure-based messages issued by the court have already been discussed in Section 5.4. Questions 32(a), (b) and (c) were conceived for the same purpose, but this time, interviewees were asked to reflect upon how they perceived the censorious messages issued by their respective YOT workers.

Question 32(a) sought to establish whether YOT workers had explicitly censured the criminal behaviour of participants. Of the forty respondents, thirty-three claimed that their YOT workers had categorically told them that what they had done was wrong, while another six reported that this was not the case.<sup>81</sup>

Of the thirty-three respondents who claimed that their YOT workers had expressed censure, nine reported that the experience had made them feel guilty about what they did, with a further two claiming they felt “stupid” [6/APO/3] as a result:

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<sup>81</sup> The remaining respondent’s answer was discarded on the grounds that it was inaudible.

...it makes me feel bad really because I know what I’ve done is wrong, but, if she’s telling me, then it makes me feel badder [27/SO/12].

According to five respondents, YOT workers’ censure served the purpose of heightening their awareness of what they had done:

Don’t know, just makes me think....Thinking about things, all the things I’ve done and whatever [28/CRO/24].

...it made me, sort of, think about other things as well like, why the situations occur and things like that, and how to get out of them...[23/RO/6].

The accounts offered by twelve of the thirty-three respondents who reported that the experience of being censured directly by their YOT officers had no impact on them merit a brief comment.<sup>82</sup> While six participants within this sub-group limited themselves to stating that the YOT workers’ censure failed to have any effect upon them, the remaining six noted that they felt no different because they already knew they were “in the wrong anyway” [35/DTO/4].

Question 32(c) asked the thirty-one interviewees who reported that their YOT workers had categorically expressed censure to compare these censure-based messages with those issued by the court. While twenty respondents reported feeling no different to when they were censured in court, eleven acknowledged that the experience was different. Within this smaller group, participants advanced a range

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<sup>82</sup> Two respondents claimed they were unsure about how they felt as a result of their YOT workers telling them that what they did was wrong, and another two failed to engage with the question. Additionally, one respondent noted that he did not listen to his YOT worker.

of responses which recognised that the repetition of the censure-based message by YOT workers drove home the reality of what they had done:

I don't know but in court I didn't really care what I was doing, well, what I'd done. But then when I had the YOT workers and everyone, my solicitor saying, oh you've done this wrong and all that, and then I felt sorry for the person I'd done it to [45/CRO/9].

While some respondents recognised the court as the more intimidating of the parties when it came to communicating censure, a large cross-section of respondents reported that the YOT workers' censorious messages were more effective:

I felt different in the way that I had more time to think about when I was with her, and um, it wasn't just someone telling me how bad I was. It was someone explaining to me how I could make a change [18/SO+ISSP/24].

According to these interviewees, the fact that YOT officers focus upon their positive personal qualities and engage directly with them within a structured programme, makes the penal messages conveyed easier to understand and assimilate:

I felt a lot more relaxed and it was a lot easier for me to talk to a social worker than a, somebody standing up in court, you know, having to stand up is a lot more official, 'You've done something wrong', rather than somebody just sitting with you and talking to you [23/RO/6].

This might account for the fact that approximately one third of participants reported having been affected to some degree by the direct censure of their respective YOT workers.

Viewed in conjunction with the findings in Section 5.4, these accounts suggest that YOT workers, like the court, assign a central role to censure in the penal messages they convey to offenders. Eight out of the ten participants serving referral orders also identified the same censure-based messages emanating from the YOPs. Having made this point, their accounts also drew a clear distinction between the manner in which YOPs and the courts confront offenders with their wrongdoings:

There was a discussion on the case, um, there was the impression that what I'd done was wrong, so it was brought across, but not directly [40/RO/6]

It was more, look yeah, you've done something wrong, if you get on with this, then you can get on [13/RO/12]

## **8.7 Offender views on how YOT Officers can encourage desistance**

The thesis has already discussed participants' comments on the messages courts ought to disseminate in order to encourage desistance (Section 6.8). Question 32(d) was deployed for the same purpose, but this time, interviewees were asked to reflect upon the messages they thought YOT workers could disseminate in order to secure the preventive aims of the youth justice system.

Of the forty respondents to this question, seventeen singled out a deterrence-based message which would impress upon the offender the consequences of reoffending:

Get it through their heads that the fact is that if you keep on offending you're going to go to prison ain't you [12/SO/6].

...just tell them that you will get punished for it. It won't just get brushed under the carpet. It will always come back on you. And once you've got that criminal record, that's not going away. It's always staying with you, so it'll always be over your head in a sense [50/DTO/18].

Within this group, a number of respondents also felt that in order to promote desistance effectively, YOT workers should give greater prominence to the possibility that offenders could face imprisonment: "if the threat of going to prison was there in your face sort of thing, you wouldn't do the things" [40/RO/6].

According to another fourteen respondents, the message to refrain from reoffending could be conveyed by YOT workers by providing offenders with advice and support:

With a lot of young people, they go out and offend 'cause they haven't got no one there to talk to and that, so if their YOT worker is there to talk to then it makes them feel that they've got someone to talk to [27/SO/12].

Just educating them 'cause not many people, if you come from a certain type of family you might not have seen, not many of your family might not have work so you wouldn't know how to get on to jobs or you wouldn't feel confident with going on work interviews and job interviews and stuff like that. So just educating them in all the aspects of life like college and getting them to, get them to build a life rather than just float through life and not achieve anything [39/SO/6].

While three respondents were of the view that YOT workers should "keep on doing what they're doing" [45/CRO/9], another three reported that in order to encourage desistance, YOT officers should provide more activities to keep young

people busy. The lack of recreational facilities in their respective communities was identified once again by a broad cross-section of these respondents as one of the factors fuelling recidivism.<sup>83</sup>

## **8.8 Obstacles to YOT Officers' Communication**

Building upon question 16 which invited participants to consider potential impediments to the communication of penal messages during sentencing (Section 6.7), question 32(f) investigated whether interviewees could identify obstacles to the transmission of messages issued by YOT workers.

Of the thirty-nine respondents to question 32(f), thirty-seven (95%) thought that there were potential obstacles to the YOT officers' messages getting through to young offenders.<sup>84</sup> Within this sub-group, twenty-four interviewees recognised that the offender's attitude and outlook constituted the main potential obstacle:

...it depends who it is innit? If I want to stop the YOT worker's message getting through to me I can stop it, I just won't listen to what they're saying [38/SO+ISSP/16].

Um, it depends on how compliant the person is to work with the YOT worker [40/RO/6].

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<sup>83</sup> The need for YOT workers to be tough but fair on young offenders was mentioned by two respondents. Additionally, six respondents reported that they did not know what messages YOT workers should send to encourage young people not to reoffend, with a further two failing to engage with the question.

<sup>84</sup> One interviewee reported that nothing could impede the communication between the YOT workers and offenders. The remaining participant failed to respond.

Just um...the offender innit. It's up to them what they do innit, they've got their own mind [11/DTO/12].

These findings endorse those discussed earlier in Section 6.7 as well as those reported in the literature on offenders' views (Beaumont and Mistry, 1996; Barry, 2000). The communicative efficacy of the youth justice system largely depends upon how receptive the offender is to the messages conveyed by YOT workers.

Language-based factors which have been identified previously (Section 6.7) as important stumbling blocks to the court's messages did not figure as prominently in responses to this question. Having said this, however, six respondents recognised that the manner in which YOT workers communicated with young offenders carried critical implications for the efficacy with which messages were delivered:

Their communication skills and the way they interact with the younger person...Never like, look down your nose at somebody and always try and make them feel comfortable but not too comfortable like you can't be patronising, yeah [39/SO/6].

Um, just um, getting a message through...Just having like a little bond sort of thing, if you're speaking to them on their level and things like that.... they take the time to speak to you. Court, court just give you what they want to give you and then that's it [35/DTO/4].

The influence of negative peer associations was specifically identified by three respondents in relation to this question:

...say if you've got two people like say, Tom and Jack, or something. Say Tom pressurises Jack to go and nick a TV, its basically completely wiping out the message telling him not to do that because he's peer pressuring him to it [25/CPRO/12].

Um, there could be like mates, they could just be like, don't worry about it, we'll go out and do it again and all that, and if they, if some kids can't turn round to their mates and say no, I don't want to do it, they have to join in and do it [36/RepO/3].

This finding would seem to corroborate extant knowledge regarding the manner in which peer-related factors may have a negative bearing upon young people's behaviour (Warr, 1993; Thornberry *et al.*, 1994; Mair and May 1997; Akers, 2000; NACRO, 2008b; Arnall and Eagle, 2009).

Three respondents identified social circumstances, and in particular, alcohol or drug addiction as impediments to YOT workers' messages being successfully conveyed to offenders. According to another three respondents, persistent offending was concrete evidence to suggest that YOT officers' messages had not been fully assimilated by offenders. Significantly, respondents in these two groups felt that the message would fail to get through to the young person for as long as the latter needed to offend to feed their habit, or turned up 'under the influence' to their sessions with YOT workers:

They might have problems going on in their life that may need them to depend on crime....then the young person is obviously going have to go out and find some way of supporting himself [41/SO+ISSP/24].

'Cause like a lot of people when they come here, like, and they're hooked on drugs or something, they come in here and they never listen to it 'cause they're always out on drugs or something, they don't come here, they always get sent to prison, so it's like an obstacle they need to get out of the way innit [12/SO/6].

If you're off your face on something, you aint going to really be listening to what they're saying...[24/DTO/6].

Other potential impediments to the YOT workers' messages which were less frequently identified included the offenders' perceptions of their assigned officer's competence, and not having regular contact with the same individual officer.

Having examined the communicative roles fulfilled by the courts, YOPs and YOT workers during the administration of sentences, the next four sections will examine the messages conveyed to offenders by their parents/carers.

## **8.9 Parental/Carer involvement in Young Offenders' Penal Experiences**

It was like nice having my mum there with me. It was better yeah....It made me feel more confident and more relaxed [26/SO/12].

I didn't want her there....I felt I had done the crime myself and I wanted to deal with it myself, so I didn't want my parents involved for the reason that it obviously affects them and they lose sleep over it or whatever. I didn't want any of that because I didn't see that that was fair on them. I felt that I had done the crime, so I was going to deal with it myself....It made me feel uncomfortable [40/RO/6].

It would seem reasonable to expect that parents/carers will become personally involved in the penal experiences of their children. Their attitudes and involvement might carry significant implications regarding the effectiveness with which penal messages are undermined or supported in the home environment.

Questions 33(a), (b) and (c) opened the discussion and sought to investigate the degree of parental/carer involvement in offenders' penal experiences.

Thirty-one of the forty-four respondents claimed that their parents/carers had been in attendance the last time they had been sentenced. Sub-question (b) sought to gauge the extent to which parents/carers had established contact with their child's respective YOT workers. Thirty-eight respondents noted that their parents had attended the YOT at some point in order to meet with their YOT worker. A number of participants serving referral orders (n=8) were also asked if their parents/carers had been with them before the YOP, to which seven interviewees replied in the affirmative.

These findings suggest that there is a high level of parental/carer involvement in the penal experiences of their children. The fact that one out of every three participants in this study had been to court without their parents or carers, however, might not only reflect upon the family life of some of these individuals, but more importantly, it might also suggest the apathy if not the antipathy with which the courts' orders might be greeted by offenders' families.

Question 33(c) explored participants' views on the effects of parental/carer involvement. Of the forty-three respondents, fifteen reported that having their parents/carers involved was 'a good thing' while eleven perceived it as 'a bad thing'. The remaining respondents held 'mixed' views on the issue. Ten respondents recognised that parental involvement was both 'good' and 'bad', while

another seven reported that this involvement had little impact upon them ('neither good, nor bad').<sup>85</sup> The explanations advanced by participants for individual choices offer a revealing insight into the value offenders ascribe to having their respective parents/carers in attendance. The considerable overlap which links these responses makes them amenable to a joint thematic analysis.

The main reasons proffered by a wide cross-section of respondents in favour of parental/carer involvement were that these can support offenders during the sentencing process:

Because it didn't, I didn't feel as if I was on my own. I didn't feel isolated [36/RepO/3].

It was like nice having my mum there with me. It was better yeah....It made me feel more confident and more relaxed [26/SO/12]

A number of interviewees felt that parental/carer involvement would help the offender understand court proceedings:

Well, I rather my parents come in with me 'cause I don't really understand things, what they say and what is being said between them. So, they come in with me and they explain it to me when I get home a little bit more. They cut it down a bit, so...[13/RO/12].

Parental involvement in the penal process was deemed important to a number of interviewees who felt that their respective family members ought to be informed about the nature of the order:

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<sup>85</sup> The remaining two respondents provided 'Don't know' answers to the question.

Yes, so that they can, so your parents can see your progress and see what's gone on since you was in court [37/RO/6].

Well, well it was a good thing I suppose only for the fact that then my mum can understand what I'm coming to do as well...she understood where I'm going and understood that like she can help, and she was involved in it as well rather than just not me, like me doing it on my own. She can sort of help me through it, help me like go to my appointments and, just so she understood what was going on to be honest [39/SO/6].

Participants were also aware of the important advantages to be secured by having their parents/carers in attendance. While some interviewees recognised that parents/carers could act as informal advocates for the offender, others identified the important roles which they could play as guarantors of the defendant's future behaviour:

If my mum weren't in there, I'd have gone to jail because my mum explained loads about what'd gone on, what's going to happen, and what I'm going to do....It meant, I think it meant they realised that I am going to change so [47/CRO+ISSP/12].

...it was good for him that he was there because he spoke up for me. He said I'll make sure he don't do anything again and all this, so it was alright [48/CRO+ISSP/6].

...basically if my dad didn't come to court with me I'd have had prison, 'cause like I said, the judge sees if you're more likely to reoffend, they're more likely to put you in prison. If you're more likely not to reoffend, they won't put you in prison. If they see that I'm living on my own, I ain't got money to feed myself, they're going to realise that I'm going to end up doing a crime sooner or later, and put me in prison. If they see that I'm living with my dad, I don't have to pay rent, don't have to buy food, don't have to buy clothes they won't [38/SO+ISSP/16].

The views contained in many of these excerpts strongly suggest that a considerable number of offenders see parental/carer involvement in their penal experiences as an important part of their 'impression management' strategy to project themselves in a favourable light.

The eleven respondents who reported that parental/carer involvement in their respective penal experiences had a negative effect upon them also merit a brief commentary. A cross-section of these participants claimed that they would rather their parents/carers had not been present during proceedings in order to protect them from the embarrassment, pain and disappointment which seeing their child being punished might have:

Don't know, it just made me feel bad like my mum sitting there, and like, she didn't have to come in, she could have been sitting at home or something, she had to come down like, she had to go to court and that with me. It's not right....it's just shouldn't be going to court at the age of sixteen with my mum do you know what I mean? [29//RO/6].

Because the court, the prosecution putting me down, the court's putting me down and everything is just negative against you. Nothing is positive really. And then it's making you feel like they're ashamed of you and you've let them down because parents always want the best for the children. For them to be stood there watching you being trialled, about to get sent to prison for a crime, it's obviously not going to be very nice, so [50/DTO/18].

...I feel bad for my mum 'cause my mum feels like a victim as well, or like a criminal as well 'cause she's got to stand in court, and the court are like, they were like moaning at her about it because I'm her child [27/SO/12].

This last example is particularly interesting because it encapsulates the views of many participants and empirically corroborates the work of Hoyle and Noguera (2008:67) who report that:

many of the moralising and responsabilising messages directed at the offender find currency with parents in a way which makes them feel ashamed, embarrassed and as if they themselves are on trial.

Given that participation in this process may be testing for some parents, and that it might engender negative feelings, it is perhaps unsurprising that some parents were unwilling to participate in the process, and that some participants were reluctant to have their parents/carers present during proceedings. In their research, Hoyle and Noguera (2008) also cast doubt upon the supposition that all parents/carers will necessarily be able to play a supportive role within their child's penal experiences. The accounts provided by participants in this study would seem to confirm their viewpoint. Far from being supportive, offenders' parents were often described as emotionally overwhelmed by the experience and even dominant in their exchanges with YOT workers:

She was being miserable, and it's that my mum argues with a lot of people. She ended up having a go at them...it's just I don't like it when she does that 'cause mainly I know they're just there to help me, it's just that my mum's stubborn [43/RO/8].

Both are like bad thing....'Cause she tries to, they try, my mum tried answering the questions for me when she didn't know nothing about it and she weren't even there so [49/RO/].

The study also found what Hoyle and Noguera (2008:74) define as 'offence-level neutralisation', which involves "the parent downplaying the incident, something likely to frustrate other participants who are keen for the offender to acknowledge their culpability [and wrongdoing]." This behaviour is exemplified in the following excerpt:

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**Interviewee 45 [CRO/9]:** ...my parents didn't exactly say it was wrong because all my family is against Asian people, so they're racist anyway, and that's what I got done for, racism abuse. So they was cheering me on and everything and I got caught so.

**Interviewer:** And how does that make you feel because the court is obviously giving you one message and your family is perhaps giving you another one, how does...

**Interviewee 45:** [Interrupting] I was confused but I'm not a racist person 'cause I get on with everyone, and I've got loads of Asian mates and everything. I've left my family over Asian people so many times it's so unreal, but I don't care.

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The findings of this study also support the view advanced by Hoyle and Noguera, (2008:75) that "parents may not [always] unequivocally disapprove of the behaviour [of their child]". While in the above-cited excerpt, the respondent offers a politically-correct response and claims not to have been conditioned by her parents' views, the communicative value of the punishment process is bound to be undermined in instances where parental disapproval is not forthcoming.

## 8.10 Parental/Carer views of the Sentence

My mum was just like, ‘Well, it’s your fault really. You do the crime, now you’ve got to do the punishment’ [41/SO+ISSP/24].

My mum was really pleased ‘cause she didn’t want me to go to jail, so it’s a bonus really, innit [47/CRO+ISSP/12].

Of the forty-five respondents to question 34, eleven participants reported that their parents felt that the sentences issued by the court were fair and just responses to their criminal behaviour. According to an additional eight respondents, their parents/carers thought it was only right that their child should undergo some form of punishment for their offence:

My dad was very disappointed, not in the sentence, in myself. He wasn’t really happy at all. My mum stood by me and she knew that it was fair, for like the sentence that I got. It was fair for what I did, so she just helped me through it and did what she could [50/DTO/18].

He thinks it’s very, very fair. I think ...he thinks that I got the right sentence because it’s a second chance for me and I can sort of sort myself out [23/RO/6].

Another ten respondents reported that parental views of their orders were inextricably linked to their perceptions of how severe their respective sentences were. Within this sub-group, seven participants claimed that their parents thought the offender had received a lenient sentence (“They think it’s just a slap on the wrist” [32/CPRO/12]), while the remaining three felt that a harsh sentence had been meted out:

She thinks it's a bit harsh and so does my step dad [16/YP did not know/12].

Seven respondents reported that their parents perceived their sentences as benevolent because they saw these in the context of the sentence they thought they could have received:

She was relieved about it... 'cause she thought I was going to prison as well [22/SO/12].

So, they think this is good because they could have sent me to prison, so it's better this than going to prison [32/CPRO/12].

According to six respondents, parental perceptions of sentences are linked to the positive impact these have upon the life of the defendant:

They think it's good because it will get me to understand things and to get back to how I used to be [46/CRO/6].

They think exactly the same as me. They can't do nothing about it. That's what they've said, and that's what I've got to do. That's...they think it has put me back on track [13/RO/12].

The opposite is also true for the four parents who were dissatisfied with the orders their children were serving either because they felt the sentence was not helping them, or because of the general inconvenience caused to them personally in having to ensure that the young person complies with the order:

'Cause she reckons that they're not helping me. But at the end of the day, I know they're helping me and I can see that they're helping me. It's just my mum just can't see what they're helping me with [43/RO/8].

My mum sees it as a pain in the ass because she's got to keep on bringing me in [to visit the YOT], or someone else... [1/SO with SA/18].

Common sense would suggest that parent/carer views of the sentence are bound to impact upon how offenders not only respond to being on the order, but also, perhaps, on how they will behave in the future. This issue was put to participants, and responses to this question will be discussed in the next section.

### **8.11 Do parents conceive of punishment in communicative terms?**

My mum doesn't really want to get involved 'cause she's not really bothered [43/RO/8].

Yeah, she's just like look, 'They've gave you another chance, just buck up your ideas' [22/SO/12].

The study was also interested in exploring how, according to offenders, their parents/carers viewed the punishment process. The empirical investigation of parental views of the communicative value of sentencing would involve the compilation of information derived from an additional sample of adults, however, and was therefore deemed beyond the remit of this project. Having said this, the study was still interested in developing a better understanding of how parental/carer influences might affect the communication of penal messages to offenders. A compromise position was therefore adopted, and offenders themselves were asked

whether they thought their parents/carers conceived of the punishment process in communicative terms.

Of the forty respondents to this question, thirty-two reported that their parents/carers thought that the punishment process was communicative.<sup>86</sup> Within this sub-group, eighteen interviewees reported that their parents thought the penal messages were preventive in nature, and urged them “not to reoffend” [40/RO/6] and “to keep out of trouble” [8/SO with SA/12]. Another four respondents thought that their parents/carers believed that the punishment process aimed to highlight to offenders the consequences of offending: “crime gets you nowhere, pulls you backwards really” [37/RO/6].

Three respondents believed that their parents/carers viewed the punishment process as a helpful and constructive response to their child’s offending behaviour:

Just mainly to help me I think. I know she wants to understand why they’re here, but it’s just like a case of her not understanding and being stubborn [43/RO/8].

Other respondents reported that while the sentence expressed disapproval in their parents’ eyes, it also afforded the offender another chance.

Question 35(b) sought to investigate whether parents/carers had discussed the sentence with their children and consciously made an effort to reinforce the

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<sup>86</sup> Only one respondent reported that his parents did not view his sentence in communicative terms. The remaining seven respondents provided “Don’t know” answers to the question.

court's messages at home. Twenty-three of the twenty-four respondents to this question reported that their parents/carers had discussed these matters with them:

Well yeah, we have actually spoke about it and she said...they're teaching you right from wrong...they're showing...you'll have benefits from your good behaviour and you'll get to go certain places if you behave [39/SO/6].

Yeah, she said to me. As soon as we walked out and like got back in the car, she said it [22/SO/12].

Question 35(c) explored whether parent/carer views of the punishment process had influenced the participant's outlook while serving the sentence. Of the thirty-three respondents, sixteen reported that their views had been influenced by what their parents had said:

Yeah, it has a bit 'cause when they talked to me about it, then it makes me more positive about what I can do out of the course I've got to do really [8/SO with SA/12].

'Cause I don't want to like put pressure on my mum 'cause I'm going out, getting drunk and doing things, so I'm just not going to go out and get drunk really [6/APO/3].

According to another fifteen respondents, however, parental/carer views had either a very negligible or no effect at all on how they viewed their sentences:

Um, no, not really 'cause it's my sentence, not my parents sentence [46/CRO/6].

Er, it hasn't made much of a difference.... because I've been told that many times before that it's just in my mind anyway so [40/RO/6].

Although tentative, given that there were only twenty-four respondents to question 35(b), these findings suggest that parents/carers engage with the penal messages communicated by the court, and reaffirm these during the administration stage of the offender's sentence. Having said this, the general thrust of participant accounts suggests that the substantive impact of parental/carer involvement is only significant in less than half of the cases considered. The next section will explore this issue in greater depth by examining participant accounts of their reactions to parental censure.

## **8.12 Parental/Carer Censure**

...it's just a lot different actually because the court tell you it's wrong and you shouldn't do this and all that and you do listen to them. But when your family and all of them tells you, it's a lot more important as well because you don't want to disappoint family [48/CRO+ISSP/6].

Yeah, 'cause it's like the court, you're obviously going to listen. Sometimes with your mum and dad you don't listen or something, you just walk out of the door and do something [29/RO/6].

Offender perceptions of the censure-based messages issued by the courts and both the YOPs and YOT workers have already been discussed in Sections 5.4 and 8.6 respectively. Interviewees were asked to comment on how they would feel if they were categorically told by their parents/carers that what they had done was wrong. Seventeen of the forty respondents to this question claimed that direct parental/carer censure would make them feel guilty and upset:

Guilty because then I know that I've made my mum upset with me because of what I've done [43/RO/8].

It just makes you feel bad, my mum telling me that I've done something wrong, it's just like not good [29/RO/6].

Another four respondents reported that parental/carer censure would bring about a more introspective stance towards their wrongdoing:

Yeah, it depends...if my Nan were up there saying you shouldn't have done that, and that...I'd be like right, sorry, and I won't do it [2/SO with SA/24].

Er, just makes me think about stuff more, about my action, if I do something I think about it more, the consequences and stuff like that [37/RO/6].

These findings were substantiated by the responses provided by participants regarding whether they perceived parental censure differently to the censure-based messages issued by the court during sentencing. Of the twenty-six respondents to this impromptu question, twenty interviewees reported that they would perceive parental censure very differently to the court's disapproval. Significantly, thirteen of these respondents claimed that the close ties which united them to their parents/carers would make their disapproval have more of an impact than the court's message:

I don't know, it's just, they'd feel disappointed with me in a way whilst the court aren't anything to do with me sort of thing. To know that it's had an effect on someone close to me, it's more hurtful than someone else telling me that I've done wrong [40/RO/6].

Yeah, because I want to like, I want to do well for my mum, and I think I'm a failure in her books, in her words and that, and

I don't want to be a failure to my mum, 'cause I was a failure to my dad, so I don't want to lose my mum as well [27/SO/12].

Many respondents expressed the view that they were more likely to listen to their parents/carers than to the messages conveyed by the court:

Um, not very good 'cause they're sort of like your parents aint they, so you listen to them more than you'd listen to anyone...But with the court...when they're saying, like 'oh, don't do this, don't do that' sometimes you just think, I don't have to impress you, that sort of thing [41/SO+ISSP/24].

Oh yeah, it's your own flesh and blood telling you.... I would rather listen to someone that is family than someone I don't really know [26/SO/12].

...young people look at like say the people in court and they think 'Well, you're not my parents so you can't tell me what to do' and then they just go along with it until they're out of court....'Cause the court haven't got a say in what children do really because they're not the people that have brought them up and look after them all their life [27/SO/12].

In sharp contrast to these accounts, ten respondents to question 35(d) categorically affirmed that parental/carer censure would have no impact on them:

No, it's just basically the same. It doesn't matter who is telling you who is telling you why it is, it's...just coming from your parents mouth, simple as [13/RO/12].

Um, not really any different...to what I like, already knew 'cause I already knew, if I did do it, then I always knew that, so like, I don't think I need to be told again [35/DTO/4].

According to a number of respondents, the impact which parental/carer censure will have upon offenders is inextricably linked to the relationship which they enjoy with their respective parents/carers:

...my mum is a bit of a hypocrite that way because...she's not much of an inspiration...she doesn't work and she's been involved with the police so what she says is quite hypocritical. So it's quite hard for me to take on board when she tells me it's wrong [39/SO/6].

I don't really listen to my parents so [23/RO/6].

This study was interested in exploring whether the provenance of censure-based messages could have an impact upon their validity and their effectiveness. It seems evident from the findings discussed in this section that in the absence of a healthy and respectful parent/carer and child relationship, or in cases involving dysfunctional families, that the parent/carer's censorious messages will, at best, have only a marginal effect on the offender. It is also fairly safe to say that in the absence of a network of supportive domestic relationships, judicial, censure-based messages are also bound to work less effectively.

### **8.13 Conclusion**

Although the literature abounds in discursive accounts describing the communicative roles fulfilled by different criminal justice agents during the administration of offenders' sentences (Sparks, *et al.*, 2000; Tudor, 2001), empirical investigations of how offenders themselves interpret the messages issued by these

actors remain scant. It is therefore hoped that this chapter has made a contribution to an area of investigation which has received little empirical attention and that the work undertaken will adumbrate further possibilities for research into areas such as parent/child dynamics during the transmission of penal messages.

The chapter has also offered some research-based evidence to substantiate the supposition that penal messages are communicated to offenders beyond the original sentencing hearing, and identified three key factors which will affect the communicative efficacy with which penal messages are conveyed to offenders beyond the 'four walls' of the courtroom. These include the provenance of the communication; the offender's attitude and outlook, and finally, the relationship between the communicator and the intended recipient. The findings discussed in this chapter also offer some empirical evidence to suggest that the majority of respondents perceive a degree of consonance between the penal messages issued by the court, the YOP and those communicated by YOT workers during the administration stage of their respective sentences. Having said this, however, the study has also noted a series of substantial differences regarding the manner in which these messages are conveyed by each party. It has identified the work carried out by YOT officers as pivotal to the central aims of the youth justice system. The implications of the findings discussed in this chapter for both theory and policy will be analysed in the Conclusion.

## **Chapter Nine: Conclusions**

### **9.1 Introduction**

In order to define the present state of knowledge in the field, the thesis has reviewed the literature on offenders' views of sentences, and examined the growing number of studies that have specifically explored young offenders' perceptions of community penalties. It has also reviewed the literature on expressive and communicative theories of punishment. The information gleaned from the critical examination of this body of academic works has offered a conceptual framework within which the qualitative information derived from the study's empirical investigation has been analysed.

The study has noted the extent to which young offenders' views of punishment in general and community sentences in particular, have been traditionally neglected by researchers and policy-makers. According to Petersilia (1990:26) the consequences of the traditional neglect of offenders' views are evident: "our perspective, and not necessarily theirs...must bear much of the blame for the current 'crisis in corrections'". Thus, for all the academic attention given to public views of punishment and objective measures of success, the fact remains that "[p]unishing today is a deeply problematic and barely understood aspect of social life, the rationale for which is by no means clear" (Garland, 1990b:3). Although crime prevention has been singled out as the principal statutory aim of the youth

justice system, and the need to review penal policies in the light of 'what works' is a prominent theme in today's youth justice arena (McLaughlin *et al.*, 2001; Burnett and Roberts, 2004), it is only recently that the need to listen and learn from the views of young offenders themselves has started to take root in the field of criminal justice.

The study has also noted that comparatively little is known about the communicative purposes that offenders ascribe to punishment. Although the idea that punishment is a communicative process has drawn the attention of the numerous academics reviewed in Chapter Three, empirical research into the communicative value of punishment had yet to be undertaken at the level of adolescent offenders within the domain of community-based sentences. This study must therefore be seen as an attempt to bridge the gap in knowledge between normative, and often empirically-uncorroborated, academic suppositions about the penal messages conveyed through the punishment process and the ways in which those messages are perceived by adolescent offenders themselves. In examining the field from this dual perspective, it is hoped that this research project might contribute to "a closer relationship between high-level normative theory and ground-level practical decision making" (Duff and Garland, 1994:21) and improve our understanding of punishment as a 'communicative enterprise' (Duff, 2003b:181).

The Introduction identified two areas of concern as meriting the attention of policy-makers and criminal justice agents. The first of these involved the need for

these two parties to ensure that adolescent offenders have been empowered with an understanding of the processes and outcomes in which they find themselves involved. The second area concerned the need to develop a more comprehensive understanding of how community punishments are perceived by young offenders. The present thesis has undertaken an empirical investigation of 'insider' views and has offered reasons to endorse a cultural shift from an overly sceptical stance *vis-à-vis* young offenders' views to one that engages more fully with these individuals in a process of participation. The implications of this proposed cultural shift carry important theoretical and policy-related implications which will be considered alongside the main findings and recommendations of this investigation once the generic and practical limitations of this study have been discussed.

## **9.2 Limitations of this Study and Suggestions for Further Research**

The sampling strategy employed had certain limitations. The problems of having to access the research sample through YOTS, and the potentially distorting effects of cherry-picking by these centres have already been discussed. The omission of individuals who were absent from their scheduled YOT worker's appointment must also be recognised as a source of potential bias. Although the decision to include five participants serving DTOs and one serving a Section 91 Sentence in the sample has been explained, the analysis of the interview scripts and the sub-group analyses would have been more straightforward had the sample

consisted exclusively of 16-18 year olds serving community-based sentences that did not incorporate a custodial element.

Undoubtedly, the empirical investigation of adolescent offenders' views of community punishment would have been much more comprehensive had the recruitment criteria been extended to include a wider age-range than the one selected for the present study. Such an approach would allow for a more in-depth exploration of Zedner's hypothesis that age, maturity and cognitive ability are important *a priori* considerations in relation to the appropriateness of a communicative theory of sentencing for young offenders.

The review of the literature, and the fieldwork carried out have also identified other sample-related considerations which merit further research. The study would like to single out the potential use of qualitative information of the kind obtained in this investigation to pursue a more extensive variable-focused analysis of, for instance, female experiences of the youth justice system. Although only 22% of the participants interviewed for this study were female, the findings discussed in Sections 5.4 and 7.7 revealed that gender might be an important variable which impacts upon both how receptive offenders are to censure-based messages and how they assess the severity of their respective sentences.

Although biases relating to the sampling strategy have already been discussed in Section 4.5., it is worth reiterating in this concluding chapter that the views expressed by participants might be particular to the penal experiences they

have lived in their respective geographical regions (Challen and Walton, 2004). In their research with the ISSP programme, for instance, Gray *et al.*, (2005:123) found that “[t]he widely different content of ISSP schemes inevitably produced very varied experiences of supervision.” The findings of this study are not therefore geographically representative of the views held by the entire offending population. The manner in which the sample for this study was selected might be expected to under-represent the views of more serious offenders; those living in urban areas and those from ethnic minorities. It must therefore be acknowledged that the results of this study would have been different had a more representative sample been achieved. A more ambitious comparative investigation into the communicative value of punishment might therefore want to engage with larger demographic groups.

On balance, and having made every effort to minimise researcher-related influences (see Section 4.8), the methodology chosen served the purposes of this research project well, and the semi-structured interviews yielded a wealth of information about those issues that were critical to the concerns of this study. Having made this point, the limitations inherent in the use of one-off semi-structured interviews averaging about 31 ½ minutes in length as the only source and type of data, must be acknowledged. These single interviews can only provide a snap-shot of the processes and influences that have gone into shaping young offenders’ perceptions of the criminal justice system. A succession of follow-up interviews, would likely have yielded additional qualitative information and allowed

for greater contextualisation of findings. The complementary value of a mixed methods approach has already been discussed in Section 4.2.3.

With hindsight, the interview schedule may have been improved. The research tool could be criticised for the number of questions it contains, and the study has identified the failure to include questions which explicitly sought to elicit participants' views on their respective experiences of YOP as a significant omission.

The emergence of recurrent themes across different interview transcripts suggests that the study's findings encapsulate views which might be shared by adolescent offenders. Every attempt has been made to document and exemplify participants' views by enmeshing their 'voices' in the discussion and by embedding their experiences in the context of relevant theoretical issues. The inclusion of verbatim quotations, together with the detailed analysis of participant responses will have gone some way towards addressing what Silverman (2005:211) defines as "the problem of anecdotalism", which he argues is "[f]ound where research reports appear to tell entertaining stories or anecdotes but fail to convince the reader of their scientific credibility" (2005:377).

The extent to which the findings of this study are ultimately generalisable (defined by Silverman (2005:378) as the "extent to which a finding in one setting can be applied more generally" to other populations or research samples) remains hard to determine. Independent of the extent to which these views might be

representative of the wider offending population, they remain valuable within the tradition of qualitative research insofar as they might offer insights into the dynamics of the punishment process:

the accounts provided by the participants...cannot simply be dismissed as unreliable and idiosyncratic. Rather, they provide an insight into the experiences, views and preferences of service users themselves (Eley *et al.*, 2005:408-409).

### **9.3 Theoretical Implications of the Findings**

Conceptualising community sentences in communicative terms does not run counter to young offenders' views of punishment, and the analysis of participant accounts in Section 5.3 confirms the broad underlying consensus identified by Sparks *et al.* (2000) regarding the communicative value of punishment. Among the wide range of different penal messages identified by participants, the importance interviewees ascribed to preventive messages, such as 'stop offending' and 'stop offending or else', illustrates a degree of consonance between what criminal justice actors aim to convey through sentencing and punishment, and what interviewees perceived (Section 5.3). The same can also be said for the identification of prevention as the primary purpose of punishment in Section 5.5.

Viewed in conjunction with the analysis undertaken in Section 7.5, the findings of this study offer some empirical corroboration of both the preventive dimensions of punishment which are central to von Hirsch (1993) and Narayan's (1993) theses, and the morally persuasive function which Duff (2001) believes

punishment ought to serve. In this respect, the findings discussed in Section 7.5 would also seem to contradict the central contention held by expressivist theorists (Kleinig, 1992; Primoratz, 1989; Ewing, 1927, 1943; Lucas, 1980) that the expression of censure *alone* constitutes sufficient justification for the imposition of hard treatment.

On the issue of censure, the participant accounts reviewed in Sections 5.6 and 7.5 offer some empirical evidence to suggest that censure alone can neither convey disapproval to the offender effectively nor make a significant contribution to securing the preventive aims of the youth justice system. Whether censure by itself could be sufficient to convey to offenders the wrongfulness of their actions ultimately depends on the receptivity of the individual defendant and the nature of the offence committed. Having noted this point, however, the study found that twenty-four of the fifty respondents believed that the imposition of hard treatment was necessary if the aim of the youth justice system is to convey the penal message to the defendant.

While not denying the condemnatory role fulfilled by punishment, and the fact that participants themselves are cognisant of the court's censorious messages (Sections 5.4 and 5.5), the findings of this study seem to cast doubt upon Feinberg's (1970:98) postulate that moral condemnation is the principal expressive purpose of punishment. The identification by participants of the wide range of penal purposes reviewed in Section 5.5, and the centrality they ascribed to preventive messages provide some empirical support for Harcourt's (2001) and Bedau's (2002)

theoretical accounts critiquing Feinberg's central contention. Hampton's (1984) argument that moral education exclusively justifies the practice of punishment would also, arguably, be called into question for these same reasons. Finally, while Stephen (1883) and Durkheim (1925) may have shared the view that punishment expressed public anger and served to quell feelings of revenge and hatred towards offenders, none of the interviewees made reference to these in relation to either the penal messages communicated during sentencing or the penal purposes served by punishment.

Contrary to the adverse effects of hard treatment identified in the literature (Narayan, 1993; van Stokkom, 2005; Walgrave, 2005 and Claes and Peters, 2005), in Section 7.9, the investigation found that for forty-two of the fifty interviewees, punishment brought about a process of introspection. The findings discussed in Section 5.4 also suggest that participants readily accept that one of the purposes of punishment is to elicit specific moral responses from offenders. On the basis of the empirical information analysed, the findings of this study would therefore seem to support Duff's (2001) conceptualisation of punishment as a process which seeks to elicit specific sentiments from defendants and his argument that the hard treatment element in punishment can be justified on the grounds of its capacity to encourage offenders to repent and reform.

For all of punishment's capacity to induce an introspective attitude in offenders, however, the study noted with some concern that thirty-nine respondents failed to mention that serving the sentence made them think about their respective

victims. This finding is perhaps all the more surprising when viewed in the light of the discussion in Section 6.5 where the study found that twenty-nine respondents held the view that the sentencing process communicates messages to victims. A hypothetical explanation to some respondents' inability to empathise more fully with the plight of their victims might be found in van Stokkom's (2005:170-1) contention that punishment will invariably focus the offender's attention almost exclusively "upon his own suffering". While not downplaying the important work being carried out by YOT workers on victim awareness, the findings of this study might suggest the need for a more concerted effort by all criminal justice agents to emphasise the effects of crime upon victims in order to drive home to young offenders the consequences of their criminal behaviours. Direct victim reparation might well be one possible option worth exploring in this context.

The findings discussed in this thesis have also provided an important insight into how participants viewed a broad range of conceptual sentencing issues which are related to the communicative dimensions traditionally ascribed to punishment. The findings in Section 7.6, for instance, revealed that according to just under half of the respondents, sentencing should not be governed exclusively by either retributivist or consequentialist concerns. The study also noted that with the exception of two interviewees, there was near universal consensus among participants regarding the current sentencing policy which holds that previous convictions will usually have an aggravating effect upon any sentence imposed by the court.

The analysis undertaken in Section 7.3 suggested that participants conceptualise punishment primarily as a coercive response to criminal wrongdoing. The study also noted the identification by participants of a number of educative elements in their definitions of the term 'punishment' (Sections 5.3 and 5.5). In their responses, participants offered some empirical evidence to support the educative theories of punishment advanced by academics such as Ewing (1943), Morris (1981) and Hampton (1984). While Duff (2001:92) downplays the morally educative role of punishment in the case of adults, the findings of this study suggest that the primarily deterrent and corrective lessons underpinning sentences are significant dimensions of punishment as far as young offenders are concerned.

From the discussion in Section 7.8 it is also apparent that the concepts of commensurability, equality of treatment and equal application between different individuals are considered by a wide cross-section of participants to be essential elements to their conceptualisations of the term 'fair', and to how they themselves rate the fairness of their respective sentences. While the study found evidence to suggest that perceptions of fairness are linked to participants' perceptions of severity (Section 7.7), interviewees did not seem as conscious as academics (Braithwaite, 1989; Sherman, 1993; Paternoster *et al.*, 1997; Piquero *et al.* 2004; Tyler, 2006) of the impact which perceptions of fairness might have upon their future behaviour.

## **9.4 Policy Implications**

The study's findings have cast light upon the widely held perception among participants that the sentencing process fails to engage with them and that it is boring and tedious (Section 5.1). Courtroom procedures were not always properly explained to interviewees, and these often reported feeling alienated by the language employed in court (Section 5.2). These findings might perhaps explain why the act of appearing before the court only drove the consequences of their offending behaviour home in a small number of cases (Section 5.1).

According to the analysis undertaken, the communicative efficacy of the criminal justice process is undermined by the complex adversarial nature of what, to many participants, seemed to be a cumbersome, obscure and jargon-filled procedure with highly ritualised behaviours (Section 6.7). In its analysis of how participants rated the communicative processes of the courtroom, this study found evidence to suggest that while adults may perceive the language employed to be appropriate for the age-range, the accounts of these 'older' young offenders reveal a different reality. Respondents felt that there was room for improvement in the court's use of language and in its ability to explain proceedings (Section 6.9), two issues which were also identified as important barriers to communication and understanding in Section 6.7.

When viewed against the passive and often non-participatory roles assumed by some adolescent defendants during proceedings (Section 6.1), their first-hand

accounts of the nature of the courtroom process may help us gauge the effectiveness with which penal messages are conveyed during sentencing. The limited scope for offenders to make a contribution during court proceedings was one of the *leitmotifs* to emerge from the analysis of some respondents’ accounts of their contrasting experiences with the YOP.

If the youth justice system’s intention is to convey to offenders the nature of their wrongdoing by making them submit to the authority of the court, the findings of this study have identified a number of areas and practices that merit reviewing. The study has discussed the value of developing an evidence-based understanding of how young people themselves perceive punishment. It has also singled out the need for a broader communicative framework, one in which young people are empowered participants with an understanding of the legal processes that they find themselves immersed in. Viewing community penalties within such a framework might involve a cultural shift away from current youth justice practices which often tend to “depersonalise” (Lyon *et al.*, 2000:30) defendants towards an approach which allows for greater engagement with them as individuals during proceedings.

A communicative framework that facilitates offender participation might provide a useful framework against which current penal policy can be assessed. It could be conducive to an improved understanding of the relationship between the penal messages issued in court and how offenders relate these to the constituent elements of their respective sentences. The discussion in Section 7.10 revealed that thirty participants believed that the activities undertaken reflected the penal

messages communicated to them by the court. Having said this, however, the study also expressed concern at the important disjuncture between the activities undertaken and the nature of the offences committed by participants. The fact that forty out of the forty-three respondents were unable to identify a clear link between message, activity, and offence suggests that the system is missing out on a valuable opportunity to reinforce the penal messages it is trying to communicate.

In Chapter Three the point was made that there is a subtle but significant difference between what punishment expresses and what it communicates. Indeed, one of the hypotheses underpinning this study has been that the communicative function of punishment can only be fully understood when its expressive intent is viewed in conjunction with the perceptions of intended recipients. Communication involves a clear understanding of the relationship between what has been expressed by criminal justice actors and what has been understood by their intended audience(s). The communicative efficacy of the youth justice system can only be fully determined by taking on board the views of all those involved in this dialogue, including offenders themselves, identified by participants in Section 6.4 as the principal addressees of the courts' messages. Given its focus on the views held by young people, it was never the study's intention to fully determine the communicative efficacy of the youth justice system. The scale of such an ambitious task would have been beyond the scope of this investigative piece, and would have called for an in-depth examination of the views held by other relevant actors. This study can only, therefore, claim to make a contribution towards a better

understanding of the communicative efficacy of the punishment process as perceived by adolescent offenders themselves.

The evidence discussed in Section 5.7 suggests that by providing offenders with only sufficient information for them to acquire a rudimentary understanding of their orders, the court might be leaving much of the communicative value of the punishment process, and the didactic elements of sentencing, to chance. Already, the findings discussed in Section 5.7 suggest that the provision of information by the court may well lend the penal message the gravitas which may otherwise be lacking when information is conveyed by secondary parties. In light of this fact, the study proposes that the court should initially assume responsibility for the dissemination of these specific messages and that it should do so in a language which is accessible to defendants. In order for the communicative efficacy of the punishment process to be improved, the court, together with other criminal justice actors, should strive to make the link between message, activity and offence clear to offenders.

The findings on the penal messages communicated to participants beyond the 'four walls' of the courtroom during the administration of the sentence have provided a better understanding of the manner in which these are conveyed to offenders throughout the punishment process. Significantly, in its examination of the communicative roles fulfilled by YOPs, YOT workers and offenders' parents/carers, the findings of this study offer some research-based evidence to substantiate the supposition that penal messages are communicated to offenders

beyond the original sentencing hearing and that the 'communicative environment' is far broader than is traditionally assumed.

The findings discussed in Sections 8.4, 8.5, 8.6 and 8.11 suggest a strong thematic congruence between the preventive and censure-based messages issued by the court during sentencing (Section 5.3), and those conveyed to offenders by YOPs, their respective YOT workers and parents/carers during the administration of their sentences. In sustaining many of the messages communicated to offenders during sentencing, the study has noted that the work carried out by YOT officers in particular is pivotal to the central aims of the youth justice system.

The findings discussed in Chapter Eight also reveal that a wide cross-section of respondents identified a series of important differences in the manner in which the court, YOP and YOT workers respectively conveyed their penal messages to offenders. In contrast to the findings in Section 5.3, for instance, the study found in Section 8.4 that many of the implicit and explicit punitive undertones surrounding the messages conveyed by the court were absent in participant accounts of the penal messages conveyed to them by their YOT workers. Borrowing the terms employed by Halliday (1973), the study found in Section 8.5 that while the court tends to make exclusive use of language which is "regulatory", YOT workers make extensive use of "personal", "interactional" and "heuristic" language. The study also noted with interest the different levels of formality participants encountered when they found themselves before the court and the YOP. Participant accounts suggest that the language employed by these parties would likely affect the way that

the message is received by offenders. Participants reported that the less formal register employed by YOT workers during their sessions made these criminal justice actors more effective at communicating with offenders (Section 8.5). Many respondents recognised that the YOT workers' censure-based messages were more effective than the court's, while others on referral orders identified a clear distinction between the manner in which YOPs and the courts confront offenders with their wrongdoings (Section 8.6).

This finding highlights the value of not only conceiving punishment in communicative terms, but also of empirical investigations into its communicative value during the administration of the sentence. The findings identified above can perhaps be explained by the different cultures of communication to be found in the court, YOP and YOT environment.

Language-based issues, however, were not the only difference identified by participants in their accounts. The findings discussed in Sections 8.5 and 8.6 offer some empirical evidence to suggest that each of these parties adopt entirely different approaches in their dealings with adolescent offenders. Respondents drew a clear distinction between the courts' tendency to focus on their negative behaviour, and YOT workers' predisposition towards a much more edifying overview of their situation. According to responses analysed in Section 8.6, the fact that YOT officers focus upon offenders' personal qualities and engage directly with them within a structured programme, makes the penal messages conveyed easier to

understand and assimilate. It was also interesting to observe that participants felt that YOPs were much more positive and willing to help than the courts.

While the youth justice system's preventive intentions may be said to have been communicated effectively to adolescent offenders by a series of different criminal justice actors, the same might not be said for its attempts to convey its punitive messages. Significantly, the study found that ninety-four percent of the sample did not view the penal messages conveyed by the court as punitive (Section 5.3); that only a few ascribed a punitive purpose to their respective sentences (Section 5.5), and that sixty percent of participants did not view their sentences exclusively as punishments, but were instead, able to identify other more positive dimensions to their respective orders (Section 7.3).

These findings suggest that the court might be failing to impress upon adolescent offenders the seriousness of their actions and the gravity of the situation they might find themselves in. Having said this, however, much will depend on the individual weighting the youth justice system assigns to its preventive, punitive and rehabilitative aims. Whether it wants offenders to view the orders it imposes as punishment *strictu sensu*, or as constructive responses to their offending behaviour which aim to help them, merits further commentary.

In Section 5.3 it was hypothesised that when punishment and the courts' efforts are viewed by defendants as attempts to help and not just to punish them, this perception may well impact positively upon the effectiveness of the sentence. The

study noted with some concern, however, that if offenders' views are premised on a lack of respect for the court's authority, or worse still, a perception that very little will happen to them in the event of a repeat offence or a breach of their current order, then these findings may carry important ramifications for deterrence and desistance. While the issue is certainly ripe for further empirical research, the findings of this study suggest that the latter hypothesis might be correct. The findings discussed in Sections 5.1; 5.3; 5.5 and 6.8 suggest that in the eyes of some interviewees, the youth justice system still affords them too many chances.

While an instinctive reaction to this view might be a ratcheting up of sentence severity, such a response is bound to fail because it does not take into account the psychological complexities of the age-group under review. Significantly, the findings discussed in Section 6.8 suggest that if the court is to encourage desistance among young offenders, it should not increase the severity of the sentences issued by the court, or pursue an exclusively punitive penal policy. Neither approach, according to a wide cross-section of participants, would be an effective means of securing the preventive aims of the youth justice system, or of enhancing the communicative efficacy of the punishment process. The almost exclusively outcome-based interest displayed by a wide cross-section of respondents (Section 5.1), for instance, is perhaps to be expected given that their immediate future is on the line. While their attitude is understandable, the failure of the sentencing process to engage with young offenders more fully might risk alienating them from proceedings and possibly coerce them into assuming a passive role.

If the youth justice system is to secure its preventive aims and encourage adolescent offenders to desist, it should attempt to take them on board through a structured judicial process that seeks to support, communicate, and inform. For all of the court's attempts to convey penal messages to young offenders, the "communicative efficacy" (Sparks *et al.*, 2000:207) of the system, according to the majority of interviewees, ultimately depends upon how receptive the offender is to the messages being conveyed (Sections 6.7 and 8.8).

This study proposes a more participatory sentencing framework as a way of reforming current judicial practices. The findings analysed in Sections 6.1 and 6.6 have already shown that in instances where adolescent defendants are afforded a voice, they are willing to participate in the youth justice process and make a contribution to proceedings. Calls for a more participatory youth justice system have already been made by a number of academics reviewed in this thesis (Zedner, 1998; Weijers, 2002). The qualitative findings obtained for this study would seem to endorse their calls for a review of current practices (see Section 6.8).

Failure to make offenders active participants in the punishment process is unlikely to bring about attitudinal changes to their offending behaviour, and might serve little purpose other than to contain the individual for the duration of the sentence. If the procedures employed in the sentencing of juveniles are to serve a long-term rehabilitative purpose, it is important that offenders do not perceive themselves as objects to be systematically processed by the youth justice system.

This study therefore recommends that in order to promote desistance more effectively, the youth justice system should review the activities undertaken by adolescent offenders as part of their respective sentences (Section 7.11). The findings discussed in Section 7.10 suggest that there is a clear disjuncture between the messages issued by the court, the activities undertaken, and the nature of the offences committed by offenders which must be addressed if the communicative efficacy of the punishment process is to be improved. A broad cross-section of respondents also identified the inadequate provision of recreational facilities in their respective communities as one of the factors that might contribute towards recidivism (Sections 6.8, 7.7 and 8.7). The implications of this finding should draw the attention of policy-makers to the potential worth of carefully conceived social policies as a first step with which to address the problems associated with juvenile delinquency.

In its examination of the court’s limited post-sentencing role, Section 8.1 noted how the court could be missing out on a valuable opportunity to reinforce its penal messages by failing to keep track of offenders and not offering them support while they are on their respective orders. The fact that interviewees did not consider the post-sentencing role of the court as significant may perhaps be ascribed to its traditional policy of non-involvement. According to Bateman and Stanley (2002:3), “[r]egular provision of feedback to the court on the progress of young people subject to court orders is...rare”. The Criminal Justice and Immigration Act 2008, however, empowers the court to “formally request that a young person returns to court in order for their progress on a Youth Rehabilitation Order to be reviewed”

(Youth Justice Board, 2010b:12). Given that defendants within this age-range are going through their formative years, perhaps the courts ought to be encouraged to celebrate and formally acknowledge the achievements of those who complete their orders successfully. The supportive post-sentencing involvement of YOPs identified by some interviewees might endorse the youth justice system's preventive messages and serve to consolidate offender rehabilitation. These measures might also go some way towards addressing a situation where "no effort is made to reconcile the offender with the community" (Braithwaite, 1989:101) because the punishment process usually segregates those who are within the pale of the law and those who have transgressed it. It is also Braithwaite's contention that "[p]unishment erects barriers between the offender and punisher" (1989:73), a view endorsed by Zedner (2004:221-2) who, writing in relation to the electronic monitoring of offenders, observes that this sentence "labels the offender but provides no means for constructive dialogue..., for the expression of remorse, or for eventual reintegration back into civil society".

Duff's (2004:86) argument that offenders' apologetic reparation through hard treatment can restore their links with the community has come under heavy criticism by numerous academics reviewed earlier in Section 3.11. Notwithstanding these criticisms, however, it could be argued that the absence of the reconciliatory potential that Duff claims punishment ought to ideally provide is perhaps the result of current criminal justice practices which tend to be exclusionary, stigmatic and, in Braithwaite's (1989:101) words, little more than "degradation ceremonies".

Already, there is widespread academic agreement on the need to recognise the law's role as a potential therapeutic agent in the extensive therapeutic jurisprudence literature (Wexler and Winick, 1991; Winnick, 2003; Rosen, 1999; Hora *et al.*, 1999; Senjo and Leip, 2001; Rottman, 2002). Consensus surrounding the potentially healing functions to be served by the law is perhaps best exemplified by the emergence in recent years of drug treatment courts across a number of jurisdictions, including the United States, Canada and Australia (see further Hora *et al.*, 1999 and Freiberg, 2000). These specialised courts have emerged as a popular alternative to dealing with non-violent, substance-abusing offenders. They are guided by a series of key principles, ones which integrate offender monitoring through regular court appearances and incentives to reward progress (and sanctions to correct non-compliance) (see Nolan, 2001). Although these initiatives are evidently subject to case-load management concerns, they might address a situation in which the absence of a follow-up by the court means that the onus of sustaining the penal messages contained in the sentence falls upon other agents.

While the government may be tempted to re-brand community-based sentences under alternative nomenclatures in order to "persuade the public and the courts to regard them as punitive" (Mair, 1998) the findings in Section 7.4 suggest that this re-branding exercise might only be marginally successful at influencing the way that young offenders perceive these sentences. According to interviewees, the communicative value of the names assigned to sentences themselves, is minimal, as these individuals consider these changes to be a matter of style rather than substance. From the responses provided by participants (Section 5.3), however, it is

also apparent that the messages conveyed by the court are not the exclusive preserve of any specific sentence, but are generic to all sentences. The finding that all sentences ultimately draw upon a set of core penal messages which are not exclusively sentence-specific would seem to support the recent introduction of a new community sentence for young offenders which combines a number of previously existing separate sentences into one generic order (Youth Rehabilitation Order, as per the Criminal Justice and Immigration Act, 2008). Having said this, however, it remains to be seen whether the introduction of this measure will affect how offenders perceive their community sentences, and in particular whether they will be more or less likely to understand what their respective orders involve in the absence of a sentence name which describes the relevant activity or restriction.

## **9.5 Communicative Frameworks and Moving Beyond 'merely punitive punishments'**

For the 'cultural shift' which is being proposed in this final Chapter to take root within the youth justice system, the latter must avoid tokenism and ensure that engagement with offenders is more than just a paper exercise: "Listening is only half the story; acting on what they say is what makes their involvement meaningful" (Kirby *et al.*, 2003:145). If punishment is to be perceived as a 'communicative enterprise', its full rehabilitative and reparative potential might only be realised if the youth justice system actively engages with adolescent offenders. It is the responsibility of criminal justice agents to explain the nature of the punishment so that they may come to terms with the rationale for its imposition. Unfortunately,

however, a key feature to emerge from the analysis of the literature, and from the qualitative findings of this study is that there is often a failure on the part of the youth justice system to ensure that adolescent offenders have been empowered with an understanding of the processes and outcomes in which they find themselves involved (Mair and Nee, 1990; Roberts, 2004a; Dodgson *et al.*, 2001).

If, as this study has sought to argue, engaging with offenders is important, it is also necessary for the criminal justice system to ensure that punishments meted out are constructive responses to offending behaviour. Duff's (2003) thought-provoking discussion on the nature of punitive punishment seems to endorse a call for a change of legal culture:

We should certainly resist 'merely punitive' punishments, and look instead for responses to crime that exhibit proper respect and concern for both victims and offenders as our fellow citizens. However, there are two ways to do this. We could first, resist 'punishment' as such, and look instead for non-punitive responses to crime: that is the path that many theorists have taken. But there is an alternative: for we could, secondly, resist the particular conceptions of punishment that inform so much of contemporary penal discourse and practice, in favour of a more appropriate conception that will transcend the 'merely punitive', and which is informed by those inclusive values to which the critics of punishment often appeal (2003b:182).

Transcending the merely punitive is bound to be problematic, however, because of the evident need for community punishment to be perceived positively by the consortia of interested parties it is meant to serve, from the general public down to offenders themselves.

The findings of this study suggest that if the government is committed to pursuing an 'evidence-based' policy in the youth justice context, policy-makers have to develop a more informed understanding of the manner in which juvenile offenders view community punishment. Among the many reasons discussed, listening to offenders' views is deemed important because "many stereotypes about imprisonment and other sanctions have developed and been perpetuated in the absence of systematic research" (Roberts, 2004a:92). The inherently subjective nature of punishment means that top-down approaches which fail to consider what offenders themselves have to say about the punishment might well be irredeemably flawed. The study has therefore argued that by listening to offenders' views and recognising their experiences of punishment, policy-makers might arrive at a better understanding of how to improve and develop existing programmes and interventions.

There is a window of opportunity for the criminal justice system to address public misperceptions *vis-à-vis* punishment by initiating a concerted campaign to increase public understanding by providing factually relevant information regarding how punishment is perceived by those experiencing it. If such information is forthcoming, it might generate the necessary impetus to recognise that punishment within the context of the community setting can be a credible and effective option. As Petersilia (1990: 23) points out:

If it can be shown that other-less expensive- sanctions also have punitive qualities, then perhaps the public might accept that community-based sanctions are appropriate and quite consistent with their demand to 'get tough' and hold criminals accountable

for their crimes. If this link were made, the criminal justice system could save money and operate a system with more rehabilitation potential.

The findings of this study suggest that the criminal justice system ought to take the initiative on this front, and present the public with a research-based account of how punishment is perceived by offenders. It must be bold in the dissemination of information and enlist the support of the news media to facilitate public understanding. Already there is a growing body of encouraging research evidence to suggest that public understanding can be improved and misperceptions rectified. Criticisms levied by the public against the perceived leniency of community penalties, for example, often evaporate when the requirements attached to these sentences are explained to the public:

The considerable support that emerged for alternative sanctions, once one was made salient, suggests that a clear priority for the juvenile justice system is to educate the public about the availability of community-based sanctions (Tufts and Roberts, 2002:60-61).

Similarly, there is an increasing volume of research literature to suggest that the extent to which harsh penalties are consistent with the views of the public have been over-exaggerated. Roberts *et al.*'s (2003:34) findings are illuminating with regards to the widely accepted views on penal populism: "more sophisticated research suggests that public support for harsh sentencing is less solid than many politicians appear to believe."

In the same way that the research literature on penal populism has identified the discrepancy between assumptions and facts, this study has sought to cast light upon some of the empirically-uncorroborated academic assumptions regarding the communicative value of punishment. The academic literature reviewed and the main findings of this empirical investigation suggest that the youth justice system stands to gain much from listening to offenders’ views of community sentences and the communicative dimensions of punishment. The research experience lends support to Underdown’s (2001:117) view that punishment in the community presents “both special challenges and rich opportunities”. These challenges and opportunities warrant the creation of a new collaborative framework which allows for constructive offender participation along the lines advocated by the Children and Young People’s Unit (CYPU, 2001)<sup>87</sup> and which builds upon the work of youth justice practitioners and academics:

The future...of the criminal justice system, like the future of other public services, rests on developing new terms of co-operation between government, professionals and service users and citizens (Rogers, 2005:2-3).

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<sup>87</sup> The CYPU’s (2001) definition of participation posits that young people should be involved in instances where individual decisions are being taken about their own lives, where services for, or used by them are being developed or provided locally, and finally, where national policies and services are being developed or evaluated.

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D.Phil Thesis

Title: 'Communicative Sentencing: Exploring the Perceptions of Young Offenders in the Community'.

## **Appendices**

## Appendix One: Parent/Guardian Consent Form

Parent/ Legal Guardian Consent Form

**What Do You Think?**

**Community Sentences**

I \_\_\_\_\_ (Name of Parent/ Legal Guardian in BLOCK CAPITALS) agree that:

\_\_\_\_\_ (Name of Young Person in BLOCK CAPITALS) can take part in this interview.

I understand that the purpose of the study is to learn about young peoples' views of community sentences.

I agree that the interview can be recorded on the basis that the information that the young person provides will be anonymised, their identity protected and anonymity preserved (subject to normal legal requirements).

I understand that only the Principal Investigator will have access to the identifying data provided which will be stored securely and will not be retained for longer than necessary.

I agree that- subject to provisos on anonymity, confidentiality and data protection- the interview data the young person provides can be used for research and educational purposes.

I also understand that:

- this project has been reviewed by, and received ethics clearance from, the University of Oxford Central University Research Ethics Committee;
- the Principal Investigator is **Stephen Noguera**, doctoral research student at the Centre for Criminology at the University of Oxford, who can be contacted for further information at the above address or by email: [stephen.noguera@law.ox.ac.uk](mailto:stephen.noguera@law.ox.ac.uk)

Parent/ Legal Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix Two: Sentencing History Release Form

### Request for Access to Sentencing History

I \_\_\_\_\_ (Name of Researcher in BLOCK CAPITALS) undertake that the collection and analysis of any data concerning you will be carried out in such a way as to protect your identity.

Researcher Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I \_\_\_\_\_ (Name of Participant in BLOCK CAPITALS) agree to allow the Principal Investigator, Stephen Noguera, to access to my sentencing history through the YOT.

I understand that only the Principal Investigator Stephen Noguera will have access to the sentencing history data provided which shall be stored securely and will not be retained for no longer than necessary.

I understand that my identity will be protected and anonymity preserved.

### Appendix Three: Detailed Overview of the Composition of the Sample

The following tables contain detailed information pertaining to the sample.

YP ID	Age	Gender	Race	Interview Date	Interview Length (Minutes)	Interview Location	YOT	Current Order	Length of Order
1	16	Male	White British	26 <sup>th</sup> February 2008	21:52	Newbury	West Berkshire	SO with SA	18 Months
2	16	Female	White British	26 <sup>th</sup> February 2008	47:05	Newbury	West Berkshire	SO with SA	24 Months
3	16	Female	White British	26 <sup>th</sup> February 2008	20:06	Newbury	West Berkshire	SO	6 Months
4	17	Male	White British	17 <sup>th</sup> March 2008	25:48	Newbury	West Berkshire	CPRO	12 Months
5	16	Male	White British	17 <sup>th</sup> March 2008	30:38	Newbury	West Berkshire	SO	12 Months
6	16	Female	White British	4 <sup>th</sup> June 2008	33:56	Newbury	West Berkshire	APO	3 Months
7	17	Female	White British	4 <sup>th</sup> June 2008	32:37	Newbury	West Berkshire	APO	3 Months
8	17	Male	White British	27 <sup>th</sup> May 2008	33:29	Sittingbourne	Canterbury and Swale	SO with SA	12 Months
9	17	Male	Black African	27 <sup>th</sup> May 2008	38:40	Sittingbourne	Canterbury and Swale	CPRO	18 Months
10	18	Male	White British	28 <sup>th</sup> May 2008	35:31	Canterbury	Canterbury and Swale	RO	8 Months
11	16	Male	White British	10 <sup>th</sup> June 2008	25:25	Swindon	Swindon	DTO	12 Months
12	16	Male	White British	10 <sup>th</sup> June 2008	23:59	Swindon	Swindon	SO	6 Months
13	17	Male	White British	10 <sup>th</sup> June 2008	60:00	Swindon	Swindon	RO	12 Months
14	17	Male	White British	11 <sup>th</sup> June 2008	18:37	Chatham	Medway	Section 91 Sentence	60 Months
15	16	Male	White British	11 <sup>th</sup> June 2008	17:00	Chatham	Medway	YP did not know	24 Months

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<b>16</b>	16	Male	White British	11th June 2008	19:23	Chatham	Medway	YP did not know	12 Months
<b>17</b>	16	Male	White British	11th June 2008	32:17	Chatham	Medway	YP did not know	12 Months
<b>18</b>	17	Male	Black British	11th June 2008	42:27	Chatham	Medway	SO + ISSP	24 Months
<b>19</b>	16	Male	White British	11th June 2008	27:09	Chatham	Medway	SO	6 Months
<b>20</b>	17	Male	White British	11th June 2008	22:58	Chatham	Medway	CRO	18 Months
<b>21</b>	17	Male	White British	12th June 2008	33:01	Chatham	Medway	DTO	6 Months
<b>22</b>	16	Male	White British	12th June 2008	32:47	Chatham	Medway	SO	12 Months
<b>23</b>	16	Female	White British	12th June 2008	37:15	Maidstone	Maidstone and Ashford	RO	6 Months
<b>24</b>	16	Male	White British	13th June 2008	34:00	Maidstone	Maidstone and Ashford	DTO	6 Months
<b>25</b>	17	Male	White British	13th June 2008	27:04	Maidstone	Maidstone and Ashford	CPRO	12 Months
<b>26</b>	16	Male	White British	13th June 2008	23:00	Maidstone	Maidstone and Ashford	SO	12 Months
<b>27</b>	17	Female	White British	13th June 2008	27:07	Maidstone	Maidstone and Ashford	SO	12 Months
<b>28</b>	17	Male	White British	13th June 2008	21:01	Maidstone	Maidstone and Ashford	CRO	24 Months
<b>29</b>	16	Male	White British	13th June 2008	30:53	Ashford	Maidstone and Ashford	RO	6 Months
<b>30</b>	18	Male	White British	26th June 2008	28:49	Maidstone	Maidstone and Ashford	CPRO	24 Months
<b>31</b>	18	Male	White British	26th June 2008	25:44	Ashford	Maidstone and Ashford	RO	6 Months

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<b>32</b>	16	Male	White British	26th June 2008	29:28	Ashford	Maidstone and Ashford	CPRO	12 Months
<b>33</b>	16	Male	Black Caribbean	25th June 2008	42:26	Slough	Slough	CRO	24 Months
<b>34</b>	16	Male	White British	25th June 2008	25:21	Slough	Slough	SO + ISSP	9 Months
<b>35</b>	17	Male	White British	25th June 2008	33:59	Slough	Slough	DTO	4 Months
<b>36</b>	17	Male	White British	25th June 2008	35:00	Slough	Slough	RepO	3 Months
<b>37</b>	17	Male	Black Caribbean	25th June 2008	31:22	Slough	Slough	RO	6 Months
<b>38</b>	16	Male	Mixed Heritage	2nd July 2008	31:22	High Wycombe	Buckinghamshire	SO + ISSP	16 Months
<b>39</b>	16	Female	White British	2nd July 2008	45:58	High Wycombe	Buckinghamshire	SO	6 Months
<b>40</b>	17	Male	White British	21st July 2008	34:27	Leamington Spa	Warwick	RO	6 Months
<b>41</b>	17	Male	White British	21st July 2008	27:42	Leamington Spa	Warwick	SO + ISSP	24 Months
<b>42</b>	17	Male	White British	22nd July 2008	21:25	Rugby	Warwick	SO + ISSP	12 Months
<b>43</b>	17	Female	White British	22nd July 2008	28:46	Rugby	Warwick	RO	8 Months
<b>44</b>	16	Male	White British	22nd July 2008	35:00	Rugby	Warwick	RO	4 Months
<b>45</b>	18	Female	White British	23rd July 2008	30:00	Nuneaton	Warwick	CRO	9 Months
<b>46</b>	17	Female	White British	23rd July 2008	31:38	Nuneaton	Warwick	CRO	6 Months
<b>47</b>	16	Male	White British	23rd July 2008	33:13	Nuneaton	Warwick	CRO + ISSP	12 Months

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<b>48</b>	17	Male	White British	23rd July 2008	40:09	Nuneaton	Warwick	CRO + ISSP	6 Months
<b>49</b>	17	Male	White British	23rd July 2008	32:44	Nuneaton	Warwick	RO	3 Months
<b>50</b>	18	Female	White British	23rd July 2008	45:29	Nuneaton	Warwick	DTO	18 Months

<b>Abbreviations used for Sentences:</b>	
<b>APO</b>	Action Plan Order
<b>CPRO</b>	Community Punishment and Rehabilitation Order
<b>CRO</b>	Community Rehabilitation Order
<b>CRO + ISSP</b>	Community Rehabilitation Order and ISSP
<b>DTO</b>	Detention and Training Order
<b>RO</b>	Referral Order
<b>Repo</b>	Reparation Order
<b>SO</b>	Supervision Order
<b>SO + ISSP</b>	Supervision Order and ISSP
<b>SO with SA</b>	Supervision Order with Specified Activities

Title: 'Communicative Sentencing: Exploring the Perceptions of Young Offenders in the Community'.

YP ID	Sentencing history obtained?	Number of previous convictions (Including present conviction)	Does the current sentence involve a custodial element?	Does the YP have any previous experience of custody? (Not including current sentence)	Previous experience of the current order?	Age at first conviction (Years/Months)	Age at most recent conviction (Years/Months)	Time elapsed between date of most recent conviction and the date of interview (Days)
1	Yes	6	No	No	Yes	14y 9m	16y 1m	211
2	Yes	4	No	No	Yes	14y 1m	14y 10m	337
3	Yes	5	No	No	No	15y 5m	17y 8m	15
4	Yes	7	No	No	No	13y 3m	16y 10m	119
5	Yes	3	No	No	Yes	15y 3m	15y 11m	35
6	Yes	1	No	No	No	16y 9m	16y 9m	37
7	Yes	1	No	No	No	17y 10m	17y 10m	37
8	Yes	3	No	No	No	Unknown	Unknown	Unknown
9	Yes	3	No	No	No	Unknown	Unknown	Unknown
10	Yes	1	No	No	No	Unknown	Unknown	Unknown
11	Yes	9	Yes	No	No	12y 6m	16y 5m	92
12	Yes	7	No	No	Yes	14y 9m	16y 4m	141
13	Yes	2	No	No	Yes	17y 1m	17y 4m	127
14	No	Unknown	Yes	Unknown	Unknown	Unknown	Unknown	Unknown
15	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
16	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
17	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
18	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
19	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
20	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
21	No	Unknown	Yes	Unknown	Unknown	Unknown	Unknown	Unknown
22	No	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
23	Yes	1	No	No	No	15y 9m	15y 9m	73
24	Yes	4	Yes	No	No	16y 0m	15y 11m	46

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25	Yes	4	No	No	No	No	14y 4m	15y 8m	95
26	Yes	7	No	No	No	Yes	12y 10m	15y 11m	95
27	Yes	6	No	No	No	Yes	12y 9m	16y 7m	337
28	Yes	13	No	Yes	No	No	14y 9m	17y 1m	74
29	Yes	1	No	No	No	No	15y 10m	15y 10m	101
30	Yes	5	No	No	No	No	17y 4m	17y 8m	129
31	Yes	1	No	No	No	No	17y 9m	17y 9m	121
32	Yes	4	No	No	No	No	15y 6m	16y 1m	16
33	Yes	1	No	No	No	No	16y 5m	16y 5m	12
34	Yes	7	No	No	No	No	13y 6m	16y 2m	188
35	Yes	6	Yes	No	No	No	15y 7m	17y 8m	90
36	Yes	1	No	No	No	No	17y 2m	17y 2m	57
37	Yes	1	No	No	No	No	17y 1m	17y 1m	89
38	No	2	No	No	No	Yes	Unknown	Unknown	Unknown
39	No	1	No	No	No	No	Unknown	Unknown	Unknown
40	Yes	1	No	No	No	No	17y 5m	17y 5m	33
41	Yes	9	No	No	No	Yes	14y 2m	17y 3m	69
42	Yes	6	No	No	No	No	15y 11m	17y 1m	32
43	Yes	2	No	No	No	Yes	17y 2m	17y 5m	116
44	Yes	1	No	No	No	No	16y 6m	16y 6m	88
45	Yes	4	No	No	No	No	16y 4m	17y 4m	280
46	Yes	5	No	No	No	No	16y 6m	17y 10m	41
47	Yes	12	No	Yes	No	No	13y 3m	16y 11m	14
48	Yes	8	No	No	No	No	16y 9m	16y 9m	98
49	Yes	1	No	No	No	No	17y 2m	17y 2m	56
50	Yes	4	Yes	No	No	No	13y 8m	17y 6m	537

## Appendix Four: Interview Schedule

### Interview Schedule: Page One

#### Section 1: Views on Sentencing

This first section is about your views on sentencing. I am first going to read out a made-up story of a young offender appearing in a youth court. I will then ask you some questions about it.

*Before the youth court is a young person, John, aged 16 who has admitted to stealing money from a vending machine at the local train station. John has had a tough time these past few months. Ever since his father left, he has had to look after his baby brother during the day, while his mum was at work. As a result, he has missed out on a lot of school. John is of good character, and he has never committed any offences in the past. He regrets what he did and says he is sorry.*

1a. In your view, what do you think are the two most important facts about John which the court would think about when sentencing him?

1b. Why?

2a. If I told you that John had stolen money before, do you think this would make things better or worse? [Note: Alternate order]

2b. Why?

3a. In sentencing John for what he did, do you think the court is trying to tell him something? [Paraphrase: Send him some message/ trying to get a message across]

3b. What do you think the court is trying to tell him? [Paraphrase: What message is it trying to get across?]

4a. By sentencing John for what he did, the court aims to achieve something. What would you say the sentence aims to do? [Paraphrase: What do you think the purpose of his sentence would be?]

4b. Can you think of any more purposes?

4c. Which would you say is the most important purpose?

**Interview Schedule: Page Two**

**Section 2: Communicating Messages: The Imposition of the Sentence**

This section will look at your experiences and views of the last time you were in court.

5a. What community sentence are you now serving?

5b. How long is the order?

5c. How long ago did you start?

6a. What could you tell me about your experience in court the last time you were there?

6b. Were able to understand what was going on?

7a. Would you say the information the court gave you about the order before you started it was:

Very clear  Clear  Unclear  Very unclear

7b. Was that information:

Very helpful  Helpful  Unhelpful  Very unhelpful

7c. Did the court provide you with all the details about the order?

7d. Did you depend on someone else [Possibly YOT worker] to fill you in on further details?

8a. When we were talking about John earlier on, I asked you about whether you thought the court was trying to tell him something when they sentenced him. Given your experience in court, do you think when your case was being heard that the court was trying to tell YOU something?

8b. [If Yes] What do you think the court was trying to tell you?

9a. Is that why you think you were given the order? Yes  No

9b. Can you think of any other messages the court was trying to send you? [If Yes] Which?

9c. [If more than one message mentioned] Which do you think is the most important?

10. Do you think the sentence you have been given sends you that message you mentioned above? How?

**Interview Schedule: Page Three**

11a. Did the court tell you that what you did was wrong?

11b. How did this make you feel?

11c. At the time did you think that being made to feel this way should be part of the sentencing/punishment process?

12a. Who out of the following groups should the court try to send a message to:

Offender  Victim  Public  Parents/Carer  All four  Other group \_\_\_\_\_

12b. [If more than one selected] Which of these, in your view, is it the most important to get the message across to and why?

**Speaking in Court**

13a. Were you given a chance to say something in court?

13b. [If Yes] What did you say?

13c. [If No] Why do you think you were not given the chance to speak?

13d. Would you have wanted to say anything?

13e. [If Yes] What would you have said?

**Speaking to the victim**

14a. Do you think the sentencing process communicates messages to the victim? Yes  No

14b. Which messages do you think the sentencing process communicates to the victim?

14c. Did you say anything to the victim in court? Yes  No

14d. [If Yes] What did you say to the victim?

14e. [If No] Why didn't you say anything to the victim? [Further Probe: Would you have wanted to say anything to the victim?]

**Interview Schedule: Page Four**

**Young person responding to the communication**

15a. Besides speaking in court, do you think it is important for the defendant to show some sort of response or reaction while the case is being heard in court?

15b. [If Yes] What kinds of responses/ reactions do you think are expected of you in court?

15c. Were you given any direction(s) on how to act/ behave by your solicitor?

**Obstacles to Communication**

16a. We talked about the messages that sentencing is trying to send the young person. When a court sentences a young person, do you think there may be factors/things which may stop the court's message getting through?

16b. [If Yes] Which?

16c. [If Multiple reasons mentioned] Which do you think is the most important reason which may stop the court's message getting through to young people and why?

16d. What kind of message do you think the court should send to encourage young people not to reoffend?

16e. How should this message be sent?

17a. Do you think the messages sent/ communicated to you by the court could be made more effective?

17b. [If Yes] How could they be made more effective?

17c. [If Multiple reasons mentioned] Which do you think is the most effective way and why?

**Section 4: Communicating Messages: The administration of the sentence**

This section will look at your views on the community sentence(s) you are currently on.

18. Would you say your sentence is:  too easy  easy  about right  tough  too tough?  
Why?

19a. When you got that sentence, did you think it was fair? Yes  No

19b. Why did you think it was fair? OR: Why did you think it was unfair?

20. If you had to explain the word 'fair' to a friend of yours, how would you explain it?

**Interview Schedule: Page Five**

21. What could you tell me about being on the sentence/order itself? [Paraphrase: Do you have to go somewhere or are there any special requirements?]

22a. What do you think about the activities you have been asked to do as part of your sentence?

22b. Does being on the order get you thinking about things?

23a. Can you see a link between what the court was telling you and what you have been asked to do as part of your sentence? Yes  No

23b. In what ways would you say the activities reflect what the court was telling you? OR: Why don't you think the court's message is reflected in the activities?

24a. Do you think of these restrictions/ activities you have been asked to do as a punishment?

24b. Why? OR: Why not?

24c. If you had to explain to a friend what 'punishment' is, how would you explain it? [Paraphrase: How would you describe what a punishment is to someone else?]

25. We talked about the messages that sentencing is trying to send to the young person. Some people say that the sentence has to be hard or tough to make the person see that their behaviour was wrong. Other people might say, just tell them off, and you don't need anything else. What do you think?

**Communicating a deterrent message**

26a. What do you think will happen if you fail to comply with the order?

26b. Who told you about what would happen if you failed to comply with the order? Did anyone else tell you about what would happen? [If Yes] Which party/person would you say was more effective at getting the message across? Why?

26c. Does knowing what will happen encourage you to comply with the terms of your order? Yes  No

26d. Why?/ Why not?

**Relationship with YOT workers**

27. What kind of relationship do you have with your YOT worker?

28. What kinds of things does your YOT worker talk to you about?

**Interview Schedule: Page Six**

29. When your YOT worker talks to you, do you think he/she is trying to send you a message? [If Yes] What are they trying to tell you?

30. Are there any other things your YOT worker could be trying to tell you?

31a. We talked earlier about the court trying to send you a message. When your YOT worker talks about the sentence you got and what it is for, is he/she giving you the same message or a different one?

31b. [If different] In what way(s) is it different?

32a. Has your YOT worker told you that what you did was wrong?

32b. How does this make you feel?

32c. Is that different to how you felt when what you did was being discussed in court?

32d. What kind of message do you think YOT workers should send young people to encourage them not to reoffend?

32e. How could this message be sent?

32f. What do you think could stop the message going through?

**The role of the family in communicative terms**

33a. Were your parents (or carer) in court the last time you were sentenced?

33b. Have your parents (or carer) had to come in to see the YOT worker?

33c. Would you say that having them there [in either just one or both] was a good or a bad thing? In what way? What kind of an effect did it have?

34. What do your parents (or carer) think of the sentence?

35a. Did they think the sentence is trying to send you a message? [If Yes] What message do they think the sentence is trying to send you?

35b. Is that [message] something which they have told you as well?

35c. Has this influenced how you think about the message the sentence is trying to send you? In what way?

35d. If your parents tell you that what you did was wrong, how does that make you feel?

**Interview Schedule: Page Seven**

**Post-Sentencing and the court**

36a. How much interest has the court taken in your progress while you have been on the sentence?  A lot  Some  Not at all

36b. Would it matter to you if they did/ did not take an interest? Yes  No

36c. Why would it matter? OR: Why wouldn't it matter?

37. Are there any ways in which your sentence may be improved to make the messages communicated more effective? [If Yes] In which way(s) may this be done?

**Section 5: Closing the Interview and Looking Ahead**

38a. Would it make any difference to you if your sentence was called a punishment, and not an order? Yes  No

38b. How would it make a difference? OR: Why would it not make a difference?

38c. Do you think it would make a difference to the way your family/guardians view it, and how they have reacted to you being on the sentence? Yes  No

38d. How do you think it would make a difference to them? OR: Why would it not make a difference to them?

39a. Some people say that the sentence given by the court has to look at the past, looking at what the defendant already did. Other people may say that the sentence should look to the defendant's future behaviour. Which view would you agree with?

39b. Why?

**Severity and Deterrence**

40. Severity of Sentences: Sentences are often placed in order of how hard/easy they are. I would like to see what you think. How hard/easy would you say the following sentences are? Using the numbers 1-4, please put them in order, hardest first, and easiest last. Hardest= 1 Easiest= 4. (Options on Card: Community Service, Imprisonment, Being told off in court, Fine)

41. Deterrent Effects of Sentences: How effective do you think the following sentences are in telling people not to offend? Once more, using the numbers 1-4, please put them in order, most effective first, and least effective last. Most effective=1 Least Effective= 4 (Options on Card: Community Service, Imprisonment, Being told off in court, Fine)

42. What do you think you will be doing in five years time?

43. Are there any other comments you would like to make?

**End of Interview**

## **Appendix Five: Ethical Guidelines: A Review**

Academic consensus regarding the value of ethical guidelines is not forthcoming.<sup>88</sup> Neuman *et al.* (2004:115) are of the view that “written ethical standards typically are only vaguely worded philosophical principles” and to Gallagher, Creighton and Gibbons (1995:296-297) “[e]thical guidelines produced by professional bodies have...tended to offer little advice on how to deal with ethical dilemmas.” A similar view is expressed by Kvale (1996). On the subject, Cree *et al.* (2002:54) conclude that these codes and guidelines “can never be more than this [a sound starting-point], because there will always be ambiguities and complexities such as those highlighted by our study.”

To some academics, these guidelines do not purport to resolve ethical dilemmas. According to the British Sociological Association’s (March 2002) *Statement of Ethical Practice*,

The statement does not...provide a set of recipes for resolving ethical choices or dilemmas, but recognises that it will be necessary to make such choices on the basis of principles and values, and the (often conflicting) interests of those involved.

Similarly, the British Society of Criminology’s Code of Research Ethics notes that: “The guidelines do not provide a prescription for the resolution of choices or dilemmas surrounding professional conduct in specific circumstances” (February 2006). In this context, Corti *et al.* (2000) are correct in their assertion that these

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<sup>88</sup> Particularly relevant to criminologists are the British Society of Criminology’s *Code of Ethics for Researchers*, The British Sociological Association’s *Statement of Ethical Practice*, as well as the Social Research Association’s *Ethical Guidelines*.

codes of ethics are meant, primarily, “to inform members about the ethical judgments they need to make rather than impose standards”.

Research ethics committees, according to Truman (2003:Abstract), have in recent years “gained a powerful role as gate keepers within the research process”. To Miller and Boulton (2007:2202) this signals “a move from self-regulation to external regulation.” Some researchers believe that these developments will have a detrimental effect (Coomber, 2002 as cited in Crow and Wiles, *et al.*, 2006). Truman (2003:Abstract), is particularly cynical about their *raison d’être*:

Underpinning the re-constitution of ethical guidelines and research governance, are a range of measures which protect institutional interests, without necessarily providing an effective means to address the moral obligations and responsibilities of researchers in relation to the production of social research.

This concern with institutional interests is certainly evident in the CUREC/2 form which asks researchers at Oxford University to consider whether participation in the project by potential research subjects will have negative consequences for the University.

## Appendix Six: Participant Consent Form

**Consent Form**

**What Do You Think?**

**Community Sentences**

I \_\_\_\_\_ (Name of researcher in BLOCK CAPITALS) undertake to ensure that the collection and analysis of any data concerning you will be carried out in such a way as to protect your identity.

Researcher Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I \_\_\_\_\_ (Name of participant in BLOCK CAPITALS) agree to take part in this research interview.

I understand that the purpose of the study is to learn about young peoples' views of community sentences.

I have read the participant information sheet, and been given the opportunity to ask questions about the study, and received satisfactory answers to questions, and any additional details requested.

I understand that I can refuse to answer any question; can withdraw from the research at any stage without explanation; can ask relevant questions and bring up new subjects that are relevant.

I agree that the interview can be recorded on the basis that the information that I provide will be anonymised, my identity will be protected and anonymity preserved (subject to normal legal requirements).

I understand that only the Principal Investigator will have access to the identifying data provided, which will be stored securely and will not be retained for longer than necessary.

I agree that- subject to provisos on anonymity, confidentiality and data protection- the interview data I provide can be used for research and educational purposes.

I also understand that

- I can retain a copy of this consent form;
- this project has been reviewed by, and received ethics clearance from, the University of Oxford Central University Research Ethics Committee;
- the Principal Investigator is **Stephen Noguera**, doctoral research student at the Centre for Criminology at the University of Oxford, who can be contacted for further information at the above address or by email: [stephen.noguera@law.ox.ac.uk](mailto:stephen.noguera@law.ox.ac.uk)

Participant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix Seven: Participant Information Sheet

Information Sheet

# Community Sentences

## What Do You Think?

- AGED 16-17?
- On a COMMUNITY SENTENCE?
- WANT TO SHARE YOUR VIEWS ON COMMUNITY SENTENCES?

If the answer to these three questions is yes, please read on for further information on how to participate.



**TELL YOUR STORY AND SHARE YOUR VIEWS ON COMMUNITY SENTENCES IN A SHORT AND FRIENDLY INTERVIEW**



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**What is the project about?**  
I am working on a doctoral research project at my university. My project is going to study what young people think about community sentences. Policy-makers and academics do not always know what young people think about these. This is where your help comes in! This study would really like to learn about what you think of community penalties.

**Who is being invited to take part, and what does it involve?**  
I would like to interview young people who are:

- AGED 16-17
- On a COMMUNITY SENTENCE

I will be asking you about what you think of community sentences.

**Do you have to take part?**  
It is up to you to decide whether or not to take part. There are no right or wrong answers to the questions you will be asked. If you don't want to answer some of the questions that's fine, you don't have to. You may stop the interview at any time.

**Will what you say be kept secret?**  
With your permission, our discussions will be taped. This lets me pay full attention to what you are saying. The words on the tape will be typed out by me, and I will remove any names so that no one else can see them. What you tell me during the interview will be kept private, but if I think that you, or someone else, are in danger, I might have to tell some other adults who can help.

**COMMUNITY SENTENCES**

**Your Experiences**

**Your Views**

**Your Story**

**What will happen to the results of the research study?**  
The results will form part of the project I hand in to the university. I can share my results with you if you are interested.

**The chance to win a prize voucher:**  
In order to say thanks for your time and your contribution, participants in contact with \_\_\_\_\_ Youth Offending Team will be entered into a lucky draw for a £10 HMV shopping voucher.

**If you are willing to be interviewed, or require further information...**  
--please contact me, as soon as possible, by email, phone or post - whichever is easiest. Contact details can be found on the next page.

#### CONTACT INFORMATION

Stephen Noguera  
Centre for Criminology  
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Manor Road  
Oxford OX1 3UQ  
  
01865 281929  
[stephen.noguera@law.ox.ac.uk](mailto:stephen.noguera@law.ox.ac.uk)

#### Who is organising the research?

My name is **Stephen Noguera**, and I am a twenty-three year old research student. This project has been reviewed by, and received ethics clearance from the University of Oxford Central University Research Ethics Committee.

#### Centre for Criminology

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## Appendix Eight: Useful Telephone Numbers and Websites Sheet

Useful Telephone Numbers and Websites

What  
Do  
You  
Think?

**Community Sentences**

**YOUTH2YOUTH**

Tel: 020 8896 3675  
Web: [www.youth2youth.co.uk](http://www.youth2youth.co.uk)

Youth2Youth- The UK's first National Young Person's helpline, run *by* young people, *for* young people.

**youth  
ACCESS**

Web: [www.youthaccess.org.uk/](http://www.youthaccess.org.uk/)

Youth Access is the national membership organisation for young people's information, advice, counselling and support services.

**The National Youth Agency**

Web: [www.nya.org.uk](http://www.nya.org.uk)

The NYA supports those involved in young people's personal and social development and works to enable all young people to fulfil their potential within a just society.

**National Drugs Helpline:**

Tel: 0800 77 66 00  
Web: [www.talktofrank.com](http://www.talktofrank.com)

Talk to Frank is a web-site and telephone helpline offering advice, information and support to anyone concerned about drugs and solvent/volatile substance misuse, including drug misusers, their families, friends and carers.



Tel: 080 800 13219  
Web: [www.connexions-direct.com](http://www.connexions-direct.com)

Connexions Direct, the government's support service for all young people aged 13 to 19 in England. The service aims to provide advice, guidance and access to personal development opportunities. It is a confidential information and advice service for young people



Tel: 0808 2000 247  
Web: [www.womensaid.org.uk](http://www.womensaid.org.uk)

Women's Aid is a national domestic violence charity that helps over 320,000 women and children every year. They work to end violence against women and children, and support over 500 domestic and sexual violence services across the country.



Web: [www.youthinformation.com/](http://www.youthinformation.com/)

Youthinformation.com is The National Youth Agency's online information toolkit for young people and all those working with them.



Web: [www.rapecrisis.org.uk](http://www.rapecrisis.org.uk)

A website which aims to provide the basic information that survivors of sexual violence, friends and family need to access the services they need.

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