Alternatives to custody : The case for community sentencing: Speech by Lord Phillips of Worth Matravers, The Lord Chief Justice of England and Wales

This evening's title would not have made much sense to the criminologist in the time of my predecessor, Judge Jeffries. Rehabilitation did not feature among the aims of sentencing. Punishment and deterrence certainly did, as did the prevention of re-offending. But all three were catered for by the death penalty, perhaps commuted to deportation, for all but the most trivial offences. Custody was something that happened as much to debtors as to criminals. Opportunities for anti-social behaviour were more limited than they are today and could be dealt with, within the community, by a spell in the stocks.

Today, life is more complicated. Convicted criminals are not, with a few exceptions, put out of circulation for life. That is perhaps just as well, or our population would decline even more rapidly than it is, for the statistics tell us that 34% of the male population will have a criminal conviction of one kind or another by the age of 30. Anyone reading our popular press would be likely to form the view that crime is the major preoccupation of the nation. It is certainly my principal professional preoccupation. In the past the Lord Chief Justice was almost exclusively concerned with the criminal jurisdiction. The responsibilities transferred to me under the Constitutional Reform Act mean that this can no longer be the case. I sit equally in the Civil and Criminal Divisions of the Court of Appeal and have, at the same time, to direct quite a lot of energy to administration.

But the criminal jurisdiction provides undoubtedly the most challenging and the most rewarding part of my work and, as President of the Criminal Division of the Court of Appeal and Chairman of the Sentencing Guidelines Council, I am particularly interested in the sentencing and management of offenders.

It is my professional duty, for the law so requires, to see that offenders are not sent to prison unless their offending is so serious that no alternative sentence is appropriate. And when they are sent to prison, they must be sent for no longer than their offending requires. While that is my duty, it is one that I am happy to perform, for I am in favour of alternatives to custody where the facts of the individual case enable such a course to be adopted, and I shall say why.

It should be appreciated, however, and often I do not believe that it is, that when a judge imposes a sentence he is not following his own predilection, but is doing his best to apply, to the facts of the individual case, criteria that are now quite clearly laid down by statute.

If the public are not aware of the statutory constraints on the sentencer, they are also unaware of the relative severity of the sentencing regime in this country. In 1940 the prison population was 10,000, in 1990 it was 45,635 and today it is approaching 80,000. In 2004 we had more people in prison per head of population than any other country in the old European Union. This is not just because we send more people to prison. We send them to prison for longer. Over the last 20 years there has been a marked increase in the length of the average sentence imposed for the more serious offences, drug offences, criminal damage, violence and burglary, and most of that increase has been in the last ten years.

The number of prisoners serving sentences of four years or more, more than doubled between 1994 and 2004, from 15,660 in 1994 to 32,430 in 2004. Over the same period, the number of prisoners serving medium term sentences - 12 months to 4 years - increased by 53%. Those serving sentences of less than 12 months increased by 31%. Offences of violence against the person constituted the largest offence group for the male population, accounting for 23% of prisoners in 2004.

The increase in the prison population cannot be wholly explained by the imposition of longer sentences. Nor does it reflect a growth in crime. In 1993 the number of recorded offences was 19 million, in 2005 that figure had dropped to 11 million. In part the increase in the prison population reflects the fact that more criminals are being apprehended and brought to justice.

Home Office statistics indicate a 27% increase in offenders brought to justice since March 2002. The

statistic that is particularly relevant to my topic today is that which relates to prisoners serving short term sentences of less than 12 months.

As I have said, this sector of the prison population increased by 31% in the ten years up to 2004. That statistic does not, however, tell the whole story, because it represents as I understand it a bird's eye view of the make up of the prison population at any one time. More significant is the fact that receptions into prison in 1994 of those with sentences of less than 12 months totalled 38,719 whereas in 2004 this had risen to 61,669. The breakdown of this figure is interesting. 53,676 (87%) received sentences of 6 months or less. Only 7,993 (below 14%) received sentences between 6 and 12 months. This obviously reflects the 6 month limit of jurisdiction of the magistrates.

That jurisdiction is being increased to 12 months this November, and this makes the topic of this lecture of all the greater relevance to magistrates.

What is this section of the prison population serving short custodial sentences? Obviously they are those who have committed the less serious of the offences that pass the custodial threshold. What kind of offences are those? I have the figures for 2004, and I shall confine them to those sentenced to 6 months or less. Of the total of 53,676, 14,614 were for theft or handling - the largest group of offenders. They were followed by 12,515 convicted of motoring offences such as driving whilst disqualified; then 8,210 for violence against the person, 2,831 for burglary and 1,619 for fraud and forgery; 11,087 were for other unspecified offences.

Some of these offenders are never going to offend again. Most, however, are. The statistics show that, of those discharged after short sentences in the first half of 2001, 67% were reconvicted within 2 years. After two years, 47% of all those discharged in 2001 had two or more reconvictions, 32% had 3 or more and 21% had four or more. The statistics do not show what proportion of these were short sentence servers, but one can deduce that they were the majority.

Some of those on short sentences are serving apprenticeships for serious crime. They subsequently feature, if they are caught, in the statistics of those serious offenders serving long term sentences. Most, however, are not serious professional criminals.

Most do not commit the serious crimes and therefore receive relatively short sentences. Within two years of release the majority have been re-convicted.

This fact is proof of their inadequacy, for the able offender is not all that easily caught and convicted. They are nonetheless an anti-social and costly menace to society. It is my belief that, when sentencing this category of offender, the primary objective must be rehabilitation. In this I agree with the direction taken by the Home Office (exemplified by the public policy statements of the former Home Secretary) and this is perhaps a good point to say something about Government policy.

Government policy

It is not for Ministers to give instructions to judges on sentencing policy, nor indeed for the Chief Justice. There are, however, ways in which each can legitimately have an influence on this.

A Home Secretary can sponsor legislation that sets the sentencing framework. He is also able to request the Sentencing Guidelines Council to consider issuing a guideline in relation to some particular area of offending and he is someone that the Council is required, by statute, to consult before introducing a sentencing guideline. And he can, of course, seek to influence public perception and the approach of judges that may reflect public perception, by public pronouncements. Finally, and this is very important, he can make available resources necessary to present the sentencer with sentencing options that would not otherwise be available.

The Criminal Justice Act 2003 contains a number of important provisions that give effect to government policy on sentencing.

Some of these are aimed at increasing the time that certain offenders remain in prison and some at keeping other categories of offenders out of prison altogether, or reducing the time that they spend in prison. This is not paradoxical, any more than is the potential conflict between some of the purposes of sentencing that are set out in section 142 of the Act:

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offence

Sections 224 to 236 of the Act require that offenders who have been convicted of a wide range of specified offences be given life sentences, or sentences of 'imprisonment for public protection' if there is a significant risk to members of the public of serious harm as a result of the commission of further specified offences.

In either case a minimum term must be specified which the offender must serve by way of punishment for his offence and to deter others, but thereafter the offender will not be released unless and until the Parole Board are satisfied that he can be released to be supervised in the community without posing a significant risk to the public. Thus in the case of dangerous offenders, punishment and protection of the public are seen to be paramount purposes of sentencing.

Sections 224 to 236 contrast with those to which I referred at the outset of this lecture: Section 152, which provides that the court must not pass a custodial sentence unless of the opinion that the offending was so serious that neither a fine nor a community sentence can be justified and section 153, which provides that if a custodial sentence is imposed, it must be for the shortest term that is commensurate with the seriousness of the offending.

The policy which these provisions reflect was spelt out by the former Home Secretary in a speech which he delivered to the Prison Reform Trust on 19 September 2005.

In this speech he emphasised the need to place the prevention of reoffending at the core of correctional services and stated that the reduction of the number of offenders that reoffend was now the paramount aim of offender management [1].

For serious offenders, rehabilitation must start in prison. For others, however, this can more effectively be achieved as part of a community sentence. It is, however, essential that community sentences are, and are perceived by all concerned to be, real punishment. Very important work is being done to encourage the growth of confidence of the offender, sentencers and community that these are tough, punitive sentences.

A properly planned and resourced community sentence is a hardship for the offender, but one that is focused on the root causes of his offending. More importantly: community sentences provide a visible demonstration of reparation to the community in which the offence occurred. The community is able both to influence and to understand the nature and type of sentence performed.

The 'Five year Strategy for Protecting the Public and Reducing Re-offending' recently published by the Home Office, reinforces the theme that prison is the place for serious or violent offenders from whom the public has a right to be protected [2] but not for others. I agree that it is not enough that offenders be punished.

It is in the interests of society to which they return that they be given every opportunity to reform and contribute to society [3] . This strategy is one the judiciary have supported for some time: We support a new vision for community justice, as well as more schemes to build on 'Community Payback', where local people have a say in what offenders will do to give something back to society to make good the harm that they have done.

Chapter 3 of the Strategy, entitled 'Punishment, Reparation and Rehabilitation' says this:

“It is important that offenders are properly punished for their crimes. But sending people to prison is not the only way of punishing them. We want to use punishments which give us the best opportunities to address the issues that might make someone more likely to offend again.

“Prison in many ways asks less of offenders than community punishments, which can mean hard work on behalf of others, or a strict curfew while an offender holds down a job. And community punishments also give us better opportunities to rehabilitate offenders and get them going straight.”

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Ingredients of a community sentence

What should be available in the shopping basket of the sentencer when considering the ingredients of a community sentence? The answer is to be found in sections 199 to 215 of the 2003 Act.

- **an unpaid work requirement** now forms part of about 50% of community sentences imposed

  Up to 300 hours can be ordered. That potentially equates to nearly 6 months worth of weekends improving the community by working without pay.

  A total of some 5 million hours are currently performed and the goal is to raise this to approaching 10 million by 2011. The aim is to involve the local community in identifying the work that they want done and to demonstrate the work that has been done by a highly visible ‘Community Payback’ logo. A typical example of such work has been the removal of graffiti from park walls and buildings and cleaning up a children’s playground in Ipswich. More imaginative has been the use of offenders in restoring Brunel’s ship SS Great Britain in Bristol, which led some to gain qualifications in carpentry and to volunteer to continue with the work once the mandatory quota had been completed.

- **an activity requirement** can require an offender to present himself at a designated place, such as a community rehabilitation centre for up to 60 days. There the offender may receive help with employment, or group work on social problems. Reparative activities involving contact with those affected by offences may be included
- **a programme requirement** can require an offender to participate in an accredited programme such as anger management, or a programme designed to counter sex offending or substance abuse
- **a mental health treatment requirement** can direct an offender to undergo mental health treatment under the direction of a doctor or chartered psychologist
- **a drug rehabilitation requirement** or **an alcohol treatment requirement** may be imposed

The former is initiated by pre-charge drug testing in magistrates' courts under s19 of the Criminal Justice Act. Detoxification can be combined with intensive support to help the offender to reject the peer pressure and lifestyle which are at odds with recovery from drug addiction.

There are, of course, preconditions to the imposition of these orders which involve different types of positive rehabilitation - not least the availability of the facility in question. Apart from the unpaid work requirement, there are other orders that can be made that are essentially punitive, namely a prohibited activity requirement, a curfew requirement, an exclusion requirement, a residence requirement, an attendance centre requirement, an electronic monitoring requirement and finally a supervision requirement.

What are the benefits of imposing a community sentence made up of one or more of these requirements rather than a short sentence of imprisonment?

Provided the resources are allocated, I would contend that a community sentence is more likely to prevent re-offending than a prison sentence. To date short prison sentences have not been accompanied by any of the types of rehabilitation that I have been describing, either during imprisonment or after release. Such sentences punish, and punishment is important but they do not tackle the underlying causes of the offending behaviour. Research carried out by the prison service in 2001 showed that three quarters of young male prisoners aged between 18 and 21 were dependent on at least one drug and that many of

them were also subject to harmful levels of alcohol abuse. The majority of prisoners have a history of truancy and falling behind their peers at school. Many are illiterate. A large proportion suffer from some form of mental illness.

Home Office statistics reveal that if a person with a criminal record finds settled employment, or receives training with secured employment when he comes out of prison, the chances of re-offending are cut by two thirds. An offender released from prison unemployed is 80% more likely to reoffend. It follows then that a sentence which enables the offender to keep his home and his job, if he is lucky enough to have either, while his offending behaviour is addressed in the community is more likely to prevent re-offending. In particular, it must be obvious that drug addicts who resort to crime to feed their habits will continue to offend until cured of their addiction.

Chapter 3 of a Home Office Five Year Strategy has a table which shows the two year re-offending rates for adults serving prison sentences and community sentences. This indicates that the rate for those who have served community sentences is 53% as opposed to 68% for those who have served a prison sentence[4]. The December 2005 Bulletin, warns, however, that a satisfactory method for comparing the effectiveness of prison with probation or any other sentence has not yet been devised.

Whatever method is adopted, rehabilitation of those who have become subject to the criminal justice system is not going to be an easy task.

Many have been so damaged by deprivation or abuse of one kind or another from their earliest years that attempts to counter these influences are doomed to failure. But this is not so in the case of all. NOMS' goal is to reduce re-offending by 10% by 2010[5]. This may look comparatively modest, but if the goal is reached it will be a significant achievement.

There is, so it seems to me, one demonstrable reason for preferring a community sentence to a sentence of imprisonment, where the offence is not so serious that the latter is a foregone conclusion. A community sentence is less expensive to administer than imprisonment. It costs more to keep a young man in prison than it would cost to send him to Eton.

Since 1995 we have built 26 new prisons providing an additional 12,000 places at a cost of £1.28 billion. The annual costs of running the prisons are well in excess of £2 billion a year. Libby Purves commented in a leader in *The Times* on 4 April of this year, that community sentences are allocated, per head, one tenth of what is spent on keeping someone in prison, yet they are 10% better at preventing re-offending. The cost of reoffending by ex-prisoners is estimated to cost society £11 billion per year. Even if punishment is the object of the exercise, you get much better value for money by arranging for the offender to perform a gruelling spell of unpaid work than paying for him to be confined in prison.

In *The Times* on 13 April there was an article by Jamie White, said to be a philosopher and the author of a book called *Bad Thoughts: A Guide to Clear Thinking* . His thesis was that we ought to be sending more people to prison. Let me quote you a passage from his article:

"If keeping someone in prison for a year is worth more than £37,000 then it is money well spent. So is it worth more than £37,000? Imagine a town of 500 adults that has nabbed its local criminal. They convene a town meeting to decide whether to spend the £75 each required to send him to prison for a year. What do you guess they would decide? It would depend on the types of crimes he commits, of course. But if he were a typical British criminal - if he would willingly smash a pint glass in your face, kick your head in and break into your house at night – then I am sure that most people would consider £75 a bargain. When imprisoning criminals is such good value, we should be doing much more of it."

This exemplifies the standard of much of the debate in the media about the merits of prison, and also typifies the misconceptions under which so many members of the public labour.

The kind of criminality described by Mr White would automatically attract a heavy custodial sentence. Research shows that the public grossly under-estimate the length of the sentences that are imposed for serious crime. It also shows that, if given all the material facts, most would be no more severe in

sentencing than are the magistrates and judges who perform that task.

What then do we need if community sentencing is to fulfil its potential?

First and foremost we need the appropriate resources. I have, I hope, demonstrated that a good business case can be made for substantial expenditure to keep offenders out of prison and out of crime. The probation service is stretched and will be further stretched when custody plus is introduced. In some quarters they are also disheartened because of apprehension about the changes in National Offender Management Service (NOMS).

Offender management needs to be properly resourced and we certainly cannot afford to lose any of the devotion and the expertise that is shown by so many members of the probation service.

Drug treatment is an essential step to rehabilitation in the case of many offenders. Facilities for drug treatment are not standardised across the country. It should not have to be necessary to resort to crime in order to qualify for drug treatment, but that I am told that is the position in many parts of the country, if not throughout the country.

Next one needs co-operation at local community level. The various agencies involved need to work together in the provision of the various elements of a community sentence. Meaningful and valuable unpaid work must be provided. It is important that a community sentence should not merely be penal but should be seen to be penal.

Those who are involved in the system must have confidence in it. In going round the country I have been encouraged to find that magistrates, by and large, do have confidence in community sentences. In 2004 135,300 people started community sentence supervision, which shows that it is not a sentence that is being ignored.

It is also essential that the public should have confidence in community sentences, both as punishment and as the most effective way of achieving rehabilitation. This is, I fear, the most difficult nut to crack. Some newspapers appear to have an agenda which is to persuade the public that judges are soft on crime, that no prison sentence is long enough and that a sentence which does not involve imprisonment is no sentence at all. The only purposes of sentencing which they recognise are punishment and deterrence - rehabilitation does not enter the picture.

They do not draw the distinction that the Home Office policy draws, between dangerous and serious offenders who need to be locked up and offenders who do not pose a danger to the public, but whose anti-social activities are none the less a menace which calls for implementation of the best measures that will reduce their re-offending. This is not to disregard the needs of the victim or the necessity for punishment. It is to recognise that society will be best served if this category of offender is given punishment that does not cost far more to administer than the harm that the offence has caused and can be combined with measures that have the best chance of dissuading the offender from doing the same again.

I have already referred to the article which shows that the majority of the public have serious misconceptions about the sentences that judges impose.

Research has shown that when asked what percentage of men aged 21 and over who had been convicted of rape were sent to prison, the average estimate was 58 per cent compared to 98 per cent in reality. Not surprisingly, 76% of the population is under the impression that sentences are much too lenient. Why is there this misconception? It is because sentences which appear over-lenient make good copy, as opposed to the vast majority, which do not.

Every judge is required to explain, in his sentencing remarks, the reason for the sentence that he is imposing. How often, when the papers criticise a sentence for being unduly lenient, does it record the reasons given by the sentencer?

We need to get the message across that a community sentence is not a soft option. We need to get the message across that such a sentence involves the offender paying back to the community compensation for the wrong done by the offending.

We need to get across the message that rehabilitation of offenders makes life better not just for them but for the rest of us.

In order to achieve this aim I believe we need to place the Court at the heart of the way in which the Community deals with offending, the causes of offending, the prevention of offending and the punishment of offending.

The Court is put at the centre of the community by, for example:

- using the community to assist the court in assessing the impact of particular crimes on the community by discussions with community panels comprising community members both adults and youths
- using community panels to inform the court of worthwhile community projects that should be tackled by offenders. Those who undertake the work are visible to the community and the community sees what is done
- using volunteers from within the community to act as mentors for offenders who are subject to a community sentence. This involves the community directly in bringing offenders back within the community. At Liverpool an advertisement was placed in the local paper asking people to apply. 77 applications were received; 25 mentors have been trained and are in place
- informing the community through regular reports of how the court is dealing with offenders. Use can be made of the local press and broadcast media or the court's own printed media and website
- enquiring of the community how the court can assist the community in dealing with the issues it faces
- making the premises available for community events
- having close liaison with community projects and associations in the statutory and non statutory sectors

In short, we must examine how we can link justice to the community.

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Community Justice

I want, in the time that is left, to talk about some pilot schemes for community justice that adopt some of these methods. Their inspiration comes from the United States and, in particular, from New York State.

There, fifteen years ago, the quality of life in Times Square and the surrounding neighbourhoods of Clinton and Chelsea was significantly diminished by the prevalence of low-level crime - prostitution, shoplifting, minor drug possession, graffiti, turnstile jumping and disorderly conduct. In 1993 the Midtown Community Court was opened as a pilot scheme to try to make justice visible in this community and to encourage the support of local residents, organisations and businesses in developing community service and social service projects as an alternative to subjecting offenders to periodic short terms of imprisonment.

The court had the following unusual features:

- a coordinating team working in partnership with the Court administrators to foster collaboration with the community and other criminal justice agencies and to plan Court-based programmes
- an assessment team to determine whether a defendant had a drug problem, a job, a place to live and so on
- a resource co-ordinator present in court to help tailor drug treatment, community service and other sanctions to the individual defendant
- innovative technology to provide immediate access to information needed by the judge
- representatives in court of social service providers to address underlying problems of defendants
- community service projects designed to 'pay back' the community damaged by the offending
- a Community Advisory Board to keep the Court informed of problems caused by anti-social behaviour

in the community and of community service projects
- court-based mediation and court based research to report on how the scheme was working

The scheme was a success. Community sentences were imposed, not merely in place of short prison sentences but in circumstances where the offender would have been discharged without the imposition of any conditions.

The sentences imposed were rigorously enforced. Arrests for prostitution in the Midtown area dropped by 56% and for unlicensed vending by 24% in the first 18 months and there was a marked reduction in anti-social street activity in general and in graffiti. The scheme won the support of the police, prosecutors, defence lawyers, defendants themselves and the local community.

The example was built on by the famous Red Hook Community Court in Brooklyn which opened in April 2000. In this court Judge Alex Calabrese hears cases arising within the local catchment area involving problems such as drugs, low level crime, domestic violence and housing disputes. Seven years of planning resulted in the community being closely involved in crime prevention.

Projects ancillary to proceedings in the court itself involve:

- **Red Hook Public Safety Corps** which each year puts fifty community residents to work escorting defendants to drug treatment, assisting domestic violence police officers at local precincts, painting over graffiti and fixing broken locks and windows in public housing
- **Red Hook Youth Court** in which local teenagers are trained to act as judge, jury and attorneys, hearing real cases involving other teenagers stopped by police for low-level offences
- **mediation** provided by trained community volunteers to help settle neighbourhood disputes which might otherwise result in court proceedings

The beneficial results to the community have been dramatic. Compliance with sentences imposed has averaged 75%.

As at a year ago more than 1,000 defendants had been directed to long term drug and alcohol treatment. Low-level offenders have contributed hundreds of thousands of dollars worth of labour to the community – cleaning local parks, painting over graffiti and sweeping the streets. In 2004 Red Hook for the first time in 35 years had experienced no homicide, and the same was true of the next two years. The Community Court cannot claim all the credit for this, but the change in attitude that it brought about must have helped.

These courts are examples of a new kind of court that is now an established feature of the American system, known as ‘problem-solving courts’. The theory behind them has been described as ‘therapeutic jurisprudence’. Offenders are prescribed a regime of treatment designed to address the particular problems associated with their wrongdoing and, by doing so, to prevent re-offending and enhance the society in which they live.

The first of these courts was a ‘drug court’ opened in Dade County, Florida in 1989. Drug offenders are offered intensive court-based treatment projects to cure them of their addiction. It is of the essence of the success of these that they return regularly to court, where their progress is supervised by the judge, who has their test results, and with whom they build a personal relationship. Praise and even prizes are conferred for success; public admonition and sanctions for non-compliance.

The system worked and has become the model for over 1,100 drug courts, established throughout the United States. In New York it has been shown that re-offending by those who have been sentenced by a drug court is 32% lower than by those who have been subject to a conventional court process.

A similar approach has been adopted to domestic violence. Domestic violence courts use rigorous compliance monitoring schemes which maximise offender accountability and ensure the safety of victims by linking them to shelter, counselling and other services. In the most sophisticated of these courts a single judge will preside over all claims arising from a domestic violence situation – criminal, matrimonial, custody, access and social support. There are also specialist mental health courts which seek to improve public

safety for communities by providing closely-monitored treatment for offenders affected by mental illness.

In New York State, under the leadership of Chief Judge Judith Kaye, whom I have had the privilege and pleasure of meeting, there are now established over 200 problem-solving courts.

Lord Woolf and David Blunkett, when he was Home Secretary, went to New York to look at the Red Hook project, and were impressed. As a direct consequence pilot schemes have been set up in this country to follow the American example.

The best known example is the new Community Justice Centre in Liverpool, presided over by His Honour Judge Fletcher. The Centre services an area of North Liverpool with a population of about 83,000 and very high levels of deprivation and of 'quality-of-life' crime.

The Centre opened on 5 September 2005 and consists of a local courtroom around which representatives of the criminal justice agencies are based. In addition the Centre offers, not just to offenders but to all in need, drug and alcohol treatment and advice, mediation, housing advice, basic education and vocational advice, debt counselling and mentoring.

The court sits as a Magistrates' Court, Youth Court and Crown Court, with Judge Fletcher exercising all three jurisdictions himself. Judge Fletcher deals with offenders who tender guilty pleas. Those who do not he sends off for trial in the Magistrates or Crown Court (in the future trials will take place at the centre). In the event of conviction they come back to him for sentence. It is the sentencing process and the supervision of the implementation of sentences that is unusual.

If a community sentence appears appropriate, a problem solving meeting is convened, chaired by a probation officer, or a social worker from the Youth Offending Team in the case of someone under 18. Where appropriate, members of other agencies will be involved, such as the drug intervention team or the relevant officers to deal with housing or debt problems. At the conclusion of the meeting, the chair will report to the court, often with a recommendation.

Performance of the sentence may be assisted by one of a team of 25 trained volunteer mentors, and monitored by Judge Fletcher personally. Where orders are breached, enforcement measures are swift and effective - there is an over 80% voluntary attendance at breach courts.

Judge Fletcher has regular meetings with community groups to inform him of concerns of the neighbourhoods and community projects for unpaid work.

You will see just how much this pilot project is modelled on what has succeeded in Red Hook, New York. Many people, including myself, are watching it in the hope and expectation that what has worked there will work here.

There are other pilot schemes. One is under way in Salford, which involves similar links with the local agencies and services, although they are not co-located at the court.

And earlier this year I attended, with the Lord Chancellor, the official opening of a drugs court in West London under the inspiring leadership of my namesake, District Judge Justin Philips, who is following the American model.

The community justice panel at Chard and Ilminster is another example of an attempt to try and promote local justice for a community.

The creation of this panel was a reaction of those who lived in the vicinity of those towns to a number of local concerns. In 1994 the local magistrates court had been closed down. The size of the local police force had visibly reduced. Anti-social behaviour had, on the other hand visibly increased in the form of drink driving, speeding, vandalism and disturbances between neighbours.

Those living in the neighbourhood resolved to 'bring local justice back'. They formed a panel of trained volunteers to whom the police agreed they would send appropriate offenders who agreed to being dealt

with by the panel rather than by criminal process. The focus of the panel is on restorative justice and making the punishment really fit the crime.

Victims explain to the panel the nature of the offenders conduct and the effect that this has had on them. This is then explained to the offenders and a suitable punishment imposed that makes redress for the particular wrongdoing.

Let me give you two examples.

A woman was sitting in the pub with a few drinks inside her when her boyfriend walked in with another woman. She reacted by hitting him on the head with a bottle. She was referred to the panel. She was brought to accept that her behaviour adversely affected not merely her boyfriend, but the community as a whole.

She signed an 'Acceptable Behaviour Order' which required her to spend three evenings a week collecting glasses in the pub. She did this to such good effect that the landlord took her on as an employee and she has not re-offended.

A nineteen year old man, again in the pub, was told by his girlfriend that she was seeing one of his friends. He walked out in a fury and put his fist through a shop window, causing £200 worth of damage, quite apart from injury to his arm, which required micro-surgery. The police referred him to the panel. He admitted that he had acted improperly, apologised to all concerned, including the police and those who had to take care of him at the hospital. He signed an Acceptable Behaviour Order and complied with this to the extent of moving in to calm a potentially violent situation on a subsequent Saturday evening.

These may seem trivial examples of alternatives to custody. They do exemplify, however, the fact that you can prevent recurrent crime if you show offenders that the community cares and persuade them that they must also care for the community.

In arguing the merits of alternatives to custody, I have been concerned to demonstrate that these are in the interests of victims, of potential victims and of society as a whole. There is a further point to make. They are in the interests of the offenders. I know that it is unfashionable to refer to the interests of offenders, as opposed to those of their victims. Of course, victims have the first claim on our sympathies and on our actions. But this does not mean that we must disregard the interests of offenders. For if we do not we can never hope to deal with the underlying reasons for offending behaviour. And it is this that is in all our interests.

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Conclusion

My first ten years at the Bar were spent in Admiralty practice, where my staple diet was salvage. Alternatives to custody involve another kind of salvage.

I believe that the exercise is enormously worth while in the interests of all of us and I commend it to you.

This is a public lecture. It may be reported. If so, I would like to think that it will be reported fairly. That would, I must accept, be something of a novelty.

Last autumn the Sentencing Guidelines Council, which I chair, published draft guidelines in respect of robbery. These stated that the starting point in relation to robbery should almost always be a custodial sentence – a long one where serious violence or injury was involved. There was one exception to this, in the case of young first offenders using minimal force or threat of force. This earned me the headline in one tabloid, in letters an inch high, **RIDICULOUS** followed by ' **Muggers must not be sent to prison says our new Lord Chief Justice** '

This evening I have not been talking about serious or violent criminals.

I have been talking about the large number of inadequate or damaged members of society for whom minor criminality is the only way of life they know. Short spells of imprisonment followed by re-offending is an expensive and ineffective way of dealing with these. Meaningful punishment in the community, coupled with a proper programme of rehabilitation, properly resourced and managed, must be the better option.

Ends

Footnotes:

1. “We have to make preventing re-offending the centre of the organisation of our correctional services. We have to make reducing the number of re-offenders the central focus of our policy and practice.” [back]
2. “We must do all we can to protect the public from serious, violent and dangerous offenders. This means using prison better, reserving it for more serious offenders but keeping the most dangerous in prison for longer” [back]
3. As well as needing offenders to be punished, a healthy and safe society needs them to be given every opportunity to reform – to get back onto the straight and narrow and become contributors to the good of society as a whole. [back]
4. The source is Home Office Statistical Bulletin 25/05. Bulletin 17/05, published in December 2005 [back]
5. NOMS 5 Year Strategy [back]