

**Through the Young Offender Lens:
Capturing Experiences of Restorative Justice**

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Abstract

Significant world-wide interest in restorative justice has resulted in reforms to the youth justice system in England and Wales, which include restorative features. The most explicitly restorative of these reforms is the referral order. Hitherto, evaluations of restorative justice initiatives have tended to focus on quantitative analyses based on re-offending rates, number of referrals and cost effectiveness, or structured questionnaire surveys with limited opportunities for participants to express their feelings about the process. Using ethnographic methods this research documents young offenders' experiences of undertaking a referral order, with the main aim of assessing how far the referral order fits the theoretical framework underlying restorative justice. This research aims to add to existing theoretical and methodological debates and provide an additional source of information for policy makers and practitioners.

Drawing on data gathered from observations and semi-structured interviews with practitioners and young people, the research explores the strengths and weaknesses of the way the referral order is being implemented, through the key restorative justice principles of stakeholder involvement, relationship building and repairing the harm done by crime. It finds that the referral order holds the potential to be a restorative approach to crime, but that there is a need to restructure the relationship between justice agencies and local communities. Young people report positive experiences of restorative panel meetings, but I suggest that young people need a more supportive environment in order to engage in a meaningful dialogue, and that the presence of a victim significantly increases their ability to empathise and express remorse. I argue that the criminal justice system's retention of its coercive role, together with punitive indirect reparation activities, jeopardises restorative principles and values.

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List of Abbreviations

BCS	British Crime Survey
BSA	British Sociological Association
BSC	British Society of Criminology
CJS	Criminal Justice System
CPM	Community Panel Member
CRB	Criminal Records Bureau
DHSS	Department of Health and Social Security
ESRC	Economic and Social Research Council
FGC	Family Group Conferencing
IT	Intermediate Treatment
OCJS	Offender Crime and Justice Survey
RISE	Reintegrative Shaming Experiment
RO	Reparations Officer
ROLO	Referral Order Liaison Officer
STLD	Support Teacher Learning Difficulties
UNESC	United Nations Economic and Social Council
VLO	Victim Liaison Officer
VOM	Victim Offender Mediation
VORPS	Victim Offender Reconciliation Program
YJB	Youth Justice Board
YOP	Youth Offender Panel
YOS	Youth Offending Service
YOT	Youth Offending Team
YOT PC	Police Liaison Officer

1. Introduction

Instead of defining justice as retribution, we will define justice as restoration. If crime is injury, justice will repair injuries and promote healing. Acts of restoration will counterbalance the harm of crime. We cannot guarantee full recovery, of course, but true justice would aim to provide a context in which the process can begin. (Zehr 1990:186)

Restorative justice has emerged as a radical and distinctive critique of formal justice systems. Proponents of restorative justice argue that, with traditional retributive justice, offenders, victims and communities, do not receive a meaningful sense of justice, and the amount of harm done by crime and conflict is increased (Zehr 1990, Wright 2002). Restorative justice suggests an alternative philosophy and set of practices which places victims, offenders and local communities at the centre of processes to resolve conflicts and repair the harm done by crime. At a time when there is widespread acknowledgement of the shortcomings and failures of existing systems of crime control (Wright 1996, Downes and Morgan 2002), there is significant world-wide interest in restorative justice and moves towards adopting reforms which implement restorative features. The broad aim of this thesis is to offer an in depth, critical examination of one model of restorative justice, the referral order, adopted as part of youth justice reforms in England and Wales. Using ethnographic methods, primarily participant observation and semi-structured interviews, this study aims to capture the experiences of a small group of young offenders undertaking a referral order.

Why Research Restorative Justice and Young Offenders?

The Origins of the Idea

In 1991 a pilot scheme of police-run restorative cautioning was introduced in Wagga Wagga, New South Wales, Australia, which adopted features of a New Zealand model of restorative conferencing for young offenders. By 1993 there was intense debate Australia-wide about the merits of this new form of responding to youth crime. Parliamentary inquiries were established in Western Australia, Queensland, South Australia and New South Wales to address the perceived problem of increased juvenile offending and to consider more effective approaches to juvenile justice (Daly 2001). Restorative justice was a key topic on this agenda.

At this time I was working in Inner City Sydney as a Support Teacher for Learning and Behavioural Difficulties (STLD) with a class of aboriginal children aged 11-14 years. The school was in a predominantly aboriginal area of the city and most of the children in the school were aboriginal. This was a close knit and politically aware community, concerned with issues such as black deaths in custody, and there was intense interest in the Wagga pilot with its implications for aboriginal children, many of whom had family members with an offending history. Aboriginal youth between the ages of 10-14 years were 25 times more likely to be arrested than non-aboriginal youth and between the ages of 15-17 years they were 9 times more likely to come into contact with the justice system (Aboriginal Justice Council 1999). The experience of working with this community triggered my interest in restorative approaches to youth offending.

In 1998 I returned to the UK, at the same time as restorative approaches to youth justice were being introduced by the New Labour government in England and Wales. This seemed like the perfect thesis topic and it linked very well with my emerging interest in the sociology of deviance and long experience of working with children and young people who exhibited challenging behaviour. It all came together with support from an Economic and Social Research Council (ESRC) grant and enthusiastic supervision from the University of Kent.

What is Restorative Justice?

The key to understanding restorative justice is to recognise that, with a restorative approach, crime is seen as a violation of people and their relationships rather than a violation of the law. In restorative justice, crimes and conflicts are seen as actions which do harm. This then creates needs and obligations, and justice is a matter of meeting those needs and obligations through the active involvement of the people affected by the crime or conflict in order to repair the harm that has been caused.

Restorative justice has multiple applications. At a macro level, restorative justice is strongly associated with post conflict situations, such as the *South African Truth and Reconciliation Commission* in the reconstruction of post apartheid South Africa and in

post-sectarian Northern Ireland. It is also widely used at a micro level in the mediation of family disputes and disputes in workplace, school and neighbourhood settings. Yet its main worldwide appeal has been as a way of dealing with crime. In justice applications it encompasses a variety of practices at different stages of the criminal justice process. It has been applied most consistently to youth justice and minor offences but increasingly is also applied to adults and more serious offences (Strang 2002).

Despite the range of different contexts and approaches that are associated with restorative justice, three main principles can be identified which are common to all of them. These are *participation, reparation and reintegration*. *Participation* is the crucial ideal of restorative justice. Restorative justice encourages the encounter and inclusion of the people affected by crime, including the victim and offenders families. For restorative justice to happen there needs to be a voluntary meeting of these stakeholders, a dialogue between them and a form of collective decision-making (Christie 1977). Secondly, when a crime is committed restorative justice asks “How can this be put right?” The idea of *reparation* is not just about material compensation but also about restoring emotional loss; loss of security, dignity, confidence and a sense of self worth. Restorative justice involves actively repairing injuries and promoting healing (Zehr 1990). Offenders are expected to apologise and make amends but also to receive credit for their reparation and forgiveness for their behaviour. The third key idea is *reintegration*. A central focus of traditional justice systems has been on changing the behaviour of the offender but a restorative approach recognises the need also to transform communities in order to change the conditions under which offending takes place. Restorative justice aims to reintegrate both victim and offender back into the community offering ongoing support and control.

Growing Political Interest in Restorative Justice

In December 2000 the United Nations Commission on Crime Prevention and Criminal Justice asked all member states for comments on a draft declaration on *Basic Principles on the Use of Restorative Justice Programmes in Criminal matters* (1999). In the spring of 2002 forty countries joined the government of Canada in sponsoring a UN resolution on restorative justice. In Europe, the present form of victim-offender mediation came

into existence in the 1980s with pilot projects in Norway and Finland. During the 1990s the number of mediation and restorative conferencing programmes across Europe increased steadily with legislation already in place in some countries such as Germany and Belgium. In 2000, two years of preparatory work culminated in the formal establishment of the *European Forum for Restorative Justice and Victim-Offender Mediation*. This network was funded by the Grotius programme of the European Commission and supported by The Council of Europe¹. This growing Global and Europe-wide interest in restorative justice, especially in youth justice systems, is reflected in domestic legislation and practice in England and Wales.

In 1997, the newly elected Labour government in Britain, having produced a paper *Tackling Youth Crime: Reforming Youth Justice* (Home Office 1996), whilst in opposition, produced further proposals towards their promise that youth justice would be a priority. The White Paper *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales* (Home Office 1997) led to the *Crime and Disorder Act 1998* which was described as a “*comprehensive and wide ranging reform programme*” (Home Office 1997:1). Many of its provisions were explicitly aimed at young offenders. Importantly the Act contained “*proposals for reform (which) build on principles underlying the concept of restorative justice*” (Home Office 1997: Section 9.21).

The most significant change to the youth justice system in England and Wales under the *Crime and Disorder Act* (1998) was the establishment of a Youth Justice Board (YJB) and local Youth Offending Teams (YOT). The YJB committed considerable funds to the stimulation of restorative justice projects for young offenders and issued guidance on the establishment of victim offender mediation (VOM) and family group conferencing (FGC) programmes (Crawford and Newburn 2003). *The Youth Justice and Criminal Evidence Act 1999* constituted the second wave of major reforms making restorative justice principles an explicit part of sentencing for young offenders in the form of the referral order.

¹ The impetus to introduce restorative justice in European jurisdictions is to be found in the Council of Europe's Recommendation No. R (99)19 *Mediation in Penal matters*.

The Referral Order

Referral orders were piloted in eleven areas in England in 2000 and introduced across England and Wales in April 2002. The referral order is available in the Youth Court, for all non-imprisonable offences, where a young offender pleads guilty to a first offence (Home Office 1999). The key difference between a referral order and other orders of the court is that the young offender is referred to a Youth Offender Panel (YOP) composed of two volunteers from the local community and a member of the local Youth Offending Team (YOT). The panel meets in a neutral location away from the court with the young offender and their supporters. Crucially the victim and their supporters are invited to attend and participate. Panel members lead discussion on the reasons underlying the offence that has been committed. They discuss its effect on the victim and its effect on the wider community. They agree a contract to address the offending behaviour and make reparation to the victim. This contract is supervised by the YOT and reviewed by the panel. The conviction is considered 'spent' when the order has been successfully completed. Failing this the young person is sent back to the youth court for re-sentencing. With the governmental reforms a restorative approach to crime was enshrined in the mainstream criminal justice system by law. It is this level of acceptance by policy makers that makes it important to understand just how restorative the reforms are and what they mean for those who experience them.

An Opportunity to Research

In terms of its affective impact on the victims' sense of closure and well-being and on the offenders' self esteem and acceptance of responsibility, there is evidence that restorative justice has a positive effect. For example, in Austria, pilot projects suggested a 96% degree of victim participation and satisfaction and, over a three year observation period, studies suggested that re-offending rates were also positively affected (Miers 2001). A substantial international literature addresses the theoretical and practical aspects of restorative justice. It emphasises that successful restorative justice programmes depend on the *way* that restorative justice principles and values are understood and implemented in the local context (see for example Miers 2001). Reviewing international research findings, Weitekamp (1999b) concluded that:

While victim offender mediation and restorative justice models appear sound in theory, their evaluations suffer from a number of shortcomings. These include: the unsystematic application of restorative justice models and programmes, poor planning, unsystematic implementation and short term evaluations. (Weitekamp 1999b in Miers et al 2001:12).

A major difficulty then, with regard to restorative justice is effective evaluation of schemes. As Johnstone (2002) suggests:

There is a need to understand much more about how the implementation of restorative justice might alter our patterns of crime control and the meaning of doing criminal justice. (Johnstone 2002:170).

With a New Labour government committed to far reaching changes in youth justice, which appeared to embrace a new paradigm for viewing justice, an opportunity presented itself to research the implementation of the new legislation. Hitherto central government funded evaluations of restorative justice initiatives have tended to focus on quantitative analyses based on re-offending rates, numbers of referrals and cost effectiveness, or interview data based on general levels of participant satisfaction (see Newburn et al 2001, 2002).

Young people are the prime target for restorative justice initiatives, but there has, to date, been little in-depth qualitative research on the experiences of young offenders undertaking the referral order. Thus this research aimed to generate and analyse qualitative data in order to understand and document young offenders' experiences of the referral order process as well as their feelings about their offending and their attitudes towards the victims of the offence. Drawing on the theoretical framework of restorative justice, the key research question was to examine how far the referral order fits the concept of restorative justice. More specifically, the research aimed to address two questions: firstly, is the way that the referral order is being implemented consistent with the principles and values of restorative justice and secondly, are those principles and values reflected in the experiences of young people undertaking a referral order. The research thus aimed to add the crucial dimension of young peoples' experiences to the existing empirical and theoretical literature and provide a further source of information for policy makers and practitioners.

The Structure of the Thesis

This thesis is organised into nine chapters. A brief summary of the content of each chapter is outlined below.

Chapter Two provides a theoretical framework for understanding the concept of restorative justice. It looks at definitions of restorative justice and touches on debates about the role of the state. Having identified the key principles and values of restorative justice, it goes on to trace the origins and theoretical underpinnings of these concepts. It argues that practice and theory work together in restorative justice and that the range of practices and a diversity of theoretical strands have contributed to its worldwide impact on non-governmental and governmental crime and conflict policies.

Chapter Three situates the research in the social and historical context of youth crime and justice in England and Wales. Part One explains how young people and youth crime have been constructed as a 'problem' in the late twentieth century and outlines attempts to explain and address this problem. Part Two explores youth justice under the New Labour government (1997-2007). It examines a range of measures introduced into legislation by New Labour which purport to incorporate restorative principles. Part Three introduces the referral order. It outlines the intentions of policy makers to present the referral order as a restorative model for dealing with youth crime, and critically examines both the policy documents and early evaluations of the pilot studies. It argues that we need to go beyond quantitative and survey research if we are to understand how far this model of restorative justice fits the theoretical framework.

Chapter Four outlines the research strategies which have been adopted in order to address the research questions. It offers justification for choosing these methods of data collection and analysis and offers reflections on the research process. This chapter traces the research journey from negotiating access to collecting and making sense of the data and in-depth analysis. It explores ethical issues and the particular difficulties involved in researching children and young people. It argues that an ethnographic approach, using multiple methods of documentary analysis, participant observation and

interviews, is the most appropriate for giving voice to young people undertaking a referral order.

Chapter Five explores the transition from policy into practice. It sets the scene for further chapters by explaining how referral orders were implemented and managed in the research area. The chapter outlines some of the problems encountered by the ‘street-level bureaucrats’ in the Youth Offending Service (YOS) responsible for making the referral order work in practice and how they addressed these problems. It examines the professional practitioner’s understanding of the key restorative principle of stakeholder involvement in restorative justice and their understanding and experience of their changing roles and responsibilities. It goes to look at the relationship between volunteer panel members and practitioners. It argues that the way policy is interpreted by ‘street-level bureaucrats’ can, at least partly, explain the gap between the theoretical framework of restorative justice and its practice in the referral order model.

Chapter Six contrasts young peoples’ experiences in a youth court with their experiences at a referral order panel meeting. It explores the key restorative principle of stakeholder involvement, from the young offender’s point of view. In this chapter I discuss how the type of ceremony that young people experience inhibits or facilitates their participation in the justice process. I outline the characteristics of a courtroom ‘degradation’ ceremony (Garfinkel 1956) and contrast it with the ‘reintegration’ ceremony (Braithwaite and Mugford 1994) of a more restorative approach. I argue that a reintegrative approach is more likely to promote mutual respect and a meaningful dialogue between stakeholders. I include in this chapter a discussion of the role of the state, represented by the court, in the referral order.

Chapter Seven explores the emotions experienced and expressed by young people undertaking a referral order. Emotional healing and symbolic reparation are important outcomes of restorative justice. This chapter opens with an exploration of the theoretical framework behind shame, guilt and remorse and the difficulties of understanding and interpreting the sources that generate these emotions. It looks at the social contexts in which they occur. The chapter then uses case studies of encounters between young people and the victims of their offence to examine how emotional healing was experienced by some young people. Finally the chapter explores the role of

parents in the referral order process. I argue that the emotional dynamics of a restorative encounter depends upon the state of the bonds between participants. The key relationship is that between a young person and the victim of their offence, but for this relationship to move towards restoration there needs to be a safe and supportive environment in which young people feel able to express themselves freely.

Chapter Eight addresses material reparation in the referral order and its link with reintegration. The primary objective of restorative justice is to repair the harm done to victims, offenders and the community by a crime or conflict. For this to occur, young people undertaking a referral order need to make amends and receive ongoing control and support from the community. This chapter explores the role of reparation in the referral order, especially the dominance of indirect reparation carried out in the community. It addresses the debate about punishment in restorative justice and considers gender issues in reparation activities. It argues that the danger for the referral order is that a restorative approach risks being absorbed into a traditional punitive justice system in which reparation is primarily coercive, indirect and standardised with the role of the victim marginalized. It suggests that the role of the community is crucial for meaningful reparation leading to meaningful reintegration.

Chapter Nine offers a summary of the thesis and draws out the recurring themes that run through the research. This final chapter also looks at the implications for theory development, policy and practice and concludes with some reflections on the research process

2. Restorative Justice: The Theoretical Framework

This chapter aims to provide a theoretical framework for the restorative justice ideals within which the research problem is located. As Marshall (1999) points out, restorative justice lacks a single theoretical statement and practice has frequently preceded theory. There are, however, a number of theories and approaches that are associated with restorative justice. Crucially the diversity of theoretical strands and wide-ranging interest in various aspects of restorative justice has cut across party political allegiances, which has contributed to its impact upon government policy. In this chapter I explore attempts to define restorative justice before going on to trace the origins and theoretical underpinnings of the main concepts involved.

Defining Restorative Justice?

Considerable divergence of opinion makes defining restorative justice a complex issue. Definitions range from those based upon intended outcomes, to the values embodied and the processes used. It is difficult to achieve any kind of consensus about what it *is* (McCold 1998), which may be why it is often defined by what it *is not* and why it has such a broad appeal. In criminal applications restorative justice has emerged as an alternative to two dominant crime control perspectives framed by classical and positivist criminology (Bazemore 1998, Zehr 1990). It rejects classical images of crime as a violation of the law and the 'just desserts' model. At the same time it rejects the positivist foundations of a rehabilitative, treatment or welfare model (Braithwaite 1999). Instead it aims to discard state 'repressive' responses to crime and to nurture a form of justice capable of building harmonious communities. It involves thinking about justice in a different way.

Marshall (1999), who describes restorative justice as a set of principles rather than a particular practice, produced the following working definition in collaboration with the multi national Alliance of Non-Governmental Organisations on Crime Prevention and Criminal Justice. This definition emphasises restorative justice as a process:

Restorative justice is a process whereby parties with a stake in a specific offence, collectively resolve how to deal with the aftermath of the offence, and its implications for the future. (Marshall 1999:5).

Just how far the state should be involved in restorative justice, if at all, is the subject of much debate. The basic problem is whether restorative justice should be considered merely as a series of techniques that can be integrated into existing systems of crime control or if restorative justice has to become a fully-fledged alternative, which in the longer term replaces existing systems (Bazemore and Walgrave 1999). One element of this debate is whether restorative justice *can* successfully be applied alongside or as part of a traditional justice system, with the inevitable constraints of working within an existing framework.

Marshall (1999) describes restorative justice as:

A problem solving approach to crime which involves the parties themselves and the local community in an active relationship with statutory agencies. (Marshall 1999:5).

This suggests a central and active role for justice agencies as representatives of the state which Marshall (1999) has illustrated in a diagram of restorative justice showing a triangle of relationships between victims, offender and the community with justice agencies at the intersection (see Figure 2.1 Marshall 1999).

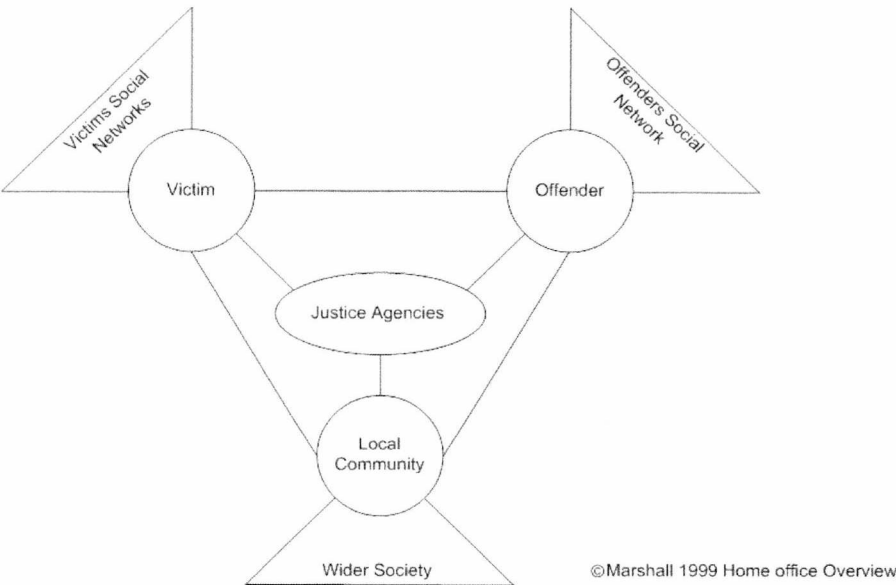


Figure 2.1 Triangle of Relationships

Van Ness and Strong propose a fuller definition in criminal applications, which suggests a more co-operative and less central role for governments.

Restorative justice focuses on repairing the harm caused by crime and reducing the likelihood of future harm. It does this by encouraging offenders to take responsibility for their actions and for the harm they have caused, by providing redress for the victims and by promoting the reintegration of both within the community. This is done through a cooperative effort by communities and government. (Van Ness and Strong 1997:41).

Bazemore and Walgrave (1999) call for a 'maximalist' model with restorative justice being defined as:

Every action that is primarily oriented towards doing justice by repairing the harm that has been caused by crime. (Bazemore and Walgrave 1999:48).

This definition questions Marshall's (1999) suggestion that restorative justice is only about restorative *processes*. Bazemore and Walgrave (1999) argue that restorative justice cannot be limited to a process. They argue that Marshall fails to include the central notion of repairing harm and the repair of harm implies that a focus on restorative *outcomes* is essential even if this includes judicial coercion. This pragmatic approach regards an insistence on voluntary and face to face meeting of victim and offender as too limiting.

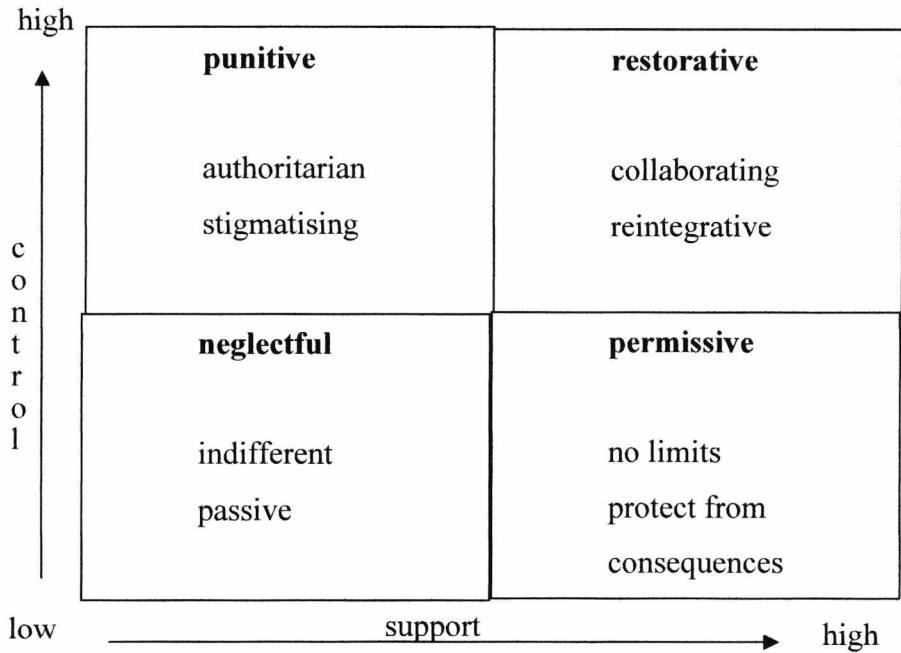
McCold (2000) challenges this model because of its potential to minimise direct stakeholder empowerment and include court-ordered community service work. He argues that

Stakeholder empowerment is not just an obscure semantic squabble, but the central principle of restorative justice. (McCold 2000:361).

These definitions, while not agreeing on the relationship between restorative justice and the existing criminal justice system, raise the key concepts of stakeholder involvement, repairing the harm done and reintegrating both victim and offender into the community. McCold and Wachtel (2002) outline one theoretical explanation of the meaning of these concepts and the relationship between them. Their theory of restorative justice has three connected structures. These are the *social discipline window*, *stakeholder needs* and McCold's (2000) *restorative justice typology*.

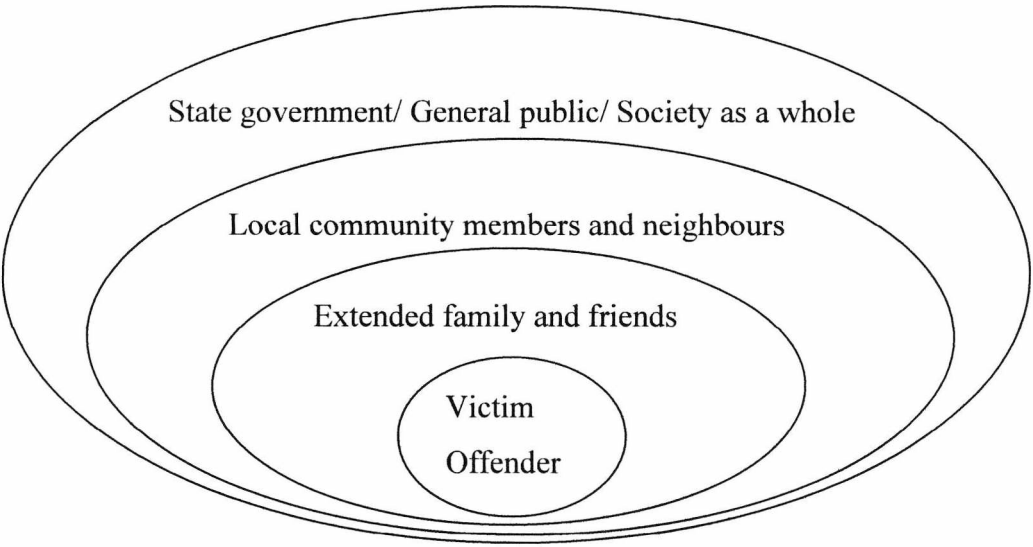
Social discipline suggests that a restorative approach to justice requires both high level control; confronting and disapproving of wrongdoing, as well as high level support for the offender, in terms of encouragement, assistance and acknowledging the offender’s intrinsic worth (See Figure 2.2 McCold and Wachtel 2002).

Fig 2.2: Social Discipline Window
(adapted from McCold and Wachtel 2002)



Stakeholder needs (see Figure 2.3 McCold and Wachtel 2002) recognises that there are direct and indirect stakeholders and that their needs are different. The victim, the offender and their families are direct stakeholders and they need an opportunity to express their feelings and be involved in repairing the harm done. The state and community members are indirect stakeholders; they have a responsibility to support and facilitate processes that will reintegrate victims and offenders and build a stronger community. The degree to which direct stakeholders are involved in restorative justice is the degree to which a process can be termed fully restorative.

Fig. 2.3: Stakeholders Needs (adapted from McCold and Wachtel 2002)

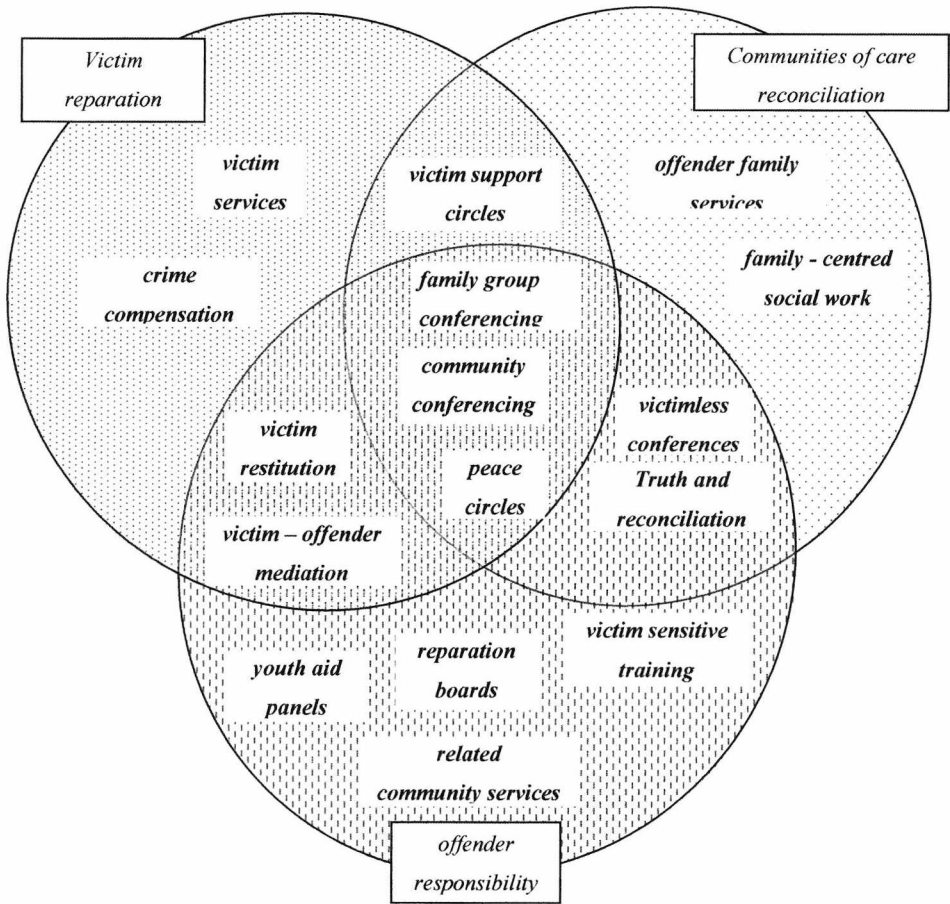


McCold's (2000) *restorative justice typology* suggests that fully restorative practices occur at the intersection of the three circles of 'victim reparation', 'offender responsibility' and 'communities of care reconciliation'. At that intersection are practices such as peace circles² and various kinds of conferencing³. Outside this intersection are practices such as victim offender mediation, which he defines as mostly restorative because they exclude communities of care (family and friends), and processes such as reparation boards, which are only partly restorative because they deal solely with reparation and do not require the inclusion of all stakeholders (See Figure 2.4 McCold 2000).

² Given disharmony, Navajo communities in North America must engage in a healing or peacemaking ceremony to restore the community to harmony. This can include a process for reconciliation between a victim and an offender (Winfree 2002).

³ Conferencing refers to community or family group conferencing and was introduced formally in New Zealand in 1989. It is a specifically restorative approach concerned with the broad relationships between victims, offenders, their families and the community (Winfree 2002).

Figure 2.4 Types and Degrees of Restorative Justice Practice (McCold 2000)



McCold and Wachtel's (2002) analysis can be used to assess the restorativeness of a restorative justice programme by measuring aspects of the connected structures.

Connected Structures of Restorative Justice (McCold and Wachtel 2002)

Social Discipline Window

Measure level of collaboration, and levels of control and support

Stakeholder Needs

Measure level of empowerment, through dialogue and relationship building,

Restorative Practices (McCold 2000)

Measure level of involvement by stakeholders

Van Ness and Strong (2002) propose that three key principles and four key values of restorative justice underpin the main concepts. Firstly, justice requires that we work to restore victims, offenders and communities who have been injured by crime. Secondly, that victims, offenders and communities should have opportunities for active involvement in the restorative justice process and thirdly that in promoting justice; the government is responsible for preserving order and the community for establishing peace.

For Van Ness and Strong (2002) these three principles are accompanied by four values of restorative justice, which are: *encounter*, *amends*, *reintegration* and *inclusion*. *Encounter* refers to the meeting of involved parties, communication at the meeting and a resulting agreement. *Amends* is a distinctive outcome of the process usually in the form of an apology or some kind of restitution. *Reintegration* involves mutual respect and material and moral assistance for both victims and offenders. *Inclusion* means the genuine involvement of the victim, the offender and the community in the justice process. For Van Ness and Strong (2002) only a system that includes all of these components can be considered fully restorative.

Principles and Values of Restorative Justice (Van Ness and Strong 2002)

Principles

Values

Restoration of harm done

Amends: material and symbolic reparation

Involvement of stakeholders

Encounter/Inclusion: participation, dialogue, communication, emotion, understanding, agreement, and empowerment

Community to preserve order and establish peace

Reintegration: mutual respect, collaboration, material assistance, moral direction, social control and discipline

The most accepted overall definition of restorative justice which stresses the importance of both restorative processes and restorative outcomes. This is the definition adopted by the United Nations Economic and Social Council (UNESCO 2002), which defines restorative justice as:

Any programme that uses restorative processes and seeks to achieve restorative outcomes. (UNESCO 2002)

Restorative processes are defined as:

Any process in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime, participate actively in the resolution of matters arising from the crime, with the help of a facilitator. (UNESCO 2002)

Restorative outcomes are defined as:

An agreement reached as a result of a restorative process which includes responses and programmes aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender. (UNESCO 2002).

Presser and Van Voorhis (2002) usefully provide a list of process and outcome measures that can be used to assess the quality of programme activities as follows:

Process and Outcome Measures (Presser and Van Voorhis 2002)

Process Measures

1. Quality of Dialogue
 - Assess: Level of participation
 - Intensity of discussion
 - Direction of dialogue
 - Presence of coercion
 - Level of mutual respect

2. Relationship building

Assess whether offender and victim felt valued (before, during and after conferencing)

Assess community response in terms of concrete offers of assistance (projects, mentors etc) and whether this was well received
3. Communication of moral values

Offender: demonstrates a commitment not to re-offend

Victim: demonstrates a sense of safety from future victimisation

Community: demonstrates broad social consensus that crime was unjustified and responsibility to support victim and offender.

Outcome Measures

1. Restoration

Reparation	Material (compensation or restitution)
	Symbolic (apology, willingness to repair harm)
Emotional Healing	Victim (anger, fear, distress, forgiveness)
	Offender (shame, remorse)
	Victim/Offender (perceived fairness and satisfaction with process)
2. Social Well Being

Offender	change of behaviour (no re-offending or gradual change)
Victim	change of attitude (less fearful/angry, more sympathetic)
Victim/Offender	feelings of belonging and connection to community
Community	involvement in local justice (community concern and assistance, provision of resources, ongoing control and support)

Despite the complexity and debate surrounding definitions of restorative justice, it is possible to summarise the main elements. Restorative justice is concerned with restoration of the victim, restoration of the offender to a law-abiding life and restoration of the damage caused by crime to the community. The most important and overarching principle of restorative justice is to repair the harm done. In order to achieve this,

victims, offenders and the community should have an active involvement in the restorative process. The key values underlying this process are the face-to-face encounter of the stakeholders, the making of amends by the offender to the victim and the community and a commitment by the community to reintegrate the offender, in a meaningful way back into the community. The concepts identified in this section form the basis for an assessment of the restorative justice initiatives outlined in New Labour's youth justice policy. In this next section I trace the origins and theoretical underpinnings of these concepts.

The Origins and Theoretical Underpinnings of Restorative Justice

There are a number of different strands from which theories of restorative justice have emerged. It is argued, for example by Van Ness and Strong (1997), that restorative justice echoes pre-modern patterns of justice in the Western world. More recently, in the late twentieth century, restorative justice has emerged from a series of critiques of current criminal justice systems, often from those with particular political and philosophical concerns; notably, the victims' movement, and social justice movements. There has also been the significant influence of indigenous approaches to crime, in particular native North American, pre-colonial African and New Zealand Maori cultural practices. These diverse strands, set within the context of a growing interest in community justice, come together most comprehensively in the work of Braithwaite (1989). His theory of 'reintegrative shaming' has informed the model of restorative justice adopted in youth justice policy in England and Wales and furnishes a significant intellectual justification for restorative justice approaches presented in New Labour policy and legislation.

Victim Offender Mediation

The evolution of restorative justice has been a process of discovery rather than invention and practice continues to lead theory (McCold and Wachtel 2002). The most influential practices in restorative justice have been Victim Offender Mediation (VOM)⁴

⁴ The origins of contemporary restorative justice experiments with victim offender mediation and reconciliation programmes can be traced to Mennonite groups in Ontario, Canada in 1974, which were looking for a radical Christian response to crime (Zehr 1990).

and Victim Offender Reconciliation Programmes (VORPS) in North America and Family Group Conferencing (FGC) in New Zealand; the latter based on indigenous peoples' needs and practices. These practices developed independently of each other but share the key principles of restorative justice. The real difference between them is that with FGC there are more people, such as family members and the community, actively involved in the process.

Nils Christie (1977) argued that conflicts belong to the people affected by them and that criminal justice systems have '*stolen*' these conflicts. He argued that we should '*restore*' participants' rights to their own conflicts with more meetings between victim and offender. Christie (1977) made a distinction between civil conflicts, in which participants are more fully involved and criminal conflicts, in which he suggested, the offender has "*lost the opportunity to explain himself to a person whose evaluation of him might have mattered (and) lost the possibility of being forgiven*" (Christie 1977:9. In particular Christie (1977) highlighted the victim as the key player who, in traditional criminal justice systems, is "*so thoroughly represented that he or she is....pushed completely out of the arena*" (Christie 1977:3).

The influence of Christie's (1977) ideas can be seen in the context of a growing victim movement. This contemporary 'rediscovery of the victim' has largely stemmed from the strong emphasis placed by left realist criminology⁵ on understanding crime from the perspective of the victim (see Lea and Young 1984) within a pragmatic and reflexive approach to crime. A victim focus has not been without its critics and Alison Young (1996) for example, has suggested that an idealised version of the victim could marginalize the offender within contemporary criminology. It has however considerably contributed to the academic argument at the root of restorative justice that the criminal justice system should be reoriented towards the victim (Zedner 2002, Wright 1996).

With a main aim of improving victims' rights, there are three broad areas on which victim concerns have focused; individual victim support at local level, expanding

⁵ Left Realist Criminology emerged in the early 1980s as a response both to the punitive and exclusionary policies of conservatism and to the utopianism of New Left radical criminologies. It is both radical in its criminology and realistic in its appraisal of crime and its causes (Young 2001).

opportunities for victims to participate, and compensation⁶ (Zedner 2002). The ‘victim movement’ has helped to raise the profile of victims but, within the existing criminal justice system, victims cannot take on an expressive role and their participation is peripheral (Walklate 1989, Mawby and Walklate 1994).

The main influence of Christie’s (1977) work has been in restorative programmes of mediation between victim and offender outside the criminal justice system. VOM became a primary element in VORPS. VORPS works outside, but in co-operation with, the criminal justice system and consists of a face to face encounter between victim and offender where the offender has admitted the offence. On May 28th 1974, two young men from Elmira, Ontario pleaded guilty to vandalising 22 properties. A probation officer called Mark Yantzi had to prepare the pre-sentence report in the case and at a meeting he remarked, not entirely seriously, that it would be a good idea for the offenders to meet their victims. The idea stuck in the mind of Dave Worth who was the Co-ordinator for Voluntary Service Workers and he convinced Yantzi to make the suggestion in court. The Judge’s first response was predictably negative. However, at the sentencing hearing the Judge ordered face to face meetings between the offenders and their victims. Yantzi and Worth then took the boys around to each of the victim’s homes, knocked on the door and negotiated restitution. Within two months repayment had been made⁷. In a more refined form by 1990 there were dozens of similar VORPS programmes across Canada and well over one hundred in the U.S.A.

The key focus of VORPS is to ‘*make things right*’. Reconciliation implies a ‘*healing*’ process of “*repentance and forgiveness*” (Zehr 1990:187). The most important innovation of VORPS was the recognition of the need for engagement between the parties involved. Just how far this engagement has become a reality is a focus of this research.

⁶In England and Wales, *The Victims Charter* 1990 signified an important step in the recognition of victims’ interests. Innovations in the 1996 *Victims Charter* included the introduction of victim statements and compensation orders are now standard court practice. The central organ of the victim movement is *Victim Support* which is run by volunteers and funded by the Home Office; from £5000 in 1979/1980 to over £17 million in 1999/2000.

⁷ The details of this early experiment in VORPS was related by Mark Yantzi at the European Restorative Justice Conference in Barcelona June 2006.

A Restorative Lens

Strongly influenced by VORPS, Howard Zehr (1990) was one of the first writers to create a fully integrated and comprehensive model of restorative justice. In *Changing Lenses*, Zehr (1990) represents restorative justice as an alternative justice paradigm opposed to the principles underlying legal or retributive justice. Influenced by Kuhn's (1970) *The Structure of Scientific Revolutions*, Zehr (1990) used a photographic metaphor to suggest that our view of the world is shaped by the particular lens through which we view it:

Paradigms shape our approach not only to the physical but also to the social, psychological and philosophical world. They provide the lens through which we understand phenomena. They determine how we solve problems. Our paradigms are particular ways of constructing reality, and our retributive understanding of justice is one such construct. (Zehr 1990:86).

Zehr's (1990) central argument then is that the existing criminal justice system is a retributive paradigm; that we view crime through a retributive lens. He suggests that we look at crime through a restorative lens and then justice can be seen as repairing injuries by restitution and promoting healing for victims. Zehr (1990) stressed that offenders should be actively responsible for putting right the harm done, which would have a greater impact than receiving punishment from the courts. Developing Zehr's (1990) focus on civil settlement, and clearly influenced by Christie (1977), Wright (1996) argues that restorative justice is a move from a criminal to a civil approach to law. For Wright (1996), victims and offenders should not be restricted to being passive spectators in justice systems. They should be able to communicate with one another. The victim should be able to receive reparation and the offender should be able to receive credit for reparation. This would be a more positive action towards repairing the harm done (Wright 1996).

The first systematic use of victim-offender mediation in Britain was introduced by the Exeter Youth Support Team in 1979 (Marshall 1996). It was established as a supplement to police cautioning; called 'caution plus' and with the specific aim of diversion from the courts. In 1984 Mediation UK, a voluntary organisation, was set up as a *Forum for Initiatives in Reparation and Mediation*. However, despite some

promising findings in early reparation and mediation schemes⁸, research was critical of the way in which the needs of victims were subordinated to the aim of diverting offenders from custody and funding was withdrawn after two years (Davis et al 1988). Mediation UK however, survived and set up advisory or management committees which responded to the criticism. It subsequently placed a greater emphasis on mediation as a process rather than the attainment of specific outcomes (Crawford and Newburn 2003).

The most limiting aspect of victim offender mediation is that its individualistic emphasis is essentially in favour only of the private concerns of the victim and the offender, and it has largely neglected public and community interests in crime. The community is given a more direct role in Family Group Conferencing Schemes (FGC). This social dimension of restorative justice is associated with the group forum approach of the indigenous cultures of North America as well as, importantly, Maori culture in New Zealand and has also been associated with a thread of criminological thought initiated by Braithwaite (1989).

Family Group Conferencing

As part of broader post-colonial struggles, indigenous peoples have sought to revitalise their traditional approaches to conflict which are embedded in pre-colonial methods of dispute resolution (Pratt 1996). Maori cultural practices in New Zealand address the restoration of harmony, balance and peace within a community (Winfrey 2002). For the Maori, conflict resolution helps to define and hold together the community (Johnstone 2002). Durkheim also argued that, in modern western society, crime makes a contribution to social stability, in that it serves to clarify and reinforce the norms and values of the group. For Durkheim 'repressive', punitive justice would yield to 'restitutive' justice, thus restoring harmony in a community, as society moved from 'mechanical' to 'organic' solidarity (Downes and Rock 1995). The existing western criminal justice approach however, relies on the state to secure convictions and impose punishments. Within this structure, without active community involvement in conflict resolution, conflicts can fragment and destroy communities (Wright 1996).

⁸ In 1985 the Home Office funded four pilot projects in Coventry, Leeds, Wolverhampton and Cumbria.

In 1988 a report commissioned by the New Zealand Department of Justice advised that the Maori be allowed to deal with conflicts that affected them in a way that was 'culturally appropriate'. In 1989, informed by Maori cultural practice, FGC was established for young offenders in New Zealand. There have been concerns that indigenous cultural practices have a limited application to the communities that generated them. While Daly (2002) is rather harsh in describing indigenous justice practice in contemporary approaches as a 'myth', there is an element of truth in her assertion that FGC is a fragmented form of justice. Conferencing splices white, bureaucratic forms of justice with elements of non-western informal justice values (Maxwell and Morris 1993, Daly 2002).

Conferences are held in relatively informal settings, such as schools and community halls, and the aim is to involve all those present in determining appropriate responses to the offence, to encourage acceptance of responsibility by the offender for his or her actions and to make amends to the victim. This crucially involves the young offender's family and supporters. In New Zealand, FGCs are also used for more serious offences and persistent offenders in the youth justice system. Early research suggested positive results (in terms of re-offending rates and satisfaction from participants) but there was concern that only half of all conferences were attended by victims (Strang 2001). It was suggested that this could be explained by poor professional practice and lack of resources (Morris et al 1993). The absence of a key stakeholder is problematic in restorative justice. It undermines the process and makes it less meaningful for offenders.

The Idea of Community and Restorative Justice

Restorative justice should be seen within the context of the growth of alternative forms of conflict resolution 'within the community'. This third element in Marshall's (1999) triangle of relationships is arguably the most important for our understanding of the development of restorative justice in England and Wales. There is increasing concern in modern western society over perceived disintegrating communities and the breakdown of social cohesion (White 2000, 2003). For Bazemore and McLeod (2002) increased state intervention, implemented through agencies of the criminal justice system, has created a dependency on the state and an over extension of juvenile justice programmes.

This reliance has hindered the ability of some communities to foster other forms of control and produced communities deficient in informal youth socialisation. Therefore active community-building is an essential element of restorative justice, and conferencing models are potentially well placed to summon the resources of communities (Bazemore and McLeod 2002). The idea of community is not however without its problems. These problems include the difficulty of defining community, the appropriation of community as a rhetorical device by governments and the potential for communities to be exclusive and punishing.

Community is a contested concept because it has both sociological and normative connotations. Tonnies (in Fletcher 1971) provided a contrast between *Gemeinschaft*, which can be understood as community, based on kinship and shared traditional bonds and *Gesellschaft*, which is a complex network of formal associations based on contractual connections. He emphasised that features of *Gemeinschaft* and *Gesellschaft* exist side by side in contemporary society. Community as a social or political principle suggests a social group that possesses a strong collective identity. The normative appeal to community rests on the emotional pull of an idealised past of social harmony and order (Hughes 2001). This is seductive for policy makers as it has a powerful rhetorical and legitimising quality. The reconstruction of local community has been seen as an important part of the political reinvention of the larger society. The assumption behind the project of constructing a new solidarity was that “*the very terms of intimate experience would permit people to create a new kind of sociability, based on sharing their feelings*” (Sennett 1974:298). However, Sennett (1974) notes that “*this struggle for community solidarity serves a stabilising function in terms of larger political structures of the society.....as people are plunged into a passion of community, the more the basic institutions of social order are untouched*” (Sennett 1974:309). Community politics has usually then, been the concern of political elites interpreting social fragmentation as being part of a ‘decline of community’.

The concept of community at the end of the twentieth century has played an important role in the philosophical and political discourse of *Communitarianism*⁹, at the heart of

⁹ A broad philosophical and sociological tradition in which there is emphasis on the centrality of informal, communal bonds and networks for the maintenance of social order. It is critical of individualistic and liberal notions of ‘society’. It has both conservative and radical variants (Hughes 2001).

which is the assertion, first, that a sense of community is vital to a healthy society and second, that in the modern world the bonds of community have been progressively weakened. Individuals are shaped by the communities to which they belong and thus owe them a debt of respect and consideration. The call for strong, responsible communities within a communitarian framework has been a central feature of New Labour's political philosophy.

Conservative party strategies in the 1980s, which appealed to a sense of community, were given a boost in November 1993 in the aftermath of the death of Jamie Bulger and the arrest and trial of the two boys who killed him. The media response addressed the case in terms of moral and social disintegration, the hidden evil of children and the threat of juvenile delinquency to the whole social fabric, highlighting the need for a sense of responsible community. The case provided the, then Conservative, government with the cultural and rhetorical resources for launching a toughening of policies on crime and community, linking the need for greater control over youth with the virtue of promoting traditional families and neighbourhoods. In 1998 New Labour harnessed this appeal to moral values and combined it with more traditional Labour appeals for social inclusion and social justice. Communitarianism was an important element in this election-winning combination of free market economics and moral rearmament (Jordan 1999).

Shifting the theme of rights towards a balance of rights and responsibilities, New Labour was influenced by the conservative 'new' communitarianism of Etzioni (1998), which places the state behind self, family, extended family and neighbours as a source of care and control. The problem for New Labour was that community is difficult to construct artificially. States rely on the formal power of governments to compel and coerce and community relies on shared experiences, shared facilities and co-operative relationships with the ability to persuade. Notions of responsibility cannot be enforced when they rest on informal relations of trust. Etzioni (1998) makes it clear that it is a mistake to look to a charismatic leadership to define and provide a moral voice for the polity. It is easy for political elites to misunderstand both the notion of community, and how it can be encouraged and sustained in a complex, free-market economy. The rediscovery of community depends on a strong civil society and grass-roots commitment rather than a top-down imposition. New Labour's 'statist' approach holds

the danger of undermining the building of community networks. State agencies may be better employed in reinforcing rights rather than imposing responsibilities.

The discourse of 'community justice' presupposes a community which is inclusive, which seeks to 'put things right' rather than to punish. However the reality of community may be exclusive. Community can mean segregation, prejudice and a desire for revenge. The punishing community may not encourage reintegration but may reinforce embedded criminality. Anne Worrall (1997), for example, argues that while the term community may appeal to a warm, nostalgic sense of belonging among the law abiding, its promise of inclusivity can be interpreted in contradictory ways when applied to those who break the law (Worrall 1997). Alder (2000) argues that while restorative justice can be particularly empowering for female offenders, there is a danger that community values may stigmatise girls whose behaviour is inconsistent with expectations of femininity (Alder 2000).

Walgrave (2002) addresses the need to protect offenders' rights in ensuring that restorative justice agreements are reasonable and proportional. The rights of young people, who lack power in society and are not regarded as active citizens, can be of particular concern. The United Nations *Treaty on the Rights of the Child* (UN 1989) states that in all actions the child's 'best interests' should be the primary consideration (Brown 1998). Walgrave (2002) sees the state as playing a central and essential role in the protection of children's rights and Eliarts and Dumartier (2002) argue that restorative justice needs to include procedural safeguards based on human rights. In England and Wales, however, there has been a tension between what is regarded as in the *best interests* of the child and the political agenda.

Victim involvement is central to the task of community building. Alison Young (1996) argues that, within the left realist criminological framework, victimisation has become closely bound up with notions of citizenship. An 'expressive dimension' of victimisation (Hayward 2004) empowers the individual citizen and expresses a sense of community belonging, which can serve to galvanise a community. In the realist account, individuals identify with one another as victims but instead of being passive, take up a role in the prevention of crime and become active citizens. This approach recalls Durkheim in that crime is functional; it unites communities and reinvigorates

social solidarity. The problem with this analysis is that the offender may become a *'shadowy figure, little more than a blurred reflection in the eyes of the victim'* (Young 1996:56).

Philosophically, restorative justice offers some justification for the engagement of criminal justice with social welfare and reform even when explicit appeal is made to ensure a rights-respecting criminal justice system (Braithwaite and Pettit 1990). Addressing offending needs to be conceptualised as a community task; *"a restorative response to crime is a community building response"* (Pranis 1997:1). For White (2003) the key challenge is how to engage in *'restorative social justice'* where the focus of reform is more directly on community building and in which social justice is integral to institutional practices. State policies which aim to prevent young people offending have tended towards short and medium term 'solutions' rather than addressing the more substantive role of social reactions in shaping the criminalisation process (White 2003). Hirschfield and Bowers (1997) have argued that high levels of social cohesion, even in areas that are socially and economically disadvantaged, tend to have lower levels of recorded crime. A central focus of criminal justice has been on changing the offender but a restorative approach recognises the need to transform communities in order to change the conditions under which offending takes place.

Reintegrative Shaming

The concept of community and communitarianism is central to Braithwaite's (1989) theory of reintegrative shaming. Braithwaite's contention is that the community is a source of social control, which operates most powerfully when it deploys techniques of shaming, directed by those who are valued and respected members of the offenders' immediate environment, against offences which flout 'core consensus values' (Downes and Rock 1995). For Braithwaite (1989)¹⁰, there are two kinds of shaming and each has a different effect on recidivism. Firstly, he identifies disintegrative shaming, which stigmatises and excludes the offender, and secondly, reintegrative shaming, which forgives and rebinds the offender to the community. Labelling theory has been of key importance in Braithwaite's (1989) analysis in that it shows how stigmatisation fosters

¹⁰ See Appendix A: Summary of the Theory of Reintegrative Shaming (Braithwaite 1989).

subculture formation. Once an individual is stigmatised with a deviant label a self-fulfilling prophecy unfolds as others respond to the offender as deviant. The offender is marginalised and attracted to subcultures, which provide social support for the offenders' deviant identity (Tannenbaum 1938, Becker 1963, Lemert 1972).

Braithwaite (1989) argues, however, that unlike other versions of the labelling perspective which contend that social control makes deviance worse, reintegrative shaming is conceived as labelling that reduces crime. Shaming then, operates most successfully when it does not lead to permanent out-casting but encourages the moral and social return of the one who has been shamed, thus avoiding stigmatisation.

Braithwaite's (1989) highly influential theory of reintegrative shaming has generated much debate. Stokkom (2002) argues that Braithwaite (1989) does not adequately explore why shame causes behaviour change or the interaction between shame and other emotions in restorative justice conferencing. For Maxwell and Morris (2002) shame can be felt by an individual independently of the shaming by others and therefore shaming by others may not result in a feeling of shame by the offender. Braithwaite (1989) defines shaming as "*all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed*" (Braithwaite 1989:100). It would seem that Braithwaite saw shaming (as the expression of disapproval) as both signifying the intention of the person disapproving as well as its effect on the offender. However, clearly the intention and the effect are not only different but crucial.

A further theoretical problem is the extent to which young offenders in particular can generalise their identification with a specific victim to an empathy with other potential victims (Pitts 2001). The Kirkholt Study (Forrester et al 1990) suggested that offender's divide the world into legitimate and illegitimate targets so that the restorative justice process may serve only to 'delegitimise' a specific victim. For restorative justice to work in practice, it must be the offender who determines the effect of the shaming. Therefore it is crucial that policy recognises the importance of offender engagement in the process, and restorative justice policy needs to be aware of the delicate balance of emotions in restorative processes. There is room here for further research examining whether theoretical ideas about shaming, remorse and empathy can be evidenced in practice.

For Braithwaite, communitarian societies such as Japan in which “*individuals are densely enmeshed in interdependencies which have the qualities of mutual help and trust*” (Braithwaite 1989:100) are reintegrative. He argues that modern western society lacks an institutional and cultural basis for offenders to be part of the community. Labelled as offenders, there are few opportunities for offenders to re-establish their social membership (Braithwaite 1989). However, Braithwaite (1989) argues that while modern urban life makes communitarianism more difficult to attain, the modern urbanite is more densely interdependent. For Braithwaite (1989) these modern interdependencies make reintegrative shaming possible. Modern interdependencies however, do not necessarily amount to community. Relationships in contemporary society may lack depth, commitment, and mutual help and trust (Johnstone 2002). Offenders may easily lack even micro ‘communities of care’ (Braithwaite 1989), or relationships may encourage criminogenic behaviour. In these circumstances it may be that restorative justice needs to offer *integration* into a community.

Forgiveness and acceptance back into the social group and re entry into community life as a contributing, productive person are critical aspects of the restorative justice process. For reintegration to take place there needs to be mutual respect and commitment, intolerance for the deviant behaviour and repentance and forgiveness. Braithwaite (1989) contends that the good society is one in which there is consensus over certain core values and that is intolerant of deviance from these values. However in modern society there is considerable debate over what these values may be. There is doubtful consensus over drug use and prostitution for example. A society that “*moves away from repressive social control in favour of moralising social control*” (Braithwaite 1989:184) is in danger of being able to use its capacities against, for example, homosexuality or the ‘unfeminine’ behaviour of women. Values held by some young people may be fundamentally different from those adults in authority. This could lead to a lack of understanding and sense of grievance.

A key link between FGC and Braithwaite’s (1989) theory of ‘reintegrative shaming’ was the piloting of a programme in Wagga Wagga, New South Wales. It is this model which has been the most influential in England and Wales, in particular the Thames

Valley Police restorative cautioning initiative in 1998¹¹. The Wagga conferencing model is a form of police-led cautioning following a 'scripted' format. Family, friends and other members of the offender's 'community of care', are seen as figures supporting reintegration by acting as 'shaming' agents denouncing the criminal act while continuing to value the offender as essentially worthwhile. The Reintegrative Shaming Experiment (RISE) in Canberra sought to test a version of the Wagga model against court processing (Strang et al 1999) and found that offenders felt that they had been treated more fairly in conferencing and victims reported a significant level of satisfaction. Thames Valley police (1998) adopted the same broad model but dealt with less serious offenders. Formal evaluation suggests that most participants reported satisfaction with various aspects of the process (Hoyle et al 2002). In most cases reparation was in the form of an apology which was seen as a manifestation of genuine remorse. However in a small number of cases apologies had to be 'coerced' and nearly two fifths of offenders experienced a form of stigmatisation rather than reintegrative shaming. Hoyle et al (2002) concluded that the quality of the facilitation had a significant impact upon the parties experience of the process and on the restorative nature of the outcomes. If restorative initiatives are to have a positive effect on young offenders' lives then we need to look at the quality of programmes claiming to be restorative. A key contribution to this process is to examine the accounts of those young people who have experienced such programmes.

Conclusion

Restorative justice is particularly difficult to define, but this lack of clarity has arguably helped to facilitate its spread and influence. Policies and practices influenced by restorative justice ideas can now be found across the world, and are enshrined in legislation in many countries. At a philosophical level restorative justice challenges formal or traditional justice systems and appeals to a more participatory form of justice embedded in notions of a stronger civil society. The most important principle of restorative justice is that the justice system should be re-oriented towards repairing the

¹¹ In 1998, Thames Valley Police launched a restorative cautioning initiative, whereby police officers administering cautions invited all those affected by the offence, including victims to a meeting. The police officer used a script to facilitate a structured discussion about the harm caused by the offence and how this could be repaired (Rowntree Foundation 2002).

harm that has been done when a crime or conflict has occurred. For harm to be repaired, the direct stakeholders affected by the event, need to be given the opportunity to come together and participate in restoring harmony. Restoration involves processes of relationship building, especially communication between the participants, and including the communication of shared moral values. Restoration outcomes may include both symbolic and material reparation and move towards a sense of social well-being that reintegrates participants back into a supportive, empowered community.

This chapter has attempted to outline the diverse strands from which the concepts associated with restorative justice have emerged. Critiques of the current dominant justice system highlight the demand for the recognition of the victim and the making of amends by the offender. The work, particularly of Christie (1977), Zehr (1990) and Braithwaite (1989), has provided a number of important theoretical underpinnings of restorative justice. Both Christie (1977) and Zehr (1990) attempt to re-conceptualise the way modern society approaches the idea of justice. They both stress the importance of a participatory approach through the active involvement of victims and offenders. Braithwaite (1989) addresses the role of the community in restorative processes as a moralising and binding force; an idea which has resonance in a modern society which associates crime and conflict with social fragmentation. Conferencing has become the central mode of implementing restorative justice ideals, but there are a variety of ways of implementing it as a model. It can be used as a cautioning process (usually police-led), as a diversion from court (police-led, youth justice or volunteer-led) and for serious or minor offences. The relationship between restorative justice and the state is the focus of considerable ongoing debate. Bazemore and Walgrave (1999) argue for a 'maximalist' model able to encompass justice agencies as major stakeholders. In contrast, McCold (2000) argues for a 'purist' model, which privileges the involvement of the direct stakeholders, that is, those actively affected by individual crimes.

One model of restorative justice, which has emerged in youth justice legislation in England and Wales, is the referral order. This important reform cannot be isolated from the particular social and historical context which informs how restorative justice theory has been interpreted and what elements of theory find their way into policy. The next chapter explores this context.

3. Restorative Youth Justice: Politics and Policy

This chapter has two main aims. Firstly, it situates the research in the social and historical context of youth crime and justice in England and Wales. Secondly, this chapter critically examines the introduction of the referral order and the most recent empirical research. The chapter is organised into three parts. In **Part One** I outline how youth crime has been constructed as a ‘problem’ and attempts by youth justice to address this problem. In **Part Two** I look more closely at youth justice policy under New Labour. There have been profound changes to the youth justice system in England and Wales in the latter half of the twentieth and early twenty first century, reflecting an historic concern about the link between young people and crime and, increasingly, the politicisation of youth crime. The introduction of a ‘restorative’ approach to youth crime by the New Labour government cannot be fully understood without considering this context. There is, for example, likely to be a number of tensions between restorative notions of creativity and flexibility and the uniformity and predictability of state bureaucratic systems. In **Part Three**, I examine the most recent reforms in youth justice policy which include the referral order. I argue that there is a need for in depth qualitative research assessing the strengths and weaknesses of the referral order in practice and representing the referral order from the young offender’s perspective

Part One: Youth Crime and Youth Justice: The Wide Angled Lens

Youth and Crime

Understanding youth and crime requires either a dissolution of ‘youth’ as a special object of knowledge and policy, or an inclusion of young people in the social enterprise through the legitimisation of their voices and a recognition of their potential for citizenship. (Brown 1998:119).

In England and Wales the relationship between criminal justice policy and youth crime is at best oblique. Pitts (2001) argues that “*policy is seldom informed by a dispassionate assessment of the nature, dimensions and effects of youth crime*” (Pitts 2001:1). Governments since the 1960s have been more interested in ‘youth crime’ as a political issue than youth crime per se (Pitts 2001). There has been considerable tension between political ideology, the constraints of economic reality and the demands of

electoral viability in government approaches to youth crime. The 'politicisation' of youth crime came particularly to the fore with the Conservative Party victory in the 1979 election and this influenced subsequent New Labour Party policy and legislation.

Youth is strongly associated with crime in modern western society and concern with youth crime dominates discussions about the crime problem. The meaning of youth and its association with crime emerges from a network of interactions between government, the media, the police, academics, pressure groups and professionals in the field (Muncie 2001). Youth is a socially constructed category that is represented as an age of deviance and disruption despite the fact that the precise boundaries of youth are uncertain (Muncie 1999). Youth conjures up emotive and troubling images and, as Muncie (1999) suggests, is defined in terms of what it is *not* rather than by what it is. Young people are deemed to be 'immature', 'uncontrolled' and 'irresponsible'. They are seen as problematic to the maintenance of social order (especially working class and black young men). The behaviour of young people is often noisy and visible and news media have consistently reinforced this visibility and focussed on the 'dangers' associated with youth cultures, creating 'moral panics' (Cohen 1972)¹² which fuel public concern.

Troubling images of young people contrast with adult idealised notions of childhood innocence and vulnerability constructed in the nineteenth century (see Aries, 1973, Jenks 1996). Since childhood was socially constructed as a distinct category from adulthood, young people have been worshipped and protected, feared and regulated (Hendrick 1990). Adult nostalgia and anxiety, projected onto the lives of children and young people, is a recurrent theme in the way society has responded to childhood and youth throughout the twentieth century. It has informed largely irrational responses to the youth crime question (Brown 1998). Young people represent modern society's anxieties about social disintegration. They are seen as undisciplined and in need of control, or in danger and in need of protection.

¹² The first systematic empirical study of a 'moral panic' in England and Wales was Cohen's (1973) research into social reaction to Mod and Rocker disturbances in Clacton in 1964. He found no evidence of structured gangs and evidence of only minimal serious violence. Exaggerated and distorted media reaction however, fuelled wide public concern which in turn attracted more news coverage. The 'moral panic' thesis maintained that selective reporting and police targeting can create crime waves. Pearson's (1983) study of *Hooligans* puts 'moral panics' in historical perspective, noting comparable concerns about East End youths in London in 1898 and Teddy Boys in the 1950s.

While Durkheim in his *Rules of Sociological Method* regarded increasing crime rates as an entirely normal by product of social development, some of the characteristics of late modernity, such as reflexivity of the self and the weakening of collective identities are processes which may be seen as undermining the normative order. The processes of individualisation and subjective disembedding may create the conditions in which crime is likely to rise (Giddens 1991). Cohen (1972) has argued that the 1960s in particular was a time of rapid social change, with increasing feelings of uncertainty, which fostered public anxiety about youth groups. Adolescence is a period when young people loosen bonds with family and school and weaken ties with adults. For young people, late modernity marks changing transitional patterns to adulthood. There are, for example, fewer traditional opportunities for unskilled youth labour in declining manufacturing industries. Young people may be dependent on their families for longer at the same time as lacking stabilising domestic commitments (Furlong and Cartmel 1997). Risk taking has long been regarded as a normal part of, particularly male, adolescent development, but in late modernity a weakening of communal ties and an increased feeling of mistrust and insecurity can lead to an intensification of generational conflict and panic about young peoples' behaviour even if there is no evidence of a significant rise in youth crime.

In the late 1980s cultural criminology recognised that there are complex cultural processes through which crime attains meaning for young people and a shift from local class-based youth subcultures to the transnationalisation and hybridity of contemporary youth style. This analysis recognises the participatory pleasure and excitement of engaging in deviant activity. Deviance is seductive; a way of overcoming the banality and predictability of everyday life (Katz 1988, Ferrell 1999, Presdee 2000). Typical of this intersection between crime and culture are the rave and club cultures of the 1980s and 1990s which provoked public fear, condemnation and political concern. Brown (1998) suggests that the 1990s saw the emergence of a "*total panic surrounding youth*" (Brown 1998:46), from the earlier 'discrete' panics involving relatively small groups of young people. In this environment adults and criminal justice agencies are preoccupied with youth crime prevention.

The link between youth and crime however, appears to be justified by crime statistics. The main source of data on the extent of offending in England and Wales is the annually produced *Criminal Statistics* (Home Office) derived from police and court records. Young offenders are usually classified as *children* (between the ages of 10-13), *juveniles* (between the ages of 10-17), *young persons* (between the ages of 14-17) and *young adults* (between the ages of 18-20 or 25). The picture offered by *Criminal Statistics* (2002) is that in the 1990s the peak age of 'known' offending was 18 years for males and 15 years for females and that over 40% of all indictable crime appeared to have been committed by those under the age of 21 years (Home Office 2001/2). These figures show a decrease in male offending between 1986 and 1996 of 46% for those aged 10-13 years and 14% for those aged 14-17 years but a small increase in offending for females aged 14-17 years.

Official statistics are however, both partial and socially constructed. They depend upon crime being both reported and recorded by the police and they are constructed by changes in the law and law enforcement (Coleman and Moynihan 1996). Self report studies may give a better picture of 'hidden' crimes. Findings from the 1998/1999 *Youth Lifestyles Survey* (Flood-Page, C et al 2000), suggested that those aged between 14-21 years committed the most offences, that the average age at which offending began was 13 years for boys and 14 years for girls and that the peak age for offending was 18 years for men and, surprisingly, 14 years for women. More recent findings from the 2004 *Offending, Crime and Justice Survey* (Budd et al 2005) (OCJS) included drug taking and anti-social behaviour. Five thousand interviews were conducted with young people aged between 10-25 years, but the survey excluded high offending groups such as those living in institutions, including prisons, and the homeless. Findings showed that the peak age for offending was between 14-17 years for both males and females. 26% of the young people surveyed said that they had committed at least one of the core offences in the 12 months before interview (core offences were property theft; including burglary, robbery and assault and selling drugs). Eight per cent admitted committing an offence six or more times during the same period and therefore were classified as frequent offenders, of which 2% were classified as frequent serious offenders, and 12% admitted committing at least one of the more serious offences (burglary, theft of a vehicle or assault with injury). The majority of young people (74%) said that they had committed no offences and overall most offending was either only occasional or

relatively trivial. Those young people classified as frequent offenders committed 84% of all offences measured. The survey showed that levels of reported offending among young people had remained stable between the 2003 and 2004 surveys.

Self Report studies also have limitations in that they are dependent upon the willingness of young people to admit their offending, but they do seem to confirm that some kind of offending is higher among young people than in older age groups. Despite evidence that young people commit less serious offences and are more likely to be targeted and arrested, 'youth' is still the most criminogenic age. The *Audit Commission Report* (1996) estimated that those aged under 18 years were committing around 7 million offences a year (*Audit Commission* 1996:6) and the more recent *Audit Commission Report* (2004) suggested that between 1999 and 2003 this rate of youth offending had remained constant (*Audit Commission* 2004:3).

A number of explanations have been put forward to account for criminal behaviour in young people. The 'criminal career' approach suggests that offending extends from anti-social behaviour that emerges in childhood and is then reproduced in successive generations. Farrington (2002) takes this developmental approach and focuses on individual, family and school risk factors¹³ for offending and anti social behaviour. The *Cambridge Study of Delinquent Development* (Farrington and West 1990) identifies socio economic deprivation, poor parenting and family conflict, criminal and antisocial families, school failure and antisocial and impulsive behaviour as predictors of future criminality. The *Edinburgh Study of Youth Transitions and Crime* (Smith and McVie 2003) aimed to explore why some young people with 'criminal' inclinations graduate to persistent offending and some do not. Results appeared to confirm the importance of impulsivity, and a link with moral disengagement. The *Edinburgh Study* (2003) also showed a strong association between youth offending and families at the margins of the economic system.

The 'criminal career approach is attractive to policy makers because of the simplicity of its basic argument and because it seems to point to a set of distinctive and practical

¹³ A risk factor is an individual attribute or characteristic, a situational condition or environmental context that increases the probability of youth offending (Clayton 1992).

actions. It suggests that anti social indicators can be identified and measured and anti-social behaviour leads to crime. This approach has influenced policy which aims at early intervention and hence targets young people. The danger is that it can be used to justify excessively interventionist approaches towards young people. Haines and Drakeford (1998) argue that criminal careers research has both methodological and interpretive problems. For example, samples are typically taken from the most deprived strata of the general population without adequate reference to better off areas. There is also a tendency to individualise problems that have a social cause (like unemployment) and link them with criminal behaviour. Their findings could be re-interpreted to show that crime is related to situational factors rather than individual characteristics and that it is the situational factors that ought to be the target for action.

Sampson and Laub (1990) have produced a more complex picture based on the implications of social factors on an individual's development. They draw on the social control theories of Hirschi (1969) and Durkheim (1897) and others, emphasising the link, independent of socio-economic and ethnicity factors, between childhood anti-social behaviour and troublesome adult behaviours, including general deviance, economic dependency, educational failure and employment instability. Their model concentrated on the lifelong influence that social institutions, such as families, communities and schools could have on criminal behaviour. Sampson and Lamb (1990) observed that the influence of each institution varies as individuals' age. Importantly, the model, echoing Durkheim, suggests that crime and deviance result when an individual's bond to society is weak or broken. Changes that strengthen bonds to society will therefore lead to less crime and deviance and in turn will strengthen adult social participation. This approach is closer to the restorative justice literature, in which there is clear recognition in of the role of social bonds in controlling, preventing and responding to youth crime (Pritchard 2002).

Gender

In 2001 only 19% of known offenders were women (Home Office 2002) and evidence

from self report studies indicates that criminal behaviour is predominantly male¹⁴. A number of explanations have been put forward for this striking difference including a difference in aggression arising from biological inheritance, sex stereotyping leading to different patterns of socialisation and a broader imbalance of power so that females are more effectively controlled in all social spheres. Studies of masculinity have, for example, interpreted young male involvement in crime as an attempt to establish masculine identities in a rapidly changing social world (Campbell 1993, Newburn and Stanko 1994). Social control theories (Heidensohn 1996, Smith 2002) suggest that women are more constrained by the roles they are expected to play in society and thus restrained from committing deviant acts. Walklate (2001) however, points out that gender differences are not so marked among young offenders and age appears, to a limited extent, to override the effect of sex. Nevertheless the experience of youth and criminal behaviour differs fundamentally for boys and girls (Muncie 1999, Walklate 2001) and representations of youth are largely predicated on gender specific assumptions.

Race and Ethnicity

'Moral panics' associated with youth culture are also frequently linked with race and ethnicity. Although defining race and ethnicity is problematic and the terms are highly contested, the majority of studies indicate that black people are over-represented throughout the criminal justice process (Croall 1998)¹⁵. Urban disturbances in England and Wales in the 1980s and 1990s were attributed to racial tension and crime was increasingly linked to immigrant youth cultures. To left realists this is largely a product of both racism on the part of criminal justice agencies and the structural position of minority ethnic groups in society (Lea and Young 1984). However, for Gilroy (1987), relating race to class and the problems of lower class youth as a whole, underplays the role of race and the process of criminalisation. A key work in critical criminology was

¹⁴ Even amongst young people where the gender gap is smaller, findings from OCJS 2004 survey showed 18% of young women in the 10-25 age group committed an offence in the previous 12 months compared with 33% of young men. Young men were more likely to report committing a core offence than young women and to be classified as a frequent or serious offender (Home Office 2005).

¹⁵ For example, people from ethnic minority communities are more likely to be stopped and searched, more likely to be arrested, more likely to be remanded in custody and represent a disproportionate percentage of the prison population (Home Office 2000)

Hall et al's (1978) analysis of the 'moral panic' surrounding 'mugging' (street robbery) in the 1970s. 'Mugging' was associated with a growing 'problem' of black youth in the inner cities and the black 'mugger' was portrayed as an outsider, an alien and a scapegoat for economic and social decline. The process of criminalisation includes a process in which the law, agencies of social control and the media associate crime with a particular group. Criminalisation can be used to justify harsher social control measures.

Young People as Victims

Research on youth and crime has tended to focus on young people as offenders rather than as victims. Furlong and Cartmel (1997) highlight that:

In many respects, the concentration on young people as the perpetrators of crime has left us blind to the extent to which young people are victims.... Moreover, while adults express concerns about 'lawless' youth, many crimes are also committed against young people by adults" (Furlong and Cartmel 1997:93).

Specific questions about youth victimisation were not included in *British Crime Surveys* (BCS) (victimisation survey) until 1992, in which a third of 12-15 years olds claimed to have been assaulted at least once, a fifth had had property stolen and a fifth had been harassed by an adult. Although the risk of theft and assault was higher for young people than for adults few incidents were reported to the police. As Brown (1998) puts it "*children and young people have to earn their status as victims, whereas they are eagerly ascribed their status as offenders*" (Brown 1998:96). On the basis that there is a strong relationship between victimisation and offending (see for example, *The Edinburgh Study*: Smith and McVie 2003), the OCJS (2004) included an Appendix on the extent and nature of personal victimisation among children aged between 10-15 years (OCJS 2004 Appendix D). The BCS now covers young adults aged between 16-25 years (OCJS 2004:105)¹⁶ which was used for comparison. Findings showed that 31% of 10-25 year olds reported that they had been the victim of one or more personal crimes (assault or theft) in the previous 12 months and that personal crime was the most

¹⁶ The OCJS (2005) notes that in the main chapters of the report, children refers to those aged 10-17 years and young adults to those aged 18-25 years. Policy makers clearly find it difficult to define the precise boundaries between childhood and youth.

common form of victimisation. Fifty five per cent of these had experienced repeat victimisation. Males were significantly more likely to be the victim of a personal crime. Although these figures suggest that young people experience a high level of victimisation (albeit of a relatively less serious nature) it is significant that for policy makers, its importance is largely because of its relationship to offending.

The relationship between age, class, ethnicity and gender is complex, but social reactions and political responses tend to regard all young people as potentially troubled and troublesome and in need of control and guidance. Young people are presented as the ‘*young barbarians*’ of the underclass (Murray 1994); irresponsible and uncivilised, but since the 1990s young people in trouble have also been treated as though wholly responsible for their actions (Haines and Drakeford (1998)¹⁷. There is a paradox here. The current emphasis upon responsibility enshrined in the phrase “*The Government is determined to reinforce the responsibility of young offenders (and their parents).....for their delinquent behaviour*” (White Paper *No More Excuses* Home Office 1997), goes unmatched by any reciprocal conception of young people as possessed of rights and duties owed to them by the wider community. There also seems to be some contradiction between the responsibility expected of young people and a growing emphasis on parental responsibility. Young people have only a limited form of citizenship (Brown 1998) and are denied inclusion in many areas of civic life. This confusing and contradictory view of youth legitimises interventions and has shaped formal criminal justice responses.

Youth Justice: The Social and Historical Context

The history of youth justice has been one of competing philosophies, approaches and ideologies. For much of the twentieth century an uneasy balance existed in the juvenile justice system between welfare on the one hand and a punitive tendency on the other, that at best mitigated and at worst subverted the more rehabilitative approaches to youth crime (Newburn 2002:559).

¹⁷ Between 1993 and 1999, legislation systematically eroded much of the ‘special status’ of children in criminal law and produced a matrix of provisions to facilitate and increase the ‘responsibilisation’ of young people including the abolition of the presumption of *doli incapax* so that all those over the age of 10 years are presumed to ‘*know the difference between right and wrong*’ (Home Office 1990). This low age of criminal responsibility in England and Wales (and age 8 years in Scotland) has been the subject of concern elsewhere; the United Nations Committee on the Rights of the Child (1995) for example (see Bandalli 2000).

The history of youth justice has been marked by “*confusion, ambiguity and unintended consequences*” (Muncie 1999:253) largely because of the “*ambivalence and tension between contradictory aspects of punishment/ justice for the wrongdoer and treatment/welfare for those in need of help*” (Hughes 1996:265). Throughout much of the twentieth century the youth justice system has been concerned not only with the control of offenders but also with the care and protection of those young people considered ‘at risk’ of offending. Although the logic of welfare has remained formally the cornerstone of all work with young offenders in England and Wales, in the 1970s it became increasingly contested in the politics and practices of youth justice. By the 1980s, alongside the re-emergence of a justice based philosophy, a more pragmatic approach to managing the ‘problem’ of youth offending by means of diversion emerged. Diversion from custody meant a range of crime prevention initiatives and community based programmes with cases increasingly dealt with by multi-agency teams. Much of the impetus for these measures was driven by budget constraints and the need for a better managed system. In the 1990s emerged a simultaneous and contradictory development of a return to dealing punitively with young offenders.

Ultimately, the welfare needs of the individual young offender cannot outweigh the needs of the community to be protected from the adverse consequences of his or her offending behaviour. (Labour party pre-election manifesto statement, Media Office 1996:9)

Into this context has emerged the logic of restorative justice, whose political attraction may lie in its appearing to offer a tougher reworking of the concerns expressed with welfare based policies alongside those of justice for the victim and punishment for the offender.

Welfare

A focus on welfare was part of the ideology of the social democratic solidarity project of the post war Welfare State. Up to the 1970s there was a general political consensus and confidence in the state’s capacity to deal with social problems (Newburn 2002). Young offenders were likely to be seen as victims of psychological or social deprivation

requiring expert-led intervention in order to meet the child's needs. Under this welfare model, responsibility for young offenders was relocated from the criminal justice system to welfare agencies (Kirton 2005). Despite this consensus, welfare was always controversial and contradictory. Throughout the 1950s and 1960s there was continuing debate over whether to care for and treat 'deprived' young people in trouble or to train and punish 'depraved' young offenders. The debate culminated in the highly controversial *Children and Young Persons Act 1969* in England and Wales, which was quite explicitly based on a social welfare approach to young offenders. Key measures of the Act included raising the age of criminal responsibility to 14 years and the introduction of the care order, where offending was one of the possible grounds, along with abuse, neglect and truanting, for transferring parental rights to the local authority. This welfare approach to youth justice was criticised on three main points. Firstly, that the distinction between care and control was confused. There was a tendency to draw the neglected along with the offender into an ever widening net (Austin and Krisberg 1981, Cohen 1985). Secondly, the 'best interests' of the child was ambiguous and inconsistent; 'care' institutions could be dehumanising and criminogenic. Thirdly, there was criticism that children's rights were receiving insufficient legal and judicial protection¹⁸. Out of this criticism the welfare / rehabilitation model was increasingly replaced by a justice / punishment based model¹⁹.

Justice

Proponents of 'back to justice' stressed proportionality of punishment and equity of rights through due process of law. It was argued that sentences should be based on the seriousness of the offence rather than on the needs of individual offenders. The 1969 Act was never fully implemented after the 1970 election of a Conservative government. The post war welfare / rehabilitation consensus was breaking down and there were growing moves towards a more authoritarian and custody based approach (see Muncie

¹⁸ Perhaps the most important general critique of a welfare/rehabilitation model came from Martinson's (1974) analysis of 231 research studies of adult treatment programmes in the U.S. He concluded that "with few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect upon recidivism" (Martinson 1974:25 in Muncie 1999). The conclusion then was that 'nothing works'.

¹⁹ See Appendix B: Comparison of Welfare and Justice based Models of Juvenile Offending (Black Committee 1979).

et al 2002). The 1969 Act was blamed for the perceived ills of juvenile crime and a 'soft' justice system, despite the fact that from 1971 to 1977 there was a 225% increase in sentences to Detention Centres and a 70% increase in Attendance Centre Orders²⁰. In 1975, in England and Wales a *House of Commons Expenditure Sub Committee* was set up to make recommendations for change. It argued that an important consideration in youth justice was to deter others from criminal activities and also to contain and punish a hard core of persistent offenders. The White Paper *Young Offenders* (Home Office 1981) put forward the idea of a bifurcation or twin track approach with penalties increased for serious and persistent offenders and decreased for less serious offences, including greater use of community sanctions.

Diversification

Attempts to divert from custody by discouraging courts from adding to an overcrowded prison system were implemented in the *Criminal Justice Act 1982* when community service orders were made available for 16 year olds. This was reinforced by the *Criminal Justice Act 1988* which introduced strict criteria before custody was to be considered. In 1983 the Department of Health and Social Security (DHSS) launched an Intermediate Treatment (IT) initiative to develop alternatives to youth custody in collaboration with police and magistrates (Pitts 2001). The combination of an increase in cautioning and a range of non custodial sentencing options, led to a remarkable decline in the numbers of young people in the criminal justice system and particularly in custody²¹. The reasons behind this move were clear. Prison was expensive, inefficient and counter productive. For Margaret Thatcher's Conservative government, committed to reducing taxation and public expenditure, there was pressure to find alternatives to prison for less serious offences. It was stressed that this was a 'tough' approach to law and order, emphasising the importance of individual responsibility, initiative and self discipline. The Conservative government "*intended to move social responsibility back to the individual and morality back to the family*" (Brake and Hale 1992:2). The *Criminal Justice Act 1991* attempted to provide a national framework through which to

²⁰ The number of males aged 14-16 years sent to custody increased from 3,200 in 1971 to 7,700 in 1981 (Criminal Statistics Home Office: See Appendix C; Young Offenders sentenced to Custody 1965-2000).

²¹ The proportion of 14-16 year olds sentenced to custody fell from 12% in 1985 to 7% in 1990 (Criminal Statistics Home Office: See Appendix C)

build upon the success of local initiatives and to expand the use of juvenile diversionary strategies to include young adults aged 17-21 years. To justify more rigorous community disposals it was stressed that this was *punishment* in the community, based on 'just desserts'. The stress on punishment required a change of focus for the Youth Court so that welfare was now effectively removed from youth justice policy (Muncie 1999).

The expansion of non custodial 'community penalties' introduced by *The Criminal Justice Act 1991* involved the co operation and active involvement of the offender in programmes of work and / or treatment in the community generally supervised by the Probation Service. This expansion of community penalties during the 1990s (Gelsthorpe 2001) was accompanied by research about the types of programmes with offenders that offer most in reducing future offending. During the 'nothing works' era, practitioners had continued to be optimistic about developing new, structured approaches to rehabilitation (Raynor 2002). Gradually research began to emerge on programmes of various kinds designed to address offending behaviour being undertaken as part of probation orders. These programmes included a cognitive behavioural approach to rehabilitation (Vanstone 2000) and the use of the statistical technique of meta-analysis to draw general conclusions by aggregating the findings of small studies (much criticised, by for example Mair (1995), but increasingly influential) (Raynor 2002). What emerged from these various strands of research was an 'evidence-based' approach based on the analysis and modification of offending behaviour. It suggested that some forms of supervision were capable of reducing offending and was taken on board by Probation under the 'what works' initiative.

The Mid Glamorgan Probation Service for example, set up an intensive probation programme (STOP) based on a '*Reasoning and Rehabilitation*' programme designed in Canada (Raynor 1998) based on the principles of 'what works' which included; a highly structured approach targeting high-risk (of reconviction) offenders and a focus on criminogenic need (those characteristics which contribute to an individual's offending). Evaluation of STOP suggested that the largest change in the attitudes of offenders was in impulsiveness. Offenders mentioned most frequently that community penalties such as STOP helped them to think a problem through and consider the consequences. These findings were supported by Killias et al (2000) who showed that community penalties

changed offenders' attitudes particularly in the direction of accepting responsibility for their offending.

The Criminal Justice Act 1991 signalled only a brief flirtation with emerging ideas about effective 'evidence based' rehabilitation, but community penalties that addressed problem solving skills were to become an important feature throughout the 1990s, including work with young offenders, and the notion of accepting responsibility for offending has become a key feature of restorative responses to crime. It was in this environment that Mediation UK and other restorative reparation schemes were working with young offenders. Crucially, these schemes were also situated in the community rather than in institutional settings²². There was a growing optimistic mood that 'something might work'.

Custody

This optimism however was shattered between 1991 and 1993. Against a background of deep and protracted recession, urban disturbances in Oxford, Cardiff and Tyneside, moral panics about persistent young offenders and public concern following the James Bulger (1993) case, the new Home Secretary outlined a range of tough policies increasing the use of custodial sentences, claiming 'prison works'. *The Criminal Justice and Public Order Act 1994* doubled the maximum sentence available in young offenders' institutions and introduced a secure training order for 12-14 year olds. Youth Justice Policy had firmly returned to punitive incarceration. This punitive development was part of what Pitts (2001) has termed 'dejuvenilisation' that is, eroding the principle of treating children and young people separately from adults. There was widespread criticism from professionals and voluntary organisations, and also, from those who monitor the *United Nations Convention on the Rights of the Child* (UNCRO), but significantly no sustained political hostility in parliament. The language of Youth

²² Maidstone Mediation Scheme, for example, was set up late in 1989 as a voluntary organisation on the initiative of Kent Probation, Kent Constabulary, Victim Support and the Churches Council for Social Responsibility and by 1993 was accepting referrals of young offenders (Maidstone Mediation Information literature 2003).

Justice was now the language of conflict, contempt and 'zero tolerance' of young offenders and their anti social behaviour²³.

Neither Welfare nor Justice?

With the expansion of punitive community disposals for young offenders, it seemed to some that Youth Justice was offering neither welfare nor justice. Pratt (1989) for example, argued that Corporatism had become the predominant trend in juvenile justice. Pratt (1989) defines Corporatism as a sociological model referring to the tendency in advanced welfare state societies:

Whereby the capacity for conflict and disruption is reduced by means of the centralisation of policy, increased government intervention and the co operation of various professional and interest groups into a collective whole. (Pratt 1989:237).

For Pratt (1989) Corporatism is a 'delinquency' management service provided in the community which is cost effective and efficient and involves an increasing range of agencies and more systematic use of resources and statistical evidence. In this model professionals are socio technical experts with increasing administrative powers. There was also a shift to a language of 'risk' which Feeley and Simon (1992) refer to as 'the new penology'. This was not about punishing or rehabilitating individuals but about identifying and targeting unruly groups. It was not intended to eliminate crime but about efficient crime control. This was a replacement of a moral description of the individual with an actuarial language of statistical probabilities.

Such corporate, multi-agency strategies were to become subsumed within a much broader process of public sector managerialism, in which political, economic and social issues are seen as problems to be managed rather than resolved. The three E's of public provision are Economy, Efficiency and Effectiveness. With this in mind law and order was opened up to investigations by the Public Accounts Committee and, crucially for Youth Justice in England and Wales, the Audit Commission.

²³ Between 1992 and 1998 the number of 15-17 year olds in custody rose by 79% (Criminal Statistics: Home Office See Appendix C).

Audit is an increasingly important feature of late modernity. It is:

A distinctive mode of modern social organisation in which states, corporations, bureaucracies and other agencies are constrained to scrutinise and account for their activities and the consequences. (Atkinson and Coffey 1997:48)

Power (1997) refers to this '*audit explosion*' as a particular set of attitudes and cultural commitments to problem solving. Based on long-standing financial practices, audits are aimed at ensuring value for money and quality of delivery. The Audit is a powerful model of administrative control; an institutionalised form of accountability, applied to a wide range of programmes in many different organisational settings (such as hospitals, schools and water companies) including criminal justice. In the '*audit society*' (Power 1997) of the late 1990s the Audit Commission acquired an important role, not just in the implementation of official justice policy but also in its interpretation.

Recommendations from this body were in support of management ideals of attaching resources to 'successful' outcomes or 'evidence based' initiatives. This agenda increasingly crossed party political boundaries and received strong endorsement from the New Labour government in 1997.

Part Two: New Labour, New Youth Justice: Moving Into Focus

Tough on crime, tough on the causes of crime. (Tony Blair 1993)

The challenge for the newly elected Labour government in 1997 was to incorporate a 'welfare' model of youth justice which sat well with Labour ideology, within a new 'tough' punitive agenda for dealing with youth crime. The government was also committed to incorporating elements of restorative justice into youth justice. It was inspired by the Audit Commission's report, *Misspent Youth* (Audit Commission 1996), which argued that the current court justice system for dealing with youth crime was inefficient and expensive. It suggested that restorative approaches such as Family Group Conferencing (FGC) may be more cost effective. The Labour Party produced a pre-election consultation document, *Tackling Youth Crime and Reforming Youth Justice* in 1996 which promised to implement a "*comprehensive and wide ranging reform programme to get the youth justice system in England and Wales working as it should*" (Home Office 1996:1). Reparation was a key element in proposals designed to make

young people take responsibility for their actions and was included in the proposed Reparation Order, the Action Plan Order and Supervision Order.

The consultation document led to the White Paper *No More Excuses* (Home Office 1997) in which the government stated that its proposals for reform built on the principles underlying the concept of restorative justice. These principles were outlined as: *Restoration*, which is defined as young offenders apologising to their victims and making amends for the harm they have done, *Reintegration*, which is defined as young offenders paying their debt to society, putting their crime behind them and rejoining the law abiding community; and *Responsibility*, as young offenders, and their parents, facing the consequences of their offending behaviour and taking responsibility for preventing further offending (Home Office 1997: 9.21).

Under the heading “*What are the causes of youth crime?*” (Home Office 1997: 1.4) *No More Excuses* identified a range of criminogenic risk factors. It recognised social disadvantage and poverty as part of a complex interconnectedness of risk factors, but generally dismissed wider social and economic conditions as causing crime, suggesting that this was simplistic and “*insulting to those living in deprived circumstances*” (Home Office 1997: 1.4). The focus was on a narrow set of eight individual attributes (Graham and Bowling 1995)²⁴ which were clustered into three groups; Parenting, Schooling and Peers. This narrow interpretation of crime causation is in line with the language of ‘the new penology’ (Feeley and Simon 1992) in which ‘risk’ assessment is part of managerial processes.

The emphasis was therefore on the individual responsibility of young people and their parents, “*to develop self respect and respect for others and a sense of personal and social responsibility*” (Home Office 1997, 8:16), rather than state and community responsibility to improve the circumstances of young people’s lives. This extends Garland’s (1996) ‘responsibilisation’ strategy, in which responsibility for crime prevention is devolved outside the state in a multi-agency approach. Responsibility for the causes of crime is clearly placed within the family. By focusing on a narrow risk

²⁴ These eight factors draw heavily on Farrington and West’s (1973) Cambridge Study ‘confirmed’ in *Misspent Youth* (Audit Commission 1996).

factor paradigm, which is easy to understand and communicate, the Home Office risked limiting opportunities to innovate. With restorative justice programmes needing to be accredited to fit the paradigm, there was also the risk of a 'one size fits all' curriculum and only a partial understanding of restorative justice values. In *No More Excuses* New Labour outlined a dual track approach to restorative justice, transforming an existing part of the system and diverting a specific group of young offenders guilty of minor offences. *No More Excuses* (Home Office 1997) also made clear that the most serious and persistent young offenders would continue to be dealt with by the Youth Court with a focus on punishment.

The government's reforms of the youth court in England and Wales will help to shape a more effective Youth Justice System for the next century. The approach combines the principles of restorative justice with more punitive measures, which must be available to the courts in order to protect the public. (Home Office 1997: 9.59).

Surveys of magistrates, magistrates clerks and Youth Offending professionals indicated that one of the clearest areas of concern was the use of mandatory restorative initiatives for minor crimes, when a discharge might be deemed more appropriate (Crawford and Newburn 2003). Two points can be made from this; firstly that a fully restorative process may not be deemed cost effective for very minor crimes and secondly that respect for the restorative process may be undermined.²⁵

This White Paper led to the government's flagship legislation, the *Crime and Disorder Act 1998* in which many of its provisions were aimed at young offenders and which endorsed support for restorative principles. The most significant change to the Youth Justice system under the legislation was the establishment of the Youth Justice Board (YJB)²⁶ and Youth Offending Teams (YOT). A YOT was to be established by the local authority and to consist of a probation officer, a social worker, a police officer, a person nominated by the health authority and a person nominated by the chief education officer. It was the statutory duty of the YOT to co-ordinate the provision of youth justice services under the new multi-agency arrangements (Home Office 1998, Section

²⁵ Following Newburn et al's (2002) evaluation of The Referral Order, the Youth Justice Board commissioned a Review (2003) and subsequent legislation removed the mandatory element for minor offences.

²⁶ The YJB is composed of an advisory Board of public figures and senior justice system experts chaired by Lord Warner who had been Jack Straw's adviser on youth. The board is serviced by a senior civil servant whose study had been the basis for the Audit's Commission's *Misspent Youth* (1996).

39.5,7). New Labour was thus handing administrative responsibility for Youth Justice to Local Authorities but strategic and political responsibility now rested with the YJB which was accountable to the Home Secretary.

Crime and Disorder Act 1998

The Crime and Disorder Act 1998 and *The Youth Justice and Criminal Evidence Act 1999*, together formally introduced elements of restorative justice into legislation as outlined in *No More Excuses*. Dignan and Marsh (2003) argue that integrating elements of restorative justice as part of the mainstream criminal justice system constitutes a “switch of decision making forum, from a court based judicial model to a community conference model” (Dignan and Marsh 2003:115). Clearly however decision making has not entirely been switched from the courts. Reparation was the key restorative element of the *Crime and Disorder Act (1998)*²⁷. This was most explicit in the Reparation Order (Section 67) but could also form part of the Action Plan Order (Section 69) and the Supervision Order (Section 71). The legislation states “*make reparation for the offence otherwise than by the payment of compensation.*” (Chapter 1 Part 4:85) which suggests that payment will be made in kind, for example by writing a letter of apology or cleaning graffiti. However the Act allows financial compensation to remain with the courts. The court can therefore make a compensation order in addition to a reparation order which may result in the offender being penalised out of proportion to the offence. Clearly the Act allows for high level control by the courts which is at odds with the core values of restorative justice.

Although reparation is a key element of a restorative process there is a danger of it becoming a routine but not meaningful response to a range of offences committed by young people. Restoration is not just about reparation “*but about seeking to restore the victims security, safety, self respect, dignity and most importantly, sense of control*” (Morris and Gelsthorpe (2000:20). Under the legislation victims views must be sought before a Reparation Order is made and there is envisaged the possibility of the victim meeting the offender, but this is only a limited version of the ‘involvement’ envisaged by restorative justice. Restoration is also a two way process and although the YOT

²⁷ See Appendix D *The Crime and Disorder Act 1998*: Provisions.

must provide a report for an action plan order outlining “*the benefits for the offender*” (Home Office 1998, Section 70), there is no obligation under the Act specifically to address the needs of the offender. Reintegration can be defined as “*re entry into community life as a whole, contributing, productive person*” (Van Ness and Strong 1997:116). Both victims and offenders may experience alienation from the community and stigmatisation. The restorative process requires relationships characterised by respect, intolerance for deviant behaviour but also action and commitment on the part of the community. In McCold and Wachtel’s (2002) framework for a theory of restorative justice they suggest that restorative responses exercise high control and high support in contrast to a punitive response which exercises high control and low support. Thus for successful restorative interventions there needs to be high level community support for the reintegration of both victims and offenders.

Many elements of the legislation prop up the pivotal role of custody in youth justice policy, for example the Detention and Training Order for 10-17 year olds. *The Crime and Disorder Act 1998* thus still frames punishment as the dominant mode of response to young people. Punishment is usually understood as requiring coercion and as the intentional infliction of pain, deprivation or loss (De Haan 1991). This raises the question of the role of punishment in restorative justice. For some like Wright (1991) and McCold (2000) punitive sanctions cannot fall within the restorative framework. However for Daly (2002) restorative justice can accommodate punishment and coercion may be a necessary element. There is a danger however, that restorative justice set within an existing criminal justice system represents an attempt to patch up a retributive paradigm. In the model of restorative justice adopted by New Labour, instead of seeking ‘alternatives to punishment’, by expanding community solutions as an alternative to custody it simply offers ‘alternative punishments’ (Zehr 1990:93). The debate depends upon whether restorative justice is envisaged as ultimately a replacement discourse for the punishment paradigm (Crawford and Newburn 2003) or whether restorative justice is seen as compatible with existing justice systems. The restorative reforms in the *Crime and Disorder Act 1998* cannot be said to constitute a paradigm shift. At best they can be regarded as intermediate goals.

For New Labour in 1998, there was to be a pragmatic approach to youth crime. Preventing offending was the central focus. For Labour this would require early

interventions, punishment as a means of expressing society's condemnation and crucially for restorative justice, the idea of making reparation to the victim and to the community. There was a key shift towards outcomes and policy was to be 'evidence led'. This is a managerialist agenda; targeting interventions and justifying the expense. Multi-agency working was vital for effective, disciplined delivery, illustrated by the composition of the YOT. There was also to be a focus on local community solutions. Thus the Labour government was influenced by communitarian thinking with its 'punitive' notion of 'responsibility' alongside a renewed interest in welfare. The Act includes a raft of early welfare interventions, for example, the anti-social behaviour order, child curfews and exclusion zones were designed to stop unsupervised children from causing "*misery and alarm to local communities and developing criminal habits*" (Home Office 1997). Non compliance with these 'welfare' orders is a criminal offence.

The new youth justice then, has echoes of both 'welfare' and 'justice' models as well as a managerialist approach and the increased drawing in of 'at risk' groups. New Labour has produced a strategy for crime prevention which prioritises early intervention, and social exclusion rather than social inequality is seen as the underlying problem (Downes and Morgan 2002). The appeal of restorative justice in this environment is its focus on a community response and the possibility of making good "*those deficits in the behaviour, beliefs and attitudes of individual offenders and their parents, and to instil in them a new disciplined, capacity for self regulation*" (Pitts 2000:10). The danger is the potential for the dilution or distortion of restorative justice principles and values to appease the political agenda. As restorative justice moves from the margins to the mainstream of youth justice systems, the primary focus of the process may shift from offering an experience of healing to serving justice system goals which de-emphasise restorative values (Umbreit 1999). In the next section I introduce the referral order and comment on early evaluation studies.

Part Three: The Referral Order: Zooming In

Referral Orders: The Process

The Referral Order, for 10-17 year olds, introduced by *The Youth Justice and Criminal Evidence Act 1999* holds the greatest potential for achieving restorative principles and

values in youth justice in England and Wales. Available where a young person pleads guilty to a first offence, courts may make referral orders for a minimum of three and a maximum of twelve months (Home Office 1999). The referral disposal involves referring the young offender to a Youth Offender Panel (YOP). Panel meetings should be held in locations close to the young person's address and the venue should be informal (for example in a community hall). The YOT is responsible for organising the panel meeting and preparing reports. Victims are contacted to find out whether they want to be involved in the panel meeting. Parents are expected to attend if the young offender is under 16 years²⁸. The purpose of the panel is to provide a constructive forum for the young offender to confront the consequences of the crime and agree to a programme of meaningful activity to prevent further offending. The aim of the initial meeting is to devise a contract to be carried out by the offender. The YOT member's role is to advise the panel and ensure proportionality²⁹. The contract is signed by the offender, a parent and a panel member. The YOT is then responsible for monitoring the contract and keeping records. At least one review panel meeting is held and additional panels can be convened, if requested, by any of the participants or, if it is deemed necessary, by the YOT to vary the terms of the contract. A final meeting is held to 'sign off' the contract and if it has been successfully completed the offender is no longer considered to have a criminal record³⁰. If the order is not carried out to the satisfaction of the panel, the young person is sent back to the youth court for re-sentencing.

The Referral Order is modelled on the Australian 'Wagga' model of FGC, rather than the New Zealand model. There is a critical difference. In New Zealand the power of professionals to make decisions is curtailed and the role of the court is marginal. Conferences are also held for young offenders who have committed more serious offences rather than only those young offenders who have pleaded guilty to a first non-

²⁸ Section 5 of Part 1 of *The Youth Justice and Criminal Evidence Act* provides for the attendance of an 'appropriate adult' at the Youth Offender panel, which can be the choice of the child subject to the approval of the panel. There are no provisions for legal representation.

²⁹ Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the 'Beijing Rules', states that '*the juvenile justice system.....shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence*' (United Nations General Assembly 1985). The concept of proportionality, often expressed in terms of 'just desserts' in relation to the gravity of the offence, serves to offset over zealous intervention in favour of minimum necessary intervention.

³⁰ It is actually a spent conviction that need not be declared unless an Enhanced Criminal Records Bureau (CRB) check is called for, for example in the case of working with children.

imprisonable offence. Indeed, research emerging from RISE³¹ in Canberra suggests that a restorative response is more effective for more serious crime in terms of participant satisfaction (Strang 2000). In contrast, the 'Wagga' model is much more prescriptive and inflexible (Morris and Gelsthorpe 2000) and, like the Referral Order in England and Wales, is backed up by a return to court if the 'youth offender contract' is not satisfactorily carried out. Morris and Gelsthorpe (2000) state, correctly in my view, that "*youth offender panels do not supplant court proceedings; rather they supplement them*" (Morris and Gelsthorpe 2000:29).

In England and Wales Referral Orders were piloted in 11 areas over the summer 2000 and implementation of referral orders in all youth offending teams began on 1st April 2002. The legislation extended the statutory responsibility of YOTs to include the recruitment and training of voluntary community panel members and administering panel meetings. The role of community volunteers was to represent the views of the community and it was therefore necessary that they were representative of that community. By 31st December 2002 there were 5,130 panel volunteers nationally who had completed training. Of these 65% were female, which is over representative of the general population (Bierman and Moulton 2002)). The most common age group was 40-49 years which represents the national population spread. However *Guidance* (Home Office 2000) to YOTs suggested that younger volunteers might be particularly well equipped to engage with young offenders. Eighty six per cent of volunteers were white compared to 91% in the total population and 63% were in full time or part time employment (Bierman and Moulton 2002).

There was no specific information on the social class composition of panels but a *Home Office Citizenship Survey* (2001) showed that people who live in the least deprived areas were more likely to volunteer for community activities. Gelsthorpe (2001) pointed out that it is important that attention should be given to social and cultural differences in the delivery of community penalties. Respect for those differences is an important corollary of the principle of social inclusion. This may be especially relevant in terms of supporting the parents of young offenders, where white, middle class notions of

³¹ Reintegrative Shaming Experiment (RISE) has been running in the Australian Capital Territory since 1995. It examines conferencing programs in Canberra, based on the Wagga model of police run schemes (Australian Institute of Criminology 1995).

parenthood may not be the norm. A more realistic representation of the community therefore, might be to recruit more volunteer panel members from deprived and high crime areas.

Accountability

One of the criticisms of restorative justice is that there is a danger in unchecked participant power. Informal sanctions can be powerful, especially with regard to deviance (Braithwaite 1989). There is a deliberative accountability built into restorative justice meetings where participants provide verbal accounts which are scrutinised and assessed by other participants. For this to be effective however, attention needs to be given to the conditions of the deliberation. Findings that emerged from Declan Roche's (2003) wide ranging qualitative, comparative study of 25 restorative justice programmes in 6 countries showed that to be accountable, meetings must make consensual decisions. The referral order was the only one of the programmes in the study in which the victim cannot withhold consent from a particular course of action. The referral order may therefore benefit from state institutional measures, such as judicial review, which, as Roche (2003) suggests can play an important role in providing the safeguard of institutional accountability.

There needs to be a balance so that meetings are persuasive and negotiating rather than coercive and dominating. Roche (2003) argues that it is fundamental that an offender not be punished for electing not to attend a restorative justice meeting. With the referral order, attendance for the offender is not entirely voluntary because it is an order of the court, which carries the threat of less desirable alternative treatment including a criminal record. There is also the danger with young offenders, and some victims, that they may be disadvantaged in communicative processes. They may be inarticulate or have only limited social skills. This is where supporters can help or hinder the process. Parents, in particular, can help or hinder the process but both victims and offenders may need professional advocates available such as a victim liaison officer or a dedicated youth worker to accompany them. The role of the convenor or facilitator of a meeting is also crucial in ensuring that participants are able to express themselves in an environment and in terms with which they feel comfortable. One way that the referral order has

addressed this potential problem is to ensure that meetings do not happen in police stations and that police officers do not attend. This is one way in which the referral order is substantially different from restorative cautioning such as the Thames Valley Police initiative (1998).

Dignan and Marsh (2003) suggests that reintegration of the offender is reflected in the fact that, once a young offender has satisfactorily completed a Referral Order contract, the conviction is spent and the offender has no criminal record. For Dignan and Marsh (2003) this, in itself, represents a more socially reintegrative approach distinct from disintegrative shaming. In my view however this cannot be considered restorative reintegration unless provisions within the contract adequately address issues that may have led to offending and any reparation activities are considered meaningful by offenders. An important task of crime prevention and in dealing with young offending is to use the opportunity of intervention to rebuild communities and, as part of this, to foster ideas of solidarity and co-operation (White 2003). Community support in providing opportunities for young people is therefore essential. Reintegration must involve the *“nesting of the young offender in a web of familiar, pro social relationships”* (White 2003:151). Young offenders may live in communities with limited resources to promote reintegration, in terms of healthcare, education and employment prospects, so that unless governments address issues of social inequality and structural social and economic problems, reintegration may not be meaningful.

Provisions for youth offender contracts, in line with *No More Excuses*, emphasise the responsibilities of the child, but state and community responsibility towards young offenders is not clearly articulated in the 1999 Act. Young offenders may be bound into complex and inflexible arrangements which carry severe penalties for non-compliance. There may be considerable pressure for a young person to agree with and comply with a contract drawn up by adults. It is essential therefore that the young person is engaged by the process. In order to be restorative the referral order needs to offer justice and reintegration in a way that is in balance with the young person's understanding of

fairness³². Goldson (2000) argues that there is little in the measures available to a YOP that draws meaningfully on restorative justice principles. In its guidelines for *Effective Practice* (2003) the YJB states that its approach to restorative justice focuses on two key elements; victim satisfaction and engagement with young offenders but there is no specific mention of community responsibility (YJB 2003). *Effective Practice* (YJB 2003) also stresses that in restorative justice processes it is important that young offenders as well as victims be given the choice to be involved. A young person can refuse a referral order but an alternative disposal means a criminal record is certain, which is at best persuasive and at worst coercive.

Evaluation Research

A comprehensive evaluation of the “*Introduction of Referral Orders into the Youth Justice System*” was carried out between March 2000 and 2002 over the eleven pilot areas³³ (Newburn et al 2001a, 2001b). Data were drawn from a range of sources including surveys of YOT staff and panel members, a number of panel observations, analysis of YOT records and some interviews with offenders. The latter were largely structured telephone interviews with only a limited opportunity for young people to express their views. Forty young people were interviewed: 36 were male, 4 female, 36 white, 3 black and 1 other, 28 respondents were aged 15-17 years. Of the sample 25% had pleaded guilty to a driving offence. Other offences included violent assault, criminal damage, intent to supply drugs, burglary and theft with 2 offenders pleading guilty to arson and 2 to public order offences. Half of the sample received the 3 months minimum referral order (Newburn et al 2001a, 2001b).

Results from the interviews indicated that generally the level of information received before the first panel meeting was quite high. However the report notes that a minority of interviewees did not appear to have a clear understanding of the process or the

³² Mc Cold and Wachtel's (2002) quantitative study using data collected from published programme evaluations, including VOM in England and RISE in Australia, comparing victim and offender satisfaction with restorative and non-restorative processes, showed that fairness was a key element for all participants.

³³ The pilot areas were Blackburn, Cardiff, Nottingham, Oxfordshire, Swindon, Suffolk, Wiltshire, Hammersmith and Fulham, Kensington and Chelsea and Westminster. Pilots were overseen by an Inter-agency Referral Order Steering Group chaired by the YJB. Evaluation was carried out by a consortium from Goldsmith's College and the Universities of Kent and Leeds.

implications of the referral order. It was noted that several interviewees had difficulty remembering details about previous events. Notably though, a very high percentage (90%) received or remembered information about what would happen to them if they did not attend or if they did not stick to the contract. This would seem to indicate that the more punitive aspects of the referral order registered most firmly with the young people. Interviewees were asked what they thought the purpose of the referral order was and their responses fell into two categories; those who felt that the purpose was to punish and those who felt the purpose was *'to make up for what they had done'* (Newburn et al 2001a). As a contrast to their initial court appearance interviewees appeared to be positive about the referral order process, however, the positive effect was a focus on interviewees realising that they 'had a problem', 'needed to co operate' and 'make up for what they had done'. This seems to reflect an understanding of 'positive' defined by policy makers rather than young offenders. Clearly there is room here for more in depth understanding of the process from the offender's point of view.

Fifty two per cent of those young offenders interviewed said that they just went along with whatever the panel suggested and a significant minority (20%) felt that they had been pushed into things that they did not agree with. This highlights the fact that many young people felt that they had little influence over what was happening to them and is consistent with research into FGC in New Zealand where only a third of young people felt actively involved in the decision making process (Maxwell and Morris 1993). If young people are to be engaged in restorative justice then their views need to be sought. There is little evidence to suggest that hitherto young people have been actively consulted about restorative processes and what it might mean to them.

For restorative justice to be meaningful it is essential that all stakeholders are actively involved yet victim attendance has been low across all areas (Newburn et al 2001). Karp and Walther (2001) in their study of victim attendance at reparation board meetings in Vermont (which are very similar to referral orders) suggest four possible reasons for this response. Firstly, they suggest that restorative processes are still a novelty and victims may not appreciate the possible benefits, secondly that victims of minor offences may have put the incident behind them by the time panels meet, thirdly that victims may already have received compensation ordered by the court and fourthly that procedures for encouraging victims to attend are poor. Newburn et al (2001b)

support this view, finding that victim contact is labour intensive, time consuming and requires specific training but also that there is tension between the requirements of informed consent, the police role as gatekeepers and the YOP's aim to involve as many victims as possible. A particular problem is a poor response from corporate victims.

Victims who have attended report high levels of satisfaction with the process especially the opportunity to ask questions and express hurt, fear and anger about the effect of the offence on them. There is evidence to suggest that victims often see emotional restoration as far more important than material or financial reparation. For example Umbreit et al (1994) found that a quarter of victims who had experienced mediation spontaneously mentioned the importance of the process for resolving feelings of distress. Evidence from RISE in Canberra supports this, suggesting that what victims want is not so much substantial reparation but symbolic reparation, primarily an apology (Strang et al 1999). Face to face meetings with offenders frequently reduced fear and anger and increased feelings of sympathy with the offender. Figures from RISE show that 65% of victims felt anger before a conference and only 17% felt sympathy but after conferencing these figures had changed to 27% and 50% respectively.

An apology then seems crucial to restorative success. However the form the apology takes may be problematic for young offenders. The most common form of reparation was a letter of apology to the victim (when the victim did not attend in person). This had a mixed response from young offenders, many of whom found the task too hard or didn't write enough to satisfy the panel. There is no information in the report on educational achievement but school failure is a significant risk factor (Audit Commission 1996) which may mean young offenders would find this activity especially punitive and shaming of their ability to write rather than shaming of their behaviour. If, as the research suggests, 31% of offenders 'showed no expression of remorse' then further research is necessary to understand why young offenders feel that way. Young offenders could be feeling remorse without being able to express it in a way that is clearly visible to panel members.

Community based forms of intervention were better received when they were perceived by young offenders to be relevant and interesting (for example driving courses for road

traffic offences). One to one sessions were considered especially successful as many young offenders were uncomfortable being forced into close contact with other young offenders for group activities. There is room here to examine whether this was because young offenders felt labeled as a group and stigmatised by the experience. McCord (2002) has warned that some programmes of intervention can have harmful or have adverse effects on young people, particularly she suggests, programmes in which potential young offenders have the opportunity to group together. Group bonding can encourage bragging about deviant behaviour and further deviant activity. McCord (2002) relates this finding to Construct Theory of intentional action in which peer responses among young offenders provide potentiating reasons for further offending. The kinds of community activity that young offenders undertake as part of the contract could therefore be crucial to both the processes and outcomes of restorative justice.

In response to *Home Office Research Study 242* (Newburn et al 2002), Cap Gemini Ernst and Young (Management Consultants) was commissioned by the *Youth Justice Board* in March 2003 to address areas of concern that had been raised by the evaluation. This research was to address three main issues: the appropriateness of the mandatory use of referral orders for non-recordable offences, the use of referral orders for most serious offences and the use of referral orders in conjunction with Court ordered compensation. As a result of this survey and structured interview research, the legislation regarding referral orders was amended on 18th August 2003. From that date an element of discretion was returned to magistrates for minor offences so that referral orders are no longer mandatory for minor offences but remain mandatory for more serious non-imprisonable offences. This was clearly in response to resource constraints, but greater discretion by magistrates, and financial compensation as a court priority may undermine restorative justice principles. In July 2003 the New Labour government published the consultation document *Restorative Justice: the Government's Strategy* (Home Office 2003) which indicated a long term commitment to an expansion of restorative justice. The Home Secretary, David Blunkett, admitted that "*we are still learning about where restorative justice works best*" (Home Office 2003:5). However, two years later the Home Office restorative justice policy team was shut down as part of

staffing cuts and a number of pilots were closed due to lack of funding³⁴.

Contemporary public opinion suggests that there is considerable pessimism about youth crime and the quality of youth justice responses to it (Hough and Roberts 2004).

However, co-existing with public pessimism, which is generally based on systematic misinformation, largely as a result of inaccurate media representations of youth crime³⁵, is a contradictory set of attitudes. First, the public is not as concerned or sceptical as the tabloid press would have us believe. Nor do people favour locking up young people as much as might be inferred from responses to general questions about sentencing.

Hough and Roberts (2004) found, in their study of public opinion about youth crime and justice that support for custody fell when even a few details about a young offender were presented to respondents. The survey also demonstrated a high level of public support for community sentences and reparation. These findings show the importance of putting a human face on the 'problem' of youth crime. The problem with broad based largely quantitative research, is the limited opportunity it offers for young offenders to express opinions in their own way. It addresses young peoples responses only to the criteria laid down in policy evaluations, and does not allow them to play an active role in the research. This kind of research tends to evaluate the success or failure of policy. It neglects the human face of policy and how far policy corresponds to theory and practice.

Conclusion

The introduction of referral orders in England and Wales provoked wide ranging critical comment. Muncie (2002), for example argued that we should be wary of transposing policies from other jurisdictions to the U.K, because of the danger of undermining the positive potential of restorative justice within a punitive 'what works' ideology. Others

³⁴ . In February 2007 Research led by Sherman and Strang commissioned by the Esmee Fairburn Foundation and the Smith Institute into international evaluations of RJ concluded that RJ reduces the likelihood of re-offending and meets the needs of victims. This report may re-ignite government interest in and funding for RJ.

³⁵ A study by Pfeiffer et al (2005) on media and perceptions of crime and sentencing attitudes, suggests that the pattern of television viewing is associated with the belief that crime is rising even though German police recorded statistics show a decline in total offences. A belief that crime is rising is the factor most strongly associated with a preference for stiffer penalties.

have suggested that referral orders come close to fulfilling at least some restorative justice principles and values (see for example, Pitts 2000, Crawford and Newburn, 2003). What I have attempted to illustrate in this chapter is that we cannot escape the social, historical and political context of youth crime and justice in England and Wales which provides the framework for the form in which restorative justice is interpreted and implemented.

In **Part One** I addressed the link between youth and crime and its construction as a 'problem'. Despite the fact that the boundaries between childhood, youth and adulthood are unclear; constructed and re-constructed over time and over space, there is an acceptance that young people are a cause for concern. They represent the hopes and fears of a society, which has taken for granted the dependence and innocence of childhood and the deviance of youth. Throughout the twentieth century popular cultural images, emphasised through the media, have reinforced official concerns that young people are a problem. From specific moral panics to an increasingly total panic, young people are identified as being central to the problem of social disorder. Youth crime has become an issue that dominates the political agenda, backed up by studies and statistics, which focus on the criminal behaviour of young people (rather than young people as victims), and shape increasingly net-widening interventions. This section of the chapter outlined attempts by youth justice to deal with the youth crime 'problem' through the competing logics of welfare, justice, diversion, custody and more recently a managerial approach. It is into this context that restorative justice has emerged.

The New Labour government was committed to bringing elements of restorative justice into legislation primarily through the *Crime and Disorder Act 1998*. It introduced a raft of youth justice measures to be overseen by a newly created Youth Justice Board and Youth Offending Service. **Part Two** of this chapter provides a critical review of these policy measures. It argues that incorporating restorative justice into mainstream youth justice holds the danger of the distortion or dilution of restorative justice principles and values to appease a political agenda. **Part Three** zooms in on the referral order. It examines how the referral order was conceived as government policy and provides a review of evaluation research in the early days of referral order implementation.

There are two main reasons why qualitative research from the offender's perspective is important. Firstly because evaluations have tended to be large scale quantitative analyses which do not allow participants to 'tell their story' in a meaningful way, and secondly because the focus of evaluations has been so strongly on questions relating to implementation and outcomes rather than processes. Crawford and Newburn (2003) are critical of a perceived division in criminology between those engaged in largely theoretical study and those whose work concentrates on empirical, largely quantitative data analyses that have underpinned the 'what works' movement. Bottoms (2000) refers to this as the 'pragmatic division of labour'. He asserts that criminologists can neither avoid theory nor ignore the fact of the real world with which they must engage. What I have aimed to do in this research is to take these comments on board and provide a small scale, localised in-depth, empirical study, which engages meaningfully with both the theory underpinning restorative justice and the relationship between the politics, policy and practice of restorative justice.

4. Methodology

This chapter outlines the research strategies which have been adopted in order to address the research questions. It offers justification for choosing these methods of data collection and analysis and reflects on the research process. The chapter traces the research journey from negotiating and maintaining access to collecting and making sense of the data. It explores ethical issues and the particular difficulties involved in researching children and young people. It argues that an ethnographic approach, using multiple methods of documentary analysis, participant observation and interviews, is the most appropriate for giving voice to young people undertaking a referral order.

An important aim of this research was to examine the strengths and weaknesses of the way that the referral order was implemented in a local context. The emphasis was on the feelings and attitudes of young people who were experiencing a referral order and to construct a picture of their experiences, in which the voices of these young people could be heard. The production of such knowledge needed to incorporate and relate theoretical principles and effective, ethical and reliable research methods (Harvey 1987). By adopting a reflexive approach to the research process, it was possible to consider the theoretical and methodological implications of the strategy chosen, as well as the impact of the research on the participants and on me. This chapter unravels and interrogates the research process. It describes how effective methodologies were developed and established and how power dynamics were considered and negotiated. It describes the process of data analysis and theory building and the creation of an ethnographic account.

Designing the Research:

In **Chapter Three** I argued that we needed to go beyond the kind of large scale quantitative and survey research which has characterised evaluations of restorative justice initiatives. I have argued that these approaches tend to oversimplify the complexity of young peoples' experiences or ignore them altogether. This small scale in-depth study focuses on the experiences of a group of young offenders who were undergoing, or who had recently experienced, a referral order. An interpretive approach

using qualitative techniques was especially appropriate for giving voice to young offenders; hearing their accounts, privileging their subjective views and interpreting the cultural significance that they placed on events (Eder and Fingerson 2002).

Qualitative techniques encompass a diversity of approaches, each with their own particular strengths and weaknesses. An ethnographic approach was chosen for this research. Ethnographic methods are appropriate for the study of children and young people as they allow them a more direct voice and participation in the production of data than is possible with other methods (James and Prout 1997). Ethnography involves participating in people's daily lives for an extended period of time, watching what happens, listening to what is said and asking questions. The aim is to collect whatever data is available to throw light on the issues at the centre of the research (Hammersley and Atkinson 1995). Its basic strength is that it bears a close resemblance to the routine ways in which people make sense of their world. It allows the researcher to be both storyteller and scientist. The researcher can establish a relatively long term relationship with participants in their 'natural' setting at the same time as developing a scientific understanding of relationships and events. Crucially it allows for flexibility, which facilitates seeing the research topic in new and critical ways.

An ethnographic approach was not a simple choice. There is an inherently political nature to the research process and the construction of ethnographic texts. Issues such as language, the nature of representation and power relations, dominate current debates (Coffey and Atkinson 1995). The impact of postmodernism has also challenged traditional modes of representation and encouraged reflexivity. Despite its flexibility and open-ended nature, an ethnographic approach still needs a robust attitude to pre-fieldwork preparation and planning.

Locating the Field and Defining the Boundaries

An early task was setting the geographical boundaries for the research. There was a danger that too wide a focus could result in too shallow an understanding. I decided to focus on the Eastern Region of my chosen County. This region had four youth courts and four Referral Order Teams. They operated in slightly different ways in each area but there was co-operation between them and some overlap of personnel. I chose to

focus on referral orders which came out of one youth court and were within one administrative district. There were two Youth Offending Panels (YOPs) operating in this area. Carrying out the research on just these two panels seemed to offer the best opportunity to maintain some control over the data collecting process.

This choice was not without its problems. In several cases the young offender was sentenced in one youth court, the panel was held in another area and the young person was supervised in a third. This made keeping track of young people who had initially agreed to participate in the research difficult. As far as possible however I tried to keep within my designated area. The research had thus narrowed to a geographical area of approximately 10 by 15 miles with a total population of approximately 140,000. Using Indices of Deprivation from the Office of the Deputy Prime Minister (2004), the research area ranks slightly above average in income and employment scales (of 354 Local Authority Districts in England) and is in the top of the third quartile in the index of multiple deprivations. It includes four wards which rank in the top 20% of deprived areas nationally. It contains an interesting mix of more affluent owner occupiers (over 70%) in coastal, rural and urban settings and estates of social housing. In socio-economic terms, it was therefore largely representative of the County as a whole.

Negotiating Access

A central problem in ethnographic research is how to establish and maintain 'access' (Pearson 1993). The difficulties of negotiating access to an organisation are frequently dismissed as methodological inconveniences, but May (1993) argues that we should take such difficulties and the feelings they invoke seriously. They are an essential part of the research process and starting points to better understanding. In this case the important 'gatekeepers' to my research were individuals working in the Criminal Justice System. In these formal bureaucratic organisations, initial access negotiations were focused on getting official permission to do the research. Permission could legitimately be granted or withheld by key personnel so it was important to identify the hierarchy of power and decision making (May 1993).

There was a formal procedure for research approval so I submitted a County Social Services Project Proposal Plan. This was a detailed document, the exact format of

which was still being developed at the time I applied. In many respects this was a useful exercise because it gave some insight into the main concerns of the organisation. These were primarily the ethical issues involved with working with young people and a concern that the location of the research would be confidential. This necessitated an application to the Criminal Records Bureau (CRB) for an Advanced Disclosure check and to assure personnel of anonymity. The submission of a formal plan was also useful later on in the research when my methodology was questioned and I was able to point out that this had been clearly outlined a year earlier. I also wrote to the Magistrates Courts Services for official permission to attend Youth Court which was granted on condition that I received permission from the Bench concerned on each court visit. The Youth Bench granted me open access to the courtroom (providing I received informed consent from all parties attending court) and opportunities for post court discussions with the Youth Court Magistrates.

Ethical Issues

In order to ensure the integrity of the research, ethical issues needed to be considered right at the start of the research (Kvale 1996). They were also closely bound up with the process of negotiating access. Subscribing to a code of ethics was essential to preserve participants' rights and '*to do no harm*' (Fetterman 1998). Barnes defines ethical decisions in research as those which arise:

when we try to decide between one course of action and another not in terms of expediency or efficiency but by reference to standards of what is morally right or wrong. (Barnes, J 1979:16).

The *British Sociological Association* (BSA) highlights researchers' "*responsibility both to safeguard the proper interests of those involved in or affected by their work, and to report their findings accurately and truthfully*" (2002:1). In this research I was also guided by the *Code of Research Ethics* of the *British Society of Criminology* (BSC) which provides a framework of principles to assist choices and decisions which have to be made, recognising that there are distinctive ethical challenges in the nature of qualitative research techniques and their application to criminological topics. In addition the *Data Protection Act* (1998) and the *Human Rights Act* (1998) have both had an impact on the statutory rights of participants in social research.

As feminist and radical critics have pointed out, simply 'knowing' about the issues of values and ethics is not a sufficient basis upon which to conduct research; they need to form part of research practice itself. Hence it was necessary to be aware before, during and after conducting the research of relevant ethical issues, such as informed consent, anonymity and confidentiality, exploitation and the consequences for future research.

Informed Consent

Information on the purpose of the study, the right to ask questions and to withdraw at any time are important features of informed consent, which also emphasises that participation in the research is voluntary, that no harm will come to participants (or that any risks are clearly explained) and that participants' privacy will be protected. In qualitative research there may be limitations to the informed consent process, for example, it was difficult to explain in advance the precise characteristics of the study as the research questions underwent some changes over the course of the project (Marvasti 2004). Ethics had to be addressed in order to get permission to work with social services and the courts but importantly, in order to ensure continued access, gatekeepers needed to be updated regularly on changes to the proposal to make sure that consent was ongoing. I was aware that for some individual participants oral consent might be more appropriate than written consent. For example, young people might fear that information regarding their participation would be revealed to social services or other agencies (Warren 2002). A further issue was that the logic of informed consent presumes that the respondents will understand the intent of the research, and are able to give consent. For those young people aged under 16 years consent had to be given by an appropriate adult as well as the child. However it was particularly important for my research and for building a trust relationship, that it was clearly the child who consented. With these potential problems in mind I made sure that the information given to young people was age appropriate. I obtained written consent from those willing to give it and oral consent from those more comfortable not signing a form.

Anonymity and Confidentiality

Privacy and confidentiality were maintained throughout the research. I followed a policy of non-disclosure of information and gave the participants assurances of confidentiality as far as was possible. I was aware that researching into crime related subjects could present the problem of participants revealing previously undisclosed offences, or young people disclosing offences that had been committed against them (Martin 2000). Confidentiality could not therefore be absolute. Pseudonyms were used in order to protect personal identity and locations were disguised. I followed BSA (2002) guidelines which suggest that when recording for research purposes it should be made clear to participants the purpose of the recording and to whom it will be communicated. I also followed BSA (2002) guidance on the safe storage of research data and legal requirements for data protection set down in the *Data Protection Act* (1998).

Exploitation

It has been argued that research necessarily involves the exploitation of those studied and particularly that the researched are frequently less powerful members of society (Hammersley and Atkinson 1995). This is especially true of research into young offenders. At the same time however, I was offering young people an opportunity to have their views heard, and express opinions which may contribute to changes in policy and procedure. I hoped that participating in this kind of research study might contribute to their sense of self esteem in that the research acknowledged that they had privileged information which was valued. I was aware that researching with young offenders may increase or revisit their feelings of anxiety, shame or anger therefore it was important to consider the potentially harmful emotional aspects of the research and attempt to minimise them. Potential physical risks for both me and the young people also needed to be considered. With this in mind I was careful to choose locations for the interviews where there were parents or youth workers nearby to provide assistance if necessary.

Consequences for Future Research

Since I was relying on being given access to particular and sensitive settings, it was impossible to conduct meaningful research without the goodwill of gatekeepers. A

negative reaction either to the research process or to the findings of the research might inhibit future research from being undertaken. There could however be a tension between the intellectual responsibility of academic research and the interests of those studied. The BSA advises that:

Researchers have a general duty to promote the advancement and dissemination of knowledge, to protect intellectual and professional freedom, and therefore to promote a working environment and professional relationships conducive to these. (BSA Code of Ethics).

The individual researcher has an ethical obligation to colleagues not to 'spoil the field' but this may not always be possible, "*there may well be conflicting interpretations and clashes of interest*" (Hammersley and Atkinson 1995:275). Becker (1964) has suggested that there are irreconcilable conflicts between the interests of science and the interests of those studied, which Hammersley and Atkinson (1995) regard as an exaggeration. Nevertheless it was important to seek to avoid damaging confrontations with the gatekeepers and participants of the research (BSA Code of Ethics). In my view the best way to proceed in this particular research was to provide gatekeepers and participants with adequate information and opportunities to discuss the research, and to be open about the importance of a critical approach.

Early Days in the Field

Having received formal approval I was able to begin to build relationships with individuals within the organisation. There were some problems. Enthusiastic support from the County Youth Justice Manager, for example, gave me access to managers at area level but also fostered a certain amount of suspicion that I may be 'checking up' on them for policy makers. This was understandable because of the pressure put on them by targets and performance indicators. However, since the referral order was such a new development, managers did not seem to feel that their established procedures were under threat and some social workers hoped that my research would help to reveal the need for better resources. I also became aware, as Bruyn (1966) has noted, that clearance at one level of an organisation did not ensure clearance at another level. For example each Referral Order Team worked as a close knit, relatively independent unit and had the power to frustrate access regardless of official approval from above. It was

different in the Youth Court where I was able to turn up in court and speak to whoever was there on the day.

As I worked my way around the Youth Offending Service (YOS) meeting new people at different levels I also learnt the value of 'name dropping'. This was a delicate operation as I needed to 'pitch' it at the right level. In emails to the social workers who organised panel meetings for example, I started by listing everyone in the organisation who supported the research, but soon found out that there was a person to whom they all turned to check my credentials. I then only had to mention this name for suspicions to evaporate. I discovered then, that for a friendly response it was less the position in the organisation that the person held, than the level of respect that they commanded amongst other workers, that was the key to successful access.

Hammersley and Atkinson (1995) point out that, understandably, gatekeepers will be concerned as to the picture of the organisation that the researcher will paint. Hence they may attempt to exert some degree of surveillance and control. One early concern from members of the YOS was a certain amount of discomfort with ethnographic methods. My gatekeepers were used to surveys containing a clear list of questions which would not vary for each participant. The idea of semi-structured interviews provoked some feelings that the research might run 'out of control'. Therefore, on some occasions, it proved useful to reveal something of my background to reassure key gatekeepers of my professional integrity. Maintaining access is as important as gaining access and as I began the exploratory work, following the progress of the referral order from youth court to completion, I kept notes detailing dates and times I had last contacted someone so that I could be sure to contact them again at regular intervals. Keeping gatekeepers well informed improved my credibility as well as prompting further suggestions and invitations to events.

The way I presented myself was different with different individuals. Taking my cue from Goffman (1959) and Hammersley and Atkinson (1995) I gave much thought to '*personal front*' and '*impression management*'. Whereas it was appropriate to wear a suit to youth court it was better to 'dress down' at meetings with the youth offending team and at panel meetings in community centres. Carole Adams (2000) has questioned this approach on the grounds of authenticity and integrity. However, I was used to

wearing and comfortable in, a suit for more formal occasions, and casual clothing was essential for outdoor recreation activities so I did not find this to be a problem. The tension was between presenting myself as someone who knew what they were doing, from a respected academic institution, and someone who knew very little and who 'wanted to learn'. With senior management it worked best to convince them of my competence, since, as Lofland and Lofland (1995) point out, I did not want the research to be perceived as frivolous or ill thought out. At other levels it was better to present myself as someone who knew very little. For example, I made an early mistake with a middle manager by correcting him on a point of restorative justice theory. This could easily have alienated him. Over time, as I got to know people in the organisation, I found that I had established a working identity as 'the researcher from the university' and no one seemed to notice any more what I was wearing or asked about what I was doing.

Concerns about the research were also different at each level. Senior management were most interested in receiving findings and reports of my results, managers were particularly concerned about ethical issues; anonymity and confidentiality, and youth justice workers most concerned about the possibility of increased paperwork. I also became conscious of the danger of over identifying with the youth justice workers. I came to the research having been a teacher for twenty years; always in 'difficult' inner city schools and with a background of working with children with learning and behaviour difficulties. My personal history made it easy for me to sympathise with those who had to make a system work, often with lack of resources and pressure from above. Even at an early stage of the research I recognised that it was going to be difficult to maintain a distance at the same time as developing important relationships of co-operation. Like Hobbs (1988) I tried to 'go academic' rather than to 'go native' by returning to the academic environment after every encounter to write up notes and reflect on the experience.

A year into the research all my key contacts were made and progress meetings with the County Referral Order Manager, Area Co-ordinator and local team had become quite informal. At this point however staff in the Youth Offending Service (YOS) changed completely. The County Referral Order Manager and the Eastern Region Co-ordinator with whom I was working both resigned and so did one of the Referral Order Liaison

Officers (ROLO) who had been invaluable on a day to day basis keeping me up-to-date with new guidelines and documentation. At the same time my primary supervisor left the University. I felt quite bereft for a while until it became clear that they had all left the foundations in place for me to carry on. It did however change the climate within which I was working and new relationships had to be nurtured.

During this period of building networks of support, I became dependent on emails and telephone calls telling me when and where things were going to happen. I examined a large number of policy documents and working practice guidelines³⁶. I also collected useful statistical information on the age and gender of young people who had been referred, the type of offences they committed and also on the number of contracts satisfactorily completed. Key actor interviews³⁷ with Youth Justice practitioners helped to provide valuable information and situated vocabulary. Pilot interviews to test the method and types of questions were followed by more formal interviews. I interviewed six Referral Order Liaison Officers (ROLOs), five Community Panel Members (CPMs) and two Youth Court magistrates. These interviews examined how they perceived the referral order process and elicited their views on the constraints placed on them by, for example, budget and resources. They provided knowledge about interpersonal relationships and the workings of the organisation including their understanding of departmental guidelines. They also provided a useful sounding board and helped to synthesize my observations. They formed a crucial role in developing an understanding of the referral order process and professional ideologies and constraints

³⁶ The policy document is a fundamental element in the organisation of politics and governmental authority. Documents are a focus of administrative control. As Weber (1947 translation by Talcott Parsons) suggests, the operation of state bureaucracies is based upon written documents. Bureaucracies are faced with the problem of transforming their conversations into written reports in order to justify their participation and decisions (Cicourel 1968) Reports, for example, are a repository of 'expert' knowledge defining a problem and pointing to solutions. They translate events into records. Formal, official and legislative material which is written as part of a political agenda, in an institutional setting and in a particular social and historical context throws light on how information is represented and understood. A vast array of policy documents and practitioner guidelines were produced nationally by the Home Office and locally by individual Youth Offending Teams. These included legislation, management plans, performance targets, risk assessments and feedback forms as well as job descriptions. They were able to define policy and serve as a comparison between the policy and the practice of organisations. As Prior (2003) points out document content is important but official documents are produced in socially organised settings and therefore '*should be treated as social products*' (Hammersley and Atkinson 2002:168) and need to be approached critically. I asked questions about the purpose of documents, who had written the document and for what audience the document was written (Jupp and Norris 1993).

³⁷ See Appendix G Practitioners Interview Schedule.

Why an Ethnographic Approach?

The design of the research was strongly influenced by a well-established ethnographic tradition. Although my aim in this research was not to *become* an insider in my chosen setting, I aimed to see the referral order from insiders' perspectives and an ethnographic approach seemed appropriate for research emphasizing insiders' subjective experiences. Ethnography was traditionally associated with naturalism or naïve realism but the postmodern critique has questioned this linkage by allowing the development of different methodologies with the aim of distinguishing ethnography from lay accounts of social life (Brewer 2000). Despite the difficulty of clearly defining ethnography, Noaks and Wincup (2004) offer a working definition as follows:

"Ethnography is the study of groups of people in their natural setting, typically involving the researcher being present for extended periods of time in order to collect data systematically about their daily activities and the meanings they attach to them" (Noaks and Wincup 2004:93)

The essential core of ethnography is to understand a way of life from another's point of view (Spradley 1979). It means writing about the culture of a group of people; their patterns of behaviour, beliefs and attitudes in a social setting and using the concept of culture as a lens through which to interpret results. What remains central is a commitment to an interpretive approach (James 2001). For me drawing on this approach allowed for an empathetic understanding of the young offender's experience. Young offenders are a marginalised group and therefore their views are infrequently heard by mainstream audiences and their lives are often misrepresented, especially by the media (Ragin 1994). Only by observing, talking with, listening to young offenders and involving myself in their experiences could I hope to illuminate, in any depth, their feelings about the referral order process. For this reason I also drew specifically on a research strategy using the two data collecting techniques of participant observation and in-depth interviews which are linked to an ethnographic approach.

Ethnography and Deviance

One key reason for choosing an ethnographic approach was the influence of a long tradition of ethnographic work in the study of deviance, particularly in studies of young offenders. The later work of the Chicago School is inextricably linked with the development of ethnographic fieldwork. Key studies include Thrasher's "*The Gang*" (1927) and Whyte's "*Street Corner Society*" (1943). These, and other studies, highlighted the normality of criminal or deviant activities within particular social groups (Wincup and Griffiths 1999). Despite a range of criticisms, including that they failed to place the everyday world of crime and deviance into the wider economic and political context (Haywood 2001), the Chicago School established the importance of understanding how behaviour is meaningful in the social life-worlds of individuals.

This tradition of work led to the development of *subcultural* approaches to deviance, that argue that delinquency is a solution to the structural and cultural problems facing marginalized groups. Albert Cohen's (1955) research into gang culture identified shared beliefs and a specialised vocabulary among gang members. Cloward and Ohlin (1961) explained working class deviancy as a collective solution to restricted opportunity. In Britain, Downes (1966) used similar observational methods in his study of delinquent youth. 'The Birmingham School' at the Centre for Contemporary Cultural Studies in the 1970s, also used various ethnographic analyses to explore youth culture and subcultural style but, influenced by Marxism, addressed the political implications of deviancy.

A common criticism of The Chicago School is that it implied that individual action can be explained by environmental, residential factors. In contrast, an interactionist framework assumes that human action is characterised by free choice and flexibility which changes according to types of interaction and context. The social world is the product of such interactions. Ethnography has an affinity with interactionism because of a shared interest in capturing the actor's point of view. One of the key theorists associated with this 'appreciative' criminology is Becker. Becker's "*Outsiders*" (1963) was an ethnographic study of drug users that was highly influential for criminologists and formed the basis for the development of Labelling Theory. Another important

ethnographic study of male teenagers was carried out by Willis (1977). In *Learning to Labour*, Willis (1977) showed how deviance formalises conflictual relations with middle class culture and prepares working class youth for their inherited position on the labour market.

It is partly because of the difficulties of revealing, by other techniques, the hidden nature of much social activity, that ethnography has acquired such a prominent place as a feminist method. They both have experience, participants, definitions, meanings and sometimes subjectivity as a focus and they do not lose sight of context (Skeggs 2001). As Stacey (1988) argues

Many feminist scholars have identified ethnographic methods as ideally suited to feminist research because its contextual, experimental approach to knowledge eschews the false dualism of positivism and, drawing upon such traditionally female strengths as empathy and human concern, allows for an egalitarian, reciprocal relationship between knower and known. (Stacey 1988:21).

‘Empathetic ethnography’ offers unique insights for feminist researchers, enabling them to see the world from the insiders’ perspective. This approach has particular relevance for studying young female offenders. For example, Campbell’s (1984) study of girl members of violent gangs situates female gang members within the structural constraints of class and ethnicity, but also questions female stereotypes.

These key strands of criminological research departed from a positivist research tradition, which looked for individual causal factors of criminality, and adopted a more imaginative approach, looking at the characteristics of a social phenomenon and structural, rather than individual, causes of crime. It was this rich history of ethnographic work with young people which encouraged me to try a similar approach.

Reflexivity

One way in which ethnography has responded to the postmodern critique is by developing into a more rigorous approach adopting important principles of ‘reflexivity’ in which:

The orientations of researchers will be shaped by their socio historical localities. What this represents is a rejection of the idea that social research can be carried out in some autonomous realm that is insulated from the wider society and from the biography of the researcher. (Hammersley and Atkinson 1995:16).

Reflexivity thus involves not only participating in the social world but reflecting on the products of that participation.

Ethnographic techniques depend upon the researcher as the primary tool for the collection of data, participating, to some extent, in the lives of the participants (Hammersley and Atkinson 1995). They recognise that researchers are part of the social world they study, even if it is only as an unobtrusive presence, and not a neutral channel of communication (Hobbs and May 1993). Engagement with participants is an essential element of an ethnographic approach, but it can raise questions about the influence of the researcher on the research process (Aull Davis 1999). Lofland and Lofland (1995) counsel involvement and enmeshment rather than objectivity and distance but there is an inevitable tension between distance and closeness. One of the dilemmas inherent in the process of this research was the developing relationship between me as researcher and my participants. Hammersley and Atkinson (1995) suggest that the important thing is to set about understanding the effects of the researcher. Reflexivity “*recognises that texts do not simply and transparently report an independent order of reality*” (Atkinson 1990:7). May (1993) points out that understanding the effects on the researcher is as important as understanding the effects on the researched and the research process. The subjectivity of the researched and of the researcher and the inter-subjectivity of the research process cannot be eliminated or ignored but has to be accounted for and reflected upon (Renzetti and Lee 1993). Sociological reflection was thus important for understanding the feelings I experienced during the research, as well as the impact I had on my participants and the quality of the data collected.

Ethnographic research focuses on understanding a local population in a broader social and political context. By understanding one local community I hoped to contribute to understanding other local communities as well as understanding links between local, national, regional and global structures, policies and practices. This seemed especially relevant for understanding restorative justice. One of the strengths of ethnography is its ability to enhance understanding and interpretation of global issues as they manifest

themselves at local level (Schensul et al 1999). This can help to identify resources supportive of change, assist in formulating intervention programme models as well as assessing those models. I was aware, however, that a small scale project such as the one I was embarking upon could be criticised on the grounds of the difficulties of generalisability. Hammersley (1992) for example, warns of the dangers of generalising from a study of a small number of cases and suggests that reasonable judgements can only be made with:

reflection and clarity about the population and time period to which generalisation is to be attempted, use of aggregate data, extent and generated by survey research, and/or systematic coordination of ethnographic studies to sample across populations and over time. (Hammersley 1992:91).

These were some of the problems associated with an ethnographic approach which made it far from a simple choice. In many ways both the strengths and weaknesses of ethnographic research lie in its flexibility and open ended nature. It was still possible for the research to be systematic and rigorous. Importantly, analysis was an ongoing process. It fed into the research design and data collection and allowed for new questions and ideas to be explored. As May (2001:159) observes “*fieldwork is a continual process of reflection and alteration of the focus of observations in accordance with analytical developments*”.

Research Methods

The most important criterion for choosing a particular method is not its relationship to academic arguments about methods, but its fit with the question being asked in the research. (Oakley 2004:191).

The main research methods employed in this study were participant observation and semi-structured interviews. These methods were chosen because of their suitability for addressing the research questions. Denzin (1970) defined participant observation as a field strategy that “*simultaneously combines document analysis, respondent interviewing, direct participation and introspection.*” (Denzin 1970:28). For Okely (1994) participant observation helps to make sense of even the most detached survey data. Fieldwork can also counter or support interpretations of statistics. This *triangulation* allows for different styles of research to complement one another and

balance the potential weaknesses of one style against the strengths of another (see for example Bulmer 1984, Brewer and Hunter 1989, Brannen 1992, and for a fuller discussion see Noaks and Wincup 2004). Whyte (1984) has stressed the importance of combining observation with interviewing, as it is not always obvious from observation alone what is going on. Observations can provide insights as a method of exploration in order to discover relevant variables of behaviour, which can be turned into questions for interviews. Interviewing helps to uncover the ‘hidden agenda’ especially if we are observing a culture in which social processes *appear* to be similar to our own.

Participant Observation

The advantage of participant observation is that we can represent the meanings of a setting in terms more relevant to our subjects than other methods permit. (Gubrium 1991:140).

With access established,³⁸ I attended youth court and panel meetings whenever I could. The importance of observing individuals in their natural setting as they go about their ordinary activities, is stressed by Becker (1963) and the Chicago School. It is about engaging in a social scene, experiencing it and seeking to understand and explain it. By observing, listening and experiencing, in a disciplined and systematic way, impressions were formed and theories considered, reflected upon, developed and modified (May 2001). This approach can provide insights when there are important differences between the views of insiders as opposed to outsiders (for example youth cultures) or when the view is obscured from outsiders (for example in justice organisations) (Jorgensen 1989). It has the potential to place individuals in a group context and gain a realistic picture of the dynamics of individual and group behaviour and opens up possibilities for encountering the unexpected ideas worthy of further study or “*the advantage of serendipity*” (Whyte 1984:27). Observations thus offered me insights that might otherwise have been obscured, for example, the difference between social situations that were an everyday activity for the practitioners, but an extraordinary event for the young offender.

³⁸ See Appendix E for Research Timetable.

I made extensive observational field notes and asked many questions. Field notes included descriptions of the setting, who was present, what they did and said and how they responded to one another (Spradley 1980). Observations also allowed my role to be negotiated and the establishment of rapport and trust with those involved. Moreover it also enabled informal conversations with participants about what actually happened, rather than just what is supposed to have happened and it raised questions that could be explored further in interviews. This involvement provided useful background information and allowed practitioners the opportunity to contribute their experience and knowledge about the culture of the institutions. It also illustrated a genuine desire on my part to listen and learn from what they had to say.

I found it interesting to observe in two very different environments. The youth court was very formal but panel meetings were less formal. In both environments practitioners had clear roles. By now I was known and accepted by the key gatekeepers but it took some time for me to establish a role for myself as ‘researcher’ with other professionals and volunteers. For example, there were spatial considerations. I had to negotiate a place for the ‘researcher’ to sit. At first I felt as though I was explaining myself to a sceptical audience and I experienced some suspicion. Gradually though, over time I became a familiar face and I found that practitioners who now knew me, explained to newcomers what I was there for. Practitioners began to ask how the research was going and to volunteer information they thought might be useful. I began to fit into my role as ‘participant as observer’ (Gold 1969). This process seemed to echo Whyte’s (1984) experience in Street Corner Society “*As I sat and listened, I learned the answer to questions I would not have had the sense to ask*” (Whyte 1984:69).

Not only did this period of exploratory work provide me with a detailed understanding of the process of the referral order and the culture of different aspects of Youth Justice in the research area, but it was invaluable in reinforcing my understanding of observing and listening as a reflexive and ongoing process. It allowed me to be sensitive to the issues and nuances of working in youth justice and often revealed the tensions and conflicting needs of organisations and individuals. At this stage clearer conceptual boundaries were drawn and some tentative themes began to emerge (Fetterman 1998).

The main fieldwork period involved arranging interviews with young offenders and more structured observations at panel meetings. I attended all the initial panel meetings held in the two locations until thirty young people agreed to take part in the research³⁹. There was only one refusal. The sample consisted of 22 boys and 8 girls. Prior to their initial panel meeting, I told them about the research and gave them an information sheet. I asked them if they were willing to participate and then, if they agreed, I observed at this first meeting. I structured my observations by using an observation sheet based on the conceptual framework underlying restorative justice. I then conducted informal interviews immediately afterwards and made notes⁴⁰. This framework helped me to refine themes and explore further ideas and connections. I continued to attend all their review panel meetings and as many of their contract activities as I could. I also attended youth court if they had been returned to court. In this way I tracked each one of the young people in the sample from the beginning to the end of their order. I asked all thirty young people to consent to a more formal interview and all of them initially agreed. Eventually semi-structured interviews were secured with 21 young people (70% of the sample), 14 boys and 7 girls (one third of those interviewed). Some of the problems I encountered securing interviews are explained in the next section.

Interviewing

Observation guides us to some of the important questions we want to ask the respondent and interviewing helps us to interpret the significance of what we are observing. (Whyte 1984:96).

The fundamental task of interviews and interviewing is generating and maintaining conversations with people in order to “*yield rich insights into peoples biographies, experiences, opinions, values, aspirations, attitudes and feelings*” (May 2001:120). For Spradley (1979) the purpose of interviewing is to make “*cultural inferences*” (Spradley 1979:8) in order to understand cultural meanings systems. This requires the interviewer to make inferences from what is said and from how people act. The purpose of most

³⁹ During the three month period July to September 2002, 91 referral orders were completed in the research County so it seemed an attainable target to gain a sample of thirty. Panel meetings were held every week but there were not always initial panels or there might be two initial panels in one week.

⁴⁰ See Appendix F for Field notes Observation Sheet.

qualitative interviewing is to derive interpretations from respondent talk or, as Carol Warren puts it, “*aiming to understand the meaning of respondents experiences and life worlds*” (Warren 2002:83).

Following Kahn and Cannell (1983), May (2001) suggests that there are three necessary conditions for the successful completion of interviews. The first is *accessibility* which refers to whether or not the respondent has access to the kind of information which the interviewer seeks. The second condition is *cognition* or an understanding by the respondent of what is required of them in the interviewee role. Thus it is important to explain the research to participants and clarify questions. The third condition is *motivation* which suggests that problems occur if it is perceived that the respondent’s information and participation is not valued. Gorden (1980) usefully suggested a number of *inhibitors of communication* which could cause problems. He set them out in two categories: those which make a respondent unwilling to give information, such as a threat to their ego, fear of disapproval or trauma and those which reduce the respondents’ ability to give information, such as forgetting things or chronological or inferential confusion. In order to minimise these inhibitors, I was influenced by Gorden (1980), who suggested a number of *facilitators of communication* which may enhance the flow of information. These include the interviewer expecting co-operation from the interviewee, expressing acceptance and appreciation, listening with sympathetic understanding and showing curiosity. These facilitators include being aware of non verbal behaviour such as the use of body language, timing and tone of voice.

In a research interview the interviewer defines the situation, introduces the topics of conversation and, through questioning, steers the course of the interview (Lofland 1971). A first concern was to establish rapport and create an atmosphere in which the informant felt safe enough to talk freely. Following Whyte (1984) I deliberately kept the conversation away from emotionally loaded topics early in the interview. I felt it was also important, particularly with young offenders, to avoid giving advice and passing moral judgements even if they violated my own ethical or political standards. Spradley (1979) suggests that the rapport process should progress from apprehension to exploration to co operation to participation. Guided by Spradley (1979), I hoped that I would be able to develop a trust relationship and that my interviewees would have an active role in the interview.

The kinds of questions I asked were crucial to the quality of the data collected (Burgess 1990). Kvale (1996) argued that a good interview question should contribute *thematically* to knowledge production and *dynamically* to provide good interview interaction. Thematic questions relate to the topic of the interview. Dynamic questions keep the flow of conversation going. Kvale (1996) stressed the importance of brief simple questions and the role of the interviewer as 'active listener'. Follow up questions extend purely descriptive answers and probes are essential for pursuing content. For example I used probes to ascertain the meaning of certain cultural terms used by my participants. Following Kvale (1996) and Spradley (1979) I identified three main types of questions to be used. Firstly, descriptive questions allowed my informants to provide statements about their activities. Descriptive questions formed the backbone of the interview. Secondly, more structured questions helped me to find out how informants organised their knowledge and thirdly contrast questions allowed my informants to discuss the meanings of situations and provided an opportunity for me to make comparisons.

It was important to consider the wording of questions. I wanted to avoid ambiguous or loaded questions, where I might be in danger of imposing the answer (Burgess 1990). On the other hand leading questions might help to check the reliability of the interviewee's answers as well as to verify my interpretations (Kvale 1996). I wanted to ensure some consistency, in which instances are assigned to the same category by different observers (Gorden 1980), and validity. The notion of validity has been controversial in qualitative research, with some researchers rejecting it altogether as inappropriate in field research. It refers to the extent to which we regard the data as conforming to fact, or the extent to which an account accurately represents the social phenomena to which it refers. Hammersley (1992) has suggested that qualitative researchers can address validity by adopting a 'subtle form of realism'. The key is being convinced by the plausibility and credibility of the evidence.

The Problem of Difference

When we enter ethnography we enter it with all our economic and cultural baggage, our discursive access and the traces of positioning and history that we embody. (Skeggs 2001:434).

The relationship between interviewer and respondent is determined to a great extent by how their roles fit into a wider social context. This *triadic relationship*, between the nature of the information sought, the nature of the respondent and the nature of the interviewer tends either to inhibit or facilitate the flow of information (Gorden 1980). Reactivity, or the way in which the respondent reacts to the interviewer, depends upon the personal characteristics of the researcher and the researched. Taking this into account was a crucial part of the research process. The age of my participants was fundamental to the research, but gender, social status and, to a lesser extent, ethnicity, were all variables to be considered in the research process.

Gender

Lorna McKee and Margaret O'Brien (1983) argue that gender influences the research process and has "*profound implications for what is disclosed or withheld, pursued or neglected*" (McKee and O'Brien 1983:147). They suggest, for example, that men and women engage in conversations and listen differently. In western culture men need to distinguish themselves from women by signifying greater capacities for controlling people and the world, for autonomous and rational thought and action and for risk and excitement (Connell 1992). There was a need for me to recognise and respond to problems that may arise from how men 'do gender' in an interview; the ways in which men signify in culturally prescribed ways a creditable masculine self (Schwalbe and Wolkomir 2002). The interview situation may appear to pose a threat because the interviewer is setting the agenda, and this may provoke a defensive response. Such displays of course, form a useful part of the data. I was aware of potential problems because I am an older woman, and two thirds of my interviews were with young men, who might have developed better rapport with a male interviewer because of shared gender and an assumed distancing from females (Frosh et al 2002). I felt that an element of symbolic control for the interviewee (such as being involved in choosing the

time and place) would be helpful and in practice all interviews were conducted on that basis.

Interview studies have played a central role in redressing women's invisibility but Reinhartz and Chase (2002) warn against the expectation that a woman interviewing women will result in the developing of sisterly bonds of mutual understanding. Research relationships are more complex than that. Establishing rapport may be easier given that women are typically socialised to connect with others and express themselves verbally but uncertainty and discomfort may arise for interviewers and interviewees whose social locations differ dramatically. McRobbie (1978) has suggested that it is more difficult for a woman to be 'one of the girls' than for a man to be 'one of the boys'. I thought that this could be particularly relevant when interviewing female offenders who display 'atypical' female behaviour. Phillips (2003) has found, for example that adolescent girls can display aggressive behaviour very similar to that of boys, which is associated with having a positive self image rather than as a result of victimisation (Phillips 2003). This 'bad girl femininity' (Messerschmidt 1997) appears to be a transitory life experience but would need to be taken into account during interviews with female young offenders. One third of the young people in my sample were female so that gender issues might be explored and could be meaningful. One approach I used when interviewing these young women was to include discussions of their gendered experiences outside of their criminality (Cain 1989); experiences that we were, to some extent, able to share.

Social Status

Gender's relationship to crime is conditioned and mediated by other variables especially social class and 'race' and ethnicity (Hagan and McCarthy 2000). Class position and geographical location still broadly determine the shape of their future lives for working class young people (McDowell 2003). Many working class young people are still expecting a future prospect of living in the locality where they were brought up working in low paid insecure employment. As the structure of the labour market alters in late modernity, young men in particular are often excluded from the forms of manual labour which brought previous generations' social respect.

Respect and respectability are key words. Based on interviews with working class women, Skeggs (1997) has argued that 'respectability' is one of the most ubiquitous signifiers of class. She draws on Bourdieu's (1984) documentation of the ways in which class differences are mapped on to the body as well as reflected in every aspect of everyday life. Skeggs (1997) notes that in Britain, the notion of respectability "*informs how we speak, who we speak to, how we classify others...and how we know who we are (or are not)*". She argues that respectability is usually the concern of those who are not seen to have it and would not be of concern if the working classes were not consistently classified as dangerous and threatening and without respect. This observation is especially true for working class young people who face a hostile press presenting them, in opposition to middle class values, through a range of anti social and criminal behaviours. Interviewing working class youth and particularly working class young offenders therefore presented a particular challenge. By considering the work of Skeggs (1997) and McDowell (2003) in particular, I was able to make respect (for the integrity of their comments as well as for themselves) an integral part of the interviewing process.

Race and Ethnicity

One of the young people in my sample group was black, and although his ethnicity was not central to my research, it was important that my research did not misrepresent his lived experience as the member of a minority group. Russell (1992) has argued that black researchers have a familiarity and understanding of black community experiences that bring legitimacy to research into minority groups⁴¹, but Phillips and Bowling (2003) suggest that a conscious stance and commitment to some guiding principles can contribute to minority perspectives regardless of the ethnic identity of the researcher. It was important for me to be sensitive to potential cultural differences (Phillips and Bowling 2003). Also important was collaboration in the interpretation of accounts, for, as Gelsthorpe (1990) observes "*what appears to be racist or sexist to me (as a white,*

⁴¹ The Schuman study (1967), suggested that the effect of race and ethnicity in interviewing depends on the kinds of questions asked. It showed that in interviews with black respondents certain kinds of information was given just as freely to white as black interviewers but other kinds of information was given much less freely to white interviewers (Gorden 1980).

middle class academic) might be completely wide of the mark when compared to the experiences of defendants” (Gelsthorpe 1990: 102).⁴²

Interviewing Young People

With the incorporation of the European Convention on Human Rights into English domestic law through the Human Rights Act (1998), children have been given the right to be heard which builds on other historical developments, for example the Children Act (1989), which created an opportunity to involve and listen to children in social care services. Since 1997 there has been an interest in listening to children and young people and recognising the contribution young people can make to policy development. There is then a growing commitment to putting young people’s voices at the centre of the research agenda. A strong methodological position has been developed in childhood studies about listening to children but in many cases the boundary between this and youth studies have been blurred (France 2004). Methodologically this can be problematic as the youth experience can be substantially different. Childhood studies do however give us a route into thinking about the importance of young people’s voices to the research process.

Ethnographic methods have permitted children and young people to become seen as research participants. This is a move from children as objects to children as subjects in the research process (James 2001). Ethnography is appreciated for the insight which it can yield into the social aspects of children’s development in particular cultural contexts. It allows children and young people to be seen as competent informants about and interpreters of their own lives (James and Prout 1997). One of the virtues of using semi-structured interviews with young people is that this technique enables the young person to assert the authority of their own accounts within a flexible framework (Eder and Fingerson 2002).

⁴² Fundamental to the interviewing of young offenders from ethnic minority groups, is to consider the role of contextual racism and discrimination. The Macpherson Report (1999) has brought to the centre of the political and policy landscape a new language of institutional racism, defined as *“the collective failure of organisations to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people”* (Macpherson 1999:28)

Power and Empowerment

The research process cannot help being influenced by and embedded within both researchers own situation and position as researcher as well as the specific places in which research is conducted and all the wider familial and institutional power relations within these spaces. (Barker and Weller 2003).

The task of interviewing children and adolescents presents researchers with unique opportunities and problems at the centre of which is the question of power dynamics. There is an increasing institutionalisation of the everyday spaces of young people that are designed and constructed by adults and child-centred research is often challenged or conflicts with the conception of childhood held by gatekeepers and institutional leaders (Barker and Weller 2003). Children and young people have lower status than adults and lack power. They are surrounded by teachers, parents and other adults who have the power to command their actions. Parents in particular may exercise their power to highlight children's assumed inaccuracies and clarify or correct children's accounts. On the other hand children do not passively reproduce social structures and processes but actively contribute to and influence their own lives (James 2001). They are not simply passive recipients of power relations. They can, and did in the present study, use the interview forum to challenge their parents' accounts (Barker and Weller 2003). The research experience may be particularly empowering for adolescents. In a study of girls from different social and ethnic backgrounds for example, Taylor et al (1995) found that individual interviews conducted by adult women provided girls with the opportunity to think through issues of importance to them by talking about them to an interested adult.

Choosing the location of the interview was important. Children were likely to give different kinds of responses in different settings (Shipman 1981). I interviewed a number of young people in their own homes and for ethical and safety reasons a parent or carer was close by. In an attempt to highlight the importance of the young person's account and to minimise adult involvement in the process, I was careful to address all questions and comments to the young person from the moment I arrived and kept interaction with parents to the minimum required of courtesy. I tried to maintain a balance between privacy and confidentiality and adopting cautionary practice.

Part of the skill of being a child is to be able to detect adult clues so I was concerned that children would tailor their answers to seek my approval (Rich 1968). However Davies (1989) found that the children in her study simply saw her as another person who needed to have the way the world really is explained to her. An interactive interviewing approach encourages young people to initiate their own questions and comments. What was important was to ensure that the questions I put to them were phrased in a way that a young person could understand. An over-complicated question was more likely to elicit a 'don't know' answer (Shipman 1981).

The main aim of the fieldwork was to conduct a semi structured interview with each of the participant young offenders. An interview guide which outlined the topics to be covered and their sequence in the interview provided a suitable framework⁴³. The importance of the guide was to develop straightforward logical thought. The decision to use a semi-structured format was influenced by my desire not to restrict young people from being able to talk to me at some length about their experience. However, a willingness to talk to me could not be assumed. Young offenders undertaking a referral order have already talked at length about their offending to police, lawyers, social services, their youth offending supervisor and the panel. I therefore made it clear that I wanted to talk to them about their experience of the referral order itself rather than their offending behaviour and I stressed how valuable their experiences were to me.

My original aim had been to interview each young person after their order was either completed satisfactorily or revoked. This proved to be a problem for number of reasons. The main problem was the timing of interviews. Every young person I approached initially expressed a willingness to talk to me. The best time was after the final review panel when an order was completed. At this point we were in a suitable venue with a parent or guardian present if necessary, and youth offending workers nearby. The young person was experiencing a sense of relief that it was over and wanted to talk about it. Once they had left the building however, arranging an interview became problematic. Firstly, they were less likely to want to talk about it now that it was 'behind them'. They were often reluctant to revisit the experience even if it had been a positive outcome for them. Secondly it was very difficult to arrange a suitable

⁴³ See Appendix H Young Persons Interview Schedule.

time and place if they were now outside the sphere of the YOS. In some cases administrative difficulties within the YOS meant that they were 'signed off in absence' and a final review panel was not held. Further problems occurred if they did not complete the order and were returned to court. In some cases their parents did not know where they were or how to contact them. In one case the young person was moved by social services out of the area before I could speak to him. The length of the order was also significant for the quality of the data collected. On a longer order of 6-12 months young people frequently could not remember accurately what had happened several months before.

Successfully securing an interview depended on the level of trust I was able to build with the young person, and often their parents or carers, over time. A high level of contact generated a higher level of trust which significantly improved the quality of the data because they were prepared to tell me more openly about how they felt. Interviews conducted as soon as possible after the event also produced the richest data because the experience was fresh in their minds (despite the potential loss of impact from longer term reflection). Therefore in response to the problems I was having I decided to re-organise my interview schedule into sections that could be more flexible. Section one asked about their experiences in the Youth Court. Sections Two and Three explored the initial panel meeting. Section Four concentrated on carrying out the Contract and Section Five asked them to reflect on their whole experience of the order. In this way I was able to conduct interviews at different points in their referral order and build up a full picture. An added bonus was that now each interview was shorter so that their limits of concentration were not over-stretched.

This approach was particularly successful when I interviewed them during their reparation activities. They were understandably keener to talk to me if it resulted in a break from unpaid work. For those young people who agreed to be interviewed at home in their own time, I decided to follow Linda McDowell's (2003) lead and recompense them with a small sum of money (£5). I gave this issue quite considerable thought but since they all came from low income families the money might be a genuine bonus and I wanted them to know that I regarded their time and information as valuable. Some social workers advised me that it would be better to give vouchers because "*They will just spend it on cigarettes*" but, like McDowell, I felt that they should be able to spend

it in whatever way they wanted. As Noaks and Wincup (2004) argue “*such moral judgements should not influence a decision that in essence concerns the payment of a suitable fee for a service*” (Noaks and Wincup 2004:150). I made sure that their parents were aware of, and agreed to, this financial arrangement. In the event several young people rejected the offer on the basis that they were happy to help me.

Recording the Data

I chose to record data by keeping field notes and by audio and video recordings. There are problems associated with all three recording methods. Note-taking can, for example, add to the formality of the interview and inhibit the informant. It was also impossible to write down everything verbatim, and condensed notes and memory notes taken afterwards could lead to distortion of the data. Nevertheless field notes provided a vital source of data. I was aware that tape recording equipment would affect interactions and become an element of play between myself and the participants (Pink 2001). Participants would be conscious that they were being recorded but I hoped that audio recording would give scope for better eye contact in interviews and would be an accurate verbatim account of the young person's voice and words. It would allow me ‘*to concentrate on the interview*’ (Moser and Kalton 1971:281). It was important to make sure that the young person felt at ease during the interview to minimise the intrusion of the tape recorder. I also hoped to be able to video record some of the panel meetings in order to provide a richer source of data on the social interactions and body language of the participants and their non verbal gestures and expressions (Kvale 1996). Potter and Wetherall (1994) suggest, that by using video data, the researcher can observe voice features and dynamic interactions that provide the fine detail in discourse. I also thought it might be appropriate to video record young people because they may be less articulate verbally but provide interesting and illuminating non-verbal behaviour. Silence, for example may be presented visually as powerful form of resistance. Retzinger and Sheff (1996), in their study of shame in restorative mediation during observations of community conferences in Australia, stress that the most significant information was conveyed with facial expressions and physical posture.

I followed the recommendation of Schatzman and Strauss (1973) and organised my field notes according to three types. Firstly, *Observational Notes* which recorded what

happened in the social setting; or the Who, What, When, Where and How of the setting. Data was recorded on an observation sheet with two main headings: first, a description of events and situations which took place and second, an identification of relationships and behaviours within the social setting. It was necessary to use some sort of framework for structuring data such as spatial arrangements in order to observe subtle group behaviours. I was guided by Whyte (1984) who suggested using positional map making to plot group activity. By map making and tabulating set events over time, the structure and organisation became clearer. Secondly, *Theoretical Notes* which are a self conscious, controlled attempt to derive meaning from *Observational Notes* and thirdly *Methodological Notes*, which are reminders or instructions to oneself on, for example, validity, what to do next and a critique of methods. A field work journal supplemented field notes and was also an important source of data in itself as it was an introspective record of the field work which enabled me to take into account personal biases and feelings which arose (Spradley 1979) supporting a reflexive approach to the research.

Audio recording proved to be relatively straight forward, but video recording was more problematic than I had anticipated. I was not able to record initial panel meetings because the time available between conviction and panel was too short to build up a relationship of trust with the young person. There was also a danger that it was unethical to increase the stress upon a young person facing an unfamiliar environment. Awareness of the importance of non-verbal gestures however encouraged me to keep detailed notes that could be compared with video data at other panels. For example the demeanour and body language of a young offender who had successfully completed a referral order and had had the opportunity to build a relationship with panel members might be very different from their first encounter and was likely to be significant for the research. The other problem was securing informed consent from the adults involved. The minimum number of adults at a panel meeting was two panel members, a ROLO and a parent or carer. It was not easy to gain consent from all of them especially at short notice. Adults proved to be much more reticent than young people about being recorded on video. In contrast the young people were either blasé about being filmed or insisted on 'fixing their hair' first even though they knew the recording would be viewed only by me. I was able to record three review panels by the end of my fieldwork period.

Once data had been collected in raw form, field notes were indexed and recordings transcribed. Kvale (1996) describes transcribing oral data from a recording as, in itself, the beginnings of analysis. I transcribed all recordings according to the same standard format to aid analysis. Audio and video recordings provided me with the opportunity to replay observations and interviews many times in order to find new layers of verbal and non-verbal meaning. Indexing was developed and refined as data collection progressed. During the course of his study: *Street Corner Society* (Whyte 1943) Whyte (1984) devised a rudimentary indexing system consisting of a page in three columns containing, for each interview or observation report, the date, the person or group interviewed and a brief summary of the interview. This index covered from three to eight pages and was then enough to give Whyte a reasonably full picture of where data items could be located. Using Whyte as a guide, I decided to use a spreadsheet. This proved to be a useful way of keeping track of and cross referencing data.

Analysing the Data

Fieldwork is systematic, not by having uniform procedures but by recording carefully what is seen and heard as field notes and subjecting them to systematic scrutiny and analysis. (Judd, Smith and Kidder 1991:299).

The purpose of data analysis was to look for patterns in the data by categorising the information so that links could be made in order to illuminate the focus of the research study. In qualitative research, data collection and data analysis are not regarded as sequential stages. Analysis commences with the process of data acquisition and continues to the end of the project (Hammersley and Atkinson 1995). The theoretical assumptions behind qualitative research, of expanding on theory from data, rather than testing prior theory, require that researchers remain open to ideas, patterns and new categories or concepts that may emerge during the process of data collecting. Methods of handling qualitative data must therefore contain ways of catching and developing ideas and drawing connections between them and the data from which they derived. One of the strengths of observational research is its ability to shift focus as new data becomes available. However, insight and originality needed to be combined with rigour. In order to improve the reliability of my field notes for example, I found Silverman's (1993) suggestion useful. He distinguishes between *etic* analysis (based on

the researchers concepts) and *emic* analysis (deriving from the conceptual framework of those being studied).

Once I had established a system for filing field notes and cross referencing them, there needed to be a system for combing through the field notes in order to discover and test themes and concepts (Rose 1982). The analytic process involved both the reading of the raw data and the application of concepts which had arisen from outside the data (Hughes 1991). Analysis needed to be both systematic and scientific (Sacks (1992). Pursuit of detail was important and analysis needed to become more and more focussed; from early breadth to progressive depth. I was guided by Spradley's (1980) four kinds of ethnographic analysis. Firstly, domain analysis, which gives an idea about possible areas that could be examined more closely, secondly, taxonomic analysis, which shows more about the relationships among the items in the domain, thirdly componential analysis, which looks for units of meaning that participants have assigned to cultural categories and fourthly, theme analysis, which charts the broader features of the cultural landscape. Spradley (1980) emphasised that analysis is always a cyclical and reflexive process.

Theory Building

The 'theoretical descriptions' produced by ethnography are distinctive because of the explicitness and coherence of the models employed and the rigour of the data collected and analysis on which they are based. (Hammersley 1992:22).

Theory building consists of developing both concepts and relationships between concepts. Becker (1979) lists three stages of data analysis. Firstly, the selection and definition of problems, concepts and indices, secondly, checking the frequency and distribution of phenomena, and thirdly, the construction of social systems models which incorporates individual findings into a generalised model (Becker 1979). This is similar in form to Glaser and Strauss's (1967) movement from substantive theory grounded within observations to more formal theory composed of abstract categories.

Grounded theory methods consist of flexible strategies for collecting and analysing data moving the researcher and the research towards theory development (Charmaz and

Mitchell 2001). Glaser and Strauss (1967) refer to building theory as a process of constant comparison of concepts that emerge in the field. Grounded theory is:

A style of doing qualitative analysis that includes a number of distinct features, such as theoretical sampling and certain methodological guidelines such as the making of constant comparisons and the use of a coding paradigm, to ensure conceptual development and density. (Strauss 1987:5).

In essence this approach involves first, the ‘chunking’ and coding of data, dividing facets of the available data into segments which are given labels, names or codes; second, the accumulation of those central codes which recur, and the development of abstract definitions to specify the properties associated with those core codes, and third, identifying links between the codes, links which may merely be associational, but which, in some cases, will be causal. These systematic procedures can help to maintain control over the research by focusing, structuring and organising it, thereby adding rigour to ethnographic methods whilst preserving an open-ended approach. The importance of grounded theory techniques is that they can sharpen the analytic edge of ethnographic research. A potential problem with ethnographic studies is seeing data everywhere and nowhere. Grounded theory helps to gain a more complete picture of the whole setting (Charmaz and Mitchell 2001) although it risks following too prescriptive a process.

I wanted to discover and draw out themes from the raw data in order to generate theory which would be grounded in the experiences of young offenders. At the same time the connected structures of restorative justice and its principles and values formed the framework for the fieldwork. Ethnographic descriptions, for Hammersley (1992) are theoretical in that they ‘apply’ theories to the understanding of particular phenomenon. In this research I was applying theories of restorative justice to the data collected and the interpretation of that data as well as building ‘new’ theory. Richards and Richards (1994) suggest that grounded theory influences qualitative research more “*as a general indicator of the desirability of making theory from data, rather than a guide to a method of handling data*” (Richards and Richards 1994:149). An adaptive approach (Layder 1998) incorporates some features of grounded theory but is not theory neutral. It engages with concepts from general social theory and is able to use some quantitative as well as qualitative data. The importance for me was to adopt a rigorous approach to

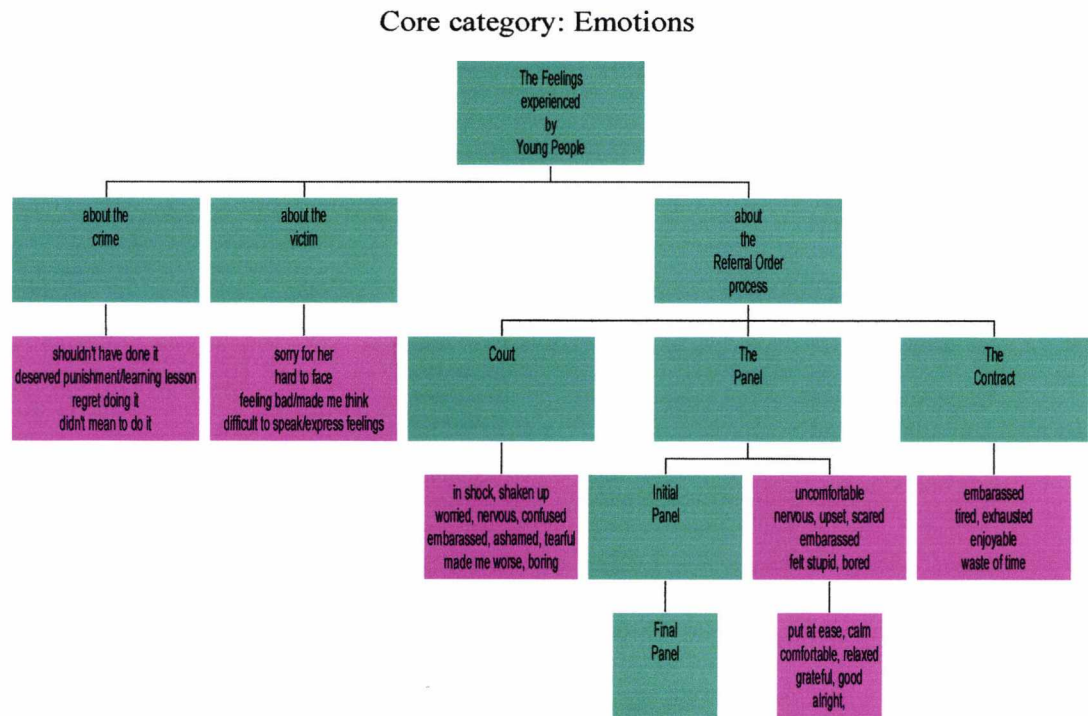
analysing data but also to reflect on existing empirical research within a theoretically coherent framework.

My approach to data analysis largely followed those stages described by Strauss (1987), which encourages the use of data to think with. *Open coding* opened up the inquiry, asked the data questions and searched for answers. This initial unrestricted stage led to *axial coding* whereby each category was analysed more intensely and links between categories were explored in the search for a core category. *Selective coding* took place around the core category. Field notes and transcriptions were loosely organised around significant themes, such as *respect* and *punishment*, but I was wary about imposing an inappropriate structure on the data. The stages of open, axial and selective coding overcame this problem by allowing me to use the data as a whole to highlight themes and then focus on these themes to search for detail. This close analysis of the data helped to produce emergent theory to guide further analysis to reach saturation point.

This process of analysis was not linear. I split transcripts up and analysed sections and put sections together with other sections having similar themes. I created categories and sub categories. At times I returned to the whole transcripts. I decided not to use a qualitative computer package such as Ethnograph or NUDIST because I felt that these programmes might distance me from the data (see Coffey and Atkinson 1996). Instead I used word processing to cut and paste and copy data and I colour coded hard copies of transcripts using felt tip pens. Emerging themes formed the preliminary categories and then concepts could be grouped around particular themes and then into sub-categories. This process was then repeated many times with constant comparisons. Pivotal to analysis were the linkages and theoretical connections that I made between the analytical categories. As Coffey and Atkinson (1996) suggest “*the important analytical work lies in establishing and thinking about such linkages*” (Coffey and Atkinson 1996:27). The process enabled me to break down themes such as *emotion* into a number of categories such as, feelings experienced about the *crime*, emotional encounters with *victims* and feelings expressed about undertaking the *referral order process* (see Fig 4.1 for a simplified illustration). These linked ‘units’ (Lofland and Lofland 1984) facilitated systematic manipulation of the data as a preamble for thinking creatively and generating frameworks and theories.

All interview transcripts, documentary evidence and observational notes were analysed in this manner creating categories grouped around particular themes. At the same time I wrote copious memos to aid theoretical developments. Theoretical memos highlighted the connections between axial and selective coding.

Figure 4.1



I was constantly aware of the need to explore data that did not fit the emerging themes. Field research is predominately *inductive*. *Analytic induction* includes the search for deviant cases (Silverman 1993). *Negative case analysis* using analytic induction can only be applied to fairly narrow range of empirical phenomena but, influenced by criminological work using these methods (see for example Cressey 1953, Becker 1963), I was careful to look in my data for examples that did not follow the emerging pattern and follow those connections through. For example only one young person reported *not* experiencing his court appearance as a formal occasion. It transpired that the main courtroom was closed that day for re-decorating and alternative arrangements had been made. These arrangements changed the physical environment in which the young person’s case was heard. Although the people involved were the same as for other cases

the emotional and behavioural dynamics were significantly different. Equally important was to consider the implications of non-response and missing data.

Having interrogated the data and categorised it in line with the emerging themes, the final stage of the analytic process was interpreting the data; examining it for embedded meanings and understandings. This stage required much reflection and on occasions there was a need to remove myself from the data and think it through, especially in order to allow me to consider theoretical frameworks. This stage could not be separated from writing up which was an integral part of the analysis process.

Representing the Data

The results of the data analysis were written up with '*thick description*' (Geertz 1973) which is the presentation of specific incidents from field notes and interviews, organised around the themes and discussion of empirically grounded theory. Writing up was central to the analysis process as Coffey and Atkinson (1996) point out:

Writing and representing is a vital way of thinking about one's data. Writing makes us think about data in new and different ways. Thinking about how to represent our data forces us to think about the meanings and understandings, voices and experiences present in the data. Writing deepens our level of academic endeavour. Analytic ideas are developed and tried out in the process of writing and representing. (Coffey and Atkinson 1996:109)

I began writing up quite early in the analysis process and I was conscious that I was not simply presenting my findings, but representing particular accounts of social life. The actual words that people used were of considerable analytic importance. The 'situated vocabularies' employed by participants provided me with valuable information about the ways in which members of a particular culture (for example, a bureaucratic organisation or a youth culture) organised their perceptions of the world and so engaged in the 'social construction of reality' (Hammersley and Atkinson 1995). It was essential that direct quotations were clearly distinguished from summaries in field notes and the context was clearly identifiable. My account was necessarily a selective construction and I was aware of the difficulties surrounding claims that texts represent lived experience. Nevertheless I aimed to produce an authentic and accurate representation of

accounts from young people who had received a referral order at this particular time and in this particular place.

At different stages in the writing I consulted key actors to check for factual accuracy. I also produced interim reports for the youth offending team. This process highlighted that I was writing for different audiences. The same material could be presented in different ways in order to reach these audiences (Richardson 1990). For example, although I was writing a thesis primarily for an academic audience, it was important that the research findings had resonance for practitioners and policy makers. For these audiences the writing style and emphasis might be different. It would be different again if written up as an article according to the requirements of an academic journal. I had not anticipated that the process of writing would involve so much reading. I especially found that reading a wide range of ethnographic accounts sharpened my awareness of textual possibilities and made me more aware of my own work. Crucially I began to realise that *how* I wrote about the social world was of fundamental importance to my own and others' interpretation of it (Hammersley and Atkinson 1995).

Leaving the Field

The main period of field research had clear boundaries from the beginning but that did not make it any easier just to walk away, either physically or emotionally. I felt an enormous sense of relief that I had collected as much data as I could in the time I had allowed, but there were still loose ends to be tied up. A few of the young people in the study needed to be followed up beyond the fieldwork period which extended my contact with them. Some of these had caused me particular concern and I wanted to know how they were getting on. Others have approached me in the street to ask how the research is going. I am always touched by their interest and conscious of the debt I owe them. Perhaps more importantly I had formed relationships with practitioners and volunteers, some of whom had become friends. I also wanted to maintain contact with my key gatekeepers to make sure that I left the field free for myself or others to return for future research (King 2000). One event however gave me the opportunity to leave smoothly. Three months after the 'official' end of my attendance at panel meetings I was invited to the volunteer panel members Christmas dinner. I was pleased that they had chosen to include me in this 'internal' event and it gave me the opportunity to thank them

collectively for their participation and help. It was an emotional occasion; I had been working with some of them for nearly two years, but it marked an appropriate end and a departure that was better than simply not being there any more. I was grateful to them for giving me the chance to leave them on such a positive note.

Conclusion

The research process is a journey, from locating and exploring the field, negotiating and maintaining access to leaving the field and making sense of the data and the personal experience. The production of knowledge is a dynamic process which is constantly evolving and which moves towards an understanding of a reality and of the knowledge which structures our perceptions of that reality (Harvey 1987). This production of knowledge required that I incorporate sound theoretical principles and effective, reliable and ethical research methods. This chapter has provided an account of the methods chosen in this research, how they were put into practice and the problems encountered during the course of the study. I have documented my experiences as a researcher and attempted to reflect on the strength and weakness of the approach. The following chapters (re)present the findings of the research.

5. Setting the Scene: From Policy into Practice

The decisions of street-level bureaucrats, the routines they establish and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out. (Lipsky 1980).

Crawford and Newburn (2003) suggest that criminological debate about crime policy in general and youth justice policy in particular, tends to be based upon an inadequate understanding of what is actually happening. There is an assumption that “*the way in which policy will be implemented in practice is predictable and can be read directly from the formal policy instrument*” (Crawford and Newburn 2003: 236). This ‘top down’ approach assumes that there are no serious constraints on those implementing policy and that policy makers and practitioners understand and agree with objectives (Hogwood and Gunn 1984). However, there is not necessarily a smooth transition from policy prescription to the practice of ‘*street-level bureaucrats*’ (Lipsky 1980) and to understand the latter it is necessary to explore the way in which policies are implemented. This chapter aims to explain how referral orders were introduced and managed in the research County and how they worked in practice.

In this chapter I outline some of the problems typically encountered by ‘*street-level bureaucrats*’ in the Youth Offending Service (YOS). I then show how the management team in the County interpreted referral order policy and organised the workload. The main aim of this chapter is to provide a discussion of how the referral order was understood and experienced by practitioners, therefore the substantive section of the chapter presents in-depth data from key actor interviews with professional practitioners and volunteers. There are two parts to this discussion. **Part One** examines the practitioner’s understanding and application of the idea of stakeholder participation in the referral order. **Part Two** explores practitioners’ understanding of their roles and responsibilities and the relationships experienced between volunteer community panel members and professionals in the YOS. **Part One** illustrates some of the constraints that practitioners faced in implementing the referral order and how they attempted to address these problems. **Part Two** shows some of the tensions inherent in a process that relies heavily on changing and unfamiliar roles and relationships.

‘Street-Level Bureaucrats’: Policy made on the Street

However precise the law, theory or policy might be, there is always a certain flexibility, ambiguity or discretion in how it is applied in practice. (Gelsthorpe and Padfield 2003:3)

Lipsky (1980) argues that the actions of most public service workers actually constitute the services ‘delivered’ by government and when the individual decisions of these workers are taken together they become, or add up to, agency policy. These public service workers, or ‘*street-level bureaucrats*’, oversee the service that people receive in government programmes and exercise substantial discretion in the course of their work “*Discretion relates to differences between what is said to be the case and what is the case*” (Gelsthorpe and Padfield 2003:3).

In May’s (1991) probation study, probation staff were asked who they thought had the most influence over policy formulation and their replies indicated that probation management were believed to be the most influential. Management however, lacked a thorough understanding of front line work. Front line personnel were thought to have little influence over policy even though they translated policy in terms of how it could be implemented in practice. May (1991) suggests that in order to understand this ‘*implementation gap*’ (May 1991: 84) it is important to look at “*the structure of the work situation*” (Lipsky 1980: 17) or the problems faced by front line staff on an everyday basis. This is a bottom up rather than a top down approach.

As front line practitioners interact directly with the public they have considerable impact on peoples’ lives. They are, however often torn between the demands of the service recipients to improve effectiveness and responsiveness and the demands of citizen groups to improve the efficiency of government services. Ideally street-level bureaucrats should respond to the needs of the individuals they serve but in practice they must deal with clients on a mass basis, since work requirements frequently inhibit an individualised service. They are therefore liable to invent benign modes of mass processing that enable them to deal with the public fairly. There is a danger that they may give in to processes which stereotype individuals and routinise practice (Lipsky 1980).

I argue in this chapter that the YOS workers responsible for referral orders are typical street-level bureaucrats. As professionals they are able to exercise relatively high levels of discretion in decisions made with young offenders. They are free to make judgements but at the same time they are subject to the constraints of rules and regulations which can be voluminous and contradictory (Lipsky 1980). Their response is to prioritise and adhere to these demands selectively. It is also in their interests to maintain and even expand their autonomy. They are often 'process oriented' (Bottomley 1973) in that they develop work processing devices, as part of the informal agency structure, that are seen as necessary to maintain the organisation even though these procedures may be contrary to policy. They are able to circumvent regulations and exercise creative subversion both in favour of individual clients as well as discriminating between them.

The work environment of the practitioners in this study was structured by a set of conditions which are common to street-level bureaucrats (Lipsky 1980). The YOS workers that I spoke to suggested that they were working with inadequate resources in circumstances where demand was unpredictable and increasing. Case loads were therefore high and they worked with a high degree of uncertainty because of the complexity of the young peoples' lives. Goals and performance expectations in this environment were difficult to measure. They were also working with multiple clients. Young offenders and their parents were essentially involuntary clients but they gave their consent to the process either because they accepted its legitimacy or recognised that dissent would not be productive (Lipsky 1980). The referral order was often seen as an alternative to something worse (many young people feared custody, for example). On the other hand interventions like the referral order could not succeed unless the YOS were able to motivate young people to accept the discipline of the programme. Victim attendance was voluntary which had the potential to create a tension between the needs of victims and the needs of the young offenders. The needs of the agency also had the potential to put the professional practitioners in conflict with the voluntary community panel members because they were not necessarily governed by the same organisational

imperatives. In addition to these constraints practitioners faced a sometimes sceptical response from mainstream criminal justice⁴⁴ and the public.

Implementing the Referral Order: From National Policy to Local Delivery

The referral order was introduced nationally in England and Wales on 1st April 2002 and was implemented by the YOS immediately. The Home Office Final Report on the Referral Order pilots (Newburn et al 2002) presented three possible models for referral order implementation but acknowledged that there had been fluidity with Youth Offending Teams developing a mix of the models, drawing elements from each:

1. The *inclusive* model:
All Youth Offending Service (YOS) staff are involved in every aspect of referral order work.
2. The *dedicated/specialist* model:
Specialist workers operate independently from the rest of the YOS
3. The *partnership* model:
A contracted out service delivers panel related matters while the YOS continues to deliver all the operational aspects such as report writing and interventions.

The model that was chosen in the research County was something of a hybrid of all three of the models set out above (Dadd et al 2002). Overall responsibility for converting national requirements into local delivery came within the role of the County Referral Order Manager. This included the recruiting and training of volunteers to act as Community Panel Members (CPMs) and developing procedures to facilitate greater levels of participation by victims. The Community Panel related work was to be a specialist area with dedicated workers.

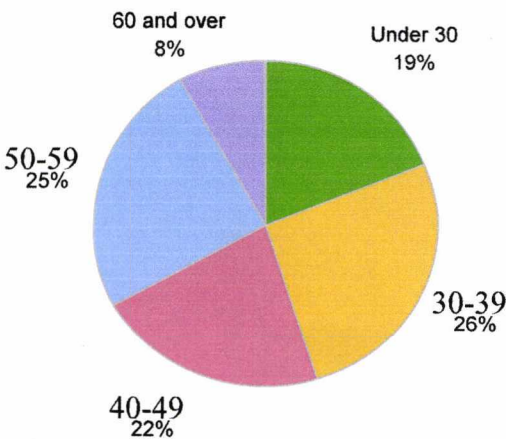
The County was comprised of three Regions and the research area was in the Eastern Region. The Eastern Region was divided into six areas, one of which was the research area. There were four youth courts in the Eastern Region (the research sample was taken from those young people receiving a referral order from one of the youth courts). In the Eastern Region there was a Referral Order Co-ordinator (management level) and

⁴⁴ 57% of magistrates rated the referral order as good or excellent in providing programmes of activity and supervision (Audit Commission 2004). Magistrates who were able to observe Youth Offending Panel's in action were much better informed and positive about the process.

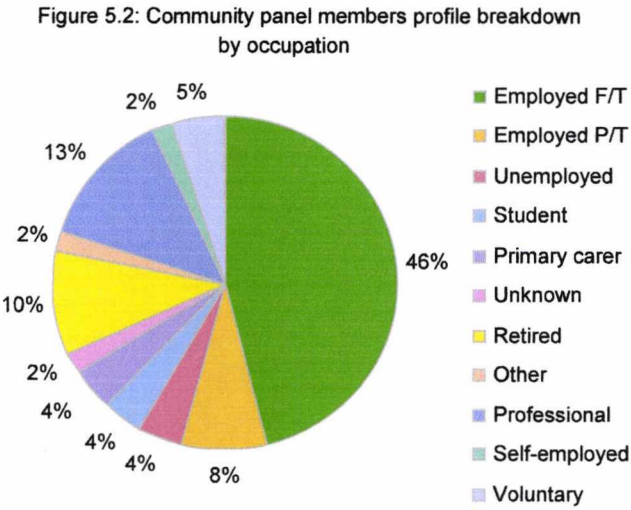
a team of Referral Order Liaison Officers (ROLOs) who were to attend community panel meetings as advisers/facilitators and prepare the contracts agreed at the meetings. Some of these (qualified as Social Workers) were also to carry out supervision of young people as they carried out the contracts. Panel meetings were held at three community locations in the research area. There were also two Reparations Officers (ROs) to supervise indirect reparation activities (unpaid work in the community) in the Eastern Region and three police officers seconded to the Youth Offending Team (YOT PCs) dedicated to issuing Final Warnings to young people and contacting victims for pre-sentence reports and Referral Orders. There was one specialist Victim Liaison Officer (VLO) in the Eastern Region who was employed by Mediation Services and also based within the YOT.

By November 2002 170 volunteers had been recruited in the County as Community Panel Members (CPMs). This first group was recruited by local advertising and word of mouth recommendation. The age breakdown for the County group (see Fig 5.1) was very similar to the group in a national study (England and Wales) undertaken by the Research Development and Statistics Department of the Home Office (Biermann and Moulton 2003). Biermann and Moulton’s (2003) study was primarily to ascertain what kinds of people were volunteering for the Active Communities Unit but it serves as a useful comparison.

Figure 5.1: Community panel members profile breakdown by age



In the County group, 48% were aged between 30 - 49 years, compared with 45% in this age group in the national study and 22% in the same age group of lay Magistrates⁴⁵. There was a higher ratio of female to male volunteers (65% female to 35% male) which was exactly the same as the national study. The national breakdown for lay Magistrates was 51% male and 49% female. The figure for ethnic minority members in the County was 3%, which reflects the ethnic minority population in the research area (Census Data) and 46% of volunteers were in full time employment (Dadd et al 2002) (see Fig 5.2).



A rolling programme for recruiting and training panel members was set up. This programme included targeting certain groups (for socio-economic group and age) by putting up posters at community centres on public housing estates and later on (2005) by promoting student volunteering with leaflets on University campuses. The prospective panel members attended six days of introductory training over a six week period and then could attend a range of additional ongoing courses, such as ‘Anger Management for Young Offenders’, during the time they sat on a panel. Panel members were then able to state their desired locations within the area and their availability in terms of days and times.

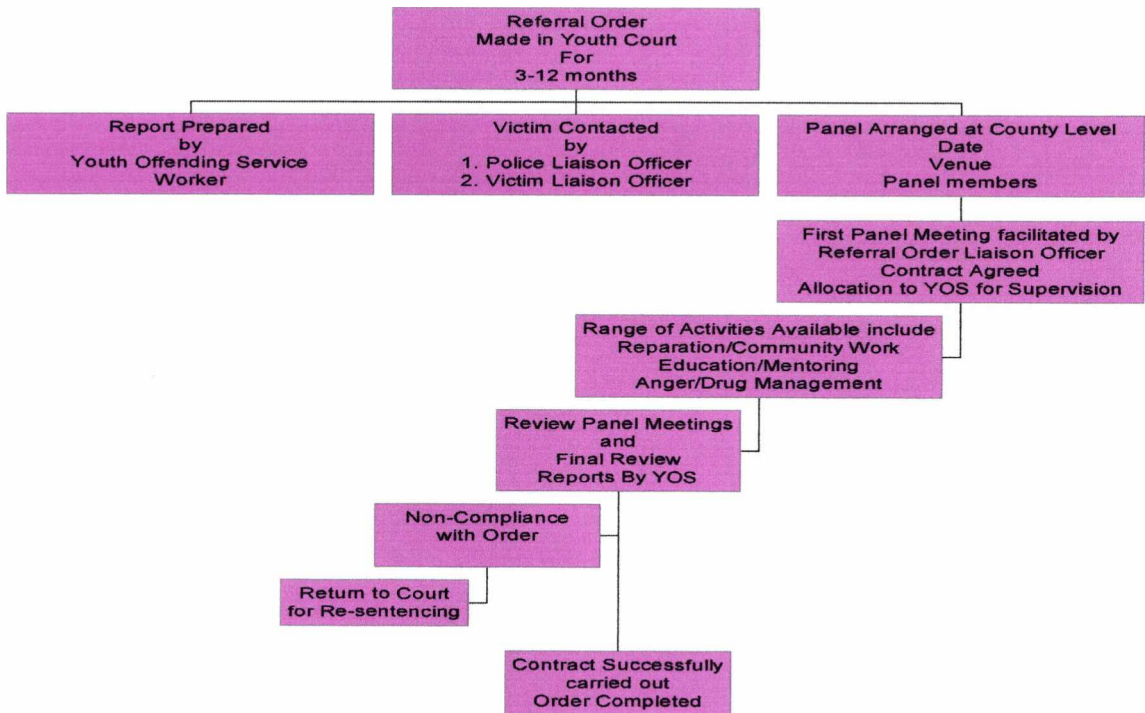
⁴⁵ The minimum age to become a panel member is 18 years compared with 27 years for a Magistrate.

The stages in the progress of a referral order in the County are shown in Fig 5.3. This pattern conforms to national guidelines (Dadd et al 2002). Following sentencing to a referral order in the youth court, the YOS prepared a report on the young person that was presented to the panel at the initial panel meeting. Victims were contacted at this stage by the YOT PC and the VLO to ascertain whether or not they wished to attend or provide a victim statement. The initial panel meeting was arranged centrally by administrative staff. This involved booking a venue close to the young person's home and convenient for a victim and arranging for two panel members to attend.

The first panel meeting, facilitated by a ROLO, drew up an appropriate contract for the young person which could include unpaid work in the community, a letter or face to face apology to the victim, a range of group activities at an attendance centre (including prison awareness, anger management and victim awareness courses) and referral to health (including mental health) and education authorities or job search organisations. Other possibilities included referral to mediation, counselling programmes, drug rehabilitation, outward bound activities and mentoring programmes. The young person's contract was supervised by a YOS worker during the course of the order and review panels were held every three months to check progress. If the contract was satisfactorily carried out then a final review panel signed the young person off and wished them well for the future. If the contract was breached by the young person then a review panel was able to return them to court for re-sentencing⁴⁶.

⁴⁶ See Appendix I for a detailed description of each stage of the referral order process.

Fig 5.3: The Stages in the Referral Order Process



Referral Orders: The Workload

In the first year of the implementation of the referral order, the number of referral orders issued nationally totalled 25,347 (Home Office 2003). This figure was produced from the number of defendants proceeded against in Magistrates' Courts in 2003. Of these 21,075 (83%) of the offenders were male. The national figures show a breakdown of the ages of the young offenders given a referral order (see Table 5.4).

Table 5.4: Number of offences by age group

Age Group	No of offences
10-12 years	470
12 and under 15 years	6,495
15 and under 18 years	18,382
Total	25,347

For a national breakdown of the most common types of offences committed by either gender and all ages of young offenders in 2002, see Table 5.5 which gives those offences for which more than 1,000 referral orders were issued:

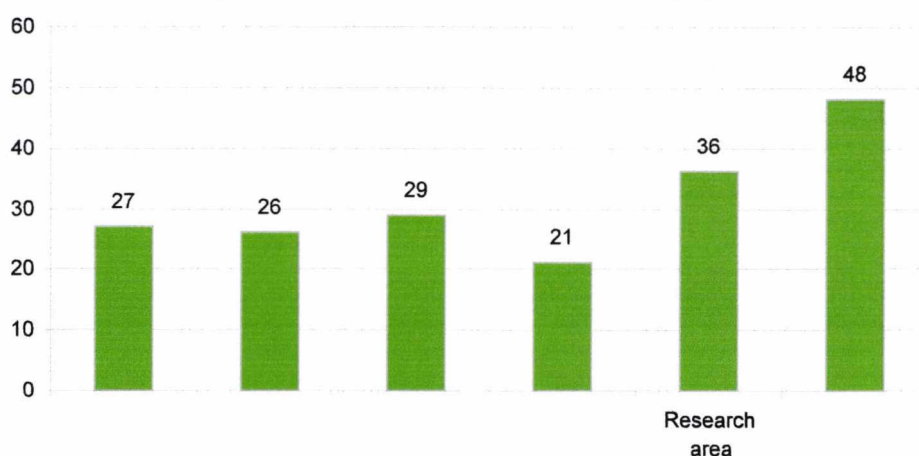
Table 5.5: Number of referral orders by offence type

Offence	No of orders
Common Assault	2,322
Theft from Shops	2,282
Wounding	2,216
Criminal Damage	2,205
Public Order Offences	1,144
Possession Class B Drugs	1,086
Total	11,255

The national figures show that the most common age for young people to be given a referral order was 15-17 years and the most common offences were assault (of varying degrees of seriousness) and theft.

Between 1st April 2002, when referral orders were first rolled out nationwide, and 31st March 2003, 738 referral orders had been issued in the research County. During this first year of implementation 67 referral orders were issued in the research area. The following year, between 1st April 2003 and 31st March 2004, this figure had risen to 84⁴⁷. Figure 5.6 shows a breakdown of County figures for the first three months. It shows the number of referral orders issued in the research area compared to other areas of the County.

Figure 5 6: Number of referral orders for the county April-June 2002



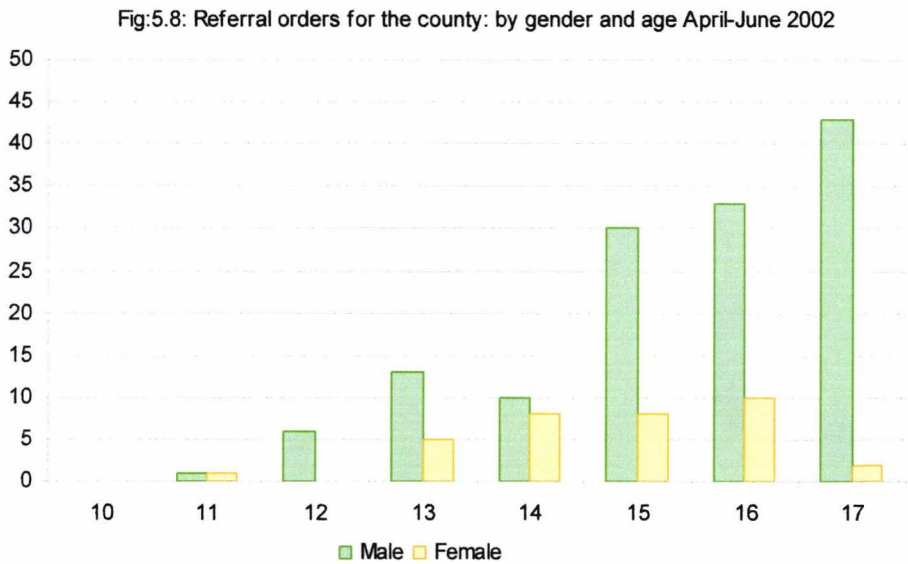
⁴⁷ There had also been 36 extensions to existing orders during this period. An extension can be ordered by the court if an offender is returned to court having pleaded guilty to a further offence. This can be automatic if the new offence predates the original offence. If not then exceptional circumstances need to be presented to the court. Magistrates have discretion in the matter.

Table 5.7 shows the County breakdown for the most common type of offences committed by both genders and all ages of young offenders for the first year of implementation. It shows a similar pattern to the national figures with the most common offences being assault and theft.

Table 5.7: Number of referral orders in research area by offence type

Offence	No of orders
Common Assault	9
Theft from Shops	9
ABH	11
Criminal Damage	7
Public Order Offences	3
Possession and/or with intent to supply drugs	4
Total	43

Figure 5.8 shows the age and gender of those young people receiving a referral order in the first three months of implementation in the County (internal figures).



In the research County the most common age for receiving a referral order was also 15-17 years, 80% of young offenders were male and the most common offences were for assault and theft. Comparison with national figures therefore shows that the research area largely represents the national pattern for age, gender and type of offence.

Nationally, in 2001 the age group 15-17 years represented 76% of the total court population and during April 2002 to June 2002 the same age group represented 74% of the referral order population (Home Office 2003). National and regional figures showed that the referral order was largely replacing fines and discharges as a sentencing option but there were signs of a decrease in all other sentences as a result of the referral order⁴⁸. Referral orders represented almost one third (32.4%) of all sentences imposed upon young people during the first quarter following implementation. At the same time the custody rate decreased by 1% (Home Office 2003).

As discharges and fines require no YOS intervention so the above figures illustrate the dramatically increased workload experienced by youth justice workers in the research area. As a result of this workload the YOS in the research County proposed using more standardised programmes for specific offences (for example road safety programmes for motoring offences), using group work whenever possible, making use of mediation services more than before (amongst other private and voluntary organisations) and crucially that they “*should not be seeking to engage with all victims of youth crime*” (Dadd et al 2002). Having said this, managers stated that victim attendance at referral order panel meetings was a high priority. It was already becoming clear that essential elements of restorative justice, in this case victim contact, and individualised activities for young people, were in danger of being compromised in an effort to make policy workable in practice.

How the Referral Order was Understood and Experienced by Practitioners

The substantive section of this chapter addresses the extent to which this particular model of restorative justice; the referral order, adhered to some standard of practice that distinguished it from other diversionary or community interventions. In short how ‘restorative’ was the practice. The main question was how did staff working with a referral order programme engage restorative principles and values; in vision and in practice, as Bazemore and Schiff (2005) argue, “*Vision is...a necessary, though not*

⁴⁸ Fines are rarely used for young people because they lack income but it was common to impose a conditional discharge for non serious offences. Under a conditional discharge, should an offender commit a further offence during the stipulated period they would also be re-sentenced for the original offence. Prior to the introduction of the Referral Order, Action Plan orders and Supervision orders introduced under the Crime and Disorder Act 1998 were more commonly used for first offences.

sufficient, prerequisite to the implementation of restorative practice” (Bazemore and Schiff 2005:12). The intention in this study was to develop grounded accounts of what restorative justice practitioners appeared to be trying to accomplish. I present how the practitioners have understood and put into practice the key restorative justice idea of stakeholder participation (encounter and inclusion) (Van Ness and Strong 2002, McCold and Wachtel 2002). Data used in this section was taken from interviews with five Referral Order Liaison Officers (ROLOs), a Youth Offending Team Police Officer (YOT PC), and a Victim Liaison Officer (VLO). It includes comments from volunteer Community Panel Members (CPMs).

Following Van Ness and Strong (2002) and Bazemore and Schiff (2005) three main components or considerations were addressed in interviews with practitioners. Firstly the quality of the *invitation* to participate, secondly, the *communication* component, which encourages victims and offenders to tell their story and express their feelings about events, and thirdly, the *roles* that stakeholders and facilitators play in a conference.

Part One explores how practitioners understood and implemented the idea behind *stakeholder participation* or the involvement of victims, offenders and the local community. **Part Two** examines the principle of a *transformation in community roles and relationships* or the roles, responsibilities and relationships between stakeholders and practitioners. This part examines the changing professional roles and systems of working of the YOS and the potential for tensions between the professional practitioners and voluntary community members.

Part One: Stakeholder Involvement.

Restorative justice programmes have as their primary rationale to provide a structured means of involving victims, offenders and the community in a response to crime. All the practitioners agreed that the referral order was intended to be a restorative justice approach to crime and that participation by victims, offenders and the community was essential if the referral order was to be consistent with restorative principles and values. For them this meant an opportunity for victims to come face to face with offenders in a safe and personal environment, facilitated by local community members and for

offenders to accept responsibility for the consequences of their actions and do some kind of meaningful direct (for the victim) or indirect (within the community) reparation.

For young people to pay back to society for the crime they've committed and for the victim to have a say in the process and for the community in general to have some ownership of young people and offending. That's it in a nutshell. (Mark.ROLO)

Well the idea is to redress the balance...it is the only order where the victim is invited to come face to face with the offender and discuss the consequences of what happened...it's about reparation, responsibility and rehabilitation. (Chrissie ROLO)

The idea is that victims are involved from the start....even if a victim doesn't attend a panel their views should be noted and then it's up to the panel to convey those views to the young person and then there's the element of reparation....and it should not be just a meaningless community service exercise. (Kate ROLO)

Their accounts showed that all practitioners had understood the importance of stakeholder involvement and the centrality of the victim in the process. While there was agreement about the need to engage and generally empower the stakeholders the real question for this study was how practitioners make this principle work in the various stages and phases of the referral order process.

Victim Participation

The active and voluntary involvement of victims in youth offender panels lies at the heart of the restorative justice potential of the referral order process. It makes the process meaningful to offenders as well as being potentially beneficial to the victims themselves. It provides a forum for victims to express the harm they have experienced and to receive some kind of emotional or material reparation and creates an environment in which young offenders must face the consequences of their offending behaviour. If we agree with Zehr (1990) that victims are central to any restorative justice agenda, then low victim attendance compromises the referral order as a restorative approach to youth crime.

By November 2002 victim participation in the referral order in the research area was disappointing. During, for example, the three month period July to September 2002, 91

referral orders were concluded, 41 (non-corporate)⁴⁹ victims were identified with respect to these orders, contact was made with 14 of these victims and face to face contact was made in two of these cases (Dadd et al 2002).

Three main problems emerged from informal interviews with the management team and the practitioners. These problems are consistent with Crawford and Newburn's (2003) evaluation study. Firstly, there were concerns that the Data Protection Act (1998) narrowed initial access to victims to the police rather than a specialist Victim Liaison Officer (VLO). The YOT PC suggested that in many cases it is simply unnecessary for a police officer to make first contact if the initial police report implies that contact can be made. I was told that victims could "*easily get fed up with too many people contacting them*" (YOT PC) and the VLO is well trained and qualified to make the first phone call. Secondly that lack of public awareness about restorative justice made it difficult for victims to make properly informed decisions about attending panels. The VLO felt that there is widespread public ignorance that victims can have this type of input in the justice system. Thirdly victim contact work is labour intensive and time consuming. To be successful it requires well-trained and committed pre-meeting preparation but resources for this were not considered by practitioners to be adequate.

The Eastern Region VLO was responsible for all referral orders out of four youth courts. This was a heavy workload and national standards required that an initial panel meeting must be convened within 15 working days of sentencing (Audit Commission 2004) which did not allow very much time for victims to be contacted and prepared. In response to this the VLO decided to keep face to face pre-panel preparation meetings with victims to a manageable minimum and deal with more cases over the telephone. This is a problem when in some cases the VLO may have to prepare an upset or angry victim who needs face to face preparation time before they are ready to meet the young offender. Umbreit (1999) argues that preparation is central to the conferencing experience because it is so intimately related to the quality of participation. Practitioners in this study also suggested that it is crucial, not just in order to encourage

⁴⁹ A Corporate victim refers to a company or an organisation, usually a supermarket, in which a theft or criminal damage has occurred. Non-corporate victims refer to individual victims, including staff in a corporate organisation, who have been harmed by a crime.

victims to attend, but because inadequate preparation can lead to a negative, even punitive, response at the panel meeting.

The young person had assaulted another boy and at the panel the victim accepted an apology from him but the victim's father wouldn't leave it there and was trying to get more compensation and was threatening civil action and the victim and the offender got very upset. There were issues there that should have been dealt with before they came to the panel. (Clare ROLO)

It may also take time to arrange a suitable venue that is convenient for the victim to attend, especially if they do not live in the same area as the young offender or the meeting is assessed as potentially volatile and the design of the building needs to accommodate separate entrances and separate rooms. Difficulties with time managing victim participation were given as a key reason why victims do not attend panels. This was either because victims needed more time to be prepared or because they wanted to 'put it behind them' as soon as possible and sometimes became 'fed up' with waiting for a panel to occur (VLO). The Audit Commission (2004) was critical of delays in convening panel meetings but this did not take into account the need for flexibility. This was typical of the kind of conflicting demands made on street-level bureaucrats with limited resources.

The single most important thing that would increase victim attendance would be to increase the number of personal visits in order to explain, encourage and support. It really needs a team of workers. (VLO)

Practitioner's accounts suggested that a large proportion of victims were not willing to attend a panel for fear of repercussions. There was widespread feeling that if they (the victim) became involved they may experience intimidation or re-victimisation, usually from the friends or family of the offender rather than the offender him/herself. Practitioners felt that this was a problem that was beyond the scope of the referral order process.

The power of street-level bureaucrats is evident here, in that the VLO and the YOT PC made decisions to modify their own activities, in this case contacting and preparing victims, in order to match their ability to perform the task. As Bochel and Bochel (2004) suggest, street-level bureaucrats carry out a process of rationing at client level.

They exercise some control over their own activities and also over their own agency. It is often convenient for organisations to allow this discretion to continue (Bochel and Bochel 2004). In this case government pressure to expedite cases and a limited number of trained victim workers led to client controls, in which the VLO differentiated between victims who were 'worth' the time and effort and those who weren't, based on their initial response to a phone call. One of the problems with this approach is that victims are not an easily identifiable or homogenous group. Different victims may require different approaches and different levels of preparation. Those who are most harmed by the crime or most fearful of re-victimisation need more, not less, support and encouragement to attend. Seen by practitioners as a resource issue, preparation of victims was competing with other bureaucratic goals, in particular timeliness of meetings.

All practitioners agreed that having a victim attend the meeting produced an entirely different response from the participants and was essential to a restorative process. The VLO suggested that there were three key reasons why victims *were* willing to attend a panel meeting. Firstly the victim may need "*to dispel a few myths*" about the offence.

They want to know things like whether or not they were targeted, is the young person going to do it again and what did I do wrong that I became a victim. (VLO)

The other two reasons related to victims' positive and negative feelings about the offender. Often they wanted to help the young person and support measures to stop them offending or they felt angry and saw the panel as a way of expressing their anger. There were two important outcomes that victims expected to get out of attending a panel. Most of all they wanted a genuine apology with obvious signs of remorse but it was often equally important for them to feel that they could explain their feelings and have a say in repairing the harm done. Most practitioners had had very positive experiences with victims attending panels.

The first time I had a victim it was great. He was a really small lad and he had had a really horrible experience of bullying. This bigger lad had put a cigarette out on the back of his neck. He hadn't told anybody but the mark was discovered and reported to the police. In the panel meeting it was the victim who had the power in a completely safe environment. He was looked after and people had been really nice to him. In the end the boys agreed to say Hi to each other in the street and the victim put his hand out

to the young offender and the young offender felt quite glad that he had the chance to apologise. (Liz ROLO)

I had one with a shop manager. I was a bit worried about how it was going to go. The lad was absolutely terrified and looked as though he was going to burst into tears. But it was all good and the manager was quite warm. He was using words like profit margin (laughs) but he was doing his best and the manager was pleased with how it went and the lad made his apology and wrote a letter for the shop....and that was a hard thing to do. (Ivy ROLO)

Clearly practitioners recognised the value of victim attendance but constraints, they believed were imposed on them, limited opportunities to put it into practice. This was especially true of the involvement of corporate victims who can be seen here as part of the wider issue of community participation.

Community Participation

Well normally the young person would go to court and be dealt with by a penalty or a fine, and there is no involvement by the local community. So they have to put up with the crime but don't actually have a say in how the young person is dealt with. (Mark ROLO)

Community building is an important objective of restorative justice. Repairing the harm caused by crime in a way that engages citizens in the decision making process is ultimately more likely when communities own and sponsor this dialogue (Bazemore and Schiff (2005). Community building can take a variety of forms. It can include macro-level changes in large communities and micro-level involvement in terms of schools, neighbourhood projects and youth programmes for example. The latter can be part of the relationship building and social support mechanisms as part of the making of amends or reparation. Bazemore and Schiff (2005) point to two related agenda. The first is systematic reform of the structure to support restorative decision making by changing the focus of justice systems to support maximum community participation. The second is concerned with strengthening community capacity to respond to youth crime by relying on the informal resources of communities (Bazemore and Schiff 2005). Community group members therefore need to be actively encouraged to be involved in the decision making process as vital forms of social capital (Putnam 1995, 2000) Social capital refers to “features of social organisation such as networks, norms and social

trust that facilitate co ordination and co operation for mutual benefit” (Putnam 1995:66). It consists of networks of civic engagement which foster sturdy norms of generalised reciprocity and encourage the emergence of social trust. Such networks facilitate co-ordination and communication.

Several of the practitioners interviewed were concerned about the lack of involvement of some members of the local community, especially in terms of the contribution that large organisations could make in providing reparation opportunities and particularly if they were also corporate victims. There were two issues here; firstly that large organisations needed to recognise that they had an important role as members of the wider community and secondly that as corporate victims they were able to make a significant contribution to the referral order process by attending panel meetings. It was significant that practitioners were specific in including large private companies, for example supermarkets, in the micro community rather than just state organisations. Retail outlets have an important role as employers of casual, young, frequently unskilled, labour in a local area (see for example Mizen 2004) as well as being frequent victims of low level crime, and practitioners were keen to establish their regular participation. This was a difficult issue because these organisations may make involvement decisions at national or even international level rather than at local level. It is also difficult to mediate between young offenders and corporate victims because the encounter is likely to lack emotion.

I think that large organisations could take a lot more interest in the process. Some of them make noises but very few of them are willing to come along to panels and say how crime is affecting their business. (Mark ROLO)

When large organisations did participate practitioners reported positive results.

The R hospital was burnt down last year and the person responsible for security came to the panel and he was excellent. He explained to the young person what could have happened. Corporate victims, when they come, are actually very good because there is not so much tension and they're usually very articulate and understand why they are there. (Chrissie ROLO)

She (a security manager from a large store who regularly attended panel meetings) never has a go at the young person but she is very good at explaining to them.....look (she says) you might think that you just stole a bar of chocolate but this is what the

effect has been on not just you but your family ...you put the prices up because you are nicking a bar of chocolate. She's so good at engaging with them. (Clare ROLO)

This latter example was very much the exception rather than the norm. Usually in cases of shoplifting it was common for young offenders to be banned from the store and to pay compensation and court costs before attending a panel meeting. At the panel they usually wrote a letter of apology to the store manager as part of the contract. However, it was rare for a representative from the store to attend the panel and young people rarely received a response to their letters of apology.

For corporate victims the victim contact system had been formalised so that a fixed form could be filled in by the VLO and sent to the panel. An agreement had been reached with a number of large corporate victims (supermarkets, music and electrical stores in particular) that the form could automatically be filled in by the VLO without contacting the store. This form usually suggested that the young person should attend a corporate victim awareness course. This was a good example of street-level bureaucrats exercising discretion where they perceived that there were no resources available for an individual response. For the YOT a standardised response for corporate victims used minimum resources but maximised victim satisfaction.

The VLO considered that this arrangement was a practical response to an already high workload and lack of corporate interest in a community response to crime. The VLO explained that numbers of shoplifting cases were high; up to 25 cases a week, and further involvement by stores was time consuming and not considered cost effective by the stores involved. Stores maintained that there would be little benefit to themselves in attending panels in terms of the reduction of crime, which was their primary concern. They did not always appreciate the longer term contribution they could make in the process (and potentially in the cost effectiveness for their business) and as they were victims they could not be compelled to attend panels. This administrative response did not apply if the victim was a small shop keeper or if an additional offence had been committed against a particular member of staff.

There were, however, alternative responses possible. In one area there was a Retail Theft Initiative run by a local police officer in co-operation with the manager of a large

local store. This was run every three months as a group session in the store and was considered to be a more positive response. Initiatives of this kind were heavily dependent on the efforts of individuals often in their own time.

It's where young people learn about the consequences of shop theft but not just having someone lecturing at them...to find out how it affects not just themselves having been caught but how it affects the general public....prices going up...and the staff in the shop. (Chrissie ROLO)

The ability of the YOS to deliver a fully restorative referral order process was influenced and limited not just by practical and organisational concerns based on lack of resources but by the interests and pressures of the local community. They were constrained by victims and corporate organisations, including corporate victims choosing not to become involved. The key for many practitioners and volunteers was a need for wider and positive publicity informing individual victims that involvement was possible and encouraging businesses to take a longer term view of the possible benefits for them. In this way victim involvement would be gradually normalised and become a part of a community building response to crime.

There should be more press coverage supporting work like cleaning up the beaches...that they (young offenders) are giving something back to the community. (Jackie CPM)

The community needs to be more involved. They need to be told the more positive things...perhaps interviews in the paper. But most people won't take the risk of using young offenders. (Sally CPM)

This view is supported by the Restorative Justice Consortium, whose Chief Executive has said “(There) appears to be a lack of clear information provided through the media to the general public” (Clothier 2006:18)

The Audit Commission (2003) recognised that there was a problem with largely negative reports about youth justice in the national media and that people are seven times more likely to read the national press than the more positive reports in local press. However, the Halliday Review of Sentencing (2001), which recommended a range of strategies for disseminating information to the public, from the Home Office to the Youth Justice Board (YJB) and individual YOTs, suggested that the focus should be on

correcting the mistaken impression that sentences were less severe than they really were. Most community panel members supported the idea that there should be a focus on informing the public through the media about opportunities for victims and the wider community to become more involved.

This section illustrates some of the conflict that exists for justice systems and for professionals working as street-level bureaucrats, in their allegiance to system goals vs. the need to be active in community building. Bazemore and Schiff (2005) argue that a challenge for restorative justice is to build upon private informal control exercised by family and friends and parochial informal control exercised by neighbours and the community. The challenge however goes further than that with the referral order and needs to involve connection between private and parochial informal controls and public formal control and needs to include the wider involvement of large and corporate organisations that operate in a local community.

Offender Participation

Restorative justice seeks to involve offenders in such a way that they are seen as part of the solution rather than just the problem. Offenders therefore need the opportunity to express their regret for the harm done and offer apologies. It is crucial that the panel meeting encourages them to tell *their* story (without justifying the offence), accepts their genuine remorse and helps them to gain insight into the effects of their offending. It is then important that they have the opportunity to make things right and get support to rebuild relationships with their families and the community (Toews and Katounas 2004). The danger with the referral order is that panel meetings are dominated by adults and young people may find it difficult to express themselves clearly in this environment. Many practitioners felt that young men were less articulate than young women. All the practitioners agreed that some skill was required in order to create an environment in which young people felt comfortable speaking freely and felt that they had some control over the outcome. There were no panel members who admitted that they had difficulty communicating with young people but some ROLOs suggested that this was a problem.

There is a problem with panel members not communicating very well with young people. Young people cannot articulate what they do know so that if the panel asks do they know what a referral order is they can't put it into words. Sometimes I don't feel that panel members really know what young people are like. (Clare ROLO)

On the whole young people are pretty good at putting their point of view across. It depends on how well panellists ask them things. Young people often don't like going over the offence again and again but they like that the panel is interactive and it's better if the panel put forward suggestions rather than you are going to do this and that. (Kate ROLO)

One ROLO suggested that, taking into account the type of background that many young offenders came from and their often low educational achievement, they expected to be told what to do and it was all too easy not to make the effort to get them more involved.

Quite often it (their participation) is very limited because they are often from a council background and have a low I.Q and they are very compliant and will accept anything. (Mark ROLO)

However most practitioners felt that, with some sensitivity and skill, the panel meeting provided them with a unique opportunity to tell their story and be listened to.

In my experience they open their mouths and then do not shut up. They tell you their life story and sometimes this is the first time that somebody has listened and the amount of information we get is surprising. (Liz ROLO)

We had this nightmare case with a girl threatening to kill another girl. She frequently carried weapons and stuff so we had precautions with a police officer there. And then in came a tiny girl in a huge puffy jacket and she was terrified and she wasn't going to talk to anyone. But we got on to ballroom dancing and then she laughed and relaxed and things got better. You have to find something to engage them in. (Liz ROLO)

Overall practitioners felt that the level of active participation on the part of the offender and the intensity of the dialogue depended on the ability of the panel to establish some rapport with young people. Panels were however constrained by organisational factors, including the perceived need to limit the time spent on each panel meeting, which did not always allow for rapport to be established. Administrative difficulties also inhibited the opportunity for the same panel members to sit on subsequent review meetings for

the same young person⁵⁰. Such opportunities could help to build more meaningful relationships and demonstrate community commitment. Community Panel Members felt that continuity was crucial but the YOS argued that volunteers were not always available at times when panels had to be held in order to comply with guidelines. Bochel and Bochel (2004) argue that under these kind of organisational and administrative pressures street-level bureaucrats develop techniques that enable them to fulfil their task within the resources that they have available to them. It became YOS policy for an attempt to be made to contact at least one of the original panel members to sit on review panel meetings. In this way the street-level bureaucrats demonstrated flexibility and compromise at the same time as maintaining control over the process.

The question of how best to engage young people in the referral order process revealed a tension between professional youth workers, who felt that their training and experience gave them particular insight into building relationships with young offenders, and volunteers, who felt that rapport could develop if enough time, flexibility and continuity was built in to the process. Relationship building is at the heart of restorative justice and central to the success of stakeholder involvement. For there to be successful relationship building there needs to be *“change in the missions and mandate of juvenile justice agencies and change in the role of the juvenile justice professional”* (Bazemore and Schiff 2005:68). This next section looks more closely at professional role change and the importance and difficulties of building relationships with volunteer community members.

Part Two: Roles, Responsibilities and Relationships

An important set of relationships in the process of the referral order are those between the Referral Order Liaison Officers (ROLOs) and the Community Panel Members (CPMs). According to the Youth Justice Board guidelines on effective practice (YJB 2000) the ROLO is a member of the panel and is there to advise on the components of the contract, including what interventions are possible and to ensure proportionality. The ROLO co-ordinates panel meetings. They meet and greet the participants and ensure their health and safety, which may involve an assessment of the risk dynamics

⁵⁰ This is recommended by the Audit Commission (2004) but individual YOT's make this decision.

between victim and offender. They provide background information to the panel and advice about the contract. This usually means discussing the offender report with the panel, discussing the victim and then advising what it is possible to put in the contract with regard to available resources. At the end of the panel meeting they are responsible for typing up the contract and ensuring that it is signed by all parties and also conducting a de-briefing session with the panel members⁵¹.

All of the ROLOs interviewed suggested that their role went further than this. The most commonly held view was that they were mediators at panel meetings and that they took an active role rather than being passive reporters of the proceedings. They also felt a heightened sense of responsibility for the process as they were the professional member of the panel. Their responses in interview suggested that there was a degree of ambiguity about their role and a potential tension between the way that the ROLOs understood the referral order process and their role in it and the way that it was understood by community volunteers. Relationships between professional youth justice workers and community volunteers held the potential for conflict. Asked about how the referral order is a community response to crime the majority of practitioners felt that having panel members recruited from the local community was the most important element of a community response. However there were some reservations expressed by ROLOs about the kinds of people who were recruited in that they tended to be middle-aged and middle class and therefore did not always reflect the actual communities in which the young people were embedded⁵².

The idea behind the volunteers is that these people are actually drawn from the community affected by the offending behaviourthe problem here is that people who volunteer for things like this.... is that you don't necessarily get a true reflection of the community...the people who may have most to offer, who may have been in trouble themselves aren't included in the recruitment process. (Kate ROLO)

Some people think that's not for me I haven't got the skills ...and I think you tend to get white, middle class, often femaleum...from teaching or social services backgrounds. (Chrissie ROLO)

⁵¹ To date research eliciting the views of those youth offending professionals working with the referral order has focussed on YOT staff generally rather than ROLOs in particular (see Crawford and Newburn 2003 chapter 6). Internal staff surveys in the research area have tended to focus on training needs, hours to be worked and administrative responsibilities.

⁵² see figures 4.1 and 4.2 earlier in this chapter for age and employment breakdown of CPMs.

Partly in response to what ROLOs perceived to be volunteers inexperienced in dealing with the kind of young people likely to be undertaking a referral order, most of them felt that they needed to exercise active control over the process. This was despite the fact that all five of the volunteer panel members interviewed, as Chrissie suggested, had a background in Social Services, youth or community work and therefore did not see themselves as inexperienced.

I suspect that I probably have more involvement in the process than other ROLOs....I don't know. If a question isn't asked and I think it should be asked then I ask it. The less I speak the better the panel is going. (Mark ROLO)

I try to be passive but I am very pro active person so it's difficult and I have a reputation for being controlling but people appreciate the fact that I have a lot of knowledge. If they say something stupid then I have to tell them. I make sure that the panel members use appropriate language and I keep them on track and time keeping.....they go on too long sometimes. (Chrissie ROLO)

It depends on who the panel members are because some panel members are maybe a bit more timid than others. In those instances I have to be a bit more forward and take control. In other situations I've got people who have been doing it for longer and I didn't really have to do anything. (Ivy ROLO)

One particular area where professionals may continue to exercise control over the process was the young offender report prepared by the youth offending team in advance and presented at the initial panel meeting. All of the ROLOs and CPMs felt that the report on the young offender was a vital component of the meeting in terms of providing background information. The quality and depth of the report was considered a critical factor in the decision making process. Most ROLOs felt that as much information as possible should be in the report and were supportive of the County decision to include suggestions to the panel in the report about what should be in the contract. This is not national practice but is one way in which guidelines could be interpreted, discretion could be exercised and street-level bureaucrats can make policy. ROLOs, as professional representatives of their agency were at least partly driven by the need to control and time manage panel meetings. They felt that volunteers needed professional guidance to make decisions.

It's important that the panel should have a feel for how the meeting is likely to go. If they have then the length of the meeting is shorter because the questions have been asked. (Mark ROLO)

I think that as a report writer you have more to do with a young person, an hour or two hours sometimes and you can get a better feel for what might be appropriate than the panellists in a half hour session....I've been to panel meetings where panellists say they are going to do this and that and you have to be firm with them and say well that's not going to work and usually they will bow to experience. (Kate ROLO)

Panels aren't duty bound to follow recommendations but they will take advice. The trouble is that panel members haven't had the opportunity to speak to my colleagues to know how we work so they may not know what is appropriate....because they don't understand how things work. (Chrissie ROLO)

CPMs, on the whole regarded the report as useful for its background information but saw it very much as a guideline for the contract.

The professionals make suggestions but sometimes we agree that they (the young person) deserves either more or less. (Jackie CPM)

I think the report is mixed in its usefulness. It is only background and we must see the young person. Some things come up that are not in the report....critical things. At one time I tended to feel that it was all written down and we had to go along with it. (Helen CPM)

ROLOs also highlighted ethical issues. They argued that in a report which is read by a young person and their parents, there were things that should not be written. They felt that some things needed to be communicated to the panel verbally from the report writer through the ROLO. This was a decision made by the YOS or in some cases dictated by legal considerations such as a pending court case. Some CPMs had concerns that information was not always as comprehensive as it should be. For example they felt that it was important that they were informed if a young person had significant learning difficulties especially if writing a letter of apology was likely to be in the contract. Choices about what should and should not be brought up prior to a meeting were made by the professionals.

If it's a more difficult young person we talk to the report writer and look through their file and see if there is anything they've saidmaybe something they're worried about and not to touch on certain subjects. (Clare ROLO)

You'll find that they have not often had what you'd think of as normal experiences....there could be a bereavement issue.....or mental health issues..... so that you don't tread anywhere you shouldn't. (Liz ROLO)

Because the young person has the opportunity to read the report, sensitive information isn't put in the report. I had a young person who had three suicide attempts that her father wasn't aware of it and because she is over 16 he doesn't need to be aware but he does have to be at the panel with her so it's not to be mentioned. (Kate ROLO)

Questions about the written report revealed a tension between the professional youth worker and the voluntary panel member. This tension was more marked when other decision making factors were asked about, in particular the response of the panel to the way the young offender behaved at the initial panel. For CPMs their face to face exchange with the young person was the most important factor for making a decision about what might be included in a contract. Some ROLOs felt that CPMs were too influenced by the 'attitude' of the young person.

If the young person comes in and they are a bit stroppy which a young person can be, especially if they are going to be meeting new people they've never met before, some panel members are absolutely dreadful for saying well he was lippy to me I think he should get more reparation hours. (Ivy ROLO)

You've got that thing where if they're going to have that attitude then let's make them do more things that they don't want to do...or hours and hours of reparation...well is it really going to help that young person? (Liz ROLO)

All the CPMs felt that the young person's demeanour was an important and valid factor in deciding what should be in a contract. In some cases panels increased reparation hours because of a 'bad attitude' with a view to decreasing them at a later review panel if their attitude had improved.

Attitudes and body language are important. (Anne CPM)

With some of them you can see that they've made an effort to present themselves. (Sarah CPM)

ROLOs tended to be critical of the way in which they perceived CPMs used reparation as a punishment for an 'attitude'. In contrast, CPMs thought that 'attitude' was an indicator of feelings of remorse and remorse should warrant less reparation

‘punishment’ for the offence. One ROLO summed up what is likely to happen at a panel meeting.

Before the meeting we might say that we are going to give them 12 hours of reparation based on the evidence of the report. The young person will come in with an attitude and the panel will say right 30 hours of reparation. The panel’s back will go up as the young person is being disagreeable. If a victim is there, then (it is important) how the young person presents themselves to the victim. If the panel sees the young person give a genuine apology then that’s the hard work done and there’s no point giving them 30 hours reparation. (Kate ROLO)

The question of attitude was interesting in a number of ways. It could be perceived, for example that a ‘bad attitude’ was representative of disrespect for the ‘law’ or for the ‘community’. It could be argued that by ‘punishing’ a ‘bad attitude’, panel members were behaving much as a conventional court might do. Furthermore it raises the question of what constitutes a ‘bad attitude’ in terms of shame, guilt and remorse. These questions are explored in more detail in **Chapters Six and Seven**.

The systematic reform needed in a transition to restorative justice requires a change in the role assumed by youth justice professionals. This change requires a move away from the role of expert service provider and towards the role of facilitator and community builder. Bazemore and Schiff (2005) point out that this new role requires the type of partnership in which the conferencing programme works with and through the community but there is still the potential for replicating the ‘expert’ role and solving problems *for* the community rather than *with* them.

Conclusion

There is an assumption that governments formulate policy and policy is translated into action unproblematically by neutral and obedient bureaucracies. This ‘top down’ approach (Bochel and Bochel 2004) assumes that communication is good between policy makers and all implementing agencies and that all practitioners understand and agree with policy objectives. It also, and crucially, assumes that there are no serious constraints on practitioners (Hogwood and Gunn 1984). However, policy is more likely to be subject to constant street-level adjustments which ultimately become agency

policy. In short, policy is made on the street (Lipsky 1980). An important part of this is the exercise of discretion by the 'street-level bureaucrats' (Gelsthorpe and Padfield 2003). The actual outcomes of policy may therefore be very different from those intended by policy makers. In reality implementation is constantly interactive and changing. These changes come about through the problems faced and choices made by practitioners.

In this chapter I have discussed how referral order policy was interpreted by those practitioners in the YOS who were responsible for its implementation, and translated into practice. Interviews with practitioners provided a better understanding of some of the constraints practitioners faced and the methods they chose to deal with them. Figures showed that practitioners were faced with a high and expanding workload and what they perceived as inadequate resources to deal with it. Consequently they prioritised and developed processing devices in order to achieve agency goals. These devices impacted on the practice of restorative justice and its fit with the theoretical framework.

Part One of this chapter looked at how practitioners understood and experienced the key restorative justice principle of *stakeholder involvement* in the process. Practitioners clearly understood the importance of victim participation but faced considerable constraints, which restricted the flexibility essential for more victims to be actively involved. Under pressure to move cases forward, victim contact was routinised and rationed and, in the cases of corporate victims, reduced to an administrative exercise. Victim involvement is crucial to restorative justice and different kinds of victim require different kinds of approach before higher victim involvement becomes normal practice. From practitioners accounts this level of involvement needs a more flexible time frame and higher numbers of dedicated and trained personnel. Despite this, practitioners were very positive about the results when victims did attend panel meetings. The involvement of the community and community building raised a number of issues. There was no clear management responsibility for wider community involvement (beyond recruiting and training community volunteers) or positive media links. Positive publicity informing individuals that involvement was possible and encouraging other community groups of the benefits for them would help to normalise restorative justice approaches and become part of a community building response to crime. In particular

practitioners expressed regret that corporate victims, who had resources to offer and an interest in outcomes, made so little contribution to the referral order process.

Part Two explored the changing roles of justice professionals and their relationship with the volunteer community panel members. It highlighted the potential for conflict between professional practitioner and volunteer panel member. Strong professional leadership may well be central to successful conferencing but in some cases there seemed to be reluctance to share power and control over the process. The key tension between professional youth workers and volunteer members of the community was that the professionals felt that they knew and understood the behaviour and coping mechanisms of young people better than most volunteers did. In some cases they were reluctant to hand over decision-making control to volunteers whose class and work experience may have added to the potential for conflict. Middle-aged and middle class volunteers from a social service or youth worker background might be regarded as more difficult to 'control' than other members of the local community in which many young offenders were embedded. Restorative justice requires a transformation in community and government roles and suggests a need to restructure the relationship between justice systems and the community (Bazemore and Schiff 2005). There may still be a role for professional expertise in response to youth crime but there is some tension as youth justice professionals change from the primary 'expert' service and surveillance provider, to facilitator of informal, problem-solving community responses to crime. Having said this, an element of tension could be positive if the ensuing dialogue ensures that community panel members play an active role rather than deferring to decisions made by professionals. An alternative might be to train the community panel members themselves to be referral order facilitators.

Johnstone (2005) has argued that referral order policy is unclear and leaves considerable scope for youth justice workers to interpret it in ways that are feasible. In this chapter I have argued that the gap between the theoretical framework underlying a fully restorative justice and its practice can at least partly be explained by the devices adopted by street-level bureaucrats to cope with what seems to be feasible. Tensions between youth justice policy and restorative justice flexibility meant that the reality, for street-level bureaucrats implementing the referral order, was finding ways to deal with the conflicts and ambiguity inherent in the system, especially limited resources and

ambiguous new roles. My findings were in line with Crawford and Newburn (2003) who suggest that those professionals who deliver restorative justice policy do so in a constructive way despite constraints placed upon them. However, the referral order is still in danger of being a dilution if not a distortion of key restorative principles.

6. Youth Justice Gets Personal: Differences between Court and Panel

In traditional criminal justice procedures, confrontation is indirect, impersonal and filtered through judicial rituals. Restorative processes, on the contrary, are personal, direct and often very emotional. (Walgrave 2001:3)

Restorative justice is referred to as a new paradigm, or as a new pattern of thinking about a response to crime, and discussions often begin by comparing it to a court-based criminal justice system. Zehr (1990) for example, refers to crime in a conventional criminal justice system as a violation of the law, distinct from restorative justice, which focuses on the violation of people and relationships. This different emphasis is evident in the contrasting environment of a youth court and a youth offending panel and the actions of the practitioners in each. Young people undertaking a referral order experience both a youth court procedure and a restorative justice panel. This chapter documents their experiences in both environments. It is by contrasting the 'impersonal' nature of the court with the 'personal' nature of a community panel meeting (Walgrave 2001) that we can begin to understand how young peoples' experiences affect their attitudes and behaviours about the harm done. From the young offenders' perspective we can also begin to see whether or not these differences reflect the theoretical framework which underlies the concept of restorative justice.

In this chapter I argue that the referral order holds the potential to be at least partly restorative and support reintegration into the community. I discuss how the type of ceremony that young people experience inhibits or facilitates their involvement and participation in the justice process. I outline the characteristics of a courtroom 'degradation' ceremony and contrast it with the 'reintegration' ceremony of a more restorative approach. I argue that 'fixing' or 'closing' the distance between young people and the justice process has an impact on how they perceive that they have been treated. I contend that a reintegrative approach is more likely to promote mutual respect, produce a meaningful dialogue and give young people a voice. This personal approach is more inclusive and has the capacity to break down the barriers between those with a stake in events and thus move towards a more restorative justice.

Degradation or Reintegration?: The Ceremony

Involvement and participation in justice are central principles of restorative justice. These principles are greatly restricted in conventional criminal justice proceedings; limited by the adversarial and judicial dimensions of the courtroom, and by the definition of crime as an offence against the state. There is an assumption that a courtroom procedure is the superior paradigm of justice with the state as the guardian of human rights and a criminal justice system designed to protect offenders from arbitrary justice (Zehr 1990). The rule of law therefore requires decisions to be taken by an independent and impartial tribunal according to settled rules (Ashworth and Redmayne 2005).

The young people in this study⁵³ attended their first court appearance where they were sentenced to a referral order. They, and usually their families, had little previous experience of court proceedings and were unfamiliar with the rituals and formal language that was routinely used. They often failed fully to comprehend what was taking place throughout the process. The formal, impersonal environment they experienced and their role as “*silent pawns*” (Van Ness and Strong 2002:56) in the courtroom was likely to exclude and, in some cases, alienate them from the process. A recurring theme in young people’s accounts of their experience of attending the initial community panel of their referral order was the contrast between the panel encounter and the courtroom experience that preceded it. Their accounts illustrate the difference between seeing justice through a retributive lens and seeing justice through a potentially restorative lens (Zehr 1990).

Braithwaite and Mugford (1994) refer to community conferences as ‘reintegration ceremonies’ in which co-ordinators develop procedures to make the theory of shaming and reintegration of offenders (Braithwaite 1989) realised in practice. In a reintegration ceremony, disapproval of a bad act is communicated to the young person while their identity is sustained as essentially good. Crucially there needs to be respect for the

⁵³ See Appendix J for a full list of the young people in the study with details of offence and family circumstances. All names and places have been changed to protect their identity. This list also shows outcomes after the referral order.

wrongdoer throughout the ceremony, in order to sustain the multiple identities of the young person as son/daughter, promising student or netball player, for example, in preference to creating a 'master' identity such as 'delinquent'. A restorative approach therefore uncouples the crime from the offender and removes the crime from the everyday character of the offender (Braithwaite and Mugford 1994).

The reintegration ceremony contrasts with Garfinkel's (1956) notion of the 'degradation ceremony'. By 'degradation ceremony' Garfinkel (1956:421) meant a process whereby "*the public identity of an actor is transformed into something looked on as lower in the local scheme of social types*". The view that most criminal procedures are examples of status degradation ceremonies was prominent amongst labelling theorists (see Becker 1963; Erikson 1962). Erikson (1962), for example, suggested that these criminal procedures constitute "*a sharp rite of transition at once moving him out of his normal position in society and transferring him into a distinctive deviant role*" (Erikson 1962:311). Garfinkel (1956) suggests that, in a courtroom the crime and the offender are coupled together and removed from the realm of the everyday as 'out of the ordinary' and are treated as uniform 'deviant types'.

The court process is adversarial. It assumes a conflict of interest between parties (Zehr 1990). The emphasis is, therefore, on complex rules and procedures at least partly designed to ensure equity of treatment. Professionals represent the state and the offender. This process is necessarily formal and impersonal. There is a production-line approach with a discourse of legalism, which makes it hard to attain an atmosphere of mutual respect. Young people are forced into feigned respect by being made to stand up when a bench of people they do not know walk into the room and legal language is used. Braithwaite and Mugford (1994) suggest that denunciation by the judge may degrade the offender, but the process is so incomprehensible that all the judge usually accomplishes is some authoritative outcasting. They suggest that this atmosphere is unlikely to "*touch the soul*" (Braithwaite and Mugford 1994:142) and thus make it easier for offenders to sustain psychological barriers against accepting responsibility or feeling shame for acts which the court defines as criminal. The differences in treatment that the young people received between the court and the panel meetings began with their initial reception and continued throughout the process. Their experiences vividly reflect the formal/informal differences between a conventional and a restorative

approach or the degradation/reintegration differences suggested by Garfinkel (1956) and Braithwaite and Mugford (1994).

The Courtroom Approach: Fixing a Distance

Formality is important in an environment in which the focus is on the public harm done. The court represents the formal dignity of the state and is invested to speak in the state's name. A formal court ceremony is characterised by '*fixing a distance*' (Garfinkel 1956:423) between the court and the offender. 'Fixing a distance' is part of a ritual separation of the offender from direct involvement in the court process. There is both a physical distance and a social and moral distance.

Time Spent Waiting

Time can be used as a form of disciplinary control. It is a quantifiable commodity defined by the court and endured by the offender (Wahidin 2004). It can strip offenders of autonomy and identity. At the court, time was influenced by the demands of bureaucratic processing. Time spent waiting was a significant feature in young people's accounts of their court appearance. Waiting time before a court appearance varied for each of the young people but John spoke for many in expressing his desire to present himself well, right from his arrival, and then finding that his efforts were not recognised.

Me and me Dad had a letter saying we had to be in....well our appointment was for 10.30.....we turned up early at 10....thinking it will look better....they didn't tell us there were so many people there.....that were going to be before me.....we waited 'til about 3 o'clock before I could finally go in...I think that's bad...because I think they should roughly give people different times to go there. (John)

Waiting times for the young people varied from less than half an hour to over four hours but from the beginning enhanced the idea that they were being processed through a system in which they had no significant control or involvement. The court waiting room was like other public institutional waiting rooms, with many people there waiting to be 'processed' through the system, and with court officers organising the processing. For many young people the waiting increased the tension they experienced but also

increased their boredom and feelings of resignation about the outcome. They were ready on their arrival to present themselves in a positive light but after a long wait they just wanted to get it over with and were not engaged by the process.

Children shouldn't be there really because it's a boring experience. (Amy)

I didn't know what was going on, mainly I was just getting bored. (Jake)

Time was constructed within the justice system, imposed from above by explicit rules. Young offenders had to arrive at court on time; being even a few minutes late was an offence. Once they were there they were unable to leave because they could be called into court at any time. The 'boredom' reported by Amy and Jake reflected the majority response and suggested a psychological 'switching off' or 'self-distancing' before they even entered the court. This was a reasonable response to the tension of waiting for something bad to happen.

Spatial Distancing

Youth courts are sometimes arranged in a more informal way than an adult court. For example, tables and chairs may be rearranged to minimise the distance between young people and the Bench. In many courts this may not be possible because of the fixed nature of the physical environment. Magistrates may still sit on a raised dais and young people (as well as court personnel) will still be expected to stand in front of them when being addressed. There are formal positions for court staff, the offender is physically distanced from the bench and often they are also distanced from their parents or guardians⁵⁴. Alex's comment was typically factual, but Lewis emphasised his passivity in this environment.

I stood by myself and my family were behind me. (Alex)

My mum and Dad were sat behind me and they (the Magistrates) sort of stood me up and said about what I'd done and what I'd have to do. (Lewis)

⁵⁴ The Audit Commission Report Youth Justice 2004 recommended changes to the layout of youth courts to improve interaction between young people and magistrates.

The way temporal and spatial dimensions of the ceremony are used convey important messages to the participants. The criminal justice system has developed a clearly bounded process which sanitises and rationalises the event. The process becomes a Weberian technical/rational practice, in which lack of engagement or disenchantment leads to the loss of opportunities for the transformation of the self.

Social and Moral Distancing

Magistrates must be seen as public figures rather than private individuals. They are invested with public authority and clearly located as public supporters of society's values. A social distance is enhanced by court staff dressed formally in suits or gowns and by the complexity of the language used. Distance and ritual separation also help to reinforce an environment of moral superiority which brings to mind Matza's (1964) comment that "*the presumption of moral superiority is deeply embedded in the work of officials who oversee delinquency*" (Matza 1964:139). The 'moral superiority' of the bench was experienced by several (8) young people as being 'spoken down' to in court. Luke felt particularly aggrieved at how he was treated.

They speak to you like shit and they look at you like shit. They roll their eyes up and they think that they are better than you.... technically they are in that situation.... because they are not the ones who done wrong are they? They should treat you right..... but the way they look at you.... (Luke)

Luke clearly did not accept that members of the bench were 'better' than him as people, just in the 'technical' sense because they had been assigned a role in the courtroom and were not identified as the wrongdoer. He was angry at what he perceived was their presumption of total superiority which gave them the right to treat him without respect, or as a '*total deviant*' (Braithwaite and Mugford 1995). In John's case, his mother reinforced the idea that as an offender he had relinquished some of his right to be treated respectfully.

Jo (interviewer):	"Do you think that the Magistrates treated you with respect?"
John:	"Not really"
John's Mother:	"Well you done wrong so yeah they did"
Jo (interviewer)	"Is that what you think John?"
John:	"Not really. They don't talk to you very politely"

John and Luke were physically big for their age and displayed what could be interpreted as non-compliant behaviour in court. They had, for example, kept their hands in their pockets and met the gaze of the chairman of the bench. Those young people (4 female and 9 male) who reported their court treatment as 'alright', 'fine' or 'not bad' were smaller, younger or female. Amy's account is a good example of this difference.

They treated me with quite good respect actually. They're not as bad as everyone makes out they are. (Amy)

Amy's comment refers to the reputation of the court as an authority which has the power to treat people harshly. She was therefore expecting worse. Jessica's account reflects the contradiction between what she accepts is 'fine' and the aggression displayed in what actually happened.

They were fine...I only got shouted at once.....because he said he didn't want to see me there again. (Jessica)

Distancing in the courtroom emphasises the court's power over the physical body and the power to demand compliance and respect, from a position of moral superiority invested in the court officers by the state. This is likely to lead to identity degradation (Garfinkel 1956) but it is not likely to encourage participation and dialogue. Jessica spoke for many when she said that the experience made her 'feel small' and 'go quiet'.

I just like..changed..I went all quiet and didn't want to say anything...they made me feel small. (Jessica)

Procedure, Language and Rights

Youth Court Magistrates undertake training to speak to young people in a more informal way than in an adult court (Youth Court Training Notes 2003). Such informalised courtroom procedures may make them less threatening to young offenders but they do not fundamentally alter the balance of power in the criminal justice process. It is still a court, subject to courtroom constraints and judicial procedures and in many youth courts there is very little difference between a youth court and an adult court.

Offenders in a courtroom remain observers in a process run formally by criminal justice professionals, and they will, in an environment which focuses on their legal rights, in many cases be represented by lawyers using legal language and standard legal procedure. Katie and Alex recognised that a courtroom had formal language and procedures but questioned its appropriateness for young people.

In court the people have to speak in kind of.....use long words and that. I understand why they have to do it but some young people don't understand what they are talking about. (Katie)

The court was a lot more serious and there were a lot more rules.....whether it was just for effect I don't know. (Alex)

Katie and Alex did partially accept the formality as part of the ritual, unlike Lewis who regarded it as disrespectful and degrading.

The panel was better....it was much better (than the court) the way they spoke to you...the way it was all laid out.....like they weren't all like high up and you like low down...you didn't have to stand up when they came in and all that stuff. (Lewis).

Many of the young people's narratives revealed that they did not understand what was going on in the court room and did not understand what their sentence entailed.

They (the Magistrates) explained it to me and give me a leaflet but it didn't make any sense to me. (Amy)

They said....I can't remember what they said but it was just basically what I'd have to do. The bloke said something to me when I left but I can't remember what it was. I didn't know what he was going on about.....couldn't work it out at all. I was just like...what? (John)

When you're in there you don't know what they're talking about. I can only remember bits. At one point I didn't really understand what was going on. I need someone to explain it. I don't really get it the first time if you know what I mean. (Sam)

They did explain...but...this was the confusing part....they said we're going to refer you a panel for 6 months and right we're going to leave it to the bloke behind you and that was it really.....and then we got moved out and the bloke said you'll get it all explained to you in a letter about this youth panel thing. And that was it really. It was a bit confusing. (Owen)

These accounts demonstrate that the process was largely incomprehensible to the young people involved and usually time was not taken to explain it properly to them. Lack of understanding and confusion isolated young people from involvement in the process and promoted exclusion rather than inclusion⁵⁵.

Restorative justice is frequently criticised for its lack of legal rights protection which aims to protect offenders from arbitrary justice (see for example Johnstone 2002, Ashworth and Redmayne 2005). In courtroom practice however, legal advice may well be brief and cursory at best. All but two of the young people in the sample consulted a solicitor before their court appearance. In all cases it was the duty solicitor and meetings were held while they were waiting. Only three of them could remember the solicitor's name, four that it was a woman and two that it was a man. The rest stated that they could not remember who it was. At worst lawyers were capable of scaring their clients. Diana, for example, who at age 13 was the youngest of the sample said of her solicitor:

She said I could get a big fine or go to a Young Offenders (institution). I was a bit shaken up about that. (Diana)

It was in fact extremely unlikely that Diana would receive anything other than a referral order as long as she pleaded guilty. Diana and her mother did not report being put under any pressure to plead guilty, but her lawyer outlined the alternatives available if she pleaded not guilty. What is significant is that the only thing Diana can remember is the threat. Young people's accounts of the impersonal and sometimes coercive nature of their legal advice suggest that duty solicitors may see themselves as much as agents of the court, with the needs of the criminal justice system as paramount, as representing young people and their rights. Parker et al's (1981) study of juvenile courts suggested that lawyers were incorporated into the ideological framework set by the bench. Legal representation helped the court to run smoothly and decision-making was routinised. Lawyers tended to take for granted the 'problem' nature of the children in the court and tended to reinforce established sentencing practice. Morris (1983) argues that this undermines the argument that the court necessarily protects the rights of children. All

⁵⁵ The Audit Commission Report Youth Justice 2004 recognised that the quality of communication in youth courts could be improved. It suggested training for court personnel and magistrates.

of the young people interviewed said that they received adequate legal advice but, from their accounts, advice was delivered with little attempt to ensure understanding. Under some pressure to expedite cases, the lawyers were not able to get to know their clients needs. The danger with the rule of law, as Christie (1977) has argued, is that there are too many professionals working within the state apparatus, which can lead to the interests of the professionals and the state being served above the needs of victims and offenders.

For all the young people to whom I spoke, the courtroom environment fostered a sense of distance and anonymity, which is consistent with a streamlined managerial approach to justice (Monaghan 2000). It was a view shared by youth justice professionals who suggested that the courtroom was an alienating and punitive environment in which young people felt that the process had nothing to do with them.

When you see a young person in court.....they look at their Solicitor. It's completely out of their hands. As well as being frightening and overwhelming it is nothing to do with them. They might as well not be there. (Liz ROLO)

Anonymity and Confidentiality

There are limitations on who is allowed to attend a youth court. The general public, including victims, cannot enter the courtroom and there are often restrictions on members of the offender's family and friends. There may however, be a number of court officers, including other lawyers, probation officers and even the press, present in the room as the young person's case is heard⁵⁶. Most, if not all, of these court officers are unknown to the young person. In more than one case I observed, apart from the two young offenders and their guardians, myself (who was known to them) and their Solicitor (whom they had met that morning) there were up to 16 other people in the court. The number of people in the room was intimidating for young people.

⁵⁶ In Keiran and Luke's case the prosecution invited the local and national press to the court and the event was front page news in the local paper. Their names were not used but they told me that it was common knowledge at their old school and in their local community. Keiran's mother thought that it was going to be difficult to escape this notoriety and might make repeat offending more likely.

Quite scary.....The amount of people in there. All ushers and that walking around.....and like all the people in there. (Sophie)

It was quite scary because I'm so little and everyone was looking at me. (Amy)

I didn't like everyone looking at me. (Jessica)

Ryan took this idea further and pointed to an impersonal and rational efficiency in the court which is inherent in a mass processing approach.

So many people and it's rubbish really. Too many things going on. They just want to get rid of you. (Ryan)

For many young people there was a strong sense of anonymity in the process. This was often made worse because they were being looked at by people who did not know them (and did not care about them as individuals). The presence of so many people did not however, afford them privacy nor assure them of the confidentiality of the court. Indeed, as a significant strand of making the criminal justice system more transparent, the intimate details of cases (although reported anonymously) were available to the media.

For Jake, as with others, the experience did not '*touch the soul*' (Braithwaite and Mugford 1995) but produced a Simmelian blasé attitude in which he distanced himself psychologically from the process.

I just switch off after a while, just basically they were telling something I don't want to be listening to, just switch off... ..(laughs). (Jake)

By 'fixing a distance' in a formal courtroom ceremony the criminal justice system encourages 'self-distancing' from the offender. The offender may be degraded but is more easily able to deploy barriers against feeling responsibility or remorse and may be able to sustain the 'techniques of neutralisation' (Sykes and Matza 1957) which may have originally been used to justify the offence.

The Deviant Type

The court room ceremony reinforced the idea of young offenders as 'deviant types'. Co-defendants were seen together in a courtroom so that being part of a group or a 'type' of 'deviant' was emphasised. This labelling process has two consequences: ideological and coercive. Duster (1970) argues that certain deviant aspects of the offender may be regarded as 'master statuses' from which knowledge of the total identity of the individual may be deduced and overrides any other characteristics of the person. The process stigmatises the offender and may be self-fulfilling. Duster (1970) suggests that this moral characterisation must be accepted by the offender in order to be treated well by the court. It was often a comfort to young people to be in court with co-defendants because of the support they provided, but it also enhanced the distance between them and the court. The young people developed a certain kinship and shared identity which reinforced their notion of people set apart from the normal (Duster 1970).

We had to stand up. There were three of us, one in front of me, on six tables. My Dad sat next to me. It was better being with (co-defendants) because you weren't just going through it on your own. (Katie)

In many cases this encouraged mutual disrespect between the bench and the young people, and was likely to produce mockery from young people who had the support of other members of the 'deviant type'. Their response was to laugh or exhibit hostile behaviour.

They treat me better than the other boys (co-defendants) what was in there. They (the co-defendants) were standing and laughing and that. Trying to make (us) go all stupid and that. I just stood there and I weren't laughing or nothing and like.....they told one boy to get out and he walked out and swore at them. (Sam)

Me and my mate (co-defendant) were trying not to laugh...it was the judge because of the way she was speaking.....really high pitched. (Ethan)

Mockery can be an effective weapon against the dignity and formality of the court although it was used only rarely by the young people to whom I spoke. Becky was the only young person who reported open hostility in the court room.

I got in a bit of an arse (she giggles). They were talking about that court order thing and I didn't want to talk about it so I said I'm not talking to you. The Magistrate got in a right strop. He walked out and then he came back in.....then I just sat there and listened. (Becky).

Becky believed that she had '*made things worse for myself*' by refusing to answer questions and consequently she believed that she had received a longer order than she might otherwise have done. Becky had refused to accept the demands of the court for a show of compliance. She believed that she was punished because she rejected the rules of the courtroom and the 'moral characterisation' (Duster 1970) expected by the court. The formal criminal justice system expects involvement and participation only on its own terms. It expects respect but does not encourage mutual respect and 'fixes a distance' which often results in 'self-distancing' and even mockery of its procedures. It demands compliance but may achieve only strengthened resistance and mutual disrespect. As Luke explained:

If people speak to you with no respect....well people piss me off all the time...and then if you do it to them (treat them with no respect) then they don't like it. Basically it just pisses everyone off then. (Luke)

The judicial system guarantees rights and freedoms to citizens and therefore it follows strictly defined procedures to cope with its limitations. These procedures are highly formalised. Walgrave (2001) suggests that if, as is often the case, many offenders have already experienced social exclusion and failure then society and its judicial representatives very often are looked upon as hostile and unjust. The judge has no moral authority in the eyes of the offender to decide about the wrong done and to deduce punishing consequences from it. The judge is perceived as a professional who is paid to do his or her (further excluding) job. Thus the possible moral message does not reach the offender. The experience is seen as confirmation or reinforcement of the negative relationship that already existed. This is shaming directed at the young person and is mostly the kind of disintegrative shaming or stigmatisation identified by Braithwaite (1989) which can lead to reinforcement of a 'deviant' identity and consequently to further offending.

A Reintegrative Approach: Closing the Distance

The context, the relationship between the stakeholders, the sanctioning procedures and the impact on the offender are, in principle, completely different in a reintegrative approach. A reintegrative ceremony closes the distance between the stakeholders. It emphasises a less formal space and suggests that physical time and space should promote inclusion (Braithwaite and Mugford 1994). In contrast to court, the community panel meetings that I attended were by appointment and there was rarely more than a few minutes of waiting time for young people and their supporters. Time was controlled by the youth offending team and the panel, but the needs of all the stakeholders were paramount so timings were more flexible and negotiable. In this way, unlike in a youth court, time was used to promote inclusion. In the community panel meetings I observed, the physical and social environment was very different from a courtroom.

Panels were held in community centres, which were used for a range of activities, including older peoples meetings and activities, play groups for parents with babies and after school clubs for young people. I attended panel meetings in three centres. With older people, small children and young people arriving and leaving the centres at intervals, it was not at all obvious that young people attending a youth offending panel were in any way different from other members of the community. In each place panel meetings were held in a private room with tables and chairs arranged closely together, often in a circle⁵⁷ to minimise a sense of hierarchy and increase informality⁵⁸. The number of people present usually included two Panel members, one or two Youth Offending workers, the young person with supporter(s) and the victim with supporter(s) (if the latter attended). All the people in the room were connected to the young person's case. Support here was provided by those considered to be in a position to offer positive moral guidance, not themselves part of the 'deviant' group. The young person

⁵⁷ Circle sentencing was developed in Canada amongst First Nation people. It differs from other forms of restorative justice conferencing in that it usually has a ritual element such as a 'talking stick' to ensure emotional inclusivity. Its purpose is more about structural conflict than a single crime event (Stuart 1996). (Stuart, B "Circle Sentencing" in Galway, B and Hudson, J (eds) (1996) *Restorative Justice: International Perspectives*, Monsey New York).

⁵⁸ Guidelines for procedures at panel meetings were provided by the YOS. They included detailed seating arrangements and suggestions about what to do and say at a meeting. They were updated at intervals in consultation with panel members (Guidelines for Panel Meetings August 2002/2005).

was able to have supporters at the panel chosen by them. John, for example, went to court with his mother, his sister and his girlfriend but his girlfriend was not allowed into the courtroom. He was however, able to include his girlfriend in the panel meeting as a supporter.

The first time I went there (to court) me girlfriend went with me but I had to go back and me Mum and sister came with me too....they only allowed me Mum and me sister into the public gallery.....I felt more comfortable with my girlfriend in a panel like this. I feel comfortable but not in court.....if anything bad was said you know. (John)

John clearly set some store by what his girlfriend thought of him and was concerned that the court might have represented him in a bad light in a way that he was not expecting from the panel. At the panel he was comfortable having her there as a supporter.

I felt comfortable (at the panel meeting) I didn't feel comfortable in court....I dunno I just felt comfortable. I got talked to normally if you know what I mean...I didn't get told what to do if you know what I mean....I was asked. (John)

Being Normal: Uncoupling the Offender from the Crime

Being treated as 'normal' was of great importance to the young people I spoke to. Katie emphasised the difference between being seen from 'one side' as a deviant and being seen a whole person.

At the first panel I thought I was going to get told off but they just talked to me and that like I was anybody else really and not like talking down to me. In the court they only have a picture of one side of you and don't know if you would be like that normally. (Katie)

For Amy and Luke being 'normal' and a 'whole person' was really about equal treatment or equal respect.

At the end of the day they should treat you the same as any other. Well I don't know how to explain it.....kind of equal opportunity or something.....yeah equality....I don't know how to pronounce it....yeah equality, equality.....the way they treat you like a person and not put you down if you know what I mean. (Amy)

Being normal like...treating me with respect.....we should be treated the same equal...we're all equal individuals. (Luke)

The reference to equal respect is fundamental to restorative principles. Ricky wanted to be treated like an ordinary person who had problems. He did not deny his guilt for the offence or the anger that had precipitated it, but he wanted it to be seen in the context of the problems he felt that he was having at the time.

(They treated me) like any ordinary person....because some people do wrong but it's not their fault...they just got some problems. (Ricky)

Jason and Alex also wanted to have the event separated from the person they saw themselves as.

(The important thing is) I suppose to be treated respectfully. What I done was a spur of the moment thing. I'd never done anything like that before. (Jason)

The panel didn't just judge me on the crime. They knew me. The Magistrates just thought.....well he's done this. In the panel you realise that they are talking to you like a whole person. (Alex)

These accounts are consistent with successful reintegration ceremonies (Braithwaite 1989) in that they clearly separate the offender from the event and recognise that young people have multiple identities. The more personal environment of the panel meeting allowed for these identities to be recognised and for the offence to be seen as an event which did not necessarily define the young person. It was important therefore to talk about, and show an interest in, the non deviant or 'normal' aspects of a young person's identity.

We went in and it was alright, nice people, asking me like what I do and living in the village and that. (Ryan)

They was asking me about hobbies and that and what I wanted to do and what I was good at and what I do with my uncle. We like to go climbing and they asked me about that. They was asking what sports do you do and stuff like that. I was talking about fishing and where I go fishing and what I've caught (Lewis)

An important way for panel members to reinforce that the young people before them were 'normal' and deserving of respect was to talk to them about the non-criminal aspects of their life and their interests in other things.

Meeting and Greeting

It is probably unrealistic to expect state representatives and lawyers in court to respond in a more personal way, given the role ascribed to them by the Criminal Justice System (Roche 2003), but meeting and greeting is an important first step to a more personal approach. Greeting rituals are important in restorative justice. Young (1997) uses the expression 'greeting' to refer to communication that "*makes no assertion and has no specific content*" (Young 1997:70) but its absence is felt as "*coldness and indifference*" and even insulting. As well as verbal greetings there were non-verbal gestures that bring people together warmly, such as smiles and handshakes which "*set the conditions for amicability*" (Young 1997:70). Community Panel Guidelines (2005) for conducting panel meetings in the County were written by the Youth Offending Team in consultation with panel members and started with introductions in which first names were used and hands were shaken. These rituals were important to the young people interviewed.

At the panel you are with people you have been introduced to, the court is more tense because you don't know who all these people are. (Ethan)

The way we was treated at the youth panel was perfect.....the way they was presented to us and we shook hands and everything. We walked into the court and we had to stand up, sit down, stand up and we didn't know their names or anything and we didn't know much and all we had to say was guilty and not guilty. At the youth panel you could explain and everything and they agreed or disagreed and told their names and everything." (Owen)

In all the panel meetings that I observed, the panel member nominated as Chair rose to greet the young person and their supporters. They introduced themselves and shook hands with the young person, before making general introductions and inviting the young person to sit down. This greeting was regarded by young people as a mark of respect. In one case a 14 year old boy (Ricky) told me that he had never had his hand shaken by an adult before. Owen's account raised other themes common to all young

people's accounts. At the panel meeting Owen felt that he could explain and that the panel members then agreed or disagreed with him. There was clearly an opportunity for dialogue between the stakeholders and feeling that they could speak (but were not forced to speak) was important to young people.

Having a Voice: Having a Choice

The focus of a panel meeting is to work *with* young people in contrast to a courtroom which is focussed *on* young people. Young people are increasingly regarded as competent witnesses to their own lives and capable participants in social life (France 2004). This is reflected in legislation that supports the 'voice' of young people. For example, Article 12 of the *United Nations Convention on the Rights of the Child* (1989) states that, "*the child shall...be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child*" (UN 1989: 12 (2)). In England and Wales the *Children Act 1989* created the opportunity to listen to and involve young people in social care services (Roche 2002)⁵⁹. The more informal environment of the panel meeting made young people feel comfortable and 'put them at ease' which encouraged a dialogue over which they had some control. For Keiran it was simply that there were fewer people at the panel meeting.

I don't like talking when there are loads of people around. (the panel) was smaller. In court loads of people...its too many. (Keiran)

For others humour contributed to the informality at the beginning of the meeting and this encouraged engagement.

In court you are in front of a load of people that you don't know. At the panel we introduced ourselves..and had a little laugh and a joke. (Ethan)

The first meeting was quite funny actually because they had a bit of humour..a laugh and a joke. They were a lot more friendly. (Luke)

⁵⁹ It perhaps should be mentioned that much of this legislation is ambiguous and open to interpretations that do not support the active involvement by children and young people.

Sophie and Amy also clearly felt that the panel members were approachable. The less serious and lightly humorous environment allowed them to feel that they could speak freely at the meeting.

I sat down and they were speaking to me....not like in court...I felt a bit more comfortable. They was alright....that lady was nice..the one with the short hair....she had a laugh..she wasn't you know too serious like. I felt I could speak to her. I could say like..not really my side of the story but have my say....but at court I didn't really have a chance to speak....it was quite rude really. (Sophie)

I could say anything I wanted. They totally put me at ease. They made me relaxed and calm. (Amy)

These accounts illustrate that the panel meeting was more likely to give young people a voice; to enable them to explain the circumstances of the offence. Pleading guilty and accepting responsibility for their wrongdoing did not preclude the possibility that there was another 'side' to their story. For Lewis and Owen the ability to engage directly in a dialogue was very important.

(I felt) a lot more comfortable.....(they were) in my face so I could get back on it straight away or whatever. You can sit there and speak because it was like face to face and you could understand them. It was good we got all our points across. When people listen it sort of feels alright don't it? (Lewis)

They give you feedback as well..it's a lot more relaxed and comfortable. I'm happy with the feedback and I feel better about myself. (Owen)

Some young people highlighted the lack of coercion. They felt that an important element was being able *not* to talk if they didn't want to and being given time to think about what they said. This was important because, as Ethan said "*I was worried that I might say something wrong*".

They didn't force you to say anything.....they asked a question and said that you could answer in your own time....in any way I liked...you could say stuff about it. What was good was not being forced to say. (Becky)

Ryan, like others felt that he had some choice about how he responded and what he agreed to in the panel meeting.

We were talking about what things to do like reparation. They was asking me not telling me. I had a choice. If I didn't want to do that I could do another thing. When you come here (the panel) I dunno it's different. Go to court and you feel pressurised but come here and they speak to you and ask if it's alright with you. (Ryan)

Touching the Soul

The informality of the panel meeting improved avenues of communication and broke down the barriers of psychological distancing from the effects of harmful actions. By encouraging a dialogue that valued the young person's contribution and gave them some control over what was said they were more likely to understand the harm that they had done. The decision to involve stakeholders directly and to make participation easier did not mean that injurious behaviour was accepted or discounted (Netzig and Tenczek 1996). Sophie, for example found the personal atmosphere more uncomfortable than the courtroom.

It weren't nice when they asked me to speak and I felt everyone's eyes burning in the side of my head because they were all close to me and speaking to me. They were speaking to me. In court they was all getting on with their own thing and that. (Sophie)

Unlike in court, Sophie found that everyone in the room was focused on her and what she had done. There was, in this environment, less opportunity for her to distance herself from the event.

When they (the panel) were asking questions like who it affects and that....I didn't know that it would affect that many people. They explained it to me. The panel worked well I think ...I think it gets what they are trying to say into your head a bit more because otherwise you wouldn't know, like, what the consequences are and like ...the effects for people can go on for ages. I don't think a person would think like that if they didn't have a panel who.....They explained it well and I understood everything they were saying. (Sophie)

Owen admitted that at first he had not thought that anyone was harmed by his theft from his corporate employer, but that the panel had made him think about things differently.

I understood how many people were really hurt in the place where I worked and then I felt sorry for what I done. (Owen)

Alex had mixed feelings about the personal nature of the encounter which he considered intrusive. A personal environment can include uncomfortable details about a young person's private life.

I wasn't sure about (being asked about) the parent situation but I suppose they had to know what my home life was like. I didn't think it was really relevant whether I got on with my aunt or not. (Alex)

Clearly however, like Sophie and Owen, for Alex the personal environment encouraged a greater understanding of his responsibility for the offence he had committed.

I think when you go in there (the panel) you are quite intimidated but once you realise that they are talking to you properly like a whole person then you feel more at ease. I think it is easier in a panel to talk about what you have done. When you hear it in court, it's quite shocking, but when you hear about it... .., when some one else is talking about it ..likeproperly...then you realise what you have done. (Alex)

Interaction with Panel Members: Gender and Age

A reintegration ceremony needs to close the distance between the stakeholders in order to enhance empathy. For this to happen there needs to be a positive relationship between the young people and the panel members. Presser and Van Voorhis (2002) suggest a number of measures that can be used to assess the quality of restorative programmes. They point to relationship building and the communication of moral values as important parts of the process if programmes are to achieve the outcomes of restoration and social well being. In this section I explore how gender and age might affect interaction between young people and panel members.

Over the period of the research I observed sixteen different panel members interacting with the young people at panel meetings in the three locations. There were always two panel members sitting together (in addition to the YOS facilitator). At the initial panel attended by the young person it was a matter of chance (organised by availability) which two panel members were encountered. The majority of the panel members were middle-aged. Ten panel members were aged 40-59, with four over 60 and two of them under the age of 40. Fourteen of the panel members I observed were female (see Fig 6.1). However, some of the panel members sat more frequently than others. One of the

male panel members sat very frequently so that, although the majority of the panel members were female there was a good chance that young people would encounter a male panel member at their first panel meeting (see Fig 6.2). On one occasion the two male panel members sat together.

Fig. 6.1 The age and gender breakdown of community panel members

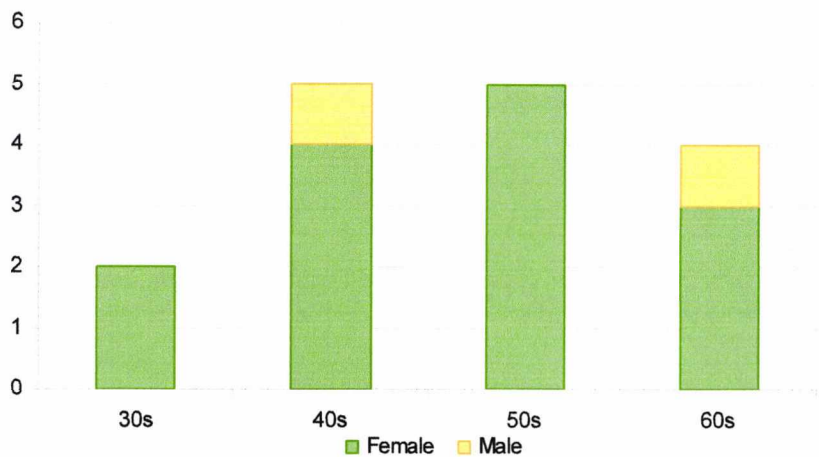
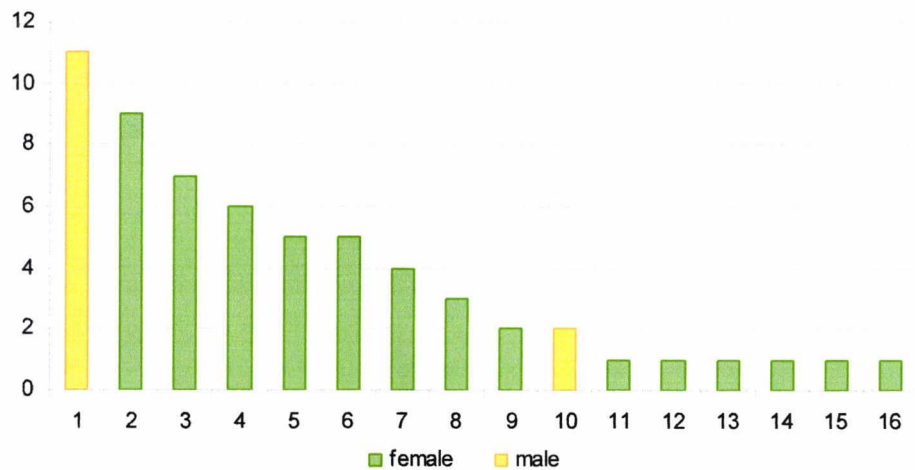


Fig. 6.2 The frequency of sittings by community panel members



I wanted to explore how the age and gender of the panel members might affect relationship building at the first panel meeting. Just under half of those interviewed said that it made no difference at all. They said that the way the panel spoke to them was the most important factor. This was summed up by Amy:

(age and gender) don't make no difference at all. At the end of the day they should treat you as any other would treat you. (Amy)

Of the rest only Jessica and Lewis mentioned gender as having any significance for them. Jessica had a male and a female panel member and said she would have preferred them both to be female because she was 'quite scared' of the male panel member at first. Lewis also had one male and one female panel member and he thought that perhaps it would have been easier for him to communicate with male panel members. He said that "you can speak to them in a different way". Neither Jessica nor Lewis however regarded gender as very important. Like the other six young people who thought age important, Jessica and Katie would have preferred the panel members to be younger. They gave the reason that young people might be more comfortable with younger panel members.

I would have liked them to be younger because people might be able to get on with them better....be less scared....because they're younger. (Jessica)

I think it would be better if they got some younger people because then you could relate to them if you know what I mean. (Katie)

Lewis and Ryan felt that younger panel members might be more likely to understand young offenders better.

I think they (younger panel members) would understand more or something. (Lewis)

I think if they were younger people they would understand because they walk around like we do every day. I don't think it matters if they are male or female if they are young. (Ryan)

These sentiments need to be understood in a wider context within which young people often felt 'looked down upon' by their elders. Many young people were at their most vociferous when they were asked about how they felt they were generally treated by adults in the community.

There were two old people there (at the initial panel) if they were younger they would be...well it doesn't matter if they are male or female no, but older people they just look at you....like.... we didn't do this in our day.....it's like if they see a boy then run for your life..but there's no way that young people of my age can do that they are accused of. It's not all old people....it's some of them....the ones who are up themselves and think kids shouldn't do this and that and these days you should get the cane or the whip and I'm like hey this is the twenty-first century....the whip has gone. (Ethan)

They think we're revolting and they like can push you around but we're the same as them only younger. They think we're less responsible and like and they've always got to be watching us and make sure we're doing everything perfect. The shop over the road that I go to every morning the man always watches us....like I take my brother and sister and he watches us all the time. I feel like saying we ain't taking nothing. They always think we're going to be nicking something. I would like to be speaked to like normal people. (Sophie)

Younger people on the panel would probably be more on my side. I think that older people see my generation as basically just a bunch of little shits (laughs) well fair enough we are. (John)

John was proud of the fact that he and his friends had been praised for not getting into trouble at a local store.

You know that (supermarket) near the security centre? Well basically me and my mates we got this thing of going there fairly often when we get off work and there'll be like five or six of us and so we are talking to the people in there. It's always the same people at that time and basically they said we're quite impressed with you lot. They turned round and said that every time a group of teenage boys or girls come in they just well every single camera is on them and they said we've never seen you messing around or nicking stuff and they said you lads are alright. I'm the type of person that if people treat me with respect I treat them with respect. (John)

Overall it seemed that gender was of very little importance to young people and the way they felt they could interact with panel members. Age was of more significance to them with regard to the way they felt that they were treated, especially in terms of how much respect they felt that they were accorded by adults.

It is important in restorative conferencing for panel members and supporters to include those people from the local community whom young people feel they can respect and by whom they feel they are respected (McCold and Wachel 2002). Recruiting younger people to sit with older people as community panel members may be one way in which young people can have a stake in the justice system. This involvement may help to increase the possibility of mutual respect felt by young offenders attending a panel and increase the impact of moral direction. It may also be empowering for young people to say whether they would prefer an all male or all female panel. Having said this there were no reports from young people that the panel had not shown them respect and the question of young people showing disrespect for the panel arose infrequently because the restorative process was at least partly about *building* a respectful atmosphere. The

composition of the panel is not the most important feature of a truly reintegrative ceremony but it may be able to increase the involvement and participation of young people towards greater communication, understanding and agreement. What is important is that ceremony design can be flexible to suit the needs of all the stakeholders (Braithwaite and Mugford 1994).

Young people in this study demonstrated how important positive interaction between panel members and young offenders was for a successful reintegration ceremony. It was interesting that gender was of little significance to most young people in terms of the probability that relationships would be built over the course of the referral order. Age generated a more vociferous response, not in terms of their own experiences at a panel meeting, but rather in more general terms of wider community responses to young people (Brown 1998). Age had significant symbolic meaning for young people. More important for all the stakeholders in a reintegrative approach was a sense of continuity; a following through the process that was able to demonstrate a commitment to reintegration into the community.

Following Through: Reviews and Final Review

Reintegrative shaming is superior to stigmatisation because social disapproval is more effective when embedded in relationships overwhelmingly characterised by social approval. (Braithwaite 1989:68)

A reintegration ceremony is made more personal than a degradation ceremony and the stakeholders are more actively involved when a collective obligation is entered into by voluntary collective agreement. Reintegration is seen to depend upon contract agreements being followed through (Braithwaite and Mugford 1994). Systematic procedures were in place to follow through contractual agreements made in the initial panel meeting. The initial panel meeting of the referral order was the first meeting that young people attended. Referral orders can be given for a minimum of 3 months to a maximum of 12 months and review panels were held at least every 3 months of the order and could be requested by any party at other times or in the event of a breach of the contract. Young people on a referral order therefore attended a panel at least twice.

A Final Review panel was held at the end of the referral order to sign the young person off the order and offer ongoing support if necessary. This final panel was an important reintegrative ceremony for the well being of all the stakeholders (although few victims chose to attend). It marked the completion of the contract and promoted feelings of belonging and connection with the community. It was future-oriented and characterised by social approval. Owen's experience was typical.

They said they hope I get on well at college and they hope they see me get on better in life. (Owen)

Jean (a community panel member) spoke for many when she said that the most positive experience for her was *"seeing the difference between the young person at the initial panel and the final review"*. Jessica, for example, had been quite reticent and subdued at the initial panel meeting but her exchange with Jean at the final panel illustrates a more positive connection:

- Jean: *"Hello again. I was at your review and this is Jenny (CPM)"*
Jenny: *"Hi, I'm Jenny" (shakes Jessica's hand)*
Jean: *"Well it's nice to see all these ticks and all these goods on your report. Are you pleased with yourself?"*
Jessica: *"Yeah" (she looks relaxed and is smiling)*
Jean: *"Well that's good and so you should be. Now you are waiting for your (GCSE) exam results"*
Jessica: *"Yeah, I've sat eleven"*
Jean: *"And what are you going to do after the GCSE's?"*
Jessica: *"I'm going to go into the sixth form and do sport"*
Jean: *"Well it's lovely when you come back for your final review and we see how well you've done. Is there anything else you'd like to ask us or we can help with?"*
Jessica: *"No but I'm grateful for all of it and I want to thank you"*

Personal exchanges similar to this marked the end of an order. In a reintegrative approach the community needs to offer ongoing control and support and offenders should feel valued as members of the community and demonstrate a change of behaviour.

The question of continuity through the order arose with all the practitioners and many of the young people that I spoke to. Practitioners were told at their initial training that *"it is best practice that panel members should follow a case through but it is difficult to*

organise" (Jayne RO Co-ordinator). Relationships built over a number of panel meetings were likely to improve the young person's connection and interaction with community members. However, administrative problems frequently meant that young people saw different panel members at each review meeting. All the community panel members that I spoke to said that this needed to change despite the bureaucratic difficulties. Andy (CPM) described one case in which he was involved, which illustrates the importance of this kind of continuity for the reintegration process.

It's important that we see people through the whole process. I have seen dramatic changes in the young offender from the beginning to the end of the order. One boy, he was 14, had assaulted his mother. He was on drugs and he punched her. Over the 6 month order he sorted his life out and it was nice to see. He was an absolute horror at the first meeting.....violent, abusive. At the second meeting the panel took him to the point of crying and then calmed him down and we started the process of him accepting what he was doing. (Andy)

I asked all the young people in the sample whether it made any difference to them if the panel members were the same at each meeting. Owen and Jason were among those who thought that it did.

I think it would make it easier for people to see the same people because when you see the first people they know what you've done wrong but if you see another two people in the second one they might not know what your full condition is. I know they might read it before you go into the room but you don't know if they know something completely different so I think it's best to stick with the same people. (Owen)

Yeah they could see how you are getting along I think that would help. You would feel more comfortable with them as well and they could see how you are going. (Jason)

If the referral order is to adhere to a community response to crime and provide moral direction and ongoing support then it needs to take seriously the question of community panel members taking responsibility for the young people they see (Presser and Van Voorhis 2002). An important part of this is for the same panel, as far as possible, to attend all the meetings of a young person, so that relationships can be built up over time. This would make a significant difference to the reintegrative nature of the process.

Degradation and Reintegration: Are they Compatible?

Restorative Justice programmes are embedded in a contemporary cultural and political context where punitive and exclusionary punishment is dominant (Garland 2001). The court plays a significant role in the referral order process. A young person must undergo a court procedure in order to be sentenced to a referral order. Furthermore the court retains the power to order financial compensation and the costs of the case. In the event of further (or prior) offences being committed the young offender is returned to court and the court decides whether or not to extend the order or re-sentence in some other way. If the contract signed by the offender at the initial panel meeting is breached, the young person may also be returned to court for decisions to be made. The referral order essentially combines a retributive process with a restorative process which raises the question of compatibility. Restorative justice would seem to be at odds with a punitive and exclusionary criminal justice system even though it conforms to trends supporting greater victim and community involvement in crime.

Roche (2003) argues that courts provide essential formal modes of accountability which support restorative initiatives especially if the deliberative accountability inherent in restorative meetings fail. In this analysis the courts (and state professionals on the panel) retain an important role. Crawford and Newburn (2003) suggest that the referral order represents *“both a particular and a rather peculiar hybrid attempt to integrate restorative justice ideals and values into youth justice practice”* (Crawford and Newburn 2003:239) and does so in a clearly coercive, penal context that offends restorative ideals of voluntarism (Christie 1977). Yet this system provides a steady stream of cases towards a restorative approach thus circumventing some of the problems of restorative initiatives where there are insufficient referrals. In Crawford and Newburn’s (2003) view the coercion provided by the courts has at least moved restorative justice to centre stage in youth justice. Maxwell and Morris (1996) have concerns about state involvement in restorative processes. Maxwell’s (1999) study in New Zealand suggested that avoiding charges in a youth court led to more positive restorative outcomes, especially for minor offences (Maxwell 2005). However Maxwell and Morris (1996) concede that, nevertheless, participants are able to have a greater voice than in solely retributive procedures and outcomes can be more satisfactory.

The majority of young people in this study felt that conferencing should be preceded by a court procedure. They felt that coercion played a role.

I think that it's better to go to court first because to be honest if you thought you were going straight to this panel, young people might think I'm not going to prison so I'm going to do it more times. So I think they should go to court and the court decides what happens. (Owen)

I think the court is necessary because of the possibility of what could happen and you think hang on I might have to go back there and I would never want to go back there. (Alex)

Kathleen Daly (2002) suggests that restorative justice need not necessarily be seen as the opposite of retributive justice. She questions the idea that restorative practices should be characterised as *good* and retributive practices as *bad*. By rejecting, what Daly calls, the 'caricature' of an 'attitude of hostility' by the justice system towards offenders (Daly 2002: 59), restorative justice advocates assume that retribution (that is censure for the offence) should also be rejected. She argues that the apparently contrary principles of retribution and reparation should be viewed as dependent on one another; that retribution should occur before reparation. She further suggests that it would be preferable to use the terms *old* and *new* justice practices and to accept a flexible incorporation of multiple justice aims. This view suggests an acceptance of the court process currently included in the referral order. The danger is that the referral order could lose sight of the *ideal* of a fully restorative justice and accept a set of techniques that fall short of the underlying concept. The fact that a degradation ceremony precedes a reintegration ceremony should at best be regarded as a transitional measure and not that it *should* be present. By continuing to contrast the differences between the two approaches to justice we are better able to move towards a change of vision about the meaning of justice for all the participants and to the wider society.

Conclusion

For young people undertaking a referral order there was a marked difference between their experience of a courtroom procedure and their experience at an initial panel meeting. This difference was characterised primarily by the level of involvement and

understanding that the young offenders had in the process. For these young people the way that they were treated in the two different environments had a considerable impact on the way that they viewed themselves and their offending behaviour. In this chapter I have suggested that a courtroom ceremony; a formal criminal justice response to young people's offending behaviour, is characteristic of the 'degradation' ceremony outlined by Garfinkel (1956). This type of ceremony 'fixes a distance' between young people and the justice process but binds together the offence and the offender. From young people's accounts of this experience, in which they felt labelled as 'deviant' types, it was unlikely that an atmosphere of mutual respect would be promoted. Young people felt that they had no voice and no choice in this kind of ceremony. Furthermore they were able to set up psychological barriers or 'self distancing' which made a genuine change of behaviour and connection to the law abiding community more difficult.

In contrast to the court, the initial panel meeting experienced by this group of young people, operated through less formal relationships. It conformed to the restorative principle of a reintegration ceremony in that it uncoupled the crime from the offender and removed the crime from the realm of everyday character (Braithwaite and Mugford 1995). A reintegrative ceremony closed the distance between participants. Young people suggested that this kind of ceremony gave them a voice and a certain amount of choice in the collectively made agreements about future action, which were the immediate outcome of the first panel meeting. Young people reported that they were made to feel 'normal' and that they and their involvement in the meeting were valued. The referral order panel meetings broke down psychological barriers and this allowed young people to recognise the harmful effects of their actions. It was more likely therefore to '*touch the soul*' (Braithwaite and Mugford 1994) and encourage them to accept responsibility for what they had done. Referral order panel meetings do hold the potential for a more restorative response to crime. They are capable of providing a safe, mutually respectful environment for young people to focus on the private as well as the public harm done

Positive and supportive interaction between community panel members and young people was crucial for a meaningful dialogue about the harm done and for the building of mutual respect. Two issues emerged from young peoples' accounts. A key difference between the court process and panel meetings was that agreements made for

future action at the first panel meeting were followed through by a number of review panels and a final panel meeting. This provided ongoing support and encouragement as part of the reintegrative emphasis on social disapproval for the offence and social approval for the offender. Continuity, in terms of being able to see the same community members at subsequent meetings, was therefore important to young people so that positive relationships could be built over time. A reintegrative approach required that panel members were people from their community whom young people felt that they could respect and by whom they felt that they were respected. A second issue therefore concerned the age of community panel members. Young people felt that younger people should be represented on the community panels. They felt that this would help to mitigate the negative image in which young people are perceived by the wider community as well as potentially encouraging a greater empathy with individual young people.

The referral order includes elements of both degradation (retributive) and reintegration (restorative) ceremonies and these would appear to be incompatible with one another. I have included in this chapter a short discussion on the compatibility debate and the role of the court in the referral order. Clearly the court undermines the voluntary ethos of restorative justice (Christie 1977). Young people may choose in court not to accept referral to a panel but if they do so they will receive an alternative sentence which will not result in a spent conviction. The court holds coercive power in the event of a breach of the referral order contract and sole power over financial compensation. On the other hand the court provides a formal mode of accountability as well as a large number of referrals to a restorative approach (Roche 2003). Both of these issues have been problematic with other restorative programmes.

7. Shame, Guilt and Remorse: Emotions and the Referral Order

The victim came to the panel and he (the young offender) said I am really stupid and he looked the victim in the eye and said I'm really sorry. He couldn't explain why he had done it but you could see he meant it. (Kate ROLO)

I think very few young offenders actually show shame or remorse. At their age they don't really understand how to display emotions and often their background is that they are not allowed to. I think that when they are asked the question are you sorry? Most say yes but really they are sorry that they got caught not that they acted in that manner. (Mark ROLO)

Kate and Mark represent a range of views expressed by practitioners at panel meetings about the difficulties of interpreting the emotions felt by young people when they undergo a referral order. Most of the youth justice professionals felt that this was a skill only developed through close personal experience of working with young people. They were critical of lay magistrates, volunteer panel members and the public who expected to see visible signs of shame, guilt and remorse in “*an alien and public environment*” (Mark ROLO). Many felt that young people may feel remorse but not be able to show it visibly or that they may be able to express remorse but not genuinely mean it. Mark sounds cynical about the ability of young people to feel remorse or shame but he also points us to the turbulence of youth and emotions and the possibility that young people hide their genuine feelings in the presence of adults, or that they may respond in what they think is the appropriate way expected of them⁶⁰. Many practitioners, like Ivy, agreed with Retzinger and Scheff (1996) who stress that the most significant expressions of shame, guilt or remorse at a conference with young people are conveyed with facial expressions, gestures and physical posture.

I knew she was sorry because of her body languagenot looking.....looking embarrassed rather than looking bolshy. (Ivy ROLO)

In this chapter I explore the emotions experienced and expressed by young people through their referral order. In order to include body language as an indicator of

⁶⁰ Hochschild's (1983) concept of emotion management suggests that peoples' feelings reflect social and cultural values. All relationships involve emotion management but in the public realm emotional labour requires people to suppress or induce feelings in order to sustain the outward countenance expected of them by others. This is done through surface and deep acting.

emotion, I use observational notes and evidence from video recordings as well as interview data to provide an account of young peoples' feelings about their crime, their victims and the referral order process. In this way I hope to offer some insight into the role of emotional healing and symbolic reparation (apology and willingness to repair harm) in restorative justice. This chapter opens with an exploration of the theoretical framework behind emotional healing in restorative justice and addresses the debate about the role of shame, guilt and remorse in the conferencing process. It shows how young people felt during their court appearance and at their initial panel meeting. This chapter then uses case studies of encounters between young offenders and their victims to examine how emotional healing and symbolic reparation were experienced by participants. Finally this chapter examines the role of parents in the referral order process.

Emotions and the Justice Process

Conventional accounts of the relationship between crime, emotions and the law hold that, whereas crime itself might express an emotion, emotion is extinguished in the operations of law. Law establishes independent norms for the restitution of harm. It is impersonal. Weber describes it as an '*imperium*'. Law represents a collective interest and is normative not affective. Thus, although the law may satisfy public need for expressions of moral indignation (Ranulf 1964/1938 in Barbalet 2002), the law offers little opportunity for the private expression of emotion.

Restorative justice challenges the moral reasoning of the offender (the idea for example, that the victim has not really been hurt by the crime) and emotions play an important role. The restorative encounter is designed to achieve a number of things, but central to the process is that there should be an emotional healing leading to restored social well being for victims, offenders and the community (Presser and Van Voorhis 2002). Victims are able to express their anger, fear and distress about the crime in a safe environment and can begin to see the offender as a person rather than a criminal. Offenders are offered the opportunity to discharge the shame they may feel about events through symbolic reparation (usually an apology) and when an offender expresses remorse for his or her actions this can help to alleviate a victim's suffering and lead the way for forgiveness. Offenders may also hear about the harm done, not just to the

victim, but to the victim's family, friends and neighbours and also the offender's own family and friends. By listening to victims' stories, offenders may realise that the material or financial loss experienced by a victim is often incidental compared with the emotional or psychological damage caused (Roche 2003).

Tomkins (1987) asserts that human relationships are at their healthiest when there is free expression of emotion or *affect*. Nathanson (1998) adds that it is through the mutual exchange of expressed *affect* (minimising the negative and maximising the positive) that we build community, creating the emotional bonds that tie us together. Thus the free expression of emotion inherent in restorative practices not only restores, but proactively builds new relationships and social capital (Putnam 2000). Sherman (1993), reviewing a number of studies, suggests that shame and the social bond, when not acknowledged, can lead to defiance of authority and further crime. Sherman (1993) defines defiance as:

The net increase in the prevalence, incidence or seriousness of future offending against a sanctioning community caused by a proud, shameless reaction to the administration of a criminal sanction. (Sherman 1993:459)

A key insight from Sherman (1993) is that when offenders are treated unfairly or with perceived or actual disrespect, they are likely to act defiantly. They may not give criminal sanctions legitimacy and are more likely to assert their anger and autonomy by committing more crime.

What is often hoped for, by advocates of restorative justice, are moving stories about meetings in which a transformation takes place. An angry victim becomes forgiving and a young offender becomes remorseful, makes amends and changes his or her behaviour. The reality may be a more modest success or no success at all. Restorative justice can be a messy business. There may be no clear lines drawn between who is the victim and who is the offender. The victim may be overly punitive and vengeful. The offender may feel no remorse or shame. They may not even feel guilt even though they have pleaded legally guilty to an offence. A wide range of emotions are felt and expressed during a restorative process and not all of them fit neatly into the categories of shame, guilt and remorse. Furthermore understanding the expression of these emotions and their role in the justice system is complex.

The Role of Shame, Guilt and Remorse

Expressions of shame, guilt and remorse are central to restorative approaches to crime and must be part of a positive and reintegrative process. However, these emotions are difficult to define and there is disagreement among theorists and practitioners about how we understand and interpret the sources that generate these emotions and the social contexts in which they occur. Retzinger and Scheff (1996) outline the psychological dynamics of emotions at a restorative conference. They distinguish two central processes that occur: material reparation and symbolic reparation. The material reparation includes the contract agreed to by the parties and the symbolic reparation is the repairing of the social bond between the victim and the offender. They place emphasis on symbolic reparation, which depends upon "*the emotional dynamics of the meeting and the state of the bonds between the participants*" (Retzinger and Scheff 1996:316). For Retzinger and Scheff (1996) symbolic reparation depends on '*shame dynamics*'. They suggest that:

If the offender can come to the point of sharing and communicating shame instead of hiding or denying it, the damage to the bond between the offender and the other participants may be repaired... ..disguised or denied shame inhibits the participants from repairing the bonds between them and blocks symbolic reparation. (1996:318-9)

Restorative justice aims to redirect aggressive emotions and to elicit shame that can lead to empathy. Retzinger and Scheff (1996:316) stress that it is therefore of fundamental importance that a young offender "*clearly expresses shame and remorse over his or her actions*".

Guilt theorists such as Tangney and Price (1995) suggest that (psychological) guilt rather than shame is the emotion more closely associated with empathy for victims. Braithwaite (1989) questions whether such distinctions matter. His theoretical framework of reintegrative shaming suggests that any perceived distinction between shame and guilt, with guilt as a failure to live up to the standards of one's conscience and shame as a reaction to criticism by others, is not relevant. This is because from the perspective of the offender, shame and guilt may be distinguishable but guilt induction and shame induction are both criticism by others. The distinction between 'stigmatic

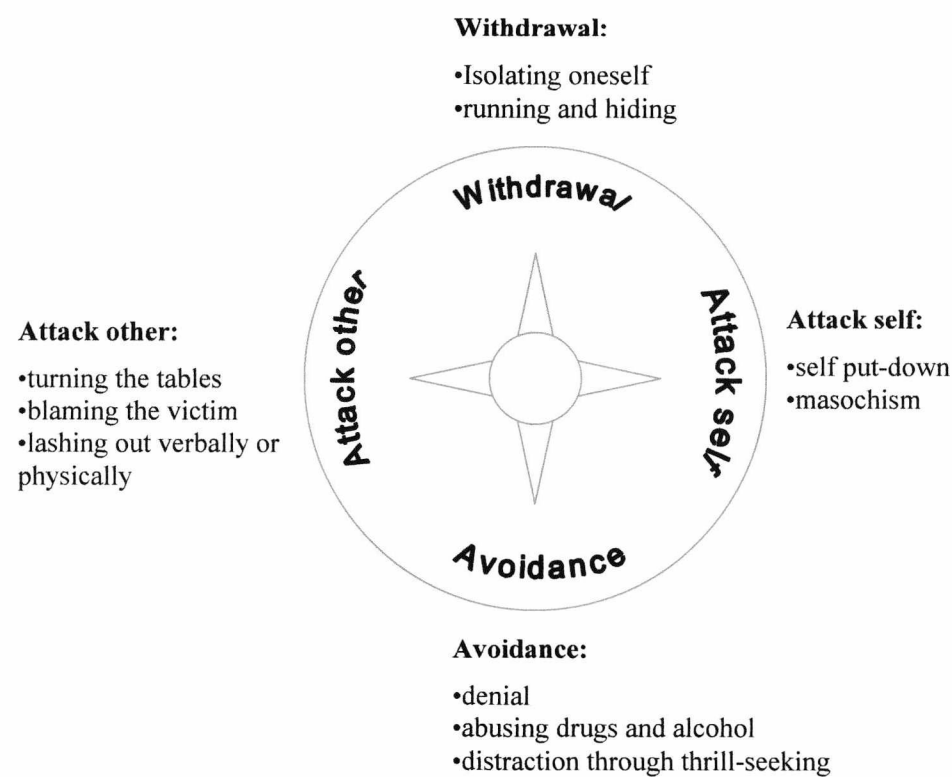
shaming' and 'reintegrative shaming' (which encompasses personal disgrace (and support) and private remorse) is much more relevant for Braithwaite's (1989) theory of crime control. Stigmatic shaming, in which the offender is subject to the rejection and contempt of society, is rejected by Braithwaite (1989) in favour of reintegrative shaming which condemns the offence rather than the offender. Braithwaite and Mugford (1994) emphasise that the shame that matters most is, crucially, not that of a judge in a traditional justice system, but the shame induced by the people that the offender cares most about. Maxwell and Morris (2004) refer to Benedict (1946) who suggested that traditional group-oriented societies like Japan were more likely to generate shame than peer-oriented societies such as the United States of America. These modern societies were more likely to generate anxiety.

Debates about the distinction between guilt and shame induction and the cultural context in which they occur are not the only factors that make a general theory about shaming problematic. Emotional responses are highly individualised, which makes it difficult to generalise ideas of shame. Tomkins (1987) for example, concluded that shame can be used to stand for a wide range of emotions including embarrassment, ridicule, humiliation and feeling 'put down'. The nature of these emotions is defined and experienced differently by different people depending on their past history as well as on their temperament.

Jack Katz (1999) emphasises the complexity of shame and embarrassment and the pervasiveness of these emotions in human experience. He defines shame as a form of self-reflection that isolates one in the face of a sacred community. What is revealed is a moral inferiority that makes one vulnerable to irresistible forces. As a state of feeling, shame is "*fearful, chaotic, holistic and humbling*" (Katz 1999:147). Katz's definition evokes some of the breadth of the concept of shame but can be criticised for implying that there is only one type of shame (although he includes embarrassment), rather than a variety of types (Scheff 2002). Katz (1999) excludes types of bodily and defensive shame, experienced as, for example, arrogance. Scheff (2002) concludes that, although the cultural community response is clearly significant, shame can primarily be felt as isolation from the self. Shame is an internal and private emotion.

Nathanson (1992) has developed a *compass of shame* (see fig 7.1) to illustrate the various ways that people react when they feel shame. The four poles of the compass of shame and the behaviours associated with them are *withdrawal* (isolating oneself), *attack self* (self put down), *avoidance* (denial or distraction through thrill-seeking) and *attack others* (lashing out verbally or physically).

Fig 7 1: The Compass of Shame (adapted from Nathanson 1992)



For Nathanson (1992) restorative practices provide an opportunity for people to express their shame, along with other related emotions, and, in doing so, reduce their intensity. In this way participants may move from negative emotions to positive emotions.

In Leibrich’s (1993) adult study of the role of shame in re-offending rates, she suggests that people do not re-offend when life has meaning for them and they have something of value that they do not want to lose. This could be a number of things such as material belongings, relationships, social status or self-respect. Shame was most commonly identified as a cost of offending and feeling ‘good’ about oneself as a reason for not offending. The study identified three different kinds of shame. Firstly, public humiliation, which is out casting as might be experienced through the courts and as

having a criminal record. This is stigmatic shaming. Secondly Leibrich (1993) identifies personal disgrace, which is the kind of shame that brings shame on the offender's family, and thirdly private remorse. Grasnich and Bursik (1989), similarly separate personal disgrace, which they refer to as embarrassment and private remorse which they call shame.

Shame or feelings of shame are a self-imposed sanction that occurs when actors violate norms they have internalised. Shame can occur even if no one is aware of the transgression. Embarrassment is a socially imposed sanction that occurs when actors violate the norms endorsed by people whose opinions they value. (Grasnich and Bursik 1989:315)

Leibrich's (1993) study suggests that shaming is not effective unless the offender genuinely feels that what they did was wrong. Private remorse would therefore seem to be the most powerful form of shame. It is related to personal, internal values of what is right and wrong rather than legal definitions of guilt. Maxwell and Morris's (2004) study similarly indicates that remorse is the central emotion that occurs in restorative conferencing and Van Stokkom (2002) agrees that expressions of remorse (which he defines as deep regret) are the most likely to lead to meaningful reparation.

It is critical to a restorative process that shaming is reintegrative rather than disintegrative but it is clearly difficult to 'get it right'. What does seem clearer is that the act of shaming (others taking conscious steps to shame) needs to be distinguished from feeling ashamed (the internalisation of shame). Maxwell and Morris's (1999) research in New Zealand seemed to show that young people feel a potentially reintegrative sense of shame as a result of what happens at a family group conference but that shame occurs not because of attempts by others to induce shame but because of recognition of the consequences that their actions have had on others. Thus remorse and empathy may be the primary emotions. Concerns from theorists and practitioners about the negative implications of shaming as a process done *to* individuals has led some practitioners to give less emphasis to shame and more to social support and the importance of a more general, firm yet affirming, presentation of how the offender's behaviour has affected others.

Feeling Scared, Feeling Stupid

In interviewing young people about their emotions, sometimes immediately after the event, I was conscious that a number of things might affect the quality of their responses. They may, for example, not want to revisit painful emotions in interview or not be willing to tell me about them or not have the words to describe accurately how they felt. It was important to build up a relationship of trust before the interview which included being present at their panel meetings. We could then refer to what had happened in the conferencing process and share the experience. They would not have to describe the context and I could make observations and tell them how I felt about the experience.

Restorative justice conferences are demanding and moral pressure on offenders, especially the young, is high. Polk (1994), amongst other authors, states that restorative justice meetings may be experienced as more threatening than criminal proceedings in which the position of the offender is protected by legal guarantees. This view was not supported by the accounts of the young people in this sample. The common emotion among all the young people prior to and during their courtroom appearance and prior to the initial panel meeting was fear. They were, without exception, scared about what was going to happen to them and most thought that they were going to be sent to prison.

I was shaking because I didn't know what was going to happen to me. It was scarybecause...I thought I was going to go to prison....in the letter they said....imprisonment....I could get that. (Kevin)

I was in shock for it. I didn't have a definite idea of what could have happened to me. It could have gone the custody way. I was very very nervous. (Katie)

It was really, really scary. I thought I might be going down. I thought oh my god. I was crying my eyes out. (Diana)

These accounts and others point to the physical manifestation of their fear, very graphically described by Sam and Ricky.

I had a feeling in my stomach, that's what it was, a feeling in my stomach, bits getting at me. Just a weird feeling in my stomach, you know what I mean. (Sam)

Sometime my head was like it was hurting, aching and sometimes it felt like it was splitting because there was so much going round and round and it was, you know, not very nice. (Ricky)

Fear dominated their experience of the court process and, although most of them expressed remorse through their legal representative, Amy was the only one who admitted to feeling shame.

It was quite scary because I'm so little and everyone was looking at me and I'm thinking oh no, stop looking at me and I started getting embarrassed and I felt really ashamed of myself as well. (Amy)

Many were most frightened of having to speak in public.

I was scared. I didn't know what to say when they tell you to talk in front of everyone...it's me...I don't like doing things like that. I didn't say much. It was horrible really. (Kieran)

I was scared....standing in front of them (the magistrates) asking loads of questions. You don't know what to say. (Lewis)

Both Lewis and Kieran were relieved after their court appearance. Most young people were similarly relieved that they had received a referral order and not been sent to prison. Jake and Ryan, however, felt annoyed that things were not going to be over as quickly as they had hoped.

I was a bit annoyed really. I didn't think there would be more meetings. I thought it would just be going to court and getting the order. (Jake)

I just wanted to get on with it and that. I just wanted to get it over and done with and get on with my life instead of traipsing all over the place. (Ryan)

Fear and anger can be closely associated with guilt and it is difficult to interpret whether these expressions by young offenders indicated feelings of guilt. What is clear is that these young people experienced painful emotions in court. The question for restorative justice is whether painful and negative emotions can be converted into empathy and reconciliation in conferencing. All the young people were nervous before attending their initial panel but a pre panel meeting with a member of the YOS, in most cases,

explained what was likely to happen so that their fear was dissipated into a more general worry.

I was less nervous when I went to the panel because I knew what they were going to say. (Jessica)

I was pretty worried because like I didn't really know like what a panel meeting really was. But it was full of old dears laughing and telling jokes. It was alright. (Luke)

At first I was a bit nervous because I'm quite quiet when I first meet people but then I got talking to them and they were alright. (Katie)

Clearly, being put at ease by panel members made the young people feel more comfortable at the panel meeting. Amy and Becky were also in the position of recognising someone at the meeting. Amy knew by sight one of the panel members who was a well known local foster parent and Becky recognised the ROLO who had been working in a local youth club.

I was embarrassed at first but as soon as I walked in and saw Salma I thought oh I know that lady. It was good because it sets your mind at ease if you know what I mean. You're not so worried about all these people. (Amy)

There were two old people there and the bloke, I don't know his name but I knew him from S (Youth) Club. They were alright actually, in a nice way. They made me laugh in some parts of it but they made me embarrassed a little bit. (Becky)

Both Amy and Becky were comforted by the knowledge that they were in the presence of people demonstrably concerned about young people. Becky suggested that the presence of "the bloke from the youth club" encouraged her embarrassment about what she had done. Amy later said that Salma's presence made her more likely to comply with the contract because she did not want "to look bad" in front of her. Their responses suggested low level shame induction in the form of embarrassment in the presence of people whose opinion they respected.

If fear was the dominant emotion in the courtroom then embarrassment was the dominant feeling expressed by young people at their initial panel meeting. Tomkins (1987) and Katz (1999) suggest that embarrassment can be included as part of the concept of shame, perhaps as a less intense manifestation, rather as Goffman (1967) has

described in his treatment of interaction ritual. Goffman (1967) suggests that embarrassment plays a prominent role in every social encounter but that there are degrees of feeling from the more subtle embarrassment through shame to humiliation. Gottschalk and Gleser (1969) developed a basic method for detecting low visibility shame from verbal texts. As one of their five categories they group shame and embarrassment together⁶¹. Interestingly, as Scheff (1988) points out, few of Gottschalk and Gleser's (1969) sample sentences in this category contain explicit references to shame. Instead most of the examples they provide use phrases such as "I feel funny" or "They were staring at me". Similar expressions of discomfort, because of being stared at, were common among accounts by young people in this study. These indirect but still negative perceptions of the self are taken by Gottschalk and Gleser (1969) to indicate feelings of shame.

Lewis (1971) takes up the issue of shame markers more explicitly than Gottschalk and Gleser (1969) and divides them into two basic types. She suggests that *overt* or undifferentiated shame involves painful feelings not fully acknowledged as shame by the person experiencing them. These feelings are often referred to in terms that disguise the shame experience, such as people suggesting that they feel foolish or stupid for example. Lewis (1971) argues that these terms can nevertheless be regarded as shame markers, firstly, because of the *context* in which people appear to perceive themselves as negatively evaluated and secondly because of a change in a person's *manner*, for example stammering or being very quiet or lowering or averting the gaze. For Lewis (1971) both verbal and non verbal markers can be forms of hiding the shame felt. This type of overt shame can be illustrated by Sam's and Sophie's responses at their initial panel meeting.

I just felt stupid, you know what I mean (Sam)

It made me feel stupid. (Sophie)

Both Sam and Sophie looked down at the table when they were telling me how they felt so that the verbal markers were accompanied by non-verbal signs as described by

⁶¹ The other four categories are humiliation, ridicule, inadequacy and overexposure of deficiencies or private details (Gottschalk and Gleser 1969).

Lewis (1971). In my interview with Aaron it was difficult to get any verbal responses about how he felt but I noted that he sank deeper and deeper into the chair and covered his mouth and would not look at me every time I asked about his feelings about his offence. In this way he exhibited strong non-verbal signs of overt shame. The second pattern identified by Lewis (1971) is that of *bypassed* shame in which speech may take on a speeded-up quality resulting in rapid repeating of a story, often not to the point, and in seemingly obsessive detail. I would suggest that Ethan's 'constant fiddling with his fingernails' (from my field notes) as he told and retold the story of his offence (I also noted that 'he won't stop talking'), and as he blamed his co-defendant as more culpable, may be an example of this second kind of low visibility shame. The notion of bypassed shame might also be construed as a form of defence or even denial. These two basic patterns of, either the slowed down reaction in overt shame, or the speeded-up pattern of bypassed shame, show how difficult it might be to identify shame in practice.

Most of the young people in my sample had little difficulty in describing to me the way that they felt in court and at the initial panel meeting. They were overwhelmingly scared before, and mostly during, their court appearance and embarrassed when they attended their panel meeting. Some of them, like Sam and Sophie, also said that at the panel meeting they felt stupid or they exhibited non-verbal behaviour which could be taken to indicate shameful feelings. These responses would seem to suggest that the referral order panel meeting was able to dissipate the feelings of fear induced by the youth court and encourage feelings of shame. In this next section I look at the impact that face to face encounters with victims had on young offenders.

Reintegrative Shaming and Victims

There were thirty young people in my sample group for this research and 8 of them encountered a victim at their initial panel meeting. In this section, I use case studies to describe in some detail these encounters and, through testimony and observation, my assessment of the emotional impact that it had on the participants. Braithwaite and Roche (2001) observe that "*The testimony of victims and apologies are sufficient to accomplish the necessary shaming*" (Braithwaite and Roche 2001:72). Bazemore and Schiff (2005) underscore the importance of the testimony of victims, but as *necessary* rather than merely *sufficient* to achieve reintegrative shame as an outcome at a

restorative conference. I quote here, in full, Bazemore and Schiff's (2005:63) summary of the relationship between conferencing practices and reintegrative shaming.

It is important that the victim's voice be heard, that support for the offender be encouraged along with denunciations of the offence, and that those whose opinions matter to the offender be present at the conference. Moreover, reintegrative shame is more likely to impact behaviour when the discussion of the harm caused by the offender's behaviour, and disapproval of the behaviour precede and are not diminished by expressions of support for the offender. It is also important that the offender has understood the harm caused and can articulate and express feelings about this.

The first case study is an example of the type of conferencing practice outlined by Bazemore and Schiff (2005). It describes the encounter between Danny and his victim Mr M. Mr M is able to describe the impact that Danny's actions have had on him and Danny, with his parents disapproval of his actions but support of him, can apologise for the harm he has done and receive Mr M's understanding and forgiveness.

Case Study: Danny

Danny was 17 years old at the time of his offence. He lived with his grandmother, only a few streets away from his mother whom he visited regularly. Danny's mother's home was over-crowded with Danny's four younger siblings living there and Danny did not always get on well with his step father, so the arrangement suited everyone in the family. Danny was employed as an apprentice in painting and decorating with a local company, a job which included attending courses at a further education college. In court Danny pleaded guilty to an offence of theft from a motor vehicle and received a referral order for 6 months and a compensation order to pay the victim £100. The details of the offence were as follows. Danny was out drinking with friends before he went on to a club where more alcohol was consumed. He left the club in the early hours of the morning and walked home alone very drunk. As he reached his own neighbourhood he saw a stereo in a car that belonged to a neighbour and he tried to remove it by brute force. In the process he damaged the car door, broke the stereo and ended up throwing the stereo into a bush. Danny was caught by fingerprint evidence because his fingerprints had been stored by the police on a previous occasion when he had been cautioned for a minor offence the previous year.

The initial panel meeting of the referral order was held in a community centre very close to Danny's home and was attended by Danny with his mother and his step father as supporters. The victim of the offence was a middle-aged man who was the owner of the car. He also attended but came alone. The panel invited Mr M into the room first. They explained that he would be able to tell his story face to face to Danny and would be able to explain how he felt and what effect the offence had had on him. Danny and his parents then entered the room and introductions were made. Danny, his parents, Mr M and the panel sat on chairs in a circle arrangement and Mr M was asked to speak first. Mr M's main concern was "*Why my car?*" He was worried that he had been targeted in some way and that it might happen again. He explained to Danny and the panel that he felt angry at the inconvenience that was caused to him. He had to take time off work to arrange to get the car repaired and he had not had the use of the car while it was being repaired. He feared that he had lost his no claims bonus. His voice rose and he looked annoyed when he spoke of the time he had to waste on getting the car fixed. The panel chair asked Mr M why he had decided to attend the conference. Mr M said that he wanted to see the offender's remorse for himself. He wanted a face to face apology for the trouble he had been caused and he didn't think that getting a letter of apology was the same. Danny immediately apologised to Mr M. He said that he was drunk and just didn't think. He told Mr M that he had not targeted him and that it would not happen again.

Throughout Mr M's testimony Danny sat on the edge of his chair with his hands firmly clasped. He spent most of the time looking at the floor between his legs. When Mr M finished speaking Danny sat up and looked him in the eye to apologise without being prompted. His body language gave every impression that Danny was genuinely sorry for the harm he had done Mr M.

Danny's mother told the panel that she was very embarrassed by Danny's behaviour. She said she was sure that he would not do anything like it again. Mr M said that he also came to the panel because he thinks that young people should get a second chance because everyone makes mistakes. He said:

In the old days we got a clout from our father or the local policeman. This worked. Now both parents have to work and no one is home all the time. Years ago the brother

of my girlfriend was put into prison and he came out a hardened criminal. In prison he learnt more criminal skills and got a badge of respect from others.

Mr M said that he thought that the referral order was a good idea because it was important to apologise to a real person. Danny apologised again. Mr M stood up and shook hands with Danny. He smiled at him and said that he hoped that the apprenticeship went well. He wished him good luck with his future. Mr M was shown out of the room by the Referral Order Liaison Officer (ROLO) and the panel discussed what kind of contract was appropriate. Danny relaxed in his chair when Mr M left. He sat back and unclasped his hands. He looked visibly relieved.

The panel suggested that Danny should do some unpaid work in the community. They suggested twelve hours and Danny agreed to this. He was concerned about how these hours would fit in with his work. He said that he was worried that his employer would find out and he would lose his job. The panel explained that the hours could be arranged to fit around his work and that his employers need not be told. They also explained that if he completed the contract satisfactorily it would be regarded as a spent conviction and he need not declare it for the kind of work he was going to do. Danny was also concerned that his grandmother not find out because it would upset her too much, so Danny's parents suggested that all mail regarding the contract should be sent to their house for Danny to collect. Danny also agreed to attend fortnightly supervisions with a Youth Offending worker. The contract was agreed by the parties and signed.

I spoke to Mr M outside the meeting room. He told me that he was glad that he had come. He felt much better now that he had had a chance to tell Danny how he felt. He thought Danny was a nice boy really and he thought that he wouldn't do anything like it again. He felt that Danny's apology was genuine and that was important. He had already received £100 from Danny in material compensation and, although it had cost him more than that to have the damage repaired, he thought it was a reasonable sum given Danny's income.

I spoke to Danny 6 months after the panel meeting. Danny said that it was not hard to pay the compensation because he was earning money and did not have to pay very much rent. The hardest thing for Danny was facing Mr M and hearing about how the

offence had affected him. Danny said *"I just didn't think. I don't know why I did it"* Danny told me that he had no intention of offending again.

As far as the participants of this encounter were concerned there was a positive outcome for everyone. Danny clearly indicated and expressed shame and remorse (verbally and non-verbally), symbolic reparation was made by way of a genuine apology and Danny made a commitment to change his behaviour in the future. At least part of this was because of the internal shame he felt about the possibility of his grandmother finding out. Emotional healing was accomplished for the victim. Mr M was able to express his anger and move towards being less fearful and more sympathetic to Danny.

Facing a Victim is the Hard Option

Danny was not alone in saying that the hardest thing to do was facing his victim. Alex's theft of computer equipment from his school meant that, not only was the school generally a victim, but his head teacher felt personally let down by Alex's behaviour. Alex explained to me how he felt about this.

Seeing the Headmaster, that was hard. Seeing his face, that was bad. He felt bad and I felt bad. He wanted to find out what happened and get my side of the story and why I'd done it. If I hadn't spoken to Mr H I wouldn't have realised the situation. Face to face with the victim is the crucial part. People should see who they hurt. I wrote a letter of apology and I've had a reply and everything. It said that it was a disgusting thing that you did but I'm pleased that you're sorry and wish you success in your A-Levels.

The policy of the school was that, as a consequence of the offence, Alex was permanently excluded only a few weeks before his A-level examinations, which would have jeopardised his chances of securing his place at university. The head teacher, however, allowed Alex to return to take his exams on the premises and his subject teachers gave him tuition sessions in their own time. Alex felt that this support was in response to his genuine remorse over what he had done.

I asked the young people who had not encountered a victim at their panel how they thought they would have felt. Kieran and Luke had corporate victims and wrote letters of apology to which they received no reply. It was not clear whether or not they felt

genuine remorse. They agreed that it would have been much harder to face a representative of the store but Luke still thought that it was a good idea.

I would have been quite stressed actually (if a victim had come) but I reckon it's a good idea. You could say sorry and get it over and done with but it would have been a lot harder. (Luke)

It would have been difficult for me to say what I did in front of them (the store).
(Kieran)

Sophie also felt that she would not have been able to speak freely in front of her victim.

I don't think a person can really say what they want to say in front of the person they actually done it to...I don't think they can speak to the people as much as they would of...and hold themselves back a bit more..I know I would of (Sophie)

Sophie and Kieran would have needed considerable support if they were to be able to speak freely in front of their victims.

Danny's experience was an ideal type restorative encounter in which the emotions expressed moved quite smoothly from negative to positive. It was hard for Danny to face his victim but he felt a sense of well-being afterwards. Other accounts reinforced the idea that facing a victim is potentially stressful and difficult. They also illustrated the importance of ensuring adequate support for young people at a panel meeting. There needs to be a safe environment in which a balanced dialogue can take place and young people feel that they are able to speak freely. As in Danny's case, the most usual supporters are parents. Diana found it hard to face her victim but her panel meeting covered a wider range of emotions than most. This case study illustrates the anger, fear and distress of the victim and her family and Diana's remorse. It also addresses the importance of preparation before a meeting takes place and the role of parents at a young person's panel meeting.

Case Study: Diana

Diana was 13 years old at the time of her offence. She lived with her mother and Grandmother and had no contact with her father. Diana had a history of short term

exclusions from school and at the time of the offence was between schools. Her mother had removed her from one school and was trying to find a place for her at another. The family was looking to move to another area. Diana was arrested in June and pleaded guilty to an offence of false imprisonment that had happened the previous February. The details of the offence were set out in the report received by the panel. Diana was long term friends with her victim, Helen. Diana and Helen, along with a male friend of Diana's called Jason, were at the house of a neighbour. While the neighbour was upstairs, Diana and Jason started to tease Helen and, knowing her fear of dogs, shut her in the front room with the neighbour's dog. Helen was eventually freed by the neighbour and went home crying, while Diana and Jason shouted abuse at her.

The initial panel meeting was held in August (7 months after the offence). At Diana's mother's request it was held at a community centre not close to where they lived. Diana's mother feared victimisation for Diana, related to other problems with neighbours. The meeting was attended by Diana and her mother (Mrs D) and Helen and her mother (Mrs H). Helen and her mother arrived first and came into the panel meeting. Diana and her mother arrived early and were taken into another room to wait. Diana was told for the first time at this point that Helen was attending. After the meeting the ROLO reported to the panel that Mrs D was '*annoyed*' at not knowing earlier. In the panel room Helen's mother was visibly upset and agitated. Before introductions were made she addressed the panel members:

Who are you? Are you qualified to do this? What is the punishment aspect of this?

The ROLO explained what a referral order was about and asked if Mrs H had seen the report. She had not. Mrs H also explained that Helen had a learning disability. This was not mentioned in the report. The participants at the meeting appeared to be inadequately prepared for the encounter and this may have contributed to their anger and distress.

Diana and Mrs D were brought into the room to join Helen and Mrs H and the rest of the panel. Helen was asked to tell her story first. She said:

One day we were bored and we went to my friend's house and they were upstairs and Jason and Diana shut me in a room and put the dogs on me. Then Jason touched me up there (she indicated her breasts).

Mrs H said that Jason had been charged with sexual assault. He had pleaded not guilty and was going to have a trial in which Helen was to be a witness. This aspect of the incident could not be mentioned in the report because the report was about Diana and Jason's court case was pending. The ROLO and the panel did not therefore have this information prior to the meeting and it significantly added to the emotional nature of the meeting. Mrs H burst into tears. She said:

Helen is so scared now. It has ruined her life. I don't think people know what it is like. She has done so much to overcome her disability and now she has been frightened and abused. This has been so upsetting for the family that we have applied to emigrate to Canada where my sister lives.

One of the panel members asked Diana

How do you think Helen feels?

Diana replied:

very scared and upset. I know because it has happened to me

Diana's mother (Mrs D) explained that since this incident Diana has been bullied at school which is why she has withdrawn her from the school. There was a court case pending in which Diana was the victim. The panel steered the discussion back to the incident with Helen to the obvious irritation of Mrs D (she pursed her lips and folded her arms) and asked Helen about the impact on her life. Mrs H said:

The impact of this is beyond... ..I have to think about her all the time. What did she do for this to happen?

Mrs H cried again and Helen put her arm around her shoulders. A panel member said to Diana:

Do you realise the impact this has had on everybody?

Mrs D replied:

I'm sorry it's happened. It won't happen again. Now that it has happened to Diana I know how hard it is. (to Helen) You don't have to be scared because it won't happen again.

Diana said:

I just wish I didn't do it. I'd like to say that I'm really sorry. It was just a joke at first....I dunno, I found it funny. Jason said that that Helen hates me and that made me angry.

Mrs H was still visibly upset. The ROLO took them from the room and spent some time talking to them before returning to say that they had left. The panel discussed with Diana and her mother the possible contents of a contract before agreeing to 6 hours of indirect reparation, which would be unpaid work in the community and fortnightly supervisions, which would include a focus on peer pressure and the making of a scrap book about bullying. Diana also agreed to attend a group victim awareness session and to be referred to the YOS Education officer. Mrs D pointed out to the panel that she and Diana had previously received mediation for family problems and that Diana had been to anger management counselling. The contract was signed and Diana and her mother left.

I was unable to speak to Mrs H and Helen after the meeting but I interviewed Diana while she was doing her unpaid work in the community. She explained to me how she felt about the panel meeting.

I was pretty nervous when I found out that Helen was coming. I thought 'Oh my God'. My Mum wasn't very happy because I would have to apologise face to face. But it was my choice and I apologised and she accepted it.

Although Diana expressed remorse and apologised to Helen, this meeting did not clearly result in emotional healing. This may have been because of a number of problems. It did not appear that any of the participants were adequately prepared for this encounter. The panel had not received information about the victim's significant learning disability, which may have affected the way they managed the dialogue. The panel members were also unaware of the related sexual abuse claims, which changed

the context in which the offence had occurred and increased the emotional response. The panel meeting was also held a long time after the initial incident which may have dampened emotional responses from Helen and Diana but seem to have exacerbated responses from their mothers.

Diana's experience also revealed the potential for parents and their emotions to dominate a panel meeting. It was Mrs H rather than Helen who was distressed at the meeting and the dialogue was primarily between Mrs H and Mrs D. As Diana explained:

Well, we all... ..the parents were allowed to talk, Helen's mother first and she was disgusted by what happened and said that Helen had been crying and every time she saw me she had to call her mum and then it was my mum's point of view and then I apologised and she accepted my apology but I think her mum went a bit over the top

At this panel meeting Helen outlined what had happened to her, Diana expressed her empathy and remorse and was able to apologise, but most of the dialogue and emotional responses had been from their parents. In this next section I look more closely at the role of parents in restorative justice.

Parents as Supporters

A key characteristic of a restorative approach to youth crime is the active participation of young offenders and their parents in a forum to discuss collectively the offence, the harm caused and how to deal with the aftermath. Parents as well as young people are given a voice in this process and the opportunity to participate in a dialogue with those who have been affected by an offence. Parents are especially important in the process because they have significant influence over young people's behaviour and in cases of a young offender being under 16 years a parent will be ordered to attend the panel meeting by the court. Social control theories (see for example Hirschi 1969) are relevant to the parent-child relationship. They attempt to explain why people *do not* commit deviant acts and the family emerges as an important controlling factor,

especially because of young peoples' *attachment* to their parents⁶². Hirschi (1969) for example suggests that low levels of family attachment may impact on delinquency. Taking control theories further, Svensson's (2004) study of the concept of shame as a consequence of the parent-child relationship, indicates that parent-child relationships have a significant effect on shame. He argues that low levels of parental control may lead to lack of internalisation of moral conscience or that young people who have a good, open relationship with their parents are more likely to display shame. This finding is consistent with Retzinger and Scheff's (1996) suggestion that shame is dependent on the state of the bonds between participants, and Grasnick and Bursik's (1989) argument that embarrassment occurs when young people violate the norms endorsed by people whose opinion they value. Svensson (2004) also suggests that young females feel more shame in the face of their parents, teachers and friends than do young males.

I asked professional practitioners and volunteer panel members about their experiences of the contribution that parents make to the panel meeting. All practitioners agreed that a supportive parent was vital to a successful meeting. There was an understanding that supportive in this context meant both supportive of the young person as well as supportive of the referral order process.

The parents acknowledge the fact that their child has done wrong but they are taking full involvement and express why they have done it or to say that he or she is not really that bad. They have made a silly mistake and I'll do what I can to help them through the order and stop them getting into trouble again. So it's the acceptance that they've done wrong but also the acknowledgement that they will help keep them out of trouble. (Mark ROLO)

The most important thing about having a parent there is that you want them on your side because with the support of mum or dadthey will do their best to let you know (that) I'm a bit worried about him or her today. And it is their first forum to tell about everything. (Liz ROLO)

All the practitioners had experienced panel meetings in which they felt that parents were either not supportive of the young person or not supportive of the referral order process.

⁶² Other controlling factors are *commitment* to conventional pursuits, *involvement* in conventional activities and *belief* in and acceptance of the common value system of conventional society (Hirschi 1969)

Ivy, Jackie and Anne recounted their experiences of parents who seemed unable or unwilling to provide adequate support for their children.

I did a final panel recently and the young person had done everything on the contract, which was really good so we praised him for that. He was still on drugs though and he was stealing from his parents and both his parents turned up and they were in such a negative cycle of parenting. This poor kid was in such a state. Every time we tried to say something positive the mother would just sit there and scoff and shake her head. It must be really hard for him to see them shaking their heads and stuff like that. They just wanted him to move out (Ivy ROLO)

All this woman was interested in was getting him to tidy his room. She couldn't see a normal teenager. She just blamed everything on him. (Jackie CPM)

Dad was a Taxman, Mum a Librarian. Their son was an only child and just a normal teenager but his parent's upbringing was so totally different they just couldn't understand. (Anne CPM)

These accounts from practitioners, where parent-child relationships are poor, may be expected to increase the negative emotions experienced by young people and may lead to stigmatic shaming if insufficient support is not available from other adults.

Practitioners tended to blame young peoples' criminal activity on 'chaotic' or 'dysfunctional' families, which, they suggested, were often headed by female single parents who dominated proceedings.

Usually the single mother (attends the meeting). The percentage of complete families in the process is extremely low. You have usually got a mother whose partner is not there. It's not usually the young person's natural mother and father who attend. You have chaotic families and often the mother's needs are as great, if not more than, the young person's. That's one of the problems to deal with in the panel. (Mark ROLO)

Sometimes it's the Mrs Bloggs show and you can see why they've got problems...you know...Mum's got more problems than little Kevin...that sort of thing and it's a really dysfunctional family and people live in misery with what's happening. (Liz ROLO)

The sample in this study demonstrated a wide range of family groupings, which included extended and reconstructed families. Of the thirty in the sample, 6 young people lived with their biological parents, 8 lived with one biological parent and a step parent (7 of these were step fathers), 5 either lived with their grandparents or a

grandparent shared the single-parent family home and 2 lived with an Aunt. In these extended families in all but one case (Alex's parents had both died within months of one another from cancer), a biological parent lived nearby and was seen regularly. The most common reason given for these arrangements, including the one boy who lived with family friends in a house opposite the family home, was lack of space rather than family breakdown. Two young people were in foster care. There were therefore 6 young people who lived in a single-parent family unit without other adult members of the family at home, although in 4 of these cases there were supportive adult siblings living with their own families nearby. Of the fourteen young people who lived in a single parent household or with a step parent, four saw their other biological parent on a regular basis.

Given the variety of family groupings in this sample, including one-fifth living in a 'traditional' nuclear grouping, it would be difficult to support a claim that single mothers should be singled out for criticism or that these families were necessarily 'chaotic' or 'dysfunctional'. It may support, however, the importance of flexibility in restorative approaches. In particular restorative justice stresses the importance of encouraging a wide range of supporters to participate in the process, especially extended family members and other significant adults. In two cases in my sample (neither of whom was available for interview) a maternal uncle attended the panel meeting as an additional supporter and go-between between parent and child. This helped to facilitate a more positive emotional outcome.

Ivy and Liz gave examples of situations where they felt that parents had not initially supported the conferencing process.

And we have some where the parent is so sticking up for the young person that they are really over defensive which means you can't talk about anything. (Ivy ROLO)

The worst is when you have parents and it's why are we here? We had one lad and it was obvious that they had given him a clip round the ear and dealt with it and they thought any further intervention was a complete waste of time. (Liz ROLO)

These accounts point to some antipathy from parents towards outside intervention in their private family space. This led, in some cases, to defensive or aggressive responses

from parents. The panel meeting may then be the forum in which negative emotional responses from parents towards the restorative process, may be transformed into more positive restorative outcomes for young people. Pre-panel preparation for families would seem to be important in these cases so that parents could be clearer about their role and feel less threatened.

The role of parents in the referral order is crucial, both to a successfully empowering process and to restorative outcomes of emotional healing and symbolic reparation. The relationship between young people and their parents is frequently the central relationship in the restorative forum. This relationship is complicated if the parent is also the victim of the offence. Of the 8 cases in this study where a victim attended a panel meeting, 5 of the victims were the young persons' parent.

Parents as Victims

Although there were no internal figures available, practitioners in the research area pointed to a fairly large proportion of victims who were also the parents of the young offender. In this study the most common offence against parents was criminal damage, often in the home. Parents were the victims who were most likely to attend panels and they had often been ordered to attend the panel by the courts as the responsible guardian. These panel meetings were also the most likely to exhibit a strong emotional response from participants. This raises a number of questions including the quality of emotional support for young people at a conference and the wider issue of parental responsibility.

We have parents who are both parents and victims. In that case we will have the parents in first as a victim but it is difficult for young people to see their parents as victims. (Kate ROLO)

Panel meetings revealed in many of these cases that parents had reached "*the end of their tether*" (Mark ROLO), in terms of controlling the young person, and had telephoned the police in desperation.

One of the main reasons why these young people get into trouble is because their parents can no longer take responsibility for their child's actions. We need to tackle the parents first. (Mark ROLO)

Drawing on control theories (e.g Hirschi 1969) and developmental criminology (e.g Farrington 2002), inadequate parenting has long been regarded as a key feature in the production of delinquency (Graham and Bowling 1995, Newburn 1997). The Parenting Order introduced by the *Crime and Disorder Act 1998* is the most recent embodiment of a shift towards state enforcement of parental responsibility for exercising control over their children. Under a Parenting Order parents can be required by the court to attend parenting classes and the order can include additional requirements such as ensuring that a child attends school. It is emphasised that this order is intended to help and support parents in controlling the behaviour of their children. The Parenting Order is, however, backed up by fines and the possibility of custody. One danger here is that these measures risk criminalising parents who do not respond to such help (Drakeford and McCarthy 2000).

Parents then, are held to be at least partly responsible for their child's offending behaviour and can be held accountable. Garland (2001) argues that the state's strategy is to persuade parents, amongst others in the private sector and the community outside the formal justice system, to:

exert their informal powers of social control, and if necessary to modify their usual practices, in order to help reduce criminal opportunities and enhance crime control. (Garland 2001:126).

There is clearly a tension if the parent feels that they are unable to exercise control over their children. It could be that parents are responding to increased 'responsibilisation' (Garland 2001) by increased 'victimisation'⁶³. In the role of victim, a parent cannot be held to blame for the offence and can also receive victim support. In these cases the referral order becomes a forum in which to discuss and take action on difficult and emotional family relationships. It may be therefore that by introducing punitive

⁶³ The 'responsibilisation' issue cannot be adequately explored here but could form the basis for further research. Another issue for future research is that schools and other institutions acting *in loco parentis* may be increasingly calling the police to deal with internal incidents rather than dealing with them themselves, thus further widening the net of those young people involved in the youth justice system.

measures to enforce responsible parenting, the youth justice system is increasingly the channel through which 'welfare' interventions are delivered and the boundary between welfare and justice becomes increasingly difficult to define. This further widens the net and criminalises more young people experiencing difficult family situations. Lewis's case, against the back-drop of his parent's recent divorce, provides an example.

In this case a mother was trying to pick her son up from a nightclub but he was drunk and abusive, damaged her car and threatened to kill himself by running onto the railway line. She called the police because she feared for his life. He pleaded guilty to criminal damage of the car. At the panel meeting it was clear that he was out of control and she was scared that he was going to get into more trouble. It was very distressing for her and she had the VLO there to support her. (Kate ROLO)

In this case Lewis's father, who no longer lived in the family home, was there to support Lewis, and the Victim Liaison Officer (VLO), together with Lewis's grandmother, with whom Lewis now lived, was there to support the victim (Lewis's mother). Both parents expressed concern that prior to the incident they were in danger of being prosecuted for their son's non-attendance at school. As they were 'victims' of their son's criminal damage they were now able to achieve priority access to intervention from education and mental health authorities via the justice system and they were absolved of some of the responsibility for his behaviour. This was a deeply emotional meeting lasting almost two hours, in which Lewis's mother was clearly distressed and Lewis and his father were both embarrassed and angry at her distress. Lewis apologised for his behaviour but did not clearly exhibit remorse until Lewis's father tentatively suggested that the breakdown of the marriage was probably to blame for Lewis's angry response. Lewis later told me that his relationship with his mother was improving and he was unlikely to re-offend because the whole thing had been so embarrassing.

In other cases where parents are victims, the young offender may not have a 'supporter' at the panel meeting. Emma arrived at her panel meeting with just her mother. She had pleaded guilty to criminal damage at the family home after an argument with her mother, which happened, like Lewis, after her parents had separated. Emma said very little at the meeting. Her mother on the other hand was very distressed and was able to express her hurt and anger about Emma's behaviour. Emma reluctantly expressed remorse that she had upset her mother but there was little evidence of emotional healing

at this initial panel. In interview 3 months later, Emma told me that she was ashamed of her behaviour. She said that her anger had been directed at her father who did not care enough to come to the court or the panel. It was not clear whether he had been approached by the YOS to provide Emma with support. By the end of her order Emma had formed a positive relationship with her supervising YOS worker.

I liked P. he got me stuff about anger and helped me to talk about it. He's been like a friend, quite an old friend, but quite like a friend. He got me stuff for my walls about anger and what you got to do when you get angry and stuff and about family. (Emma)

Emma may have been better empowered at her panel meeting if she had had support from the YOS worker who was to supervise her through the order. I was able to spend some time at Emma's family home talking to her mother (Mrs E). She said that there had been problems with Emma ever since her father left home. Emma's truanting from school had become so serious that Mrs E had been threatened with court action. Mrs E said that it was "*such a relief when I finally called the police*" because since then she had been offered all the help she had tried and failed to get before. She was deeply sorry that Emma had had to go to court but she saw no other way forward.

Becky's parents received a parenting order from the courts when she took her mother's car without permission and was stopped by the police. In this case the court suggested that Becky's parents were failing to take responsibility for her actions and needed support underpinned by a court order. At the panel meeting, however, Becky's mother was regarded as the victim of Becky's offence because the car belonged to her. It was a short and hostile encounter. Neither Becky nor her mother made eye contact with one another at the meeting. Becky's account of the event was delivered very succinctly.

Woke up...wanted to go to training....got into a stress....Mum wouldn't drive me....got more stressed....got fighting with her....took the keys (to the car).....trying to forget about it.

Becky's mother was even briefer in her response when the panel asked her how she felt about the incident. She said that it was nothing to do with her. I asked Becky some weeks later about how supportive she felt her parents had been since the offence was committed.

Not very supportive....When they had to do that parenting order, they hardly went to any meetings. Mum's always at work and Dad's never there (he is a long distance lorry driver).....he's away all week. I get on alright with my Mum really but my Dad.....I don't get on with him. (Becky)

Neither Becky nor her mother brought additional supporters to this meeting and their angry feelings were unresolved. Like Emma, Becky's father did not attend although it was not clear why he had not. Also like Emma, Becky later formed a good relationship with her supervising YOS worker. She told me:

I like her (the YOS worker).....she's alright...treats me nice and is kind to me. You do work about what you've done wrong and if you was the victim and all that.....what you would feel like....it makes you think really....about why you done it. (Becky)

The supportive relationship which Becky formed with her YOS worker was clearly instrumental in encouraging Becky's expressions of remorse and empathy at review panel meetings. Emotions at a panel meeting can be complex and wide-ranging and this is particularly so when family relationships break down. Emma and Becky may have benefited from having other supportive adults at their initial panel meeting including their supervising YOS worker⁶⁴.

These accounts from practitioners and young people also suggest that the concept of 'youth crime' has been widened so that a range of youth behaviours, including those that occur within the family, have become regarded as legitimately criminogenic⁶⁵. Pat Carlen (2000) has expressed concern that the focus of restorative justice on (individual) 'responsibility' has been interpreted as referring almost entirely to the obligations of known (young) offenders to known victims rather than to the obligations that the state has to all young citizens because of their varying degree of dependency. If, often vulnerable, young people are expected to express shame, guilt and remorse at a panel meeting, which can be dominated by the emotional needs of adults, they need to be

⁶⁴ The Youth Justice and Criminal Evidence Act (1999) allows for an appropriate adult to be present at a referral order panel which can be the choice of the young person, subject to the approval of the panel. (see Section 5 Part 1). The pilot studies (Crawford and Newburn 2003) suggested that those organising panels should be encouraged to facilitate a wider group of people who may have a beneficial impact at the panel. Most notably this includes people who care about and are capable of having a positive influence on the young person such as extended family members or others that matter in a young person's life.

⁶⁵ The growing trend of involving the CJS in institutions such as children's homes and schools is cause for concern to RJ advocates. Recent work suggests that these institutions are prime sites for restorative approaches to conflict (see for example Hopkins 2004).

assured of high levels of support. In the event of the victim also being the young person's parent, then parental support cannot be assumed.

Conclusion

A key measure of a successful restorative justice approach to conflict is the level of emotional healing and social well-being achieved as an outcome of a restorative encounter between victims and offenders (Presser and Van Voorhis 2002). Central to restorative practice is to provide a safe forum in which participants can express their feelings about the harm that has been caused by a crime. Restorative justice aims to redirect angry or aggressive emotions expressed by participants towards more positive feelings (Retsinger and Scheff 1996). It is hoped that the restorative process will elicit shame in the offender, leading to empathy for the victim. Offenders are encouraged to express remorse and make symbolic reparation by apologising and seeking to repair the harm done. Victims may feel angry, distressed and fearful but may, through witnessing the offender's shame and remorse, be able to move towards forgiveness. Through the mutual exchange of expressed emotion, guided by family, friends and community members, who are respected by the participants, it is hoped that new and positive relationships may be built (Nathanson 1998). These relationships in turn help to strengthen community bonds. Expressions of shame, guilt and remorse by young offenders are therefore crucial to restorative justice, but they must be part of a positive and reintegrative process in which family and the community provide moral direction and ongoing support. This chapter explored the range of emotions experienced and expressed by young people undertaking a referral order and set their accounts within the theoretical framework of restorative justice.

There is no clear agreement among theorists and practitioners about how to understand and interpret the sources that generate the key emotions of shame, guilt and remorse and the social contexts in which they occur. Tangney and Price (1995) argue that (psychological rather than legally defined) guilt is the emotion most closely related to empathy for victims whereas Maxwell and Morris (1999) and Van Stokkom (2002) suggest that remorse is the emotion most likely to lead to meaningful symbolic reparation. Braithwaite (1989) argues that the difference between guilt and shame is not

relevant because both guilt induction and shame induction involve criticism by others. For Braithwaite (1989) the key distinction is between 'stigmatic' shaming, in which the offender is rejected by society, and 'reintegrative' shame induction, which is carried out by those people whose opinion the offender cares about. Reintegrative shaming condemns the offence rather than the offender and promotes feelings of belonging and connection to the community. Other theorists (for example Gottschalk and Gleser 1969, Tomkins 1987, Nathanson 1992 and Katz 1999) point to the complexity of notions of internal shame, which may include embarrassment, denial and defensive aggression. A distinction emerges between feeling ashamed (the internalisation of shame) and the act of shaming (see Maxwell and Morris 1999).

In this study young people shared a range of emotions. Fear dominated their experience of their court appearance but in most cases this painful and negative emotion had dissipated into nervous embarrassment at their panel meeting. The presence of a victim at the panel meeting significantly increased the young person's ability to empathise and express remorse. Bazemore and Schiff (2005) argue that the testimony of victims is *essential* if reintegrative shaming is to be achieved at a panel meeting. The involvement of victims is clearly the best way for young people fully to understand the emotional harm they have caused.

In this chapter I presented the case study of Danny to illustrate some of the elements of successful emotional healing and symbolic reparation. Firstly, it emphasised the importance of a face to face encounter with the victim of the offence (Mr. M). In this case Mr. M was able to express his anger and move towards being more sympathetic towards Danny. Secondly Danny was supported by both his parents. He clearly indicated and expressed his remorse and apologised. The result was that Mr. M accepted his apology and wished him luck for the future. Danny's case also illustrated how hard it is for young people to come face to face with their victim. Amongst other examples, Alex's account suggested that this encounter is not only hard but the crucial element for understanding the harm done and expressing genuine remorse and feeling empathy. Diana's case study illustrated a more complex panel meeting where the range of emotional responses was affected by a number of factors. These included the long time frame between offence and panel, occasioned by Diana's case being part of another and more serious offence by another young person. For the victim it was difficult to

isolate Diana's offence from this distressing context. At this panel it became clear that none of the participants, including the community panel members and the ROLO, had been properly prepared prior to the meeting and this exacerbated negative feelings. This case also illustrated the potential for parents and their emotions to dominate panel meetings. Diana did have parental support in this meeting but her case raised the question of whether, in some cases, additional support should be provided.

Emotional healing and symbolic reparation depend upon the emotional dynamics at a panel meeting and the state of the bonds between participants. For emotional healing and symbolic reparation to take place there are two key relationships for young people. The first is that between the young person and the victim and the second is between the young person and their supporters. Supporters at panel meetings were usually parents. Practitioners accounts suggested that there were significant problems if these parents were either not supportive of their offspring or not supportive of the referral order process. Tensions were considerably increased if parents were also the victims of the offence. From young people's accounts it seemed that in these cases it was more likely that parents concerns and emotions were able to dominate proceedings, and that it was easy for young people to be isolated and stigmatised. For some young people moral direction and support was enhanced when the community panel included someone that they knew and respected. For others, restorative justice allows for the flexibility of providing additional support, which could come from other members of the young person's extended family or other respected adults known to the young person. Failing these arrangements the young person's YOS supervisor may be an appropriate supporter. If, often vulnerable, young people are expected to express shame, guilt and remorse over their actions they need to be assured of adequate support in a safe and supportive environment.

8. Restoration, Reparation and Reintegration:

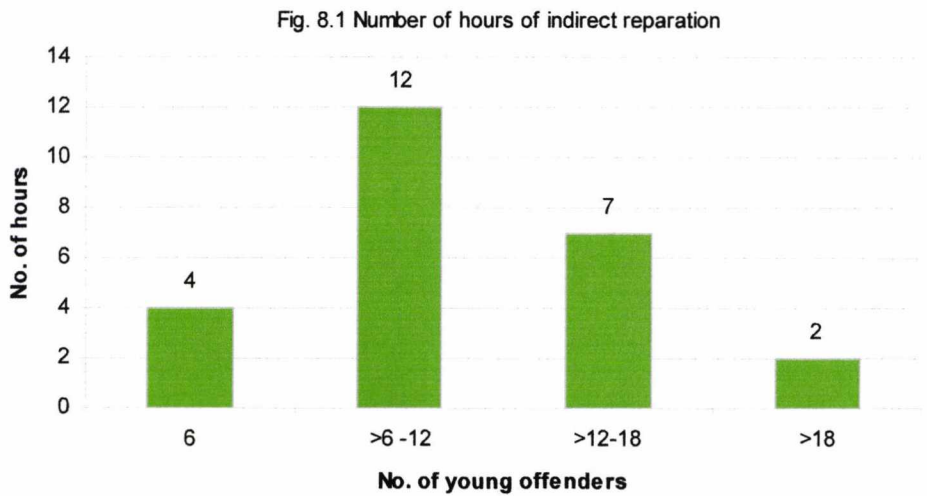
The primary objective of restorative justice is the repair of the harm caused to victims, offenders and communities by crime. Harm to individual victims and to affected communities is commonly addressed by a range of reparation activities described as 'making amends' (Van Ness and Strong 2002, Bazemore and Schiff 2005). Making amends constitutes the meeting of obligations set forward in the agreement or contract at the end of the first panel meeting and may take the form of restitution (sometimes referred to as compensation), apologies (symbolic reparation), service to victims (direct material reparation), or service to the community (indirect material reparation) (Bazemore and Schiff 2005). Restorative justice should also have the outcome of a change of behaviour by the offender and ongoing support by the community. The difference between court-ordered compensation and reparation through a conferencing process is that young offenders take responsibility for the harm done and take action to repair the damage, and the community, including the victim, play important roles in making and monitoring the agreement. This chapter explores reparation in the referral order, especially the dominance of indirect material reparation in the community, and the relationship between reparation and reintegration in restorative justice.

Making Amends

Reparation is a key element of the referral order contract. In their evaluation of the referral order pilot studies in England and Wales, Crawford and Newburn (2003) found that there was a reparation element in 82% of contracts. In my much smaller research sample, reparation (not including court ordered financial compensation) was included in all but 4 contracts (almost 90%). Practitioners made a distinction between reparation to the victim referred to as *direct reparation* and reparation to the community in the form of unpaid work (or community service) which was referred to as *indirect reparation*. The former was regarded as preferable but most practitioners said that direct reparation was quite rare because of low victim participation rates.

We don't have a lot of direct reparation because we find that the victims don't want anything further to do with them (the young offenders). (Anne ROLO)

Low victim involvement was consistent with Crawford and Newburn’s (2003) findings. They found that direct reparation to victims (including the payment of court-ordered compensation) was specified in only 7% of contracts with community or indirect reparation specified in 52% of contracts. In my sample all but 5 young people received a specified number of hours of indirect reparation (4 had no reparation and one carried out direct reparation to a victim) (see Fig 8.1).



Twenty-five young people in my sample, out of a possible thirty, were given indirect reparation in the community (84%).

Practitioners reported that indirect reparation, in the form of unpaid work in the community, was not given as a matter of course by the referral order panel. It was sometimes regarded as inappropriate, especially if the young offender had already paid financial compensation as an order of the court and was going to write a letter of apology. The report on the young offender, which was presented to the panel at the initial meeting, usually recommended a certain number of hours of unpaid work in the community, based on the seriousness of the offence, and then the panel made the final decision. If the panel decided that indirect reparation was appropriate then it was regarded as a non-negotiable part of the contract. In almost all cases, the type of work or project was then decided by the reparations officers in the research area, who were responsible for organising and delivering reparation activities. It was rare for unpaid

work in the community to be given to those young offenders under the age of 13 years⁶⁶. The purpose of this chapter is to explore the quality of indirect reparation opportunities for the young people in my research sample. For this I used extensive field notes and interviews with reparations officers and young people as well as documentary data provided by the YOS. A key question was whether indirect reparation in the form of unpaid work in the community was genuinely reintegrative and restorative or whether it was retributive and disintegrative.

Reparation and Punishment

Van Ness and Strong (2002) warn that without first defining the exact harm done to a community, indirect reparation risks having less to do with restoration than with enhanced punishment. As Harland and Rosen (1990) point out:

Unlike victim restitution that is based upon a case by case determination of victim injuries, the harms on which the offenders' community service liability is predicated are far less specific and (may be) no less arbitrary than the amount of a fine, probation, incarceration or any other panel sanction. (Harland and Rosen 1990: 127)

By definition, punishment implies some form of unpleasant consequences or 'hard treatment' (Von Hirsh 1993) for an offender. Punishment is an essentially contested concept and justifications for it may be offered on a number of grounds. For some, there is the practical idea that it will *deter* the offender from repeating the offence or others from committing an offence. Punishment may include incapacitation (by imprisonment or supervision) which is justified on the grounds that it removes the means of committing an offence. More ambiguously, penalties that are intended to rehabilitate offenders (as in counselling programmes) even in a mild form, usually involve a degree of compulsion that will inconvenience offenders, and require them to do things they would not normally do voluntarily. For most people however the key justification for punishment is that the offender *deserved* it (Sparks 1996). This is retributive punishment.

⁶⁶ Young people under the age of 13 years usually received fortnightly supervisions with a YOS worker as well as other interventions such as education support and anger management. Reparation projects were usually deemed unsuitable for young people of this age.

Retribution plays a role in expressing social disapproval but, unlike restorative justice, it is outcasting rather than reintegrative. Sparks (1996) summarises, that in liberal democratic societies, punishment generally involves some form of deprivation (of liberty, time, money or reputation) and usually involves compulsion and deliberately imposed hardship. Community reparation can be conceptualised, and often is, in an unambiguously punitive way as a deprivation of an offender's liberty involving a degree of compulsion and inconvenience. The punishment is enhanced if an offender is required to undertake meaningless and demeaning work that is unrelated to the crime.

Daly (1999) is of the opinion that restorative justice agreements are punitive because they inevitably lead to obligations which are unpleasant for the offender. She does not however put this forward as a reason to reject restorative justice. On the contrary, Daly (1999) is in favour of the making of amends being hard work for offenders. The *maximalist* model of restorative justice, as put forward by Bazemore and Walgrave (1999), does not have a problem with the inclusion of coercive judicial interventions in restorative justice, such as non-negotiable indirect reparation in the community, but they stress that the aim must be restoration not retribution. Bazemore and Walgrave (1999) argue that in repairing the harm caused by crime, the actions required of the offender may include coercive sanctions as well as voluntary processes, and coercion can only be exercised through the criminal justice system. They argue that coercive sanctions in restorative justice are not punitive as long as those who enforce the sanctions do not *intend* the offender to suffer. Any unpleasantness is a potential side-effect.

The question of *intent* is contested in restorative justice. Dignan (2002) for example, has argued that the distinction between punishment in the conventional justice system and deprivations imposed in restorative justice, are premised on a misleading understanding of the two elements involved in the concept of intention. One element of intent relates to motive (the intended purpose) and the other to volition (that is punishment deliberately imposed). The danger, suggests Dignan (2002), is that if restorative justice denies that it is in the business of punishment and therefore accepts such a distinction, then there is no obligation to provide moral justification for imposing sanctions on offenders in the way that there is for deliberative punitive interventions. He suggests that, in much the same way that *rehabilitative* measures have been criticised, benevolent intentions may fail to provide adequate safeguards to protect

offenders from unjust treatment. Dignan (2005) advocates an integrated approach with traditional justice systems moving towards being more restorative and less retributive. McCold (1999), on the other hand, argues that including coercive sanctions in a restorative approach risks shifting restorative justice back into a punitive, retributive system of justice which is not in accordance with purist restorative justice theoretical principles. The role of the community is crucial in this debate.

Reparation and the Role of the Community

The idea of community is difficult to define and may range from people in a local area or neighbourhood to a much wider interpretation of an international community or a community of people who share common interests. Community has flexible boundaries but, for the purposes of this chapter, it is useful to use McCold's (2004) concept of the 'micro-community' and the 'macro-community' in restorative justice theory and practice. McCold (2004) defines the micro-community as a network of relationships consisting of those most directly affected by a crime, such as an offender's family, friends, neighbours, teachers and anyone else emotionally connected to a particular offence, including the victim. They form individual 'communities of care' and consist of those people whose opinions are most likely to influence young peoples' feelings and behaviour (McCold and Wachtel 2002). The macro-community is not defined by personal relationships, but by geography or membership. Macro-communities may be the city or state or the interests of society in general. Macro-communities are often represented by volunteer community members, who have no significant emotional involvement in a specific crime. The main difference then, is that for the micro-community crime harms *specific* people and relationships, whereas for the macro-community crime creates *aggregate* harm; the cumulative effect of crime on neighbourhoods or society (McCold 2004).

From a micro-community perspective restorative justice brings together those who are directly affected by a crime. It aims to address the specific needs of victims and their families and their relationship with offenders and their communities of care. The participants in a conference use their subjective experience and collective wisdom to decide what needs to be done. The restorative justice *process* is the key to this approach

and there cannot be standardised reparation activities because outcomes depend on a case by case approach (McCold 2000).

For the wider community, justice must be seen to be done to its fullest extent by focussing, not just on the harm done to individuals, but also by taking action to protect neighbourhoods through, for example, restraining or retraining offenders, and/or requiring community service to compensate and benefit the macro-community. The primary goal of restorative justice from a macro-community perspective is to repair the *aggregate* effect of crime and limit the threat posed to society by the offender's future behaviour. It is concerned less with the process than the *outcome*. This approach supports the removal of magistrates and professional advocates from the process, but it does not necessarily require an encounter between victim and offender. It favours representatives of the macro-community, as in citizen volunteers, under the guidance of justice professionals, making the decisions. Indirect reparation in the form of unpaid work in the community provides material reparation to society generally and helps to improve neighbourhoods. In contrast to the micro-community approach, concern with the macro-community allows for a set of reparation activities available for all cases, with only the hours of unpaid work adjusted for each case (McCold 2004).

Restorative justice theory and practice is evolving along these two separate paths, which McCold (2004) argues can lead to conflicting goals and divergent practices. He suggests that a macro community approach is in danger of being directive rather than supportive, and that it threatens to usurp the key role from the direct stakeholders. He suggests that, in the vast majority of cases, macro-community needs can be satisfied by a micro-community approach, since both are concerned with stopping the harmful behaviour and making amends; the wrongdoing is acknowledged, the offender is held accountable, relationships are reconciled and the potential for future harm is diminished (McCold 2004). The cumulative effect of micro-community restorative justice efforts is therefore the most effective means to repair the aggregate harm caused to society.

Van Ness and Strong (2002) do not rule out community service as a form of restitution, but they argue that in order to make it restorative, we need to clarify the nature and extent of the harm done to a community, as well as the most appropriate means for the offender to repair that harm. Indirect reparation must include the direct involvement of

victim, offender and community members in determining community service that is meaningful to both community and offender. Community members and offenders should work side by side in activities that offer an opportunity for offenders to gain or enhance skills, and there needs to be public acknowledgement of the offender's contribution.

The quality of the amends made is crucial for the restorative justice process and also determines the extent of its impact on the longer term outcomes. Although Bazemore and Schiff (2005) tend to support a macro-community response, they suggest that in order to maximise the benefits that the reparation has on offender behaviour, and to ensure that the repair has validity for victims and the community, participants at the referral order panel meeting need to make sure that they propose tasks that place the offender in a responsible helping role, and not in tasks that are widely recognised as punitive (Bazemore and Schiff 2005).

Indirect Reparation: Policy and Practice

Referral order practitioners were acutely aware of the need to make indirect reparation activities meaningful to offenders, useful to the community and they agreed that, whenever possible, victims should be involved in the decision making process.

Reparation should be meaningful and not just about digging holes (Chrissie ROLO)

From the very start the victim should be involved so that It's not just a meaningless community service exercise (Kate ROLO)

Practitioners wanted reparation activities to be relevant both to the crime and to the skills of young people, but they admitted that there were limited resources in terms of the number and kinds of activities available and the staff to supervise them.

(Reparation is) about making repair for the harm that has been done to the individual and the community and ideally it should be relevant to that particular crime but I don't think that happens too often to be honest. The victim doesn't want to be involved in the process and there is a limited supply of reparation projects in the area (Mark ROLO)

We are limited with resources but we try to be creative and we have projects that we use to try and make them meaningful to the young person. By using their skills and interests to make it appropriate and they're not just there for the sake of it. (Liz ROLO)

I spent considerable time (September 2003-September 2005) with young people and reparations officers on various reparation projects available in the research area. My most important contact was Alan, a Reparations Officer (RO) who had been working in the County with young people for five years. Alan outlined the reparation process for me. Firstly, he received the young person's name, address and the number of hours of work that they had to do from the YOS. He then contacted the young person in order to arrange a suitable time to interview them at home. Alan met the young person and their parents at their house and explained the health and safety requirements. This interview included assessing any medical needs that were to be taken into account. Alan explained the rules and standards of behaviour required and made sure that the young person had suitable (usually old) clothing to wear. The young person (or parent if the young person was under 16 years of age) then signed a written agreement to adhere to the terms. Alan then made an assessment of the young person in terms of their interests and their ability to work with other people. He would then decide whether it was more appropriate for a young person to work on their own rather than on a group project. At this stage he might also consult their YOS worker. He would try to match the young person with suitable available projects and then make arrangements about which days to pick them up. This was negotiated with young people and their parents based on other commitments such as school or work.

Reparations officers in the research area had a range of projects available to them. Some of these were permanent and ongoing and some were temporary or for specific work. Permanent projects included several local attractions which were open to the public and had an established induction procedure for non-offending volunteers (for example, The Princes Trust) as well as young offenders. Work on these projects was largely outdoors, clearing vegetation and helping to construct better facilities for visitors. There was also a long-standing arrangement with a local bus company cleaning buses and work at local community centres painting and doing general repairs. Practitioners were keen to point out that they felt that some projects had a more tangible effect on the community or a more educational effect on the young offender.

There's an allotment where they grow vegetables and all the produce goes to Age Concern. (Anne ROLO)

We have a project called Beach Watch where they have been collecting rubbish from the beach, not just bagging it up but listing what it is. They all write down 5 packets of fags and 6 this and 7 that and it's explained to them and it goes to the Marine Conservation Society and I think they give a certificate to those who have done a good job. (Clare ROLO)

This is a major historical site and it is educational for young people. The on-site staff provide a tour of the tunnels and a history of the site. The project is really popular with young people. Sometimes they (the young person) come back to visit with their families or carry on working here as a volunteer. (Alan RO)

Relationships in Reparation Practice

Crawford and Newburn (2003) in their pilot study found that practitioners recognised that goodwill underpinned offers of reparation activities and were concerned that this goodwill could quickly evaporate, particularly if young people did not behave appropriately. In the research area on-site staff felt that such fears were ungrounded.

I like having the YOT herethey do a good job. We have never had any trouble. It's not quick but they do quality work. I've known L (reparations officer) for years so I have all the paint ready for when they come. I'd really like them here all the time. This is a youth centre so it's good that that it's young people who come and they are well organised and behaved. (John Centre Manager)

It was crucial that Reparations Officers built up a relationship with reparation providers and were trusted to supervise the young people properly. Many, like Alan, had built up relationships over a number of years.

When I moved from X area to Y area I brought this project with me. It's a bit further away but the staff are good and prepared to give a reference for good work. They know me really well. I have been working with them for years. (Andy RO)

Reparations officers felt that they needed more time and staff to build relationships and to involve more organisations. Alan said that he would like to involve corporate retail outlets, but that at the moment it was a 'non-starter' because responses in the past had been so poor. As far as the ROs were concerned it was not just the behaviour of the

young people that was important but the way young people were treated by the on-site staff.

He (a staff member) was shouting at this one girl and I had to step in and say that's not acceptable and I don't want him working with us again. Katy (the girl) said thanks for sticking up for me, but it's not on is it? If we want them to do good work we have to treat them with respect. (Len RO)

A disciplined approach is best but the important thing is that the young offenders are treated with respect. I give them a lot of praise when they work hard. I didn't get any praise when I was a boy so I want to make sure I tell them when they do it well. Sometimes I write to their parents too. (Ron On-site Manager)

It was also important that reparations officers built strong relationships with the young people in their care. Alan had an interest in sport and cars which, he told me, helped him to get along with young people. He thought that the most important thing for a successful reparations officer was to be 'streetwise'. He said that he respected young people and he expected them to respect him. He thought that the biggest danger, likely to lead to unsuccessful completion of reparation, was boredom, so he allowed young people to change to different activities on different days if they had been given a longer number of hours (usually 6 hours were completed in one day). He said that he was keen for young people to feel that they could be successful in completing the work and that it was very important that the community valued the work that they did. He liked them to feel that a certain amount of skill was involved and it was important to expect a high standard of work from them.

Young people responded well to Alan and the other ROs they encountered. Without exception they had positive comments to make about how they were treated by them.

He (Alan) is lovely, really lovely. I think he is well good. He's been really nice. He's got a lot of respect for us. (Sophie)

He's (Alan) good. He asked what music we liked and played it in the car. (Jessica)

He (Alan) is alright actually. He has been explaining all the rules and no swearing or I'll have to go back to court. And he was very caring and said take your tablets and stop when it got too hot. (Diana)

The idea of unpaid work in the community (indirect reparation) fulfilled a number of criteria for practitioners. Firstly it could be 'sold' to the public, familiar with the concept of community service, as a punishment. In practice most practitioners saw it less as a punishment than as a way of filling time for young people who were not at school or work and providing them with some basic skills. Secondly, panel members could alter the number of hours in the contract at review panels, if the young person had commitments to education or employment or was doing very well. This allowed the panel to exercise their control and discretion and exhibit flexibility and provide rewards. Thirdly, working in the community provided concrete and visible evidence of the active involvement of young people in their contract, and fourthly it provided a kind of structure and 'tariff' which could provide measures of proportionality.

Indirect reparation as part of the referral order contract was clearly punitive in that it was not a voluntary element and if it was not carried out to the satisfaction of the review panel young offenders could be returned to court for re-sentencing. It was a macro-community restorative response, according to McCold's (2004) analysis, in that it generally consisted of standardised programmes providing symbolic reparation to society in general rather than to individuals specifically affected by a crime. There were, however, efforts by practitioners to make it meaningful and educational to young people and beneficial to the local community within the constraints of institutional practice. There was no clear *intention* to make it punitive (Bazemore and Walgrave 1999) although it might well have the result of unpleasant hard work.

Doing the Work: Young Peoples' Accounts of Indirect Reparation

The main focus of this chapter is to document young people's responses to carrying out what they had agreed to undertake in the reparation part of their contract. This section explores young people's accounts of their experiences. Their accounts revealed a number of recurring themes. These themes were firstly, the nature of the work they were required to do, secondly, the question of punishment in relation to the work, thirdly, how beneficial they felt the work was to the wider community and fourthly the question of choice and how appropriate the work was to their offence, or to their skills development and interests. Finally this section addresses the issue of gender and

reparation activities. I address each one of these themes using observational notes and interview data.

Hard Work?

Most of the young people in this sample who undertook indirect reparation as part of their contract found the work physically hard.

It wasn't good at all. We had to pick up this gravel stuff and load it all up and before the break we had to lay it out on the paths and then after the break we had to load it all up. I think they shouldn't have made us work outside like that with the weather like it was. It wasn't very nice at all. I, like, pulled all the muscles on my back and we've, like, got two more days of this shovelling loads of grit into a truck. (Sophie and Jessica)

I was digging and I had a bad back. I've still got a bad back now. (Kevin)

We had to cut all the stinging nettles out of the pens and when we cleared it all out inside, we had to take it all down. We had these gloves on but we still got stung to death. We've got all the little things on our arms. We've been levelling out all the ground as well and we had to get the wire up from the ground. There's, like, all this mud on it. (Luke and Kieran)

This response is consistent with Daly's (1999) study of young offenders in Australia who went through a family group conference similar to the referral. Many, in the present study, like Ethan and Jake said that they thought that the problem was that they were not used to physical working like this.

It was hard. I had to do garden working. We had to re-vamp the whole place and I was, like, oh my god. I'm not used to that kind of work. I hated the reparation, hated every minute of it (Ethan)

We had to sweep out the tunnels. It was hard work and I haven't really done a lot of work. We built a fence and cut wood. (Jake)

Ryan pointed out that the alternative to unpaid work would probably be a fine and, like most young people in this study, he was deeply concerned that paying a fine would create family financial hardship and would have to be paid by his parents, which was unfair.

It's better than giving us anything else really, much better than giving a fine. They can't pay that. Better to go out and work it off. They ain't going to be able to pay then have to go back through the courts again. (Ryan)

Punishment?

Ryan, like all the young people in this sample and also those in Daly's (1999) Australian study, regarded reparation as a punishment. Most of them also accepted that they deserved to be punished for what they had done.

It's a punishment for everyone so you have to do it. Some people don't mind doing the reparation, but people like me who don't want to put their backs into it... ..it's just a punishment. (Ethan)

There were things that I didn't want to do but I knew I had to because it was a punishment. (Jessica)

They're giving you punishment but then considering what you've done... ..considering....I don't think it was too harsh. Basically it seemed alright, nothing I was unhappy about. (Jake)

John and Alex (both 18 years old at the time of the reparation) did not find the work they were given to do especially hard, probably because they were both healthy and strong and had a previous interest and some experience in the work.

It was better than I expected. I just had to paint the skirting board and part of the ceiling. I've done this kind of thing, painting and stuff before. To be honest it was a bit of a doss. (John)

We started by cutting reeds around the pond. I am used to this kind of work. I do it for my Grandmother and her friends. She doesn't like gardening. (Alex)

Beneficial to the Community?

It (the work) is beneficial to this establishment. People will be able to use this area now to sit in. (Alex)

Like Alex, John regarded the decorating he had done at a community centre that was used mostly for youth activities, to be beneficial to the community. He was glad to have the standard of his work praised by the on-site centre manager and thought that he might be able to do decorating for a living. For many young people though, the work was far from being meaningful to them. Sophie said that she would have preferred to see her work directly benefit a disadvantaged group in the community, and importantly, she wanted the opportunity to show that she was good at something.

I think maybe (we should be doing) something I dunno like making somewhere better, like say a children's home or something and show that we can actually do good at something. (Sophie)

It's (the Wildlife Park) not really benefiting the community because it costs money to get in. I would understand if it was a park or something but it's selective really and you have to pay so it's not really for the whole community. (Katie)

Katie was happier on the day that she helped to clean buses because, although it was a private company, she felt that everyone wanted a clean bus and she said that she also learnt the right way to clean windows.

Appropriate Reparation: The Question of Choice

Both the reparations officers and the young people I spoke to said that they would like to have more choice in reparations activities and also that they would like to be able to match activities to young peoples skills and interests, as well as to the crime they had committed. Alan suggested that individualised activities were almost impossible given time and resource constraints, but that they did the best they could. Ricky, for example, wanted to do gardening. He was working hard on his garden at home, which he showed me with some pride, and there were a number of gardening projects available to the YOS. Alan therefore took him to a site where gardening was an option. Ricky explained what happened when he arrived.

We went to this building place. I forget what it's called. But in the end the weather was too wet for gardening so we did something else. We had to help screwing on doors and help move wood and that. As long as you do what they tell you it's fine. One boy was with me. He left me to do it all but then you know I didn't mind. (Ricky)

Ricky went on to tell me that he appreciated that his interests had been taken into account but that, since his mother was his victim, the garden he was making at home was more meaningful to him. He would have liked to have been taken somewhere where he could have learnt some gardening skills “*and about plants and that*” (Ricky). Kevin wanted to be a chef and did not think that he was suited to the digging and clearing work that he was required to do.

With the reparation I would rather have worked inside, making sandwiches or that in an old peoples' home or something. I prefer working inside but other people might prefer working outside. (Kevin)

Kevin thought that some experience working with food would have helped his application to catering college in the future. Kevin's offence was attempting to sell cannabis to his friends at school. He found the cannabis in his parent's wardrobe at home and had never smoked it himself. He felt that working for the community generally was appropriate for his offence because drugs were dangerous for the community. Like Kevin, Aaron also planned to go to college. He already had a weekend job working at a kennels and would have liked to work with animals as part of his reparation.

I am going to college, hopefully. I work with dogs anyway so I want to go to college to study small animals, cats and dogs and stuff like that. (Aaron)

There were no places available for Aaron at the wildlife park project within the time frame during which he had to complete his reparation, so he was assigned to a gardening project. Aaron didn't mind because he felt that the project to which he was assigned was useful and that reparation ought to be hard work and punitive.

If you've done something wrong to the community you've got to give it back, like if you've smashed something up you got to make it up and things like that. If you've done something bad then it's got to be more difficult to do. Not just gardening but something more hard (Aaron)

Aaron's offence was punching his older brother during an argument in the family home. It was hard to see how his reparation was appropriate to his offence or to his skills and interests. Jessica thought that she could have used her skills more effectively. She was

a star player in the school netball team and was planning to go to university to study sports science. She was expected to pass the G.C.S.E's that she had taken and was soon to enter the sixth form to do A.Levels. Jessica felt strongly that she could have helped to coach other children in netball.

You could use something you are good at, your skills, to give something back to the community....because some kids, they've not played netball before and that's what I like doing. (Jessica)

Alex felt that he should have had the opportunity to carry out direct reparation to his victim, even though he admitted that it would have been hard for him to return to the school from which he had stolen computer equipment.

I think maybe I should have worked the reparation to the victim. I think I should have gone back and done something for the school. (Alex)

All of the girls, as well as Ethan and Kevin, said that there should be a greater choice of activities which did not involve physical work out of doors. For Jessica, and the other female offenders, young women were being asked to do work that was for males.

I think it was a man's job, It weren't a girls job no way (Jessica)

The question of gender arose spontaneously during interviews with the young women in the sample group (of the young men in the sample only Ethan mentioned gender). This was particularly interesting because I did not ask any questions directly relating to gender in this section of the interview schedule. The final part of this section looks at some key ideas about gender and its relevance to reparation.

Girls Work: Reparation and Gender

In late modern society the creation of identity is seen as a subjective challenge (Sennett 1977). Adolescence is a key stage in such a task. Young people reflexively construct their 'selves' in a number of ways as part of "*the sustaining of a coherent yet continuously revised, biographical narrative*" (Giddens 1991:5). As Messerschmidt (1993) states '*gender is an accomplishment*' (Messerschmidt 1993:79). We are

required to work at it and demonstrate it in our relationships with other people. Explicit references to gender in the accounts of young women undertaking community work can be seen in the context of the construction of their gendered sense of self.

We had to use spades and it is hard to lift anything. It's easier for boys because they are a bit stronger and don't care. Girls care more than boys what they look like.
(Katie)

Girls aren't used to doing heavy things like shovels and digging and stuff. (Sophie)

In reality the girls were as strong as the boys, in some cases visibly stronger and healthier. Most young people in this sample complained about how hard the work was, but only the young women suggested that it was not 'girls work'. In the context of gender differences, 'girls work' is related to ideas of femininity (Gilligan 1982) For Foucault (Hekman 1996), subjectivities are constructed within and by means of discursive practices, and an important focus is the process of constructing gendered subjectivities. Foucauldian approaches focus on lifestyle, identity and consumption; the way in which identity is linked to adopting behavioural styles or, echoing Goffman's (1959) analysis, of roles and acting a part; the idea of gender as style and performance. Katie pointed to the importance of appearance for young women and '*caring what you look like*' and Amy said it was about '*getting your fingernails dirty*'. For Becky there were quite subtle differences in types of 'girls work':

If they are boys they should do something for boys and if they are girls they should do something for girls. I'm one of them girls who likes cleaning...I don't like dirty things...but not cleaning bus windows. They should do girls cleaning, like hoovering up rooms or something. That would be better

Generally these young women were taking better advantage of the educational opportunities available to them than the majority of the boys (only one girl had been excluded from school), and they all expressed a desire to pursue a career, but at the same time they had conventional notions of their role as women. McRobbie (1991, 2000) suggests that the culture of young women finds expression, at least partly, in and around the commodities focused directly on the teenage market where the interest is on aspects of femininity such as beauty and fashion. They adopted those images of women constructed in the market place, and were also looking to a 'feminine' career in the

home. These young women were less inclined to struggle against their status as traditional women labouring in the home, even as they had rebelled by becoming offenders. Their 'criminality' may even have reinforced their desire to make a distinction between the masculine dominance of crime and their femininity.

A Masculine Model

Gender is of overwhelming importance in crime contexts because girls make only a modest contribution to crime (Heidensohn 1996). Heidensohn (1996) suggests that acceptance of criminal labels appears to be vigorously resisted by many women who prefer to emphasize the non-criminal element of their lives. Refusal to accept the dominance of a deviant identity is probably linked to ideas of 'appropriate' gender role behaviour (Heidensohn 1996). The young women in this study were keen to see themselves in caring roles working with children or old people. For example, Jessica suggested that she might coach children in netball or Katie's suggestion that she could work in children's home.

Parker et al (1981) found that more shame and embarrassment was experienced by young women than young men in justice contexts, and suggested that young women were more stigmatised by the experience. Certainly the young women in this study found reparation activities to be an embarrassing and stigmatising experience in ways not found in young men's accounts.

We shouldn't have to do it in a public place where there's loads of people walking around. It was quite busy yesterday. I didn't think there would be that many people. I felt embarrassed because they was, like, staring at us....Like (indicates a sign above her head)....criminal! We look like a criminal. (Sophie)

My friends were passing and it was really embarrassing. (Jessica)

Heidensohn (1996) points to the comparative lack of interest in female offenders by the criminal justice system, and a failure to develop means of dealing with them in any other way than the standard procedures for men. Women do not fit neatly into systems designed for men. It may be useful to consider Connell's (1987) analysis of how gender is organised. Connell (1987) focuses on three social structures which underpin gender

relations and define the conditions under which gender identities of masculinity and femininity are constructed. These structures are the gender division of labour, gender relations of power and sexuality. Borrowing the term 'hegemony' from Gramsci's notion of the dominance of one group by consent, Connell (1987) refers to the impact of these structural relations as 'hegemonic masculinity'. If normative, white, heterosexual masculinity possesses hegemonic power, then femininity and other versions of masculinity, for example homosexuality, are downgraded. Criminality in particular has assumed a masculine status. As Walker (1981) notes, a distinction can be drawn between 'paper justice', which involves giving the same penalty to women, and 'real justice' which considers the consequences of such a penalty. Unpaid work in the community is assumed to be gender neutral, and indeed this was stressed by reparation officers, but in practice it conforms to a masculine model. In general terms women and men are treated equally by the justice system given their offences (Walklate 2001) but inequalities may co-exist with 'equal treatment'. As Eaton (1986:11) puts it:

To assume that justice for women means treating women like men is to ignore the differences which distinguish the lives of women from the lives of men.

Macro-community restorative reparation, based on standardised activities using a normative masculine model may be more punitive and inappropriate for young women and young homosexual men than for young heterosexual men. One example of this was the question of working in a group. O'Connor's (2006) study, of young people aged 14-17 years in Ireland suggested that for young women 'connectedness' remained an important way of 'doing girl' made possible by the support young women receive from female friends. This aspect of female experience was supported by Sophie who said:

I'm with my friend. It doesn't feel so much of a punishment but if I'd been alone I'd have hated it because I'm not on my own it's better.

Jessica also thought that she would have been more comfortable supervised by a woman.

I would have liked a female supervisor. I would have been able to talk to her better.
(Jessica)

The 'Problem' with Girls

Young women were less comfortable working alone than young men and less comfortable working with a group of young men. In practice young women were often supervised in a group, but because of protection issues rather than because it was more appropriate for them. Usually the young people working on projects were supervised by the RO. This was seen by practitioners as a 'problem' if a female young offender needed to be supervised, and the ROs were male. Practitioners had concerns about the supervision of girls without a female reparations officer in attendance. On these occasions it was usually arranged for a joint project with another area, which had a female RO, who could supervise a number of girls together. An alternative was working in a charity shop which was run by a woman capable and willing to supervise young people by herself.

I don't know what we'd do without C at the charity shop. She gets them to work hard too. (Len RO).

This solution for dealing with the 'problem' of the girls (although it was the male practitioners who had the problem) did mean that young women had fewer work options available to them. Another example was Ethan who wanted to work in the charity shop but thought that it was only for girls. Ethan was homosexual and was more comfortable working with young women than with heterosexual young men. He resented having to do physical work *'just because I'm a boy'*.

Kennedy (1993) points out that equality is more than parity of treatment. It requires a fair, unbiased appraisal of each person's situation. In efforts not to categorise women in 'domestic' roles, reparative activities such as unpaid work in the community risked marginalizing women; reducing their choices and not catering for their particular skills, interests and needs. ROs did not support the idea of different reparations activities for females because they felt this would be discriminating, but it could be discriminating not to offer other opportunities.

These accounts suggest that a macro-community response to reparation may be meaningful to the wider community, but is unlikely also to be meaningful to many

young offenders. Accounts from young women illustrate the tensions between providing standardised work activities, based on a heterosexual masculine model, which limit the opportunities for doing meaningful work for many young people, especially young women, and individualised activities which reparations organisers contend were not practical, given resource constraints.

Repairing the Harm: Reintegration

Reintegration can be defined as “*re-entry into community life as a whole, contributing, productive person*” (Van Ness and Strong 2002:106) and reintegrative shaming requires the “*expression of personal satisfaction that the character of the offender is restored*” (Braithwaite 1989:72). The link between reparation and reintegration has been referred to by Bazemore (1998) as a kind of ‘earned redemption’, which can be associated with exchange theory approaches. Exchange theories suggest that human co-operation and civil discourse is grounded in virtually universal expectations of reciprocity (Molm and Cook 1995). An imbalance occurs when a crime is committed. In retributive justice this imbalance is addressed via punishment but in restorative justice, it is addressed by repairing the harm done. Taking responsibility and action to repair the harm caused to individuals and the community leads to meaningful offender reintegration. Norms of fairness and reciprocity demand that someone who has hurt another person or damaged the well-being of a community, should take steps to repair the harm before receiving help and support.

Exchange theory is not commonly mentioned in restorative justice literature but Bazemore and Schiff (2005) argue that practitioners have used this kind of rationale to support the requirement of accepting responsibility and taking reparative action on the part of offenders, as a first step towards reintegration. When offenders do so, they earn their redemption. Long term outcomes linked to the restoration of well-being for victims and the community, flow from the making of amends in order, according to social exchange theories, to restore balance and reciprocity (Bazemore and Schiff 2005).

Walgrave (2001) suggests that restorative reparation activities in the community have a reintegrative advantage even if they are imposed upon offenders. He argues that offenders may:

In the longer term understand the sanctions in a constructive way that will increase their chances of being re-accepted by the community more than a retributive action would. (Walgrave 2001:23)

He also suggests that it gives the community the opportunity to observe young offenders doing constructive services, which may contribute to the deconstruction of stereotypical images. There is no guarantee, however that the community will adhere to the constructive character of the restorative response.

Most practitioners held the view that reintegration back into the community was largely brought about by the high level of intervention offered by the referral order, in order to address the offending behaviour, rather than in reparation activities. This meant close supervision throughout young peoples' contracts by a youth offending team worker, and referral to a wide range of other agencies. These agencies offered help with education or job searching, referral to health centres for assessment and treatment, mediation and mentoring and outward bound courses, in addition to attendance centre activities offering programmes on, for example, anger management. Some of these interventions could be included as a voluntary part of the contract. The intention was to assess the needs of the young person, and provide intervention tailored to those needs.

We don't just do reparation with them we work on other issues that will help them...because we are a multi-agency team we may refer them to our liaison teacher...we may refer them on a voluntary basis to other organisations...like the mentoring service...careers advice....health worker .it's bringing them back in really. (Chrissie ROLO)

Another key idea related to reintegrating young people back into the community was that the referral order is regarded as a spent conviction, and thus does not need to be declared unless the young person wishes to work with children, vulnerable adults or join the police or armed forces. Dignan and Marsh (2003) suggest that this, in itself, represents a socially reintegrative approach. Practitioners, however, regarded this

aspect of the referral order more as a 'selling point' and encouragement to complete the order successfully.

Once the referral order has been completed it becomes a spent convictionand it is an opportunity for the young offender to take advantage of the help that we can give them and try to resolve the issue once and for all. That's how we sell it to them, everything else will give them a criminal record. (Clare ROLO)

Of the thirty young people in this study, 21 of them satisfactorily completed their order and in the six month period after completion had not re-offended. Three young people were called to a non-compliance panel meeting and the panel decided to return them to court. In two of the cases the court extended their referral order but they subsequently committed further offences and were again returned to court where they received Supervision Orders. The third requested in court that he be allowed to pay a fine instead of completing reparation hours that he had missed. The court agreed to this request. One young person was moved out of the area by social services during his referral order and could not be contacted for follow up information. The remaining young people in this study were returned to court, during their referral order and without reference to the panel or the YOS, because they committed further offences. One of them received an Action Plan Order and the others received Supervision Orders⁶⁷. Two of those who received Supervision Orders were for offences which pre-dated the referral order offence and when these cases finally came to court, nearly six months later, they had almost satisfactorily completed their referral orders.

I asked young people what they thought of the referral order as a response to youth offending and their responses were very mixed. Some thought that it would encourage re-offending because it was not harsh enough. Some thought that it was much harder than going to court because of the amount of commitment involved. Liam, for example said:

"I'd rather just go to court. It's just a one day thing, its easier, I'ts simple. They just tell you to do this or that, simpler than all this mooching around I've been doing for weeks"
(Liam)

⁶⁷ See Appendix J for details.

However in almost all the accounts young people mentioned not having a criminal record as a key reason for the referral order being generally a good idea for youth offending and in all cases this was because they were aware of the effect of a criminal record on their employment prospects. It would seem then, like Dignan and Marsh (2003) that young people regarded a spent conviction as socially reintegrative.

Clearly, not having a criminal conviction is of importance to young people undertaking a referral order, in terms of their future prospects in the community, but reintegration requires a more active role in repairing the harm done from both the community in general and the participants in particular.

Conclusion

The primary objective in restorative justice is to repair the harm done when a crime is committed. It is not what should be *done* to the offender. This is what distinguishes restorative justice from both punitive and rehabilitative responses to crime. Crime is defined by the harm that it causes and not by transgression of the legal code. The harm considered for reparation must primarily be the psychological suffering and material damage caused to victims, and secondarily the effect of the crime on the local and wider community. A restorative process includes the making of an agreement between those affected by a crime or conflict. There should be agreement on the best way for an offender to make amends, and a key part of this is direct reparation to victims and/or indirect reparation to the community. This chapter has explored the role of reparation in the referral order process and its relationship to reintegration. Given low victim attendance at panel meetings, reparation in the referral order was overwhelmingly indirect reparation carried out as community activities.

A key debate is whether the theoretical framework of restorative justice allows for the coercive obligation to undergo reparation if voluntary agreements cannot be accomplished. For some (Van Ness and Strong, 2002, McCold, 2000), restorative sanctions, enforced by judicial procedure, leave few differences between such sanctions and traditional punishment. Daly (1999) agrees, but argues that punishment has a place in restorative approaches. Walgrave (2001) however points to important differences

between restoration and punishment. Firstly, restorative sanctions include a strong *moral* orientation, not present in retribution and secondly, that a restorative obligation to repair harm may be painful for the offender, but the pain is not *intentionally* inflicted, which is ethically more acceptable. The key here, for Walgrave (2001) and Bazemore and Schiff (2005), is to preserve a clear cut difference between punishment and restoration.

McCold (2004) has expressed concern that a macro-community response in the form of indirect reparation risks not only blurring the distinction between restoration and punishment, but also risks usurping the key role of the direct stakeholders in the restorative process. He argues that the concerns of the wider community can best be addressed by a micro-community response to individual cases and a more active role for community members in reparation activities. The danger for the referral order is that restorative justice risks being absorbed into a traditional punitive justice system, and reparation becomes primarily coercive, indirect and standardised with the role of the victim marginalized. This may distort the restorative justice principle of repairing the harm done to victims and the community by crime, and conform more closely to a traditional punitive response based on repairing the offender.

Practitioners' accounts of reparation revealed a tension between the intentions of the practitioners to make the experience meaningful and *restorative* for young offenders and the need for practitioners and volunteers to retain discretion and control, work within resource constraints and 'sell' reparation as *punishment* to the wider community. Most practitioners accepted the punitive nature of indirect reparation and were of the opinion that reintegration was more closely linked to high levels of professional intervention than reintegrative reparation. Young people reported very high levels of support from their YOS supervisor, but this approach is more akin to repairing the offender than repairing the harm done.

Despite positive accounts of their treatment by reparation officers, without exception, the young people in this research regarded the work that they did in the community as a punishment and most found it hard. Most reported that they *deserved* it. For them it was retributive punishment. Many accounts (including those from practitioners) suggested that they had few choices about which activity might be most appropriate for

them, and that the type of work they were required to do was related neither to their offence nor to their skills and interests. They generally had no say in the number of hours they were required to do. Although some young people considered that the work they did was beneficial to the local community (and some reported that there had been an acknowledgement of their contribution by on-site staff), for many young people the activities available did not have meaning for them and their contribution was not clearly acknowledged by their community.

A significant number of young people raised the issue of gender in their accounts of reparation. Young women felt that they were being required to undertake work more suitable for young men. Choices of community work were limited, for women, by the dominance of young men in criminal activities, which resulted in work based on a heterosexual masculine model and the supervision problems encountered by male reparations officers. Gender needs to be taken seriously in the referral order and it may be appropriate to consider increasing the number of female supervisors and reparations officers, and addressing the suitability of reparations activities for female offenders. Greater choice in the activities available for indirect reparation would benefit all young people.

For reintegration to be successful for young people, there need to be gestures of acceptance from the community in which they live and the establishment of a more positive relationship with the wider community. The community has a responsibility to find ways for young people to rejoin the community. Offenders need ongoing control, support and encouragement to build or re-build relationships with the wider community. This requires that the contract should address the reasons for the offending, perhaps by offering drug and alcohol support or family mediation, but also by providing opportunities for young people to gain or develop transferable skills. Some of this may be offered by specific education or job training but reparation should play an important role. Wider community involvement in indirect reparation may help to mitigate the problem of activity suitability. Reintegration needs to be built into the reparation stage of the process by assigning more active roles for participants, for without the active involvement of family members and/or community members in the reparation part of the contract, indirect reparation risks being a stand alone punishment unconnected to the restorative process.

9. Looking Back and Moving Forward: Conclusions and Implications

"Thank you very much for answering all my questions. Is there anything you would like to ask me?" (Jo)

"What's it all for again?" (Kevin)

This thesis offers an account of the experiences of a small group of young offenders who were sentenced to a referral order by one youth court between September 2004 and September 2005. This is a small-scale study of local practice, but the referral order claims to be grounded in restorative justice theory, and therefore it offers the research opportunity to engage as meaningfully with theory as it does with policy and practice. This account has tried to capture the voices of young people and set their voices in the context of the theoretical framework of restorative justice, youth justice policy in England and Wales, and the practice of one youth offending team responsible for implementing the policy. It has explored the level of involvement and participation that these young people had in the process, the differences that they found between attending a panel meeting and attending court, the emotions that they experienced, and the reparation activities they undertook in order to complete their order. By choosing an, in-depth, qualitative approach, this research hopes to help define the referral order more precisely. This final chapter of the thesis draws out the recurring themes within this account, looks at the implications for theory development, policy and practice and concludes with some reflections on the research process.

Choosing Restorative Youth Justice

It is no accident that experiments with restorative justice have focussed on young people. The link between young people and crime reflects society's fears and anxiety about social disintegration (see for example Brown 1998), and statistics tend to support the view that youth is a criminogenic age (Home Office 2002/2005, Audit Commission 2004). The image of young people as troublesome and in need of control is emphasised by media representations of young people and youth culture (Muncie 1999). These, frequently negative, representations help to legitimise increased political interventions in youth justice. The historical debate in youth justice centres on balancing a welfare

model of justice with a justice model (see **Chapter Three**). The former assumes that young people are less responsible than adults for their behaviour, and they therefore need intervention from welfare agencies when they are in trouble. The focus is on the needs of young people. The justice model stresses proportionality of punishment, and emphasises that young people need to accept responsibility for their actions (Haines and Drakeford 1998). The focus is on the offence rather than offender needs. The latter approach increases intervention from criminal justice agencies. The tension between these contradictory aspects of perceiving the behaviour of young people, and the failure of traditional justice systems to tackle the youth crime 'problem' effectively, encourages experimentation. The emergence of restorative justice has seemed to open up new possibilities. It can be marketed to the wider public as a tough solution, while at the same time being seen as a welfare intervention. A restorative approach may gain credibility with the public if it focuses on the involvement of local people, and it sits well with current justice priorities of re-framing the justice system towards victims. Restorative justice may be seen as an attempt to incorporate welfare, justice, diversion and punishment, as well as conforming to a managerial model for dealing with youth crime.

A primary model of restorative decision-making is face to face conferencing. This is a non-adversarial process, geared to the needs of the stakeholders. It engages them in a dialogue about the harm done and decisions about how to repair it. It is intended to guide and support those stakeholders directly affected by the event and to mobilise the resources of communities. This re-focusing of justice towards stakeholders and non-professional members of the community has become part of the systematic reform of, primarily, youth justice in many parts of the world. In England and Wales the most explicit application of restorative youth justice is the referral order. The main problem for restorative justice is that the key principles and values are difficult to maintain within the confines of adversarial punitive systems (Crawford and Newburn 2003). For restorative justice to be restorative, theoretical concepts have to be understood by those who have responsibility for policy making and those who put policy into practice. The very openness and flexibility of restorative justice leaves it vulnerable to misunderstanding and possible misuse. It also poses the methodological question of how best to conduct sound research that examines the relationship between restorative justice theory, and the politics, policy and practice of its implementation.

How can Restorative Justice be researched?

Walgrave (2006) poses the question “*Do the practices based on the restorative justice options actually achieve what they seem to promise?*” (Walgrave 2006:146). Reliable answers to this question can, he argues, only be found by cautious and systematic scrutiny of the practices based on adequate and scientific methodology. There needs to be systematic and critical assessment of what is achieved in reality. Walgrave (2006) cautions that although there is a lot of research available, if it does not fulfill sufficiently rigorous standards then the credibility of the findings is doubtful. Currently, although we know that restorative justice does mostly work well in practice for the majority of participants, we do not yet know enough about the nuances and conditions. Paul McCold (2003:106) has written “*Empirical research on restorative practice is a mile wide, but only an inch deep*”. It is crucial therefore that further research is carried out into restorative programmes. The question is how best can this be done.

Crawford and Newburn (2003) point to a division between those who conduct largely theoretical scholarship and those who engage in technically sophisticated empirical study. They suggest that there is not enough engagement between the two in a meaningful manner. They argue that the introduction of the referral order is illustrative of some of the tensions between theory and empiricism, formal policy and emergent practice. They are also however, critical of small-scale empirical studies of local practice, which, they argue, tend to resemble a variant of ‘administrative criminology’ (Young 1986) concerned with rational choice and deterrence. However small scale research can help to find out the limits and constraints of particular practice and to improve it. It can hold a mirror for the practitioners. It can illuminate the practical feasibility of innovative approaches for policy makers and it can increase our theoretical knowledge base. Small scale in-depth studies may be best placed for engaging in all these elements of research.

What emerges from these and other critical comments concerning research into restorative justice is that evaluating interventions is a difficult undertaking. It can only be carried out effectively if the objectives are clearly defined, if the type of practice is

described carefully and the limitations of the research are clearly articulated. This is what I have aimed to do in this research.

How do we know Restorative Justice when we see it?

The difficulty of clearly defining restorative justice creates a conceptual problem for research into restorative approaches or, as Bazemore and Schiff (2005) put it “*How do we know restorative justice when we see it?*” (Bazemore and Schiff 2005:327). They argue that the standards for gauging how far an initiative, such as the referral order, fits the theoretical framework of restorative justice must come from the core principles and values identified as central to ‘restorativeness’ (Bazemore and Schiff 2005).

Restorative practice is driven by a set of values and beliefs which is part of a restorative justice philosophy. Without this philosophy ‘restorative’ justice is simply a set of techniques (Walgrave 2006). Governments in particular may isolate some practices from the restorative philosophy but keep calling them restorative because it is fashionable or a way to secure funding. There are some essential values and beliefs which help to identify what constitutes ‘restorativeness’ and these can be used as the basis for research.

The guiding ideal of restorative justice is to repair the harm that has been done by a crime or conflict (see for example Zehr 1990, Marshall 1999, Van Ness and Strong 2002). Using McCold and Wachtel’s (2002) connected structures of restorative justice and guided by Van Ness and Strong (2002) and Presser and Van Voorhis (2002) in particular (see **Chapter Two**), the key concepts of restorative justice can be identified. Firstly, stakeholder involvement and participation is essential to a restorative approach. Secondly, the level of stakeholder empowerment can be explored. Empowerment involves the building of relationships between the direct stakeholders (victim, offender and local community members) and the transforming of relationships between the direct stakeholders and the indirect stakeholders (the wider community and the state, in the form of the court and state justice agencies). Thirdly, there needs to be collaboration in repairing the harm done, in terms of symbolic and material reparation and reintegration. These interlocking strands emerge as recurring themes throughout this research.

Recurring Themes

Stakeholder Involvement

Fundamental to restorative justice is the active involvement and participation of those with a stake in repairing the harm that has been caused by crime. Restorative group conferencing programmes have as their primary rationale to provide a means of accomplishing this task. The principle of involvement therefore runs throughout the research. There is largely a consensus about the need to engage and empower stakeholders in restorative dialogue but some difference and disagreement about how to do it (Bazemore and Walgrave 1999, McCold 2000). Stakeholders need to be invited to attend and there needs to be meaningful communication between them, in which they feel that they are encouraged to tell their stories, and supported in expressing their feelings. There is a shared vision of inclusion, but in practice restorative justice programmes interpret this idea differently, placing different emphasis on, for example, the way that young offenders are invited to attend, or the priority afforded to victim attendance. There are also differences in the way that community involvement is perceived and carried out.

The referral order is restricted to only those young people who have committed a first offence, although they may have already received a police caution and/or a final police warning. They are not invited to attend in the strictly voluntary sense. They attend court and providing that they plead guilty they can be sentenced to a referral order. They are able to refuse, but if they do, they will receive an alternative sentence which will ensure that they have a criminal record. For young offenders the referral order is a coercive intervention backed up by the weight of the criminal justice system. Responses from professional youth offending team workers suggest that victim involvement is a priority and yet victim participation rates are low. The quality of the invitation and inclusion of victims reflects, at least in part, the working practices and resource constraints experienced by those implementing the referral order within a bureaucratic organisation (see **Chapter Five**). Going beyond victim-offender mediation, the referral order is a community response to crime (Braithwaite 1989, Wright 1996, Pranis 1997). The community is officially involved in the referral order by way of selected and trained community panel members and in the reparation

opportunities offered by community organisations. However there are tensions between volunteer community members and professional practitioners about the roles they should assume in delivering restorative justice and wider community involvement is limited. In this next section I expand on these points.

Offender Involvement

The primary subjects of the referral order are the young people who have committed a criminal offence and the key difference between a restorative approach and other sentences is the *active* involvement of the young person in decisions about how best to respond to their offending. Active involvement involves giving young people the opportunity to engage in a dialogue about their offending behaviour, in a safe non-coercive environment. They should have the opportunity to accept responsibility, apologise and make amends, and in return they should receive moral direction and support from people whose opinion they value. Ideally they make a commitment to change their behaviour and they are given support to be active members of the law abiding community.

For young people fully to participate in the restorative process there needs to be an atmosphere of mutual respect, free from coercion, in which a young person feels fundamentally valued. It is their behaviour that must be condemned (Braithwaite 1989). The young people in this study reported a marked difference in their experience of the youth court and their experience of a panel meeting and this had an impact on the way that they viewed themselves and their offending behaviour. I argued that this was largely because of the type of ceremony that characterised the formal courtroom setting compared with the type of ceremony that characterised a panel meeting. The court room 'degradation' ceremony outlined by Garfinkel (1956), 'fixed a distance' between young people and the justice process. From their accounts, this ceremony was more likely to encourage psychological distancing. It labelled them as offenders and did not encourage mutual respect. In contrast the initial panel meeting conformed more closely to the restorative principle of a reintegrative ceremony (Braithwaite and Mugford 1994). This type of ceremony uncouples the crime from the offender. Young people reported that this less formal environment gave them a voice, and some choice, in decisions about future action. They said that they were made to feel 'normal' and treated with

respect, and they felt that their opinions were valued. From their accounts referral order panel meetings hold the potential to encourage a high level of involvement and participation from young people. These findings are consistent with evaluation research in Australia (Strang 2000) and England and Wales (Crawford and Newburn 2003). In this research I uncoupled young people from the significant adults in their lives for a fuller picture. Panel meetings were easily dominated by adults. The accounts of young people suggested that their participation could be compromised if the panel meeting did not provide a sufficiently supportive environment. Young people also had limited involvement in the construction of the contract agreed at the end of the initial panel meeting.

Victim Involvement

Professional workers from the youth offending team clearly expressed that they understood the importance of victim involvement in the referral order, but they were subject to the organisational and administrative pressures common to ‘street-level bureaucrats’ (Lipsky 1980). Under an increasing workload and resource constraints, they prioritised and developed processing devices in order to achieve agency goals rather than to develop restorative processes and outcomes. Victim contact tended to be routinised and rationed and, particularly in the case of corporate victims, reduced to an administrative exercise. Practitioners cited time constraints imposed by policy makers, and lack of dedicated and trained personnel available to approach and prepare victims, as the main reasons why victims did not attend. These problems also impacted on those victims who were willing to attend (see **Chapter Seven**). In some cases there were clear signs of inadequate preparation of victims resulting in less than restorative outcomes at panel meetings (see case study Diana). In other cases where victims were involved, results, in term of victim and offender satisfaction, were positive (see case study Danny), which is in line with findings from other studies (see for example McCold and Wachtel 2002, Strang 2002). As direct stakeholders, victims’ involvement is crucial to a fully restorative process (see for example Umbreit 1999). Their absence significantly reduces the level of restorative participation possible, not just for victims but for young offenders, who are denied the opportunity to engage in a face to face encounter. Victim involvement is also central to the task of community building as involvement empowers individual citizens to become active community members.

The Role of the Community

For most restorative justice advocates, active community-building is an essential element in restorative justice (Pranis 1997). The referral order provides an opportunity to summon the resources of local communities. Active communities alter the focus of justice, away from criminal justice priorities of changing the offender, towards a broader focus of changing the conditions under which offending takes place. For this to happen there needs to be a transformation in the role of justice agencies and the role of communities (Bazemore and Schiff 2005). As I have argued (see **Chapter Two**), the idea of community is not without its problems and these problems include the difficulty of defining community, the use of community as a rhetorical device by governments, and the potential for communities to be punitive.

Partly because of concerns about political use of community and communitarianism, a community emphasis is not evident in all conferencing models. Only some models in the U.S and Canada (Bazemore and Schiff 2005) and the referral order in England and Wales make extensive use of citizen volunteers⁶⁸. In the referral order, community members have the opportunity to participate directly as volunteer community panel members, and indirectly as suppliers of reparation activities, or as providers of social support in terms of youth programmes. There were concerns from practitioners in this research that more could be done to involve a wider group of community members in the referral order, especially those operating in the commercial sector. However, community-building is a difficult transition for many conferencing practitioners, and the focus for professionals in the youth offending service tended towards formal intervention programmes, accredited and delivered by professionals, rather than a focus on engaging community groups in informal participation. Their working practices owed primary allegiance to young offenders. They accepted that victims should participate where possible, but community building was a less developed goal of the conferencing process. Bazemore and Schiff (2005) published similar findings in their overview of conferencing programmes. There was a tension between community panel members and professional youth workers. Youth justice workers felt that panel

⁶⁸ This echoes the long-standing tradition of lay Magistrates in the CJS in England and Wales.

members needed guidance on decision making, particularly with regard to proportionality. Panel members feared, on the other hand, that the report and recommendations risked standardising elements put into the contract and weakening their role. There was reluctance from youth justice professionals to hand over control to the community and encourage informal community responses to crime. This illustrates the tensions between a criminal justice focus on proportionality and the implicitly more flexible restorative justice model. Recruiting community volunteers is only one manifestation of community involvement and, from a theoretical perspective, does not in itself constitute revitalising informal social controls and empowering communities. It is equally important that professionals and volunteers work together to take the opportunity to build social networks and encourage wider community involvement. This may involve open debate about their different organisational and cultural understandings of restorative justice.

Empowerment: The Building of Relationships

Relationship building is an important part of a fully restorative process and is linked to the longer term well being of both victim and offender. Positive connections with citizens and community groups can also provide ongoing healing and social support in the aftermath of a crime (Bazemore and Schiff 2005). For stakeholders to be empowered in the decision-making process, the participants need to see relationship building as a primary goal of the conference. Multiple relationships are involved in restorative justice. As I mentioned earlier, a positive relationship between professionals and volunteers in the referral order is important for a successful and restorative conferencing process. There needs to be a shift in power relations from professional to community volunteer. Even more important is a positive and supportive interaction between community panel members and young people. This is crucial for a meaningful dialogue to take place about the harm done by the crime committed, for the communication of moral values and for ongoing support.

Young people pointed to mutual respect as an essential element of the relationship-building process. The informal environment, and the rituals of meeting and greeting the participants of the panel meeting, encouraged an atmosphere of mutual respect. Young people felt able to speak more freely about themselves and the circumstances of their

crime. It was important for young people to feel that they could engage in a dialogue without coercion and tell their story. Many of them also felt that in a small intimate environment it was harder to distance themselves from the consequences of their actions. This reflects the link between building good relationships and the communication of moral values at conferencing (Braithwaite 1989). In this research I explored how the gender and the age of community panel members might affect interaction with young people (see **Chapter Six**). The results showed that gender was not generally a concern with young people, but that age was considered more important. The majority of panel members were middle-aged and young people felt that the recruitment of younger panel members might create better relationship-building opportunities. It was also important to include those people from the community whose opinions young people felt they could respect and by whom they felt they were respected, for example local community leaders. Another important issue raised by the research was the question of continuity. For successful relationships to be built over the course of the referral order, both young people and panel members suggested that seeing the same panel members at each review meeting would significantly improve relationship building and foster a positive environment of trust and social support.

Relationship building is an essential element in emotional healing and symbolic reparation (Presser and Van Voorhis 2002). Through the mutual exchange of emotion and guided by family, friends and members of the community it is hoped that positive and empowering relationships may be built (Nathanson 1998). The two key relationships here were the bond between the young person and their supporters, usually their parents, and the relationship between the young person and the victim. The role of parents (and carers) was often crucial in providing an environment of moral direction and support. This support could be compromised if parents' concerns were able to dominate proceedings or if the parent was also the victim of the offence. This situation did however, provide practitioners with an opportunity to help build relationships between young people and their parents. Victims should be able to express their anger, fear and distress about the crime and may begin to see the offender as someone they are able to forgive (see Presser and Van Voorhis 2002). Offenders are expected to show remorse and offer symbolic reparation by way of a genuine face to face apology. Accounts from the young people in this study illustrated the difficulty of defining and interpreting expressions of shame, guilt and remorse in restorative justice. Young

people experienced a range of emotions during the referral order, many of them indicative of shame, such as embarrassment, but the crucial element for young people fully to understand about the harm they had caused, and to empathise and feel remorse, was the presence of the victim (see **Chapter Seven**).

Collaboration in Repairing the Harm

Essential for repairing the harm done by crime is the making of amends (Van Ness and Strong 2002). Making amends usually involves both symbolic reparation, in the form of genuine apologies, and material reparation, in the form of restitution, compensation or reparation activities directly to the victim, or indirectly in the form of unpaid work in the community. In the referral order indirect reparation was the most common form of reparation and was included in 84% of the contracts agreed by the young people in this research (see **Chapter Eight**). Evaluation research into the referral order has produced similar findings (Crawford and Newburn 2003). Young people suggested that they had little choice about what reparation activities might be appropriate for them, and some questioned the gender appropriateness of some activities, in that most activities conformed to a masculine model of unskilled physical work (see Connell 1987, Heidensohn 1996).

The question of punishment in restorative practice is contested, largely because of the idea of *intent* (see Daly 1999, Bazemore and Walgrave 1999, Dignan 2002). Most writers argue that sanctions in restorative justice are not punitive as long as there is no *intention* of suffering. However McCold (1999) warns that there is a risk to the fundamental principles and values of restorative justice in incorporating its practice into a punitive system. All the young people in this study regarded indirect reparation as a punishment. Most did not find it meaningful in terms of both repairing the harm done to the victim and to the community, and in terms of using or developing their skills and achieving an outcome they thought was worthwhile. Practitioners also suggested that reparation was a punishment, and there was some disagreement between professionals and community panel members about how it was applied in the contract. The young offender report presented to the panel recommended a certain number of hours of unpaid work, but this could be adjusted by the panel. Youth justice professionals felt that community members tended to change the number of hours according to the

demeanour of the young offender thereby explicitly using reparation as a punishment. Community panel members expressed concern that reparation was being routinised by the youth justice system. All practitioners admitted that unpaid work in the community fulfilled a number of justice goals. Firstly, practitioners said that the general public would accept it as deserved punishment. Secondly, they suggested that it could conform to a 'tariff' approach, which would ensure proportionality (see earlier comments) and thirdly, they argued that work in the community provided visible evidence of the active involvement of young people in the contract. For all concerned in the referral order, indirect reparation seemed to have become a standardised form of punishment, incorporated into a restorative process, largely to assuage the assumed fears of a punitive public and political agenda.

Reintegration back into the community depends upon the making of amends and meaningful reparation by the young offender, and control and support offered by the community. This requires active involvement from all stakeholders. However, most practitioners held the view that reintegration was brought about, not by reparation, but by the high level of intervention offered by professional services. These services included referral to education, training and job opportunities and healthcare departments, programmes for anger management and cognitive behaviour therapy as well as referral to mediation, mentoring and outward bound courses. Some of these services were provided by local community organizations, but most were formal accredited programmes provided and controlled by state agencies. Reintegration is more likely if active roles are assigned to the direct stakeholders (Bazemore and Schiff 2005). The danger for the referral order is that the role of victims and local community members becomes marginalized and welfare and justice continues to be done *to* young offenders rather than *with* them. At present the reintegration aspect of the referral order looks more like a high level welfare intervention and is in contradiction to a fully restorative process.

The Role of the State

In this thesis I touched on a number of issues and debates about state involvement in restorative processes. A central element to this debate is whether restorative approaches can be fully restorative if they are incorporated into the traditional justice system.

Restorative justice theorists are divided on this point, with some suggesting a co-operative role with governments and existing justice systems (see for example Marshall 1999, Bazemore and Walgrave 1999, Van Ness and Strong 1997) and others warning that this pragmatic approach risks marginalizing the key stakeholders and absorbing restorative justice into a traditional punitive system (see for example McCold and Wachtel 2002).

The role of the court is problematic in that restorative justice, enforced by judicial procedure, may leave little difference between restoration and retribution (see Van Ness and Strong 2002, McCold 2000). It certainly undermines the voluntary nature of restorative justice. With the referral order, the court retains significant power to order compensation and ancillary orders, in addition to backing up any failure by a young person to complete the agreed contract of future action with a return to court. Roche (2003) however argues that courts provide an essential mode of accountability. Other writers (see for example Johnstone 2002, Ashworth and Redmayne 2005) have pointed to the lack of legal rights protection inherent in restorative justice. I have argued, in agreement with Christie (1977), that the danger with the rule of law is that professionals work within the state apparatus, which can lead to the interests of the state superseding the interests of the stakeholders (see **Chapter Six**).

The referral order is an attempt to combine a restorative process with a retributive process and is clearly coercive, yet Daly (2002) argues that the apparently contradictory principles of retribution and restoration may be able to work together. I have argued that the involvement of the court should be seen, at best, as a transitional measure because of its capacity to divert larger numbers of cases away from traditional sanctions. Diversion may be better accomplished without the involvement of the courts, with cases diverted prior to attendance at court. In my view however, diversion is not an appropriate ultimate goal and should only be seen as a transitional measure, or a starting point, for moving towards a fully restorative justice.

A role for state agencies, in the form of youth justice professionals, is less controversial, but still requires systematic reform of approach, to ensure that professionals fully support a move towards shifting discretion and authority to the community. I have argued that there is a conflict for 'street-level bureaucrats' between their allegiance to

agency goals and the need to be active in community building (see **Chapter Five**). In the referral order the focus still seems to be on programme building, with a focus on the young offender, rather than steering resources towards victim participation. There is also a tendency to resist handing over power to community panel members.

Practitioners in this study claimed that they wanted the community to be more involved in restorative processes, but they were reluctant to distribute decision-making more widely. State agencies, in maintaining a high level of organisational control, risk marginalizing the key stakeholders.

I have summarised here some of the main tensions between restorative justice and existing criminal justice systems, which put pressure on the fundamental principles of restorative justice, and risks serving the justice system rather than the participants. I conclude that the referral order is at present an uncomfortable hybrid version of restorative justice and should only be seen as partly restorative.

Implications for Theory, Policy and Practice

This study hopes to help define and clarify some aspects of restorative justice theory, policy and practice. It should be stressed that findings from a small scale study such as this have their limitations, but nevertheless in this chapter I have outlined some issues that have implications for theory development, policy and practice. The research contributes to an important ongoing debate and reflection on the theoretical principles and values which underpin restorative policy and practice. This debate helps to keep the field sensitised to the essentials.

The greatest threat to restorative justice may be the enthusiasm of policy makers and practitioners to incorporate restorative justice into a traditional justice system. This research has highlighted how the fundamental principles and values of restorative justice can be diluted and distorted by the need to satisfy a political agenda and by inflexible institutional practices. There is no clear theory of restorative justice, which is the source of both its strength and its weakness, but there is a consensus about some of the key concepts. Theoretical reflection and its relationship to policy and practice, needs to point to these essentials. As Marshall (1999) has said, practice has frequently preceded theory and, as Lipsky (1980) has argued, policy is made on the street, so an

analysis of practice has implications for both theory and policy. In this research I have tried to maintain a strong link between theory, policy and practice. The results have supported the view that there is an ongoing tension between restorative theory, the elements of theory that find their way into policy, and the implementation of policy into practice. In this next section I put forward a number of points arising from the recurring themes of this study to contribute to ongoing debates.

Institutional Change

The coercive role of the court and the punishment paradigm needs to be challenged if the referral order is to be a restorative programme.

Restorative justice in the form of the referral order is currently being carried out in an environment that has other rationales and purposes. The essential principles and values are compromised by this agenda. Current justice systems are primarily designed to inflict punishment on offenders, at least partly to appease a general public who are bombarded with crime and justice issues but not always well informed. Stereotypes of young people are promoted and young people are acutely aware of these, frequently negative, images of them. Government has tended to promote simplistic solutions to the perceived problem of young people. For example, unpaid work in the community for this group of young people was seen as a punishment and endorsed by practitioners as 'tough' to appeal to a punitive public and political agenda. This is an extension of a retributive criminal justice system and undermines the restorative ideal.

The essential principles of restorative justice need to be made more visible to the general public, to victims, community and to local and national policy makers. Wider understanding of restorative justice should improve the quality of the debate and increase involvement in its practice. At the same time restorative justice theory may benefit from engaging more explicitly in the wider sociological and political issues of, for example, young peoples' structural position in society.

Informal community-based restorative justice may be the ultimate goal of restorative justice, but if it is to have widespread impact and maximise its potential it needs to engage with formal justice systems. Restorative justice outside the criminal justice

system risks being marginalized with few referrals, but within it the fundamental principles may be compromised. In this study young peoples' responses to their court appearance revealed the negative impact of this kind of ceremony and compared it to the much more positive response at a panel meeting. This response points to the potential benefits of diverting more young people, at least in the short term, to restorative justice at a pre-court stage. Offering restorative justice as an alternative to court would reduce coercion and may help to mobilise more community resources. Diversion may be a starting point but, I suggest, should not be a goal. At best it should be a transitional stage.

Practitioners need to assume a more supportive role facilitating informal, community-driven processes with a focus on utilising the resources of the local community and the skills of community members. Victim attendance needs to be a priority.

The idea of community is ill-defined and key questions arising from this, and other, research, is what constitutes a community, what is its role in restorative justice and what kind of people are representative of the community. Sociology has historically assigned a vital role to the community both as a causal factor in the ecological distribution of crime as well as linking it to individual propensities (see Shaw and McKay 1943, Kornhauser 1978). In restorative justice theory, informal social control plays a vital role (Braithwaite 1989) but the theory does not make clear how conferencing might mobilise communities. In part, this is because community is conceptualised as flexible and each community has its own dynamics. Community building is closely linked to the question of institutional change. There is room for further research addressing the challenge to restorative justice as a community response to crime.

The referral order is currently obstructed by the quality of conceptualisation by policy makers and practitioners. Practice tends to be tailored towards bureaucratic needs and the professional control of young offenders. Practitioners feel constrained by resource limitations but seem to be reluctant to share control with community volunteers. The subjective differences between professionals and volunteers, and the dynamics of co-operation between justice agencies, impact on the restorativeness of the referral order. Interventions by professionals may be beneficial and progressive but may not be restorative. Findings in this research suggest a need for institutional reform and

recognition of the value of greater diversity in participation and involvement. The capacity of the wider community, for example corporate involvement, has not been fully explored in the referral order. More importantly, despite the rhetoric, the referral order is not tailored to towards maximising victim involvement. Restorative justice looks both to the past and to the future. Symbolic and material reparation is crucial to both the process and the outcomes. Young people reported that the best way for reparation to be meaningful is a face to face meeting between victim and offender. As I have argued in this research, face to face encounter between victim and offender needs to be seen as a fundamental aim of conferencing.

Involving and Empowering Young People

Young offenders need to be fully supported in conferencing by people whose opinion matters to them. They should also have a more active role in how they repair the harm done.

There is a need to identify more closely the people in the community most likely to be capable of engaging with and influencing young people. The young people in this research suggested recruiting younger people onto community panels might help redress the balance of young peoples' inclusion in the community generally, as well as improving communication between young people and panel members specifically. A sense of belonging to a community could be enhanced by improving citizenship opportunities for all young people to be involved in restorative processes.

Young people also suggested that inclusion on a referral order panel of volunteers already known to them in their capacity as youth leaders may improve the potential for moral direction and support. Another way forward might be if volunteer panel members were also trained as facilitators, thus reducing the potential conflicts experienced by professional practitioners coping with multiple roles. Also parents whose children had experienced a referral order, could be encouraged to return as panel members.

A further question arising from young peoples' accounts concerns what constitutes a young persons community of care. Referral order practice does not seem to either

recognise, or utilise sufficiently, the role of extended families and friends as supporters of young people. This has a tendency to isolate young people, particularly if their prime supporter is a victimised parent. The capacity for emotional healing was enhanced in cases where a young person felt fully supported at panel meetings. Finally, direct reparation is the ideal, but indirect reparation activities could be made more meaningful to young people if they were more flexible and more closely linked to the nature of the offence and the skills and interests of the offender.

Reflections on the Research Process

Reflexivity is part of an ethnographic approach (see for example Hammersley and Atkinson 1995). At the design stage of this research (see **Chapter Four**) I chose methods which I believed to be compatible with the aims of the research; that is to see the referral order through the young offenders' lens. I wanted to present findings that did justice to young peoples' accounts of their experiences, but I also needed to reflect on the research process and its effect on the participants and on me. At the end of the research journey I took time to consider Kevin's parting question "*What's it all for again?*" and I realized that the recurring methodological dilemma I had faced was the concern that I had exploited Kevin and the other young peoples' willingness to involve me in a difficult period of their lives without offering anything very substantial in return. As Glesne and Peshkin (1992) note:

"Questions of exploitation.....tend to arise as you become immersed in research and begin to rejoice in the richness of what you are learning. You may feel guilty for how much you are receiving and how little you are giving in return" (Glesne and Peshkin 1992:112)

I asked myself who was going to benefit, other than myself, from the research. I hoped that policy makers and practitioners might benefit from a critique of policy and practice, although I appreciated that they might question the transferability of the findings of a small scale study grounded in a particular time and place. My major concern however, was for the young people who agreed to participate. It was difficult at times to maintain a social distance and an outsider's perspective. It was difficult to establish rapport and at the same time to avoid over-identification with my participants. I found myself on some occasions for example, becoming angry on behalf of young people. The

emotional effects of doing ethnographic research seem to be in opposition to notions of rationality and professionalism (May 1993), but the emotional consequences for both the researcher and the researched cannot be ignored, especially when researching sensitive and troubling issues. Even though I felt that a qualitative approach was the best way of empowering young people and presenting their experiences, at the same time I had concerns that, as an ethnographic researcher, in which elements of *“inequality, exploitation and even betrayal are endemic”* (Stacey 1988:23), I could be in danger of exploiting their trust.

Those who agreed to be interviewed did so for a number of reasons. Some said that they wanted a chance to say what they thought about their court and panel experiences. Others agreed to participate, I feared, because they were in a vulnerable situation and it was safer to agree to adult requests. Without exception the young people in this group developed a close relationship with their youth offending team supervisor, but in most cases I was the only adult outside their family who had attended other stages in the referral order. In some cases I was there in court, at the panel meetings, during their reparation and in their homes. I was aware that my presence may affect the quality of the data, but I hoped that I was not contributing to the difficulties they were experiencing. Young offenders are vulnerable and marginalized as well as regularly demonised. I was determined to give them a voice, but I recognised that it was important not to speak on their behalf but try to offer as reflexive an account of their own words as possible. Ultimately the interpretation of their accounts is my responsibility and I recognise that other researchers may have interpreted these accounts differently. The analysis I have presented in this thesis, despite its limitations, uses the words of some young people who experienced a referral order and is as true an account as I can make it.

Conclusion

There is much to be positive about with the introduction of referral orders. They offer the opportunity for the genuine involvement and empowerment of victims, young offenders and local communities in processes to repair the harm that had been done by crime. Criticisms of the referral order that have arisen during the course of this study however suggest that, as it is currently being implemented in this local context, it cannot

yet claim to be a fully restorative response to crime. The central problem lies in the uneasy relationship that restorative justice initiatives have with the existing criminal justice system and this requires an institutional change of focus.

In this chapter I have revisited and summarised some of the key points that arose in the research and attempted to draw out some of the themes that ran through the chapters. I have also suggested some ways in which the study might contribute to our understanding of how far the referral order fits the theoretical framework of restorative justice and some implications for policy and practice. Finally I have briefly reflected on the impact that participating in this research might have had on the young people who generously gave me their time and their trust.

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Appendix A Summary of the Theory of Reintegrative Shaming (Braithwaite 1989)

Appendix B: A Comparison of Welfare and Justice Models of Juvenile Offending

Appendix C Young Offenders Sentenced to Immediate Custody 1965-2000

Appendix D The Crime and Disorder Act (1998): Youth Interventions

Appendix E Research Plan and Timetable

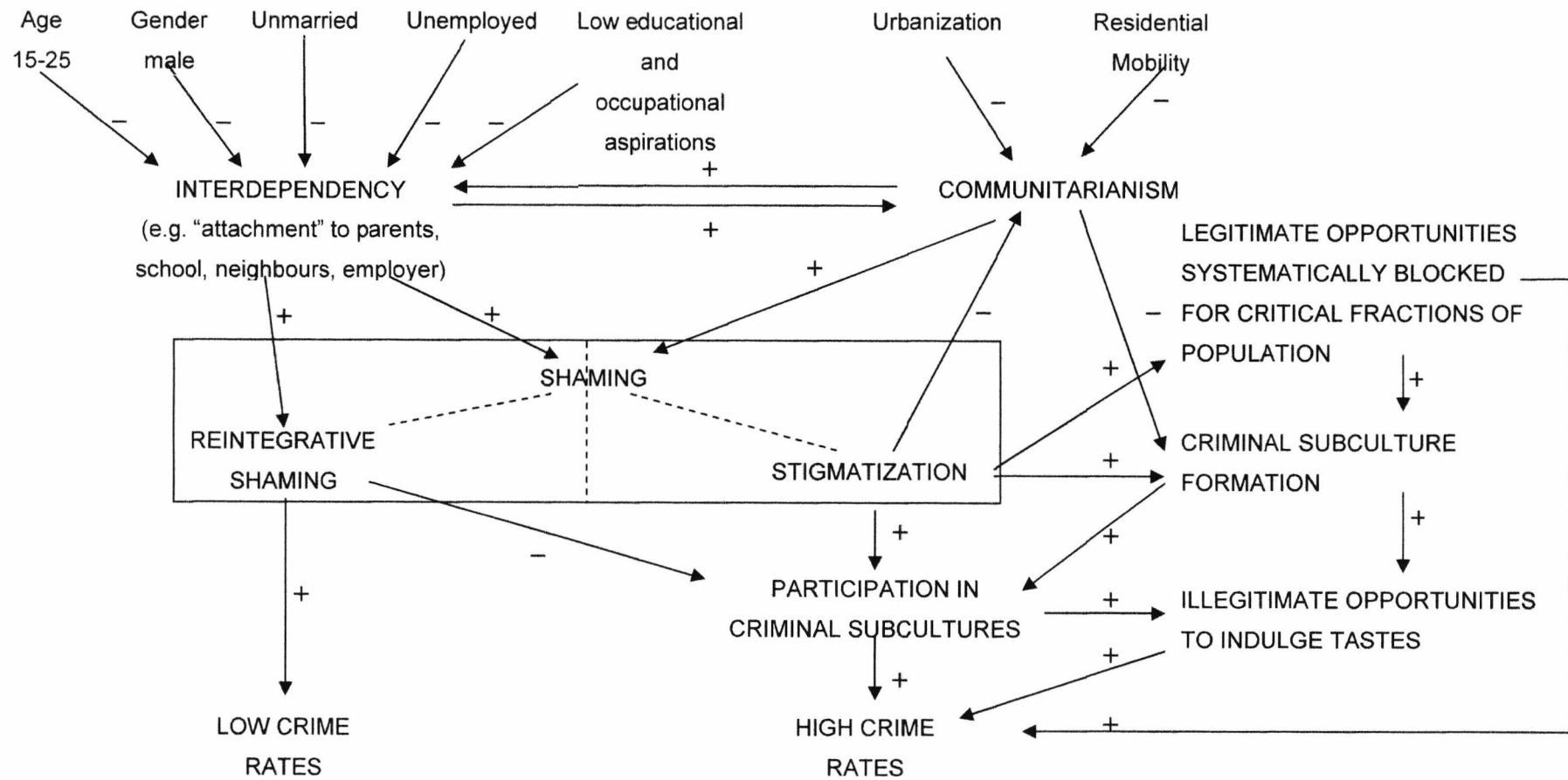
Appendix F Fields notes: Observation Sheet

Appendix G Practitioners Interview Schedule

Appendix H Young Person Interview Schedule

Appendix I The Stages in the Referral Order

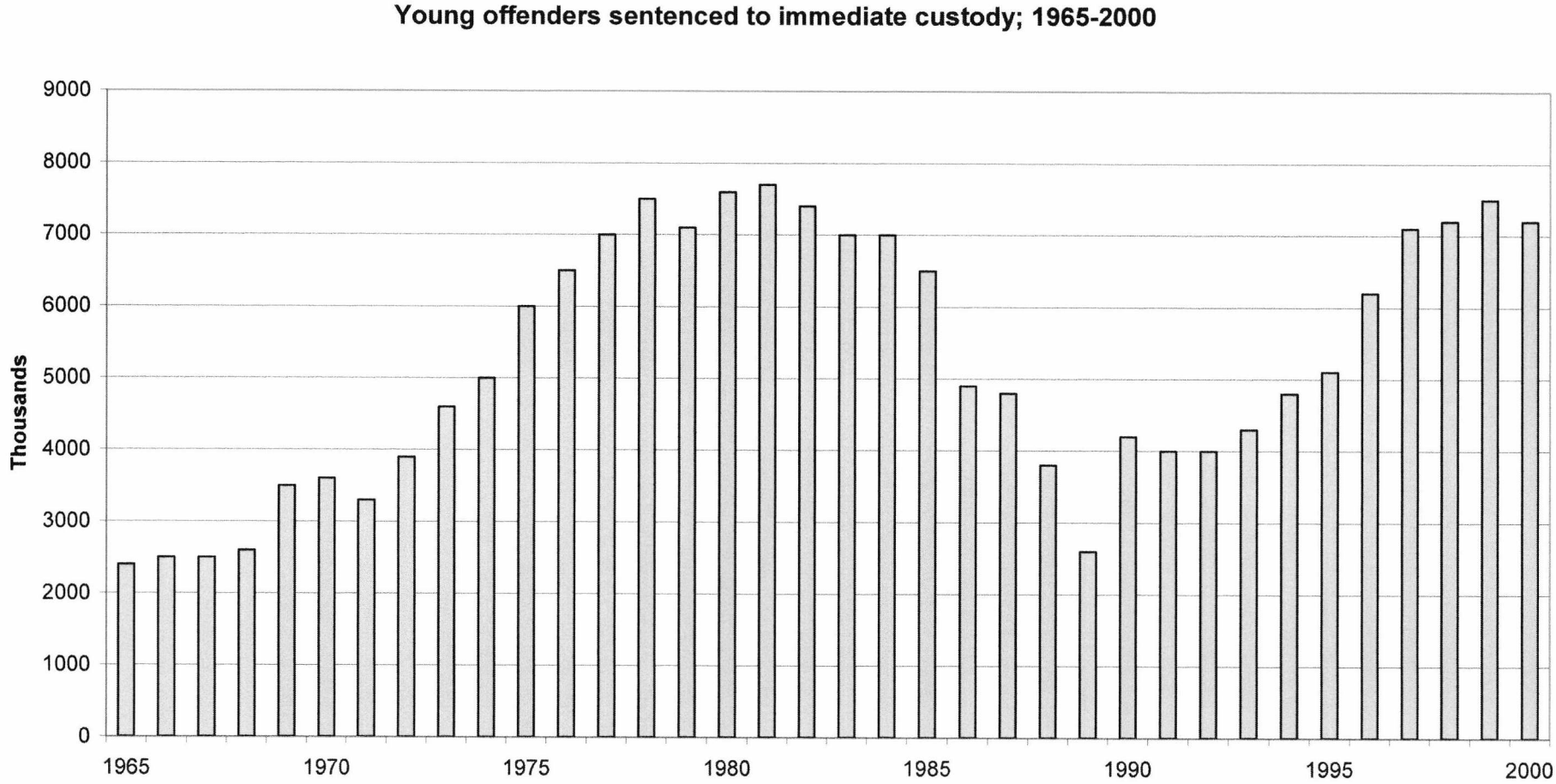
Appendix J List of Young Offenders in Study



Appendix A: Summary of the Theory of Reintegrative Shaming (Braithwaite 1989:99)

A Comparison of Welfare and Justice based models of juvenile offending

Assumptions of Welfare	Assumptions of Justice
a) Delinquent, dependent and neglected children are all products of an adverse environment which at its worse is characterised by multiple deprivation. Social, economic and physical disadvantage, including poor parental care are all relevant considerations.	a) Delinquency is a matter of opportunity and choice; a manifestation of a rational decision, although other factors may bring a child to the point of delinquency.
b) Delinquency is a pathological condition; a symptom of a deeper maladjustment out of the control of the individual concerned.	b) Insofar as a person is responsible for his/her actions, he/she should be accountable, qualified in respect of children by criminal responsibility defined by statute.
c) Since people have no control over causal factors dictating their delinquency, they cannot be considered responsible for their actions or accountable for them. Guilt or innocence is therefore irrelevant and punishment is inappropriate.	c) Proof of commission of an offence should be the sole justification for intervention and the sole basis for punishment.
d) All children in trouble are basically the same and can be dealt with through a single unified system designed to meet the needs of children.	d) Sanctions and controls are valid responses to deviant behaviour both as an expression of society's disapproval and as a deterrent.
e) The needs or disorders of which delinquency is a symptom, are capable of identification and treatment and control are possible.	e) behaviour attracting legal attention and sanctions should be specifically defined to avoid uncertainty.
f) Informality is necessary if children's needs are to be determined and their best interests served. Therefore strict rules of procedure are unnecessary.	f) Power to interfere with a person's freedom, especially that of children should be subject to a rigorous standard of proof in a court of law.
g) Need is highly individualised therefore flexibility of response is vital.	g) There should be equality before the law; like cases treated alike.
h) The child's welfare is paramount. Prevention of neglect and alleviation of disadvantage will lead to prevention of delinquency.	h) There should be proportionality between the seriousness of the delinquent behaviour and the community's response



(Adapted from Newburn, T. (2002) *Young people, Crime and Youth Justice* in Maguire, M., Morgan, R., Reiner, R. (2002) (eds) *Oxford Handbook of Criminology* (3rd ed.) O.U.P. Source; Home Office

Appendix D

The Crime and Disorder Act (1998)

Early Interventions:

Local Child Curfew

Child Safety Order

Parenting Order

Anti Social Behaviour Order

Pre Court Preventive Interventions:

Reprimand

Final Warning

Non Custodial Preventive Disposals:

Fine

Action Plan Order

Reparation Order

Supervision Order

Probation Order

Community Service Order

Combination Order

Incarceration:

Detention and Training Order

Appendix E

Outline Plan: Restorative Justice and Young Offenders

Jo O'Mahoney

Phase One	Sept 2003	
	Sept to May	Negotiation of Fieldwork Access
		Draft Introduction and Literature and Policy Review Draft Methodology Chapter
		Undertake Exploratory Observations
	May to Sept	M.Phil/Ph.D Upgrade Presentation Draw up interview schedules
		Undertake pilot young people interviews
		Undertake key practitioner interviews
Phase Two	Sept 2004	
		Fieldwork Main Data Collecting Period Young Offender Observations and Interviews Transcription and Preliminary Analysis
		Update Literature Review Chapters Two and Three
		Review and revise Methodology Chapter Four
		Draft Setting the Scene Chapter Five
Phase Three	Sept 2005	
		In depth Analysis of Data Draft Making it Personal Chapter Six Draft Emotions Chapter Seven Draft Reparation/Reintegration Chapter Eight
	Sept 2006	Preparation of Thesis: Update and Edit all Chapters Final Chapter Conclusions and Implications
	March 2007	Submit Thesis

Appendix F

Field notes: Observations

Date of Observation:

Type of Observation:

Time:

Setting: Location, Use of Space, map space

Those present: YOT / ROLO

Panel Members

Offender and supporters

Victim and supporters

Victim details

Past Offences details

Offence details

Court sentence

Offender details: Age
 Gender
 Ethnicity
 Socio-economic group
 Domestic circumstances
 School / work

Pre panel discussion: the report

The panel meeting: The process

The contract:

Notes

Themes

Appendix G

Practitioners Interview Schedule

What the study is about: **Introduce myself / short summary of study / why the study is important and how their information will contribute.**

Confidentiality: **No real names or locations will be used / no information will be given to colleagues about individuals.**

How I will be recording the interview: **Tape recording / why it is useful as a memory aide and for detail.**

Background Information

First name

Gender

Age

Ethnic Group

Qualifications and Experience

What is your job title?

How long have you been working in your current position?

What experience did you have before this job?

Do you have any qualifications particularly related to the job?

Part One

Firstly, I would like you to tell me about some of the *ideas* behind referral orders.

1. The Referral Order is described as a restorative approach to crime.

What do you understand restorative to mean?

2. How do you think restorative justice is different from traditional justice?

3. Reparation is a key feature of a restorative approach.

What do you understand reparation to mean? What kinds of reparation might be appropriate?

4. Restorative justice is a community response to crime.

How is the community involved in a referral order? How could the community be more involved?

5. How do you think referral orders might offer reintegration back into the community?

7. What do you think that referral orders are meant to achieve?

Appendix G

Part Two

Now I want to find out more about some of the *processes* involved in a referral order.

8. What do you see as your role in the referral order process? (in court or at a panel meeting)
9. What information is available about the offence, the offender and the victim? How useful is it? How does it affect decision making?
10. What other factors might affect decision making (for example length of order or awarding compensation/ the number of hours or other activities to put into a contract)?
11. So how much discretion do you have in making decisions?
12. How flexible do you think the referral order is in meeting the needs of everyone involved? (e.g offenders, victims and the wider community)

Part Three

I am interested in how you have *experienced* the referral order. So I'd like you tell me about some of the cases you have dealt with?

13. Who usually comes with the young offender? In your experience what is their contribution to the process? Have you found them to be supportive or a hinderance to the process?
14. Have you had experience of victims present (or a victim statement)? Can you tell me about it?
15. In your experience what is the level of participation of the young offender? Does it change over time?
16. Do you think any intimidation or coercion has been exerted on anyone involved?
17. What signs have you seen that would indicate feelings of shame or remorse? (or anger or resentment)

Part Four

Finally I would like to ask you more about your *opinions* of the referral order.

18. Do you think the cases you have dealt with were appropriate for Referral Orders? Why? Why Not?
19. What other kinds of cases might be appropriate?
20. In your opinion what are the most positive aspects of referral orders?
21. What problems/constraints can you identify in relation to referral orders?
22. How might these problems be overcome?
23. Is there anything else you would like to tell me about referral orders?

Thank you very much for agreeing to talk to me. Your comments have been very interesting and will make a valuable contribution to the research.

Appendix H

Young Person's Interview Schedule

Name:

Section One: At Court

- 1. I would like you to tell me about what happened in the Magistrates Court when you were given the Referral Order. Can you start from when you arrived at court and go through what happened.**
- 2. Who came to court with you?**
- 3. How were you treated by the court staff?**
- 4. Did you have a Solicitor? What did they say to you about what was going to happen?**
- 5. What was it like in the courtroom? How did you feel at this point?**
- 6. Did you have the opportunity to speak? What did you say?**
- 7. Did your mother/father/guardian have an opportunity to speak? What did they say?**
- 8. What did the Magistrates say to you about the order?**
- 9. Did you understand what the order was about? What did you expect the order to be like?**
- 10. How did you feel about the whole court process?**
- 11. Was there anything good about the court process? What was the worst thing?**

Section Two: Pre Panel

- 12. Tell me about your interview with the YOT officer and the preparation of the report.**
- 13. What were your feelings before going to the panel?**
Who did you think would be there? What did you think would happen? Were you nervous? Etc

Section Three: The Initial Panel Meeting

- 14. Please tell me what happened at the panel meeting?**
- 15. Who came to the panel meeting with you?**
- 16. What were the panel members like? Male/Female, Old /Younger? Do you think it makes any difference? How did you feel you were being treated by the panel?**

Appendix H

17. Was there a victim at the panel? How did you feel about the victim before the meeting? How do you feel about them now?

18. Did you get the opportunity to speak? What did you tell them? Did you get the chance to say all you wanted to say?

19. Did your parent/guardian speak and what did they tell them?

20. How did you feel about what happened at the panel meeting?

21. What were the good things/bad things about the panel meeting?

Section Four: The Contract, Reviews and Final Review

22. Tell me what was in the contract?

23. What reparation did you do? What was it like doing it?

24. Did you go to the Attendance Centre? How good was the course? Do you think it will affect the way you do things in the future?

25. How did you get on with your supervisor? What happened in your supervisions? How helpful was your supervisor? How did your supervisor treat you?

26. Were there any other things were in your contract?

27. What were the good things/ the bad things/ the hardest things/the easiest things about the contract?

28. Did you complete the contract?

28a. If yes: What was the Final Review Panel like? What did the panel say to you? How did you feel about yourself afterwards?

How do you think your family felt about you having a referral order?

Has the referral order changed the way you plan to do things in the future?

28b. Why do you think it didn't work out?

What has happened to you since then?

Section Five: General Questions

30. Do you think the Referral Order is a good thing for young people who have committed an offence?

31. What are the good things/ bad things/ about it?

32. If you were in charge how would you change it?

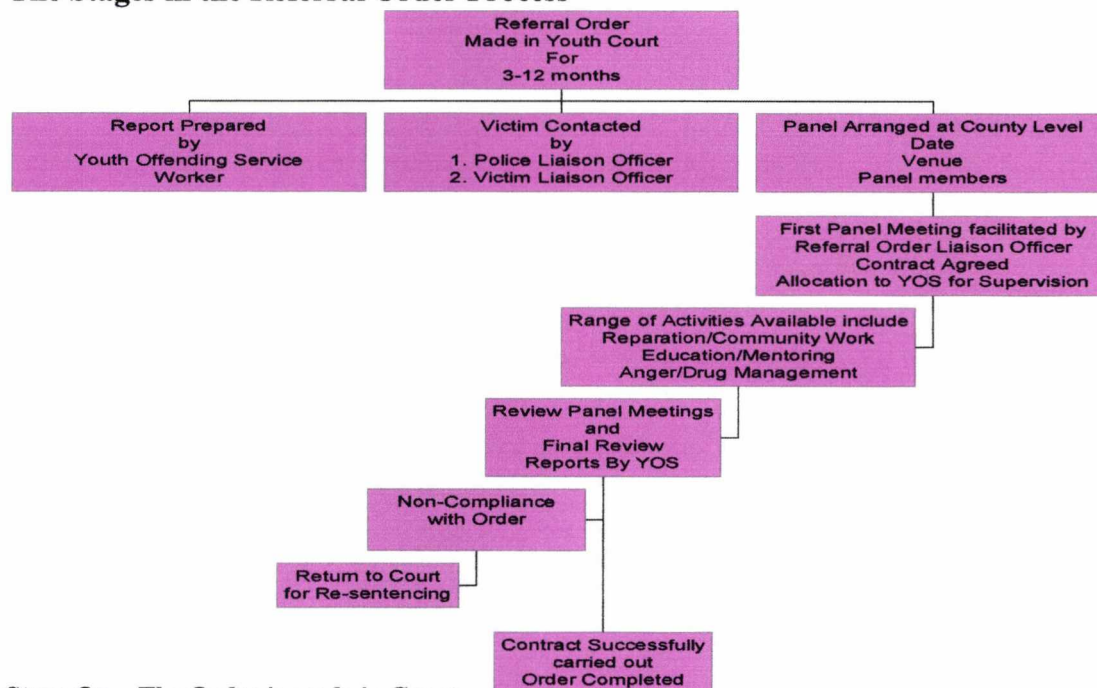
Is there anything else you wish to say?

Do you have any questions about the research or the interview?

Thank you very much for your help

Appendix I

The Stages in the Referral Order Process



Stage One: The Order is made in Court

The referral order is made in the Youth Court. A court officer from the Youth Offending Service explains the referral order to the young person and parent/guardian (if they are 16 years and under) and gives them an explanatory leaflet. The young person waits for a letter arranging a meeting with the referral order report writer.

Stage Two: The Panel Meeting is Arranged

The Community Panel and Venue are Booked

Panel members are contacted to attend (at least two panel members are required) and an appropriate venue will be booked. This is usually a multiple use community centre close to the home address of the young person. Schools are not deemed appropriate for panels with young offenders, who have often had a negative experience of education. A Referral Order Liaison Officer (ROLO) is allocated to the panel. The Area Youth Offending Service allocates a report writer who may be the panel ROLO in some cases and who may or may not be the subsequent supervisor of the order.

A Report on the Young Offender is Prepared

The young offender is contacted in order that the report can be written. This may take place at the offender's home or at a Social Services office. The Youth Offending Service officer collates the available information for the report which may include information from CAFIS (computerised information) if the family is already on record with Social Services, and will include an ASSET assessment. ASSET is a 13 page profile document intended to assess the risk of re-offending. ASSET focuses on individual, family and school risk factors for offending and anti-social behaviour (Farrington 2002). The report is drafted and the practice in the research County is that the report includes recommendations to the panel. The young person and parent/guardian have an opportunity to read the report before the panel meeting and are also told whether or not a victim will be attending.

The Victim is Contacted

Crawford and Newburn (2003) identify 8 steps in victim contact:

1. Identify victims
2. Contact victims
3. Provide victims with choices
4. Secure victim consent
5. Assess victim suitability to attend conference
6. Facilitate practical attendance
7. Facilitate victim input at meeting
8. Follow up and keep victim informed of progress

Appendix I

In the research area first contact is carried out by police officers at the time of arrest. On the reverse of the police report is a form with victim information and notes on the willingness of the victim to be contacted again. If a victim has been identified then, in order to comply with the Data Protection Act (1998), they are contacted by the YOT PC, and they are asked if they are willing to be contacted by the VLO. If the victim agrees, then the YOT PC passes the victim information to the VLO. The VLO can then contact the victim by phone to explain the referral order to them and offer them the opportunity to attend the panel. If the victim expresses a wish to attend, then the VLO arranges an interview to assess their 'suitability' for face to face inclusion at a panel and addresses any concerns or questions they may have. The VLO carries out pre panel preparation and facilitates practical arrangements. The VLO can also accompany the victim to the panel as a supporter. If the victim is unable or decides not to attend the panel the VLO can help them to prepare a written or videoed statement to present to the panel in their absence. This statement may include the victim's thoughts and feelings regarding the offence and their feelings about possible direct reparation. In some cases the victim liaison officer may attend the panel in person to represent the victim's views.

Stage Three: The Initial Panel

At the Initial Panel Meeting the panel members read the report and discuss the possible implications and the recommendations. If a victim is present he or she is seen by the panel first to discuss with them their understanding of the process. The young person and supporters then join the meeting. The panel ask the young person about the offence and their feelings about their offending. Reparation will be discussed and a range of possible options and activities available to address offending. If a victim is present the victim is able to express their feelings about the offence and their views about reparation. The ROLO advises the panel if requested and types up the contract. The contract contains all options agreed by the meeting which the offender must carry out within the course of the order. It is signed by the offender and the panel. It is now a legal document enforceable by the youth court.

Stage Four: The Contract is Carried Out

A YOS (primary case) worker is allocated to the young person for the duration of the order and he or she arranges action by other agencies (for example referral to the Mediation Service, a Mentor, the Education Service or the Attendance Centre for courses in a variety of activities such as Anger Management). The YOS worker then supervises the contract on a regular basis (usually fortnightly supervisions for the first three months). Indirect reparation is delivered on the basis of project availability and the work and education commitments of the young person. First the reparation officer receives the young person's details from the primary case worker and the number of hours they are contracted to do. The Reparations Officer then contacts them in order to arrange a suitable time to meet them at home. At their home he/she goes through the health and safety requirements including what clothing might be suitable and discusses any medical issues they might have. He/she explains the rules and standard of behaviour required of them and obtains written parental permission if they are under 16 years old. The young offender then signs a document agreeing to the conditions of work. The reparations officer then makes an assessment of the young offender to determine what project might be appropriate. This assessment is based on their personal interests and skills, the days they are available to work and their ability to work with other people. Their YOT primary case worker may recommend that they work in a group or on their own.

Stage Five: Reviews and Final Review

If the referral order is for longer than 3 months there will be a Review panel every 3 months to monitor progress. Review panels can also be requested by the case worker or the young person or their parents/guardian at any point in the process. The same panel members who attended the initial panel may or may not follow the same young person through their referral order. If progress is not satisfactory the young offender may be breached and returned to court for re-sentencing. If the contract goes well then a Final Review panel will be held. This panel is to sign off the young person from the contract and to encourage them to continue not to offend. The panel may offer further support if needed. The referral order now becomes a spent conviction which need only be declared if the young person requires an Enhanced Criminal Records Bureau (CRB) check in order to join the police force, the armed forces or to work with children or vulnerable adults.

no	Name	DOB	age	RO made	Length	Initial Panel	Panel Location	Offence	Education/work	Family	Victim	Atten ded	Indirect reparation	RO	Intervi ewed	Sex
1	Sam	23/05/1987	17	14/09/2004	4months	12/10/2004	A	Public Order Sec 3 Involved in fight outside kebab shop while drunk	Excluded from school year 9, Special School for learning difficulties	Lives with mother and older brother with two sisters living away from home.	Local Community.	No	None	Satisfactorily Completed.	Yes	M
2	Kevin	14/06/1990	14	14/09/2004	6months	18/10/2004	B	Supplying Cannabis at school	Excluded from school because of offence. Alternative curriculum programme.	Lives with father and step mother and younger sister age 6.	School friends.	No	12 hours	Satisfactorily Completed.	Yes	M
3	Nathan	14/11/1989	14	31/08/2004	12months	25/10/2004	A	Burglary and Theft, Criminal Damage	Excluded from school . No permanent placement since entering care system ADHD	In out of borough foster care. Foster carer terminated arrangement because of behaviour.	Neighbour + Retail Store	No	12 hours.	Moved out of area.	No	M
4	Richard	30/08/1990	14	05/10/2004	6months	02/11/2004	B	Shop Theft	Excluded from school then at Behaviour Unit. ADHD	Lives with mother, step father and younger step brother and sister.	Retail Store.	No	12 hours	Non Compliance Panel, further offences shop theft and criminal damage. RO extended 12 months. RO breached. Returned to court. RO revoked. 12 month supervision order.	No	M
5	Ricky	03/01/1990	14	07/09/2004	3months	02/11/2004	B	Criminal Damage destroying sofa at home	School refuser since year 8	Lives with mother and older brother and sister	Mother.	Yes	8 hours	Satisfactorily Completed.	Yes	M
6	Andrew	28/01/1990	14	05/10/2004	6months	02/11/2004	B	Shop theft	Excluded from school then at Behaviour Unit.	Lives with mother and Grandfather.	Retail Store.	No	12 hours	Returned to court for further offences 2x criminal damage. 12 month supervision order.	No	M
7	Brandon	15/10/1989	15	12/10/2004	3months	09/11/2004	B	Common Assault	Special school for Learning Disabilities.	Lives with mother and step father	Neighbour	No	None	Satisfactorily completed order. Signed off in absence. Re-offended	No	M
8	Jake	29/11/1986	17	26/10/2004	3months	23/11/2004	A	Criminal Damage to mother's car, while drunk	Casual work minimum wage	Lives with Grandmother, sees both parents	Mother	Yes	6 hours	Satisfactorily Completed.	Yes	M
9	Ethan	25/05/1990	14	21/09/2004	6months	23/11/2004	A	Burglary and Handling stolen goods	Truant from secondary school. No permanent placement since entering care system	In out of borough foster care. sees mother regularly. Foster carer terminated arrangement because of behaviour.	Youth Worker.	No	12 hours	Re-offended. RO Revoked. Given Action Plan Order.	Yes	M
10	Josh	24/03/1990	14	19/10/2004	3months	30/11/2004	B	Shop theft.	Excluded from school. Working towards part time return to mainstream education.	Lives with mother and younger sister 2 older sisters live away from home	Retail Store	No	12 hours	Satisfactorily completed. Signed off in absence.	No	M
11	Danny	01/06/1987	17	15/06/2004	6months	13/07/2004	B	Theft from motor vehicle.	Apprenticeship and college.	Lives with Grandparents. Sees mother and 5 siblings regularly.	Neighbour.	Yes	12 hours	Breach of RO. Returned to court. RO revoked. Received Fine.	No	M
12	Lewis	29/11/1986	17	23/11/2004	4months	26/01/2005	B	Public Order Sec 4 threats with baseball bat against neighbour	Excluded from school year 11. Unemployed	Lives with mother, father and two younger sisters.	Neighbour.	No	None	Satisfactorily Completed.	Yes	M
13	Jason	12/11/1987	17	21/12/2004	9months	26/01/2005	B	Aggravated TWOC, excess alcohol, No Ins	GCSE's plans A Levels at school.	Lives with friends. Sees mother, stepfather and younger brother and sister and step sister regularly.	Stepfather.	Yes	12 hours	Satisfactorily completed	Yes	M
14	Luke	20/04/1989	15	04/01/2005	6months	31/01/2005	B	Shoplifting.	At school year 10 taking GCSE's	Lives with grandparents since birth and mother who has learning disabilities.	Retail Store.	No	18 hours	Returned to court for further offences which predated original offence. RO revoked. Given 12month Supervision Order.	Yes	M
15	Kieran	24/09/1988	16	04/01/2005	6months	31/01/2005	B	Shoplifting.	College bricklaying course	Lives with parents and two brothers	Retail Store.	No	18 hours	Returned to court for further offences which predated original offence. RO revoked. Given 12 month Supervision Order.	Yes	M

no	Name	DOB	age	RO made	Length	Initial Panel	Panel Location	Offence	Education/work	Family	Victim	Atten ded	Indirect reparation	RO	Intervi ewed	Sex
16	Ryan	18/06/1988	16	15/02/2005	4months	14/03/2005	C	Common Assault against another boy	Excluded from school year 9. Behaviour support Unit, Project 15. In full time work minimum wage.	Lives with mother and older brother and younger sister. Sees father.	Boy Same Age	No	6 hours	Satisfactorily Completed. Signed off in absence.	Yes	M
17	John	12/10/1990	14	11/01/2005	12 months	25/04/2005	C	Burglary of dwelling and non dwelling	Excluded from school. Behaviour Support Unit.	Lives with mother, her partner and younger step brother. Father died in accident. Older sister lives with grandparents.	Neighbour + Neighbour	No	35 hours	Satisfactorily Completed	Yes	M
18	Jamie	19/03/1987	17	11/01/2005	12 months	25/04/2005	C	Burglary of dwelling and non dwelling	Excluded from school. Casual work usually with his father	Lives with mother and her partner and siblings. Sees father regularly.	Neighbour + Neighbour	No	35 hours	Satisfactorily Completed	No	M
19	Alex	20/08/1987	17	12/04/2005	6 months	09/05/2005	C	Theft of Computer Systems £1300 from own school	A Levels. University Computer Science Degree Course	Lives with Aunt since parents both died of cancer within a couple of years of each other. Older brother works in Bank and lives in London.	School headteacher.	No	18 hours	Satisfactorily Completed. Signed off in absence.	Yes	M
20	Aaron	23/11/1989	15	07/04/2005	4 months	16/05/2005	C	Common Assault assaulted his younger half brother	At school referred to Mental Health Unit.	Lives with Mother, step father and younger half brother. 2 older brothers live away from home. Paul has a stammer.	Brother.	No	6 hours	Satisfactorily completed	Yes	M
21	Owen	26/06/1987	17	10/05/2005	6 months	06/06/2005	C	Theft in breach of trust £200	Statemented at school for learning difficulties. Now College	Lives with parents and older brother	Retail Store.	No	None	Satisfactorily completed	Yes	M
22	Sean	01/06/1987	17	01/03/2005	6 months	11/04/2005	C	Burglary non dwelling	In full time work minimum wage	Lives with mother her partner + 3 siblings	neighbour	No	10 hours	Satisfactorily completed	No	M

23	Chloe	21/11/1988	16	02/11/2004	4months	30/11/2004	B	Assault and shop theft	In year 11 at school	Lives with her mother. Has regular contact with father.	Girl Same Age + Retail Store	No	12 hours	Did not complete reparation. Order period ran out. Signed off in absence.	No	F
24	Jessica	25/05/1989	15	12/10/2004	3/9 months	30/11/2004	B	Shop theft /Receiving stolen goods. RO extended to 9 months for second offence.	At school taking GCSE's.	Lives with mother and sister.	Retail Store	No	16 hours	Satisfactorily Completed.	Yes	F
25	Sophie	19/06/1989	15	18/01/2005	6months	21/02/2004	C	Burglary and Theft	At school taking GCSE's	Lives with mother step father and younger brother and sisters. Regular contact with father who has Attended all panels with her.	Neighbour.	Yes	18 hours	Satisfactorily Completed.	Yes	F
26	Amy	02/12/1989	15	15/02/2005	6months	15/03/2005	C	Public Order and Shop theft	Excluded from school year 9. Attends Alternative Curriculum project.	Lives with mother, father, twin brother, older brother and younger sister.	Local community + Retail Store.	No	12hours	Non compliance meeting. RO continued. Then breached in absence and returned to court.	Yes	F
27	Katie	17/05/1990	14	06/01/2005	7months	21/03/2005	C	GBH	At school taking GCSE's	In foster care. Sees parents regularly.	Girl Same Age	No	18 hours	Satisfactorily completed	Yes	F
28	Becky	29/01/1988	17	10/03/2005	6months	05/04/2005	C	Twoc No Ins No licence	Excluded from school has been sacked from all work placements	Lives with both parents and 2 sisters	Mother	Yes	15 hours	Satisfactorily Completed	Yes	F
29	Emma	19/11/1990	14	26/04/2005	3 months	23/05/2005	C	Criminal damage smashed lamp and clock at home	Excluded from school Attending behaviour Unit	Lives with mother, 1 older and 1 younger sister. Divorce pending.	Mother.	Yes	6 hours	Satisfactorily Completed.	Yes	F
30	Diana	19/11/1990	13	19/07/2005	3 months	16/08/2005	A	False Imprisonment locked a girl in a room	Not attending school. Home Tutor.	Lives with Mother and Mother's partner	Girl similar age	Yes	6 hours	Satisfactorily completed	Yes	F

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