



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

Review of Community Sentences

12 January 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Stewart Dickson

Mr Seán Lynch

Ms Jennifer McCann

Mr Basil McCrea

Mr Alban Maginness

Mr Jim Wells

Witnesses:

Mr Gareth Johnston) Department of Justice

Mrs Anne O'Connell)

Mr Paul Doran) Probation Board for Northern Ireland

The Chairperson:

We will now receive a briefing on the results of the consultation on a review of community sentences and proposals for the way forward. I welcome Gareth Johnson, deputy director of the criminal justice policy and legislation division in the Department of Justice (DOJ), and Anne O'Connell from the criminal policy unit of the Department of Justice. Paul Doran from the Probation Board is here again for this session. Again, this will be reported by Hansard. I hand over to the officials. Members will have an opportunity to ask questions once they have finished.

Mr Gareth Johnston (Department of Justice):

Thank you, Chairman. In response to a commitment made in the Hillsborough Castle Agreement, a consultation on a review of community sentences was issued last year, which explored the role, scope and effectiveness of current community sentences. That opened up the debate on the value of short prison sentences compared with community sentences and sought views on the need for change. The review was specific but, of course, was set in the context of a wider-ranging agenda of reform, from the individual at risk of offending to the offender whose offence is so serious that a prison sentence is warranted.

Central to those reforms is what you have just been hearing about — the strategic framework on reducing offending. The proposals that we are going to present to you today play an integral but specific part in that. The purpose of today's presentation is to seek the Committee's views on the Minister's proposals on the way forward. They have been developed in light of the responses to the consultation exercise and of the outcome of another important strand of reform — the prisons review.

There were 13 responses to the consultation. The consensus emerging from those responses was that custody should be used as a last resort. Secondly, it was deemed that the community sentences available to the judiciary were appropriate and did not need any significant change. However, thirdly, the consensus was that effective community engagement is key to building and maintaining confidence in community sentences.

Chairman, in light of that, we want to put forward four proposals for the Committee's consideration. The first proposal is to introduce a legislative presumption against prison sentences of three months or less. I will say something about that in a moment. The second proposal is to commission research on offenders who receive community sentences. The third proposal relates to pre-sentence reports, encouraging the use of the short-sentence report and considering, in liaison with the Lord Chief Justice, the impact for pre-sentence reports of the presumption against custody, which I have just mentioned. The fourth proposal is to develop a community engagement strategy.

The first of those proposals is to introduce a legislative presumption against short custodial

sentences. The consultation asked for views on whether steps should be taken to reduce the use of short custodial sentences for less serious offences. As I said, respondents were of the view that custody should be used only as a last resort, with the majority of respondents confident that community sentences here did much more to tackle the factors that lead offenders to reoffend. That view is supported by statistics for reoffending. Data shows that almost 43% of offenders who receive a custodial sentence of three months or less reoffended within a year. Data on those who are sentenced to community orders shows a more encouraging outcome. The reoffending rate for those who are sentenced to community service orders is 23.5%; for probation orders, it is 24.4%; and for combination orders, it is 34%, although I should say that, to date, the number of combination orders has been quite small.

The views of consultation respondents in that exercise were echoed in the prison review team's final report, which recommended a legislative presumption against custody of three months or less. It pointed to recently introduced legislation in Scotland for a similar presumption against custody. That is the way forward that we intend to adopt on foot of that consultation. In the longer term, it has the potential to reduce what has been an upward trend over the past few years in the number of offenders who receive short custodial sentences. Our review highlighted the fact that prison receptions in 2009 for sentences of three months or less had increased by 181% since 2001.

First, we are looking at that statutory presumption. Secondly, we are looking at research. If more offenders are to be managed in the community, it is important to ensure the effective use of resources in other areas given that the presumption against custody is likely to have a relatively minor impact on the average prison population and, therefore, is unlikely to produce significant savings. Unfortunately, as the Committee will be aware, you do not achieve significant savings on prison budgets unless you can pull significant numbers of people out of the prison population.

The review of community sentences highlighted how little we know about that cohort of offenders, particularly about why the judiciary choose non-custodial or custodial sentences or, indeed, about sentencing trends in that area or generally. I referred to an increase in the number of offenders who receive short prison sentences. Interestingly, the Probation Board also identified a significant increase in the number of community service orders. Therefore, short

prison sentences at the upper end are increasing while the numbers are also increasing at the lower end of the community sentence spectrum. In the absence of supporting data, it is difficult to know whether that is evidence of net-widening — in other words, whether people who might traditionally have been given, for example, a fine are now being given a community sentence. We do not have the information to enable us to make a comparison of the profile of offenders, the nature of offences, the offending history or the propensity to reoffend.

Data shows that, in 2007, 213 first-time offenders got a community service order, which was almost 32% of all community service orders. Of those, only 6% reoffended within a year. There is a question about whether community service orders are being appropriately targeted at that lower end of the scope of community orders generally. Are offenders who might previously have got fines now getting community sentences? What might be the reasons behind that? Is that a pattern that we want to continue and, potentially, to increase?

In tandem with the presumption against custody, the Minister is proposing that research be commissioned on that cohort of offenders. The research findings will form the basis of discussions with the judiciary and the other criminal justice agencies to ensure their effective and appropriate management and to inform the future development of sentencing policy in the Department.

The third proposal, which is also aimed at making the most effective use of resources, concerns the information that is provided in pre-sentence reports, which are used to assist the courts in sentencing decisions. Of particular relevance in that context is a recent Criminal Justice Inspection (CJI) recommendation to the Probation Board that work should be undertaken to identify reasons for the limited uptake by the judiciary of specific sentence reports. They are an abbreviated form of pre-sentence report and are intended to provide the court with targeted information about a defendant. Their real advantage is that they can be provided very quickly, which helps to speed up justice. Although the use of specific sentence reports has increased, they still account for only 9% of the total number of reports. We propose that we liaise with the Lord Chief Justice and that that would include discussion on increased usage of specific sentence reports, thereby releasing resources in the Probation Board for other core activities.

Finally, we want to address various points about the importance of community engagement. The consultation and the responses to it served as a reminder that confidence in community disposals is low, community engagement is key to building confidence and is an aspect that will require increased focus if there is to be public understanding of the value of non-custodial alternatives and, indeed, public acceptance of a presumption against custody. The Probation Board has already taken a number of steps to improve community engagement in that area through providing for victims and for the wider community to have a say in what work offenders should do and on publicising the outcomes of completed projects. The boardwalk on Divis and Black Mountain is a particular example.

Consultation respondents were asked for their views on how we might build on that work and how we can communicate more effectively the message that community sentences are onerous, challenging and, from the statistics, effective. The majority of the responses focused on the new policing and community safety partnerships and how they could provide an effective channel for disseminating information.

The Committee may remember that the development of a community engagement strategy on sentencing issues is already included in the proposals for sentencing guidelines mechanism. We discussed that with the Committee before the Christmas recess. Building confidence in community disposals and engaging with communities on suitable work projects for community service will form a key element of the strategy. That will encourage partnership and innovation at a local and community level.

The Minister considers the proposals to be tailored to local needs. They reflect the responses that we received in the consultation, and they use our framework structures and partnerships, which all work to provide for the effective management of lower level offenders, when appropriate, in the community. Subject to the Committee's views, the Minister wants to move to publish the summary of responses and to include in that his proposals on the way forward.

The Chairperson:

Gareth, thank you very much. I want to put a couple of questions to you on the Minister's four proposals. I doubt that members around the table will have much difficulty with three of those

proposals. However, the first proposal, on the presumption against prison sentences of three months or less, needs some interrogation. Will you tell us the offences for which people have been given sentences of three months or less? What are the issues?

Mr Johnston:

We can provide more information on that. I do not have an analysis that is broken down by specific offences. I can come back to the Committee on that. Certainly, the overall numbers of those sentences have been increasing, even in recent years. There were 114 in 2006; 168 in 2007; 248 in 2008; and 315 in 2009. Therefore, we have seen considerable growth in that area.

The Chairperson:

Sorry, was that figure 315 or 350?

Mr Johnston:

The figure was 315 in 2009.

Mrs Anne O'Connell (Department of Justice):

That figure relates to adult males who are over 21 years of age. When youths are included, the figure is 346.

The Chairperson:

Therefore, according to your most recent figures, approximately 350 people were given a sentence of three months or less.

Mr Johnston:

It is important to emphasise that there are people in that category for whom a short prison sentence is absolutely appropriate. For example, there are people who have already been through community alternatives. The courts see that as a step up. That can be a justification. Sometimes, there can also be reasons for looking at community alternatives again. However, a step up is one reason why a short sentence might be appropriate. It might also be that the seriousness of the offence means that a court is unwilling to consider anything other than a custodial sentence. Anne can remind us of the average terms that people spend in prison.

Mrs O’Connell:

The average sentence that is less than three months is 67 days.

Mr Johnston:

We are conscious that that short time in prison provides very little opportunity for any effective engagement with an offender. It provides next to no opportunity for any programmes or training. If, on the other hand, someone has a community sentence, which might typically last a year, it provides a much longer period over which to explore with an offender the reasons for his or her offending behaviour. You can look at suitable programmes, engage and talk. You can do all those types of things that help offenders to address their risk areas for offending. You can start to get people into more secure forms of accommodation. You can address their relationship issues and support networks. Many studies have shown that those issues address offending behaviour, which underlies the recommendation. If we made more use of community sentences for that group of offenders, we could have better outcomes down the line in reducing offending, rather than worse ones.

The Chairperson:

Talk me through the legislative presumption against custodial sentences. What exactly does that mean? How is the judiciary tied into that?

Mr Johnston:

Let me cite what Scotland has done. It is not necessarily exactly what we would adopt, but it shows the model. The Scottish provision is outlined in section 17 of the Criminal Justice and Licensing (Scotland) Act 2010:

“A court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.”

If the court nevertheless decides to pass a sentence of imprisonment, it must state its reasons and have those entered in the record of proceedings. Essentially, it is saying that a presumption is made that someone in that category will get a community sentence. If there are particular reasons, they can still be given a sentence of imprisonment, but those reasons would be stated and recorded by the court.

The Chairperson:

Is this an issue? There has not been consistency in the way in which sentences are administered. Some magistrates or judges may have a preference for community sentencing as a more effective means. Are there others whose automatic step is to send someone to prison for a month or two or three as opposed even to considering the community sentencing approach?

Mr Johnston:

The proposals that we brought separately to the Committee on a sentencing guidelines mechanism were really more about how we promote consistency and transparency in sentencing. Those mean that guidelines will be available to all courts on a much wider range of sentences. The Lord Chief Justice told us this morning that there are, I think, about 60 areas for which the guidelines have been provided through the initiative. I see that more as addressing consistency issues. This proposal is more about getting the most effective sentencing outcomes for that group of offenders.

The Chairperson:

What thought has gone into the kind of message that would be sent out by people being given community sentences for those types of offences rather than going to prison? The statistics show that the first and foremost deterrent is the fear of going to prison. That drops once people have gone through the prison system, but, for those who have not, that is their main reason for not committing a crime in the first place. Secondly, where has the balance been struck in considering the withdrawal of an individual from a community so that that community gets some respite from that individual's activities?

Mr Johnston:

Prison is certainly a deterrent; I do not seek to deny that. However, deterrence is only one part of reducing offending. The threat of prison can be one part, but the way in which you have worked with someone with the types of issues to which I referred is vital. That is borne out in the statistics. I do not pretend that it is not a challenge, but we need to get across that community sentences are real, are a burden on people, are meaningful in respect of the number of hours in which we ask people to engage and are really challenging. Paul might want to say something, but, in a community sentence, people will be asked difficult questions and brought face to face

with their offending behaviour. People may be asked to challenge many issues that, during a short time in prison, they will not have an opportunity to challenge.

Mr Paul Doran (Probation Board for Northern Ireland):

I refer to the previous evidence session about the strategy for reducing offending. There is a good piece of evidence about how the speed of justice is probably as important as the severity of a punishment. The questions about speeding up justice are very appropriate. If the time frame between the disposal of a young offender and the offence is as close as possible, it makes it more real. Severity is not always as significant as speed, but I fully accept that prison should remain as the right deterrent. A challenging community service order is probably more likely to change the behaviour of an offender. However, I also recognise the need for the punishment element of a prison sentence.

Mr Wells:

Every now and then, they let me off the chain when there is an issue that is of concern to the community. The alarm bells will be ringing in the community about this proposal. Everything seems to be moving in the direction of leniency rather than the short, sharp shock that is needed. To me, prison has three benefits: punishment, rehabilitation and taking the rascals off the street and away from the community for the maximum time. Sadly, communities do not see community service orders or building a boardwalk across Divis — good work and all that it is — as punishment. They just do not see it that way. With regard to the sort of issue that I am interested in directly, such as animal cruelty — a nasty, horrible business that would normally warrant a sentence of under three months that would send out a clear signal that it is unacceptable — the community would say that after two months, an offender has learned his or her lesson. The public are not absolutely convinced that a six-month community service order is punishment at all.

You quoted a figure of 350-odd people who have warranted sentences of less than three months. If a message is sent out that there is a presumption against prison for low-level offences that annoy the community and cause a lot of bother, a signal is being sent and a green light is being given to those people to keep their offences below a certain level and the worst that they will get is a community service order. I do not like fettering judges or forcing them into a

position in which they have to justify why they believe that a prison sentence is necessary. Clearly, in 350 cases, a judge thought that a custodial sentence was appropriate. Why not simply use sentencing guidelines as the vehicle rather than forcing a presumption against prison? I assume that if a person appeals and there is a presumption against prison, a judge then has to justify his decision. Many judges and magistrates will probably decide that they cannot be bothered and will just go for community service orders. The alarm bells are ringing. It is just not right that this is happening. The short, sharp shock has to be an option.

I have direct experience from 20 or 30 years ago of a civil disobedience campaign that was run against a certain agreement — without giving too much away. I know an awful lot of people who paid up when it was made clear to them that custodial sentences were an option. If it is community service, it is a different issue altogether.

Mr Johnston:

In the example of animal cruelty, a short, sharp shock might be appropriate. On the other hand, a community sentence in which, if it were deemed suitable, an offender worked in an animal shelter, might make that person realise the impact of the crime that he or she has committed and enable him or her to make some sort of amends.

I want to set the proposal in the wider context of sentencing policy and what has been developed over the past few years. There has been a concentration on serious offending, which culminated in the Criminal Justice (Northern Ireland) Order 2008. We now have extended and indeterminate custodial sentences. We now have the means by which serious and risky offenders can be held in prison and their release determined on the basis of the risk that they pose and managing that risk. Therefore, I take issue with what you said, Mr Wells, about leniency informing the whole policy. However, we need to look at what is appropriate at different levels. We are not talking about the really serious level of offenders; we are talking about people whom we believe could benefit from community engagement.

Withdrawal from a community can be an advantage of a prison sentence. However, the sort of figures that we are talking about — 50 or 60 days — is not necessarily a withdrawal that will make a wild lot of difference in a community. We are talking about those sorts of offenders. The

short, sharp shock will still be an option.

I have one person among my acquaintances who expressed his displeasure about the agreement that you have just mentioned on the wall of the Department of Foreign Affairs in Dublin. He spent some days in Mountjoy prison. That was probably a formative experience for him. *[Laughter.]*

Mr A Maginness:

A political prisoner.

Mr Johnston:

I am not saying that it is irrelevant; it is still an option. All that we are saying is that a community sentence would be a more appropriate disposal for a significant number of people who receive short sentences.

Mr Wells:

In a court, the one thing that strikes terror in a criminal is the phrase “Take him down.” I have watched many times, and when two prison guards take such people down through that tunnel and into prison, it strikes terror in them. I have never seen those people terrorised when they are told that they will serve a community service order. It just does not have the same deterrent effect. You must have confidence from the public. Regardless of the stats about rehabilitation and reoffending, the public want to see justice. The public see justice in a strict, severe sentence, even if it is short. They do not see it in the form of a community service order. Those can often be very interesting and perhaps beneficial to a criminal and a community, but it just does not appear as if it is a punishment. You are tying the hands of a magistrate or judge. You have not answered the question about what happens with an appeal. Is it more difficult to sustain a custodial sentence at appeal if there is a presumption against someone going down for anything less than three months?

Mr Johnston:

The court of appeal would certainly need to take presumption into account. Over time, we envisage that the court of appeal would issue guideline judgements that would help to guide the

judiciary in the sorts of cases in which it is reasonable to set aside the presumption and impose a custodial sentence.

Mr Wells:

Have you ever encountered a criminal who was deterred by a community service order?

Mr Johnston:

It is not just about that fear of God that might be put into someone by the phrase “Take him down.” I do not deny that that is a factor. However, more than 40% of those who are taken down for prison sentences of less than three months reoffend within a year. It may be a deterrent, but, for 40%, it is not proving to be enough of a deterrent.

Mr Wells:

Where is the punishment element of a community service order? Where is the pain?

Mr Doran:

I fully accept many of your comments. I will pick up on the animal cruelty theme. We have very successful partnerships with organisations such as the Assisi Animal Sanctuary and Crosskennan Lane Animal Sanctuary, where offenders undertake community service. Last year, we relaunched our community service strategy on the back of a CJI report, which allowed victims of crime to have influence over where offenders undertook their community service. The victims who have taken up that option have said to us that they found it very satisfying and helpful to know that an offender was doing something constructive in an area that they identified. That is a possibility in the area of animal cruelty.

Given the evidence base that we examined in the previous evidence session, there is evidence for that group of offenders that, although the short, sharp shock works in the short term, a more concentrated and long-drawn-out programme is needed for longer-term behavioural change. It is a bit like stopping smoking or drinking or something like that. Community service orders can be up to three years for more persistent offenders. During that period, the theory of change is that people may relapse, but the chances of success are longer than the short, sharp shock for particular groups of offenders.

Mr Wells:

Where is the punishment? Where is the pain? You have not identified where the pain is for someone who goes to work in some dog kennels. What strikes fear into a criminal about that prospect rather than “Take him down”?

Mr Doran:

They have to do up to 240 hours of unpaid work. I do not know whether I would call it pain, but it is certainly a deprivation of their free time. It is a fine on time, so to speak.

The Chairperson:

When I was with you, Paul, I met one gentleman who had received over 100 hours’ work, and he did not like that. He was working very hard to get that time dealt with. However, the issue that we are talking about is the presumption in law that people do not go to prison for less than three months. I worry about that and have some concerns about the message that that sends out. I accept the fact that community sentencing for individuals is appropriate and the right way to deal with them. However, making that an automatic presumption would concern me.

Mr Dickson:

I have a lot of sympathy with Mr Wells’s comments on these matters. My suspicion is that this blanket rule will not find favour with the public. It is probably not the best way to solve the problem. I understand the problem, and I understand that people going to prison for three months, six months or even longer, but certainly under a year, is a disadvantage in the long term to society and for those individuals. That is the discussion that we have just had in this room.

At the same time, however, I have concerns about there being a presumption that, if a sentence is less than three months, a person is not sent to prison. It brings us back to the issue of targeting sentencing guidelines better and giving freedom to judges. I have no problem with including in the sentencing guidelines the fact that it may not be necessary to send someone to prison, but it has to be a judge’s decision. A judge needs to make that decision based on all the information that is in front of them.

I will continue with the animal cruelty example. If somebody has been guilty of neglect, perhaps the best way to deal with that is to have him or her work in an animal shelter. However, if somebody has committed an act of cruelty, perhaps society sees a period of deprivation of his or her freedom as a more appropriate sentence.

It is a very difficult area. The Committee has agreed that women going to prison for a short time for shoplifting or debt is not practical. I am sure that we would all say that the presumption should be not to do that, but we are perhaps suggesting that we have some concerns about the presumption for general sentences of a few months.

The consequences of a custodial sentence are perhaps not the same as any other type of sentence. There are knock-on effects in the real world. There are limitations on travel outside the European Union, for example, if someone has a custodial prison sentence. There are requirements to get visas rather than using other mechanisms to travel. If people have had a custodial sentence, it affects a range of issues in their lives. Custodial sentences carry a much heavier level of punishment than simply deprivation of freedom. That is why a judge should be allowed to make that decision rather than us legislating for a presumption.

I take Mr Wells's point about appeals. Although I have no legal qualifications, people might say that a judge did not exercise the presumption appropriately or properly. On balance, I am coming down on the side of the view that we need to target sentencing guidelines better rather than producing another blanket solution to a problem.

Mr Johnston:

It is just a presumption; it is not a ban. A decision will still lie with a judge. We do not have to follow the Scottish example slavishly, but it states that a court must not pass a sentence unless it considers that no other method of dealing with the person is appropriate. It may consider that no other method of dealing with the person is appropriate. I do not know whether the courts might think that 10%, 20% or 30% of the 315 people who received short sentences in 2009 would have been more appropriately dealt with by a community sentence if the provision had been in place. However, it is not about tying judges' hands; it is about saying that the legislature has an expectation and that judges should take certain things into account. There is, certainly, still the

opportunity for them to make a decision about a custodial sentence. As the Scottish provisions come into effect, we will start to see exactly what that is and to get statistics on the difference that it has made. I would think that, if we were including that in legislation, it would be the faster, fairer justice Bill that we are proposing for later this year. So there will be a time gap and an opportunity to see how it has impacted in other jurisdictions.

Mr A Maginness:

I am very pleased that Mr Wells has been converted to the belief in not fettering the hands of judges. I recall his impassioned speech on mandatory sentences in the Assembly. On that occasion, he was not arguing in favour of more discretion for judges.

Mr Wells:

Yes, but I do not want to weaken —

Mr A Maginness:

I welcome him to the fold. He does, in fact, make a point about sentencing. If it becomes so complex and restrictive, we begin to fetter judges' discretion. We have to take that into consideration. I am not certain that, in those circumstances, we actually fetter a judge's discretion to the extent that Mr Wells suggested. In that situation, it is more persuasive than binding on a judge. That is the point that is being made by the proposal. Am I right in saying that?

Mr Johnston:

Yes. It is not a ban on short sentences. However, it asks the court to consider them very seriously and whether such a sentence is the only way to deal with an offender. If it is, that is fine, and the reasons should be recorded.

Mr Wells:

In planning, the word "presumption" is a very important word. It is one that is used in legislation. If there is presumption in favour of a development, it is extremely difficult on appeal or through a public inquiry to overturn that presumption because it is such a well-tested phrase. When there is a series of appeals around a presumption, it is accepted that something is not done, and judges will say that it is not worth their while imposing it because it will be lost at appeal. Therefore, if

you use that particular word, you should know that it is one that has a strong resonance and legal standing throughout Northern Ireland.

Mr A Maginness:

There might be some alternative to that, though I am not sure whether there is. All that I am saying is that Mr Wells has a point about fettering judges' discretion.

With regard to the other point about short, sharp shocks, is that a reality or a myth? It appeals to the emotional reaction that you have to criminals who deserve that sort of experience. Does it actually happen in reality?

Mr Johnston:

What happens in reality is that, when you ask people what would discourage them from offending, the threat of prison is high on the list. A significant number of people quote that. However, statistics show that, when someone is actually in prison, the threat of it reduces significantly. Therefore, the idea of prison is a threat. However, the reality is, as I said, that 40% of people in that category who come out of prison go on to reoffend within a year — again with the threat of prison attached to it.

Mr A Maginness:

What, on average, is the level of reoffending among people who undergo, basically, community service or something of that nature?

Mr Johnston:

If it is a community order or probation order, it is around 25%. It is higher for combination orders. However, the number of them has been so small so far that —

Mr A Maginness:

So you get a better result in preventing reoffending through community service orders as opposed to short prison sentences.

Mr Johnston:

By a difference of about 15 percentage points. We have the best results with regard to community orders in the United Kingdom.

Mr A Maginness:

How long would someone spend in prison if they got a three-month sentence?

Mr Johnston:

That person would still get remission because the sentence is less than one year. Therefore, as Anne said, the average sentence is —

Mrs O'Connell:

Sixty-seven days. Just over a month is the average time spent in prison.

Mr Johnston:

Sixty-seven days is the sentence. However, an offender would spend only half that time in prison.

Mr A Maginness:

I am sorry; I am confused. Will you say that again?

Mr Johnston:

Sixty-seven days is the average sentence. However, because those offenders qualify for 50% remission, the average time that is spent in prison is just over 30 days.

Mr Doran:

Another point, Mr Maginness, is that we have a victim information scheme. A number of victims who register with us would say that, for them, the most important thing is that the offender does not reoffend and that the length of the prison sentence or community order is not as important as that reassurance. We can never give that guarantee. However, it is very important to victims.

Mr A Maginness:

With your indulgence, Chairman, I would like to make a final point. There is a high number of fine defaulters — over 1,000 a year. How many of them go to prison as a result of their incapacity to pay or, in a sense, their trying to write the entire thing off by doing a bit of time in order to avoid payment?

Mr Johnston:

We have not been able to get that information in quite the format in which you are asking for it. We will come back to brief the Committee on fine enforcement at the start of February. We have some information on the profile of those offenders and their issues. I will have some more information on the number for whom the issue is finance, housing, and so on. Certainly, there are the can't pays and the won't pays. In all the discussion on avoiding people having to go to prison who do not need to, I have not said very much about fine defaulters. However, they are an important category. We will come back to that issue with the Committee in February.

Mr McCartney:

I have a couple of questions. You are always fearful when you hear people say that the public would demand something, because the public does not speak with a single voice. We can only assume what sections of the public may or may not want. It is fair that we see that in the context that, when someone does something wrong, it is reasonable that we frame it in acceptance that the person did something wrong and that they are punished for it; then, we prevent them doing it again. That is how that should be framed. Evidence in many papers that have been presented on the discussion on whether short sentences work suggests that they do not work if a community service order is put in place. There is less chance of someone reoffending if they get a community service order. It is in that frame that I ask the question. I think that 340 people are serving sentences that are less than three months.

Mr Johnston:

I think that the latest figure is 315.

Mrs O'Connell:

The figure for adults is 315. It was 346 —

Mr Johnston:

Yes, if youths are included.

Mr McCartney:

Most people who get a community service order know when they enter a court that they are not entering into an atmosphere where they feel that there is a possibility that they will go to prison.

Mr Johnston:

There is certainly a possibility of a custodial sentence. A person will be in court and go through the court process. When they embark on that, they do not know exactly how things will end up.

Mr McCartney:

The overwhelming majority of people who go to court do not end up getting custodial sentences. I am just trying to get that idea into my head. There is a presumption. I can see that, if there are sentencing guidelines, they might run contrary to the complexity of putting sentences together. Does it add to or take away from the complexity?

Mr Johnston:

It is fair to say that sentencing is already a fairly complex area. The Judicial Studies Board has produced a lot of guidance for judges, such as templates that judges can use and things to make the whole area more straightforward. To be honest, I do not see how introducing a presumption would make it all that much more complicated because it is a pretty clear provision and it applies to a clear range of cases. The judges will come up against it week by week. It would fairly quickly get in to the usual round of judicial work.

Mr McCartney:

As part of taking it forward, would it be of benefit for us to have a profile of those people who are serving three-month sentences? The assumption could be made that they are all involved in activity by which the whole community is terrorised. You could be serving three months for whatever. Maybe it is a bad assumption to make, but I do not think that the 314 people are all in for what might be called anti-community behaviour. There may be a number of offences, down

to driving offences. We should not create the picture that, if we let the 314 out, they will all automatically terrorise the community or the community will ask what they are doing out of prison.

Mr Johnston:

I will ask the Minister's office to write to the Committee with the most up-to-date information. We put some information in the consultation paper about the range of offences. In 2007, the number of people who served less than three months was 143. Obviously, it has increased since then. In that group of 143, 28 were in for motoring offences; 14 were in for criminal damage; 17 were in for theft, burglary, fraud or acquisitive-type offences; 33 were in for offences against the person; and 47 were in for other offences that were not specified — all sorts of miscellaneous things. As for sexual offences, you are talking about only two people. The same is true for drugs offences. There is a preponderance of criminal damage and motoring-type offences. We will go back to the office and see whether we can give you more detailed information than that, and we will write to the Committee.

Mr McCartney:

I know that it would be difficult, but is there any way in which you can put it through a filter and determine how many of them would have ended up in prison if presumption had been in place?

Mr Johnston:

It is very difficult to do that because it depends on the particular circumstances of each case. We can certainly give you the overall figures.

Mr B McCrea:

I am slightly bemused by members' contributions and your responses to some of them. Earlier, I heard a discussion from people about the travesty of remand that comes from the short, sharp treatment when judges send them to prison. However, you turn that round and say, "Hold on a tick, a three-month sentence would be better." I have to say, Gareth, that you ducked some of the questions, such as the ones that Mr McCartney asked. There is evidence about the difference. I looked through the papers that were presented for an earlier session. They talk about the Norwegian Ministry of Justice and the Police, and it goes on about all the stuff. It talks about the

report 'Community or Custody' by Make Justice Work, which notes:

"It is clear that community sentences are demanding, and that many offenders find them much tougher than prison."

The evidence says that this is a better way of doing it. I also have to say that I do not think that you have made the case yet about the burden that short-term prison sentences have on the Prison Service. There is an administrative burden and a lot of work involved with constantly going in and out. Neither has it been brought out yet that you are in there for such a short time that you have no opportunity to intervene and change because the systems are not set up properly.

In saying all that, I am not disagreeing with some of the points that were made about how the public might look at this as being negative. You have to make the case that community service orders are effective, cost-effective and not a soft option. That has to be brought forward. All the general information that I get is that we should be trying to keep people out of prison and out of the criminal justice system, because once they get into it, they are condemned to a particular trajectory. Whether you think that it morally right, and whether you think that it is punishment for doing things, it is ineffective.

There are presumptions and statistics. You hear people say that, if you get a community service order, it is only 25%, whereas if you get a prison sentence, it is higher. Presumably those getting community service orders are at the lower end of the scale rather than the higher end. The statistics cannot be taken simplistically.

Do you believe that community sentences are an effective way of dealing with people in comparison with prison sentences? Is that more effective? Does the evidence show that that is a better way of dealing with things?

I am going to ask you about the cost. Are community service orders a soft option or are they the tough option and more effective at reducing crime?

Mr Johnston:

I apologise if I ducked any of the earlier questions, but I have had 20 years' experience as a civil servant of ducking questions. Are community sentences more effective compared with prison sentences? For this group of offenders, yes, there is evidence that they are. There are other

groups of offenders for whom a prison sentence is right, but we see from the figures that reoffending after short prison sentences is significantly higher than for community sentences. I accept the point that, if you bring some of those who are serving short prison sentences into community sentences, it might change the figures. However, we are not talking —

Mr B McCrea:

It was just a statement to say that we have to be careful of statistics. The Chair said that, when he went out and met people, community service orders are the appropriate way forward for certain individuals, and that is the key point. Does managing the introduction of short-term sentences into a prison provide a significant overhead with regard to the cost of running prisons? Is it difficult to establish a corrective regime in such a short time?

Mr Johnston:

With regard to the first part of your question, it depends how you ask the question. I would be reluctant to say that pulling some of those people out of the prison system will lead to enormous savings because our prisons are overcrowded, and, if you start to pull some people out, it reduces overcrowding, which is worth doing, but it does not provide fungible cash. If you look at a whole-cost basis, you see that the cost per prisoner place is running at about £77,000, compared with the typical cost of a community service order, which is £2,000, and a probation order, which is £4,200. On a whole-cost basis, those are much more economic alternatives.

Does it give you a better opportunity to influence behaviour? I believe that it does. The international evidence — some of it is in the consultation paper — be it from Canada, Germany, Finland or Australia shows that it has that effect. There is even an argument that not only would offenders not have the opportunity to engage with people effectively over the course of 30-odd days in prison but they would be brought into contact with seasoned and hardened offenders. That —

Mr B McCrea:

That was going to be my next point. Is it not the case that many people go into prison relatively innocent but come out much more educated in the way of criminal activity? Should we not avoid doing that where possible?

Mr Johnston:

Offenders will not go into prison and find, amongst their fellow inmates, necessarily good role models. We have much more potential to expose people to good role models by giving them community sentences.

Mr B McCrea:

I think that there is merit in your proposals. However, a communication exercise has to be carried out. Quite rightly, as colleagues pointed out that, we are trying to convince the public — I accept that members of the public are not all the same — in general terms that this is a better, more cost-effective and more appropriate way of dealing with things. We must stress that the judiciary will still have the final say and that this is only guidance. Thank you, Chair.

The Chairperson:

Thank you, Mr McCrea. I am still not convinced as to why it is necessary to make a legislative presumption. Gareth, one of your responses to Mr Maginness dealt with whether this was more a persuasive method, and Mr Wells then gave his example. If the judiciary will ultimately have the final say in all of this, why do we need to put in the legislative presumption that offenders must not go to prison for less than three months? If the judiciary can ultimately say that offenders will go to prison, why is it necessary to send a message to those 350 people that they would have not otherwise went to prison?

Mr Johnston:

By doing so, you are sending a message to sentencers and the judiciary about their need to give serious consideration to community alternatives. We fully expect that to impact on the numbers that are sent to prison for short periods. As I said, we have seen a significant increase in the number of people being sent to prison for short periods over the past few years, at a time when crime has been on the decrease and when there has been no significant increase in more serious types of crime. That is difficult to explain, and we want to send a message about it. I believe that it will be an effective message. It would not completely tie the hands of judges, but it would serve as a control mechanism on the decision-making process and on the numbers that go to prison. It would also encourage judges to think seriously about how we will achieve the best

outcomes.

The Chairperson:

Is there not a degree of hypocrisy from the Department? When some wanted those offenders to go to prison as a minimum, the Department opposed mandatory minimum sentencing for crimes against the elderly as it would interfere with the judicial process. However, it is now arguing that we must not send people to prison.

Mr Johnston:

No, because this is a presumption, not a mandatory provision. In that debate, the Minister was very clear that he was not arguing that severe sentences for those who attacked older members of the community were inappropriate. Of course the courts would want to show the revulsion of the community against such attacks. What the Minister objected to was the ruling out of any possibility of judicial discretion. We are not, in these proposals, ruling out any possibility of judicial discretion. We are saying that you can still impose a custodial sentence if the reasons are there. However, we are simply introducing a presumption that will guide sentencers in their decisions.

Mr Wells:

All that I can say is that I have never heard of a short, sharp community service order. What you have forgotten is not so much the criminal but the potential criminal. What message are you sending out to someone on the street who is thinking about getting involved in criminal activity? You may never know the impact but, if that person thinks that the worst that will happen to him is that he will have to build a boardwalk over Divis — as nice and as good work as I am sure that that is — as opposed to spending three months in prison, he or she may make a different decision on whether to commit the crime in the first place.

Mr Johnston:

I come back to the fact that the deterrent feature — the short, sharp shock — is only one aspect of reducing offending. This is where we get into the presentation that the Committee has just had and thinking about why people offend and addressing those issues. It is just part of that wider package.

Mr Wells:

One technical issue: is it possible to mix and match? Is it possible to have a custodial sentence and a community service order?

Mr Johnston:

It is possible to have a custody probation order, although it is now the new kind of determinate sentence. You can have a period in custody, and, when you come out, you are under the supervision of the Probation Board with certain conditions attached.

Mr Wells:

That gives you the best of both options. You have the short, sharp shock and send out the very clear signal that it is unacceptable. You also have time through the community service order to deal with them, educate them and point them in a better direction. That is what you need to do rather than withdrawing the option that judges must have to be ready, when required, to say to the individual, "We just will not tolerate what you are doing."

Mr B McCrea:

Have we received a presentation from the Probation Board at any stage about what is effective? It is a very effective agency.

The Chairperson:

I do not know if we have in this mandate. I recall that there was one prior to the Assembly elections.

Mr B McCrea:

It might be worth considering including that in the work programme at some stage. It is interesting to get information from practitioners at the coalface.

The Chairperson:

I was going to come to the point about getting more information on that.

Just before I let you go, 340-odd people are dealt with by the Probation Board as opposed to going into custody. The Probation Board is not filling vacancies, there has been a reduction in staff, and it is having to make savings, but there is a drive for it to do more work and it has already increased the workload. How is the Department marrying the approach with that fact?

Mr Johnston:

That is where I get into point 2 of the recommendations: are there people at the lower end who get community service who could, as appropriately, be dealt with through some other means? There are certainly savings that we could make at that lower end so that the Probation Board could invest more at the higher end in engaging with prisoners. That said, there is a continuing discussion with the Department about resources. Ultimately, those resource questions are for the Minister to decide on. However, we are not looking at this group in isolation. We are looking at it in the wider context of how we can use resources more effectively.

The Chairperson:

OK. Thank you all very much.