

**WORLDS APART:  
OFFENDERS AND MAGISTRATES  
CAUSAL ATTRIBUTES FOR OFFENDING**

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## **Foreword**

The masculine gender has been used throughout the thesis to represent all participants regardless of whether they were male or female. The nature of the research did not require or attempt to identify difference between male and female participants.

During the period of my research, there have been many changes within the Criminal Justice system. The terms used in chapter 1 and 2 have been utilised throughout the thesis for the sake of clarity, although they may not be the term in use at the time when I completed my research. For example, the Probation Service has come to be referred to as a part of the National Offender Management Service. Probation Orders became Community Supervision Orders and more recently Community Orders. Community Service became Enhanced Community Punishment and is now referred to as Unpaid Work. The changes have been numerous and it would have been unhelpful to use a variety of terms for essentially the same thing within different chapters. It was inappropriate and impractical to revise earlier chapters by changing terms and using names and phrases that were not in use when that part of the research was undertaken and the chapter written.

It is hoped that the approach outlined above will assist in the reading of the thesis text and will not prevent the reader understanding my research findings.

## **Abstract**

The purpose of the research was to investigate the difference in attributions of offenders and magistrates about the factors that led to offending behaviour. Difference in beliefs between offenders and magistrates, about seriousness of some common offences and factors believed to be motives for offending, justification of offending and neutralisation of responsibility for offending were also investigated.

The effect that differences in attributions between offenders and magistrates and how these influence the way in which offenders are dealt with in the criminal justice system was investigated. The attitude of criminal justice system professionals, and magistrates towards offenders was also investigated to find out if they affect court sentencing decisions, and the treatment and punishment imposed in an attempt to reduce offending.

My research has shown, that offenders and magistrates hold significantly different attributions about the factors that influence people to offend, and about offence seriousness. Offenders and magistrates also hold significantly different beliefs about motives for offending, justification of offending and neutralisation of responsibility for offending.

The UK Government Crime Reduction Policy since 1997, has been strongly related to the 'What Works' approach. This has influenced sentencing policy and the treatment of offenders. A major strand of the policy has been the introduction and

implementation of the What Works' approach and the use of Cognitive Behavioural Accredited Programmes within the Probation Service and Prison Service to change the behaviour of offenders and reduce recidivism (Harper and Chitty 2005). Based on my research findings recommendations are made in the final chapter of the thesis for modifications to the present approach, and the treatment of offenders.

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## **Chapter 1. Introduction**

### **1.1 Sociological and Criminology Research**

The causes of crime and the behaviour of offenders has been investigated by sociologists and criminologists over a considerable period of time. This research has provided evidence about the part that social and environmental factors contribute to the level of crime and types of criminal behaviour in society. For example, economic social and environmental deprivation have been identified as factors that relate to criminality and levels of crime (Cohen 1955; Whyte 1955; Rex and Moore 1967; Baldwin and Bottoms 1976). Included with the above broad categories is social class and how power differences between social class groups affects their attitude towards and treatment of each other.

### **1.2 Psychological Research into Crime**

Psychology, in comparison to sociology and criminology has taken less interest in researching the causes of crime. Research within the field of psychology has mainly followed a positivist paradigm looking for scientific evidence for the causes and levels of crime. This approach followed the establishment of the Behavioural School of psychological research (Watson 1920). The behavioural research method was to some extent driven by the fact that early psychology research had been viewed with suspicion by the scientific establishment.

The development of social psychology research in the mid 20<sup>th</sup> century (Heider 1958; Festinger 1957; Bem 1967) brought about a greater interest and investigation into the social aspects of human behaviour. Attribution theory (Heider 1958) began the

increase in psychological research into how social, cultural beliefs and attitudes influence and cause some aspects of human behaviour. Moscovici (1961) opened up research into the part played by social representations, cultural beliefs and social attitudes affecting human behaviour and how individuals and social groups view each other.

Social psychology research interests have mainly investigated the broader social issues that affect most of society. During the early development of social psychology the proponents of cognitive behavioural psychology were already looking for scientific explanations for criminal behaviour and the development of treatment methods for use with offenders to change their behaviour.

### **1.3 'Nothing Works', 'What Works'.**

Investigations into interventions to reduce offending behaviour with prisoners in American penitentiary establishments took place in the 1960's although research papers and reports were not published until the 1970's (Martinson 1974: Lipton et al 1975) and studies related to UK prisons (Brody 1976). The research into prison interventions was looking for positivist scientific proof and although aware of social aspects affecting their research they appear to have viewed social factors as a distraction from their main research aim of finding cognitive behavioural explanations and treatments. The reaction to the 'Nothing Works' investigations and report (Martinson 1974) that there was not sufficient evidence of a high enough quality to conclude that the treatments being used at that time with offenders worked, gave rise to a backlash and the development of the 'What Works' movement using cognitive

behavioural psychological methods to search for ways of using this methodology to develop interventions and treatments for use with offenders.

The 'What Works' approach is built on the premise that offenders commit crime due to having faulty thinking, beliefs and poor social interaction skills and this can be addressed through the use of cognitive behavioural based training programmes to change offenders thinking, beliefs and develop their social skills. By reprogramming offenders thinking and beliefs it is claimed that their behaviour and level of offending can be reduced and the pattern of their offending altered. The adoption of the 'What Works' approach by the New Labour Government in 1997 in the UK has also influenced sentencing policy and the treatment prescribed for offenders by sentencers. The majority of offenders and magistrates live in very different social worlds and as a result their attributions about each other are often inaccurate. Consequently, the sentence and treatment imposed upon an offender in court might not be appropriate or have the capacity to change his behaviour or lifestyle.

Due to the dominance of the 'What Works' approach social psychology models have been under utilised to examine the social context of offence behaviour and crime with the differences in social and financial status within society.

#### **1.4 Research Background**

As a manager working within the National Probation Service involved with the development and implementation of 'What Works' programmes I became increasingly aware that the claims made for the causes of offence behaviour and the beliefs and attitudes of offenders in the 'What Works' model had been overstated.

Offenders did not hold the level of cognitive deficits and distorted thinking that the advocate of the 'What Works movement had claimed and therefore the claims for its effectiveness were also suspect. If offenders were being sentenced to attend programmes intended to change their thinking and beliefs and unless the offender believes he has these beliefs and that they need to be changed, then the programme interventions would be ineffective.

I also became aware that the thinking and attitudes attributed to offenders under the 'What Works' model were not accurate and that a possibility leading to this was a failure to understand the social world offenders lived in and the affect that attributions, beliefs and experiences had upon their offence behaviour and level of criminality.

### **1.5 Research Aims**

The research aims were:-

- a) To investigate how the difference in the social world of offenders, magistrates, judges and criminal justice professionals influenced their beliefs and attitude about each other and their effects upon sentencing and treatment of offenders.
- b) Investigate how differences in causal attributions affected offenders, magistrates and members of the general public beliefs about factors that lead to offending, social and personal perceptions of crime, offence motives, justification for offending and neutralisation of responsibility.
- c) Examine the effectiveness and validity of the 'What Works' approach and its implementation within the National Probation Service in England and Wales.

- d) Explore what changes if any should be made as a result of the above research findings to improve the treatment of offenders and reduce the level of offending.

### **1.6 Research Methodology**

- a) Design and run a pilot study to develop and validate questionnaires for use with a convenience sample of offenders to investigate their attributions and beliefs related to offence behaviour.
- b) Carry out a main study based on the measures valuated under a) above using a sufficiently large convenience sample of offenders, magistrates and the general public.
- c) Analysis the main study data using quantitative and qualitative methods
- d) Report findings and develop recommendations for the treatment offenders and contribute to reducing crime levels.

### **1.7 Thesis outline**

Chapter 1 introduces the reason for the research and methodology. The tensions between the researcher working within the National Probation Service with responsibility for the management and implementation of 'What Works' is dealt with in the methodology chapter. Chapter 2 examines the different social worlds of magistrates, criminal justice professionals and sentencing policy. In chapter 3 the differences between social psychology and social representations, cultural beliefs

and the cognitive behaviour psychology approach to investigating crime and offence behaviour including the 'What Works' are examined and compared.

Chapter 4 contains the pilot study prior to undertaking the main research and the development and validation of questionnaires for use in the main research study. In chapter 5 the main research study methodology and data collection is described. Chapter 6 contains the results from the analysis of the research data.

Chapter 7, the final chapter contains the discussion of the main study results and recommendation for different approaches to be used with offenders and implications for policy and practice within the National Probation Service in England and Wales.

## **1.8 Conclusion**

This chapter has laid the foundations for the research. It has also introduced the research aims and presented the reasons for proceeding with the research. The research methodology was outlined including recognising that action research involvement by the researcher needed to be considered and bias avoided during the undertaking of the research data collection and methodology design. On these foundations the research proceeded.

## **Chapter 2 Offenders' and Sentencers' Attributions.**

### **2.1 Differences in Perspective**

There are considerable differences in perspectives between magistrates, offenders and members of the general public. The effect of these differences shape in particular the encounters of magistrates and offenders with each other within the criminal justice system. Firstly, there is a disparity in viewpoint of judges and magistrates and those being sentenced about what are the 'causes' of offending. Secondly, there is a difference in attributions made by sentencers, offenders and members of the 'general public' about the reasons, justification for offending and their view about the seriousness of different types of offence. Thirdly, different attributions about the 'causes' of offending affect and influence the type of sentence imposed by sentencers, and the 'treatment' prescribed to change the attitude of offenders as part of the overall sentence. Since 1997, the treatment imposed by UK Courts has been linked to the 'What Works' approach. The intention of this approach is to encourage offenders to examine their beliefs and attitudes that are thought to be contributory causes of their offending and as a result of this self-examination to voluntarily change their thinking. My experience during the last 10 years of using 'What Works' Approach related programmes within the Probation Service has brought me into regular contact with offenders who claim they do not have the attitudes and beliefs that are presented to justify the use of 'What Works' programmes. The fourth focus is to examine the implementation and use of the 'What Works' approach within the Criminal Justice System and its effectiveness in changing offenders attitudes and reducing crime.

## **2.2 The Court – Two Different Social Worlds**

Observation of the Criminal Justice System in operation gives a clear view of the difference between offenders, the legal profession and the judiciary. The gowns and other trappings of the legal profession serve to reinforce the fact that sentencers and offenders observe and form opinions about each other based on competing beliefs and values. Offenders claim that sometimes the beliefs and values that underpin the Criminal Justice system appear more pertinent to the outcomes of a trial and the sentence handed down, than the facts surrounding the case. Many offenders with whom I have worked with in the Probation Service over a considerable period of time have informed me that their experience is that the Courts are pre-occupied with procedural matters to the extent that the defendant is made to feel like a spectator.

As a manager within the Probation Service I am involved on occasions in liaison with magistrates and in magistrate training. It is evident from my discussions with offenders and magistrates that large areas of misunderstanding exist between them. Offenders complain particularly about the process in magistrate courts where they feel their 'voice' is not heard. The intimidating atmosphere and procedural arrangements of the Court can make it difficult for the lay person to defend or represent himself. There is an attitude conveyed by the magistrates that they only want to hear argument from solicitors (Gill 1976). Some magistrates consider offenders incapable of defending themselves. This prejudicial view of magistrates exists despite the fact that the majority of them have no legal training. Jackson

(1993b) found that in 1991 there were only 76 magistrates formally trained in the law out of the entire lay magistracy of approximately 28,000 magistrates.

It has been claimed that traditional prejudices and power structures mitigate towards the use of solicitors and barristers. Carlen (1976) claimed that the positioning of magistrates, police, defence solicitors and defendants is arranged in such a formal and ritualistic way in magistrate courts that the defendant is disadvantaged in verbal interaction. The spacing and placing of various adversarial protagonists in the court setting mitigates against the defendant. Carlen claims that the courtroom placing and spacing amounts to 'judicial exploitation' of the courtroom setting and imposes a 'surrealistic dimension of meaning' on the proceedings.

It is often clear at court hearings that solicitors and barristers appearing before the Court are unfamiliar with the details of the case. Offenders complain that at their trial a replacement solicitor or barrister whom they have not met before may attend to defend them. It is rare when this situation occurs for the magistrates to stop and reschedule the trial, even when it must be evident to the magistrates that a case is not being properly conducted. It is the magistrate's common practice to let the trial proceed despite the fact that a miscarriage of justice could result. McConville et al (1994) found that defence solicitors were often poorly prepared and disinclined to function in an adversarial capacity. McConville claimed that solicitors operate in a way that assumes the client's guilt. Belloni and Hodgson (2000) found from

interviews with defence solicitors that some share the values of magistrates, as in the following example:

'My view is that probably 90-plus percent of defendants are guilty; and as you pointed out, 95% of defendants get convicted, so it probably works out just about right - but whether for the right reasons I do not know.

I suspect that the vast majority of people who are charged are guilty of an offence, and I think that is probably the view of most magistrates....Unlike jurors, I think magistrates tend to become...perhaps the word isn't cynical, but hardened to a certain view. I think they probably expect and believe that most defendants are guilty. Their decision, not always based on the evidence, reflect that...I think it is a rough and ready result that comes out [in magistrates courts] at the end. But in most cases, happily, I think it is probably justified. However, the magistrates' way of dealing with it does not necessarily equate with it being correct and unbiased' (Interview, February 1995). Belloni and Hodgson (2000) p. 4-5)

The principle, a right to be heard in one's own defence can be oppressed by the formality and professionalism of the courts. Offenders believe they are often not listened to by magistrates and this results from sentencers unwillingness to try to understand the points being made to them and magistrates reluctance to grapple with concepts and beliefs alien to them. It is also the view of many offenders that there is a large presumption on the part of magistrates that prosecution evidence is beyond question and a presumption that the offender is guilty. There are sufficient examples

of miscarriages of justice that show evidence to obtain convictions has been fabricated by the police on occasions, which support the view that it is unwise for magistrates to accept prosecution evidence at face value. Belloni and Hodgson (2000), claim that magistrates are strongly disposed to believe and rely upon the integrity of the police and the veracity of their evidence. In support of this view they cite the following interview with a solicitor- advocate

I think the police are more believable to the magistrates than the defendants. They think: 'The police don't have to come here and tell lies. On the other hand, the defendant comes here because he's in trouble and he might tell lies to get out of trouble.' I think they work on that basis too often: so it is an uphill struggle for us solicitors to persuade them otherwise. (Interview, February 1995) Belloni and Hodgson 2000 p. 4)

Hedderman and Moxon (1992) found that the majority of both defendants and their solicitors believe that 'magistrates are on the side of the police'. Investigation into the procedures in magistrates' courts suggests that the burden of proof seems to be reversed: if the police say you are guilty, you will be found guilty unless you can prove your innocence (Gifford 1986). McConville et al. (1994) gained the impression that in magistrates' courts 'there is a reverse onus of proof, under which it is for the defendant to establish innocence rather than for the prosecution to prove guilt.' (McConville et al. 1994 p.211-38)

Gill (1976), investigating urban stereotypes and delinquent incidents in Crossley, interviewed a number of teenage offenders and police. The offenders were involved in minor offences such as causing a disturbance, resisting arrest, and minor assaults. The offenders reported incidents where the police goaded them at times to create problems. The teenagers also reported that on occasions they intentionally provoked the police. The offenders had a general belief, that if the police wanted to take anyone in, it was relatively easy for them to do so.

Offenders expressed a number of views as part of longer interviews:

'You've got no chance with the coppers.....they push you just so you will say 'fuck off' and they can drag you in then.....the bobbies will go for any bastards around here'.

'If you say you come from the West End they say, 'Oh that will do us'.

You get no peace with the coppers...a jeep pulled up and they told us to get off the corner. They just wanted to argue so they could pull us in' (Gill 1976 p 325-6).

Interviews with the police confirmed that they had a biased view of the residents in the area, as confirmed by statements they made:

'When you see a gang of youths in that area, it usually means trouble'

'You've got to agree it is a tough area and there's quite a few villains'

'Luke Street is the sump of Crossley' (Gill 1976 p 323).

Although Gill's (1976) research was primarily interested in what happened in the neighbourhood between offenders and the police, he followed the incidents through the court hearings. The offenders when in the witness box lacked the communication skills to describe their actions and make their behaviour intelligible. In the courtroom the clash of two worlds was very apparent. On minor charges there was a typical common sequence of exchanges:

- 1 Court Official: 'Why did you do this?'
- Boy: 'I don't know'
- Court Official: 'Don't say you don't know. You must have had a reason. Nobody does anything without a reason.'
  
- 2 Boy: 'We didn't do that. I never touched him'
- Police prosecutor: 'Are you calling the police officer a liar.'
- Boy: 'Well yes, we didn't do it.'
- Police prosecutor: 'That's a very serious business calling a police officer a liar. This man has got an excellent record of public service but look at you.' (Gill 1976 p 332).

The young offenders held the same view of the courts as they did of the police. Just as they believed the police methods were discriminatory, they also felt they rarely got a fair deal in court. They saw it as two sides, winners and losers. The winners were the judges, magistrates and court personnel. The police were aligned to the courts and therefore their account tended to be accepted by the courts. The losers were people like these young offenders. They felt discriminated against because of the area they came from.

The way that authority is used tends to influence whether those it is directed towards accept and respect it. Betham (1991) argued that most power relations stand in need of legitimisation. The factors that give it legitimacy are, a) has the power been legally acquired and exercised lawfully, b) are they morally justified, and c) what are the beliefs about issues of legitimacy by those subject to the authority. Tyler (1990) found that people are concerned about procedural fairness. Has their case been treated in a fair way and like cases treated similarly? Are they accorded respect by the police in on street encounters? Hence, every transaction with authority figures extends beyond the particular incident that brings them into contact with each other. Taylor suggests that where this is not the case the legitimacy and authority of the courts, prison and community punishment is compromised and will be less effective with a lack of compliance with the specific terms of the sentence. As indicated from the incidents reported by Gill (1976) there is evidence of an abuse of power by the police and court officials that provoked resentment and non-compliance in the young offenders.

The dichotomy between the view of magistrates and offenders seems to operate in a number of ways. Offenders do not appreciate entirely that the function of the Court is not to establish guilt or innocence, but primarily to evaluate the evidence presented to it. The verdict therefore hinges to some extent, not on fact, but on how convincing a case in support of their opposing arguments, is made by the prosecution and defence. Belloni and Hodgson (2000) claim that most solicitors in magistrates' courts do not act in an adversarial client-centred way and as a result some defendants will be wrongly convicted.

Magistrates' perceptions of 'what is right' are to some extent shaped by the influence of their personal experience and the mores of the strata of society they live in (Auld 2001). It is therefore difficult for magistrates to understand the way of life of working class offenders and what drives people to make choices in materially and socially impoverished and restricted circumstances (Fitmaurice and Pease (1986). Even when magistrates try to understand and take the offender's circumstances into account they are still not able to put themselves in the position of the offender. They may in fact be exonerating him from a measure of responsibility by making causal attributions. This may result in them making assumptions and providing excuses for the offender's behaviour that the offender himself would not put forward. Magistrates regard 'white collar' crime differently and less serious than the majority of crimes tried in magistrates courts (Flood-Page and Mackie (1998). They therefore view evidence from a perspective limited by their experience, and concepts of what society should

be like. The views of magistrates can also be informed by prejudice. Interviews with magistrates as an adjunct to my research to discover why they applied to become magistrates have been very revealing. For example, one magistrate, a professional driving instructor, openly admitted that his chief purpose was to deal harshly with motoring offenders and make an 'example of bad drivers' when they appeared before him. Another revealed that having her home burgled on more than one occasion had made her decide to become a magistrate. Others, when interviewed indicated that the social status of being a Justice of the Peace had appealed to them. Being a Justice of the Peace had also assisted them in their career and business enterprises. For a number of magistrates, the dispensing of justice appears not to be their chief aim or concern.

The differing perspectives of magistrates and judges from those of offenders result in them failing to understand the 'world' of many offenders. Consequently, the subtlety and significance of defence statements are not always picked up by magistrates, and as a result magistrates are at times incapable of making a dispassionate evaluation of the claims and counter claims presented by the prosecution and defence. The selection and appointment process of magistrates contributes to their view of themselves as part of the Criminal Justice System, charged with the duty of preserving the established order within society. They are granted status as Justices of the Peace, that confers upon them powers to order, arrest and restrict the liberty of others. In addition, privilege and status is conferred that makes them more likely to align themselves with the police and prosecution service. They are, as a result, less

likely to take a dispassionate and unbiased view of prosecution evidence presented in court (Gill 1976).

Offenders also fail to do themselves justice by their inability to communicate clearly what they feel and want to say. The story presented by the offender might be disorganised and incoherent. Insecurity, and the offenders' inability to fully understand the variety of factors that has influenced them, can result in the withholding of crucial details pertinent to their defence or important factors in mitigation of their actions. The offender may feel his true story is so incredible and likely to be disbelieved that he does not tell it. The effect of this failure in communication can be crucial both during the trial and at sentencing stage. If the offender fails to present clear evidence of factors that led to either the committing of the offence or its increase in seriousness, then the magistrate or judge will be influenced by his own preconceptions.

Observers or examiners of another person's actions engage in what Heider described as 'a naïve analysis of another person's actions,' which he called 'naïve psychology' (Heider 1958). The observer (sentencer in this instance) can only infer the intention of the actor (offender) and speculate about whether the actor was fully aware of the outcome and consequence of his offence. Ross (1977) found that observers in this process make fundamental attribution errors about actors' intentions, due to the observer's personal bias and perceptions. Causal attribution theory and false attributions will be discussed more fully in the following chapter.

False attributions due to the lack of experiential knowledge of the offender's circumstances by those judging the case can lead to an unjust result or inappropriate sentence.

A further factor is the disparity that often exists between the offender and the judiciary. Each of the parties fail to understand the other due to cultural and societal differences. Bottomley (1973), Fitzmaurice and Pease (1986), have drawn attention to the human and social dimension in judges' decisions. The class difference between judges, magistrates and offenders contrasts sharply. Lord Devlin acknowledged:

‘Judges do lead the comfortable life of a professional successful man, and this is not the ordinary life. It is the sort of life led by many successful people, such as politicians, editors, writers of all sorts, and many kinds of merchants, whose job it is to know what ordinary people are thinking and how they are likely to react. The knowledge is obtained instinctively and independently of whether a man lives in a palace or a council estate’. (Devlin 1979) (Fitzmaurice and Pease (1986) p.20).

Devlin's claim, without supporting evidence, seems to illustrate an unjustified confidence in the knowledge and ability of the judiciary and magistrates. It illustrates the arrogance and patronising attitude that offenders often complain is directed towards them in the Courts.

The assertion that knowledge of others is obtained instinctively, has been challenged. Fitzmaurice and Pease (1986) commenting on cognitive errors and judges, described this attitude as a false consensus bias that links closely with fundamental attribution errors. In their research study, Fitzmaurice and Pease found that the majority of judges took the view that their social distance from defendants was not a problem. Those who offered reasons for their belief stated 'that they had come from humble beginnings or had lived ordinary lives'. Maurice and Pease found, interestingly, that all who made this claim had attended public school.

### **2.3 Judges, Magistrates and Social Class**

The majority of judges and magistrates come from predominately middle-class and professional backgrounds. A study into the social class composition of the magistracy (Baldwin 1976) found that almost 84% of magistrates were from social class I and II and only 15.3% came from social class III, IV and V. The majority had come from what might be considered a 'privileged' childhood and family background. In relation to gender, 35.7% were women. Baldwin concluded that the magistracy was not representative of the wider community.

The Royal commission on Justices of the Peace (1948) stated ' it is essential that there should be many among the justices who know enough of the lives of the poorest people to understand their outlook and their difficulties'. Although the language of the Royal commission may now sound quaint, the principle enshrined within it is still valid. Baldwin concluded that 'the importance of having some degree

of social mix on the bench cannot be exaggerated.....In the final analysis, the question of the importance of social composition of the magistracy, is that justice must be seen to be done'. On the basis of the findings of Lord Justice Auld (2001) in his Review of the Criminal Courts of England and Wales it appears little has changed since the 1948 Royal Commission on Justices of the Peace. Chapter 4 of the Auld report deals with Magistrates. Paragraphs 59-79 deals in particular the composition of Magistracy and Auld makes some important statements about them, in part based on the research of Morgan and Russell (2000). For example,

'The fact that the magistracy is not a true reflection of the population nationally or of communities locally is confirmed by a number of studies, of which the Morgan and Russell research is only the latest ---- if the magistracy is both to survive and to earn public confidence as a lay element in the administration of criminal justice, urgent steps must be taken to remove its largely unrepresentative nature'. (Auld (2001) para. 59)

'As to status and class, the magistracy is overwhelmingly drawn from the professional and managerial ranks, that is, "disproportionately middle class, and almost certainly financially well off, compared to the population at large". (Auld (2001) para 60)

Among Lord Justice Auld's recommendation on the composition of the magistracy made to the Lord Chancellor, Auld said, 'I recommend that that steps should be taken

to provide benches of magistrates that reflect more broadly than at present the communities they serve.' (Auld 2001)

The fact that the socio-economic status of offenders, magistrates and judges is mostly different results in them failing to understand each other's experiences and beliefs. Each group view the offence and its circumstances from different perspectives and their opinions are shaped by personal experience and circumstances (Morgan and Russell 2000). The difference between the circumstances of offenders and sentencers is often dramatic. As Auld's report indicates, the majority of magistrates tend to be chosen from professional and self-employed classes. Consequently, they have more freedom of choice in determining and organising their affairs and actions. This social and economic freedom exacerbates the imbalance in social mix within the magistracy.

Home Office research (May 1999) suggests that some offenders have limited intellectual ability and this contributes to the likelihood that they may offend. Similar findings were made in subsequent studies. Home Office Research findings 233 (Davies et al. 2004), suggests that the average offender has reading and writing skills below National Curriculum level 4 (age 11) and that 17% of them fall below level 2 (age 7). King (1985) investigating cognition and reasoning ability in adults found that as Inhelder and Piaget (1958) suggested causal reasoning and formal reasoning is related to developmental stages. If, as Home Office Research finding 233 indicates the intellectual development of many offenders fall below Piaget's stage of logical reasoning, it is then probable that some offenders do not consider their offending

behaviour in a rational way. Offenders with intellectual deficits do not tend to follow a logical reasoning process when making their decisions, and in particular consider the likely consequences of their offence behaviour (May 1999). In contrast, judges come from a highly educated sector of the population. Judges therefore find it difficult to believe or comprehend the lack of forethought and irrational decision-making that can underpin some offenders' actions (Devlin 1979; Gill 1976).

As demonstrated from the above research findings offenders and those who pass judgement upon them tend to hold very different perspectives. Kelly's Personal Construct Theory (Kelly (1963) helps to explain how these differences occur. Kelly has indicated that people formulate constructs based on their experience. These constructs are used to interpret and make sense of events. In view of the differing spheres of influence and experience encountered by offenders and sentencers, it is difficult for sentencers to understand the motives and actions of offenders. Sentencers presented with the facts of a case are inclined to view the offence from the perspective of their own limited constructs relating to the offender's world. They fail to recognise that the offender has a multiplicity of other competing personal constructs that may have led to the committing of the offence, and which are not disclosed within the documents pertaining to the case.

#### **2.4 Attributions and their effect on Sentencing Decisions.**

Magistrates and judges presented only with facts of an offence without evidence of circumstances related to the offence will tend as an observer to attribute cause based

only on their view of the offender. As Bem (1967) suggests, the observer (sentencer) is likely to attribute cause to the offender's internal motivation and make a fundamental attribution error (Ross 1977). The implication of this is that the sentencing decision will be affected and mitigating circumstances disregarded when making that decision. Studies have consistently reported the failure of perceivers' to make adequate allowance for the effects of social roles on behaviour. (Nisbett and Ross 1980; Ross 1977, 1978; Ross and Anderson, 1982). In general, people when they encounter an event, for example a road accident, often surmise and make attributions that may be inaccurate or biased about the cause and responsibility for the accident despite having not witnessed the impact of the vehicles or circumstances leading up to it. Many people do this in relation to a variety of events that are alien to them.

Davis and Gergen (1961) have also pointed out that perceiver's social views of acceptable norms will affect their opinion of the actor and his acts. If cultural and class differences exist between the actor and observer the likelihood of convergence of their understanding of the causes of the actor's behaviour and actions will be reduced.

Fitzmaurice and Pease (1986), suggested that people underestimate the impact of situational factors and overestimate the role of dispositional factors in controlling behaviour. Based on a review of the research of Ross, Amabile and Steinmetz (1977), Fitzmaurice and Pease (1986) concluded that observers make fundamental

attribution errors by ascribing personal differences when the real differences are situational. The effect of the fundamental attribution error in the courtroom would be for judges (and others) to attribute ineptitude to personal deficiencies rather than ignorance of situations. Specific to sentencing, Fitzmaurice and Pease claimed that insufficient account would be taken of situational pressures when sentencing. Sentencers' as a result, would ignore or not take sufficient account of the part that situational pressures contributed to the commissioning of the offence. Ashworth et al (1984), reported in their survey of judges;

'Most ....believed that the factors which predominantly inhibit most people from committing crimes are moral beliefs and fear of social stigma' (p. 27).

The judges' views focus on personal factors, rather than situational factors. In the same study Ashworth reports judges' views:

'The reason why there is a disproportionate number of persons from the lower socio-economic groups in prison is that they commit more crimes, ....and this was attributed by some judges to lower intelligence and lower moral standards among these groups' (p. 70).

The views reported by Ashworth et al (1984) illustrate the social difference between sentencers and offenders.

The implication of Ashworth et al (1984) findings is that misattribution by magistrates will affect some sentencing decisions. The magistrates may make causal attributions about the attitudes and beliefs of the offender that led them to offend. Resulting from these attributions magistrates may impose a sentence and treatment requirement

aimed at the eradication of the offender's beliefs and attitudes. If, however, the magistrates' attributions are wrong and the offender does not have the attitudes the magistrates assume are present then the treatment will have no effect. Offenders sometimes claim that social pressures such as financial circumstances caused them to offend. Magistrates may ignore such claims. Factors that could mitigate the actions of an offender may not be fully understood or may not seem credible to magistrates and therefore will not be taken into account.

The principle of mitigation, that account should be taken of such factors as financial pressure, the influence of others, does not always appear to be given due consideration by magistrates. Accounts of the offenders' circumstances often make the offender's behaviour more understandable. In many instances when the magistrates allow such details to be heard, it appears from summing up and pronouncing sentence, the factors that the offender has presented to the Court have been ignored. This may be because magistrates have their own preconception, which shapes their attributions and may result in consensus bias. Attribution theory recognises three levels of responsibility (Shaver 1975) causality, legal accountability and moral accountability. Shaver claims that exaggeration of causality and legal accountability may arise to such a degree in the attributions of sentencers that their ability to make objective judgements might be compromised.

The view of the law and many sentencers is that criminal activity is a conscious choice taken by the offender and not something considerably influenced by external

factors. There is a belief that the offender engages in a rational decision-making process and concludes having considered a number of factors, whether or not to commit the offence. The type of factors most likely to be considered by offenders are the risk of detection, the ease of committing the crime and the likely proceeds and personal gain from offending. Although this is not a 'scientific' analysis on the part of the criminal, it does involve for many offenders a limited process of rational assessment. For example, offenders freely admit they look for 'soft' targets. Burglaries are planned after noting the use and occupancy pattern of the premises, and checking for alarm systems and security cameras. Accounts from offenders, and also evidence from criminal investigations, suggest that the majority of offences are not premeditated. A number of offences, for example acquisitive crime is committed on an opportunistic basis.

The concept that crime is the result of a deliberate and intentional action by offenders is a view presented by Roshier (1989). Roshier focuses on the law's contention that a person needs to accept responsibility for their actions. Roshier claims that people are free to act as they will, and that most of our actions are rational. The goal of our rational choices is personal satisfaction and self-interest, and these key motivational characteristics are more powerful than environmental and cultural influences. The criminal therefore is a person who rationally decides to take advantage of an opportunity to commit a criminal act from motives of personal gain and self-interest. The neo-classical view presented by Roshier finds some support from the attitude often expressed by offenders towards their victim. Offenders tend to display little, if

any, victim empathy. It is quite common for an offender to suggest that their victim deserved what happened to them, and in some way the victim contributed to the committing of the offence by their action or negligence. An exception to this appears to be motor offences. Motoring offenders interviewed indicated that they do not consider the risk of driving without a licence or insurance, driving while disqualified or after the consumption of alcohol. Most offenders guilty of drink driving offences indicate that they did not set out with the intention to drive when over the legal limit.

## **2.5 Offence Seriousness**

Offence seriousness is an important consideration since it is likely to influence the sentence imposed. My research for this PhD investigates and reports in chapter 5 and 6 the difference in attitudes to offence seriousness held by offenders, magistrates and members of the 'general public. In legal terms a more grave offence should attract a sentence of greater severity. Studies attempting to establish a consensus about offence seriousness have produced inconclusive results. Sellin and Wolfgang (1964) study was considered to be flawed (Rose 1966; Walker 1971) and far from achieving a consensus view on offence seriousness, actually created polarised disagreement on the subject.

Durrant et al (1972) carried out a study into offence seriousness. They found that in general there was a close degree of agreement across socio-economic groups in social class 1-V. In contrast a study by Walker (1978), however, identified social class differences. Walker found that lower social classes rated income tax evasion

more serious and violence less serious than higher social classes. A similar finding resulted from the work of Sparks et al (1977) with lower class respondents giving higher scores to property crime which they considered more serious than violent offences. Fitzmaurice and Pease (1986) based on their investigations expressed the view that judges and parole authorities do not share the same perception of offence gravity as their fellow citizens. The view expressed by Fitzmaurice and Pease may go some way towards giving credence to the claim made by offenders that judges and magistrates do not understand them.

The Magistrates Association issue Sentencing Guidelines that cover the type of offences dealt with on a regular basis in magistrates courts. These guidelines indicate aggravating and mitigating factors that may be considered during the sentencing process. There is no legal requirement for magistrates to use these guidelines but the guidelines provide an insight into the general level and attitude likely to be evident in magistrates sentencing practice.

A Home office study, Flood-Page and Mackie (1998) examined actual sentencing decisions in magistrates and Crown courts in the mid 1990's, and the study provides a picture of how offence serious is viewed by some sentencers. The magistrates survey indicated that violence offences that involve assault of a police officer are sentenced more severely than for members of the general public. Seriousness of injury was also taken into account. An offence against a stranger was treated as considerably more serious than an offence against a friend, partner or relative. With

regard to burglary offences, if the offence had been pre-meditated this influenced Magistrates to impose a more severe sentence. The value of financial loss incurred by the victim also influenced the severity of the sentence. Flood - Page and Mackie (1998) found that there was less difference between the sentence for domestic and non-domestic burglary than they expected given the Magistrates Association Guidelines that domestic burglary should be viewed more seriously.

Young offenders (under age 40), were sentenced more severely than older offenders. Offences of theft involving a motor vehicle, either theft of the vehicle or theft from a vehicle were dealt with most severely. Whether or not an offender offered compensation or showed remorse were other factors affecting sentencing decisions. Offenders offering no compensation were much more likely to be put into custody than those offering compensation to the victim (Flood-Page and Mackie 1998).

The above findings suggest that the concept of offence seriousness can be influenced by the attributions made by the sentencer about the offender. If the offender does not offer compensation magistrates can interpret this as an indication that he has no remorse. The fact that compensation is offered to the victim does not change the nature or seriousness of the offence but does appear to influence sentencing decisions. Compensation may be an indication of remorse but on the other hand may equally be just a ploy used by the offender to attract a lesser sentence. The concept of offence seriousness appears also to differ across social class and my later search findings will substantiate the view that a difference in

assessing offence seriousness exists between magistrates and offenders. This is linked with the main focus of my research that offenders and magistrates live and operate in very different social worlds and as a result their attributions about each other are often inaccurate. Consequently, the sentence and treatment imposed upon an offender might not be appropriate or have the capacity to change his behaviour or lifestyle.

## **2.6 Psychology and the Purpose of Sentencing.**

The purpose of sentencing has both a political and practical dimension. The fundamental principles of sentencing are; a) the punishment of crime, b) crime reduction, c) reform and rehabilitation of the offender, d) reparation by offenders to persons affected by their crime (Fitzmaurice and Pease 1986).

Punishment takes the form mainly of imprisonment or fines. The restriction of liberty of a custodial sentence provides a punishment element and curtails the opportunity for recidivism.

Reparation to the community can be achieved through enhanced community punishment. This is a policy that the government introduced into the criminal justice system in 2003. Enhanced Community Punishment, is supervised by the Probation Service. It involves offenders carrying out work on projects in the community to benefit charitable organisations and improve the environment. In addition, offenders are taught problem solving skills and social interaction skills when planning work and

alongside undertaking physical tasks. It has a restriction of liberty element within it. Reparation to individual victims can be made through payment of compensation if ordered by the Court.

One way to attempt reform and rehabilitation of offenders is achieved through a community rehabilitation order and interventions to address and change offenders' behaviour and reduce offending. Since 1998, the 'What Works' approach and use of Accredited Programmes has increasingly become the main method adopted. The aim of accredited programmes is to encourage and assist offenders to gain an understanding of the reasons for their offending. Cognitive behavioural methods, problem solving, and social skills training is used to enable offenders to change their attitudes, understanding and attributions about offending. The 'What Works' approach and its implementation within the Criminal Justice Service, is introduced and discussed in greater detail later in the chapter and its use reviewed in relation to my research findings in the final chapter.

The political aspect of sentencing is linked closely with psychology. For example the present government has used the phrase 'tough on crime and the causes of crime' to convey to the nation that driving down crime levels is a major priority for them. This is politically a useful approach for them since surveys have shown that many people live in fear of crime in their community. In a similar way the use of the phrase 'What Works' gives the impression that the government have put in place tried and tested methods that are effective in reducing crime. Psychologically these phrases are

intended to reassure the general public and give the impression that the government are effectively addressing public fears and taking effective action to reduce crime.

Sentencing and the level of punishment serves the purpose of making a statement through the courts about what society finds abhorrent in the offending behaviour denounced. It also serves the purpose of defining what legislators view as socially unacceptable behaviour and the gravity of the offence. There is a 'catharsis' element to denouncing and applying a retributive sentence upon the individual whose behaviour has offended the sentencer and society in general. The danger in the use of sentencing in this way is that it can be unduly influenced by media campaigns. The deterrent effect hoped for by imposing a punitive sentence, is a psychological component of the sentence (Fitzmaurice and Pease 1986; Festinger (1957).

## **2.7 Cultural Preconceptions.**

The view of each individual is influenced by cultural preconceptions.(Tajfel 1967; Taylor and Jaggi 1974). For example, particular types of dress and hairstyle are associated with class, religion and professions. Moscovici (1961) considered such social representations provided a shared 'reality' and order for people. They also provided a social identity and the individual uses them to categorise himself and others. Psychologically this leads to polarisation between groups of different individuals and social constructs about others that may or may not be accurate. These constructs irrespective of their validity influence our beliefs and attitudes towards others. Moscovici (1984) pointed out that a person's social representation of

something or someone will influence the person's judgement and opinion. Social representations act as a homogenising code for groups of people who share common understandings and views. Bem (1967) claimed that groups regulate the beliefs, attitudes and behaviours and provide us with a frame of reference within which we compare and evaluate our own reactions to things. Group social norms can result in members of a group developing attitudes and beliefs that are shaped by misconceptions and prejudice about other people who are not members of the same group. Reference was made earlier in the chapter to the disparity in social class and lack of common experience between offenders and magistrates and the possible influence this can have on sentencing decisions.

Cultural preconceptions and social traditions can play a part in shaping the views held by criminologists, psychologists and criminal justice professionals. As a consequence, inaccurate opinions and beliefs about the attributions that lead to criminal behaviour and treatment of offenders may result. Offenders also may hold preconceptions about the magistracy and courts that can be prejudicial. Offenders consider that they are not treated with respect by the criminal justice system and feel that the courts are biased against them. Offenders also claim that the police often provoke them by their attitude and actions leaving them little alternative but to respond in self-defence. Research by Carlen (1976) and Gill (1976) suggests that in some instances offenders claims are valid.

## **2.8 Criminology Perspectives**

The purpose of my research is not to investigate theories of crime. It is appropriate, however, to set the research within the context of the major criminological theories that have influenced attitudes towards offending and interventions used with offenders during the last half century. Theories about the causes of crime are to some extent common knowledge for most people although their views have not arisen from studying criminology. The knowledge has been gained from the media and other general sources of information about crime and criminal proceedings. Crime studies and opinions expressed by criminologists have been absorbed as common sense opinions. The process is similar to Moscovici's (1961) claim that Freud's psychoanalytical theories have seeped into French society and people use phrases from it to explain their own and others behaviour. This is more probable for magistrates who tend to come from the educated classes where academic theories are more likely to be discussed than for offenders. Although magistrates may be better informed than offenders, their knowledge of criminology and law does match that of a high court judge or barrister and has been only gathered by sedimentation of academic thought percolating down through society.

In the last three decades, considerable emphasis has been placed on social deprivation and environmental conditions as significant factors in the cause of crime. Newman (1972) found that crime rates varied in relation to the height of buildings, access routes and the size of public spaces in housing areas. Where there are high population densities and deprivation then crime rates were found to be higher (Wilson

1980). Urban environments have been identified by Felson (1980, 1994) as playing a significant part in the levels of crime. He also claimed that socio-economic status, population densities, ethnic mix were factors that caused crime. In areas where people were more affluent then crime was less prevalent. Also in areas with less ethnic diversity there was less crime and better control of offenders by citizens in the community acting collectively together.

### Anomie Theory

According to Merton (1949) and his Anomie theory, crime is an inescapable feature of society, due to the inequalities that exist within it. A central view in Merton's theory was the idea that the mass media and markets sustain the urge to succeed and the desire to consume. Merton was not specific about how this took place. This theory portrays a picture of people encouraged to achieve improvement through self-effort, often finding themselves frustrated in their attempt due to social class disadvantage, race and seemingly insurmountable obstacles. For those that are unable to achieve such goals, inequality and social discontent is experienced by them. Merton suggested this is one of the underlying causes of crime. It arises as an outcome and consequence of the strain within the social system. The sense of frustration that arises in such circumstances encourages the individual to look at alternative ways of achieving their goals. This alternative approach often results in offending. Durkheim (1964) expressed the view that crime was a social fact and it in part results from social change. These changes may be related to a number of social factors including the division of labour and changes in employment practice.

Many offenders claim that a lack of opportunity and facilities to provide them with interesting activities to occupy their spare time initially encouraged them to resort to vandalism and petty crime. This pattern became a way of life for them, leading them into increasingly serious offending. My thesis research reporting the views of offenders' indicates the importance of this factor may have been exaggerated.

### Conflict Analysis

Conflict analysis theory claims that the disadvantaged social groups offend in order to redress the imbalances in wealth and power they encounter. The feelings and sense of imbalance produce a conflict perspective. Resorting to crime is seen as a possible way of correcting the imbalances and justifies for the offender their criminal activity. Marxist theories is a major example of the Conflict Analysis approach and its views often correlate closely with offenders' perspectives of the cause of their offending. Studies of conflict in Liverpool (Gill (1977) and Parker (1974) found that the autonomy of the boys in their studies was controlled and bounded by the rules of the larger and more powerful society influences around them. This included the police, the courts and local government housing policy. They felt in particular subject to unusually fierce police harassment against which they rebelled. The boys also found themselves excluded from employment opportunities in part due to the reputation surrounding them and their area. The 'Birmingham School' (Hall et al 1978) expressed the view that youth sub-culture and youthful deviance results from the struggle against sets of interest which are ultimately those of the capitalist ruling class.

A balancing view to conflict analysis has been presented by Left realists. This group see crime as a factor within the core institutions of society, and as part of wider social structures. Crime is not dependent on absolute levels of deprivation, or the level in the social structure of the offender (Lea 1992). Nevertheless, it is recognised that it is among the poor and marginalised ethnic groups of society that the push towards crime is greatest (Young 1997). Young (1997) claimed, however, that there is no evidence that absolute deprivation, unemployment, lack of schooling or poor housing leads automatically to crime.

Blackburn (1995) acknowledged that power and wealth imbalances exist within society, but also emphasised that the existence of social differences does not establish the causes of crime. In the same community, for some groups crime becomes a way of life, while others choose to accept their deprived circumstance rather than engage in criminal activity. A considerable number of offenders believe that social factors are not sufficiently understood by magistrates and judges and taken into account by them. This may be the case when economic necessity has severely influenced the choice to offend.

### Labelling

Labelling theorists claim that deviance lies more in the reaction of a social audience rather than in the behaviour of an individual actor (Muncie 1997). Muncie claims 'It is the audience that determines whether or not any behaviour comes to be defined as deviant'. Concepts of crime are socially constructed, contingent and contestable.

Some people who are labelled as deviant are more likely to offend in some instances because of the locality they live in. Individuals' are expected to act in certain stereotypical ways and are treated accordingly (Muncie 1997). Becker (1963) claimed that behaviour only becomes deviant when labelled as such. Becker's dictum that 'deviance is not a quality of the act the person commits, but rather the consequence of the application by others of rules and sanctions', reflects what happens to offenders' from certain groups and localities. The social reaction of the observers of those labelled, tends to reinforce and encourage the unacceptable behaviour to continue (Carson and Wiles 1971). The reaction of the media, helps the authorities to denounce the behaviour and label its perpetrators as deviants and delinquents. The result of this type of response denies those involved in the unacceptable behaviour legitimate opportunities to access services and facilities that could enable them to change and therefore a cycle is established that tends to encourage them to behave in socially unacceptable ways.

Young (1997) claimed that labelling someone as a criminal, in addition to involving stereotyping may also have a self-fulfilling effect. The individual is encouraged to behave in ways that conform to the label. The adage 'once a thief, always a thief' is an apposite example. Gove (19xx) has claimed that labelling theory overdoes the idea of a self-fulfilling prophecy and that there is insufficient empirical evidence to support such a claim. Gove accepts that the main mechanisms of labelling theory are persuasive but claims that attempts to test them have been controversial, particularly in education. Plummer (xxxx) argues that the more complex variants of

labelling theory are almost impossible to test or falsify. Cicourel (1964) claimed that the terms in labelling theory lack precision and take no real account of central social processes, such as how every day social behaviour produces a reaction. Cicourel (1968) suggests that matters like police procedure and how they react to an individual's appearance, demeanour, or attitude of arrestees affects the social judgements the police and courts make and the labels and attitudes towards the arrested person that they adopt.

It is not uncommon for judges and magistrates' to make statements in open court about an offender that stigmatise the person (Carlen 1976, Gill 1976). Duster (1970), found that when a person is labelled he finds it difficult to enter the ranks of normal society. Labelling, therefore, instead of encouraging an offender to change, is more likely to encourage the person to conform to the label that has been allocated to him. Farrington (1977) investigating the effects of public labelling found that when youths were publically labelled then their level of offending and engagement in delinquent acts increased. Farrington acknowledged that his findings did not prove conclusively that public labelling caused an amplification of deviant behaviour, however, he claimed that his research and findings were a suggestive piece of evidence of a causal link.

## **2.9 Psychological and Cognitive Behavioural Explanations of Crime**

In the latter part of the 20th century, increasing attention has been placed on the interplay between psychological and social factors, as contributory causes of

offending. Those of a deterministic persuasion, Ross and Fabiano (1985), claim social and cognitive skills are learned skills, their acquisition being strongly influenced by environmental factors. The standpoint taken by Ross and Fabiano, is that as a result of social and environmental factors an offender is disposed to engage in cognition that leads to the decision to offend. This approach while not condoning crime seeks to provide a psychological explanation of some of its causes. This cognitive behavioural approach to offending was to become an increasingly influential factor in deciding how to work with offenders to reduce recidivism and levels of crime.

A cognitive behavioural view of why people offend takes account of environmental factors and the individual. The model is complex in that it synthesised components from a variety of schools of thought and disciplines. The major theories drawn upon were behaviourism, social learning theory, cognitive behavioural theory. The individual contribution that the various theories and models make to the overall cognitive behavioural concept of offending, has never been clearly defined. This may be due to the complexity of trying to identify the part external environmental influences and internal thoughts and feelings play, in the decision to offend. Below is a summary of how a number of theories relate to the cognitive behavioural approach.

Bandura (1996), put forward the concept of reciprocal causation between personal and environmental factors. Bandura's theory suggests that internal motivation alone cannot adequately account for marked shifts in behaviour under differing situational circumstances. It is much more complex interactions of various factors that shapes

behaviour. The individual does not simply react to stimulus events and environmental cues. Causal beliefs of the person, influence which environmental events are attended to, and how they are cognitively processed, interpreted and acted upon. For example, a person who believes that some harm done to him was accidental, reacts differently than when he believes someone harmed him intentionally. Social cognitive perspectives suggest that contingent experiences create expectations, but based on the individual's own belief and perspectives, they do not necessarily result in mere stimulus – response behaviour. Kelly (1963) has claimed that an individual has the creative capacity that makes him capable of reaction to his environment and not merely to respond to it. Kelly claims that the individual can place alternative constructions on what he finds in his environment, and, indeed do something about it if it does not suit him. Kelly's insight into human behaviour supports the proposition that when expectations fail to be met or hopes fail to be realised, societal influences only play a part in the behaviour that offenders engage in. Offenders are therefore not deterministically disposed to a particular response. It is too simplistic to conclude that social factors are the cause of their offence behaviour.

Social cognitive theory (Bandura 1996) recognises that behaviour involves reciprocity of influence between thought, conduct and social factors. Self-generated affective consequences operate within a network of social influences. As Kelly (1963) has pointed out, each individual formulates in his own way constructs through which he views the world. Some of the factors that are related to causality are personal

agency, the harm action causes and a sense of social depersonalisation. An offender's explanations for their offence behaviour may also be shaped by the need for self-justification, self-esteem and other hierarchical needs (Maslow 1968).

Satisfactory explanations of crime need to take account of the complex interaction between the offender, his environment and social interaction factors. Social learning theory attempts to explain the acquisition and initiation of types of behaviour (Bandura 1986). Bandura claimed that a large part of an individual's behaviour is learned through imitating others. Peer group association, family practices and media influences are powerful factors that influence and shape behaviour. The models for behaviour, including criminal behaviour are to be found in the social environment. Similarly, the reinforcers of criminal behaviour are also prevalent in society. Financial reward, peer group status, a sense of achievement in committing an undetected crime can serve as re-enforcers of criminal behaviour. Despite the fact that external influences may be considered powerful stimuli toward offending, the individual is not at their mercy and can choose how to respond to them. In recognition of the influence of external factors some sentencing practice imposes punishment as a deterrent and a means of reducing and extinguishing criminal behaviour.

Explanations of crime that attribute the main causes to social and environmental factors conform to a simple stimulus-response behaviourist model (Watson 1920). Early behavioural paradigms attributed actions and events to outside stimuli. It was recognised, however, that consequences resulting from responses to the stimuli tend

to reinforce or extinguish the behaviour. Positive reinforcement of the behaviour occurs when the individual finds the response rewarding and negative reinforcement when the behaviour produces undesirable consequences. Cognitive behavioural explanations of offence behaviour identify and emphasise the complex inter-relationship of thoughts, feelings and behaviour and argue for a more rational approach to encourage offenders to commit less offences. The role offenders play in how they respond to stimuli and cognitively process their thoughts and feelings are seen as crucial factors in the type of behaviour that occurs. A core belief of the cognitive behavioural approach is the premise that all action is preceded by thought whether conscious or unconscious, and it is argued that even automatic processing is a learned response.

An example of the way that the individual responds to situational and environmental factors has been demonstrated in prison research studies. Sapsford (1979) found that life prisoners did not fall into a state of learned helplessness or become institutionalised. Some demonstrated what Sapsford described as *reactance* to their indeterminate sentences and prison life. This was not necessarily a thought through decision making process but their reactance enabled them to respond to prison life and develop coping mechanisms that prevented them from being overwhelmed by their predicament. The routine of prison life had the potential to demotivate prisoners. Sapsford found that some prisoners become more motivated towards developing strategies to mitigate the effects of the prison environment, and sought ways of exercising individual freedom to the fullest extent possible within the prison

regime. This included taking up hobbies, engaging with education programmes and maintaining interest in outside events despite the fact they were unable to directly participate within the outside world.

A similar set of circumstances may apply in the case of the beliefs and self-factors attributions of offenders in the community. There is some possibility that when magistrates make attributions about the factors that led to an offence that they are correct and the offender is wrong. Offenders do not necessarily engage in a rational examination of the circumstances surrounding an offence to determine its cause. However, if the magistrates are correct it does not change the principle that interventions and treatment that aim to change the offenders beliefs are not likely to be effective unless and until the offender agrees he had these beliefs and that they need to be changed.

## **2.10 Attributions about Offending**

Differences in attributions about the action of offenders and why they offend are crucial in shaping attitudes towards offenders and how they are treated. My research focuses on the attributions of individuals' about offending and its causes. This includes magistrates, offenders and members of the general public from differing socio-economic backgrounds. Society in general, regards offenders as being aware of the causes of their behaviour, and fully responsible for their actions. The basis for such beliefs can be explained in part by attribution theory insights into how people develop shared beliefs about 'rights' and 'wrongs' in social contexts. Heider (1958)

described these culturally shared beliefs as 'oughts and values'. 'Oughts' are required ways of acting viewed almost like moral imperatives or commandments which set standards of what ought to be done or experienced, independent of the individual's wishes and form the basis of socially shared moral judgements. For example, if a driver sees a car accident he almost instinctively knows that he should stop and see if he can help. Such beliefs constitute a social framework for evaluating behaviour in terms of rights and wrongs.

People appear to have a need to make causal assessments of events in their environment. Heider (1958) described how one formulates attributions. Individuals perceive events as caused by environmental influences, external to the person, or influences internal to the person, or a combination of the two. Buss (1978) claimed that causes and reasons are distinct categories for explaining different aspects of behaviour and that actors and observers differ in the explanations they give for events. Participants (actors) in the behaviour or event, and observers of the behaviour tend to make different attributions regarding the cause. Actors favour external attributions as explanation of causes of their behaviour, whereas observers explain the same behaviour through internal attributions (Bem, 1967). If the observer considers the actor to have acted atypically, then internal motivation is ascribed to the actor (Tedeschi and Felson, 1994). Ross (1977) described observer's practice of not using external variables to draw conclusions as the 'fundamental attribution error'.

Actors and observers, in most instances, are not party to the same facts, and the observer can only speculate about the internal motivation of the actor. The distinction between the attribution of causality and the attribution of responsibility has also been raised (Finchman and Jaspars, 1980, Henderson and Hewstone, 1984). They pointed out that responsibility carries with it a distinct moral quality, which makes it qualitatively different from causality. A study into prison inmates' violence (Henderson and Hewstone 1984) showed the importance of distinguishing between causality and responsibility. In some instances prisoners felt less responsible for their violence when they were acting in self-defence. Observers of such violent incidents, unaware of the circumstances, would normally attribute responsibility for the violence to all participants. It is possible the person acting purely in self-defence has no responsibility for the violence, or at the least, has justification for his action. A purpose of my research is also to investigate the different ways that offenders, magistrates, judges and people in general (referred to in later chapters as the general public or general public sample) understand the causes of criminal activity and offence seriousness.

This chapter has outlined some of the differing views and perspectives held by judges, magistrates, offenders and criminal justice system professionals. If sentencing decisions and treatment is based on the attributions of magistrates about why offenders offend and these are inaccurate or different from those of the offender then the treatment is likely to be ineffective. Causal attributions, social

representations and their relationship to offending and sentencing decisions are examined in the next chapter.

## **Chapter 3 Causal Attributions, Social Representations and their Relationship to Offending and Sentencing.**

### **3.1 Introduction**

The previous chapter identified the different social worlds that offenders, magistrates and criminal justice professionals tend to inhabit. The consequence of these differences were seen as factors that lead to misunderstanding and differing perspectives between these individuals when they consider the behaviour of offenders and attribute causes for an offender's behaviour. These differing perspectives affect the way that each of the respective group members view each other and the treatment that is prescribed to attempt to change offenders beliefs, behaviour and attitudes. A few elements of attribution theory and the part that attributions play in shaping the views of magistrates and offenders was considered in chapter 1. In this chapter greater consideration will be given to a number of elements of attribution theory and social representations that are related to the perceived causes of offending and the sentencing and treatment of offenders.

### **3.2 Attribution Theory**

Attribution Theory and its development over the last 50 years increasingly helped identify the part attributions and social representations play in shaping opinions and judgements made by individuals and society in relation to offenders. Heider(1958) who is often regarded as the founding father of attribution theory began his work on attribution theory in the latter part of his academic career.

Previously Heider's main academic research interests were related to Gestalt psychology, personal perception and balance theory. The development of attribution

theory arose mainly out of his work in the fields of personal perception and balance theory. Attribution theory has had a major impact not only in social psychology but across a number of fields of psychology and other academic disciplines. Although it is less dominant in social psychology now than in the past, the fact that it still being researched so long after its inception underlines its usefulness and relevance.

The focus of Heider was on how we see action as caused in our everyday lives. Heider (1958) noted that observers of another person tend to attribute the cause of the actor's behaviour to the actor. Heider (1958) argued that the tendency to perceive the actor as the main cause of the behaviour led to an underestimation of situational factors that might have influenced the actor's behaviour. Heider (1958) recognised that in reality the causes of behaviour are more complex and that both personal and environmental factors contribute to an act. Heider was aware of the perceiver's tendency to ignore, or not take adequate account of environmental factors, when explaining behaviour. Heider acknowledged that the criterion of intention is an important factor that needs to be taken into account when assessing causality. He also emphasised that observed behaviour can only be inferred as caused by the actor, when there is clear evidence that the actor intended it to happen, and the actor was aware of its consequences. People make judgements about incidents they observe mainly based on their general life experiences. Heider (1958) called this process common-sense psychology.

Common-sense psychology can be thought of as 'how the man in the street' explains his own, or another person's, behaviour. It has been referred to as folklore psychology encompassing traditions and beliefs generally accepted within particular societies and cultures. It is based on principles we use to build up pictures of our social environment and which guides our reaction to it and others behaviour. Although an explanation of perceived behaviour may be possible, it does not necessarily mean that the observer can correctly determine causality of the action. (Heider 1958, p5)

### **3.3 Commonsense Attributions.**

Shaver (1975) points out that stereotypes affect an observer's attributions of cause. Shaver used the example of different social identities to illustrate how social stereotypes and prejudices can influence attributions. He claimed that an observer of a conflict, between a 'low class' or black person and a white middle class person will attribute the cause of the dispute to the lower class or black person. Because of social stereotypes other factors surrounding the event and possibly the true cause of the conflict will not necessarily be able to be clearly recalled by the observer. Jones and Davis (1965) pointed out that perceivers make inferences about what an actor was trying to achieve. The situational context of an action will affect the meaning the perceiver attributes to the action and causality; however, cultural assumptions and social stereotypes may obscure the true significance of an action (Jones and Davis 1965)

The unreliability of common-sense explanations is indicated by Moscovici and Hewstone (1983) in their view, that 'common sense is a corpus of knowledge based on shared traditions.' People using common sense knowledge tend to believe that it enables them to see and explain things and situations. Common sense explanations, however, are based on generalised hypotheses and are by their nature too broad to explain individual incidents. Similarly, the reason why people behave in a particular way cannot be explained through generalisations or social norms.

Gergen (1973) drew attention to the part that historical and cultural factors play in relation to social events, and also claimed that seeing people as the originator of their own behaviour may be a culturally based phenomenon. Within a particular culture people approach an event with a rich store of hypotheses that they use to explain the event rather than consider it objectively and engage in a process of deductive reasoning. Schema theory (Bartlett 1932) showed individuals' use scripts and schemas to make sense of situations. These are sufficient short-cuts for making sense of, and quickly assessing everyday situations. They are less reliable for making crucial judgements and assessing unique situations. Where societal differences exist between observers and actors, the inferred causes of behaviour given by observers and the actual cause may be very different.

Jones and Davis (1965) developed their Correspondent Inference Theory which aims to systematically account for a perceiver's inferences. Jones and Davis claimed that a perceiver's problem when observing actions is to decide which effects, if any, of the

action were intended. The cause of many actions cannot be determined from observation alone, for example, someone crying. People are known to cry both when they are upset and when they are happy. Children on occasions cry, in anticipation of being punished for some wrongdoing. In some instances, people cry, not because of remorse, but in the hope of reducing the severity of anticipated punishment.

Making attributions about unusual or unexpected behaviour is difficult for the observer. Events can be explained in a number of different ways. Heider (1958) discussing 'The Naïve Analysis of Action' made a distinction that was to become important in the assessment of attributions about causation:

'In common-sense psychology (as in scientific psychology) the results of an action is felt to depend on two sets of conditions, namely, factors within the person and factors within the environment.'(Heider (1958) p.82)

Laljee, Furnham and Jaspars (1982) found that explanations for moral and immoral behaviour are concerned with the motives of the actor and less account is taken of situational factors. Kelley and Michela (1980) claim that unexpected behaviour is explained more in terms of the person, and expected behaviour in terms of the situation.

Heider's explanation of how people arrive at decisions and apportion blame, fits in well with Laljee et al (1983) claim, that people have hypotheses about why events occur, and seek specific information that will enable them to disambiguate their hypothesis. This process enables an individual to lessen the impact of competing

claims, and rationalise conflicting opinions. Surber (1981) has suggested that people use this type of schema to meet the need for fast and economical analysis. Kassin (1979) has also implied that they come into play where strong preconceptions are held. The part that such hypotheses and schemata play in sentencing decisions may be significant given the differences between sentencers and offenders.

### **3.4 Group Attributions**

It is clear that different groups within society share certain common values and beliefs, but these are not sufficiently universal, to make them reliable predictors of the causes of behaviour (Tajfel 1969). Cultural and social structure differences cause them to be unreliable predictors. The UK is a relatively stable, multi-ethnic society, however, as Tajfel (1969), points out societies have many facets:

‘We live in a social environment which is in constant flux. Much of what happens to us is related to the activity of groups to which we do or do not belong; and the changing relations between these groups require constant readjustments of our understanding of what happens, and constant causal attributions about the why and how of the changing conditions of our life’.  
(Tajfel, 1969 p 79)

Some aspects of society are accepted on a consensus basis, but this differs to some extent according to social class. For example, offenders in the UK live within a

capitalist society, but the majority are probably not capitalists or active participants in the capitalist model.

Our relationships and therefore our attributions are defined by people's membership of social groups; for example, a Jew and Arab discussing the Palestinian uprising (Tajfel 1969). Jews and Arabs attribute different causes to the present conflict between them. Ethnicity seems to take precedence over membership of other social groups such as employment or professions. Despite the probable benefits for both groups of political compromise and accommodation of each other, each group tends to maintain their own polarised standpoint. Tajfel (1978) identified factors that result in differences in attribution namely: **social** (black or white, gender - male or female), **intra-group identification** and **intra-subject variability** between the groups. In the case of the intra-group identification category of judges, their beliefs about what constitutes a humble beginning and ordinary life are extremely remote from the reality of ordinary people (Devlin 1979), (Fitmaurice and Pease 1986 p 20).

As Davis and Gergen (1961) have pointed out, perceivers' social views of acceptable norms will affect their opinion of the actor and his acts. For example, various groups in society view driving after drinking differently. If a feature of a person's job involves them in entertaining clients to obtain an order or contract, he may view it as a risk worth taking or as a necessary (unavoidable and not so culpable) part of the job. The same person, however, might view an individual who drinks for pleasure and then drives, as irresponsible. Similarly, observers form opinions about others' actions

based on cultural and social factors. Taylor and Jaggi's (1974) study of Hindu perceivers' attributions for positive and negative acts by Hindus and Muslims, found that there was bias in each group. People attributed positive events and actions to their own group, and negative events to the other group. Pettigrew (1979) extended the work of Taylor and Jaggi and arrived at the conclusion, that there exists an 'ultimate attribution error', which he defined as a 'systematic patterning of inter-group misattribution shaped in part by prejudice'. It is a bias that influences the explanation and attribution of other groups' behaviour. Pettigrew specified the ultimate attribution error in the form of two main predictions:

Across-group perceptions are more likely than within-group perceptions, especially for prejudiced individuals, to include the following:

- 1 For acts perceived as negative (antisocial or undesirable), behaviour will be attributed to personal, dispositional causes. Often these causes will be seen as innate characteristics, and role requirements will be overlooked.
- 2 For acts perceived as positive (prosocial or desirable), behaviour will be attributed to any one of the combination of the following: A. to the exceptional, even exaggerated, special case individual who is contrasted with his/her group; B. to luck or special advantage (and often seen as unfair); C. to high motivation or effort; and /or D. to manipulable situational context. (Pettigrew, (1979) p 469).

Pettigrew's findings are similar of misattribution for the cause of events that (Ross 1977) called the fundamental attribution error.

The findings of Taylor and Jaggi, Pettigrew, and Ross, indicate how offenders with particular backgrounds, or from some localities, are likely to be viewed more suspiciously by police and treated differently by the courts than offenders from different localities. There have been many claims made by ethnic minority offenders, of racial prejudice and racial discrimination by the police and courts (Belloni and Hodgson 2000). In some instances, these claims have been upheld. A prominent example is the McPherson Report into the police handling and investigation of the murder of Stephen Lawrence. The report identified procedures and failures of process that had been used by the Metropolitan police in the investigation of his murder were influenced by racial prejudice. The report concluded that there was institutional racism within the Metropolitan police force (Macpherson 1999).

There is also a distorted view held by many offenders that they will not receive a fair trial in magistrate courts due to the attitude of magistrates. This view is held mainly on the basis of social tradition rather than substantiated fact.

### **3.5 Individual's use of Causal Attributions.**

In general, little attention has been paid to the mental processes involved in making causal inferences. Jaspers (1984) claims none of the classical contributions (Heider, 1944, 1958; Jones and Davis, 1965; Kelley, 1967) give an indication of how the

information used to make causal inferences is encoded. There is also no evidence to show how the inferences which are made, are related to immediate behaviour or future behaviour. Attempts to explain causal attributions using ANOVA models or Kelley's Cube (Kelley 1967), have been considered too scientific. These mathematical modelling concepts were criticised by others investigating causal attribution processes (Miller 1979: Druian and Omessi 1992). The criticism of the mathematical modelling is that all the analysis were ascribed some identical factors, for example, identical thought processing response times were applied to every scenario. It is unlikely that in real life situations this would be the case, and individuals would think longer about some scenarios than others before responding. Jaspars, Hewstone and Fincham (1983) developed an analytical grammar/syntax model. Inferences about the differences in causal attributions of actors and observers made using this model are dependent upon statistical analysis. It is difficult to conceive of most people being so logical and consistent when making inferences or decisions, that their attributions can be revealed by using a statistical analysis of syntax.

Heider (1958) has taken a different approach. He stressed that our everyday model of the individual can be represented as goal-directed. This model equates well with how individuals behave and plan their life using a problem-solving approach, but it does not elaborate on how goal-orientated decisions that affect behaviour are made. People do not tend to respond uniquely to each different situation. An individual tends to have scripts, life plans and goals for organising their life. Some are short-

term and some long-term. Goals provide an overall sense of stability and direction, and these goals may also enable reasonably accurate attributions to be inferred about a person, but not necessarily the cause of the individual's actions or behaviour.

Scripts are considered to be a commonly used central device, employed by most people in understanding and organising their social life using routine-stereotyped sequences for dealing with events (Bartlett 1932). Schemas based on past experience, are used to generate responses to new situations. Existing schemas are modified by information related to the new situation, and used to generate a response or course of action. Schemas are too general to be reliable predictors of causation.

Social context and communal beliefs are important factors in causal attribution and the shaping of behaviour. Communal beliefs provide: (a) an orientating structure (b) a specific content and shared view and (c) an assumed validity. Most individuals have a need for structure, clear views shared with others, and a sense that their views and beliefs are valid, to allow them to function within society. The need for structure, is the desire to have some guiding knowledge on a given topic. Any knowledge, whether it is right or wrong, is better than existence in a maelstrom of confusion and ambiguity. Such knowledge and beliefs provide a basis for action and are causal factors of behaviour. In parts of society where criminal behaviour is considered an acceptable way of life, this belief becomes a causal attribution of offending. It is also easier to comply with existing structures than face the crisis of rejecting them, and creating an alternative set of values to live by. Thus, the need for

structure 'freezes' the inclination to develop an alternative hypothesis and predisposes the individual to conform to the prevailing beliefs within their peer group. Where situations arise that provoke goal conflict, a process which is different from that which operates in everyday scenarios comes into play

Goal conflict situations can frustrate the efforts of an individual to achieve a novel goal. In this circumstance, the person is likely to resort to learned schemas and beliefs (Bartlett, (1932), Rummelhart and Norman, (1983)) and refrain from probing and assessing the cause of their frustration. People often want to concur with, and maintain shared views, since they act as a justification of their behaviour. The offender can attribute the cause of his behaviour to the environment, and the customs in the society, where he lives. This justification of an act is often preferable to acknowledging personal responsibility and guilt. The individual's tendency to avoid developing alternative views is reinforced in these circumstances, by the fact that a belief in the influences of external causes is desirable as a means of self-justification. Shared structures and views, become a causal attribution that allows the offender to grant himself permission to offend.

A balancing influence to the need for structure and shared views, is the need for validity. In general, no knowledge or view can be sustained in the face of obvious invalidity. To know something to be true, while believing it to be false, is a contradiction in terms. The awareness of inconsistency alongside the need for validity, can initiate the process enabling the individual to abandon structure in favour of validity. The offender faced with incontrovertible prosecution evidence of his

offence might conclude it is wiser to change his plea to guilty. This may not necessarily be the result of an acknowledgement of guilt, but may be due to acquiescence to the pressures the offender feels is stacked against them. Arriving at a decision to change his plea, the offender has made causal attributions about how invalid he feels his alibis will be considered, and concluded that to change plea and plead for leniency is a more valid option. The change of plea can be internally justified by using a criterion ascribing causality to an external entity. For example, 'the weight of evidence was so great, I had no alternative but to change my plea.' The offender will also be aware, or made aware, that a guilty plea at the start of the trial will attract a less severe sentence. A reduced sentence for a guilty plea may seem fair and reasonable from a Criminal Justice System perspective, but it does put pressure on a defendant. Such pressure of the guarantee of a reduced sentence may be a cause of the individual's guilty plea although he may in fact be innocent of the alleged offence.

In a similar manner, an offender may attribute his offending behaviour to circumstances, and deny personal responsibility. He may attribute his behaviour to impersonal factors or circumstances beyond his control. When forming beliefs about their world, attributers use less than completely rational information-processing 'heuristics' (Kruglanski et. al. (1983)). This forming of attributions and plans by a trial and error process, can result in valid conclusions. When, however, crucial information is excluded from the calculation, there is a potential to arrive at faulty conclusions. Errors result because heuristics, like schemas, take short-cuts that omit

optimal processing of all the available information. This limited processing leads to misjudgement and faulty conclusions. Such errors give rise to unforeseen behaviour and outcomes. An offender caught in the midst of carrying out a crime rarely attributes his arrest to the lack of planning or foresight. Most offenders attribute being caught, to bad luck or some other misfortune, such as the getaway vehicle having no petrol, or vehicle breakdown. When the claim is analysed, it can be seen the actor was responsible for the avoidable mishap.

### **3.6 Differences in Attributions by Actors and Observers**

There are notable differences between actors and observers. Actors are self-observers who view their own behaviour in terms of its surrounding context, and attribute cause accordingly. The actor is involved in a process which Mead (1927), describes as self-reflexivity. Using this process, the actor looks for factors that will justify his behaviour to himself and others. In comparison, a person who is solely an observer of another individual is bound by the constraints of objectivity. Although we can imply from observation of behaviour and body language what a person feels, we can never with certainty explore and verify the motives and actions of another. For example, it is possible to empathise with someone who has suffered loss through bereavement, but it is impossible to experience his personal pain. Similarly, we can as an observer, impute motive to the action of others. It is possible that the actor does not even know his true motive and all the factors that influenced or controlled his behaviour.

Explanations from Learning Theory (Bandura 1978) indicate that through the process of social interaction at an early stage of development, individuals learn and adopt patterns of behaviour. These learned patterns of behaviour become formative elements of the individual's lifestyle. The individual can be unaware of the extent to which these factors influence their behaviour.

### **3.7 Actors Attributions**

Causal attributions are often used as self-validating inferences, and explanations are often shaped by bias, rather than knowledge and facts that provide evidence of real cause. Kruglanski et.al. (1983) have claimed that bias and error are inevitable aspects of all inferences, including scientific inferences. Such claims indicate why actor-observer inferences of causality are in many instances dichotomous. Kruglanski et.al.(1983) found that particularly in goal-conflict situations, behaviour is substantially affected. When a goal cannot be achieved due to some unforeseen cause, then planned behaviour based on previous experience and knowledge is abandoned, and a totally irrational course of action may result. A typical example, is the armed robber who does not intend to use the weapon other than as a threat, but when trapped, shoots someone or takes a hostage. Despite the initial plan not to use the weapon, and the knowledge that its use will aggravate the seriousness of the offence, in the tense conflict situation, the robber will abandon his original non-violent script. Given that an actor's behaviour may be modified substantially by goal-conflict factors, then it raises questions regarding the validity of attributions that observers attach to the

actions of others. An observer from a different section of society and social class is likely to imply faulty attributions to the behaviour of others.

There is generally a marked difference in social and economic status of magistrates in comparison to the majority of offenders. These differences may result in faulty causal attributions being made about the offender's behaviour.

### **3.8 Observers' Attributions**

Kelley and Michela (1980) have drawn attention to the different ways in which people process and understand the behaviour of others. Kelley and Michela claim that unexpected behaviour is explained more in terms of the person, whereas expected behaviour is explained in terms of the situation. Where there are two plausible causes for an event, one cause is discounted. When the actor's behaviour is consistent with the contextual setting, then the observer attributes the appropriate behaviour to be a consistent and positive aspect of the actor's character, or the appropriate way to behave. If the behaviour is inconsistent with the contextual setting, the inappropriate behaviour is attributed to having been caused by the actor.

The implications of these findings are important in understanding the attribution of sentencers about an offender. Magistrates carry out their role in the observer mode and the decisions of courts often confirm Kelley and Michela's (1980) findings. In the case where a person normally assumed to be of good character and standing within the community is charged, the court tends to disbelieve prosecution evidence, and

give the accused the benefit of the doubt. Fitmaurice and Pease (1986) claim that differences in the use of punishment are easy to find in the type of cases outlined above.

Griffith (1977) investigated differences in sentencing in relation to social class. A similar study was carried out by Nagel (1962) into sentencing and political alliance. Both Griffith and Nagel concluded that there was sentencing bias in relation to social class and party political alliance. Hood (1962) investigating variations in magistrate sentencing found that middle-class magistrates in small and stable middle-class towns imposed relatively severe sentences on working-class offenders.

In recent years, there have been a number of prominent cases of alleged conspiracy to pervert the course of justice, police corruption and falsifying of evidence, on the part of the police. The following prominent examples support the claim of bias in court proceedings and sentencing. The 'Guildford Four' were sentenced to life imprisonment after being convicted of pub bombings in Guildford and Woolwich. Following the discovery that the police investigators had fabricated evidence the 'Guildford Four' were released by the Court of Appeal 14 years after their original conviction. Lord Chief Justice Lane concluded that the police officers must have lied to the court. The police detectives involved in questioning the Guildford Four were prosecuted for conspiracy to pervert the course of justice, and acquitted at their subsequent trial.

In the similar case of the 'Birmingham Six', the Appeal Court found that the police had withheld expert forensic evidence at the original trial and had falsified alleged confession interview notes. Three of the detectives investigating the 'Birmingham Six' offences were subsequently charged with perjury and conspiracy to pervert the course of justice, however, the charges were dropped without trial.

Despite the fact these cases against the police were brought after the Court of Appeal quashed the original criminal convictions, juries have failed or been robbed of the opportunity to convict the police officers involved. Events of this nature support the view that evidence alone is not the major factor that influences decisions reached in Criminal Justice trials.

When observers attribute motive to the action of others, their judgement is not value-free, but influenced by preconceptions, prejudice and situational factors. Contextual situations do not only affect an actor's behaviour, but may also affect the attributions that an observer infers caused his behaviour. Weiner (1971,1980) identified two other important dimensions. One of control, (which refers to the extent that events are controllable by the actor), the other stability (which is a dimension of time relating to whether the causes of behaviour are a relatively enduring factor). An example of the interaction of the three dimensions of contextual situation, control and stability can be seen in the way that individuals behave when on holiday and away from the constraining factors of their normal life. Out of character bouts of reckless behaviour, holiday romances and excessive drinking can be common holiday features. Because

of a change of situation, and a limited period of contact with comparative strangers, the individual (actor) attributes little risk to behaving recklessly for a limited period. The same person on return to his everyday life resorts to a more sober and conventional life style. In addition to the dimensions identified by Weiner(1980), Lalljee, Furnham and Jaspars (1982), found that dimensions underlying the explanations for moral and immoral behaviour, are also concerned with the motive of the actor. Using the holiday analogy, the concept that a holiday is an opportunity to relax, 'drop one's guard' and 'let off steam', equates well with changes in behaviour that are less disciplined and controlled. Similar to an often typical holidaymakers behaviour, offenders interviewed about their offences indicated that they also take greater risks when they believe that discovery of their crime and conviction is unlikely.

### **3.9 Social Representations and Attributions**

Social influence has been identified as a powerful force (Moscovici's 1961). Social Representation research, suggests that knowledge and common-sense theories are formulated through engaging in real-life experiences. It is largely an experiential knowledge, resulting from participating in situations and developing an appropriate response to deal with them. Moscovici (1976) defines social representations as:

'A system of values, ideas and practices with a twofold function: first, to establish an order which will enable individuals to orientate themselves in their material and social world and to master it; and secondly, to enable

communication to take place among the members of a community by providing them with a code for social exchange and a code for naming and classifying unambiguously the various aspects of their world and their individual and group history.' (Moscovici (1976) p xiii).

Moscovici and Hewstone (1983) claimed that attributions are often made to serve explicit psychological and social functions. For example, Fauconnet (1928), considered the concept of responsibility a part of a system of representations. Responsibility attributions serve a social purpose. In the case of crime they provide the incentive to find a culprit, and punish the perpetrator or cause of crime, to prevent its return or increase. Moscovici (1984) claimed that:

'Social representations provide a crucial homogenizing force for groups because they supply a conventional code for communication and because people who share representations agree in their understanding and evaluation of aspects of the world.' (Moscovici (1984) p 204).

Conversely, social representations that encourage individuals' to join a specific group must also bring about polarisation between diverse groups. The difference between offenders and magistrates, and the social groups to which they belong, was highlighted in the previous chapter. These differences provide some explanation of why offenders and magistrates see offending from different perspectives. The difference in perspectives between offenders and magistrates supports the premise that observers can only speculate about why the person involved in a situation

responded to it in a particular way. The actor is likely to understand better the effect of social and environmental factors and their causal influence upon him, than a person who only observes the behaviour or considers a second hand account. Although the observer sees more of an event the outsider may not understand the internal perspectives of the offender. The observer, however, can strip away the maze of taken for granted 'truths' in which the offender lives.

Pepitone (1981) and Lalljee (1981) investigated the origin of individuals' attributions. This line of enquiry led them to conclude that observers of behaviour attribute cause and effect based on their own perspectives and social norms. It is, therefore, more difficult for an individual who does not engage in criminal activity as a way of life, to understand the perspectives and causal attributions that offenders believe are the causes of their offence behaviour.

The complex nature of behaviour, including that of offenders, cannot be explained entirely in terms of the actor's internal cognitions and motivation. It is more likely that offending results from an amalgam of interactions between social influence, cognition and motives. Perceptions, beliefs and motives of an offender, whether or not others see them as rational and legitimate, are a fundamental part of the causal attributions of his behaviour. Attribution Theory suggests that an understanding of an offender's casual attributions and how these are shaped by influences within society, cannot be gained from the theoretical perspective of an observer, and should be investigated from the perspective of the offender. It is, therefore, more difficult for sentencers to

reach informed decisions about offenders behaviour, and to make allowance for aspects of offence behaviour, when they lack experiential knowledge of the offender's social circumstances.

There are a number of views held about what motivates and justifies a person to offend, and how offenders neutralise responsibility for their actions within their thoughts and feelings. Many offenders claim that they are not really criminals. An initial reaction to this is to categorise the offender's responses as a denial of responsibility. This view, however, expressed by offenders becomes more understandable in the light of Matza's (1964) findings. Matza claimed that offenders (Matza used the term delinquents) drift into crime. The offenders' behaviour is not an outright rejection of accepted social and conventional values, but a process of loosening of commitment and identity with these values. Matza's 'drift' concept is a gradual process of movement into offending that can be reversed by the offender (actor). It is claimed by Matza that an individual drifts into and out of delinquent behaviour at various times in their life, with periods of remission (Matza 1969). Matza argued that delinquents are not very different from other people. Most of the time they subscribe to conventional views, beliefs and conduct. According to Matza, there are no rules that enable us to predict who will, and who will not, conform to social norms.

Similar to Matza's views, Heidensohn (1989) claims that crime is a socially constructed concept. Crime can only be defined against accepted but varying

conduct norms that differ across the strata of society. The arguments of Matza and Heidensohn, help to explain why many offenders do not consider themselves as 'real' criminals. The view of offenders about what defines a 'real criminal' emphasises the different social representation and attributions held by diverse social groups.

Attribution Theory supports an expectation that offenders, non-offenders and sentencers, would hold different perspectives. The difference in attributions between offenders, and those deciding on what treatment the offender should receive, is an important factor that can determine the suitability of the intervention. Factors that influence this are beliefs about the causes of crime and attributions about why some people offend. There are many theories of crime, some of which were referred to in the previous chapter. Each theory contains what it considers the main cause of crime, for example: poverty, environment, differences in class structures, conflict, individualism, to mention but a few. The inevitable conclusion is that there are many causes. Since the causes of crime are so numerous, there must also be numerous reasons for offending. Due to the multiple causes of crime and reasons for offending, it cannot be tackled using a 'one size or one model fits all' approach.

### **3.10 Social Class Differences and Attributions**

Moscovici and Hewstone (1983) have indicated that there may be differences in attribution between social classes and between cultures. By way of illustration, they compare 'Western' man with a rational approach and intellectual analysis of situations, to some other cultures that will engage in a more 'spiritual' and cultural

evaluation of a situation and make a less 'scientific' analysis. From a social representation perspective, causal attributions are shaped within society, as with 'common sense' psychology. Common sense comprises the mental images and metaphors used when trying to explain familiar problems and predict their outcomes.

Magistrates who are unfamiliar with the social and cultural background of the accused, are likely to attribute incorrect motives for the offender's behaviour. The effect may lead to a lack of justice by mitigating factors being ignored, or equally, to inappropriate leniency, from a failure to forge links between causes of behaviour, and social and cultural factors (Bruner 1957).

Findings of guilt and sentencing decisions, particularly in Magistrate Courts, can be influenced by the extent of hurt or injury caused to the innocent party. The research of Flood-Page and Mackie (1998) showed that inherent to the decision reached, and the sentence handed down, is an assessment of the amount of harm the offender intended towards the victim. Some sentencing decisions raise the question, how reliable are these assessments and on what are they based? With respect to Magistrate Courts, a number of factors need to be considered. The court appearance is often short and the defence evidence fairly limited. It is only after a verdict of guilty is reached, that a Pre-Sentence Report is commissioned with a view to imposing a penalty. The report is short, and irrespective of social background reports or mitigating evidence within it, the guilty verdict will not be reversed.

Additionally, the majority of lay magistrates have very little, if any legal training as confirmed by the reports of Baldwin (1976) and Lord Justice Auld (2001) They also lack training in the assessment of evidence and imputing of motive that would be expected of a County or High Court judge. Although the Clerk to the Court can legally advise magistrates, the magistrates are not duty bound to take this advice. The social dimensions that can be associated with sentencing also need to be taken into account, as a factor that influences decisions. Jones and Davis (1965) in their theory of attribution referred to the 'social desirability' of perceiver's beliefs. Factors such as social class, the perceived expectations of society, bias and prejudice, can all play a part in shaping a perceiver's beliefs about another person's actions. Differences in social experience and values, together with a lack of accurate knowledge of the actor's circumstance, may well contribute to an inappropriate inference of motive and culpability by the perceiver.

The perceiver's own needs and views may distort attributions. An emotional response to facts about the case and the evidence presented might influence the judgement of the court. There is also evidence from case law of judges who obtain a reputation for dealing severely with certain types of offence, while showing leniency with others. Some magistrates wish to portray themselves as severe to enhance their own reputation on the local bench and within their community. Jones and De Charm (1957) research suggests that the more relevant the act is to the perceiver, the stronger will be the correspondence between the act, intention and sentence

imposed. Nisbett and Ross (1980) claimed that there is a need for a more systematic analysis of bias in attribution and other social judgements.

Social attitudes and perspectives within different sections of society are often inaccurate. Moscovici and Hewstone (1983) claim that social representations are influenced by prejudices, superstitions, common illusions and ideas that are lacking in reason. They are based on opinions, attitudes and stereotypes shared by the peer group. The views of magistrates and sentencers may be influenced by faulty premises and caricatures that can lead to unsafe convictions and unfair sentences. As Moscovici and Hewstone (1983) suggest, the inner core of representations is difficult to discover. Inside each individual are thoughts and values stored for reflective analysis. Outside is the physical and social reality. Interacting with internalised concepts and external reality are other factors, such as societal expectations and representations that will influence judgement. Given the complex interaction of facts, opinions and societal expectations, it would be naïve to assume that a sentencer arrives at his decision on the evidence alone. The sentence imposed in such circumstances may be inappropriate and unable to assist the offender to change or reduce his level of offending.

This chapter has outlined aspects of attribution theory and social representations. Using these theories the relationship between offender's criminal behaviour and the attitude of sentencers and sentencing decisions have been examined including how differences in cultural beliefs and influence that often exists between magistrates and

offenders can influence how they view each other and their respective behaviour. The affect these differences may have on sentencing decisions and the treatment prescribed for offenders particularly under the 'What Works' approach is examined in more detail in the next chapter.

## **Chapter 4 What Works**

### **4.1 Introduction**

This chapter examines how cognitive behavioural psychology, and in particular the 'What works' approach became an increasingly influential feature in the sentencing and treatment of offenders. The implementation and effectiveness of the 'What Works' approach within the UK, particularly within the National Probation Service is examined.

### **4.2 'What Works' Approach**

In the latter part of the last century 'What Works' became a dominant approach within the criminal justice system. The practice of imprisoning offenders for long periods, without attempting to address the causes of their offending and rehabilitate them so that they could be reintegrated into society, was considered a wasteful use of resources. The Cognitive Behavioural model was initially used in North America and Canada, in prisons and with offenders in the community. There was no clear agreement between academics (Martinson 1974, Lipton et al 1975, Nellis 2002, Farrel 2002) who questioned the validity of using the 'What Works' approach and those who championed it (McGuire 1995, Hollins 1996) This has led to claims and counter claims by academics about 'What Works', which were to become increasingly bitter and polarised either in favour or against the use of the 'What Works' model. The enthusiasm of McGuire and Hollins was rebutted by the comments of others. Mair (2004) writing about the origins of 'What Works' in England and Wales described it as 'house built on sand' and (Hough 2004)

complained that research findings were being 'cherry picked' to justify the use of the 'What Works' approach.

Practitioners within the probation and prison service also tended to become ambivalent about 'What Works'. Underwood (1998) believed it to be an effective way of working and was in denial of any weaknesses inherent within the approach. Its likely effectiveness was considered by others to be unrealistically optimistic (Merrington and Stanley 2001; Sharp 2000). There was little dispute about the fact that if the model could be used with offenders in the community as an alternative to custody, then it would be more cost effective and politically attractive.

In relation to the UK, the debate about the use of imprisonment and the lower cost of using Cognitive Behavioural Approaches with offenders in the community, took place in the context of increasing levels of crime and the increasing cost of managing a growing prison population. The incoming 'New Labour' government of 1997 were enthusiastic about reducing the size of the prison population and treating offenders in the community. They decided to proceed with what had become by this time known as the 'What Works' Approach, despite the fact that it was a largely under-researched model that had not been proven to be successful. The validity of the research methodology being used to investigate and justify the use of 'What Works' has been challenged by the Home Office's own Statistic and Research Directorate (Harper and Chitty 2005).

### **4.3 'What Works' Principles.**

The current major Home Office approach in the UK to crime reduction is mainly based on the 'What Works' philosophy. The adoption of this approach has increasingly affected the sentencing policy of the Courts and the interventions used with offenders. It was launched in 1998 within the Probation Service, as part of an Evidence Based Practice initiative (Chapman and Hough 1998). At the centre of the initiative has been the borrowing of methods from a number of diverse psychological theories and a process of synthesising these, to produce the 'What Works' approach and Accredited Programmes for use with offenders. 'What Works' uses, primarily, elements of Social Learning Theory, Emotional Rational Therapy, Cognitive Behavioural Therapy, Problem Solving, and Cognitive Skills Training. The impetus for the development of 'What Works' was a reaction to Martinson's alleged claim (Martinson 1974), that 'Nothing Works'. Martinson did not in fact make such a bold claim. The heading on Martinson's paper on the treatment of offenders is presented in the form of a question, 'Nothing Works?' The article written by Martinson was based on a pre-print of selected findings from a larger study by Lipton and a number of other colleagues of Martinson (Lipton et al 1975). Martinson, in his 1974 paper 'Nothing Works?' states,

“This is not to say that we found no instances of success or partial success; it is only to say these instances have been isolated, producing no clear pattern to indicate the efficacy of treatment” (Martinson 1974).

Martinson's views were based on his findings that the available studies were generally very poorly controlled in methodological terms. He could not identify an

underpinning reliable theoretical base to the studies, and there were too many differences in the studies to arrive at clear conclusions about 'What Works'. The main study (Lipton et al 1975) and Brody (Brody 1976) also concluded that there was no evidence that attempts to reform offenders and reduce recidivism were particularly effective.

As a reaction to Martinson, the 'What Works' enthusiasts encapsulated their approach and communicated it through use of the rhetorical affirmation, 'What Works'. This created a platform for their methods. The title and use of a rhetorical question was a convenient and useful linguistic device to stifle incipient opposition or challenge, perhaps, since at best there was only tentative evidence to support their claims that it would be effective.

The ready acceptance by the UK Government of the 'What Works' agenda was surprising. Justification for the large amount of expenditure and faith placed in the 'What Works' approach was based largely on some mainly North American Meta-Analysis studies, and the untested opinion of a number of UK academics. It seems unlikely that the psychologists within the 'What Works' movement were not aware of the potential risk that predicted outcomes would not be achieved using treatment models based on inadequately researched theories. The effectiveness of psychological treatments, including Cognitive Behavioural therapy to change behaviour, had already been challenged.

Beech (1969) wrote:

“There is an understandable tendency, especially in popular expositions of psychological treatments to paint a somewhat optimistic picture of the results obtained. Opinions cannot, and should not be regarded as an adequate substitute for facts. It is reasonable to argue that we should base our conclusions about the relevance and importance of treatment upon the kind of evidence which we would consider to be necessary when choosing a car – not opinions, but figures concerning performance.” (Beech 1969 p. 257)

An acknowledgement of Beech’s warning about placing too much trust in Cognitive Behavioural Therapy does not deny the effectiveness of its use in clinical psychology, counselling or in treating phobias. It is, however, a reminder that success in one sphere should not be extrapolated as an indicator for its use in other fields without evidence to indicate its effectiveness. Evidence based on rigorous research that (Beech 1969, Hough 2005, Harper and Chitty 2005) suggests is necessary has not been produced by the advocates of ‘What Works’ to prove effectiveness of the Cognitive Behavioural Therapy approach within the Criminal Justice System.

The use of Meta-analysis as a suitable method for assessing research into criminal justice interventions is not universally accepted. Meta-analysis is viewed by a number of researchers as no-more-nor-less than describing, synthesising and analysing research findings (Wood 1995). In order to view the results from meta-analysis with confidence there needs to be a review of all aspects of the various research studies. For studies included in the research, knowledge of the content, methodology, the

variables and how they have been defined, the measures employed and the context of each study is required. The meta-analysis of studies that report on interventions delivered in different social and cultural settings, by differently qualified staff, using programmes that are not identical, and researched using different methodologies, makes it implausible that the research studies being synthesised are comparable. Given the above variations, the reliability of the meta-analysis conclusions can reasonably be viewed with some scepticism.

The 'What Works' enthusiasts, due to the lack of reliable data within the UK Criminal Justice system to enable them to carry out research to support their claims, resorted to the meta-analysis of North American and Anglo-American studies. They pointed to the usefulness of meta-analysis methods within the field of medicine, and claimed that results in treatment and interventions with offenders produced equivalent if not better results than drug and medical treatment studies. Such claims failed to acknowledge the difference between the more rigorous scientific methods and controls used in medical research, in comparison to the less rigid and quasi-scientific methods used within the criminal justice system. In order to illustrate the claim that medical and criminal justice interventions cannot be taken as synonymous, consider the following:

In medicine, a drug used in any number of studies is manufactured to the same chemical formula under stringent quality control, administered in prescribed doses and the time that each dose is given, recorded. Other checks on aspects of the

patient's body functions are also regularly carried out and recorded in patient treatment records. In comparison, when accredited programme treatments are delivered in a number of different criminal justice settings, difference in the programme material and methods of delivery used by facilitators can result in programme drift and loss of programme integrity. The environment and dosage, is not identical in all delivery situations, or rigidly controlled. These aspects cannot be taken into account in a meta-analysis of different criminal justice interventions. Eysenck (1978) raised the issue of the inclusion of studies that had very different parameters in meta-analysis, and levied the charge that 'apples were being counted with oranges'. The charge of trying to compare 'apples and oranges' at the same time, may to some extent be justifiably levied against those that drove the adoption of the 'What Works' approach with adult offenders in the UK criminal justice system. The results from meta-analysis studies that they most relied upon were from Juvenile delinquent studies (Lipsey 1992, Losel 1995).

#### **4.4 'Implementation and 'What Works' Outcomes**

The Government, through the agency of the Home Office placed considerable resources into using 'What Works' (Macquire 2004). Reductions of the order of 5% by 2004, in reconviction rates 2 years after the initial offence, and following attendance on a 'What Works' Cognitive Behavioural, General Offending Behaviour Programme, were forecast (Home Office 2001).

Targets were set for year 2001-02 planning for 20,457 commencements on 'What Works' Accredited General Offending Behaviour Community based programmes, with 14,320 completions within England and Wales. (Home Office 2000). Despite the failure to achieve these targets, or put in place the infra-structure required to support this bold initiative, a three year strategy was announced in 2001 relating to the SR 2000 Probation Settlement : What Works. The revised strategy was aimed at 20,000 offenders completing community based accredited Programmes in year 2002/3 and a further 30,000 completing programmes in year 2003/4. (Home Office 2001). When it became evident that these targets were clearly unattainable, the Home Office dramatically reduced the targets. The further lowered targets for Offending Behaviour Programme completions, and the actual number of completions achieved, published by the Home Office (Home Office 2004) are shown in Table 4.1

**Table 4.1**

**Home Office General Offending Accredited Programmes Reduced Targets and Actual Completions 2001-2004**

Year	Target	Completions	Shortfall	Shortfall %
2001/02	6,267	3,431	2836	45.25
2002/03	12,000	7,716	4284	35.70
2003/04	15,000	13,136	1864	12.43
Totals	33,627	24,283	8984	26.76

The above details show the continuing failure to meet revised target completions for the years 2000-2004 of 26.76%. The above table indicates an improvement in the level of shortfall for year 2003/04, however, this was only achieved by cutting the target for the period 2003/04 from 30,000 completions to 15,000 completions. If the Home Office had retained its original target for the period 2001/04 of 46,320, against the actual completions of 24,283 then the shortfall and failure to reach target completions would have been 47.56%.

There are a number of reasons for the failure to achieve targets. The implementation strategy of the Home Office and National Probation Directorate for Accredited Programmes was over-ambitious and lacked professional management. The Home Office Research study, 'The Impact of Corrections on Re-offending: A review of What Works' (Harper and Chitty 2005) reports;

'The essence of the task to understand 'what works' is to establish which policies and interventions the correctional services should implement in order to achieve their objective.----- The state of knowledge to date is not sufficient to do this in most cases. There are two main reasons for this: poor implementation and sub-optimal research design. ---- over the last decade or so, many of the interventions delivered by the correctional services have suffered from poor implementation.' (Chitty 2005 p. 79).

The appointment of training consultants and the standard of training provided for programme tutors was poor. A large number of the trainers appointed were known by

me. Despite a large component of the 'What Works' accredited programmes being based on Cognitive Behavioural Psychology approaches, the external training organisation appointed did not employ psychologists. Internal appointees within the Probation Service trained by the external training organisation were mainly probation officers and Probation Service officers with no psychology qualifications. In my role within the Probation Service, I manage a team of programme tutors. The common practice across the whole Probation Service was to appoint staff as tutors who did not necessarily have previous experience of working in probation or have qualifications in psychology or sociology. Resulting from the quality of training tutors received, they only had a superficial understanding of the 'What Works' approach and the psychological models underpinning accredited programmes. The entire training process was and still is, dogged by weak administration and inadequate management. Training is arranged on an ad hoc basis at short notice, instead of on a planned strategy. The implementation of the Accredited Programmes was criticised in the Accreditation Panel Reports (Accreditation Panel Report 2004) and in other evaluations (Raynor 2004), (Hough 2004). The failure to achieve the planned reduction in reconviction rates and the failure of the implementation strategy for Accredited Programmes had an effect on the number of Programmes delivered to offenders. More crucially however, attrition rates have been very high on the Programmes. A number of studies into the cause of the high dropout rate and failure to attend Programmes have been carried out (Kemshall 2002).

Research findings show that a considerable portion of the content of the 'What Works' Accredited Programmes used within the Probation Service are viewed by a large number of offenders as simplistic, unrealistic, and irrelevant to them. Offenders complain that the Programme session examples do not reflect the daily situations they have to deal with. The concepts and Programme examples used to deliver programme strategies, and the suggested ways of dealing with situations likely to cause offenders' to offend, are not representative of their real-life experiences and circumstances. The programme examples either portray circumstances an offender would rarely, if ever, encounter, or when advice on handling the situations is given, then the advice and strategies offered would not work. This disengagement of offenders from the programmes will ultimately be fatal to their usefulness and success.

The weakness of the 'What Works' approach is becoming more evident as reconviction data and more stringent research investigation into its implementation and effectiveness is carried out. Table 4.2 presents a tables from Home Office Research Study 291 (Harper and Chitty 2005) showing reconviction study results for Programmes delivered in prisons and in the community.

**Table 4.2**

Table 2 (Home Office reference ) 'What works' evidence: offending behaviour programmes

<b>Study</b>	<b>Intervention</b>	<b>Rating</b>	<b>Key findings</b>	<b>Sample sizes</b>	<b>Critical comments</b>
Cann <i>et al.</i> , (2003) England and Wales	Accredited Enhanced Thinking Skills (ETS) and Reasoning & Rehabilitation (R&R) Prison	4	No differences in the one and two-year rates between adult men or young offenders who started a programme and an individually matched comparison group. Significantly lower reconviction rate for men and young offenders who completed after one year but not two.	Treatment men: 2,195 Treatment young offenders: 1,534 Control men: 2,195 Control young offenders: 1,534	No random assignment/ no control of dynamic factors.
Falshaw <i>et al.</i> , (2003, 2004) England and Wales	Accredited ETS and R&R Prison	4	No significant differences in the two-year reconviction rates for adult male prisoners who had participated in cognitive skills programmes and individually matched comparison group who had not.	Treatment: 649 Control: 1,947	No random assignment/ no control of dynamic factors.
Friendship <i>et al.</i> , (2002, 2003) England and Wales	Pre-accredited ETS and R&R Prison	4	Significantly lower reconviction rate of 14 percentage points for medium-low risk and 11 percentage points for medium-high risk adult male	Treatment: 667 Control: 1,801	No random assignment/ no control of dynamic factors.

			offenders compared to individually matched control group.		
Friendship <i>et al.</i> , (2003) England and Wales	Pre-accredited Sex Offender Treatment (SOTP) Prison	4	Significant lower reconviction rate of 3.5 percentage points in two-year reconviction rates for sexual or violent offences for treatment group compared to individually matched control group.	Treatment: 647 Control: 1,910	No random assignment/ no control of dynamic factors.
Allam, (1998) England and Wales	Pre-accredited SOTP Probation	3	Significantly lower reconviction rates of 8.1 percentage points for child sex abusers compared to control group followed up for 1 to 3 years.	Treatment: 155 Control: 74	Weakly matched comparison group and small sample.
Dobash <i>et al.</i> , (1996) Scotland	Two programmes for domestic violence Probation	3	Significantly lower rates in frequency of violence and further violence for programme group at 12-month follow-up compared to control groups, based on partner's reports.	Treated: 51 Control: 71	Weakly matched comparison groups and small sample.
Farrington <i>et al.</i> , (2002) England and Wales	ETS as part of intensive regime for Young Offenders Prison	3	Significantly lower rates by 10 percentage points for experimental group after one year but not after two when compared to control group. Experimental group took longer to re-offend and	Treatment: 175 Control: 127	Weakly matched comparison group and small sample.

			committed significantly fewer crimes after two years.		
Raynor and Vanstone, (2001) England and Wales	Pre-accredited R&R Probation	3	Lower reconviction rate for community-sentenced treatment group compared to prison-sentenced group after one year but not two. Lower rates for completers.	Treatment: 107 Control: 82	Weakly matched comparison groups and small samples.
Steele and Van Arendsen, (2001) England and Wales	Think First Probation	3	Higher reconviction rate after one year for treatment group of adult men and women compared to non-treatment group serving community sentence in same period.	Treatment: 74 adult men and women Control: 40	Weakly matched comparison group and small sample.
Stewart-Ong <i>et al.</i> , (2003) England and Wales	Pre-accredited Think First Probation	3	Significantly higher two-year reconviction rate of 24 percentage points for adult males on community-based programme compared to adult males sentenced to custody without programme.	Treatment: 267; Control: 254	Weakly matched comparison group.
Sugg, (2000) England and Wales	Aggression Replacement Training (ART) Probation	3	Lower rate of 9.2 percentage points for treatment group compared to non-treatment group with similar community penalties. Lower rates for completers.	Treatment: 153 Control: 153	Weakly matched comparison group and small sample.

Sugg, (2000) England and Wales	Drink Impaired Drivers (DID) Probation	3	Lower rate of 2 percentage points in reconviction for drink-related offences for treatment group compared to custodial sentence group and lower rate of 1 percentage point compared to other disposals.	Treatment: 100 Comparison: 101	Weakly matched comparison group and small sample.
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The research ratings in the above table have been inserted by the Home Office researchers. They are based on the Scientific Methods Scale (Sherman et.al.,1997), but adapted for the purpose of the Harper and Chitty report on programme outcomes as measured by reconviction. Level 1, is the lowest standard and level 5, the highest standard. Table 4.3 below presents a description for each standard.

**Table 4.3**

Standard	Description
Level 1	A relationship between intervention and reconviction outcome (intervention with no comparison group)
Level 2	Expected reconviction rates (or predicted rates) compared to actual reconviction rates for intervention group (risk predictor with no comparison group)
Level 3	Comparison group present without demonstrated comparability to intervention group (unmatched comparison group)
Level 4	Comparison group matched to intervention group on theoretical relevant factors e.g. risk of reconviction (well matched comparison group)
Level 5	Random assignment of offenders to intervention and control conditions (Randomised Control Trial)

The results in the above tables confirm that accredited programmes have been less effective at reducing reconviction rates than had been predicted. The research ratings also indicate that the research methods have not been particularly robust. The lack of control groups within the research methodology with considerable variation in results between studies raises doubts about their reliability and the consistency of the research methods employed. It has become evident from my discussions with other managers and programme tutors responsible for the delivery of Accredited Programmes in the probation service that with high attrition rates from programmes and low success rate in changing offenders' attitudes and behaviour, the cost of delivery outweighs the benefits.

Despite increasing evidence of the lack of success of Accredited Programmes, the Home Office continues to introduce further Programmes commissioned from the same North American and Canadian Sources. The implementation procedure for these latest programmes shows no improvement on the roll-out of the first Accredited Programmes and in some instances appears to be worse. There is still a lack of adequate training for staff. The training is being delivered by having a few Programme tutors trained by the Programme Developers, then cascading this training, using these newly trained staff as National Trainers. In some instances, the appointed National Trainers have less than two years service within Probation. Through no fault of their own, these officers have limited experience of working with offenders. They also have limited knowledge of wider Probation Service Policies and how the Probation Service is managed. This limits their ability to address queries from programme tutors on training, that are not programme specific, but have a

relevance to wider Probation Service policy and conflicts with the advice being given within the Programme tutor training particularly if the questions are not programme specific. A similar problem exists when overseas consultants and external trainers are used to deliver programme training.

There is increasing evidence of deterioration in the overall training of programme tutors. Implementation of new programmes is quite chaotic. Given the present situation, a further deterioration in 'What Works' and Accredited Programme outcomes can be expected with a commensurate lack of success in reducing recidivism.

#### **4.4 Research Evidence Collection and Evaluation**

As indicated previously, the 'What Works' approach initially portrayed as research-driven, was 'sold' to politicians as an effective way of intervening with offenders to reduce recidivism and the level of crime (Macguire 2004). Mair (2004) wrote, 'Early what works conferences seemed to me to be akin to an evangelical revivalist movement with charismatic leaders being the Canadians – we were being asked to buy into cognitive behaviouralism as an article of faith' (Mair 2004 p.16). Mair comments that this may be appropriate for a religious movement but may not be an ideal basis upon which to construct a new way of working with offenders in probation. There is increasing evidence that 'What Works' is failing to achieve its intended goals (Raynor 2004). Raynor's article is largely a summary of some other researchers' findings, the main issues he highlights for accredited programmes are shown below:

- Participant completion rates are very low at 28% for the Think First Programme.
- Low-risk offenders likely to complete, but their reconviction rates did not improve.
- Reconviction rates slightly worse for offenders who attended the programme in the community than for a custodial comparison group.
- Poor implementation of Programmes and failure to keep to implementation plan
- The typical (research) results are not confirmation of 'What Works'.
- There are doubts about the quality of reconviction information available from central databases for evaluation purposes.

Raynor refers to the overall Crime Reduction Programme as a 'politically driven initiative'.

Some researchers into the effectiveness of the Crime reduction Programme, 'What Works' and Accredited Programmes, claim that their research findings were withheld from publication by the Home Office, when their findings showed that the Approach was not working effectively. Other studies were 'cherry picked' in order to show the Crime Reduction Programme in the best possible light. It is also suggested that the Home Office argued to have some studies re-analysed and re-interpreted to produce results more palatable to the Home Office (Macguire 2004).

It is claimed insufficient attention to the implementation of the 'What Works' Accredited Programmes, and the differences between academics' and policy makers' understandings of research, has contributed to its failure to achieve the envisaged goals and successful outcomes (Maguire 2004).

In addition, action was initiated to implement the collection and analysis of research data from participants on the programmes to evaluate programme effectiveness (Home Office 2000). The data was to be collected through Psychometric testing, the collation of data relating to attendance and completion of Programmes by participants, and reconviction data available to the Home Office (Home Office 2000). A new computer system specifically intended to facilitate this research IAPS (Interim Accredited Programme Software) was announced in 2000 and intended to be quickly put into operation across the entire National Probation Service (Home Office 2001). The introduction and utilisation of the computer data collection system encountered difficulties, and by December 2004, was still not being used nationally to collect data. A mountain of paper records of psychometric testing and performance data built up in most Probation Service Areas. Due to associated storage difficulties, many of these records have been destroyed and the data lost.

The psychometric measures used to collect data and evaluate effectiveness has also limited research into the 'What Works' approach. Some of the psychometric tests that were chosen to research the 'What Works' approach, presumably on the advice of the Programme developers, or at least with their tacit agreement, are very old. In addition they were developed, used and validated with a very different population from the UK 'What Works' General Offending Behaviour Programme participants. For example, some of the measures were developed and used with American high school and University undergraduate and post-graduate students. Others were developed and validated only with juveniles and young adolescents. Some of the

tests have never been validated for use with offenders. One of the measures, the Levenson Scale, had been severely criticised and discredited by a number of experts in the field of psychometric testing, prior to the Home Office deciding to include it in its test manual (Kline 2003). Despite advice given to the Home Office over five years ago by psychologists and psychometric test administrators (myself included), that most of the psychometric tests were incomprehensible and irrelevant to offenders they chose to take no action. It is presumed, the intransigence of the Home Office displayed was influenced by the 'expert' academic advice of the 'What Works' movement.

A belated attempt to improve the Psychometric tests used with offenders, was made in 2004. This has resulted in fewer tests being used; however, some of the new measures have been developed by 'cherry picking' from a number of different measures and rolling these together into new questionnaires. These new measures have not been properly validated and this method of producing new tests breaches good practice for developing psychometric measures. In addition, further Social Attitude Measures from America and never properly validated with a UK population before being utilised are included. In view of the cultural difference between America and the UK, this is a serious oversight.

The offender population participating in the UK 'What Works' Approach is very large. Criticism of the Home Office and the National Probation Directorate for their failure to take the opportunity to develop and validate psychometric measures, fit for purpose, and relevant to the 21<sup>st</sup> century, cannot be avoided. This was an opportunity to take

a leading world role and generate income for the Criminal Justice system by marketing the new tests. Instead, there was a large expenditure purchasing test licences from other countries for tests that only partly meet our requirements.

Research to investigate the effectiveness of Accredited Programmes has mainly been in the form of prospective studies. With the data collection problems identified above, the historical database used for these studies is small and limited. In most instances there were no control group samples and therefore the predicted results were speculative. Home Office Research and Statistical Developments Directorate in a recent report indicate:

‘Where there were no control groups the claims made based on the research, are highly speculative making it virtually impossible to attribute with any certainty changes in the behaviour of offenders to the Accredited Programmes, or the ‘What Works’ approach’. (Harper and Chitty (2005) p.80).

The findings from these studies have shown scant evidence that the ‘What Works’ approach has reduced reconviction significantly. Programmes delivered in the community have shown that reconviction rates for offenders that undertake programmes are worse than for offenders given other Probation disposals.

Home Office and National Probation Service Directorate responses to these findings have been interesting. The suggestion has been made by the Home Office Minister for Prison and Probation, that the statistical methods employed to measure these Programmes have been flawed, and the results are in fact much better than the

research studies have shown. The likelihood of this scenario being correct is questionable, given the high level of expertise within the Home Office Research and Statistical Development Directorate. It has recently been revealed that the Home Office Research and Development Department expressed reservations about some of the proposed research into Accredited Programmes, but the Offending Behaviour Unit went ahead and commissioned the research (Harper and Chitty 2005).

A further change in the way that the effectiveness of the 'What Works' approach is being communicated has been adopted. The original vision using 'What Works', and the target set for reducing reconvictions by 5% by 2004 for offenders punished by community supervision, (Home Office 2001). The new measure being adopted will only compare reconviction rates with the predicted rate for reconviction. This redefining of the parameters set for measuring 'What Works' appears to have been adopted to mask the ineffectiveness of the approach. This is also linked to an announcement that different statistical methods are to be employed in the future to measure 'What Works' (LeVay 2004).

The Correctional Services Accreditation Panel, an international panel of academics and practitioners, appointed to accredit programmes and safeguard the quality of programme delivery, has been critical of the research and evaluation of accredited programmes. In the Panels 2003-4 Report, in relation to evaluation they record their suspicion that there might be a gap between "what had been promised and what had actually taken place." The panel also expressed an intention to "go tough" in relation

to its application of the evaluation criteria. (Correctional Services Accreditation Panel Report (2004).

Despite the above weaknesses in data collection and stringent evaluation of Programmes, and also the failure to achieve targets with respect to completion rates, the Home Office has pressed on with the introduction of narrower focussed programmes aimed at addressing drink driving offences, anger management and domestic violence. Development of further Programmes is still in progress, and the current intention is to introduce these within the Probation/National Offender Management Service. The failure to put adequate structures in place to support the 'What Works' Approach, is a factor that has contributed to its ineffectiveness and the failure to achieve the hoped for reduction in offender reconviction rates.

There is a rearguard action by those who instigated the 'What Works' approach to shore-up and re-launch some of the original Accredited Programmes. Within the Probation Service enthusiasts for the re-launch, there is a group that do not understand research evidence or choose to ignore it, and genuinely want to keep the 'What Works' faith. Politicians and government ministers are also caught up in this dilemma. The government made a large financial and political investment in the 'What Works' Approach and Accredited Programmes in the Spending Reviews in 2000 and 2003. Having invested so many resources it is difficult for the government to admit that it has not been as successful as they believed it would be.

If offenders' attitudes are to be changed and they are to benefit from the sentences imposed by the courts, then the punishments given and interventions used with them must be credible and relevant to the offender.

This chapter has examined the implementation and use of the 'What Works within the UK criminal justice system. The use of 'What Works' accredited programme outcomes in relation to my research findings will be discussed later in the thesis.

## **Chapter 5 Methodology and Pilot Study.**

### **5.1 Introduction**

In this chapter an account is given of my reasons for carrying out the research and the methodology used for the pilot study. At the end of the chapter are listed the findings that influenced the design for the main study.

### **5.2 Background to the Research.**

In my role within Teesside Probation Service I was responsible for designing, implementing groupwork programmes based on the psychological cognitive behavioural approach and evaluating their outcomes. This was at the same period in 1997 as the New Labour government was adopting and planning to introduce similar 'What Works' accredited programmes nationally within the probation service in England and Wales. I was involved in piloting some of the programmes before they became accredited for national use. The 'What works' approach and accredited programmes were designed on the premise, that offenders committed crime because of faulty thinking, poor problem solving skills and a lack of social skills. My own programme designs followed a similar approach.

Although not directly involved with offenders on a daily basis, I became aware of this when I did meet with offenders during my investigation of programme outcomes. I also became aware when working with colleagues to implement programmes and observe their delivery of the programmes, that views about offenders that underpinned the 'What Works' approach did not correspond with offenders views and

attributions about their offending. I therefore decided to investigate whether the reasons that have been given to explain the causes of offending and the treatment prescribed for use with offenders were valid and sufficiently took into account the views of offenders to be relevant and effective. My research seeks to identify the difference in attribution of cause and offence seriousness between offenders and sentencers. It will also, from its findings provide information on why offenders believe they offend.

## **5.2 Pilot Study Methodology.**

An initial problem was that working within the Probation Service there was the difficulty of being objective about the research and eliminating researcher bias. I was not directly responsible for the case management of the offenders interviewed and worked in a non practitioner role within the probation service. The research being carried out was not intended to inform or change immediate practice and was of an evaluative type. Griffith and Tann (1992) indicate that all evaluative research should not be considered as action research. The research methodology did not include focus groups or dialogue with participants.

The research was not used to develop or influence practitioner practice and the methodology was reviewed by my research supervisor acting in a critical friend model (Miller 1990). The ethic and research methodology was based on the British Psychological Society guidelines for members engaged in research.

The initial plan was to look for existing measures that could be used in the research to measure offenders attributions. The Blame Attribution Scale, Gudjonsson (1984), (Gudjonsson and Singh, 1989) and Attribution of Blame Scale, Loza and Clements (1991), were considered. Investigation revealed that the Attribution of Blame Scale had only been used with incarcerated offenders within the Canadian Penal system. There were only 197 participants within the Canadian study. The average number of previous convictions for each participant was 9.44 prior to participation in the study. Of the total sample 18% were serving life sentences. The Canadian research findings using the Attribution of Blame Scale did not support the Canadian study predicted outcomes.

The possibility of using Locus of Control scales was considered. The dependability of this type of measure to produce reliable results or measure what the scale developers claimed, namely external and internal control factors, has been disputed by a number of researchers (Kline 1993). Lefcourt (1991) argued that Locus of Control scales need to be tailored to particular populations. This made it impossible to use a locus of control measure with offenders and magistrates. Magistrates in their responses could only express attributions about the locus of control influencing offenders.

Following the investigation of existing measures, the view was formed that there were no existing scales that would enable the factors in my research to be investigated. The Blame Attribution Scale and the Attribution of Blame Scale had too narrow an

offence focus. My research sample would primarily involve offenders on probation orders convicted of offences within the Home Office Standard List offence category. No existing measures of attribution could be found that had been validated for use with offenders and sentencers. The decision was made to design a new measure and to evaluate its suitability within a pilot study.

The options were to use either a quantitative approach or a qualitative approach. The attraction of a quantitative approach was the opportunity to eliminate through statistical analysis, effects that might arise by differences in intellectual ability and communication skills, between offenders and sentencers. If questionnaires were used for participants to complete themselves, then offenders with literacy skill difficulties would have been disadvantaged. The decision to use a semi-structured interview with a standard script to collect data was adopted so that respondents with limited comprehension and literacy skills could be given the opportunity to ask for clarification of the questions if needed, and give verbal responses. The interview technique was also adopted to avoid the reluctance of respondents' to complete written questionnaires for reasons of confidentiality. An interview approach using a standard script helped to minimise any effects that might arise due to differences in intellectual ability and communication skills of offenders and magistrates.

#### Pilot Study

An initial pilot study was carried out by me in the Teesside Probation Service area to test the questionnaires and measures designed for use with offenders. The sample

for the pilot study consisted of 30 offenders sentenced by the Courts to a Probation Order of 12 months or more for a variety of offences. On initial contact the offenders were informed about the aims and nature of the research, and asked if they were willing to take part in it. They were informed that participation in the study was entirely voluntary, and should they decline, no record of their refusal would be kept nor details of their refusal made available to their Probation Officer. The offenders approached to take part in the research were all male and randomly selected. Only one individual approached declined to take part. All of the participants were between the ages of 17-27 years, with the exception of one participant who was in the age group 37+ years. Each of the interviews between the researcher and the participant were carried out within offices of the Teesside Probation Service. Only the researcher and participant were present at the interview. Data was collected using a Likert scale for two sections of the questionnaire, and a series of questions requiring an agree/disagree response for the remainder. The Likert scale responses were numerically coded to allow quantitative analysis of participants' responses. A semi-structured interview technique was used, with the researcher introducing the questions to each participant using a standard script. The respondents were asked to give one answer for each question indicating which response represented their view best from the possible available responses. The Social and Environmental section of the questionnaire asks the offender to identify causes of their offending. This is not intended to imply that it made their offending inevitable. The term 'cause' is often used loosely by offenders to explain the reason why they knowingly committed an offence. A typical example is, that of a person who drives without

insurance. This type of offence is often explained or justified by the offender stating, 'I had to get to a place and had no alternative transport'. Another example is the drug user who states, 'I had to shoplift, steal, burgle to get money for heroin'. Cause is used in this way, not in the sense of a compulsive factor that makes offending inevitable, but as an offender's attribution and belief about why he offends.

The factor identified as 'cause' is often not directly related to the offence committed. The drug users' need for a 'fix', causes them to offend. In the case of the drug user, psychological and physical needs for drugs, is for him the cause of his offending. In reality, however, psychological and physical needs are probably only two of a number of predisposing factors. The importance of the research, however, is to identify the offender's attribution of cause. After completion of the questionnaire, the participant was given an opportunity to ask any questions, or seek clarification of any matters relating to their participation in the research study. The questionnaire was administered again 3 weeks later, with 10 of the respondents, to enable test-retest reliability of the questionnaire to be assessed. The questionnaire Fig 5.1, is shown on the following pages.

Fig 5.1

Offender's Causal Attributions of Offending Survey

Name..... Offender's Ref. No.....

Age Group 17-21 22-26 27-31 32-36 37+ Sex M F

Category : Probation Prisoner On License

**Social/Environmental Factors**

Please indicate which of the following factors you see as cause of your offending and to what extent they cause your offending behaviour?

1. Influence of friends	greatly	quite a lot	moderately	a little	not at all
2. Lack of money	greatly	quite a lot	moderately	a little	not at all
3. Family members	greatly	quite a lot	moderately	a little	not at all
4. Lack of job	greatly	quite a lot	moderately	a little	not at all
5. Easy opportunity to commit crime	greatly	quite a lot	moderately	a little	not at all
6. Housing and social conditions	greatly	quite a lot	moderately	a little	not at all
7. Excitement of offending	greatly	quite a lot	moderately	a little	not at all
8. Alcohol misuse	greatly	quite a lot	moderately	a little	not at all
9. Drug misuse	greatly	quite a lot	moderately	a little	not at all
10. Custom in neighbourhood	greatly	quite a lot	moderately	a little	not at all

## Personal and Social Perceptions of Crime

Fig 5 .1contd.

Which types of offence do you consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

## Offence Motives

Please indicate which of the following factors you agree or disagree motivated your offending.

1. Personal needs	Agree	Disagree
2. Family needs	Agree	Disagree
3. To get what society owes me	Agree	Disagree
4. Need for money	Agree	Disagree
5. Need for drugs	Agree	Disagree
6. Boredom	Agree	Disagree
7. Revenge against others	Agree	Disagree
8. Feeling unjustly treated by society	Agree	Disagree
9. Lack of work	Agree	Disagree
10. Need for excitement in life	Agree	Disagree

**Justification for Offending**

Please indicate which of the following factors you agree or disagree excuse or make your offending reasonable?

- |   |       |          |
|---|-------|----------|
| 1. Need to offend to survive  | Agree | Disagree |
| 2. Need of money  | Agree | Disagree |
| 3. Everybody commits offences                                       | Agree | Disagree |
| 4. There are no victims of my offending                             | Agree | Disagree |
| 5. Everybody would offend if they thought they would not get caught | Agree | Disagree |
| 6. I'm just taking what society owes me                             | Agree | Disagree |
| 7. My offending does not really hurt anyone                         | Agree | Disagree |
| 8. I'm just doing what others do to me                              | Agree | Disagree |

**Neutralisation of Responsibility**

Please indicate which of the following factors you agree or disagree lessens your responsibility for offending?

- |   |       |          |
|---|-------|----------|
| 1. I need to offend to live   | Agree | Disagree |
| 2. It's the government to blame, they don't give me enough to live on | Agree | Disagree |
| 3. I offend because I don't have a job                                | Agree | Disagree |
| 4. The people I offend against can afford it                          | Agree | Disagree |
| 5. My offences are not really a crime                                 | Agree | Disagree |
| 6. I don't have any other choice                                      | Agree | Disagree |
| 7. Nobody loses, insurance companies pay                              | Agree | Disagree |
| 8. I was provoked   | Agree | Disagree |
| 9. I just can't stop myself   | Agree | Disagree |

### **5.3 Pilot Study Results**

A factor analysis of the participant's responses was used to identify the main factors given by offenders, in the Social/Environmental section of the questionnaire, as the causes of their offence behaviour. The factor analysis identified three main factors as causes of offending in the following hierarchical order:-

#### **Social/Environmental Factors.**

Factor 1 Substance Misuse/Social Influences

- a. Alcohol misuse (negatively correlated)
- b. Custom in the neighbourhood
- c. Drug misuse
- d. Housing and social conditions (negatively correlated).

The negative correlation for housing and social conditions suggests that the generally poor housing stock in the Teesside area is not a major factor.

It should be noted that alcohol misuse being negatively correlated, implies that excessive use of alcohol was not identified by participants as a factor that led to offending.

Factor 2 Economic/Drug Misuse

- a. Drug misuse
- b. Lack of job
- c. Lack of money

**Factor 3 Social**

- a. Influence of friends
- b. Easy opportunity to commit crime
- c. Family members

A rotated component matrix (Table 5.1) is shown below

**Table 5.1**

An analysis of responses was carried out using Cronbach's alpha to test the internal consistency and inter-item reliability of the questionnaire. Results on the test for internal consistency and inter-item reliability on the questions measuring Social/Environmental factor as causes of offending showed a value (alpha = .4333). The Covariance Matrix indicated that there was a positive covariance between the majority of the questions. Question 6, '**Housing and social conditions**' and

Question 8, '**Alcohol misuse**' were shown by the Covariance Matrix to be negatively correlated with respect to the other questions within the Social and Environmental section of the Pilot Study questionnaire.

The alpha value obtained in the analysis was low. An examination of the data indicated that responses to the questions relating to housing and social conditions, and alcohol misuse, had considerably influenced the alpha value obtained. The sample size for the Pilot Study was small, and it was recognized that given the small sample size, the nature of the participant's offences, and the similarity of personal circumstances of the participants, then these factors could have skewed the result. Individual follow-up interviews were carried out with participants to investigate the reason for their responses and establish the validity of the responses that had been given. Some of the participants were residents in the Probation Hostel, and therefore, given hostel rules and accommodation conditions, these factors were not a dominant feature in their life. In addition, a number of the sample participants were found to be in stable relationships with satisfactory housing arrangements. An investigation was carried out by randomly interviewing offenders who had not participated in the pilot study. The purpose was to establish whether they identified alcohol misuse and housing or social conditions as factors influencing them to offend. Responses from this group indicated that housing and social conditions, or alcohol misuse, were not considered relevant to their offending. It was decided in view of the above results to omit the two negatively correlated questions from the Social and Environmental section of the questionnaire and recalculate the alpha score to identify

the difference that resulted. The resulting improvement in the alpha score when recalculated is shown in the Factor 1 analysis discussed later in the chapter, with respect to revision of the Pilot Study questionnaire.

In view of the low alpha score in the test of internal validity and inter-item reliability referred to above, a Cronbach's alpha test was run in respect of each of the factors. The results show that there is better internal validity and inter-item reliability within each factor.

The alpha score for each factor is shown below.

Factor 1 value (alpha = .50477) with negatively correlated variables excluded.

The reason for recalculating the alpha scores omitting the negatively correlated questions relating to housing and social conditions, and alcohol misuse from factor 1 was to establish how much these elements had affected the reliability of the questionnaire. The difference was quite large. When these elements were omitted the alpha score improved from 0.4333 to 0.5048. The revised score showed that the measure with these factors omitted, was more reliable. This raised an issue whether to retain these questions within the measure with the score values reversed or whether to omit them from the questionnaire to be used in the main study. The decision with respect to the main study is discussed later in the chapter.

Factor 2 value (alpha = .6537)

The alpha score 0.6537 is moderately large. The questions within this factor relate to personal responsibility. Responses in the Pilot study indicate that offenders accept some responsibility for their own actions. They attribute the cause of their offending behaviour to themselves, and do not blame it all on their social environment, circumstances or other people.

Factor 3 value (alpha = .4287)

The alpha score 0.4287 is low and very similar to that obtained for factor 1. It is different, however, from factor 1 in that none of the items are negatively correlated with other questions within the Social and Environmental Factor section of the questionnaire. The items all relate to interpersonal relationships, and the scores for items within the factor are strongly correlated with each other. The scores were lower than desirable, but in view of the small sample size, it was decided to persevere with the majority of pilot study questionnaire items, and carry out a reassessment when a larger sample was available from the main research study.

Results suggest that offenders view the causes of offending as an interaction of a number of related factors. The pilot study findings indicated that offenders see customs in their neighbourhood and drug misuse, as major causes of offending in factor 1. This is consistent with Home Office research findings, that indicate 60% of all acquisitive crime is drug related. The fact that alcohol misuse is strongly negatively correlated in this factor, was to be expected, since other research has

indicated that offenders who seriously misuse drugs, particularly opiates, do not tend to misuse alcohol. The misuse of substances by offenders in the survey is shown in Table 5.2 below

**Table 5.2**

Offenders misusing drugs and alcohol	Offenders misusing drugs only	Offenders misusing alcohol only
4	22	2

The influence of **'customs in the neighbourhood'** is to be expected. Most drug users tend to operate within community areas 'policed' and controlled by dealers. There was a weak correlation between Customs in the neighbourhood (factor 1) and the influence of friends (factor 3). The negative correlation of housing and social conditions in factor 1, indicates that offenders' do not view **'poor housing conditions'** as a major factor they believe encourages them to offend. The response on housing and social conditions is surprising. It is generally assumed in criminology research findings, that social and environmental deprivation, poor housing, lack of social amenities, correlates strongly with offending. Taken at face value, the responses by participants in the pilot study seem to run contrary to the commonly held view. This is particularly surprising, since the housing stock in the Teesside conurbation tends to be generally of poor quality, and the level of deprivation high, due to the adverse effects caused by heavy industry and economic downturn.

Factor 2 identifies a link between drug misuse, lack of job, and lack of money. This association of interactions may appear obvious, however, the indication of lack of

employment as more relevant than lack of money, challenges the view that a significant number of offenders prefer to live off of Social Security Benefits, as an alternative to seeking employment. There has been some urban regeneration in the Teesside area in recent years, but unemployment remains higher than the national average. The indications are, that social and urban regeneration that does not bring with it significant employment opportunities, is likely to be ineffective in reducing crime in the area. Other studies carried out by the Home Office, indicate that finding gainful employment for offenders reduces recidivism (May 1998).

Social relationships are indicated in Factor 3 as causes of offending. In view of the important contribution of drug misuse indicated in factor 1 and 2, it is not surprising that the **'influence of others'** is indicated as a cause of offending, given the current drug culture and habits in the Teesside area. The general attitude within a neighbourhood appears to contribute to the causes of offending. This may suggest that where unemployment levels are high, a communal sense of helplessness and entrapment arises, which encourages a culture of offending to develop, as the principal method of coping with economic deprivation. Anecdotal evidence and accounts from probation interview records suggest this is the case. The influence of **'other family members'** is consistent with police and probation records, which show that in many immediate, and extended families, there is a shared culture of crime.

## **Offence Seriousness**

The factor analysis identified the four following group of offences as considered most serious in the following hierarchical order.

### Factor 1 Offences against the Person/Property

- a. Offence against a rich person
- b. Offence against a company
- c. Offence against a neighbour
- d. Criminal damage
- e. Offence against a friend

### Factor 2 Level of Association with Victim/Nature of Offence

- a. Assault/violence
- b. Offence against a stranger
- c. Offence against police

### Factor 3 Social Responsibility and Nature of Offence

- a. Alcohol misuse
- b. Offence against poor person

### Factor 4 Social Misdemeanour

- a. Speeding

A rotated component matrix Table 5.3 is shown on the following page below.

**Table5.3**

**Rotated Component Matrix**

	Component			
	1	2	3	4
S2Q9	.738			
S2Q3	.736			
S2Q4	.641			
S2Q5	.580			
S2Q7	.539			
S2Q6		.796		
S2Q8		.626		
S2Q11		.618		
S2Q2			.809	
S2Q10			.754	
S2Q1				.951

Extraction Method: Principal Component Analysis.  
 Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 6 iterations.

The results on the section of the questionnaire dealing with perceptions of the seriousness of offences showed a consistent response between offenders. The view expressed about offences against a child was expected. The hierarchy within Factor 1 appeared to reflect, how offenders perceive sentencers views of seriousness, rather than their own. The fact that ‘**offences against a rich person**’ and ‘**criminal damage**’ appear in Factor 1, showed a perception of Class structures and attitudes within society that would not normally be associated with offenders. The above results, raised the possibility that offenders were answering the questions in relation to what they believe are the values of society in general and sentencers, instead of indicating their own views. To test this hypothesis, further interviews were carried out with the participants. The subsequent interviews established that offenders had responded by giving what they thought would be the view of sentencers. In order to obviate this possibility, it was decided to revise the questionnaire for the main

research data collection, to include separate sections that would elicit from offenders their understanding of; a) the view of society in general, and, b) their personal view.

The hierarchical structure of Factor 2, reflects perceptions of victims. It was surprising that the category of **'assault/violence'** in this factor did not appear in Factor 1. Perhaps, again, this emphasises the importance often placed on property, rather than people within society. The revised questionnaire for the main research study, that will enable both general and personal views of the social perceptions of crime to be expressed, should assist in clarifying this aspect of the research.

Factor 3 categories indicated that substance misuse impinges on the sense and values of social responsibility. The factor 4 response regarding **'speeding'**, was as expected.

### **Offence Motives, Justification of Offending and Neutralisation of Responsibility.**

Data collected in these sections of the pilot study questionnaire, were compared with the responses for the Social and Environmental factors, and Offence Seriousness responses.

An analysis of the relationship between similar Social and Environmental factors and Offence Motives was carried out. In order to compare the Social and Environmental factors interval data, with the Offence Motives categorical variables, a crosstabulation and Eta analysis, was used to measure correlations. The results for the compared

variables, are shown below. The dependent variable is shown in the left hand column of each of the following tables: 5.4, 5.5, and 5.6.

**Table 5.4**

**Social and Environmental Factors/Offence Motive**

<b>Social/Environmental Factor</b>	<b>Offence Motive</b>	<b>Eta Value</b>
Lack of money	Need for money	0.624 **
Excitement of offending	Need for excitement in life	0.084 NS
Drug misuse	Need for drugs	0.618 **

<b>Offence Motive</b>	<b>Social/Environmental Factor</b>	<b>Eta Value</b>
Need for money	Lack of money	1.00 **
<b>Need for excitement in life</b>	Excitement of offending	0.234 NS
Need for drugs	Drug misuse	0.680 **

\*  $p < 0.05$  \*\*  $p < 0.005$  NS not significant

A similar comparison was carried out between a) Social and Environmental factors and Justification of Offending, b) Social and Environmental factors and Neutralisation of Responsibility for Offending.

**Table 5.5**

**Social and Environmental Factors/Justification of Offending**

<b>Social/Environmental Factor</b>	<b>Justification of Offending</b>	<b>Eta Value</b>
Lack of money	Need to offend to survive	0.463 *
Lack of money	Need of money	0.514 *

<b>Justification of Offending</b>	<b>Social/Environmental Factor</b>	<b>Eta Value</b>
Need to offend to survive	Lack of money	0.551 *
Need of money	Lack of money	0.864 *

\*  $p < 0.05$  \*\*  $p < 0.005$  NS not significant

**Table 5.6**

**Social and Environmental Factors/Neutralisation of Responsibility**

<b>Social/Environmental Factor</b>	<b>Neutralisation of Responsibility</b>	<b>Eta Value</b>
Lack of money	I need to offend to live	0.400 **
Lack of money	I offend because I don't have a job	0.233 NS
Lack of money	It's the Government to blame they don't give me enough to live on	0.191 NS
Lack of job	I offend because I don't have a job	0.263 *

<b>Neutralisation of Responsibility</b>	<b>Social/Environmental Factor</b>	<b>Eta Value</b>
I need to offend to live	Lack of money	0.555 **
I offend because I don't have a job	Lack of money	0.260 NS
It's the Government to blame they don't give me enough to live on	Lack of money	0.342 NS
I offend because I don't have a job	Lack of job	0.477 *

\* p<0.05 \*\* p<0.005 NS not significant

The above tables show the association between the two variables and significance levels.

The responses in the sections of the questionnaire dealing with the relationship between social and environmental factors/offence motives gave insights into an offender's motivations for offending. Although such motives might not appear rational, they nevertheless are meaningful to the offender. The investigation of the relationship between Social and Environmental Factors and Offence Motives, indicates there are strong links between them. The **'lack of money'** and the **'need for money'** as an offence motive, was strongly positively correlated (Eta 0.624). The **'need for money'** as an offence motive and the **'lack of money'** is shown as a

perfect correlation (Eta 1.00). This is the outcome and result that was expected. Similarly, a strong positive correlation is shown between the **'need for drugs'** as an offence motive and **'drug misuse'** (Eta 0.680). The part that drug misuse is claimed to play as a cause of offending in Factor 1 of the Social and Environmental factors, is corroborated by these correlations relating to offence motives.

The **'need for excitement in life,'** is shown as a fairly insignificant offence motive (Eta 0.283). The low Eta value (Eta 0.084), in relation to the **'excitement of offending'** as a social/environmental factor, and the **'need for excitement'** as an offence motive, is evidence that any excitement associated with offending does not satisfy this need, and is only coincidental. As a result of this finding, it was decided to remove the question about the excitement of offending from the questionnaire to be used in the main research.

**Offenders justify their offending by referring to various other events in their present or past life experiences. In some instances, such inferences may be correct; in others, they justify for them their lifestyle and offending behaviour that is generally unacceptable to society. Whether society agrees with the offender or not, is largely irrelevant in terms of an offender's justification of offending. To the offender their perceptions are important for rationalising and excusing their behaviour. As discussed in the previous chapter, an understanding of the offender's perceptions is important in planning interventions and programmes aimed at changing an offender's lifestyle.**

**The 'lack of money' correlates with the view that there is a 'need to offend to survive' that justifies offending (Eta 0.463). This is a moderately strong correlation, which was even stronger when the 'need to offend to survive,' as a justification for offending, is related to the 'lack of money' (Eta 0.551)**

**The 'lack of money,' as a social factor is also positively correlated with the 'need for money,' as a justification for offending (Eta 0.514). This social dimension is identified as a strong justification of offending (Eta 0.864), along with the lack of money. There is evidence from acquisitive crime statistics and interviews with offenders, that they tend to steal 'designer' label goods. This is not entirely based on the view that the goods will be easier to sell to others. Many offenders seek to display a sense of affluence by the clothes and jewellery they wear. Discussions with offenders indicate that the quality of the merchandise they wear does not relate to their disposable income. The results agree with the identification of lack of money in Factor 2 of the Social and Environmental factors, as a cause of offending.**

**Offenders provide excuses for their offending as a means of minimising their personal responsibility for offending. These justifications serve to minimise internal conflicts between conscience and behaviour. The rationale behind neutralisation of responsibility statements, is to excuse for the offender, the more objectionable effects and outcomes of their offending behaviour.**

**The factor of 'lack of money,' was compared with the neutralisation of responsibility statement 'I need to offend to live'. A moderately strong positive correlation, was indicated by the responses (Eta 0.400). When the neutralisation statement is given as dependent on the 'lack of money,' the correlation is stronger (Eta 0.555). The indications are that offenders in the pilot study viewed a lack of money with which to live, as reasonable grounds for committing an offence to resolve their difficulty. Interestingly, they did not see the lack of sufficient Social Security, 'It's the Government to blame they do not give me enough to live on', as reasonable grounds for neutralising their responsibility for offending (Eta 0.342).**

**Offending because they do not have a job, linked to, the lack of money, although only a weak positive correlation (Eta 0.260), it supports the Home Office Research Findings that employment can reduce recidivism. The correlation also tends to support the Personal and Social Perception of Crime Factor 2 indication, that lack of a job is a factor that causes offending. This is further confirmed by the correlation between the Neutralisation of Responsibility statement 'I offend because I don't have a job' and Social / Environmental factor 'Lack of job' (Eta 0.477).**

### **Test -Retest Reliability**

Following the administration of the pilot study questionnaire to participants the questionnaire was again administered 3 weeks later with 10 of the respondents in

order to enable test-retest reliability of the questionnaire to be assessed. Test – retest reliability, was measured using a Pearson correlation to compare and analyse the response on the first and repeated test with the same participants. The test – retest reliability of the questionnaire for all questions using a Pearson Correlation ranged from (R = -.3 to 1.0). The majority of values were (R = .8) or above. It was concluded from the above results, that the overall test-retest reliability of the questionnaire was robust.

### **Pilot Study Implications for Main Research**

Results from the pilot study indicated that, subject to some revision of the questionnaire, the questionnaire and measures had achieved its purpose of eliciting the offender's causal attributions **of** offending. The responses obtained were in some instances different from those expected, suggesting that the main study would provide evidence of differences in views between the offender (actors) in the offence, and those who observed the offender's behaviour, and passed judgement upon it. The original proposal for the research was only to compare the views of offenders and sentencers. It was decided, however, as a result of the pilot study findings, to collect, in addition, a non-offenders' sample, paralleling the magistrates in terms of origin and representative of 'their class', but outside the magistracy for comparison with convicted offenders and sentencers. The term 'non-offenders' is used in a generic sense and does not imply that all members of the sample will not ever have offended. The comparison sample is likely to include people who have offended but have never been convicted, or people who do not disclose any conviction history to

the researcher. The purpose of including a non-offending publicly collected sample in the main research study, is to establish whether there are any differences in beliefs about the causes of offending and perceptions about crime, between convicted offenders, sentencers and the comparison group. Most people commit offences of some description, for example motoring offences and other social misdemeanours. As noted earlier in relation to convicted offenders, these members of the comparison group would not, however, describe themselves as a criminal.

The Pilot Study questionnaire was modified as discussed earlier in the chapter, for use in the main research. The revised measures are included in chapter 6, containing an account of the main study.

## **Chapter 6 Main Study**

This chapter outlines the methodology and execution of the main study. The characteristics of interviewees, and how the members within the sample represented their respective group is also considered. The pilot study investigated whether offenders conformed to the generally held views among criminal justice professionals of why offenders committed crimes and what motivated them to offend. The offenders views on perceptions of a selection of criminal offences was also investigated and neutralisation of their responsibility for offending. A prime focus of the pilot study was to construct and validate measures for use in the main study.

Results from the pilot study suggested that offenders held different attributions and views from professionals working within the criminal justice system about the causes of offending, and factors that motivate or mitigate offence behaviour. In the light of the pilot study findings, it was decided to proceed with the main research study using a revised questionnaire. The difference between the pilot study questionnaire and the main study questionnaire was the elimination of the items relating to 'the excitement of offending' (Question 7, Social and Environmental factors section) that was used in the pilot study. Results from the pilot study indicated that the 'excitement of offending' factor was considered irrelevant by offenders. Another indication from the pilot study as reported in the previous chapter, showed that offenders tended to answer some of the questions from a third party perspective in the Social Perceptions of Crime section of the questionnaire.

These responses were in the form of what might be considered 'socially approved responses' or the views they felt that magistrates might be likely to hold.

The main study was conducted with offenders on Community Rehabilitation orders, or Community Punishment and Rehabilitation Orders, within the Teesside, South-East London, and Warwickshire Probation areas. In addition, prisoners at Hewell Grange Prison and offenders released on licence also participated. A group of magistrates from the Warwickshire Petty Sessions area provided the sentencer sample. This sample was comprised of all the responses received from the magistrates. Every magistrate in the petty session area was sent a questionnaire and given the opportunity to respond allowing a representative sample to be collected.

As the research data collection proceeded, an initial comparison of responses, suggested that considerable differences of views existed between offenders and sentencers, with regards to attributions about the causes of offending. The difference in views was greater than expected by the researcher, when the main study was commenced.

This early finding raised the issue of whether this was a phenomenon attributable to antagonism and disdain of each other and their disparate roles in society between offenders and magistrates, or genuine differences of belief regarding the causes of offending and offence seriousness.

In order to assess any element of bias that might be influencing responses, it was decided to include a general public sample for comparison purposes. The importance, and also conversely the difficulty of obtaining a general public sample that matched the offender and magistrate sample as closely as possible was recognised. An effort was made to match the general public sample by interviewing residents in social housing areas typical of the areas where many offenders live. In addition, people living in private housing areas representative of the type of area that magistrates tend to live in were interviewed. The general public sample was collected in the London, Warwickshire, West Midlands, North-East England and Glasgow area.

The sample was collected from everyday contacts that the researcher met. A small number of telephone interviews were also used and random sampling in public places. The random sampling in public places was done in main thoroughfares of shopping areas that bordered on local authority housing estates and private housing developments. The researcher also before approaching members of the general public tried to assess the likely socio-economic group and age of potential respondents. Although this judgement was subjective, it did assist in the attempt to obtain a balanced sample. Some of the contributors to this sample volunteered their occupation details and this was helpful in assessing the cultural and socio-economic balance of the sample. On completion of the collection of the data from the general public, the data for each sample group was analysed to assess how well the sample

was balanced with respect to the age of respondents. The mode for the age category of each group was offenders 22-26, magistrates 56+ and general public 37+. There were no magistrates under 46 years old.

The table below shows the numbers in each group:

Participants	Numbe
Offenders	
CRO or CPRO	146
Prisoners or on licence	30
Magistrates	46
General Public	101
Total	323

The purpose of the main study was to investigate the difference in attributions about the causes of offending and offence seriousness between offenders, sentencers and members of the public. Offence seriousness studies generally focus on the views of victims. The British Crime Survey uses a seriousness scale ranging from zero to 20. The lower values relate to less serious offences. Maung (1995) has pointed out that there are weaknesses in the BCS methods, in that it does not repeat biennial samples with the same participants. Variation in sample size may also be a factor that influences responses.

The BCS also excludes crime against commercial properties from its sample. Budd, Sharp and Mayhew (2005) note that the BCS uses objective judgements which relate to the level of force used, the value of damage done and the value of property stolen, as parameters for assessing seriousness. A small amount of offender self-reporting is used and this results in crimes such as substance misuse being included. Bottomley and Pease (1986), suggested that self-reporting by offenders has advantages in that it will pick up 'victimless' crime, and also avoids the partiality that a victim may express. My research uses the self-reporting of offenders since it allows the offender to express their view on seriousness, regardless of whether or not they have committed the offence. By using the same approach with magistrates and members of the general public, it enabled differences in attributions and attitudes between each sample group to be assessed. In addition, offenders and sentencers were also asked to record their causal attributions in respect of offence motives, justification for offending and neutralisation of responsibility.

As established at the pilot study stage, there were no existing scales available which measured the above factors. The questionnaire developed for the pilot study and used with offenders was modified and enlarged in the light of the pilot study findings. In addition, the form was enlarged to enable respondents to express their view on general concepts of offence seriousness, and what they believe is the view of people in general regarding offence seriousness in the Perception of Crime section of the questionnaire.

Offenders' responses within the Probation Service and Prison Service sample, were collected in a similar manner to that used in the pilot study. A semi-structured interview approach was used, with volunteer offenders being interviewed by the researcher. Participants were permitted to respond without providing their name in order to preserve their anonymity, provided they gave details with respect to their gender, age and ethnicity. Respondents were given information about the purpose of the research, and the opportunity to ask questions prior to completing the research questionnaire. After completion of the questionnaire, a further opportunity was given for respondents to seek any clarification that they required. The revised questionnaire for use with offenders in the main study (Fig 6.1) is shown on the following pages.

Offender's Causal Attributions of Offending Survey

**Fig. No. 6.1**

Name..... Offender's Ref No.....

Age Group 17-21 22-26 27-31 32-36 37+ Sex M F Ethnicity White Black Other

Category Probation Prisoner On License

**Social/Environmental Factors**

Please indicate which of the following factors you see as cause of your offending and to what extent they cause your offending behaviour?

- |                                     |         |             |            |          |            |
|-------------------------------------|---------|-------------|------------|----------|------------|
| 1. Influence of friends             | greatly | quite a lot | moderately | a little | not at all |
| 2. Lack of money                    | greatly | quite a lot | moderately | a little | not at all |
| 3. Family members                   | greatly | quite a lot | moderately | a little | not at all |
| 4. Lack of job                      | greatly | quite a lot | moderately | a little | not at all |
| 5. Easy opportunity to commit crime | greatly | quite a lot | moderately | a little | not at all |
| 6. Housing and social conditions    | greatly | quite a lot | moderately | a little | not at all |
| 7. Alcohol misuse                   | greatly | quite a lot | moderately | a little | not at all |
| 8. Drug misuse                      | greatly | quite a lot | moderately | a little | not at all |
| 9. Custom in neighbourhood          | greatly | quite a lot | moderately | a little | not at all |

Social Perceptions of Crime

Fig 6.1 contd.

Which types of offence do you think **MOST PEOPLE** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

**Personal Perceptions of Crime**

Which types of offence do **YOU** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

**Offence Motives****Fig 6.1 contd**

Please indicate which of the following factors you agree or disagree motivated your offending.

- |  |       |          |
|--|-------|----------|
| 1. Personal needs                      | Agree | Disagree |
| 2. Family needs                        | Agree | Disagree |
| 3. To get what society owes me         | Agree | Disagree |
| 4. Need for money                      | Agree | Disagree |
| 5. Need for drugs                      | Agree | Disagree |
| 6. Boredom                             | Agree | Disagree |
| 7. Revenge against others              | Agree | Disagree |
| 8. Feeling unjustly treated by society | Agree | Disagree |
| 9. Lack of work                        | Agree | Disagree |
| 10. Need for excitement in life        | Agree | Disagree |

**Justification for Offending**

Please indicate which of the the following factors you agree or disagree excuse or make your offending reasonable?

- |   |       |          |
|---|-------|----------|
| 1. Need to offend to survive  | Agree | Disagree |
| 2. Need of money  | Agree | Disagree |
| 3. Everbody commits offences  | Agree | Disagree |
| 4. There are no victims of my offending                             | Agree | Disagree |
| 5. Everybody would offend if they thought they would not get caught | Agree | Disagree |
| 6. I'm just taking what society owes me                             | Agree | Disagree |
| 7. My offending does not really hurt anyone                         | Agree | Disagree |
| 8. I'm just doing what others do to me                              | Agree | Disagree |

Neutralisation of Responsibility

Fig 6.1 contd

Please indicate which of the following factors you agree or disagree lessens your responsibility for offending?

- |   |       |          |
|---|-------|----------|
| 1. I need to offend to live   | Agree | Disagree |
| 2. It's the government to blame, they don't give me enough to live on | Agree | Disagree |
| 3. I offend because I don't have a job                                | Agree | Disagree |
| 4. The people I offend against can afford it                          | Agree | Disagree |
| 5. My offences are not really a crime                                 | Agree | Disagree |
| 6. I don't have any other choice                                      | Agree | Disagree |
| 7. Nobody loses, insurance companies pay                              | Agree | Disagree |
| 8. I was provoked   | Agree | Disagree |
| 9. I just can't stop myself   | Agree | Disagree |

The questionnaire used with offenders was adapted for use with magistrates. The adapted questionnaire requested sentencers to express their views on the same questions as offenders, but from an observer's perspective. This questionnaire allowed sentencers to express what they believed were the responses and attributions that offenders would give. Responses from sentencers were obtained using a mixture of semi-structured interviews and by issuing detailed instructions to sentencers in groups, and providing them with written instructions on how to complete the questionnaire.

The opportunity to ask for clarification and information after completion of the research questionnaire was available to respondents. The same rights of anonymity that were granted to offenders was also offered to magistrates. The questionnaire used with magistrates (Fig 6.2) is shown below:

Magistrate's Causal Attributions of Offending Survey		<b>Fig 6.2</b>			
Name.....(can be completed anonymously)					
Age Group (please circle category) 21-26 27-31 32-36 37-45 46-55 56+					
Sex (please circle category) M F Ethnicity ( please circle category) White Black Other					
Category (please circle response) Stipendary Lay Magistrate					
<b>Social/Environmental Factors</b>					
Please indicate which of the following factors <b>you</b> believe offenders see as causes of offending.					
1. Influence of friends	greatly	quite a lot	moderately	a little	not at all
2. Lack of money	greatly	quite a lot	moderately	a little	not at all
3. Family members	greatly	quite a lot	moderately	a little	not at all
4. Lack of job	greatly	quite a lot	moderately	a little	not at all
5. Easy opportunity to commit crime	greatly	quite a lot	moderately	a little	not at all
6. Housing and social conditions	greatly	quite a lot	moderately	a little	not at all
7. Alcohol misuse	greatly	quite a lot	moderately	a little	not at all
8. Drug misuse	greatly	quite a lot	moderately	a little	not at all
9. Custom in neighbourhood	greatly	quite a lot	moderately	a little	not at all

### Social Perceptions of Crime

### Fig 6.2 contd

Which types of offence do **you** think **MOST PEOPLE** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

### Personal Perceptions of Crime

Which types of offence do **YOU** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

### Offence Motives

### Fig 6.2 contd

Please indicate which of the following factors **you** agree or disagree **motivate offenders** to offend.

- |   |       |          |
|---|-------|----------|
| 1. Personal needs                           | Agree | Disagree |
| 2. Family needs                             | Agree | Disagree |
| 3. To get what they think society owes Them | Agree | Disagree |
| 4. Need for money                           | Agree | Disagree |
| 5. Need for drugs                           | Agree | Disagree |
| 6. Boredom                                  | Agree | Disagree |
| 7. Revenge against others                   | Agree | Disagree |
| 8. Feeling unjustly treated by society      | Agree | Disagree |
| 9. Lack of work                             | Agree | Disagree |
| 10. Need for excitement in life             | Agree | Disagree |

### Justification for Offending

Please indicate which of the following factors **you** agree or disagree **offenders believe** excuses or makes their offending reasonable?

- |   |       |          |
|---|-------|----------|
| 1. Need to offend to survive  | Agree | Disagree |
| 2. Need of money  | Agree | Disagree |
| 3. Everybody commits offences                                       | Agree | Disagree |
| 4. There are no victims of my offending                             | Agree | Disagree |
| 5. Everybody would offend if they thought they would not get caught | Agree | Disagree |
| 6. I'm just taking what society owes me                             | Agree | Disagree |
| 7. My offending does not really hurt anyone                         | Agree | Disagree |
| 8. I'm just doing what others do to me                              | Agree | Disagree |

### Neutralisation of Responsibility

Fig 6.2 contd

Please indicate which of the following factors **you** agree or disagree **offender's believe** lessens their responsibility for offending?

1. I need to offend to live	Agree	Disagree
2. It's the government to blame, they don't give me enough to live on	Agree	Disagree
3. I offend because I don't have a job	Agree	Disagree
4. The people I offend against can afford it	Agree	Disagree
5. My offences are not really a crime	Agree	Disagree
6. I don't have any other choice	Agree	Disagree
7. Nobody loses, insurance companies pay	Agree	Disagree
8. I was provoked	Agree	Disagree
9. I just can't stop myself	Agree	Disagree

Reference was made earlier to the greater than expected difference in responses from offenders and magistrates that gave rise to the collection of a general public comparison sample. The use of the term 'general public' as a convenient term for describing this group of respondents was discussed in chapter 1. The major differences between offenders' and magistrate responses related mainly to the Social and Environmental Factors, Social Perceptions of Crime and Personal Perceptions of Crime, sections of the questionnaire. It was decided to use only these sections to construct a questionnaire for use with the general public comparison sample.

The general public were not asked to express views on Offence Motives, Justification for Offending or Neutralisation of Responsibility.

The general public sample data collection procedure is described earlier in the chapter. For research purposes, the general public respondents have been classified as non-offenders, however, this may not be the case. No enquiries were made about their offending status.

The questionnaire used with the general public (Fig 6.3) is shown on the following pages:

Offender's Causal Attributions of Offending Survey											General Public Views			<b>Fig 6.3</b>
Name.....														
Age Group	17-21	22-26	27-31	32-36	37+	Sex	M	F	Ethnicity	White	Black	Other		
<b>Social/Environmental Factors</b>														
Please indicate which of the following factors you see as cause of crime?														
1. Influence of friends		greatly	quite a lot	moderately	a little	not at all								
2. Lack of money		greatly	quite a lot	moderately	a little	not at all								
3. Family members		greatly	quite a lot	moderately	a little	not at all								
4. Lack of job		greatly	quite a lot	moderately	a little	not at all								
5. Easy opportunity to commit crime		greatly	quite a lot	moderately	a little	not at all								
6. Housing and social conditions		greatly	quite a lot	moderately	a little	not at all								
7. Alcohol misuse		greatly	quite a lot	moderately	a little	not at all								
8. Drug misuse		greatly	quite a lot	moderately	a little	not at all								
9. Custom in neighbourhood		greatly	quite a lot	moderately	a little	not at all								

### Social Perceptions of Crime

### Fig 6.3 contd

Which types of offence do you think **MOST PEOPLE** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

### Personal Perceptions of Crime

Which types of offence do **YOU** consider the worst?

1. Speeding	very serious	serious	moderately serious	not serious
2. Alcohol misuse	very serious	serious	moderately serious	not serious
3. Offence against a company	very serious	serious	moderately serious	not serious
4. Offence against a neighbour	very serious	serious	moderately serious	not serious
5. Criminal damage	very serious	serious	moderately serious	not serious
6. Assault/violence	very serious	serious	moderately serious	not serious
7. Offence against a friend	very serious	serious	moderately serious	not serious
8. Offence against a stranger	very serious	serious	moderately serious	not serious
9. Offence against rich person	very serious	serious	moderately serious	not serious
10. Offence against poor person	very serious	serious	moderately serious	not serious
11. Offence against police	very serious	serious	moderately serious	not serious
12. Offence against a child	very serious	serious	moderately serious	not serious

Reliability Analysis using Cronbach's Alpha of the questionnaires for the pilot study had shown some low scores. The revised questionnaires for the main study were analysed for reliability using Cronbach's Alpha and achieved Cronbach Alpha levels ranging between point .78 and .87 for the questionnaires measures. These levels are acceptable (Coolican 1999).

Statistical analysis of the questionnaire responses to identify differences between the sample groups was carried out using Discriminant Analysis, Crosstabulations and Chi-Squared analysis. The use of these measures and how they were used is indicated in the results analysis in chapter 7.

Supplementary questions were asked of some respondents to clarify why a particular response had been given to some questions, when their response was different from most other respondents' score. The information obtained from the additional questions is included with the statistical analysis results within the next chapter.

## **Chapter 7 Main Study Results**

This chapter reports the results from the statistical analysis of the main study data, and the follow up interviews with some respondents to clarify their responses. The relationship of research findings to the research hypothesis is also discussed.

Results from the initial discriminant analysis of the research data, showed that offenders in the community, prison inmates and prisoners released on licence, viewed the causes of offending very similarly. It was decided to combine the above categories into a single group category of offenders, for making a comparison with magistrates and the general public. Analysis was carried out by comparing the responses of offenders and magistrates. A separate comparison of magistrates and the 'general public' was carried out. A comparison of responses of offenders and the 'general public' was also conducted. Finally, a comparison of offenders, magistrates and the 'general public' was conducted, to establish an overall comparison of the groups.

### **Offenders and Magistrates**

#### **Social and Environmental Factors**

An analysis of responses from the Social and Environmental Factors section of the questionnaire was scored statistically significantly different by magistrates and

offenders. Magistrates identified the following factors as a greater underlying cause of offending than did offenders:

- Drug abuse
- Family members
- Influence of friends
- Alcohol misuse

The difference of importance that magistrates and offenders placed on these factors is shown by the discriminant analysis results in Table 7.1 and 7.2 .

**Table 7.1**

**Social and Environmental factors**

Canonical Discriminant Function 1 Factor	Magistrates		Offenders	
	mean	sd	mean	sd
Drug Misuse	4.7391	0.61227	2.3466	1.60687
Family members	2.7174	1.02552	1.4943	0.96212
Influence of friends	3.8261	0.94996	2.3523	1.31935
Alcohol misuse	4.0870	1.11208	2.5227	1.60341

**Table 7.2**

	Wilks Lambda	Chi-Square	df	Sig p<	Group Centroids	
					Magistrates	Offenders
Function 1	.552	129.368	4	.001	1.753	-.458

The results indicate that magistrates see drug and alcohol misuse as major factors in the cause of offending, whereas offenders view them as less important. The difference in attribution is quite large, as indicated by the mean and standard

deviation scores for each group. The high mean value for drug misuse, alcohol and influence of friends recorded by magistrates with relatively low standard deviation values, indicates that most magistrates see these as major factors that lead to offending. In comparison, offenders report a much lower mean and larger standard deviations indicating their view that these factors are less important. Offenders' reason for viewing drugs very differently may be that some use drugs such as cannabis and ecstasy on a recreational basis and intermittently. Use of the class A drug ecstasy, has become commonplace in youth culture and the nightclub scene. Cannabis is also widely used by a large number of people.

Although the difference between magistrates and offenders is less pronounced, the influence of family and friends is also viewed quite differently. The Wilks Lambda value of .552 shows that 55.2% of the variance between magistrates and offenders is not explained by the canonical discriminant function. The discriminant function accounts for 54.8% difference of attributions between magistrates and offenders. The amount that each component variable within the discriminant function analysis contributes to the difference in attributions of magistrates and offenders has been calculated from the discriminant function stepwise Wilks Lambda statistics shown in Table 7.4 .

**Table 7.4**

Canonical Discriminant Function 1 Factor	Contribution
Drug Misuse	27.1%
Family members	24.2%
Influence of friends	24.2%
Alcohol misuse	23.9%

The above table shows that each of the factors contribute a very similar amount to the difference in views expressed between magistrates and offenders on the social and environmental factors affecting offending. The similar contribution by each of the factors, emphasises the importance all of them play, and shows that no single factor accounts for the overall difference in attitude between the two groups. The overall level of disparity between magistrates and offenders, on their attributions of the social and environmental factors that cause offending is indicated by the group centroid scores (magistrates 1.75: offenders -.458). The separation between the groups is large indicating that they hold very different opinions.

The results above support the research hypothesis, that magistrates and offenders view the causes of offending significantly differently. This is consistent with the claims of attribution theory that actors (offenders) and observers (magistrates) attribute different causes to events, actions and behaviour. Resulting from such disparities in causal attributions, magistrates when trying cases approach the facts of the offence and its causes from different perspectives than the offender. Similarly, when the circumstances surrounding the offence are considered different

perspectives play a part. Due to different understandings and perspectives sentencers may wrongly convict an individual or impose a harsher or more lenient sentence than would be the norm for the offence.. For example, a sentencer unfamiliar with the social lifestyle or circumstances of the offender may attribute the offender's behaviour entirely to the offender's wilful disregard of the law and his victims. It may be the case, however, that an offender's personal circumstances, made it impossible for the offender to see a viable alternative to offending. If for example, occasional drug misuse is not seen by offenders as causal of offending, then the treatment imposed is unlikely to be effective.

The consistency of views within the magistrate group and the offender group, is shown by the Canonical Discriminant Function 1 Factor means and the standard deviations. The smaller value for the standard deviations, for drug misuse, influence of friends and alcohol misuse, indicate that magistrates hold a more consistent view than offenders, and see these factors as more important than offenders do. In relation to the influence of family members, offenders have a more consistent view than magistrates, and do not consider this factor seriously influences their offending.

The internal validity of each group's responses for the canonical discriminat function, was assessed using Cronbach's alpha and is shown below:

Magistrates alpha = 0.5288

Offenders alpha = 0.3620

As the above low/medium alpha values indicate, neither magistrates or offenders share within their respective group reliably consistent views on the discriminating factors.

### **Attributions about Others' Social Perceptions of Crime**

The second section of the research questionnaire investigated social perceptions of crime. Respondents were asked to identify which type of offences they believed most people consider the worst/most serious.

Analysis of the Social perceptions of crime data that identified offences, also indicated that magistrates and offenders held statistically significantly different views. The offence types which magistrates and offenders viewed differently are listed below:

- Offence against a rich person
- Offence against a friend
- Assault/violence
- Offence against a company
- Criminal damage
- Speeding

The difference between magistrates and offenders is shown by the discriminant analysis results in Table 7.5 and 7.6 :

**Table 7.5**

Canonical Discriminant Function 1 Factors	Magistrates		Offenders	
	mean	sd	mean	sd
Offence against a rich person	2.2609	0.74341	2.6875	0.82050
Offence against a friend	3.2391	0.79400	2.7159	0.77753
Assault/violence	3.8261	0.38322	3.3693	0.72897
Offence against a company	1.7391	0.61227	2.2557	0.85354
Criminal damage	2.8478	0.75916	2.5114	0.87498
Speeding	1.5000	0.65828	2.0000	0.92582

**Table 7.6**

	Wilks Lambda	Chi-Square	df	Sig p<	Group Centroids	
					Magistrates	Offenders
Function 1	.716	72.476	6	.001	1.226	-.320

The Wilks Lambda value of .716 shows that 71.6% of the variance between magistrates and offenders, is not explained by the canonical discriminant function. The discriminant function accounts for 28.4% difference in attributions between magistrates and offenders. The amount that each component variable within the discriminant function analysis contributes to the difference in attributions of magistrates and offenders has been calculated from the discriminant function stepwise Wilks Lambda statistics and is shown in Table 7.7

**Table 7.7**

Canonical Discriminant Function 1 Factors	Contribution
Offence against a rich person	17.0%
Offence against a friend	17.1%
Assault/violence	16.8%
Offence against a company	16.6%
Criminal damage	16.3%
Speeding	16.2%

The internal validity of each groups' responses for the canonical discriminant function was assessed using Cronbach's alpha, and is shown below.

Magistrates alpha = 0.5834

Offenders alpha = 0.6073

The above alpha values indicate that offenders answered with greater consistency than the magistrates, however, there is very little difference between each group. Although the alpha values are higher than for the Social and Environmental influences section of the questionnaire they are only moderate values. Overall however, magistrates and offenders do not share similar attributions about offence seriousness

## Personal Attributions about the Social Perceptions of Crime

When invited to respond to the same questions to indicate their personal views, both magistrates and offenders identified in terms of offence seriousness different types of offences. Magistrates identified the following offences:

- Assault and violence
- Offence against police
- Offence against a company
- Alcohol misuse

The difference between magistrates and offenders is shown by the discriminant analysis results in Tables 7.8 and 7.9.

**Table 7.8**

Personal Perceptions of Crime

Canonical Discriminant Function 1 Factors	Magistrates		Offenders	
	mean	sd	mean	sd
Assault and violence	3.9130	0.35441	3.2216	0.81542
Offence against the police	3.7174	0.55418	2.8125	1.01083
Offence against a company	2.8478	0.66558	2.0455	0.94305
Alcohol misuse	2.9783	0.68278	2.3011	0.92285

**Table 7.9**

	Wilks	Chi-Square	df	Sig	Group Centroids	
	Lambda				p<	Magistrates
Function 1	.777	54.894	4	.001	1.042	-.272

The Wilks Lambda value of .777 shows that 77.7% of the variance between magistrates and offenders, is not explained by the canonical discriminant function. The discriminant function accounts for 22.3% difference in attributions between magistrates and offenders. The very low standard deviation for the magistrates' scores with respect to assault and violence, indicates how consistent and strong an opinion is held on the seriousness of this type of offending. The amount that each component variable within the discriminant function analysis contributes to the difference in attributions of magistrates and offenders has been calculated from the discriminant function stepwise Wilks Lambda statistics and is shown in Table 7.10

**Table 7.10**

Canonical Discriminant Function 1 Factors	Contribution
Assault and violence	25.2%
Offence against the police	25.0%
Offence against a company	24.8%
Alcohol misuse	25.0%

The results show that each of the factors in the above table make a very similar contribution to the overall difference in views between magistrates and offenders. No single factor within the Canonical Discriminant function is responsible for the difference of views expressed by magistrates and offenders.

The internal validity of each groups' responses for the canonical discriminant function was assessed using Cronbach's alpha and is shown on the following page:

Magistrates  $\alpha = 0.4914$

Offenders  $\alpha = 0.6181$

The above alpha values indicate that offenders answered with a somewhat greater consistency than the magistrates. The consistency of responses from offenders slightly improved in comparison to the previous section questions. The consistency of responses from magistrates deteriorated indicating that individual magistrates' views differ about what types of offences were considered most serious. The deterioration in magistrates score was 15.76%. This difference is quite large and tends to support the claim of offenders that prejudicial and inconsistent attitudes on the part of a magistrate seem to influence trial outcomes and sentencing decisions.

These measures do not only show the difference in perspective between magistrates and offenders, but also, as the measure was intended to assess their different understanding of how people in general view the seriousness of various offences. The difference of opinion between offenders and magistrates of what their attributions of most people's view would be of offence seriousness is quite marked. This is confirmed by the group centroid scores (magistrates 1.226: offenders -.320).

Examination of the discriminant analysis results, when magistrates and offenders were asked to express their personal views of the worst type of offences (questionnaire section 3) is slightly less pronounced. The group centroid scores for this measure are (magistrates 1.042: offenders -.272). The difference on the types of

offence is interesting. The number of offences where they hold divergent opinions that are significant for the discriminant analysis, is reduced from six to four. Two new offences appear in the list that distinguishes the magistrates and offenders that were not included in the perception of most people's attitudes (questionnaire section 2).

The new offences in the analysis of section 3 of the questionnaire are; **'an offence against the police'** and **'alcohol misuse'**. In addition, 'an offence against a friend', 'criminal damage', 'an offence against a company' and 'speeding' is viewed by both magistrates and offenders more similarly, and eliminated from the discriminating factors.

The results lend credence to offender's view that magistrates view crime from different perspectives and attribute a different significance to some types of offence than offenders. An example of this difference of approach is indicated by the scores of magistrates and offenders in relation to the question relating to an 'offence against the police'. When asked to express a view on what most people's opinion would be (questionnaire section 2) the mean score for each group was (Magistrates 3.000 : Offenders 2.9716) Asked to express their personal view (questionnaire section 3) the mean scores for 'offence against the police' were (Magistrates 3.7174 : Offenders 2.8125). As the means indicate, the view expressed by offenders showed little change, whereas, the magistrates score changed considerably. The difference in magistrates scores tends to support the belief of offenders that magistrates align themselves with the police, and show partiality when they consider prosecution and defence evidence

In relation to speeding, offenders gave a very similar response in both sections of the questionnaire. Offenders mean scores for this question were (most people 2.0000; personal view 2.0398). The responses from magistrates varied considerably as indicated by the mean scores (most people 1.5000; personal view 2.4348). A similar pattern can be found in relation to 'offences against a company' and 'alcohol misuse'.

Given that the principle for magistrate selection is that they are selected from a non-offending group of the public and hopefully representative of the general public view, the results are surprising. It would have been more logical to expect the magistrates views to remain consistent in both sections of the questionnaire and different views to be expressed by offenders. The findings provide some evidence in support of the claim made by offenders (reported in chapter 1), that when appearing in court offenders feel their circumstances are not understood by magistrates. It is claimed by offenders that sentencing decisions are unfair and do not take account of the real world. Magistrates responses suggest they appear to have an opinion that their view of the seriousness is better than that of offenders and people in general.

### **Post Data Collection Interviews**

Follow-up interviews with offenders in relation to their response to question 11, (Offence against the police) to find out why they had rated it mainly as 'serious' or 'very serious', provided insight into their perspectives on the legal process. They indicated that they did not view the statement as relating, for example, to a disagreement or fight with arresting police officers. They did not consider such an

event significant or a cause for concern. In responding to the question the majority of respondents had viewed it in its technical usage within the criminal justice system. They interpreted it as failing to report to the police, attend court or pay fines, and as a result a warrant for their arrest being issued. This interpretation reflects the view expressed by offenders that they find it difficult to deal with a criminal justice system that fails to relate to them and appears irrelevant to their life experiences. Offenders see the Criminal Justice System as profession driven by solicitors, barristers and judges. Offenders indicated that they feel unable to put their points across in ways that the Courts can understand. They also indicated difficulties in understanding the legal process and procedures.

### **Offence Motives, Justification of Offending and Neutralisation of Responsibility.**

The remainder of the questionnaire that related to offence motives, justification of offending and neutralisation of responsibility, was analysed using crosstabulation and chi-squared methods. The purpose was to identify whether offenders and magistrates identified similar motives, justification and neutralisation of responsibility for offending. One of the claims of Attribution theory is that actors and observers identify and attribute different causes for the actor's behaviour (Jones and Nisbet 1971). It is further claimed that only the actor can with certainty attribute cause to their behaviour. The cause the actor attributes might not be accurate, but it is 'real' for him. A further claim of attribution theory is that observers of behaviour can only speculate and infer cause for another person's actions (Jones and Davis 1965). The

observer's attribution of cause for the behaviour of another person may be correct, but they can never be certain that this is the case (Kelley 1967).

### **Offence Motives**

Analysis of the offence motive data shows that magistrates and offenders attribute statistically significant different motives for offending. The statistical significance difference, using continuity correction ratio statistics, which provide a more rigorous measure of the nominal dichotomous variables than Pearson chi-squared, indicates for the majority of the analysis, a significance level  $p < 0.001$ .

The difference in attribution between magistrates and offenders of the factors that motivate offenders to offend is very marked. Many of the factors indicated by magistrates as significant are viewed by offenders as insignificant. Table 7.11 on the following page shows the statistically different factors that magistrates and offenders identified in their questionnaire responses.

**Table 7.11****Offence Motive**

Question	Agree		Disagree		Sig P<
	Magistrate	Offender	Magistrate	Offender	
	%	%	%	%	
Personal needs	95.7	58.0	4.3	42.0	.001
Family needs	60.9	24.4	39.1	75.6	.001
To get what Society owes me	47.8	11.4	52.2	88.6	.001
Need for money	97.8	55.7	2.2	44.3	.001
Need for drugs	100.0	31.8	0.0	68.2	.001
Boredom	65.2	38.1	34.8	61.9	.05
Revenge against others	67.4	26.7	32.6	73.3	.001
Feeling unjustly treated by society	56.5	26.7	43.5	73.3	.001
Lack of work	80.4	53.4	19.6	46.6	.05
Need for excitement in life	54.3	35.2	45.7	64.8	.05

The results in column 1 above, indicate that magistrates are consistently more likely to claim that any of the items, are an offence motive for offenders. Five of the magistrates' endorsed every item in the list as a motive. All magistrates endorsed a minimum of one item in the list as a motive of offenders' for their offending.

The above table shows that 95.7% of magistrates indicated that offenders are motivated to offend to meet '**personal needs.**' Offenders did not agree with this judgement, and only 58% of them indicate that '**personal needs**' motivate them to offend. There is a similarly large difference between magistrates and offenders with respect to '**family needs**' as a motivating factor of offending. A similar difference

can be linked with the '**need for money**' as a factor that motivates offenders to offend. It should be noted that a '**lack of work**' was indicated by offenders as almost as important a motivating factor of their offending, as a '**need for money**'. Initially, it might seem reasonable to associate '**boredom**' as a contributing factor, however, only 38.1% of offenders indicated this to be a motivating factor of their offending. Magistrates saw '**boredom**' as a more important factor, as indicated by 65.2% of them.

Discussing with offenders their responses in relation to the '**lack of money**' and '**lack of work**' they indicated that a job was important to them. The ability to earn money was not all that was important to them. A sense of self-esteem and respect from others was linked to having a job. There was also a sense of responsibility to support their family expressed by some offenders. One offender who had managed to find employment stated that he was now pleased to be paying the rent for his flat instead of it being paid by the DHSS. Offenders commented on the fact that when socialising with others the conversation was quite often about what had happened at work that day. Offenders who were unemployed felt excluded from that dimension of social interaction and marginalised.

The '**need for drugs**' as a motivating factor of offending is expressed by all magistrates as a cause of offending. In comparison, only 31.8% of offenders saw the '**need for drugs**' as a motivating factor of their offending. The difference can be explained in part by the attitude to drug use expressed by offenders in follow-up

interviews. Some offenders indicated that they did not use drugs and therefore it was not a factor relevant to them. Other offenders admitted to the use of 'recreational' drugs, for example cannabis, ecstasy, however, they indicated this was a personal lifestyle choice. These offenders were adamant that they did not need the drug. While recognising that the use of a banned substance was illegal, offenders considered it similar to choosing to consume alcohol. Offenders who use drugs recreationally indicated concern that all users of drugs are grouped together. These offenders saw the users of heroin and other class 'A' drugs as addicts who were driven by their need for drugs. In discussing their responses with them in the light of magistrates' responses, the majority of the offenders interviewed felt that magistrates were out of touch with reality. Recreational drug users who felt they were being categorised as 'needing drugs' claimed they were being stigmatised by this social attitude. The difference in responses between magistrates and offenders supports the claims of attribution theory that actors and offenders hold different perspectives on the causes that motivate an actor and influence his behaviour.

Research results support the claims of offenders that magistrates do not understand them and therefore when considering evidence presented to them often arrive at inappropriate sentencing decisions. The results suggest that magistrates are more likely to impute more motives for offending than offenders admit. The view held by offenders that magistrates misconstrue offenders motives for offending is supported by attribution theory. Jones and Davis (1965), indicate that perceivers of an action make judgements based on inferences about what the actor hoped to achieve.

When making inferences, the perceiver or observer views the action as occurring within a particular social context. If the observer of the contextual situation are inaccurate then the inferences made and the conclusions reached by the observer are likely to be flawed.

### **Justification for Offending**

Analysis of the justification for offending data, also shows that magistrates and offenders attribute statistically significant different reasons for justifying offending.

Offenders were asked to identify the factors they agreed or disagreed excused or made their offending more reasonable. Magistrates were asked to indicate the factors they thought that offenders' believed excused or made their offending more reasonable.

The statistical significant difference using continuity correction ratio statistics, indicate that for the majority of the analysis, a significance level  $p < 0.001$ . The causal attributions are very different between magistrates and offenders about the factors that justify offending. Table 7.12 shows the statistically different factors that magistrates and offenders identified in their questionnaire responses:

**Table 7.12**

**Justification of offending**

Question	Agree		Disagree		Sig p<
	Magistrate	Offender	Magistrate	Offender	
	%	%	%	%	
Need of money	93.5	56.8	6.5	43.2	.001
There are no Victims of my offending	76.1	31.3	23.9	68.8	.001
I'm just taking what society owes me	43.5	9.7	56.5	90.3	.001
My offending does not really hurt anyone	71.7	27.3	28.3	72.7	.001
I'm just doing what others do to me	41.3	18.2	58.7	81.8	.05

In the above table, the magistrate's scores in the agree category indicate that their view is that offenders tend to produce reasons to justify their offending and see their crimes as largely victimless. Offenders' responses show, however, that offenders do not see their offending as victimless.

Similar to the responses for factors that motivate offending, magistrates identified the **'need for money'** as being considerably more important than did offenders. The magnitude of difference between the magistrates and offenders is almost identical for the motivation to offend and the justification for offending, in their response to the **'need of money'** statement. The results indicate that magistrates view financial need as a factor that offenders use to justify offending. The responses from

offenders, however, suggest this is not an important factor for them. The difference in responses indicates again a failure of magistrates to understand the causal attributions of offenders for their offending. These results are consistent with the predictions of attribution theorists, that observers infer cause and motive to another person's actions (Jones and Nisbett 1971). Observers of behaviour also look for evidence to correspond with their beliefs and inferences about the actors' intentions and dispositions. (Jones and Davis 1965).

In relation to the attitude towards victims, the responses to the statements '**There are no victims of my offending**' and '**my offending does not really hurt anyone**' indicates a significant difference of view between magistrates and offenders. In relation to both statements, 75% of magistrates indicate their belief that a lack of victim empathy on the part of offenders is used by the offender to justify their offending. This suggests that magistrates attribute little concern about victims to most offenders and view them as mainly self-interested. In contrast, however, only about 29% of offenders see their offending as victimless or view this as a justifying factor for offending.

Discussions with offenders in follow-up interviews confirm that most offenders are aware that they create victims by their offending. They see this as a secondary and unfortunate consequence, similar to the way that politicians view the killing of innocent civilians and the destruction of their property in war situations as collateral damage. Offenders do not consider their attitude to be significantly different from that

expressed by the legislators that frame the law. Most offenders do not view their offending from a self-interest perspective. The majority of offenders do not see themselves as victims of their own offending. It is quite common for offenders to express the view that they deserve the punishment imposed by the court.

The response of magistrates to the statement **'I'm just taking what society owes me'** indicates that they are unsure about whether this excuse is used by offenders. As the data shows, only 43.5% of magistrates think that offenders use this excuse. Although the magistrates' judgement is in the same direction as the view expressed by offenders, it is still in numerical and statistically significant terms very different. Only about 9% of offenders indicate that they believe that society owes them anything that can justify their offending.

The difference in the view of magistrates and offenders is not surprising. Some magistrates when discussing offenders with me have described them as 'people with a chip on their shoulder'. They also think of offenders as 'being work shy' or use similar comments that imply the majority of offenders illegitimately and without real need claim social security benefits. Offenders claim that in court they are often viewed as 'second class' citizens. Offenders sense this by the way they are treated and addressed in court.

There is a considerable difference of opinion between how magistrates and offenders justify offending in relation to others. The response to the statement **'I am just doing**

**to others what they do to me'** shows that 41.3% of magistrates think that offenders use this excuse to justify their offending. In contrast, only about 18% of offenders believe that the way they are treated by others might justify their offending. This inference by magistrates about the belief and actions of offenders is likely to influence their judgement and sentencing decisions when interpersonal disputes are relevant to a case. The motive that they attribute to the offender will shape their belief concerning the action of the offender. There is no obvious evidence to support the view held by magistrates. The theory of Jones and Davis (1965) that an actor's behaviour might have hedonic relevance for the perceiver may give a clue to magistrates' attitudes. Jones and Davis showed that observing the action of another can promote or undermine the perceiver's values. Magistrates' beliefs that offenders act on the basis of retribution may serve in a hedonic way to bolster their own self-esteem and set them apart from offenders. Alternatively, given the class difference between the majority of magistrates and offenders, magistrates might be reflecting how they act when they feel that someone has injured or offended them in some way. It may also be the case, that magistrates may find it easier to condemn and punish someone who they believe have fundamentally different values from themselves.

### **Neutralisation of Responsibility.**

The data relating to the responses of magistrates and offenders about attitudes and factors that neutralise responsibility for offending show statistically significant differences. The statistical significant difference using continuity correction ratio statistics indicates for the majority of the analysis a significance level  $p < 0.001$ .

Offenders' were asked to indicate the factors that they agreed or disagree lessened their responsibility for offending. Magistrates' were asked to indicate the factors they believed offenders used to lessen their responsibility for offending. In responses on questionnaires, magistrates identified more reasons which they believed offenders would use to neutralise responsibility for offending than offenders. This was not the outcome expected. There could be a number of possible explanations for this:

- 1) Magistrates genuinely believe a number of the reasons for neutralisation of responsibility in the questionnaire are justified. This seems an unlikely scenario.
- 2) As suggested in chapter 1, the views of magistrates' have been influenced by the sociological theories and beliefs gathered from their magistrate training.
- 3) Magistrates are out of touch with how offenders view their offences and make faulty attributions about offenders.
- 4) Magistrates believe that offenders use social circumstances and excuses to neutralise their responsibility for offending.

The most plausible explanation is that a combination of items 2), 3) and 4) above account for the responses of the magistrates. If this is the case, it lends weight to the claim of offenders that magistrates are out of touch with offenders' lifestyles and do

not understand them. Offenders indicate that if they show remorse or accept responsibility for their offence in court magistrates sometimes appear to treat such statements as disingenuous. This fosters within the offender disrespect for the court and the criminal justice system.

Table 7.13 shows the statistically different factors that magistrates and offenders identified in their questionnaire responses.

**Table 7.13**

**Neutralisation of responsibility**

Question	Agree		Disagree		Sig p<
	Magistrate	Offender	Magistrate	Offender	
	%	%	%	%	
I need to offend to live	67.4	31.8	32.6	68.2	.001
I offend because I Don't have a job	67.4	42.0	32.6	58.0	.05
The people I offend against can afford it	73.9	25.0	26.1	75.0	.001
My offences are Not really a crime	50.0	28.4	50.0	71.6	.05
Nobody losses insurance companies pay	73.9	25.6	26.1	74.4	.001
I was provoked	78.3	33.5	21.7	66.5	.001
I just can't stop myself	43.5	20.5	56.5	79.5	.05

The above results show that there is a considerable disparity between the understanding of magistrates and offenders of the excuses offenders use to

neutralise their responsibility for offending. In each of the above 'agree' responses magistrates indicate by a large margin their belief that offenders' seek to use excuses to lessen their responsibility for offending. Offenders responses indicate this is not the case to the extent magistrates believe. The majority of magistrates 67.4% in response to the statement '**I need to offend to live**' indicated this was an excuse used by offenders. In comparison, only 31.8% of offenders believed this neutralised their responsibility for offending. The magnitude of the difference, suggests that magistrates hold a view of offenders that is not accurate. It may be that magistrates believe offenders will use any excuse to justify their offending. The response from offenders indicates that the majority do not believe they need to offend in order to live. The implications of the difference of view between magistrates and offenders, is that when offenders state in court that they offended in a moment of desperation, their excuse may be disregarded. One offender when interviewed recounted his story where such desperation had caused him to offend. Having failed to receive unemployment benefit because he had been too ill to sign at the job centre he was subsequently refused a DHSS emergency payment. Short of money he stole from a supermarket one small loaf and a packet of pasta. He was apprehended, charged and taken to court for this his first and only recorded offence. The magistrates refused to accept in mitigation his story about his illness and lack of money. The findings from my research that indicate the predominant view of magistrates suggests they might display prejudice when presented with evidence in mitigation.

Similarly, 67.4% of magistrates indicated that they believed offenders used a '**lack of a job**' to neutralise their responsibility for offending. Only 42.0% of offenders saw this as a factor that neutralises their responsibility for offending. These results further emphasise the difference of views and attitude between magistrates and offenders.

Magistrates also indicated that they believed offenders neutralised their responsibility for offending by claiming that those they offended against could afford it and insurance companies met the costs involved. These beliefs were held by 73.9% of magistrates. Offenders responded differently with only 25.3% indicating that they thought these factors neutralised their responsibility for offending. These findings support the claim made by offenders that magistrates hold views about offenders that are not accurate. Offenders believe that magistrates think of them as totally unprincipled. In follow-up interviews some offenders indicated that the magistrates attitude disturbs them since they are often willing to acknowledge that their offending is wrong. The consequence of magistrates' perception of offenders is that offenders believe they are often dealt with inappropriately by the Courts. Some of the offenders interviewed have cited cases where they have genuinely offered to pay compensation to a victim and the magistrates have disregarded their offer. The effect when this happens is that the offender leaves court with the feeling that the legal system has made it impossible for him to make amends in a tangible way for the damage and hurt he has caused. Such an attitude on the part of magistrates flies in the face of the principle of restorative justice that has been an important part of the

government's criminal justice policy (Restorative Justice: the Government Strategy, Homeoffice 2003).

Some offenders claim they could be helped to reduce their offending if they were given different sentences and interventions to help them to change. There are indications from other responses that offer some support to the offenders' view. In response to the statement '**I just can't stop myself**' 43.5% of the magistrates indicated that they believed offenders used this statement to neutralise their responsibility for offending. Offenders were more frank about their responsibility for offending than magistrates had predicted with only about 20.5% indicating they were incapable of stopping offending.

A large number of magistrates 78.3% also indicated in their response to the statement '**I was provoked**' that this was an excuse offenders' would use to neutralise their offence responsibility. This was not the case and only 33.5% of offenders indicated that they believed provocation by others neutralised their responsibility for offending. Offenders discussing their responses confirmed that it was often in situations when they had been provoked that they offended. Some claimed that the provocation was caused on occasions by the police. Despite this claim the majority acknowledged that such situations did not neutralise their responsibility for their actions.

The significantly different responses between magistrates and offenders confirm the research hypothesis, that each group hold different views on the causal attributions of offending. The understanding of magistrates and offenders of the factors that motivate and justify offending is quite different.

### **Magistrates and the General Public.**

As indicated in chapter 4, which discussed the research methodology being used it was decided to collect a 'general public' sample in relation to Social and Environmental factors that cause offending and offence seriousness. The reason for this was to assess the relationship of magistrates and offenders with the 'general public'. This comparison was made to help establish whether magistrates or offenders hold views closest to those of the 'general public'. It was decided to compare offenders and the 'general public', and separately magistrates and the 'general public', using discriminant analysis techniques.

### **Social and Environmental Factors**

The reference to a 'general public' sample as indicated in previous chapters represents the collection of responses from individuals' in sections of the community from which magistrates may be selected. For convenience this group is referred to as a 'general public' sample.

The items from the Social and Environmental Factors section of the questionnaire, were scored statistically significantly differently by magistrates and the 'general

public'. The following factors were identified differently as underlying cause of offending:

- Lack of Money
- Housing and social conditions

Magistrates saw '**lack of money**' as an underlying cause, but the 'general public' placed a greater emphasis on '**housing and social conditions**' shown by the discriminant analysis results in Tables 7.14 and 7.15:

**Table 7.14**

**Social and Environmental factors**

Canonical Discriminant	Magistrates		General Public	
	mean	sd	mean	sd
Lack of money	4.2609	0.94996	3.7228	1.14995
Housing and social conditions	3.1522	1.07429	3.3861	1.06743

**Table 7.15**

	Wilks	Chi-Square	df	Sig p<	Group Centroids	
	Lambda				Magistrates	Gen. Public
Function 1	.890	16.758	2	.001	.517	-.235

The Wilks Lambda value of .890 shows that 89.0% of the variance between magistrates and the 'general public' is not explained by the canonical discriminant

function. The discriminant function accounts for 11.0% in the difference of attributions between the magistrates and offenders. The amount each component variable within the discriminant function analysis contributes to the difference in attributions of magistrates and offenders has been calculated from the discriminant function stepwise Wilks Lambda statistics and is shown in Table 7.16 .

**Table 7.16**

Canonical Discriminant Function Factor 1	Contribution
Lack of money	51.1%
Housing and social conditions	48.9%

The above table shows that each of the factors made a very similar contribution. Each factor therefore makes an almost equally important contribution to the difference of views expressed between magistrates and the ‘general public’.

The internal validity of group responses for the canonical discriminant function was assessed, using Cronbach’s alpha and is shown below.

Magistrates            alpha = 0.5229

General Public        alpha = 0.7251

The above alpha values indicate the ‘general public’ answered with greater consistency than the magistrates. The consistency of responses from the ‘general public’ is about 92% better than from the magistrates. The fact that the magistrates

have answered less consistently than the 'general public' is surprising in view of the magistrates' training and their Criminal Justice Service experience. The findings lend credence to the expressed opinion of offenders, that magistrates act inconsistently when arriving at verdicts and imposing sentences for very similar cases. The amount of variation in the response of magistrates raises questions, about the consistency of decision making, and level of justice dispensed by the courts.

Although magistrates and members of the 'general public' expressed different views on other factors of the Social/Environmental section of the research survey, they were not statistically significant. The overall difference between magistrates' and 'general public' responses was substantial as confirmed by the group centroid scores for this measure (magistrates .517: general public -.235).

### **Attributions about Others' Social Perceptions of Crime**

The second section of the research questionnaire investigated social perceptions of crime. Respondents were asked to identify which type of offences they believed that most people consider the worst/most serious.

Analysis of the Social perceptions of crime data that identified offences respondents considered the most serious, also indicated that magistrates and the 'general public' held statistically significant different views. The offence types which magistrates and the 'general public' viewed differently are listed below:

- Speeding
- Alcohol misuse
- Offence against a company

Magistrates saw '**alcohol misuse**' as more serious than the 'general public'. The 'general public' placed a greater emphasis on '**speeding**' and '**offence against a company**' as shown by the discriminant analysis results in Tables 7.17 and 7.18.

**Table 7.17**  
**Perceptions of Crime others belief**

Canonical Discriminant Function 1 Factors	Magistrates		General Public	
	mean	sd	mean	sd
Speeding	1.5000	0.65828	1.7624	0.77651
Alcohol misuse	2.3478	0.84898	2.1485	0.79229
Offence against a company	1.7391	0.61227	1.9802	0.76132

**Table 7.18**

	Wilks	Chi-Square	df	Sig	Group Centroids	
	Lambda				p<	Magistrates
Function 1	.884	17.663	3	.001	-533	.243

The Wilks Lambda value of .884 shows that 88.4% of the variance between magistrates and the 'general public' is not explained by the canonical discriminant function. The discriminant function accounts for 11.6% of the difference in

attributions between the magistrates and the 'general public'. The amount each component variable within the discriminant function analysis contributes to the difference in attributions of magistrates and offenders has been calculated from the discriminant function stepwise Wilks Lambda statistics and is shown in Table 7.19

**Table 7.19**

Canonical Discriminant Function 1 Factors	Contribution
Speeding	33.3%
Alcohol misuse	33.8%
Offence against a company	32.9%

The above table shows that each of the factors made a very similar contribution to the difference of views expressed by magistrates and the 'general public'. In view of this, it is important that each of the factors are considered when identifying the difference between magistrates and members of the 'general public's' views.

The internal validity of each group response for the canonical discriminat function was assessed using Cronbach's alpha and is shown below:

Magistrates            alpha = 0.5812

General Public        alpha = 0.5790

The above alpha values are moderate indicating that there was limited consistency in the response of both the magistrate and general public group. The response of

magistrates was slightly more consistent than that of the 'general public'. The difference in group centroids for this measure (magistrates  $-.533$ : general public  $.243$ ) although in the opposite direction, they indicate a similar magnitude of difference in responses as they do for the Social and environmental factors measure.

The result in relation to speeding is interesting. It was expected that magistrates would view speeding as more serious than the 'general public' based on the way they tend to deal with offenders in court. Magistrates actually considered speeding less serious than did the 'general public'. This may suggest that magistrates view speeding not in terms of seriousness, but on a more 'fixed penalty' basis approach. It is possible that when hearing this type of case magistrates do not pay a great deal of attention to the evidence presented or the circumstances surrounding a speeding offence.

### **Personal Attributions about the Social Perceptions of Crime**

When invited to respond to the same questions and indicate their personal views, both magistrates and the 'general public' did not identify the same offences as for the previous section. Magistrates and the 'general public' only statistically significantly differed in their responses, with respect to an **'offence against the police'**. Magistrates viewed this offence more seriously than the 'general public'. The discriminant analysis results are shown in Table 7.20 and Table 7.21.

**Table 7.20****Personal Perceptions of Crime**

Canonical Discriminant Function Factor 1 Offence against the police	Magistrates		General Public	
	mean	sd	mean	sd
	3.7174	0.55418	3.4455	0.68520

**Table 7.21**

	Wilks Lambda	Chi-Square	df	Sig p<	Group Centroids	
					Magistrates	Gen. Public
Function 1	.963	5.436	1	.005	.290	-.132

As the Wilks Lambda score indicates the discriminant function factor only accounted for less than 4% of the differences in responses between magistrates and the 'general public' on this measure. It was, however, the only difference of statistical significance. When the responses of magistrates to what they believe others consider most serious is made with the magistrates' personal beliefs, discrepancies occur. There are a variety of plausible explanations for this; a) they are out of touch with public opinion; b) they have been influenced by their training or information passed to them in criminal justice briefings; c) they seek to portray a public persona that is not consistent with their own views. An alternative explanation consistent with attribution theory is that they make faulty attributions (Ross 1977) about 'general public' views. The implication of all of the above for offenders tried by magistrates, is that magistrates in trying to reach verdicts and pass sentences, may treat the offender unjustly.

## **Offenders and the General Public**

### **Social and Environmental Factors**

Responses of offenders and the 'general public' were also analysed. The purpose was to see if the responses of offenders and the 'general public' were similar.

Items from the Social and Environmental Factors section of the questionnaire were scored statistically significantly different by offenders and the 'general public'. The following factors were identified as underlying causes of offending.

- Influence of friends
- Lack of money
- Family members
- Housing and social conditions
- Alcohol misuse
- Drug misuse

The general public saw all the above factors as an underlying cause of offending as shown by the discriminant analysis results in Tables 7.22 and Table 7.23.

**Table 7.22****Social and Environmental factors**

Canonical Discriminant Function Factor 1	Offenders		General Public	
	mean	sd	mean	sd
Influence of friends	2.3523	1.31835	3.9307	0.72467
Lack of money	2.8693	1.51562	3.7228	1.14995
Family members	1.4943	0.96212	3.0000	0.91652
Housing and social conditions	1.9261	1.25593	3.3861	1.06743
Alcohol misuse	2.5227	1.60341	4.0792	0.89088
Drug misuse	2.3466	1.60687	4.4950	0.68737

**Table 7.23**

	Wilks Lambda	Chi-Square	df	Sig P<	Group Centroids	
					Offenders	Gen. Public
Function 1	.405	246.145	6	.001	-.916	1.596

The Wilks Lambda value of .405 shows that 40.5% of the variance between magistrates and the general public is not explained by the canonical discriminant function. The discriminant function accounts for 59.5% in the difference of attributions between the offenders and the 'general public'. The amount each component variable within the discriminant function analysis contributes to the difference in attributions of offenders and 'general public' has been calculated from the discriminant function stepwise Wilks Lambda statistics and is shown in Table 7.24

**Table 7.24**

Canonical Discriminant Function Factor 1	Contribution
Influence of friends	16.4%
Lack of money	15.9%
Family members	17.1%
Housing and social conditions	15.8%
Alcohol misuse	16.9%
Drug misuse	17.8%

The above table shows that each of the factors made a similar contribution. There is no single factor that accounts for the overall difference in views expressed between offenders and the general public.

The internal validity of each group response for the canonical discriminant function was assessed using Cronbach's alpha and is shown below:

Offenders                      alpha = 0.6212

General Public                alpha = 0.6207

The above alpha values are moderate indicating that there was limited internal consistency in the response of both the offenders and 'general public' group. The consistency is almost identical for each group.

Results indicate that the 'general public' identified considerable more social and environmental factors as causes of offending than did offenders. The overall

difference was large, as confirmed by the group centroid scores for this measure (offenders -.916: general public 1.596).

Although the factors 'influence of friends, 'family members', 'alcohol misuse' and 'drug misuse' were identified by magistrates as causes of offending, none of the factors that the 'general public' indicated were considered by offenders as causes of their offending. These results do not prove that magistrates' and the 'general public' beliefs are incorrect; but they support the claim of attribution theory, that observers cannot accurately predict the causal attributions of actors (Jones and Nesbett 1971). The results also lend some support to the claim of offenders, that magistrates and non-offenders have faulty beliefs and make incorrect attributions about the underlying causes of offending. Interestingly, both magistrates and the 'general public' identified more factors that might mitigate the liability for offending, than did offenders. Offenders, therefore, do not appear to seek to excuse their offending by claiming their offending was due to the adverse influence of social and environmental factors, as has generally been assumed in the past. Criminologists and researchers investigating social and environmental factors (Baldwin and Bottoms 1976; May 1999) have indicated that social and economic deprivation correlate with increased levels of criminal activity.

### **Attributions about Others' Social Perceptions of Crime.**

The second section of the questionnaire investigated social perceptions of crime and the list of offences that the respondents believed others would consider the more serious.

Analysis of the Social perceptions of crime data, that identified offences that respondents believed others would consider the most serious, also indicated that offenders and the 'general public' held statistically significant different views. The offence types which offenders and the 'general public' viewed differently are listed below:

- Assault/violence
- Offence against a friend
- Offence against a rich person

The 'general public' placed a greater emphasis on 'Assault/violence' and an 'offence against a friend' than did offenders. Offenders viewed 'an offence against a rich person' as more serious than did the 'general public'.

The difference between offenders and the 'general public' is shown by the discriminant analysis results in Tables 7.25 and 7.26.

**Table 7.25****Perceptions of Crime Others' belief**

Canonical Discriminant Function 1 Factors	Offenders		General Public	
	mean	sd	mean	sd
Assault/violence	3.3807	0.72307	3.6832	0.54646
Offence against a friend	2.7159	0.77753	3.0891	0.77587
Offence against a rich person	2.6875	0.82050	2.2574	0.92362

**Table 7.26**

	Wilks Lambda	Chi-Square	df	Sig p<	Group Centroids	
					Offenders	Gen. Public
Function 1	.810	57.655	3	.001	-.366	.637

The Wilks Lambda value of .810 shows that 81.0% of the variance between offenders and the general public is not explained by the canonical discriminant function. The discriminant function accounts for 19.0% of the difference in attributions between the offenders and the general public. The amount that each of the component variables within the discriminant function analysis contributes to the difference in attributions of offenders and 'general public' has been calculated from the discriminant function stepwise Wilks Lambda statistics shown in Table 7.27:

**Table 7.27**

Canonical Discriminant Function 1 Factors	Contribution
Assault/violence	32.6%
Offence against a friend	32.6%
Offence against a rich person	34.8%

As the percentage for each factor shows they all contribute almost identically to the difference between the two groups views on offence seriousness. The contribution of all the factors need to be taken into account, when considering the difference of views between the two groups.

The internal validity of each groups response for the canonical discriminant function was assessed using Cronbach's alpha and is shown below:

Offenders            alpha = 0.5277

General Public      alpha = 0.5267

The above alpha values are moderate indicating that there was limited internal consistency in the responses of both the offender and the 'general public' group. The consistency is very similar for each group. Results indicate that the 'general public' identified one more type of offence as more serious than offenders. The overall differences in responses between offenders and the general public to the canonical discriminant function factors was large as confirmed by the group centroid scores for this measure (offenders -.366: general public .367).

The results in relation to 'Assault/violence' and 'offence against a friend' are not surprising. The indication that offenders view an 'offence against a rich person' as being more serious than the 'general public', was unexpected. In follow up interviews with offenders, they indicated the reason for viewing an offence against a rich person

as more serious, was because they believed this to be the attitude magistrates held. Consequently, if being tried for this type of offence, offenders would expect a severe sentence. A comparison of the responses between magistrates and the 'general public', and magistrates and offenders; showed magistrates in both samples had actually viewed an offence against a rich person to be less serious. This indicates that offenders' perceptions of magistrates are incorrect.

### **Personal Attributions about the Social Perceptions of Crime**

The third section of the questionnaire asked for responses to the same questions; but indicating their personal views on the most serious offences from the list of offences. Offenders and the 'general public' did not identify the same offences as in the previous section of the questionnaire. The offence types which offenders and the 'general public' viewed differently are listed below.

- Offence against a company
- Criminal damage
- Assault/violence

The 'general public' viewed all the above offences as more serious, than did the offenders. The discriminant analysis results are shown in Tables 7.28 and 7.29:

**Table 7.28****Personal Perceptions of Crime**

Canonical Discriminant Function 1 Factors	Offender		General Public	
	mean	sd	mean	sd
Offence against a company	2.0455	0.94305	2.6832	0.70613
Criminal damage	2.4205	0.94683	3.1836	0.73525
Assault/violence	3.2216	0.81542	3.8614	0.37496

**Table 7.29**

	Wilks Lambda	Chi-Square	df	Sig p<	Group Centroids	
					Offenders	Gen. Public
Function 1	.770	71.379	3	.001	-.412	.439

The Wilks Lambda value of .77 shows that 77.0% of the variance between offenders and the 'general public' is not explained by the canonical discriminant function. The discriminant function accounts for 23.0% of the difference in attributions between offenders and the 'general public'. The amount that each component variable within the discriminant function analysis contributes to the difference in attributions of offenders and 'general public' has been calculated from the discriminant function stepwise Wilks Lambda statistics and are shown in Table 7.30.

**Table 7.30**

Canonical Discriminant Function 1 Factors	Contribution
Offence against a company	32.7%
Criminal damage	32.8%
Assault/violence	34.5%

Similar to the views others are believed to hold on the seriousness of offence types the discriminating factors make an almost equal contribution to the overall difference in views between offenders and the 'general public'.

The internal validity of each group's responses for the canonical discriminant function was assessed using Cronbach's alpha and is shown below:

Offenders                      alpha = 0.6235

General Public                alpha = 0.5131

The above alpha values are moderate, indicating that there was limited internal consistency in the response of both the offenders and the 'general public' group. The consistency of responses is considerably higher for the offender group in comparison to the 'general public' group.

The results indicate that the 'general public' identified one more type of offence as being more serious than did offenders. The offences identified for their personal perceptions of offence seriousness are different from the offences identified when they were indicating what they considered were the offences that others believed to be more serious. The overall difference in responses between offenders and the general public to each of the canonical discriminant function factors was large as confirmed by the group centroid scores for this measure (offenders -.412: general public .439).

A comparison of the group centroids for the three groups (offenders, magistrates and 'general public') shows that the views of offenders and the general public, are more similar than the views of magistrates and the general public. Since offenders are a minority group within society then this is not the result that one would necessarily expect. In relation to section 2 of the questionnaire, that measures the perception of respondents about the view others would have about the most serious crimes; the difference in views between magistrates and the general public is less marked. Nevertheless, the difference is still significant. The indications seem to be that the views of magistrates are out of touch with both offenders and the 'general public'.

The research results do not provide us with insights into the causes of crime. They do, however, provide us with the attributions that each of the parties invited to participate (offenders, magistrates and the 'general public') consider from their perspectives to be factors that make a contribution to, or are related to, criminal activity. The responses given may or may not be valid, but from their individual group perspective, they are relevant. It is not surprising that the views of offenders and magistrates differ. A closer correlation of magistrates' and the 'general public' views was expected. The difference raises questions of how representative magistrates are of society. The principle, that magistrates should be a representative sample of their community appears not to be the case.

In chapter 2 (p 21-24) reference was made to the study (Baldwin 1976), the Royal Commission (1948) On Justices of the Peace and (Auld 2001) The Criminal Courts

Review in relation to the composition of the Magistracy. Baldwin concluded that ‘the importance of having some degree of social mix on the bench cannot be exaggerated. In the final analysis, the question of the importance of the social composition of the magistracy is that justice must be seen to be done’. Auld, in the 2001 Criminal Courts Review arrived at a very similar conclusion.

Tackling crime is likely to be more effective if there is a consensus within society about the issues that need to be addressed and the methods that should be used to reduce offending.

## **Chapter 8 'Present Influences on Future Practice.**

### **8.1 Introduction**

This chapter will reflect on the research and its findings reported in chapters 6 and 7, and how this relates to the treatment of offenders within the Criminal Justice System. Findings from the research will be used to make recommendations for future practice within the criminal justice system.

One of my research aims was to investigate the claim made by offenders that they lived and functioned in a different social world from magistrates, judges and criminal justice professionals. As a result of these differences, offenders claimed that they were misunderstood which resulted in them being often wrongly convicted of alleged offences and sentenced to treatments that would not help them change. In court hearings offenders felt their 'voice' is not heard and their views ignored or disregarded. Evidence of the differing social worlds and respective attitudes and behaviour of magistrates, criminal justice professionals and offenders towards each other was cited in chapter 2.

The reason for the injustices does not only arise out of class differences but also arises because of differences of attributions and beliefs between magistrates and offenders about why the offences were committed and the motives for offending. Each of the different social groups, magistrates, and offenders were affected by cultural and differing social representations and expectations that were shaped by traditions, environmental and social circumstances of their respective social worlds.

Heider (1958) suggested this arises as a result of the influences of common-sense psychology. Tajfel (1969) pointed out that different social groups hold different sets of values and these cultural and social values they use are unreliable for interpreting the behaviour of members of different social groups. The difference in responses from magistrates and offenders to my research questionnaires are consistent with the research findings of Heider and Tajfel. Pettigrew (1979) investigating differences between groups claimed there exists an ultimate attribution error. It is a bias that leads to faulty interpretation, explanations and attributions about the behaviour and actions of members that belong to a different social group than the person observing or interpreting the behaviour.

Sentencing policy has mainly been influenced by the views of lawyers and politicians most of whom are unrepresentative of the offenders. The attributions of offenders about why they offend and what might enable them to reduce their level of offending is rarely sought and taken into account.

One of my research aims was to collect the views of offenders and members of the general public about causal attributions of offending, offence seriousness, motives for offending and neutralisation of responsibility and compare them with the attributions of magistrates. The research findings therefore can be used to examine present sentencing policy inform future sentencing decisions and the interventions used with offenders to reduce their level of offending.

A second aim of my research was to consider how likely the interventions included in sentencing decisions would assist offenders to change their offence behaviour. In particular, how effective the sentencing of offenders associated with the 'What Works' approach to attend accredited programmes within the community was likely to achieve change. Part of my investigation was instigated because of claims made by offenders that the content of accredited programmes were irrelevant to them and that the scenarios, approaches and methods being introduced to them to enable them to change were not relevant to the social world in which they lived and had to survive. This echoed the earlier claims of Martinson (1974) that 'Nothing Works' in his research review of interventions used with offenders in the USA.

My research findings, reporting the attributions of offenders about what influences them to offend and their motives for offending can be used to inform a better understanding and development of interventions for use with offenders. In chapter 1, reference was made to the weaknesses in the 'What Works' approach and its implementation and use within the National Probation Service. Insights from my research will be used to identify and suggest ways of working more effectively with offenders to reduce re-offending. Suggestions and recommendations will also be made later in the chapter for further research to enhance the interventions used with offenders.

A third aim of my research was to produce evidence and recommendations to improve future practice with offenders and improve treatments and interventions used with offenders to enable them to reduce their offending.

## **8.2 Offenders and the Courts**

My research began in chapter 2, by drawing attention to the suspicion and ambivalence that offenders have for the legal system and Courts. Some offenders claims that they were treated disrespectfully by the Courts were reported (Gill 1976). These views contributed to offenders disrespect for the judicial system. More importantly, offenders believed the situations and factors that led them to offend were not understood by magistrates, or disregarded by them. Linked to offender's beliefs was their view that the misunderstanding of magistrates affected sentencing decisions and the way they were treated in Court. Other attitudinal differences of offenders and magistrates have been identified by my research, and are included in the research results reported in chapter 7.

My research findings show that the effect of Social and Environmental Factors are seen as less important by offenders than by magistrates. As previously indicated in chapter 3, Heider (1958) has shown that actors' and observers' attribute different causes to behaviour. Observers form their view of another's actions based on their own experience and limited knowledge of the actor's situation. In addition, an observer is unaware of all the peripheral circumstances and influences that affect the

actor's behaviour. My research has shown that magistrates (observers) attribute different causes and influences to the behaviour of offenders (actors).

In their attributions, offenders and magistrates identified different factors as being significant causes of offending. The factors that offenders attributed as the four most significant causes of their offending were; **lack of money, lack of job, easy opportunity to commit crime, alcohol misuse**. Similar views have been reported by sociologists investigating the causes of crime in urban and socially deprived communities (Rex and Moore 1967; Baldwin and Bottoms 1976; Hall et al 1976) Magistrates expressed different views than offenders. The four factors magistrates considered contributed most to the likelihood of someone offending were in order of priority, **drug misuse, lack of money, alcohol misuse, influence of friends**. There is only one factor, that occurs within the offenders' and magistrates' list namely, alcohol misuse, but it appears in a different place in their order of priority. We cannot be sure the factors selected by offenders did cause them to offend. The difference in choice between offenders and magistrates, however, supports the claim that actors attribute different causes for an event than observers of the event (Heider 1958, Jones and Nisbett 1972). Observers are believed to regularly attribute incorrect causes to other people's actions, and Ross referred to this in his research, as the fundamental attribution error (Ross 1977). The finding of Ross lends credence to the claim of offenders, that magistrates fail to understand them and the reasons for their offending.

In chapter 2 the account was recorded of offenders that felt ignored and disbelieved by magistrates and criminal justice professionals, even when they were telling the truth (Gill 1976). This difference in understanding contributes to the lack of respect that exists between offenders and magistrates. The belief on the part of offenders that it affects the way they are treated by magistrates and sentencing decisions is quite plausible. A further important factor when considering the difference in the views of the courts and offenders about what they believe are the causes of offending, is the influence such attributions have on the sentences imposed by the court. It may not be appropriate to impose a form of treatment that reflects the court's view rather than that of the offender. If the basis of the sentencing decision is flawed, then offenders may be directed to address and work on areas of their life which they do not believe are causes of their offending. Conversely, things that the offender knows cause him to offend may be disregarded and the offender left without professional help to address these matters in ways that could assist them to change.

My research results reported in chapter 6 and 7 show also, that views of magistrates are different when compared with those of members of the 'general public' who took part in the research. As indicated in earlier chapters, this 'general public' sample was collected from a population from which one might expect magistrates to be appointed. The fact that magistrates seem so out of touch with opinions within this general group of society raises concerns about the way that justice is dispensed and for the interventions ordered by the Courts in the hope of reducing recidivism.

Some of the possible causes for magistrates being out of touch with offenders and the 'general public', are already known (Fitzmaurice and Pease 1986; Ross 1977). Investigations into the composition of the magistracy over the last century have shown that magistrates mainly come from the professional and employing class, or management. Statistics about the composition of the magistracy is cited in chapter 2. Home office surveys show there are only a few magistrates that are skilled or unskilled manual workers. Ethnic minority groups are also under represented. There is a narrow representation of the main political parties within the magistracy. Attempts to get a broader representation of society serving as magistrates has had limited success (Baldwin 1976; Auld 2001). In my opinion, the fact that most magistrates do not have personal knowledge of the culture and section of society that the majority of the offenders live or operate within, compromises magistrates capacity to understand offenders. Devlin (1979) puts forward the contrary opinion that such knowledge and experience is unnecessary.

The views of magistrates are also influenced by the briefing and training they receive. Magistrates' training was handled at a local area level until 2005. Most of the material available to magistrates has been available through the Magistrates Association, but not all magistrates choose to join this organisation. Examining the training material available to magistrates I found the material to be quite old and written mainly by local magistrate groups or the Institute of Personnel and Development. A few criminologists have contributed to training courses but their contribution is quite limited. A mere 2-3 days training is provided by the Department

of Constitutional Affairs for new magistrates. This mainly deals with procedural matters and includes a visit to a Prison, a Youth Offending Institution and a Probation Service facility. The situation changed in 2005, when the Judicial Studies Board took on the responsibility of overseeing magistrate training. The effect of the change will only be gradual and will initially apply to newly appointed magistrates. Information about the causes of crime given to magistrates is based on the main sociological theories of crime current within criminology.

Many of the theories within the training material were developed about half a century ago but continue to be regularly restated in criminological texts. This leads to theories maintaining ongoing acceptance of being relevant today despite the radical differences in culture and society from the time when they were first published. For example, there is increased access available through the internet that could affect trends in offending and encourage people to offend. Child pornography, online gambling, e-commerce sites are readily available on line. Breakdown of marriages, changing social values relating to the family and sexual freedom, a relaxation on what can be broadcast has influenced behaviour. Different attitudes have developed during the late 20<sup>th</sup> century towards what is socially acceptable and unacceptable behaviour. Training relating to the findings of psychological research into the causes of offending and motives for offending would enable magistrates to better understand the cases they judge and could improve sentencing decisions.

The 'What Works' Approach has also influenced the policy of the courts and the decisions of magistrates. This approach has led to the Probation Service recommending in Pre-Sentence Reports the imposition of prescribed interventions, treatments and 'What Works' accredited programmes when offenders fall within a target band of the Home Office Offenders' General Reconviction Scale.

### **8.3 Magistrates, Courts and Offenders Attitudes**

In chapter 2 a number of examples were cited that illustrated the gulf in perspectives between court officials, magistrates and offenders (Gill 1976; Carlen 1976). The research results and reports of discussions with offenders and magistrates during my research demonstrate the magnitude of these differences in their views and understanding. The assistance and treatment that will help offenders change is viewed very differently by the magistracy and offenders. It was reported in earlier chapters that many offenders find the 'What Works' approach and Accredited Programmes irrelevant to them. A clear understanding between offenders and magistrates is a crucial component for the effective working of the Criminal Justice Service and the delivery of justice. Magistrates need to accept that their role is to reflect the attitude of the society they serve and to evaluate evidence excluding as far as humanly possible their own preconceptions, approaching each case on the basis that the alleged offender is innocent until proven guilty by reliable and convincing evidence.

#### **8.4 Magistrates and Courts**

Sentencing decisions and the imposition of interventions on offenders needs to be improved. In the case of magistrates, they need a better understanding of offenders and the causes of offending. This should be addressed through training, not only by academics, but also by practitioners that work daily with offenders. The responsibility for being ill informed about offenders does not entirely lie with magistrates. Visits arranged by Probation and other agencies within the criminal justice service for magistrates to meet offenders are generally arranged on a basis that is not helpful to magistrates. The offenders are often 'cherry picked' from a group of offenders that are not representative of the entire caseload of the organisation. Offenders are chosen so that they will not embarrass the agency, or cause offence to the magistrates. It is also seen as an opportunity for the agency to present itself in the best possible light of how effectively it has worked with the offenders. Magistrates, however, are given a distorted view of offenders by the offender selection process and by this type of event.

Magistrates need also to gain a better understanding of the communities they serve and circumstances offenders encounter on a daily basis. A more representative social mix is required within the magistracy. Manual workers, ethnic minority groups, in addition to professionals and businessmen, need to be encouraged to serve as magistrates (Auld 2001). For many people there are economic barriers that prevent them from committing the time to be magistrates, since they would incur loss of income. Payment for loss of earnings is an issue needing to be addressed if the

magistracy is to become more representative of the society it serves. A similar recommendation was made in the Criminal Courts Review (Auld 2001). In the interest of justice, a wider representation of society in general within the magistracy is essential.

There needs to be a change in practise by the legal profession and courts towards offenders. It was noted earlier, that offenders are often treated disrespectfully in the courts. Gill (1976) reports of court proceedings indicates the process can be overbearing and contain elements that are prejudicial to the offender. The effect of this is to create a rebellious response in offenders and a feeling that magistrates are not interested in them or their views. As standard practice, offenders are required to attend at the start of the Court sitting and may wait for hours before their case is heard. Victims and witnesses also experience a similar disadvantage due to court procedure. On some occasions the offender, witnesses and victims may be required to wait most of the day, and then find the case is postponed to a later date. During these long periods of waiting, offenders are rarely advised about the progress being made towards the hearing of their case. In this situation frustration, psychological pressure and tension arises and affects offender's attitudes towards the court and the criminal justice process. When these circumstances occur, the behaviour displayed by the defendant and court staff towards each other tends to deteriorate as the court delay lengthens. This heightening of tension can affect the defendant adversely and the defendant during the trial may well be disadvantaged due to the behaviour that he displays during the trial and the attributions that the magistrate makes about the

causes of that behaviour. The increased arousal levels that the defendant displays may be interpreted as a form of ambivalence or give an impression leading the magistrates to attribute to it a sign of guilt.

The court system needs to be organised in a way that it treats all parties fairly and with equality. Prosecution witnesses, often giving freely of their time to give evidence are like the accused similarly disadvantaged by the present process. Police officers waiting to give evidence are at times also inconvenienced, however, in contrast they often accrue large amounts of overtime payment for simply sitting around in court waiting areas. In addition, defence solicitors and counsel are affected by these delays that results in escalating legal costs. Representation has recently been made to the Department for Constitutional Affairs by the professional bodies representing barristers that handle legal aid criminal cases. The complaint has been that the fees paid for legal aid work does not cover the time spent on cases.

If the respect of offenders for the criminal justice system is to be improved, a change of attitude towards offenders in the courts and by the legal profession is needed. Offenders, irrespective of what they have done, deserve to be treated with dignity, particularly before they have been tried for the alleged offence. Pro-social modelling towards them is important if they are to be expected to interact appropriately with the Courts and within society.

### **8.5 Offenders Attitudes to Crime and Sentencing.**

The attitude of offenders also needs to be addressed. Offenders are often ambivalent about their offending behaviour and their attitude towards the courts disrespectful. Many accept offending as a way of life that is quite rewarding for them (Bottoms et al 2001). This is measured not only in monetary terms but in access to drugs and for some a type of lifestyle they could not achieve through conventional employment. This attitude is partly due to their circumstances, but circumstances do not cause or excuse their offending (Hall et al 1978). Most offenders appearing before magistrates expect a fine or Community Punishment Order. Since the introduction of the Criminal Justice Act 1991, there has been a rise in the use of Probation and Community Orders by magistrate courts (Flood-Page and Mackie 1998). Sentencing guidelines (Halliday 2001) has brought about an increase in the use of fines as an alternative to custody and probation orders. The majority of fines as current government statistics show, are not paid or only partly paid, and this situation has been allowed to exist for many years (Home Office, 2003). Community punishments are viewed by most offenders as an inconvenience that they can manage, either by engaging in minimal compliance, or by devising ways to have them revoked (Home Office 2003).

It is acknowledged that there has been a long and considerable debate about whether the sentence of the court should contain a deterrent component. During this period of debate there has been very little, if any, deterrent component included in sentencing. At the same time, current sentencing policy appears to have been

ineffective in contributing to reducing crime. With continuing high levels of crime there is a case for including a deterrent component within sentences. Evaluation of whether a deterrent factor can contribute to reducing crime and re-offending is crucial if this approach is adopted.

The principle of using deterrents is well established in other aspects of crime reduction policy. Speed cameras are used to deter motorists from speeding. There is nothing in principle to prevent the inclusion of a deterrent component within all sentences imposed by the courts. What is more important, is that if adopted, it is applied consistently and equitably across the entire country. This could be achieved by issuing sentencing guidelines to courts that detailed the deterrent component to be included in all sentences for Standard List offences. The deterrent component should stand alone, and not be subject to amelioration in the light of mitigating circumstances or early admissions of guilt.

If offenders' attitudes are to be changed in ways that will reduce offending, they need to be made more aware of the negative consequences of their offending. The displeasure of society, and the fact their behaviour will not be tolerated needs to be made plain to them. Excusing offender's behaviour on the basis that offenders are the outcome of their environment, victims of their social circumstances and culture is counter-productive. Where there is genuine evidence of damage resulting from life events, this can be acknowledged in mitigation and taken into account in the overall sentence for that particular offender. Better detection, with tougher sentencing, is

required to change the attitude of offenders. If the personal cost of offending outweighs the advantages for offenders, this will encourage some offenders to offend less (Festinger 1957).

Magistrates and court staff also have an important part to play. Offenders need to be motivated to comply with the sentence of the court, particularly when a Community Punishment or fine is imposed. Currently, at the court hearing, motivation of the offender to comply with the sentence is not a feature. If an approach that included motivation as part of the procedure of announcing the sentence became the responsibility of the presiding magistrate, then it could act as a powerful motivator for offenders. This motivation should include two features; a) a clear message to the offender of the advantage of receiving a community punishment or fine instead of a custodial sentence; b) a warning of the likely consequences should the person be brought before the court for failing to comply with the sentence being imposed. Recognising that in the tense situation of the Court hearing the exhortation to comply with the sentence might be partly lost, the details should be confirmed in writing within 10 working days.

Offenders who failed to comply with the original sentence and appear before the court for breach need to be dealt with more severely. The further penalty should be exemplary to bring about compliance, or the offender re-sentenced for the original offence. Similarly, an offender who re-offends when serving a Community Penalty would be re-sentenced for the previous offence as if it were a breach and for the new

offence. The new sentences should not be allowed to run concurrently which at present is often the case, but should be made consecutive. If this model was adopted as standard practice within the Criminal Justice System, it could have a positive effect on reducing recidivism.

My suggestions given above were written prior to publication and implementation of the Criminal Justice Act 2003. It is acknowledged that some of the above recommendations are enshrined in principle within the Criminal Justice Act 2003. Part of the new Act came into force in April 2005, but the implementation date for various sections and schedules of the Act has not been promulgated, and may never be implemented. The suggestions made above, go beyond parts of the existing provisions of the Criminal Justice Act 2003. Further legislation or amendment to existing legislation might be required to put the new recommendations into effect.

The 'What Works' approach and its implementation is discussed earlier in chapter 3. Evidence identifying weaknesses in the model and its failure to produce the hoped for results is cited. The intention was not to create the impression that the 'What Works' approach is entirely flawed, but to highlight features that could be changed to give it the possibility of being more effective.

## **8.6 Recommendations for Future Practice**

Results from my research findings indicates there is a case for making changes within the criminal justice system and in the approaches presently used with offenders to reduce their level of offending. My recommendations are a review of

sentencing policy and practice including the training of magistrates, the introduction of a deterrent related to the interventions and treatments used with offenders and a review of the 'What Works' approach.

### **8.7 Sentencing Policy and Practice**

Despite the changes made (Carter 2003) a new sentencing approach and the way that magistrate courts operate is required. This should take into consideration the points raised earlier about the way offenders are dealt with by the courts and sentencing policy.

Training for magistrates should be improved so that a) they are more aware of the social and economic conditions within which the majority of offenders live. This could be achieved by making part of magistrates preparation and ongoing training a requirement to engage in visiting local communities and social housing estates so that they are better informed before being allowed to serve as magistrates. b) magistrates should in addition to training about court procedure be trained and examined in other aspects of their duties. Part of the training should include information from sociology and social psychology, in particular attribution and social representation theory that would make them aware of the dangers of allowing their own cultural beliefs to affect their judgement and sentencing decisions. C) the introduction of payment for magistrates to enable them to take time off from their everyday employment. This would achieve a better representation of social class and cultures within the magistracy.

## **8.8 Deterrence Component and Sentencing Policy.**

The use of deterrents is an approach that has suffered from the vacillation of political and criminological opinion. Attention was drawn earlier to the lack of a deterrent component in sentences of the court. The Halliday Report (Halliday 2001) recognised that deterrents could work for some offenders, but stopped short of recommending the inclusion of a deterrent component in future sentencing policy.

I recommend that this matter be given further serious consideration. The theory of cognitive dissonance (Festinger 1957; Bem 1976) advocating the use of deterrents and enforced compliance fell out of favour within social psychology. Its use within the USA to reduce racial prejudice and discrimination was a major catalyst of social change. The introduction of a smoking ban in public places in the UK has similarly brought about a shift in behaviour.

I suggest that a reasonably large pilot study is implemented which would include a robust deterrent element within sentences and interventions imposed by the courts and the outcomes evaluated with respect to compliance with the sentence and changes in behaviour and levels of offending

## **8.9 Review of What Works.**

Most reviews of the 'What Works' approach have been done by the main proponents of the 'What Works' movement. In effect the advocates of 'what Works' have judged and provided the justification for its ongoing use. The government has largely

ignored its own Home Office Research Directorates findings and reservations about the approach (Harper and Chitty 2005). The political investment that the new Labour government in 1997 made in 'What Works' as one of its major strategies to reduce crime has probably contributed to the acquiescence and reluctance to properly evaluate the model.

I recommend that a thorough and independent review of the 'What Works' approach and the use of accredited programmes be commissioned by the government. This investigation should be carried out by independent researchers of international repute from countries where the 'What Work' approach is not used. The research should investigate the validity of the model, its effectiveness in treating offenders and reducing their level of offending. The implementation and the economic cost of the 'What Works' within the prison and probation service should also be investigated.

I also recommend that that the research is commissioned by the Office for National Statistics and that the research report be delivered to them for publication simultaneously with its release to government.

### **8.10 Conclusion**

At the start of this research journey, I suggested there were large differences in attitudes and beliefs between offenders, the magistracy and criminal justice professionals. My research findings have shown this to be the case and that magistrates and offenders do have significantly different attributions about the social

and environmental factors that contribute to offending. Comparisons of offenders' and magistrates' views about the seriousness of some offence types were also shown to be significantly different.

The beliefs of offenders and magistrates about offence motives, justification of offending and neutralisation of responsibility are also significantly different. Offenders were less likely to justify and neutralise their responsibility for offending, than magistrates believed would be the case.

A concerning finding from the research was the difference in views of magistrates and a 'general public' sample chosen to represent the sections of society from which magistrates are likely to be appointed. Serving magistrates had significantly different views on the social and environmental factors that contribute to offending and on offence seriousness.

Concerns were raised about the use and effectiveness of the 'What Works' approach and the fact that an evidence based case for its implementation and use had not been established before it became a major component of the criminal justice system aimed at reducing crime and enabling offenders to change their behaviour.

The journey is concluded by again suggesting it is time to change some of the present approach. The changes need to be based at least in part on a better understanding of offenders and their behaviour. The attributions of offenders should

be taken into account and play a part in the design and developing of the changed approach.

The Criminal Justice system owes a duty to offenders and the law-abiding citizens of our society to put in place effective measures to reduce crime, the fear of crime, and to make Britain a safer place.

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