

14 February 2002

RESTORATIVE JUSTICE PROJECT

Thank you for your letter of 7 February. I delayed replying until I had received a response from Professor Sherman. This I have now received and I enclose a copy.

First of all, can I make it clear that I am very supportive of the project and pleased that Igor Judge made arrangements to enable it to take place. However, I appreciate your concerns and welcome your letter. It gives me an opportunity to make my views clear as to how I consider the real problems, to which you refer, should be tackled. I would, however, before doing so make it clear that it must be for the individual judge to make his own decision as to the appropriate manner in which to respond to the project bearing in mind that he and he alone is responsible for passing the appropriate sentence in the case before him. Subject to that, being absolutely clear, I would offer the following comments:

1. A judge is always entitled to take into account the fact that an offender has demonstrated that he genuinely regrets having committed the offence for which he is to be sentenced. That his regret is genuine can be demonstrated by his plea of guilty and the fact that he has taken part or is prepared to take part in a restorative justice project.
2. The fact that an offender has not taken part in the project certainly does not mean that he should be sentenced more heavily than he would otherwise be. It does, however, mean that the judge does not have the benefit of knowing how he would respond if he had taken part in the project.
3. The fact that an offender wants to participate in the project but for one reason or another cannot do so is not a matter of which the offender can legitimately complain. He has no entitlement to be involved in the project. The position is exactly the same as a situation where some particular form of disposal is not available, for example, a drug treatment project. The sentencer has to sentence in the way that he considers are appropriate in the circumstances which actually exist. The judge may still be satisfied that the offender is genuinely remorseful and the court can give such credit for that as it considers appropriate.

4. While consistency in sentencing is highly desirable, in practice it can never be achieved totally and the judge is always having to sentence recognising the realities on the ground in which he has to impose the sentence. Even if it was possible to achieve consistency, one prisoner will pass his sentence in much better conditions than another prisoner sentenced to the same sentence for exactly the same offence because what is on offer in different prisons is not the same.

The importance of the project is that it may reveal that restorative justice can make a useful contribution to the justice system. If it can, it may also enable us to know the best way in which it can be used. A positive outcome would be extremely welcome. It could help break the recurrent cycle of offending behaviour which is at present an extremely worrying feature of the justice system. Sentencing is all about achieving the right balance between retribution, deterrence and rehabilitation in the interests of the public. There is increasing evidence that restorative justice can reduce re-offending. If this is the case then we need to know this.

That is why we need your co-operation but I certainly appreciate, as does Igor, that being involved in a project of this sort in the short term makes your life more difficult than it would otherwise be.

Subject to what I have already said, I agree with the “short answer” contained in Professor Sherman’s letter which I would express in my own words as follows: that judges involved in the project adopt exactly the same approach to sentencing as they would prior to the project but when a range of sentencing options are open to them, they can consider any offender’s response to restorative justice (if he participated in the project) in the same way as they would any other form of mitigating circumstances.

I am forwarding a copy of this letter to Lord Justice Judge, Mr Justice Aikens and those to whom Professor Sherman sent his letter.

Yours ever,

His Hon. Judge Pitman
The Crown Court at Snaresbrook
75 Hollybush Hill
Snaresbrook
London E11 1QW

cc: The Rt. Hon. Lord Justice Judge (RCJ)
The Hon. Mr Justice Aikens
Her Hon. Judge Anwyl (Woolwich)
His Hon. Judge Charles (Snaresbrook)

His Hon. Judge Hitching (Blackfriars)
His Hon. Judge Lyons (Wood Green)

Her Hon. Judge Anwyl
Woolwich Crown Court
2 Belmarsh Road
London SE28 0EY

His Hon. Judge Charles
The Crown Court at Snaresbrook
75 Hollybush Hill
Snaresbrook
London E11 1QW

His Hon. Judge Hitching
Blackfriars Crown Court
Pocock Street
London SE 1 OBJ

His Hon. Judge Lyons
Wood Green Crown Court
Woodhall House
Lordship Lane
Wood Green
London N22