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Criminal Justice Environment-2

Will the amendments in the Criminal Justice Act 2003 to the Juries Act 1974 improve the use of juries in criminal trials?

Justice Rights and Democracy

Jury system is regarded as an important part of English Legal System and has been known as a significant symbol of participation of the public in deciding who should go to prison and who should be free:

> The English jury system is highly regarded all around the world and seen as the bastion of freedom and liberty where one is judged by ones peers rather than by judges or barristers. Lord Devlin, a former master of the rolls, once said of the jury "a little parliament… the lamp that shows that freedom lives". [(Fitzgerald & Munice 1983) cited in: Murder in the UK (2005) (Online).]

However, it is one of the most controversial fields in criminal justice system. The jury system has been criticized by academics, the police, politicians and the public. Due to the secrecy of their verdicts there are many accusations and even myths about their work. There have been many consultations and discussions regarding amending the jury system; the last amendments are presented in the Criminal Justice Act 2003. The question is: Will these amendments improve the use of juries in criminal trials?

Juries have been used since the Norman Conquest in 1066. Their use was different from the present day use, as they were used as witnesses and for administrative purposes in the courts. There are evidences of bad treatments of jurors by judges at that time by forcing them to bring a verdict of guilt. [Martin, 2000: 232]

A jury consists of twelve persons selected randomly by computer system from the electoral register. They have to match certain criteria according to the Juries Act 1974 c.23 (1) (as amended) [see appendix 1]. They are regarded as tribunals of fact in contrast to judges who are tribunals of law.

Jury system has witnessed many improvements, as prior to 1972 only those people who have a house over a certain price could serve as jurors. So the homeless, many women and young people who did not own properties were not eligible. Doran appreciates this reform, although reminds us that it was not sufficient:

> The removal of the property qualifications and the subsequent extension of eligibility to a much wider range of individuals have certainly made juries more generally representative of the population as a whole, but there remain concerns that a proper balance of representation on juries has not yet been struck. [2002:387]

Juries are rarely used nowadays, because 95 percent of criminal cases are tried in magistrate courts and many others plead guilty so there is no need for jury; only one percent of criminal case will remain for the jury to decide. [Elliot & Quinn, 2002: 154]
However the small quantity of the jury trial is not trivial by regarding the quality of the cases that they decide, as Doran said:

> Yet notwithstanding its relatively limited use in practice, the importance of jury trial ought not to be underestimated. Obviously, the cases that are heard by juries include the most serious offences, such as murder, manslaughter, serious sexual offences and other serious offences against the person. It is in such cases that the consequences for an accused person will be most severe in the event of a wrongful conviction. [2002:379-380]

It can be argued that jury system is a sensitive area of criminal law for amendments and reform, as jury is regarded as the voice of the public in the courts and any change in this field may encourage the governments to interfere more and more and reducing the scale of jury trial. [Partington, 2003: 124]

Juries are selected randomly from the electoral register, this process is not sufficient for a representative jury. As everybody is not registered due to their age, being a member of the ethnic minority communities and those people who live in rented properties and move a lot. [Auld, 2001: Ch.5 para.22, online]
Looking for alternative ways for improving the way jurors are selected; Zander supported Auld's proposals, as he says:

> Auld suggests that a way to address that problem is to use in addition to the electoral roll other official sources of names such as the Driver and Vehicle Licensing Authority, the Department of Work and Pensions, the Inland Revenue and even telephone directories. If that is practicable, I agree. [Department for Constitutional Affairs (DCA) (online)]

The Criminal Justice Act 2003 (CJA2003) came after the suggestions of reform by Lord Justice Auld and the Act removes any excuses for ineligibility, unless they are mentally ill or disqualified. [See Appendix 1] It can be argued that this reform is one step forward towards a representative jury. Jury system was blamed for over-representative of the working class as middle class people and professionals were mostly ineligible in the past. Many academics have criticized jurors for their lack of knowledge about legal matters, as Cownie et al. say:

> Jurors have no qualification in terms of knowledge or skill which distinguishes them from others within England and Wales. Moreover they are not merely untrained: since they sit as jurors for only a short time they do not even acquire that knowledge that comes with experience. [2003: 366]

It can be argued that participation of criminal justice professionals and other middle class people will boost the jury; now there is the possibility to find jurors with legal knowledge within the juries.

However, as jury is selected at random there is no guarantee for a mixed jury from different backgrounds or social classes:

> Random selection from the community is unlikely to produce a cross-section, unless some form of stratified sampling is used, which is not the case in summoning a jury. Random selection may throw up juries which are all male, all conservative, all white. [Slapper & Kelly, 2001: 489]

At the same time Cownie et al. [2003: 368] defend the old ineligibility system for professionals in the criminal justice system such as judges, barristers, police officers and etc. from becoming jurors because; as they argue 'the jury is a lay institution'. So, allowing middle class professionals to sit as jurors may destroy the jury's basic principle. They further criticize Lord Auld's suggestions, which are now part of the CJA2003, by saying:

> Auld LJ dismissed objections that due to their professional status they might unduly influence other jurors, be prejudiced, or use insider knowledge of the system to make educated guesses about matters not always disclosed to the jury, such as previous convictions. [Cownie et al., 2003: 368]

Juries are accused of being emotional towards defendants; it has been traditionally argued that they are very fast to acquit defendants. Since jurors are not case hardened like judges and not legally qualified they may decide their verdict on the basis of their conscience. There are examples where jurors acted in that way, and simply neglected the legal evidence; such as in **R** v **Ponting** (1985) where the defendant acquitted despite the evidence of passing secret information to journalists. [Elliot & Quinn, 2002: 170]

It can be argued that jury system is the voice of the public to defend civil liberties against the government interfere in the criminal justice system and stand against the oppression of the state, in a recent study Partington argued that:

> There have been historically significant, if rare, cases where juries appear, despite the weight of evidence, to have acted on their conscience to protect civil liberty by finding persons not guilty of crimes which may be said to have significant political overtones. [2003: 123]

However there are others who accuse the jury for miscarriages of justice that happened, as they argue, as a result of juries' failure to defend the civil liberties against the state's oppression:

> For all those who now cite the acquittal of Clive Ponting, I would remind them of the so called Winchester Three, the Guildford Four, the Maguires and the Birmingham Six. [Slapper & Kelly, 2001: 491]

It is obvious that the jurors can not be blamed for these miscarriages of justice but they can be blamed for their failure to:

> Remedy the lack of due process at the pre-trial stage and thus did not provide the break on oppressive state activity claimed for the jury by its defendants. Devlin's lamp that shows that freedom lives' did not offer a glimmer of hope to these defendants. [Slapper & Kelly, 2001: 491]

Juries many times accused of racism and racial bias. It is not allowed to choose a racial balanced jury according to the decision of the Court of Appeal in **R** v **Ford** (1989). [Elliot & Quinn, 2002: 161] However everybody is entitled to a fair trial according to Article6 (1) of the European Convention on

Human Rights and it may be in breach of that convention if the defendant is racially prejudiced. This matter was challenged in the European Court of Human Rights (ECHR) in **Gregory** v **United Kingdom** (1997) when there was a note about the racial bias of a juror. The (ECHR) held that 'the judge should have discharged the whole jury'. [Elliot & Quinn, 2002: 161]

In **R** v **Mirza** (2004) the House of Lords held that the trial judge should deal with any problem which may arise with the jury and to identify any sign of wrong doing in the trial:

> To this end the jury must be told of their right and duty both individually and collectively to inform the court clerk or the judge in writing if they believe that anything untoward or improper has come to their notice. [Holroyd, New Law Journal, 2004: 398]

Marsh et al. [2004: 169] warned against racial bias in the jury room by telling a scenario about an Asian man on trial for arson who may face years in prison if found guilty. They asked about the fate of such a person in hands of some racist jurors! Zander disagrees with the racially balanced jury because:

> Special ethnic minority representation on the jury breaches the fundamental principle of random selection. Another is that it opens the door to claims for similar special treatment for other minorities. A third is that if they were aware that they had been chosen by this special procedure it would place the ethnic minority jurors in a highly uncomfortable position in the jury room. [DCA (online)]

According to section 8 of the Contempt of Court Act 1981 [see Appendix-2] the court can not investigate into the jury's verdict. This is known as jury's secrecy. It can be argued that this procedure is a good safeguard for juries in order to fulfil their duty. However, it can be argued that research into the way they reach their verdicts is also necessary for improving their service. McHugh J has mentioned two lists for secrecy and against it, cited in [Elliot & Quinn, 2002: 164] (see Appendix 4)

It can be argued that secrecy of the jury's verdict has its meaning and purposes; however a limited and controlled research by a higher court or an authorized body may not stand against the free decision of jurors and even improves the reliability of their verdict. In the case of **R** v **Mirza** (2004) The House of Lords held that the court can investigate in the problems arise from trial by jury, so it can be argued that some limited research is now allowed:

> Following the decision in Mirza, there is no longer a need to amend section 8 to allow investigations by the trial judge and/or the Court of Appeal as it was held that the court cannot be in contempt of itself. The question remains whether this goes far enough to meet the concerns expressed by Lord Steyn as to the risk of potential miscarriages of justice. [DCA, 2005, (online)]

According to CJA 2003 s. 43 (see appendix-3) the prosecution can apply for a trial without jury in serious and lengthy fraud trials. This point has been suggested many times before and it is included in Lord Auld's report [2001, (Online)] but it is still a controversial point, as Holroyd [New Law Journal,

2004: 399] mentioned: 'This controversial measure has not met with universal enthusiasm.' As the former director of the Serious Fraud Office has said before:

> It is a common belief that the facts of these cases are too difficult for a jury to understand. Whether that is true or not is something we simply do not know. Until controlled research is allowed, we can only guess at how the jury decide as they do. (Financial Times, 1 June 1998) cited in [Holroyd, New Law Journal, 2004: 399]

Trial without jury was allowed in some certain cases as national security, terrorism and now after the CJA 2003, in certain fraud cases and in cases where there is a 'real and present danger of jury tampering'. S. 44 [see appendix- 3] so it can be argued that the scale of jury trials becomes smaller and smaller, but this does not suggest abolishing the system; as Partington, [2003: 123] remarked:

> There are actually no serious proposals that jury trial should be abolished. Such a step would be seen as politically unacceptable, and as too great a move from the due process model to the crime control model of criminal justice.

There are other suggestions as alternatives to jury trials, such as trial by judges and magistrates, a panel of judges or judges and lay people. However each of these has their own problems; what Slapper& Kelly [2001: 495] mentioned is the best conclusion for this discussion:

> Existing ones such as magistrates and judge-only courts are fraught with problems of their own, but it should be remembered that existing models are not the only ones. In an atmosphere of reform and argument surrounding the Royal Commission on criminal justice, there has never been a better time to question the status quo and the traditional justifications which have underpinned it and to see if there is not some better, new, alternative.

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http:/ / www.dca.gov.uk/ criminal/ auldcom/ ar/ ar3.htm# part1
Accessed: [19 Apr. 05]

Cases

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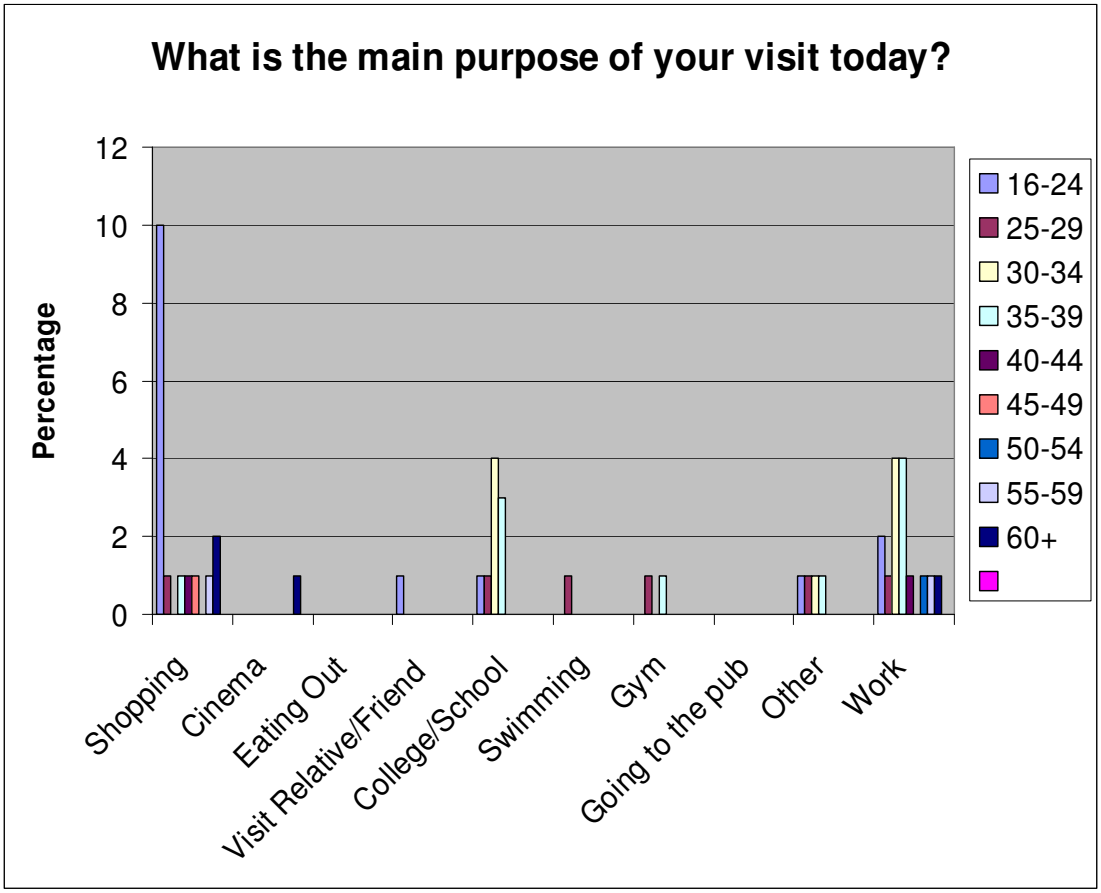
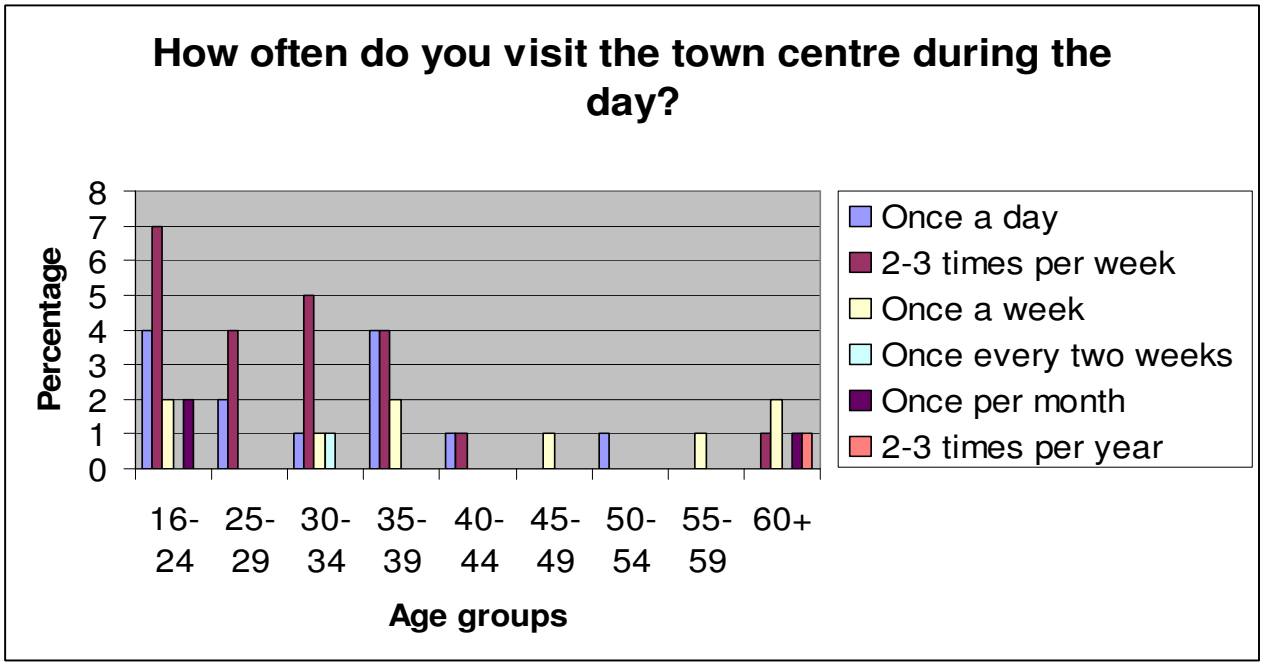
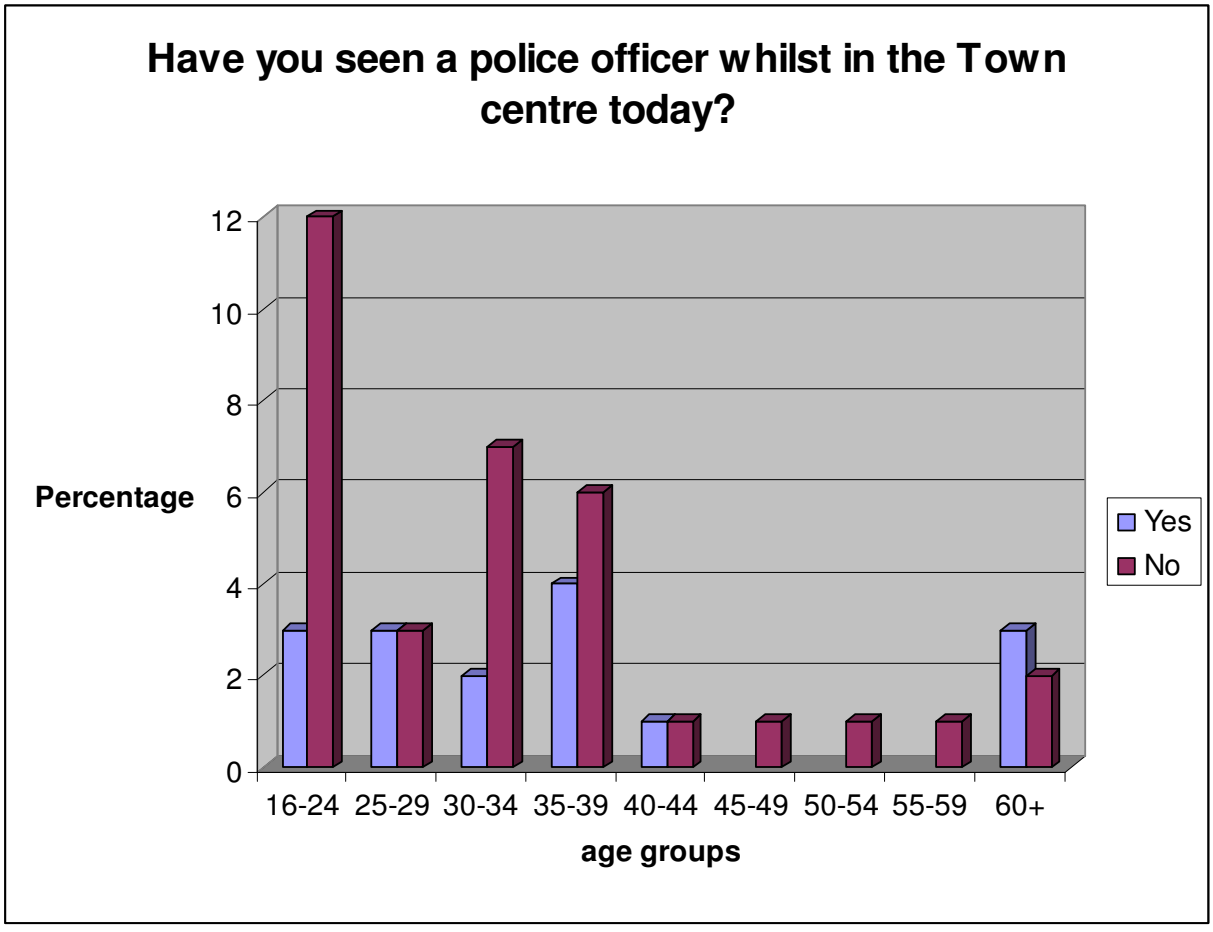
R v Ford (1989) 3 All ER 445
R v Mirza (2004) UKHL 02, [2004] 1 All ER 925.
R v Ponting (1985)

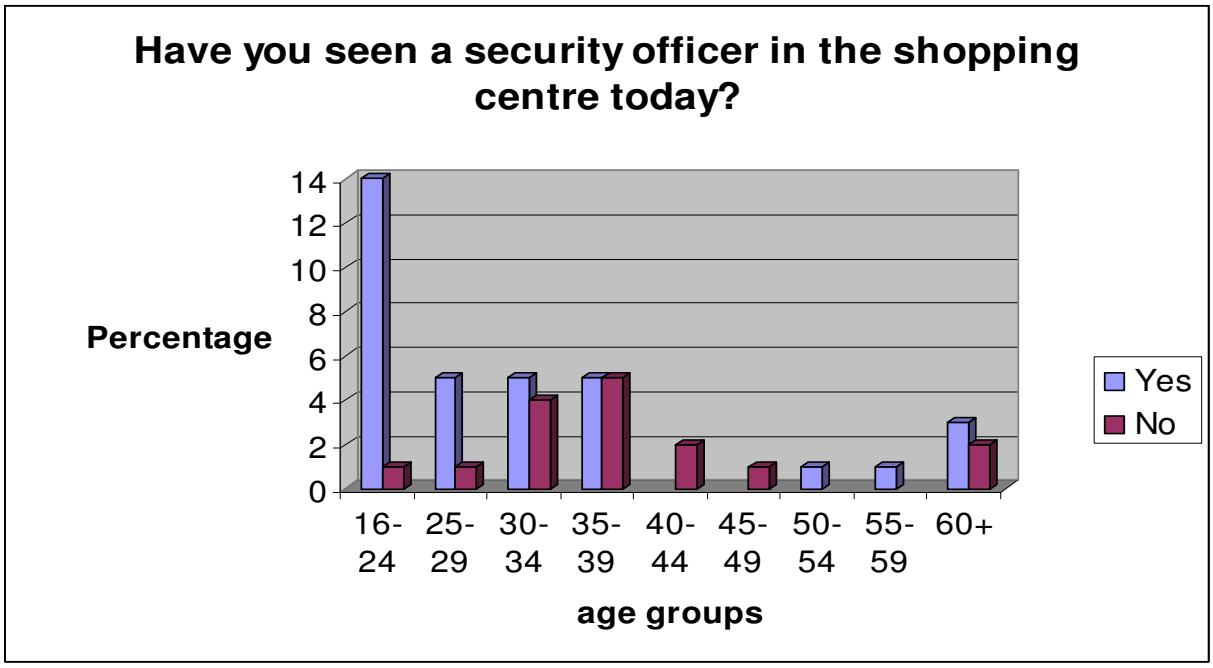
Crime and Punishment

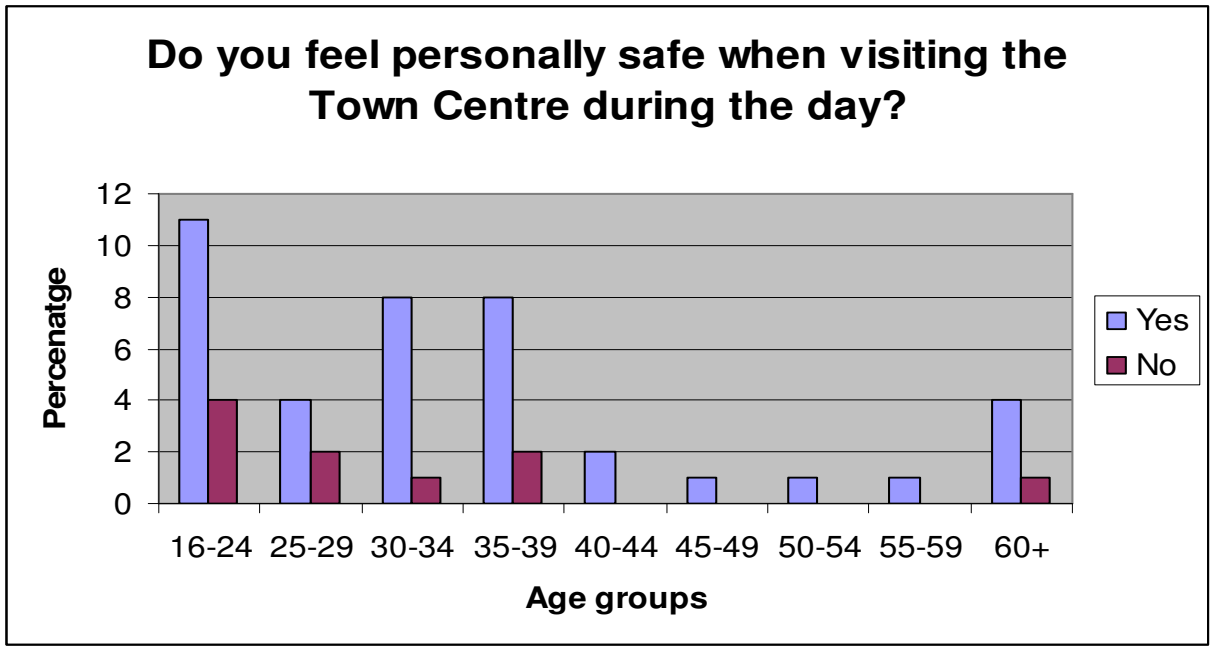
Task 1

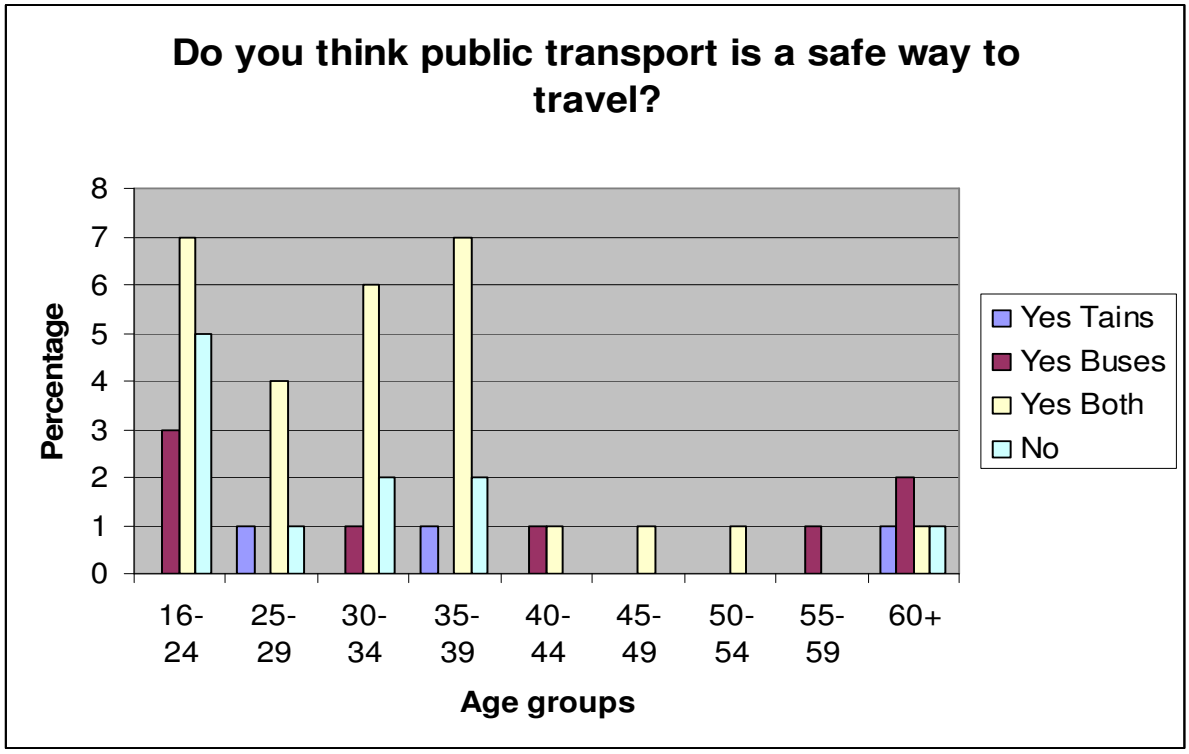


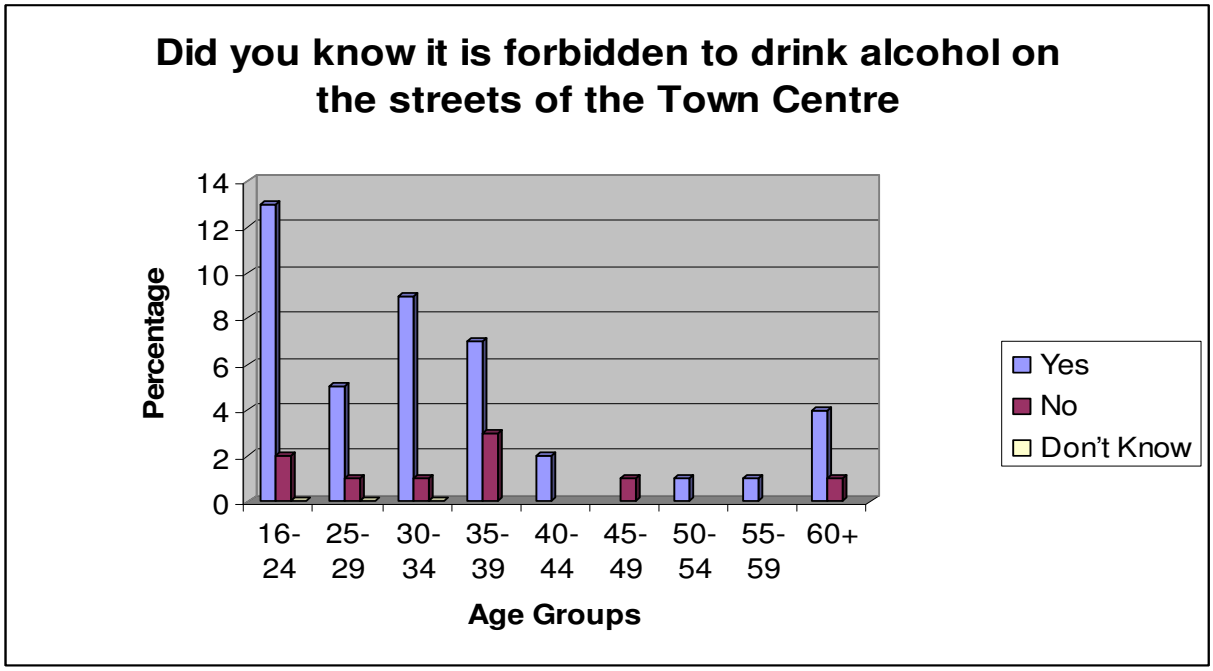

How often do you visit the town centre during the day?
Percentage
0
1
2
3
4
5
6
7
8
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Once a day
2-3 times per week
Once a week
Once every two weeks
Once per month
2-3 times per year

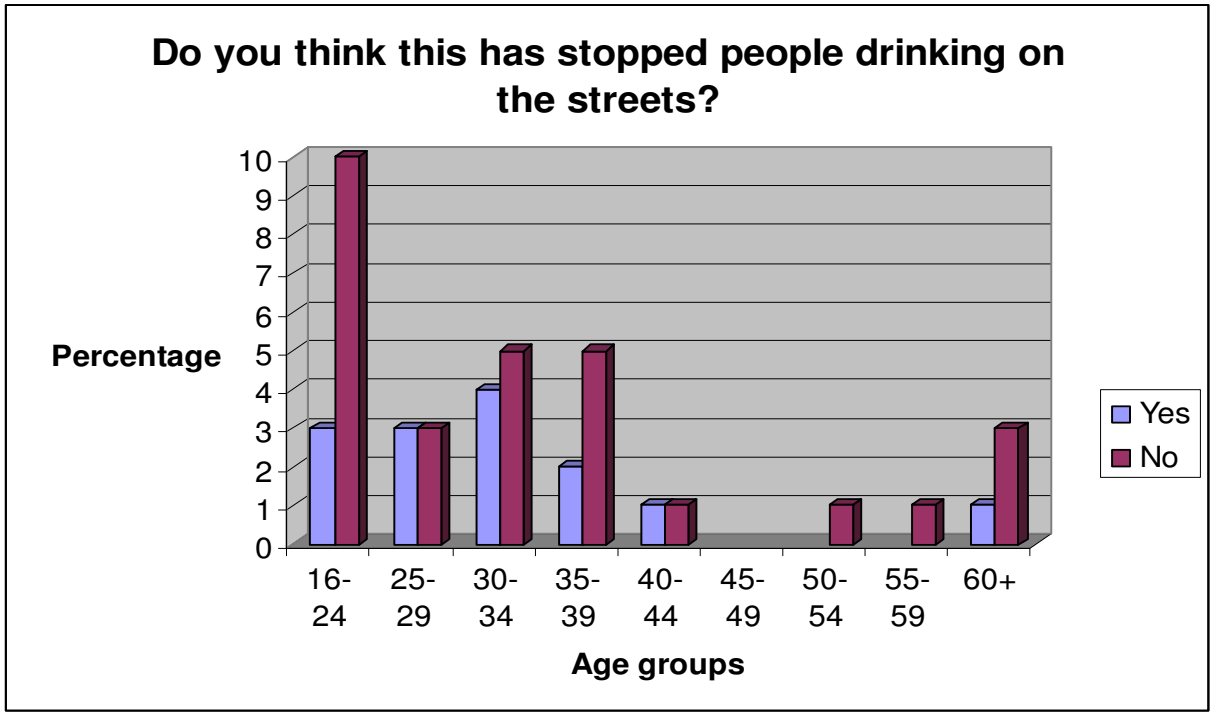

Have you seen a police officer whilst in the Town centre today?
Percentage
0
2
4
6
8
10
12
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
age groups
Yes
No

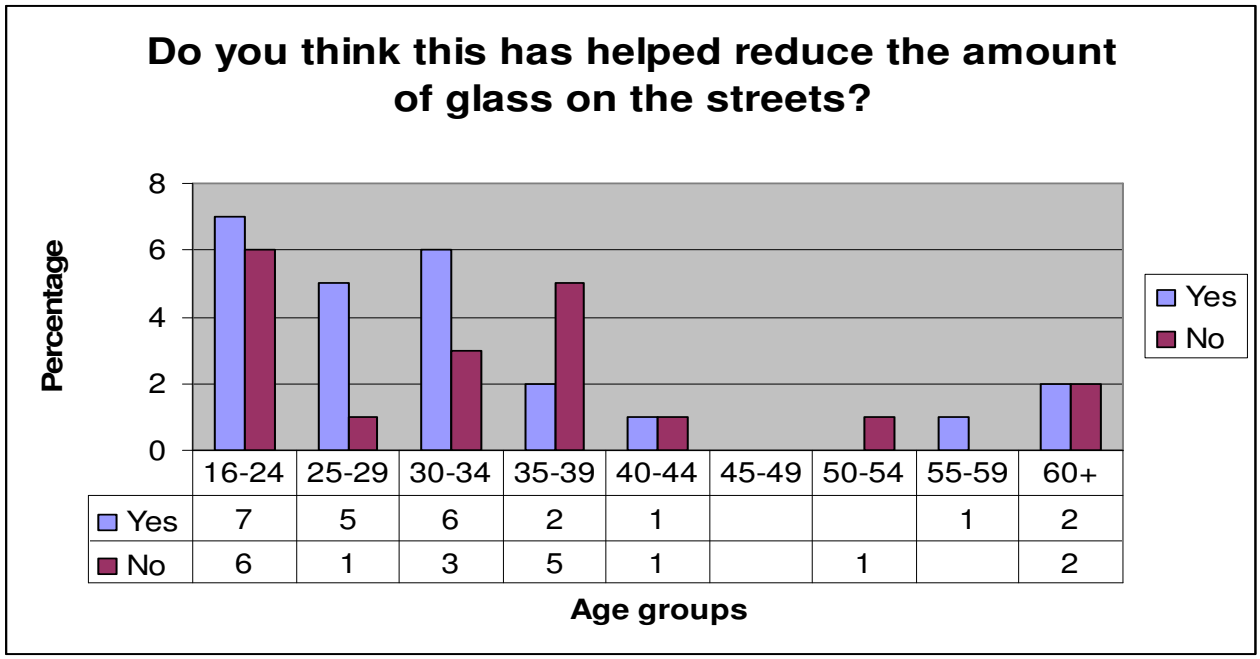

Have you seen a security officer in the shopping centre today?
Percentage
14
12
10
8
6
4
2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
age groups
Yes
No

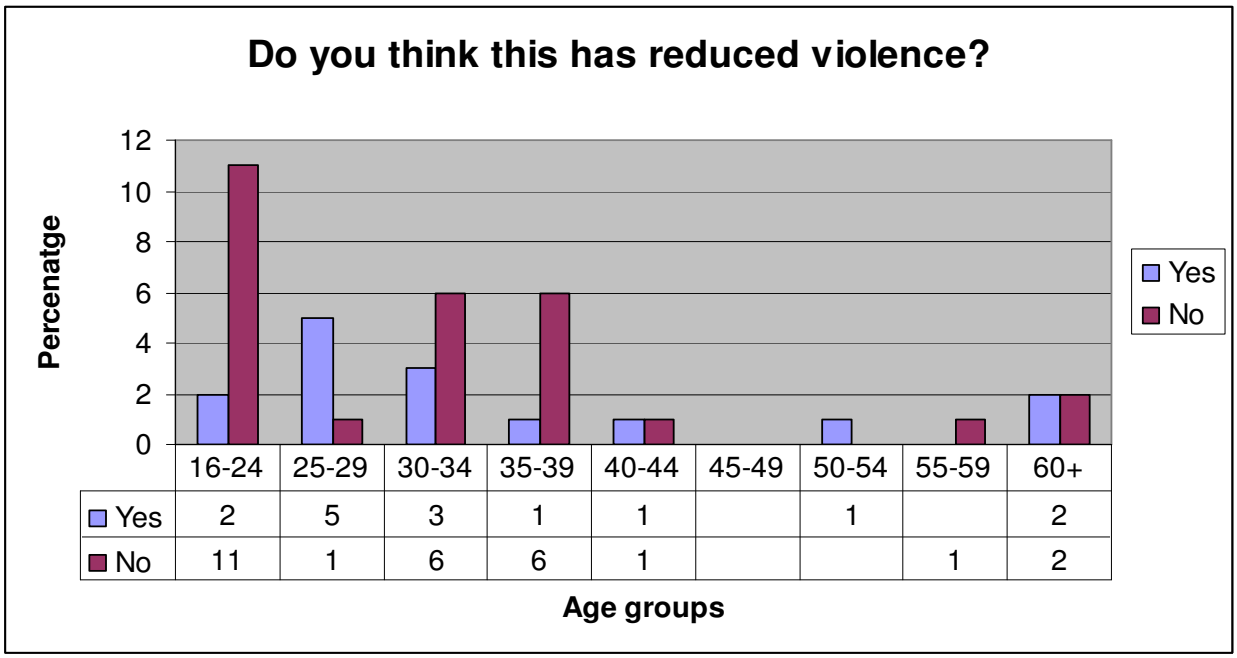

Do you feel personally safe when visiting the Town Centre during the day?
Percenatge
12
10
8
6
4
2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No


Do you think public transport is a safe way to travel?
Percentage
0
1
2
3
4
5
6
7
8
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes Tains
Yes Buses
Yes Both
No

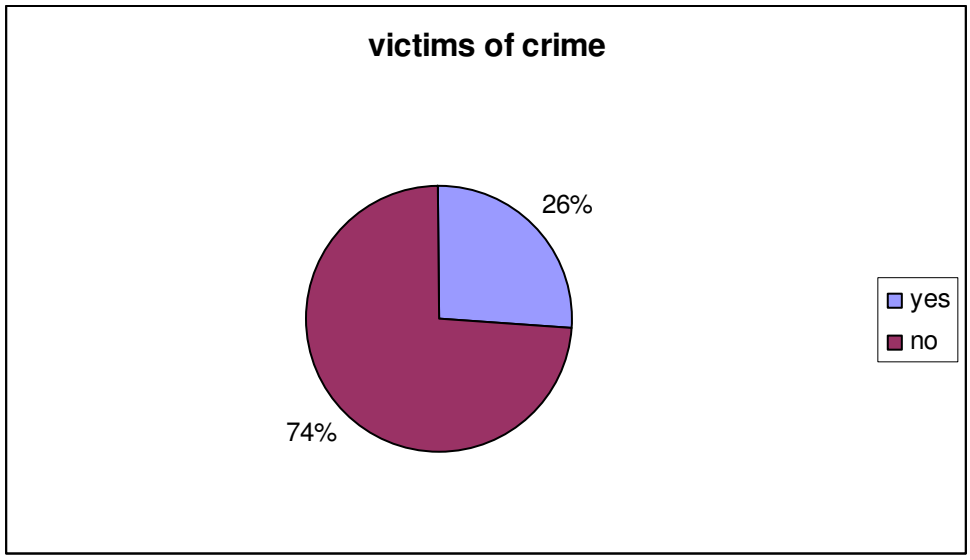

Did you know it is forbidden to drink alcohol on the streets of the Town Centre
Percentage
0
2
4
6
8
10
12
14
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age Groups
Yes
No
Don't Know

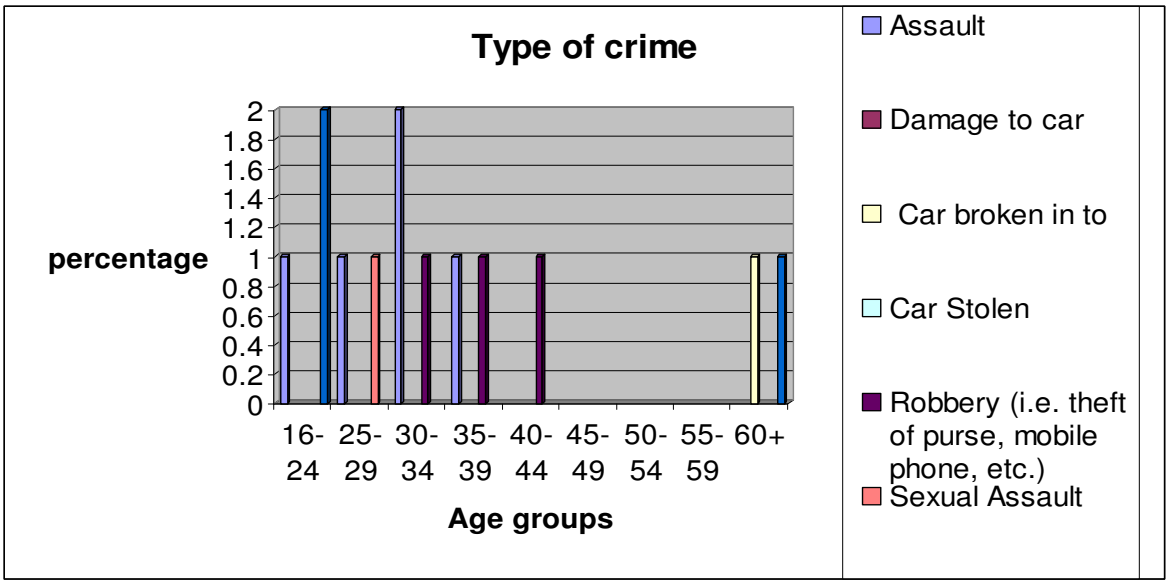

Do you think this has stopped people drinking on the streets?
Percentage
10
9
8
7
6
5
4
3
2
1
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No

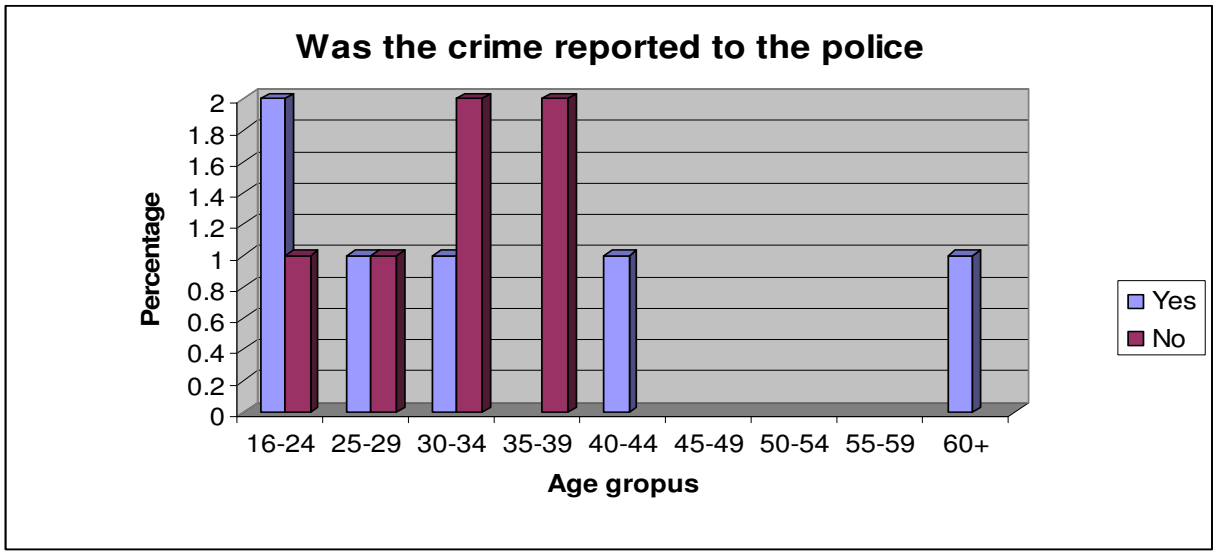

Do you think this has helped reduce the amount of glass on the streets?
Percentage
8
6
4
2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Yes 7 5 6 2 1 1 2
No 6 1 3 5 1 1 2
Age groups
Yes
No

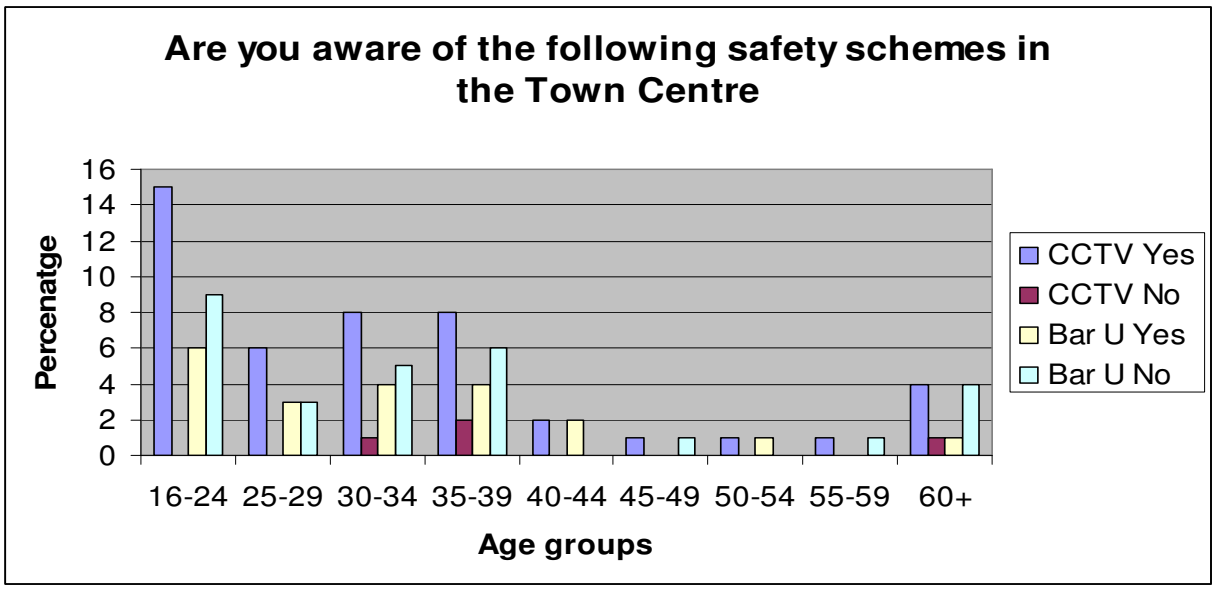


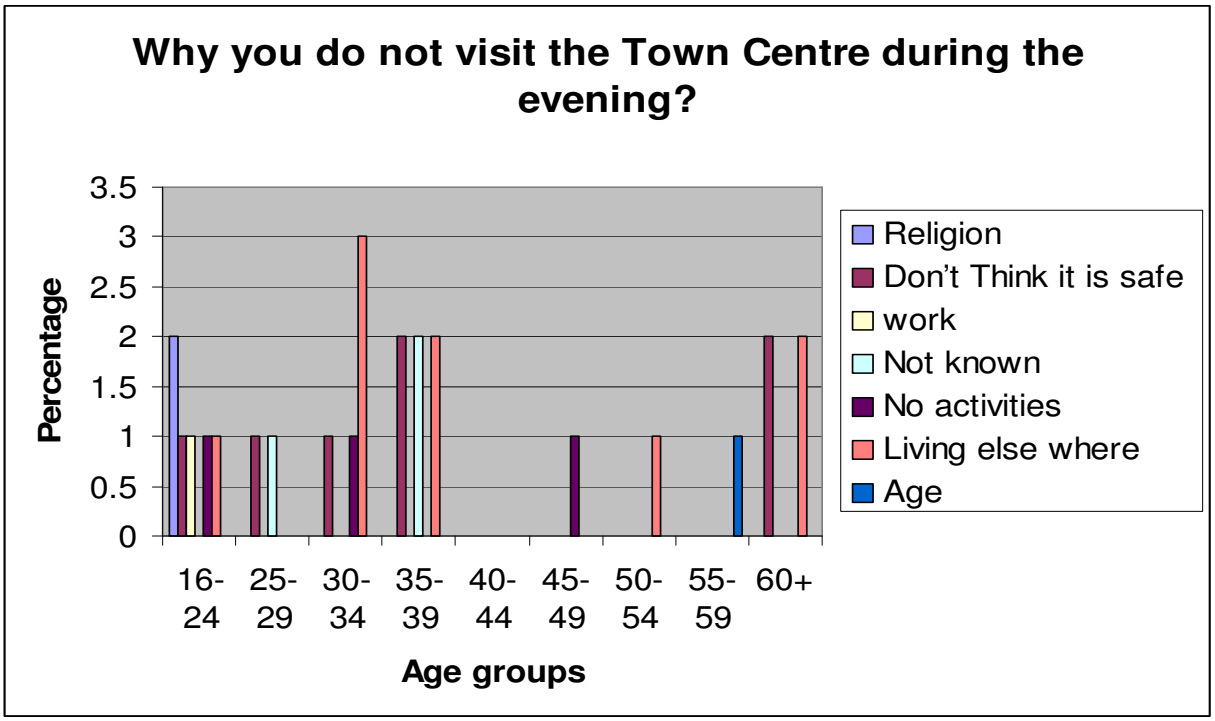
Have you been a victim of crime in the Town Centre?


victims of crime
26%
74%
yes
no

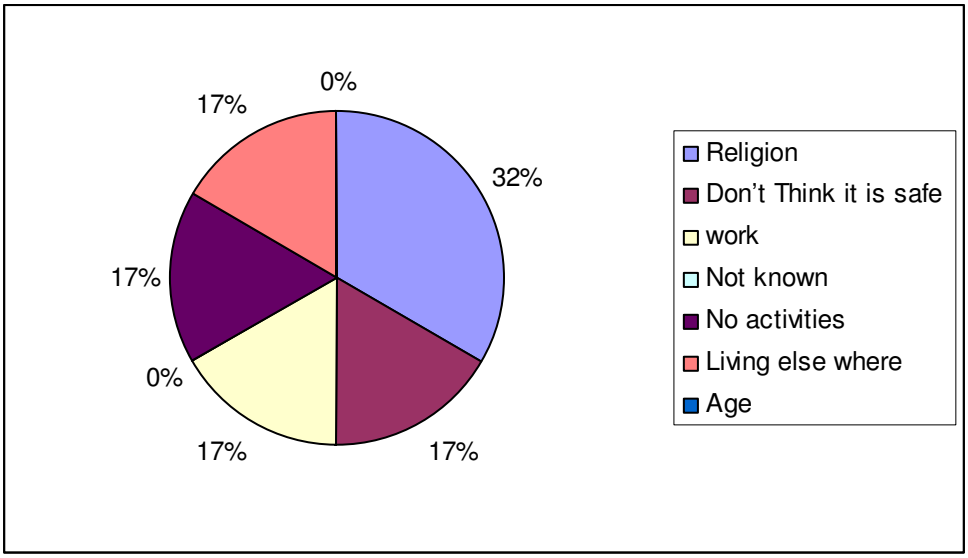

Type of crime
percentage
2
1.8
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Assault
Damage to car
Car broken in to
Car Stolen
Robbery (i.e. theft of purse, mobile phone, etc.)
Sexual Assault

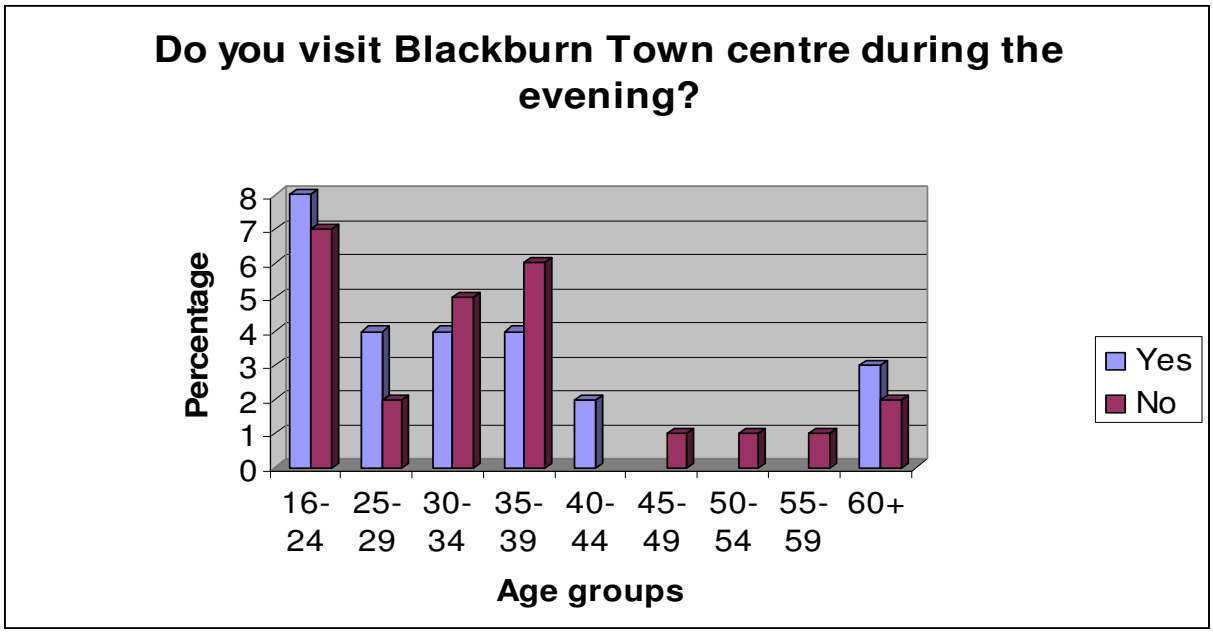

Was the crime reported to the police
Percentage
2
1.8
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age gropus
Yes
No

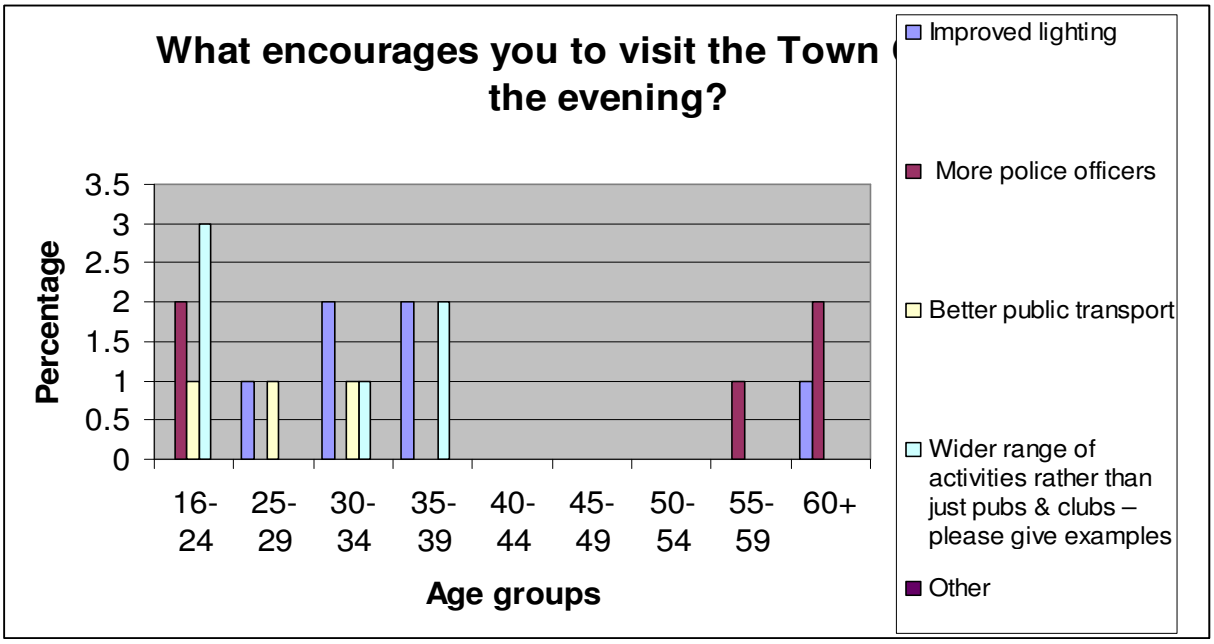

Are you aware of the following safety schemes in the Town Centre
Percenatge
16
14
12
10
8
6
4
2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
CCTV Yes
CCTV No
Bar U Yes
Bar U No

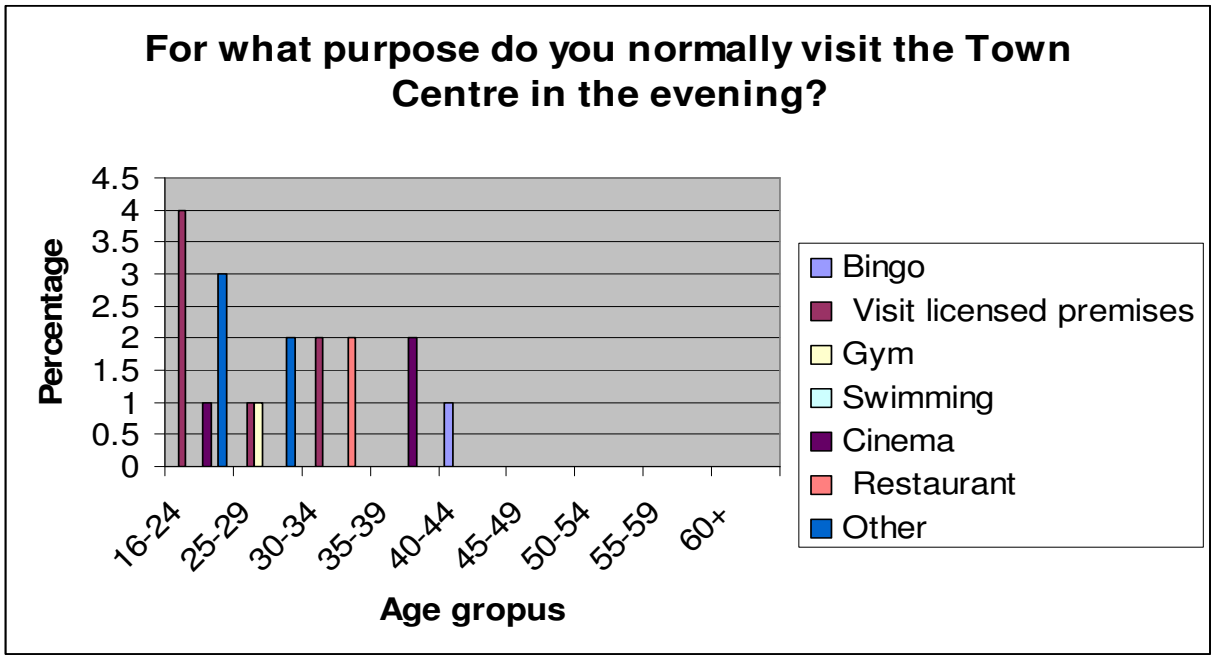


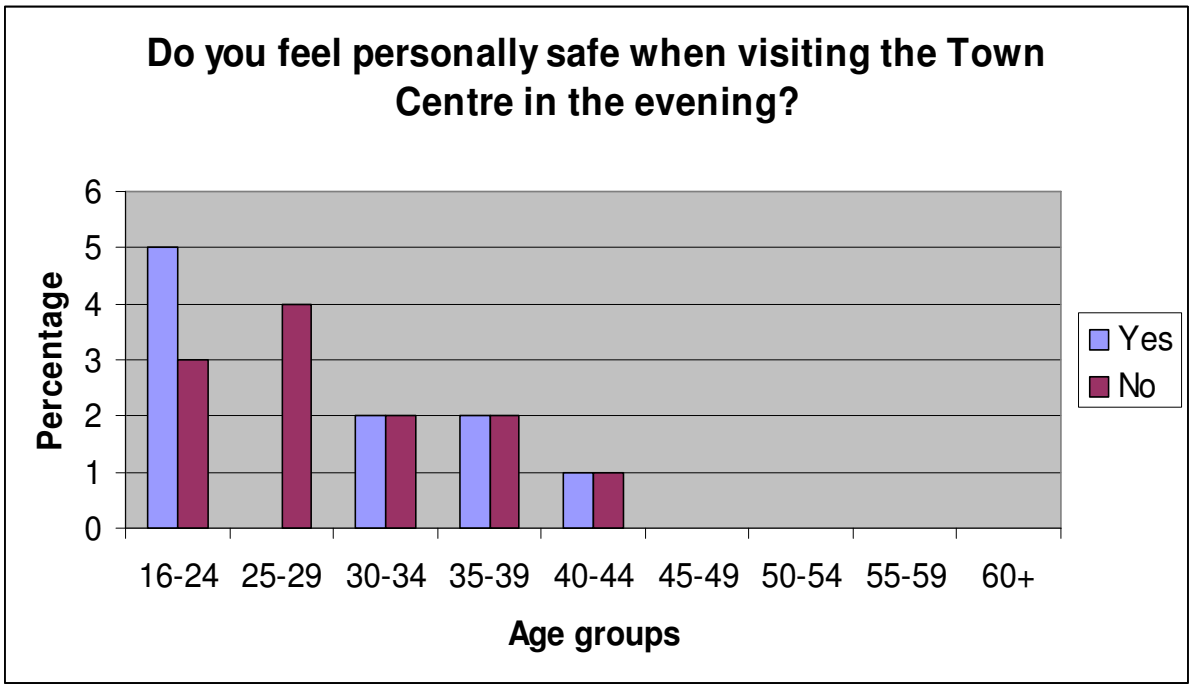
Why you do not visit the Town centre in the evenings?

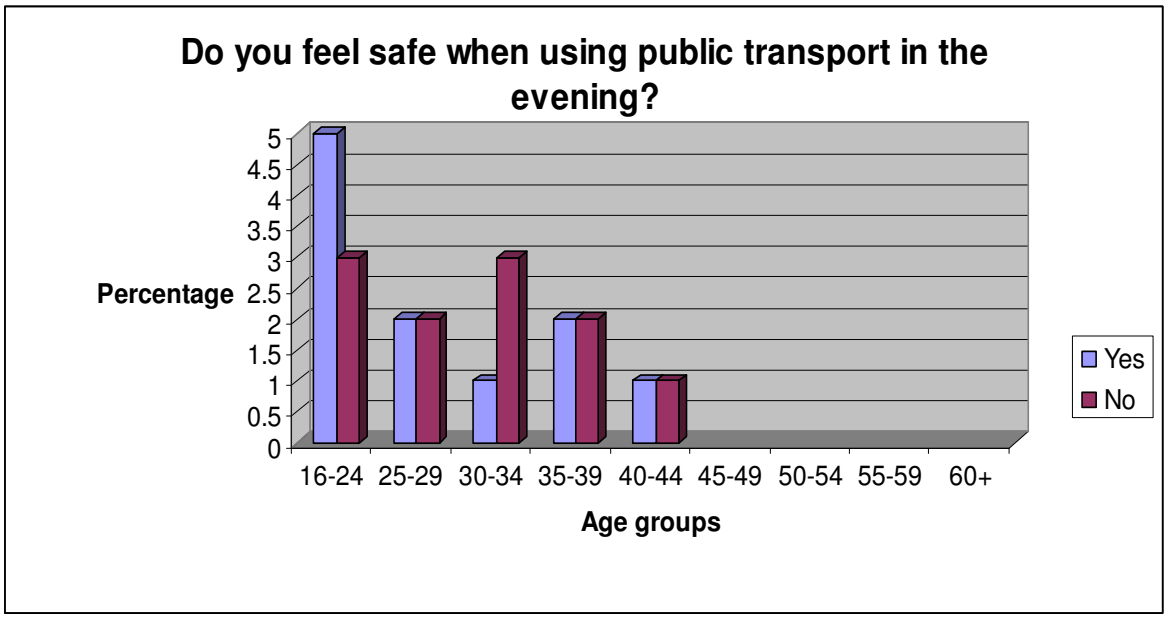


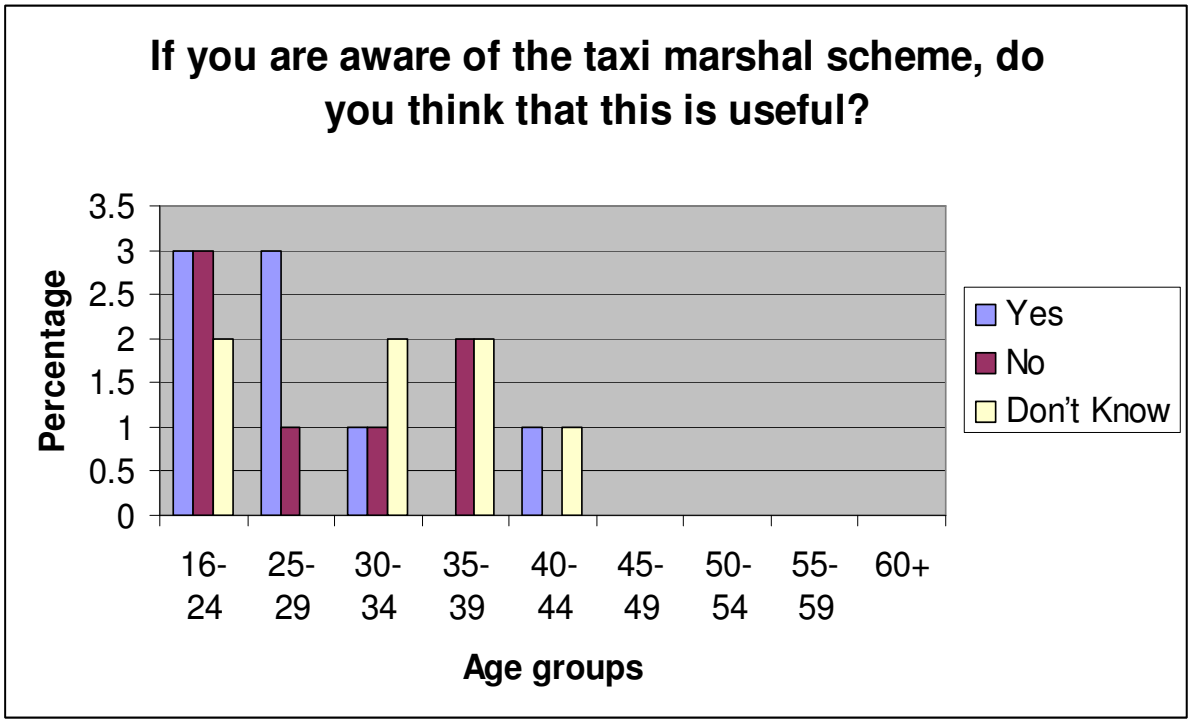

Do you visit Blackburn Town centre during the evening?
Percentage
8
7
6
5
4
3
2
1
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No


What encourages you to visit the Town
the evening?
Percentage
3.5
3
2.5
2
1.5
1
0.5
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Improved lighting
More police officers
Better public transport
Wider range of activities rather than just pubs & clubs – please give examples
Other

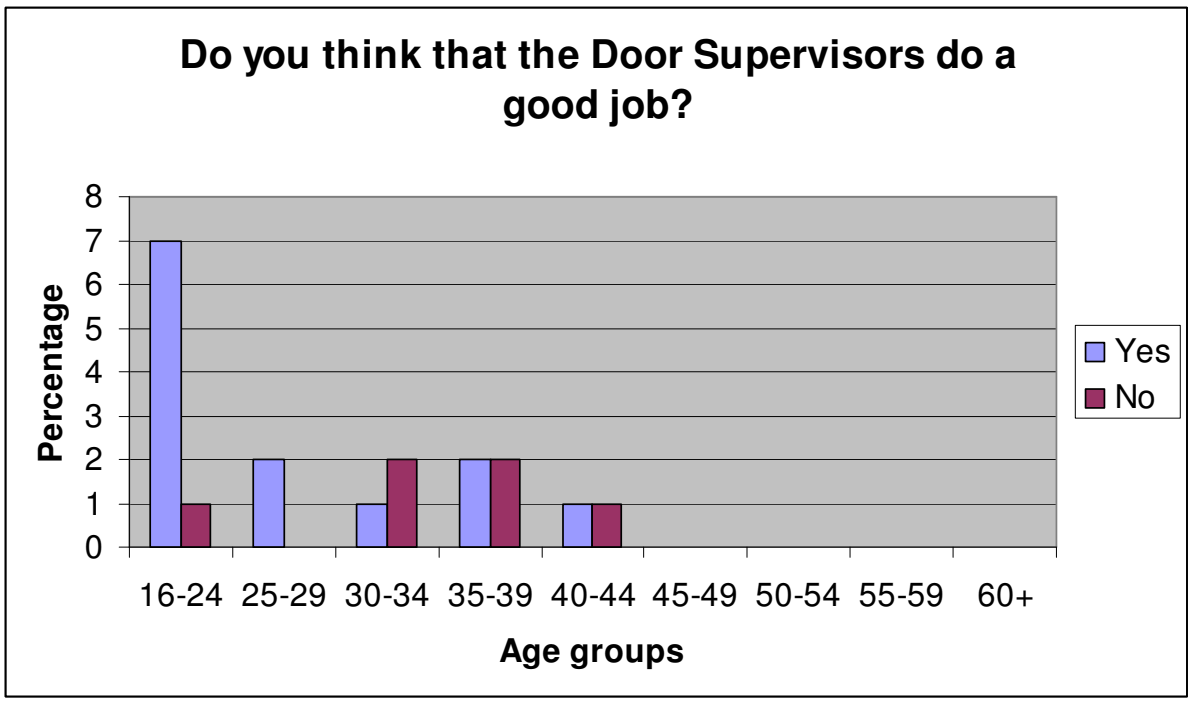

For what purpose do you normally visit the Town Centre in the evening?
Percentage
4.5
4
3.5
3
2.5
2
1.5
1
0.5
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age gropus
Bingo
Visit licensed premises
Gym
Swimming
Cinema
Restaurant
Other

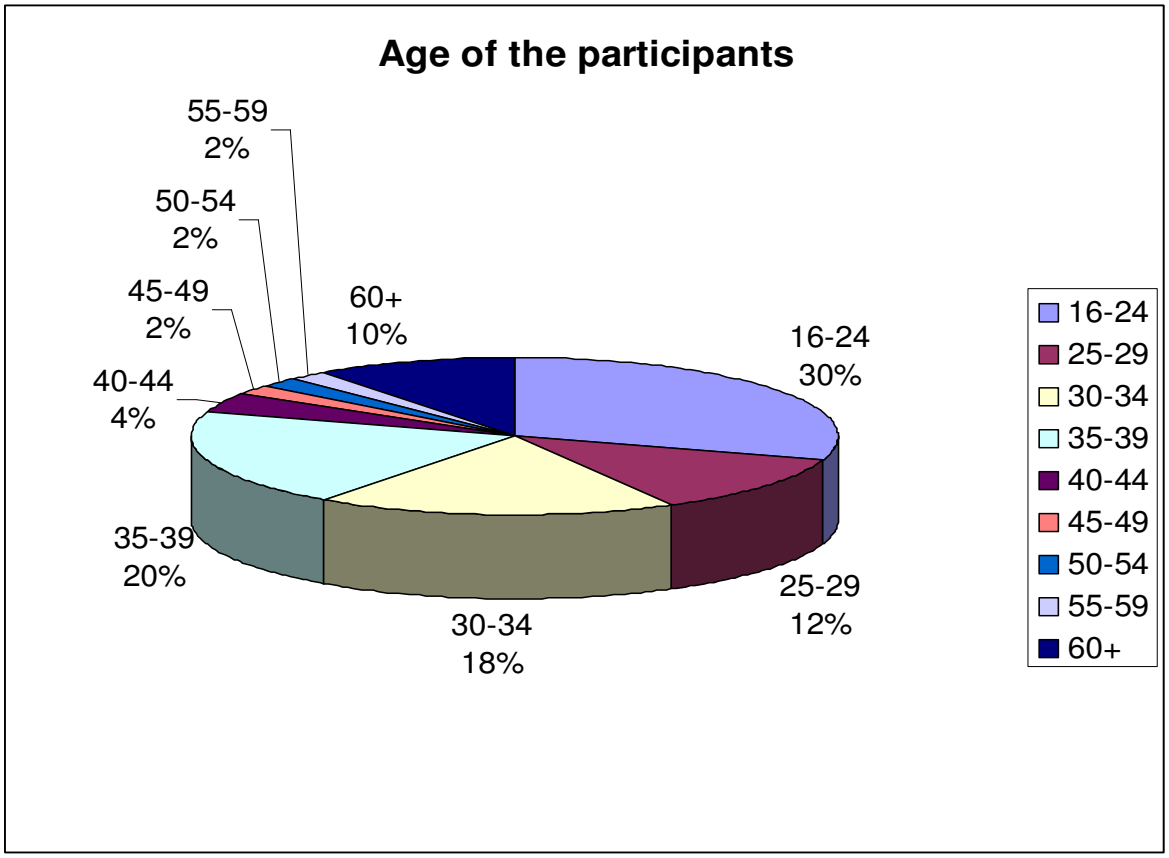

Do you feel personally safe when visiting the Town Centre in the evening?
Percentage
6
5
4
3
2
1
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No

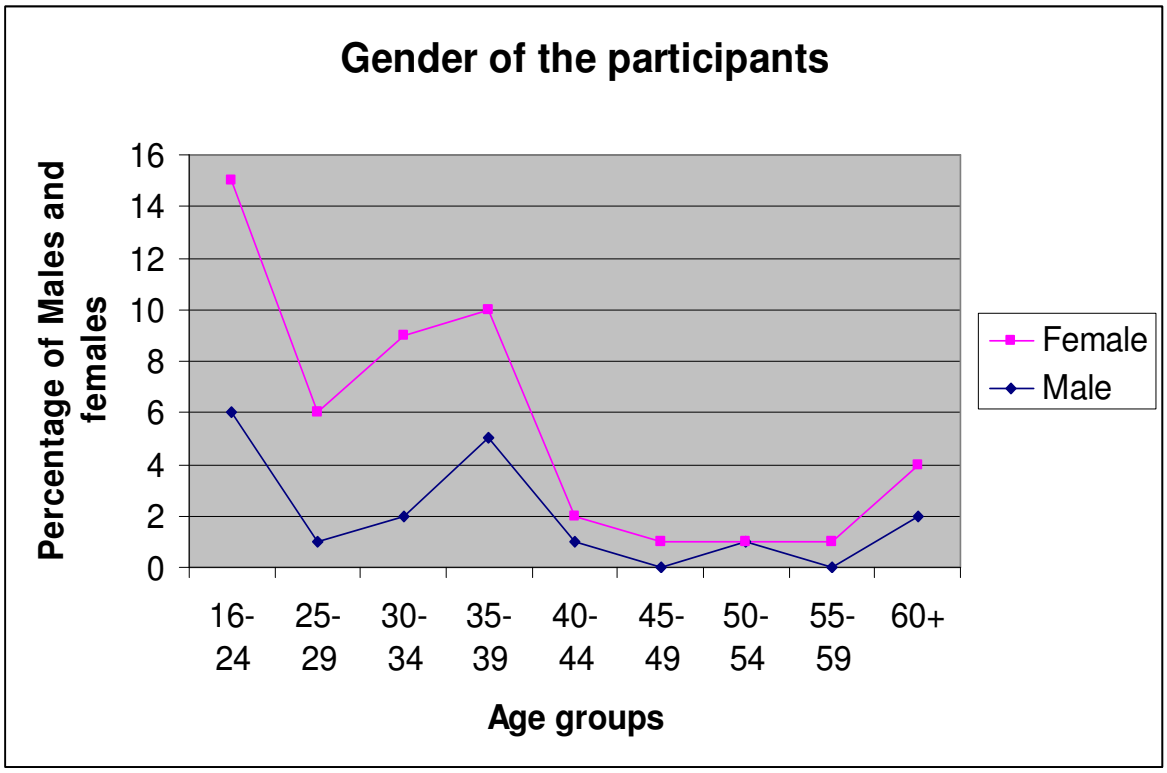

Do you feel safe when using public transport in the evening?
Percentage
5
4.5
4
3.5
3
2.5
2
1.5
1
0.5
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No

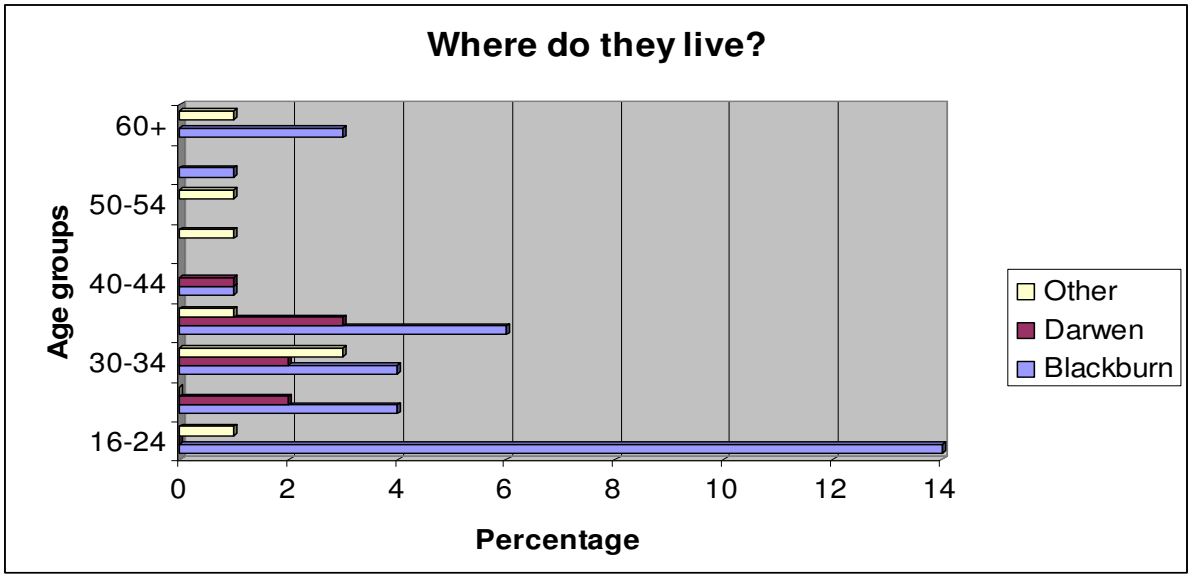

If you are aware of the taxi marshal scheme, do you think that this is useful?
Percentage
3.5
3
2.5
2
1.5
1
0.5
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No
Don't Know

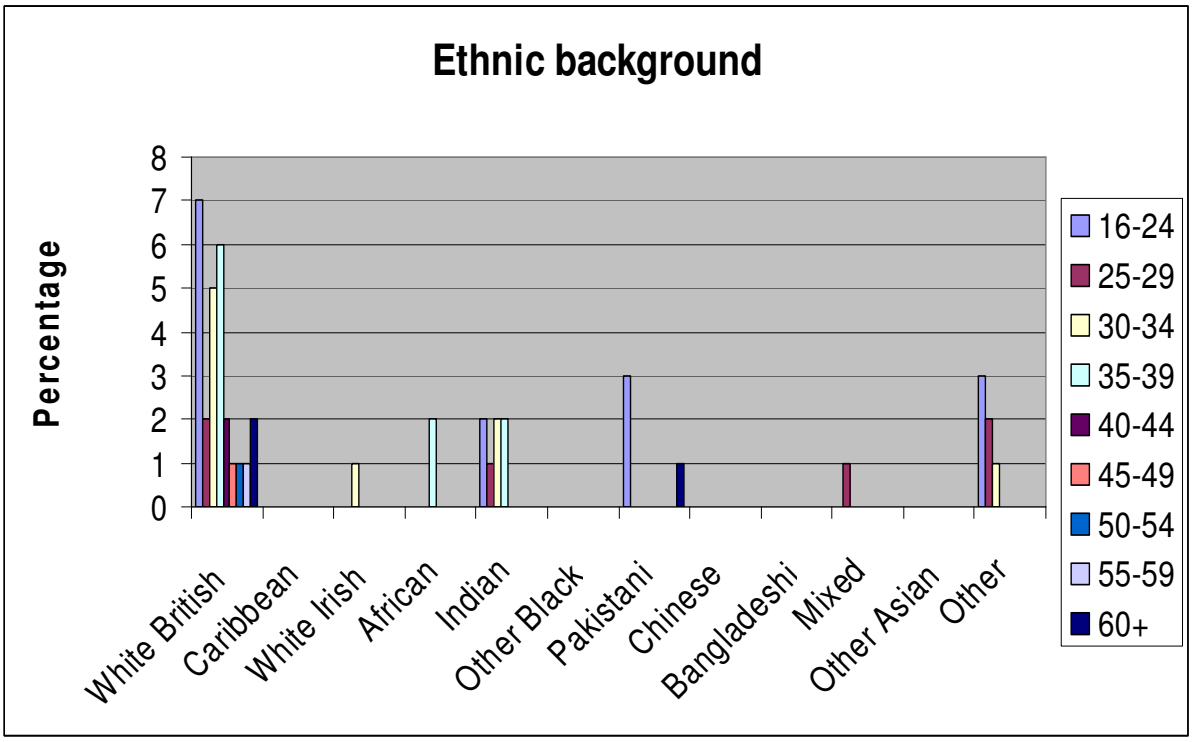

Did you notice the Door Supervisors that work in the pubs and clubs?
Percentage
8
7
6
5
4
3
2
1
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No

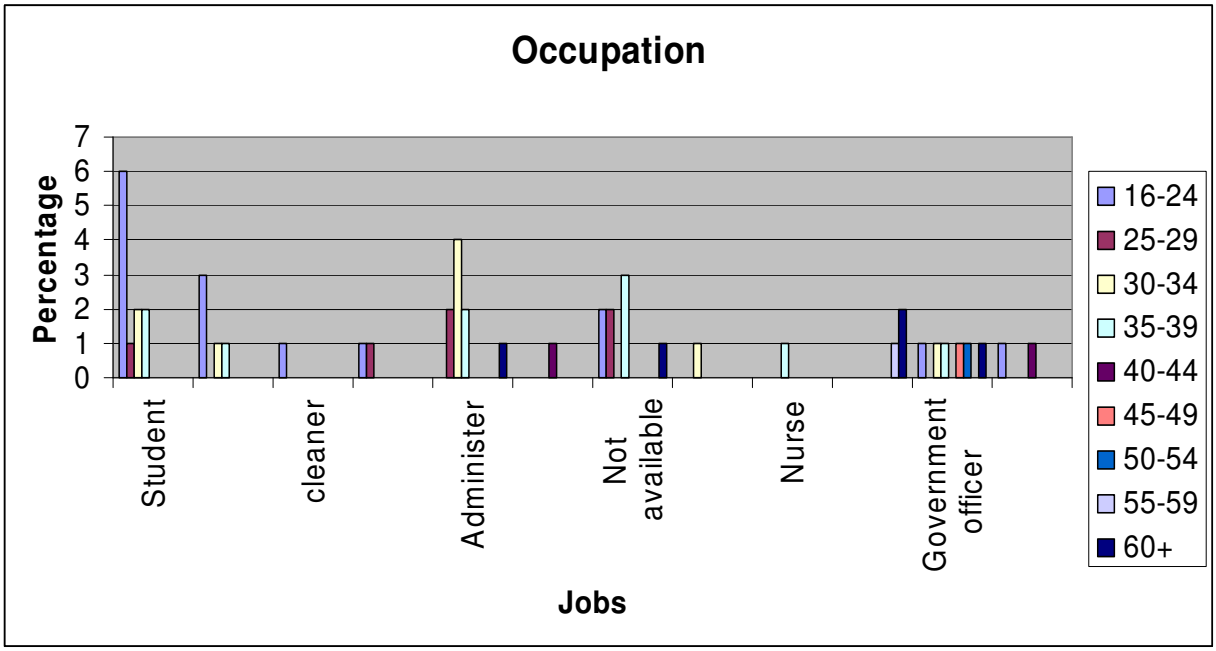

Do you think that the Door Supervisors do a good job?
Percentage
8
7
6
5
4
3
2
1
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Yes
No


Age of the participants
55-59
2%
50-54
2%
45-49
2%
60+
10%
40-44
4%
16-24
30%
35-39
20%
30-34
18%
25-29
12%
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+


Gender of the participants
Percentage of Males and females
16
14
12
10
8
6
4
2
0
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+
Age groups
Female
Male


Where do they live?
Age groups
60+
50-54
40-44
30-34
16-24
0
2
4
6
8
10
12
14
Percentage
Other
Darwen
Blackburn


Ethnic background
Percentage
8
7
6
5
4
3
2
1
0
White British
Caribbean
White Irish
African
Indian
Other Black
Pakistani
Chinese
Bangladeshi
Mixed
Other Asian
Other
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+


Occupation
Percentage
7
6
5
4
3
2
1
0
Student
cleaner
Administer
Not available
Nurse
Government officer
Jobs
16-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60+

Task 2

If a crime of some form has been committed, a form of punishment is administered, as offenders cannot be seen to get away with their crime.

A certain amount of crime is needed in society to keep it tick along.

Does the punishment of offenders actually work?

How do people justify the punishment administered?

What purpose does punishment serve, will it deter people from criminal behaviour. There should be a justification for punishment as Cavadino & Dignan say:

> Punishing people certainly needs a justification, since it is almost always something that is harmful, painful or unpleasant to the recipient. (1997:32)

Two examples to justify receiving a punishment for a crime could be reductivism and retribution.

Reductivism

Reductivism could be seen as a utilitarian approach, although not always.

If punishment does indeed reduce the future incidence of crime, then the pain and unhappiness caused to the offender may be outweighed by the avoidance of unpleasantness to other people in the future, thus making punishment morally right from a utilitarian point of view (Cavadino& Dignan, 1997:33)

Reductivism is seen as a forward looking theory, whereby the assumption of future consequences might be used to justify punishment.

There are several ways in which reductivism might be used to deter criminal activity:

A) Deterrence

This might be seen as the fear of a punishment if a crime is committed. Deterrence can be used to set an example to others wanting to commit a crime. This form of deterrence is known as general deterrence, whereby the punishment is aimed at the public,

a) The public know the threat of the punishment.

b) The threat of the court imposing a severe sentence.

B) Individual Deterrence

An individual might commit a crime, to stop the offender re-offending; an individual deterrence could be brought in. It can be argued that shame or feeling shame about wrong doing may deter individuals from crime, as Williams say:

Shame (or the internal deterrence of conscience) had the strongest deterrent effect: that is, if an individual believed something was wrong and would be ashamed of doing it; this factor was most likely to pull him or her back into conformity. (2001:400)

In theory, using deterrence as a punishment, should work, but often when put into practice it does not. The offender might not live by any moral code, or could suffer from mental problems.

Deterrence was the idea behind the 'short, sharp, shock' treatment that was implemented in the detention centres during the Thatcher Government in the eighties.

Reform or Rehabilitation

Rehabilitationists study the scientific causes of crime and why the crime was committed.

Rehabilitation offered the promise that crime could be almost eradicated by these scientific and professional approaches- an orthodoxy which dominated penal policy until the 1960's. (Criminal Justice,1998: 277).

Reformists or rehabilitationists might see imprisonment not only as a deterrent but also as an opportunity to re-train offenders to live the way society says is as correct.

Ways in which rehabilitation might be used to treat criminals,

Medical, doctors, psychiatrists are involved.

Work and discipline, this involves work related training, therefore could give the offender a new start, or a career.

Counselling and the use of social workers, another service that could be used might be the probation service. These services can provide after-care, when the offender leaves prison, so to try to stop the recidivism. Community punishment, it can be argued, is an effective way for reforming the criminals out of prison's walls and bars:

This movement towards community punishment is based on the argument that prisons and their like are ineffective, or even dangerous because they strengthen he criminal's commitment to crime. Community based alternatives, for example community sentence

orders, are also seen as cheaper and more humane than the traditional incarceration system. (Lawson & Heaton, 1999: 238).

Incapacitation

The offender will have a physical restriction imposed, this will take away any opportunity to stop re-offending.

The most common way of incapacitating offenders is through long periods of imprisonment justified on the grounds that they prevent persistent or serious offenders from re-offending (Criminal Justice,1998:243)

Other ways of incapacitation might be, for a driving offence, remove the drivers licence.

The American writer James Q Wilson (1975:199) once asserted that a 20per cent reduction in street robbery could be achieved simply by locking offenders up for longer. (Cavadino& Dignan, 1997:38)

Retribution

An offender has committed a crime, therefore punished, as they deserved it. Retribution will look back to the act of crime, instead of looking forward.

The retribution theory is sometimes referred to as 'an eye for an eye'.

Retribution is concerned with recognising that the criminal has done something wrong and taking revenge on behalf of both the victim and society as a whole. (The English Legal System, 2002: 303).

Problems can arise for crimes such as murder, another murder cannot be committed.

Retribution therefore has a set of punishments which match the seriousness of the crime committed.

When deciding the punishment, the moral culpability of the offender needs to be taken into consideration.

Retributative justice ensures that criminals do not profit from their criminal behaviour.

Denunciation

Another way of justifying punishment is denunciation.

The denunciation model stresses the role of the criminal justice system in publicly expressing societies condemnation" (Criminal Justice, 1998: 246)

This theory derives from Emile Durkheim, denunciation would be to publicly shame an individual, so to remind them of their criminal activity. However denunciation may not always be the right choice, as miscarriages of justice is quite common, as Cavadino & Dignan say:

> It is wrong to convict and punish someone who has done nothing morally wrong. And if it makes sense to punish at all, there is some point in trying to punish offenders. (1997:43)

Reparation

Reparation is the notion that people who have offended should do something to 'repair' the wrong that they done, and in doing so acknowledge the wrongness of their actions. (The Penal System, p42)

Reparation is seen as offenders repaying society, for their actions.

This could be through a form of community service, or compensating the victim in some way.

Reparation can be used as a punishment in its self, or used with another form of punishment such as reductivism.

Victimless Crime

Victimless crime is a crime where the victim might not realise they have been a victim in the traditional sense. Often these types of crimes do not get reported, therefore are often omitted from the statistics.

Although these crimes do exist, people often do not get punished for committing them, as they are not reported. This type of crime is often referred to as 'the dark figure of crime'

Victimless crime could be when there is an exchange between the consumer and supplier of illegal commodities.

Prostitution

Illegal Gambling

Drug Crime

Fraud could be classed as a victimless crime depending on whether the victim has yet realised. The stealing of a person's identity would be classed as this.

Other offences might be companies not complying with the government's health and safety regulations.

Marxists and punishment

The Marxist theory does not agree with the mainstream justifications for punishment, they believe that capitalism punishes the working classes according to their market needs, as Lawson& Heaton said:

They argued that the severity or leniency of punishment in society is related to the scarcity or otherwise of labour. When the value of labour is high, then punishment is relatively light, so that labour shortages will not be made worse by the incarceration of large numbers of workers. (1999: 239)

Town Centre Crime Survey 2004

To tie in the crime survey with the research, the results have been analysed and put into graph form.

Crime prevention in the town centre is seen as very important.

Fifty people were asked to fill in questionnaires.

Crime Prevention

It could be said that crime prevention are the strategies put into place, so to deter people from committing crime.

Although crime prevention has no one particular definition, it could be said it uses parts of the reductivism, particularly the deterrence theory. The town centre has in place, various schemes that could help combat criminal activity.

CCTV, Is used in the town centre

Taxi marshalling

Security people, tour the shopping centre

Door/ security supervisors are present on all night club doors

Police officers also patrol the town centre; from the information gathered the majority of people had not come across a police officer on that particular day.

It is now forbidden to drink alcohol on the streets in the town centre, but it could be said from the information gathered that this has not had a great influence on people:

a) Drinking on the street.

b) The amount of glass on the streets.

c) Reduced the amount of violence on the streets.

It can be argued that fear of crime is much greater than the amount of crime committed. In this survey only 26% of those filled the questionnaire were victims of crime in the Town Centre, while the other 74% where not victims of crime. Although most of the people in this questionnaire feel safe during the day but safety is one of the main reasons of preventing people coming to the Town Centre during the evenings which is 17% comparing to other reasons.

Recommendations

Recommendations that could be made, to make the town centre a safer and more enjoyable place to be

More police officers patrolling the town centre, especially in the evenings and around the towns trouble hot spots.

Improved lighting

Although the public in general felt safe using public transport, an improved service was needed

A wider range of activities for the younger generations. The majority of young people tend to socialise in bars and clubs, in these places alcohol is often sold very cheaply, to people who cannot handle it. This could be seen as the start of some alcohol related crime:

Tighter regulations on licensing laws.

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Crime at the Workplace

Crime at the Workplace

Crime at the Workplace: John Smith's death

Crime at the Workplace:

John Smith was found dead at work. He was working on a lathe on a twelve hour shift. It is reported that the guard on the lathe was missing, but they argue that he might be dead from a heart attack. It is not clear either the missing guard caused his death or he fell in to the lathe as a result of his heart attack.

At the absence of a witness who saw the accident it is difficult to identify the direct cause of his death. There are not sufficient information for an investigation concerning the shift of the work; day time or night, and his employment history, as well as his general health, domestic situation, previous employments and training.

However fatal and non-fatal offences and accidents are very common within the workplace, so the possibility of a criminal offence is credible:

There were 235 fatal injuries to workers in 2003/04, an increase of 8 (4%) on the 2002/03 figure of 227. [Health and safety Executive (HSE) 2003/2004 (online)]

Non-fatal injuries such as slips and falls, struck by moving or falling objects and injuries as a result of handling lifting and carrying materials recorded by the HSE are also in rise:

The number of reported major injuries to employees rose by 9% in 2003/04, to 30 666 from 28 113. The rate of reported major injury to employees also rose by 9% in 2003/04, from 111.1 to 120.7. [Health and safety Executive 2003/2004 (online)]

It can be argued that the number of the non-fatal injuries or offences is much higher than what is recorded in the statistics; however the number of the fatal offences is more reliable because a dead person needs death certificate and it can not be easily hidden from the authorities. However the fatal offences are not reported as crimes but as accidents, as Wells (1993) said:

> Events in which death, injury, or disease result from inattention to regulations are generally described as 'incidents', 'accidents; or even 'disasters' rather than 'crimes'. [Cited in (Croall, 1998:270)]

It can be argued that working environment same as other situations of life is not free from accidents, as criminal prosecution needs (acts or omissions) this may not be always exist or at least obvious on the part of the companies and the directors. [Williams, 2001: 70]

It can be argued that companies and organisations are not individuals to have a guilty mind (Mens rea) which is necessary for a crime such as manslaughter; however the manger or the director can be treated as the 'responsible individual' for that purpose:

> The test of whether a "company" is guilty of manslaughter or not is intrinsically linked to whether or not a director or senior manager of the company – a 'controlling mind and will' of the company – is guilty of manslaughter. If the director/manager is found guilty, the company is guilty; if the director/manager is found innocent, the company is innocent. [Centre for corporate Accountability, 2004 (online)]

It is not easy to prosecute a large company even when there are evidences of breaching the Health and safety regulations because of various reasons including the nature of the economic system, Croall says:

> While there is little evidence that large companies are treated more sympathetically, they may be less likely to be prosecuted. Large companies and indeed wealthy individuals can and do use their considerable resources to prevent prosecution and, if prosecuted, to defend themselves. [1992: 52]

However the number of deaths within the workplace resulted from criminal offences are so serious that they can not be ignored. As Whyte says:

> Not all deaths at work are the result of criminal breaches of health and safety law, but around 70 per cent are likely to be (see Pearce and Tombs, 1998:129–31)… The total number of deaths at work that result from health and safety *crimes* are therefore likely to exceed 4,500 each year, and this is before we factor in the largely unknown total of deaths caused by other occupational diseases. [2004: 136]

In John Smith's case it is clear that the guard of the lathe was missing, so the lathe was not safe for work, and this is an offence in itself according to Provision and Use of Work Equipments 1998 (PUWER). According to PUWER any equipment should be:

> Safe for use, maintained in safe condition and, in certain circumstances, inspected to ensure this remains the case. [Work Equipment and Machinery: Legislation (online]

The company may argue that they did not commit an offence, as there is not an obvious guilty mind mens rea for the crime; however it can be argued that the unsafe condition of the machine provides enough evidence for manslaughter under the duty of care. Williams (2001: 66) remarked on this subject by saying:

> The mere fact that machinery in factory is dangerous may be sufficient to prove a crime even if those in charge of the factory did not intend to injure anyone, or even did not know it was dangerous. They ought to know, and have a duty to ensure it is safe.

However, existing criminal law has certain rules and conditions that should be satisfied; as it is not possible to prosecute only on moral wrongs, Croall (1992:8) said:

> Critics argued that criminologists should restrict their attention to criminal law, otherwise they could define anything they disapproved of as crime and thus undermine their academic objectivity.

In relation to workplace crimes it is difficult to prove who is directly responsible for the offence due to the ambiguity of the criminal statute and so called 'diffusion of responsibility' [Croall, 1998: 272].

Traditionally crime is known as violent crimes which directly threat the public, such as rape, murder, mugging, domestic violence and child abuse. These crimes may attract the media and can easily create an atmosphere of 'fear of crime'. [Wells, 1988, Cited in Croall, 1992: 14] However, as (Box 1983) argued 'workers are seven times more likely to be killed at work than by homicide'. [Cited in Croall 1992:40]

Most work related crimes do not result in prosecution due to the ambiguity of the law and applying different standards in dealing with these crimes, they apply what is called 'regulation' instead of power of law; as Whyte says:

> The term 'regulation' suggests the control of something other than real crime. Indeed, it is possible to find established texts on regulation that hardly mention the role of the criminal law at all, or seek to establish regulation as an entirely separate sphere of legal control. [2004: 134]

It can be argued that the current Health and safety laws and statutes are not sufficient to deal with the workplace related crimes, they do not have the necessary knowledge and skill that the police have and the procedure they follow in order to investigate crime is not very practicable. Whyte explains this point by saying:

> Both the Health and safety Executive and The Environment Agency deal with the vast majority of serious offences they detect with

informal advice or administrative notices that request compliance with the law. [2004: 138]

The following figures support this argument:

Only 33 percent of deaths at work, 11 per cent of major injuries to workers and 1 per cent of occupational diseases are prosecuted. [(Centre for corporate Accountability, 2002) cited in Whyte, 2004: 139]

However, it can be argued that workplace crime cannot be controlled only by law enforcement and tougher laws only, although this contains a corner stone in the process, but they should come in line with channels of support and advice. [A strategy for workplace Health and safety- HSE online]

Marxists argue that the whole system of capitalism is criminogenic. The nature of the system, they argue, is based on the exploitation of workers and the only way out of this 'state of crime' is changing the system. They argue that even the laws which appear to protect the masses are in reality used for the advantage of the ruling class. However Marxists are criticized because in the so called socialist countries the level of crime remains the same as in capitalist countries. [Moore, 1996: 82]

Crime at the workplace can be related to Merton's strain theory: Anomie. Capitalism depends on greed and profits so in order to increase their profits and production they may ignore Health and safety regulations and commit crime. Lawson & Heaton say:

The strain that enables the white-collar criminal to commit crime in pursuit of profits is conceptualised as economic conditions in which the need to maintain profitability is paramount. [1999: 134]

Corporations are not individuals so the may argue that they are working for the good of their organisation and the mangers may argue that they are 'following orders', that business is business' and that their fight for benefits is justifiable. [Croall, 1998: 283]

Some may apply sub-cultural or labelling theory to workplace and corporate crime, while:

The cultural tolerance of many offences also made subcultural theory appear less appropriate and, as offenders are by and large not seen as deviant, labelling perspectives were similarly not applied. [(Box 1983; Croall 1992) Cited in Croall, 1998: 285]

There is the dark side of this kind of crime, as there are many workers who are working illegally, unless in the case of death it is very rare that they report any offence or injury; in case of reporting, they can not claim any compensation officially and they fear loosing their 'hidden career'.

At the conclusion it can be argued that there are many gaps in this field of criminal justice; new laws should be created and the whole area needs to be fully researched.

Our goal is not to have a risk free society but one where risk is properly appreciated, understood and managed. . [A strategy for workplace Health and safety- HSE online]

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PRISONS AND PENAL POLICY

HOW THE MODERN PRISON SYSTEM HAS DEVELOPED?

<u>Task One:</u> The Historical Development of modern Prison System

As there were always norms and regulations in society, there must have been always a percentage of people who break these rules and facing punishment by rulers and officials. Punishment, as it is historically known, starts with torture, mutilation and public executions; known as the 'Bloody Code'.

Changes in society and in the way people understand the world around them brings a new era, known as 'Enlightenment', when they thought that punishment is not necessarily killing people. Imprisonment was the first option for punishing the criminals instead of killing them and it went through many stages from jails to houses of corrections into central prisons. Transportation of criminals to America and later to Australia was another option for getting rid of criminals.

The pre-enlightenment era is known for its brutality and the inhumane treatments of offenders. They had executed the offenders in public places by mutilating and severe torture. People's minds were dominated by superstition and myth, and there were no room for a rational thinking. Criminals or offenders were treated as bad souls or infections and the only way to get rid of them was by killing them. The purification of soul was the main motive behind the mutilation and torture and all the other methods of physical suffering.

Enlightenment starts with the rational thinking about nature and society and this affects the way people thought about the way they deal with offenders and criminals. The way of life has changed, modernity, science and civilization took the place of myth and superstition. Now criminals were seen as human beings who committed offences and they need to be rehabilitated and corrected. The evilness is not something people born with, they argued, but it is created by the bad situation and circumstances they live in. The Whig historians or the 'Liberals' influenced the society's view towards criminals and asked for changes and reforms in the law and penal policy. As Emsley said:

> The traditional Whig interpretation largely accepts the case argued by eighteenth- and nineteenth-century reformers that the 'Bloody Code' was arbitrary and savage, and that the reformers' stance was morally and rationally unassailable. [1996:248]

These great changes were accompanied by great ideas and philosophical views for human society and nature, in this context the role of Marxism and the Utilitarian thinkers should not be neglected for their contribution in these reforms, as Emsley remarked:

> These changes in the system of punishment have been related to the great changes taking place in society, implicitly by the Whig historians who thought in terms of progress with the past developing towards a more enlightened future, and explicitly by Marxists, and others, who have explained the development of the prison in terms of the control needs of bourgeois capitalism. [1996:284]

Through out the eighteenth century prisoners were kept in houses of correction, which were run by the local Gaolers and Justice Officials. Prisoners in these prisons had to pay the Gaolers for their services. These prisons where subject to bribery and corruption. The prison was more than a prison for the poor people:

> A prison sentence for those without resources was virtually a death sentence. Unsanitary conditions, risk of disease and starvation were forever present. [McLaughlin & Muncie, 2001: 160]

In the 1770's and specifically John Howard's report paved the way for the 1779 Penitentiary Act, which introduced religious instructions for reforming the criminals. Offenders were forced to wear masks when they went around and they were totally isolated from each others, this bad condition of

the prisoners lead to a rise in mental illness and suicide. There where many calls for reform in the prison system and the most important one of them was:

> The 1823 Gaol Act was the first piece of legislation to lay down a uniform penal practice for all local prisons. Reforms recommended by John Howard such as the abolition of the sale and consumption of alcohol in prisons, and regular visit by prison inspectors were made compulsory. [Lea, 2004 (online)]

As it was not possible to kill all the offenders because of the nature of their offence, their age or other considerations and they were not also satisfied just with whipping and flogging before releasing them, transportation became a suitable option Transportation was become official with the Transportation Act of 1718 and continued for about fifty years. [Emsley, 1996: 250]

In 1878 Du Cane became the chairman of the prison commission; he had introduced a firm system known as the 'Du Cane Era'. Prisoners were forced to get cropped hair, he made the prison as hard as possible for them, known as 'penal servitude', and they were forced to do the hard meaningless labour known as crank and tread wheel and oakum picking.

> Du Cane was a very strong believer in the prevailing wisdom that offenders were sent to prison for deliberate punishment by infliction of rigid, measures severity and saw one of his missions as being to ensure carefully graded suffering to prisoners in order to achieve quantified deterrence. [Forsythe, 2004:759]

The Gladstone report in 1895 came as a result of discussions about the effectiveness of the punishment and deterrence as the main object of imprisonment. The committee remarked that prison should become a place where people reformed and deterred from further offending. The system of unproductive and meaningless labour came under question and they asked to replace it with productive labour. Books and education for prisoners was introduced as part of reformation and preparation for being good citizens after release. Prisoners, the report said, should be classified according to their offences. They made proposals for developing juvenile establishments known as 'Borstals' [Edwards& Hurley 2002 (online)]

Although the idea of Borstals was introduced by the Gladstone Committee, but it took quite a long time to develop a special form of institution for the young offenders. The Gladstone report made it clear that the young offenders should be segregated from the adult offenders; they need more training both physically and mentally as well as rehabilitation for coming back to the normal life after release from prison.

In 1900 they chose a group of lads from London and they have trained them to lead a good life after release. In 1902 they had used a branch of Borstal prison for the same purpose. In a famous report Edwards& Hurley described theses pilot schemes as:

> The Borstal experiment did not encounter any serious setbacks and although the number who could benefit from it was small, a modified system was soon introduced in local prisons under which young offenders were as far as possible separated from adult

prisoners and given a little more attention than previously. [2002 (Online)]

Punishment and imprisonment went through many stages until it has reached the present day condition. The great historical changes and scientific discoveries played a vital role in developing the whole society and all its institutions towards a better understanding of human conduct and behaviour. Despite all these great reforms and changes the question of a better prison system is always present.

Task Two: The Contemporary Prison System-Crisis and Alternatives

Throughout the history of punishment, imprisonment remains as the most important and at the same time problematic method of dealing with offenders. It has still the principal role in the English penal system [Cavadino& Dignan, 1997: 111]

While the aim behind imprisonment and the way of dealing with the offenders had developed throughout the history, this does not lead to a new alternative for prison:

As prison has the highest profile of any sanction in common use in our kind of society, it plays an important part in reassuring people that 'something is being done' about the problem of law and order, and the social threats which they are persuaded to take most seriously. [Cavadino & Dignan, 1997: 113]

Prison is the most expensive method of punishment, its role in punishing, reforming and rehabilitating offenders and deterring them from re-offending is very controversial. For the first target it can be argued that it plays the role, but punishment may lead to further re-offending if it has taken by itself. Cullingford said:

There is little evidence that putting people into prison for long periods, or the threat of doing so, reduces crime. One can argue that the only way of preventing the activities of certain criminals is incarceration, but this has little to do with crime prevention. The threat of vastly increased prison sentences has no effect on crime. It is shame rather than fear that has an effect. [1999: 10]

However, it can be argued that, as [Wilson& Ashton] said' The government have a duty to be seen to support law and order, to protect people and property.' [1998:12] This duty can not be maintained without a punishment system and specifically without prison. This kind of thinking is supported by the conservatives, as Michael Howard in 1993 said:

Let's make one thing absolutely clear: Prison Works. It ensures that we are protected from murderers, muggers and rapists- and it makes many who are tempted to commit crime think twice… This may mean that more people will go to prison. I do not flinch from

that. We shall no longer judge the success of our system of justice by a fall in our prison population. [Wilson& Ashton, 1998: 16]

However studies from the United States, who have a much more higher rates of incarceration, does not support this idea; crime still rises and the country does not become a safer place to live in. [Wilson& Ashton, 1998: 18-19]

Privatisation of the prison system may help in reducing the funds and high expenses of prisons; however this system may bring other problems such as corruption, bribery and inhumane treatment of the inmates. The target of the private companies is profit and business, which can not guarantee a better prison system for the benefits of the public and the government. There are many disadvantages of privatization:

These include, first, the potential for exploitation and mistreatment of inmates by contractors; secondly, a lack of effective government oversight; and, thirdly, the possibility of corruption between government officials, prison staff members and private contractors. [Cavadino & Dignan, 1997: 154]

Prison overcrowding is another crisis facing the English penal system. When a prison is overcrowded it will cause many problems for the prison officers and the inmates. Inmates can not get access to the services like education, training and rehabilitation because there are great numbers of them, and it will become difficult for the prison officers to control them, so the possibility of disturbances will rise. [Cavadino & Dignan, 1997: 120]

One of the main and fundamental targets of a contemporary prison is rehabilitation and deterring re-offending, while prison is a place where all kinds of offenders and criminals are collected, this may bring an opposite result. Wilson& Ashton mention four reasons for re-offending which related to the collection of criminals, labelling, unemployment and social situation. [See Appendix 1]

The Criminal Justice Act 2003 (CJA 2003) suggests some alternative solutions in terms of community sentences and restrictions on imprisonment powers of the magistrates. The (CJA 2003) introduced five purposes for sentencing, which are punishment of offenders, reduction of crime, reform and rehabilitation, protection of the public and reparation. [CJA 2003 (Online)]

Community sentence is regarded as a powerful method for keeping many offenders out of walls and bars of prison. Community sentence in this Act has many forms as they are described in s147 of the Act (see Appendix 2). At the same time the community order is subject to many restrictions as it is not automatically imposing on every offender. These restrictions are defined in s148 of (CJA 2003) (see appendix 2)

According to (CJA 2003) the court should try all the possible means of community sentence and fine before passing a custodial sentence (CJA 2003) s.152 (2) (see Appendix 2). However, if a sentence is fixed by law, as in the fire arms offences, repeated offences and dangerous offenders, the community sentence is not available (CJA 2003) s.150. (See Appendix 2)

The new technology of tagging and monitoring offenders and suspects is regarded as a highly valuable kind of 'prisons without walls', because the traditional prison system is under question:

> Prison might keep dangerous people off the street, but on the whole it does not make them better people- anything but. The prison service monitors the future criminal convictions of all inmates who are released from prison, and the statistics make depressing reading. [Wilson& Ashton, 1998:27]

However, as it is defined in (CJA 2003), the community sentence, fines, surveillance and tagging may not work for all types of offenders; some sorts of offenders can not be controlled without prison, as Wilson& Ashton said:

> Although it is our belief that the British prison population is currently too high, some criminals clearly need to be locked up, both as a punishment to them and to protect society. The question is, what type of prison system should we be locking them up in? The general answer has to be one that makes them better people when they come out. [1998:34]

It can be argued that community sentence combines many targets of punishment together, as offenders get punishment by several means and it will work better than prisons in rehabilitating and deterring them from re-offending.

> Politicians viewed community service as an attractive option because it blended punishment and reparation. Ideally it also brought about the rehabilitation of the offender. [Wilson& Ashton, 1998: 142]

At the conclusion it can be argued that the new measures may help in reducing the number of people sent to prison and the number of re-offenders at the same time. However, we should not forget that a number of offenders should get custodial sentence as the only possible punishment, but which kind of prison should be called prison of the future:

> For most offenders, imprisonment has to be justified in terms of public protection, denunciation or retribution. Otherwise it can be an expensive way of making bad people worse. (Home Office, 1990a:6) [Cited in Matthews 1999:

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HNC CRIMINOLOGY
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Task One: Understanding the Sentencing of Women

It is obvious that the number of male prisoners is much higher than the females. In order to investigate this issue and finding the reasons behind it, the Home Office has carried out a research study (The Home Office research study 170). Although the research has found out that there are differences in the ways they treat men and women but it is far from any allegations that women are unfairly discriminated by the magistrates or courts. The research does not create a fixed principle to ensure that both sexes can have a fair trial but it can be argued that this research is a corner stone for any reforms in the future.

A fair treatment is that people who have the same circumstances should be treated similarly, however as the study suggests that men and women have different situations which should be taken into consideration if they seek a fair trial.

It can be argued that anybody looks at the criminal statistics may immediately suggest that women are treated more leniently than men. They are reluctant to send women to prison! That is the common belief. According to the weekly prison population statistics of 15 July 2005 there are: 71,847 male and only 4,529 female prisoners. [HM prison service online]. However, a study about the prison population in 2002 has found out that:

… Between 2001 and 2002, the number of female prisoners in custody increased from an average of 3,740 to an average of 4,300 (an increase of 15% compared with a 6% increase for male prisoners in custody). [Councell, 2002. Online]

This comparison has revealed the fact that although there is always a big difference between male and female prisoners; however the number of female prisoners is on a rise.

The study suggests that in the past three years 60% of females found guilty received a caution while only 37% of males were cautioned. It is not clear either this comes from the chivalry acting or it depends on other factors such as previous convictions or the seriousness of the offences.

The study has investigated three kinds of offences that include men and women offenders: shoplifting, violence and drug offences in 1991.

Women shoplifters were either released or received community penalties, while men are fined or sentenced. This finding is not an automatic positive answer for leniency or discrimination. It can be argued that the judges or magistrates are not willing to fine a woman who may not have enough resources to pay or it may become an indirect penalty for her children. Most of the women shoplifters are believed to be single mothers who steal out of need not greed. Although many women can avoid a sentence or a fine, however they receive community penalty more than men. It can be argued that community penalty is tougher than a fine.

The magistrate or judge may decide a probation order on a woman instead of a fine; this is not because they want to be nice and soft with her but because they believe that she can not pay the fine. However she will face custody if she re-offends; this means that they just postponed her sentencing for some time. As the study suggests the persons responsible for sentencing women are looking for a discharge, if they are not satisfied they make them to receive a tougher penalty than their equivalent men.

The study suggests that women convicted of violent offences are less likely to receive custody or to be fined for the reasons mentioned before but they either discharge them or put them in probation. However the study suggests that 3% of men and 3% of women were receiving custody for first time violent offences in the magistrate courts. This finding is interesting because here there is no any sign of difference between the sentencing of the sexes. Women who are convicted of violent offences are mostly on charges of cruelty to children; in this context both men and women are liable for custodial sentence.

Both men and women are likely to receive a fine or be discharged, however women are more likely to be discharged if the court believed that fine is not a good option for her. So the big majority of women 48% discharged while 50% of men received a fine.

According to the criminal statistics men and women receive custodial sentences for drug offences in equal numbers. Women drug offenders may be treated even more deviant than their male equivalents as a result of how they are labelled or what the society expects from women. Women drug offenders appear elder than men offenders and most of them have a history of previous convictions and re-offending, especially in the fields of fraud and forgery. However they are not more likely to be dealt with in crown courts; where they have a higher possibility to receive more serious charges.

It is obvious from the statistics and the report that almost always women are more likely to be discharged and men to receive a fine. However, if a fine is expected on a woman and unconfined for any reason, a tougher sentence is more likely for a woman than a man.

This part of the report suggests that women are treated more leniently and at the same time tougher than men; by being discharged in one case and receiving a harsher non-custodial penalty in another. Avoiding prison sentence and fine for women is regarded as the general belief that penalising a mother is penalising the whole family and sending children to care is not the best option where other options are available.

This point can be criticized because, as the report suggests, there may be also men in a similar situation who may be single fathers who are fully responsible for breeding the children, in this context, it can be argued, that women are labelled as sole responsible for children.

In another part of the report the researchers have interviewed a number of magistrates about their views in the differences of men and women sentencing. Most of the magistrates interviewed have appreciated that there is a kind of difference for sex. However they claimed that the differences have their excuses. As most women are appearing helpless and innocent in front of them, although it can be argued that they were advised by their solicitors to look like that.

A big number of women offenders are convicted of shoplifting. The magistrates argue that they are troubled and they do it as a need not greed. A single mother with some children who steals some tins of food to feed them is very different from a young man who steals some cans of beer. It can be argued that there is some sort of labelling here for women; it is believed that women are stealing out of need and men out of greed.

It is a public belief that women are mostly victims than offenders. This kind of thinking affects magistrates also as members of the same community. However male offenders may take opportunity of that kind of thinking and using women as criminals and the male offenders acting as undercover agent. Many magistrates believe that even if a man and a woman came together, the man looks like

the offender and the woman looks like an innocent person who is not somehow responsible for her acts.

Appearance and body language are affecting the magistrates; many magistrates claimed that tattoos and earrings affect their decision. This attitude affects men and women offenders also. A man may appear with tattoos and earrings, careless and somehow disrespectful for the court, while the woman is very calm, respectful and even often tearful.

There are only a small number of women prisons in the country. When a woman is sent to prison this means that, in most cases, she should be far from home and children. Many magistrates claimed that they are reluctant to send women to prison unless they believe that there is no any other way.

At the conclusion it can be agued that there are differences in dealing with males and females in terms of sentencing. This report does not claim that these differences are pure sex discriminations, but they are differences which have social, economical, psychological and cultural roots. Some of these differences have some kind of excuses and are still necessary to be regarded, while others need reform and change as they become old fashioned labelling beliefs about male and female roles in the society.

Task two: A Criminological Understanding of Differences between Male and Female Sentencing

It is generally agreed that there is a big difference between male and female sentencing. Criminologists are looking for the reasons behind this difference. Some may argue that crime is the problem of men only, so they should pay the price by going to prison. While others may argue that leniency from the courts and magistrates prevents them from going to prison; which is known as chivalry.

The recorded crime suggests, "Crime is an activity carried out by young, and young adult, males." [Heidensohn, 1989: 86] Men mainly carry out serious crimes; women may appear in less serious crimes and in fewer occasions. Prison population statistics support this argument to a great deal. Anne Campbell (1981) following a self report study argues that the rate of male and female crime is some how equal. Depending on Campbell's findings, it can be argued, that the difference is not in offending but is in sentencing. However, Steven Box (1981) revealed that only by counting trivial crimes in parallel with serious crimes they may be equal; otherwise the official statistics are accurate. [Moore, 1996: 165]

Traditionally it is believed that women are sexually vulnerable in the society; they should be protected by men. This belief is strengthened by the fear of sexual violence and specifically rape. A rapist, as it was portrayed, is a stranger who looks for women in order to satisfy his extreme sexual thirst. Studies about rape and sexual violence have proved that:

In a survey of about 1,000 married women, Painter (1991) found that approximately 14 per cent had been raped by their husband, and that in almost half of these cases violence had been used. Married women are twice as likely to be raped by husbands as by

acquaintances or boyfriends, and seven times more likely by husbands than by strangers. [Moore, 1996: 195]

However the way society thought about women has resulted in controlling them. Females are subject to social control from childhood and may continue for the rest of their life, Hagan (1989) argues that because women are mostly under control and supervision in the society they have less opportunity to commit crime, while it is expected from males to participate in risk-taking activities. [Lawson & Heaton, 1999: 208]

Females are less expected to commit crime because of their family and social limitations. A girl's role in the family is mainly to care and support that is far more from violence and crime, so her socialization does not lead to crime. [Moore et al, 2002: 255]

Committing a crime needs an opportunity for such an act. Women's role in the society is so limited that they have not as much opportunity as males to commit crime:

Because of their sexual differences, girls and boys had different capabilities and interests which are channelled and developed through different training and education, which leads to differential behaviour. [Williams, 2001:500]

However these different sexual roles may change over the time and from a culture to a culture, so it can be argued that the issue of female criminality is more complex than to be explained by some hypotheses, as Williams said:

It could be argued that upbringing over many generations has actually over-emphasised what was originally a negligible difference between the sexes. It is very difficult to ascertain which, if either, of the social or the genetic has had the greater effect. [2001:491]

It can be argued that leniency from the police, magistrates and courts towards female offenders can be accounted as another reason behind the small number of female prisoners. Mannheim (1940) argues that:

"The female offender -if punished- meets on the whole with greater leniency on the part of the courts than the male." [Cited in Heidensohn, 1989: 101]

SOME MAY ARGUE THAT TREATING WOMEN DIFFERENTLY BY MAGISTRATES AND COURT HAS NO EXCUSE. HOWEVER IT IS OBVIOUS THAT FACTORS SUCH AS PREGNANCY, HOME RUNNING AND CHILDCARE HAVE BEEN TAKEN INTO CONSIDERATION BY COURTS. [MOORE, 1996: 165]

Women are more likely than men to be discharged or given a community sentence for indictable offences and are less likely to be fined or sentenced to custody. [Women in Custody 2003 (online)]

However Carlen (1985) found out that although courts may not fine women because of their financial dependency on men, but they send more of them to prison as a consequence. [Cavadino & Dignan, 1997: 285]

Feminists argue that women are facing a double bind treatment from the courts, as Cavadino and Dignan said:

> Women who commit crimes are seen as 'double deviant': they have offended not only against the law, but also against deeply ingrained social norms about how women should be, so they are perceived as being particularly depraved. [Cavadino & Dignan, 1997: 280]

However, it can be argued that the few women sent to prison are suffering because prisons are adapted for men not women. As a result of a small number of women being in prison, there are few prisons for women in the country, so it is difficult for their relatives especially children to travel far in order to visit them. [Cavadino & Dignan, 1997: 285]It can be argued that this is a strong factor to prevent sentencers from sending more women to custody.

Radical feminists argue that you cannot understand crime unless you see it through a female point of view. [Moore, et al. 2002: 257] They even go further to say that masculinity means criminality and femininity means conformity, Heidensohn has explained this point by saying:

> Masculinity is at least as much a problem to be analysed and explained as femininity. In fact logically it is an even greater problem, since it is masculinity which is associated with crime and delinquency, whereas femininity is linked to conformity. [Heidensohn, 1989: 97]

However socialist feminists argue that the problem of masculinity and femininity in relation to crime can be only understood when men and women are living in societies divided by sexism and opposing classes. [Moore, et al., 2002: 257]
Postmodern feminists argue that the argument 'most crime is male crime' is a male's concern; women should study the reasons behind the fact why women almost always are oppressed. [Moore, et al., 2002: 257]

It can be argued that women in many occasions are victims of crime, however the social and sex-role changes in recent years (Denscombe, 2001) lead females to be involved in more outdoor activities and risk-taking behaviours. This may support the theoretical hypotheses relating such activities to a rise in crime rates, as Moore et al said:

> Female crime levels are rising much more quickly than male ones, not just in terms of numbers but also in terms of seriousness of crimes committed. [2001:257]

At the conclusion it can be argued that although there is a big gap between male and female sentencing but in most of the cases it has its excuses and reasons. Women have less offences or at least less serious offences and at the same time more defences in terms of childcare, family, economical dependency and the way the society have been built through hundreds of years. However society is always in progress so it can be argued that laws and social norms are always subject to review and reform.

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Substantive Criminal Law

Criminal liabilities and defences for Jenny

There was an argument between Tom and his partner Jenny the defendant (D) about a possible affair of her with another man. This argument was heated by Ali The victim (V) who was the best friend of Tom who interfered in the argument. Jenny became very angry and threw a heavy vase at Ali causing injury and making him unconscious.
V has died in hospital as a result of his injury. Although V has arrived in hospital alive and was assessed by the junior doctor as not crucial, but according to the post mortem examination he has died from a brain haemorrhage.

Here a human being is dead and the cause of his death is the acts of D. It can be argued that D can be charged with murder as there are the necessary requirements of that crime; unless there will be defences.

Murder is the most serious offence of homicide and carries the most serious charges. Prior to 1965 it attracts death penalty and now it is a mandatory life sentence. It can be argued that life should mean life but at the same time it is not just or moral to deal with all those who cause death as cruel murderers. Professor Ashworth says:

'…Death is final. This finality makes it proper to regard death as the most serious harm that may be inflicted on another, and to regard a person who chooses to inflict that harm without justification or excuse as the most culpable of offenders.' [Cited in Herring, 2005: 191]

Any defendant charged with murder should have two elements which are Actus Reus- an unlawful act and Mens Rea- a guilty mind. The actus Reus of murder is unlawfully causing death of another human being under the peace of the queen within any country of the realm. The mens rea of that offence is "malice aforethought" or an intention to kill which is (express malice aforethought) or to cause Grievous Bodily Harm (GBH) (implied malice aforethought). [Storey & Lidbury, 2004: 63-64]

At the present case the conduct of D caused V to be injured and be taken to hospital. The act of throwing a heavy vase on a human being is very probable that may cause GBH if not killing him. This conduct, it can be argued, is what is called 'indirect or oblique intent, which is not necessarily what D desires but what he foresees will almost certainly happen.' [Storey & Lidbury, 2004: 66] Herring says:

Notably an injury may amount to grievous bodily harm even though it does not endanger a person's life. For example a terrorist may shoot a victim in the knee; if unexpectedly the wound becomes infected and the victim dies, the defendant could be guilty of murder, even though it was not foreseeable that his act would lead to the victim's death. [2005: 196]

However D may claim that the causation of the death is too far and it is caused by medical negligence more than by her act. The junior doctor has assessed him as 'not critical' and left him for some time (forty five minutes or so) in order to deal with more serious cases caused by the coach accident. V died as a result of brain haemorrhage which can be argued that he survived if he had received proper medical treatment. However in *Cheshire* (1991) the Court of Appeal (CA) held that:

Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant (per Beldam LJ) [Cited in Padfield, 2004: 33-34]

However D may argue that V voluntarily refused to receive treatment or being X rayed, despite the fact that he was conscious when the doctor came back and answered all the questions. Here the point of defence is stronger because if he was X rayed it could help in diagnosing the cause of the bleeding and could probably prevent his death. However in the case of *Blaue* (1975) Lord Justice (LJ) Lawton said that even if the victim refused to receive medical treatment on basis of religious beliefs or other reasons still the defendants can be convicted of manslaughter:

The question for decision is what caused her death. The answer is the stab wound. The fact that the victim refused to stop this end coming about did not break the causal connection between the act and the death. [Cited in Padfield, 2004: 34]

On the basis of the information provided so far, it can be argued that Jenny (D) is responsible for killing Ali (V); however it can be argued that partial defences are available for D to bring down that conviction from murder to manslaughter. It is worth mentioning that the last decision will always remain with the jury as members of the community to decide following the legal directions of the judge.

The actus reus and mens rea of voluntary manslaughter are the same of murder but with defences available which may draw a line between somebody who intended to kill and have previous plans and insist and another who acted under provocation or diminished responsibility (DR) . As Padfield said 'The criminal law should penalise the blameworthy.' [Padfield, 2004: 41] however every case should be decided on its merits and all the circumstances should be taken into consideration.

It is the responsibility of the defence to provide grounds for DR. According to s.2 of the Homicide Act 1957 (HA 1957), a person who has abnormality of mind to a specific degree caused by injuries of mind, it is not developed properly, caused by disease or it is inherited which makes him/ her not master of his/ her mind should not be convicted of murder. Although this defence is partial and is not leading to acquittal but he should be convicted of manslaughter.

At the present case there is no any medical evidence provided by the defence proving that D is suffering from that kind of abnormality of mind. As it is mentioned if the defence is not providing evidence (medical or non- medical) it can be argued that D is not liable for DR. However, if D can provide some evidence of abnormality of mind at the time of the act which probably impaired her mental responsibility this can be used as a DR defence even if it is not permanent, as Martin & Storey said:

There is nothing in the 1957 Act to indicate that the 'abnormality of mind' has to have any degree of permanence. It should suffice that it existed at the time of the killing and

that it substantially diminished D's responsibility (Tumanako (1992) 64 A Crim R 149). [2004: 263]

D should suffer of a 'Substantially impaired mental responsibility' [s2 HA 1957] this does not mean that his mental responsibility should be totally impaired as it should also not be very trivial, as Ashworth J, told the jury in *Lloyd* (1967) :

'Substantial does not mean total, that is to say, the mental responsibility need not be totally impaired, so to speak, destroyed altogether. At the other end of the scale substantial does not mean trivial or minimal. It is something in between and parliament has left it to you and other juries to say on the evidence, was the mental responsibility impaired and if so, was it substantially impaired?' [Cited in Martin & Storey, 2004: 264]

Another partial defence is provocation. According to s. 3 of HA 1957, a person who is charged of murder if there is evidence that at the time of the act he/ she was provoked by things done or said or both and he/ she lost his/ her self control suddenly it is up to the jury to decide either the provocation was enough to make a reasonable man to act in the same way as the defendant. The jury have to take into consideration everything done or said form the point of view of a reasonable man. [Padfield, 2004: 177]

This definition contains a subjective element which is a question for the jury to ask whether D provoked or not? The Jury should also ask two objective questions; would a reasonable man in his position be provoked? Would a reasonable man respond in the same way as the D reacted? [Ashworth (1976) Cited in Padfield, 2004: 177]

In the present case Ali interfered in the argument between Jenny and Tom. Further than that Tom insulted Jenny by saying: 'I am not lying, as I said Tom, once a hooker, always a hooker.' Here it can be argued that D was provoked and this provides the subjective element for her defence of provocation. As for the second and third question the problem lasts with the reasonable man test. Would a reasonable man provoked and reacted in the same way of the D? As Padfield remarked this is problematic:

If a reasonable person would have done as D, then why is he convicted of any crime? And who is the reasonable man? [Padfield, 2004: 179]

The problem of the reasonable man aroused In the case of *Camplin* (1978). How a reasonable man react to what happened to D in that case is different to the reaction of a 15 year old boy; Lord Diplock said:

The judge should explain to the jury that the reasonable man is a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing such of the accused's characteristics as they think would affect the gravity of the provocation to him. [Cited in Padfield, 2004: 179]

Jenny was alleged to be a former prostitute. Mentioning that in the way that V did 'Hooker' in front of her partner is very offensive and threatening their whole relationship which is considered as very important and vital for D. It can be argued that a reasonable woman in the same situation of D would react in a similar way.

The prosecution may argue that D is not liable for the objective test because V was monitoring her actions and reporting what he has seen to Tom. They may argue that D did not reflect to a sudden loss of control but reacted to a long lasting jealously concerning the relationship between V and her partner. As in the case of *Weller* (2003) when Court of Appeal (CA) dismissed the appeal of D for his convictions for the murder of his girlfriend:

> The court decided, on the basis of its analysis of the judgements in Smith, that D's 'unduly possessive and jealous nature' should have been left to the jury and that they had been. [Padfield, 2004: 183]

It can be argued that personal differences should be taken into account when a case is directed to the jury. A reasonable man test for this purpose is a test when the judge directs the jury to find out that a specific person with the same personality, mental state and circumstances has controlled himself in a situation similar to what happened to D. As in *Weller* (2003) Mantell LJ said:

> 'The question whether [D] should reasonably have controlled himself is to be answered by the jury taking all matters into account. That includes matters relating to [D], the kind of man he is and his mental state, as well as the circumstances in which the death occurred…' [Cited in Martin &Tony, 2004: 282]

However previous acts and words of the V may provide some grounds for what is called 'Cumulative Provocation'. Cumulative provocation was recognized in *Humphreys* (1995) and in *Luc Thiet Thuan* (1997) as Lord Goff said:

> 'It may be open to a defendant to establish provocation in circumstances in which the act of the deceased, though relatively non- provocative if taken in isolation, was the last of a series of acts which finally provoked the loss of self-control by the defendant and so precipitated his extreme reaction which led to the death of the deceased.' [Cited in Martin & Storey, 2004: 276]

The matter whether D lost her control in a reasonable way when the act took place could be analysed on the basis of several previous cases. In *Duffy* (1949) it was held that the loss of self-control should be 'a sudden and temporary loss of self-control, so that D is not master of his mind.' [Martin & Storey, 2004: 287] It can be argued that in the present case D has suddenly lost her self-control and temporarily she was not master of her mind when she throw the vase on V.

In *Ibrams and Gregory* (1981) the Court of Appeal upheld their murder because of the length of time between their anger or provocation and the act of killing, as well as, the existence of the pre-prepared plan for the killing. However, it can be argued that in the case of Jenny there is neither any pre-formulated plan nor any time delay between the anger and the act, so she is eligible for provocation defence.

It can be argued that Jenny's special circumstances as well as the allegations of being a former prostitute should be taken into consideration when the judge directing the jury. If the jury look at her case as an ordinary woman on the basis of the traditional 'reasonable man test', there is a danger of misleading the jury as it was happened in *Rawland* (2003). In Rawland (2003) the D was 'portrayed as a normal placid man' while he was suffering from Peyronie's disease. [Martin & Storey, 2004: 289]

At the conclusion, it can be argued, that although Jenny is responsible for the death of Ali, she is liable for provocation defence to bring down her conviction from murder to manslaughter. Jenny was provoked by Ali's action by interfering in their family argument and by insulting her in front of her partner in a way which may put their future relationship in danger. D has lost her self-control and had no time to think or plan for her act and she did not look for any kind of weapon but attacked him with the nearest available object; a vase. It is worth mentioning that the final decision lies with the jury who can decide on the available defence.

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