

## Slide 1

### 'Rough justice'

A qualitative study of legitimacy, fairness, and police-offender relationships, in Integrated Offender Management (IOM)

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## Slide 2

### Overview

- Introduction (PJT and its adequacy for explaining offender perceptions of IOM policing)
  - Literature review (PJT and its empirical support)
  - Method (Grounded, inductive theory)
  - Sample
  - Data (qualitative (ethnography (observations and interviews)
  - Limitations (difficulties in translating heavily quant based PJT to Qual data).
  - Findings (offender narratives)
  - Discussion and conclusions (explaining IOM offender perceptions of IOM policing and future research)
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### Introduction Procedural Justice Theory

Tyler's (1990)

Normative, processed-based model of regulation, which claims

Police legitimacy and compliance with the law are obtained not through the threat of force or risk of sanction, but through the presence of procedural justice during police-citizen encounters (Tyler, 1990).

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### Introduction

#### What is Procedural Fairness?

'Procedural Fairness' - number of key dimensions, which generally can be reduced to two core issues:

1. *Quality of decision-making* – captures impartiality, objectivity, transparency, trustworthy motives, and participation in the decision-making process, and
2. *Quality of treatment* – concerns assessments by the public that during encounters with the police, officers are honest and treat them with dignity, respect, and humanity

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### Introduction

#### PJT and public cooperation

- PJT has been shown to explain public cooperation with the police, compliance with police officer directives and reductions in offending behaviour (e.g., Paternaster, 1997; Tyler and Wakslak, 2004; Tyler and Huo, 2002; Trinkner *et al.* 2018).
- Due to impact on legitimacy judgements.

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### Introduction

#### What is legitimacy, in this context?

- Tyler (2006: 675) – legitimacy is a property that an authority has when others feel obligated to defer to its decisions and rules, voluntarily rather than out of fear of punishment or anticipation of reward.

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### Introduction: PJT and modern forms of policing

- We know little about how these arguments might relate to modern forms of policing, operating outside the context of traditional patrol interventions (where much of the procedural justice–police legitimacy literature has so far been constructed).
- Content and antecedents of legitimacy, as well as the implications for the behaviour of the parties involved, may be shaped by factors specific to this particular setting.

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### Introduction Integrated Offender Management

Multi-agency partnership between 4 main agencies, with some 3<sup>rd</sup> sector input.

Police /Probation /Prison /Drugs intervention services / 3<sup>rd</sup> sector – housing/drug services/health/debt

Rise and fall of Transforming Probation

Largely, targets recidivist offenders

Aims to reduce crime/victims through:

Enforcement (traditional policing methods)

Support and rehabilitation

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### Introduction Operationalising IOM Policing

## Policing within IOM

### 'Carrots' – Police offender managers

- Intelligence gathering / pathway support (education, housing, accessing drugs/alcohol agencies)

### 'Sticks' – Uniformed response officers

- Disruption / enforcement

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### Introduction: Research on IOM policing

- Different conclusions as to whether the changes this form of policing entailed are reflected in changes in underlying police cultures (e.g., Cram, 2016, 2018; Annison *et al.* 2015; Sleath and Brown 2017)
- But my question is how might procedural justice operate within this setting, and how might this shape notions of police legitimacy?

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### Data from one IOM area

- Diverse forms of IOM police–offender interactions were characterised by a number of practices that could well be seen as procedurally unfair.
- Repeated street stops, physical and verbal abuse by IOM police.
- May have negative consequences for their cooperation/compliance with the scheme, because of the potential impact of procedural [in]justice on legitimacy evaluations.

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#### More data from one IOM area

- Offenders seemed to confer a degree of legitimacy on the interventions, even though they considered that in many ways they had been subject to unfair treatment by the police.
- Participants viewed themselves as responsible for, even deserving of some aspects of the treatment.
- Understood as a sort of 'rough justice',
- Actions of the police were seen as morally correct, or at least understandable, on the basis of previous offending.

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#### Differences in what was accepted

- However, there was an important distinction in the data.
- Some (even extensive) police interventions were accepted as legitimate (i.e., acceptance that IOM police have valid authority and moral authority, not just to enforce legal rules, but *also* to dictate appropriate behaviours) because of prior records of prolific offending,
- Others were not (i.e., where offenders felt IOM police action was not grounded in evidence and/or disproportionate).

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#### Rough justice

- Not disputing the claims of Tyler and his colleagues.

- Rather, using the notion of 'rough justice' to examine the adequacy of Tylerian literature in accounting for instances where legitimacy judgements, made by committed recidivist offenders, appear to survive procedurally unfair police behaviour.

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Literature review [1]

Empirical support for PJT

- The argument is that a consistency of procedural fairness during police-citizen interactions helps police strengthen legitimacy; in turn, officers are more likely to receive support and voluntary compliance from members of the public.
- Routinely tested and shown to have strong empirical support (e.g., Paternaster, 1997; Tyler and Wakslak, 2004; Tyler and Huo, 2002; Trinkner *et al.* 2018; Posch *et al.* 2020)

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Instrumental/cost-benefit concerns

- E.g., police deterrence, effectiveness and distributive fairness
- Less influential than perceptions of procedural justice (*cf.* Tankebe, 2009, Karakus, 2017, Lee and Cho, 2021).
- Some instrumental concerns are embraced within Tyler's concept of *quality of decision-making*, which emphasises normative expectations of policing within democratic societies (Bradford *et al.* 2017; Tankebe 2013).

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Problem with Tyler's conceptualisation and operationalisation of legitimacy

- Tankebe (2013: 124) has drawn attention to the 'danger of assuming that feelings of obligation to obey legal authorities are always normatively justified'.

- People might report feeling an obligation to obey the police out of fear, or ‘dull compulsion’ and instrumental calculations.

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Legitimacy as a dialogic and dynamic concept

- Obligation, according to Tankebe (2013: 105), should therefore be considered as a ‘dependent variable’, sometimes a consequence (rather than a constituent) of perceived legitimacy, sometimes not.
- He further suggests that police legitimacy is best understood not as a single transaction between the police as powerholders and the public as their audience, but as a perpetual ‘discussion’ between the two (also, Bottoms and Tankebe, 2012: 129), with police officers making claims to (i.e., attempting to establish and cultivate) legitimacy and the public responding to this claim – supporting or rejecting it.
- The police may adjust their claim in light of the audience response, and the process continues (2012: 129).

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IOM police legitimacy

- It makes sense to study IOM police legitimacy as a dynamic interaction among officers and offenders because relationships between IOM police and offenders are typically lasting.
- Over time, dynamics of police-offender relations change for both parties (i.e., based on police officer’s changing sense of authority and power, and on the offenders’ reception of IOM police claims to power and authority (also, Tyler and Jackson, 2013)).
- Implicit in the framework, therefore, is the notion that some form of information is conveyed throughout the legitimacy dialogue; although, neither Bottoms and Tankebe (2012), or later Tankebe (2013), are explicit on the substance of the claims and responses.

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IOM police legitimacy

- In 'feedback', conveyed by IOM offenders, emphasised several relational factors found at the core of the *quality of treatment dimension* of procedural justice theory (e.g., respect, honesty, and dignity) but most of all, trust in the motives of powerholders, found within the *quality of decision-making dimension* (Tyler, 2006).
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Method [1]

Data comes from larger study on IOM

400 hours of observations

- Patrol officers (50)
- Police offender managers (350)

51 Interviews

- 31 IOM managers / police / probation / drugs workers
  - 20 offenders (custody/community)
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Method [2]  
Sample

IOM offenders

- Mean age of 28
- 3 female, 17 male.
- 19 self-identified as white
- 1 self-identified as black



Participants selected onto the IOM scheme, through an 'Offender Group Reconviction Scale' Version 3 (OGRS3) and an Offender System Scores (OASys)) –actuarial software, estimating the probability that offenders with a given history of offending will be reconvicted within two years of sentence, or release if sentenced to custody (Howard, 2009).

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Data analysis

- Inductive grounded theory approach (Glaser and Strauss, 1967) used to analyse interview data.
- Thematic analysis and open coding - provided a detailed description of the data (Braun and Clarke, 2006).
- Axial coding to differences within and between categories that emerged from the initial coding and provided comparative analysis of codes and categories.
- Themes were further refined and named:
  1. regularity of police attention
  2. nature and quality of police treatment and
  3. offender perceptions of the fairness and legitimacy of police action.

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Limitations

- Procedural justice research dominated by survey-based quantitative research
- May not unproblematically translate across to a study supported by qualitative data.
- Data were of sufficient quality for this examination, but a survey-based study may, for example, more readily identify significant differences in participant experience within the sample.

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Findings [1]  
Offender narratives

18/20 reported involuntary contacts with uniformed police were of excessive frequency.

“I got stopped four or five times on my road. It might be a long road, but I’ve been stopped by one set of police officers and then walked down the road a bit and like another set of police officers pulled me over. I’ve said, “Look I’ve just been pulled over”. They’re like “Oh well” and started laughing at me ... like they think they’re funny.”

Also, complained of police offender managers “turning up” at their homes uninvited:

“I got out from the courthouse and went to my girlfriend’s house. They were waiting for me. I wasn’t expecting them. They just turned up and said, “we’re police, working with probation and we’re here to help you. But if you step out of line, we’ll send you back to prison before the courts will. Make sure you don’t step out of line. We’re keeping an eye on you”.

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Disjuncture between Police and offender perceptions of the reasons for the contact

- Distrusted police motivations when subject to what they characterised as unwanted, baseless [no evidence] street stops – saw them as arbitrary
- Police, however, referenced intelligence-based, risk-management mechanisms used by the scheme as the justification for targeting offenders. evidence-based policing as claim to legitimate authority re interventions (also, Bradford 2017: 60).

Bradford (2017: 60) ‘evidence-based policing is nothing if not a claim to legitimate authority over the realm of crime control’.

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## Disjuncture between Police and offender perceptions of the reasons for the contact

On the slide, Sunnyvale offender criticises the police for carrying out a series of street stops, initially understood to result from a form of risk-based targeting. Later it becomes clear that the stops were influenced by evidence-based suspicion and the man is more accepting of the interventions

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## Disjuncture between Police and offender perceptions of the reasons for the contact

Risk-based targeting by patrol officers was seen as less acceptable than interventions based on firm evidence of past offending.

PJT - *Quality of decision-making* dimension requires perception of objectivity and openness, as well as opportunities for representation and correction of mistakes made in respect of police decision-making (Tankebe, 2013: 111).

However, action based on risk-calculations means the police decision-making process underpinning the intervention is effectively concealed and not prone to challenge or accountability mechanisms.

Police activity is thus experienced as a form of harassment rooted in subjective (police) discretion.

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## Police motives mattered

- But where police give reasons etc..., interventions are accepted, and offender comments implying a measure of cooperation, where police gave a reason for the stop.
- Addresses several dimensions of procedural fairness:
- *Openness*
- *Respect*

- *Motive-based trust*
- At the core of the distinction seems to be the trustworthiness of police motives.

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nature and quality of police action

- Disrespectful police *talk*

‘vile’, ‘dirty scroats’, ‘shit-bags’, ‘crack-heads’ and (on one occasion) subject to racist behaviours (XXXX, 2018).

- Disproportionate and/or inappropriate police *action*:

“When I’ve been arrested sometimes, I’ve had police sat on top of me, slap me across the face put their fingers in my face, shout in my face. Been really, really, aggressive towards me and at that specific moment in time, I haven’t done anything wrong; I haven’t been charged with anything, whether I have or haven’t done anything wrong.”

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Offender narratives: nature and quality of police action

*Instrumental and/or prudential calculations*

Procedurally [un]just encounters (i.e., involving disrespectful and physically abusive police behaviour) resulted in deference and cooperation based on a sense of prudential and/or instrumental obligation:

I was walking down the road and the police was pulling someone across the road and the copper shouted over: “You been found dead yet?” to me, “You been found in a field?” And I said, “Fuck off” and he ran straight over and grabbed me and said, “Say sorry”, bending my arm back. I’ll nick you in a minute”. So, ended up saying sorry, rather than getting nicked.

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Offender narratives: nature and quality of police action

“Dull compulsion” (Carrabine, 2004)

If [an offender manager] is asking questions, then you're expected to answer them. They put that on the table from the off. It's like if you've got nothing to hide then you've got nothing to worry about. So, if he's asking questions, I'm expected to answer them. If I don't then I appear as if I'm being awkward. So, either way I'm going to do it. If I was awkward and difficult and said "Oh I ain't talking to you", that would have consequences. I can't do that because he definitely governs whether I stay out of prison or not. If I'm difficult, he's going to think, "Well he's obviously not trying to help himself".

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##### Police effectiveness

Some offenders also questioned the effectiveness of IOM police

Who the fuck wants to chat to a police officer? Come on let's have it right; do you honestly think? You know what they said to me? "Anything you say to me is confidential" You're a fucking police officer. Do you honestly think you're going to chat to me mate? Get fucking real. Stop wasting your time.

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##### Perceptions of fairness

##### Playing by rules

Distinction between police officers and the police institution

Offenders focused on police officers "playing by the rules" – both formal (legal and administrative) and informal (i.e., subtle exercise of police discretion (McConville *et al.* 1991: 60-1)).

Police action perceived to stay within these parameters, tended to be viewed as fair.

"We'd nicked something. Got home, sold it. Police pulled up and said, "What you been doing today?" I'm like, "Ah shit". But they bailed me on the street [and] said, "Look, come on up [to the police station], we'll sort it out".

I had to go back at 3 o'clock. [When I went to the police station] he said, "I knew you'd scored, but I wasn't going to search you. I don't condone it, but I know you needed it."

Fair treatment because it postponed the formal exercise of police powers (detention at the police station) until a later date.

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Perceptions of fairness

- Tyler (2006) - fair treatment is more important to people than the actual outcome of interactions with police,
- But outcome (not being detained) was of paramount importance to Emma and thus, in part at least, determined her perception of fairness.
- But relational elements were also present, i.e., flexibility (within clear boundaries), honesty, understanding and apparent concern for her wellbeing, on the part of the officer.

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Overlap between instrumental concerns and procedural fairness

Marc, for example, said:

When I came out of prison, a plain clothed police officer, come up to me at the gate and said, what's your plans? I told him I was going for a probation order. He said if you need help with anything give me a call. Said he'd be in contact with probation and keeping an eye on me. I found it helpful. Even though he's a copper. If there's help there for me, which there is with [Sunnyvale], then it's all good.

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Perceptions of fairness

- Similar to Emma's Marc's perception of the fairness of the intervention also stems from the way authority was exercised.
- Valued was the straightforward, honest approach of the police officer, as well as instrumental returns (i.e., support).
- The latter seemingly wrapped up in a sense of trust and confidence in the motives of the police officer: a belief that the offender manager cared genuinely about Marc's welfare and improvement.
- But this sense of motive-based trust, so pervasive throughout offender accounts, played an important part in Sunnyvale offender legitimacy judgements.
- In the final empirical section, I turn to this issue of trust, attempting to tease out what it represents and its relationship to offender perceptions of Sunnyvale policing.

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Offenders understood Sunnyvale police interventions through the lens of their criminal behaviour.

Offending record seemed to justify some Sunnyvale police operational practice.

Various quote would demonstrate this but this is most apposite:

I understand it. I've got 40 previous for burglary dwellings and I've had 6-year sentences, 5-year sentences, I've had this 4-year sentence just gone, 3 and a half years before. I've had some big sentences; so, I can understand it. He's just a flat-out burglar. A lot of police are one track minded – once a criminal always a criminal.

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Trust, legitimacy, and Sunnyvale policing

Most offenders imposed this frame upon their treatment as a way of making sense of their experiences.

Interactions perceived by offenders as ‘unfair’ when aspects of police practice strayed beyond formal (legal) and informal (police discretion) ‘rules’ that defined the boundaries of ongoing relations, the purpose driving police action (responding to offending) was accepted to a degree as justified.

Reflects Tyler’s notion of motive-based trust (i.e., police are seen as legitimate when people believe they represent a proper moral purpose (Beetham, 1991; Tyler and Wakslak, 2004; Sunshine and Tyler, 2003; Bradford *et al.* 2014).



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Discussion

Linkage between fair and respectful policing and police legitimacy (Tyler, 2006)

Offenders emphasised their criminal behaviour when considering the legitimacy of Sunnyvale policing.

‘Rough’ treatment at the hands of the police was seen as an unwelcome “occupational hazard” which, alongside intense police attention, required management and negotiation as part of ongoing police-offender relational work. It was also understood and accommodated as a predictable – and to some extent ‘just’ – aspect of a prolific criminal lifestyle; a form of ‘rough justice’.

But there were limits.



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Discussion

Tension between Sunnyvale police belief risk-assessments were a legitimate basis for focused intervention, and offender believe that only interventions responding to evidence of recent offending were justified.



Yet when asked, ‘what gave Sunnyvale police the right to intervene in their lives to this extent’, the same participants suggested that the ‘right’ (a degree of legitimacy) arose from their prior offending and the risk of reoffending it denotes.

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Discussion

To make sense of it can begin by recalling offender perceptions of the fairness of Sunnyvale police action bound up with both the *quality of decision-making* and the *quality of treatment* dimensions of procedural fairness. Aspects of police conduct, such as straightforwardness, honesty, the relaxation/suspension of formal powers (soft-power (Crew, 2011)) and process and decision-making driven by evidence, were strongly related to a sense of fairness, whilst repeated street stops, unannounced home visits, disrespectful language and disciplinary practices were closely tied to perceptions of unfairness.

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Discussion

But trust in the perceived motivations of powerholders (Tyler, 2006; Tyler and Huo 2002) was the primary distinguishing dimension of procedural fairness, which shaped offender perceptions of the legitimacy of Sunnyvale police action – or lack thereof.

Participants questioned and distrusted police motivations when street stops – often infused with hostility and disrespect – were carried out without a perceived evidence-base. Such encounters went further than what was accepted within the ‘rough justice’ frame and were viewed as unwarranted, personal attacks and outside of the scope of the legitimate use of police authority.

The result tended to be compliance/cooperation predicated on instrumental concerns, but a history of these encounters was also found to place stress on future relations between participants and police offender managers, with the latter viewed as untrustworthy.

Alternatively, when stopped or visited at home, for what were accepted as justifiable reasons (e.g., suspicion of criminal activity, and/or the offer of support from offender managers) most participants understood better the context of the action and trusted the motivations of the police officers involved.

For some offenders, this perception appeared to contribute to willing cooperation with Sunnyvale police, although, again, prudential and/or instrumental cost/benefit calculations, were also operative.

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Discussion

May be a result of the context in which these insights have developed.  
Difference between routine (but often sporadic) police-citizen encounters (hitherto focused on by Tyler and his colleagues) and enduring Sunnyvale police-offender relations.

In the latter context, offenders have histories (prior offending), which frame the meaning and scope of police activity (enforcement and ongoing rehabilitative work) for both parties. In this setting, police legitimacy judgements are not easily anchored in Tyler's *quality of decision-making* dimension.

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Discussion

- PJT depends on neutrality / lack of bias – i.e., police treating those they encounter as merely another citizen.
- Neither IOM police, nor IOM offenders expect that to be true.
- Instead, both parties accept that offenders will be targeted on the basis of previous offending, and intelligence on their risk of re-offending that falls short of reasonable cause to suspect them of criminality.
- The focus of offender evaluations of IOM policing, therefore, shifts towards relational dimensions of PJT (i.e., trust, honesty, respect).
- Likely to have a greater effect on legitimacy judgements, within IOM, because evaluations of procedural fairness can move beyond perceptions of whether police

are following (or breaking) formal laws and rules, into the locus of enduring police-offender relationships.

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Discussion

This finding highlights the 'audience response' stage in the legitimacy dialogue, implicit in Tankebe's (2013) 'dialogic' proposition of legitimacy (also, Bottoms and Tankebe, 2012).

Tankebe's argument was that legitimacy is best thought about as a continuing dialogue involving the claims by powerholders (Sunnyvale police officers) and responses by audiences (Sunnyvale offenders) in the form of deference to authority or following directives.

Allows for a more flexible approach, and for the contents of the dimensions of legitimacy to vary in different settings. Procedural justice, effectiveness, distributive fairness, and lawfulness are put forward by Tankebe as potential content of the dimensions of police legitimacy in a liberal democracy,

But in the context of Sunnyvale, we saw that it was the relational dimensions of procedural justice, which were particularly amplified within police-offender legitimacy dialogues.

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Discussion

Research done on the relevance of legitimacy in the context of prisons and community sanctions (e.g., Bottoms, 2001; Sparks *et al.* 1996; Bottoms and Rose, 1998; Crew, 2011; Rowe *et al.* 2018) helpful.

Here judgments on the fairness and legitimacy of (probation/prison) staff action correlate highly with a positive perception of offender-staff relationships (i.e., where relationships were possessed of aspects of trust, respect, straight-talk, support, honesty, informal relations and 'soft-power'(Liebling 2011: 491).

Analogies drawn between the work of prison and probation staff and that of police offender managers. Here relationships are also a key site in which to build legitimacy (McNeill and Robinson, 2013)). But relational work also requires trust.

Returns us to Tyler's PJT, which recognises the importance police motives in the construction of perceptions of police legitimacy (Tyler, 2006; Tyler and Wakslak, 2004).

If people believe the police are sincerely trying to do what is good for the people with whom they deal, this helps shape the belief the police are legitimate.

When we extrapolate this from Tyler's work, into the context of IOM, one can postulate that Sunnyvale policing –enforcement and/or relational rehabilitative work– was perceived by offenders as legitimate because of the trust associated with the motives underlying the action: a response to prolific offending.