

THE MAGISTRATES' ASSOCIATION
JUDICAL POLICY & PRACTICE COMMITTEE

**Evidence submitted by the Magistrates' Association to the All Party Parliamentary
Group inquiry into Justice in Communities**

The Magistrates' Association welcomes the opportunity to provide evidence to this review. As the timescale for the preparation of evidence was a little over two months, we have had limited opportunity to consult our wider membership. However, we regard this as an important issue for both the civil and criminal legal systems of England and Wales. The situation regarding local justice is different in both Scotland and Northern Ireland.

There are over 29,000 active magistrates in England and Wales, and the vast majority of them are members of the Magistrates' Association. The Association is a charity with the objectives of educating and instructing magistrates and others in the law, the administration of justice, the treatment of offenders and the best methods of preventing crime.

In 2011, the office of magistrate celebrates its 650th anniversary. Magistrates had their origins in local communities and for most of their history a link to a local community has been an essential prerequisite for selection of magistrates. However, in recent years, the place of magistrates' courts and the role of magistrates in serving their communities, and drawing upon their local knowledge, has been eroded. This is often to such a point that some parties, but not the Magistrates' Association, have expressed views in favour of 'titan' courts that are resource efficient, but have no link to any local community.

On the other hand, there are emerging views that low level crime which is committed locally is best dealt with locally. This trend is best seen in the development of local CDRPs and the linking of police BCUs in some areas to local district or unitary council boundaries. The desire to involve local people in the justice system has been given further impetus by the discussions about the creation of bodies such as community justice panels. Councils have become involved in preventative measures such as alley gates schemes and greater involvement in regulation such as control over licensing. The creation of community and neighbourhood support officers can be seen as a move away from large centralised police forces towards a return to former 'town police forces', although councils have yet to become 'watch committees'.

The government at Westminster has recognised the need for some relationship between the criminal justice system and local areas through the creation of the North Liverpool Community Justice Court and the piloting of a range of magistrates' courts as specific 'community justice courts', of which Salford and North Liverpool have been the subject of published evaluation of the early stages of operation (although two entirely different models).

At the same time as the community justice movement has been gaining ground, there has also been a desire to pilot courts with particular specialisms within the wider criminal justice system, whether to deal with drug offenders, domestic violence cases or road traffic matters. Except within the largest conurbations, and even to some extent in those areas, specialisation means a move away from dealing with offenders in their local community in favour of specialist understanding of the particular offence group. There has also been an increase in the use of salaried District Judges (Magistrates Courts), the successor to the former stipendiary magistrates.

To some extent these three trends outlined above, cannot co-exist without a clear view of the place of the justice system in England and Wales. Although the majority of the population live in urban areas, there are places, especially in the south of England, where smaller towns and cities are expanding at a faster rate than the urban areas. The nature of crime has also been changing. Crimes based upon the need to feed an addiction are now widespread in all types of communities, as are crimes such as domestic violence and stranger on stranger violence, often fuelled by the consumption of excess amounts of alcohol. Most are still committed by local people on others in the locality.

The biggest driver of the criminal justice system in recent years has been the need to use resources in a manner that is conceived to be more cost effective. For the magistrates' courts, this drive has coincided with their transfer from local authority control to first the DCA and now the Ministry of Justice. Local decision making about the nature of the service is now taken at arm's length from most providers of other local services, and the budget is created using a centrally driven model that appears to take limited account of regional or local variations in provision. This has tended to produce a system of resource-based justice where courtroom utilization is seen as a key measure of effectiveness, exacerbated by the current resource problems.

The Magistrates' Association has been campaigning for a greater understanding of the relationship between the provision of courts and local communities. We believe that HMCS now accepts that there should normally be a court within no more than one hour of travel by public transport. To meet this target would certainly mean a review of the effectiveness of a policy of maximum courtroom utilization, since many rural areas and small towns do not need even one courtroom functioning five days a week. When magistrates' courts were a local government function courtrooms could be used for other purposes when not in use as courts. If HMCS could be convinced to pilot a rural 'courtroom hire scheme' or co-location of services in one building, including court services, in association with a district council then the advantages of *taking justice to the community* rather than the present model of the *community to justice* could be tested.

This model would also fit in with the notion of de-centralised community activities introduced by a number of Councils in attempts to locate services closer to their users. Such a pilot might well cost a fraction of some other pilots in the criminal justice system. The use of video technology could provide the court with links to probation and other support services to allow decisions to be taken quickly on issues such as community sentences and suitability for

unpaid work. The improvement of Libra and its use and access, and availability other (restricted and safe) partners would also assist.

The Magistrates' Association also views with concern the trend towards centralisation of offices within the probation service. We believe that such centralised offices are challenging for those in work who are required to travel further to interviews and provide an incentive for those seeking excuses not to attend.

The association notes that HMCS, the body with operational oversight of the courts, has a performance indicator relating to the time witnesses spend waiting at court: it has no such indicator for travelling time. In extreme cases, defendant, witness and even magistrates can find themselves travelling to court on the same bus.

At the same time that magistrates' courts have been reduced in number, new powers have been created for both the police and local authorities to hand out sentences to those judged by these authorities to have broken the law. When these powers extend to decisions about how to 'sentence' individuals on a case by case basis, as with Conditional Cautioning, the Association believes that the essential boundary between an independent judicial system serving the interests of the community and the defendant and the executive, as represented by the police and prosecuting authorities, whether the CPS or other body including local authorities, has been breached. This is a dangerous precedent that contains within it considerable inherent risks for society, particularly when legal aid is often not available for many minor offences. Pressure to accept a penalty notice in the police station without understanding the full consequences for future employment and other outcomes is a risk of such summary handling of cases. A court appearance, even later the same day, allows time for reflection. Acquiring a criminal record should not be too easy to achieve lest the old maxim 'that rather a hundred guilty men go free rather than one innocent person is wrongly convicted', no longer becomes a cornerstone of our judicial system at its most fundamental level where it deals with the greatest number of people.

In considering a new model of local sentencing, some local authorities have considered the idea of community justice panels. The first of these, in Chard in Somerset, was established when the local magistrates' court was closed. The idea of such panels reinforces the twin purposes of the magistrates' courts, local justice and the involvement of unpaid volunteers in deciding sentences, without, and in the case of magistrates' courts, deciding guilt or innocence as well. Many of the panels have been coupled with the notion of restorative justice. This concept of making the perpetrator aware of the effects of their crime and convincing them to offer redress has a place in any criminal justice system, and especially in dealing with anti-social activities such as noisy neighbours and low level public nuisance. Such actions are not restricted to community justice panels. Indeed, it could be argued that the notion of community payback and increasing the visibility of offenders undertaking unpaid work is identifying punishment as restoration to the community, albeit not through choice.

The Association welcomes the focus of the inquiry on integrating local services to help reduce re-offending. We are surprised not to see education included in the list as, along with mental health issues, the lack of education qualifications and exclusion from school are key features of many of those who regularly appear before our courts. In this respect, the high correlation between achievement at Key Stage 2 tests and the level of deprivation of the ward in which a child lives provides a clear pointer to reducing a propensity towards offending behaviour.

The inquiry highlights the growth in the prison population in recent years. However, between January 2008 and January 2009 prisoners serving short sentences of six months or less fell by some 11% to 4,912. In February, it was 15% lower than the year before, although the annual winter increase took the actual number up by around 300 to 5,201. Were it not for the growth in those in prison for acts of violence, the prison population might be considerably lower than current numbers, especially for women prisoners.

The Magistrates' Association firmly believes that summary justice should be rooted in communities, along with actions both to try to prevent offending requiring such justice, and to deter re-offending. The Magistrates' Court must have an essential part to play in delivering justice locally in an open democratic and participative manner, as it has for nearly 650 years.

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