

**THE MAGISTRATES ASSOCIATION**  
**JUDICIAL POLICY & PRACTICE COMMITTEE**

**Response to Bradley Report**

There is nothing in principle within the Bradley Report with which anyone could sensibly disagree. The introduction to the Executive Summary states:

1. *Evidence suggests that there are now more people with mental health problems in prison than ever before. While public protection remains the priority, there is a growing consensus that prison may not always be the right environment for those with severe mental illness. Custody can exacerbate mental ill health, heighten vulnerability and increase the risk of self-harm and suicide.*
2. *The policy of 'diversion' for people with mental health problems or learning disabilities has been supported by Government since as far back as 1990. But the lack of a nationally guided approach has meant that implementation has been inconsistent.*
3. *Over the intervening years, policy developments across both the health and criminal justice sectors have created a much more receptive background for implementing this diversion approach. For example, offenders are now recognised as part of a socially excluded population.*
4. *Although there are many similar issues that affect both people with mental health problems and those with learning disabilities, there are distinct differences. These mean that learning disabilities must be seen separately. There is a lack of consensus in defining the boundaries between learning disability, borderline learning disability and learning difficulty. This is due, in part, to the lack of agreement on the most effective methods of identification and assessment.*

The report also suggests that while there are some pockets of good practice around the country, there is no planning, no direction, little funding and no cohesive will to resolve such difficulties. Any areas of good practice have been set up locally and there has been no real analysis of what works and what doesn't.

The report looks at the various stages of the Criminal Justice process

- Early intervention, arrest and prosecution
- The Court process
- Prison, community sentences and resettlement

We are clearly most concerned with the Court Process, but many of our concerns will be affected by the effectiveness of any changes within the arrest and prosecution stages. Magistrates rarely know whether a defendant has any kind of mental health issue until late in the process and so plans to improve earlier recognition would be very important and helpful to all concerned. Such issues are often more difficult to pick up than, for example, learning disabilities which can become clear as soon as someone can't read the oath or remember their address accurately. However, in this response we concentrate on the Court Process and on the recommendations that the original report made and the government acceptance and response of these recommendations.

Some of the recommendations within the Court Process section of the original report were dealt with in the Government's response in other sections.

These are laid out in the following pages.

**Overall view:**

The Bradley Report is critical of the way in which defendants who have mental health problems are dealt with throughout the criminal justice system. While the report itself is not news to most within the system, some of the detail is news and reinforces this view. The question we should be asking is "why has such a report been necessary?" The government response is generally in agreement in both general and specific terms, which begs the question, "why has it taken such a report to gain this response?"

The Magistrates' Association not only supports the broad aims of the Bradley Report but would also like to be involved wherever we can in helping to set up processes for the simple reason that good sentencing is based on full knowledge. There is much anecdotal evidence that we are not informed as well as we could be about mental health issues. This must affect the way in which defendants with mental health conditions are treated.

The government responses, while laudable, exclude the judiciary from the planning and development of processes. We believe that this misses out on a significant amount of knowledge.

Their responses also seem to indicate a lack of the timely financial commitment that would be necessary to implement some of Bradley's recommendations.

28 May 2009

## Summary Recommendations

Bradley Report Recommendation re: Courts	Government Response Status	Government Proposed Action	Magistrates Association response
Courts, health services, probation and CPS should work together to agree a local Service Level agreement for the provision of psychiatric reports and advice to the courts	Accepted	Service level agreements are being piloted in the South West and London HMCS regions. Independent evaluations are expected to be delivered in June and October 2009 which should inform a national approach. The CPS and the Defence and Legal Services Commission will be involved in the development of the SLA. A core SLA will be agreed and implemented by April 2011.	These pilots appear to be providing an altogether better service, at lower cost and faster than the experience in the rest of the country. However, we were first made aware of these pilots at least 3 years ago and would have expected a faster roll-out than has happened. We should also propose that the judiciary should play a part in the development of the SLAs as we will be the recipients of such agreements.
All criminal courts should carry out a six-month base-line study recording psychiatric and psychologist reports commissioned by the court and the cost of those reports, in order to inform the development of the Service Level Agreement.	Accepted	The Programme Board will await the results of current pilot evaluations and review what needs to be done as a baseline study is likely to feature as part of	This work could be carried out now. What is the advantage in waiting?
The judiciary should undertake mental health and learning disability awareness training.	Accepted	This recommendation will be taken forward by HMCS / Judicial Studies Board with advice from DH-OH.	Agreed. This should be a core part of all magistrates' training.
The Ministry of Justice should examine how individuals with a dual diagnosis are served in drugs courts	Accepted in principle	The Programme Board will consider the development of an appropriate model in the context of a review of all courts and assess the resource implications.	This is a key area. Dual diagnosis defendants are poorly handled at the moment because of lack of knowledge and a non-anecdotal analysis would inform the court process.
HM Courts Service and the Department of Health should investigate how defendants with a dual diagnosis of mental ill health and drugs/alcohol are currently served by all courts, including specialist courts.			However, it should be said that the presence in some courts of mental health specialists that were available until a few years ago did help to identify such problems. These specialists were withdrawn because of lack of funding to the detriment of defendants with a mental health issue and to the detriment of the courts which relied heavily on this facility for a better approach.

<p>A study should also be undertaken to evaluate how Community Justice Centres impact specifically on people with mental health problems or learning disabilities.</p>	<p>Accepted in principle</p>	<p>The Board will review the need for this once the impact of other work has been assessed</p>	<p>Why wait? The issue exists now and work can already be underway to inform. However, there is significant difference between the Liverpool CJC and all others, in which courts have to rely on a telephone number to give to the defendant / offender, rather than the in-house specialism that used to exist.</p>
<p>The Department of Health and HM Courts Service should commission further research on the use of MHTRs (Mental Health Treatment Requirements)</p>	<p>Accepted</p>	<p>We are currently awaiting independent research results from Sainsbury Centre for Mental Health. The Programme Board will consider the scope of further research following evaluations from a range of current pilot schemes.</p> <p>The Offender Health Research Network will be commissioned to undertake further research which will be incorporated into its current work plan</p>	<p>Agreed</p>
<p>A Service Level Agreement between the Court Service, Probation Service and National Health Service should be developed to ensure the necessary mental health requirements for community orders are available.</p>	<p>Accepted</p>	<p>Model Service Level Agreement's will be developed by December 2009, pilots will be identified before April 2010, pilot reports will be delivered by September 2010 with national roll out completed by April 2011.</p>	<p>As mentioned above, the judiciary should be involved in this development process.</p>
<p>The Department of Health and HM Courts Service should issue clear guidance for sentencers and probation staff regarding the use of MHTRs.</p>	<p>Accepted</p>	<p>To be taken forward with the Sentencing Guidelines Council, with a view to setting a timetable for issuing guidance.</p>	<p>Agreed, but again with involvement of the judiciary</p>

**Recommendations addressed in other (non-courts) sections but which have relevance**

<b>Bradley Report Recommendation re: Courts</b>	<b>Government Response Status</b>	<b>Government Proposed Action</b>	<b>Magistrates Association response</b>
<p>Immediate consideration should be given to extending to vulnerable defendants the provisions currently available to vulnerable witnesses.</p> <p>An audit should be undertaken of the mental health needs of individuals in approved premises, and the capacity of local services to deal with the identified level of need.</p>	Agreed	It is anticipated that this audit could be undertaken fairly quickly, completed and fed into local commission plans by October 2010.	This is one of our main problem areas. There are many times where we would like to offer an "approved premises approach " (bail hostels in old parlance) but cannot, because of the lack of availability. This means more defendants are remanded to places which are in many cases unsuitable. This is a key area which should be addressed with some urgency.
A full evaluation of the three approved premises with enhanced mental health provision should be undertaken. The evaluation should look at the effectiveness of the current service provision, and whether it offers value for money.	Agreed	A study will be commissioned and will report to the Programme Board by April 2010	Agreed, but can the timescale be improved?  The reference to "value for money" is of concern.
Liaison and diversion services should form close links with the judiciary to ensure that they have adequate information about the mental health and learning disabilities of defendants, and concerning local health and learning disability services.	Accepted in principle	The Programme Board will consider this recommendation further, reviewing current mental health pilots and the recent developments in MH service directories. The resource implications of this will be examined.	There must be a joined up approach to these problems. The judiciary must be involved in setting up processes if they are to work.
All courts, including current specialist courts, should have access to liaison and diversion services, in order that specialist courts are seen as an addition to a comprehensive liaison and diversion service.	Accepted in principle	The Government agrees with the goal behind this recommendation, and considers that every police custody suite and every court should have access to mental health liaison and diversion services, able to carry out timely assessments, and where appropriate refer offenders to treatment. The Programme Board will consider, as part of the delivery plan, what further advice needs to be given to PCT commissioners, and the CJS to help achieve this goal. Further assessment required by DH to determine the impact on local NHS organisations	Agreed. We used to have this and it was removed for lack of money. JPs at courts where this facility used to be available, greatly regret its removal. A telephone number to access such assistance, is not the answer