

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY AND PRACTICE COMMITTEE

Mental Health – Policy Brief

THE ISSUES

The Bradley Report in 2009 highlighted the unsatisfactory way in which defendants with mental health problems are dealt with throughout the criminal justice system. Based on Lord Bradley's recommendations for advice and training for the judiciary, Judge Atherton outlined three areas which need to be considered when assessing needs of the judiciary with regard to mental health and learning disabilities: powers of the court, understanding the issues and awareness of resources. The Association supported all Judge Atherton's suggestions.

Magistrates rarely know whether a defendant has any kind of mental health issue until late in the process and so plans to improve early recognition would be very important. Such issues are often more difficult to detect than, for example, learning difficulties. It is a major problem that some defendants with health and social care needs, including mental health and substance misuse issues, are not identified at the appropriate time and therefore may be given a custodial sentence when another sentence with a treatment requirement would be more appropriate. We support the principle that no person should be disadvantaged by virtue of their health and social care needs in obtaining justice. However, for the courts to base any sentence on an assessment of health and social needs it will be necessary to establish such a procedure staffed by people with appropriate skills and for appropriate funding to be made available.

Powers of the Court

Consistent guidance needs to be provided to courts, perhaps with a JSB paper as a basis. Magistrates are largely unaware of the scope of mental health issues and rarely issue mental health orders, but they need to know how to manage the issues when it comes to dealing with offenders.

Understanding the Issues/Psychiatric Reports

An important issue for courts is the frequent delay in receiving psychiatric reports which is due to the lack of sufficient number of suitably trained personnel to prepare them. Some courts used to have mental health experts available so that a bench could stand a case down to get a verbal report which might inform it down a particular route at an early stage. This is no longer widely available due to funding.

Resources

The JSB paper entitled *Mental Health Act 2007: Guidance for the courts on remand and sentencing powers for mentally disordered offenders* includes a statement of the court's powers in respect of remand into hospital and orders imposing compulsory detention in hospital. It also explains the consequences of such orders.

The Equal Treatment Bench Book has much useful information but is rarely accessed, or even known about, by magistrates and so promotion of any handbook/guide is also an important feature of such work.

In the interests of consistency national guidelines should be drawn up to increase the judiciary's knowledge of the most apt methods of handling mental health and learning disability issues locally. As well as information on what is available for mental health needs locally, information on the time it takes to produce a psychiatrists report would be useful.

It is counter-productive to suggest programmes to benefit the offender and then be unable to offer them because of lack of funds.

KEY RECOMMENDATIONS

- Ideally, all courts should have mental health experts available so that a bench could stand a case down to get a verbal report at an early stage.
- There should be a specialised mental health and substance misuse court-based service should be provided, not exclusively in major cities and towns but also in rural areas.
- No person should be disadvantaged in obtaining justice by virtue of their health and social care needs.
- National guidelines should be drawn up to increase the judiciary's knowledge of the most apt methods of handling mental health and learning disability issues locally.
- Magistrates should have well designed face-to-face training which addresses the evident sensitivities of the issues appropriately.
- Further guidance/training for legal advisers who often act as the 'gatekeepers' in these cases should be provided.

April 2010