

THE MAGISTRATES' ASSOCIATION

YOUTH COURTS COMMITTEE

The Future of the Youth Justice System

1. Overall Proposal

In 2008/9 the number of first-time entrants to the youth justice system fell by 21% compared to the previous year, a trend that has continued into 2009/10. Since 2000, the frequency of youth reoffending has fallen by 24% and the number of young people sentenced to custody continues to decline. In March 2010, 2,209 young people were in custody, a reduction of 16% from the number in March 2009.

However despite these encouraging trends this still left some 185,000 children and young people in the youth justice system. This current youth justice system has arisen as a result of many Criminal Justice Acts introduced since the Children and Young Persons Act of 1988, which separated the youth and family courts. In particular there have been two main thrusts of the legislation over the last decade.

1. There has been an increase in the proliferation of pre-court intervention measures along with pre-court and out-of-court disposals. This has now led to a confusing approach to dealing with youngsters under the age of 18. Some of these measures are to be commended but others have not encouraged the main aim of the youth justice system, which must be to stop youngsters offending or re-offending.
2. Increasingly the available sentences in the youth court have grown to resemble those available in the adult court. The recent example of the Youth Rehabilitation Order has almost mirrored its adult counterpart. Some requirements forming part of Community Orders have been provided in statute but without adequate funding, so that examples of excellent community programmes such as Intensive Fostering are available in theory but rarely in practice.

It is important to recognise in the above figures that 15-17 year olds in 2008/9 accounted for 71% of all offences, with 10-12 year olds accounting for some 7%. Given the two main thrusts, mentioned above, coupled with the need to consider different measures or approaches for different age groups, a full review of the youth justice system should now take place.

This review should address the concerns of specially trained youth magistrates in England and Wales, about the recent reductions in youth court sittings. This means that young people are sometimes appearing in adult courts. The Magistrates' Association is totally against this practice. Youths must be sentenced by youth panel magistrates who are highly trained specifically for dealing with youngsters — not even remand decisions should be made in an adult court, particularly as there is evidence that this leads to more youths being remanded into custody. The Magistrates' Association does not condone the practice of giving minimal training to non-youth magistrates to enable them to deal with youths in adult court.

The Association would expect this review to consider the current balance between magistrates' youth courts and the crown courts. We are concerned that children and youths

charged with indictable-only offences, and either-way offences which are dealt with in the crown court, could be dealt with by a judge who rarely comes into contact with young people. It is suggested that magistrates' court which deals frequently with young people through summary justice could deal with more of the cases that are currently being passed to crown court. It is important to remember that the powers of youth court magistrates are greater (two years in custody) than their adult court counterparts. These changes in venue could be achieved partly through a review of the grave crimes procedure and would save considerable funds.

2. Detailed Proposals

If a major re-evaluation of the youth justice system is not considered necessary or appropriate, then the Magistrates' Association offers a number of constructive proposals around current issues. Most of the proposals are cost-neutral, with a few saving money. One proposal to extend community penalties at the top end relies on the funds from the continuing decline of custody numbers being reassigned to robust and flexible community programmes, intended to rehabilitate young people.

2.1 Increasing the Trust of the Community in the Youth Justice System

The Magistrates' Association has increasingly been engaged in projects designed to increase the trust of the community in the magistracy and the work of the magistrates' court. Notably amongst the many projects has been the work of the Local Crime Community Sentence (LCCS) programme, a joint project with the Probation Association designed to develop the public's confidence in adult community sentences as opposed to custody. It is proposed that a similar scheme is considered to outline the work of the youth courts, involving magistrates and officers from the Youth Offending Teams. This project would focus on raising community awareness of the effectiveness of community penalties.

2.2 Anti-Social Behaviour

There are already a number of different ways in which behaviour that is not serious enough for a charge and court appearance can be dealt with. The Magistrates' Association's policy is that if the behaviour is serious enough for court action, then that is where it should be dealt with. The level of action required must be dictated by the seriousness of the behaviour, and if that results in police effort devoted to arresting and charging, then that is entirely appropriate and proportionate. Although anti-social behaviour is a serious problem in many areas, strengthening the powers of the police simply continues the erosion of the distinction between them and the courts, and may result in the police losing some of the trust and respect they enjoys from the public. The Magistrates' Association's view has always been that police are there to apprehend criminals, Crown Prosecution Service to prosecute them and the judiciary to sentence them.

The Association's policy is that **all** anti-social behaviour should be dealt with in the criminal courts and not be heard in county courts whose powers are limited. This also applies to gang-related offences and offences related to alcohol. This would save money as magistrates' courts are cheaper than county courts.

2.3 Age of Criminal Responsibility

The vast majority of ten year olds — and most children considerably younger — know what is right and what is wrong. However, they lack the maturity of thought to understand the possible consequences of their actions, to themselves and to their victims.

As always, each case should be dealt with on its own merits, taking all significant factors (regarding both the offence and the offender) into account. Any age is arbitrary and there is no absolute right or wrong answer in deciding the appropriate age of criminal responsibility. Furthermore, children clearly develop at different rates and one child may be much more mature and sophisticated than another child of the same age. Therefore young age should be regarded as a mitigating factor when a young person is sentenced. This should be reflected in the sentences available and the processes followed. Bearing in mind these factors the Association is currently reviewing its existing policy that there should be no change to the age of criminal responsibility.

A very important factor is that these young people are dealt with in a youth court by magistrates who are fully trained in dealing and engaging with children and young people in court on a regular basis, and are aware of the various issues. There are also discussions regarding young people's 'fitness to plead'. Young defendants should have an understanding of the charges and the potential consequences; the ability to understand the process of the trial; the potential to participate in the court process; and the capacity to engage with their legal advisors during the court process.

2.4 Out-of-Court Disposals

It is frequently stated that out-of-court disposals are intended for low-level offences, and it is agreed that pre-court activity can properly take place in relation to matters that are not serious enough to be brought to court. The Magistrates' Association is very much in favour of keeping children and young people out of the criminal justice system wherever that is possible and appropriate. The role of children's services is also vital in this respect. It is important that there is the right disposal for the right level of case, and in relation to the youth court the view is that too many minor incidents are being brought to court which in previous years would not have been prosecuted. These relate to incidents in schools, public places and particularly care homes. For example magistrates are seeing minor scuffles in the school playground being brought to court when previously they would have been dealt with by the school's disciplinary procedures. This often adversely affects young people for years to come, by reducing their chances of gaining appropriate employment and preventing them from fulfilling their full potential. The Association supports a review of the criminal offences recording arrangements for children and young people.

Existing pre—court intervention measures are too extensive, and a multitude of out-of-court disposals is now available:

- Informal Warning
- Youth Restorative Disposal
- Penalty Notices for Disorder
- Reprimand
- Final Warning

- Youth Conditional Caution

Reprimands and Final Warnings have been used extensively over recent years and have been relatively successful. However further disposals have been added. Two of these, the Youth Restorative Disposal and the Youth Conditional Caution, are still at their pilot stage. It is possible, given the availability of these two disposals, for an individual to commit over a dozen crimes before being taken to court for the first time. In 2008/9 of all identified cases some 41% were dealt with through pre-court disposals. This left some 35% to be sentenced at first tier level and the rest through community disposal or custody (7%). This proliferation of disposals can lead to confusion in the young defendant's mind. It is high time that their use was radically reviewed.

This applies particularly to the Penalty Notices for Disorder (PNDs), where multiple use has been made to little effect, except to involve the courts with the non-payment of fines, which happens in some 50% of cases. It is the Magistrates' Association's policy that there should be no extension of PND's in any shape or form, as they have not been proved effective at reducing offending.

2.5 Youth Conditional Cautions

The Youth Conditional Caution is the highest tariff out-of-court disposal for young offenders, with conditions that aim to support rehabilitation, reparation or punishment. The pilot was launched in five sites across England in January 2010 and will run for approximately 12 months.

The policy position of the Magistrates' Association regarding conditional cautioning, which applies equally to adult and to youth courts, is that sentencing must be reserved for sentencers — members of the judiciary — and that cases serious enough for a court disposal must be subject to charge and prosecution. For youths in particular there are sufficient pre-court disposals, in addition to the Referral Order as a first tier restorative approach disposal. There is some evidence in the existing pilots that this disposal is already being used for serious cases that should come to court. Therefore, the Magistrates' Association would like to see these pilots abandoned, especially as there is adequate capacity in the youth courts, thus saving significant amounts of money.

2.6 Referral Orders

Over 25,000 Referral Orders are made each year. The Referral Order is the principal method of delivering restorative justice, providing a formal opportunity for community volunteers to act as panel members and for victims to take part too. The Youth Justice Board specify that they have the lowest rate of re-offending of all sentences, some 38%. This however compares less favourably with the old 'Conditional Discharge' where the re-offending rate was in the low thirties, used by magistrates prior to the provision of Referral Orders.

The Magistrates' Association's view is that the Referral Order is an expensive method of dealing with first-time offenders who are brought to court but then 'contracts' are agreed behind closed doors with no effort of openness or transparency. It is no surprise then that the response from victims has also been very low. These offenders have often committed many

crimes before and have been through the pre-court intervention and pre-court disposals routes discussed earlier and a restorative justice approach is not always appropriate.

It is urged that the mandatory requirement to use Referral Orders for offenders who come into court charged with imprisonable offences is removed, and the option to 'conditionally discharge' an individual is reinstated. This will make significant savings.

There is also considerable concern at the lack of options when these first-time offenders commit offences that are particularly serious and warrant the consideration of custody. The current choices are a long Referral Order of some nine months, given the need to recognize an early guilty plea, or custody. There is nothing between these two extremes, thus leading to the greater use of custody. This is extremely important, as the policy of the Magistrates' Association is to seek viable alternatives to custody, such as the use of an electronically-monitored curfew. This again would save money.

If Referral Orders are to continue, there is a need for greater co-operation between the judiciary and panel members. Specifically the judiciary should scrutinise the contents and operation of the contract which forms the main part of the Referral Order. This could be achieved by the courts having a monitoring role on the progress of the order.

2.7 Sentencing

When sentencing in youth court the principle aim is to prevent offending or re-offending nevertheless although the welfare of the child is no longer paramount, it remains very important. The Magistrates' Association's policy is to call for legislative changes to be made to enable the youth court to transfer cases, after suitable enquiries have been made, to the family proceedings court, when it is evident that there are overwhelming welfare issues to be addressed.

2.8 Community Based Sanctions

It is vital that sentencers and the wider public trust community sentences. Effective, robust sentences must be available within the community. Programmes must be extensive and aimed at stopping the young person from re-offending. They must be aimed at providing activities for young people for more than just a couple of hours a week. Resources must be made available to provide these programmes on a regular basis. The standards that form part of any programme must be robust and easily understood by the young people. Their enforcement must be strict and prompt.

Magistrates have for some time expressed the concern that there are not enough appropriate disposals to manage the real and underlying causes of offending. There needs to be a structure to ensure that the causes of the offending behaviour are identified and presented to the court; and that there is a range of programmes available to address the needs of the specific individual. To achieve this YOTs should also be given wider remit to deal with social issues.

The introduction of robust and flexible community programmes will give magistrates the confidence to reduce custody numbers even further. To add to this confidence, magistrates should be given an extended monitoring and reviewing role for the community orders. This

will serve a twofold purpose. Firstly it will make the defendant aware that the court is following their progress, or lack of it. Secondly the bench would see in detail the types of programmes being pursued. It would thus provide the community with an opportunity, through the magistrates, to influence these programmes.

Any increase in the use of community based programmes must lead to a reduction in the number of young people sent to custody and thus lead to significant savings.

2.9 Custody

Custody really is the last resort. Remands to secure accommodation and to custody are used only when *all* other measures have been tried and exhausted. Whilst it is hoped that the YOTs and, via them, children's services will provide more intensive programmes of support for very serious cases, there will always be a need for custody for the most serious cases and the most persistent of offenders. There are however considerable differences in the use of custody by the various youth courts in England and Wales. Effort is now being made to understand these differences and, where possible information is provided to magistrates about the various non-custodial options available to them, and their rates of custody compared to those in other areas. The Magistrates' Association is already working with the YJB to encourage Youth Panel Chairs to meet with Youth Offending Team managers to discuss local sentencing data with a view to reducing custodial sentences by engendering trust in alternative robust community sentences. These efforts should be supported.

Only dedicated and fully trained staff should be employed in the youth secure estate. This would lead to better services for young people in custody and thus reduce the likelihood of their re-offending when they leave custody. A good example of this is the Keppel Unit in Wetherby, where increased numbers of highly trained staff are producing significant beneficial effects.

It is time to involve local authorities in the provision of custody places. It has been argued that local authorities have a vested interest in allowing young people to be sent to custody, as there are savings to be made in the children's services budget. This argument is difficult to prove or justify, but nevertheless it seems logical that local authorities must be involved in the provision of custody places.

3. Summary of Proposals

- The youth justice system should be reviewed, with particular emphasis on a new approach to deal with the under—fifteens.
- More crimes should be transferred from the crown court to the magistrates' youth court.
- Young offenders should only be dealt with in the youth court.
- Increase the trust of the community in the youth justice system.
- Referral Orders should not be mandatory for first—time offenders in the youth court.
- The Conditional Discharge should be made available for first—time offenders in the youth court.
- The recording arrangements for criminal offences for children and young people should be reviewed.

- Other community orders should be made available for sentencing serious first—time offenders in the youth court.
- Referral Orders should be monitored by the judiciary.
- A full review of out-of-court disposals and pre-court disposals should be undertaken at the earliest opportunity.
- Penalty Notices for Disorder should be abandoned for under-eighteens.
- The age of criminal responsibility should be reviewed.
- Youth Conditional Caution pilots should be abandoned.
- Youth courts should be able to transfer appropriate cases to the family courts.
- Anti-social offences committed by youths should be dealt with only in the youth court.
- YOTs should have a wider remit to deal with defendants' social issues, such as housing.
- More robust community orders should be provided, especially for serious cases.
- Magistrates should monitor and review community orders.
- Extensive training should be mandatory for all staff in Young Offenders' Institutes.
- Local authorities should be involved in the provision of youth custody places.
- Detailed sentencing information should be provided to magistrates.