

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY & PRACTICE COMMITTEE
RESPONSE

Green Paper – Rights & Responsibilities: developing our constitutional framework

The office of Justice of the Peace (JP) will celebrate the 650th anniversary of its introduction in 2011. This history reinforces the important part that the magistracy plays in the continuity underlying the current judicial system. Along with salaried District Judges (Magistrates' Courts) JPs deal with around 95% of crime brought before the courts and a significant amount of family and other civil matters.

The need for an independent judiciary is as important now as at any time in history. This is recognised in the Commonwealth (Latimer House) Principles on the three branches of government accepted in November 2003 at the Heads of Government meeting in Aduja.

Were there to be a Bill of Rights enacted, the Magistrates' Association believe that the right of courts to decide upon guilt or innocence and to take the lead in sentencing matters should remain paramount. Within this right is the important right of an individual to be tried by their peers. This absolute right for indictable offences has been strongly defended in recent years, even for complex fraud cases and cases expected to last a considerable length of time, to the extent that Section 43 of the Criminal Justice Act 2003 has not yet been brought into force.

The issue has been less well rehearsed for summary offences and less important either way matters. As a result, it has become accepted, almost without debate, that a District Judge (Magistrates' Court), sitting alone, may hear trials in the Magistrates' Court.

At its Annual General Meeting in 2007, the Magistrates' Association passed a resolution that trials should always be heard by a bench of Magistrates that may include a District Judge (Magistrates Court) as well as Justices of the Peace, sitting as a court of three. This would restore the important right of an individual to have a finding of guilt or innocence decided by more than one person who has considered the evidence. The considerable training that all magistrates now undertake should mean that no case heard in the magistrates' court would be too complex for any magistrate to be able to make a decision on guilt or innocence.

Magistrates are subject to a rigorous and regular appraisal system that ensures that a high level of competence. In no way can magistrates these days be considered amateurs, and in recognition of that fact, the term 'lay' has been removed from general use although it remains in statutes.

As magistrates have links to communities, this would help ensure that all trials in the magistrates' courts were heard by those who had a link to the community where the crime was committed. This change in no way undermines the position of District Judges

(Magistrates' Courts) but rather recognises the more important right of equality before the law that is already enshrined in the European Convention.

The fact that other European countries do not have this right, and in many cases do not have the same accusatorial system for deciding guilt as in this country, is not a reason to create a two-tier system for findings of guilt or innocence in England and Wales.

Although the argument is mounted that potential mistakes may be rectified on appeal. This does not seem to the Association sufficient justification for over-ruling the key principle that, in a criminal case, a decision on guilt or innocence should always be decided by more than one person.

At the very least, the arbitrary nature of the present system where two defendants arrested for the same offence at the same time may be dealt with in two different ways needs re-considering.

The importance of the separation of powers between the different branches of government mean that the Association also cannot accept any one other than judicial office holders taking sentencing decisions. For this reason the Association strongly opposed Conditional Cautions, where the 'sentence' determined on any individual may be different to that for another person. Such decisions should not be taken by anyone other than a judicial officer holder.

Although it has become acceptable to administer the same punishment to individuals who break certain laws by means of fixed penalties, cautions and other outcomes, an important line is crossed when those representing the government start taking different sentencing decisions on individuals that also impact on victims' awareness of the outcome of the criminal case affecting them.

As the power relationship between the parties is not equal, it seems especially important that the state does not over-use its authority and usurp the purpose of the courts in deciding sentences. This debate goes to the heart of the nature of summary justice and the relationship between the citizen and the State. Thus, for example, the non-payment of a television licence is an offence that has to be dealt with by a court, whereas 16% of domestic burglaries (SGC paper) are currently dealt with by a caution. Drawing this line is not easy, and needs to be frequently reviewed and the justification understood for the executive to abrogate to itself judicial functions.

Finally, the relationship between different tiers of government is also important in determining where the appropriate level for creating and regulating bodies that can adjudicate on matters of guilt or innocence and also sentence that involve the 'national' law, are decided. The relationship between 'national' and common law, and local law, as developed through bye-laws and other regulatory powers needs clarifying, especially as local government is experimenting with structures such as local justice or citizens panels that can take decisions similar to those of magistrates' courts.