

THE MAGISTRATES' ASSOCIATION

YOUTH COURTS COMMITTEE

Comments on Draft Revised Referral Order Guidance

Thank you for giving the Magistrates' Association the opportunity of commenting on this document. In general it is a good document that makes excellent guidance for referral panels. We assume that it is referring to 10 - 17 year olds (see 1.3 which talks about 18 year olds). We applaud the idealism expressed in places e.g. 2.3 but realistically not everyone will want to get involved and we will have to work with this. Although we are in favour of greater feedback we must be careful about suggesting more meetings and even more forms as it must be remembered that magistrates are volunteers. More and more demands are being made on YOTs but can we be assured that adequate resources will be provided?

The legislation

1.3 Does the legislation prioritise reparation. In general, magistrates have usually explained a referral order as a programme of activities in a contract to address re-offending, one of which may be reparation.

1.9 We think that a flow chart of disposal route and timescale is a good idea.

Bringing Agencies and the Community Together

We welcome the section emphasising the importance of liaising with courts - 2.11 onwards.

Greater knowledge by magistrates of exactly what is decided by referral panels (not necessarily specific cases) would be useful, as we usually only ever see the failed orders or recidivists back in court. It would be helpful to know the sort of activities referral panels decide are appropriate for different types of offence/offender.

However there should also be an opportunity for panel members to understand more the role of the magistrate - a youth court observation would be invaluable. This already happens in an ad hoc way in some courts but we believe that this is not a common practice nationwide.

Section 2.12 should recognise that the Bench will often make/include comments about what areas the panel should tackle - remembering of course that these comments are advisory.

The compulsory referral order condition

3.9 As a PSR has been previously good practice and not mandatory, this needs pointing up. Where custody is not 'an option' replace with 'being considered' [since it is usually an option

even if inappropriate one], the possibility of an oral report should be retained. Sometimes the Yot team have relevant pre-knowledge that a bench would wish to hear.

The availability of referral orders

In section 3.15, we are not sure it is correct to say that the period of the order is based on seriousness alone. Magistrates sentence based on a number of factors welfare, stop re-offending etc. This should be reflected in this section. See also section 3.13. Could a sentence be included in this section on the court, when making the order, states the type of activities the referral panel may consider agreeing to put in the contract, particularly in cusp of custody cases.

In relation to 3.2, we would hope that efforts are made to ensure that a youth magistrate is included on the bench in the adult court if a referral order for a young person is being considered. Adult magistrates who do not sit on youth court panels will not have experience of sentencing young people.

The non-attendance of parents at court and at panel meetings is simply not acceptable. As it stands this document misses the opportunity to emphasise far more strongly the responsibility of parents to obey the order of the court to attend. We have the impression from hearing anecdotes from colleagues that all too often YOTs are not as firm as they could be and panel meetings often go ahead without parents. This guidance could help to rectify the situation. For instance the last paragraph of 3.21 should be re-worded to underline that it is only in *exceptional* circumstances that a panel meeting should proceed without parental attendance. Also 3.24 could be read as condoning parental absence. This section does not mention what happens if someone else other than the parent turns up, for example the brother or sister.

The format of the referral order

3.26 The labelling is confusing and the CPS input should be referred to as an offence information package/offender history to reflect its contents.

Spent Convictions

3.30 - This section needs to make mention of what happens when the Bench makes a Compensation Order alongside a Referral Order. Whilst the Referral Order conviction may be spent as soon as the contract is complete, this does not apply to the Compensation Order even if paid to the full. We believe these still stay on the books for a number of years - possibly five.

Passport control requirements may need to be investigated and a wide variety of potential careers are involved in the enhanced CRB checks. It would be a pity to mislead and perhaps fairer to consider if the system for recording needs altering in respect of young people.

Commitment and Reliability

5.8 Some Panel members have been serving since around 2002 - will they be allowed to continue? It reads that volunteers can only be panel members for a total period of 6 years - is this correct? The document should clearly state the maximum length of service.

5.9 There should be an upper age for recruitment to the panel.

Youth justice members

5.15 ...or seeking appointment in their own area after resignation or retirement?

5.20 Would be improved if some description of the type of work involved was included for the prospective referee to judge suitability.

The interview

5.21 and 5.24 We are not sure why the 'majority' should be assumed to be suitable for interviews and to proceed to the training day. Surely each is judged against the criteria specified and independently assessed and the proportion may vary.

On going support, supervision and training

5.29 One of the aspects that appears generally to be deficient is any requirement that the panel members understand/observe the process through which the young people have passed and the way in which the courts deal with/prepare them/ raise expectations etc. We think provision for a closer association, at least by way of introduction, might be useful to both courts and panels.

Contacting victims

6.3 Victim involvement is generally difficult to achieve and the document rightly refers to special care for young victims, often contemporary with the offender. We think this is an area where restorative justice may struggle and needs to be careful not to encourage vicarious curiosity by prolonging the process for the victim [6.8].

Intensive Contract

The sections about Referral Order Intensive Contract (7.4 - 7.7) needs further strengthening. In section 7.5 for example, we think that the "Yot should convene an informal pre-sentence panel" and not as the document says "should consider convening an informal pre-sentence panel".

The suggestion of a Pre-Sentence Panel is an excellent one. The YOT will be able to return to court with carefully-considered proposals in a pre-sentence report which hopefully will recognise the seriousness of the 'cusp of custody' case and suggest stringent and testing components of a realistic plan to prevent re-offending.

For a long time we have been asking for a 'super' referral order for first time guilty pleas where the offence is serious. Our views have been taken on board and the Referral Order Intensive Contract is the result.

Dealing with Non-Attendance

8.15 Again we would prefer to see a '*should*' instead of '*may*' so that the sentence reads '*where there appears to be no good reason, and no prospect of attendance in the future, the panel SHOULD refer the case back to court*'.

The content of contracts

8.22 Such detail will date too quickly and needs to be couched in general terms only to acknowledge other commitments.

Reparation

8.31 Advise magistrates of these lengths when guidelines are reproduced.

Agreeing to the Contract

8.44 Copies '*must*' (not may) also be supplied for information purposes to the sentencing court. Again this would improve sentencer confidence.

Non compliance/referral back to court

9.6 It would be fairer to be specific about what amounts to non-compliance (any failure to keep appointments for the report, agree contract, attend and engage satisfactorily with the elements of the contract) and the consequences (reconvene a panel to decide how to deal with it – continue/vary contact/return to court) while leaving a provision for 'reasonable excuse' at any point to be monitored by the YOT manager. Courts retain the discretion to continue the order or re-sentence according to the explanations provided.

Further point

Sentencer confidence in referral orders need to be improved. This is touched on in sections 2.11, 4.6, and 7.7 but there should be a section devoted to sentencer confidence because of its fundamental importance.

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