

THE MAGISTRATES' ASSOCIATION

YOUTH COURTS COMMITTEE

Responding to youth crime and anti-social behaviour

Contributing factors

School non attendance

A significant issue that can lead to criminal involvement is regular non-attendance at school. Young people excluded from or not attending school have time on their hands which often, unfortunately, results in more problems for the community. There must be appropriate resources for schools and teachers to support non-attendance as these children are often the most at risk of offending.

Alcohol

The average amount of alcohol consumed by 11-15-year olds has more than doubled since the 1990s and the proportion of English and Welsh 15-year olds who report having been drunk at least twice is higher than in most other European countries. This is a very major cause of crimes of violence, criminal damage, disorderly behaviour and sexual offences. We need to address the dramatic increase in alcohol consumption, with its effects on crime and on the health of the individuals.

Drugs

There should be regular lessons at school on the dangers of drug abuse, not just a one off period slotted into the timetable. Teachers should be held responsible for delivery of these lessons in an effective manner.

Campaigns should be hard hitting — all youngsters experiment, but they should know of the dangerous some-times long lasting effects of drug taking. Stronger messages are needed as youngsters get older and hard copies of what the children are told should be sent home for parents and carers.

Mental Health

Magistrates are particularly concerned that mental health issues and youth violence involving alcohol is very much on the increase particularly involving girls aged 16 to 18 years. We continue to be very concerned at the worrying increase of young offenders with health and social care needs. A strategic and funded approach is needed urgently as more and more of these vulnerable young offenders are appearing in youth courts.

Accommodation

A further concern is the accommodation needs of 17 year olds who very often no longer wish to live at home but have difficulty seeking appropriate accommodation. This problem can often lead to abuse issues and then possible criminality.

Intervention and prevention

We would support the greater use of preventative services to reduce the number of children and young people that become involved in anti-social behavior and crime and we agree that money should be invested in preventive services where there is convincing evidence concerning their effectiveness in achieving better outcomes.

There is certainly potential for wider provision of schemes based on sport, the arts and other constructive activities to prevent children and young people becoming involved in nuisance behavior.

Youth justice responses

Diversion

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. 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, previously would not have gone ahead; these include incidents in schools, public places and particularly care homes¹. However, at the other end of the scale, whilst accepting that discretion may be required depending on the nature of an offence or the age and maturity of the child or young person — we are clear that all but the most minor offences of violence should be brought to court.

Youth courts

It is disappointing to read that in the view of the report-writers court proceedings should be '*more intelligible when young people are accused of offences*'. Youth magistrates are highly trained to deal with young people, accustomed to engaging with them and with their parents/carers. They are conversant with the principles of sentencing youths and hopefully most courts are adapted to being youth courts.

However, the public should be aware of the concern of magistrates with the reduction in youth court sittings in certain parts of England and Wales to once or twice a month. This means that occasionally young people are appearing in adult courts. The Magistrates' Association is totally against this practice. Youths must be sentenced by youth panel magistrates — not even remand decisions should be made in an adult court.

¹ AGM policy 2005 This Annual General Meeting deplores the prosecution of so many 'looked after' children in private care homes for minor criminal offences which should be dealt with by disciplinary measures within the homes. The AGM urges the government to take appropriate action to reduce the number of these prosecutions.

Sentencing

The principal aim of sentencing in the youth court is to prevent offending by children and young people (Section 37 Crime and Disorder Act 1998). Alongside this, courts have an obligation to consider the welfare of the child (Section 44 Children and young Persons Act 1933).

In addition, there are four other purposes of sentencing:

- punishment;
- reform and rehabilitation;
- protection of the public; and
- reparation to those affected by the offence.

Balancing these aims and purposes is sometimes difficult and magistrates will require good, accurate assessment information from the Youth Offending Team (YOT). This enables the court, with the help of the pre-sentence report (PSR) from the YOT, to balance the issues and to produce a sentence that will punish, reform, protect the public and achieve reparation for the victim.

In relation to the welfare of the child — although this is no longer paramount it is still very important — and it is the view of the Association that some mechanism should be put in place to enable the youth court to transfer cases to the family proceedings court, where it is evident that there are overwhelming welfare issues to be addressed.²

Community based sanctions

It is vital that sentencers and the wider public have confidence in 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. For the courts to base any sentence on an assessment of *health and social* needs it would be necessary to establish such a procedure staffed by people with appropriate skills. One 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.

However, there will be a number of defendants who are not identified as having mental health and substance abuse needs and this is particularly acute for those with a mild mental health problem. As a result needs are often not referred to in court — or defendants are dealt with as having a mental health problem whereas in reality they suffer from alcohol or drug misuse.

² AGM policy 2003 This Annual General Meeting calls 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, where it is evident that there are overwhelming welfare issues to be addressed.

There needs to be a structure to ensure that the real underlying 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.

Custodial sanctions

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 will provide more intensive programmes of support for very serious cases there will always be a need for custody for the most serious.

Where custody is necessary, young people should always be placed in suitable secure establishments³ as near as possible to their homes otherwise family contacts and support networks are difficult to maintain, and resettlement is all the more difficult. However, magistrates report that there are problems in the secure estate mainly because there are difficulties in finding placements.

Only dedicated and specially trained staff should be employed in the youth secure estate and not simply temporary transferred adult-orientated personnel.

Some specific comments about the new Youth Rehabilitation Order (YRO)

Despite discussions with the Youth Justice Board, the Magistrates' Association still has concerns about the 'scaled approach'. The general approach to sentencing should be the seriousness of the offence, followed by consideration of mitigation, aggravation and risk factors. The scaled approach is an assessment based on risk. This 'tool' is useful but the Magistrates' Association believes it could lead to longer YROs and requirements that are not proportionate to the seriousness of the offence.

Occasionally the young person responds well to interventions and the Magistrates' Association supports the early revocation of the YRO as an incentive for early discharge if the response has been particularly positive or circumstances have changed.

Breaching for non or poor compliance with the YRO is important to maintain the credibility of the order. Having said that, the court will not require YOTs to breach for minor infringements of the order. Young people subject to these orders will often have a very chaotic lifestyle. The YOT will have to positively engage the young person, particularly in the early stages of the order. The range and type of flexibility will need to be discussed with youth court magistrates to ensure trust and confidence is maintained with the order.

A wide variety of requirements under the new Youth Rehabilitation Order (YRO) will need to be available to the courts. In the current economic climate it is vital that YOTs remain well resourced to provide a range of facilities appropriate for the variety of young people with their complex backgrounds and needs. The Magistrates' Association would wish to emphasise the importance of enabling all 18 options of the new YRO to be available to sentencing courts. Courts will then construct a sentence which is considered appropriate to

³ AGM policy 1998 This Annual General Meeting urges the Government to ensure an adequate provision of local authority secure accommodation so that no young people under 18 have to be remanded to prison.

the individual offender and the seriousness of the crime. This is particularly so with the issues of gender, race and mental health. YOTs must be resourced to provide the range of requirements needed to satisfy the needs of the young person and their parents such as alcohol and drug awareness courses and parenting skills.

Wiping the Slate Clean

We are asked to comment on suggestions for reforming policies on 'spent' convictions and how quickly young offenders should be given a clean slate, or the opportunities to 'buy back' their clean record through law-abiding behavior for a given period. Youth courts were established one hundred years ago because it was accepted that youths lacked the maturity of thought of adults. It follows that they should not be haunted by their offences for life. One solution would be for the slate to be wiped clean on their twenty-first birthday, with the exception of sexual and indictable-only offences, which could be wiped off the slate at the age of 26, assuming there had been no further similar offences for the previous five years.

Recommendations

- There must be appropriate resources for schools and teachers to support non-attendance as these children are often the most at risk of offending.
- We need to address the dramatic increase in alcohol consumption, with its effects on crime and on the health of the individuals.
- There should be regular lessons at school on the dangers of drug abuse.
- A strategic and funded approach to mental health issues is needed urgently as more and more of these vulnerable young offenders are appearing in youth courts.
- Youths must be sentenced by youth panel magistrates.
- It is vital that sentencers and the wider public have confidence in community sentences. Effective, robust sentences must be available within the community.
- Where custody is necessary, young people should always be placed in secure establishments as near as possible to their homes.
- Only dedicated and specially trained staff should be employed in the youth secure estate and not simply temporary transferred adult-orientated personnel.

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