

Stakeholder Engagement 16

Magistrates Association

Represented by

Fiona Abbott (Member of MA Youth Court Committee) – Lead on the Transition to Adulthood issue

Jo Easton – Head of Policy and Research, Magistrates Association

Background

Magistrates and judges are responsible for deciding what sentence to impose on people found guilty of a crime. They have to take into account the following factors:

- The facts of the case
- Punishment
- Reducing crime (including by deterrence)
- Protecting the public
- Rehabilitating the offender
- Reparation – trying to repair the damage the crime has done to the victim and community
- Sentencing guidelines, these are guidelines set down by the Sentencing Council
- Circumstances of the offender - the Probation Service may need to produce a report about the offender

Magistrates always consider any decision very carefully and follow a process using sentencing guidelines from the Sentencing Council, taking note of any relevant case law that has been drawn to their attention by their legal adviser in court.

Fiona Abbott (FA) leads on the Transition to Adulthood working group within the Magistrates' Association (MA) and is Youth Panel Chairman sitting at Wimbledon Youth Court.

Jo Easton (JE) is the Head of Policy and Research at the MA and has responsibility (under the direction of the Committees and Board structure) for the development and implementation of MA policies relating to the work of magistrates' courts. The MA is a member of the Care not Custody Coalition. The MA has also started a process of appointing Mental Health and Learning Disability Champions at their 60 branches across England and Wales to ensure an appropriate link between its members and the liaison and diversion schemes currently being piloted. Jo Easton is the lead contact within the MA for this initiative.

COURT PROCESSES

The majority of defendants under the age of 18 years are dealt with in the Youth Court; although the most serious cases are sent to the Crown Court. Defendants aged 10-14 are called 'children' and those aged 15-17 are referred to as 'young people'. There is no further jurisdictional distinction made for defendants over the age of 18.

In a Youth Court, Youth Offending Teams (YOTs) will provide a lot of information about the child/young person to the magistrates; they will provide a holistic view so that welfare issues are addressed. Age is an important aspect to be considered, although the Overarching Sentencing Principles states the maturity of the offender is often as important as the chronological age. The court will engage directly with the child/young person and family or other adults who are responsible for the young person. Welfare concerns and preventing reoffending are the principle aims of sentencing young people and children.

Magistrates will consider ALL information that is provided to them in determining a sentence; including facts put before them by the prosecution, defence and probation. Aspects including the offender's background, behaviour and current situation are considered but these factors may not necessarily affect the final level of sentence. In the Adult Court reports from probation are asked for if the offence has crossed the community or custody threshold; reports can be presented orally or in writing and are considered before a sentencing decision is made. The Magistrates will actively engage with all parties in court and if the defendant's behaviour in court causes concern of a nature that could impact on a sentence then the magistrates would ask for more information (including a mental health assessment) before sentencing. The age and maturity of the offender can be considered as mitigating factors if they have affected the responsibility of the offender.

FA said that personally or anecdotally she had no experience of someone being refused bail because it was argued that an individual's mental health required them to be detained for their own safety. She said there was generally an expectation to the right of bail and she did not think bail would be used in such a way, although other avenues may be explored. A court may ask for an assessment from a mental health professional if one is available and the hearing can be adjourned if time is needed for the assessment.

SENTENCING

Any sentencing decision must consider mitigating factors such as an offender's age or other personal circumstances. When an offence has crossed the custody threshold (in an adult court), sentencers must consider whether custody could be avoided in light of mitigation and a community sentence be imposed; if not, sentencers should ask themselves whether the sentence could be suspended. A pre-sentence report would be requested for

cases where the custody threshold has been reached. An all options report usually takes three weeks unless a recent report is already in existence which can orally be added to on the day. If a report is offered on the day but magistrates require more information, this can be requested. The National Probation Service is now responsible for providing reports to the court. How liaison will work with CRCs is not clear yet and is a concern looking forward.

Magistrates have no control over which prison someone goes to. If someone is remanded into custody then the case will only occasionally go back to the same bench for sentencing. If there has been a Drug Rehabilitation Requirement (DRR) given as part of a Community Order then the offender may be required to return to court for review which would be with a DRR panel.

If a case is adjourned for reports, all information will be presented to the magistrates at sentencing including pre-sentence reports, mitigation and facts as established at the trial.

In the Youth Court there are 'Overarching Principles - Sentencing Youth' regarding sentencing and these are the definitive guide requiring issues of rehabilitation and welfare to be taken into account. FA said the MA had no comment to make on whether 18 – 24 year olds should be dealt with as a distinct cohort, however, any concerns about vulnerability would be considered via the pre-sentence report or mitigation presented to the magistrates.

MAGISTRATES' TRAINING

Youth Court Magistrates are trained in engagement with young people as there is a presumption that the Bench Chairman will engage directly with the young person. Training includes ensuring magistrates use appropriate language so that young people understand the process and giving magistrates an understanding of how young people may present in court to better understand them. In the adult court engagement is generally via a defendant's representative, although that does not preclude magistrates from talking directly to adult defendants if they wish.

Induction training includes mental health and learning difficulties training and all mandatory training for magistrates is done in the first couple of years. Magistrates must also complete a number of compulsory and essential training courses designated via HMCTS but administered at a local level. In addition there are a number of local training events – often via the MA – which may include issues such as mental health, gangs and women offenders. This is ongoing and not compulsory although professional development for magistrates is being considered.

Magistrates are regularly appraised and this looks at what training they have done. Magistrates have a positive attitude to training and generally welcome any additional training and / or information that further supports their decision making processes.

Liaison with the NPS can also occur at a local level. It is hoped that information on different local programmes on offer via CRC's will still be disseminated to magistrates.

The MA welcomes active Probation Liaison Committees and hope they continue to work effectively.

SELF-INFLICTED DEATHS

It is not appropriate for magistrates to be informed if someone they have sentenced subsequently takes their own life in prison. However in general magistrates want information about what sentencing alternatives are evidenced to be effective in reducing reoffending; a feedback loop of good practice would be helpful for magistrates, particularly where it provides information to support training.

ACCT

ACCT documents are not relevant to the work of magistrates.

HEALTH AND MENTAL HEALTH

Magistrates are not always best placed to identify if a defendant has mental health issues but this can be brought to their attention via the defence, probation or other court officers. If magistrates have concerns themselves, they can ask for an assessment by a Liaison and Diversion mental health specialist in those courts where the service is already rolled out. Magistrates may be asked to use their powers to detain someone either for assessment or treatment under Section 35 or 36 of the Mental Health Act. Evidence must be heard from medical specialists in either of these cases. FA said that in her 15 years as a magistrate she has never known anyone to use Section 35 or 36 but is sure that if a case came before her, she would consider all the evidence put before her. Magistrates want as much information as possible, pre-sentence and about Liaison and Diversion options. There is a pilot in Milton Keynes supporting Mental Health Treatment Requirements as a sentencing option.*

Getting mental health assessments can be difficult and can take up to 16 weeks in areas where Liaison and Diversion has not been fully rolled out. FA said that she was not aware of anyone being sent to prison to await this. Assessment reports would be provided to the court on completion.

Medical and mental health information about the defendant will often come from either the defence or prosecuting representative or probation. It is useful for the sentencing bench to have this information if it is available. If the bench has concerns they can ask for information or an assessment of an individual but it must be recognised that appearing in court is in itself a stressful situation and it is therefore normal for defendants to appear anxious. It can therefore be difficult for the bench to tell if there are additional vulnerabilities in

play. There is an online resource from the Prison Reform Trust/Rethink¹ that is very helpful.

The MA has set up the role of mental health and learning disability champions who act as points of contact between service providers and stakeholders and their branch.

INFORMATION SHARING

Information gathered in a Youth Court is not always transferred into the Adult Court, this depends on the YOT, probation and local protocols; there may only be details of previous convictions. There is good practice in some areas where probation links with YOT and asks them to also be present in court.

¹ Jo Easton provided information from PRT/Re-Think resource and pilot in Milton Keynes offering mental health assessments (<http://www.mhldcc.org.uk/>)