

Response of the Prison Reform Trust to The Magistrates' Association enquiry into

Community Justice

1. *Does the public still support the concept of ordinary (ie. non legally qualified) citizens being involved as members of the judiciary in the delivery of justice in England and Wales?*

The Prison Reform Trust (PRT) welcomes the opportunity to contribute to this important consultation. PRT takes the view that most crime should be dealt with in its locality by people who are respected by and representative of the local community. The question of public support would need to be tested by an independent survey.

2. *Public confidence is shaped by the quality of service which magistrates provide. Do magistrates perform this task adequately?*

Magistrates have an important role which is usually carried out to the highest standards.

However, there are variations in sentencing across similar areas and evidence from both the adult and youth courts suggests inconsistent approaches, despite guidelines, which may undermine confidence in justice. Magistrate and court culture appear to be responsible for much differential sentencing. It would be helpful for lack of awareness and understanding of this problem to be addressed in magistrates' training.

Knowledge of community approaches also varies greatly between magistrates and courts. 'Rethinking crime and punishment' by the Esmée Fairburn Foundation undertook some important pilots to enable magistrates to learn more about community sentences, but this work was never systematically followed up. It is arguable that many magistrates have an overly positive view of the effectiveness of prison. Greater awareness of the evidence base from research and inspection reports would at the very least raise questions about the use of short prison sentences in each court area.

Given the considerable numbers of people in prison with mental health needs and learning disabilities, it is vitally important that magistrates are better equipped and supported to recognise and appropriately address such problems. Specialist resources will assist, but will need to be reinforced by improved training and guidance.

3. *What do we mean by local justice? Is 'local' still a meaningful concept in this context?*

A balance has to be struck between what is desirable and what is affordable. Most people would accept that a court based in the nearest conurbation or within the same county offers 'local justice'. However, in some areas the concept of 'local' may be stretched to its limit. We are concerned that, in some cases, the increased cost of travelling to a court hearing may interfere with attendance.

4. *Restorative justice – what is the role of magistrates?*

Sentencing and overseeing adversarial court proceedings are very different from forms of restorative practice, requiring a different setting and different skills. Magistrates should be aware of arrangements for restorative justice. Victims should always be given the option of some form of restorative justice, provided the offender is willing to cooperate. This can be either pre or post sentence or as part of an order.

Magistrates should have a proper understanding of the principles and practice of restorative justice in order to understand how it can be used within and outside the sentencing framework. They should be informed gatekeepers to restorative justice. All Youth Court magistrates should for instance observe a referral panel as part of their training, and understand the local barriers to enabling victims to participate.

5. *Should magistrates be involved in pre-court, or non-court, activities to deal with offenders (eg. The administration of cautions, local justice panels, etc)?*

No – it is important that the clarity of judgment inherent in the role of sentencing is not confused by other responsibilities in relation to individual offenders. It is essential, however, that magistrates have access to diversion and liaison schemes so that many people who are mentally ill, and those with learning disabilities, may be diverted into treatment and social care. Government has made a commitment to the full roll out of such schemes by 2013.

6. *Should magistrates be involved more fully in the management of sentences?*

Yes – where there is clear evidence that this can contribute to a successful outcome in terms of rehabilitation or compliance with an order of the court, and where the additional resource requirements can be justified. The experience of Drug Treatment and Testing Orders showed some value in courts and particular magistrates continuing to hold offenders to account through review hearings.

There may also be a benefit in resurrecting Case Committees or Probation Liaison Committees, where magistrates were periodically briefed on progress in the supervision of certain court orders and post-custody licences. Such liaison arrangements served both to improve accountability and to raise awareness of magistrates and probation staff.

7. *Should magistrates be more involved in the rehabilitation of offenders and reintegrating ex-offenders into the community?*

The first response to this question is to ensure that imprisonment is only considered as an absolute last resort in all cases. Recent research from the Ministry of Justice confirms that community sentences are more successful in rehabilitating offenders than short custodial sentences.

Participation of magistrates in roles such as the governance of Probation Trusts, or management of rehabilitation and resettlement schemes is wholly desirable and is an effective way of ensuring that magistrates are aware of community resources and disposals. This is different from active participation in work with individual defendants outside court, which would confuse the execution of justice. Magistrates should also be encouraged to participate in local criminal justice boards, YOT management boards and other bodies that are integral to the smooth running of the local criminal justice system. Regular visits, not only to local prisons but also to community disposals, are essential to ensure that magistrates are fully aware of the options available to them.

8. *Is the make-up of the magistracy properly reflective of society? Are there any barriers to achieving this?*

Unfortunately, in many areas it is not reflective of the make-up of the local population. This can contribute to sections of the population being alienated from the criminal justice system. An analysis of the magistracy by age, class, educational background and ethnicity would we believe show it to be very skewed in many parts of the country. Barriers include: lack of awareness of the possibility of becoming a magistrate and what it involves; little knowledge of the minimum time magistrates have to sit every year, with many believing it to be far more than 13 days; attitudes of employers; and the perception that magistrates are from a certain strata in society.

9. *Should courts be more accessible?*

Courts need to be accessible in terms of transport and also in terms of their decision making. Every effort should be made to explain the rationale for a sentence. The meaning of each sentence passed, in particular the sentence requirements, should be explained carefully, clearly and in terms that are understood by the individual concerned; further, the understanding of the individual concerned should be checked beyond simply asking the question 'do you understand?'. PRT's *No One Knows* programme reveals the prevalence of people with learning disabilities and learning difficulties in the criminal justice system and the extent to which their support needs are frequently neither recognised nor met. In 2008, the Joint Committee on Human Rights expressed concern about the problems that people with learning disabilities experience in court and the 'very serious implications' this has for the rights of people with learning disabilities to a fair hearing (paragraph 212, March 2008).

In terms of public awareness of court outcomes, it is important that matters are reported by local press. Publication of victim surcharges reinforces public confidence in a process whereby courts require offenders to pay back in some way for what they have done.