

# Communities and Culture Committee

## CC(3)-13-09 - Paper 2 - 7 October 2009

### Committee Inquiry into Youth Justice in Wales - evidence gathering - Magistrates Association

#### 1. Purpose

The Magistrates' Association accepts that the Committee's inquiry into Youth justice is focusing on the experience of Welsh children in the secure estate but assumes that members will also wish to know the views of magistrates about the experiences of young persons before they reach the custody threshold.

The MA has contacted Youth Panel Chairman in Wales and this submission includes the responses received.

It is impossible to ignore the government's new Youth Court Sentencing Guidelines which will come into force at the end of November so reference will be made to them throughout.

#### 2. Background

Welsh magistrates would wish to point out the effects of factors beyond their control. For instance, there are many exclusions from school and many examples of non-attendance. Young people excluded from or not attending school have time on their hands which often, unfortunately, results in more problems for the community.

It is essential that good and intensive community-based programmes are available where young people can learn to take their rightful and responsible places within the community. Young people must accept discipline from others and learn self-discipline as well as an awareness that they can make a favourable difference to their, and other people's lives, which, in turn, should help divert them from offending.'

Members should be aware of the concern of Welsh magistrates with the reduction in youth court sittings in certain parts of Wales to once or twice a month. This means that occasionally young people are appearing in adult courts. The MA is totally against this practice. 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. Youths must be sentenced by youth panel magistrates - not even remand decisions should be made in an adult court.

#### 3. The use of custodial sentences for young people and the realisation of a custodial sentence as a measure of last resort

In Wales, as in the whole of the UK, custody really is the last resort. Remand to secure accommodation and to custody are used only when all other measures have been tried and exhausted.

Statistics do not tell the whole story - some Welsh magistrates have reminded us that areas of Wales suffer a great deal of deprivation.

One magistrate reports that 'Pre-sentence reports identify the problems experienced by the young person, the peer pressure, problems with families where the young person has been subjected to violence, abuse, lack of stability, child protection issues, no good role models - many have spent their early life in and out of care homes. All these factors are taken into account when considering the appropriate sentence.

Welsh magistrates report that there are problems in the secure estate mainly because there are difficulties in finding placements.

The use of custody will obviously vary, due to a number of factors explained below. The MA welcomes the introduction of the new Youth Court Sentencing Guidelines; for the first time Youth Court Magistrates will have guidelines to assist their sentencing. (Guidelines have been available in the Adult Magistrates Court for a number of years.) This should go a long way towards improving the consistency of sentencing, particularly custodial sentencing, when the Guidelines come into force in the autumn of this year.

Research for the YJB by Nacro (Bateman, T. and Stanley, C. (2002) Patterns of sentencing: differential sentencing across England and Wales) identifies a number of factors, other than seriousness, which produce differential custody rates. The factors listed below are present in areas with low levels of custody but with high levels of serious offending, for example Newcastle:

High levels of diversion from court

Higher levels of low tariff sentences (fine, discharge and reparation order)

Low remands to custody

Low breach rates

Robust high level community sentences

Good Pre-sentence reports

Good alternative to custody programmes

Good relations between Youth Offending Team (YOT) and Court

Together Youth Offending Teams and magistrates can address these issues.

Welsh magistrates report that mostly there is a good working relationship with their Youth offending Teams and that very good Pre-Sentence reports are provided with community-based programmes showing "much promise".

#### **4. The balance between the different aims of sentencing for young people**

The principal aim of sentencing 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 criteria is sometimes difficult. Having said that magistrates have accepted that recognising the welfare interests of the child are important issues to be considered; addressing welfare can play a very important role in preventing future offending.

The four further purposes of sentencing 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 these issues and to produce a sentence that will punish, reform, protect the public and achieve reparation for the victim.

The structured approach that Youth Court magistrates have used for some years will be greatly enhanced by the new sentencing guidelines.

It is only right to say here that the MA has some reservations on the YJB's scaled approach (further comments below). Whilst the MA agrees with the general approach, the seriousness of the offence must remain the starting point for magistrates before they consider other factors.

The Association echoes the Sentencing Guidelines Council comment at paragraph 51, when referring to the scaled approach. It states, 'the sentence must remain proportionate to the seriousness of the offence'.

However magistrates are the sentencers and they must continue to consider all advice but come to their own conclusions before announcing the sentence along with their reasons.

#### **5. The approach to sentencing for the new Youth Rehabilitation Order, including breach**

Members will be aware of the youth sentencing changes facing magistrates from November 2009.

Despite discussions with the YJB, the MA still has concerns on the scaled approach. The general approach to sentencing should be the seriousness of the offence, followed by mitigation, aggravation and risk factors. The scaled approach is an assessment based on risk. This 'tool' is useful but the MA thinks that it could lead to longer YROs and requirements that are not proportionate to the seriousness of the offence. Assessment by YOTs could mean that proposals in PSRs for sentence are not proportionate to the seriousness of the crime. However it is pleasing to read that some Welsh magistrates have reported that already some YOTs are including a very helpful section on the Assessment of Risk in their PSRs. Their conclusions concerning possible sentences are arrived at by considering the seriousness of the offence, the whole context of the case and the circumstances of the young offender.

One area in Wales has reported that nearly all cases coming before the youth court are in the "more serious" category i.e. burglary, assault, affray, T.W.O.C., other motoring offences, public order with the more minor offences being dealt with by caution or reprimand. It is not surprising that a number of offences have crossed the Grave Crime threshold and have been sent to the Crown Court. One example of this is where a recent case, which resulted in the offenders being committed to Crown Court, involved causing criminal damage with the intent to endanger life. The offenders were all sentenced to custody ranging from 2 to 4 years. Whilst it is hoped that the YOTs will provide more intensive programmes of support for these very serious cases there will always be a need for custody for the most serious cases.

Occasionally the young person responds well to interventions and the MA 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 YOT 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.

#### **6. The consequences of different sentences for different youths with regard to factors such as gender, race and mental health**

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 MA 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 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.

Magistrates are particularly concerned that mental health issues and youth violence involving alcohol is very much on the increase in Wales particularly involving girls aged 16 to 18 years. Also magistrates have seen a significant number of first time offenders in court (from 'good family backgrounds') who are pleading guilty to assault, affray or ABH and showing real remorse.

A high number of offences are now drug related and street valium is particularly prevalent in some areas at present.

Magistrates are concerned that 'first time, guilty plea' offenders only get a Referral order BUT the Youth Justice Board have assured the MA that a 'super' Referral order will provide the more intensive support for young offenders who plead 'guilty' to really serious offences at the first possible occasion.

Of course, staff need to be recruited from a range of backgrounds that reflect the local community, with training and experience that reflects the needs of their young people.

## **7. Summary**

The Welsh Assembly Government is rightly concerned that Welsh children and young people are not sent across the border to serve their custodial sentences in England. The MA shares these concerns. Young people who need to be sent to custody should be located near to their home area. Small local custodial units may be the best way to deal with this issue.

YOTs and magistrates in Wales need to discuss the expectations of courts as to what robust programmes and services would encourage magistrates to retain young people in the community, instead of making custodial sentences, this could mean fewer young people would be sent to custody. This is particularly important given the new Youth Rehabilitation Order with its 18 possible requirements, resources need to be available so that effective services are in place that will help reduce custodial sentences.

Finally the MA hopes that Local Authorities will place high on their agenda not only crime prevention and services for young people before they become involved in youth justice services but also ways to provide accommodation stability for youths.

### **Comments on Specific Questions:**

#### **1. What action should the Welsh Assembly Government take to improve the experience of Welsh children in secure estate?**

Young people should always be placed in secure establishments as near as possible to their homes otherwise family contacts and support networks are difficult to maintain, and resettlement is all the more difficult. Perhaps, as a start, more secure children's homes should be located within the principality.

#### **2. How effectively does the All Wales Youth Offending Strategy address issues to do with the secure estate?**

The Magistrates' Association welcomed the 2004 Strategy and supports the holistic approach to 'end-to-end youth justice' in Wales. We would agree that custody must be a last resort (though it must be available and inevitable for very serious offences) and that effective, robust sentences must be available within the community. Early intervention is essential and partner agencies can assist here with programmes/strategies to deal with e.g. bullying at school etc at source. It is essential that all agencies work together. It is vital, too, that sentencers and the wider public have confidence in community sentences. These issues are highlighted in the All Wales Youth Offending Strategy Delivery plan 2009 -2011 (AWYOSDplan1009-2011).

#### **3. What particular problems are there in implementation and the delivery of support services for children and young people in the secure estate, including mental health provision, support for education and resettlement services? To what extent is the Welsh Assembly Government's "rights based agenda", in its support to children and young people, delivered to Welsh children in the secure estate? Do specific groups of children and young people need additional support eg BME groups, young people with a disability or learning impairment, Welsh speakers, young carers, and girls and young women?**

Young people should be treated as individuals in their placement - this must be difficult with Welsh speakers in English establishments, their access to appropriate education is problematic with different syllabus and Examination Boards. The Assembly should ensure that only dedicated and specially trained staff are employed in the Youth secure estate and not simply temporary transferred adult orientated personnel. Not only is the Magistrates' Association concerned about the training provided for staff who work with children in the secure estate but also the educational opportunities on offer and the support provided by other services. Settling young people back in their homes is a continuing problem as is locating suitable accommodation.

#### **4. What further action is needed to reduce use of custody and to promote alternative measures to detention for children in conflict with the law?**

The accompanying paper stresses the need for even more effective community sentences, for better leisure activities and for closer

working between Children's Services and the Youth Justice system. Projects like Intensive Fostering may provide successful results. Again 'Prevention' is already identified as a priority area in the AWYOSDplan2009-2011

The Magistrates' Association is aware of the WAG's commitment to provide community sentences which are a 'robust' alternative to custody and notes the increase of secure places in Wales from 43 in 2004 to 79 in 2008.

**5. How effective are arrangements for implementation and the delivery of provisions that blend reserved and devolved functions? Should responsibility for the secure estate be devolved to Wales?**

The Magistrates' Association would probably support the view that the secure estate in Wales should be controlled by the Welsh Assembly. However this is a political matter and therefore beyond our remit.

**6. Are there any specific recommendations you think should be considered as part of this inquiry?**

**No.**

**October 2009**