

Written evidence from the Standing Committee for Youth Justice

Background

Youth Court Magistrates deal with criminal behaviour of children aged 10 to 17.

The principal aim of the Youth Court is to prevent offending by children (Crime and Disorder Act 1998). The court must also, in sentencing, have regard for the welfare of the child (Children and Young Persons Act, 1933, s.44), and also consider the seriousness of the offence. This starting point can be moved to take into consideration likelihood of further offences and potential harm that the child has done whilst offending.

Youth courts can impose a maximum sentence of 24 months custody (Detention and Training Order) for serious offences, considerably longer than the adult court's maximum of six months. More serious 'grave crimes' can be sent to the Crown Court for trial and/or sentence, although recent case law has encouraged youth courts to retain all but the most serious cases.

Government policies, supported by the YJB, have aimed to reduce entry into the youth justice system and to divert those that are charged from going to court, ie to use pre-court disposals or divert altogether. A fall in youth crime and this policy have resulted in a fall in the number of first time entrants into the youth justice system, a fall in the number of children entering the youth court system and a fall in children being sentenced. Between 2002/2003 and 2012/2013, the number of first time entrants into the youth justice system fell by 67% to 27,854 and the number of children sentenced in court fell by 54% to 43,601¹.

These policies have had a significant effect on the profile of children appearing in court. Because of the diversion of children who have committed less serious offences, the court is now mainly dealing with more-serious offenders than in the past. There is growing evidence that children in court have greater and more complex needs².

These changes have created a youth court where the skills and competence of youth magistrates need to be far greater than in the past. But this is at a time when the reduction in numbers in the youth court system has led to youth court magistrates sitting less frequently and a consequent decline in competence and experience.

How magistrates are recruited for the Youth Court

Only magistrates who are already sitting in the adult court can apply to be a youth court magistrate. Applicants need to have sat in the adult magistrates' court for at least 18 months before they can apply to sit in the Youth Court. Those who sit in the Youth Court need to fit a minimum of seven and a half days sitting in the Youth Court on top of a minimum of seven

¹ Ministry of Justice & Youth Justice Board (2014) "Youth Justice Statistics 2012/13". Accessed 26/01/16 at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278549/youth-justice-stats-2013.pdf

² Lord Carlile (2014), "Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court", Prison Reform Trust 2010, "Punishing Disadvantage a profile of children in custody". Accessed 26/01/16 at:

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/SeenandHeardFinal%20.pdf>, Deloitte (2015) "Youth Offending Team Stocktake" Accessed on 26/01/16 at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445641/yot-stocktake-report.pdf, Ministry of Justice & Youth Justice Board (2014) "Youth Justice Statistics 2012/13". Accessed 26/01/16 at:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278549/youth-justice-stats-2013.pdf

and a half days sitting in the adult court. No-one (apart from a few magistrates in London who started before the system changed) is currently allowed to sit just in the Youth Court.

The methods and outcomes of the magistrate recruitment process have been subject to recent criticism from Policy Exchange³ and Transform Justice as leading to the appointment of magistrates who do not reflect the diversity of their local population.

Magistrates currently sitting are encouraged to apply to sit in the Youth Court when there are vacancies. They fill in an application form and are interviewed by a panel of the Bench Training and Development Committee. If they are approved (most are), they then undergo training (see below) before they start sitting.

The MoJ does not have data on the diversity of the Youth Court Bench, separate from their data on lay magistrates overall. This data reveals magistrates to be older (86% are over 50), and fewer to be from BAME communities (9% versus 13%) than in the wider population⁴.

There are also indications that magistrates are predominantly middle class. Younger magistrates, particularly those who work, struggle to fulfil the minimum sittings requirement for the adult court, let alone doing Youth Court sittings in addition. It seems likely therefore that Youth Court magistrates are on average older still than all magistrates. This is not ideal, given that they are dealing with the youngest offenders.

The Training and Development of Youth Court Magistrates

Those who have been approved to sit in the Youth Court undertake one day (six hours) of training before sitting, as well as observing the court. Those who have completed this initial youth court training are not obliged to attend any further training (unless they apply to be a Chair), though many do seek opportunities to increase their skills and knowledge.

Three separate inquiries/commissions in the last five years have recommended improvements to youth court magistrate training. The most recent of these was the Youth Courts Inquiry⁵ led by Lord Carlile: "In addition to concern about declining youth specialisation, many submissions asserted that youth specialist judiciary training requires additional content on key issues, including child welfare, communication needs, and child development". John Bache (Deputy Chair of the Magistrates' Association) argued that such training was necessary to enable the judiciary to identify and respond to children's needs in court: "If you realise there is a problem, whether it's a learning difficulty or a welfare issue or a speech and language difficulty whatever... then you're on to it and you can deal with it... The big problem is not realising there's a problem in the first place". The other two commissions (the Independent Commission on Youth Crime and Anti-social Behaviour and that by the Centre for Social Justice) mirrored the recommendations of the Youth Courts Inquiry for more extensive training, particularly in child welfare issues.

Two reports published in the last six months have again highlighted how the training of magistrates needs reform. The Law Commission's report on fitness to plead recommends

³ Chambers, M. et al (2014) "Future Courts: A new vision for summary justice" Accessed on 26/01/16 at:<http://www.policyexchange.org.uk/publications/category/item/future-courts-a-new-vision-for-summary-justice>; Pinto-Duschinsky, M. & Middleton, L. (2013) "Reforming Public Appointments" Accessed on 26/01/16 at:
<http://www.policyexchange.org.uk/images/publications/reforming%20public%20appointments.pdf>;
Gibbs, P. (2014) "Magistrates: representatives of the people?" Accessed 26/01/16 at:http://transformjustice.org.uk/main/wp-content/uploads/2014/03/Transform-Justice_Magistrates-Feb14-report2.pdf

⁴ Courts and Tribunals Judiciary (2015) "Serving Magistrates Statistics 2013-14". Accessed 26/01/16 at: <https://www.judiciary.gov.uk/publications/judicial-statistics-2015/>

⁵ Lord Carlile (2014), "Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court"

that there should be mandatory specialist training on issues relevant to trying children “to support accurate identification and provision of suitable assistance for young defendants with participation difficulties... This training should be mandatory for all legal practitioners and members of the judiciary engaged in cases involving young defendants in any court. In particular, this should involve awareness training in relation to participation and communication issues arising out of learning disability, mental health difficulties, developmental immaturity and developmental disorders.”⁶ A report for the Bar Standards Board suggests that “a lack of training or expertise on the part of some (non-advocate) youth justice practitioners – including, for example, judges and magistrates – acts as a potential barrier to effective advocacy”, and recommends that “gaps in current training provision on youth justice for magistrates, legal advisors and other court staff should be identified and addressed, with shared training materials introduced across practitioner groups where possible”⁷.

Other reports have highlighted the need for judges to be trained in childrens’ rights, particularly the UN Convention on the Rights of the Child.

Children’s hearing panel members in Scotland preside over similar cases to youth court and family magistrates in a quasi-judicial capacity, and are also volunteers. Their training and development is longer, fuller and more rigorous. All panel members need to complete the first two modules of a qualification specifically designed for panel members. These are completed as part of a seven day compulsory course, including modules on how to communicate with children and professionals, child development, law and procedures etc. Only those who pass the first two units are allowed to sit. Sitting panel members have to complete the whole course. Each panel member receives a minimum of 10 days training in the first 18 months, and subsequently all are expected to attend at least two half days training every year⁸.

Youth Court magistrates’ competence is assessed through the appraisal process whereby all magistrates are appraised by trained colleagues every three years. In contrast, in Scotland, children’s hearing panel members are appraised every year by independent volunteers. And all children’s hearing panel members have to apply for re-appointment every three years. Confirmation of re-appointment is dependent on an interview where candidates present proof of recent training and development⁹.

Compared to lay magistrates sitting in the Youth Court in England and Wales, Children’s Hearing Panel members are better trained and appraised, and their competence better scrutinised through the appraisal and reapplication process.

Potential for the Youth Court to become a problem solving court: implications for magistrates.

Problem-solving courts have recently received a great deal of interest, particularly from the Lord Chancellor, Michael Gove, after his recent visit to the USA.

In England and Wales, a number of problem solving approaches have been developed, most noteworthy the Family Drug and Alcohol courts (FDAC).

⁶ Law Commission (2016) “Unfitness to plead Volume 1: Report” para 1.102. Accessed on 26/01/16 at: http://www.lawcom.gov.uk/wp-content/uploads/2016/01/lc364_unfitness_vol-1.pdf

⁷ Wigzell et al (2015) “The Youth Proceedings Advocacy Review: Final Report” Accessed 26/01/16 at: http://www.icpr.org.uk/media/41074/ypar_final_report_-_for_publication_19.11.2015.pdf

⁸ For more details see Gibbs, P (2014) “Fit for purpose: do magistrates get the training they need when they need?” at: http://transformjustice.org.uk/main/wp-content/uploads/2013/05/TJ_MAGISTRATES-TRAINING.pdf

⁹ ibid

In youth courts in England, there have been a small number of problem-solving approaches but none have been able to develop satisfactorily without a change of legislation. Problem-solving courts involve a more participative non-adversarial approach with multi-agency support to address the underlying needs of the offender. A feature of this approach is that the magistrate or judge has regular reviews of the sentenced offenders' progress. This approach is particularly suitable for children and a number of pilot projects are likely to be developed in the next 12 months.

The problem-solving approach demands more skills and experience than most youth court magistrates currently have. Most of the FDAC are led by District Judges who sit regularly, and have developed, through training and experience, competence to handle difficult and complex cases.

If youth magistrates are to play a part in developing problem solving youth courts, they will need to sit much more regularly and develop their inquisitorial skills whilst maintaining their ability to engage children in court. This requires more training and, particularly, specialisation.

The current reduction of work load in the youth court has meant that youth magistrates are sitting much less frequently. We understand that many are sitting far less than the seven and a half full days per year they are recommended to sit in the Youth Court. Specialisation, sitting just in the youth court, and possible merger with their family court panel colleagues will be the only way this new development can be staffed.

Recommendations

- 1) Longer, fuller, initial training and more on-going training and development for Youth Court magistrates.
- 2) More frequent and rigorous appraisal by independent scrutineers
- 3) MoJ should interrogate and publish data on the diversity of Youth Court Magistrates and the frequency of sittings
- 4) Guidance should be changed so that people can apply straight off to specialise in the Youth Court only, and so that existing magistrates are allowed to sit in the Youth Court only. If magistrates wish to sit in both courts, they should be free to do so, but the minimum sitting requirement (13 days) should apply to Youth Courts sittings, to ensure Youth Court magistrates get sufficient experience.

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

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