Volume 59
Number 7

Cover photograph by Hemera

Joint Editors
Miranda Smart, Victor Smart
166 Broomwood Road, London SW11 6JY
Tel: 020 7223 9646
Fax: 0870 133 3795
e-mail: magistrate@btinternet.com

Advertising Enquiries
Mongoose Media Ltd
2 Lonsdale Road, London NW6 6RD
Telephone: 020 7306 0300
Fax: 020 7306 0301

Design: Jeremy Spencer 020 8671 6484
Printed by Scottish County Press Ltd.

Subscription Enquiries
Subscription enquiries and notifications of address etc should be addressed to Membership Records,
28 Fitzroy Square, London W1T 6DD
Telephone: 020 7388 5558
Fax: 020 7383 4020
e-mail: nick-salmon@magistrates-association.org.uk

MAGISTRATES ASSOCIATION

The Magistrates' Association
Patron: Her Majesty the Queen
President: The Lord Chancellor
Chairman of Council: Rachel Lipscomb JP
Honorary Treasurer: Flo Kaufmann JP
Deputy Chairmen: Cindy Barnett JP
Peter Blackwell JP
Chief Executive: Sally Dickinson

General Enquiries
Enquiries should be addressed to Sally Dickinson, Chief Executive,
The Magistrates' Association,
28 Fitzroy Square, London W1T 6DD
Telephone: 020 7387 2353
Fax: 020 7383 4020
www.magistrates-association.org.uk

Association news

News from the national office. Please address any queries to Ann Flintham.
ann.flintham@magistrates-association.org.uk

Second phase shadowing scheme gets underway

The second phase of the shadowing scheme jointly organised by the Lord Chancellor's Department (now the Department for Constitutional Affairs) and Operation Black Vote is now running in Derby and South Derbyshire, Walsall, Lancashire (Burnley, Pendle and Rossendale), Merseyside, Leicester, Nottingham, London, Oxfordshire, West Hertfordshire (Watford and Hemel Hempstead), Birmingham, Bradford and Cardiff. In each of these regions, six to eight people are being selected by OBV and the local advisory committee. Participants will comprise a broad mix of African, Asian, Caribbean and Chinese and other minority ethnic communities. Those selected will attend a two-day workshop to discuss their experiences.

Georgia Ramsay from Bristol is the first person to be appointed from the pilot exercise said, 'I am thrilled to be recommended. It is very important that the racial and ethnic mix within the magistracy reflects local communities. Support for the scheme has been extremely widespread and I am pleased to be paving the way for others.'

Domestic violence training

A domestic violence training pack is currently being developed by the Judicial Studies Board, supported by the Magistrates' Association and the Justices' Clerks' Society. The pack, to be launched in autumn 2003, will be relevant to all magistrates in their work in both criminal and family courts. The objectives are to enable magistrates to be able to:

- define domestic violence;
- recognise when domestic violence issues feature in cases;
- identify how that recognition of domestic violence impacts on the conduct and disposal of a case, including issues relating to vulnerable groups.

The pack will consist of a video supported by written training materials. The aim is to provide a flexible resource for trainers to use for courses from half to one day in length. There will be training provided on the materials for trainers.

It is hoped that magistrates' courts' committees will include domestic violence training in their training plans so that magistrates will be able to attend training courses in their local area soon after the trainers have received their training.

Guidance on the legal measures available to secure regular attendance

Over the past year there has been a great deal of media attention given to concerns resulting from pupils truanting from school and the consequences, both for the young people themselves, and for the community in which they live. The Youth Justice Board (2002) has found that those who truant or are excluded from school are twice as likely to offend as those who regularly attend. At a time where nearly half of all children are achieving five or more good GCSE's, only 8% of persistent truants achieve this standard and around a third achieve no passes at all (DfES). Local education authority officers have been working to encourage parents to take their responsibilities seriously and where this fails, officials must consider prosecution. There have been a number of high profile cases where parents were found guilty and given custodial sentences.

The accepted connection between crime and truancy means that non-attendance at school is an important issue and one that must be treated seriously. However, every case is different and there is no standard path that can be followed in applying intervention strategies. However, it is recognised that for all cases of non-attendance, it is essential that early action is taken. A working group, including representatives from the Magistrates' Association, has worked to produce information on the measures that are available under the law. This guidance explains:

- the roles and responsibilities of parents, schools and the local education authority in ensuring children's regular school attendance;
- the law relating to school attendance;
- the range of intervention strategies available to the local education authority to enforce school attendance;
- the procedure for bringing a prosecution against a parent who has failed to ensure their child's regular school attendance;
- what happens at the court hearing and the sentencing options available to the court in the event that the parent is found guilty of the offence.

Members should make sure they read this guidance, and in particular the last section, so that they are well-informed to deal with such cases in court.

The document can be found on the DfES school attendance website www.dfes.gov.uk/schoolattendance or by contacting DfES publications on tel 0845 602260 quoting ref DfES 0432/2003

Mock Trial Competition

The Association would like to thank the Citizenship Foundation and, in particular, all magistrates and court staff who have been involved with the 2003 Mock Trial Competition. The final this year is in Leeds at the beginning of this month. Anyone who would like to become part of this rewarding project should get in touch with the Citizenship Foundation who do a wonderful job in undertaking all the organisation. There are still some areas where magistrates are needed to support the interest from the local schools. These students may be our magistrates of the future so let's encourage them!

Vicky Alhadeff

Students from Enfield County School, prosecuting in the hard-fought contest at the local heats in Enfield Magistrates' Court earlier in the year

For further information contact the Citizenship Foundation 020 7367 0500 info@citfou.org.uk or Katie Chappell at the national office katie.chappell@magistrates-association.org.uk

Useful information from the National Probation Service

The National Probation Service website has an area dedicated to sentencers www.probation.homeoffice.gov.uk. You can download the latest publications produced for sentencers. The recently completed video on *Enhanced Community Punishment*, which includes an interview with Lord Hurd of Westwell, is available in trailer form on this site. A copy of the MORI questionnaire that came out with last month's issue of the *Magistrate* is also available on the website.

Issues three and four in the *Important Information for Sentencers* series will be published in July. The subjects are the Offender Assessment System (OASys) and Enhanced Community Punishment (ECP). Both these documents will be available on the website.

New department

The Lord Chancellor's Department, the Scotland Office, the Wales Office and part of the Office of the Deputy Prime Minister have come together to form a new Department for Constitutional Affairs. Parliamentary Under-Secretaries of State in the new department are Christopher Leslie, David Lammy and Lord Filkin.

Congratulations

Queen's Birthday Honours

Congratulations to all members who have received awards in the recent honours.

We would especially like to congratulate Christine Field OBE JP (Inner London branch) and Don Manley OBE JP (Black Country branch), both credited for their services to justice.

In brief

Essex magistrate wins top award

Celia Edey, chairman of Essex Magistrates' Courts' Committee (EMCC), has won the Central Government Sector award sponsored by the Institute of Public Finance in the Public servants of the Year awards 2003. Celia was nominated by Peter McGuirk, the EMCC's chief executive for her extensive voluntary contribution in using her media training to support a large private finance initiative to revamp the courtroom estate in Essex.

MCSI report on race issues

A recent thematic report by the Magistrates' Court Service Inspectorate on race issues identified work being done by magistrates' courts' committees to help eliminate racism in the workplace and to increase recruitment from ethnic minorities. The report identified good practice and listed recommendations. For a copy, contact Publications section, MCSI, Block 2, Government Buildings, Burghill Road, Westbury-on-Trym, Bristol BS10 6EZ or visit www.mcsi.gov.uk

Fixed penalties to go nationwide

Following a successful pilot, fixed penalty notices for some public order offences will be introduced nationwide by 2004. The use of these notices for crimes such as being drunk and disorderly has released police officers from spending their time filling out paperwork. Proposals in the Anti-Social Behaviour Bill include additional powers for community safety officers allowing them to issue fixed penalty notices for graffiti, fly-posting and other anti-social behaviour offences.

Fixed penalties for road traffic offences

The June edition of the *Magistrate* reported on the Association's response to the proposals for extending the fixed penalty system. Changes have been made (from 1 June 2003) but not all the proposals have been adopted. Below are the final details.

- The no insurance offence – £200 penalty and six points.
- No MOT certificate is not endorsable but will attract a fixed penalty of £60.
- No vehicle excise licence displayed is not endorsable but will attract a fixed penalty of £60.
- Failure to supply details necessary to identify the offending driver contrary to s172 Road Traffic Act 1988 will not at the moment be a fixed penalty offence. It follows that punishment remains a level three fine and three penalty points.
- All police forces now have automatic number plate recognition (ANPR) machines. Initially 23 police forces (about half the country) will pilot the new fixed penalty scheme. If successful, it will be adopted nationwide on 1 January 2004.

These changes will impact on the Association's sentencing guidelines and they will be considered at the next meeting of the Sentencing Guidelines Working Party.

Legal aid review

Spending on legal aid continues to rise – £1,915 million in the last financial year – and a review is being conducted, including both civil and criminal legal aid to ensure better value for money and to eliminate duplication.

The government is concerned with regard to criminal legal aid where severe pressures have stemmed from the fact that a greater number of cases now pass the 'interests of justice' test used by the courts to determine whether defendants qualify for legal aid.

Proposals which aim to target resources better include:

- the Criminal Defence Service (CDS) provides assistance for those under investigation at police stations. Less serious matters may be removed from the scope of this scheme where the CDS cannot advance a client's case;
- in other areas, the duplication of services (or services which are not strictly required by the 'interests of justice' test) can be removed. These include Narey hearings and the court duty solicitor, who may represent some people even though their cases would not necessarily get a representation order;
- the system of recovery of defence costs orders (RDCOs) where it is proposed to reduce the courts' discretion to make orders as the discretionary nature has led to unfairness.

Copies of the consultation paper *Delivering Value for Money in the Criminal Defence Service* can be found at www.lcd.gov.uk

The Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act cases

This committee was formed in May 2002 to produce a protocol based on models of best practice from care centres and family proceedings courts (FPCs). There have been two significant studies, one in 1996 and the other last year, that have shown lack of effective case management as being a significant contributor to prejudicial delay in Children Act cases. The protocol was to include target timescales for each stage of the judicial process. The committee's membership included wide representation from stakeholders in the process: the Magistrates' Association was represented by Christine Field.

The committee has now concluded its work and the protocol was published on 18 June, for countrywide implementation on 1 November 2003. Included within it, is the requirement that each magistrates' courts' committee, through its justices' chief executive, prepare a plan for the implementation of the protocol. The procedures contained in the protocol recognise that, in certain areas, resource limitations do not, at present, allow for rigid imposition of timescales or processes.

Family panel magistrates in most parts of the country will be well aware of the fact that delay is often the result of factors outside the control of the court. CAFCASS not being able to make timely guardian appointments, directions not being complied with by the (often dysfunctional) families, and the lack of availability of experts are all issues faced every week. These and other obstacles have been recognised by the committee in its final report. Nevertheless the protocol is much to be welcomed, and has the potential to reduce delay and make the whole process more predicable for its users.

There is a significant multi-disciplinary training requirement and all family panel magistrates should expect to receive training in September or October. The Judicial Studies Board is preparing guidance; please consult your justices' clerk for more information.

Custody plus

Below is the Home Office reply to a request by the Association's Sentencing Committee to clarify custody plus.

Consecutive sentences

Under the proposed new system, magistrates' sentencing powers will be extended to 12 months. When sentencing for one offence, this will mean a single sentence of custody plus (between 14 and 90 days in custody within an overall sentence length of between 26 and 51 weeks) or a single sentence of 12 months exactly (of which half will be served in prison and half on licence).

For consecutive sentences, the maximum total length of the sentences will be 65 weeks. This will take the form of custody plus, with up to 180 days of custody within the overall sentence length of up to 65 weeks. This means that a sentence of 12 months exactly cannot be combined with a sentence of custody plus, nor can a magistrate impose more than one sentence of 12 months exactly.

The reason that magistrates' sentencing powers are not being extended to 24 months for more than one offence lies in the nature of the new sentences. Magistrates' main new sentence will be custody plus. Consecutive sentences of custody plus are served in the following manner; the custodial periods are served consecutively while the licence periods are served concurrently. Therefore there is no need to double the maximum sentence length for one sentence of custody plus in order to get the maximum sentence length for consecutive sentences.

Further to allow magistrates to sentence to more than one sentence of 12 months exactly, or a sentence of 12 months exactly in addition to a sentence of custody plus, would mean extending magistrates' sentencing powers to 24 months. This is considered too great a leap to take in 'one bound'. The bill contains an order-making power to extend magistrates' sentencing powers to 18 months for one sentence (and 24 months for consecutive sentences) depending upon how well the extension to 12 months works out.

Sentence maxima

The sentencing maxima for all offences will be changed in accordance with the new sentencing framework. Offences whose maximum is currently six months will be raised to a maximum of 51 weeks, to enable custody plus to be imposed. Offences with maxima of under six months have been analysed to determine which should have a maximum of 51 weeks and which should be made non-custodial. Schedules 19 through 21 of the Criminal Justice Bill contain these changes.

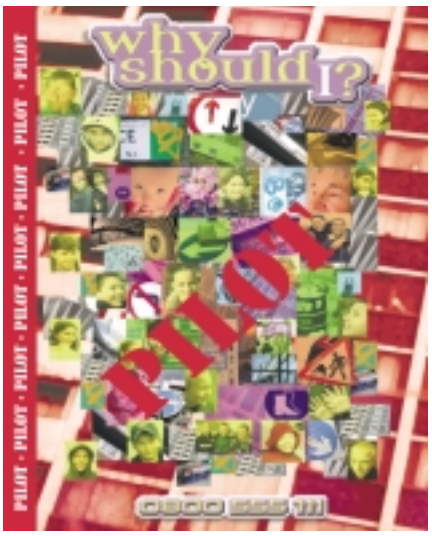
Implementation

The new sentencing framework represents a major change for the courts and the prison and probation services. It is essential that each of these have the capacity to undertake the work required before the sentences are implemented. Planning for implementation is currently underway. Dates for any pilots, rollout, training, etc will be announced in due course.

Presentations for magistrates on drink-drive rehabilitation schemes

TTC2000 provide informative and humorous presentations to provide magistrates with background knowledge on the government backed drink-drive rehabilitation scheme. The length of the presentation can be flexible but a minimum one-hour is recommended. Areas covered include the background to the scheme, course structures, referral process, monitoring and evaluation, high-risk offender scheme, local area statistics etc. This includes latest news, for example, courts in Cumbria are using e-mail to fast track referrals and one-third of all magistrates' courts in England and Wales now refer convicted drink-drivers onto alcohol awareness courses.

TTC2000 also produce an occasional newsletter. If any magistrate would like to be put on the mailing list or receive further information to request a session, contact Jenny Feehan or Graham Wynn, TTC2000, Grosvenor House, Central Park, Telford TF2 9TW tel 01952 292246 e-mail train@ttc-uk.com



Why Should I?

The Crimestoppers Trust is piloting an educational resource aimed at Years 7-9 which focuses on crime-related issues as part of the citizenship curriculum. *Why Should I?* represents a question that many young people ask about different situations and this programme of lessons aims to demonstrate the range of choices available and shows why they should do the right thing for themselves and the community in which they live.

Gift aid

The Association is very grateful to all those members who have signed a gift aid declaration or its predecessor, a deed of covenant. This means that we are able to reclaim a £7.33 tax refund for each member who is signed up. With over 15,000 out of our 21,100 ordinary members participating, this increases the Association's income by well over £100,000 per annum. This makes a significant difference to the Association's finances, and enables subscriptions to be maintained at as low a figure as possible while funding activities which would otherwise be beyond our means.

Any new or unsigned members who are not sure if this applies to them but would like to help in this way should contact the membership department by e-mail or tel 020 7388 5558.

Conversely, if you have signed a gift aid declaration or a deed of covenant in the past and your circumstances have changed so that you no longer pay any income tax or capital gains tax then please notify us as above so that we do not continue to reclaim tax without justification.

Boards of Visitors are changing!

Boards of Visitors in prisons and Visiting Committees in immigration removal centres have changed their name and are now known as Independent Monitoring Boards (IMBs). Described as 'public service at its most unglamorous and most unrecognised', IMBs perform a vital 'watchdog' role on behalf of ministers and the general public in providing lay and independent oversight of prisons and immigration removal centres.

Serving as a board member is recognised as a public duty and few forms of voluntary service are more unusual – or more important.

What do board members do?

Have you ever wondered what it is really like behind the fence at your local prison or immigration removal centre? If so, have you ever considered becoming a member of your local Independent Monitoring Board? Board members monitor the day to day life in a particular prison or removal centre. The work is wide ranging, requiring an objective approach and, above all, a sensitive understanding of all aspects of life in a prison or removal centre. For example, board members hear complaints from prisoners and detainees, visit all parts of the establishment, and are called in when there is a serious incident to monitor how it is dealt with.

What does it take to be a board member?

Board members, regardless of age, should be:

- mature;
- open-minded; and
- committed to diversity, equality and human rights.

A certain level of commitment is required (about four half days per month), as is the need for confidentiality. Much of the work involves talking to prisoners and detainees, as well as staff. Being a good listener with plenty of common sense and tact, plus the ability to communicate effectively with people of all backgrounds and cultures is essential.

Who can apply?

- No special qualifications are required but successful candidates have the personal qualities, the interest and the time to make a full contribution to the work of the board.
- Members should, ideally, live within a 20 mile radius of a prison or removal centre to which they are appointed.
- Appointments are made by ministers for periods up to three years (with possibility of reappointment at the end of each three-year period).

How can I apply?

The IMB Secretariat, based in the Home Office, is currently recruiting new board members for posts in prisons and immigration removal centres across England and Wales. To request an application pack, please telephone the secretariat on 0870 267 8149 or e-mail imb@bov-secretariat.demon.co.uk

Probation conference report

Judy Howlett JP gives an insight of a recent conference for sentencers in the east of England.

The six probation areas in the east of England held a conference for sentencers from across the region in Linton, Cambridgeshire, at the end of April. Bench chairs and their deputies and other magistrates with a particular interest in probation joined district judges, Crown Court judges, probation boards members and staff from all the court offices for what was billed as 'a useful and thought-provoking day'. It did not disappoint.

For a start, the chairman for the day was Jon Silverman, BBC Home Affairs correspondent from 1989 to 2002 and now a freelance crime and home affairs analyst. Lord Justice Kay gave the keynote address and looked at balancing custody and community, speaking particularly about the partnership which already exists between the probation service and sentencers, but which is becoming closer.

Eithne Wallis, Director General of the National Probation Service for England and Wales, was joined on stage by probation practitioners from all the areas represented. Their highly professional and entertaining presentations and video clips gave us all an insight into the various accredited programmes, DTTOs and the work which is carried out with serious offenders. The graphic PowerPoint demonstration, complete with sound effects, of targeting the right programme to the offenders will long be remembered!

In his address, Nicholas Moss JP, chair of Hertfordshire Probation Board, suggested that the new criminal justice boards had major implications for magistrates. He wondered if we were prepared for the changes they would bring. For example, were benches' relationships with probation fully joined up? He also noted that about 20% of people serving community sentences under probation probably should not be, because they did not pose a medium to high risk of reoffending.

The afternoon session was given over to a hands-on look at the offender assessment system – OASys. In break-out groups, delegates all tried their hands at assessing a make-believe offender. That brief exercise brought home the sheer amount of work required to produce a PSR, not to mention the professional skill required to make the necessary judgements and recommendations.

Probation forums on the benches in Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk are now looking at how best to follow up the issues raised. Our thanks to east of England region of the National Probation Service for staging such an exhilarating conference.

Gambling Bill

Members have been asking for an update on this bill. The government is still committed to making the earliest possible progress in the modernisation of gambling legislation and the bill has not been postponed until after the next general election as has been reported. Details of the proposals of the Gambling Bill are expected to be published in the late summer/early autumn. The draft bill will then be presented to Parliament for scrutiny before introducing the final bill as soon as Parliamentary time becomes available.

Advert(s)

id8 photography

The decision to imprison

What factors influence sentencers when choosing between custody or community sentences? Mike Hough, Jessica Jacobson and Andrew Millie report the findings of the study they conducted with the Criminal Policy Research Unit and the Prison Reform Trust.

The prison population in England and Wales has been rising steeply. Prisons are overcrowded, budgets are stretched to the limit. Despite this, there has been remarkably little debate about the reasons for this increase, and about ways of putting a stop to it. We have just finished a study designed to go some way to filling the gap.

Whether to contain the prison population is a contentious and thus a political decision. Though there is a strong case for reducing prison numbers, our study did not focus on the pros and cons of doing so. Rather, our starting point was that politicians who want to curb the use of imprisonment need to know the best ways of doing so. We set out to look at what might discourage the use of custody, and what might encourage the use of non-custodial alternatives.

We mounted 48 face-to-face interviews with Crown Court judges, recorders and district judges; and we organised 11 focus groups with 80 magistrates. We asked everyone to provide details of four cases that lay on the 'cusp' between custody and community penalties. (Magistrates provided this information in a self-completion questionnaire.) We also interviewed five members of the senior judiciary.

Explaining the rise in the prison population

As a preliminary, we trawled through Home Office statistics to identify the factors driving up the prison population. We focused on the adult prison population of England and Wales. This has grown from 36,000 in 1991 to 62,000 in 2003 – an increase of 71%. The rise cannot be explained simply by greater use of remand. Nor is it the result of more offenders appearing before the court. Numbers have fallen, as have crime rates.

There are two main reasons why the prison population has grown. Sentencers are now imposing longer prison sentences for serious crimes, and they are more likely to imprison offenders who ten years ago would have received a community penalty or even a fine.

Tougher sentences

Why has sentencing become tougher? In part it is because legislation, guideline judgments and sentence guidelines have all had an inflationary effect on sentences passed. At the same time, the climate of political and media debate about crime and sentencing has become more punitive, and has influenced sentencing practice. All of the five senior judges who took part in the study thought this, as did many Crown Court judges and recorders. District judges and magistrates were less inclined to talk in terms of tougher sentences, and more likely to say that more serious cases and more persistent offenders were coming before them.

In fact, the statistics show little change in the 'offence mix' in courts' workloads, and if anything, there appear to be a greater proportion of first offenders now than ten years ago. However, the statistics could be masking *some* changes in offending behaviour that have an impact on sentencing, such as increased drug dependence.

Certainly, sentencers' *perceptions* of changing patterns of crime are a factor in sentencing practice, regardless of their accuracy. If they regard offending behaviour as more serious than hitherto, they are likely to pass heavier sentences than hitherto.

Whether or not they responded to pressure to pass tougher sentences, almost all of those interviewed were aware of these pressures. Many referred to media pressures, and several referred to 'mixed messages' coming from politicians and the senior judiciary, with calls for tougher sentences contradicting calls to use prison less.

Sentencing decisions

We asked how sentencers had made decisions in cases on the 'cusp' between custodial and non-custodial sentences. The decision to imprison was generally based on considerations of the seriousness of the offence, the criminal history of the offender or both. It was universally described as a decision of 'last resort'.

A wider range of factors were of significance in cusp cases resulting in non-custodial sentences. Sentencers attached greater weight to the present circumstances and condition of the offender in such cases. A positive response to prosecution (for example, in terms of a show of remorse or willingness to co-operate with the courts) was often a significant factor, as was the offender's 'previous good character'. This emphasis on personal mitigation makes the sentencing process a highly subjective one, in which the sentencer has to make assessments about the attitudes, intentions and capabilities of the offender; assessments which feed judgements about responsibility and culpability.

Sentencers did *not* identify a lack of satisfactory community options as a factor tipping decisions towards custody. A lack of community options was cited as a key factor in the sentencing decision only in two of the 150 cusp cases that went to custody. Interviewees stressed that they pass community sentences whenever the facts of a given case make a non-custodial sentence an option.

Sentencers did not identify a lack of satisfactory community options as a factor ...

Community penalties

There was general satisfaction with the range and content of community sentences. There was strong support for the DTTO, and the review provisions they included. Some sentencers were equally enthusiastic about curfew orders, while others had mixed feelings and many were poorly informed about them. Some were poorly informed about community penalties more generally, and their benefits. Most recognised that the general public were ill-informed about most community penalties. This suggests a need to improve awareness of community penalties both among sentencers and among the wider public.

Sentencers appeared largely satisfied with the work of the probation service: many said that pre-sentence reports had improved, and that the enforcement of community orders had become much more rigorous. However, there were widespread concerns about under-funding and under-staffing.

Conclusions

If there is political will to contain the prison population, then success in doing so will depend on changes both to sentencing practice and to the context in which sentencing is carried out.

An approach tried by successive governments is to provide the courts with a wider and more attractive range of community penalties. This may go some way to reducing prison numbers. However, those we interviewed did not say that they were using prison for want of adequate non-custodial options. The enhancement of community penalties could simply result in 'net-widening' – where the new sentences are used with offenders who would previously have been fined, or served a conventional community penalty.

Encouraging the use of fines could prove a sensible option. This would relieve pressure on the probation service; in terms of outcomes it could at best deflect some offenders entirely from further offending without resort to imprisonment or community penalties; and at worst it could defer the point in their criminal career where prison becomes inevitable.

The analysis presented here suggests that policies to contain the prison population should involve three levels of intervention:

- adjustment to the legal and legislative framework of sentencing, so as to bring down custody rates and sentence lengths;
- softening of the climate of political and public opinion on crime and punishment, so that sentencers feel at liberty to make more sparing use of custody, and greater use of the alternatives to custody;
- improving the understanding of the range of non-custodial penalties – including the fine – both among sentencers and the wider public.

However, none of these interventions is likely to meet with much success unless there is clear political will to stop the uncontrolled growth in prison numbers, and visible, consistent political leadership in stressing the need to do so.

The study's conclusions at a glance

1. The best way of bringing down the prison population is to issue guidance to sentencers to use imprisonment less often, and where it is used, to pass shorter sentences.
2. Providing a wider range of tougher and more demanding community penalties will probably result in 'net-widening' – where the new sentences are used with offenders who would previously have been fined, or served a conventional community penalty.
3. There is a need to improve sentencers' and the public's awareness of community penalties and their benefits.
4. The use of the fine has declined sharply. If the courts were to make more use of fines it would free up probation resources and defer the time when the 'last resort' of imprisonment has to be used.
5. Above all, there needs to be consistent and visible political leadership in stressing the need to end the uncontrolled rise in the prison population.

We would like to express our gratitude to the Esmée Fairbairn Foundation, who funded this study as part of its Rethinking Crime and Punishment programme, and all those magistrates and judges who took part in the research. The full report is available from the Prison Reform Trust: The *Decision to Imprison: Sentencing & The Prison Population,* by Mike Hough, Jessica Jacobson and Andrew Millie. £10 plus £1 p&p Tel: 020 7251 5070 Fax: 020 7251 5076 e-mail: prt@prisonreformtrust.org.uk

Still only a domestic?

Harriet Cullis JP was invited as part of a British delegation to New York to see the working of the new integrated domestic violence courts. She believes there are many lessons to be learnt from the US experience.

We have only two specialist domestic violence courts in the UK (Leeds and West London) and a recent visit to New York, where such courts have been in existence for several years, illustrated the benefits of an approach where the focus is directed towards:

- victim services and safety;
- intensive monitoring;
- offender accountability;
- co-ordination and information sharing.

Significant changes in the USA came about with the passing of the Violence Against Women Act 1994, resulting in mandatory arrest laws, increased funding for victims and the creation of special domestic violence prosecution and police units. Judges, court administrators and lawyers were influential in the setting up of over 300 specialist domestic violence courts nationwide.

A major part in that development has been played by the Center for Court Innovation (CCI), a public/private partnership of the NY State Unified Court system. The Center organised our visit to courts in New York State and to the NY Police Department and Mayor's Office. We also met representatives of victim advocates, NY City Administration for Children's Services and Safe Horizon, batterer programmes.

In 1996, the creation of the first specialised domestic court in Brooklyn, now internationally recognised, helped to transform the handling of indicted domestic violence 'felonies'. This busy court has been successful in achieving the objectives of intensive monitoring, supervision and co-ordination of services and has led the way for similar courts to be replicated throughout NY State.

New combined jurisdiction

This year, further progress has been made with the introduction of combined jurisdiction. The objective of integrated domestic violence courts is to bring all related cases together before a single judge, concentrating resources and services, thus reducing delays, court appearances and conflicting orders.

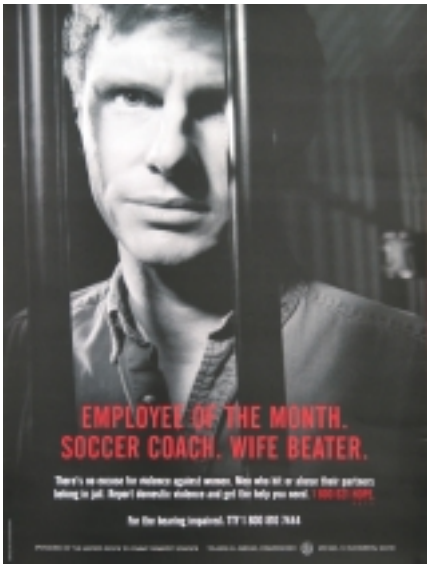
Twelve key components have been laid down, including those already mentioned above, to promote victim safety and offender accountability but with the addition of:

- extended jurisdiction (criminal, family, matrimonial);
- protocols for listing and preserving case integrity;
- training for judges and all court staff and agencies; and
- requirement to use IT.

Regular meetings are convened of all those involved both 'on and off' the court and the IT program designed to ensure prompt information sharing is essential to proper judicial monitoring.

Co-ordinator assistance

In court, the judge has the assistance of a law clerk and two co-ordinators who are present on the bench during the hearing. The role of the resource co-ordinator is to aid the judge in monitoring compliance and victim assistance by obtaining information from those involved in partnership with the court, eg district attorney, probation, batterer programmes and victim advocates assigned to every case about any alleged breaches and victim safety. Partners are held accountable by the resource co-ordinator for timely, accurate reports about victim and defendant to be presented to the judge before a hearing. Victim advocates are also aided by the children's co-ordinator whose remit ensures the comprehensive delivery of appropriate services for women and children.



Defendants, who included women, were left in no doubt of the consequences of criminal contempt of the court. Those who had violated orders of protection appeared in handcuffs. 'Batterers' who were placed on supervision programmes either on bail or through a court order were required to pay for the course and failure to attend resulted in immediate notification to the court. As far as bail conditions, the attendance of defendants on batterer intervention programme classes can be mandated by the felony court pre trial. Using the

Defendants, who included women, were left in no doubt of the consequences of criminal contempt of the court.

classes as a condition of bail is an additional way to keep tabs on a defendant who has bail but is not available in the lower, misdemeanor courts.

Domestic violence Orders of Protection are put onto a Registry to aid law enforcement. The registry feeds the national FBI database alerting all national areas as well as the sellers of firearms who are not supposed to sell guns to offenders.

One-stop facility

The advantages of the court operating as a one-stop facility were made clear when the judge was able to ask for on-site drug testing of two parents contesting custody. This was agreed and the result was available within the hour. In spite of allegations both parents tested negative. In another matter involving custody, there was a need for a guardian, who appeared available within a few minutes!

The evaluation of the new IDV courts is still taking place. Perhaps their value can be measured to some extent by the enthusiasm shown by the judiciary and partners in the criminal justice system. Some clear evidence is emerging that ongoing judicial monitoring may well be the most effective technique to reduce recidivism. Intensive supervision during the course of proceedings and after by the judge makes for an ability to hold the defendant more accountable. Already the creation of specific courts to deal with domestic violence has demonstrated a significant shift in compliance with orders and much better outcomes for victims. Robyn Mazur of the CCI writes 'the concept that the judge is watching' is a cornerstone of the domestic violence and integrated domestic violence court model. The judges in these courts have compliance (monitoring) dockets where they bring defendants back to court with regularity. The compliance court dates help the judge to reiterate the conditions of the order of protection.

The support of victims by special advocates has been key to achieving access to services and probably in reducing the number previously unwilling to proceed against perpetrators. Further improvements in consistency have been made possible by a combined jurisdiction properly serviced by excellent technology. Finally, the benefits of reducing stressful court appearances should not be underestimated.

In spite of all the many complex issues surrounding the subject, it maybe an appropriate time to debate the need for combining jurisdiction in our own courts and possibly initiating a more effective system for victims and perpetrators of domestic violence.

The UK delegation to New York consisting of representatives from the CPS, police, Home Office, probation and magistracy was organised by Jill Maddison, policy adviser on domestic violence at the London Borough of Croydon.

Grateful thanks are due to the Center for Court Innovation New York for much of the information supplied in this article and to the GLMCA for supporting two magistrate delegates.

Contact standingtogether@btinternet.com for a list of publications and further information about the domestic violence court in West London.

Women and justice

A new inquiry in the form of a commission has been launched to assess what happens to women victims, defendants and practitioners in the criminal justice system. Vera Baird QC MP, who is chairing the Commission on Women and the Criminal Justice System, with the Fawcett Society, explains.

Why a commission?

Lyndsey Armstrong was just 17 when she committed suicide a few weeks after the conviction at trial of the boy who had raped her. She had been through a humiliating experience while giving evidence, in particular when she was asked to hold up her underwear in front of the jury. Things are changing for young women like Lyndsey but there is still a long way to go.

It is because of cases like this that the Fawcett Society has set up the Commission on Women and the Criminal Justice System. I am delighted to be chair of a high profile and expert group of commissioners which includes Martin Narey (the Commissioner for Correctional Standards), Liz Bavidge JP, and Mrs Justice Heather Hallett.

The Commission will examine women's experiences of the criminal justice system which has historically been a particularly male-dominated part of our legal system. It is hardly surprising that our law has developed along a male model of behaviour when you consider how few women have been involved in criminal litigation. Our legal system must now adapt to reflect the wider society.

As magistrates will know, significant changes are being planned to our laws and procedures; the Criminal Justice Bill and Sexual Offences Bill are currently before Parliament, there is a consultation on domestic violence, starting next month, as a precursor to legislation in the autumn, and a Victims and Witnesses Bill has also been promised. The Commission's aim is to bring a gender perspective to the current debates around criminal justice policy, and in the longer term to ensure that gender is mainstreamed in future policy-making.

id8 photography

Holistic perspective

The Commission is examining the system in three broad areas of work; women as victims and witnesses, women and offending and women working in the system. We believe that by taking a uniquely holistic perspective we can make a significant contribution to the existing knowledge about women and the criminal justice system.

We started our work in February by gathering evidence about women who are victims and witnesses. It is unfortunately clear from the women and organisations we have spoken to, as well as the existing research, that the system is failing female victims of very serious offences, so much so that many women say they would not go to court again.

Rape

I know from many years of experience as a criminal barrister that rape victims are often treated badly. I have seen this myself. The problem is systemic; most women have so little faith in the system that they do not report the offence in the first place. It is estimated that as few as one in ten women report rape and of the few cases that are reported only 7% result in conviction.

The age-old problem of the complainant's sexual history evidence being introduced by the defence to discredit her as a witness has been, in part, addressed by s41 Youth Justice and Criminal Evidence Act 1999 and this provision is currently subject to a research project on its efficacy. The changes to rape in the Sexual Offences Bill which define consent and introduce a 'reasonable person' test to the defence of honest belief in consent are also likely to bring both improvement and an increase in confidence.

However, there are still serious problems at every stage of the process. Dr Liz Kelly's research for the Crown Prosecution Service(CPS) Inspectorate last year found that 'at each stage of the legal process, stereotypes and prejudices play a part

Research repeatedly illustrates the failure of the criminal justice system in its dealing with women. Statistics confirm that domestic violence is still a notoriously difficult area and in rape cases only seven out of 100 reported rapes results in conviction. And in terms of the prison population, the number of women in prison has more than doubled.

in decision-making'. Dr Kelly found that too often prosecutors are looking for weaknesses in the complainant's evidence, rather than trying to build the case.

The Commission welcomes plans to address this problem by introducing specialist prosecution teams within the CPS to handle rape cases. In addition we are recommending that the Director of Public Prosecutions takes steps to ensure that only advocates who have attended accredited training courses are instructed to prosecute rape cases. We have real concerns about the senior judiciary, who, as I discovered through a Parliamentary Question to the Lord Chancellor, have had no training whatsoever in the special skills of trying rape, until now.

Domestic violence

The facts about domestic violence are similarly stark. Two women a week are killed by a current or ex-partner and domestic violence accounts for a quarter of all violent crime. While the problem comes before the courts frequently, it can be difficult to identify because there is no 'domestic violence' offence. In addition there is little training about the cycle which this violence always takes, which is vital if agencies are to be empowered to intervene before it grows critical. As with rape, there are very low rates of reporting and very high attrition rates.

There are ground-breaking projects taking place such as the operation of model domestic violence courts in several magistrates' courts. But good practice is scattered among the police, CPS and the courts. A domestic violence consultation paper is due to be published imminently, followed by legislation in the autumn. This presents an opportunity to make the system work for women who are abused. The safety of the woman and child needs to take top priority at child contact and bail hearings, and the complex relationship between the civil and criminal courts needs to be simplified. (See also page 194.)

Funding of support services

At the same time as legislative change is taking place to help victims of crime there is a crisis of funding for support services and the most basic provision, such as 24-hour helplines, is not available. Ms A, who was violently raped and assaulted by a work colleague, told the Commission 'I did report it to the police four days after the incident. To be honest though it was largely because it was a Saturday and I desperately needed someone professional to talk to about my fears. My GP was unavailable and the Rape Crisis Foundation helpline was only open on a Thursday night!'

The Commission is urging the government to ensure that funding is available so that victims of sexual assault and domestic violence have access to 24-hour helplines as well as specialist referral centres (such as sexual assault referral centres), which provide a 'one-stop' shop for victims. These centres provide specialist medical treatment, counselling, forensic sampling and access to the police. They not only provide the essential support that victims need in the immediate aftermath of crime, they are crucial to the investigation and prosecution process.

Recommendations and future work

The Commission will be publishing an interim report of findings and recommendations in the summer. Please see contact details below for how to obtain a copy.

The Commission will next be looking at the way that female offenders experience the criminal justice system. This will be followed by an examination of the system from the perspective of the women that work in it. The magistracy is at the heart of all of these issues.

Vera Baird is a QC and Labour backbencher who succeeded Mo Mowlam as the MP for Redcar at the last election.

Commission on Women and the Criminal Justice System

The Commission is examining the system in three broad areas of work; women as victims and witnesses, women and offending and women working in the system. The Commission is gathering evidence from experts, organisations and most importantly from individual women themselves. This is largely by way of written submissions, but we are also holding a series of hearings, seminars and closed sessions where individual women can tell us about their experiences in a confidential setting.

How magistrates can get involved

Magistrates have a wealth of experience in all the areas of our work and we very much want to hear from you. If you would like to participate or for further information please contact the Commission's Policy Officer Holly Dustin at the Fawcett Society, 1-3 Berry Street, London EC1V 0AA or e-mail holly@fawcettsociety.org.uk or see our website at www.fawcettsociety.org.uk.

Advert(s)

How the BBC is tackling new causes

Could the BBC's recent awareness-raising season on domestic violence be a model for future co-ordinated programming? Tim Harrison asked the producer of *Hitting Home*.

From time to time the BBC really comes into its own as a public service broadcaster, harnessing in-house know-how, co-ordinating disparate departments and focusing, with an unflinching stare, on a chosen topic.

The Big Read recently nurtured the revived appetite for reading, and the annual Children In Need stimulates fundraising while raising awareness of the plight of society's underclass.

But in February, the BBC attempted an even bolder move – tackling a taboo issue, domestic violence – with a co-ordinated series of programmes across the board, from TV documentary to radio play, local phone-in to website, children's drama to film, soap opera to freephone advice.

BBC

Hitting Home

Seetha Kumar, head of BBC Lifeskills, brought everything together under the banner *Hitting Home*. 'We who work in TV are always thinking of areas we should cover, and things we should be doing,' she explained in her office in the BBC's White City complex in west London.

'I'd read the odd story in the papers, and I'd been talking to a policewoman about the work she had done in the field,' she said. With the help of researchers, and the enthusiastic support of BBC 1 controller Lorraine Heggessey, the ball started rolling in the spring of 2001.

The stark statistics (one in four women is affected by domestic violence, one in three schoolboys considers violence against women 'acceptable') shocked everyone Seetha discussed the subject with, and *Hitting Home* was born.

The season of programmes was aired in the week after Valentine's Day, following two years of planning and commissioning. It told the harrowing stories of the victims, survivors and perpetrators of domestic violence, while offering hope, advice and solidarity to viewers and listeners.

Casualty and *Neighbours* wove relevant storylines into their scripts; the children's channel CBBC screened a specially-written drama, *Behind Closed Doors*; Benjamin Zephaniah's play *Listen To Your Parents* was broadcast on Radio 4; regional radio stations selected the topic for their phone-ins; and the BBC's website guided people to the agencies that can help (it's still accessible via www.bbc.co.uk/hittinghome).

Jeremy Vine's Radio 2 show tackled anger management; actor David Soul made a riveting confession of his own violent past in the powerful BBC1 documentary *Dangerous Love: Tales of Domestic Violence*; and there was a retrospective look (with contributions from scriptwriters and actors) of the violent *EastEnders* storyline involving the soap characters Trevor Morgan (Alex Ferns) and Little Mo (Kacey Ainsworth), to examine how television tackles the issue.

Reaching across the BBC

'I felt very passionately about the subject, and wanted to use the different voices and tones of the BBC to give it maximum impact,' said Seetha. If, say, you'd had a hard day at work, you might not want to sit and watch a factual programme, but the message was also there in *Casualty* and Radio 1's *Sunday Surgery* phone-in chose the subject, reaching an audience which may not have seen some of the TV programmes.

Only 'appropriate' genres were used, however. It was felt, for example, that there was no room for any involvement by the BBC's comedy departments.

Audience research

Audience research suggests the season was a resounding success, particularly in reaching potentially vulnerable viewers (who may only watch daytime TV programmes) and to the black and Asian communities via the BBC's specialist channels.

Another measure of success is the flood of requests for tapes of the shows from police, probation and other agencies, for use in training.

So could the template be used for other subjects?

'We in the media have a job to tell the stories no-one else does. I think we did that with *Hitting Home*,' said Seetha, who previously ran the unit which makes *Crimewatch*. '*Hitting Home* got a lot of support from within the BBC and outside agencies. We are talking about how we can do other tough subjects.'

One example on the agenda is poverty. Other issues are also being weighed up in light of the *Hitting Home* experience.

'It's interesting to see how we can work together to do things we all believe in – the public service remit of the BBC – to make more of an impact,' said Seetha.

Courts and Criminal Justice Bills

Rachel Lipscomb, Chairman of the Magistrates' Association, updates members on the Courts and Criminal Justice Bills.

As I write this, the Courts Bill is about to be presented in the Commons, having been through the Lords. Meanwhile, the Criminal Justice Bill will shortly be going to the Lords, having been through the Commons. Both these bills are of critical importance to magistrates.

When the Courts Bill is debated in the Commons, much of the running will be made by the Select Committee to the LCD*, chaired by the Rt Hon Alan Beith MP. This committee has been very active since its inception in March, when Sally Dickinson and I gave evidence to it. Their report on the Courts Bill, published in June, focuses on:

- the scope of the Lord Chancellor's powers;
- the accessibility of courts;
- court closures;
- courts Boards;
- the relationship between justices' clerks and magistrates;
- court security;
- fees and costs;
- fines.

In step with this, an MA briefing went out to MPs, as well as individual briefings in May and June.

Unified administration

Meanwhile, on 4 June, the LCD put on a conference in London at the request of the MA for around 250 branch and bench chairmen, as part of the consultation process on the unified administration. There were presentations from the minister, Yvette Cooper, Ian MacGee, chairman of the UA Board, together with members of the board and the UA implementation team. This was followed by lively forum sessions, and an address from Lord Justice Judge, the Senior Presiding Judge for England and Wales, who declared that now is a major moment in our history where we become full partners in the judiciary, sharing:

- the same court rules and guidance;
- the same sentencing guidelines;
- the same standards of case management and preparedness on the part of prosecution and defence.

Courts in general have arguably never been so much under the spotlight from politicians and the media. While it is right that our actions are held up to scrutiny, this must never be at the expense of our judicial independence, and these closer ties within the judiciary will help us to resist undue pressure.

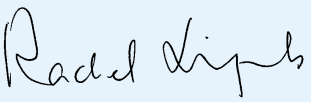
Criminal Justice Bill

Moving on to the Criminal Justice Bill, this too will have a major impact. In the March issue, Cindy Barnett wrote about the proposals that affect magistrates' powers. As it moves through the Lords, we expect robust and extensive debate to take place. The most controversial issues are jury trial, life sentences and double jeopardy. Individually we may have strong views on these matters, but as sentencers they are not central to us as magistrates. However, there are other clauses which affect us directly and on which we are seeking clarification or amendments. The MA has delivered a briefing to Peers which is on our website and circulated with Notice Board in July. Two examples of our concerns are:

- **Bail**. Reversing the presumption of right to bail when a defendant has failed to answer bail is not unreasonable. However it will impose an important duty on the police, Crown Prosecution Service and courts to ensure that all the information required to make a decision is available as soon as someone is arrested breaching their bail.
- **Probation liaison.** We shall be seeking the chance to put liaison with the probation service back on a statutory footing, as it was in 1997.

This is an area of major concern. At the beginning of June, the MA, together with the Justices' Clerks' Society and the Probation Boards Association met Eithnie Wallis, Director General of the National Probation Directorate. Since reorganisation, the service has faced extreme difficulty in terms of budget and staff numbers in some areas. This is being addressed, but it is essential we now build back the contact that used to exist between probation and sentencers. There is a wider range than ever before of community penalties that rely on evidence based programmes. We, as sentencers, need to know what they are, where they are available and receive regular feedback on what works. This is why we are pursuing this matter via the bill as well as directly with probation.

To say there is never a dull moment seems like a monumental understatement right now, but I am very conscious that the two bills currently going their opposite ways through Parliament will shape and define the magistracy for many years to come. This is why they are rightly taking up so much of our time and energy. With your wholehearted support I am confident we shall achieve the right results.



Rachel Lipscomb
Chairman of Council

*The LCD is now the Department for Constitutional Affairs.

Letters

Letters are extremely welcome but, due to restrictions on space, it is impossible to print every letter, and some have to be abridged. Letters should be addressed to the: Magistrate, 166 Broomwood Road, London SW11 6JY. (Please indicate if you would like your e-mail address to be published.) If you require a reply from the national office, please also copy your letter to Sally Dickinson.

The true cost of custody

May I comment upon Mark Pimlet's letter (April 2003). It was actually Martin Narey who spoke of the courts 'love affair with custody' and the record high numbers now in prison appear to add weight to this argument. Imposing short prison sentences on non-violent repeat offenders and fine defaulters may satisfy magistrates' needs to dispose of problem cases, but it smacks of desperation and represents a quite inappropriate use of custody.

His comments about a local prison feeling 'more like a holiday camp' are a gift to all those who ridicule magistrates as being hopelessly out-of-touch with the reality of prisons to which they readily commit offenders. I suspect that his views were formed as a result of a short visit, organised specifically for JPs and designed to minimise any meaningful contact with prisoners. The reality is that most prisons are overcrowded, cramped, hostile places in which hours of mind-numbing boredom are relieved only by outbreaks of bullying and intimidation. Over 600 people committed suicide in Britain's prisons in the 1990s and research by the Howard League suggests that there are as many as 21,000 incidents of self harm each year. Hardly a sign that prisons are 'an inviting place to stay'.

Alan Rusbridger is quite right that we cannot build our way out of the prison overcrowding crisis, and neither should we try to. Mark Pimlet's idea that prisoners 'should build the prisons themselves' is impossible to take seriously and since we could build 60 primary schools for the cost of one prison it is not hard to see why prison has famously been described as 'an expensive way of making bad people worse'.

The urgent need to alleviate prison overcrowding can be easily and effectively achieved by sending fewer people to prison and magistrates therefore have a key role to play. Community penalties are cheaper and more effective than prison, as they engage with offenders to challenge their behaviour, instead of simply despatching them to a custodial system already over-stretched, for periods too short to allow for any constructive activity but long enough to disrupt an offender's accommodation, employment prospects and family ties. Little wonder that so many ex-prisoners reoffend so quickly when their problems on release are so much worse than when they entered prison.

Prisons will always have their place, but they can only be improved by restricting their use to those we really need to send there.

David Wilkinson JP
(Essex)

Sentencing options for driving offences

Now that there are over 24 million cars on our roads today, isn't it time that offences of driving whilst disqualified, driving with excess alcohol and repeated no insurance be upgraded from summary only matters to either way offences with the possibility of committing to Crown Court for sentence?

We recently had a defendant who was charged with drink-driving whilst disqualified by court order and no insurance. It was his 20th offence of driving whilst disqualified and his alcohol reading was three times the legal limit.

He had been before the courts on 33 previous occasions, for similar offences, and on 30 of those had received a custodial sentence.

The sentencing options at our disposal, six months in prison, are not adequate enough when dealing with someone who constantly defied court orders.

Maybe the knowledge that a severe Crown Court sentence could be a possibility would make some motorists think twice before they drove after drinking or whilst disqualified.

Jill Wilson JP
(Berkshire)

Mandatory review for Home Detention Curfew

As a member of the independent monitoring board of our local prison, I have just been informed that the government intends to increase from 3 to 4½ months prior to release the mandatory review for Home Detention Curfew (HDC). This has subsequently been confirmed by Mr Hilary Benn MP, Home Office Minister.

This increase now means that a sentence of six months or less is meaningless as far as custody and public protection is concerned, the offender will be released in two days.

So that the public can perceive some protection should we be making more use of 'tagging' (HDC) straight from court and also/or bail remands?

W Hugh Phillips JP
(Gwent)

Radical re-think?

I recently attended a conference in Cambridge, entitled *Cutting Crime: Sentences that work*.

One of the speakers was Eithne Wallis, Director General of the National Probation Service. Pondering on this lady's persuasive presentation I concluded that there must be a case for a radical re-think of sentencing.

Magistrates have very few options: discharge, fine, community punishment in one form or other, or prison.

My thought process was that when we send people to prison we do just that, with no account of which prison

or what regime it may operate. Logically should we apply the same thinking to community sentences? We make our judgments based to a large extent on reports, prepared by probation.

Should we merely reflect the severity of the sentence in terms of length and leave the probation service to use its skills and knowledge to decide what our offender should do? This would allow probation to move the offender from one course to another if it became appropriate.

I realise that many of my colleagues will throw up their hands in horror but I believe it is an idea worth serious debate. Cases throughout would be improved, delays reduced and cost savings achieved by not continually 'going off for reports'.

Jim Wyllie JP
(Suffolk)
For a report of the meeting see Association news page 198

View from the inside

As chairman of a bench training and development committee (BTDC), I do not recognise Peter Bailey's criticisms of magistrates' training and appraisal (*Comment*, May 2003) and therefore do not support his arguments for independent, external trainers and assessors.

In my view, it is essential that the magistracy and those who advise it, retains firm control over its members' training and development. Our judicial independence depends on it and is the stronger for it.

The appointment of appraisers and mentors is not by 'subjective invitation' if BTDCs follow the guidance published by the Judicial Studies Board in October 2002. In my area, candidates are nominated and seconded by members of the bench. The BTDC makes its selection, based on published criteria, and there follows appropriate training. Also, I see nothing wrong in appraisers and appraisees knowing each other – in most working environments this is bound to be the case. Like magistrates, appraisers must demonstrate the confidence, sensitivity and impartiality to objectively voice their assessments, be able to identify the evidence in support of competence and be willing to support colleagues in their own development.

Mr Bailey's proposals will, I believe, lead to magistrates being bombarded with more training as opposed to development, lead to alienation as opposed to support, and his wish to see a more representative magistracy will not be realised.

Training and appraisal must develop in order that the magistracy will continue to command public confidence. I am sure that the improvements being sought to the Magistrates' National Training Initiative (MNTI) will represent a sensible and positive approach to what Mr Bailey seeks to diminish as 'in-house' training.

Duncan Webster JP
(Buckinghamshire)

Training and appraisal

Having recently completed a two-day training course organised by the MA as preparation for the MNTI 2 Appraisal Project, I found Peter Bailey's article (May 2003) very interesting.

I share Peter's concern that in-house training and appraisal may not always produce the best results. However, I have serious doubts on the suitability of training consultants based on recent experience. Most professionals rely on experts in their specific field for training in order to provide credibility from their own experience. I cannot imagine doctors, lawyers or pilots being trained by independent consultants with no experience of that profession. The important issue is that trainers are taught how to be effective trainers.

As an appraiser I understand the risks of familiarity and subjectivity between colleagues on the same bench. However, independent assessors would be restricted to appraisal from the well of the court only, as they could not sit as a magistrate with the appraisee. An alternative could be cross-bench appraisals. Many counties already combine with their neighbours for training and this could be extended to appraisal. The success of any appraisal scheme will be the tools provided to carry out the task. The MNTI 2 proposals currently being piloted need a lot of consultation with active magistrates to get them right, even if it means delaying the hasty implementation presently planned.

I endorse Peter Bailey's summary that for all the current shortcomings in our training and appraisal, the magistracy does a very good job, displaying a very high level of professionalism. We would not benefit from external training and appraisal consultants.

Mr A D Turner JP
(Dorset)

Retirement age for magistrates etc

I noted with interest the letter from Erik Farr-Voller JP (May 2003) concerning magistrates on the supplemental list.

I fully concur with his views that it is very sad that magistrates, who retire from the bench at the age of 70, are not used for the benefit of the courts and their fellow magistrates.

Firstly, I think that the retiring age of 70 should not be mandatory and that magistrates should be allowed to continue their duties on an annual basis for perhaps another two or three years. During that time their services should be used to carry out the duties of appraisers and even mentors, preferably at a court near where they have served, as I am personally not in favour of appraising or being appraised by my colleagues from my own bench.

Secondly, there is a lot of merit in the suggestions put forward by Peter Bailey JP in his Comment in the same issue.

It would be interesting to know how many of our colleagues around the various benches have the same views in regard to these matters.

Harold Hare JP
(Middlesex)

Noise

Readers are invited to study this imaginary case and to compare the sentence they would give to that on page 212.

Mrs Armstrong lives on the second floor of a detached three storey Victorian house, the other two floors are unoccupied. Her rooms face what has been for many years a relatively quiet minor road and despite the nearby presence of a pub and a certain amount of vehicle and pedestrian traffic she has never, until recently, been troubled by noise.

Things have now changed drastically. The pub has changed hands and an ambitious young licensee has obtained a public entertainment licence following which he has introduced several forms of noisy entertainment including karaoke, live bands and widescreen sports TV. The pub has a new clientele and Mrs Armstrong is beset with many hours of amplified music, singing, clapping and cheering. On several occasions she has asked the manager to 'keep the noise down' and in particular to ensure that the doors and windows of the pub are kept shut but he has made no effort to co-operate.

Having complained to the local authority, Mrs Armstrong was asked to keep a diary of noise events and an environmental health officer visited her flat to monitor noise levels. Shortly afterwards the licensee was reminded that doors and windows must remain shut during periods when music was being played, or TV sports events were being viewed. He failed to comply with this request and the authority issued a Noise Abatement Notice under s80 of the Environmental Protection Act 1990, a copy of this being sent to the pub management company.

The notice had no effect, it was a hot summer and the pub doors and windows were frequently opened during music and TV sports events. On being prosecuted for breach of the abatement notice the licensee said in his defence that he was doing his best but he had a business to run and that Mrs Armstrong was a difficult woman. He had offered to pay for her to have air conditioning and double glazing but she had refused, in his opinion she had an obsession about noise and was making a fuss about nothing.

Noise

Dudley Thomas gives his response to the sentencing problem on page 211.

Where the noise nuisance emanates from industrial, trade or business premises a defendant who, without reasonable excuse, fails to comply with an abatement notice is liable to a fine in a magistrates' court not exceeding £20,000.

After many years peacefully enjoying her home, Mrs Armstrong's life has changed dramatically. The ambitious and avaricious young licensee has arrogantly failed to respond to Mrs Armstrong's request, the approaches by the local authority and now the abatement notice. At court he is dismissive about Mrs Armstrong's plight.

This case requires a significant financial penalty to reflect the seriousness of the failure to comply with the notice. It is sadly the case that many victims of this type of interference with their lives go on to suffer mental health difficulties. Mr Greedy-Licensee is in line for a hefty penalty.

We are not told if he has any previous convictions, so assume that he has none. We are not told if he admitted or denied the breach of the abatement notice. If he admitted it then credit will have to be given in determining the final amount of the penalty. To what extent should the court take into account the licensee's claim that he was doing his best and had offered to pay Mrs Armstrong to have double glazing and air conditioning installed. Apart from this offer, which was understandably declined by Mrs Armstrong, the licensee, it appears, has done little to control the level of noise occasioned by his recently introduced activities.

As always the court will need to carefully examine the defendant's means in deciding the penalty.

As a person convicted of a breach of an abatement notice is not also liable to a civil action for damages for the same mischief, the court will need to consider a compensation order in favour of Mrs Armstrong. If this is to be awarded then it should take priority over and above any other financial penalty. I would make such an order in this case.

Finally, under the Noise Act 1996 the court is empowered to make a forfeiture order in respect of any equipment used in the commission of the offence – no more karaoke!

Most of the committees, honorary officers and staff at the Association have on-going work throughout the year. In each issue, we will keep members abreast of the key issues and areas of concern and provide an update on activities and representation. As space is limited, information on key issues and activities will be prioritised.

Chairman and deputy chairman of Council

- All three officers attended a briefing with the Liberal Democrat MPs re the Courts Bill; the Courts Bill conference for branch and bench chairmen on the proposed unified administration (organised at the Magistrates' Association request); meeting with Kevin Sadler, Lord Chancellor's Department; the Association's charter group and editorial board meetings.
- Rachel Lipscomb attended Justices' Clerks' Society conference; a reception at 10 Downing Street; Seminar – Future Options for Correctional Services; Audit Commission Advisory group on Victims and Witnesses experiences; met Simon Hughes MP, was interviewed by Frances Gibb of *The Times*, visited South Yorkshire, Norfolk and Birmingham branches; with Sally Dickinson met Eithne Wallis at National Probation Directorate to discuss communications between sentencers and probation; attended meeting to discuss probationer training modernisation.
- Cindy Barnett attended a Street Crime Action Group; did a telephone interview with *East Anglian Daily Times* on compensation; visited Wiltshire Bench executive with Sally Dickinson.
- Peter Blackwell attended meeting of JUICE Training group; together with Christine Field gave a presentation at the Children Law UK conference on the merits of referring some cases from the youth court to the family courts where circumstances of the children cause concern.

Licensing Committee

- Committee members continue to attend meetings of the various sub-groups of the Alcohol and Entertainment Licensing Bill Advisory Group Meetings.

Road Traffic Committee

- **DVLA**
  Representation – Elliot Griffiths
  Key issues discussed include:
  - new, more secure, road fund licence disc to start circulation October 2003.
  - Improved and more secure V5, vehicle registration document to be introduced early 2004.
  - DVLA doing more checks before issuing a driving licence to reduce fraud.
  - continuous registration to come in 2004, meaning that until the owner informs DVLA of a new owner, the 'old' owner will remain responsible for vehicle congestion charges and parking fines. Continuous registration should help reduce the number of abandoned cars because the owner will be more easily traced.
  - proposals to make relicensing of vehicle easier in early 2004 when owners of cars under three years old can buy a licence over the telephone or via the internet.
  - a consultation document on the proposed abolition of the driving licence counterpart is expected shortly.
  - Part of the European Union Third Directive is that member states can issue smart card driving licence with electronic chips. Progress likely to be slow as a common standard will need to be agreed.

Family Proceedings Committee

- **President's Interdisciplinary Family Law Committee**
  Representation – Malcolm Richardson
  - The Family Justice Council should be in place by the end of the year. Funding is still to be approved but it is a high priority for the government.
  - The case management protocol for public law cases will be in use by 1 November.
  - The Family Proceedings Committee also responded to the consultation on the committee's draft interdisciplinary curriculum for all those whose professional work involves the family justice system.
- **All Party Parliamentary groups on Domestic Violence and Children**
  Representation – Peter Sloman
  Meeting to review current research on the impact of domestic violence on children.
- **Children Law UK conference on Welfare and Justice**
  Representation – Malcolm Richardson
  Conference focused on the findings of the Sieff foundation report last year of the need for youth courts to be able to consider the diversion of children at risk into the ambit of the family proceedings courts and how these findings may be taken forward.
- Responded to articles in *Community Care* magazine and *The Times* re delay in family proceedings.

Criminal Justice Systems Committee

- **Creating Civil Communities Conference**
  Representation – Cindy Barnett
- **Greater London Domestic Violence Sixth Birthday Reception**
  Representation – Cindy Barnett
- **Policy Meets Practice**
  Representation – Cindy Barnett
  Concerned with domestic violence issues.
- **Inter Agency Sounding Board of the new Victim and Witness Care project**
  Representation – Cindy Barnett
  A new group being set up by the Crown Prosecution Service and Office of Public Service Reform (OPSR)

Sentencing Committee

- **Draft Mental Health Bill Forum**
  Representation – Janet Males

Advert(s)

Life after retirement

How many magistrates after retirement have missed the fellowship and the interaction of views and experiences they enjoyed in their years on the bench. Alex Demetriades explains how the Manchester City Retired Magistrates' Association is run.

At Manchester City Magistrates' Court, currently a bench of over 400 justices, about 14 years ago, the then chairman of the bench, Aileen Hargreaves, instituted an annual function in the form of a tea party for members of the supplemental list who were invited to gather again and at which some of their former colleagues still serving joined to renew old acquaintances. From this developed the idea of updating members who attended with matters relating to our courts and matters of concern to magistrates arising out of new legislation which seemed to be coming thick and fast.

Forming the association

As time passed, it seemed that those attending the tea party would have liked something more frequent to be available to them to meet and in 1999 the then chairman of the bench, Michael Hammond, suggested a committee be set up from members of the supplemental list to consider forming a more organised body from those members interested. Invitations were sent to members asking if they would attend a meeting should they be willing to serve on such a committee.

Following responses received a meeting appointed a steering committee to consider the form such an association should take, what it would aim to do and how it would attract colleagues to become members on joining the supplemental list.

From the beginning it was recognised that without some valued support from the court's executive, it would not be possible to progress the workings of the association and it was decided that there would be a link magistrate still serving on the active list in a senior capacity, as an honorary member of the association and as a member of the committee.

Informal organisation

It was decided that it should be a fairly informal organisation with the minimum amount of bureaucracy and bearing in mind the advanced years of those involved a not too strenuous programme.

Three facets were to be incorporated:

- social: with visits to places of interest;
- welfare: keeping in touch with colleagues who might be suffering ill health or recent bereavement;
- practical: taking an interest in what is happening both locally and nationally in the justice system specifically affecting the magistracy and where any influence members might have in their retired capacity might be utilised to the benefit of the magistracy as a whole.

An inaugural meeting of members of the supplemental list approved the proposals along with a constitution simple in detail. Members pay an annual subscription of £10.00

Social activities

On the social side it was decided that the aim would be to organise about three events a year one of which would be the annual tea party already in place and before which the annual general meeting of the association takes place and a speaker or speakers are invited. There would be at least one full day's outing and a further meeting which might be a local visit – half day – or a talk at the courts on something of current interest to retired magistrates.

Regarding the welfare of colleagues, in addition to the network of contacts within the association, the courts have been helpful in informing us of circumstances which have come to their notice which has meant that response can be timely.

Keeping up to date

Keeping up to date with issues that impact on the magistracy, there have been talks on the problems arising out of the reorganisation of courts administration and on the development of the role of the probation service in sentencing procedures and how this affects magistrates. An example of action taken has been that of members registering with politicians their dismay at proposals to abolish the supplemental list.

We have much to thank court officials for their assistance in the early days and for continued willingness of officers to allow occasional use of court's facilities.

Membership

Our membership at present is 80. Despite *anno domini* we have been able to keep it around that mark and with the number of magistrates retiring or leaving before the age limit is reached, we believe their membership can assure them of many years of contact with each other.

We would certainly welcome contact from other retired magistrates' associations in order to exchange experiences and where appropriate consider how such bodies nationally might have a role to play.

Alex Demetriades is Chairman of the Manchester City Retired Magistrates' Association, Manchester City Magistrates' Court, Crown Square, Manchester M60 1PR.

MAGISTRATES ASSOCIATION

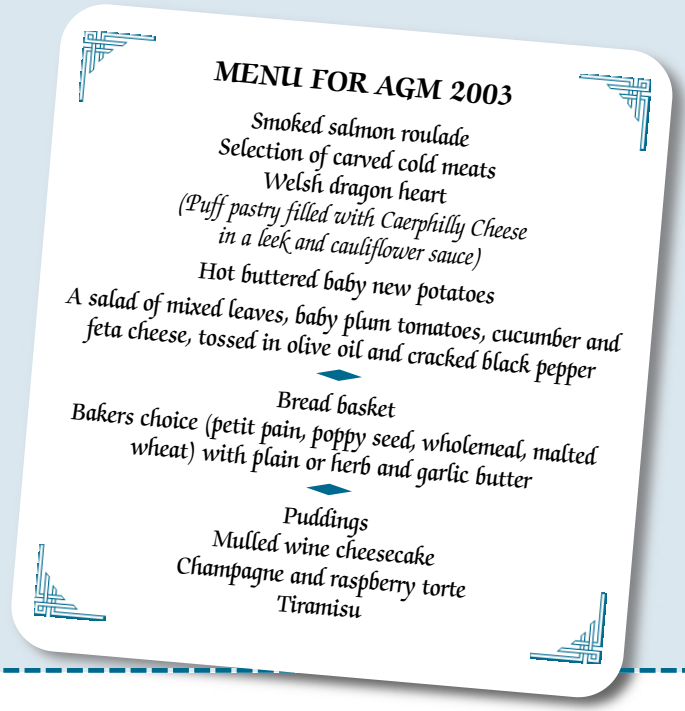
ANNUAL GENERAL MEETING

Saturday 25 October 2003, Grand Theatre, Swansea

This is your meeting, open to all members – so make a point of attending this year and help to form Association policy for the 21st century.

All members coming to the AGM will require an entrance ticket obtained in advance. Lunch tickets must be purchased in advance also. Members requiring lunch should enclose a cheque and complete and return the application form below. The AGM runs from 10.30am – 4pm with a break for lunch from 12.30pm – 2pm. There will be a church service at 09.30am for those who wish to attend.

For information about Swansea, contact the Tourist Information Centre in Swansea on 01792 468321, e-mail tourism@swansea.gov.uk or visit their website at www.visitswanseabay.com



Application form for AGM 2003, Saturday 25 October, Grand Theatre, Swansea

Please complete in **BLOCK CAPITALS** and return by **26 SEPTEMBER 2003** to Melodie Hyams, 28 Fitzroy Square, London W1T 6DD.
Please complete all sections of the form including telephone number and e-mail address.
Please note that all tickets will be despatched during the week commencing 1 October 2003.

I wish to attend the AGM and require an entrance ticket ☐
I will require lunch @ £15.00 ☐
I will require a vegetarian lunch @ £15.00 ☐
I enclose a cheque (made payable to The Magistrates' Association) for £ _____

TITLE _____ FIRST NAME _____ SURNAME _____

ADDRESS _____

_____

_____ POSTCODE _____

CONTACT TEL NO _____ BRANCH _____

E-MAIL ADDRESS (if applicable) _____

Do you have any special needs? eg diet, access etc? _____

Means to pay fines

The Zacchaeus 2000 Trust argues there should be more research into the minimum incomes needed for healthy living and guidance for magistrates to ensure fines are proportionate to means.

The Lord Chancellor wrote to Zacchaeus 2000 in August last year to say, 'Setting the correct level of fine is, in my view, the key to successful enforcement. To enable this, it is vital that magistrates have accurate and up to date information about an offender's means at the time of sentencing, and indeed throughout the enforcement process.' Fines and debt repayments should be proportionate to means. Therein lies the problem for magistrates.

No British government has ever researched the minimum incomes needed for healthy living and a minimum degree of participation in the community. All statutory minimum incomes are inadequate. Some are far below a bare minimum revealed by independent research. An unemployed single childless adult aged 18-24 receives £43.25 a week income support after rent and council tax. Aged 25-60 the figure is £54.65; they can be reduced by £10 or more repaying an emergency loan from the Social Fund. Work at the London School of Hygiene and Tropical Medicine has shown that a minimum needed for healthy living is £84.76 but more in metropolitan areas. Is any fine proportionate against an inadequate income when it will increase the chances of ill health? The problem is even more complex than that.

The poverty trap

The Treasury knows that the combination of minimum wage at £4.20 and tax credits will result in some families being worse off in work than unemployed. The Treasury's 'ready reckoner' shows a gain to work of £33.19 for a couple with one child under 16 and one of them in work for 35 hours a week. That is wiped out by costs that occur in work but do not occur in unemployment such as paying for school meals at over £7 a week, travel to work at over £25 a week. If the other partner works part time for 16 hours the 'ready reckoner's' gain to work is £59.86. Add 30% of childcare costs to the other in work costs and that is wiped out too.

BT has cut off the telephone of over one million households due to unpaid bills. The preferred means of communication of the poor are now the pay-as-you-go mobiles that charge no rent and are always able to receive calls even when they have no credit left. To query a mistake at the Child Benefit Office near Newcastle upon Tyne or the Income Support Office in Glasgow, with all the hanging on that causes, costs 10p a minute for both 0870 and 0800 numbers. The Auditor General has repeatedly qualified the accounts of the Department of Work and Pensions due to mistakes in the administration of benefits.

Life for the poorest is also burdened by the trigger happy computers of local authorities and their outsourced agents. Threats of eviction for rent arrears and prison for council tax arrears are sent to vulnerable people whose frequent visitors are the door-to-door lenders from the 'Provvy'. They exploit the fear of eviction and prison, low incomes and the fact that the poor cannot borrow anywhere else with loans at up to and over 300% APR. However unacceptable, theft or drug running are other options.

An unemployed single mother with four children was threatened with prison, the bailiffs or bankruptcy for a council tax debt and eviction for rent arrears. She was not present in the magistrates' court when the liability order was granted. The arrears were deducted from her benefits. She borrowed £350 from a loan shark plus £250 interest to be paid off at £30 a week for 20 weeks. I challenged the council. The debts were a mistake. Magistrates imprisoned an unemployed single parent for the truancy of her two children. The children of the poorest are humiliated in the school playground due to their shabby clothes and lack of holidays, Christmas and birthday presents. I called the Head Teacher to offer £150 a child to buy them new school clothes and shoes. She enthusiastically accepted the gift.

Disproportionate fines to means

Until there are properly measured irreducible minimums after rent and council tax that are sufficient for good health and some participation in the community, both in and out of work, for the variety of households in the UK poverty will not be ended. Magistrates will have no option but to enforce fines and council tax arrears that are disproportionate to means.

The Rev Paul Nicolson, Chairman of Zacchaeus 2000 Trust.

An injured child: who did it?

David R Goodman, barrister.

Where a child has suffered non-accidental injuries, it is often unclear whether one or both parents were involved. It would be unsatisfactory to have to decide what to do on the basis that the most that can be said is that the parent was unable to protect the child from injury, when that parent might, in fact, be the abuser. Magistrates must be careful not to return a child to a possible abusing parent, but equally must take care not to deny a child its parent unless absolutely necessary. It is easy to guard against the danger of physical or sexual abuse by removing a child, but that removal itself may be an abuse if the child can be protected in the home. The House of Lords has set the test that should now be applied in such circumstances in *In re O and N (Minors) (etc) 2003*. If the court cannot say which parent injured the child, the court should proceed on the basis that each was a possible perpetrator. Split hearings will usually be necessary; if a definite finding can be made at the first hearing, that should be clearly stated, to assist social workers, psychiatrists etc when preparing reports for the disposal hearing. If not, a finding that a parent cannot be excluded as the perpetrator of the injuries is not the same as a finding that that parent did not cause them, and the court should proceed at the disposal hearing on exactly that basis: the parent has not been proved to have caused the injuries, but possibly did so. The court should look at each option, and decide whether the child will be adequately protected at that level, on the basis stated. Magistrates will be aware that social workers may assess the risk of further harm from both parents as high where they cannot ascertain which was the perpetrator, and should guard against that themselves, assessing the risk on the basis that the parent is a possible perpetrator, not the perpetrator of the previous injuries.

Digest of cases

Care proceedings

The parents of a child who is the subject of care proceedings may be compelled to give evidence, in full proceedings or in a split hearing: *In re Y and K (Minors) (Split hearing: Evidence) TLR 18.4.03.*

Disqualifications

Very long disqualifications are likely to be counter-productive, and should not usually be imposed, especially where the defendant is being sentenced to imprisonment. (8 year disqualification reduced to 3 years, for offences of driving while disqualified and excess alcohol): *R v Gitau 2002 Lextel 8.11.02.*

Off-road driving

It is an offence under s34(1)(a) Road Traffic Act 1988 to drive a motor vehicle onto or on any common land, moorland, or land of any other description which does not form part of a road. 'Land of any other description' means what it says; a village green with a track across it, which the public as a whole does not use as access, will not be a road, but will be 'land of any other description', so it will be an offence to drive onto or on it: *Massey and another v Boulden and another 2003 2 AER 87.*

'Custody'

'Custody', in an offence of escaping from lawful custody, means the same as in the Bail Act 1976; when the defendant surrenders to his bail, he is, until released by the court, in custody. Whether a person was in lawful custody at any given time will depend upon the facts, but he does not have to be under the direct control of someone to be in lawful custody. (Comment: The defendant was sentenced to imprisonment. He then ran out of the building. He was properly convicted of escaping from lawful custody, even though no security officer or escort was in court at the time. In my view, the situation would be the same if the defendant had run out of court before the magistrates had sentenced him to imprisonment, as he had answered his bail and had not been allowed to leave by the magistrates or any court officer): *R v Rumble 2003 167 JPR 205.*

Awarding costs

If refusing to award costs to a successful defendant, the court should give at least brief reasons: *R (on the application of Cunningham) v Exeter Crown Court 2003 CLR 340.*

Medicine and the magistrate

There are several medical conditions that may cause dilemmas on the bench. Sheena G Jowett JP and Nigel I Jowett MD FRCP explore a case of failing eyesight.

Case scenario: 'I'm sorry, I can't see you at the moment.'

An elderly lady stood before us. She looked frail and leaned heavily on a stick. We asked if she would prefer to sit, but she declined. The prosecutor outlined the case to which she had already pleaded guilty.

She had driven into a stationary car on a single-track country road at a speed estimated at 30 mph. There were no skid marks. The driver of the parked vehicle had sustained several injuries. She didn't know how it had happened.

The policeman attending the scene noted that she could not read the number plate of the police car and suggested that she had her eyes checked. The optician found bilateral cataracts and referred her to the local hospital. Following surgery, her sight returned to normal.

The lady told us that she had diabetes, but the Driver and Vehicle Licensing Agency (DVLA) was aware of her medical condition.

The medical perspective

Drivers of motor vehicles must be able to see. The legal standard is rather generous, and is met by being able to read a registration plate from about 25 yards*. This equates to a visual acuity of between 6/9 and 6/12 on a standard Snellen eye chart. Failure to meet this standard means that the individual is suffering from what is legally termed a *prescribed disability*, and their driving licence must be refused or revoked. It is the responsibility of the sufferer to inform DVLA if they have ever had, or currently suffer from visual difficulties using Form V1 (available from DVLA). It is an offence in law to drive with eyesight below the legal standard.

There are many reasons for impaired vision. In the elderly, cataracts are a particularly common cause. Most cataracts are small and do not affect vision, but with progression, the individual may notice that vision is a little blurred, rather like looking through frosted glass. As the cataract gets bigger and clouds more of the lens, it becomes harder to read and do other daily tasks, including driving.

Patients with diabetes are particularly at risk of visual loss, and are advised by Diabetes UK to have their eyes checked at least annually. This is because diabetes is the commonest underlying cause of blindness in people under the age of 65 years, and much is preventable or treatable.

Drivers with diabetes treated with tablets or insulin must notify their condition to DVLA. Applicants are required to submit a health questionnaire (Form DIAB1), which includes a compulsory declaration that they can meet the legal visual requirements (ie they can read a registration plate at 25 yards).

Where possible, DVLA make a licensing decision based on the information provided on the questionnaire. However, if further information is required, their medical adviser may contact the patient's own doctor and/or consultant, or arrange for physical examination by a locally appointed medical officer or specialist.

Considerations on sentencing

She had a clean driving licence, and had never been in trouble with the law.

At the time of the accident, this lady could not see, and legally should not have been driving. Whether she realised she could not see is an interesting consideration. Most drivers would feel sure that they could read a number plate from 25 yards, but how many of us have actually tried since our driving test! Why not try it now?

Whilst this lady must have declared that she could do the number plate test when applying for continuation of her licence, how did she know? Like most people when asked, it is likely that her ability to meet this standard was assumed; changes in her visual status would not necessarily be picked up unless she had routine eye checks as recommended to all those with diabetes.

The charge was driving without due care and attention, and the lady received a fine and three penalty points. The latter was redundant, as she had already returned her driving licence to DVLA, vowing never to drive again.

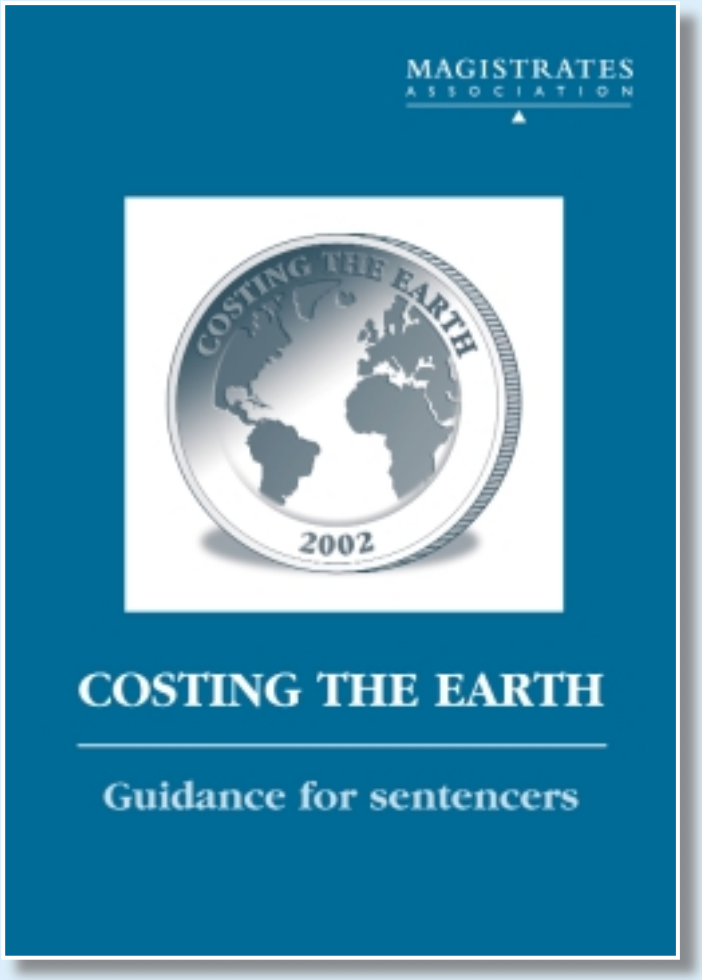
The *Magistrate* would welcome details of other cases with medical complications that could be highlighted in this page. Please contact the editors, outlining briefly the case scenario, by post or e-mail: magistrate@btinternet.com

Sheena G Jowett JP is a member of North Pembrokeshire Bench and Nigel I Jowett MD FRCP is Clinical Director of Medicine, Pembrokeshire and Derwent NHS Trust.

* The precise wording is 'to read in good light (with the aid of glasses or contact lenses if worn) a registration mark fixed to a motor vehicle and containing letters and numbers 79.4 mm high at a distance of 20.5 metres'.

'…everyone concerned with environmental protection has a use for a practical handbook like the present one…'

Lord Justice Sedley

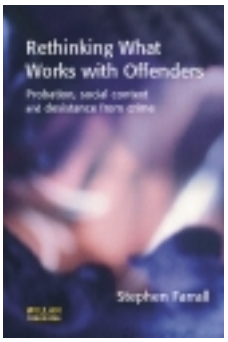


With guidance on assessing the seriousness of the crime, sentencing criteria and over 40 case studies, **Costing the Earth** is now available generally from the Environmental Law Foundation, price £25.95 plus p&p.

For more details or to order a copy
please call 020 7404 1030 or e-mail: info@elflaw.org

Rethinking What Works with Offenders: Probation, social context and desistance from crime

Stephen Farrall
Willan Publishing, Culmcott House, Mill Street, Uffculme, Cullompton, Devon EX15 3AT, 01884 840337
info@willanpublishing.co.uk
ISBN 1-903240-95-6
Price: £30 (hardback only)



The title of this book sums up very well what the book is about. The text can be split basically into two parts – the first four chapters give, what would appear to be, to someone without a background in criminology, a fairly detailed literature review followed by the methodology to be used for the study that forms the basis of the book. This would be especially interesting for those studying criminology and as such the book is well written in a formal academic style. It would also be of interest to magistrates familiar with or at least partially familiar with the subject and some knowledge of statistics.

The second part of the book would be of much more interest to magistrates, particularly those with an interest in the probation system, as it gives details of comments made by both probationers and their probation officers when interviewed by researchers. Some of these were quite revealing about the attitudes of those on probation towards life in general and to the help that had been given to them by their probation officer. Although there were no sets of circumstances that fitted everybody it was heartening that the same spurs such as finding a partner, getting a new job, getting older, not drinking as heavily and reducing, or ceasing, dependence on drugs were mentioned by many.

Frank Spowart Taylor JP
(North East)

Environmental Law & Regulation

John F McEldowney & Sharron McEldowney
Oxford University Press, Great Clarendon Street, Oxford, OX2 6DP, 01865 556767
ISBN: 1-84174-114-0
Price: £24.95

Despite its broad title, this book focuses on the use of standards and standard-setting in protecting the environment and human health. Part I addresses underlying issues and Part II addresses specific sectors. I would not regard the book as a 'must' for the practising lawyer or magistrate: in the authors' words 'its primary aim is to provide a framework and conceptual analysis ...'. But the book should be helpful to those wishing to add depth to their knowledge and understanding of the subject.

Part I contains six chapters. One, on The Enforcement of Environmental Standards, addresses the role of the courts. But, to illustrate the wider focus of the book, I shall address the chapter on Science, Risk Assessment and the Concept of Safety. This explains the use of science in standard-setting, and highlights how evolving science should lead to evolving standards. It goes on to describe some of the scientific techniques used in the assessment of environmental harm, notably ecotoxicology. Importantly, the chapter addresses scientific uncertainty and its various sources, and the relevance of the public perception of risk. But I was disappointed to find relatively little discussion on how standards should be set in the face of scientific uncertainty.

Part II examines many standard-setting instruments applicable in the UK regarding water, land and air. Regarding water specifically, the coverage is broad but some important instruments receive only a brief mention and there is no reference to the EC Water Framework Directive. The concluding chapter looks to the future.

Daniel Owen
(Barrister, Fenners Chambers, Cambridge)

The Village That Died For England

By Patrick Wright
Published by Faber & Faber
3 Queeen Square, London WC1N 3AU
020 7465 0045 www.faber.co.uk
ISBN 0-571-21441-X
Price £14.99p

This is a story about the invasion of a part of England. The invading forces were not German, or French, or Roman, or Viking. They were English.

On December 19 1943 the village of Tyneham, on the Dorset coast just east of Weymouth, was evacuated, most reluctantly, by its inhabitants on the orders of the British Army. Tyneham and its environs became a training ground for tanks and was never returned to its rightful occupants, despite solemn promises made at the time.

I make a point of not reading other people's comments on books I am about to review myself on the grounds that they may colour one's own impressions. I hope to be forgiven, therefore, for expecting a dry, dusty, pedantic account of the type favoured (in my unfortunate experience) by far too many military historians. I am glad to report that I was hopelessly wrong.

This book is not merely a recollection of a most regrettable(some would say disgraceful) episode in British military history. It is a meticulous, flowing evocation of a time gone by: of people, attitudes, customs and practices long gone. The places are still there, of course, but the period and feeling are not.

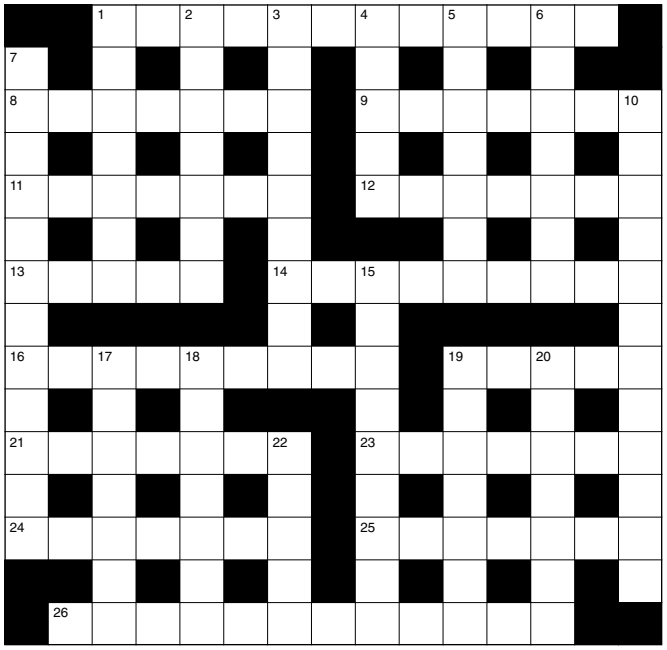
Read this wonderful book. I have never enjoyed the written word as much in my life. It is not often one finds one's self re-reading passages simply to enjoy them again. Give yourself plenty of time with this book, because that's what you'll be doing!

John Bladen
(Former member of the Barnsley Bench)

Crossword

Compiled by Sine Die

Compilers must use 15 square grids in which every alternate letter down must cross-check with a letter across, and vice versa. All grid entries must appear in *The Shorter Oxford*, *Collins* or *Chambers* dictionaries. Three or more entries must be in court or legal vocabulary.



NAME AND ADDRESS

ACROSS

1 Is it a reasonable excuse for swearing in public? (8,4)
8 Pretentious figure has put star characters to good use. (7)
9 Lists of Indian desserts that the man misses out on. (7)
11 Primitive instincts applied to one in charge. That's daft! (7)
12 National Union of Railwaymen give voice as a caring profession. (7)
13 Acts of entitlement or derring-do. (5)
14 Cross about its recent mismanagement. (9)
16 Application of moral reasoning when something caustic is thrown. (9)
19 Lever open to find treasure. (5)
21 Salad ingredient – only the tip is visible? (7)
23 Point where representative is bound to be bailed out. (7)
24 Nathan mostly takes chemical balance on board; it provides illumination perhaps. (7)
25 View of symbol of mathematical precision embedded in pungent vegetable. (7)
26 Rioting rabble of a church I attend; it's no excuse for this misdemeanour. (6,2,4)

DOWN

1 Only frozen water, nothing else; that's fair. (7)
2 Insufficiencies occurring when threads are pulled. (7)
3 The cat is caught disturbing the religious instructor. (9)
4 Flashing signal which doesn't start until you make it straight. (5)
5 Command precedes the Queen. Who says so? (7)
6 Pet goes up onto part of roof. Feeling touchy perhaps? (7)
7 In court catchment area, the jury's heard, in a manner of speaking. (12)
10 Vision of grained translation into immediate note recognition. (5-7)
15 Berated corrected work. (6,3)
17 Start street crier, who clears the way. (7)
18 Derailed train that is in a state of immovability. (7)
19 Father takes most of April and a kick start to prepare seasoning. (7)
20 Opening with the first letter. (7)
22 Downward force on broken stringed instrument shown on chart. (5)

Please send your entries for the Summer competition with your name and address to Mrs T Reed JP, Melverley, The Warren, Ashtead, Surrey KT21 2SP by 1 August 2003. First correct entry will receive a £15 book token. The winner of the May 2003 competition was **Ms Sue Dodd of Warrington**. SOLUTION TO JUNE PUZZLE **Across:** 1. Forfeited; 6. Refit; 9. Criminal offence; 10. Lawman; 11. Skittles; 13. Seychelles; 14. Spur; 16. Read; 17. Steeliness; 19. Terrible; 20. Courts; 23. Hearsay evidence; 24. Deeds; 25. Riderless. **Down:** 1. Focal; 2. Railway carriage; 3. Epitaphs; 4. Tray; 5. Doorkeeper; 6. Refute; 7. Final appearance; 8. Treasures; 12. Platelayer; 13. Scratched; 15. Disorder; 18. Kiosks; 21. Seeks; 22. Diva.

Advert(s)

Court rise

JP Winger shares amusing moments in court. If you would like to contribute please write to the: Magistrate, 166 Broomwood Road, London SW11 6JY. E-mail: magistrate@btinternet.com

Pecking order

Neath magistrates in South Wales were intrigued when a raven began tapping on the courtroom windows and skylights. One solicitor told the local paper: 'Defendants of a nervous disposition are quite chilled by the sight of a big black bird looking down on them.' He said a rumour was going round that the bird had been a criminal in a past life, and had returned to haunt the place. A spokesman for the Royal Society for the Protection of Birds said the raven probably thought its reflection was another bird trying to muscle in on its territory. 'Put some paper over the windows,' he advised.

Room service

I am grateful to the magistrate who let me know about the following sign in a hotel room in Thailand. It read: Please do not bring solicitors into your room. It may have been written by the same person who created the following sign, spotted in a Paris hotel lift. Please leave your values at the front desk.

What a dope

My thanks to Ann Clayton JP of the Liverpool Bench for jotting down the following question, posed by the defence solicitor to his client in the youth court. 'Was it your idea to enter the derelict house to smoke a spliff, or was it a joint enterprise?'

Man of mystery

Court exchange reported by overseas correspondent Graham Capewell.

Lawyer: Are you married?

Witness: No, I'm divorced.

Lawyer: And what did your husband do before you divorced him?

Witness: A lot of things I didn't know about.

Transparent justice

Radiographer Hilary Winfield was chairing a court in Kettering, Northants, when she realised that she had recently X-rayed the defendant. She asked the defence solicitor if he wanted her to step down. He replied that he was rather concerned that she would be able to see right through his client. Thank you Peter Turner JP.

Hats off

The *New York Times* reported the fate of a teenager who was in court on a traffic summons. Politely taking off his hat when the judge walked into the courtroom, the teenager blushed as a marijuana joint fell from his hat and dropped to the floor. The teenager is now doing jail time. Thanks to Chris Smith JP, Dudley for spotting the report.

Ceps maniac

The HGV driver in the dock had pleaded guilty to several tachograph offences. By way of mitigation, his solicitor explained how his client's work involved delivering mushrooms from Northern Ireland to England. He helpfully added: 'Because these are fresh mushrooms, his work schedule means that he cannot keep within the law.' Thank you, Paul Helmn JP of Chorley Bench in Lancashire.

YESTERDAY'S JUSTICE

A copy of a letter to the Lord Mayor of London was published in *The Magistrate* of January 1941.

1st January 1941

My Lord Mayor,

On behalf of the members of the Magistrates' Association, I should like to express to you and the members of the City Corporation our profound grief at the destruction of Guildhall by enemy action.

This Association came into being in the Council Chamber 20 years ago, and since that time we have met there annually under the auspices of the Lord Mayors. Our members, I know, have many pleasant recollections of the courtesy extended to them by all concerned, and I am sure I am voicing their wish when I say that we sincerely hope that the Guildhall, with all that it symbolises, will rise again to carry on the traditions with which it has always been associated.

I am, my Lord Mayor,

Yours faithfully,

E. Marlay Samson, Chairman

Magistrates' Association