

Magistrates' Courts, Neighbourhood Justice Panels and Out of Court Disposals: Consequences for Defendants' Rights and Summary Justice

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Out of Court Disposals

- Since 2003 the number of out-of-court disposals administered each year increased by 135% from 241,000 in 2003 to 567,000 in 2008, peaking in 2007 at 626,000.
- Official stats show drop of 42% in last 5 years
- Convenience of avoiding court process = more likely to admit guilt when innocent?
- Broad inconsistency and no supervisory mechanism
- Magistrates report minor offences only being tried in court when defendant requires an interpreter – racial discrimination?

Police Decision-Making

- *Royal Commission on Criminal Procedure* set up under Sir Cyril Philips (1978) found:
- The police should not investigate offences and decide whether to prosecute. The officer who investigated a case could not be relied on to make a fair decision whether to prosecute
- Different police forces around the country used different standards to decide whether to prosecute
- The police were allowing too many weak cases to come to court, this led to a high percentage of judge-directed acquittals
- ‘Why, if the police in 1978 could not be relied on to make a fair decision about whether to prosecute, is the judicial system now giving them back that decision in the form of issuing cautions?’
(*Magistrate*)
- Magistrates see it being job of CPS to oversee – not magistrates or PCCs as has recently been suggested

Neighbourhood Justice Panels

- Justice Panels are an alternative disposal for first-time, low-level offences that would normally attract a Reprimand or Final Warning for young offenders or a Caution for adults.
- Main motivation for offenders participating in Panels is the opportunity to avoid criminal proceedings (Clamp et al., 2010)
- Some magistrates reported, because Panels are not part of the formal justice system, they appear to operate 'outside any legal constraints' and 'can impose whatever solution they want'

Tensions Between Courts & Panels

- 'This is exemplified by a case that I met in the youth court the other day. He was a bit of a local tearaway that had finally run out of cautions and final warnings and had appeared in court for his first offence/conviction. The bench, as the defence solicitors love to point out to us these days, was legally obliged to impose a referral order and send him to the first group of "local, trained volunteers" for them to impose a suitable solution to his behaviour. The trouble was that whilst the bench was trying to sort out a suitable date for his first appointment, we discovered that he already had an extensive career of nuisance behaviour on the estate on which he lived. The problem with fixing a time/date for his appointment was that whatever local justice system was working in the area had already imposed a 12 hour curfew on him that was being controlled and monitored by a local PCSO. A restriction on somebody's liberty is a pretty serious matter in the magistrates' court and we cannot impose it without pre-sentence reports etc. and there is a limit to the length of time for which it can be imposed. Not so on the estate in XXXX where whole groups of young people had been more or less permanently denied the right to go outdoors after 6.00 pm.'
- (Magistrate)*

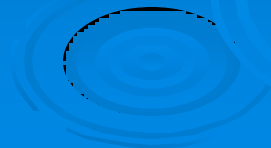
A Role for Magistrates?

- Some magistrates see a role for themselves in local justice in order to:
- Ensure that the process is fair to both the victim and offender
- Ensure that the rights of the offenders are protected
- Ensure that the solutions are fair and proportionate
- Ensure that local residents don't use the system to 'harangue or humiliate offenders' – thus turning it into 'something of a kangaroo court'
- Decide if the offender should be put into the court system (in the same way that the magistrates' court commits to the crown court) rather than dealt with outside of it

BUT – also some strong resistance from the magistracy re changes to the judicial role which would require them to participate, see also Donoghue, J. (2012) 'Anti-Social Behaviour, Community Engagement and the Judicial Role in England and Wales', *British Journal of Criminology* (52): 591–610

Conclusion

- Big division of opinion over out-of-court disposals including judicial participation in local panels
- May be worth thinking about expanding the remit of panels to include referrals from the court....



Thank you

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