Written evidence from the Magistrates’ Association

The Magistrates’ Association (MA) is the independent membership organisation that represents some 24,000 magistrates across England and Wales. The MA is grateful for the opportunity to respond to this select committee inquiry.

Magistrates are in an ideal position to respond to this inquiry as they give their time freely to serve the interests of the provision of justice in England and Wales. They are drawn from the community and are of all ages and backgrounds. They bring with them a unique mix of commitment, a sense of fairness and an obligation to do right to all without fear, favour, malice or ill will. Magistrates’ backgrounds, life skills and experiences, together with their position in the communities that they serve, means they hold a unique holistic view of the criminal justice system, unfettered by the demands of ‘this statistic against that sound bite’.

It is of course the case that magistrates in their capacity as judicial office holders follow the rule of law and operate the processes involved therein. However that does not, nor should not, preclude magistrates from expressing views in support of, or raising concerns about the practical application of policy, principles and practice. It is in this context that the following representations are made.

Summary

- The MA believes that the criminal justice system (CJS) does not need constant change according to the latest fad, but instead be given time to operate cohesively across all agencies with better communication between those who make the laws, those who to investigate crime and protect the public and those who administer the law under due process. These responsibilities have become blurred with those who are there to investigate crime increasingly operating as witness, prosecutor, judge and sentencer.

- While cost must necessarily be an issue, justice should not suffer. The CJS exists for the victim and the community and should attempt to reduce the chance that members of the public become victims. The CJS therefore needs to devise methods to reduce offending rather than reduce cost.

- As magistrates we must play our part in crime reduction. To do this there needs be a better relationship between that part of the judiciary that comes from the local community and others within the local and national CJS. The idea that there is no magistrate on the Board of HMCTS, when we are the prime users of the system (dealing with 95% of criminal cases) is strange.

- Of ongoing concern is that the components of the criminal justice ‘journey’ are not ‘joined up’ across various government departments. Criminal behaviour is in the main carried out by feckless individuals whose backgrounds are often intergenerationally criminal and whose lives are chaotic and undisciplined. We should stop making assumptions based on our own experiences, but seek to understand more about their criminal behaviour if we are really to reduce crime.
What is the government’s approach to cutting crime?

1.1 Any government has to balance two potentially opposing views when dealing with the CJS. The first is the populist view featured (and largely led) by the media which tends to be focused on revenge and retribution and which regards a non-custodial sentence as leniency. The second is the view from the professionals and practitioners who would wish to change behaviour patterns among those who persist in criminal behaviour. For these, there is an understanding that a non-custodial sentence is more likely to reduce reoffending. While these and other tensions continue to exist it is difficult to imagine how a cohesive approach can be made that will lead to a reduction in reoffending, either by persistent offenders or those new to criminality.

1.2 A second balancing act is that of cost versus effectiveness. For example, problem solving courts were established on a piecemeal basis in an attempt to understand offenders and by making them part of the process to try and help with their chaotic lifestyles. These largely ceased because of funding. Another example is that of the cost of prison places. While all sentences other than custodial sentences are expected to be completed in full, the public is often surprised that custodial sentences are immediately halved even after discounting for a timely guilty plea. There have been several recent high profile examples of this with offenders being released well before the stated sentence has been completed. This does little to reassure the public that sentencing is process driven, consistent and fair.

1.3 Nowhere is the logic more confused than with regard to the court estate. In one breath a comprehensive review of the court estate is being announced in order to develop a planned approach to the provision of justice (and not before time). Days later a consultation is launched to close another eighty courts in the interests of saving money.

1.4 Government publications make mention of factors and issues deemed important to cutting crime, for example the need to reduce recidivism. However this seems to be carried out in a piecemeal fashion and with opposing principles often being espoused at the same time. The MA questions whether the drive to reduce recidivism is based on an understanding of what drives criminal behaviour or whether it is based on “teaching them a lesson”. The MA is not aware of a comprehensive, fully articulated criminogenic model that intersects the criminal justice system as a whole (including the police).

1.5 The role and efficacy of the various crime cutting measures is also opaque. For example, the balance between those cases that need to be dealt with inside a courtroom because of the seriousness of the offence, the recidivism of the offender or the views of the victim is left to local interpretation by police and CPS, and based more on the potential cost of bureaucracy than on the need to change behaviour. There is little or no analysis reported to the public or the judiciary as to the effectiveness of either, as far as the MA is aware.

1.6 It is a matter of some concern that the magistracy, who are responsible for 95% of all sentences, are not made aware of the relative effectiveness of the different disposals available to them. The removal of Probation Liaison Committees as a statutory body has severely affected the relationships between the judiciary and the Probation Service. The removal of bench court committees (as a cost cutting measure), where local issues could be discussed with all agencies, has also...
been a retrograde step. It is difficult to see how any initiative to cut crime can succeed without the full participation of the magistracy and judiciary at large.

To what extent is the approach taken cross-departmental and how are resources for such policies – from within and outside the criminal justice system – allocated and targeted?

2.1 The MA is of the view that in many critical areas, government policy remains simplistic and in some cases divorced from reality. Crime and anti-social behaviour (particularly at the lower level) has its roots deep in society, parts of which are dysfunctional through the impoverishment of opportunities, housing, education and meaningful employment. There needs to be a wider ownership and responsibility from individual government departments, where currently there are gaps.

2.1 Crime is a journey for perpetrators, victims, those that investigate, prosecute, adjudicate and deal with post-sentence issues. Government departments (apart from the Treasury, Home Office and Ministry of Justice) such as Health, Education and Work & Pensions all have a role to play in this journey. Of concern is that different departments have seemingly different priorities, funding issues and direction.

2.2 The MA is concerned that notwithstanding the efforts of Ministers and officials there are too many ‘break points’ and areas of potential conflict to provide a holistic governmental response to the criminal justice journey identified here.

2.3 A recent move has been positive. That is the move to understand that those released after a short term in custody are effectively set up to fail because they often return to a chaotic lifestyle among an offending peer group, and because of this will be more likely to return to offending due to a lack of support. Benefits will be late in payment, lack of accommodation and other support mechanisms do not exist because it is wrongly supposed that offenders are the responsibility of the criminal justice system alone.

2.4 Magistrates see a large proportion of offenders with mental health issues, and despite efforts to divert this group away from the CJS, magistrates often have no option but to deal with them in the same way as other offenders. This helps no-one.

2.5 It has always been an issue that an offender who wishes to rid themselves of a substance abuse habit (which often leads to offending) views the CJS as their best way to a course of treatment.

2.6 Similarly, offenders who have accommodation needs see a prison sentence as temporary relief, rather than as a deterrent.

How reliable is the evidence on which these policies are based?

3.1 The MA recognises and supports the steps taken across government to provide a framework for ‘fit for purpose’ evidential baselines. However differences in measurement and priorities between departments still creates problems. The fact that each constituent part of the criminal justice ‘journey’ does not fit in a holistic
way means that the process is littered with casualties and inappropriate outcomes for many.

3.2 The target culture, though not as prevalent as previously, still exists. This means that different agencies are seen to be measured by their own isolated success rather than as part of a whole. The fact that serious offences are still being disposed of without troubling a court and that increasing numbers of out of court disposals (OOCDs) are being handed out to those who are repeat offenders (in the interests of speed and efficiency rather than of effectiveness) means that the revolving door of offending gathers momentum.

3.2 The major concern, therefore, is that the criminal justice ‘journey’ and its component parts are not ‘joined up’.

What impact have recent spending reductions had on the implementation of crime reduction policies, and the way in which resources for crime reduction are channelled at local level?

4.1 The MA recognises that some significant changes are taking place, without necessarily welcoming them all. The effect of the creation of PCCs is too recent to pass comment on, but initial comments made by some of them (particularly on their perceived role in sentencing) indicate that they are not necessarily aware of the independence issues about the CJS, and their role within it. Expectations may need to be discussed.

4.2 It is clear that reductions in spending, whether from the government directly or by way of altered support for local authorities, are having a significant impact. The MA is concerned that valuable locally driven initiatives which support the needs of those likely to offend or reoffend, are under enormous pressure.

4.3 Ongoing spending cuts undermine professional confidence and stifle good initiatives. Offenders require the continuity of professional, dedicated and interested support. The MA believes that mentors are a key resource in the support of those likely to offend or reoffend, yet their numbers are being reduced in the Probation Service due to funding.

What contribution do existing sentencing, prison and probation policies make to the reduction of crime?

5.1 We do not know. The MA believes that good evidence of the effectiveness of these measures should be made available to sentencers so that sentences can be constructed, at least in part, with this in mind. If magistrates are to play a larger role in crime reduction then Sentencing Guidelines must be tuned to achieving this and magistrates need to be trained to deliver it. Magistrates require reports to inform them of the current crime landscape (and the effectiveness of their disposals).

5.2 The MA welcomes the recent change in policy for those being released from short prison sentences being required to engage with the Probation Service. It is a change that has been long-advocated by the MA and others. However the level of engagement needs to be more than a simple ‘meet and greet’ and must involve robust mentoring and support that will have a positive effect to reduce criminal behaviour.
5.3 It is the MA’s view that the majority of repeat offenders are a relatively small number of dysfunctional people with multiple problems. Whilst their offending may be viewed by the government as a low level of seriousness, it is not always one that is shared by victims or the community. It takes an extraordinarily large amount of time, effort and financial resource across a range of areas to assist this group in terms of recidivism. The MA is concerned that the proposed changes to probation involving PbR will adversely affect the good work done by the Probation Service (and others) in this area.

5.4 Short term prisoners form a bulk cohort of repeat offenders. This is well known. The fact that they are also the most likely cohort to reoffend may have something to do with the fact that they get little or no assistance while in custody that might change their behaviour. The revolving door for such offenders is an obvious consequence of the lack of attention they get in prison. There remains a need for the short term prison sentence which serves to punish non-compliance with other orders and to offer relief to communities from repeat criminality. One idea that might yield better results could be a different estate for short term offenders, one that is geared to local needs instead of incarceration in an establishment specifically designed for long term prisoners.

How cost-effective and sustainable are the government’s strategies for punishment and reform and their proposals for transforming rehabilitation?

6.1 The MA has serious concerns that policy and strategies are being rolled out with insufficient regard to the issue of unintended consequences. The MA believes that policy based on limited, highly focused and funded pilots is not a sensible or sustainable way of tackling punishment, reform or rehabilitation, particularly when those pilots are not assessed or analysed before they are rolled out.

6.2 Overall, the MA believes that much good work is being done with high risk and serious cases. However magistrates know only too well that lower-level crime and criminal activity seriously affects communities and undermines confidence in the CJStS. Crimes perpetrated at the lower order of seriousness are often committed by people with extraordinarily complex issues. These ‘issues’ cannot be wished away by a bit of Community Payback or RJ. They go to the root of this demographic of people and cover a whole range of issues including social exclusion, poor parenting, health, education, job prospects and self-esteem. The MA has concerns that PbR will not adequately deal with these issues in a holistic way.

6.4 The MA also has concerns that both the measurement philosophy of a binary system of counting and the exclusion of all of those offences which never see the inside of a court may lead to game playing by many of the providers. There are other major concerns about creaming and parking, where only the “valuable” offenders will be dealt with.

6.3 The MA has concerns that the skills and professionalism of the Probation Service will be seriously eroded by the introduction of PbR. There are many examples of good practice where the Probation Service works collaboratively with third sector and other providers, but the ‘ownership’ of the offender has always remained within the Service. It needs to be highlighted that not everyone is motivated by financial inducements. Members of the Probation Service are not so motivated
and magistrates themselves have no financial incentive to give their time freely in the interests of the CJS.

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