Youth Courts: The Crime and Disorder Act and Beyond

Lynne Ravenscroft JP
describes the tensions between punishment and welfare within the New Youth Justice.

Since 1908 when Juvenile Courts were first established in England and Wales, there has been a constant tension between the conflicting aims of punishment and welfare, as demonstrated by the legislation and the responses to it, whether by the courts themselves or the other agencies in the criminal justice system.

Punishment and welfare

"It shall be the principal aim of the youth justice system to prevent offending by children and young persons." (Crime and Disorder Act 1998). Now, for the first time ever, magistrates must impose sanctions that, to the best of their knowledge, aim to prevent offending. This should mean that they must be told the results of their sentencing in individual cases, so that where their sentence has not prevented offending, they will be able to make a more informed judgment in the future. This will be a time-consuming but nonetheless essential function for all concerned. As someone who sat in a youth court piloting the new orders from September 1998, I was not aware of the effects of the sentences we passed, nor of any mechanism or system that allowed this to happen.

Another important change was the removal of 'doli incapax'. From 1908, the courts have been required to be on their guard when dealing with children under 14. Until now, the prosecution has had a duty to rebut the presumption, 'incapable of harm', by proving that the child knew at the time of committing the offence that it was not just naughty, but seriously wrong. This now means that a child of 10 is seen to be just as culpable as a seasoned criminal in his twenties.

Fast-tracking

We should take note too, of the conflicting measures which require the system both to be speeded up and to have a multi-agency approach to dealing with young offenders, and to take account of the victim's views. Surely, a persistent offender will require investigations into his/her family life, education, health, social and offending behaviour, which may require expert knowledge rather than just that of those present on the YOT. Unless huge financial resources are provided to enable sufficient numbers of qualified people to respond quickly to requests for a diagnosis, speeding up the process will not happen.

This incompatibility is nowhere more apparent than in the Reparation Order. This order reflects the importance in the Act of making young offenders aware of the effects of their offence, by understanding the position of the victim and perhaps by making some form of recompense. This can be done either through writing a letter of apology, meeting the victim and discussing the offence, or doing some form of work, either for the victim or the community.

With fast tracking measures, some children are appearing in court within days rather than weeks, when the YOT may not have had either the time or the inclination to contact the victim. There are examples of magistrates expecting victims to be contacted immediately, not appreciating the complexities and sensitivity required, nor perhaps realising the immense demands that writing a letter of apology can make on a youngster. Nor should the order be seen as a mini-community service order, where 'a bit of hard work will do him good', rather than as an opportunity for the offender to understand and value the victim's position and in turn to be valued as a young person who can contribute to society.

The court must, in most cases, make a reparation order, yet the inflexibility of the Final Warning system means that extraordinarily petty offences are being dealt with in the courts, such as the theft of a £1.40 sandwich, which would have been dealt with by a caution in the past.

The Action Plan Order, lasting 3 months, could be regarded as a mini supervision order or even a compulsory enactment of a Final Warning intervention, but should be regarded as a serious sanction as it is a community penalty, and seen by the legislators as a higher tariff than a 12-18 hour Attendance Centre Order. Leisure activities, guidance, better health provision, extra tuition, a curfew condition, and time at an Attendance Centre can all be included. The order can be reviewed by the Court at 21 days, but this is a time-consuming measure, requiring a written report from the supervising officer, and should only be used if there was some doubt about the feasibility of a part of the order, rather than to check up on progress. Breach proceedings, always difficult when dealing with adolescents, are made even more so by the shortness of the period of the order. Perhaps this is fortuitous.

Parenting

Guidance through the Parenting Order, whose concept as a compulsory measure was resisted by many, is proving to be popular with most parents and magistrates. This confirms the original view that parents are desperate for help and advice in bringing up their children, and many YOTS are providing much needed courses which parents readily accept on a voluntary basis. We should therefore beware of comments suggesting Parenting Orders are a failure because statistically few are made. Parents who do reject this help should be held accountable through the provisions of the 1989 Children Act: 'harsh and erratic parenting' is unlikely to improve

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with threats of financial penalties or even custody.

The court *must* give reasons for not making a reparation order. This must be proportionate to the seriousness of the offence, as with all sanctions, but as yet, there are really no guidelines. Without them, a consistent approach across the country is hardly feasible, and rightly or wrongly, in some areas it may be the YOT that is setting the standard, and in others the Youth Court magistrates. The Magistrates' Association is currently drawing up new guidelines for youth courts. Bearing in mind the multi-agency membership of the Sentencing Advisory Panel, it might be pertinent to inquire how widely the Association is consulting or involving others in its deliberations. Without the right starting point in the structured decision-making process, outcomes will be seriously skewed.

DTOs

The new custodial sentence, the Detention and Training Order, where half the sentence is spent in secure accommodation and the other on supervision back in the community, has a seductive tone for magistrates. Faced with a youngster, who has not been in school for probably a year, spends nights on the streets, breaks into houses for food and cash, misuses substances and is extremely vulnerable to the usual predators, the idea of a secure boarding environment, with discipline, education, regular meals and health checks, is extremely attractive. Hampshire doubled its custodial sentences whilst piloting the raft of lower measures (Raines 2000).

Attractive, that is, until you look at the research. A similar institution to the Medway Secure Training Centre, the Lisnevin Training Centre in Northern Ireland had reconviction rates of 100% in 1995 (Howard League 1999). Thus, such custody is extremely expensive and totally ineffective, if not positively harmful. This is clearly incompatible with the primary aim of the Act, the prevention of offending. Surely to comply with the law, we must use the *restorative, rehabilitative, targeted* programmes which we know can fulfil that aim, and abandon the punitive approach to sentencing that has been so discredited.

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