

Referral Orders – more than the sum of their participants

Rod Earle surveyed the members of Youth Offender Panels to see how these volunteers 'at the gateway' administer justice.

Referral orders provide a new gateway into the criminal justice system. Over 5000 volunteers are positioned at this gateway, resulting in new levels of public participation in the administration of youth justice. Since April 1 2002 any young person pleading guilty to their first offence is likely to receive a referral order (see box). This order is unlike any other in the criminal justice system because it is administered by volunteers from the community. It is also unique in allowing much wider participation in the decision-making processes of a court order. This participation can include not only the young offender but also his or her parents, the victim(s) and any other significant individual, as well as representative members of the local community.

Volunteers: from, for, or of the community?

Home Office guidance advises YOTs that panel members should be 'properly representative of the community' (Home Office 2000). In the pilot areas initial recruitment was constrained by tight deadlines. This contributed to a slightly skewed first cohort of volunteers in which older, white and female volunteers were over-represented. Relatively few had backgrounds in manual work or were unemployed. Outside of the more metropolitan pilot areas, such as Nottingham City and West London, minority ethnic participation was limited. Being 'representative' of diverse and complex communities is intrinsically problematic (Crawford & Newburn 2002). Most pilot YOTs aspired to a model that sought to reflect the make-up of the local community principally in terms of ethnicity and gender. For most of the pilot period it remained more of an aspiration than a reality. It was hoped that such diversity as was achieved might allow panel members to be matched with offenders, making the experience less remote and formal. Thus, for example, in West London the parents of a young black offender could consider the terms of his/her contract among a largely black group of people meeting one evening in a local library. The extent to which such a group would in fact have anything in common reflects the complexity of the idea of

representative volunteers; its problems and potential. By the end of the pilot there were indications that targeted recruitment, developing experience and further community contacts had attracted more, younger, minority ethnic and male volunteers. Becoming a Community Panel Member (CPM) requires considerable commitment but they quickly established themselves as enthusiastic and energetic participants in the new process. As one YOT manager noted "They are a very confident group of people. They are a force to be reckoned with".

For some YOT workers such integral participation of members of the public provoked mixed feelings. They found it difficult to reconcile the current emphasis on evidence-based practice and risk assessment with transferring decision-making power to unqualified members of the public. However two staff surveys revealed widespread, durable and emphatic support for the referral order

The referral order was introduced in England and Wales by *The Youth Justice and Criminal Evidence Act 1999*. If a young person pleads guilty to their first offence, and the magistrate or youth court in which they are appearing does not impose a custodial sentence, an absolute discharge or a hospital order, it must impose a referral order. The order can be of 3-12 months duration and is activated by a contract agreed at a subsequent Youth Offender Panel (YOP) meeting consisting of:

- two volunteer Community Panel Members (CPMs),
- a member of the local Youth Offending Team (YOT),
- the young person (accompanied by parents/carers if under 16),
- the victim(s), if they so wish;
- any other relevant adult(s).

Upon completion the contract is considered 'spent' under the terms of the Rehabilitation of Offenders Act 1974. Referral Orders were piloted and evaluated in 11 Youth Offending Teams during 2000/1 and then introduced nationally from 1 April 2002.

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(Newburn *et al* 2001). Both YOT staff and volunteers appeared committed to forging a working partnership in largely uncharted territory. This partnership though fraught with tension, and uncomfortable at times, appears to be mostly creative and pregnant with possibilities (Earle and Newburn 2002).

Participating in a new process

Much of the referral orders' radical potential hinges on the active participation of young offenders, their parents, and, where possible, victims in the panel meetings themselves. The evaluation collected extensive monitoring data on those who attended panels. These data were augmented by intensive observation of some (130) panels to identify the dynamics at work. It was most common for a young person to attend a panel with a single adult, usually their mother. Only relatively rarely were other significant adults drawn into the process. In this respect referral orders do not seem to be operating as inclusively as they might and the burden of participation seems to be taken up disproportionately by women. Observers recorded the extent of contributions within the panel meeting. As might be expected given their role in structuring the meeting, CPMs contributed most and were most directive. Young people in the meetings were however far from passive. Nearly half (49%) made 'lengthy and full' contributions, while a further large proportion (40%) made 'short but several' contributions. Only 10% were noted as offering 'monosyllabic' responses. Parents were also observed to make frequent and meaningful contributions. Over 80% of contract elements agreed at observed panels were 'actively' accepted by the young person. That panels included a process of deliberation of contract elements, rather than a simple rubber-stamping of a plan, is evidenced by the fact that nearly a fifth (18%) of suggested elements were rejected. Just under half (40%) of these were rejected by the young person. However relatively few contract elements were generated by parties other than the YOT or CPMs.

Absent victims

Throughout the period of evaluation YOTs had difficulty in meeting the expectation that victims could and would attend panel meetings. In only 13% of cases where it might have been possible did a victim actually attend a panel. Those that did attend were largely positive about the experience and even more supportive of the principle. Almost all the victims contacted, including those that did not attend a panel, described panels as a 'good idea'. They were most critical of the barriers that limited their involvement. Where victims did attend their impact was widely acknowledged as significant in altering the dynamics of the panel, largely in a constructive manner.

A new image

The final evaluation report concluded that referral orders had established themselves as novel 'participative and deliberative forums in which to address young people's offending behaviour' (Newburn *et al* 2002). They are not readily reducible to the sound-bites that characterise some other criminal justice reforms, perhaps because they run counter to the punitive logic of bigger cages and longer chains. By contrast, they are refreshingly democratic. As Raymond Williams once noted 'The symbols of democracy, in the English mind, are as likely to be the institutions of power and antiquity, such as the Palace of Westminster, as the active process of popular decision, such as a committee or jury.' (Williams, 1961). Youth offender panels, which have something of both the committee and the jury about them, stand at the gateway of a criminal justice system still infused with the antique symbols of monarchy, but they represent, in some small but not insignificant way, an advance of the democratic impulse.

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