CJM
CRIMINAL JUSTICE MATTERS

A LOST OPPORTUNITY?

Juvenile Court or Youth Court: What's in a Name?

The Criminal Justice Act 1991 now categorises 17 year olds, for the purposes of trial and sentence, as young persons under the Children and Young Persons Act 1933 rather than as young adults. The 1991 Act also makes substantial sentencing distinctions between 10 to 15 year olds and the 16 and 17 year olds, and changes the name from juvenile to youth court. This article suggests that renaming the court, in combination with other provisions, is an example of the confusion of purpose in this, as in other recent Criminal Justice Acts.

Peter Dalrymple

A special jurisdiction

The juvenile court has emerged in recent years at the vangard of reform in the criminal justice system. From 1908 until 1991 proceedings involving the protection or control of children, and most criminal proceedings against defendants over the age of 10 and under 17 years old, were heard in courts with a special jurisdiction in regard to children and young persons. From 1933 the juvenile court as we know it developed, and magistrates were elected to the juvenile panel on the basis of their experience of or interest in young people. The dual care and criminal jurisdiction, which lasted until implementation of the Children Act 1989, has always been unsatisfactory particularly in care proceedings, where critical decisions affecting the lives of children in need of care and protection were made. These proceedings were quasi-criminal in nature, and heard in a forum which was part of the criminal justice system. On the other hand in both types of proceedings the juvenile court was under a duty to reach its decisions 'having regard to the welfare of the child' (Children and Young Persons Act 1933 s44), and over the years the inherent interest of the work of the court attracted many high quality magistrates with a real concern about both children in need of care and protection and young offenders.

Alternatives to custody

In recent years many of these magistrates have been convinced that custodial sentences for young people were to be avoided in all but the most extreme cases. There is no doubt that this was a critical factor in the reduction in the custodial sentencing of 14 to 16 year olds, through the increased use of community based alternatives. The positive outcome of the fortuitous combination in the 1980s of helpful departmental guidance on cautioning, positive social work practice with young offenders, substantial funding for community based projects and underpinning legislation has been noted by the author elsewhere (1).

During the decade from 1981 to 1991, after the dramatic rise in court appearances and the resulting use of custody during the 1970s, the numbers of children and young people appearing in most juvenile courts was dramatically reduced by official encouragement of the widespread use of cautioning (2). In the same period the number of males aged from 14 to 16 years sentenced to custody for indictable offences, mainly by magistrates juvenile courts fell from 7,400 to 1,600 (3).

In the White Paper 'Crime Justice and Protecting the Public' (4), the rationale for transferring 17 year olds to the juvenile jurisdiction was clearly spelt out. The Government's view was that there is little to choose between most sixteen and seventeen year olds and that they should all, therefore, be diverted from court by the maximum use of cautioning, and that where they are proceeded against it should, for the purposes of trial and sentence, be in a court that separates them from, instead of treating them as, adult offenders. The additional benefit was seen to be that of appearing before justices who are members of a panel with a special interest in young people.

Confusion of purpose

The change appears well-grounded: seventeen year olds are minors in law; the move is in line with practice in most other Western European countries; it has been widely welcomed by those working with young offenders; and it is supported by the general limitations on the use of custody for defendants of all ages enshrined in the Act. At this early stage, of course, the actual outcome cannot be predicted. There are grounds for concern, however, that the details of the reform present yet another example of the Janus like quality of recent Criminal Justice Acts: namely that the provisions look in one direction towards giving 17 year olds the benefits of being treated as juveniles, whilst on the other providing the courts with, apart from restriction on the length of custodial sentence, the whole range of adult penalties, thus making 16 year olds liable to sentences not previously available for that age group. It is suggested that changing the name from 'juvenile' with its established welfare orientation to the potentially threatening 'youth' court exemplifies the confusion of purpose inherent in the legislation.

References

(1) C. Ball, 'Young Offenders and the Youth Court'. Criminal Law Review, 1992, pp 277-287.
(2) Home Office Circular 14/85
(3) R.Allen, "Out of Jail: the Reduction in the Use of Penal Custody for Male Juveniles 1981-1988" (1989) 30 Howard Journal 30-52.
(4) Cmnd. 965 (1990), HMSO.

***Caroline Ball** is Lecturer in Social Work Law, University of East Anglia and Editor of The Magistrate.*