



COURTING CHANGE

The future of local justice

Bryan Gibson

Unprecedented developments have affected the magistrates' courts in the past six years. Whilst magistrates and their legal advisors remain free from control or direction in relation to their everyday judicial and legal functions, the *administration* of magistrates' courts now occurs within a statutory framework designed to reconcile local responsibility with the Lord Chancellor's accountability to Parliament for the use by those courts of some £300 million a year.

The scrutiny of Magistrates' Courts

In 1989, the Home Secretary (then the relevant minister) announced a scrutiny of the management and organisational structure of the magistrates' courts. The resulting report suggested that the magistrates' courts service should be run as a national agency funded 100 per cent by central government. The agency would be free from executive control - but accountable to Parliament through a Director General, who would report to the Home Secretary. The scrutiny also concluded that there was a case for larger administrative units than the existing magistrates' courts committee (MCC) areas; and that magistrates' representatives should be removed from the resource decision-making process in favour of consultative machinery.

Transfer to the Lord Chancellor

The somewhat unexpected outcome was the transfer to the Lord Chancellor of responsibility for magistrates' courts - to where, in constitutional terms, it properly belongs. The Scrutiny Report was thereafter abandoned in favour of a series of consultation papers to elicit the views of courts and court users. The results found expression in the Police and Magistrates' Courts Act 1994.

The 1994 Act

Central to the debate during the passing of the 1994 Act was the question of judicial independence, significant changes to the original proposals taking place in the House of Lords.

The picture is now one in which:

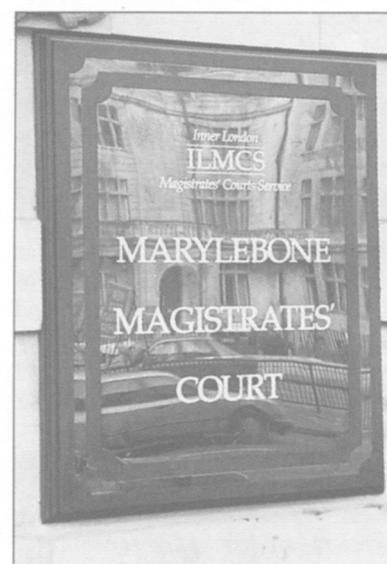
- the Lord Chancellor has responsibility for all items of a judicial nature (including the appointment of magistrates and oversight of their training) together with responsibility and accountability to Parliament for an effective magistrates' courts service. The Lord Chancellor has significant powers to:
 - approve the most senior staff appointments; approve co-optees or appoint nominees to MCCs; require the submission of reports and plans; set performance standards; subject to procedural safeguards, to enforce the amalgamation of MCCs; take direct action by way of default powers if an MCC fails properly to discharge its duties; give directions to MCCs about keeping the magistrates in the area informed and about ascertaining their view.
- the Lord Chancellor's day-to-day functions are carried out by the Magistrates' Courts Division (MCD 1) of the Lord Chancellor's Department (including strategic planning, control of capital expenditure and the provision of 80 per cent of revenue expenditure).
- local MCCs set revenue budgets and determine priorities. They can, in effect, act as a 'local management board' and the justices' chief executive (below) is required by the 1994 Act to work 'subject to and in accordance with any directions given by the committee'. Committees have slimmed down and members are appointed by local selection committees (subject to any appointments by or with the consent of the Lord Chancellor; above), and committee chairmen (or justices' chief executives) can be given powers by the committee to discharge the committee's functions.
- each MCC must appoint a justices' chief executive who can, with the agreement of the Lord Chancellor, also hold office as a justices' clerk at the same time (although specific authority from the MCC is needed before the powers of the latter can be exercised by him or her). Alternatively, specific functions of a

justices' clerk can be given to the chief executive.

- justices' clerks along with other legal advisors are exclusively responsible for legal advice and such other functions as the MCC bestows on them by virtue of the arrangements in a given area. Justices' clerks and other legal advisors enjoy statutory protection from direction by any person in relation to the advisory aspect of their duties (although the justices' chief executive is responsible for calling a 'legal forum' to enable discussion of law and practice). However, local Petty Sessional Divisions still operate *under the auspices* of the justices' clerk in so far as this is necessary for the discharge of his or her advisory function.
- local benches must be consulted on significant issues affecting their own PSD (eg the provision of courthouses, the appointment or removal of a justices' clerk).
- local authorities continue to be responsible for the remaining 20 per cent of revenue funding (but have no say whatsoever as to how courts are run).
- an Inspectorate of Magistrates' Courts has been created with wide-ranging powers to assess administrative performance.

Judicial independence

Throughout, the judicial status of



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SENTENCING

magistrates has remained the same and the Lord Chancellor has indicated that there are no plans to alter the balance between the largely lay magistracy (29,000 strong) and stipendiaries (some 150). The role of the justices' clerk has been enhanced in certain respects - by the separate addition of further judicial or quasi-judicial functions (without this detracting from the role of magistrates in deciding central issues affecting guilt, liberty and sentence) and by the statutory protection contained in the 1994 Act in relation to the giving of legal advice. But in separating out the roles of justices' clerks and justices' chief executives and giving the latter the responsibility for administration there is always a danger that - whatever the statutory safeguards - the demands of financial and other targets will begin to impinge on the judicial aspects of magistrates' courts. Subject to the Lord Chancellor's agreement, there is, in any event, nothing to prevent the same individual from holding both appointments ie justices' chief executive and justices' clerk (above).

However at the Autumn Conference of the Central Council of Magistrates' Courts Committees in 1994, Lord Mackay, Lord Chancellor, said:

"...MCCs are themselves important protectors of judicial independence. They must maintain the boundary between administration and judicial decision-making. This means taking great care over setting up the roles of justices' chief executives and justices' clerks. There is also a risk to judicial independence if bench and administrative interests become entangled at the MCC."

Given the momentous nature of the changes, the future of local justice now seems to depend on positive outcomes on two fronts - ie local committees operating effectively so that there is little need for central intervention; the respective roles of MCCs, justices' chief executives and justices' clerks being worked out in a way which truly preserves the judicial independence of the magistracy. Only then will the magistrates' courts avoid the risk of central intervention. ■

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A sentencing case conference?

Alec Samuels

Sentencing the serious offender is a ritual, an artificial, vicarious ritual. The probation officer interviews the offender and writes a report with a recommendation. He is principally interested in the psychology of the offender; he cannot do much about housing, employment or money. He may or may not attend court, and in any event he is unlikely to say anything. The defending advocate makes the traditional plea in mitigation - the offence was out of character, he yielded to temptation, he has pleaded guilty, he is sorry, his father died, his wife has been in hospital. The offender himself does not speak. The judge or the magistrates sentence him to so many hours' community service or so many months or years in prison, and away he goes. There is little involvement and discussion. Subsequently the community service officer finds and allocates and supervises the work; or the prison authorities allocate the prison regime.

A new approach

In many walks of life, when the future of a person is being considered, e.g. in health or education or employment, a case conference is called. Why not a case conference for the serious or potentially serious offender?

Under a lead officer, say a probation officer or social worker, a team of "experts" could write reports with recommendations, e.g. probation officer, social worker, doctor, psychiatrist, psychologist, alcohol worker, drugs worker, housing officer, social security officer, employment service officer, family welfare officer, citizens advice volunteer, race relations officer, prison visitor, assistant prison governor, whoever seemed relevant and appropriate.

They would assemble at the case conference, with the judge or magistrates and solicitor and offender, all round the table. Everybody would make their contribution, including the offender if he wished. Vital issues would include the gravity of the offence, aggravating and mitigating factors, the impact upon the victim, the dangerousness of the offender,

assessment of risk of re-offending, other people involved.

The judge or the magistrates, by now thoroughly well-informed, would take the ultimate decision, prison or community sentence. The category of prison could be prescribed. For a community sentence a personal package could be prescribed, including, where appropriate, probation supervision, the intensity of supervision, attendance for treatment, prescribed course or programme, so many hours' work, curfew, reparation, compensation. This is in line with recent Government proposals.

The sentence announced in open court would have specifically to address retribution, deterrence, reparation, rehabilitation, punishment in the community, where appropriate, restriction of liberty, prevention of re-offending.

Feedback

A great weakness in our system is that there is virtually no follow up, no feedback. The sentencers have no idea how things turn out, unless the offender happens to re-appear before them. Obviously practicality dictates that only a few offenders could be followed up, but the case conference system would enable selected cases to be followed up, and experience gained accordingly. The present sentencing system has many defects. Little or nothing is done at an early stage, and the offender steadily "moves up the ladder" of crime. He feels neglected, isolated, alienated, oppressed by unthinking authority and bureaucracy. The re-offending rate is distressingly high.

If it be said that the case conference concept would be "going over the top", using scarce resources, the answer must be that it would be used only in suitable cases, and effective intervention at an early stage is much more likely to produce positive results than waiting until things are too far gone. The repeating and increasingly serious offender does a great deal of harm to the community. Real involvement of everybody with a contribution to make would enhance the dignity of the process, concern for the offender (despite his wrongdoing), the likelihood of success, and the consequent protection of the public. ■

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