

**Response to the Magistrates'
Association's national enquiry into
community justice**

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For further information contact Vicki Helyar-Cardwell, Director, Criminal Justice Alliance, on 020 7091 1298 or at vicki.helyar-cardwell@criminaljusticealliance.org

About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 64 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system. The CJA's current member organisations are: Action for Prisoners' Families; Adullam Homes Housing Association; the Apex Charitable Trust; the Association of Black Probation Officers; the Association of Members of Independent Monitoring Boards; Birth Companions; the Buck Project; Carers Federation; Catch22; the Centre for Crime and Justice Studies; the Centre for Mental Health; Chance UK; the Children's Society; the Churches' Criminal Justice Forum; Circles UK; Clean Break; Clinks; Concord Prison Trust; DrugScope; the Fawcett Society; the Griffins Society; Gwalia Care and Support; Hafal; Hibiscus; INQUEST; the Institute for Criminal Policy Research; JUSTICE; Leap; Nacro; the National Appropriate Adult Network; the New Bridge Foundation; Pact; Partners of Prisoners and Families Support Group; Penal Reform International; the Police Foundation; the Prison Fellowship; the Prison Officers' Association; the Prison Reform Trust; Prisoners Abroad; Prisoners' Advice Service; the Prisoners Education Trust; the Prisoners Families and Friends Service; the Public and Commercial Services Union; the Quaker Crime, Community and Justice Group; Race on the Agenda; Raising Your Game; RAPT; Release; the Restorative Justice Council; Rethink; Revolving Doors Agency; the RSA Prison Learning Network; Safe Ground; Shannon Trust; SOVA; the St Giles Trust; Transform Drug Policy Foundation; UNLOCK; User Voice; Women in Prison; Women's Breakout; Working Chance; the Young Foundation; and Young Minds.¹ The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

Introduction

The Criminal Justice Alliance is pleased to have the opportunity to submit evidence to this enquiry, which we welcome, and which has come at a key moment for criminal justice reform. The CJA believes that magistrates play a valuable role within the criminal justice system and within their local communities. Since the majority of cases coming through the courts are dealt with at magistrates' courts, magistrates are integral to ensuring proportionate, effective and consistent sentencing; they are also vital to promoting awareness and understanding of sentences and sentencing amongst victims, offenders and the wider public, and so to improving levels of public confidence. We are particularly pleased to see the enquiry's interest in restorative justice, and believe that magistrates have a key role to play in ensuring more widespread access to and use of it.

Response to the consultation questions

We have responded to the questions on which we have a view below.

Does the public have confidence in magistrates?

Figures from the British Crime Survey (BCS) show that levels of confidence in the criminal justice system have increased in recent years, with 61% of adults in 2010-11 thinking that the criminal justice system as a whole is fair, compared with 56% in 2007-8. Whilst those who think that that the justice system as a whole is effective are in the minority, the most recent figure of 43% is an increase of 6% on the figure for 2007-8.² It is, however, not possible to extrapolate levels of confidence around individual strands of the criminal justice system from these figures. The Witness and Victim Experience Survey (WAVES), which has now been discontinued, provides more specific information about levels of

¹ Although the CJA works closely with its members, this consultation response should not be seen to represent the views or policy positions of each individual member organisation.

² Home Office (2011) *Crime in England and Wales 2010-11* - available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1011/hosb1011?view=Binary>

confidence in the courts, although it is, of course, limited to those members of the public who have had direct experience of the courts as witnesses and victims. The last set of quantitative data collected through WAVES demonstrated high levels of satisfaction with those aspects of the court experience victims and witnesses were questioned about: 91% were satisfied with the consideration they were shown before giving evidence in court, and 87% were satisfied with the court facilities.³ Again, however, it is not possible to discern levels of confidence in magistrates specifically from this data.

A Ministry of Justice report published in 2010, which presents findings on public confidence from the BCS from 2002-3 to 2007-8 does, however, give information on levels of confidence in different parts of the criminal justice system. The report shows that, in 2007-8, 31% of the public thought that magistrates were doing a good or excellent job. This figure should be seen within the context of relatively low levels of confidence in other areas of the criminal justice system, including prisons, probation, the Crown Prosecution Service and judges - the one notable exception is the police. It should also be seen in the context of increasing levels of confidence: the figure for 2007-8 is an increase of 5% on that for 2002-3.⁴ Nevertheless, it would appear that there is scope for increasing levels of public confidence in magistrates.

Improving levels of confidence can be achieved through a range of approaches. The CJA believes that programmes that explain the work of magistrates and how they make sentencing decisions, such as the Magistrates in the Community programme, or 'Local Crime, Community Sentence', play a valuable role in raising awareness within the general public and local communities. Additionally, we believe that encouraging better understanding of sentencing outcomes through clear explanation of the nature of specific sentences, and the reasons for the sentencing decision, can promote confidence amongst victims, offenders and the local community. Recently published research from the Victims' Commissioner, for instance, has revealed a disparity between victims' levels of satisfaction with their treatment during the court process, and their satisfaction with the outcome of the process: though they may feel that, procedurally, their experience has been a positive one, they may be dissatisfied with the sentence passed, and feel that it does not reflect the severity of the offence. Interestingly, however, the research also indicates that victims do not always have a detailed understanding of what particular sentences involve.⁵ Clear explanation of the nature of a sentence, and what it will entail, can help to counter dissatisfaction with outcomes by increasing understanding of the specific requirements imposed upon an offender. Clear and accessible explanations of sentences are also important for offenders - particularly given the prevalence of people with learning disabilities and learning difficulties in the criminal justice system, as the Prison Reform Trust, a member of the CJA, has highlighted in their response to this enquiry - and can help to increase confidence within the public where sentences are reported more widely.

Do magistrates provide a good quality of service?

Key to the provision of a good quality of service by magistrates are sentencing guidelines, which help to ensure that magistrates impose proportionate sentences that accurately reflect the severity of a particular offence, and also help them to sentence with

³ Ministry of Justice (2011) *Provisional quarterly criminal justice system information, September 2010* - available at <http://www.justice.gov.uk/publications/docs/cjs-stats-bulletin-sept2010.pdf>

⁴ Ministry of Justice (2010) *Public confidence in the criminal justice system: Findings from the British Crime Survey 2002-3 to 2007-8* - available at <http://www.justice.gov.uk/publications/docs/confidence-cjs-british-crime-survey.pdf>

⁵ Victims' Commissioner (2011) *Victims' views of court and sentencing* - available at <http://www.justice.gov.uk/downloads/news/press-releases/victims-com/victims-views-court-sentencing1011.pdf>

consistency. This is important in terms of fairness; it also contributes to clarity of sentencing and the sentencing process, and so can enable public understanding.

Magistrates can also ensure that they are providing a good quality of service by imposing sentences that, within the overall context of meeting the demands of proportionality, address the root causes of offending behaviour. Imposing sentences that do this meets the needs of offenders, and also recognises the needs of local communities by helping to prevent reoffending. It also helps to meet the needs of victims: as a recent report by Victim Support has highlighted, a survey conducted for the Probation Service found that 81% of victims of crimes would prefer an offender to receive an effective sentence rather than a harsh one. Indeed, Victim Support's own research demonstrates a "common view" amongst victims that the desired outcome of sentencing is that the offender does not commit crime again.⁶

However, though there is a broad range of requirements available under community orders, the most recent figures suggest a heavy reliance on supervision and unpaid work, at the expense, perhaps, of more imaginative combinations. In 2010, 73,797 unpaid work requirements and 72,998 supervision requirements were started. In the same year, just 743 mental health treatment requirements commenced out of a total of 223,227 requirements issued with community orders,⁷ in spite of the fact that 40% of offenders on community orders are thought to have a diagnosable mental health problem.⁸ The number of requirements for alcohol treatment commencing in 2010 was significantly more, at 5,949.⁹ However, when it is considered that almost half of probation clients are recorded as having an alcohol problem,¹⁰ the relative underuse of the alcohol treatment requirement is also clear - it accounted for just 2.7% of all requirements commenced in 2010. Similarly, although 42,243 young adults aged 18-24 started a community order in 2010, just 947 attendance centre requirements, which are available for adult offenders up to the age of 25, were started.¹¹

The CJA believes that the removal of the requirement for a full psychiatric report before a mental health treatment requirement can be imposed - provided for in the current *Legal Aid, Sentencing and Punishment of Offenders Bill* - should help to counter its underuse. We also believe, however, that magistrates have a key role to play in increasing the low levels of use of specific requirements. A 2008 survey by the Centre for Crime and Justice Studies, a member of the CJA, identified a clear lack of knowledge amongst sentencers about the availability of community order requirements in their local areas.¹² Whilst the onus to find out about the availability of requirements should not, of course, fall solely on sentencers - other agencies, including probation, have an important role to play in increasing awareness - it is, nevertheless, important that magistrates play an active role in

⁶ Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing*, London: Victim Support.

⁷ Ministry of Justice (2011) *Offender management caseload statistics 2010* - annual tables available at <http://www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly-editions.htm>

⁸ Khanom, H., Samele, C. and Rutherford, M. (2009) *A missed opportunity? Community sentences and the Mental Health Treatment Requirement*, London: Centre for Mental Health.

⁹ Ministry of Justice (2011) *Offender management caseload statistics 2010* - annual tables available at <http://www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly-editions.htm>

¹⁰ Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health.

¹¹ Ministry of Justice (2011) *Offender management caseload statistics 2010* - annual tables available at <http://www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly-editions.htm>

¹² Mair, G., Cross, N. and Taylor, S. (2008) *The community order and the suspended sentence order: The views and attitudes of sentencers*, London: Centre for Crime and Justice Studies.

this area, so that they are able to impose effective and appropriate sentences. There is, additionally, a clear issue around the actual availability of requirements in certain areas, as research by the Centre for Crime and Justice Studies and the Centre for Mental Health, also a member of the CJA, has identified.¹³ Where requirements are not available, magistrates have an important role to play in questioning this, and asking for specific provision to be made available in their local areas.

Restorative justice - what is the role of magistrates?

As we have set out in a recently published briefing, there is clear evidence that restorative justice has significant benefits: it has high victim satisfaction rates, it reduces reoffending and it can deliver cost savings for the criminal justice system.¹⁴ In spite of this, however, it is currently rarely used in the adult criminal justice system. We support the statement by the Prison Reform Trust, in their response to this enquiry, that magistrates should act as “informed gatekeepers” to restorative justice, and believe that magistrates can contribute significantly to increasing access to and the use of restorative justice.

It is, of course, important that magistrates are well informed about restorative justice, so that they understand how it can be used as part of the sentencing process and can use it appropriately, and we believe that the Magistrates’ Association has a key role to play in increasing magistrates’ levels of knowledge and understanding of restorative justice. It is also important that, at a more local level, magistrates are informed about the restorative justice provision that is available in their area, so that they are able to consider using restorative justice as a specified activity requirement as part of a community order or a suspended sentence order. As we have set out above, there is currently a heavy reliance on unpaid work and supervision requirements under community orders. In order to make better use of a wider range of requirements, magistrates need to be well informed about the requirements available in their local area, and can play an active role in obtaining this information, and familiarising themselves with local projects. Where provision is not available - and it is undoubtedly the case that, at present, restorative justice services are far from widespread - magistrates can question the lack of provision in their area, and can ask for it to be made available. Indeed, within an increasingly localism-oriented landscape, this type of ‘bottom-up’ approach will be of particular importance, and will carry particular weight.

Magistrates can also encourage wider use of restorative justice at the pre-sentence stage. We fully acknowledge the concerns that have been voiced around the use of pre-sentence restorative justice - that offenders may agree to participate because they want their sentence to be mitigated, rather than because of a genuine desire to make amends, and that victims may feel under pressure to participate in restorative justice so that an offender’s final sentence is less severe. However, we believe that high quality restorative justice, with the necessary standards and safeguards implemented, provides firm protections against such risks.

The Thames Valley Restorative Justice Service, for instance, operates a clear assessment procedure, so that offenders who are not suitable are identified, and are not accepted to participate in restorative justice. During a seminar organised by the Criminal Justice Alliance, and held in September 2011 for representatives of the Magistrates’ Association,

¹³ Mair, G., Cross, N. and Taylor, S. (2008) *The community order and the suspended sentence order: The views and attitudes of sentencers*, London: Centre for Crime and Justice Studies; see also Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health.

¹⁴ Criminal Justice Alliance (2011) *Restorative justice: Time for action* - available at <http://criminaljusticealliance.org/RJtimeforaction.pdf>

the Thames Valley Service also explained that, even in cases where the motivation of the offender may initially seem “wobbly”, it can nevertheless be worthwhile to proceed, since it is the process of restorative justice that fully enables the development of understanding of the impact of an offence, and remorse. In terms of victims feeling under pressure to participate in restorative justice because it may result in the offender receiving a less severe sentence, we would echo the Restorative Justice Council, a member of the CJA, which has developed the National Occupational Standards for Restorative Practice, and the National Restorative Practitioner Register: a key principle of restorative justice is voluntarism - victims must always be clear that the choice to participate in restorative justice is theirs. Moreover, it should always be made clear that decision-making about the criminal justice outcome remains firmly with the sentencer.¹⁵

As we have highlighted above, restorative justice has high victim satisfaction rates: Ministry of Justice research found that 85% of victims said that they were very or quite satisfied with the conferencing they experienced, and that almost 80% would recommend it to others.¹⁶ In addition, as Victim Support has highlighted, restorative justice can help victims feel a sense of closure.¹⁷ As such, we believe that there are significant benefits to victims in offering restorative justice at the earliest possible stage. Restorative justice at the pre-sentence stage can also be beneficial to sentencers, as it provides them with additional information with which to make an informed sentencing decision. Research has also demonstrated that it is possible to organise pre-sentence restorative justice within the tight timescales demanded by magistrates’ courts.¹⁸

Should magistrates be involved in pre-court, or non-court, activities to deal with offenders (e.g. the administration of cautions; local justice panels, etc)?

There is no reason, in our view, why magistrates should not be involved in non-court activities such as neighbourhood justice panels in their capacity as members of a local community. However, we would emphasise that these types of non-court environments have a quite different approach and ethos to more formalised court settings, and we would therefore question the appropriateness of magistrates being involved in such activities in their capacity as magistrates.

Additionally, we do not believe that magistrates should be involved in activities such as the administration of cautions. Dealing with lower level offences by means of out-of-court disposals is an important mechanism for reducing pressure on the criminal justice system, and for helping to increase efficiency within it. The introduction of additional layers, such as the involvement of magistrates, would be likely to increase levels of bureaucracy and work against improved efficiency. Whilst we recognise the need for greater consistency in the application of out-of-court disposals, we believe that this can be addressed through the implementation of a national strategy, as recommended in a recent report by HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate.¹⁹

¹⁵ Restorative Justice Council (2011) *A new way of doing justice: The response of the Restorative Justice Council to ‘Breaking the Cycle’* - available at http://www.restorativejustice.org.uk/resource/a_new_way_of_doing_justice_restorative_justice_council_response_to_breaking_the_cycle_green_paper_gncn5/

¹⁶ Shapland, J. et al (2007) *Restorative justice: The views of victims and offenders. The third report from the evaluation of three schemes*, London: Ministry of Justice.

¹⁷ Victim Support (2010) *Victims’ justice? What victims and witnesses really want from sentencing*, London: Victim Support.

¹⁸ Shapland, J. et al (2006) *Restorative justice in practice: The second report from the evaluation of three schemes*, Sheffield: Centre for Criminological Research, University of Sheffield.

¹⁹ HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate (2011) *Exercising discretion: The gateway to justice - a study on cautions, penalty notices for disorder and restorative justice* - available at http://www.hmcpsi.gov.uk/documents/services/reports/THM/CJI_20110609.pdf

Should magistrates be involved more fully in the administration of sentences (i.e. to play a part in helping to achieve the aim of the sentence)?

Where an offender commits an offence that is sufficiently serious to merit a community order, and where this is imposed, we believe that review meetings with sentencers can be of real benefit. A Ministry of Justice evaluation of the North Liverpool Community Justice Centre, published two years after the centre had opened, details anecdotal evidence of the success of review hearings in “helping to increase compliance with sentences by offering further opportunities for problem-solving.” Data from the survey of offenders using the court appears to support this, showing that those offenders who were subject to review requirements (under section 178 of the *Criminal Justice Act 2003*) reported fewer issues in completing their sentences. 79% of offenders who had a condition to appear before the judge to review progress said that they had been able to meet the conditions of their sentence, compared with 56% who did not have the review requirement. Additionally, small-scale analysis of a sample of offenders sentenced by the court to community orders with review, compared with a sample sentenced by a different court and not subject to review, suggested that successful completion rates were slightly higher for the Community Justice Centre sample of offenders: 22%, compared with 13% for the non-Community Justice Centre sample.²⁰

A more recent evaluation, by the Centre for Crime and Justice Studies, observed that appropriate mechanisms had not been put in place to collect robust data to evidence the effectiveness of the court’s approach. However, the report highlights the ‘humanising’ effect of the review process which, in the opinion of the court’s judge, “has enabled us to go further than just the old question of punishment and ... move on to real rehabilitation.”²¹ It also draws attention to the importance, for offenders, of the encouragement to complete a sentence that comes as part of the review process. It is, in addition, worth noting that the report emphasises the importance of continuity of sentencer/reviewer during this process.

Should magistrates be more involved in the rehabilitation of offenders and reintegrating ex-offenders into the community?

As the Prison Reform Trust has suggested in their response to this enquiry, magistrates can make a significant contribution in this area by minimising the use of short custodial sentences, and by considering fully the range of other disposals available to them before making the decision to impose such a sentence. The negative effects of short custodial sentences are well-known: those serving short sentences may lose employment, housing and benefits whilst in custody, but are rarely in prison long enough to access support that will help them to address their offending. Indeed, the disruption caused by short prison sentences is such that a 2008 Justice Committee report concluded that, as well as not contributing to an offender’s rehabilitation, they may actually increase reoffending.²² The most recent Ministry of Justice figures show that 59.4% of those who have served a sentence of twelve months or less are convicted of a further offence within a year of release.²³ The CJA recognises that, in some instances, imposing a short prison sentence will be unavoidable. However, we believe that for many of those committing lower level offences, including those who are persistent offenders, a community sentence will be

²⁰ Ministry of Justice (2007) *Evaluation of the North Liverpool Community Justice Centre*, London: Ministry of Justice.

²¹ Mair, G. and Millings, M. (2011) *Doing justice locally: The North Liverpool Community Justice Centre*, London: Centre for Crime and Justice Studies.

²² House of Commons Justice Committee (2008) *Towards effective sentencing: Fifth report of session 2007-8*, London: The Stationery Office.

²³ Ministry of Justice (2011) *Adult reconvictions: Results from the 2009 cohort England and Wales* - available at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/adult-reoffending-statistics-09.pdf>

appropriate.

Is the make-up of the magistracy properly reflective of society? Are there any barriers to achieving this?

The CJA believes that magistrates should be drawn from more diverse backgrounds than is currently the case, and reforms to the way that magistrates are 'recruited' and the way in which magistrates courts operate should be considered as routes to achieving this. For example, evening or weekend courts should be considered, as people struggle to get time off work during the week to serve as magistrates. Reducing the number of days per year that magistrates have to serve should also be considered, as it is often too much time for younger, working people to commit to. There also needs to be a clearer understanding of what being a magistrate involves and what skills are required (and not required - many people think that only somebody with formal training in law can be a magistrate). These measures could help attract a broader range of people, in particular younger people.

Additionally, we believe that serious consideration should be given to opening up the magistracy to those with criminal convictions. We support the conclusions of the former volunteering champion Baroness Neuberger, who carried out a review of volunteering in the criminal justice system, that the difficulties that ex-offenders experience are "absurd",²⁴ and the recommendation of her report on volunteering in the criminal justice system that "all agencies of the CJS should have a strategy to engage the skills and time of ex-offenders".²⁵ The magistracy could take an important lead in this area by tackling this issue head on, and by developing a clear strategy as part of any programme of reform.

**Criminal Justice Alliance
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For further information about this response, please contact Vicki Helyar-Cardwell, Director of the Criminal Justice Alliance, at vicki.helyar-cardwell@criminaljusticealliance.org or on 020 7091 1298 or at Park Place, 10-12 Lawn Lane, London, SW8 1UD.

²⁴ p.22: Neuberger, J. (2009) *Volunteering across the criminal justice system*, London: Cabinet Office.

²⁵ *Ibid.*, p.28.