

28 January 2016

Mr Robert Neill MP
Chair
The Justice Committee
House of Commons
London
SW1A 0AA

Dear Mr Neill

Submission to the Justice Committee inquiry on the role of the magistracy

About the Howard League

The Howard League for Penal Reform welcomes the opportunity to submit evidence to this inquiry on the role of the magistracy.

Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

Many of the points made below apply to both magistrates' and crown courts, however reference is only made to their impact on magistrates' courts due to the terms of this inquiry.

Introduction

This is a timely and important inquiry. Despite the pivotal role the magistracy occupies in the criminal justice system, it has undergone little reform in decades. The Howard League urges the committee to use this inquiry as an opportunity to ask the big questions about what the magistracy is for? What it should aim to do? And consider what a justice system without the magistracy would look like?

The Howard League submits that wholesale reform is needed. This should include a re-examination of the types of cases magistrates hear, the sentencing options at their disposal; the

training and governance of the magistracy; improving representation and diversity; and how to respond to children who break the law.

What do we want the magistracy to do?

Many of the people that come before the magistrates' court are amongst the poorest and most vulnerable in society. The behaviour many of them come to court over is often simply annoying, and frequently borders on the trivial. The Howard League monitored cases coming before magistrates' courts in 2015 as part of the charity's successful campaign to abolish the criminal courts charge. Many of the cases we examined raised questions about why the case had come before the court and whether any of the options at the magistrates' disposal would do anything other than make the situation worse. Some examples include:

- A 37-year-old homeless man, who jumped in front of a car in an apparent suicide attempt which breached an Asbo, was jailed for 12 weeks by magistrates in Taunton, Somerset, and ordered to pay a £180 criminal courts charge and an £80 victim surcharge.
- A 26-year-old homeless man who stole a can of Red Bull worth 99p from a supermarket in South Shields, Tyne and Wear, was given a conditional discharge and ordered to pay a £150 criminal courts charge and a £15 victim surcharge
- A 43-year-old man admitted breaching a criminal behaviour order by sitting on the ground within five metres of a shop without a reasonable excuse in Oxford, Oxfordshire. He was fined £100 and ordered to pay a £180 criminal courts charge, £85 costs and a £20 victim surcharge.
- A 30-year-old homeless woman was convicted in her absence of begging in a car park in Coventry, West Midlands. She was ordered to pay a £150 criminal courts charge, a £30 fine and a £20 victim surcharge.
- A 33-year-old homeless man pleaded guilty to three counts of breaching a criminal behaviour order after he was found holding "an open container of alcohol". Magistrates in Folkestone, Kent, sentenced him to 12 weeks in prison, suspended for 12 months, and ordered him to pay a £185 criminal courts charge, £85 costs and a £100 victim surcharge.
- A 41-year-old woman from Worksop, Nottinghamshire, was fined £40 and ordered to pay a £150 criminal courts charge, £60 costs and a £20 victim surcharge for not having a TV licence.

To a large extent magistrates' courts criminalise desperate and often ill people with criminal convictions and sentences which almost always make a situation worse. Whilst the CPS and police must be involved in any reform, this inquiry should examine whether the way the magistracy currently operates provides much social benefit and whether a different kind of system would be preferable. The Howard League submits that the role of the lower courts should be refocused towards resolving disputes and reducing social harm, rather than punishing often minor breaches of the law with sentences which do little to reduce the likelihood of further offending. How such a reconfiguration of the courts and their purpose is a difficult and complicated question, but the committee is well placed to begin this important debate.

Sentencing powers

a) Short prison sentences

Some of the sentencing powers available to magistrates are inappropriate and others are not exercised properly. Further, magistrates, like the rest of the judiciary, are not accountable for the

decisions they make. This results in discredited and ineffective sentences being used time and time again.

The maximum sentence available to magistrates is six months imprisonment (or 12 months in total for multiple offences). Almost 45,000 immediate custodial sentences were handed down by magistrates in the last 12 months. Short sentences of under 12 months have the worst reoffending rate of any sentencing option, with recent figures showing that 59 per cent of those released from a short sentence reoffending within a year. These sentences are long enough to disrupt often already chaotic lives but too short to enable a person to begin to address the causes of their offending. If a person had a job, home and family before they go into custody on a short sentence, they are very unlikely to have all these things when are released. As well as being the most ineffective short prison sentences are also the most expensive type of sentence – costing the public at least £300 million each year.

The Howard League is also concerned at the ability of lay magistrates, who do not have legal training or experience, to deprive others of their liberty, the most severe punishment at the state's disposal. We therefore recommend that short sentences be abolished, removing the ability for magistrates to impose a custodial sentence and raising the custody threshold. If the circumstances of a case are serious enough to require a prison sentence of 12 months or more, magistrates would be able to pass the case up to the crown court for sentencing.

b) Use of remand

Remand is widely misused by magistrates. Howard League research found that in 2013 over 70 per cent of men and women remanded by magistrates' courts were subsequently either acquitted or did not receive a prison sentence. Whilst there will be some instances where remand is appropriate even though a custodial sentence is unlikely to follow, these cases will be few and far between. The coalition introduced legislation in 2012, aiming to reduce the use of the remand. This wasn't followed with the remand population increasing following the change in the law before declining slightly in the last few years. A far more robust legislative framework is needed to curtail the use of remand.

c) Accountability and costs

Sentencing is one of the only areas of public decision-making in which there is no accountability. Magistrates rarely discover the outcome of the decision they make unless by coincidence the same defendant appears before them again. The current system does not enable magistrates to gain knowledge about the effectiveness of sentences nor hold them account for the decisions they make. For example, if a vulnerable woman with mental health problems is sent to prison for a shoplifting offence and subsequently takes her own life in custody, there is no mechanism to ask questions about why that person was sent to prison, whether alternatives would have been more appropriate and learn lessons for the future. This must change.

How to hold magistrates to account is a more difficult question. The Howard League urges the committee to explore the different possibilities. These could include: following the example set by the NHS regarding doctors and record and publish the decision making of individual magistrates; ensuring magistrates receive information about the outcome of each case; expanding the role of the Prisons and Probation Ombudsman to look into the appropriateness of the sentence in its investigations into deaths in custody; reconfiguring the lower courts to follow a problem-solving approach, whereby sentenced persons appear before the same sentencers to report on their

progress; or creating a body to examine magistrates' sentencing decisions and make recommendations regarding problematic decision-making.

Furthermore, there is no requirement for magistrates to take the costs of the sentences they impose into account. The system allows imprisonment in particular to be treated as a free and unlimited good. This is in stark contrast to almost every other area of public sector spending, which have had value-for-money tests applied to them. The costs and effectiveness of different sentencing outcomes must be integrated into decision making in every case.

d) Knowledge of sentencing options

A frequently highlighted issue is the lack of knowledge amongst some magistrates of the sentencing options in their local areas. This is a systemic problem. Part of the issue is the infrequency with which magistrates sit, creating a barrier to keeping up to date with the different options available. Further, substantial reductions in the time and funding dedicated to magistrates' training has limited opportunities for probation or other providers to tell magistrates about the options available.

The situation has been compounded by the Transforming Rehabilitation programme which has fragmented community sentences. This not only makes it more difficult for magistrates to have knowledge of all the different options available, but has created a situation where the National Probation Service (NPS) staff must provide a sentence recommendation to magistrates via a pre-sentence report, although the vast majority of those before the magistrates' courts will be low or medium risk and therefore the sentence will be delivered by Community Rehabilitation Companies (CRCs). Her Majesty's Inspectorate of Probation has already flagged the obstacles this creates in enabling magistrates to choose the most appropriate option, stating 'Some NPS staff expressed concerns that they were becoming less knowledgeable about the services and types of supervision provided through the CRCs and that this would lead to difficulties in making appropriate proposals.'

Oversight and governance

The management and oversight of magistrates is not fit for purpose. The Magistrates' Association is a charity, which magistrates have no requirement to be involved in. The Howard League is concerned that the fundraising pressures the Magistrates' Association is under create conflicts of interest, compromising the organisation's ability to provide balanced and evidence-based information and training to magistrates. For instance, last year in an attempt to raise additional funds the Magistrates' Association established an Education and Research Network. Three of the network's main funding partners are MTCNovo, Sodexo and Working Links – private sector organisations which carry out many of the sentences magistrates hand down. In addition, MTC Novo has recently been awarded a contract to run Rainsbrook Secure Training Centre from May 2016.

The Howard League recommends that a new organisation be established. This could follow the model of the College of Policing, which has been set up to drive excellence and learning in policing and acts with probity and integrity. This is in stark contrast to the Magistrates' Association which acts more like a trade union. **Representation and diversity**

The fundamental principle behind the lay magistracy is that people should be judged by their peers; however magistrates do not represent the communities they serve. The latest statistics show that over 90 per cent of magistrates are white whilst less than 3 per cent are black. 57 per

cent of magistrates are over 60 years old and less than half a percent are under 30. Magistrates are also disproportionately drawn from the middle classes.

The Howard League is concerned that the lives of magistrates infrequently overlap with the younger, poorer and more ethnically diverse mix of people who make up the majority of court users. This undermines the legitimacy of the system. Further, there is widespread evidence of disproportionality in sentencing, particularly in regard to BAME children. For example, non-white children are much more likely to go to prison for certain offences than their white counterparts. If the magistracy is allowed to remain in its current form improving representation and diversity should be tackled urgently.

Children

Although there have been significant, and welcome, reductions in the number of children in the system and the number of children in custody, the Howard League is concerned that too many children are still being brought into conflict with the criminal justice system, with negative implications for their future lives at the expense of their communities and the taxpayer.

A fundamentally different system should be created for children in conflict with the law. The current system is overly punitive and looks at the child and the offence they might have committed in isolation. The welfarist approach of many of our European neighbours, which looks at a child in the context of their family and surroundings and aims to reduce the chance of a child breaking the law again, rather than simply punish them, is a far more effective. This could be achieved by amalgamating the youth and family courts, enabling a holistic and welfare focussed approach to children who break the law.

There are lessons to be learned from the Scottish system of child hearings, which responds to children with serious problems in their lives including but not limited to children who have broken the law. The guiding principle of the child hearing system is that children who have committed offences and those who need care and a protection are often the same children and the focus should be on helping them, rather than punishing them. The child hearing system aims to look at the child in context and include their family in determining how to move forward.

The Italian system for children in conflict with the law also merits consideration. Under the Italian model criminal and civil cases involving children are heard by the same court. The professional and lay judges involved are selected for their specialist knowledge of children and include psychologists, paediatricians and teachers. The central focus of the court is to help the child, re-educate and re-integrate them, not to punish them. Crucially, the court can also direct for criminal records to be wiped clean at several stages of the process, enabling children to make a fresh start and begin adulthood unburdened with mistakes made as children.

The Howard League is willing to provide further written evidence on any of the issues above as well as provide oral evidence if required to do so.

Yours sincerely



Frances Crook