

**Stakeholder Engagement 21
Senior Judiciary (including National Bench Chairs' Forum)
Represented by Mr Justice Holroyde – Presiding Judge of the
Northern Circuit and Judge of the Queen's Bench Division
and
Yvonne Powell, Chair of the National Bench Chairs' Forum**

4 December 2014, 102 Petty France, London

Background

The majority of criminal cases (about 95 per cent) are heard in a magistrates' court, with the remainder of the most serious criminal cases being heard in the Crown Court.

Following a guilty plea or conviction in a trial, the judge will decide on an appropriate sentence. The sentence will be influenced by a number of factors: principally the seriousness of the case, the impact that the crime has had on the victim, the sentencing guidelines and relevant law especially guideline cases from the Court of Appeal. The judge will equally take into account the mitigation and any reports and references on the defendant. Only once the judge has considered all of these factors will the appropriate sentence be pronounced.

The Sentencing Council was created by the Coroners and Justice Act 2009, the Sentencing Council was launched in April 2010, replacing its predecessors the Sentencing Guidelines Council and the Sentencing Advisory Panel. The Sentencing Council promotes greater consistency in sentencing, whilst maintaining the independence of the judiciary.

The National Bench Chairmen's Forum (NBCF) is made up of an elected representative from each of seven Regional Forums in England and Wales to which all Bench Chairmen have access and where they can discuss issues of mutual concern, share good practice and develop networks. The Forum provides a framework to support and provide information to the 160 Chairmen across the country.

Presiding Judges are responsible for the overall deployment of the judiciary and allocation of cases on their Circuit. Holroyde J (JH) was appointed a HCJ in January 2009, and in that capacity has sat on many criminal trials and appeals.

Yvonne Powell (YP) is the Chair of the National Bench Chairmen's Forum and currently Bench Chairman in South West London. She was appointed a Magistrate in 1985 and served on the Adult Bench since that appointment. YP was involved in increasing the diversity of the Magistracy, working for some

time with the Operation Black Vote organisation. She was a member of the Independent Monitoring Board at HMP Wandsworth from 1996 to 2002.

COURT PROCESSES and SENTENCING

The information available to the court in order to make decisions around sentencing will depend on the nature of the case and the offender. In a Crown Court (CC) the main source of information about the offender would be the submissions of the defence advocate and a pre-sentence report. It is a statutory obligation to obtain a report if there is a mental health issue. The Judge or Magistrate may take the view that there should be a report and the defence may have one prepared, or they can ask for one. For the most serious cases in a CC the Judge can direct that a report be prepared and the probation service will do this, this should not present any particular difficulty, but it may lead to a delay. Someone who arrives in court may be 'in a state' but the court may not know why, they could be drunk, drugged or ill. There may be no facility to refer someone there and then and an 'on-call' service may have to be used.

YP said that there are mental health diversion schemes at specific courts where a psychologist assesses every custody case before they come into court. If someone has to be sectioned under the Mental Health Act it has to be done at that time. The judicial process will follow after this. It is a very helpful option to have, although very few are sectioned. There is a gap in the system for those defendants who are mentally ill and where a community based sentence, Hospital Order or Mental Health treatment including sectioning are required but the defendant refuses to agree; it can be very difficult to get compliance.

Decisions to refuse bail on the grounds of a defendant's own protection or best interests are very rare. Not quite so rare is the refusal of bail for the protection of others, but refusal of bail is usually for other reasons. It may be that the only way a Magistrate can get a mental health assessment is by remanding someone into custody, if there is no facility at the court.

Although the police can use Section 136 of the Mental Health Act to take someone to a place of safety this option is not available to the court as someone can only come before the court if they are accused of committing an offence and then evidence for an assessment has to be provided to the court.

JH said that a Crown Court is rarely told that a mental health bed is not available and can usually get one if pressure is applied, but this is usually in the context of the more serious cases, and there needs to be evidence to support this. The order, if it is made, will be specific in the details of where a person is to be until the bed is available and how they are to be taken to the bed. A young person with good family support may be able to go home. In other circumstances it may be that the only way is to remand into custody and JH acknowledged that may not be the best thing for the defendant.

JH said that it is his personal view that a move to include welfare and maturity issues in the adult court in the same way as in the Youth Court would be unworkable. In sentencing generally, decisions about maturity – as distinct from chronological age - are common place. When sentencing for murder, the starting point for the minimum term changes when the defendant reaches the legal age of maturity, but it is well-recognised that the attainment of the age of majority does not necessarily represent a sudden increase in maturity.

It can be a big shock to go from a Youth Court to an Adult Court, previous convictions will be made available to the Adult Court. JH did not see a need for guidance on maturity as this is already part of the approach.

These days, pre-sentence reports are extremely thorough and cover all the areas that you would expect and need. They are objective and analytical and provide invaluable information to the Court, the Courts are well served by these. There shouldn't be any unfair sentences due to mental health issues that mean someone is 'dangerous'.

Judges cannot take into account any issues there may be about the state of the prison system. Custody is a last resort and is only used if this is the correct option. If someone is on the cusp of whether to sentence to prison or not a judge will consider a non-custodial disposal. If it will be custody for a short period, and there are mental health issues and the person would clearly have a terrible time if they went to prison, there is scope to take all these personal circumstances into account. There is, also, always the option to suspend sentence and require a mental health assessment in these circumstances.

A Judge cannot be deflected from the appropriate sentence by financial considerations such as prison being the more expensive option, and cannot decide which prison someone goes to.

Video links to courts are liked by prisoners as it keeps their place in the prison and avoids long journeys for them.

A Judge may, in the sentencing remarks, draw attention to personal circumstances where there is additional hardship. A Judge can order that sentencing remarks are sent to the prison Governor and that any relevant reports also be sent and can ask PECS to make the Judge's concerns known to the receiving prison.

JH said that he accepts that some people shouldn't be in prison as they are mentally ill, and that Prison Officers don't have the skills to look after them. Usually by the time someone gets to the CC the matter is too serious to divert them.

Prison should be a last resort, the realities of the strained resources and overcrowding are well known to all concerned.

TRAINING FOR THE JUDICIARY

JH said that he personally feels that there is insufficient training in mental health issues. However, there is much training to be done, and it is difficult to fit everything into the programme of training. More mental health training would be good as there may be such a complex range of needs in one person.

Training for Judges is all done by the Judicial College and there is great pressure to cover all the desired training. A member of the Mental Health Tribunal is also a member of the Judicial Board and is generally available.

For Magistrates' Courts, Probation Liaison Committees inform what learning and development services are available in each area and this works quite well.

In the CC there is liaison with Probation Officers plus the Resident Judge and Senior Probation official who meet regularly to update on the learning and development available and raise any issues.

CRCs will lead to a range of different services being available and in turn this will lead to different provisions at each county boundary and a Judge cannot prescribe where the offender will serve their sentence.

Probation Liaison Committees provide reports of what is available and Magistrates Courts will feed back on the quality of what was provided by the local probation service. Magistrates will continue to communicate with the NPS rather than the CRCs.

SELF-INFLICTED DEATHS

Judges and Magistrates don't get any feedback on the outcomes of their sentencing decisions, they wouldn't know if someone went on to take their own life. JH said that he didn't think he would want to be informed, because the judicial process ends at sentencing and there would be no benefit in knowing unless it could achieve something. YP totally agreed.

HEALTH AND MENTAL HEALTH

It can be difficult for the court if mental health issues develop during a trial, for example if the issue of self-harm arises, it can be a real dilemma for the Judge to decide whether to remand into custody or for someone to go home. A Judge may be able to get his/her concerns across to Counsel in a non-verbal or non-explicit way and get a response that the defendant will be looked after if he/she goes home and, if remanding into custody due to concerns, the Judge can direct that information about his/her concerns go to the prison with the prisoner.

There is no formal mechanism for the Prison Service to raise mental health concerns with the Judge.

A Judge can direct that a mental health report or assessment goes with the escorting services taking the prisoner to prison and this should also apply to a psychiatric report or pre-sentence report. A court may hear from a prison that there are risks with a prisoner and the more information that is shared the better.

FAMILY ENGAGEMENT

A Judge may be able to consider that separation from family or distance from their family may be another reason to suspend sentence, if it adds to hardship. It may also be a factor which affects the length of the sentence.