

Magistrates Courts and Local Justice Conference

14 March 2005

Speech – Lord Justice Thomas, the Senior Presiding Judge

About one year ago, on 27 February 2004, the Unified Administration team held a conference to introduce and explain the new arrangements for the magistracy, consequent upon the coming into force of the Unified Administration and the abolition of the MCCs. A year on, the Unified Administration has become Her Majesty's Court Service and the new structures are in place.

A year, you may think, is but a fleeting moment in the history of the magistracy, long and distinguished as it is. But I think this last year has been remarkable; I hope that the next few years will be as well, for three principal reasons: (1) the unification of the administration, (2) HM Government's reforms to our constitution, and (3) this programme.

I wanted therefore to take advantage of this opportunity to pause and see where we are, to see what we have overcome in the last year and to try and indicate where I hope we may be going.

(1) The provision of legal advice to the Magistracy

First, I wish to speak about the Magistrates' legal advisers, the Justices' Clerks – so essential to the way in which you work. There are two issues:

(a) Sir Ronald De Witt has already mentioned to you the work being undertaken to provide a proper career structure for them. I have heard on my travels across the country how enticing the offers that are made by the Attorney General and the DPP for legal advisers to join the CPS. What I hope we will see is the opportunity for a career path in the legal service (whether as a legal adviser to

the magistracy, an advocate in the CPS, or as a lawyer in other branches of government), that provides proper career progression with opportunities to change between posts. You need legal advisers just as much as the CPS needs new prosecutors.

(b) It is important that your Justices' Clerks should not only be, but feel independent. The provisions of the Courts Act, reinforced by the Constitutional Reform Bill and the structures being put in place, should enable your Justices' Clerks to feel not only that they are made independent by statute, but that they actually are. Great progress has been made over the past year, but we must be ever vigilant to ensure that their fears are allayed. You cannot act without their independent and fearless advice.

(2) Revised arrangements for training

Much has happened over the past year. The training arrangements have come at an opportune time with the coming into force of the bad character, hearsay and sentencing provisions of the Criminal Justice Act 2003.

I hope in the future we will see some proper ring-fencing for training budgets. When I go to courts, the one thing I often notice in certain parts of the court estate is the poor maintenance. Maintenance and training are always the first casualties of cuts. Proper provision has now been made to stop maintenance cuts being made, and I hope we will see properly ring-fenced budgets for training because your training is essential.

May I just add one thing about the new complex statutory provisions – some have already come into force, such as bad character, and some are shortly to come into force. Quite clearly, some of the legislation is very, very complex. You need to be trained in it, but we are fortunate in having legal advisers who can guide you through the tortuous paths. But again, looking to the future, I would

like to echo the words of the Lord Chancellor and take them, if I may, slightly further.

What we also need is simpler and easier to understand criminal justice legislation. Let us hope that when the new reforms come – and I do not doubt that for a moment that there will be reforms, as reforms to our criminal law are certainly needed – they are in simpler language that is easier to understand. A lot more trust needs to be given to the judiciary to decide cases under the legislative provisions, rather than circumscribing in an unnecessarily complex way the discretion which of necessity must be given to judges.

(3) New arrangements for case management

I wanted to say something about case management.

(a) The pre-trial stage. There has been a great deal achieved through the ETMP Programme and the Criminal Case Management Framework; this, I think, has been an excellent illustration of where the judiciary, the magistracy, the Department and HMCS have worked well together. I am encouraged to see the number of case progression officers now in place. I mentioned when I spoke to you last year that their job was to nag, nag and nag again! They are obviously having a great effect!

(b) Finding out why a trial has not proceeded. I wanted to say something about the burden (and I am conscious of the burdens that are always being imposed upon you), of asking you to take responsibility for finding out why cases have not proceeded or why, if there has been a plea of guilty on the day fixed for trial, that plea did not come earlier.

There are two reasons why I am very anxious you become involved:

(i) If a lawyer knows he has to give an explanation as to why something has not gone as it should, and he has to give that explanation in public, he will be much more careful to follow the rules and be ready.

(ii) More importantly, I think it is essential we understand why cases are not proceeding or why pleas of guilty are not coming earlier.

That is why I very much hope that those of you who already do so will continue to make a detailed enquiry, and that this will become the universal practice over the next few months. Do, please, carry out a detailed investigation of what has gone wrong, so that the ownership of the problem (if I may lapse into a jargon that I find sometimes difficult) is apparent and where people have made mistakes, or systems have gone wrong, things can be corrected.

You must carry out this investigation because you have the responsibility for improving the way the business of the court is conducted.

(c) On 4 April 2005 the New Criminal Procedure Rules will come into effect. They will strengthen your powers. Let us hope therefore that in the next year we will see great improvements. But there is one great challenge ahead and that is I think the time that is wasted at court. Some of the causes I have learnt from you:

(i) Some CPS agents, and I stress the word **agents**, are simply not on top of their case. I really applaud those benches who take steps to ensure that this is brought to the attention of the CPS Chief Crown Prosecutor.

(ii) Some defendants on bail are not in court on time. I do applaud those of you who take a tough line.

(iii) Some defence solicitors are not ready. Here I think there are areas of the country where there are not enough defence solicitors, but I know the Legal Services Commission is looking in to this.

In the course of the next year I hope when you come to court at 10 am, the cases listed for 10 am will be ready to proceed at 10 am.

(4) The judicial family

Next I wanted to say a brief word about the re-establishment of the linkage of the magistracy with the judicial family. I think there are two important aspects of this:

(a) The Area Judicial Forums. I have only had the opportunity of visiting and sitting through one of the meetings but I see the minutes of all of them. I am greatly encouraged. We are having a meeting of the judicial chairmen of these groups shortly and I very much hope that good practice that has arisen in one forum can be spread to the next.

(b) The Judges' Council. It has been an enormous privilege to be able to work with magistrates in the work that is done in the Judges' Council; magistrates have become full members of the Council.

(5) Crime and Disorder Reduction Partnerships

Next, and this was not something anticipated last year but I think it is very important, is the involvement of the magistracy in Crime and Disorder Reduction Partnerships (CDRPs), as the Lord Chancellor has mentioned.

In travelling across the country I have come across many of you who sit on CDRPs in representative capacities (such as members of police authorities) but only very few who sit in their capacity as magistrates. It seems that the work that is done in CDRPs is very important. I therefore very much hope that the

magistracy will take up what has been set out in the letter written by the Lord Chief Justice and the Lord Chancellor, with the strong endorsement of the Home Secretary and the Magistrates' Association, encouraging participation.

Why do I regard that as important?

(a) There is the question of perception. I know that you know about the communities from which you come but other people do not always appreciate you have that knowledge.

(b) I think it is important that you have a chance to explain the role of the magistracy. Criticism is made because people simply do not understand the way in which courts work; how much better it is to be able to explain things and ensure we do not have the damaging public rows or public criticism that destroys so much confidence.

(c) I think you can contribute a great deal to the CDRPs in explaining the way in which court procedure works and what you have found useful in the presentation of materials.

(d) I think that you can learn first hand what is being planned, not only by way of initiatives to deal with offenders, but initiatives to deal with the prevention of crime.

A concern was expressed to me that if you went to CDRPs then you would be subject to all kinds of issues you would find difficult to deal with. Therefore it was thought right that clear guidance should be given; the letter sets this out. First – and this is paramount – there should be no discussion of individual cases. That is something all should know about, but it astonishes me how often someone will try and come up to you and talk to you about a case in which you are involved. Secondly, it is important that there be no discussion of sentencing policy. And thirdly, there should be no discussion of who is to be identified as a prolific or

priority offender. If you go to CDRPs with those safeguards, then you will only bring great benefit to yourselves and to the community.

(6) Independence and partnership with HMCS

Finally, I would like to end by making just a few remarks about how over the past year the independence of the judiciary (and in this I include the magistracy) has been safeguarded. Looking to the future, it is important for the independent judiciary to work in partnership with HMCS, and other parts of the Executive government; such a partnership can only strengthen the administration of justice.

I need not set out in the few minutes I have left what has been done to strengthen the independence of the judiciary. Over the past year, the recognition by the Executive Government of the need to safeguard this independence has been significant. However, what I would like to emphasise is that it is also important that we recognise the position of the Executive and HMCS. They have the responsibility for ensuring that the judiciary have the facilities to conduct the business of the courts. Responsibility for the provision of the facilities lies with HMCS, not the judges.

May I take an illustration – the Estate Strategy. If you travel across the country, as I do, you will see that some Areas have magnificent courts and some have dreadful courts. It seems that, until very recently, no one had ever put together a national strategy to see that people are treated on an equal basis, whether they be as far north as Berwick or as far south as Truro.

It does seem to me essential that such a strategy should be put in place. That strategy is ultimately, under our constitution, the responsibility of HMCS; it is Ministers who must make the ultimate decision as to the location of courts. But although it is their responsibility, arrangements have been put in place to ensure that the views of the judiciary – and within that I include the magistracy – are taken into account. There is for example a judge on the National Property Board, and I know that, through him, our views will be taken into account.

There may be difficult problems in relation to facilities and resources, but it is important that we respect that the decisions that must be made are ultimately the decisions of the Executive and HMCS whilst taking into account our views and needs. That is the way the partnership should work.

May I just take three more very short examples of where I think the partnership is going and how the judiciary, the Executive and HMCS can work together in partnership, respecting each other's constitutional position.

(a) **Anti-Social Behaviour Orders.** There is quite a considerable diversity of practice. For example, some orders that are put before the court are not very sensible, and it was thought desirable to try and provide guidance on good practice. A working party has been set up, comprising representatives of HMCS, the judiciary and the Judicial Studies Board. It hopes to provide you with better guidance on this subject.

(b) **The media.** The Lord Chancellor has spoken about the media. There are two problems that we have encountered over the years.

First, the fact that the judiciary did not know members of the local press, and secondly, the way in which Reporting Restriction Orders are made is not always as clear as it might be.

I would urge you all, as I have urged those of you I have met individually, to try and get to know the local press better. I met the editor of a local paper in Wales, and, speaking to him afterwards, discovered that we both thought we were going to meet the devil incarnate! We both acknowledged we were quite wrong! Getting to know each other proved invaluable.

Secondly, the handling of Reporting Restriction Orders is something that can be a great irritant to journalists. There are ways of improving that handling.

Relations with the media is an area where we should be able to work together. The Judiciary must establish the primary relationship, supported by the Lord Chief Justice's new Communications Office, and there is a role for the HMCS Press Office. We must together ensure that what happens in our courts is better understood.

(c) **Resources and sentencing.** May I turn to what is possibly a more difficult subject, but one which emerged a year ago and which I think it is only right I should deal with - the provision of resources for sentencing.

When we had the conference a year ago there was a great deal of concern about the way in which sentencing reports and options were being provided by the Probation Service. Matters have got better since then.

However, on 4 April 2005, new powers will come into effect. It is clear that the Home Office cannot properly anticipate how those powers will be exercised by the Courts. There will always be the risk that some of the options contained in the new Community Order will prove so popular that the Probation Service's resources are stretched to the utmost.

Obviously, we can hope that the Chancellor will provide more resources, but that is only a hope. I will not say any more at this period. I wish to be realistic, and to assume that there is no more available by way of overall resources than is presently available. What we must therefore do is to try and ensure that what we want as sentencers, and what the Probation Service are able to provide, are as nearly as possible matched. I am in the process of trying to put in place arrangements to ensure this will happen, because it does seem to me that unless the new sentencing options can be made to work, and the sentences you pass are seen to be effective and worthwhile, there will be real problems ahead. I am optimistic that a solution can be found which respects the Home Office's duty

to provide what is set out in the legislation, and your independent position in deciding what you consider is the appropriate sentence in each case.

Conclusion

May I conclude by saying three things:

First, there is, as the Lord Chancellor has said, a great deal to be done and much that can be achieved through the programme outlined and by bringing to a successful conclusion what has already been started.

Secondly, I wish to express my warmest thanks to HMCS. A year ago I was optimistic as to the way in which things would work out. I do not think that I could ever have thought how optimistic I should have been. The work that has been done by Sir Ron and his staff, in looking at the details and in considering what needs dealing with, has been a remarkable achievement. I would really like to thank Sir Ron, and also the men and women on the ground who have done so much.

And thirdly may I thank you all, because I know the trouble to which you go to come and meet me at awkward times in different parts of the country and to talk about the issues that concern us. Without the opportunity of learning from you what is really happening and what you really are worried about, I do not see how we can start to deal with the many challenges and issues that we all face. What it does do, is to encourage me to think that we can actually achieve great things together in making the administration of justice better understood and better appreciated.