

Engaging Communities in Criminal Justice ~ An Appraisal ~

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1. INTRODUCTION

The Green Paper '*Engaging Communities in Criminal Justice*' (Cm 7583) issued in April 2009 by the UK Government (the Office for Criminal Justice Reform) represents a significant contribution to policy development in the sector within England and Wales and contains some potentially far-reaching proposals. Above all, it heralds a new culture in criminal justice – based on a more 'localising and democratising' public service model.

In many respects this model reflects a developing polity across government – with the two strong themes of contemporary governance in the UK (and elsewhere) now being 'community-scale' and 'democratic participation'. The document particularly echoes the ideology and principles that have been strongly driven by the Department for Communities and Local Government (CLG) from where equivalently-significant Green and White Papers have been issued in recent years and which primarily speak to the development of practice in local authorities (for example: '*Strong and Prosperous Communities*' (2006) and '*Communities in Control: Real People, Real Power*' (2008)).

Within criminal justice, roots that have helped nurture and foster this developing polity reach back a few years now and to the interest by politicians and criminal justice practitioners in the Red Hook Community Justice initiative in New York. This has provided the model for the first *Community Justice* project in this country at North Liverpool and particularly for the 'problem-solving approach' which has been pioneered there since autumn 2005.

Given the generally positive perceptions that were quickly generated about the North Liverpool initiative (and also about the similar, but less resource-intensive model piloted in parallel at Salford Magistrates' Court), it was perhaps unsurprising that a second wave of twelve more Community Justice projects was launched in 2007 and that now the Green Paper envisages a roll-out of the approach in all magistrates' courts.

But Community Justice is just one aspect – albeit probably the most important one - of this Green Paper, which overall offers a broad-sweeping vision for a more localist and participatory criminal justice process. It is a lengthy, and diversely focused, document that strongly advocates both a 'direction

of travel' (a vision) for criminal justice and offers some very specific proposals. The coverage, however, seems curiously unbalanced, if not incomplete – there being little on policing or prisons as a whole. Moreover, the fact that a number of the questions posed for public consultation invite further ideas and suggestions to develop the package of proposals might suggest that the policy-making project is still 'work in progress' and that we might expect more to come in future (i.e. when the White Paper is eventually published) – although this of course is not untypical with Green Papers.

While the vision of a more community-oriented and public-engaging criminal justice process is presented with considerable assurance and as though it is self-evidently a good thing, it is surely also quite contentious, especially for the prosecution and the courts, because aspects of the Community Justice model do in a sense challenge the traditional professionalism, 'distance' and 'detachment' of the prosecuting function and of the judiciary from the 'cut and thrust' of the prevailing polity (particularly the local one). Indeed, in redefining the judicial role into a more responsive mode, questions must inevitably be raised about the congruence of the vision with traditional conceptions of the 'separation of powers'.

So what of the content of the Green Paper as a whole?

The document divides into three main sections covering respectively:

1. The Prosecution and the Courts: Responding to Community Concerns about Crime
2. Making Amends: Payback, Reparation, Restorative Justice and Compensation
3. Keeping Communities Informed, Getting People Involved

It is interesting that, although the title of the document refers to 'criminal justice', the document is in fact more specifically focused on 'prosecution', 'courts' and 'community sentencing', and provides little coverage for the other components of the CJS (as more usually defined), notably police and prisons. Of course it will be said that much the same agenda

with regard to local policing has already been the subject of considerable policy-making and publication (see for example, 'Building Communities, Beating Crime', (2004); 'Building Safer Communities Together' (2006); and 'From the Neighbourhood to the National: Policing our Communities Together' (2008).

The absence, however, of any substantive focus within the current Green Paper on community justice and engagement in relation to custody policy and prison sentences and the associated regimes, seems surprising and arguably a missed opportunity, for example, to exploit the scope for the development of more localism in prison policy (so that more prisoners can serve their terms in closer proximity to families and friends) as well as for widening public awareness and understanding of the realities of sentences of imprisonment and consider how more people might become involved, e.g. on Boards of Visitors etc.

So let us now consider the detailed contents of the three main chapters in turn.

2. THE PROSECUTION AND THE COURTS: RESPONDING TO COMMUNITY CONCERNS ABOUT CRIME (CHAPTER 1)

This chapter of the Green Paper focuses on how justice might be made more responsive to local communities – doing so with proposals on three main themes as follows:

- Enhancing the role of the Crown Prosecution Service (CPS) in responding to the needs of the Community.
- Building on the 'problem-solving approach' developed in the Community Justice initiatives and rolling out the most effective elements to magistrates' courts across England and Wales to strengthen the connection between justice and communities (with a tailored more intensive approach in areas of most need).
- Supporting magistrates' courts in responding to community concerns.

Community Prosecutors

The first of these ideas – the proposal to establish ‘Community Prosecutors’ in around thirty pathfinder areas this year - aims ... ‘to strengthen the contribution of the CPS to community engagement activity alongside the police, courts and other partners...’. The document argues for prosecutors to engage much more with their local communities and for local prosecutor teams to be more informed about local concerns, to have stronger links with local people and local police and generally to become a more visible outward-facing and more people-focused organisation.

This is interesting not least because it is all in some contrast with the thinking and values that underpinned the formation of the CPS back in 1985 – when a national service model was chosen and standard prosecuting principles and criteria were developed to ensure a uniformly consistent and professional approach to prosecution and, most important, with clear separateness from the police (who, as well as responsibility for investigation, had previously also been responsible for prosecuting cases in the magistrates’ courts).

The Green Paper is rather unclear as to exactly what the concept of ‘Community Prosecutor’ implies in practice, how, for example, national principles and local priorities would be blended, what it means for the notion of ‘independence’ in the decision whether or not to prosecute; and what, if any, would be the implications for the existing ‘public interest’ test for prosecution (e.g. might a ‘local public interest’ test be developed?). Without clarity on such issues, it is hard to assess the proposal beyond its likely populist appeal at local level. Moreover, one also wonders about the resourcing implications and capacity of the CPS at the current time to work up and successfully implement the concept of Community Prosecutors. Also unaddressed is the important question of whose views community prosecutors might be listening to, since communities rarely speak with one voice.

Community Impact Statements

Another key proposal in this chapter of the Green Paper is for the idea of ‘Community Impact Statements’ to be developed and presented to

courts more routinely. These are already being used in some areas as a means of making community views more visible to the crime and justice service providers and also to provide a mechanism for feeding community views directly into the justice process.

In their current guise, they are typically quite short standard-format reports, not unlike witness statements, and usually (though not necessarily) compiled by the police, which seek to put offences into their wider context and highlight their effects on the community. The Green Paper suggests that the format might change in future in the light of further testing and use, but the general presumption from the document is that Community Impact Statements are expected to become more commonplace in criminal justice in England and Wales – to assist the police and CPS in deciding whether or not to charge someone; to assist probation officers in making sentencing recommendations in the pre-sentence report, and to assist the court in their sentencing decisions.

Problem-Solving Approaches in the Court-Room

The Green Paper proposes the roll-out of ‘problem-solving’ approaches (as pioneered under the Community Justice initiatives) in magistrates’ courts across England and Wales. The suggestion is that this will involve: 1) identifying appropriate cases; 2) promoting direct judicial engagement with offenders; 3) adopting problem-solving interventions; and 4) reviewing progress during sentence through the conduct of Review Hearings.

In this latter context, the single judge approach at the North Liverpool Community Justice Centre is regarded by Government to have been particularly successful in ensuring continuity from hearing to hearing (e.g. the court being able to recall what exactly was said and agreed at previous hearings and thus being able to act appropriately). The Green Paper thus proposes to extend this approach, and also the scope of S 178 of Criminal Justice Act 2003 – which provides a power to bring an offender back to court to review progress.

The Green Paper also proposes to expand use of the principles and practices of multi-agency working similarly pioneered in Community Justice projects – especially in areas of high deprivation - where possible through co-location of criminal justice and related agencies and elsewhere through other means (e.g. the development of ‘virtual courts’ – with parties ‘appearing’ at court via video-link technology)

The particular principles in this respect that are regarded as having been particularly successful are:

- Strong and effective case management
- Community engagement and involvement
- Applying problem-solving approaches
- Repairing harm caused to victims and communities

Selection and Deployment of Magistrates and District Judges

The Green Paper proposes to refresh the job description and outline of responsibilities of both District Judges (Magistrates’ Courts) and Magistrates. The belief is that community engagement and problem-solving approaches should be an integral part of the job or role description for all District Judges and Magistrates. There are already training materials available and in use on these subjects and there are intentions to develop a national toolkit to support further the work in magistrates courts in this respect.

There is also a desire in Government to do more to demystify the appointments process - particularly for District Judges - and the Green Paper proposes the idea of involving community representatives in the appointments process (as has happened at North Liverpool). Particularly in the context of the overall thrust of the Green paper – towards community engagement, and not least in the light of that experience, this proposal might at first sight seem logical. However, here the Green Paper moves on to sensitive territory – in that any suggestions about linking the appointments system for the judiciary with ‘community representatives’ – and particularly with ‘elected’ representatives, risks being at odds with the doctrine of the ‘separation of powers’ i.e. damaging the independence of the judiciary from the executive branch. The recruitment process for members of the judiciary has always been a difficult

issue – and particularly the question of who should be involved in selection – but arguably the current process involving, for magistrates, independently constituted Advisory Committees (which advise the Lord Chancellor) and the Judicial Appointments Committee approach (of the Ministry of Justice) for all professional judicial appointments, including District Judges serving in the magistrates’ courts, is probably the most appropriate way of protecting and respecting independence (and these arrangements already allow for the selection processes to involve members of the community).

Moreover, there would need to be a complete revision of the process of appointing District Judges if it were to involve community representatives from the particular local area, since currently such appointments are made at national level, and then the successful candidates are assigned to particular local areas.

Perhaps less controversial in this context, is the desire expressed in the Green Paper to extend the diversity of the magistracy through initiatives to encourage more applications from a wider cross-section of backgrounds and communities. But here too, it seems important for the judiciary itself to debate and take forward the notion of community engagement in its recruitment processes on its own terms, and with its own commitment and approaches towards this end, rather than simply acting out an executive-directed agenda.

Likewise the suggestions in the Green Paper for an accreditation scheme referred to as ‘Hallmarks of Justice in the Community’ which also risk being seen as Government (the executive branch of the state) dictating how the courts should operate, and potentially compromising the constitutional imperative of an independent judiciary. In this respect the Government particularly wants more people to be aware of court services in their area and to see/hear more about justice and the work done on their behalf, to which end a set of ‘Hallmarks of Justice in the Community’ is proposed as follows:

- Courts connecting to the community
- Justice seen to be done
- Cases handled speedily and robustly
- A strong independent judiciary
- Solving problems and finding solutions

- Working together
- Repairing harm and raising confidence
- Reintegrating offenders and building communities

3. MAKING AMENDS, PAYBACK, REPARATION, RESTORATIVE JUSTICE AND COMPENSATION (CHAPTER 2)

The next chapter of the Green Paper particularly focuses on sentencing in the community and on how local people might be given more opportunities to suggest projects to be carried out under Community Payback. It also discusses making more use of restorative justice and considers how victims might be more swiftly compensated for the harm caused to them by crime.

The chapter is organised into three sections as follows:

- Giving local people more of a say in Community Payback and Asset Recovery schemes.
- More visible and more immediate Community Payback for offenders.
- Restorative Justice and compensation: repairing the harm, restoring communities and compensating victims.

Giving Local People a Say in Community Payback and Asset Recovery Schemes

Two main channels are suggested through which local people might nominate Community Payback projects in their areas:

- Contacting local criminal justice agencies directly, on-line by phone or in a meeting.
- Participating in a Citizens' Panel.

In addition, the Government wishes to raise the profile of asset recovery and so build community confidence. There is also a suggestion that local people might be given more say in how assets seized from criminals are used.

The concern here follows on from the Casey Review and the introduction of new more visible 'Community Payback' uniforms for adult offenders undertaking unpaid work, and the Government is clearly committed to making Community Payback

more intensive and more immediate for serious offenders. Indeed, consideration is being given to increasing the minimum intensity per week from six to eighteen hours and starting offenders on projects within five days of sentencing whenever possible.

Since 2008 Intensive Community Payback has been available as a sentencing option for unemployed offenders convicted of knife possession offences. The suggestion now in the Green Paper, however, is that this power might be extended to cover offences against the person and offences against property, and with the possibility of a further roll-out to follow. The idea is to target offenders who are on the verge of receiving a prison sentence.

Restorative Justice and Compensation

Alongside Community Payback, the Green Paper is advocating more extensive use of restorative justice principles and practices, and a key priority, the document suggests, is to raise awareness of the benefits to victims of restorative justice approaches and to encourage more provision and participation.

The document also focuses on the best ways of getting court-awarded compensation to victims as quickly as possible. In this latter respect, however, it is noteworthy that there is no mention of the option usually regarded as ideal by most victims who suffer through unpaid compensation. This is the idea that the court should pay victims directly and in full after sentence (i.e. bearing the debt) and then seek to recover the money from the offenders, either in one lump sum or in instalments (and using its enforcement powers as appropriate). While no doubt this is viewed as an unattractive approach from the Treasury's viewpoint, it was surely an option that deserved to be discussed in this Green Paper and particularly given the greater prominence now being given by the UK Government to victims in the criminal justice process.

4. KEEPING COMMUNITIES INFORMED, GETTING PEOPLE INVOLVED (CHAPTER 3)

The third main chapter of the Green Paper focuses on improving communities' understanding and confidence in the agencies' responses to crime in their areas. This indeed is the chapter that takes us to the heart of the community engagement issue.

Four main themes are discussed as follows:

- Better information, better presentation.
- Making individual court case outcomes publicly available.
- Local Criminal Justice Boards: joining up communications and engagement activity.
- Promoting volunteering in criminal justice services.

Better Information, Better Presentation

Under this heading the Green Paper considers how to make information on crime more readily available to the public, particularly building on the reforms now being acted upon from the Policing Green Paper concerning the Policing Pledge (e.g. to arrange regular meetings, agree local priorities, provide monthly updates on crime and progress in addressing problems, and detailing what actions are being taken to make neighbourhoods safer). There is discussion of the role of crime and justice maps (on-line) – which would link crime maps with maps of criminal justice outcomes as potentially useful instruments for developing public awareness and confidence-building. And there is discussion of the potential of on-line information about criminal justice performance and of other ways of communicating justice outcomes, and the ‘bigger picture’ on patterns of sentencing, to the public.

Building on the findings of the Casey Review, in which nine out of ten respondents were reported to be dissatisfied at the lack of information provided about outcomes of arrests, the Green Paper discusses the feasibility and desirability of communicating court case outcome information. A public website providing the outcomes of criminal court hearings is being developed although, for reason of protecting individual rights, the current intention is to publish only the name, the town of residence, the offence and the sentencing details for each defendant.

The Green Paper also discusses whether or not the details of out-of-court disposals (e.g. Cautions, and Penalty Notices for Disorder) should additionally be made available to the public. However, the document concludes against this for various reasons, including the fact that currently, offenders accept out-of-court disposals on the assumption that they

will not be made public unless court proceedings follow.

The Green Paper also comments on coverage and communication of cases of particular local concern and suggests a role for Local Criminal Justice Boards (LCJBs) – which are boards comprising the chiefs from all the main agencies involved in criminal justice in each police force area of England and Wales. It also suggests a role in this regard for the more locally-focussed Crime and Disorder Reduction Partnerships (CDRPs) or Community Safety Partnerships (CSPs) and for Neighbourhood Crime and Justice Co-ordinators at the most local level.

Indeed, a key proposal here is that each LCJB should have a nominated ‘lead’ with specific responsibility for improving the co-ordination of engagement activity to support better the joined-up delivery of criminal justice services. This, it is suggested, should have benefits for the public and for the agencies alike.

Promoting Volunteering in Criminal Justice Services

The final section of this chapter focuses specifically on how more volunteers might be engaged within criminal justice in one way or another (e.g. as police special constables, members of Independent Advisory Groups; members of Police Authorities, Probation Boards/Trusts or Courts Boards; as magistrates; as members of a Youth Offender Panel; as Appropriate Adults for Young People being interviewed by the police and so on). The UK Government wants to encourage more local people from as wide a range of backgrounds and social groupings as possible to get involved in local decision-making processes and services.

The range of existing volunteering opportunities is reviewed, as are possible ways of developing volunteering in criminal justice. Surprisingly though, particularly given the strong focus on Community Justice in this document, there is no discussion of what might be regarded as one of the more obvious options here – notably introducing more flexible or short-term service periods for the magistracy and thus making magisterial service more feasible for many more people (e.g. with three or five year

terms). Nor, as indicated earlier, is there any discussion of the idea of introducing honoraria or attendance allowances to make such public service more attractive/feasible. While such options are of course likely to be contentious in many circles, it is surprising that they are not even discussed and seen as legitimate possibilities for consideration in the Green Paper.

Likewise, it might have been expected that a Green Paper of this nature would at least discuss the potential for more volunteers to have opportunity to understand and engage with criminal justice by being trained to act as 'personal mentors' for minor offenders, under the supervision of the Probation Service. This, after all, might well be the means to make a significant difference to the capacity and capability of the Probation Service in addressing re-offending or the propensity to breach orders etc.

5. CONCLUSIONS

The Green Paper 'Engaging Communities in Criminal Justice' is, without doubt, an important document for all involved or interested in criminal justice in England and Wales – and indeed wider than that, in so far as it builds on a particular development agenda and vision for criminal justice (as with public services more generally) that is, to differing degrees, being picked up and applied in not dissimilar manner in many other countries too. As a piece of policy development, the document is broad-ranging, although, as argued, it also neglects quite a few potentially relevant issues too. It brings to criminal justice the localising and democratising agenda that has already touched other parts of the public service, notably policing and local government, and it builds strongly on the experiences gained in the early Community Justice projects, particularly the pioneering initiative at North Liverpool.

In many respects, the agenda it charts, and the initiatives it envisages developing as a result, have immediate attraction – not least because the pursuit of greater public understanding and involvement in criminal justice processes seems a logical way to engender greater public confidence in the system and an opportunity to scotch some of the public

myths and misunderstandings that persist, for example, public perceptions about community sentences.

However, at the same time, there will surely be doubts expressed about the scale and cost of progressing this 'engagement agenda' and about its timing given the challenges that the national economic recession has now created for the public finances. For the next few years at least, the UK Government is expected to have to impose very tight restrictions on public spending, which raises the question as to whether or not there will be sufficient resources available with which to pursue such a large and diverse agenda. Indeed, there will be fears that implementation could unhelpfully distract attentions from on-going criminal justice delivery responsibilities; that it could unduly stretch already limited resources and add unwelcome further pressure for the already hard-pressed local criminal justice agencies.

But more than this, in some respects at least, this is a controversial agenda because certain of the proposals imply putting the values of 'localism' and 'democracy' ahead of those of 'consistency' and 'professionalism', particularly in relation to the prosecution and courts. Indeed, as indicated, particularly in relation to the latter, aspects of what is envisaged in rolling out Community Justice might well seem to imply an erosion of judicial independence because of the closer linkages that would be implied between judicial decision-making and the local polity.

That said, there is also much that will surely be welcomed about these proposals – for example, the suggestion for more involvement of communities in deciding local projects for Community Payback, for better communication and for the promotion of more volunteering in criminal justice. Such initiatives would seem to represent timely and logical responses to the changing expectations of criminal justice as a public service and would fit well with the mood of the country in the early 21st century. They will surely also dovetail well with what is already happening in England and Wales through the advent of neighbourhood policing.

But at the same time it is important to emphasise that these are essentially proposals of the executive arm of the state and, as such, their relevance to the courts and to the judicial branch deserves at least to be carefully questioned and certainly not imposed by government. Community Justice, as a concept and as a practical approach to delivering justice in the courts certainly seems to hold much promise. But its implications need to be carefully thought through and debated widely within the judiciary – which needs to ‘own’ the concept and implement it in its own way, as felt by district judges and magistrates to be most appropriate to them and to their understanding of the interests of justice.

Decentralisation, responsiveness, openness, inclusivity and community engagement are, to most minds, valued hallmarks of a modern democratic state. But so too is the reputation for independence of the judiciary. A balance must be struck, and arguably this lies in the courts themselves being seen to take the lead in shaping the contribution which the Community Justice model makes, and in applying it as appropriate on their own terms.