Northamptonshire County Youth Panel

Tuesday, 8th December 2015

The Northamptonshire perspective

In October 2014, the High Sheriff of Northamptonshire hosted a well attended Youth Justice symposium. At this event, the 2013 Michael Sieff Foundation paper on *'the provision of local authority reports to the youth court'*, became better known to Northamptonshire Youth magistrates. Until then the provisions under section 9 of the Children and Young Persons Act 1969 had not been used as they were not properly known to the Youth magistrates or indeed their legal advisors.

A subsequent study of the provisions and their qualifying statutory instruments (SI 1970/1882 amended by SI 1973/485 and SI 1974/1083) was conducted by our Justices' Clerk and its possible use was discussed with both the local Head of Service for YOS and the Director of Children's Services. The intention of resurrecting section 9 powers in the Northamptonshire youth courts was to inspire and support the building of a more professional and collegiate partnership between Youth Justice authorities; notably the YOS and Social Services. Lord Carlile has properly recognised in his recent parliamentarians report that some agencies had not been working well together. It was foreseen that magistrates would use section 9 if insufficient information was laid before a court, thereby raising concerns about a child's welfare, or whether they were receiving sufficient support while before the courts.

Since section 9 has re-emerged most authorities in Northamptonshire were initially on a steep learning curve but their focus on proactive professional practice has improved a little, over time. Consequently, on the first two occasions a section 9 report has been ordered at the instigation of the Bench, it has also been considered prudent to a issue a criminal procedure rule direction under 3.5(2)(a). This places an individual (usually the legal advisor sitting on the day), in charge of actively managing the case to ensure the section 9 report is both obtained and then laid before the same magistrates, for continuity. This approach has proved to be very successful. On both of these occasions when a section 9 report has been ordered, the legal advisor has 'rigorously guided' the allocated social worker under the duty to report and has secured compliance.

There has recently been one further occasion when it was considered a section 9 report would provide useful information to the court: At a Saturday morning court a child was remanded to youth detention accommodation because there was no suitable address for him to be bailed to, despite the fact that he was known to social services. The case was remitted to the first available youth court. On that day, a social worker attended the youth court, and in discussion with both the defence and prosecution, all parties agreed of their own volition that a section 9 report would be useful to the court at the next hearing. All parties agreed this was the best way forward and the court agreed. The Youth, although further remanded, was granted bail at the next hearing.

As section 9 (or indeed section 37 of The Children Act), makes no mention of the investigations being tied to the sentencing process, it opens their usefulness to all stages of a youth trial. At a recent plea and case management hearing the youth court was concerned that the young defendant could not satisfactorily take an active part in their own proceedings because they were currently of no fixed abode and with no appreciable care or support. The court had concerns under its own obligations of Article 6, and a section 9 investigation was ordered to

learn about the child's care plan and to ensure that a fair trial could be assured.

With direct reference to the The Michael Sieff Foundation paper on 24th September 2013, and the comments reportedly made by the Minister of the day: It is hard to agree with any assertion that the courts are “accepting” of the status quo. Experiences over the last year indicate a widespread unfamiliarity with section 9, amongst magistrates and legal advisors, and its ability to furnish the youth court with much needed information for subsequent action. Indeed, section 9 appears to give the court sufficient power to obtain necessary information from most agencies or organisations that are either a pure local authority or are operating as a local authority through their devolved responsibilities. If legal representations prove that this is not the case then section 9 should be strengthened.

Practical thoughts on Sections 9 C&YP Act 1969, 37 and 47 Children's Act 1989

With regard to the information that would be useful to the Youth Courts, it is clear that the sections have a slightly different emphasis. In simplified terms;

- Section 9(1) makes it a duty of the local authority to consider investigating (unless their opinion is that it is unnecessary) and thereafter report on the, home surroundings, school record, health and character of the young person. Section 9(2) makes it an absolute duty of the local authority if the court requests the said report; indeed it removes the discretion of the local authority.
- By contrast, section 37 states the local authority must consider taking action to provide care, supervision or assistance, or provide reasons why such services are not to be provided and decide whether to review any decision not to provide the said services.
- Additionally, section 47 of the same act, confers comprehensive duties and powers on a local authority to investigate a child who is suffering, or is likely to suffer, significant harm and take any action to safeguard or promote the child’s welfare.
    - Asset Plus should provide access to this information for YOS but will not automatically engage the relevant body in supporting the child.

If section 9, coupled with a CrimPR 3.5 direction, provides sufficient information for the courts to act and, additionally, the court explicitly satisfies itself that local authorities are fulfilling their own duties under section 47, then an embryonic problem solving environment is established.

It is worth noting that neither section 9 nor 37 makes an explicit mention of investigating the child’s disabilities or learning difficulties, recognised or not. Experience in the courts suggests that because these diagnoses and assessments are time consuming and costly they are often ‘overlooked’. Yet the impact of this knowledge on both trial proceedings and sentencing is immense. However, this is arguably embraced through investigations with the Health Authority under section 47, which should be accessible to the judiciary for oversight and used in case management and sentencing hearings. Courts should be aware of the availability of this information and access it as required.

Better information for decision makers

The requirement for better information to be laid before decision makers is well established. The CPS currently operate a ten point checklist system of detailed information they expect from care home managers before they will contemplate considering charging children in care. Case law has encapsulated the principle in R v Chief Constable of Kent and Another ex parte L, R v DPP ex parte B [1991] 93 Cr App R 416. In this case the court held that an application for judicial review could be successful if the decision to prosecute was made without any or sufficient

inquiry into the circumstances and general character of the accused. This judgment highlights the importance in appropriate cases of obtaining sufficient information about the youth's home circumstances and background from sources such as the police, youth offending service, children's services before making the decision whether to prosecute.

Currently, this information, which guides the CPS, is not laid before the judicial decision makers to inform their own deliberations or sentences.

Paragraph 35, Schedule 1, Criminal Justice and Immigration Act 2008

The success of recent reductions in youth crime has brought different challenges. The current cohort of children are recognised as possessing the most complex needs. Complex problems are not solved with simple solutions and their changeable nature necessitates that their solutions must be flexible. The traditional approach where courts only see offenders for sentence and breach fails to recognise the need to provide judicial oversight for Court Orders and the enthusiasm of the judiciary to ensure their Orders are being properly effective. In any other industry this would be an essential element of a quality assurance cycle.

Where needed, court reviews would provide judicial oversight to;

- The engagement, progress, successes and failures of the child subject to the Order,
- Each local authority or agency, ensuring they are supporting the Court Order to its satisfactory conclusion, by working efficiently and effectively together,
- Maintain the authority of the court throughout the duration of the Order with a view to preventing unnecessary breach proceedings.

On each occasion that a section 9 report has been ordered in Northamptonshire part of the reasoning was because information laid before the court raised concerns about whether the child's welfare was being sufficiently supported by social services, while YOS worked on rehabilitation. When children are breached it must be for what they have or have not done; it must never be because of the actions of another.

Paragraph 35 is a readily available, but not yet commenced, piece of legislation that would help to support the culture of problem solving innovations that already characterise our youth courts. Indeed, in a speech given by the Rt Hon Sir Ernest Ryder in Washington DC on 13th November 2015, he said of his reforms in the family court that, “we have had to change to a problem solving approach, so that we are able to undertake the proper identification of the issues in dispute, control the evidence needed, and in certain cases, question witnesses.” So too must this approach be supported in the youth courts.

Recommendations

- Paragraph 35 should be brought into use to support a formal process of judicial oversight for court orders that, in the opinion of the Bench, would benefit from a problem solving approach,

- As soon as practicable, the review processes of paragraph 35 should be extended to include the community element of Detention and Training Orders,

- Magistrates and judges should be informed / trained;

    - In their powers under section 9 and how broadening the information available to the court will lead to improved decisions on case management and sentencing,

    - In the responsibilities of local authorities under section 47 and be supported in new duties

of judicial oversight to ensure local authorities perform their own duties for the benefit of the child and to support better decision making in court.

- A new practice direction or procedure rule should seek to embrace the principles of collective responsibility found in CrimPR 1.2(c) where all parties are obliged to inform the court and all parties of significant failure if it hinders the court in furthering its objectives. If this principle were applied to agencies involved in youth rehabilitation and care it would override commercial, contractual and confidentiality considerations.

If further developments are considered appropriate and a pilot study is preferred as the next step, there may already be sufficient existing legislation that could be utilised as discussed above, to trial the concept of problem solving without further delay. Conversely, further innovative improvements in youth justice could bring together pertinent elements of current law and supplement them with new provisions enabling the youth courts to;

- Fully implement a problem solving environment empowering the court to gather all relevant information from agencies and local authorities with a duty to both rehabilitate and care for the child in question,

- Through judicial oversight, empower the courts to retain an ownership of their sentences allowing them to review, refine and, if necessary, remodel court orders to ensure their long term effectiveness and thereby break the cycle of reoffending,

- Make the courts formally answerable for the effectiveness of the sentences they pass and, in turn, allow them to hold agencies and local authorities to account if recommended and reviewed sentences do not achieve their desired outcomes.

- Recognise the court as a transportable environment populated by mobile professionals, which could be located at a variety of locations to deliver a local service to local communities in their own locality. Are courthouses the only place where justice can be delivered?

If I can be of any further assistance, please do not hesitate to contact me.

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