When summary justice and procedural fairness collide

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https://doi.org/10.54006/DVSR3499
Since being sworn in to sit as a Lay magistrate in the Adult court I have encountered a rich and diverse range of courtroom experiences that have enlivened and enlightened my outlook on the administration and role of local justice. One key aspect of the effective and efficient management of any courtroom process hinges on 1) the timely prosecution of cases and 2) having due regard to the manner in which summary hearings are conducted such that all parties are, as far as is practicable, full and active participants. The former had been jolted into judicial overdrive by the overriding organisational imperatives enjoined on magistrates and other court users under the systemic reforms brought in by the Transforming Summary Justice initiative in 2015. Bear in mind that the lower criminal courts process more than 95% of all criminal cases.

In this article I aim to share some brief and selective personal perspectives, anchored in my role of nearly ten years as a magistrate, on some of the inherent challenges that I believe are embedded in daily courtroom practice which have arisen from the demands of summary and procedural justice that can and have adversely impacted and marginalised defendants. Justice, fairness and equal treatment are - rightly - lauded as indispensable within the terms of the Courts and Judicial Equal Treatment Bench Book (ETBB revised edition 2022) which aims to increase awareness and understanding of the different circumstances of people appearing in courts. However, such aims can be easily unsettled and delayed by ill thought through technocratic reforms evidenced most recently when Magistrates’ court staff voted overwhelmingly in favour of strike action over the rollout of HM Courts & Tribunals Service’s Common Platform - another reform seen as ‘key to modernising the court system’.

On one memorable court sitting, a case which exemplified the challenges of dealing expeditiously with a convicted defendant, the bench had the benefit of listening to an Oral report from the court based probation worker.
This report noted that all community options had been exhausted, but the case fell short of having proper regard to procedural fairness and full user participation. A sentence of custody was imposed and the defendant distractedly looked towards his legal representative, although such an outcome was it seemed not entirely unexpected, to ask if he could speak to him in the cells. The duty Solicitor nodded his assent and dock security staff prepared to escort the defendant through the portal into the cells. The bench chair (now called presiding justice) had consulted the The Adult Court Bench Book which provides guidance for magistrates who sit in the adult court dealing mainly with defendants aged 18 or over. It is used for reference at court and to support more consistent practice. As sentencing pronouncements often sound portentous, care is meant to be expended in clearly explaining what a sentence (and any ancillary penalties) might mean for the defendant. With the introduction of the Offender Rehabilitation Act (2015) The Act provides that all those released from short prison sentences will now first be subject to a standard licence period for the remainder of their prison sentence to be served in the community, and then be subject to an additional supervision period.

I was awaiting the wording on the pronouncement card to include reference to the statutory obligations on the defendant on release from my colleague as sentence was passed. By the time, I had alerted her to this omission, the next defendant was already in the secure dock and the dranatis personae who had attended for the previous sentenced defendant were trooping out of court. An offhand aside to the effect that ‘cell staff will let him know’ but what about his period on supervision, I queried, I am sure that probation will be in touch was the clipped response!

At the end of any sitting magistrates undertake a post-court review to pick up on any issues/concerns that might arise during the day with the legal advisor in attendance. Having referenced this omission above, it appeared that this was far from unusual. I sensed that this absence of expressed concern was partly prompted by the bench’s unfamiliarity with the recent legislative changes brought in by ORA, as well as the incessant pressures of a busy court list. Getting through the day's list, with contested bail hearings, committals and often troubled defendants needing legal advice, not to mention other sentencing decisions ahead, can mean that procedural efficiencies trump considerations of equal treatment.

But such 'benign' oversights continued to thread themselves in subsequent ORA cases. It was with a wry smile that I listened to numerous cases in the Breach Court - on a separate occasion - in which defendants in breach of ORA provisions on post-sentence supervision seemed blithely unaware of the import of such obligations. That is not to say a cluster of other factors had also impacted on levels of compliance, not least the perennial issues of dependency, homelessness and variable levels of post-release supervisory support. Essentially, though, disengagement from legal proceedings risks shifting the 'case-hardened' managerialist dial when procedural fairness is compromised.
In one case - drawn from a non-CPS hearing (miscellaneous cases prosecuted in the magistrates court) - I asked whether consideration had been given to imposing an Educational Supervision Order (ESO) after hearing an Oral report on a case of adolescent truancy whereby the parent, a litigant in person, was being prosecuted by the Local Educational Authority. The probation worker in court demurred on the basis of insufficient time and my court colleagues seemed bemused that such an Order existed! The escalator belt of sanctions to the cusp of custody was getting perilously close, but the absence of any familiarity with such diversionary options seemed unconscionable.

But the value of shared decision making cannot be underplayed, and such characterisations sit alongside another sentencing outcome that embedded the value of social justice as a determining factor when reaching outside the secular matrix of Sentencing Guidelines. A defendant was found guilty of an offence of common assault after trial and sentencing options were being rehearsed in deliberation in the retiring room. The defendant was a man of previous good character, who had been involved in a dispute with his stepson in the context of an ongoing low level familial conflict which had ‘boiled over’ on the day in question. A confused narrative over who was responsible had resulted in a decision that narrowly found against him. However, several material factors were aired in what was an animated discussion, with the legal advisor perched nearby, ostensibly available for advice on legal facts and condign sentencing.

The impact of a sentence (custody had been discounted at this point) of a higher community order, in terms of employability and likely need to change professions entered into deliberations. In short, I argued that a Conditional Discharge was merited in the circumstances. This view was vehemently challenged. However, the collateral impact of the sentence, in terms of future employability and the low risk of reoffending (the stepson had moved out of the address) meant that this outcome - although falling outside the sentencing guidelines - under the interests of justice argument prevailed. Might it be cautiously said that a factored consideration of age discrimination aided by proportionality and deliberative justice worked in this case?

It would perhaps be too hasty to proffer any enduring conceptual lessons or remedial policy reforms on the basis of such an individualised account. That said, observational and participant engagement as a magistrate has at least convinced me that court practices can - if left unchallenged - all too often prioritise efficiencies over fairer justice outcomes, such that the quality of summary justice is diminished and court user-voices are too often marginalised or overlooked.