REPRESENTING MENTALLY DISORDERED DEFENDANTS IN THE MAGISTRATES' COURT

The preparation of a case involving a mentally disordered defendant can present practical and procedural challenges to those that represent them. Unfamiliarity with the procedures governing such cases can present complexities for the representative in cases that may already be difficult by reason of their client's vulnerability.

This article is intended to provide a brief guide to the procedure in the Magistrates' and Youth Courts, which is quite distinct to that which governs the trials of mentally disordered defendants in the Crown Court, with which readers of this article may be more familiar. It is accompanied by an example, from recent practice, of the procedure in action in the Magistrates' Court.

The statutory framework

The Criminal Procedure (Insanity) Act 1964 governs the procedure in the Crown Court but does not apply to summary proceedings. Cases where a defendant is 'unfit to plead' in the Magistrates'' court are governed by s. 11(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (as to procedure at trial) and by s. 37 (3) of the Mental Health Act 1983 (as to disposal).

11.— Remand by magistrates' court for medical examination.
(1) If, on the trial by a magistrates' court of an offence punishable on summary conviction withimprisonment, the court —
(a) is satisfied that the accused did the act or made the omission charged, but
(b) is of the opinion that an inquiry ought to be made into his physical or mental condition
before the method of dealing with him is determined,the court shall adjourn the case to enable a medical examination and report to be made, and shall remand him. ~~[Insertion here of the relevant sections as cited above]~~

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37.— Powers of courts to order hospital admission or guardianship.

...

(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

The Practical Application of the Legal Framework

In practice, there are perhaps four types of case that commonly arise, each providing a different route to disposal, and a different outcome for the defendant. Obtaining expert evidence at an early stage, well before trial, is the best way of ensuring that the most appropriate route is followed, and therefore the best outcome is secured for your client. Those scenarios are:

(i) Where a defendant cannot participate in the proceedings (is 'unfit'), under s. 11(1) of the PCC(S)A 2000 and meets the criteria for a disposal under s. 37(3) of the MHA 1983; or
(ii) Where the defendant is unfit but does not meet the criteria for an MHA disposal; or
(iii) Where a defendant is fit to plead but was suffering from a mental disorder at the time of the offence (the possibility of raising the defence of insanity); or
(iv) Where a defendant suffering from a mental disorder is fit to plead but may benefit from adaptations to the trial process.

Defendant is found unfit to plead

Where a defendant is unfit to plead the court may proceed to a finding that the defendant did the act or omission charged (a 'fact finding hearing'). If the court

finds the act proved, it can then make a hospital or guardianship order under s. 37(3) of the MHA 1983 without convicting him.

In order to proceed to a fact finding, the court will need a psychiatric report prior to the hearing to address the issue. The report must address whether: the defendant can understand the proceedings; can instruct his legal representatives; can understand and challenge the details of the evidence given against him; and can give evidence in his own defence. There must also be evidence that the defendant could be dealt with by way of a hospital order, if a finding that he did the act is made.

Where the medical evidence suggests that a defendant is in fact fit to plead, the case will proceed to a trial in the normal way (but see below, as to adaptations to the trial process which may be appropriate).

If a fact-finding hearing, rather than a trial, takes place, the role of the advocate is to test whether the Crown can prove that the defendant did the act or omission. The criminal standard applies just as it would in a conventional trial and the court must adopt the same rules of evidence. If the burden is not met, the court must acquit, whatever their anxieties as to the defendant's mental state may be (*R (on the application of Singh) v Stratford Magistrates' Court* [2007] 1 WLR 3119).

Following a finding that the defendant did the act, the court cannot proceed to sentence without two psychiatric reports, both of which recommend a s. 37 disposal.

Where no disposal lies under s. 37(3) MHA 1983

If the defendant does not meet the criteria for detention under s.37 (3), notwithstanding an opinion that he is unfit to plead, it ~~will~~ may not be in the public interest to proceed with the prosecution (to what end, if no disposal can be made by the court?). If the Crown does not in those circumstances

discontinue the case (and it is submitted that this would be unusual), it would be open to the court to adjourn the case *sine die.*

Defence of Insanity

Where the defendant is fit to stand trial but was at the time suffering such abnormality of mind so as not to know the nature and quality of his act, then the defence of insanity is open to him in the Magistrates' Ceourt, just as it is in the Crown Court.

However, there is a distinction: where the defence is successfully made out in the Magistrates'' Ceourt it leads to an acquittal and the court has no power to deal with the defendant further. Whereas, in the Crown Court, a successful defence leads to a 'special verdict' of not guilty by reason of insanity, and the court may proceed to make a hospital order.

The requirement under the CP(I)A 1964 that there be written or oral evidence from two medical practitioners, one of whom is approved under s. 12 of the MHA 1983, before the 'special verdict' can be returned, does not apply to proceedings in the Magistrates'' Ceourt. Although common sense dictates that the best way to mount such a defence successfully would be to put psychiatric evidence supporting it before the court.

Adaptations to the Trial Process

Where a defendant is fit to plead but is nonetheless suffering from a mental disorder which may affect his ability to cope with the trial process, certain adaptations may be made to accommodate his or her particular impairment (see *Practice Direction (Criminal Proceedings: Further Directions)* [2007] 1 WLR 1790.)

The Practice Direction applies to defendants before the adult or youth court who are suffering from a mental disorder within the meaning of the MHA or who have any other significant mental impairment.

If representing a defendant who is fit to plead and stand trial, but nonetheless meets this criteria, it may be appropriate to consider obtaining a psychiatric report addressing such matters as whether the defendant requires, for example: frequent breaks; assistance in understanding the meaning of complex language; special seating arrangements (e.g. outside the dock; next to an appropriate adult or his solicitor); or the use of an intermediary.

This assistance may in practice be most appropriate in cases involving a defendant with a learning disability, rather than a mental illness.

Making use of the Court Mental Health Assessment Schemes

When having regard to the above, the Magistrates'~~ c~~Court practitioner would be well advised to keep in mind that the court-based Mental Health Assessment Schemes can offer invaluable practical assistance.

The schemes are staffed by health care professionals with expertise in dealing with mentally disorder in a forensic context (be they doctor, Community Psychiatric Nurse, or other professional). They may be able to provide immediate expert opinion on the present mental state of a defendant (for example, where the representative feels it has changed since the last appearance in court); advise as to appropriate adaptations to the trial process for a particular individual; or avoid the need to adjourn pre-sentence by providing advice as to appropriate disposal.

Conclusion

In conclusion, in order to secure the best and most appropriate result for mentally disordered defendant, the representative must from an early stage be alive to the nature of the mental impairment suffered by the defendant; how it is likely to impact on the case; and how that informs the route that should be taken towards disposal in the particular circumstances of the case. In order to illustrate this a concrete example is given below. ~~Those issues are no less complex by virtue of taking place within the realm of the Magistrates'~~

~~Court: it is hoped that this article is of some assistance in making the way through clearer.~~

Representing a Defendant charged with various offences recently, I was faced with a client who appeared lucid and able to respond to the typical fitness to plead questions above. This was at odds with an assessment from a medical practitioner approved under s.12 of the MHA that he was not fit. As the Magistrates Court, unlike the Crown, was not required to perform an assessment before holding a fact finding, I requested one before I could take a view.

An assessment was obtained from a Community Psychiatric Nurse (CPN), at Court. It was helpful to first inform the Legal Advisors and the Crown what was happening as they were able to help contact a CPN. A CPN is not necessarily approved under s.12 MHA, but the purpose is not to provide a recommendation under s.37, but to assess fitness. It helped to have supporting adults at Court who the Defendant knew well. It also assisted the CPN to run through the standard questions with them when their advice was not clear. In doing so, I tried to keep in mind the other possible avenues e.g. defence of insanity and mitigation to a potential plea. In my case, the Defendant appeared to understand the proceedings, but was unable to provide reliable and accurate instructions on the incident itself.

However, the most helpful aspect of involving a CPN was they could advise on disposal. In particular, in Magistrates' Courts cases characterized by low level offending, a mental health diversion, as recommended in our case, can be more appropriate than a hospital or guardianship order. A mental health diversion can be recommended at any stage in criminal proceedings and essentially means a Defendant is better dealt with by a referral to the local Community Mental Health Team, for example, than to be dealt with by the criminal justice system. A CPN can offer a report, for the Crown to consider, that can recommend this form of disposal as indeed happened in our case.

When confronted with such a situation these two documents are useful – a directory of all mental health diversion teams[1] and a flow chart explaining how they can intervene at each and every stage of proceedings[2].

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[1] http://www.nacro.org.uk/data/files/nacro-2009040300-83.pdf
[2] http://www.centreformentalhealth.org.uk/pdfs/all_stages_diversion_model.pdf

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