

Making Family Circumstances Matter

For some time there has been considerable concern that too many children are prosecuted and brought before the Youth Court when the problem is not so much the dishonesty or even violent conduct of the child that gives rise to the offence, but poor home circumstances or other social causes for which the child or adolescent cannot be held responsible. Has the Care System a role to play in the Criminal Courts?

This was the question raised in a recent paper entitled 'Needy Children in the Criminal System' produced by the Centre for Child and Family Law Reform.

It is often forgotten by non-lawyers that the aim of the Youth Court system is to prevent offending by children and young persons (see S.37 of the Crime and Disorder Act 1998). More particularly it is the duty of every court when dealing with a child or young person who is brought before it, either as an offender or otherwise, to have regard to the welfare of that child or young person and in a proper case take steps to remove him or her from undesirable surroundings (see S.44 of the Children and Young Persons Act 1933 as amended).

The Centre argues that a new power is essential for use in the Youth Court, the Magistrates Court and the Crown Court when a child or young person is tried there. It could be introduced by an amendment to the Children Act 1989 as follows: 'S.37 (1) (A) Where, in any criminal proceedings in which a child or young person under the age of 17 years stands trial for any offence and it appears to the court that it may be appropriate for a Care Order or Supervision Order under S.31 of this Act to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances'.

Once a direction has been given to the appropriate Local Authority, those matters as set out in S.37 (2) and (3) would apply. Equally, upon making a direction under S.37, the court should have power to remit the case immediately to a Family Proceedings Court to consider whether an interim order is required. It is further proposed that the Criminal Court should be empowered to appoint a solicitor and guardian for the child. The information sought by the court should be provided within 8 weeks and upon the direction under S.37 (1) (A) being given, a date should be fixed in the Family Proceedings Court to enable that court to consider the report when ready.

This in essence is the thrust of the Centre's paper and its proposals have been submitted to Government and in particular to the Department for Education and Skills. Whether Government runs with this issue remains to be seen, but ASBOs are not enough nor are they working sufficiently well.

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(Timothy Shuttleworth has been a member of the Steering Committee of the Centre for Child and Family Law Reform since its inception in 2001).

