



House of Commons
Justice Committee

The role of the magistracy

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relating to the report*

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Justice Committee

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Summary

In this Report we consider the role of the magistracy within the criminal justice system in England and Wales. Our report looks at the method and rate of recruitment for magistrates, their training and development, and the effect of court closures on their work. In addition, we consider whether the role of magistrates should be expanded. Our recommendations are mainly directed at the Ministry of Justice and/or the senior judiciary, recognising that effective implementation will also require agreement with other bodies such as the Magistrates Association and the National Bench Chairmen's Forum.

We conclude that the magistracy faces a range of unresolved issues relating to its role and its workload, together with serious problems with recruitment and training; these must now be addressed as a matter of urgency. We consider it unfortunate that the Government's evident goodwill towards the magistracy has not yet been translated into any meaningful strategy for supporting and developing it within a changing criminal justice system.

We therefore recommend that, as a matter of priority, the Ministry of Justice, together with the senior judiciary, develop an over-arching strategy for the magistracy—to include workforce planning, magistrates' training and the wider promotion of their role, especially to employers. The strategy should also take into account the impact of court closures and consider whether the role of magistrates could be expanded, in particular within any proposals for problem solving courts.

Our other principal conclusions and recommendations—many of which would relate to a wider strategy—can be summarised as follows:

- There is sufficient evidence of low morale within the magistracy to cause concern. We recommend that magistrates be consulted on any further changes to the criminal justice system, especially those likely to have an impact on their role.
- We recommend that the protocol to support judicial deployment in the magistrates' court be amended and that consideration be given to allowing magistrates to sit without legal advisers when sitting with a District Judge.
- We recommend a number of steps to increase the diversity of magistrates, including wider and more proactive advertising, a streamlined recruitment process, additional funding for Magistrates in the Community and consideration of the introduction of 'equal merit' provisions for magistrates' recruitment.
- Rebalancing the age profile of the magistracy is unlikely to happen unless more is done to overcome the barriers facing employed magistrates. We recommend the creation of a kitemark scheme that recognises and rewards employers who support the magistracy.
- We recommend a comprehensive review of magistrates' training needs, maintaining a balance between different ways of learning. We also recommend more funding to support training and the introduction of a Continuing Professional Development scheme.

- We do not consider that introducing fixed tenure is a satisfactory way of reducing the number of magistrates in areas where there is insufficient work available. However, we recommend a more robust appraisal scheme which can identify inadequate performance and review the future of magistrates who are insufficiently committed to their role.
- The Ministry of Justice should ensure that at least 90% of users can reach the nearest magistrates' court venue by public transport within one hour, and should urgently explore low cost, practical solutions to potential security risks in alternative court venues lacking a secure dock. Full access to physical courts should be maintained until facilities such as video links are fully operational.
- We support increasing magistrates' sentencing powers to 12 months' custody and recommend that the Ministry of Justice provide a timetable for implementation. We recommend that the new Allocation Guideline be given time to bed down and the Sentencing Council be given an opportunity to review its impact and that the Ministry of Justice publish any modelling of the potential impact of increased sentencing powers on the prison population.
- Magistrates will play an essential role in ensuring the success of any future Government strategy for problem-solving courts and we recommend that they be fully consulted on the approach that is taken. In any event, legal restrictions should be lifted to allow them to supervise community orders in all courts, where consistent sitting can be arranged.

1 Background to this inquiry

The role of magistrates

1. Established over 650 years ago, the magistracy is recognised as an integral part of the judiciary of England and Wales. As of April 2016, there were 17,552 serving magistrates,¹ also known as ‘justices of the peace’ or ‘lay justices’. They are unpaid volunteers, although they may receive allowances to cover travelling expenses and subsistence. Magistrates deal with over 90% of criminal cases and a substantial proportion of non-criminal work, including family law cases. In court, they usually sit as a panel of three—an experienced chair and two ‘wingers’—supported by a trained legal adviser, who is an assistant to the justices’ clerk.² In addition to sitting in the adult criminal court, magistrates may be appointed to the Youth Panel, enabling them to sit in the Youth Court which deals with defendants aged 11 to 17. Similarly, magistrates may be appointed to the Family Panel whose members sit in the Family Court. Once appointed, a magistrate is allocated to a particular Local Justice Area, sitting as part of the ‘bench’ of magistrates. The local bench is led by a Chair who is elected annually by the members to act as their leader and representative.

2. Traditionally, the linked principles of ‘local justice’ and ‘justice by one’s peers’ have underpinned the role of the magistracy. For many magistrates, these principles remain crucially important today. For example, Corby Magistrates’ Bench told us: “We believe in local justice, for local people, delivered in the heart of the community. Of course, it needs bringing up to date, but the principle is sound and has worked for hundreds of years. Why change it?”³ Susan Furnival JP commented: “Magistrates should provide the link between the community and the judiciary ... maintaining the concept of judgement by our peers.”⁴ According to Peter Chapman, a retired magistrate, magistrates “make their assessments of fairness and justice based on the normal standards of ordinary members of the public.”⁵

3. Despite the centrality of its place within the criminal justice system, the role of the magistracy has not been reviewed for many years. In 2001, Lord Justice Auld’s comprehensive review of the criminal courts recommended no major changes to the magistracy other than taking steps to increase diversity and improve training.⁶ In August 2013, the then Justice Minister Damian Green MP announced that the Government would be working with magistrates to maximise their responsibilities and modernise their role; three informal consultation events would lead to a formal consultation.⁷ The following March, he announced that magistrates would be given new powers to return offenders to custody as part of the Government’s reforms of rehabilitation.⁸ However, some six months later, in a response to a Written Parliamentary Question, the then Justice Minister Mike Penning MP stated that: ‘The Government has no plans to publish a White Paper on

1 Serving magistrates statistics, April 2016 <https://www.judiciary.gov.uk/publications/judicial-statistics-2016/>

2 The Lord Chancellor, in consultation with the Lord Chief Justice, assigns a justices’ clerk to each Local Justice Area. His/her functions include giving advice to magistrates on law and procedure.

3 [MAG0012](#)

4 [MAG0039](#)

5 [MAG0036](#)

6 [A Review of the Criminal Courts of England and Wales, The Right Honourable Lord Justice Auld, September 2001](#)

7 [Rt Hon Damian Green speech, 14 August 2013](#)

8 [Rt Hon Damian Green speech, 25 March 2014](#)

magistrates' reform before the General Election. The role of magistrates will be reviewed again once our rehabilitation and summary justice reforms have bedded down.”⁹ The report of the Leveson Review of efficiency in criminal proceedings, published in January 2015, dedicated a chapter to the magistrates' courts which mainly considered how to improve case management and case progression.¹⁰ Meanwhile, a marked reduction in magistrates' court business, fundamental restructuring of the courts estate and a range of initiatives designed to modernise the criminal justice system have combined to impose significant changes on the context in which magistrates now operate.

Our inquiry

4. Taking into account all these factors, and in response to representations we received on the future of the magistracy in England and Wales, we announced an inquiry into the subject on 6 November 2015. We invited views on any matters relating to the current or future role of the magistracy, but particularly welcomed submissions on the following questions:

- What should the role of the magistracy be in the criminal justice system, especially in the wake of a falling workload? Is the right balance struck between the use of magistrates and the use of District Judges? Should any changes be made to the powers and responsibilities of the magistracy?
- How have court closures affected the work of the magistracy? How will further court closures affect this?
- Is the current method and rate of recruitment for magistrates adequate? How could the role be made more appealing? How could diversity be improved?
- Is the level of training and continuous development and support for magistrates adequate? How could it be improved?
- Should magistrates' sentencing powers be altered in any way and, if so, how? How would such a change affect the efficiency of the criminal courts and the criminal justice system as a whole?
- What will be the impact on the administration of courts and on the numbers and career structure of magistrates of current and proposed reforms to the magistracy?

5. In the course of our inquiry we received 80 written submissions and held three oral evidence sessions. Witnesses at our oral evidence sessions were Penelope Gibbs from Transform Justice; Peter Dawson from the Prison Reform Trust; Jo King JP and Alwyn Lloyd Ellis JP from the National Bench Chairmen's Forum; Richard Goold JP, Luke Rigg JP, Nicola Silverleaf JP, Dr Jenifer Harding JP, Christine Holmes JP and Dr Simon Wolfensohn JP—all of whom gave evidence as individual magistrates; Malcolm Richardson JP and Sheena Jowett JP from the Magistrates Association; The Right Hon Lord Justice Fulford, Senior Presiding Judge; Senior District Judge Riddle, Chief Magistrate; and Shailesh Vara MP, the then Parliamentary Under Secretary of State for Courts and Legal Aid. We are grateful to all those who provided written and oral evidence to our inquiry, and would like

⁹ [Written Question 224617, answered on 25 February 2015](#)

¹⁰ [Review of efficiency in criminal proceedings](#), The Right Hon Sir Brian Leveson, January 2015; Chapter 5

to record our appreciation of the senior judiciary's agreement that individual magistrates could provide evidence to us. It was particularly helpful for us to hear the personal views of a range of magistrates from across the country, each with their own experience on which to base their opinions and proposals.

6. Our report is set out under a series of chapter headings which broadly reflect the inquiry terms of reference. In drawing our conclusions and making recommendations, we have considered what changes might be made to the role of the magistracy and to the support available to magistrates within the current court structure and within existing arrangements for criminal trials. Many of our recommendations in this report are directed at the Ministry of Justice (which for these purposes we take to include HM Courts and Tribunals Service) and/or the senior judiciary in the first instance, but we recognise that for effective implementation many of them will require consultation, discussion and agreement with other bodies such as the Magistrates Association, the National Bench Chairmen's Forum and the Association of Lord-Lieutenants, and the recommendations should be read with that proviso in mind. We have not taken evidence on the decision to unify the criminal courts under a single leadership structure, announced in the joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals on 15 September 2016,¹¹ nor on the other policy proposals in that statement with potential relevance to the magistracy. Neither have we taken a view on potential reforms to the mode of trial rules for particular criminal offences.

11 [Transforming our justice system - joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals, 15 September 2016](#). The idea of a unified criminal court was originally put forward in the report of the Auld review of criminal courts (2001) and endorsed by the Leveson Review of efficiency in criminal proceedings (January 2015) as allowing for "greater jurisdictional flexibility in the allocation of cases, and the ability to match judicial resources to caseload".

2 Role of the magistracy within the criminal justice system

The modernisation of the magistrates' courts

7. The past decade has seen increasing centralisation of the organising structure of magistrates' courts, motivated by a desire to increase efficiency and improve consistency across the country. The administration of local courts was formerly conducted by Magistrates' Courts Committees, largely run by magistrates themselves.¹² In 2005, these committees were abolished and their responsibilities assumed by a new Executive Agency of the Ministry of Justice, HM Courts Service, which merged with the Tribunals Service in 2011 to form HM Courts and Tribunals Service (HMCTS). As we discuss below, the drive towards efficiency savings has also led to the closure of many local courthouses, with consolidation into fewer courts serving larger areas and/or specialist courts (such as for road traffic offences), together with a reduction in the number of magistrates' benches. The Coalition Government legislated to introduce the Single Justice Procedure,¹³ allowing certain uncontested cases to be dealt with on the papers by a single magistrate; we consider this further below. In May 2015, the Transforming Summary Justice (TSJ) initiative¹⁴ was implemented, a cross-agency programme designed to improve the handling of cases by magistrates' courts by reducing delays, minimising the number of hearings and making more trials effective on the day of listing. Under TSJ, anticipated guilty plea cases are listed 14 days after charge in Guilty Anticipated Plea (GAP) courts, with the aim of concluding all stages at one hearing, including sentencing. Cases where a not guilty plea is expected are listed 28 days after charge in Not Guilty Anticipated Plea (NGAP) courts, allowing time for review and preparation before the first hearing, and early contact with the defence.

8. Inefficiencies within the criminal justice system are against the interests of defendants, victims and witnesses, as well as being wasteful of public resources. The Association of Lord-Lieutenants¹⁵ gave an optimistic assessment of the benefits of recent initiatives aimed at reducing delays in summary justice, suggesting that "considerable improvement has been made with the recently introduced 'Transforming Summary Justice' review".¹⁶ However, a less positive view of the current situation was put by others, including Richard Goold JP:

If you give your time to be a magistrate, you expect your time to be used doing what is expected of a magistrate, not sitting in a retiring room for four or five hours because cases are not effective. Personally, that is the most frustrating thing for me as a magistrate.¹⁷

To assist it in formulating its response to our inquiry, the Magistrates Association conducted a survey of its members, receiving around 2,000 responses; we are grateful to the Association for sharing the survey results as part of its written evidence and we refer

12 See evidence from Stanley Brodie QC [MAG0057]

13 Under section 48 of the [Criminal Justice and Courts Act 2015](#)

14 https://www.cps.gov.uk/publications/agencies/transforming_summary_justice_may_2015.html

15 Lord-Lieutenants are the Sovereign's representatives in their counties and areas. They give active support to the voluntary, community and charitable sectors and they chair the majority of the Lord Chancellor's Advisory Committees which appoint, and oversee the conduct of, magistrates.

16 [MAG0046](#)

17 [Q130](#)

to them throughout this report. Survey findings indicate some support for Mr Goold's view: when asked about the most negative aspects of their work, 22% of respondents cited delays and inefficiency and 17% cited not enough sittings or cancelled sittings. Over one-third thought that they were used 'quite inefficiently' or 'very inefficiently' in their role.¹⁸

9. Other evidence raised concerns about low morale among magistrates—attributed by Dr Peter Reed JP¹⁹ and the Somerset Bench²⁰ to team spirit being undermined when benches are enlarged after amalgamation. The Magistrates Association had encountered anecdotal evidence of low morale. While its survey of members indicated that 88% were 'very satisfied' or 'quite satisfied' with their work, a clear majority of respondents felt they were not adequately consulted about reforms to the justice system (59%), management of magistrates (66%) or management of the courts (74%).²¹ Jo King JP, Executive Chair of the National Bench Chairmen's Forum, recognised that the magistracy was going through a period of great change, generating uncertainty and anxiety, but she went on to tell us: "We work very closely with our colleagues in HMCTS and through our justices' clerks, and I think we will be resolving some of those issues fairly soon, but I certainly would not say that it is in crisis."²²

10. We received some evidence specifically identifying reduced and poor quality administrative support for magistrates' courts as having a negative impact, both on magistrates and on the reputation of the justice system.²³ Nicola Silverleaf JP thought that court staff might be struggling to implement change whilst also worrying about their own jobs, and that their poor morale could be transmitted to magistrates.²⁴ It was also suggested to us that "top down administration" was undermining magistrates' ability to deliver a high quality service.²⁵ Commenting on the relationship between magistrates and the current business administration of the courts, Dr Jenifer Harding JP observed:

There is a perception that the Courts Service is less committed to magistrates. The consequence of that is that magistrates become less committed to the court.²⁶

Dr Harding illustrated her point by explaining that there had been a merger of four courts in her area; there were perceptions that this had been done without adequate participation of local magistrates, who felt that the new system had been imposed on them.

11. We endorse the principle behind initiatives designed to streamline and modernise proceedings in the magistrates' courts, but we believe there is a risk of undermining magistrates' morale by imposing changes on them without consultation and by reducing administrative support to unsatisfactory levels. Although evidence does not indicate a universal problem, there is sufficient evidence of low morale within the magistracy to cause us concern. *We recommend that magistrates be consulted as appropriate on any further changes to the criminal justice system on which their views*

18 [MAG0058](#), paragraph 17 and Appendix

19 [MAG0002](#)

20 [MAG0018](#)

21 [MAG0058](#)

22 [Q58](#)

23 Corby Magistrates' Bench [[MAG0012](#)]; Richard Goold JP [[MAG0001](#)];

24 [MAG0067](#)

25 Graham Jagger JP [[MAG0007](#)]

26 [Q154](#)

are likely to assist policy development and/or which are likely to have an impact on their role—in particular changes to administrative support to the courts, whether in their own locality or more widely across the court system.

Allocation of cases to magistrates

12. The role of the magistracy is complemented by that of District Judges (sometimes referred to as DJMCs, and formerly known as stipendiary magistrates), who are salaried members of the professional judiciary. They can be allocated to any magistrates' court in England and Wales in response to business needs and they generally sit alone without the support of a court legal adviser. As of April 2016, there were 133 District Judges appointed to sit in magistrates' courts in England and Wales, together with 101 Deputy District Judges who sit part-time on a fee-paid basis.²⁷

13. In 2011, the Ministry of Justice published a report of research²⁸ comparing the strength and skills of magistrates and District Judges, based on interviews and discussion groups with members of the judiciary, court staff, and court users; observations of over 2,000 cases in 44 magistrates' courts; and an interactive cost model which included a notional 'volunteer cost' reflecting the value of magistrates' unpaid time. While magistrates were widely perceived to be better connected to their community and less 'case hardened', the research found that District Judges were viewed as transacting cases more quickly and considered to be more adept at case management. After controlling for key differences, the cost model showed that District Judges were typically more expensive per case than magistrates—mainly because of their salary costs. However, compared to magistrates, District Judges were notably faster in dealing with 'either-way' cases and were found to be less costly for these cases when either the costs of lawyers and legal aid or the 'volunteer costs' for magistrates were taken into account. Following publication of this research, a working group, consisting of senior members of the judiciary, the Magistrates Association, the National Bench Chairmen's Forum and HM Courts and Tribunal Service (HMCTS), was established which agreed a protocol on judicial deployment in the magistrates' courts in 2012.²⁹ In summary, the protocol determines that serious cases such as those involving terrorism and extradition should always be allocated to District Judges and establishes a presumption that lengthy or complex cases should be allocated to them, as well as a share of more routine court business, including case management and pre-trial reviews. The protocol indicates that District Judges and magistrates should occasionally sit in mixed benches, with a particular view "both to improving the case management skills of magistrates and to improving the culture of collegiality".

14. Alongside an increase in the use of out-of-court disposals such as police cautions, reduction in crime has contributed to a substantial drop in the number of cases being handled by the magistrates' courts; the crime survey for England and Wales indicates that crime has steadily fallen since reaching a peak in 1995.³⁰ Records for 2005 show that, in that year, nearly 1.9 million defendants were proceeded against in the magistrates' courts³¹

27 [Courts and Tribunals Diversity Statistics, April 2016](#)

28 [The strengths and skills of the Judiciary in the Magistrates' Courts, Ministry of Justice Research Series 9/11, November 2011](#)

29 [Protocol](#) to support judicial deployment in the Magistrates' Courts, November 2012

30 Office for National Statistics, [Crime in England and Wales: Year ending December 2015](#), April 2016

31 [Ministry of Justice, Judicial and Court Statistics, 2007; Table 7.1 "Magistrates' Courts - number of defendants proceeded against for criminal offences, by offence type, England and Wales 2002 - 2007"](#)

whereas, in 2015, the magistrates' courts had fewer than 1.6 million receipts of criminal cases.³² The evidence we received suggests that in consequence of this downward trend some magistrates may be struggling to sit often enough to maintain their competence. For example, Christine Holmes JP told us that “there is not enough work for us to maintain our competence currently”³³ and the North East Bench Chairs Forum observed: “Experienced magistrates are losing confidence in their ability, in particular, to chair busy remand, NGAP and GAP courts because of lack of court sittings which they feel has reduced their competence and confidence.”³⁴ In the minds of some magistrates who submitted evidence, this problem is linked to the use of District Judges for cases that magistrates could easily handle themselves. Vivian McCarthy JP expressed concerns that illustrated this view:

I believe a balance needs to be struck where the needs of all magistrates are met by being regularly exposed to a wide range of case-work. Too heavy a reliance on DJMCs risks reducing competences of the wider bench because all but the most straight-forward work will be dealt with by the professional bench.³⁵

15. A minority of responses made specific complaints about work being removed from magistrates at short notice to ensure that District Judges had sittings³⁶ or even suggested that District Judges were able to “cherry pick” the most interesting cases.³⁷ Nicola Silverleaf JP observed that providing District Judges with enough sitting time was a “sensitive issue to benches when they don’t have enough work” but recognised that, as salaried public employees, they had to sit an appropriate number of days to remain competent.³⁸ This point was echoed in several written submissions that we received.³⁹

16. However, many magistrates were happy about the relationship between their bench and District Judges, which was variously described as “good”⁴⁰, “excellent”⁴¹ and “very conducive to positive working”.⁴² Dr Simon Wolfensohn JP thought that the current distribution of work between magistrates and District Judges worked well and that the protocol on judicial deployment “appears to be adequate to regulate the balance”.⁴³ The protocol was expressly supported by others, including David Williams JP.⁴⁴ Over 60% of the respondents to the Magistrates Association’s member survey thought that the allocation of work between magistrates and District Judges was appropriate all or some of the time.⁴⁵ However, we note that over one-fifth of the survey respondents considered the allocation of work to be inappropriate either most or some of the time and, of these respondents, over 80% were concerned about factually complex cases being retained by District Judges. In its submission, the Magistrates Association argued that there was no intrinsic reason why factual complexity should require a District Judge, “whose expertise

32 Ministry of Justice, Criminal Court Statistics (quarterly), [January to March 2016](#), 30 June 2016

33 [Q157](#)

34 [MAG0008](#)

35 [MAG0085](#)

36 Clive Lewisohn JP [[MAG0084](#)]; David Sanderson JP [[MAG0006](#)]; Margaret Robb JP [[MAG0061](#)], para 1

37 North East Bench Chairs Forum [[MAG0008](#)]; Chris Taylor JP [[MAG0005](#)]

38 [Q112](#)

39 Dominic Goble JP [[MAG0062](#)]; North East Bench Chairs Forum [[MAG0008](#)]; Margaret Robb JP [[MAG0061](#)]; Shropshire Bench [[MAG0034](#)]

40 Magistrates Association Staffordshire Branch [[MAG0028](#)], para 1.2

41 Central London Bench [[MAG0013](#)]

42 Richard Goold JP, [Q107](#)

43 [MAG0037](#)

44 [MAG0029](#)

45 Magistrates Association [[MAG0058](#)], Appendix.

is specifically legal”.⁴⁶ Other evidence that we received supported the view that magistrates would be able to deal with more challenging cases, thus providing them with a greater breadth of experience.⁴⁷

17. The decision as to whether magistrates should sit in a mixed bench with a District Judge to hear a particular trial rests with the justices’ clerk. We received a number of submissions arguing that this should happen more often, including from a range of area bodies such as Bedfordshire Magistrates Association,⁴⁸ Birmingham and Solihull Bench,⁴⁹ Coventry and Warwickshire Magistrates Association,⁵⁰ Lincolnshire County Bench⁵¹ and West Mercia Advisory Committee.⁵² The idea was also supported by Transform Justice⁵³ and by some individuals, including Phil Lloyd JP,⁵⁴ R W Farrington JP⁵⁵ and Robert Lynch, a retired magistrate.⁵⁶ In his oral evidence to us, Senior District Judge Howard Riddle, the Chief Magistrate, spoke positively about sitting with magistrates but noted that having a District Judge with two magistrates and their legal adviser was quite an expensive option. He suggested that this approach be used proportionately: “it works very well for a serious or high-profile case.”⁵⁷ In response to the same question, Lord Justice Fulford, the Senior Presiding Judge, commented:

It provides not only something that is more akin to a jury for the more serious cases but a fantastic training opportunity, both for the lay magistrate and for the District Judge. To sit together and watch each other’s skills in operation is extremely useful. Without breaking the bank at Monte Carlo, we would support this happening on a more regular basis than it does at present.⁵⁸

Lord Justice Fulford added that he had thought for a while that this area required the laying down of some general ground rules to give guidance to justices’ clerks.⁵⁹

18. We recognise that, in practice, there are difficulties in balancing the work of magistrates with that of District Judges and that District Judges must be kept occupied because of their salaried status and the need to maintain their competence. However, it is also important to retain magistrates’ competence and to value their time as volunteers.

19. We recommend that the Ministry of Justice commission qualitative research into relations between District Judges, magistrates and justices’ clerks in a sample of Local Justice Areas, with a view to understanding the source of potential tensions and identifying good practice.

46 [MAG0058](#), paragraph 47

47 John Dehnel JP [[MAG0020](#)], paragraph 1; West Cheshire Bench [[MAG0065](#)]

48 [MAG0025](#)

49 [MAG0022](#)

50 [MAG0033](#)

51 [MAG0030](#)

52 [MAG0071](#)

53 [MAG0079](#)

54 [MAG0017](#)

55 [MAG0077](#)

56 [MAG0010](#)

57 [Q277](#)

58 [Q277](#)

59 [Q279](#)

20. We note that Lord Justice Fulford is considering the possibility of additional guidance for justices’ clerks on the allocation of cases in magistrates’ courts, a development that we would welcome. *We recommend that this take the form of an amended version of the protocol to support judicial deployment in the magistrates’ court. We further recommend that consideration be given to allowing magistrates to sit without legal advisers when sitting with a District Judge.*

The Single Justice Procedure

21. Section 48 of the Criminal Justice and Courts Act 2015 introduced the Single Justice Procedure (SJP), by which uncontested cases involving adults charged with summary-only, non-imprisonable offences may be dealt with on the papers by a single magistrate, supported by a legal adviser, without attendance by the prosecutor or defendant.⁶⁰ The procedure is used for low-level cases such as TV licence evasion, failure to register a new vehicle keeper, driving without insurance and depositing litter. Following a pilot phase, the SJP was rolled out nationally from March 2016. Its introduction was supported by the Magistrates Association⁶¹ and the National Bench Chairmen’s Forum.⁶² The SJP has also proved attractive to magistrates in employment or who have other daytime commitments, as the work can be undertaken outside of normal court hours.⁶³

22. The Ministry of Justice suggested to us that the SJP:

provides an opportunity for magistrates—as a bench of three—to spend the majority of their time on more serious cases, allowing for more attention on the cases which have a direct impact upon victims and communities ...⁶⁴

23. While recognised as delivering efficiencies and creating more opportunities for magistrates,⁶⁵ the SJP has also created some disquiet. For example, Dr Simon Wolfensohn JP argued that it “goes against very fundamental principles”⁶⁶ and Christine Holmes JP told us:

I don’t like the Single Justice Procedure. It can be done in a room away from normal court processes, and I think that any form of justice needs to be open and above board. I certainly would not want to see it extended in any way, shape or form.⁶⁷

Other submissions that acknowledged the benefits of the SJP expressed a degree of caution. For example, Vivian McCarthy JP expressed hope “that it does not become a rubber stamp exercise”⁶⁸ and the Coventry and Warwickshire Branch of the Magistrates Association was concerned about the idea of extending use of the SJP, particularly if a

60 The SJP will not be used if a defendant serves notice of intention to plead not guilty, or of a wish not to be tried by a single justice.

61 [MAG0058](#), paragraph 19.

62 [MAG0063](#), paragraph 8

63 Malcolm Richardson JP, [Q221](#)

64 [MAG0050](#), paragraph 10

65 For example, Oxfordshire Magistrates’ Bench [[MAG0052](#)], paragraph 2; National Bench Chairmen’s Forum [[MAG0063](#)], paragraph 8

66 [Q163](#)

67 [Q168](#)

68 [MAG0085](#)

single magistrate had the power to determine guilt or innocence as well as imposing sentence.⁶⁹ Peter Lindley Ullathorne JP thought that any expansion of the SJP needed careful consideration, once sufficient experience had been gained and analysed.⁷⁰

24. The written submission of the senior judiciary expressed confidence that the SJP process would not compromise the quality of justice, but accepted that it should be kept “under careful review.”⁷¹ In his oral evidence to us, the Senior Presiding Judge, Lord Justice Fulford, accepted the need to abide by the principle of open justice but thought that the public had “no appetite” for watching the types of case allocated to the SJP process.⁷² He qualified this by suggesting that the hearing of a case involving a public figure might, if necessary, be moved into open court. Lord Justice Fulford indicated his intention of issuing a protocol setting out guidance for single magistrates as to when they should sit in an office, when they should sit in open court and how they should respond to requests for information “to make sure that everything that should be in the public domain is in the public domain.”⁷³ However, he wanted to stay his hand until he had received feedback on how the new procedure was operating in practice.⁷⁴

25. We note that the Ministry of Justice is consulting on proposals designed to allow defendants charged with certain minor offences to plead guilty using an entirely automated system that would issue an online conviction and penalty.⁷⁵ At first sight, this does appear to raise some issues of concern, particularly the implications of excluding judicial office holders from involvement in disposing of certain criminal cases. We have not taken evidence on this proposal and thus do not draw any conclusions in this Report, but it may be a subject to which we return in the future.

26. The principle of open justice is central to our common law tradition and also underpins Article 6 of the European Convention on Human Rights. We recognise the efficiency gains of the Single Justice Procedure, but we note concerns have been expressed about any potential extension of the procedure to additional cases. We welcome Lord Justice Fulford’s intention to issue a protocol setting out guidance for magistrates on when they should sit in open court, and recommend that these concerns be taken into account in the preparation of that protocol.

Case management

27. As we noted above, the Transforming Summary Justice (TSJ) initiative, designed to facilitate swifter summary justice with reduced delays and fewer hearings, was introduced in May 2015. TSJ relies in part on effective case management by magistrates—in particular, for first hearings of contested cases allocated to NGAP courts. A recent report by the National Audit Office found the backlog in the magistrates’ courts had fallen since mid-2015, and is now lower than in 2012; it also found that the effective trial rate had improved

69 [MAG0033](#)

70 [MAG0016](#), paragraph 3(h)

71 [MAG0072](#), paragraph 4

72 [Q266](#)

73 [Q267](#)

74 [Q268](#)

75 [Transforming our justice system: summary of reforms and consultation, Ministry of Justice. Cm 9321, September 2016](#)

by 5% over the same period.⁷⁶ However, there were divergent opinions as to whether magistrates had acquired the necessary skills for their critical case management role. The Black Country Branch of the Magistrates Association took a positive view:

Working alongside our professionally qualified legal adviser colleagues we have rapidly picked up the needs for greater control of ‘case management’ procedures and are no longer subjugated by lawyers, either CPS or defence solicitors, making arguments for why an adjournment should be granted. Training with senior colleagues and members of the senior judiciary (DJs) and use of typical examples in the higher courts has definitely ‘stiffened the backbone’ of the lay justices.⁷⁷

28. Others were less sanguine. Peter Chapman emphasised how important it was for magistrates, especially those who chaired court proceedings, “proactively to control court business and challenge delay and non-compliance with court directions”.⁷⁸ Oxfordshire Magistrates’ Bench believed that “more extensive and ongoing training” was required to help magistrates deal with more complex matters, such as case management and complicated allocation decisions.⁷⁹ David Sanderson JP argued that valuable training for case management was undermined by “a reduction in key court staff and a workload that makes effective case management almost impossible”.⁸⁰ According to Nicholas Moss JP, magistrates should be more self-critical about failing to anticipate factors that led to trials not going ahead, such as taking insufficient steps at the trial-fixing stage to maximize the chances of witness’ attendance.⁸¹ A suggestion put to us by the Crown Prosecution Service (CPS) was that a panel of specifically trained ‘case management’ magistrates be set up to ensure case management in NGAP courts is as robust as possible.⁸²

29. The success of the Transforming Summary Justice programme also depends on factors falling outside the control of the magistracy. The HM Crown Prosecution Service Inspectorate (HMCPSI) report⁸³ on the contribution by the CPS to the TSJ initiative recognised the commitment by CPS staff and their criminal justice system partners to achieving the TSJ aims but found that culture change had not yet been achieved at operational level: for example, compliance by both police and CPS with their disclosure obligations was poor and CPS lawyers were failing to engage with the defence prior to the first hearing. The additional problem of unrepresented defendants in the magistrates’ court is one that we have recently raised in a separate report.⁸⁴ According to survey evidence cited in a report by Transform Justice, nearly a quarter of defendants coming before magistrates in 2014 were unrepresented.⁸⁵ In his written evidence, Dr Chris Knight JP highlighted that:

76 [National Audit Office: Efficiency in the criminal justice system, March 2016](#)

77 [MAG0026](#)

78 [MAG0036](#)

79 [MAG0052](#), paragraph 3

80 [MAG0006](#)

81 [MAG0032](#)

82 [MAG0054](#)

83 HM Crown Prosecution Inspectorate, [Transforming Summary Justice: an early perspective of the CPS contribution](#), February 2016

84 House of Commons Justice Committee, First Report of Session 2016 — 2017: [Reduction in sentence for a guilty plea guideline](#), HC 168

85 Transform Justice, 2016. [Justice denied? The experience of unrepresented defendants in the criminal justice system](#)

what is now lacking is a more vibrant communication process between the bench and the defendant in order that the defendant is quite clear when he or she leaves the courtroom about what has happened and its implications for the future. As we see an increase in unrepresented defendants, this becomes even more significant.⁸⁶

30. We asked the Senior Presiding Judge, Lord Justice Fulford, whether there were any tensions between the recognised importance of local justice and the implications of making ambitious changes to how the judiciary operates—particularly in relation to case management skills. In response, he commented that there are:

areas of case management where it is appropriate that they are at least focused in the hands of District Judges. If you have very difficult bad character applications in serious sexual offences or you have to grant special measures in very difficult circumstances, it may well be best to ensure that the person with the right qualifications is dealing with that.⁸⁷

31. We agree that more challenging case management tasks may require the skills of a District Judge and should be allocated accordingly. However, recognising that the Transforming Summary Justice initiative depends in part on effective case management of every contested case, we recommend that all magistrates who sit as panel chairs should be offered training to assist them in fulfilling this role as effectively as possible.

86 [MAG0024](#)

87 [Q259](#)

3 Recruitment and diversity

How magistrates are recruited

32. Responsibility for recruiting magistrates lies with the local Advisory Committees on Justices of the Peace, the majority of which are chaired by the Lord-Lieutenant for the area. The Advisory Committees are responsible for interviewing applicants and recommending successful candidates to the Lord Chief Justice, who delegates appointments to the Senior Presiding Judge for England and Wales.⁸⁸ Anyone over the age of 18 and under 65 can apply to be a magistrate; no legal training or formal qualifications are required, although applicants must be able to demonstrate six key qualities: good character; understanding and communication; social awareness; maturity and sound temperament; sound judgement; and commitment and reliability. Each area assesses how many new magistrates it needs on an annual basis; we note that only a handful of Advisory Committees are currently seeking applications and that, in the year 2015/2016, only 668 new magistrates were recruited.⁸⁹ As for judges (albeit with certain exceptions),⁹⁰ magistrates are required by law⁹¹ to retire at 70. At this age, their names are placed on the Supplemental List which allows them to continue carrying out certain minor administrative functions, but not sit in court.

Diversity and age profile of magistrates

33. The number of magistrates has fallen significantly over the past decade; the current total of 17,552 compares to around 30,000 in 2006.⁹² Judicial diversity statistics for 2016⁹³ show that 53% of magistrates are female and 89% are white. While the latter figure is comparable to the proportion of the overall population that is white (86%⁹⁴), we note that many benches have no, or very few, Black, Asian and Minority Ethnic (BAME) magistrates. The statistics also indicate that, among serving magistrates, 86% are aged 50 and over, with only 4% under 40 and less than 1% under 30; well over half of magistrates (57%) are within ten years of the retiring age of 70. Only 4% of magistrates declared themselves to be disabled, in comparison to 16% of working age adults and 45% of adults over State Pension age.⁹⁵ We further note that the Ministry of Justice statistics on disabled magistrates provide no further breakdown as to the nature of their impairment or the extent to which reasonable adjustments would help them to carry out their duties.

34. The relationship between the magistracy's age profile and the limited number of new magistrates being recruited was highlighted by many of those who submitted evidence to us. It was pointed out that one consequence of an ageing magistracy is the urgent need for succession planning to cope with impending retirements. David Harding JP commented:

88 [Schedule 13, Crime and Courts Act 2013](#)

89 Source: Judicial Office

90 [Section 26, Judicial Pensions and Retirement Act 1993](#)

91 [Section 13, Courts Act 2003](#)

92 [Judicial and Court Statistics 2006](#), Cm 7273, November 2007

93 [Judicial diversity statistics for 2016](#)

94 [Office for National Statistics: ethnicity and national identity in England and Wales: 2011](#)

95 Source: [Official Statistics, disability facts and figures \(Great Britain\), January 2014](#)

Thirty percent of the Worcestershire bench will retire over the next three years. Recruitment recently authorised for 2016 (for the first time for five years) will barely compensate for this year's retirements.⁹⁶

A similar point was made by Coventry and Warwickshire Bench, who told us that significant recruitment was now needed because of the number of magistrates reaching the age of 70 in the next few years—the so-called 'baby boomers'.⁹⁷ Malcolm Richardson JP, Chair of the Magistrates Association, observed that the fact that seven thousand magistrates were expected to retire within the next five years represented "a huge opportunity" for diverse recruitment to the bench—a goal which he was confident could be realised.⁹⁸

35. We also heard that restrictions on recruitment may be linked to existing magistrates requesting a transfer into a particular area.⁹⁹ Norfolk Magistrates' Bench identified a phenomenon of magistrates moving out of cities to rural areas on retirement and then applying to transfer to the local bench: "Opportunities to actively recruit local people of diverse backgrounds and from a younger age group are therefore limited."¹⁰⁰ Christine Holmes JP thought that "the bench has been allowed to stagnate" and suggested that the embargo on recruitment in her area had "ignored the needs of the bench in its future development, succession planning and maintenance of competence in mentoring and appraisal".¹⁰¹ In the light of perceived problems with 'stop-start' recruitment, an ongoing recruitment process was supported by Riley Smith,¹⁰² as well as by Richard Goold JP who argued in his written evidence:

With the age profile of magistrates weighted heavily to 50+ it is important that there is a pipeline of candidates who can fill the gaps—not just as they arise but in advance.¹⁰³

36. As we note above, magistrates with experience of sitting in the adult court may undergo training for the Family Court or the Youth Court. Several submissions to our inquiry noted the shortage of magistrates qualified to sit in the Family Court.¹⁰⁴ According to the Coventry and Warwickshire Branch of the Magistrates Association, the problem is "acute" and the position is likely to be aggravated over the next two or three years as a result of retirements.¹⁰⁵ It was suggested by Dr Jenifer Harding JP that a possible solution to shortages of Family Court magistrates might be to raise the mandatory retirement age to 75 in some circumstances:

We cannot recruit, because we keep asking the same people, who do not want to fill in the complicated form in the next two years, we are going to have lost quite a number of those people at 70. The Family Court is going to be even more hard-pressed than it is at the moment.¹⁰⁶

96 [MAG0041](#)

97 [MAG0060](#)

98 [Q242](#)

99 Liz Harrison JP [[MAG0059](#)]

100 [MAG0015](#)

101 [MAG0023](#)

102 [MAG0040](#)

103 [MAG0001](#)

104 For example, Leicestershire Advisory Committee ([MAG0051](#)); West Mercia Advisory Committee ([MAG0071](#))

105 [MAG0033](#)

106 [Q192](#)

A more general point was made by Peter Lindley Ullathorne JP, who suggested raising the retirement age for all magistrates, to enable them to continue making their experience available for mentoring and for more specialist work.¹⁰⁷ Similarly, Professor James Crabbe JP proposed allowing magistrates to extend their term to the age of 75.¹⁰⁸ In contrast, it was also suggested to us that the retirement age might be lowered to allow recruitment of younger magistrates.¹⁰⁹

37. The need for a long term workforce plan is recognised by the Ministry of Justice, whose written evidence stated that this would “help us to retain our magisterial bench and provide a continuous injection of new talent”.¹¹⁰ When we asked the Minister how this plan would be produced and within what time frame, he was rather unspecific. In his assessment, the number of magistrates required in the medium to long term would depend on the court structure, but “I do not have the answer for that, because we are still in the process of making the reforms”.¹¹¹

38. We note that the recent joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals¹¹² announced that Local Justice Areas would be reformed to provide more flexibility in listing cases. While we have not taken evidence on this decision, at first sight it would appear to open the possibility of magistrates being deployed more flexibly across Local Justice Areas in response to business needs, reducing the need for recruitment to the magistracy to respond to the predicted workload of individual benches.

39. We recognise the valuable expertise of many older magistrates and we have particular sympathy with concerns about the shortages of magistrates qualified to sit in the Family Court. We conclude that the solution lies in workforce planning for the magistracy—including for specialist roles. We support the maintenance of a retirement age of 70 for magistrates, the same as for judges, but we consider that on application by individual magistrates it should be possible in exceptional circumstances to extend their appointments, taking into account the outcome of workforce planning. We urge the Ministry of Justice, in consultation with the senior judiciary, to undertake a workforce planning exercise for the magistracy at the earliest possible opportunity, taking into account the high proportion of serving magistrates who are expected to retire over the next five to ten years. We also recommend that recruitment be undertaken on a continuous basis, so that approved applicants are available to fill vacancies in their area, or in adjacent areas, as soon as they occur.

Attracting a wider range of applicants

40. The dearth of younger applicants to the magistracy was mentioned by many of those who gave evidence to us. This was attributed, in part, to the reluctance of employers to

107 [MAG0016](#), paragraph 3(l)

108 [MAG0009](#)

109 Dawn Nichol JP [[MAG0004](#)]

110 [MAG0050](#), paragraph 44.

111 [Q323](#)

112 [Transforming our justice system - joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals, 15 September 2016](#)

release their employees—a point to which we return below. It was also suggested that many younger people are not at the best stage in their lives to consider making this sort of commitment, particularly when they are trying to develop their careers.¹¹³

41. While the proportion of magistrates from a BAME background (11%) is higher than for other judicial office holders,¹¹⁴ we had evidence that some areas with a small BAME population had difficulty recruiting from these groups.¹¹⁵ Even in urban areas, we were told that BAME groups sometimes appear to be under-represented among the magistracy; Luke Rigg JP reported that, at a London-wide training event attended by 200 or 300 magistrates, he “could count the number of ethnic minorities in that room on my hand”.¹¹⁶ West Mercia Advisory Committee considered that more effort should be made to overcome “cultural boundaries” that inhibited those from a BAME background from applying to be magistrates, and suggested that working with places of worship might help to achieve this.¹¹⁷ According to Leicester Advisory Committee, the most successful way of generating interest in the magistracy was to “invite ethnic minority magistrates to talk to their own communities and encourage them to apply”.¹¹⁸

42. We received evidence relating to disabled magistrates, including from Disability Awareness and Advice Ltd, who thought that too little had been done to encourage disabled people to apply to be magistrates and drew particular attention to limited wheelchair access to court buildings, with wheelchair users often having to enter via a back door, “something that was recognised as inappropriate and demeaning more than 20 years ago”. The organisation argued for a disability strategy for the courts, created by disabled people themselves.¹¹⁹ Underlining the difficulties encountered by magistrates with mobility impairments, Margaret Robb JP told us about a wheelchair user who resigned from the magistracy after less than two years “due to the lack of facilities for his disability”.¹²⁰ These views are supported by research into the magistracy and disability, incorporating survey responses from over 250 magistrates, which found that 45% of magistrates with disabilities had experienced disability discrimination.¹²¹ The Prison Reform Trust proposed that Advisory Committees adopt a version of the ‘two ticks’ scheme to encourage disabled applicants for the magistracy¹²² and suggested that a similar approach be adopted for other under-represented groups.¹²³

43. While some, including Lord Justice Fulford,¹²⁴ thought that the local Advisory Committees worked well and were doing all they could to secure a more diverse bench, others were less sure about this. For example, Phil Lloyd JP told us:

Recruitment procedures have not changed in years, the recruitment process takes too long, between 12 and 18 months from start to being sworn in. The

113 Vivian McCarthy JP [[MAG0085](#)], Central London Bench [[MAG0013](#)]

114 For example, the [Judicial diversity statistics for 2016](#) indicate that 5% of District Judges (Magistrates’ Courts) identify themselves as being from a Black, Asian or Minority Ethnic background.

115 North East Bench Chairs Forum [[MAG0008](#)], Somerset Bench [[MAG0018](#)]

116 [Q134](#)

117 [MAG0071](#)

118 [MAG0051](#)

119 [MAG0078](#)

120 [MAG0061](#)

121 [A report into the magistracy and disability - research and survey findings. Harry Taylor JP, April 2015](#)

122 Under the ‘two ticks’ scheme, Jobcentre Plus gives an endorsement to employers who have demonstrated a commitment employing disabled people.

123 [MAG0053](#)

124 [Q283](#)

Local Justice Area Advisory Committees who select and interview, in the main, are made up from white, middle class, middle aged magistrates and volunteers.¹²⁵

Similar views were expressed by Nicola Silverleaf JP in her submission:

Advisory Committees tend only to recruit people similar to those already there, and are not recruiting sufficiently frequently to be good at it. Small numbers mean there is a waiting list of “traditional” applicants so very little effort needs to be made.¹²⁶

44. Under Part 2 of Schedule 13 to the Crime and Courts Act 2013,¹²⁷ if two candidates are of equal merit, one may be preferred over the other in order to increase diversity among that group of judicial office holders. The Judicial Appointments Commission has limited application of this provision to race and gender.¹²⁸ Transform Justice drew our attention¹²⁹ to the fact that the equal merit provision is not yet in place for the recruitment of magistrates—although Lord Justice Fulford told us that “very serious consideration” is now being given to implementing it for the magistracy.¹³⁰ The evidence of under-representation we have noted above indicates potential benefits from introducing the equal merit provision for the protected characteristics of age—particularly for younger age groups—and for race and disability. However, the current gender balance within the magistracy does not suggest a need to introduce it for the protected characteristic of sex.

45. Several submissions criticised the length of the recruitment process.¹³¹ Luke Rigg JP—a young magistrate who had recently been appointed—told us that he had undergone a year-long application process, which was “far too long”; he thought that this could be off-putting for some people.¹³² In Mr Rigg’s view, the lack of diversity among both Advisory Committee members and sitting magistrates was another factor that might deter people from pursuing applications, because:

if you go to an interview and there are not any people who reflect you on the committee, it can be off-putting. You go into a courtroom to visit and observe and there aren’t any people who reflect you. It is a big problem.¹³³

Mr Rigg also observed that, owing to a lack of advertising about what magistrates do, many people do not know what their role is, or whether it is paid or voluntary.¹³⁴ This view was supported by the research findings of Professor Mike Hough and Professor Julian Roberts, who told us they had found that people are poorly informed about the magistracy and about the fact that magistrates are volunteers drawn from the community.¹³⁵ With

125 [MAG0017](#)

126 [MAG0067](#), paragraph 20

127 [Part 2 of Schedule 13 to the Crime and Courts Act 2013](#)

128 [Equal Merit Provision, Judicial Appointments Commission Policy, April 2014](#)

129 [MAG0070](#)

130 [Q283](#)

131 For example, Leicestershire Advisory Committee [[MAG0051](#)], Association of Lord-Lieutenants [[MAG0046](#)], paragraph 8

132 [Q132](#)

133 [Q134](#)

134 [Q128](#)

135 [MAG0081](#)

regard to recruitment, David Sanderson JP suggested that the only way of knowing that it was taking place “was by checking with the judicial administration staff or being advised by word of mouth”.¹³⁶

46. The degree to which Advisory Committees engage with local communities was identified as a key factor in encouraging diverse applications. Jo King JP of the National Bench Chairmen’s Forum recognised that having a narrow pool of applicants would make it very difficult to address diversity issues. She commented:

As far as I am aware, no centralised advertising has been done for several years. Various informal methods are tried, but it is not always easy to identify the groups that might be interested or the appropriate people to speak to within those groups. A lot of work happens on a local basis, some of which is more successful... .¹³⁷

More positively, we heard of commendable efforts to attract diverse applicants made by the Staffordshire Advisory Committee, who recognised that it was inadequate to rely on a website and was:

subsequently very successful in getting a strong response by a major publicity campaign, using local newspapers and TV/Radio, and putting up notices in public places such as libraries, leisure centres, supermarkets and Parish noticeboards.¹³⁸

47. A number of witnesses mentioned in positive terms the successful work of the Magistrates in the Community programme, run and funded by the Magistrates Association to increase public awareness of the role of magistrates in the criminal and civil justice system.¹³⁹ For example, Sheena Jowett JP, the Deputy Chair of the Magistrates Association, gave the following example:

obviously in Wales the ability to speak Welsh is highly important. Magistrates in the Community went to a Welsh-speaking school, where they had a parents’ evening and targeted parents who could speak Welsh. Eventually, through the application process, we got two new magistrates.

48. However, there is a widespread view that the Magistrates in the Community initiative is under-resourced. Malcolm Richardson JP, Chair of the Magistrates Association, informed us that they hoped to obtain funding from grant-giving bodies to support the programme, but that prospective funders “are a lot happier to do that when they get matching funding from elsewhere”.¹⁴⁰ We also heard from Robert Lynch, a retired magistrate, that Buckingham Magistrates Association had obtained funding from assets

136 [MAG0006](#)

137 [Q77](#)

138 [MAG0027](#)

139 The Magistrates Association explains on its [website](#): ‘Teams of magistrates are willing to attend primary, secondary, 6th form colleges, schools, community groups and employers etc to give a presentation and discuss: how magistrates are appointed; what kind of cases they deal with; how guilt or innocence is decided; how magistrates decide to sentence.’

140 [Q235](#)

recovered under the Proceeds of Crime Act 2002. He wondered whether this approach could be used to support a publicity campaign “to widen the net of recruitment, from the BME community for example”.¹⁴¹

49. **We conclude that having a large cohort of magistrates approaching the age of retirement presents a great opportunity to promote diversity among those who are recruited to replace them. We recognise the considerable efforts that have been made to encourage applications for the magistracy from a wider range of people, and we commend the imaginative approaches to improving diversity that have been drawn to our attention.**

50. *We recommend that the Ministry of Justice and the senior judiciary devise a strategy containing the following steps as a matter of priority to increase the diversity of applicants and recruits for the magistracy:*

- *Adopting a wider and more proactive advertising strategy for potential applicants, seeking in particular to attract magistrates from less conventional backgrounds*
- *Streamlining the recruitment process, so that applications are processed within six months*
- *Introducing a scheme similar to the ‘two ticks’ model to encourage disabled applicants, and working with the HMCTS to ensure that reasonable adjustments can be made where required*
- *Providing additional funding for Magistrates in the Community, together with active promotion of the scheme to potential corporate sponsors*
- *Considering the introduction of the ‘equal merit’ provisions for recruitment to the magistracy for the protected characteristics of race, disability and age.*

Encouraging employers

51. We received evidence identifying particular barriers preventing or discouraging those who are employed from becoming magistrates. Under section 50(1) of the Employment Rights Act 1996, an employer is required to allow an employee to take reasonable time off during working hours to perform his or her duties as a magistrate—although this time does not have to be paid. We heard of employed magistrates facing resistance from their employers, as well as financial disincentives. For example, the Executive Committee of the Powys and Herefordshire Branch of the Magistrates Association told us that:

employers are increasingly reluctant to support employees with time off to undertake the duties. For those employees who do manage to obtain time off the compensation may be inadequate and does not necessarily compensate the employee for any pension contributions which they would have accumulated ... this, over a number of years, this can amount to a considerable loss.¹⁴²

141 [MAG0010](#)

142 [MAG0043](#)

Jo King JP suggested that small employers find it particularly difficult to release people on a regular basis, and observed that “often the employer-employee relationship, particularly given the financial situation that many businesses have found themselves in over the last five years, is quite a difficult one anyway.”¹⁴³ It was also noted that some employers now expect employees to work flexibly and for longer hours.¹⁴⁴ There was also evidence that barriers faced by employees have an impact on the age profile of the magistracy. Northern Derbyshire Magistrates’ Bench considered that the decline in the recruitment of younger magistrates was partly due to “the disinclination of businesses, especially in the public sector, to recognise the benefits of having a magistrate on their payroll.”¹⁴⁵ The Criminal Justice Alliance considered employers to be “a fundamental barrier to a more diversified magistracy”, because “all too often they are unsupportive of staff becoming magistrates and reluctant to afford them the required time off”.¹⁴⁶

52. We received a number of constructive suggestions as to how the problems faced by employed magistrates might be overcome. For example, Central London Bench thought it was important to “make employers more aware of what additional skills and perspective a magistrate’s experience can bring to a business,”¹⁴⁷ a view that was shared by the Office of the Police and Crime Commissioner for Northumbria¹⁴⁸ and by the Magistrates Association, who referred to “the huge range of transferable skills being a magistrate creates”.¹⁴⁹ Penelope Gibbs from Transform Justice described the increasing difficulties facing magistrates in the public sector, including the NHS, in getting time off work and suggested that this could be facilitated by having “a protocol across government, with public sector employers”.¹⁵⁰ Nicola Silverleaf JP considered that, when an employer supported service in the magistracy by its employees, this should be seen as similar to corporate social responsibility.¹⁵¹ The Association of Lord-Lieutenants put to us that employers might be persuaded to recognise the value of having a magistrate as a staff member “by presenting them with a brochure of the work and training of a magistrate together with a framed certificate stating that they are a supportive employer.”¹⁵² Similarly, the Criminal Justice Alliance suggested an accreditation scheme for employers. Both organisations pointed out that a similar scheme has been set up by the Government to promote service in reserve forces.¹⁵³

53. When we questioned the senior judiciary about the idea of a ‘kitemark’ scheme to recognise employers’ support for the magistracy, we received an encouraging response. Lord Justice Fulford gave cautious support, although he had not seen any detailed proposals.¹⁵⁴ Senior District Judge Riddle spoke positively:

How is it that we have not sold this concept? The skill of the magistracy, and what magistrates learn on the bench, is extraordinary. You have three people working together to ascertain facts against a legal background

143 [Q84](#)

144 [Albert Pearce JP \[MAG0021\]](#)

145 [MAG0011](#);

146 [MAG0048](#), paragraph 14; see also evidence of [Clive Lewisohn JP \[MAG0073\]](#)

147 [MAG0013](#)

148 [MAG0075](#)

149 [MAG0058](#), paragraph 41

150 [Q35](#)

151 [Q131](#)

152 [MAG0046](#)

153 [The Defence Employer Recognition Scheme](#)

154 [Q285](#)

That must be a very useful skill for most employers. I do not know why it is not seen to be a great accolade for a company, a firm or an employer to have magistrates working with him or her There ought to be a kitemark.¹⁵⁵

54. Some witnesses also suggested to us that financial incentives for employers should be considered, which might include tax advantages¹⁵⁶ or National Insurance breaks.¹⁵⁷ Somerset Bench thought that the Government “must be prepared to provide financial (and other) incentives to employers and to have a more generous policy on magistrates’ loss of earnings reimbursement.”¹⁵⁸ A similar view was expressed by Dr Peter Reed JP.¹⁵⁹

55. We received evidence suggesting that self-employed magistrates are finding it more difficult to claim Financial Loss Allowance (FLA)¹⁶⁰ because of new measures designed to prevent them from sitting purely to claim the allowance,¹⁶¹ and that the FLA for both employed and self-employed magistrates had not been updated since 2009. Any future increase to the FLA would have resource implications for HMCTS and hence for the Ministry of Justice. In relation to the costs of training and appraisal, the Ministry reminded us of the challenges it faces “especially in the current financial climate”.¹⁶² In these circumstances, it seems likely that the Ministry would also view the financial climate as a relevant consideration in the context of financial incentives for magistrates and their employers.

56. Several witnesses made suggestions as to how the courts might make it easier in practical terms for people in employment to sit as magistrates, including Saturday sittings and after-work sittings—options that would be more convenient for many working magistrates¹⁶³—although we also received submissions suggesting that limitations on HMCTS resources might prevent courts opening for out-of-hours sittings¹⁶⁴ and pointing out that court staff could not be required to work on Saturdays.¹⁶⁵ We referred in paragraph 21 to evidence of the success of out-of-hours sessions for the Single Justice Procedure.

57. Rebalancing the age profile of the magistracy is unlikely to happen unless more action is taken to overcome the barriers facing employed magistrates, including by encouraging employers in all sectors to support magistrates who work for them. We recommend that the Ministry of Justice and the senior judiciary create a kitemark scheme that recognises and rewards employers who support the magistracy, thus encouraging other employers to do the same. We also recommend that the Ministry of Justice review the current Financial Loss Allowances for employed and self-employed magistrates, including consideration of whether rates might be increased in line with inflation.

155 [Q287](#)

156 Sue Furnival JP [[MAG0039](#)], paragraph 19

157 Nicola Silverleaf JP, [Q131](#)

158 [MAG0018](#)

159 [MAG0002](#)

160 Magistrates who suffer a loss of earnings from employment or self-employment as a result of their duties can claim a financial loss allowance, in addition to travel and subsistence.

161 Nicola Silverleaf JP [[MAG0067](#), paragraph 23]; Sue Furnival JP [[MAG0039](#), paragraph 20], David Harding JP [[MAG0041](#), paragraph 11]

162 [MAG0050](#), paragraph 42

163 [Q131](#)

164 Malcolm Richardson JP, [Q220](#); Corby Magistrates Bench [[MAG0012](#)]

165 Norfolk Bench [[MAG0015](#)]

58. *We further recommend that the HMCTS encourage court managers, when resources permit, to consider the potential for increasing out-of-hours court sittings in order to maximise sitting opportunities for magistrates who are employed.*

Fixed tenure for appointments

59. At present, individuals appointed to serve as magistrates do not have an end date to their appointment, other than the statutory retirement age of 70. Some of the evidence that we received supported magistrates being appointed on a fixed tenure. Dr Simon Wolfensohn JP argued that, particularly in certain rural areas, there was “simply not enough work to go round” and that the number of magistrates was too high and should be reduced by limiting the term of office for those who sit as ‘wingers’ or by introducing rolling sabbaticals, which would be followed by some retraining. He went on to say:

Simply stopping recruitment is unhelpful, as we would end up with an ageing bench. There is no easy answer, I am afraid, but primarily, being fairly proactive about encouraging people who are not fully engaged in what they are doing to think about whether they really want to continue doing it is perhaps the best option.¹⁶⁶

60. A ten year tenure for magistrates was suggested by the Office of the Police and Crime Commissioner, Northumbria, which thought it might “assist to bring renewal of personnel, requiring regular waves of recruitment adapting to time and place and change.”¹⁶⁷ Penelope Gibbs, from Transform Justice, favoured the idea of renewable fixed tenure “if we are looking at radical solutions to improve diversity”. She went to point out that, in Scotland, justices of the peace have to renew their appointment every five years and that the appointment of children’s hearings panel members is renewable every three years.¹⁶⁸ Senior District Judge Riddle suggested a fixed term of between six and nine years for new magistrates, at the end of which—subject to appraisal—they could apply to remain in the magistracy, perhaps until retirement.¹⁶⁹ He went on to suggest that new appointees serve as wingers, sitting less frequently and needing less training than at present; then, “later on, you would keep the best people—if I can put it as simply as that—to act as chairmen, and they could sit far more frequently.”¹⁷⁰

61. However, the suggestion of fixed tenure was strongly contested by others. Lord Justice Fulford told us that the senior judiciary’s criminal team, presided over by the Lord Chief Justice, was “not enthusiastic about the proposal to have fixed terms”, being unpersuaded that it would bring any benefit.¹⁷¹ He explained the team’s view that:

it could mean that some people who would otherwise have applied while they were working might leave it until towards the end of their career before they applied for a fixed term. If anything, you would run the risk of

166 [Q132](#)

167 [MAG0075](#)

168 [Q33](#)

169 [Q288](#)

170 [Q288](#)

171 [Q288](#)

increasing the older age range ... Additionally, you run the risk of losing experienced magistrates who, in due course, may be persuaded to sit as bench chairs.¹⁷²

Likewise, the Magistrates Association rejected the idea of fixed tenure for magistrates. Sheena Jowett JP, the Association's Deputy Chair, agreed that there was a risk of people delaying applications until they were approaching retirement age and pointed out that "at 10 years, a magistrate is starting to get into the leadership roles on the bench. That could be lost if you had short tenure for magistrates."¹⁷³ This view was shared by Peter Lindley Ullathorne JP.¹⁷⁴ Similar concerns about succession planning were expressed by Jo King JP, whose assessment of fixed tenure was that "the disadvantages would outweigh the advantages".¹⁷⁵

62. While we accept that certain Local Justice Areas may have too many magistrates for the amount of work available, on balance we do not think that introducing fixed tenure for the magistracy as a whole, or for 'wingers' alone, is a satisfactory way of addressing this problem. We accept the evidence of Lord Justice Fulford and others that fixed tenure might create a perverse incentive for people to delay applications for the magistracy until they are approaching retirement, and that experienced magistrates with the potential for taking on leadership roles might be lost from the bench prematurely. A more robust appraisal system could be effective in addressing any problems arising from magistrates who are less engaged in their role, and we consider this matter in the next chapter.

172 [Q288](#)

173 [Q240](#)

174 [MAG0016](#)

175 [Q79](#)

4 Training and appraisal

How magistrates' training is organised

63. As with all judicial office holders, training for magistrates is supervised by the Judicial College, a body that is overseen by the Lord Chief Justice. Working closely with the Magistrates Association, the College is responsible for the national syllabus and in most cases it prepares training materials. Some training is delivered directly to magistrates and legal advisers by the College,¹⁷⁶ but other training is the responsibility of the local justices' clerk—although it may be delegated to a training officer or bench legal adviser. Local branches of the Magistrates Association may also provide specific training, including on non-core issues such as alcohol or drugs awareness. Planning and overseeing the local delivery of training is the responsibility of the Magistrates' Area Training Committee (MATC), which produces an annual training plan for the area and reports annually to the Judicial College. The MATC also co-ordinates the activities of the area Bench Training and Development Committee, which is in turn responsible for identifying training needs and overseeing the mentoring and appraisal schemes for the local bench. It was drawn to our attention that a recent consultation has set out proposals for rationalising the current arrangements.¹⁷⁷

64. The submission of the Judicial College described the competence framework for magistrates, which sets out the knowledge, understanding and skills they need to demonstrate to perform their role; the Adult Court Competence Framework builds on the six key qualities required to become a magistrate.¹⁷⁸ The College further explained that:

Core training for each jurisdiction—adult, youth and family—is compulsory and continuation training of 6 hours every 3 years for each of the 'tickets' (adult winger, adult chair etc) that a magistrate holds is described as 'essential'. If a national need for training is identified and deemed a priority, through the Judicial College training subcommittees, then the College's legal team, often with assistance from HMCTS legal advisers and with input from the National Bench Chairmen's Forum, the Magistrates Association and the Justices' Clerks' Society, will prepare a training pack and materials for local delivery.¹⁷⁹

On its website, the Magistrates Association gives more information about training for a new magistrate, who during the initial months sits in court with two experienced members of the bench and is mentored. At the end of the first year, the magistrate receives consolidation training and, approximately 12 to 18 months after appointment, undergoes an appraisal which is carried out by a trained magistrate appraiser, sitting as part of the bench in an observation role. Subsequent appraisals take place every three years to ensure

176 [MAG0072](#) - annexed submission of the Judicial College. In 2014/2015 the College delivered 30 courses directly to magistrates and legal advisers (including on Bench Chairmanship).

177 [Q292](#); See: [A consultation on changes to Rules relating to the composition of magistrates' courts, bench officers, elections and justices' training and authorisations](#), Ministry of Justice/HMCTS, March 2016

178 Judicial Office [\[MAG0072\]](#) - annexed submission of the Judicial College

179 [MAG0072](#)

that a magistrate's competence is retained.¹⁸⁰ As we discuss below, while magistrates are expected to undertake training throughout their careers, there is no mandatory Continuing Professional Development scheme.

The resources available for training

65. Funding for training is provided by the Ministry of Justice, although the Lord Chief Justice decides how this is allocated. Magistrates' training at the Judicial College is prepared, produced and delivered by a small legal team (the equivalent of three full-time posts). According to the Judicial College, expenditure on magistrates' training has reduced from £72 per sitting magistrate in 2009/10 to £30 in 2013/14. Although more recent information was not made available to us, it appears to be undisputed that this downward trend has not been reversed. The College attributes this reduction to the discontinued use of external venues, reduced catering and stationery costs and the provision of more distance/on-line learning, together with fewer magistrates attending training and a reduction in the number of courses delivered. The Judicial College also told us that one of the risks identified in MATC reports for 2013 - 2014 was a continuing fall in the delivery of local training designated as 'desirable.'¹⁸¹ According to the Magistrates Association, training for magistrates "increasingly struggles with its resources"¹⁸² and Bedfordshire Magistrates Association recounted that "resources are so tight that, recently in Bedfordshire, the local Magistrates Association were invited to meet the cost of the venue for a training day (rather than HMCTS)".¹⁸³ Shropshire Bench suggested that, as a result of budget cuts, training and development for magistrates "is reaching dangerously low levels"¹⁸⁴ and Dr Chris Knight JP referred to "increasing financial pressure not to bring magistrates together for training purposes as regularly as previously."¹⁸⁵

66. In its written submission, the senior judiciary assured us that "the level of training and 'continuous development' of the magistracy is considered to be entirely satisfactory for the present arrangements within the magistrates court."¹⁸⁶ When we asked Lord Justice Fulford about the reduction in expenditure on training, he told us that he did not believe that training had been cut; instead, greater care was being taken in how it was delivered:

Large, possibly expensive halls are no longer rented. We do it at court, in the main. We try to do it on days when magistrates are, in any event, attending to sit, so that they do not have to come for special training sessions. If you look back at the training packages that were offered in the past and are offered now, it is our view that they are effectively the same.¹⁸⁷

67. However, the Judicial College explained to us how its own limited resources made it dependent on assistance from court legal advisers—employed by HMCTS—to prepare, deliver and evaluate training for magistrates and that it had some concern about their current availability:

180 [Magistrates Association website: Training of Magistrates](#)

181 [MAG0072](#) - annexed submission of the Judicial College

182 [MAG0058](#), paragraph 35

183 [MAG0025](#)

184 [MAG0034](#), paragraph 4.1

185 [MAG0024](#), paragraph 4(a)

186 [MAG0072](#), paragraph 5

187 [Q290](#)

Assistance is not consistent and in this pre-HMCTS Reform process it is often difficult for legal advisers or their managers to commit time to work that is not part of their core role. That has an enormous knock-on effect on the College and could potentially impact on the quality of the product ...
 ...An agreement has been drafted which underpins HMCTS's assistance to the College and this is a positive step forward but the overall resourcing remains a concern.¹⁸⁸

We asked Lord Justice Fulford about the extent to which magistrates' training was dependent on the goodwill of legal advisers and HMCTS staff, and whether they were now being pushed to do more. He acknowledged that the judiciary was "highly dependent on people giving of their own time" and that "in all areas of the delivery of justice—court staff, judges, legal advisers and justices' clerks—people are really going the extra mile in order to make sure that we deliver a first-class service." In contrast to the Judicial College, he suggested that it was "part of some or all legal advisers' jobs to assist in training".¹⁸⁹

68. We received the clear impression that the landscape of magistrates' training is a somewhat crowded one and we welcome the decision by the Ministry of Justice to consult on proposals for rationalising the rules relating to training for magistrates.

69. In spite of assurances from the senior judiciary that the Judicial College receives adequate funding for magistrates' training and that the goodwill of HMCTS staff can be relied on to provide support, the evidence that we received in the course of this inquiry from a range of authoritative sources suggests that this is not the case. We recommend that the Judicial College be provided with more funding to support magistrates' training and that a more realistic view be taken of the ability of HMCTS staff, in particular legal advisers, to assist with training given the current pressures on their time.

The quality and range of training

70. We also received evidence of concerns about the quality of training for sitting magistrates, often closely linked to constraints on resources. Jo King JP told us that, while mandatory training for magistrates is largely very good, in relation to the non-essential training "there can be variations in how that is delivered and in the quality of the training".¹⁹⁰ According to the Judicial College, another risk identified in MATC reports for 2013 - 2014 was the use of trainers in some areas who are not qualified to deliver training to magistrates.¹⁹¹ An example was also given of a two-day course that HMCTS had "shoehorned" into one day,¹⁹² and the Executive Committee of the Powys and Herefordshire Branch of the Magistrates Association gave an example of the impact of limited resources on training for magistrates in rural areas:

The training was set for a venue that for many potential attendees would involve travel exceeding 200 miles round trip in December, this would be 12 plus hour day. On enquiring of the provision of an overnight allowance

188 [MAG0072](#) - annexed submission of Judicial College

189 [Q291](#)

190 [Q86](#)

191 [MAG0072](#) - annexed submission of the Judicial College

192 [MAG0028](#), paragraph 4.1

... this was not authorised and as an alternative 1.5 hours training was offered at a local venue. This raises the question of if 1.5 hours was now considered adequate why was a full day offered in the first instance?¹⁹³

71. For the most part, the evidence that we received indicated broad satisfaction with the range of topics covered in continuation training for magistrates—although there was a suggestion that training was sometimes provided too long after changes had been implemented.¹⁹⁴ However, a few criticisms were made of the training for magistrates who take up specialist or leadership roles. Dr Simon Wolfensohn JP expressed a view that Youth Court training “has gone to a pretty low level now;”¹⁹⁵ it was also suggested to us that Youth Court magistrates in England and Wales are less well trained than their Scottish counterparts.¹⁹⁶ Jo King JP told us that the role of bench chairmen had “changed immeasurably over the last five years”; as well as having a pastoral support role for members of their bench, they were now expected to be key decision makers and strategic thinkers—indicating that additional leadership training might be needed for them.¹⁹⁷

72. Professor Mike Hough and Professor Julian Roberts drew our attention to research that had found “widespread dissatisfaction” among magistrates with the level of training on sentencing guidelines:

The reduced sittings of many magistrates means that they have less familiarity with the guidelines, and therefore expressed a need for more training In addition, the volume of new and differently formatted guidelines has proliferated in recent years.

This view was supported by Professor Jane Donoghue, whose submission highlighted the importance of systematic training of magistrates “in ensuring sentencing consistency”.¹⁹⁸ The Judicial College sought to reassure us that magistrates’ training emphasises consistency in decision-making, including in sentencing, and that training materials refer to the Equal Treatment Bench Book and have fair treatment “woven through” them.¹⁹⁹ Nonetheless, several witnesses felt that magistrates should be better trained in equality and diversity issues.²⁰⁰

73. Several witnesses emphasised the importance of magistrates receiving training beyond the law and court procedures. The Criminal Justice Alliance²⁰¹ and the Office of the Police and Crime Commissioner Northumbria²⁰² were among those who thought that more training should be offered on mental health issues. Domestic violence was also identified as an important training topic.²⁰³ It was pointed out by Dr Jenifer Harding JP that courses did not have to be specific to magistrates but could be shared—for example, with health or probation services—in order to reduce costs.²⁰⁴ The role of training in

193 [MAG0043](#)

194 Albert Pearce JP [[MAG0021](#)]

195 [Q197](#)

196 Standing Committee for Youth Justice [[MAG0056](#)]

197 [Q95](#)

198 [MAG0082](#)

199 [MAG0072](#) - annexed submission of the Judicial College

200 Transform Justice [[MAG0079](#)]; Prison Reform Trust [[MAG0053](#)]; Coventry and Warwickshire Bench Executive [[MAG0060](#)]

201 [MAG0048](#), paragraph 17

202 [MAG0075](#)

203 Coventry and Warwickshire Branch, Magistrates’ Association [[MAG0033](#)]; Dr Jenifer Harding JP [[MAG0074](#)]

204 [MAG0074](#), paragraph 11.1

bringing about culture change was illustrated by evidence from Liz Harrison JP, who told us how her bench had responded to a cross-agency commitment to enhancing procedural fairness within the CJS in her area:

We have just completed a number of locally designed workshops for magistrates, looking at more effective communication in court, at more effective and useful reflection and feedback on performance, and at more rigorous fines enforcement. If successful we will not only improve the effectiveness of what we do, we will also raise morale across the piece.²⁰⁵

74. We were impressed by magistrates’ commitment to training and their willingness to give their time to doing it. However, we are concerned by evidence suggesting that training for magistrates is not always of sufficiently high quality. In addition we conclude that the range of training available is sometimes too narrow to equip magistrates for the role that they are expected to fulfil and to help them contribute to cultural change within the criminal justice system. We recommend that the Judicial College, in consultation with others, undertake a comprehensive review of magistrates’ training needs with a view to developing a training programme that supports a modern magistracy, taking proper account of the investment of time required from those who organise and deliver training. The review should also consider the particular training needs of magistrates who put themselves forward for specialist roles in the Youth and Family Courts, as bench Chairs and to sit as panel chairs.

Making training more accessible

75. It was suggested to us that training could be made more easily accessible for employed magistrates and those with caring responsibilities. Dawn Nicholl JP²⁰⁶ and Luke Rigg JP²⁰⁷ proposed that courses be held at weekends and Richard Goold JP pointed out that training could start earlier, perhaps at 8 am, to avoid taking up a full working day.²⁰⁸ While supporting the idea of weekend and evening training, Malcom Richardson JP noted the financial implications of providing it:

Of course, that means that there are costs to HMCTS in terms of opening up buildings, making legal advisers available to do the training and things of that sort. There has been a real clawing back of any preparedness to do that—understandably, because of budgets.²⁰⁹

76. Some supported an increase in online training to improve accessibility. Alwyn Lloyd Ellis JP thought that “e-training would be very attractive to magistrates who struggle to get time off work”.²¹⁰ While there was support for online and distance training from a number of other witnesses,²¹¹ concern was expressed about the prospect of this delivery method replacing face-to-face training that provided valuable interaction with colleagues

205 [MAG0059](#)

206 [MAG0004](#)

207 [Q142](#)

208 [Q142](#)

209 [Q245](#)

210 [Q89](#)

211 For example, the Association of Lord-Lieutenants [[MAG0046](#), paragraph 13]; Central London Bench [[MAG0013](#)]; Richard Goold [[MAG0001](#), paragraph 17]

and the chance to ask questions.²¹² This point was made by the Magistrates Association, who told us that their survey results indicated that “magistrates appreciate the need for a mix of methods, but would welcome an increase in face-to-face training”.²¹³ In a similar vein, Dr Simon Wolfensohn JP emphasised the need to recognise different ways of learning, especially for older magistrates who often preferred face-to-face methods over e-training.²¹⁴

77. As part of the comprehensive review of magistrates’ training needs, we recommend that a balance be maintained between different ways of learning, recognising that online training, in spite of its convenience and cost-effectiveness, cannot provide the quality of engagement and interaction provided in face-to-face settings. We further recommend that a reasonable proportion of face-to-face training be offered at times that are convenient to employed magistrates and those with other weekday commitments.

Continuing professional development and appraisal

78. Magistrates are required to undergo an appraisal every three years; this is carried out by another member of the same bench who sits in an observational role on a panel alongside the magistrate in question. Continuation training of six hours every three years for each of the ‘tickets’ held by a magistrate (for example, adult court winger, adult court chair) is described by the Judicial College as ‘essential’;²¹⁵ magistrates are responsible for their own learning and are expected to provide information to their appraiser. However, as noted above, they are not subject to a formal Continuing Professional Development (CPD) scheme—that is, a systematic approach to developing and maintaining professional knowledge and skills that involves keeping a record of achievements, reviewable as part of an appraisal process.

79. The National Bench Chairmen’s Forum was among those who expressed concern about how well the current arrangements operate in practice:

not all magistrates attend training and it is not compulsory: there is no system of sanctions in place for those who do not attend and too much reliance is placed on the appraisal system, which is not robust enough and does not identify those who fall below required competencies.

Others expressed even stronger dissatisfaction. For example, the appraisal system was described in two submissions as being a “tick box exercise”²¹⁶ and elsewhere as being “unfit for purpose”,²¹⁷ “quite ineffective”²¹⁸ and “woeful”.²¹⁹ Nicholas Moss JP observed that objectivity in appraisals can be inhibited because appraisers are likely to know those being appraised “so they can be reluctant to be over-critical.”²²⁰ It was pointed out by Birmingham and Solihull Magistrates’ Bench that the system was ill-equipped to deal with performance management.²²¹ Margaret Robb JP suggested that magistrates whose

212 For example, Corby Magistrates’ Bench [[MAG0012](#), paragraph 4.1]; Christine Holmes JP [[MAG0023](#)], Ian Clarkson JP [[MAG0068](#)]

213 [MAG0058](#)

214 [Q195](#)

215 [MAG0072](#) - annexed submission of the Judicial College

216 Phil Lloyd JP [[MAG0017](#), paragraph 11]; Birmingham and Solihull Magistrates’ Bench [[MAG0022](#)]

217 Somerset Bench [[MAG0018](#)]

218 Graham Jagger JP [[MAG0007](#)]

219 Corby Magistrates’ Bench [[MAG0012](#), paragraph 4.3]

220 [MAG0032](#)

221 [MAG0022](#)

appraisal identified a training need were seen as inadequate and that “by implication, the ideal situation would be the absence of any need for training!” Similarly, Jo King JP acknowledged concerns about the low number of magistrates identified with training needs by the appraisal process.²²² It was suggested by the Criminal Justice Alliance that “More effective use of appraisals would help ‘manage out’ less competent magistrates and, if replaced, consequently facilitate recruitment of a more diverse magistracy.”²²³ The Judicial College has accepted that “issues have been raised” in relation to the robustness of the appraisal system, as a result of which it has led a review by a scoping group with membership from all stakeholder groups. It informed us that “Work on revising the system, the supporting Good Practice Guidance and all of the associated training has been planned for 2016–17.”²²⁴

80. A number of the submissions that we received called for the introduction of a formal CPD scheme.²²⁵ Sheena Jowett JP commented:

at the moment we have one continuation training every three years, prior to appraisal. If we looked at having some sort of continual professional development over those three years, when it came to the appraisal time you could say, “I have done these online courses. That is what will make me a competent magistrate. You have witnessed me sitting in court as a magistrate, but this is the evidence I have.”²²⁶

As a member of two professional bodies, Dominic Groble JP pointed out that “both organisations expect me to maintain my competence and professionalism through CPD and reserve the right to manage my membership if I should fail to keep myself up to date.” He went on to suggest that magistrates who have become “dormant” might be transferred to the Supplemental List.²²⁷

81. The Magistrates Association also proposed the introduction of a formal accreditation system for magistrates, linked to a CPD programme. According to the Association, accreditation might be offered following the three-year appraisal, and need not be limited to achieving a single level. Taking on additional roles such as adult court chairman, or becoming a family or youth magistrate, could contribute towards subsequent levels of accreditation. The Association also suggested that accreditation would make magistrates more attractive to employers, helping them to see magistrates “as an opportunity rather than a potential liability”.²²⁸ The Association’s Chair, Malcolm Richardson JP, also suggested that an accreditation scheme would provide “evidence to those who suggest that we are not up to either the job that we do now or the extended job that we are proposing we ought to be empowered to do.”²²⁹

82. We asked the then Minister, Shailesh Vara MP, whether his Department would be able to provide any additional funding, should this be required to introduce a revised

222 [Q87](#)

223 [MAG0048](#)

224 [MAG0072](#) - annexed submission of the Judicial College

225 For example, Professor James Crabbe JP [[MAG0009](#), paragraph 2]; John Dehnel JP [[MAG0020](#), paragraph 9]; Robert Lynch JP [[MAG0010](#)]

226 [Q247](#)

227 [MAG0062](#)

228 [MAG0058](#), paragraphs 42 to 45.

229 [Q248](#)

appraisal scheme for magistrates—for example, for mandatory continuing professional education. He resisted making any commitment in his response to what he considered to be a hypothetical question:

Rather than simply saying, “Can we have more money?” I would first want to know what other proposals had been thought of. It is also important to remember that the training of magistrates is a matter for the judiciary.²³⁰

83. We conclude that the current system of appraisal for magistrates is inadequate, and we welcome the fact that this is currently under review. We are not convinced of the value of having a magistrates’ accreditation scheme, but the evidence that we received gives clear support for the introduction of formal arrangements for Continuing Professional Development. We recommend the introduction of a more robust appraisal scheme for magistrates, which can identify inadequate performance and impose remedial measures to address it, including reviewing of the future of magistrates who have become insufficiently committed to their role. The appraisal scheme should be linked to a mandatory scheme for Continuing Professional Development, developed as part of a comprehensive review of magistrates’ training.

5 Magistrates' court closures

History and rationale of the court closure programme

84. Following on from the closure of 93 magistrates' courts under the Court Estate Reform Programme of 2010–2014, the Government announced in July 2015 that it was consulting on further court closures. The proposed closures—which included 57 magistrates' courts—were largely justified on the basis of court utilisation rates. For magistrates' courts, average utilisation rates of 47% were recorded in 2014/15 for the courts proposed for closure, a drop of 8% compared to the previous year. The consultation document²³¹ also explained the need to fund the HMCTS reform programme which aimed to deliver an improved estate and the modernisation of working practices through the use of digital technology. Giving evidence to us the day after this announcement, the then Secretary of State for Justice, Rt Hon Michael Gove MP, acknowledged that the “biggest problem” he faced was that the Ministry of Justice was an unprotected department; in this context, court closures would need to make a contribution to reducing the departmental deficit.²³²

85. Responding to the consultation on 11 February 2016,²³³ the Government stated that 86 court and tribunal buildings in England and Wales would close, of which half (43) would be magistrates' courts. The response indicated that work would be transferred from ‘surplus sites’ to existing courts and tribunals, creating multifunctional court spaces in some areas, and that—where appropriate—hearings could be held in suitable civic (or other) buildings. The intention was to close all scheduled courts within the following two years; the proposed schedule of court closures published alongside the response was described as ‘indicative’, and a detailed implementation plan would be developed for each closure, looking at alternative provision of services. The Government stated that work was under way to pilot the use of non-court buildings for court hearings and would “make sure that the security of the judiciary, staff [and] users is assessed as part of this process and the provision of appropriate ICT facilities will also be carefully considered and evaluated.”

86. When giving evidence to us in July 2015, the then Secretary of State had told us that one of the tests for deciding whether a court should be closed would be whether the travel time to an alternative court would be less than an hour.²³⁴ The table below summarises the information given in the Government's subsequent consultation response on the impact of the intended closures on travel times to the nearest magistrates' court.

231 [Proposal on the provision of court and tribunal estate in England and Wales](#), Ministry of Justice/HMCTS, 16 July 2015

232 [Oral evidence: The work of the Secretary of State for Justice, HC 335, 15 July 2015, Q2](#)

233 [Response to the proposal on the provision of court and tribunal estate in England and Wales](#), Ministry of Justice/HMCTS, 11 February 2016

234 [Q7](#)

Mode of travel	Before changes are implemented		After changes are implemented	
	0–60 minutes	0–120 minutes	0–60 minutes	0–120 minutes
Travel times to nearest magistrates' court				
Access by car	99%	100%	98%	99%
Access by public transport	82%	97%	74%	95%

This table indicates an anticipated reduction of 8% in the proportion of the population who are able to travel to their nearest magistrates' court within an hour by public transport—from 82% down to 74%.

Impact of court closures on magistrates and court users

87. Some witnesses identified potential advantages of rationalising the courts estate. For example, Leicestershire Advisory Committee said that closures had led to a larger, single bench which was now beginning to feel more cohesive.²³⁵ Nicola Silverleaf JP commented that, as a result of court mergers, it had been possible to set up specialised domestic violence courts.²³⁶ Liz Harrison JP recognised the efficiency gains from having fewer, larger courts and said that there was a view within her bench that, if people could travel to their nearest large town for a night out or for a hospital appointment, they should also be able to travel to court.²³⁷

88. However, we received substantially more evidence identifying adverse impacts on court users and magistrates caused by court closures that had taken place or were expected to happen in future. Some witnesses highlighted the possibility of eroding the principle of local justice and diluting magistrates' local knowledge.²³⁸ Penelope Gibbs from Transform Justice explained her own concerns as follows:

Inevitably, if you close a lot of courts, the likelihood of the magistrate sitting on a particular case knowing the area where a particular crime took place—even the roads, the shops and so on—is limited. In that sense, it threatens local justice.²³⁹

Cleveland and County Durham and Darlington Judicial Business Group drew attention to the potential impact of court closures on magistrates' morale,²⁴⁰ while others pointed out that longer travel distances might deter some people from applying to be magistrates, or might make it difficult for sitting magistrates to deal with a full range of cases because of the trend towards centralising particular types of work in the remaining courts.²⁴¹ Sheena Jowett JP explained how court closures had increased her own travel times in rural Wales:

235 [MAG0051](#)

236 [Q125](#)

237 [MAG0059](#)

238 For example, Riley Smith [[MAG0040](#), paragraph 6]; Chris Taylor JP [[MAG0005](#), paragraph 2]; Bedfordshire Magistrates Association [[MAG0025](#)]; Professor Mike Hough and Professor Julian Roberts [[MAG0081](#), paragraph 2]

239 [Q27](#)

240 [MAG0019](#)

241 North East Bench Chairs Forum [[MAG0008](#)]; Lincolnshire County Magistrates' Bench [[MAG00030](#)]; Dr Peter Reed JP [[MAG0002](#)]; [Q27](#)

My local justice area is Ceredigion and Pembrokeshire... .. The two courthouses within the LJA are 72 miles apart, so the LJA goes south and north of them. Travelling for magistrates between those two courthouses, without a dual carriageway and with plenty of tractors en route, can be hugely challenging. If I am due to sit in Aberystwyth, for instance, I have to allow two hours' travelling there.²⁴²

89. A number of submissions also highlighted the detrimental impact of court closures on court users, particularly on vulnerable defendants and those with chaotic lives, taking into account that public transport services may themselves be subject to future modifications that extend journey times.²⁴³ Dr Jenifer Harding JP reminded us that travel times in urban areas can also be significantly increased by court closures. In her area, with very high deprivation levels, 34% of the population do not have access to a car; court closures, she said, would mean people—many with school age children—having to leave home before 8 o'clock in the morning to get to court.²⁴⁴ Corby Magistrates' Bench reported an increase in participants failing to attend court and thought that proper consideration should be given to the risk of this being exacerbated by court closures.²⁴⁵ In relation to young offenders, the Youth Justice Board for England and Wales argued that “the successful operation of youth courts is underpinned by strong local partnership working between the court and YOTs [Youth Offending Teams]” and that court closures threatened to undermine these partnerships.²⁴⁶ Dominic Goble JP also expressed concern about the impact of closures on youth justice, pointing out that:

the majority of children who find themselves in Youth Court are from what used to be known as ‘troubled families’ Local transport links for schooling, working or court hearings are all a challenge. Indeed, travelling across some rural areas by public transport is difficult at the best of times.²⁴⁷

90. At each of our three oral evidence sessions, we asked magistrate witnesses to give their views about the idea of providing temporary court facilities in alternative venues such as civic buildings—so-called ‘pop-up courts’. There were no objections in principle to this approach. For example, Luke Rigg JP told us:

We want to get the facts, making it not necessarily easy, but as comfortable as possible for witnesses and defendants to say what they need to say. If that means leaving a court building and going to some other kind of civic building, I am open to that.²⁴⁸

91. However, witnesses thought that certain risks were involved in using alternative venues, arising in particular from the lack of a secure dock. While expressing support for the principle of occasional courts, the National Bench Chairmen's Forum highlighted the need for appropriate security (as well as digital support) and argued that the model should be piloted before conventional courthouses were closed. The Forum's Executive Chair, Jo King JP, observed that it is “not just in the most serious casesthat we sometimes have

242 [Q216](#)

243 For example, Coventry and Warwickshire Magistrates Association [[MAG0033](#)]; Executive Committee, Powys and Herefordshire Magistrates Association [[MAG0043](#)]; David Sanderson JP [[MAG0006](#)]

244 [Q184](#)

245 [MAG0012](#)

246 [MAG0049](#)

247 [MAG0062](#)

248 [Q125](#)

problems with security; sometimes something that seems as straightforward as council tax can be very emotive. Sometimes you get people responding in ways that you do not anticipate ...”²⁴⁹ Sheena Jowett JP thought that magistrates would be open to discussing this approach with HMCTS but expressed regret that “when the courts were closed there had not been a little bit of foresight about the issue of security and alternative venues.”²⁵⁰ Christine Holmes JP suggested that in practice the types of cases in these venues would be severely restricted.²⁵¹

92. We have not taken evidence on the decision announced in the recent joint statement²⁵² to increase flexibility in case listing by reforming Local Justice Areas, but we consider it possible that a more flexible approach might also assist magistrates whose nearest court lies outside the Local Justice Area where they normally sit. This is a question to which we may return in future.

93. **We welcome the Ministry of Justice’s commitment to developing a detailed implementation plan for each proposed magistrates’ court closure, and in particular its willingness to look at alternative provision of services. *In determining the location of alternative venues, we recommend that the Ministry ensure that at least 90% of magistrates’ court users can reach the nearest venue by public transport within one hour.***

94. **Use of alternative venues has assumed a key role in the Ministry’s court estate strategy, so it is regrettable that inadequate forethought has been given to the security implications of holding court sessions in buildings that are not equipped with a secure dock. *We recommend that this matter be given urgent consideration, in consultation with magistrates, District Judges and court staff, to identify low-cost practical solutions to potential security risks.***

Digital infrastructure

95. The Ministry of Justice’s submission confirmed that, through the Spending Review, it had secured £700 million to invest in the modernisation of the criminal courts. Planned developments such as virtual hearings along with digital access to case papers and evidence displayed on courtroom screens would allow magistrates “to spend less time on case administration and focus on dealing with the disputed matters, trials and sentencing.”²⁵³ In his oral evidence, Mr Vara explained to us that the investment would “make sure that we have a first-rate, world-class courts and tribunals service.” Of the £700 million, some £300 million would be spent on a digitised Common Platform system involving the police, the Crown Prosecution Service and the courts “so that we make much less use of paper, with the delays, lost files and all that that entails”.²⁵⁴ He also emphasised his Department’s commitment to establishing video links; at present, people have to go to court and “hang around and wait in an environment that can be oppressing.” Modern technology, he told us, would allow them to “go to a nearby place—it could be a police station, the council offices or somewhere else—where they can book a particular time and give evidence by

249 [Q67](#)

250 [Q219](#)

251 [Q184](#)

252 [Transforming our justice system - joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals, 15 September 2016](#)

253 [MAG0050](#), paragraphs 4, 34 and 35

254 [Q317](#)

video link”.²⁵⁵ Similar advantages were recognised by the Crown Prosecution Service, although it emphasised that the ‘virtual court’ approach would be dependent on courts being fully equipped with the necessary technology.²⁵⁶

96. The evidence we received from magistrates suggested that they were equally enthusiastic about the benefits of modern technology. The Chair of Shropshire Bench vividly illustrated this point: “My briefcase with paper copies of the guidelines and bench books weighs 8 kilograms, compare that to the weight of an iPad with software containing all of that information.”²⁵⁷ Northern Derbyshire Bench thought that digitalisation would make it possible to transfer cases across existing boundaries so that “all court users, not just defendants, could attend their nearest court.”²⁵⁸ However, there was some doubt as to whether the digital infrastructure was in fact ready to replace physical courts²⁵⁹ and an unfavourable comparison was made with the Government’s ill-fated LIBRA project.²⁶⁰ The National Bench Chairmen’s Forum expressed concern about the delays in implementation and the performance of some digital programmes, arguing that “the importance of adequate investment in both the initial development of the programmes and their subsequent support and on-going enhancements cannot be overstated.”²⁶¹ Richard Goold JP told us that, although tablets were in use in his area, the internet bandwidth was not enough to use them; as a result, magistrates still brought their own devices to court so they could access the sentencing guidelines. He went on to say:

We must be able to use technology far better, whether it is video links or sharing documents, and not have to pass antecedents around that are six months out of date and then have to put a case to get the police liaison officer to print a new one.²⁶²

97. Others highlighted the need for magistrates’ skills to match developments in technology. Central London Bench thought that digital skills were now essential for magistrates and suggested that “willingness to engage with this technology would also seem an appropriate requirement/competence for appraisal and performance review.”²⁶³ The importance of special communication skills when dealing with people who appear in court by video link was emphasised by Norfolk Bench²⁶⁴ and, in relation to children and young people, by the Youth Justice Board.²⁶⁵

98. We commend the Government’s commitment to strengthening and updating the digital infrastructure in the magistrates’ courts, but conclude that some of its aspirations have been undermined by the difficulties in delivery of changes on the ground. We recommend that full access to physical courts, including alternative venues,

255 [Q314](#)

256 [MAG0054](#)

257 [MAG0034](#), paragraph 6.3

258 [MAG0011](#)

259 For example, Christine Holmes [[Q180](#)], Jacqueline Alexander JP [[MAG0086](#)], paragraph 3]

260 Shropshire Bench [[MAG0034](#)]. The LIBRA project was designed to provide a national standard IT system for magistrates’ courts; the contract was procured by the Government in 1998 and was widely criticised for poor competition and lack of financial control.

261 [MAG0063](#), paragraph 43

262 [Q126](#)

263 [MAG0013](#)

264 [MAG0015](#)

265 [MAG0049](#)

be maintained for the time being until facilities such as video links are fully operational. We also recommend that provision be made for upgrading inadequate video links and internet connections for courts with insufficient bandwidth.

99. *We further recommend that, in the context of the comprehensive review of magistrates' training that we have proposed, consideration be given to additional training needs created by increasing reliance on new technology, including particular communication skills required when dealing with defendants, victims and witnesses by video link.*

6 Expanding the role of magistrates

Increasing sentencing powers

100. There are four main types of sentence available to the magistrates' court: discharges (either conditional or absolute); financial penalties; community orders; and custodial sentences—which may take the form of a suspended sentence.²⁶⁶ For a single offence, magistrates can impose financial penalties up to a maximum of £5,000; for specified offences higher maximum fines may be permitted (for example, up to £50,000 for fly tipping) and there is no maximum aggregate fine for two or more offences. However, the powers of magistrates to impose custodial sentences are more limited. For a single offence, they can impose a term of imprisonment of up to six months, although a term of up to twelve months may be imposed for two or more separate offences. For either-way offences, the magistrates' court has a general power²⁶⁷ to commit a case to the Crown Court for sentence after finding that it is suitable for summary trial, where the court is of the opinion that the offence (and any associated offences) is so serious that greater punishment should be inflicted than the court has power to impose. In the Youth Court, which has a different sentencing regime, magistrates are empowered to impose a custodial sentence of up to two years by way of a Detention and Training Order.

101. Section 154 of the Criminal Justice Act 2003, yet to be commenced, provided for the ordinary maximum custodial sentence that could be imposed by the magistrates' court to be increased to 12 months for one offence (15 months for two or more offences). The increase was originally intended to accompany a new sentence called 'custody plus'²⁶⁸ which has not been implemented. Successive Governments have appeared reluctant to bring section 154 into effect, and the risk of this generating different sentencing practices that put new pressures on the prison population has previously been acknowledged.²⁶⁹ Transform Justice told us that it had made a request under the Freedom of Information Act to the Ministry of Justice, seeking information on its modelling of the possible effect of increasing the custodial sentencing powers of magistrates, in response to which the Department stated that it held such information, but that it was exempt from disclosure.²⁷⁰ In her oral evidence, Penelope Gibbs from Transform Justice argued that more information was needed before implementing such a change, "otherwise, we are just swimming in a fog of ignorance in this discussion."²⁷¹ When we wrote to the then Secretary of State asking if he would share with us in confidence the results of any modelling, he responded by saying that the Ministry was assessing the possible impacts of increasing magistrates' sentencing powers but that a model predicting the policy impact on all stakeholders across the criminal justice system was "not currently available"; however, he would "try to ensure that we share information as soon as possible if we know it is robust and reliable."²⁷²

266 Some driving offences are punished by licence points and/or disqualification from driving for a period of time.

267 Under Section 3 of the Powers of Criminal Courts (Sentencing) Act 2000

268 'Custody plus' was enacted by s181 Criminal Justice Act 2003 but never brought into force; designed to reduce reoffending, it would have meant every sentence of under 12 months taking effect as a short custodial period followed by supervised licence of up to 26 weeks.

269 For example, see the [speech of Damian Green](#), former minister for policing and criminal justice, 14 August 2013

270 [MAG0079](#)

271 [Q45](#)

272 [Letter from the Rt Hon Michael Gove MP, Secretary of State for Justice, to Bob Neill MP, 21st May 2016](#)

102. A minority of witnesses expressed doubts about the wisdom of increasing magistrates' custodial sentencing powers. According to Richard Goold JP, this debate was a distraction at a time "when so much can and needs to be done in rebuilding a criminal justice system that doesn't deliver in the way that it should do."²⁷³ In relation to assault, Dr Simon Wolfensohn JP thought there was a public expectation that sentencing would be done by "a man in a wig"²⁷⁴ in cases involving relatively serious injuries.²⁷⁵ Several witnesses considered that the Sentencing Council's recently revised guideline on the allocation of either-way cases—maintaining the presumption that cases will be tried summarily²⁷⁶—would help to keep more cases in the magistrates' court in any event.²⁷⁷ In the analysis of Nicholas Moss JP, the risk of magistrates' sentences being more punitive than those currently imposed by the Crown Court was "a legitimate public policy concern", carrying a related risk of more appeals to the Crown Court against magistrates' court decisions.²⁷⁸ An alternative approach to this issue was suggested by Senior District Judge Riddle: more cases could be handled by magistrates, if Parliament so desired, by giving summary status to certain either-way offences rather than increasing the sentencing powers of magistrates.²⁷⁹ An even more radical approach was advocated by Peter Dawson of the Prison Reform Trust (PRT)²⁸⁰ and by the Howard League for Penal Reform,²⁸¹ who both argued that the magistracy should only be able to impose community sentences, citing evidence suggesting that custodial sentences of less than 12 months are largely ineffective.

103. However, most of the evidence that we received from magistrates supported the commencement of section 154, a move that would be seen as signalling trust in the magistracy and providing a boost to its morale.²⁸² It was also suggested that there would be "significant savings by not utilising the more expensive Crown Court for lower level crime"²⁸³ and that commencement would "increase the efficiency of the court by improving case continuity".²⁸⁴ Malcom Richardson JP and Ian Clarkson JP argued that an increase of sentencing powers to 12 months' custody would release pressure on the Crown Court, allowing justice to be dispensed more rapidly.²⁸⁵ Lord Justice Fulford and Christine Holmes JP were among the witnesses who reminded us that magistrates already have sentencing powers of two years in youth cases; Mrs Holmes also pointed to the low level of Crown Court appeals against sentences as evidence that magistrates make "reasonable and sound judgments".²⁸⁶

104. We returned to the topic of modelling when the Minister gave oral evidence to us. When we asked Mr Vara whether there would be comprehensive modelling of the likely impact of extending magistrates' sentencing powers to 12 months' custody, he merely

273 [MAG0001](#)

274 [Q203](#)

275 Assault occasioning actual bodily harm (ABH) under section 47 of the Offences against the Person Act 1861 carries a maximum penalty of three years' custody.

276 Sentencing Council, Revised definitive guideline on determining whether cases should be dealt with by a magistrates' court or the Crown Court; March 2016 <http://www.sentencingcouncil.org.uk/publications/item/allocation-guideline-revised/>

277 For example, Transform Justice [[MAG0070](#)]; Vivian McCarthy JP [[MAG0085](#)]; Jacqueline Alexander JP [[MAG0086](#)]

278 [MAG0032](#)

279 [Q295](#)

280 [MAG0053](#); [Q14](#)

281 [MAG0042](#)

282 Somerset Bench [[MAG0018](#)], Robert Lynch JP [[MAG0010](#)];

283 Ian Andrews JP [[MAG0035](#)]

284 West Cheshire Bench [[MAG0065](#)]

285 [Q250](#); [MAG0068](#)

286 [Q208](#)

said that no modelling had yet taken place.²⁸⁷ When we repeated our question, Mr Vara accepted that there might, or might not, be modelling in future following consideration of all the facts.²⁸⁸ We followed this up by asking him at what point he would know whether modelling would be necessary, and he responded as follows:

Again, it is difficult to give timelines. What I can say is that we would pilot different areas, and do a thorough analysis and make announcements as and when appropriate. I am sorry that I am not being precise. I hope that you will appreciate that when you have a £700 million court reform taking place and, on top of that, you are considering problem-solving courts and the issues of recruitment of magistrates, diversity and increased sentencing powers, no one issue can be looked at in an individual, solitary way, because they form part of a bigger picture.²⁸⁹

105. We support increasing magistrates' sentencing powers to 12 months' custody, by commencing section 154 of the Criminal Justice Act 2003, and we recommend that the Ministry of Justice provide a timetable for implementation. We recommend that the Sentencing Council's new Allocation Guideline be given time to bed down and the Council be given an opportunity to review its impact on the allocation of cases to the magistrates' courts. We further recommend that the Ministry of Justice publish any modelling of the potential impact on the prison population of extending magistrates' sentencing powers.

Involvement of magistrates in problem-solving approaches

106. So-called 'problem-solving' courts provide individualised assessments of offenders, taking into account personal circumstances that may result in repeat offending and seeking to reach agreement with individuals in a non-confrontational way. Such courts rely on having a consistent relationship between the judge and the offender and often adopt a multi-disciplinary approach, bringing together several agencies at one site. In March 2016, we were able to visit the Red Hook Community Justice Centre, the first multi-jurisdictional community court in the United States. Established in 2000, the Justice Centre operates in a geographically and socially isolated neighbourhood in southwest Brooklyn. A single judge hears cases that under ordinary circumstances would go to three different courts—Civil, Family, and Criminal—and has at his disposal an array of sanctions and services, including community restitution projects and long-term treatment for drug and mental health issues. Red Hook also features an on-site clinic staffed by social service professionals and houses a range of other services including mediation, community service and a youth court where teenagers are trained to resolve actual cases involving their peers.

107. Problem-solving courts are poorly developed in England and Wales compared with many other jurisdictions. The North Liverpool Community Justice Centre, which opened in 2005, was designed to emulate the Red Hook model.²⁹⁰ It accommodated various criminal justice services under the same roof as the court room, with the aim of linking

287 [Q342](#), [Q343](#)

288 [Q344](#)

289 [Q345](#)

290 Under Section 178 of the Criminal Justice Act 2003, the Secretary of State has the power allow courts to review community orders. This power was first used in relation to the former North Liverpool Community Justice Centre and was then extended to a further twelve magistrates' courts.

offenders into appropriate services. Controversially, it was closed in 2013 due to a reported falling-off of referrals and high costs. In addition, an evaluation had found no difference in re-offending rates compared to offenders sentenced in regular courts. More successfully, the Stockport Problem Solving Court was established in autumn 2010 as a joint court and probation initiative supported by the Community Safety Partnership. The court takes a preventative, partnership approach to managing offenders (and their victims), rather than focusing on crisis management, and aims to deal with multiple or complex needs: for example, homelessness, mental health, drugs and/or alcohol misuse. The court has dedicated magistrates and legal advisers, and aims to provide continuity in the bench of magistrates dealing with each case, including after a breach. The post-pilot evaluation of the court identified substantial savings made to the prison service and the health services²⁹¹ and, in 2012, the model was adopted more widely within Greater Manchester.

108. Since 2005, over 100 specialist Domestic Violence Courts have been set up, in recognition of the complex psychological aspects of domestic violence and the benefits of a specialist multi-agency approach to prosecutions. The first drugs court opened in Cardiff in 2009 and, building on its success, further pilot courts were set up in Bristol, Leeds, and West London. These courts have likewise reported positive results. In June 2016, we visited the Family Drug and Alcohol Court (FDAC) in Holborn, London, a problem-solving court which provides specialist help to families whose children are put at risk by parental substance misuse. The same judge reviews cases every fortnight, supported by an independent multi-disciplinary Intervention Team. Parents are given ‘a trial for change’ that supports them to overcome their problems, at the same time as testing whether they can make the changes within a timescale compatible with the children’s needs. An independent evaluation of FDAC found that parents were overwhelmingly positive about its approach. It also found that 40% of FDAC mothers and 25% of fathers were no longer misusing substances after 12 months, compared to 25% and 5% respectively of the comparison parents, and that a higher proportion of children remained with, or were returned to, their parents at the end of proceedings.²⁹²

109. On 8 February 2016, the Prime Minister announced that the then Secretary of State for Justice and the Lord Chief Justice had set up a joint working group to examine how to deliver problem-solving courts in England and Wales. Its objectives were to achieve offender behaviour change through judicially supervised rehabilitative programmes; to encourage innovation in the use of judicial disposals and improve compliance with the court orders; and to deliver a swifter and more certain response to crime and to reduce reoffending.²⁹³ Caroline Dinenage MP (then Parliamentary Under Secretary of State at the Ministry of Justice) confirmed in response to a Written Parliamentary Question in June 2016 that the recommendations of the working group supported the case for problem solving courts.²⁹⁴ However, it is currently unclear to what extent, and within what time frame, the Government will be progressing the working group’s recommendations.

110. We received evidence from the Centre for Justice Innovation, a research and development charity which works to build a trusted justice system that reduces crime.

291 [Stockport Problem-solving Court: an evaluation of the pilot scheme, New Economy, July 2013](#)

292 Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings, May 2014. FDAC Research Team, Brunel University: Professor Judith Harwin, Dr Bachar Alrouh, Mary Ryan and Jo Tunnard <http://www.nuffieldfoundation.org/evaluation-pilot-family-drug-and-alcohol-court>

293 [Problem-solving courts working group: terms of reference](#)

294 [Written Question 40886](#)

The Centre’s evidence, based on its ‘Better Courts’ programme of research and practice development, maintains that the shift in court business towards more complex and high-harm crimes means that the role of the magistracy needs to change as well. It argues, first, that more proportionate use should be made of magistrates’ courts by avoiding unnecessary prosecutions in favour of community resolutions and developing the role of magistrates in scrutinising these. Second, there is potential for enhancing the role of magistrates within problem-solving courts. However, several barriers would need to be overcome for this to be achieved: magistrates would require more extensive legal powers to order and oversee post-sentence reviews; consistent sitting patterns would be needed, to ensure continuity in the relationship with individual offenders; and magistrates are likely to need additional training, similar to the training they receive to sit in the Youth Court, to develop specialisms in areas such as substance misuse or women offenders. The Centre also put to us that this expansion in the role of the magistracy could lead to an increased recruitment rate, presenting an opportunity to enhance its diversity.²⁹⁵

111. There was widespread support among other witnesses for increasing magistrates’ involvement in problem-solving approaches. Noting the formation of the joint working group on this issue, the Ministry of Justice told us that it saw “real potential for these “problem solving” courts to contribute to crime reduction and personal redemption”.²⁹⁶ The Criminal Justice Alliance also indicated strong support for problem-solving courts and magistrates’ involvement in them.²⁹⁷ Sheena Jowett JP considered that magistrates would be well-suited to this role:

If we were able to follow up and review our cases afterwards, it would be a very positive thing for both sides. We can engage with the defendant. We are used to engaging with people in court—we do it all the time.²⁹⁸

Penelope Gibbs told us that it would be a good thing if problem-solving courts allowed magistrates to specialise—for example, in Youth Court work; similarly, the Youth Justice Board recognised that problem-solving approaches might require the role of youth magistrates to be developed, with implications for their training and support.²⁹⁹ Professor Jane Donoghue, while accepting that a problem-solving approach was “contingent upon achieving sentencer continuity across hearings”, doubted that this would present an insurmountable problem and thought it was “certainly achievable with organisational commitment”.³⁰⁰ A number of individual magistrates also expressed their support for the magistracy having a greater role in problem-solving approaches.³⁰¹ A more fundamental rethink was advocated by the Howard League for Penal Reform, who submitted that the role of the lower courts should be refocused towards “resolving disputes and reducing social harm” where cases involved minor breaches of the law.³⁰²

112. As noted above, the Centre for Justice Innovation raised concerns about the restrictions of the current legal framework on magistrates’ involvement in problem-solving approaches

295 [MAG0045](#)

296 [MAG0050](#), paragraph 15

297 [MAG0048](#)

298 [Q226](#)

299 [MAG0049](#)

300 [MAG0082](#)

301 For example, Norfolk Bench [\[MAG0015\]](#); Peter Lindley Ullathorne JP [\[MAG0016\]](#); Dominic Goble JP [\[MAG0062\]](#).

302 [MAG0042](#)

and similar concerns were raised by the Magistrates Association.³⁰³ Under section 209 of the Criminal Justice Act 2003, magistrates may impose a Drug Rehabilitation Requirement (DRR), comprising structured treatment and regular drug testing tailored to individual needs, as part of a community order (CO) or a suspended sentence order (SSO); and under section 210 of the 2003 Act, the court may require the offender to report back at monthly intervals for the DRR to be reviewed. However, supervision powers are less extensive for other community orders. Under section 178 of the 2003 Act, the Secretary of State has the power to allow courts to review community orders—a provision first used in relation to the former North Liverpool Community Justice Centre (see paragraph 107) and subsequently extended, but only to a further twelve magistrates’ courts. In relation to the Youth Court, the Secretary of State has yet to bring into effect the power of magistrates to review youth rehabilitation orders.³⁰⁴

113. The evidence we have received suggests that many magistrates are eager to adopt problem-solving approaches when dealing with offenders sentenced to community penalties. We are sympathetic to this idea. Regardless of the Government’s future policy direction on dedicated problem-solving courts, we recommend that legal restrictions be lifted so that suitably trained and experienced magistrates can supervise community orders in all courts, provided that consistent sitting can be arranged.

114. We do not yet know if the Government will decide to develop a strategy for piloting problem-solving courts. If they do so, we conclude that magistrates will play a central role in ensuring the strategy is successful. In these circumstances, we recommend that magistrates be fully consulted on the approach that is taken.

Giving magistrates a broader remit

115. Magistrates are governed by the Lord Chancellor’s eligibility criteria³⁰⁵ that exclude them from the magistracy if they fulfil any one of a number of roles considered to be in conflict with their judicial office: for example, membership of a Community Safety Partnership, Restorative Justice Panel or Youth Offender Panel. They were not permitted to serve as members of the former Probation Trust Boards in their own area, although they could attend meetings as observers or in advisory capacity. The submission from Transform Justice argued that, compared to ten or fifteen years ago, “magistrates are very circumscribed in what they can say, who they can meet and the roles they can take up outside the court-room.” The organisation questioned whether these restrictions in fact threatened judicial independence. Penelope Gibbs expanded on this view when she gave oral evidence to us, suggesting that “the very point of having a lay magistracy is for them to be part of the community and to be able to influence ... things happening in the criminal justice system and in the community.”³⁰⁶ She went on to say:

There are always possibilities of conflict. For instance, someone could sit in the House of Lords or in the House of Commons as a recorder, and people still would not stop them commenting on criminal justice policy

303 Malcolm Richardson JP [\[Q228\]](#)

304 Under Paragraph 35 of Schedule 1 of the Criminal Justice and Immigration Act 2008.

305 [Ministry of Justice: guidance on eligibility; Lord Chancellor’s Directions, Appendix 2B](#), July 2013

306 [Q1](#)

... . It seems to me not to respect people's ability to make judgments and to declare interests where necessary. It also deprives us of the experience that being in court produces.³⁰⁷

116. Many of those who gave evidence to us suggested that the role of the magistracy might be broadened. A common wish was for magistrates to be more consistently involved in the independent scrutiny panels for Out of Court Disposals (OOCs), now established by most police forces to monitor the way that OOCs are used and overseen by Police and Crime Commissioners. It has been noted elsewhere that the arrangements for these panels vary considerably between forces in terms of scope, membership and frequency of meetings³⁰⁸ and Dr Simon Wolfensohn argued that clear guidelines were required to ensure consistency in the panel process.³⁰⁹ It was also suggested that Youth Court magistrates should be allowed to serve on Youth Offender Panels,³¹⁰ potentially with a scrutiny role.³¹¹ Several witnesses thought that magistrates should be permitted take on an active role within restorative justice initiatives,³¹² including neighbourhood justice panels—an approach piloted by the Government in 15 areas to deal with problems suitable for informal resolution, such as anti-social behaviour and neighbour disputes. Nicola Silverleaf JP favoured building more effective relationships between magistrates and their local Community Safety Partnerships³¹³ and also thought that magistrates might have a role within Transforming Rehabilitation, by looking at whether it was working successfully in individual cases.³¹⁴ Similarly, Peter Dawson expressed surprise that the magistracy now had so little influence over probation.³¹⁵

117. When we put it to Lord Justice Fulford that the role of magistrates might be expanded, he reasserted the importance of independence and went on to say that magistrates

must not in any way be involved in organisations, campaigning groups or other situations where it could be seen that they were in some way being party political or were being involved in political issues in their role as magistrates.³¹⁶

Lord Justice Fulford also pointed out that magistrates are permitted to participate in a wide variety of organisations, including crime prevention panels, the family mediation service, Independent Monitoring Boards, local children's safeguarding boards and the Parole Board.³¹⁷ Senior District Judge Riddle then explained that a sub-committee of the Judges Council—which included representation from the Magistrates Association—was examining “whether there is any justification for a difference between the rules for the magistracy and for the full-time professional judiciary”.³¹⁸

307 [Q4](#)

308 Home Affairs Committee, Fourteenth Report of Session 2014–15, *Out of Court Disposals* [HC 799](#)

309 [MAG0037](#)

310 Shropshire Bench [\[MAG0034\]](#); Phil Lloyd JP [\[MAG0017\]](#)

311 West Mercia Advisory Committee [\[MAG0071\]](#);

312 Cleveland and County Durham and Darlington Judicial Business Group [\[MAG0019\]](#); Criminal Justice Alliance [\[MAG 0048\]](#); Professor Jane Donoghue [\[MAG0082\]](#); Politeia [\[MAG0064\]](#)

313 [Q117](#)

314 [Q117](#)

315 [Q6](#)

316 [Q272](#)

317 [Q272](#)

318 [Q274](#)

118. Adjudications on prison discipline matters are currently conducted by District Judges. The National Bench Chairmen’s Forum suggested that magistrates’ skills made them well suited to conducting them, possibly by video link,³¹⁹ a view that had support elsewhere.³²⁰ The senior judiciary stated in its written submission that it did not think there were any objections in principle to this change, although practical and costs implications should be considered.³²¹ We explored this point further in oral evidence and Senior District Judge Riddle explained that, as prisoners are often unrepresented, hearings may be more inquisitorial; in addition, he told us that prison law is quite complicated. Another practical concern was that prison adjudication rooms would be too small to accommodate a bench of three magistrates sitting with a legal adviser.³²²

119. It was also put to us that magistrates should have a more extensive role within civil and tribunal jurisdictions,³²³ including issuing civil injunctions: the Ministry of Justice foresaw the role of the magistracy in civil injunctions developing “into a more problem-solving approach similar to that envisaged in the criminal courts.”³²⁴ An expanded role in civil injunctions was favoured by 63% of respondents in the Magistrates Association’s survey of its members.³²⁵ Sheena Jowett JP said she had “no problem whatsoever with engaging in the civil jurisdiction” but asked that magistrates be trained for this.³²⁶ The National Bench Chairmen’s Forum explained to us that magistrates’ courts already have a limited civil jurisdiction, including making anti-social order injunctions for youths, crack house closure orders, non-molestation orders and appeals from licensing bodies and local authorities. It argued that further use could be made of magistrates’ skills by extending this jurisdiction “to include less serious dispute resolution and small claims track cases, evictions and so on.”³²⁷ Jo King JP expanded on the Forum’s point in oral evidence:

I see an extension of the role being possible where those skills can be utilised—where the key requirement is for the ability to evaluate evidence and make judgments, with the support of a legally qualified legal adviser to provide us with the expertise.

120. We conclude that there are clear advantages in permitting magistrates to take on additional, non-judicial roles within the criminal justice system—both to widen their own experience and to enable them to use their skills beyond the courtroom. We welcome the decision of the Judges’ Council to establish a sub-committee to consider whether there is justification for a difference between the rules that apply to the magistracy and those that apply to the full-time judiciary.

121. We accept that there is support among some sections of the magistracy for a more extensive judicial role within civil and tribunal jurisdictions, but we consider that it would be advisable at present to focus career development and training resources on maintaining and developing magistrates’ core skills within the criminal and family

319 [MAG0063](#), paragraph 11

320 Lincolnshire County Bench Management Team [[MAG0030](#)]; Professor Jane Donoghue [[MAG0082](#)]

321 [MAG0072](#), paragraph 12

322 [Q280](#)

323 Nicola Silverleaf JP [[MAG0067](#), paragraph 9]; Oxfordshire Magistrates’ Bench [[MAG0052](#), paragraph 2]

324 [MAG0050](#), paragraph 14

325 [MAG0058](#), Table 3

326 [Q229](#)

327 [MAG0063](#), paragraph 14

courts. However, we recommend that the feasibility of suitably trained and experienced magistrates undertaking prison adjudications by video link, with the support of a legal adviser, be examined.

122. We also recommend that the role of magistrates serving on Out of Court Disposal scrutiny panels be made more consistent across the country by means of additional guidance.

7 A strategy for the magistracy

Development of future policy

123. As will be clear from this Report, much of the evidence we have received indicates that the magistracy faces a range of problems and difficulties that have escaped the attentions of policy makers in recent years—or, at least, have prompted little reflection or strategic decision-making. In its written submission, the senior judiciary identified a range of opportunities for enhancing the role of the magistracy, including by adherence to the new Allocation Guideline,³²⁸ by considering whether magistrates might have greater sentencing powers³²⁹ and by reviewing the right to elect trial by jury—recognising that views on the latter are divided.³³⁰ As noted above, no objection was raised in principle to magistrates undertaking prison adjudications.

124. In a similar vein, the Ministry of Justice expressed a wish to give magistrates “the strongest possible role in a more proportionate courts system,”³³¹ recognising that the courts and justice reform programme currently taking place creates an opportunity to consider the future role of the magistracy “not just in relation to new and innovative facilities and swifter processes, but also new powers and responsibilities”.³³² The MoJ’s submission goes on to detail a list of issues that it is considering, including the role of magistrates in problem-solving courts; the potential for greater flexibility in Local Justice Areas;³³³ improvements to the recruitment process—including attracting more diverse candidates; making sure that magistrates’ training needs are adequately met; and improving the appraisal process.³³⁴ It concludes by saying it will work closely with the senior judiciary and the magistracy to consider how these proposals may be achieved.³³⁵ In short, the Ministry is aware of many of the issues raised in evidence to us, but appears not to have decided how to tackle them.

125. When the Minister gave oral evidence to us, we pressed him for details of his Department’s thinking on the future of the magistracy. He was ready to accept that many of the issues we identified were ones that needed to be addressed,³³⁶ and said that they were being looked at,³³⁷ or that options were being considered;³³⁸ and he reassured us that his Department wanted to get things right.³³⁹ However, in most respects he avoided giving any clear indication of future policy developments.

126. The magistracy faces a range of unresolved issues relating to its role and its workload, together with serious problems with recruitment and training; we conclude that these now must be addressed as a matter of urgency. The wide range of recommendations that we have made indicate a need for strategic leadership. It is

328 [MAG0072](#), paragraph 7

329 [MAG0072](#), paragraph 9

330 [MAG0072](#), paragraph 10

331 [MAG0050](#), paragraph 1

332 [MAG0050](#), paragraph 5

333 Reform of Local Justice Areas was announced in [Transforming our justice system - joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals, 15 September 2016](#)

334 [MAG0050](#)

335 [MAG0050](#), paragraph 47

336 [Q303](#),

337 [Q308](#), [Q319](#), [Q323](#)

338 [Q324](#), [Q338](#)

339 [Q309](#), [Q329](#)

unfortunate that the Government's evident goodwill towards the magistracy has not yet been translated into any meaningful strategy for supporting and developing it within a changing criminal justice system.

127. We recommend that, as a matter of priority, the Ministry of Justice, together with the senior judiciary, consult widely on, then adopt, an over-arching strategy for the magistracy, to include workforce planning, consideration of the impact of court closures, wider promotion of the role—in particular to employers—and the shared role of the Ministry and the judiciary in ensuring the future of magistrates' training. The strategy should also consider the potential for the role of magistrates to be expanded, in particular within any future proposals to develop problem-solving courts.

Conclusions and recommendations

Role of the magistracy within the criminal justice system

1. We endorse the principle behind initiatives designed to streamline and modernise proceedings in the magistrates' courts, but we believe there is a risk of undermining magistrates' morale by imposing changes on them without consultation and by reducing administrative support to unsatisfactory levels. Although evidence does not indicate a universal problem, there is sufficient evidence of low morale within the magistracy to cause us concern. (Paragraph 11)
2. *We recommend that magistrates be consulted as appropriate on any further changes to the criminal justice system on which their views are likely to assist policy development and/or which are likely to have an impact on their role—in particular changes to administrative support to the courts, whether in their own locality or more widely across the court system.* (Paragraph 11)
3. We recognise that, in practice, there are difficulties in balancing the work of magistrates with that of District Judges and that District Judges must be kept occupied because of their salaried status and the need to maintain their competence. However, it is also important to retain magistrates' competence and to value their time as volunteers. (Paragraph 18)
4. *We recommend that the Ministry of Justice commission qualitative research into relations between District Judges, magistrates and justices' clerks in a sample of Local Justice Areas, with a view to understanding the source of potential tensions and identifying good practice.* (Paragraph 19)
5. We note that Lord Justice Fulford is considering the possibility of additional guidance for justices' clerks on the allocation of cases in magistrates' courts, a development that we would welcome. (Paragraph 20)
6. *We recommend that this additional guidance for justices' clerks take the form of an amended version of the protocol to support judicial deployment in the magistrates' court. We further recommend that consideration be given to allowing magistrates to sit without legal advisers when sitting with a District Judge.* (Paragraph 20)
7. The principle of open justice is central to our common law tradition and also underpins Article 6 of the European Convention on Human Rights. We recognise the efficiency gains of the Single Justice Procedure, but we note concerns have been expressed about any potential extension of the procedure to additional cases. (Paragraph 26)
8. *We welcome Lord Justice Fulford's intention to issue a protocol setting out guidance for magistrates on when they should sit in open court, and recommend that these concerns about any potential extension of the Single Justice Procedure be taken into account in the preparation of that protocol.* (Paragraph 26)
9. We agree that more challenging case management tasks may require the skills of a District Judge and should be allocated accordingly. (Paragraph 31)

10. *Recognising that the Transforming Summary Justice initiative depends in part on effective case management of every contested case, we recommend that all magistrates who sit as panel chairs should be offered training to assist them in fulfilling this role as effectively as possible.* (Paragraph 31)

Recruitment and diversity

11. We recognise the valuable expertise of many older magistrates and we have particular sympathy with concerns about the shortages of magistrates qualified to sit in the Family Court. We conclude that the solution lies in workforce planning for the magistracy—including for specialist roles. We support the maintenance of a retirement age of 70 for magistrates, the same as for judges, but we consider that on application by individual magistrates it should be possible in exceptional circumstances to extend their appointments, taking into account the outcome of workforce planning. (Paragraph 39)
12. *We urge the Ministry of Justice, in consultation with the senior judiciary, to undertake a workforce planning exercise for the magistracy at the earliest possible opportunity, taking into account the high proportion of serving magistrates who are expected to retire over the next five to ten years. We also recommend that recruitment be undertaken on a continuous basis, so that approved applicants are available to fill vacancies in their area, or in adjacent areas, as soon as they occur.* (Paragraph 39)
13. We conclude that having a large cohort of magistrates approaching the age of retirement presents a great opportunity to promote diversity among those who are recruited to replace them. We recognise the considerable efforts that have been made to encourage applications for the magistracy from a wider range of people, and we commend the imaginative approaches to improving diversity that have been drawn to our attention. (Paragraph 49)
14. *We recommend that the Ministry of Justice and the senior judiciary devise a strategy containing the following steps as a matter of priority to increase the diversity of applicants and recruits for the magistracy:*
- *Adopting a wider and more proactive advertising strategy for potential applicants, seeking in particular to attract magistrates from less conventional backgrounds*
 - *Streamlining the recruitment process, so that applications are processed within six months*
 - *Introducing a scheme similar to the ‘two ticks’ model to encourage disabled applicants, and working with the HMCTS to ensure that reasonable adjustments can be made where required*
 - *Providing additional funding for Magistrates in the Community, together with active promotion of the scheme to potential corporate sponsors*
 - *Considering the introduction of the ‘equal merit’ provisions for recruitment to the magistracy for the protected characteristics of race, disability and age.* (Paragraph 50)

15. Rebalancing the age profile of the magistracy is unlikely to happen unless more action is taken to overcome the barriers facing employed magistrates, including by encouraging employers in all sectors to support magistrates who work for them. (Paragraph 57)
16. *We recommend that the Ministry of Justice and the senior judiciary create a kitemark scheme that recognises and rewards employers who support the magistracy, thus encouraging other employers to do the same. We also recommend that the Ministry of Justice review the current Financial Loss Allowances for employed and self-employed magistrates, including consideration of whether rates might be increased in line with inflation.* (Paragraph 57)
17. *We recommend that the HMCTS encourage court managers, when resources permit, to consider the potential for increasing out-of-hours court sittings in order to maximise sitting opportunities for magistrates who are employed.* (Paragraph 58)
18. While we accept that certain Local Justice Areas may have too many magistrates for the amount of work available, on balance we do not think that introducing fixed tenure for the magistracy as a whole, or for ‘wingers’ alone, is a satisfactory way of addressing this problem. We accept the evidence of Lord Justice Fulford and others that fixed tenure might create a perverse incentive for people to delay applications for the magistracy until they are approaching retirement, and that experienced magistrates with the potential for taking on leadership roles might be lost from the bench prematurely. A more robust appraisal system could be effective in addressing any problems arising from magistrates who are less engaged in their role, and we consider this matter in the next chapter. (Paragraph 62)

Training and appraisal

19. We received the clear impression that the landscape of magistrates’ training is a somewhat crowded one and we welcome the decision by the Ministry of Justice to consult on proposals for rationalising the rules relating to training for magistrates. (Paragraph 68)
20. In spite of assurances from the senior judiciary that the Judicial College receives adequate funding for magistrates’ training and that the goodwill of HMCTS staff can be relied on to provide support, the evidence that we received in the course of this inquiry from a range of authoritative sources suggests that this is not the case. (Paragraph 69)
21. *We recommend that the Judicial College be provided with more funding to support magistrates’ training and that a more realistic view be taken of the ability of HMCTS staff, in particular legal advisers, to assist with training given the current pressures on their time.* (Paragraph 69)
22. We were impressed by magistrates’ commitment to training and their willingness to give their time to doing it. However, we are concerned by evidence suggesting that training for magistrates is not always of sufficiently high quality. In addition

we conclude that the range of training available is sometimes too narrow to equip magistrates for the role that they are expected to fulfil and to help them contribute to cultural change within the criminal justice system. (Paragraph 74)

23. *We recommend that the Judicial College, in consultation with others, undertake a comprehensive review of magistrates' training needs with a view to developing a training programme that supports a modern magistracy, taking proper account of the investment of time required from those who organise and deliver training. The review should also consider the particular training needs of magistrates who put themselves forward for specialist roles in the Youth and Family Courts, as bench Chairs and to sit as panel chairs.* (Paragraph 74)
24. *As part of the comprehensive review of magistrates' training needs, we recommend that a balance be maintained between different ways of learning, recognising that online training, in spite of its convenience and cost-effectiveness, cannot provide the quality of engagement and interaction provided in face-to-face settings. We further recommend that a reasonable proportion of face-to-face training be offered at times that are convenient to employed magistrates and those with other weekday commitments.* (Paragraph 77)
25. We conclude that the current system of appraisal for magistrates is inadequate, and we welcome the fact that this is currently under review. We are not convinced of the value of having a magistrates' accreditation scheme, but the evidence that we received gives clear support for the introduction of formal arrangements for Continuing Professional Development. (Paragraph 83)
26. *We recommend the introduction of a more robust appraisal scheme for magistrates, which can identify inadequate performance and impose remedial measures to address it, including reviewing of the future of magistrates who have become insufficiently committed to their role. The appraisal scheme should be linked to a mandatory scheme for Continuing Professional Development, developed as part of a comprehensive review of magistrates' training.* (Paragraph 83)

Magistrates' court closures

27. We welcome the Ministry of Justice's commitment to developing a detailed implementation plan for each proposed magistrates' court closure, and in particular its willingness to look at alternative provision of services. (Paragraph 93)
28. *In determining the location of alternative venues following closure of magistrates' courts, we recommend that the Ministry ensure that at least 90% of magistrates' court users can reach the nearest venue by public transport within one hour.* (Paragraph 93)
29. Use of alternative venues has assumed a key role in the Ministry's court estate strategy, so it is regrettable that inadequate forethought has been given to the security implications of holding court sessions in buildings that are not equipped with a secure dock. (Paragraph 94)
30. *We recommend that the need for secure docks in alternative venues be given urgent consideration, in consultation with magistrates, District Judges and court staff, to identify low-cost practical solutions to potential security risks.* (Paragraph 94)

31. We commend the Government's commitment to strengthening and updating the digital infrastructure in the magistrates' courts, but conclude that some of its aspirations have been undermined by the difficulties in delivery of changes on the ground. (Paragraph 98)
32. *We recommend that full access to physical courts, including alternative venues, be maintained for the time being until facilities such as video links are fully operational. We also recommend that provision be made for upgrading inadequate video links and internet connections for courts with insufficient bandwidth.* (Paragraph 98)
33. *We recommend that, in the context of the comprehensive review of magistrates' training that we have proposed, consideration be given to additional training needs created by increasing reliance on new technology, including particular communication skills required when dealing with defendants, victims and witnesses by video link.* (Paragraph 99)

Expanding the role of magistrates

34. *We support increasing magistrates' sentencing powers to 12 months' custody, by commencing section 154 of the Criminal Justice Act 2003, and we recommend that the Ministry of Justice provide a timetable for implementation. We recommend that the Sentencing Council's new Allocation Guideline be given time to bed down and the Council be given an opportunity to review its impact on the allocation of cases to the magistrates' courts. We further recommend that the Ministry of Justice publish any modelling of the potential impact on the prison population of extending magistrates' sentencing powers.* (Paragraph 105)
35. The evidence we have received suggests that many magistrates are eager to adopt problem-solving approaches when dealing with offenders sentenced to community penalties. We are sympathetic to this idea. (Paragraph 113)
36. *Regardless of the Government's future policy direction on dedicated problem-solving courts, we recommend that legal restrictions be lifted so that suitably trained and experienced magistrates can supervise community orders in all courts, provided that consistent sitting can be arranged.* (Paragraph 113)
37. We do not yet know if the Government will decide to develop a strategy for piloting problem-solving courts. If they do so, we conclude that magistrates will play a central role in ensuring the strategy is successful. (Paragraph 114)
38. *If the Government decides to pilot problem-solving courts, we recommend that magistrates be fully consulted on the approach that is taken.* (Paragraph 114)
39. We conclude that there are clear advantages in permitting magistrates to take on additional, non-judicial roles within the criminal justice system—both to widen their own experience and to enable them to use their skills beyond the courtroom. We welcome the decision of the Judges' Council to establish a sub-committee to consider whether there is justification for a difference between the rules that apply to the magistracy and those that apply to the full-time judiciary. (Paragraph 120)

40. *We accept that there is support among some sections of the magistracy for a more extensive judicial role within civil and tribunal jurisdictions, but we consider that it would be advisable at present to focus career development and training resources on maintaining and developing magistrates' core skills within the criminal and family courts. However, we recommend that the feasibility of suitably trained and experienced magistrates undertaking prison adjudications by video link, with the support of a legal adviser, be examined. (Paragraph 121)*
41. *We also recommend that the role of magistrates serving on Out of Court Disposal scrutiny panels be made more consistent across the country by means of additional guidance. (Paragraph 122)*

A strategy for the magistracy

42. The magistracy faces a range of unresolved issues relating to its role and its workload, together with serious problems with recruitment and training; we conclude that these now must be addressed as a matter of urgency. The wide range of recommendations that we have made indicate a need for strategic leadership. It is unfortunate that the Government's evident goodwill towards the magistracy has not yet been translated into any meaningful strategy for supporting and developing it within a changing criminal justice system. (Paragraph 126)
43. *We recommend that, as a matter of priority, the Ministry of Justice, together with the senior judiciary, consult widely on, then adopt, an over-arching strategy for the magistracy, to include workforce planning, consideration of the impact of court closures, wider promotion of the role—in particular to employers—and the shared role of the Ministry and the judiciary in ensuring the future of magistrates' training. The strategy should also consider the potential for the role of magistrates to be expanded, in particular within any future proposals to develop problem-solving courts. (Paragraph 127)*

Formal Minutes

Tuesday 11 October 2016

Members present:

Robert Neill, in the Chair

Richard Arkless

Dr Rupa Huq

Alberto Costa

Victoria Prentis

Philip Davies

Marie Rimmer

Mr David Hanson

Draft Report (*The role of the magistracy*), proposed by the Chairman, brought up and read the first time.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 127 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 18 October at 9.15am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 22 March 2016

Question number

Penelope Gibbs, Transform Justice, and **Peter Dawson**, Deputy Director, Prison Reform Trust

[Q1–55](#)

Jo King, Executive Chair, National Bench Chairmen's Forum, and **Alwyn Lloyd Ellis**, National Bench Chairmen's Forum

[Q56–100](#)

Tuesday 10 May 2016

Richard Goold JP, **Luke Rigg JP** and **Nicola Silverleaf JP**, magistrate on the supplemental list

[Q101–150](#)

Dr Jenifer Harding JP, **Christine Holmes JP**, and **Dr Simon Wolfensohn JP**

[Q151–211](#)

Tuesday 7 June 2016

Malcolm Richardson JP, Chair, Magistrates Association, and **Sheena Jowett JP**, Deputy Chair, Magistrates Association

[Q212–256](#)

Rt Hon. Lord Justice Fulford, Senior Presiding Judge for England and Wales, and **Senior District Judge Howard Riddle**, Chief Magistrate

[Q257–300](#)

Mr Shailesh Vara MP, Parliamentary Under Secretary of State for Courts and Legal Aid

[Q301–349](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

MAG numbers are generated by the evidence processing system and so may not be complete.

- 1 Albert Pearce JP ([MAG0021](#))
- 2 Association of Lord-Lieutenants ([MAG0046](#))
- 3 Association of Panel Members ([MAG0055](#))
- 4 Bedfordshire Magistrates Association ([MAG0025](#))
- 5 Birmingham and Solihull Bench ([MAG0022](#))
- 6 Central London Bench ([MAG0013](#))
- 7 Centre for Justice Innovation ([MAG0045](#))
- 8 Christine Holmes JP ([MAG0023](#))
- 9 Cleveland and County Durham and Darlington Judicial Business Group ([MAG0019](#))
- 10 Clive Lewisohn JP ([MAG0073](#))
- 11 Clive Lewisohn JP ([MAG0084](#))
- 12 Corby Magistrates' Bench ([MAG0012](#))
- 13 Coventry and Warwickshire Bench ([MAG0060](#))
- 14 Criminal Justice Alliance ([MAG0048](#))
- 15 Crown Prosecution Service ([MAG0054](#))
- 16 Dawn Nichol JP ([MAG0004](#))
- 17 Disability Awareness & Advice Ltd ([MAG0078](#))
- 18 Dominic Goble JP ([MAG0062](#))
- 19 Dr Chris Knight JP ([MAG0024](#))
- 20 Dr Jenifer Harding JP ([MAG0074](#))
- 21 Dr Peter Reed ([MAG0002](#))
- 22 Dr Simon Wolfensohn JP ([MAG0037](#))
- 23 Executive Committee, Powys and Herefordshire Branch of the Magistrates Association ([MAG0043](#))
- 24 Her Majesty's Council of District Judges ([MAG0047](#))
- 25 Ian Andrews JP ([MAG0035](#))
- 26 John Dehnel JP ([MAG0020](#))
- 27 Judicial Office ([MAG0072](#))
- 28 Leicestershire Advisory Committee ([MAG0051](#))
- 29 Lincolnshire County Magistrates Bench ([MAG0030](#))
- 30 Luke Rigg JP ([MAG0066](#))
- 31 Magistrates Association ([MAG0088](#))
- 32 Magistrates Association ([MAG0058](#))
- 33 Magistrates Association Branch Executive Committee, Black Country ([MAG0026](#))

- 34 Magistrates Association Staffordshire Branch ([MAG0028](#))
- 35 Magistrates Association, Coventry & Warwickshire Branch ([MAG0033](#))
- 36 Margaret Robb JP ([MAG0061](#))
- 37 Ministry of Justice ([MAG0050](#))
- 38 Mr Chris Taylor ([MAG0005](#))
- 39 Mr David Harding JP, Chairman, Worcestershire Bench ([MAG0041](#))
- 40 Mr David Sanderson ([MAG0006](#))
- 41 Mr David Williams ([MAG0029](#))
- 42 Mr Graham Jagger ([MAG0007](#))
- 43 Mr Ian Clarkson JP, Chairman, Leicestershire and Rutland Bench ([MAG0068](#))
- 44 Mr Peter Chapman ([MAG0036](#))
- 45 Mr Phil Lloyd JP ([MAG0017](#))
- 46 Mr Robert Lynch ([MAG0010](#))
- 47 Mr Roger Farrington JP ([MAG0077](#))
- 48 Mr Stanley Brodie ([MAG0057](#))
- 49 Mrs Jacqueline Alexander ([MAG0086](#))
- 50 Mrs Liz Harrison ([MAG0059](#))
- 51 Mrs Nicola Silverleaf ([MAG0067](#))
- 52 Mrs Susan Furnival JP, Chairman of the Herefordshire Bench ([MAG0039](#))
- 53 Ms Rona Epstein ([MAG0003](#))
- 54 National Bench Chairmen's Forum ([MAG0063](#))
- 55 Nicholas Moss JP ([MAG0032](#))
- 56 Norfolk Bench of Magistrates ([MAG0015](#))
- 57 North East Bench Chairs Forum ([MAG0008](#))
- 58 Northern Derbyshire Magistrates Bench ([MAG0011](#))
- 59 Office of Police and Crime Commissioner Northumbria ([MAG0075](#))
- 60 Oxfordshire Magistrates' Bench ([MAG0052](#))
- 61 Peter Lindley Ullathorne JP ([MAG0016](#))
- 62 Politeia ([MAG0064](#))
- 63 Prison Reform Trust ([MAG0053](#))
- 64 Professor James Crabbe ([MAG0009](#))
- 65 Professor Jane Donoghue ([MAG0082](#))
- 66 Professor Mike Hough ([MAG0081](#))
- 67 Richard Goold ([MAG0001](#))
- 68 Riley Smith ([MAG0040](#))
- 69 RoadPeace ([MAG0087](#))
- 70 Shropshire Bench of Magistrates ([MAG0034](#))
- 71 Somerset Bench ([MAG0018](#))

- 72 Staffs Advisory Committee ([MAG0027](#))
- 73 The Howard League ([MAG0042](#))
- 74 The Standing Committee for Youth Justice ([MAG0056](#))
- 75 Transform Justice ([MAG0070](#))
- 76 Transform Justice ([MAG0079](#))
- 77 Vivian McCarthy JP ([MAG0085](#))
- 78 West Cheshire Bench ([MAG0065](#))
- 79 West Mercia Advisory Committee ([MAG0071](#))
- 80 Youth Justice Board for England and Wales ([MAG0049](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Draft Allocation Guideline	HC 404
Second Report	Criminal courts charge	HC 586 (C 667)
Third Report	Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation	HC 624
Fourth Report	Criminal Justice inspectorates	HC 724 (HC 1000)
Fifth Report	Draft sentencing guideline on community and custodial sentences	HC 876
Sixth Report	Prison Safety	HC 625 (HC 647)
First Special Report	Women offenders: follow-up: Government response to the Committee's Thirteenth Report of Session 2014–15	HC 374
Second Special Report	Criminal courts charge: Government Response to the Committee's Second Report of Session 2015-16	HC 667
Third Special Report	Criminal justice inspectorates: Government Response to the Committee's Fourth Report of Session 2015-16	HC 1000

Session 2016–17

First Report	Reduction in sentence for a guilty plea guideline	HC 168
Second Report	Courts and tribunals fees	HC 167
Third Report	Pre-appointment scrutiny of the Chair of the Judicial Appointments Commission	HC 416
Fourth Report	Restorative Justice	HC 164
Fifth Report	Sentencing Council draft guidelines on sentencing of youths and magistrates' court sentencing	HC 646
First Special Report	Prison safety: Government Response to the Committee's Sixth Report of Session 2015–16	HC 647