

Justice Select Committee: 'Role of the magistracy inquiry'

January 2016

1. The Criminal Justice Alliance (CJA) is a coalition of over 100 organisations - including charities, voluntary sector service providers, research institutions and staff associations – working across the criminal justice pathway. Our members employ more than 10,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.
2. The CJA welcomes the opportunity to respond to this inquiry. We believe that magistrates play a vital role in the effective operation of our criminal justice system, and should continue to do so. As lay representatives of local communities they are in a position to improve confidence and trust in the justice system, improve sentencing outcomes and thereby reduce local reoffending.

What should the role of the magistracy be in the criminal justice system, especially in the wake of a falling workload?

3. The magistracy has a long tradition of representing local communities in our courts system. It is our hope that it continues to do so. Magistrates are an extremely valuable resource with expert local knowledge and should be valued as such.
4. Over the past ten years the number of magistrates has fallen by almost one third (from 29,841 in 2007 to 19,634 in 2016) due to a falling workload, with an increase in the number of district judges, fewer crimes being committed and faster processes for certain summary offences. This falling workload presents an opportunity to deploy magistrates more innovatively, in terms of how, where and when they sit. According to a recent survey carried out of its members by the Magistrates Association, magistrates themselves feel their range of skills and local expertise could be better put to use.
5. The survey also found that, despite falling numbers, morale amongst magistrates is currently high. They see the value that they provide to their local communities and the justice system as a whole. However, there is some frustration at certain inefficiencies in the system and the impact, in particular, that this has on victims and witnesses. Many magistrates are keen to be involved in developing innovations that would reduce these inefficiencies. There is wide support for the creation of more flexible court sittings, something the CJA strongly supports. (Half-day sittings, for example, would make the magistracy itself considerably more accessible to wide cohorts of the population.)
6. The role of magistrates in resolving low level local disputes could be extended further through greater involvement in neighbourhood justice panels and the development of community resolutions. This would increase the number of minor

offences being resolved informally outside court and encourage magistrates to increase their use of community-based hearings.

7. Currently certain adult cases (for example, some driving offences) are heard by single magistrates outside court, where an issue is viewed as regulatory as opposed to judicial. A review of this process could assist in identifying other sorts of cases that might similarly be heard outside court. This would speed up the resolution of certain cases and free up court resources. However, it is important that this is not seen as an encroachment on a defendant's right to appear in court should they wish to do so.
8. Recent research (cited in *To Be Fair*, published by the CJA in 2014) has demonstrated that improving perceptions of fairness of the court process among defendants, victims and witnesses can greatly enhance trust and confidence in the justice system. This approach – known as 'procedural justice' - is exemplified by personal interaction, straightforward lay communication and allowing individuals to have better voice in the proceedings. Providing a vital link between communities and the court process, magistrates can be champions of this approach.

How have court closures affected the work of the magistracy? How will further court closures affect this?

9. The CJA does not have a position on 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?

10. Over the last ten years diversity among magistrates has improved slightly in some population cohorts, according to the Ministry of Justice (Judicial Statistics 2015, Courts and Tribunal Judiciary), however their monitoring is limited to only four such cohorts. This has been the result of improved recruitment procedures and programmes of work by the Magistrates Association to promote the magistracy in local communities. Notably, while the proportion of black, Asian and minority ethnic magistrates in total has improved generally, the proportion of black magistrates has declined.
11. There needs to be a more professional understanding of what the current gaps among magistrates are. For example, more needs to be done to ensure that varying socio-economic backgrounds are represented, something which at present is inadequately monitored. There appears to be no evidence gathered whatsoever about the proportion of magistrates which reflects the country's lesbian, gay, bisexual and transgender populations.
12. One of the greatest barriers for underrepresented groups is lack of knowledge of the criminal justice system, and of the role of magistrates in it. Further targeted recruitment techniques and pro-active awareness campaigns for these groups should be developed.
13. The average age of magistrates has increased, with only 3 per cent under 40 and 57 per cent over 60, up from 49 per cent six years ago. As the number of magistrates has fallen, we recognise there has been less room for recruitment in certain areas and thus fewer opportunities for younger generations to become magistrates. This is a real concern and restricts the potential of promoting local confidence in courts as younger individuals feel ever more distant from them.

14. A fundamental barrier to a more diversified magistracy remains employers. All too often they are unsupportive of staff becoming magistrates and reluctant to afford them the required time off. Introducing something such as an accreditation scheme for employers, outlining the benefits of having a member of staff become a magistrate and the added skills it can bring to a workplace, would mitigate this. We believe there are lessons to be learned from Ministry of Defence efforts to promote service in reserve forces to employers in recent years.
15. As above, extending the flexibility of court sittings to evenings and weekends and holding half-day hearings would not only enhance the efficiency of courts, it would further encourage younger people, professional people, and those with caring responsibilities to apply to be magistrates. Such flexibility would also provide extensive benefits to victims, witnesses and defendants.

Is the level of training and continuous development and support for magistrates adequate? How could it be improved?

16. The training that magistrates receive from the Judicial College is described as 'excellent' by magistrates themselves. However, there is a firm view among them that there simply is not enough of it. In 2008/9 HMCTS spent £3.2 million on magistrates' training. In 2013/14 it spent £559,000. Combined with spend by the Judicial College this represents a total reduction in spend from £110 per magistrate in 2008/9, to £26 per magistrate in 2013/14. In 2013/14 the Judicial College spent £168,000 on training district and deputy district judges in magistrates' courts - £629 per judge.
17. Further training should be provided to all magistrates focusing on practical skills such as face-to-face communication with individuals and the ability to identify certain issues, such as those related to mental health, among defendants. Legal training remains an absolute necessity but magistrates feel there should be an appropriate balance between that and the development of other key skills. Mental health training would better enable magistrates to divert people to appropriate local services.
18. Continuing training on the effectiveness of sentencing would be particularly beneficial. Magistrates currently lack feedback on the offenders they sentence and local reoffending rates. Demonstrating to magistrates reoffending outcomes for specific types of offenders with certain sentences, combined with feedback on locally sentenced individuals, should be made a priority. It would improve their sentencing skills, enabling them to hand down more appropriate sanctions for specific offenders with greater rehabilitative potential.
19. Utilising local criminal justice experts to provide free training through court-based afternoon or evening seminars should be exploited as much as possible. However, this should be viewed as *supplemental* to official training.
20. There is no current continuous professional development practice and magistrates are appraised only once every three years. This appraisal is based on one half day's observation by a fellow magistrate, whom they may know. More effective use of appraisals would help 'manage out' less competent magistrates and, if replaced, consequently facilitate recruitment of a more diverse magistracy.

Should magistrates' sentencing powers be altered in any way and, if so, how?

21. Magistrates want the 'flexibility' to target offending behaviour so that they can hand out what they consider to be appropriate sanctions. (Many suggested this was the primary reason that such a substantial number were angered by the 2015 introduction of the non-discretionary criminal courts charge.) Magistrates should have discretion to sentence in ways that address offenders' issues specifically.
22. In the same vein, we strongly believe there should be an increase in the number of 'problem-solving courts' within this jurisdiction and the involvement of magistrates in them. Similarly 'sentencer supervision' should be piloted among magistrates with a view to future roll-out. As lay members of local communities magistrates are often in an excellent position to understand varying social issues within their areas, the specific problems local people face and, most important, the local solutions available. Many magistrates are extremely keen to become involved in this.
23. There are some concerns about extending the sentencing powers of magistrates. We would suggest that any such extension be accompanied by rigorous analysis of its potential impact on the prison population and local community programmes. Ministers might be asked if any such impact assessment already exists.

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This consultation response does not reflect the individual policy position of any member organisation of the CJA