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The strengths and skills of the Judiciary in the Magistrates' Courts

Ipsos MORI

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Revision to ‘The Strengths and Skills of the Judiciary in the Magistrates’ Court’

It has been brought to our attention that there were some minor errors in the presentation of the data in Tables 8.1 and 8.2 in the chapter on comparative costs of magistrates and District Judges. In the revised report, these errors have been corrected by the authors. Also, the authors made minor amendments to the way in which the data is presented in the two tables and the accompanying text to avoid confusion and enhance readers’ understanding of the underlying assumptions and the presentation of financial and economic costs in chapter 8.

Any enquiries about this revision and wider enquiries about this report should be directed to the Chief Economist at the Ministry of Justice at: osama.rahman@justice.gsi.gov.uk

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Disclaimer

The views expressed in this paper are those of the authors and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

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1. Summary

Study objectives and methodology

This report presents the findings from a Ministry of Justice (MoJ) commissioned research study, aimed at examining the strengths and skills of the judiciary in the magistrates' courts for criminal cases.

The research was designed to inform operational and policy decisions on the deployment of the judiciary within the magistrates' courts in England and Wales. Specifically the research objectives were to understand:

- the relative strengths and skills of magistrates and District Judges;
- how magistrates and District Judges were best deployed across different types of cases;
- what the process and disposal costs of using magistrates and District Judges are and, if the balance was changed, what the impact would be;
- what relevant professionals think about magistrates and District Judges taking on more serious cases and sitting together in small panels.

The research programme consisted of three stages:

- 1) In-depth interviews and discussion groups with 355 respondents, which included members of the judiciary, court staff, and professional and lay court users.
- 2) Observation of 2,291 court cases from 350 criminal court sessions in 44 magistrates' courts across England and Wales. Given the need to make fair comparisons between magistrates and District Judges in terms of case timings and outcomes, extensive data modelling work (both regression and Propensity Score Matching) was conducted following this data collection).
- 3) The development of an interactive cost model to examine the process and disposal costs of the judiciary in the magistrates' courts.

Perceptions of the strengths and skills of magistrates and District Judges

A widely perceived strength of magistrates was their greater connection with the local community as compared with District Judges, meaning that they were felt to be better placed to make judgments and dispense appropriate "local justice". Other perceived strengths of magistrates relate to the concept of "fairness". Some associated a bench of three with a greater degree of democracy, while magistrates were also felt by some to be more

open-minded and less “case hardened” or “fatigued”.¹ A few respondents, in particular magistrates themselves, also noted their cost effectiveness as magistrates are not paid a salary.

For District Judges, the most widely cited benefit was their speed in transacting cases given their legal expertise (and subsequent lower reliance on the Legal Adviser) and the fact that they sit alone (meaning they do not need to retire to consider verdict and sentencing). This was supported by the observation data, which found that average case timings for District Judges were typically shorter. District Judges also felt they were more adept at case management, a view that was shared by a number of the Legal Advisers, Justices’ Clerks and defence solicitors.²

Relationships/interactions with Legal Advisers and professional users

The observations showed that Legal Advisers provided support to both magistrates and District Judges. However, they also revealed that Legal Advisers provided guidance to magistrates within the court room more frequently than they did for District Judges. This finding was reflected by the interviews where magistrates themselves tended to highlight that Legal Advisers played a more crucial role during proceedings. However, in interviews other stakeholders suggested that magistrates were more reliant on Legal Advisers than the observation data indicated. The interviews also highlighted that Legal Advisers provided a much greater degree of support to magistrates outside of the court room than they did for District Judges.

Crown Prosecution Service (CPS) prosecutors and defence solicitors tended to agree that they presented cases differently depending on which judiciary type was presiding. Some scaled back their arguments for District Judges and felt they provided a more detailed outline of the case for a bench of magistrates (which may be partly reflected in the shorter average case lengths for District Judges). It was also suggested by these groups (and by District Judges) that a lay bench could be more accepting of arguments for adjournments. However, the observation data showed that the proportion of cases adjourned was similar across judiciary types.

¹ Attitudes influenced by the full-time job of dispensing justice.

² Case management hearings were not included in the observations.

Listing practices and case types

There was no consistent approach to listing policies and practices across the 44 courts where the case observations were made. Despite this, listing practices and policies did tend to recommend that District Judges should be used for selected cases, such as complex,³ lengthy or serious cases. Most respondents, including magistrates, supported the notion that District Judges should be prioritised for these cases when possible.

The observations showed that some selective deployment of cases did appear to be taking place, with District Judges more likely to hear “violence against a person” offences and magistrates more likely to hear motoring cases. Furthermore, three in ten cases heard by District Judges were classified as “either way” offences,⁴ compared to only 18% for magistrates’ cases. However, despite these variations, the findings illustrated that selective allocation is by no means clear-cut and that the differences in the profiles of cases heard by magistrates and District Judges are not as significant as was suggested in the interviews.

Case timings

Using regression analysis, the results indicate that, on average, District Judges transacted cases more quickly than magistrates.⁵ These findings corroborated the views expressed in interviews with the judiciary, court staff and professional users. Most magistrates and District Judges perceived that differences in time reflected the fact that three trained lay people take longer to come to a decision on the verdict and sentencing than a single qualified lawyer. They also corroborated previous research, including that by Morgan and Russell (2000); however, they found the difference in timings was smaller than in Morgan and Russell’s study. This may well be a result of differences in the methodologies between the two pieces of research.

Comparative costs of magistrates and District Judges

The interactive cost model includes a range of “financial” and “economic” costs, which can be varied according to analytical need and judgement. It allows the costs of current arrangements to be assessed under different assumptions, and the implications from changing these arrangements to be explored.

In strictly financial terms, because of their salaries, the hourly costs associated with District Judges are substantially higher than the costs associated with a bench of three magistrates.

³ For example, cases involving complex points of law, evidence, procedural issues or investigations.

⁴ These are offences which can be heard in either the magistrates’ court or the Crown Court. An initial hearing at the magistrates’ court decides where the case will be heard.

⁵ This controlled for known differences between cases.

District Judges transact business more quickly than magistrates but the difference is not great enough to compensate for these higher costs.

When economic costs are brought into consideration the picture becomes more complex and, under certain assumptions, the cost gap in favour of magistrates can be reduced or even reversed.

Certain factors (e.g. quality of decision-making) were highly subjective and therefore could not be incorporated in the model. Also, disposal costs and wider Criminal Justice System (CJS) costs could not be factored into the cost modelling. Therefore the impact of any differences in these costs; for example, the suggestion that District Judges had a higher propensity to impose custodial sentences, is not included.

Case outcomes⁶

Findings from the regression analysis suggested some differences in the sentencing patterns between magistrates and District Judges. In particular, there was evidence to suggest that District Judges were more likely to impose custodial sentences, disqualify defendants from driving or remand the defendant on either conditional or unconditional bail.

Across all observed cases, while magistrates and District Judges both adjourned with the same frequency, differences were found in their reasons for doing so. Magistrates were more likely to adjourn because of a prosecution or defendant request, while District Judges were more likely to adjourn due to the absence of a witness.

Extending sentencing powers

The majority of respondents believed that an extension of jurisdiction within the magistrates' courts would be a positive step. District Judges tended to cite the current anomaly between sentencing limits in the adult and youth courts as a key reason for an increase, and also highlighted the potential cost savings that could be made if more cases were retained within the magistrates' courts, as opposed to being sent or committed to the Crown Court.

The majority of magistrates were also in favour of extended sentencing powers, believing this would be beneficial in reducing the burden on the Crown Court. However, some Justices' Clerks voiced concerns, anticipating an increase both in workload in the magistrates' courts and in the prison population, based on the belief that magistrates would impose harsher

⁶ Please note that this concerns the outcome in the magistrates' court only – for some cases this outcome will be that the case is committed or sent to the Crown Court. This research did not analyse the final outcome of these cases.

sentences than are imposed now in the Crown Court. A few defence solicitors also highlighted the need for appropriate magistrate training to cope with such powers.

Mini-panels

The majority of those interviewed were not in favour of mini-panels for most criminal cases in the magistrates' court.⁷ District Judges, in particular, questioned the rationale for such panels, believing they would undermine their key strength, that of speed, and would not be cost effective. Respondents tended to react more positively to the notion of a "middle tier" within a unified Criminal Court, as advocated by Lord Justice Auld.⁸

Conclusions and implications

In the interviews, stakeholders described key differences between magistrates and District Judges in terms of their interactions with others in court, their handling of cases and their use of Legal Advisers. Many of these differences were not as marked in the observational data. Despite this, the research did indicate that deployment of magistrates and District Judges could be made more effective and efficient by adopting a more systematic, evidence-based approach, both within and across HMCS areas. Specifically, District Judges could be deployed more exclusively on more difficult or complicated cases (though determining this can be difficult), where their training and experience were widely seen as offering notable advantages. In addition to strengthening guidance on deployment, there could be benefits in reviewing the allocation of resources across different court service areas based on caseload information. The observation data suggested that District Judges may be more likely than magistrates to use custodial sentences for comparable cases. This means that deploying District Judges more strategically may have an impact on sentencing outcomes.

Only tentative conclusions can be drawn from the research about the potential for saving costs. It seems likely that savings could be made to magistrates' court processing costs if full advantage were taken of District Judges' legally qualified status and they were supported by "court associates" rather than Legal Advisers as they are currently. However, there was some evidence that court associates may need more training. Making comparisons between the costs associated with cases heard by magistrates and District Judges is complicated by the need to find similar cases – which is not easy – and the assumptions made about how to treat variables like premises costs. Magistrates typically (but not invariably) take longer to hear similar cases than District Judges, which has implications for the use of other resources, hence costs. There may be scope for speeding up magistrates' handling of

⁷ A bench comprising one District Judge and two magistrates.

⁸ Review of the Criminal Courts of England and Wales (the Auld Report) (2001), p. 275, para 21.

particular categories of cases, taking pointers from District Judges, where appropriate. Overall, these potential opportunities for saving costs are matters requiring further, detailed consideration.

Both magistrates and District Judges supported moves to extend their sentencing powers, saying that any reservations were likely to be overcome through training and safeguards (though their cost implication would need to be considered before any action was taken). In contrast, mini-panels that mix magistrates and District Judges would need some strong promotion to gain support.

2. Introduction

2.1 Background and Objectives

The relative cost effectiveness and work practices of magistrates and District Judges in the magistrates' courts has been the subject of debate for some time. Magistrates are lay volunteers from the community who are not salaried but who can claim expenses and loss of earnings for their services. In contrast, District Judges are legally qualified professionals who receive a salary.⁹ These differences were explored in research by Morgan and Russell (2000). However, since then a number of changes have been made in the magistrates' courts, including the introduction of the CJSSS initiative and improvements in magistrates' training. In addition, their study was criticised for being limited to ten courts and did not include all offences (for example, "summary motoring" offences were not covered).¹⁰ Consequently, there was still a lack of comprehensive and robust data on the relative strengths and skills of magistrates and District Judges.

The Ministry of Justice commissioned Ipsos MORI to conduct a wide-ranging programme of research to identify and examine differences in the approaches of magistrates and District Judges (DJs). The research covered criminal cases in magistrates' courts. It aimed to strengthen the evidence base to inform operational and policy decisions on how best to deploy magistrates and District Judges in England and Wales. Specifically, the research objectives were to understand:

- the relative strengths and skills of magistrates and District Judges;
- how magistrates and District Judges were best deployed across different types of cases;
- what the process and disposal costs of using magistrates and District Judges are and, if the balance was changed, what the impact would be;
- what relevant professionals think about magistrates and District Judges taking on more serious cases and sitting together in small panels.

⁹ More contextual information about the magistrates' courts, magistrates and District Judges is provided in Appendix A of this report.

¹⁰ Further information about this research and its limitations is provided in Appendix A of this report.

2.2 Methodology

Outlined below is a brief overview of the three main stages of the research study and the methodologies adopted for each stage.¹¹

Stage A – Discussions and interviews with members of the judiciary, court staff, professional and lay court users

355 individuals were interviewed as part of stage A, the fieldwork for which ran from 15 March to 10 September 2010.¹² The breakdown of participants is shown in Table 2.1.

Table 2.1: Participants in stage A

Judiciary/Court Staff	246
Magistrates	88
District Judges	58
Legal Advisers	61
Justices' Clerks	23
Listing Officers/Ushers	16
Lay Users	26
Criminal defendants	10
Witnesses	9
Victims	7
Professional Users	83
Probation	22
Youth Offending Team Personnel	18
Prosecution (CPS)	16
Defence solicitors / lawyers	12
Witness Service	10
Police	5

The majority of these respondents took part in individual in-depth interviews (via telephone or face-to-face), although a number of discussion groups were conducted with court staff and professional users when possible. The resulting transcripts were analysed using a specialist qualitative analysis computer software package (XSight). "Court staff" groups include Justices' Clerks, Legal Advisers, Listing Officers and Ushers.

¹¹ Further details and copies of key documents can be found in a separate technical report, available upon request from the Ministry of Justice.

¹² Definitions of all respondent types can be found in the glossary at the end of this report.

Each of the research objectives was addressed with all of the user groups involved in the qualitative research. The only exception was that “lay users” were not asked about magistrates and District Judges taking on more serious cases, or sitting in small panels together.

Respondents for the interviews were recruited via the 44 courts where the observations were conducted. These courts were selected to be representative based on random sampling techniques.

Stage B – Observation of court sessions

In addition to these interviews, 350 criminal court sessions were observed in 44 magistrates’ courts in England and Wales. Trained observers attended selected sessions and completed a template document (an observation “tool”).¹³ This gathered information on a range of issues including offence(s) committed, clarity of interactions, case timings and outcome of the case in that session (i.e. any sentence imposed by magistrates, whether the case was sent or committed to the Crown Court, adjournments, an acquittal or the case being withdrawn).¹⁴ These observations ensured that the research included observed objective measures, in addition to the views and opinions expressed by the judiciary, court staff and users. Civil and family cases and case management hearings were not observed as part of the research.

In order to get a representative sample at a national level, random sampling was employed to select courts based upon size.¹⁵ Following this, court sessions were randomly selected with the aim of achieving an equal number of sessions heard by magistrates and District Judges. As there are fewer magistrates courts with District Judges than without, to ensure that enough District Judge sessions could be observed (to allow for meaningful analysis of the data) courts with District Judges were over-sampled. In total, 2,291 cases were observed in two waves (18 March – 19 April and 10 May – 18 June 2010).

A pilot stage was conducted to test fieldwork materials and examine potential practical issues, such as the ease of gaining access to the courts. This involved observing one session at five courts, resulting in the observation of 49 cases. Two observers attended and completed observation tools to enable examination of the extent to which responses were

¹³ Observers were trained by Ipsos MORI to ensure a consistency of reporting.

¹⁴ It is important here to be mindful of the effect of the observer, i.e. the extent to which their presence affected the behaviour of the court personnel – in particular the presiding magistrates or District Judge. While we recognise that this is likely to have had some impact, we believe it was probably minimal given that those presiding were not told when an observer would be present. The observers ensured that they were as unobtrusive as possible, sitting separately from those involved in the case. Furthermore, observers clearly explained the purpose of the research to those involved.

affected by the observer. Following the pilot, the level of agreement between the observers was analysed. Overall the mean agreement rate was 65%, with some questions meriting higher levels of agreement – for example, whether or not the sentence was suspended (94%), and number of breaks and delays recorded (90%). However, other questions were revealed to be more problematic, such as identifying the presence of key personnel such as probation officers (20%), coding the case category (33%), and in some case outcomes, especially levels of fines or types of community sentence (27%). The following steps were taken to address this issue prior to the main stage, where checks on the data revealed few problems in terms of accuracy in recording such information:

- All observers attended a day-long briefing session prior to the main stage fieldwork, which involved a practice observation session.
- For the main stage, observers were provided with the “short court list” by the court contact for the day of their observations – this document listed the case category and offences for each case.
- The observation tool was amended to capture a wider range of case outcomes that were identified in the pilot.
- A full edit specification document was developed in order to correct a wide range of possible discrepancies with observations (more details are provided in the technical report).
- The first observation tools completed by each observer were checked by the Ipsos MORI project team, as well as 10% of all tools completed.

Stage C – Cost model

This involved developing a cost model to examine the relative process and disposal costs of the judiciary, though during the project the disposal cost element was dropped. It also enabled the impact of any changes to the current deployment of magistrates and District Judges across different case types to be assessed. The cost model considered both the resources allocated to courts and the per-hour financial costs for both magistrates and District Judges. The relative cost per hour could then be combined with case timings data (from the regression analysis) to estimate the cost for comparable cases of magistrates and District Judges. Costs were based on 2008–09 financial data.

¹⁵ Full details of the sampling are included in the technical report.

Sample sizes

It should be noted that the report's findings are based on varying sample sizes. Although a total of 2,291 cases were observed, 15 cases were excluded due to observer error or civil cases being observed in error. **Apart from where specified**, the main analysis was, therefore, based upon 2,276 cases, made up of 2,095 (1,185 cases heard by magistrates and 910 heard by District Judges) adult cases¹⁶ (see Sample A in Figure 2.1) and 181 youth cases (see Sample C in Figure 2.1).

To analyse case timings and outcomes between magistrates and District Judges the final usable sample was 1,053 adult cases (see Sample B in Figure 2.1). 1,042 were removed from the total sample of adult cases (2,095) for the following reasons:

- **637** cases were adjourned, and thus had no final outcome for the session observed;¹⁷
- **179** cases could not be matched to the Police National Computer (PNC) data (as the number of previous convictions was a key variable used in the analysis);
- **149** cases had no valid outcome;¹⁸
- **56** cases were found to have inconsistencies for timing data;¹⁹
- **21** cases were not completed within the session; in other words a case started in the morning and was carried over to the afternoon session where the observer was not present.

In addition, further cases were excluded where there were missing values on any of the explanatory variables used in the regression analysis (see Table 2.2 for list of variables); hence all the regression models were based on fewer than 1,053 adult cases. Exact base sizes varied between each model and is indicated in the reporting of the results in Chapters 8 to 10.

Propensity Score Matching (PSM) was also conducted as a further check on the differences in case timings between magistrates and District Judges. This analysis was based on 430 matched cases (with 632 cases not able to be matched and hence excluded).

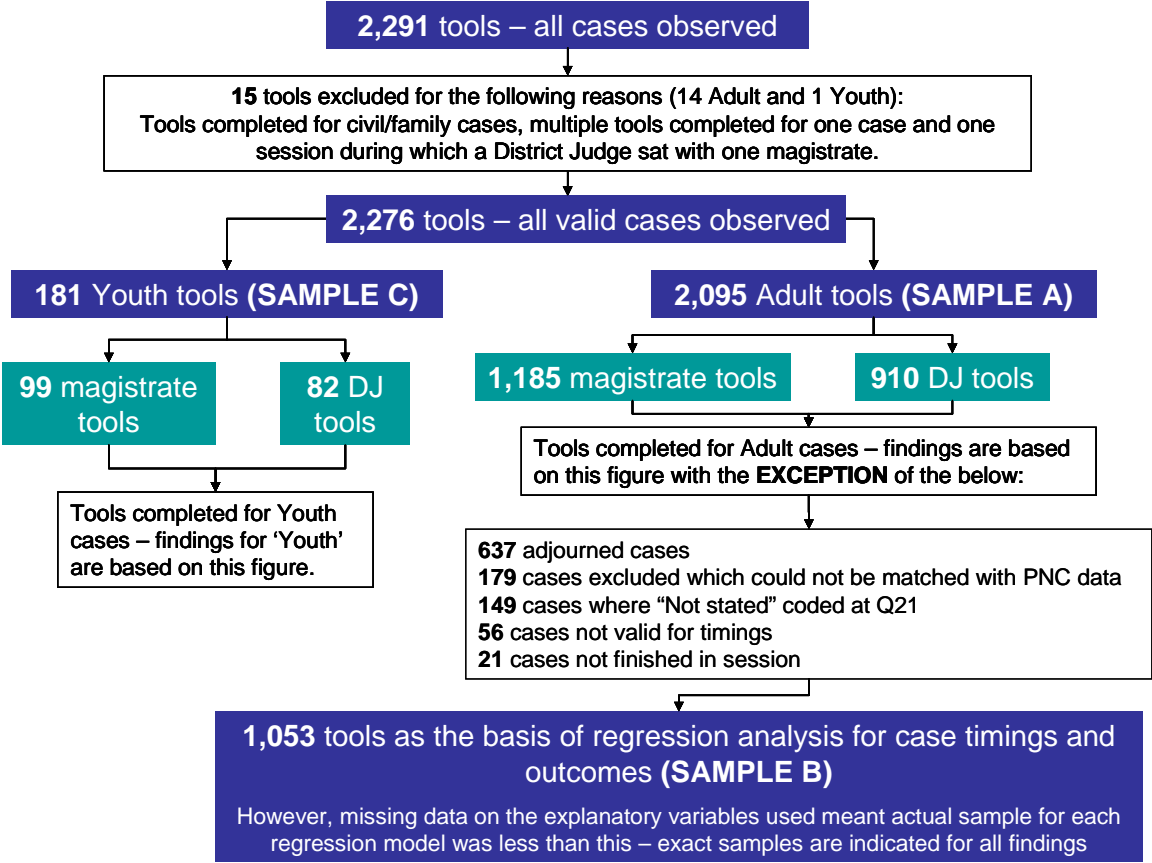
¹⁶ Some defendants in adult cases may actually be under 18, because cases are classified as "adult cases" when they are heard in regular magistrates court sessions rather than youth court sessions.

¹⁷ Due to management information and budgetary constraints it was not possible to track cases through to completion; in other words from the first to final hearing.

¹⁸ "Not stated" coded at Q21 on the observation tool.

¹⁹ For further details please refer to the technical report.

Figure 2.1: Sample sizes used for analysis²⁰



Statistical significance

Throughout the report, percentage point figures are presented to highlight differences between magistrates and District Judges in terms of types of cases seen, case timings and outcomes. The difference shown may be “real”, in other words “statistically significant”, or it may occur by chance and hence be non-significant. Some tables and charts may show non-significant differences, but in this case significant differences are clearly marked. Unless specified, only significant findings are commented on in the text.²¹

Comparing findings across magistrates and District Judges

The purpose of this study was to compare magistrates and District Judges, in terms of both people’s perceptions and the observations of cases in court (including case timings and outcomes). When drawing comparisons between observational data important differences

²⁰ Please note that adult tools referred to in this diagram may actually include observations of defendants aged under 18 years where these cases were heard in regular magistrate court sessions rather than youth court sessions.

²¹ The technical report provides more detail about how statistical significance was calculated in this research. However, it should be noted that, strictly speaking, the techniques used relate only to samples that have been selected using strict probability sampling methods (as opposed to the clustered sample approach adopted). However, in practice it is reasonable to assume that these calculations provide a good indication of the confidence intervals relating to this survey and the sampling approach used.

such as the types of cases seen (for example, offence and category) were controlled for to ensure a fair comparison. This was particularly important when assessing relative case timings between magistrates and District Judges. For example, the observations showed that the types of cases seen tended to vary between magistrates and District Judges. Hence, taking an average case time length would not provide a fair comparison.

Two different pieces of analysis were conducted to ensure that like-for-like cases were compared. The first involved running 12 different regression models to estimate either the relative difference in time taken to preside over a case or the outcome (the case timing or case outcome being the dependent variable). A number of variables (most from the observation data) were included to control for case differences so that the estimated case timing or case outcome were representative of like-for-like cases, including the type of judiciary presiding.²² Table 2.2 lists the explanatory variables included in the regression analysis.

Table 2.2: Explanatory variables used in regression analysis

Variable	Reason for consideration	Source	Analysis included in	Reference category
Type of judiciary	Aim of project was to consider differences between two judiciary types in terms of efficiency and case outcomes	Observation tool	Both timings and outcomes	Magistrates
Average age of judiciary	To consider effect of life stage and experience / tenure	Observation tool	Both timings and outcomes	Number
Persons present at court (probation officer, interpreter, police, witnesses)	Stakeholder guidance suggested the presence of these individuals could lengthen case timings	Observation tool	Timings only	No person present (i.e. no interpreter, no probation officer, no police, no witness)
Whether video link was used	Stakeholder guidance suggested use of video link may increase case timings	Observation tool	Timings only	No video link
Number of different types of offences charged with	Stakeholders suggested that an increased number of offences may make the case more complex	Observation tool	Both timings and outcomes	Number
Nature of main offence	In order to make comparisons between similar types of cases	Observation tool	Both timings and outcomes	No offence

²² As noted in Table 2.2: Explanatory variables used in regression analysis, fewer variables were used in the outcomes analysis.

Variable	Reason for consideration	Source	Analysis included in	Reference category
Case category (summary motoring, “either way”, etc.)	In order to make comparisons between similar types of cases	Observation tool	Both timings and outcomes	Sent to Crown cases
Plea	In order to make comparisons between similar types of cases	Observation tool	Both timings and outcomes	Guilty plea
First or subsequent hearing	In order to make comparisons between similar types of cases	Observation tool	Both timings and outcomes	Subsequent hearing
Defendant legally represented or representing self	To consider experience of the defence (stakeholders suggest that clients representing themselves may require more support which has impact on case length)	Observation tool	Timings only	No legal representative
Number of times Legal Adviser provided advice during case	Provision of advice takes time	Observation tool	Timings only	Actual number of incidents
Number of breaks during case	Breaks take time	Observation tool	Timings only	Actual number of breaks
Region of court	To consider regional variations in court efficiency and the presence of District Judges	Management information	Both timings and outcomes	Wales
Whether court was urban or rural	To consider size of court and level of workload	Management information	Both timings and outcomes	Urban
Number of previous convictions of defendant	Previous convictions have an inevitable influence on sentencing decisions and time taken to make these decisions is part of the case timing	PNC data	Both timings and outcomes	No previous convictions

A “stepwise approach” was used for the regression analysis. In this approach all the variables in Table 2.2 (or subset of them for the analysis of case outcome) are included in the initial regression model. The model is then re-run but with fewer variables as some are removed on the basis of least significance. The final model includes only statistically significant variables. This technique is otherwise known as general to specific modelling. There are some well known problems associated with stepwise approaches, in particular:

- Carrying out a sequence of models and significance tests on the same data set may cause problems related to multiple comparisons. In other words, when two

groups (such as magistrates and District Judges) are compared on many factors a difference is likely to be found for at least one attribute. However, this difference may not bear out when the findings are generalised to the wider population;

- It may be difficult to interpret values testing statistical significance since each is conditional on the previous tests, where variables are either included or excluded;
- Basing significance tests on the same data could result in biased results.

Hence Propensity Score Matching (PSM) was used to check the regression results.

Starting with the 1,053 adult cases (Sample B in Figure 2.1), cases with missing values on any of the explanatory variables used in the analysis were removed (see Table 2.2). The final sample size for each regression analysis was less than 1,053 (typically in the region of 800) though this depended on the specific variables included in the models. Exact base sizes are reported alongside all results.

Propensity Score Matching (PSM) was used as a check on the regression findings for case timings. PSM was developed to provide like-for-like comparisons where random assignment to “control” and “treatment” groups is not possible (as in this study, where cases have not been randomly assigned to magistrates and District Judges). Underpinning the PSM is a regression analysis which estimates the likelihood – or probability – that a case will be seen by a magistrate or District Judge. While there are many different matching methods available, in essence they all seek to pair like probabilities between the two groups – i.e. so only cases which are as likely to be seen by a magistrate as a District Judge are compared.

In this case, the explanatory variables in the PSM regression models were essentially based on the information a listing officer has at hand and utilises to make decisions over who (in terms of judiciary) to assign cases to in the magistrates’ court. These are listed below:

- Category of case;
- Region;
- Court size;
- Type of offence defendant was charged with;
- Whether it was the first or subsequent hearing;
- Plea entered;
- Life experience of the judiciary;
- Total number of different offences the defendant was charged with.

There may be other factors or variables which we have not been able to capture in the analysis as they could not be measured and were thus not recorded via the observation tool. This means there may be other factors which may have an impact on one judiciary type when it comes to case timings which could not be included in the matching process. After cases had been matched, the resulting sample of matched cases used to compare case timings was 430.

Comparisons with Morgan and Russell

Before considering any comparisons with the previous research conducted by Morgan and Russell (2000), it is important to consider differences between the two studies in terms of methodologies and sampling parameters. Some of these differences are relevant. For example, while Morgan and Russell utilised self-completion diaries and questionnaires (for magistrates) and telephone interviews with the general public, this study used in-depth interviews and discussion groups with members of the judiciary, court staff, professional and lay court users. Also, while both studies included court room observations as a data collection method, the cases viewed in the Morgan and Russell research were concentrated in far fewer courts.²³ It is also significant that different case types were selected for inclusion.²⁴ These differences mean that any comparisons drawn can only be indicative.

Structure of the report

This report covers various themes from the prevailing body of research on the judiciary and findings are presented in the following sections. While individual sections tend to focus on specific research questions, there is a degree of overlap (e.g. comparative costs have direct implications for future deployment, etc).

Table 2.3: Structure of this Report

Section	Research question covered
3. Perceptions and reactions towards magistrates and District Judges	The relative strengths and skills of magistrates and District Judges
4. Relationships/interactions with Legal Advisers	
5. Relationships/interaction with professional users	
6. Listing practices and case types	How are magistrates and District Judges best deployed across different types of cases?
7. Case timings and CJSSS	

²³ Morgan and Russell’s analysis was based on 3,047 cases across ten courts, whereas the current study analysed data from 2,276 cases (2,095 adult and 181 youth cases) across 44 courts.

²⁴ For example, observers taking part in the Morgan and Russell research did not attend court sessions dealing with summary motoring cases, and trial cases were limited to one-tenth of sessions overall.

Section	Research question covered
8. Comparative costs of magistrates and District Judges	What are the process and disposal costs of using magistrates and District Judges and, if the balance was changed, what would the impact be?
9. Outcomes, adjournments and the transfer of work	How are magistrates and District Judges best deployed across different types of cases?
10. Sentencing powers	What do relevant professionals think about magistrates and District Judges taking on more serious cases?
11. Mini-panels	What do relevant professionals think about magistrates and District Judges sitting together in small panels?

3. Perceptions and reactions towards magistrates and District Judges

3.1 Key findings

- Users' perceptions and observation data suggested that magistrates were more representative of the national working population in terms of gender and ethnicity than District Judges. However, both magistrates and District Judges tend to be older compared to the average working population. While some of those interviewed felt that magistrates have more connection with the public, the observation data showed no significant differences between judiciary types with regard to putting people at ease in the court room.
- As well as perceived closer links with local communities, the concept of "fairness" was apparent in the interviews when respondents focused on the relative strengths of magistrates. Lay involvement and the balance provided by having three people on the bench were cited as positive aspects in this respect. In contrast, a noted strength of District Judges was the speed with which they deal with cases.
- While the relative speed of the judiciary was associated with cost effectiveness, issues were raised around the quality of justice and the use of time outside the court room.

3.2 Perceived strengths and skills of magistrates

Interviews explored respondents' opinions on the relative strengths and skills of magistrates and District Judges. No objective measures of fairness or quality of justice within the magistrates' courts were attempted as part of the research.

Across all respondent groups, magistrates' perceived closeness to the local community was highlighted as a strength. Magistrates were believed to possess specific knowledge of the area and to be aware of local needs.²⁵ Those interviewed tended to feel that magistrates could in some instances be better placed to make judgments as well as having a vested interest in ensuring that "local justice" was done.

The concepts of "fairness" and "quality of justice" were recurring themes. A number of respondents cited the notion of "judgment by peers" or "justice for the people, by the people". Many also stressed that lay involvement within the Criminal Justice System was crucial as it

²⁵ It should be noted that not all magistrates serve on the bench nearest to where they live; however, there is no centrally held information on the distance between magistrates' home and the court(s) in which they preside.

brought an element of democracy to proceedings and ensured that the system did not become too remote from the public.

“Our system is very impressive and I think having lay magistrates is something we should be proud of in this country because not all countries have it. It really does send a message that it’s not ‘them’ and ‘us’. Offenders are part of our community and it’s only right that a community representative should have a say in how those people are dealt with.”

(Magistrate, Wales)

Some respondents viewed magistrates as more “in touch” and “down to earth” than judges, meaning that they were more likely to have a greater appreciation of a defendant’s circumstances. That said, the observations typically showed no significant differences between the judiciary types with regard to putting people at ease in the court room.²⁶

Another strength highlighted was the broader “experience of life” that magistrates were seen to possess. Magistrates were perceived to come from a wider cross section of society than District Judges and, therefore, believed to be better placed to bring wider perspectives and sensitivities to the bench. Comparing published statistics on the gender and ethnicity of District Judges and magistrates with that of the working population²⁷ shows that the magistracy are more representative (as shown in Table 3.1).

Table 3.1: Demographics of magistrates and District Judges – comparison with working population

Demographic	Magistrates ²⁸	District Judges ²⁹	Working population of England and Wales
Male	49%	74%	52% ³⁰
Female	51%	26%	48% ³¹
White	92%	96%	91% ³²
BME	8%	4%	9% ³³

BME = Black and minority ethnic

²⁶ Measured via the observation tool – observers were asked to record if the presiding bench or judge explained their decisions, used any jargon that the defendant then asked for clarification on, gave everyone equal time to speak, spoke clearly to the defendant and checked that the defendant understood everything.
²⁷ The working population is defined as those aged 16–59 (females) and 16–64 (males).
²⁸ Source: Judiciary of England and Wales published statistics (Judiciary of England and Wales, 2010a).
²⁹ Source: Judiciary of England and Wales published statistics (Judiciary of England and Wales, 2010b).
³⁰ Source: ONS, 2010.
³¹ Source: ONS, 2010.
³² Source: ONS, 2002.
³³ Source: ONS, 2002.

Despite some of the more positive profile comparisons for magistrates, many of those interviewed (including magistrates) felt that the magistracy did not fully reflect society and that this disparity should continue to be addressed. Some Legal Advisers, Justices' Clerks, magistrates, probation staff, solicitors and YOT personnel highlighted issues with a lack of younger and ethnically diverse magistrates.

“You have to be able to sit for 26 days a year. That’s quite a lot to ask any employer and so you might have to take annual leave which acts as a disincentive. You have to be time rich to be a magistrate, and the people who are time rich are either money rich or retired. It’s always going to skew the type of people who can be magistrates.”

(Magistrate, London)

The practice of sitting as a bench of three was also frequently cited as a key strength by most respondent groups. Again the notion of “fairness” was mentioned, with a number of respondents claiming that this set-up, akin to a “mini-jury”, led to more balanced decisions by controlling for any potential individual prejudice. This was felt to have potential benefits for defendants and lay users who may feel reassured that verdicts or sentences were reached through discussion and a majority decision. Some professional users and staff also felt that the public perceived it to be fairer, particularly in a trial situation. This view was largely supported by the lay users – defendants, victims and witnesses – interviewed, though typically on the basis of consideration of the pros and cons in the interview, rather than from their own personal experience. As well as perceived “fairness”, lay user respondents also highlighted the advantage of reducing the potential for misunderstanding key points of a case.

“When you get one on his own he could get the wrong end of the stick or misunderstand something. If there’s a couple more then they can guide him; they’ll see a different point.”

(Defendant, North West)

Other strengths cited by a small minority of respondents, though not to the same extent, included the fact that magistrates were not paid, and the notion that magistrates were less likely to become “case-hardened” or suffer from sentencing fatigue, given that they did not sit

full-time.³⁴ However, interviews with magistrates revealed that they often sat for more than the required minimum of 26 sessions per year.

3.3 Perceived strengths and skills of District Judges

The most commonly cited strength of District Judges was their speed in dealing with cases. Most respondents suggested that they were able to get through a heavy court list quicker than their lay counterparts because they sat alone and were not required to consult with others. These perceptions were supported by the observation data, which suggested that, on average, District Judges dealt with cases at a faster rate in the adult court compared to magistrates. This element of the research is addressed in greater detail in Chapter 7 (Case Timings and CJSSS).

Among the magistrates interviewed, District Judges' ability to process work more quickly was generally attributed to their sitting alone rather than to their legal knowledge. The observational data showed that 8% of District Judges' adult cases included a retirement break, compared to 24% of magistrates' cases. However, a District Judge's legal knowledge was also shown to have an effect; District Judges requested advice from the Legal Adviser in around one in six adult cases (17%) compared to one in three (31%) for magistrates.

“You'll often find a bench of magistrates retire for considerable periods of time to make a number of decisions throughout the course of a case, whereas a District Judge would rarely retire to make those decisions.”

(District Judge)

A small proportion of magistrates were also keen to stress that while District Judges may be faster at dealing with their workload, they often felt that “speedy” justice was not necessarily “better” justice. This related to perceptions about the “quality” of justice, including the perceived quality of decision-making and consideration of arguments. However, few respondents expanded on what the concept of quality meant to them.

District Judges' legal training and experience was perceived as a strength. Many professional users and court staff interviewed believed that as a result of this training District Judges were better able to relate to lawyers, were confident in their decisions, had the ability to deal with legal arguments quickly and had a better understanding of the court process.

³⁴ Case-hardened and sentencing fatigue refer to the influence of presiding over a lot of cases on attitudes towards verdicts and sentences.

Such training also meant that District Judges were not reliant on the advice of a Legal Adviser.

A number of professional users and court staff also noted that District Judges were more proficient case managers as they got to the heart of the issue and moved cases on more efficiently than magistrates. They tended to feel that District Judges were more robust in their interactions with solicitors and possessed a greater command of proceedings. This perception was to some extent borne out in the observation data, which found that magistrates were more likely to adjourn following a request from the prosecution (10% of adult cases) compared to District Judges (4%).

“District Judges are more assertive and much more robust case managers. I think that advocates tend to accept what a District Judge says without so much argument as with a lay bench. That’s what makes it move.”

(Legal Adviser Group, London)

Other perceived key strengths of District Judges included their suitability for serious/complex cases (due to their legal training) and long trials (for ease of scheduling one individual as opposed to a bench of three).

3.4 Treatment of others in the court room

Levels of courtesy, use of language and treatment of lay users by the judiciary were recorded by the observers. In the majority of cases, both magistrates and District Judges were observed to be courteous, to explain decisions and put users at ease. Very few members of the judiciary were observed to use jargon and almost everyone participating in cases was allowed sufficient time to speak. Victims and witnesses interviewed typically felt they were put at ease both by the judiciary and victim and witness services.

4. Relationships/interactions with Legal Advisers

4.1 Key findings

- Observation data showed that magistrates were more likely to require support and advice from the Legal Adviser in the court room.³⁵ Magistrates asked Legal Advisers for legal or administrative advice in about one-third of the adult cases (31%) they presided over compared to one in six cases for cases presided over by District Judges (17%). However, these figures suggest that any “dependence” that magistrates were felt to have on Legal Advisers for legal guidance (in the court room) by some of the professional users interviewed was perhaps exaggerated.
- Most District Judges stated that they did not require the assistance of the Legal Adviser within the retiring room. In contrast, magistrates noted that they played a key role in providing information and checking the validity of sentencing, without exerting any influence over decision-making. Indeed, the vast majority of magistrates interviewed saw Legal Advisers as vital in case proceedings.

4.2 Support from the Legal Adviser in the court room

Legal Advisers were considered to be valued professionals in magistrates’ courts, cited by the judiciary as providing legal advice to magistrates and, to a lesser extent, District Judges. They were also noted to hold a number of other responsibilities such as supporting unrepresented defendants, attending pre- and post-court briefings and delivering training to the magistracy (in conjunction with the Justices’ Clerk).

The observations and interviews show that while Legal Advisers sat with both judiciary types, their levels of input differed significantly. The vast majority of magistrates viewed Legal Advisers as vital, playing a crucial role in the running of the court and case proceedings.

“We work in partnership with them and have an excellent relationship. We can ask for advice if we need it and if it’s appropriate they will give us advice in open court. It’s a very important role.”

(Magistrate, North East)

³⁵ It should be noted that such observations only took place in the court room. Therefore observers were unable to note the level of assistance or interaction between Legal Advisers and magistrates or District Judges in the retiring room. Furthermore, observations cannot attempt to record any non-verbal interaction between the Legal Adviser and those presiding, which may signify the need for a discussion outside the court room.

The majority of District Judges stated that they only required administrative support from Legal Advisers and rarely asked for legal advice in the court room. District Judges also asserted that they do not require any direction on sentencing and tended to view Legal Advisers as more of a “luxury” or “comfort blanket”. A number of District Judges noted that they occasionally requested advice on matters such as sentencing powers, procedural background, new legislation and points of law. However, these respondents stressed that Legal Advisers were there to help with “small details” and “reminders”.

“If there are new pieces of legislation sometimes you might want some assistance as to whether a particular section or subsection is in force because of the way in which successive governments have brought in criminal legislation – there’s so much of it and it’s rarely enacted en bloc. Whilst one obviously has loyalty to them, I don’t think you can properly argue that you should be sitting routinely with a fully qualified Legal Adviser.”

(District Judge)

The fact that magistrates *required* a Legal Adviser in court was perceived by some professional user groups to be a key comparative weakness of the magistracy, given the additional resource this entailed. Some went further, noting that a bench was only as good as the Legal Adviser who sat with it. The observation data suggests this may be an overstatement. It showed that magistrates sought advice or the Legal Adviser intervened to provide advice (legal or administrative) or other directions in just over half of adult cases they presided over (52%), though this was only the case for just over a quarter of adult cases presided over by District Judges (26%).

The observation data showed that magistrates asked Legal Advisers for advice in around a third of the adult cases (31%) they presided over. In comparison, District Judges asked for advice (whether legal or administrative) in around one in six of the adult cases (17%) they presided over.³⁶ This suggests that magistrates’ reliance on Legal Advisers spoken about in interviews was perhaps exaggerated; however, observers were not able to distinguish between legal and administrative advice. Therefore, it may be the case that magistrates required more legal advice whereas District Judges asked for administrative advice – hence the difference between the judiciary in terms of their use of Legal Advisers may be more distinct than the observations indicate.

³⁶ In youth cases, the figures were 35% for magistrates and 17% for District Judges.

However, magistrates were more likely to ask for advice more than once, which meant that the differences between magistrates and District Judges in terms of the overall numbers of requests for advice were greater.³⁷ Taking into account the total number of requests for advice and distributing these across all observed cases, then the average number of requests per case for District Judges was 0.4, compared to 1 for magistrates.³⁸

Advice was most often sought in cases where the main offence was criminal damage, in cases where there was more than one break in proceedings, and those where jurisdiction was queried.³⁹

Reflecting Legal Advisers' roles in the court room, in about a third of the cases seen by magistrates (36%) the Legal Adviser pro-actively intervened to give advice, compared to one in eight cases (12%) seen by District Judges. They were more likely to do so in cases with more than one break and when the jurisdiction was queried. This distinction was greater in the youth court, where Legal Advisers intervened to give advice to magistrates in 45% of cases seen by magistrates, compared to 4% of cases seen by District Judges.

In a small proportion of cases, Legal Advisers had to correct the magistrates or District Judges after they had announced something (in 5% and 2% of cases respectively).⁴⁰ Legal Advisers also had to remind magistrates of something in one in ten cases (10%) compared to 7% for District Judges.⁴¹

4.3 Working relationships and support from the Legal Adviser in the retiring room

When considering the findings outlined previously, it is worth bearing in mind that these related to the events observed in the court room. It is part of the Legal Adviser role to ensure that pronouncements are correct and they are skilled at conversing with the bench in a subtle and unobtrusive manner. From the interviews, Legal Advisers noted that they would normally use the retiring room to correct the bench regarding any errors or issues, and would usually try to engage discreetly with District Judges in the court room.

³⁷ See Appendix B of this report for more detailed figures.

³⁸ In youth cases, the figures are 0.15 and 0.96 respectively.

³⁹ There is a small base size for this (fewer than 100 cases).

⁴⁰ In youth cases, the figures were 3% and 1% respectively.

⁴¹ In youth cases, the figures were 13% and 5% respectively; not statistically significant.

The vast majority of District Judges noted that they did not require the assistance of the Legal Adviser in the retiring room. They would only retire to reflect on the type of sentence and only occasionally ask the Legal Adviser to check something. Magistrates, on the other hand, noted that Legal Advisers played a key role in clarifying information, as well as advising on the validity of sentencing and the structure of pronouncements. Magistrates were, however, keen to stress that Legal Advisers only ensured that magistrates keep within certain legal parameters and did not influence any decisions made.

“They (Legal Advisers) are at the heart of the lay justice system. They are well prepared to offer advice without directing you – ensuring that it is legal advice.

They are also very good at keeping the public informed as to what’s going on.”

(Magistrate, Wales)

These views were corroborated by Legal Advisers, who noted that they only provided advice and did not influence sentencing. That said, a couple of Legal Advisers expressed slight concerns that magistrates, on occasion, disregarded their advice.

The interviews indicated that Legal Advisers provided a much greater degree of support to magistrates outside the court room compared to District Judges. Out of court support was not observed in this research and thus was not measured and costed accordingly. However, it is important to consider this resource requirement when examining the cost effectiveness of the two judiciary types.

Legal Advisers were heavily involved in the design and delivery of training for magistrates. Although a number of courses were designed by the Judicial Studies Board (JSB), Legal Advisers are required to prepare the materials and may make amendments when appropriate. Legal Advisers and Justices’ Clerks also played a role in supporting magistrates through various panels and committee meetings (e.g. family, youth or appeal panels and probation liaison committees).⁴² Justices’ Clerks were also responsible for the creation of newsletters disseminated to magistrates, as well as regular email communication and updates.

⁴² See glossary for a definition of Justices’ Clerks and Legal Advisers.

Focusing on pre-court briefings, typically magistrates met with Legal Advisers for around ten minutes before each session (and up to 30 minutes before CJSSS sessions). In comparison, any pre-court meeting with the District Judge depended on the individual presiding and was only likely to last a few minutes. Post-court briefings were also more likely to be held with the magistrates as opposed to District Judges. Legal Advisers also assisted magistrates outside of court hours with search warrant applications. In some cases Legal Advisers acted as a “gate-keeper” between the police and magistrates, and were the first port of call in checking the legal status of an application before providing the magistrate’s contact details.

4.4 Court associates

Whether it is necessary for a Legal Adviser to sit in court with a District Judge has been the subject of ongoing debate. HMCS (now HMCTS – Her Majesty’s Courts and Tribunals Service) developed and piloted the role of a court associate in London and Birmingham from January 2009 to January 2010. Unlike Legal Advisers, court associates are not qualified to provide legal advice but are required to provide administrative support to the District Judge for certain cases allocated within a framework agreed by senior judiciary members.⁴³ Examples of their responsibilities included identifying the defendant, putting charges to them (when necessary), calling witnesses, administering the oath, noting evidence or submissions, updating the case file and providing information from the documents. Following a full assessment, the then HMCS Directors Board agreed that the option to deploy court associates should be open to all magistrates’ courts in England and Wales.

Feedback from District Judges in this study regarding court associates was mixed.⁴⁴ All District Judges who covered the topic of court associates during the interviews recognised the fact that they are only required to provide administrative support. However, some reported that court associates struggled with the pace of busy remand courts.

⁴³ Court associates were initially permitted to sit with District Judges during represented trials, although this was later extended to other hearings and applications such as committals, bail hearings, and bad character/hearsay applications.

⁴⁴ The views within this section are only based upon a sub-section of 25 respondents, i.e. District Judges and Legal Advisers employed at the four pilot courts in London and Birmingham, or those who had heard of the initiative and mentioned it spontaneously. It should also be noted that no court associates were interviewed as part of the study.

Court associates' lack of legal experience also raised a few concerns, with a few District Judges preferring a qualified Legal Adviser to be present in trial situations and in the youth court. A handful of District Judges felt that this lack of legal training would require additional checks to be put in place in order to ensure that all case details had been recorded accurately. They also noted that court associates may not be able to perform the same role as a Legal Adviser with unrepresented defendants, for example clarifying issues for them. Such views were echoed by Legal Advisers in one discussion group. They mentioned that there was more of a case for court associates to sit in represented trials, but less so for specialist jurisdictions and remand cases. They also noted that numerous legal issues arise during cases which Legal Advisers deal with expeditiously, sometimes correcting District Judges on potential errors or issues. This meant that matters are resolved more quickly, which is perceived as vital in busy magistrates' courts.

Despite these concerns, District Judges typically maintained that they did not require the assistance of a legally qualified adviser and were satisfied with court associates acting purely as note takers for most cases. In addition, a small number of court staff highlighted both the high quality of skills possessed by the court associates and the benefits of fully maximising resources (by freeing up the Legal Advisers to sit with magistrates).⁴⁵

⁴⁵ This research pre-dated the HMCS decision to proceed with a national launch of the court associate scheme. This followed a positive review of the way in which court associates were working in London and Birmingham. The review took account of positive judicial feedback.

5. Relationships/interaction with Professional Users (solicitors, probation, Youth Offending Teams and the police)

5.1 Key findings

- Both magistrates and District Judges believed that professional court users, particularly solicitors, perceive many differences between the different judiciary types. In addition, most District Judges felt that solicitors were more likely to try to secure adjournments from a lay bench.
- The majority of CPS prosecutors and defence solicitors reported that they would present cases differently depending on whether magistrates (often referred to as a lay bench by solicitors) or a District Judge was presiding. A few also believed that prosecutors and solicitors were more likely to “act-up” in front of a lay bench, proposing or asking for things they believed a District Judge would refuse.

A number of professional users were interviewed as part of the research and this chapter considers responses from such users, in particular CPS prosecutors and defence solicitors, as well as members of the judiciary.

CPS prosecutors generally reported having good working relationships with both magistrates and District Judges based on mutual understanding and respect. Levels of contact with the judiciary tended to vary by court; some CPS prosecutors had more frequent contact with magistrates, while others had more contact with District Judges. Other professional user groups also reported good working relationships and only a small minority highlighted any areas of tension.

5.2 Interaction with solicitors and presentation of cases

Almost all the District Judges interviewed believed that professional users, particularly solicitors, perceived them as more efficient than magistrates in terms of the speed at which they were able to hear cases. A number of District Judges also suggested that advocates may prefer having a District Judge presiding if there are complex points of law to argue, or if the point of law favours their client. The vast majority of CPS prosecutors and defence solicitors interviewed agreed with this, stating there was no need to go into as much detail with District Judges – particularly in regard to legal arguments and case law. CPS prosecutors often reported having to explain things more clearly and in greater detail to a lay bench than would be required if a District Judge was presiding. Also, their knowledge of the law meant that “long-winded” explanations were not felt to be required, particularly in opening speeches.

These differences could potentially account for some of the variation in case timings between magistrates and District Judges (see Chapter 7). However, the potential variation in approach of solicitors and CPS prosecutors was beyond the scope of the observation tool and so could not be factored into the data analysis of case timings.

Some District Judges felt that defence solicitors would prefer a lay bench presiding as they considered them more likely to secure an acquittal or an adjournment.

“Some professional court users will prefer a bench of magistrates because they know they are more likely to get an adjournment. In terms of sentence, a lot of lawyers and indeed defendants would rather appear in front of a judge because they are more predictable.”

(District Judge)

Magistrates were typically less certain whether professional court users perceived a difference between a lay bench and a District Judge. It was suggested that professionals (particularly solicitors) might perceive magistrates to be less professional and less confident. A small number also acknowledged that solicitors may “try things on” and view magistrates as a “soft touch” who may be more easily persuaded, e.g. in securing an adjournment.

A number of defence solicitors mentioned that they were more familiar with the District Judge. By knowing their likes and dislikes they could pitch their defence accordingly, and as a result District Judges were often perceived to be more predictable than magistrates.

6. Listing Practices and Deployment across Case Types

6.1 Key findings

- Overall there was significant variation across courts with regard to listing policies and practices. While some courts had a clear policy, others had various guidance documents or “unwritten agreements”.
- Listing policies that were reviewed or discussed tended to set out that District Judges should be utilised to deal with complex, lengthy and serious cases. However, there is little consensus across courts as to whether these cases were reserved for District Judges.
- This was corroborated by the observations which showed that while there was some variation in the cases likely to be heard by magistrates and District Judges, selective deployment appeared to be limited. Indeed, both judiciary types were observed to deal with a broad range of cases.
- Most respondents interviewed, including magistrates, agreed that magistrates and District Judges *should* deal with different types of cases based on their skills, so that District Judges heard cases that involve complex points of law. This was perceived as the best use of a salaried resource.

6.2 Listing practices

To understand the differences in the types of work dealt with by magistrates and District Judges in magistrates’ courts it was important to examine listing practices.⁴⁶ In this section we compare and contrast awareness and understanding of listing from the interviews and actual listing policies collected from the courts.

The rationale behind listing practices was related to the effective utilisation of resources (court facilities and staff) to meet the courts’ goals and obligations. While specific listing practices did vary from court to court, they broadly operated at three levels:

- **Listing policies:** Covered a region or area and set out the listing policy – included any arrangements for dedicated courts, e.g. where road traffic cases were heard for the whole local justice board area.
- **Sitting patterns:** These were a weekly or fortnightly guide for court room utilisation and were generally updated every quarter. They showed the types of work to be listed in each court on a daily basis. The guide was devised initially by

the Justices' Clerk and other court administrators, with further input from other CJS agencies. The pattern was then submitted to the Justices Issues Group for agreement.⁴⁷

- **Daily lists:** These detailed the cases to be heard in each court room on each day. Generally they were prepared a week or so in advance, but not finalised until the day before.

The interviews indicated that Justices' Clerks were most knowledgeable on listings. These individuals liaised closely with court staff, judicial bodies and agencies in the development of policies and practices.

Court listing policies

Listing policy documents were requested from courts, though few were able to provide them as they did not exist in many of the courts – indeed, only four courts supplied a policy document. Questions relating to listing policies and practices were also included in the discussion guides for all court staff interviewed across the 44 courts, i.e. Justices' Clerks, Legal Advisers and Listing Officers. While many Justices' Clerks stated that they did have a policy, others noted that while no official policy existed, they did have a range of documents or “unwritten agreements” which detailed the guidance in place to deal with different aspects of listings. Based on the interviews, there were no patterns identified in terms of size or location of court with regard to the existence of formal listing policy documents.

Individuals involved in the creation of listing policy tended to vary by courts, although the Justices' Issues Group and Justices' Clerks played a key role in the development of the guidance on which policy documents were based. Despite much variation, the listing policies themselves did tend to set out that District Judges should be used for more complex, lengthy or serious cases, in accordance with national guidance. Overall, the guidance was not always adhered to, typically as a result of resource pressure and variability in caseloads. A few Listing Officers and Justices' Clerks noted that extra cases were listed in courts where a District Judge was to be presiding. However, such agreements were not always contained in any policy or guidance documents.

⁴⁶ Listing practices refer to the way in which a court deals with its caseload, such as the allocation of work between magistrates and District Judges.

⁴⁷ The Justices Issues Group operates at a Local Justice Area level with a core membership of Bench Chairmen, Magistrates Associations representatives, Bench Training and Development Committee representatives, Justices' Clerk(s) and a nominated District Judge. The Area Director of HMCS would normally also attend meetings. Major concerns of the JIG are listing, rota arrangements and case management.

“There may well be trial blitzes that we need to ask the District Judges to deal with [or] there may well be circumstances where a District Judge isn’t available and we can’t get a replacement.”

(Justices’ Clerk)

Court sitting patterns

The Justices’ Clerk (or their deputy) was likely to take responsibility for the creation of the court sitting pattern, with key inputs from a number of other sources. In some areas the Justices’ Clerk liaised with the Judicial Leadership Group (JLG) to develop the pattern. Although its development was primarily a judicial function, various court and administrative staff were involved, as well as representatives from agencies such as the CPS. However, there was a lack of consistency across courts. While sitting patterns did tend to specify whether magistrates or a District Judge would be presiding within a specific court, this was not always the case.

Listing practices and the allocation of work

In discussing listing practices and the allocation of work, a number of differences between courts became evident, as highlighted by the quotes below. However, these were isolated examples which were not indicative of the general picture across the country but instead reflected key differences in the allocation of work.

“They have a tradition on some benches that the work listed is dictated by the magistrates’ rota. I’ve said to the Justice Issues Group that we need to move to a stage where the magistrates’ rota is fitted around the work we need to manage – and that’s a big culture change. Some benches operate very flexible open rotas over a 12 month period; some operate very historical day benches where magistrates only sit on certain days of the week. Therefore if you’re trying to give fellow magistrates a balance of work across a year then you need to actually manage the business. Also frustrating is magistrates who will only sit for half a day. This is difficult as you’re having to fit their commitments around the work, rather than being able to plonk them into a court all day and just give them a day’s list.”

(Justices’ Clerk)

“The way it’s drawn up is that a certain number of magistrates are booked in for the day and when they come in they decide what court they’re going to. I don’t think this is efficient as it means particular magistrates might frequently take a certain type of court. The regular DJ comes in and when it’s not specified what

case they want him to do he similarly decides what courts he wants to do on the day. They [magistrates] pick their preference and I expect more experienced magistrates have more of a say than some of their colleagues. In other courts daily rotas allocate magistrates to particular court rooms – and someone independent ensures that everyone gets a little bit of everything, [which is] probably a fairer system. It also means that you don't have to wait for them to debate who gets what.”

(Legal Adviser, London)

Improvements to listings

Most court staff and professional users acknowledged that listing was not an exact science given the many unpredictable factors involved, e.g. differing workloads and staff availability. When asked about improvements, court users found it difficult to see beyond current practices and were unable to readily put forward alternative suggestions.

However, beyond the specifics of policies and patterns, various respondent groups made a number of suggestions to improve listing more generally. Issues raised by CPS prosecutors tended to relate to productivity. For example, concerns were expressed regarding inefficiencies that resulted from an uneven distribution of work across the courts, particularly those that were under-listed. A few CPS prosecutors and one Justices' Clerk also noted that the total number of court sessions could be reduced to reflect the decrease in overall workload.

Victim and witness service workers were more concerned with the over-listing of work in trial courts. Their concerns related to double (or treble) booking of trials; a practice which was outlined in a number of listing policies, based on the likelihood of a “cracked trial”.⁴⁸ Problems occurred when there were overestimates and respondents complained that in some cases witnesses and victims turned up to court, and were subsequently sent home. Respondents were also concerned that this negative experience could lead to reluctance among witnesses to give evidence at court in future cases. One of the areas for improvement suggested by lay users was the shortening of waiting times, an issue that was consistently prioritised among both lay and professional court users in the HMCS Court User Survey (MoJ, 2010a).

⁴⁸ A “cracked trial” is a trial which fails to go ahead on the listed date because either the prosecution end the case or the defendant has made a late guilty plea or has pleaded guilty to an alternative new charge.

Listing practices and efficiency

Professional users agreed that listing practices could have an impact on the efficiency of both magistrates and District Judges. They noted that on occasions when courts were over-listed magistrates could not get through all of their work, leading to some delays (and professional and lay users waiting for their case to begin), while also noting that under-listed courts resulted in wasted time.

6.3 Deployment across case types

Observations in the adult court show that magistrates and District Judges differed in the offence type and category of case received (see below). However, no such differences were apparent for youth cases.

Category of case

Category of case is broken down into four types: summary motoring, summary non-motoring, “either way” and “sent to Crown Court”.⁴⁹ Summary cases are those that can be heard in the magistrates’ courts; the most serious cases are sent straight to the Crown Court; and those that are classed as “either way” can be heard in the magistrates’ courts or committed to the Crown Court. Although these categories can provide an approximate measure of case complexity, they are not a perfect measure. For example, certain “summary motoring” cases could involve complex points of law and be more complicated than some “either way” cases.

Summary motoring offences made up a greater proportion of magistrates’ cases, at 23%, than for District Judges (18% of DJ cases). Conversely, “either way” cases were proportionately more likely to be heard by District Judges. Three in ten cases (30%) heard by District Judges were classified as “either way”, compared to 18% of those heard by a bench of magistrates. This is likely to be a reflection of the listing practices in operation at the magistrates’ courts, as generally “either way” cases tend to be more complex. Similarly, analysis by type of court reveals that adult “either way” cases were more likely to be heard in courts with more than one District Judge (27% of all adult cases, compared to 23% overall).⁵⁰

⁴⁹ Applicable offences across these categories include breaches, criminal damage, drugs, motoring offences, public order, “theft, fraud and evasion” and “violence against the person”.

⁵⁰ Courts were split into three different types: those where only magistrates preside (e.g. Wimbledon), those that have one District Judge based at the court (e.g. Salford) and those that have more than one District Judge based at the court (e.g. West London).

Table 6.1: Category of adult cases heard by magistrates and District Judges

	District Judges* <i>(Base: 910 cases)</i>	Magistrates* <i>(Base: 1,185 cases)</i>
Summary non-motoring	30%	32%
Summary motoring	18%	23%
“Either way”	30%	18%
Sent to Crown Court	6%	7%
Other/not recorded	16%	21%

* % as of base for District Judges / Magistrates

Analysis by court size and location revealed that adult “either way” cases were more likely to be heard in larger courts (27% of cases compared to 18% in smaller courts) and in London courts (34% of cases compared to 20% in non-London courts).⁵¹ Conversely, “summary-motoring” cases were more likely to be heard in smaller courts (30% of cases, compared to 21% overall).

Offence types

Overall, District Judges were more likely to receive cases involving drugs, public order offences and violence against the person. Magistrates were more likely to hear motoring cases and those relating to non-payment of fines. Despite these variations it was clear that while some selective deployment occurred, this was not universally the case. While motoring offences accounted for three in every ten cases heard by a bench of magistrates, they also accounted for two in every ten cases before a District Judge. Figures for violence against the person showed the reverse pattern.

⁵¹ “Larger” and “smaller” courts are identified by a combination of their postcode and caseload based on MoJ data.

Table 6.2: All adult cases heard by magistrates and District Judges (by offence type)

Figures as % of total number of cases District Judges / Magistrates presided over	District Judge (910 observed cases)	Magistrates* (1,185 observed cases)
Animal Cruelty	1	1
Breaches	15	15
Communication offences	1	3
Criminal Damage	7	6
Drugs	12	7
Education Act	Less than 0.5*	1
Motoring Offences	22	29
Public Order	21	13
Sexual Offences	2	2
Theft, Fraud and Evasion	29	32
Violence against the Person	28	21
Non payment of fine	1	3
Other/not recorded	8	8

Note: Columns do not add up to 100% as a defendant may have been charged with more than one offence.

Similar patterns were also apparent when the type of court is taken into account, with “magistrates-only” courts hearing more motoring offences (32% compared to 26% overall) and courts with more than one District Judge more likely to hear public order offences (20% of cases, compared to 17% overall). Analysis by court location showed that motoring offences were more likely to be heard in smaller courts (37% compared to 26% overall).

“Cherry-picking”

One particularly contentious issue raised by several magistrates was the perception that District Judges “cherry-pick” the most interesting cases, or cases they would most like to deal with. Although some magistrates acknowledged that this is based on speculation or hearsay from other courts, a number did assert that such practices existed at their own court and that District Judges received the “cream of the work”.

“What we’re finding now is a number of the ‘juicier’ cases are finding their way to the District Judges.”

(Magistrate, Midlands)

While some magistrates felt strongly about this, it was not possible to substantiate this point with any of the observational data, since what makes an “interesting” case is subjective. Also, the process of allocation was not clear to observers (for example, whether District Judges had selected cases themselves, or if they were allocated by court staff).

Case types received – respondent perceptions

Only a few respondents spontaneously mentioned that directions had been given on the deployment of District Judges. However, their feelings tended to closely resemble the recommendations made by Lord Venne (1996), and supported by Lord Justice Auld (2001) – that District Judges should be utilised for cases that are, broadly speaking, complex, lengthy, serious or in need of sensitive handling.

Nonetheless, and by way of illustration, one Justices’ Clerk stated that only 10–15% of the work in his region falls under the “Venne criteria” and the other 90% is work that the magistrates are more than capable of doing. Although an isolated example, this does provide an interesting case study of how listing sometimes works. In this instance the Justices’ Clerk had deliberately allocated a number of high-profile cases to magistrates in order to illustrate that they were just as capable as District Judges in handling these sorts of cases, even though a District Judge may have got through the work more quickly.

Aside from specific deployment practices, respondent preferences showed strong agreement that Magistrates and District Judges should receive different types of cases, reflecting their respective skills and abilities. Cases deemed more appropriate for District Judges tended to be those involving complex legal arguments, lengthier cases such as multi-day trials and high-profile or sensitive cases which needed careful handling. In contrast, shorter, simpler cases such as summary motoring or TV licence evasion cases were viewed as less appropriate for District Judges.

“I think if you’re dealing with a case that’s got complicated evidence then you’re probably better off with a District Judge.”

(CPS prosecutor, North East)

7. Case Timings and CJSSS

7.1 Key findings

- The results indicated that, on average, District Judges transacted cases more quickly than magistrates (when controlling for differences in cases seen using regression analysis or Propensity Score Matching). This is true across case categories.
- Magistrates were more likely than District Judges to break during cases, most commonly to consider a verdict or sentence. They were also more likely to receive legal advice from the Legal Adviser.

7.2 Time taken to preside over cases

At the aggregate level, comparing the time taken by magistrates and District Judges to conclude cases is problematic, due to the variations in the types of cases seen (as highlighted in the previous chapter). Given the importance of the case timings data in developing a robust cost model, further analysis has been conducted to provide comparisons between magistrates and District Judges on a more like-for-like basis. This involved both regression analysis and propensity score matching.

Regression analysis

This analysis explains variations in case timings across the two judiciary types. In the sample of 1,053 adult cases (Sample B in Figure 2.1), case lengths varied from less than a minute to 217 minutes. As indicated in the methodology, the analysis considered a number of variables (see Table 2.2) to examine the effect of these on case timings. Due to missing values on some of these variables the sample size for analysis across all case categories was based on 879 cases, not 1,053. We also examined case timings within case categories. As case category was unknown for some cases, the sample size for this analysis was reduced to 786 cases.

The “stepwise approach” taken for the analysis initially found that, when accounting for number of breaks in proceedings and the number of times the judiciary received legal advice, judiciary type was not a significant predictor of case timings. The findings of this model found that the following variables were significant predictors of case timings, the dependent variable in the model (and explained 51% of the variation in case timing):

- number of breaks in the proceedings;
- number of times the presiding magistrates or District Judge asked the Legal Adviser for advice or the Legal Adviser intervened;
- whether a witness was present;
- whether it was the first (and final) or subsequent (and final) hearing;
- whether a video link was used;
- offence type – with only whether the case involved violence against a person being significant;
- the plea entered by the defendant;
- whether the court was urban or rural;
- court region.

Further analysis showed that there was a statistically significant correlation between the number of breaks and number of times advice was provided by the Legal Adviser and the judiciary presiding (with magistrates taking more breaks and asking for more advice).⁵² The analysis was then repeated removing number of breaks and number of interventions by the Legal Adviser from the model.⁵³ This showed that judiciary type was significantly related to case timings (this model explained less of the variation in the dependent variable, case timings – 22%). Across all cases District Judges transacted cases 6 minutes and 19 seconds faster than magistrates – a statistically significant difference.

When comparing the two judiciary types across the different case categories, we can see that District Judges were significantly quicker across all case categories.

⁵² Magistrates took breaks in 36% of the cases they presided over, compared to only 9% for District Judges (based on 879 cases). Magistrates asked for advice or Legal Advisers intervened to give them advice in 35% of the cases they presided over, compared to only 24% of cases presided over by District Judges (based on 850 cases due to missing data regarding whether legal advice was provided or obtained).

⁵³ In addition, there was also a correlation between number of breaks and numbers of times advice was provided. The technical report (section 4.11) provides more detail as to why these variables were both dropped from the model to avoid issues with multi-colinearity.

Table 7.1: Findings of regression analysis (case categories)⁵⁴

Base: 879 cases for analysis of all case types, 786 for analysis by case category

Case type	Judiciary type	Average case length	Difference	LQ** Case Length (min)	UQ** Case Length (min)
All	District Judge	14 min, 32 sec*	DJs 6 min, 19 sec. quicker*	5	15
	Magistrates	20 min, 52 sec*		11	21
Summary Non-motoring	District Judge	14 min, 12 sec*	DJs 8 min, 11 sec. quicker*	9	20
	Magistrates	22 min, 23 sec*		17	28
Summary Motoring	District Judge	10 min, 32 sec*	DJs 5 min, 38 sec. quicker*	5	16
	Magistrates	16 min, 10 sec*		11	22
“Either way”	District Judge	14 min, 15 sec*	DJs 9 min, 14 sec. quicker*	9	20
	Magistrates	23 min, 30 sec*		18	29
Sent to Crown Court	District Judge	9 min, 33 sec***	DJs 4 min, 39 sec. quicker***	4	15
	Magistrates	14 min, 12 sec***		9	20

* Denotes statistically significant difference (at 0.05 level)

** LQ = lower quartile, UQ = upper quartile, UQ and LQ figures give the boundaries beyond which lie the 25% of cases taking the longest and shortest times to hear, respectively

*** Based on low number of observations, hence not significant

We also examined differences in case timings between magistrates and District Judges within case and hearing type (whether first and final or subsequent and final). Full results are shown in Table 7.2. This shows that differences between magistrates and District Judges in terms of timings are greater for subsequent hearings, where District Judges are significantly quicker for “either way” as well as summary motoring cases. Magistrates are notably quicker than District Judges for summary motoring cases, first hearings.

⁵⁴ The regression model from which these findings are taken explained 22% of the variation in case timing.

Table 7.2: Findings of regression analysis (case categories and hearing type)⁵⁵

Base: 879 cases for analysis of all case types, 786 for analysis by case category

N.B. Sent to Crown omitted due to low numbers of these cases observed

Case Type	Hearing type	Finding
Summary non-motoring	First (and final)	District Judge 6 minutes, 47 seconds faster than magistrates**
Summary motoring		Magistrates 2 minute, 25 seconds faster than magistrates
“Either way”		District Judge 6 minute, 18 seconds faster than magistrates*
Summary non-motoring	Subsequent (and final)	District Judge 10 minutes, 3 seconds faster than magistrates
Summary motoring		District Judge 22 minutes, 11 seconds faster than magistrates**
“Either way”		District Judge 14 minutes, 28 seconds faster than magistrates**

** Denotes statistically significant difference (at 0.05 level)

* Denotes difference on the cusp of significance – i.e. not significant at the 0.05 level but significant at the 0.1 level

Propensity score matching

Propensity score matching (PSM) was conducted as a more stringent way of ensuring a fair comparison between cases seen by magistrates and those seen by a District Judge. Cases typically dealt with by a District Judge that could not be “matched” with a similar case dealt with by a magistrate were excluded from the sample. As a result, the average time differences are based on a smaller sample size of 430 cases. Limitations in sample size meant that we were not able to conduct propensity score matching where both case and hearing type were controlled for.

In spite of the smaller number of “matched cases” the findings largely confirmed those shown in the regression analysis, although the sizes of the differences in case length were generally smaller. Table 7.3 shows the average length of matched cases by case category. Like the regression analysis, this showed that District Judges were faster across most case types but that differences were statistically significant for “either way” cases only. Magistrates were shown to be faster for “sent to Crown Court” cases (though this was not statistically significant) – this difference compared to the regression analysis is probably due to the fact

⁵⁵ The regression model from which these findings are taken explained 23% of the variation in case timing.

that fewer of these cases were observed, meaning that the matched sample is very small indeed.

Table 7.3: Average case length by judiciary type and category of matched cases

Base: 430 cases

Case Type	Type/No. of Cases	Average Case Length
Summary non-motoring	District Judge (103)	16 min 59 sec
	Magistrates (103)	18 min, 27 sec
Summary motoring	District Judge (66)	13 min 31 sec*
	Magistrates (66)	19 min, 36 sec*
“Either way”	District Judge (42)	14 min, 5 sec**
	Magistrates (42)	26 min, 21 sec**
Sent to Crown Court	District Judge (4)	14 min
	Magistrates (4)	9 min, 15 sec

** Denotes statistically significant difference (at 0.05 level)

* Denotes difference on the cusp of significance – e.g. not significant at the 0.05 level but significant at the 0.1 level

Comparisons with previous research

This research suggested that District Judges take less time to transact cases than magistrates (by over 6 minutes). This is a somewhat bigger difference than that recorded by Morgan and Russell (2000), who found District Judges to be on average a minute faster than magistrates. However other research conducted in 1995 suggested the difference was greater, with magistrates taking twice as long as District Judges (14 compared to 7 minutes across all cases, though bearing in mind the differences in caseload, the authors revised this finding down to District Judges being 1.3 times as fast as magistrates (Seago et al., 1995). Like the Morgan and Russell work, these findings are based on self-completion diaries and a smaller number of courts, hence comparisons across either of these studies are indicative only. In addition, neither of the studies used regression or PSM analysis to seek to control for case differences when making comparisons between magistrates and District Judges.

Respondents' perceptions on case timings

The interviews showed that District Judges were widely perceived to be faster than magistrates, and this was typically associated with four key factors. First, because they were legally qualified they did not have to refer to the Legal Adviser as frequently as magistrates. Second, because District Judges sat full-time, they had more practical experience and could quickly apply case law and knowledge to similar cases when they appeared. Third, an argument was made regarding confidence and robustness. District Judges, because of their qualifications and experience, could move cases along faster as they knew when an advocate was using excessive detail or requesting unnecessary adjournments (as previously noted, some solicitors and prosecutors also did not feel the need to provide the same level of detail to District Judges). Fourth, because there was one person sitting as opposed to three, there was no need to retire in order to discuss and deliberate, reducing the number and length of breaks.

Most magistrates and District Judges interviewed perceived differences in times to be inherent in the system, as three people took longer to make decisions than just one. That said, a number of ideas were put forward to increase the speed of magistrates in presiding over cases, including further training and regular observations of District Judge sessions. In addition, most magistrates stated that improvements have been made over the past few years: most notably the introduction of structured decision-making (which allows decisions to be made on the bench without the need for retiring), and the CJSSS initiative.

7.3 Breaks and delays

The regression analysis indicated that breaks in proceedings were more likely in cases presided over by magistrates. When looking across the overall sample of adult cases observed (see Sample A in Figure 2.1) we see a similar pattern. A break or delay was significantly more likely to occur during magistrates' sessions than in District Judges' sessions. Around nine in ten cases seen by District Judges (89%) had no break or delay, compared to 72% of cases seen by magistrates.

Table 7.4: Range of breaks across adult cases (split by judiciary type and category of case)

Overall base 1,706 cases (Sample A from Figure 2.1 minus 389 cases with no case category information)

	Summary non-motoring		Summary motoring		“Either way”		Sent to Crown Court	
	No break	68%	No break	78%	No break	61%	No break	81%
Magistrates	No break	68%	No break	78%	No break	61%	No break	81%
	1+ breaks	32%	1+ breaks	22%	1+ breaks	39%	1+ breaks	19%
District Judges	No break	90%	No break	90%	No break	87%	No break	96%
	1+ breaks	10%	1+ breaks	10%	1+ breaks	13%	1+ breaks	4%

All percentage differences between magistrates and District Judges in the above table are significant

There were reasons for breaks occurring in addition to magistrates and District Judges retiring to consider outcomes. Discussions with court users illustrated how some breaks could be attributed to factors relating to the CPS and the police, with some frustration noted around files or witnesses not always being available when required.

“The interface between the CPS and the police is the area where improvements are needed and not really the CPS alone. The CPS have been let down on numerous occasions by the police. It’s definitely the interface between the two.”

(Magistrate, South East)

The observation data showed that magistrates typically took breaks to consider a verdict or sentence, and took significantly more breaks for this reason than District Judges.⁵⁶ There was, however, little difference between the judiciary types in terms of taking breaks due to a lack of case information or paperwork, for CPS enquiries such as locating a witness, or to contact or find a probation officer.

⁵⁶ Though whether or not magistrates took a break for this reason depended on the type of case – over three-quarters (79%) of summary motoring cases seen by magistrates had no break, compared to three in five (61%) “either way” offences.

Table 7.5: Reasons for break in proceedings

Base: 879 cases (adult cases only, same base as that used in regression analysis of case timing)

Reason for break	All (879)	Magistrates (478)	District Judges (401)
Consider sentence	13%	22%*	2%*
Reach a verdict	10%	18%*	2%*
Lack of information	3%	3%	2%
To read paper work	1%	2%	1%
Lack of paper work	1%	1%	1%
Legal advice	1%	1%	1%
Receive / read pre-sentence reports from Probation Service	0%	1%	0%
Late arrival of defendant	0%	0%	0%
CPS enquiries	1%	0%	1%
Required interpreter	0%	0%	0%
Contact	0%	0%	0%
Arrange solicitor	0%	0%	0%
Get trial date	0%	0%	0%
No solicitor present	0%	0%	0%

* Denotes statistically significant difference (at 0.05 level) between magistrates and District Judges

7.4 The CJSSS initiative

The Criminal Justice: Simple, Speedy Summary (CJSSS) initiative was introduced across the CJS in 2007. One of the key objectives of the review was to improve the speed and effectiveness of cases heard in magistrates' courts. More specifically, it aimed to introduce an improved structure to take responsibility for the judicial management of caseloads and performance and streamline case management procedures. This research sought to gain an understanding of magistrates' and District Judge's views of the initiative. The findings indicate that views were similar across both judiciary types.

Concerns with CJSSS

Although the majority of magistrates and District Judges felt that the initiative had generally worked well, some felt progress had slowed to some extent.

“It’s good when it works but it seems to have disappeared again. I can’t remember the last time I saw a case summary for CJSSS. When it first started we rattled through it. There are a lot of initiatives that get off to a cracking start and then everything goes back to the default position ... or that’s how it feels.”

(Magistrate, London)

A number of reasons were suggested for this perceived stagnation, particularly relating to paperwork and administrative procedures; for example, papers not being received on the day, key information missing from files and “inaccurate” summaries provided by police. A small number of District Judges cited the Streamlined Process (SP), introduced by the CPS in 2007, as a concern:

“It’s been watered down slightly with the Directors’ Streamlined Guidance in that we have just got summaries in some cases and no statements, the summaries are grossly inaccurate as we expected they would be and, of course, the Defence simply won’t accept what’s in a summary until they’ve seen the statement, and quite properly in some cases.”

(District Judge)

Other reasons, cited mainly by magistrates, included the issue of police evidence not being available, trials collapsing, and complications in finding legal aid. Magistrates tended to recognise that it was a partnership effort and unless all parties involved play their role then the initiative is flawed. The Crown Prosecution Service and police failing to keep up with the accelerated process of CJSSS cases was regarded as a significant barrier to summary justice.

“In my view it has absolutely no impact in the courts unless the CPS and the police get their ducks in a row, and since they never get their ducks in a row the CJSSS is just another process, another whole lot of typing, reading, fixing and managing that doesn’t deliver any benefit whatsoever.”

(Magistrate, London)

These views contrasted with the statistical evidence indicating the success of CJSSS, as indicated via the Time Interval Survey (MoJ, 2010b).

Support for CJSSS

All magistrates and District Judges interviewed were aware of CJSSS and had received the associated training. The majority expressed support for the initiative, believing that it had improved court efficiency in a number of ways, particularly in terms of achieving pleas at the first hearing (reducing the “culture” of adjournments), and improving administrative procedures, with papers more likely to be prepared in advance and available on time.

The initiative is commonly said to have encouraged magistrates to be more active in hearings, make quicker decisions and be tougher on issues of case management in “getting to the heart of the matter”. They felt the atmosphere was more focused and there was a greater sense of “needing to get on with things”.

“It’s been liberating for magistrates and court users. It’s more effective and cost-efficient justice. Before CJSSS you’d get a million excuses from solicitors – now the rules about when a plea has to be taken have meant a radical change. I enjoy sitting in the chair much more – it’s put us back in the driving seat.”

(Magistrate, South East)

These positive views are supported by data from the Time Interval Survey (MoJ, 2010b) which show that the average time from offence to case completion fell from 8.3 weeks in June 2007 to 6.4 weeks in December 2010.⁵⁷ The number of hearings per defendant also fell from 2.93 in June 2007 to 2.2 in December 2010. Additionally, the proportion of such cases completed within a target of 6 weeks rose from 62% in June 2007 to 68% in December 2010.

While generally positive towards it, some felt that CJSSS was nothing new or radical.

“It’s like the pair of flares in my wardrobe. We’re going back full circle. All the CJSSS has done is unlocked what magistrates have wanted to do for a long time. There’s nothing wonderful about this as all we’re doing is reverting back to where we were 20 years ago. All it has done is got the existing rules, put them in a document and said ‘administer the rules that are already there’.”

(Magistrate, South East)

⁵⁷ Adult defendants in charged cases.

8. Comparative Costs of Magistrates and District Judges

8.1 Key findings

- An interactive model was developed to compare the costs associated with similar cases being heard by magistrates and District Judges. The model includes a range of financial and economic costs, which can be varied according to analytical need and judgement. It allows the costs of current arrangements to be assessed under different assumptions, and the implications from changing these arrangements to be explored.
- In strictly financial terms, because of their salaries, the hourly costs associated with District Judges are substantially higher than the costs associated with a bench of three magistrates. District Judges transact business more quickly than magistrates but the difference is not great enough to compensate for these higher costs.
- When economic costs are brought into consideration the picture becomes more complex and, under certain assumptions, the cost gap in favour of magistrates can be reduced or even reversed.

8.2 Key outputs from cost model

With advice from the steering group, costs identified for inclusion within the 'standard' model include a mix of financial costs (e.g. salaries) where there are clear monetary transfers associated with operating the court system, and economic costs (e.g. sunk costs for premises) where no comparable financial transactions arise, but courts draw on resources which could, at least in theory, be allocated to other uses and so have an opportunity cost.

The model is flexible: it is, ultimately, a matter of judgement whether to include some costs or not. Users who are considering short-term financial options, for example, may chose not to consider economic costs, or particular financial costs – particularly if they can only be varied over the longer term.

Similarly, the model allows cost figures and other assumptions to be varied to explore 'what-if' questions.

Categories of costs are as follows: all have been standardised to an hourly rate, from which cost-per-case figures are then derived.

Financial costs: District Judges

MoJ provided figures for recruiting, training and employing District Judges, and providing them with IT support. If these costs were apportioned over all the days (215) for which District Judges are contracted each year, hourly costs totalled £148.32. Excluding training, sickness and work for the JSB and JAC gave 'sitting days' comparable with the figures used for magistrates, and an average hourly cost of £162.16. This is the standard figure used in the model.

Financial costs: magistrates

MoJ provided estimates for recruitment, expenses, training, and advisory committee costs (which includes staff time for supporting magistrates' meetings). Magistrates, or their employers, can claim for lost earnings in appropriate circumstances and figures were also provided for this cost element. All of these costs totalled £26.80 per hour for a bench of three magistrates, of which £8.13 represents claims for lost earnings (£2.71 for a single magistrate).

Economic costs: magistrates' time

A proportion of magistrates are compensated for lost earnings, but most provide their time freely. Whilst no financial cost is involved, this is a valuable resource which could be put to other uses, for example contributing to the economy in some other way via other productive activities. Alternatively, magistrates might use the time enjoying leisure, which has value. Putting a value on lost productive time would require more detailed information about earnings of working magistrates, and about the value of what other productive activities they might engage in. In the absence of this data, an illustrative figure based on average earnings was considered appropriate. This was around £10 per hour for 2008-09. Deducting the £2.71 cost of lost earnings already identified gives an illustrative "volunteering cost" of £7.29 per hour for an individual magistrate, £21.87 for a bench of three.

Financial costs: Legal Advisers

Information from the 44 courts involved in the research revealed that Legal Advisers present within the court room were almost always "Tier 2" grade, costing an average of £31.54 per hour.

Economic costs: Premises

It might be argued that premises costs should not be included in the model at all if they are largely fixed sunk costs which do not alter greatly whether a court is sitting or not.⁵⁸ Even if this were so, court premises would still be valuable resources which could be put to other uses, so an opportunity cost could be inferred. They are also expensive to replace or refurbish, so if the scale of courtroom provision changes there are major resourcing implications. Premises costs have been included in the model, and in accordance with the above considerations, like magistrates' "volunteering costs" premises costs have been classed as economic costs (rather than as financial costs such as the cost of the salary of a District Judge, say, or a magistrate's expense claim).

Premises costs were calculated using MoJ data for the 44 sampled areas. Costs associated with court room buildings were assigned to the court room space within these buildings, then apportioned across the time periods during which court rooms were used. An average was then taken across the sampled areas.⁵⁹ The resulting figure (cost per court room hour used) was calculated at £111.43 per hour overall, but varied greatly across courts, from £33.24 (Gloucester) to £365.83 (Hereford).⁶⁰ This variation appears to be due to a number of factors, some of them specific to individual courts, others to more general patterns (e.g. private finance initiative (PFI) schemes). Although there are local differences in the floor space allocated to magistrates and District Judges, overall there were no consistent patterns.

Police and other staff costs: Although the cost of police, lawyers, legal aid, probation and other staff may be seen as an important consideration in the overall costs represented by a case being heard, the observation data indicated that their presence in court was either rare or randomly distributed (police), or highly case-dependent. They have not been included in the "standard" version of the model, therefore, but hourly costs of £20.00 for police, £32.00 for lawyers and £26.00 for legal aid have been calculated and the implications from including these costs are considered later.

⁵⁸ Some costs clearly do vary with use, e.g. for lighting and power, but might be small in comparison with fixed costs like rent, depreciation, amortisation of capital costs. Also some premises are leased, and those which are owned would have a market value if vacated, implying costs are not entirely fixed over the long term.

⁵⁹ This approach was adopted because areas with relatively high numbers of court rooms are over-represented in the sample and some of the areas with larger numbers of court rooms are among the less costly – although patterns here are complex. An alternative would be to take an average across all court rooms in the sample (i.e. 380), which gives a slightly lower figure of £107.31 per court room hour.

⁶⁰ Hereford is something of an outlier: the next four most expensive locations (per court room hour) are Highbury Corner (£192.31); Worcester (£183.47); Manchester (£181.46) and Liskeard (£179.48).

8.3 Calculating Case Costs

Moving from these hourly costs to give comparable case costs requires figures for the time taken to hear matched cases heard by magistrates and District Judges. Matching was considered in Chapter 7, with both regression analysis and propensity score matching (PSM) techniques being used. The different approaches to matching give somewhat different case times: PSM is considered the most stringent approach to matching, but was possible with a smaller number of cases only.

In Table 8.1 the case times from the PSM matched cases (Table 7.3) are combined with the hourly cost estimates derived above to give case costs for matched cases when heard either by a District Judge or a bench of 3 magistrates.

Table 8.1: Comparative Case Costs for Matched Cases Heard by Magistrates and District Judges

Base: 430 cases

Category of case	Summary non-motoring		Summary motoring		"Either way"		Sent to Crown Court		ALL	
	Jurisdiction/ case length DJ 16m59s (.283h)	Magistrate 18m27s (.308h)	DJ 13m31s (.225h)	Magistrate 19m36s (.327h)	DJ 14m5s (.235h)	Magistrate 26m21s (.439h)	DJ 14m (.233h)	Magistrate 9m 15s (.154h)	DJ 15m 18S (.256h)	Magistrate 20m 16s (.336h)
Cost category/ Hourly costs	£	£	£	£	£	£	£	£	£	£
DJ: £162.16	45.89		36.49		38.11		37.78		41.33	
Magistrate Financial £26.80		8.25		8.76		11.77		4.13		9.02
Legal Adviser £31.54	8.93	9.71	7.10	10.31	7.41	13.84	7.35	4.86	8.04	10.61
Total: Financial costs	54.82	17.96	43.59	19.07	45.52	25.61	45.13	8.99	49.37	19.63
Magistrates "volunteering" time £21.87		6.74		7.15		9.60		3.60		7.37
Premises £111.43	31.54	34.32	25.07	36.44	26.19	48.92	25.96	17.16	28.40	37.50
Total: economic costs	31.54	41.06	25.07	43.59	26.19	58.52	25.96	20.66	28.40	44.87
TOTAL: FINANCIAL + ECONOMIC COSTS	86.36	59.02	68.66	62.66	71.71	84.13	71.09	29.65	77.77	64.50

A cautionary note needs to be raised about statistical significance. The annotations to Table 7.3 point out that only "either way" time differences are significant at the 0.05 level, and summary motoring cases at the 0.1 level because of the challenges in achieving effective matching across large numbers of cases, and similar points apply to the tables in this Chapter.

In terms of financial costs, Table 8.1 shows that, whilst District Judges transact business more quickly for most comparable cases, the differences are not great enough to compensate for their higher salary and employment costs. Adding in the economic costs of premises and volunteering time changes the position somewhat, with reduced gaps between District Judges in three case categories, and magistrates notionally incurring higher levels of cost for “either way” cases.

8.4 Exploring Options

It has been pointed out already that judgement is required about whether to include particular cost categories in particular analyses. A decision may be made to ignore premises costs, for example, if it is thought they cannot be varied over the short-term. It is known that the “volunteering costs,” representing the unpaid time contributed by magistrates, have caused concern to some interest groups who have suggested that they should not be included at all when costs are being compared. However, both the premises and the “volunteer time” factors within the cost model do relate to valuable resources drawn on by the courts and so have been included in the “standard” version of the model.

As well as removing cost elements, different elements can be added for analytical purposes. It was pointed out earlier that observation data discouraged the inclusion of costs for police, lawyers, and legal aid staff. In principle, however, if cases are heard more quickly, it will save time for these individuals too, potentially leading to cost savings. Adding the £78 per hour indicated for these staff categories taken together to the figures in Table 8.1, gives a new cost structure summarised in Table 8.2.

Table 8.2: The Impact of Adding Costs for Police, Lawyers Legal Aid

Base: 430 cases

	Summary non-motoring		Summary motoring		“Either way”		Sent to Crown Court	
	DJ 16m59s (.283h)	Magistrate 18m27s (.308h)	DJ 13m31s (.225h)	Magistrate 19m36s (.327h)	DJ 14m5s (.235h)	Magistrate 26m21s (.439h)	DJ 14m (.233h)	Magistrate 9m 15s (.154h)
Total: Financial costs	54.82	17.96	43.59	19.07	45.52	25.61	45.13	8.99
Total: economic costs	31.54	41.06	25.07	43.59	26.19	58.52	25.96	20.66
Costs of Police, Lawyers, Legal Aid	22.07	23.87	17.55	25.51	18.33	34.24	18.31	12.01
REVISED TOTAL:	108.43	82.89	86.21	88.17	90.04	118.37	89.40	41.66

Table 8.2 shows how, as hourly costs increase, the faster case times of District Judges⁶¹ mean that the relative case cost position moves in their favour – to the extent that summary motoring as well as “either way” cases are shown as requiring fewer resources (if both financial and economic costs are considered) when heard by District Judges, although the points made earlier about statistical significance need to be borne in mind.

“What-if” calculations can be made to explore changes to current arrangements. In the light of recent HMCTS’ consideration of the use of Court Associates rather than Legal Advisers to support District Judges, the model was used to explore the implications from retaining Legal Advisers (£33.74 per hour) in cases heard by magistrates (who are not usually legally qualified), but substituting Court Associates (£13.56 per hour) in cases heard by (legally qualified) District Judges.

Again taking Table 8.1 as the basis for comparison, Table 8.3 shows the impact of, in effect, reducing relative costs by £20.18 per hour in favour of District Judges.

Table 8.3: The Impact of Replacing Legal Advisers with Court Associates in Cases Heard by District Judges

Base: 430 cases

	Summary non-motoring		Summary Motoring		“Either way”		Sent to Crown Court	
	DJ 16m59s (.283h)	Magistrate 18m27s (.308h)	DJ 13m31s (.225h)	Magistrate 19m36s (.327h)	DJ 14m5s (.235h)	Magistrate 26m21s (.439h)	DJ 14m (.233h)	Magistrate 9m 15s (.154h)
Total: Financial costs	54.82	17.96	43.59	19.07	45.52	25.61	45.13	8.99
Total: economic costs	31.54	41.06	25.07	43.59	26.19	58.52	25.96	20.66
Reduction to District Judge costs if Court Advisers used	-5.71		-4.54		-4.74		-4.70	
REVISED TOTAL:	80.65	59.02	64.12	62.66	66.97	84.13	66.39	29.65

8.5 Sensitivity analysis

The case cost figures generated by the model are inevitably highly sensitive to the values of key inputs – notably case times. The data in Table 8.1 is for mean (“average”) case times, but the position is rather different if we look at matched cases heard relatively quickly or relatively slowly.

⁶¹ For most categories of cases surviving the PSM matching process.

Earlier in the report, Table 4.1 gave Upper and Lower Quartile (UQ and LQ) figures for case times – using the larger numbers of cases matched through the regression analysis,⁶² so figures are not directly comparable with the PSM-derived data used elsewhere in this chapter. Translating these timings to case costs, using the figures given at the start of this chapter, suggests the following:

Shortest hearings (LQ): District Judges are much quicker at transacting business (5 minutes vs 11 minutes for all LQ cases), perhaps because they have no need to confer over “straightforward” decisions. This means that the gap between financial costs for cases heard by magistrates and District Judges is relatively small (£13.14 vs £10.79). Adding in economic costs means that all categories of cases heard by magistrates have higher cost figures than for matched cases heard by District Judges.

Longest hearings (UQ): Although District Judges still hear cases somewhat more quickly than magistrates, the differences are less pronounced (15 minutes vs 21 minutes for all UQ cases). This means that financial costs are higher for District Judges in all case categories; adding in economic costs gives a position where case costs are very similar whether heard by District Judges or magistrates.

As for sensitivity to hourly cost assumptions if variations are applied to the different cost elements, the largest changes arise, by definition, as a result of varying the largest cost elements. These are the costs of employing District Judges and premises costs.

Whilst major changes to District Judge salaries may be thought unlikely, it may be worth noting the changes which arise if, rather than the £111.34 average hourly cost used currently, the much lower figure for Gloucester (£33.24 per hour) is used. Referring back to Table 8.1, this would have the effect of reducing economic costs for all case categories heard by magistrates by £29.60, and £22.19 for cases heard by District Judges – further extending the cost gap in favour of magistrates.

On the other hand if the much higher figure for Hereford (£365.83 per hour) is used case costs for all case categories heard by magistrates increase by £85.51; for District Judges the figure is £64.89. Under these assumptions the costs per case become slightly lower for District Judges on the familiar basis that, overall, they work somewhat more quickly and so use valuable resources more intensively.

⁶² 786 for analysis by case category

8.6 Summary

We can summarise the overall impact of different assumptions about cost elements by considering their cumulative effect, as in Table 8.4.

The key point is that magistrates have a considerable financial advantage because they are not paid for their work in the courts and District Judges are. District Judges tend to transact business more quickly, and under particular assumptions this speed can mean that they call on fewer resources than magistrates to hear comparable cases. This position is far from the norm, however, and only arises when cumulative cost figures are high.

Table 8.4: Cumulative Effect of Adding Cost Categories

	Category of case			
	Summary non-motoring	Summary motoring	"Either way"	Sent to Crown Court
Category of cost				
Financial	***	***	***	***
Add Legal Adviser	***	***	***	***
Add magistrates' "volunteering" costs	***	**	**	***
Add premises	**	0	0	***
Add police, lawyers, legal aid	*	-	-	***
Reduce District Judge costs if Court Adviser used	*	-	-	***

Key:

- *** District Judge costs higher by >100%
- ** District Judge costs higher by 50-100%
- * District Judge costs higher by 10-50%
- 0 District Judge and magistrates costs within 10%
- Magistrates costs higher by 10-50%

9. Outcomes, adjournments and the transfer of work

9.1 Key findings

- Regression analysis of case outcomes showed some differences in the sentencing patterns between magistrates and District Judges. In particular, it suggested that District Judges were more likely to use custodial sentences.
- Across all cases observed, magistrates and District Judges both adjourned with the same frequency, although reasons for adjournment did differ. Magistrates were more likely to adjourn due to prosecution or defendant request, while District Judges were more likely to adjourn because of the absence of a witness.
- Of the cases observed, only a small minority were committed to the Crown Court for trial or sentencing, with no overall significant difference between magistrates and District Judges in this respect.

9.2 Variations in outcomes and adjournments

Outcomes in adult cases

A range of hearing outcomes are possible in adult cases, ranging from a custodial or community sentence to a defendant being found “not guilty” (case dismissed). In adult cases observed, the most frequent outcome was a financial penalty (costs/compensation/fines), which was imposed in one-third (33%) of the hearings observed. Although not the final case outcome, the second most frequent hearing outcome was “adjourned” – this was an outcome for 30% of hearings. A closer analysis of the data highlighted significant differences between magistrates and District Judges for a number of outcomes at the overall level, notwithstanding differences in case category seen, or other key factors.⁶³

- A custodial sentence was more likely to be given in a case heard by a District Judge (7%) than by magistrates (4%), although still in a small minority of cases;
- District Judges were more likely to use conditional bail or unconditional bail (both 12%) than magistrates (8% and 9% respectively);
- A financial penalty was more likely to be used by magistrates (37%) than by District Judges (29%);
- Magistrates more frequently utilised endorsements/penalty points; 9% of magistrates did so compared with 6% of District Judge cases.

⁶³ Please refer to Appendix C of this report for a full breakdown of adult case outcomes by judiciary type.

However, these differences will, at least in part, reflect the varying types of cases that magistrates and District Judges preside over; for instance, magistrates see a greater proportion of summary motoring offences and District Judges a greater proportion of cases involving violence against the person. Further analysis was therefore conducted to provide comparisons between magistrates and District Judges on a more like-for-like basis. Firstly a regression model was used to control for key differences between cases. Following this, more stringent Propensity Score Matching analysis was used to identify a subset of cases which are most comparable across the two judiciary types at an individual case level. Both forms of analysis considered completed adult cases only – see methodology section in Chapter 2 for more information on both types of analysis.⁶⁴

Regression analysis

A number of different regression models were used to consider what variables affected case outcome – one for each outcome possible (with the likelihood of that outcome being the dependent variable).⁶⁵ As can be seen from Table 9.1, this analysis showed that magistrates were significantly more likely to use financial penalties while District Judges were more likely to impose custodial sentences, disqualify defendants from driving (for motoring cases) and remand on bail (conditional). However, caution should be raised when interpreting these results as the regression analysis showed that the variables examined (see methodology section in Chapter 2 for a full list), explain only a small proportion of the variation in whether the case resulted in the following outcomes:

- custodial sentence (analysis explained less than 10% of the variation)
- remand on bail, conditional (analysis only explained 11% of the variation).

As noted in the previous chapter on the comparative costs of the judiciary, it was agreed that disposal costs would not be included within the cost models. Therefore, it should be noted that any differential in these costs, for example, District Judges' higher propensity to impose custodial sentences, are not factored into the model. In this example, the wider CJS costs of District Judges is likely to be higher given the relative costs of custodial sentences.

⁶⁴ Outcomes were analysed without the inclusion of adjourned cases, given that these did not actually have an outcome as they had not completed.

⁶⁵ The initial sample for this analysis was 1,053 cases (Sample B in Figure 2.1); however, cases were removed if there were missing variables on any of the explanatory variables used (see Table 2.2: Explanatory variables used in regression analysis). This meant the sample size for each model was slightly different: financial penalty = 792, custodial sentence = 788, community service = 788, endorsement or penalty points = 884, disqualification from driving = 1,053, absolute or conditional discharge = 890, commit to Crown Court for trial = 788, commit to Crown Court for sentence = 890, remand on bail (conditional) = 899, remand on bail (unconditional) = 876, remand in custody = 1,053.

Table 9.1: Case outcome analysis

Base: 786 cases (or 879 cases for analysis across all case types)

Outcome	Base size (cases)	Finding (minus sign = DJ less likely to use than magistrates, plus sign = DJ more likely to use than magistrates)	Model adjusted R ² (indicates the amount of variation in likelihood of the sentence being imposed explained by the analysis) (%)
Financial penalty	792	-0.07**	32
Custody	788	+0.05**	8
Community service	788	+0.02	7
Endorsement/penalty points	884	-0.02	38
Disqualification from driving	1053	+0.05**	21
Absolute or conditional discharge	890	-0.03*	25
Commit to Crown Court for trial	788	+0.02	31
Commit to Crown Court for sentence	890	+0.00	13
Remand on bail (conditional)	899	+0.05**	11
Remand on bail (unconditional)	876	+0.02	6
Remand in custody	1053	-0.00	5

** Statistically significant (at 0.05 level)

* On the cusp of significance – i.e. not significant at the 0.05 level but significant at the 0.1 level

Outcomes in youth cases

Outcomes in youth cases can range from a Detention and Training Order (custody) to a fine or Youth Rehabilitation Order (YRO). In youth hearings observed (see Sample C), around a third (31%) were recorded as being adjourned. Following this, the most frequently used outcomes were fines and Youth Rehabilitation Orders (YRO), which were both used in almost one in five cases (19% and 18% respectively).

At an overall level, there was less variation in sentencing between magistrates and District Judges in youth cases.⁶⁶ This is explained by the low number of cases spread across a number of different case outcomes. Only two differences that are statistically significant emerged. Firstly, magistrates were more likely to absolutely or conditionally discharge the defendant, doing so in one in ten cases (10%) compared to just 2% of cases heard by District Judges. Secondly, defendants in cases heard by magistrates were more likely to receive a YRO (27%) than defendants in cases heard by District Judges (10%).⁶⁷ Due to the small number of youth cases observed, it was not possible to examine differences in

⁶⁶ See Appendix D in this report for a full breakdown of youth case outcomes by judiciary type.

⁶⁷ Such findings may be explained by the types of cases received by magistrates and District Judges; however, the small sample size does not allow for this.

outcome for different offences between magistrates and District Judges. It was also not possible to run any further analysis to match individual cases across judiciary types and provide more like-for-like comparisons.

Perceptions of outcomes

A number of respondents believed that District Judges were harsher, both in their verdicts and sentencing.⁶⁸ Reasons cited for this discrepancy included District Judges being more “battle-hardened” and magistrates being more susceptible to “sob-stories”. A number of respondents felt that District Judges were more likely to send defendants to prison, while magistrates were perceived to be more reluctant to do so.

As noted above, however, apparent differences in outcomes within the observations largely disappeared once cases were matched on a more like-for-like basis. It is likely that people’s perceptions do not factor in issues such as variations in case category across judiciary types, etc.

There was also the perception, especially amongst several CPS prosecutors, that there was a greater degree of unpredictability amongst magistrates. Conversely, District Judges were believed to be more consistent, whether that is consistently harsh or lenient:

“I think that if you go before a District Judge you are more likely to know what the outcome is going to be – irrespective of who the District Judge is – than if you go before a lay bench. You never quite know what is going to happen.”

(CPS prosecutor, South West)

However, despite these perceived differences, and the differences illustrated previously from the observations, it is important to note that there was also a perception that variation lies within the benches as well as between them.

“There’s probably as much variation from one District Judge to another as there is from District Judge to lay bench.”

(Legal Adviser, London)

⁶⁸ All respondent groups were asked, with the exception of lay users.

9.3 Adjournments

As noted previously, adjournment was one of the most frequently observed hearing outcomes in both adult and youth hearings observed (30% and 31% respectively). In general, both magistrates and District Judges felt that the number of adjournments granted had significantly decreased over time, and that they adjourned as little as possible.

“We as a bench are very reluctant to adjourn cases.”

(Magistrate, London)

The majority of District Judges, CPS prosecutors and defence solicitors believed that magistrates adjourn cases more frequently, noting that magistrates grant more adjournments because they lack the robustness of District Judges, and are more susceptible to pressure from the defence or prosecution. On the other hand, magistrates and Legal Advisers tended to feel that there was no difference in the number of adjournments granted.

The observation data showed the number of adult cases adjourned was around three in ten for both District Judges (31%) and magistrates (30%). Using offence type as a broad measure for similar cases, there was no statistically significant difference in the frequency with which these offences were adjourned by District Judges or magistrates. For example, theft, fraud and evasion cases were adjourned in 31% of such cases seen by District Judges and in 33% of cases seen by magistrates. Similarly, the respective figures for drug offences were 31% and 30%.

The observations highlighted a number of differences in the reasons for adjournments between magistrates and District Judges, which again will at least partly reflect differences in the types of cases heard:

- Magistrates were more likely to adjourn at the request of the prosecution or defendant (both 10%) compared to District Judges (4% and 3% respectively);
- District Judges adjourned more frequently due to the absence of a witness (5%) compared to magistrates (1%);
- District Judges were more likely to adjourn to fix a trial date or obtain dates to avoid for a trial (34%) than magistrates (17%).

It should be noted that the observation tool was not designed to take account of the distinction between court-directed adjournments, e.g. pre-sentence reports (PSRs) and forced adjournments, e.g. an because of an incomplete file.

9.4 Transfer of work

Overall, a relatively small number of cases observed were committed to the Crown Court either for trial or for sentencing. Just 9% of adult and 3% of youth cases were committed to the Crown Court for trial, and 4% of adult and 3% of youth cases were committed to the Crown Court for sentencing. There was no difference here between magistrates and District Judges.

Committals to the Crown Court for trial were most frequently employed for drug offences (20%), violence against the person (14%) and theft, fraud and evasion (13%). Furthermore, between 6% and 7% of all such cases were committed to the Crown Court for sentencing.

Overall, there was only one area where a statistically significant difference was found between magistrates and District Judges in relation to the transfer of work to the Crown Court. Magistrates committed 10% of adult cases with a main offence of violence against the person to the Crown Court for sentencing. This is significantly higher than the 2% of cases that District Judges committed for sentencing.

10. Sentencing powers

10.1 Key findings

- District Judges were fairly unanimous in their support for increased sentencing powers in magistrates' courts (to allow them to impose custodial sentences of up to year) and felt sufficiently well equipped to be granted this extension. Some questioned whether such powers should also be extended to magistrates.
- Justices' Clerks and defence solicitors also questioned whether magistrates should take on more serious cases, raising concerns about lack of relevant skills and experience, as well as a potential overstrain on resources.
- However, the vast majority of magistrates felt that an increase in sentencing powers would be beneficial and that they possess the requisite skills (some pointing to the fact they already have the power to impose custody). They recognised that additional training would be required, though they felt that this would not be a significant barrier.
- In addition to training, most professional groups believed that the provision of updated guidelines and additional support from Legal Advisers in the initial stages would be essential.

10.2 Attitudes towards an increase in sentencing powers

Overall, respondents believed that an increase in sentencing powers was a positive step, with the majority of most groups supporting an extension. The general consensus among respondents was that the ability to sentence up to one to two years in custody would be most appropriate.

There were a number of reasons cited by District Judges as to why an increase should be permitted, with the most common being the current “discrepancy” between sentencing limits in the adult and the youth court (in which a sentence of two years detention and training may be imposed). A number of District Judges highlighted the “anomaly” and believed that the two should be brought into line.

“I can give two years to a 16-year-old in the youth court, so why can't I do the same for someone aged 18 or above?”

(District Judge)

A number of District Judges also highlighted the potential cost savings that could be made if more cases were heard in the magistrates' courts, citing the fact that cases heard at the Crown Court were more costly overall. Several also spoke of the Crown Court being

“cluttered” and “over-worked”. They noted that a reduction in cases being sent or committed would relieve the burden, free up valuable time for more serious offences and be a more efficient use of court resources.

While the vast majority of District Judges were in favour of an increase in sentencing powers for the magistrates’ courts as a whole, some believed that such an extension should only be granted to District Judges given their greater experience and legal training. Similarly, some expressed misgivings as to whether magistrates would be able to cope with the increased workload.

“It would be a massively costly programme to try and train magistrates to deal with cases up to 12 months imprisonment because you would be taking enormous swathes of work out of the Crown Court that they’d never had any experience of. It worries me to some degree that they can impose imprisonment already.”

(District Judge)

One further concern, voiced by a small number of District Judges, related to the perceived potential increase in the prison population that could result from a change in jurisdiction, especially given the Lord Chancellor’s stance on reducing the overall population.

“We’re riding two horses at once, aren’t we? Kenneth Clarke wanting to cut back on prison sentences and sentencing powers being increased at the same time.”

(District Judge)

Like District Judges, the vast majority of magistrates interviewed were in favour of an increase in sentencing powers, with many believing that it was long overdue and some citing legislation for such powers which, although on the statute book, had yet to be enabled.⁶⁹ Furthermore, magistrates also agreed that the burden on the Crown Court should be reduced and that it would be more efficient and less costly for certain cases to be heard in magistrates’ courts.

Reflecting the concerns of some District Judges, a few magistrates described occasions where they had committed cases to the Crown Court in the belief that they warranted a sentence in excess of six months, only to find that a lesser sentence was subsequently imposed (e.g. community service). These magistrates felt that if jurisdiction was extended then those cases could remain in the magistrates’ courts for “more appropriate” sentencing.

⁶⁹ Comments relating to powers on the statute book were raised by magistrates in response to questioning (as opposed to them commenting on what is feasible at present).

However, magistrates were also keen to stress that they took the responsibility for sentencing very seriously and only ever imposed a custodial sentence when required, typically as a last resort. Some also stressed that it was rare for magistrates to send someone to prison and therefore felt that an increase in powers would not lead to a subsequent increase in the prison population. This is largely backed up by the observational data, which showed that magistrates imposed a custodial sentence in only 4% of cases heard.

Other respondents such as those from the CPS also believed that an increase in sentencing powers would be a positive step. Most felt that there was too much work in the Crown Court which could be dealt with adequately at magistrates' courts (even within current guidelines). Like District Judges, they believed that this would have the knock-on effect of saving time and money and lead to more efficient use of resources. A significant minority of CPS prosecutors interviewed also believed that such powers should only be extended to District Judges (again, given their greater legal experience and training).

Overall, Justices' Clerks and defence solicitors were the most sceptical of all the groups interviewed, for varying reasons. Justices' Clerks tended to voice concerns regarding the extra workload and a few expressed misgivings over a perceived increase in the prison population. Referring to the latter, they believed that magistrates may become more "case-hardened" or may impose custodial sentences for more serious crimes which may attract a lesser sentence in the Crown Court. Others noted that a number of cases that go to the Crown Court are committed as the result of a defendant's right to elect trial by jury and would therefore still be committed, regardless of any extension in jurisdiction.

"More serious cases are more likely to get custody in the magistrates' courts where custody may not be required. It will lead to an increase in the prison population."

(Justices' Clerk)

"Magistrates would have to be given careful guidance because we wouldn't want a situation where cases that would have been sentenced to six months [at the Crown Court] are sentenced to nine and twelve months for the same type of [offence]. There would be benefits in terms of less cases going to the Crown Court, but the benefits would be lost if it meant that prison sentences were longer."

(Justices' Clerk)

Among the small sample of defence solicitors interviewed, the majority believed that an increase in sentencing powers would not be a positive step. Some tended to focus more upon the skills of magistrates, questioning their ability to cope with an increase. Some suggested that they may get too “carried away” or feel obliged to utilise the additional powers, which, in turn, could lead to greater sentences being passed. Subsequently, it was suggested by a minority that some defendants may choose to elect trial by jury in order to secure a lesser sentence in the Crown Court. Some also noted that it would be a costly process to ensure sufficient training was made available to all.

“I think if it is serious enough for a lengthy prison sentence then you’d better go to the Crown Court and get a judge who knows what he is doing, rather than risk it with a lay magistrate who perhaps might get a bit carried away with these excess powers.”

(Defence Solicitor, London)

10.3 Skills and abilities to deal with increased powers

The majority of the judiciary, professional court users and court staff felt that the skills and abilities to deal with a change in sentencing powers were already largely in place at magistrates’ courts. District Judges were the most firm in their opinion that they possessed the skills and abilities to be granted increased powers. A number of respondents from all groups noted that they themselves would have confidence that those presiding would closely follow the structured decision-making process and sentencing guidelines. Some also noted that the decision whether or not to impose custody at all was the most difficult, regardless of whether the sentence is six months or up to two years.

“The magistracy is experienced and mature enough to take on greater powers. There are strategic ways of going about things, magistrates have structured decision-making, they are better trained and have Legal Advisers to consult. It’s enshrined in primary legislation and should be carried through. Parliament haven’t taken that final step – they just need to flick the switch.”

(Magistrate, South East)

Although the requisite skills are believed to be in place, additional training was widely believed to be an important factor if sentencing powers were to increase. That said, some District Judges felt additional training would only be required for magistrates, though others suggested that Legal Advisers would also need further training, e.g. in Crown Court sentencing policy.

Although this point was not cited as frequently as additional training, a number of respondents noted that guidelines would need to be updated and amended to incorporate an extension in sentencing powers. Furthermore, a number of Justices' Clerks and Legal Advisers felt that magistrates would need additional support from the Legal Advisers, particularly in the initial stages of implementation, in order to ensure that sentencing decisions are appropriate.

Similarly, a number of magistrates also felt that the additional support of the Legal Adviser would be a necessary prerequisite. In contrast, District Judges were confident that they would not require any additional support – perhaps unsurprising given that they did not feel that Legal Adviser support is required in most cases at present. Despite this, the observational data does indicate that District Judges will still refer to the Legal Adviser on occasion (see Chapter 4).

10.4 Effect upon professional user roles

Overall, there was little consensus among professional users and court staff as to whether a change in sentencing powers would affect their role(s). Some CPS prosecutors, Justices' Clerks and Legal Advisers believed their workload would potentially increase as the volume of cases heard in the magistrates' courts would be greater. This could consequently have a knock-on effect in terms of resource allocation. However, others did not believe that it would have any impact. Similarly, Legal Advisers and Justices' Clerks highlighted the additional workload it may impose on them, and the heightened responsibility associated with such an adjustment, i.e. the need to become more familiar with sentencing law for more serious cases. However, it is worth noting that these impacts were not felt to be a primary concern.

“It would increase our role as we would be providing magistrates with advice regarding the sentencing of more serious cases, so there would possibly be more research to do when cases come before the court. As I say, in the youth court we provide magistrates with advice on more serious cases, so it would just be applying that to the adult court as well.”

(Legal Adviser, London)

11. Mini-panels

11.1 Key findings

- The majority of respondents were not in favour of the idea of mini-panels (i.e. mixing magistrates and District Judges), for most criminal cases in the magistrates' courts. District Judges tended to be the most critical of all respondent groups, with most finding it difficult to perceive any advantages and many believing that it would compromise roles and slow down the court process.
- Some respondents mentioned the idea of a "middle tier" (between the Crown and magistrates' courts), with some citing the proposal by Lord Justice Auld (2001). They were typically more receptive to this structure.

11.2 Attitudes towards mini-panels

Overall, the majority of respondents interviewed were not in favour of mini-panels for all criminal cases, in other words a system in the magistrates' courts whereby a District Judge would preside on a panel alongside two magistrates. Many questioned the basis of the suggested system, finding it difficult to perceive any notable advantages of such a change. District Judges were almost unanimous in their rejection of the proposal, feeling it would compromise their role, and diminish their key strength of speed due to the need to retire to discuss and deliberate. This was thought likely to result in a fall in the number of cases that could be heard in court, leading to a drop in overall efficiency.

"The reality is that we are different – we bring speed. What is the point of then degrading that speed by latching us on to a slower system?"

(District Judge)

Some also highlighted the potential for conflict if a professionally qualified lawyer was over-ruled by two magistrates.

Some magistrates were more positive about the proposal, noting potential advantages in terms of aiding their development and learning, as well as potentially leading to more balance in decision-making and fairer sentencing. Some saw it as a "best of both worlds" scenario, combining the experience and knowledge of the District Judge with the notion of peer judgement. Some argued that it would be no different to Crown Court appeals.

However, magistrates also expressed concerns, most notably that District Judges would automatically chair proceedings so that those magistrates who currently chair would have to sacrifice their position. A minority believed that this would be a barrier to recruiting

magistrates and may lead to the resignation of those who felt their role had been compromised.

“If magistrates only ever sat as wingers to District Judges you’d have mass resignations and I would be one of them. I am violently against that. If there was a balance between sitting as a chair and winger then I’d be open to that, but I don’t believe for one moment that a District Judge would be happy to sit as a winger in any court.”

(Magistrate, South East)

Professional user groups and court staff, particularly Legal Advisers, tended to react negatively to the proposal. Reasons mirror those expressed by the judiciary; perceived wastage of court resources and court utilisation, tensions that may arise as a result of a mixed bench with differing skills and backgrounds and the loss of efficiency in terms of slowing down the process. Some also believed that District Judges would over-rule magistrates and adversely affect the magisterial role.

An additional key concern for Legal Advisers was the belief that their role may become redundant, or at the very least greatly reduced. A number of Justices’ Clerks and Legal Advisers also felt that the Legal Adviser role may become one of “conflict resolution” as opposed to “useful guidance”.

“There might be a question over whether or not a bench that consisted of two magistrates and a District Judge would require an independent Legal Adviser? If we were not required you’d be left with one legally qualified opinion against two people who are essentially in the dark.”

(Legal Adviser, London)

Despite these concerns, some professional users and court staff (e.g. Legal Advisers) felt that mini-panels might bring some benefits through the transfer of skills and experience, with both magistrates and District Judges gaining experience from the other. There were a few suggestions from Justices’ Clerks that a mini-panel approach may be beneficial if the panel comprised a Legal Adviser sitting with two magistrates rather than a District Judge.⁷⁰

⁷⁰ It is worth noting here that Legal Advisers (in accordance with The Justices’ Clerk Rules [UK Statutory Instrument, 2005]) may exercise delegated powers, enabling the individual to carry out certain functions of the court in relation to criminal proceedings. These powers include committing a case for trial in the Crown Court, taking a plea, fixing a trial date and adjourning cases (consent from all parties permitting).

Respondents did acknowledge that the panel set-up may be more beneficial for certain case types, such as trials, those involving complex points of law, youth cases, domestic violence and family cases. Trials, in particular, were felt to potentially benefit as it is typically deemed helpful to have the combination of judgment by peers aligned with the case law knowledge of a District Judge. However, there is a consensus that it would be unnecessary for everyday cases. For example, many felt it would be completely inefficient if it were to be implemented on remand cases.

11.3 Middle tier panels within a unified Criminal Court

When discussing the concept of mini-panels a number of respondents spontaneously mentioned the proposal by Lord Justice Auld, who advocated an enhanced jurisdiction for a bench of two magistrates and a District Judge. The bench itself would sit as a middle tier within a unified Criminal Court.

Where discussed, there was a more positive reaction to this proposal, including some of those who were critical of mini-panels. Some magistrates and District Judges believed that it may be an efficient way of keeping costs to a minimum and reducing the pressure on Crown Courts (given that cases could be kept within the magistrates' courts). It would also help to ensure the retention of local justice, while striking a good balance between "fact-finding" and "the law".⁷¹

"I think it would be a great idea. We [the district bench], were behind that when Sir Robert [sic] Auld conducted his review of Criminal Courts and suggested the middle tier with a District Judge sitting with magistrates. It's essentially them sitting as a sort of mini-jury and fact finders, and us directing them as far as the law is concerned. I think they missed a real chance there."

(District Judge)

Some of those who were critical of the proposed middle tier again tended to outline similar reservations to those previously discussed in relation to mini-panels.

⁷¹ Comments relating to a middle tier were raised by participants in response to questioning (as opposed to them commenting on what is feasible at present). For example, defendants would lose their present elective right to trial by jury in "either way" cases within the unified Criminal Court (Auld, 2001).

Glossary of terms and abbreviations

Adjourned: If a case is not concluded during a hearing, it can be adjourned to another time and date. This is usually so that some other action can take place during the adjournment, e.g. for a report to be prepared, to obtain further information, to organise committal papers or prepare for trial. In addition, a case may be adjourned if a party, e.g. a defendant or witness, fails to attend the hearing.

Bail hearing: At this hearing it is decided whether the accused should be released on bail with or without conditions, or kept in custody until the next court date.

Bench: The collective term for the judiciary hearing a case. In magistrates' courts this is a District Judge or panel of two/three magistrates.

Breaches: If an offender has not complied with the terms of a community order or suspended sentence imposed by the court then he/she is said to be in breach. At the hearing to answer the breach the defendant will be asked if he or she admits the breach (rather than if he/she is guilty or not guilty). Breaches of community orders or suspended sentence requirements are prosecuted by probation or Youth Offending Teams (YOTs). Breach of an Anti-Social Behaviour Order is a criminal offence which is dealt with by the police and CPS.

Chair: One of the two/three magistrates who will be responsible for conducting the court session and leading discussions on sentencing. However, the chair does not have any additional authority when the bench are making decisions.

CJS: Criminal justice system.

CJSSS initiative: The Criminal Justice: Simple, Speedy Summary (CJSSS) initiative was introduced across the CJS in 2007. The initiative aimed to reduce the number of hearings and time taken to complete cases heard in the magistrates' courts. CJSSS had strong judicial leadership. Improvements were achieved through better case preparation and more robust case management. For more information, please refer to http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf

Commit to Crown Court for sentence: If a defendant has pleaded guilty or been found guilty of an offence, the magistrates' courts may commit them to the Crown Court (if the bench think that the defendant should receive a sentence beyond their jurisdiction).

Commit to Crown Court for trial: An “either way” case (see later entry) is sent to the Crown Court if the bench presiding decline jurisdiction. That is, if they do not consider the case to be suitable for summary trial (i.e. trial in the magistrates’ courts) because, if convicted, the likely sentence will be beyond the sentencing powers of the magistrates’ courts. If an ‘either way’ case is considered suitable for summary trial then the defendant still has the option to request that their case be committed to the Crown Court for trial.

Communication offences: These are offences that breach the Communications Act (2003). These include TV licence payment evasion or communication network offences. The latter may include making offensive, obscene, indecent or menacing phone calls, sending text messages of the same nature or making hoax calls.

Community Order: This sentence is available for adults and is served in the community. The maximum length of the order is 3 years. The bench has the option to impose one or more of the following 12 requirements:

- **Activity Requirement:** The offender is required to present himself to specified person(s) at specified place(s) on a specified number of days and/or participate in specified activities on a specified number of days. The maximum total number of days specified is 60.
- **Alcohol Treatment Requirement:** The offender is required to submit during a specified period (minimum period of 6 months) to treatment with a view to the reduction or elimination of the defendant’s dependency on alcohol. The treatment given can be residential or non residential.
- **Attendance Centre Requirement:** This requirement is only available to offenders under 25. They are required to attend a specified attendance centre for between 12 and 36 hours spread over a period of weeks.
- **Curfew Requirement:** The offender is required to remain in a specific place or places for specified periods (between 2 and 12 hours) per day. The order can apply from one to 7 days per week and for different lengths of time per day. These orders are normally monitored using an electronic tag.
- **Drug Rehabilitation Requirement:** The offender is required to submit during a specified period (minimum period of 6 months) to treatment with a view to the reduction or elimination of the defendant’s dependency on or propensity to misuse drugs. During the order the offender is also required to provide samples to ascertain if there are any drugs in their body. The treatment given can be residential or non residential.

- **Exclusion Requirement:** The offender is prohibited from entering a specified place or area for the period specified in the order. The prohibition can apply for certain periods and may specify different periods or days. The order is usually electronically monitored. The maximum length of order is 2 years.
- **Mental Health Requirement:** The offender is required to submit during a period(s) specified to treatment by (or under) a registered medical practitioner, chartered psychologist or both. The aim is the improvement of the offender's medical condition. The treatment can be residential or non residential.
- **Programmes Requirement:** The offender is required to participate, in accordance with instructions from his supervisor, in a programme accredited by the Secretary of State. While on the programme the offender must attend when requested and follow any instructions given.
- **Prohibited Activity Requirement:** The offender is required to refrain from participating in the activities specified in the order. This can be on a specified day(s) or for a specified period.
- **Residence Requirement:** The offender is required to reside at a specified place for the period specified in the order.

Covariates: Variables that have explanatory power to the variable under study. In this case, variables, aside from judiciary type, which may influence the length of a case and/or the outcome of a case.

CPS: see Crown Prosecution Service.

Crown Court: The Crown Court deals with all criminal cases committed (see entry 'Commit to Crown Court, above), or sent (see entry "Sent to Crown Court", below), from the magistrates' courts. Trials are heard before a Judge and jury. The court also hears appeals against the decisions of the magistrates' courts.

Crown Prosecution Service (CPS): The CPS is the Government department responsible for prosecuting criminal cases investigated by the police in England and Wales. The CPS advises the police on cases for possible prosecution, reviews cases submitted by the police, determines any charges in all but minor cases and prepares/presents court cases. The CPS does not prosecute all cases that will be heard at the magistrates' courts. Certain agencies will prosecute their own work e.g. TV Licensing, the Department of Work and Pensions and local authorities.

Defence lawyer / solicitor: The legal professional representing the defendant (the accused).

Discharge: An absolute or conditional discharge is imposed when the court believes that it is inappropriate to punish, given the nature of the offence and the character of the offender. If the discharge is absolute the matter is concluded. If conditional the condition is that the offender is not convicted of any further offence from the date of the order for a period of up to 3 years. If there is a further conviction the court may re-sentence for the original offence.

Discontinued case: An offence is discontinued by the CPS once notice is served. This ends the prosecution without the need for a court hearing or the attendance at court of the parties. If the defendant is remanded in custody it also allows their immediate release. It should be noted that while a discontinued case ends the present proceedings, a prosecution could still be brought in the future should additional evidence come to light. However, the prosecution must be based upon the same facts, for the same offence and must be authorised by the CPS.

Dismissed: The case will be dismissed if the defendant is found not guilty or the prosecution offers no evidence.

District Judge (magistrates' courts) (previously known as Stipendiary Magistrates): District Judges are full time members of the judiciary and receive a salary. They are legally qualified, having at least 7 years experience as a Barrister or Solicitor, and will usually have served as a Deputy District Judge for 2 years. They are appointed by the Queen on the recommendation of the Lord Chancellor. District Judges sit alone.

DJ: see District Judge.

Education Act (Offence): Parents/guardians can be prosecuted under the Education Act if their children do not attend school regularly (and are below the age at which they are permitted to leave full-time education).

Either way offences (case category): Such offences can be dealt with in either the magistrates' courts, or at the Crown Court. These include theft and drug offences. An initial hearing in the magistrates' courts will determine where the case is to be heard.

Fine: The maximum level of fine in the magistrates' courts is £5,000. Costs and compensation may also be imposed. If fined, offenders are also required to pay a victim surcharge of £15.

First hearing: The defendant is appearing in court for the first time in connection with the charges.

HMCS: Her Majesty's Court Service (former name of HMCTS – see below).

HMCTS: Her Majesty's Courts and Tribunals Service.

JAC: Judicial Appointments Commission.

JSB: Judicial Studies Board.

Jurisdiction: The legal power/authority of the magistrates' courts to decide matters before them.

Justices' Clerk: Justices' Clerks are responsible for the legal advice given to magistrates and for the overall performance of Legal Advisers. Although a civil servant, the Justices' Clerk has complete judicial independence when undertaking judicial duties and providing legal advice. Justices' Clerks also possess the powers of a single justice, e.g. in issuing summons, adjourning proceedings and extending bail. As part of their role they are responsible for the training of magistrates, will be heavily involved in regional listing practices, and may also sit on various groups and committees.

Legal Adviser: Legal Advisers are responsible for providing legal advice to magistrates in the magistrates' courts. They advise on the law and procedures, but play no part in decision-making. Other duties include magistrates' training, ensuring that unrepresented defendants understand the procedures to be followed and providing guidance as to the nature of the offence. Legal Advisers can also sit in sessions presided over by a District Judge (MC), though some courts are now also using unqualified Court Associates to sit with District Judge (MC)s in certain cases. Subject to the guidance of the Justices' Clerk, a Legal Adviser also possesses the same independence as the Justices' Clerk in exercising judicial functions.

Listing Officer: Listing is a judicial function. The listing officer is empowered by the judiciary to make any necessary arrangements regarding listing as set out in the listing policy.

Magistrates: Magistrates are unpaid volunteers appointed by the Crown, receiving only expenses and compensation for loss of earnings. They do not usually possess any legal qualifications, but do undergo significant training before taking up their post, and are advised on the law by qualified Legal Advisers. There are around 30,000 magistrates in England and Wales, with 70 being the mandatory retirement age for magistrates.

Magistrates' courts: Magistrates' courts deal with 95% of criminal cases in England and Wales. They also deal with some civil cases and family matters. Cases are heard either by a panel of two/three magistrates, or by a District Judge.

No evidence offered: In summary proceedings, the prosecution may offer no evidence at any stage before the close of the prosecution case. The charge is then dismissed. In committal proceedings, no evidence can be offered at any stage before the moment of committal. The charge is then discharged under Section 6, Magistrates' Courts Act 1980. A discharge is not an acquittal and proceedings could be started again if appropriate.

Probation Officer: The key role of the Probation Officer is to work to rehabilitate offenders through supervision of court orders and conditions placed on release from custody. Other key duties include the preparation of oral and written reports to assist the bench when sentencing and enforcing community sentences.

Prosecutor: The Crown Prosecutor or Associate Prosecutor presenting the case on behalf of the CPS or the representative acting for other prosecuting agencies.

Prison (custody): For adult offenders in the magistrates' courts, the maximum sentence of imprisonment for a single offence is 6 months. If there are two or more "either way" offences sentences may be imposed consecutively to a maximum of 12 months. In the youth court a sentence of imprisonment is called a Detention and Training Order. This can be for 4, 6, 8, 10, 12, 18 or 24 months. Half of the sentence is served in custody and the remainder in the community under supervision.

PSM: Propensity Score Matching.

Public Order (Offence): A range of offences against public order including riot, affray and violent disorder. Relatively minor forms of public disorder such as behaviour causing harassment, alarm or distress can also be prosecuted.

Referral Order: If there is a guilty plea to a first offence in the youth court (and that offence is imprisonable) the only sentences possible are a referral order of 3 to 12 months, a Detention and Training Order (see entry above), an absolute discharge, or a hospital order. Under a referral order the young person attends a referral order panel meeting where a contract is agreed with the aim of repairing the harm caused and addressing offending behaviour. In certain circumstances an extension of the order or second referral order is possible.

Remanded on bail: A defendant may be released on bail to reappear in court at a later date. It can be conditional (for example, stipulating that the defendant has to live and sleep in a specified place) or unconditional. Unconditional bail means the defendant only has to return to court on the specified day.

Remanded in custody: The court may order the defendant to be held in custody until the date of their next court appearance.

Remittal: Magistrates' courts may, if the offender pleads guilty or is found guilty, remit them to another court for sentencing. This is usually done to allow cases to be sentenced together.

Reparation Order: This sentence is available in the youth court. The order is designed to help the young person understand the consequences of offending and take responsibility for their behaviour. Examples of possible reparation include writing a letter of apology or meeting the victim to apologise, repairing criminal damage, cleaning graffiti and collecting litter.

Sent to Crown Court offences (case category): For adult offenders these offences are indictable only, and must be heard at the Crown Court (the offences include murder and rape). These cases are generally sent to the Crown Court from the magistrates' courts at the first hearing.

Session: A day's work in a court room is split into two sessions: morning and afternoon.

Statistically significant: Only findings which were proven to be "significant" at the 95% confidence level were reported on. This means that there is a 95% chance that the differences found are true, e.g. in the length of time taken for District Judges to hear a case in comparison to a bench of magistrates. However, this does not mean that these findings are necessarily important.

Subsequent hearing: The defendant in such a hearing will have already made an appearance in court in connection with these charges.

Summary motoring (case category): Motoring offences that are only eligible to be heard in the magistrates' courts.

Summary non-motoring (case category): Non-motoring offences that are only eligible to be heard in the magistrates' courts.

YOT: see Youth Offending Teams.

Youth cases: The majority of youth cases are heard in the youth court, which is a part of the magistrates' courts. Murder cases are committed to the Crown Court. Certain other offences may be heard in the youth court or the Crown Court, e.g. offences such as robbery, which, in the case of an adult, carries a sentence of 14+ years' imprisonment. In general, the test for jurisdiction in the youth court is whether there is a real prospect of the youth requiring a prison sentence of two years or more.

Youth offending teams (YOTs): Each local authority in England and Wales has a youth offending team. They are multi-agency teams made up of representatives from the police, Probation Service, social services, health, education, drugs and alcohol misuse and housing officers. The YOT carries out an assessment of the needs of each young offender. They try to identify the specific problems that lead to a young person offending, as well as measuring the risk that they pose to others. The YOT aims to address the needs of the young person to prevent further re-offending. They prepare reports to help magistrates and District Judge (in magistrates' courts) sentence, and work with those young people on community orders.

Youth Rehabilitation Order: This combines 18 requirements into one generic sentence. The court selects the most appropriate requirements for each defendant. The YRO aims to simplify sentencing, providing clarity and coherence while improving the flexibility of interventions. The YRO also allows plenty of opportunity for reparation to be included, giving scope for victims' needs to be addressed.

- **Activity Requirement:** This requirement instructs the young person to participate in specific activities or residential exercises for a number of days.
- **Attendance Centre Requirement:** This requirement instructs the young person to appear at a designated attendance centre for a number of hours (as specified in their order).

- **Curfew Requirement:** The young person must remain in a designated place for the period specified in the order. The order can also specify different periods of curfew on certain days. The curfew period will last between 2 and 12 hours on any given day.
- **Drug Testing Requirement:** This requirement can only be attached to a YRO when a Drug Treatment Requirement has also been attached. The young person must provide samples, as directed by their responsible officer, in order to ascertain whether there are any drugs in their body during the treatment period.
- **Drug Treatment Requirement:** The young person must submit to treatment with a view to the reduction or elimination of the young person's dependency on, or propensity to misuse, drugs. The treatment required and specified as part of the order must be either residential or non-residential treatment.
- **Education Requirement:** This requires a young person of compulsory school age to comply with approved education arrangements, e.g. those made by their parent/guardian and approved by the local education authority.
- **Electronic Monitoring Requirement:** The young person may be ordered to wear an electronic tag to enable the authorities to monitor whether or not they are complying with the terms of their order. Such monitoring usually forms part of an Exclusion or Curfew Requirement.
- **Exclusion Requirement:** The young person is prohibited from entering a place specified in the order for a certain period, but no longer than three months.
- **Intensive Fostering:** This programme is funded by the YJB and is an alternative to custody for children and young people whose home life is felt to have contributed significantly to their offending behaviour. Like other community penalties, Intensive Fostering aims to hold a young person to account for their crimes, while ensuring that they receive the support they need within their community to address factors which may have contributed to their offending behaviour. The programme provides highly intensive care for up to 12 months for each individual, as well as a comprehensive programme of support for their family.
- **Intensive Supervision and Surveillance:** This is the most rigorous non-custodial intervention available for young offenders. As its name suggests, it combines unprecedented levels of community-based surveillance with a comprehensive and sustained focus on tackling the factors that contribute to the young person's offending behaviour. It targets the most active repeat young offenders, and those who commit the most serious crimes.

- **Intoxicating Substance Requirement:** The young person must submit to treatment, with a view to the reduction or elimination of their dependency on, or propensity to misuse, intoxicating substances.
- **Local Authority Residence Requirement:** The young person must reside in suitable accommodation provided by or on behalf of the local authority. The order may also stipulate that the young person is not to reside with a particular person.
- **Mental Health Treatment Requirement:** This requires the young person to receive treatment from a registered medical practitioner or psychologist with a view to improving their mental condition.
- **Programme Requirement:** This requirement allows young people to engage in a systematic set of activities at a designated place on a specified number of days. Examples of programmes include anger management and the Knife Crime Prevention Programme (KCPP).
- **Prohibited Activity Requirement:** The young person must not participate in activities as specified in their order on specified days or periods of time. A court may not attach a Prohibited Activity Requirement to a YRO unless it has consulted with the YOT or local probation services.
- **Residence Requirement:** This order requires the young person to reside with a specified person, for example a grandparent (that person's consent must be obtained), or at a specified place (known as a 'place of Residence Requirement') for the specified period. A place of residence requirement may only be included in a YRO if the young person is 16 or over at the time of conviction. The legal parental responsibility for that young person would not change.
- **Supervision Requirement:** This order requires the young person to meet with the responsible officer as and when agreed. When included in a YRO, the Supervision Requirement will remain in force for the duration of the order.
- **Unpaid Work Requirement:** This requirement is only available for young people aged 16 and 17 years at the time of their conviction. When a YRO with an Unpaid Work Requirement is made, the number of hours which the young person is required to work must be specified in the order.

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Appendix A

Supplementary background information

Magistrates' courts

Magistrates' courts deal with 95% of all criminal proceedings in England and Wales, with cases being heard by either a panel of three magistrates (Justices of the Peace) or a single District Judge. The majority of cases heard by those presiding tend to be for less serious crimes, for example motoring offences, criminal damage and public disorder. However, those charged with more serious offences, such as rape and murder, will still be required to attend an initial hearing at the magistrates' courts. Following this, the case will be committed to the Crown Court for trial by jury (or for sentencing if the defendant pleaded guilty).

Magistrates and District Judges cannot normally order sentences of imprisonment that exceed six months, or fines that exceed £5,000. In certain circumstances they are permitted to impose a sentence of 12 months in custody for two or more "either way" offences (to be run consecutively).

Magistrates

Magistrates are lay volunteers from the local community who are not paid a salary, but may claim expenses and an allowance for loss of earnings. Their role dates back to the 12th century when the reigning monarch, Richard I, commissioned certain knights to maintain the peace in unruly areas. Such individuals were responsible for ensuring that the law was upheld and were known as "Keepers of the Peace". In 1361, they were given the official title of "Justices of the Peace" and by this date they had also acquired a number of additional responsibilities, including the authority to arrest suspects, investigate alleged crimes, punish offenders and undertake various administrative tasks. In the 19th century, these responsibilities were passed to the local authorities and the police.

Magistrates are now appointed by the Lord Chancellor on the recommendation of local advisory committees. Such committees will select magistrates based upon interviews, an application form and references, and will seek to ensure that the local bench is representative in terms of gender, ethnicity and social background.

Magistrates are not usually legally qualified. They do, however, undergo a substantial amount of training supervised by the Judicial Studies Board. Furthermore, they are supported by a fully qualified Legal Adviser within the court room, who will advise them on matters of the law. When sitting, one member of the bench (the chairman) will take

responsibility for speaking in court and guiding proceedings – although all three members possess equal decision-making powers.

As well as hearing adult and youth criminal cases, magistrates may also preside over civil matters, in particular family work. Their civil jurisdiction also extends to other matters, e.g. the non-payment of council tax.

There are around 30,000 magistrates in England and Wales and all are required to sit for a minimum of 26 half-days (or “sessions”) per year. The retirement age for all magistrates is 70.

District Judges

District Judges are full-time members of the judiciary who sit alone when hearing cases in magistrates’ courts. Previously known as stipendiary magistrates, their role was created in the mid-18th century to replace corrupt Justices of the Peace in Middlesex. They were appointed to other metropolitan areas in the 19th century – most notably in Inner London, where stipendiaries sat within their court rooms. Their numbers have fluctuated over the years, but have grown more recently in provincial areas. In August 2000, stipendiary magistrates were re-named District Judges in order to recognise their position as members of the professional judiciary.

District Judges are salaried, legally qualified individuals and are appointed by the Queen on recommendation of the Lord Chancellor. They are required to have at least seven years’ experience as a Barrister or Solicitor and will usually have two years’ experience as a Deputy District Judge.

As with magistrates, District Judges hear adult and youth criminal cases, as well as some civil proceedings, such as family work. A number of District Judges are also authorised to deal with extradition proceedings and terrorist cases (most notably at Westminster magistrates’ court).

According to judicial statistics for 2010, there are 143 District Judges currently in post in England and Wales.

Appendix B

Interactions with Legal Advisers by judiciary type

Base: 2,095 adult cases

Question	Response	% of District Judge cases	% of magistrate cases
Did the bench ask the Legal Adviser for advice?	Yes	17	31
Did the Legal Adviser intervene to give advice?	Yes	12	36
Did the Legal Adviser have to correct the magistrates or District Judge after they had announced something?	Yes	2	5
Did the Legal Adviser have to remind the magistrates or District Judge of anything?	Yes	7	10

*All percentage differences between magistrates and District Judges in the above table are significant.

Base: 2,095 adult cases

Question	Number of occasions	% of District Judge cases	% of magistrate cases
Please record the total number of times the Legal Adviser provided advice or guidance during the case	0	76	51
	1	14	24
	2	7	13
	3+	3	12

*All percentage differences between magistrates and District Judges in the above table are significant.

Appendix C

Adult case outcomes by judiciary type⁷²

Outcome	Overall % (N=2,095) (X)	% of District Judge cases (N=910) (A)	% of magistrate cases (1,185) (B)
Financial penalty (costs/ compensation/fine)	33	29	37 XA
Adjourned	30	31	30
Remanded on bail (unconditional)	10	12 B⁷³	9
Remanded on bail (conditional)	10	12 B	8
Commit to Crown Court for trial	9	9	9
Endorsements/Penalty points (motoring)	8	6	9 A
Community sentence	6	6	6
Remanded in custody (prison)	6	6	6
Disqualification from driving (motoring)	5	6	4
Prison	5	7 B	4
Absolute/conditional discharge	5	4	5
Commit to Crown Court for sentence	4	4	3
Dismissed/No evidence offered	2	2	2
Withdrawn/Discontinued	2	1	2
Remittal	1	1	1
Other/Not stated	9	10	8

⁷² For a full description of adult case outcomes, please refer to the glossary.

⁷³ Letters indicate significant differences, though this comparison considers all adult cases, not just matched cases.

Appendix D

Youth case outcomes by judiciary type⁷⁴

Outcome	Overall % (N=181) (X)	% of District Judge cases (N=82) (A) ⁷⁵	% of magistrate cases (99) (B)
Adjourned	31	34	29
Fine	20	21	19
Youth Rehabilitation Order (YRO)	18	27 B	10
Remanded on bail (conditional)	14	11	17
Referral Order	11	11	11
Remanded on bail (unconditional)	8	9	8
Absolute/conditional discharge	7	2	10 A
Detention and Training Order (custody)	6	5	7
Remanded in custody	5	4	6
Dismissed/No evidence offered	4	6	2
Commit to Crown Court for sentence	3	1	4
Commit to Crown Court for trial	3	2	3
Withdrawn/Discontinued	3	1	5
Remittal	2	4	1
Remanded in Local Authority accommodation (conditional)	2	1	3
Reparation Order	1	1	1
Disqualification from driving (motoring)	1	-	1
Endorsements/Penalty points (motoring)	1	-	1
Other/Not stated	7	3	9

⁷⁴ For a full description of youth case outcomes, please refer to the glossary.

⁷⁵ Letters indicate significant differences.