



Ministry  
of Justice

# **Government Response to the Justice Committee's Eighteenth Report of Session 2017-19: The Role of the Magistracy**

October 2019

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# **Government Response to the Justice Committee's Eighteenth Report of Session 2017-19: The Role of the Magistracy**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

October 2019



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# Introduction

1. The Government welcomes the Justice Select Committee's follow up inquiry and report on the role of the magistracy.
2. Magistrates continue to be a central pillar of our world-class justice system. Both the Lord Chancellor and Lord Chief Justice want magistrates to maintain their strong and central role in our transformed and modernised justice system. Every criminal case begins in the magistrates' court, and the magistracy are crucial as the Government takes robust action to tackle crime and make our streets safer.
3. Magistrates are dedicated public servants who give up their valuable time to give back to their local communities by serving on the bench. The Government does not underestimate the immense value of the magistracy, either as a collective or as individuals, and the importance of this public service to our country.
4. We recognise that magistrates have experienced huge changes to their leadership and governance structures, ways of working and to the structure of the support provided to them by Her Majesty's Courts and Tribunals Service (HMCTS). The Government is grateful for the considerable efforts of the magistracy in support of this change and will continue to work closely with the magistracy as we move together towards the reform of our courts system. We will also ensure that the magistracy continue to be considered and consulted in decisions about the justice system.
5. We also recognise that in many areas, Advisory Committees are facing difficulties in recruiting sufficient numbers of new magistrates. We have been working hard to address those difficulties, and will continue to work with the magistracy and Judicial Office to support recruitment. The evidence given to the Committee and your report has given us further insight as we continue this work.
6. This paper sets out the Government's response to the Committee's observations and recommendations, and in some places the views of the judiciary, whom we have consulted where appropriate.

# Magistrates strategy

## Strategy and morale

The Select Committee recommended:

We do not share the then Minister's assessment that magistrates' morale is "on the up". Magistrates are dealing with reduced support and an apparent under-valuation of the time they give as volunteers, against a background of continuous change that many believe to be undermining the principle of local justice. This emphasises the urgent need for a national strategy for the magistracy.

**We recommend that the Government consult the senior judiciary and leadership magistrates to develop and adopt a national strategy for the magistracy at the earliest opportunity.**

We welcome the initiative of leadership magistrates in developing a national strategy. However, their strategic objectives are unlikely to be achieved without the backing of HMCTS funding. We doubt that this initiative can fill the gap created by the Government's failure to develop an adequately funded, overarching national strategy for the magistracy. Merely identifying the magistracy as a component within the Government's strategy for the judiciary as a whole is inadequate to recognise the distinctive and pivotal role of 15,000 magistrates working as unpaid volunteers within the criminal justice system.

As in the 2016 report, **we urge the Government, in consultation with the senior judiciary and leadership magistrates, to develop and adopt an overarching strategy for the magistracy, to include workforce planning and recruitment; promotion of the role to employers and to a diverse range of potential applicants; resources for magistrates' training; and mitigation of the impact on magistrates of court closures.** The strategy must be supported by adequate funding.

**We further recommend that the Ministry of Justice establish a dedicated policy team to oversee all aspects of its support for the magistracy.**



7. The Government considers the magistracy a crucial part of our internationally respected judiciary, and our previous approach has been to incorporate the magistracy into Government's wider judicial strategy. While it is right that the magistracy is not considered in isolation from the wider judiciary and the system in which they operate, we agree that their unique position as lay members of the judiciary and volunteers must be recognised, respected and adequately promoted.
8. To clarify the evidence given to the Committee by the then-Minister, there already exists a policy team with specific responsibility for magistrates - the Judicial Policy team in the Ministry of Justice. The policy team do not, of course, work in isolation, but with colleagues from all over the Ministry of Justice and HMCTS, whom the then Minister referred to in her evidence, and with Judicial Office colleagues.
9. Although we maintain that policy on magistrates must be considered in the context of the wider judiciary, we recognise the unique nature of magistrates and the need to take a strategic view of the magistracy. The Government, through HMCTS and MoJ policy, has been involved in supporting the magistracy in developing a judicial-led strategy for the magistracy. Their strategic objectives cover a number of responsibilities of both the Lord Chancellor and the Lord Chief Justice, and we welcome this work.
10. We are fully supportive of this strategy which has been developed from the bottom up, with input from magistrates across the country. A separate Government strategy risks duplication and the Government does not consider that trying to replicate this existing good work would add further value. Instead we will intensify our work to support the magistracy to deliver their own strategy. We are fully committed to this and to addressing the challenges the strategy seeks to overcome. We will continue to work closely with the magistracy to ensure we are working together to achieve our shared goals. As part of this and prompted in part by the Justice Select Committee report, we are establishing a Magistrates Recruitment and Attraction Steering Group to address recruitment and raise the profile of the magistracy, jointly chaired by MoJ leaders and the Magistrates Leadership Executive.
11. To this end, we have increased the policy resource in MoJ dedicated to magistrates. This will better ensure that the good work going on across the department is co-ordinated and planned to form a coherent and strategic approach that accurately reflects our shared priorities for the magistracy. Our efforts will be particularly focused on increasing recruitment and diversity, and improving morale by ensuring that magistrates' roles are rewarding and meaningful.
12. We understand that the magistracy has experienced significant change in the courts system over the last few years, including the introduction of new technology, and the restructuring of the Advisory Committees, governance and leadership structures. We recognise that change on this scale is always challenging, and the Government greatly

appreciates the professionalism, commitment and resilience shown by the magistracy in adapting to and driving forward this change.

13. We are pleased to note that despite these challenges the vast majority of magistrates still enjoyed their work, according to a survey carried out by Judicial Office in December 2017. 80% of respondents said they had a strong feeling of satisfaction with their role, 89% said they had a strong personal attachment to the role, and 91% said they would recommend the role to friends or colleagues.<sup>1</sup> We are committed to ensuring that today's and future magistrates feel able to express similar levels of satisfaction with their role.

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<sup>1</sup> 2,745 magistrates replied to the survey. Respondents were self-selecting.

## Relationships with District Judges

The Select Committee noted:

**There has been a significant improvement in the relationship between the magistracy and District Judges since 2016. We welcome initiatives taken by members of the senior judiciary to promote collaboration between District Judges and magistrates by, for example, encouraging them to sit as mixed panels.**

14. The relationship between the magistracy and District Judges is a matter for the independent judiciary, however we are grateful for the Committee's comments on the improvements that have been made since 2016.

## Leadership structure of the magistracy

The Select Committee recommended:

We accept the senior judiciary's rationale for changing the leadership structure of the magistracy and recognise that these changes have had insufficient time to bed down, but **stronger effort is required to improve channels of communication to engage with magistrates at ground level.**

Local benches provide local leadership and important pastoral support for individual magistrates and help them make their voices heard regionally and nationally. **Any operational efficiency to be gained from abolishing Local Justice Areas must not negatively affect that position.**

15. Communication between the judiciary remains a matter for the judiciary. The judiciary has, however, advised that current channels of communication used to engage with all magistrates include: senior judicial attendance at the annual conference for bench chairs funded by HMCTS and the annual Magistrates' Association (MA) conference; publication of the bi-monthly 'Magistrate' magazine; fortnightly MA eNews and use of Twitter by the Magistrates' Association to its members; a regular newsletter by the National Leadership Magistrate to all magistrates; and access to the judicial intranet for all magistrates.
16. The Magistrates Leadership Executive (MLE) is developing a dedicated digital store of information that all magistrates can access. It will provide portals for communicating issues at national, circuit/regional and local bench levels and is planned to be launched in October 2019. One of the strategic themes within the judicial-led strategy for the magistracy is communication, with a specific objective to better engage with all magistrates via regular and relevant communications. It is envisaged that the structures being put in place will improve channels of communication. The Ministry of Justice and HMCTS will support the MLE in achieving this objective wherever we can.
17. The Committee also raised the potential impact of abolishing Local Justice Areas (LJAs) on local leadership and pastoral support. Whilst we have no current specific plans to make further changes to Local Justice Areas, we understand that the Magistrates Leadership Executive is keen to work towards a single national bench. We will work closely with them on the issue and ensure that any future consideration of changes will include how to maintain the benefits currently gained from having local benches.

## Recruitment and diversity

The Select Committee concluded:

The current shortfall in the number of magistrates is as frustrating as it was foreseeable. The Government's failure to undertake the workforce planning exercise the Justice Committee recommended in 2016 has led to the current predicament. The new three-year strategy for magistrate recruitment and other initiatives to speed recruitment are welcome, but it is much to be regretted that it has taken a near crisis to prompt the Government into belated action.

We are disappointed that the Government's acceptance, in 2016, that "the time is right" to consider carefully its approach to recruiting magistrates and its acknowledgement of the need for more proactive encouragement of applicants from all backgrounds has led to little progress so far. We remain unconvinced that the various steps mentioned by the then Minister amount to a sufficiently strategic approach.

**We recommend that the Government, working with the senior judiciary, revisit as a matter of urgency the 2016 Committee's recommendation of a wider and more proactive advertising strategy for potential applicants to the magistracy.**

**We recommend that the Judicial Diversity Statistics be expanded to include data relating to the professional, social and educational background of magistrates, and that data collection be resumed on magistrates who declare a disability.**

### Recruitment

18. Recruitment of new and diverse magistrates is the Government's top priority for the magistracy. We are working and will continue to work closely with the magistracy to develop a new recruitment strategy, building on previous initiatives to streamline recruitment. Our objective is to achieve both an increase in overall numbers, and a more diverse magistracy to better reflect the society it serves.
19. While the number of magistrates has reduced considerably in the last decade, it is important to look at these figures in context and to reiterate that the workload of the magistracy had also fallen over this time. This reduction in workload naturally reduced the need to recruit as many new magistrates.
20. We recognise, however, that recruitment has fallen too far, and we have been taking proactive steps to rectify that by increasing our recruitment activities since 2015, including taking into account the recommendations of the previous Committee in 2016. The length of the process to recruit, appoint and train new magistrates, however,

means that decisions to increase recruitment do not have an effect in terms of the number of magistrates sitting until around 18 months later.

21. Whilst progress is being made, we are far from complacent and acknowledge that a greater focus on recruitment is needed, not least because of the age profile of the current magistracy. As of 1 April 2019, 52% were aged 60 and above,<sup>2</sup> and so will reach the statutory retirement age in the next ten years. Plans to recruit an additional 20,000 police officers will also mean that more magistrates are required to judge the additional cases brought to the magistrates' courts.
22. Advisory Committees have set ambitious similarly targets for the recruitment of new magistrates this year, to those achieved last year, when the over 1,000 new magistrates were appointed last year. The Government has also been working to develop a new workforce planning tool that will allow us to plan more effectively for long term recruitment needs. This work is still in progress but the model brings together data and analysis about magistrates in post, expected resignations and retirement rates, with modelling about likely demand in the courts, allowing us to build a longer-term view of the shape of the magistracy.
23. A huge amount of work has been undertaken in the last three years to improve the recruitment process, the structure of the Advisory Committees responsible for recruitment and the materials available to those Advisory Committees to aid recruitment. The Government carried out a public consultation in 2017 on the mechanisms and governance around the recruitment and conduct of magistrates, leading to a number of significant changes. Working with Judicial Office and the magistracy, we have:
  - Changed the structure and organisation of Advisory Committees, creating 23 Recruitment Advisory Committees, dedicated solely to recruiting new magistrates;
  - In October 2018, introduced a new process to allow people to apply directly to the Family Court, rather than requiring two years' experience in crime, significantly expanding the eligible pool for family magistrates;
  - Developed and implemented a new recruitment process to ensure national consistency and reduce the length of time it takes to recruit a new magistrate. This included a fundamental shift away from arbitrary cut off dates based on application numbers, to a clear deadline for applications, and the introduction of a paper sift to ensure only appropriate applicants are interviewed;
  - Invested in branding and advertising materials, including a digital recruitment toolkit to support advisory committees in their recruitment activities, creating case studies and new imagery of real magistrates to represent the diversity of the magistracy, and publishing a full page editorial in the Metro newspaper;

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<sup>2</sup> <https://www.judiciary.uk/publications/judicial-diversity-statistics-2019-2/>

- Appointed a senior leader within HMCTS to have national responsibility for Advisory Committees and the magistracy, and seven senior lawyers to oversee and manage changes to recruitment in each region; and
- Supported the development of a young magistrates' group.

24. To ensure that we continue to make progress with recruitment. The Government will, working with the magistracy:

- Establish a Magistrates Recruitment and Attraction Steering Group jointly headed by the Ministry of Justice and leadership magistrates, to lead activity on promoting the magistracy and increasing recruitment, with a particular focus on increasing diversity. This Steering Group will meet quarterly, comprising members from MoJ, HMCTS, Judicial Office and magistrates from across England and Wales. It will work to gather information from the magistracy at local and national levels, enable the sharing of best practice, and ensure that we are using our resources to maximise value for money, with smart and targeted action where it is most needed and can be most effective. The ultimate objective for this group will be to raise the profile of the magistracy at local and national levels, leading to an increase in both applications and appointments of more diverse magistrates.
- Build on the recent end to end review of the recruitment and appointment process, to identify further areas for potential improvement, continue our work to streamline the process, and help the Steering Group determine where to best target our resources to make the biggest difference.
- Improve the information available to potential applicants about the magistracy, to provide better and clearer information on what the role entails, what the application process involves and the vacancies that are available in a particular area.
- Review the existing eligibility criteria, to ensure that we are not excluding potential applicants unnecessarily.
- Work with Advisory Committees to understand what recruitment activity has been successful in local areas, and ensure that good ideas and best practice are shared across the magistracy, including in areas that struggle to attract sufficient candidates.
- Work with communications and marketing experts to develop greater insight and an evidence base to help us target marketing and recruitment activity more effectively.
- Develop a targeted employer strategy, which will expand our work with employers to emphasise both the societal value and the benefits of the skills and experience that their employees can gain by serving as magistrates. This work will promote the profile of the magistracy with the aim of recruiting more diverse members.

### **Diversity**

25. The Government is absolutely clear that increasing diversity within the magistracy is a key priority. We have made good progress towards a more diverse magistracy in recent years. The most recent statistics were published in July 2019, and showed that

amongst magistrates in post on 1 April 2019, 12% of magistrates declared themselves as being from a BAME background (an increase of four percentage points since 2012), and 56% of magistrates were female (an increase of five percentage points since 2012).

26. We recognise, however, that there is more that can be done to ensure we have a magistracy that better reflects the communities they serve, particularly in recruiting younger magistrates to balance the age profile of the magistracy, and more BAME magistrates. Since the last Committee report was issued, we have taken a number of steps to raise the profile of the magistracy with under-represented groups. For example, relationships are being forged with universities and religious centres throughout the country to raise the profile of the magistracy among young people and BAME communities to ensure we reach a wide representation of society. We have also designed socially inclusive recruitment and advertising materials that Advisory Committees are encouraged to use, highlighting the fact that people from all backgrounds and walks of life are encouraged to apply.
27. The Government is committed to raising the profile of the magistracy and do more with the local community and public services to ensure that the role and responsibilities of magistrates are understood more widely, to generate greater interest and applications that are more reflective of society. Increasing diversity will be a core strategic objective for the new joint Steering Group, and our plans to expand recruitment offer an exciting opportunity to make the future magistracy more diverse.

### **Diversity data collection**

28. The Committee also recommended that the collection of diversity data be expanded, and that data collection on disability should be resumed.
29. To clarify this position, disability information for the judiciary is currently collected on a non-mandatory basis by self-declaration. Disability information of magistrates is not currently presented as part of the Judicial Diversity statistics as it is not possible to differentiate between those without a disability and non-respondents.
30. We have made changes to the collection forms of diversity data to ensure the collection of more complete information going forward, including on disability, but this is currently only for new magistrates and does not take into account current magistrates.
31. Disability information may change over time. A magistrate's diversity information is currently only taken at point of entry unless they contact the relevant HR staff to update their disability information should their status change.
32. We are investigating how best to expand the collection of data from existing magistrates, including socio-economic background.



## Employed magistrates

The Select Committee recommended:

We are greatly concerned about the barriers facing employees who want to become magistrates, which undermine efforts to widen the age profile of the magistracy.

**We recommend that the Government introduce a kitemark scheme for employers and bring forward proposals to legislate for mandatory employee release for magisterial duties.**

33. Existing legislation (section 50 of the Employment Rights Act 1996) already provides that employers must allow their employees reasonable time off to serve as magistrates.
34. The Government recognises the barriers which exist for many employees wanting to become a magistrate and are keen to mitigate these wherever we can. A working group has been established to look at how best to do this and the Steering Group will also consider how to raise the profile of the magistracy with employers as part of its remit.
35. As part of our employer strategy, we will also expand our work with employers to understand the barriers from their perspective. We will emphasise both the benefits of the skills and experience that employees can gain from volunteering in this way, and the valuable social contribution to communities that businesses can make by promoting the magistracy, and supporting their staff to train and serve as magistrates.
36. The Committee has repeated its 2016 recommendation that a kitemark scheme for employers should be introduced; as part of our work with employers, we will consider the merits of such a scheme and whether this would be an effective way to incentivise employers to better support employers who wish to become magistrates. We will, of course, continue to support the Magistrates' Association "Employer of the Year" award.

## Magistrates' expenses

The Select Committee recommended:

We are disappointed by the delay in reviewing the Financial Loss Allowance, leading to a situation in which some magistrates are effectively subsidising HM Courts and Tribunals Service. This is clearly unacceptable.

**The Government must fulfil its commitment to completing the review of the Financial Loss Allowance by the end of 2019.**

37. The Government committed to begin a review of magistrates' expenses in 2019 and work has now begun. The review will consider a range of magistrates' expenses, including the Financial Loss Allowance. We will be working with magistrates' representative groups to engage and seek the views of the magistracy. Throughout the review, the Government will need to balance addressing evidence of issues with the current policy and rates, against the need to secure value for money for the taxpayer and to ensure that rates have regard to HMRC rules on the tax treatment of expenses.
38. We expect the review to conclude by Spring 2020.

## Retirement age of magistrates

The Select Committee concluded:

We welcome the decision in principle of the Judicial Executive Board to allow magistrates to sit beyond the age of 70, subject to business need and continuing competence. We see no reason for a distinction to be made between magistrates and the paid judiciary in this regard.

39. The Government is aware of the proposals to allow some magistrates to sit beyond the mandatory retirement age as a potential way to meet business need and to make good use of experience.
40. Any change to mandatory retirement age or to allow business-based extensions beyond that age would require primary legislation, proposed by the Lord Chancellor.
41. We are positively considering the implications of a change to the retirement age for all judicial office holders, including magistrates, and will consult publicly on this in due course. The implications of any change to the retirement age for the magistracy will need to be considered alongside that. As part of this work, we will need to take account of the current and future need for magistrates, as well as the implications for the diversity of the magistracy.

## Magistrates' training

The Select Committee recommended:

We are concerned by the suggestion made by leadership magistrates that, taken as a whole, magistrates' training—however funded and delivered—falls short of fulfilling the training needs of the magistracy. The importance of adequate training in supporting magistrates' morale and building their confidence cannot be underestimated.

**We recommend that the Ministry of Justice increase its funding to HMCTS and the Judicial Office to allow additional investment in magistrates' training. We further recommend that, when considering staff resources for courts, HMCTS give greater recognition to the important training role that Justices' Clerks and legal advisers fulfil in relation to magistrates.**

**We also recommend that attendance at evening or weekend training sessions should qualify for expenses and Financial Loss Allowance on the same basis as sitting days.**

42. Magistrate training is a matter for the judiciary. The Judicial College supports a 'blended' approach to training, using eLearning to supplement face-to-face training delivered by HMCTS legal advisers using materials produced by the College. This approach maximises its effectiveness and can provide a more flexible, timely and more readily available training resource.
43. Core and essential magistrate training material for HMCTS is generally designed and published by the Judicial College for 'cascade' use, which means the majority of magistrate training is delivered locally by HMCTS. The annual training requirement for magistrates is agreed between the Judicial College and HMCTS. HMCTS funds the agreed training requirement and will increase funding where this is needed. Funding for this does not come from the Judicial Office budget. The Judicial College monitors the delivery of the minimum training requirement by HMCTS.
44. HMCTS recognises the important role legal advisers play in the facilitation of training for magistrates. Facilitation of magistrate training by legal advisers is provided for in the annual legal adviser resource allocation. HMCTS is currently reviewing the legal adviser resourcing process and this essential role will continue to be recognised and funded. There has been a shift of training provision from external venues to HMCTS accommodation which has reduced costs. There has been no change for many years in the amount of training that magistrates are required to do to maintain competence. It should also be noted that over time the budget arrangements within HMCTS have

changed and consequently it is not possible to look at costs from year to year on a truly comparative basis.

45. There are a small number of courses delivered directly by the Judicial College (bench chairs, family panel chair, Training, Authorisations, Approvals and Appraisals Committee chair; essentially the training for bench officers/leadership magistrates) which are delivered by the College on exactly the same basis as for the salaried judiciary, given the national roles. The funding for this training is within the College funding amount, and separate from the HMCTS funding referred to by the committee.
46. In response to the recommendation on expenses, magistrates are entitled to claim for Financial Loss Allowance where financial loss occurs, due to loss of earnings or carer costs, as a direct result of them being required to perform judicial duties – this includes training sessions, including any held during the evening or at weekends. However, if no financial loss occurs (when, for example, the training session occurs outside of work hours), Financial Loss Allowance cannot be claimed.
47. Where travel expenses have been incurred performing judicial duties, including training sessions, these can be reimbursed.

## The appraisal scheme for magistrates

The Select Committee recommended:

We are concerned by evidence indicating that the new appraisal scheme for magistrates has shortcomings similar to those of the previous scheme and we welcome the steps being taken by the Magistrates' Leadership Executive to align appraisals with training. In particular, we believe appraisal should focus on good or improved performance rather than the maintenance of minimum standards of performance.

**We recommend, as did our predecessor Committee in 2016, a mandatory scheme for continuing professional development linked to the scheme for magistrates' approval, and we request, in the response to this Report, an indication of the range of CPD that might usefully be provided and the funding that might be required for these options.**

48. The appraisal scheme for magistrates is a matter for the judiciary. The new appraisal forms are a comprehensive statement of identified tasks and behaviours which reflect the competences all magistrates are expected to demonstrate under the framework. This ensures consistency for magistrates and appraisers, and allows the Training, Approvals, Authorisations and Appraisals Committees (TAAACs) to make fully informed decisions. As important are the narrative sections of the form which capture discussion on examples of good practice, positive feedback to the appraised and any training and development needs with which the TAAAC can assist.
49. In addition, post-court reviews are a fundamental part of the personal development process and encouraged for every single court sitting. This is an opportunity for the bench to reflect on and consider improvements to individual and collective performance. An exchange of feedback is encouraged. Magistrates are expected to make a note of training or development needs identified and necessary actions. These are then referred to the deputy justices' clerk/TAAAC.
50. Engaging in ongoing learning and development, part of the competence framework, is embedded for all magistrates and is one of the identified tasks and behaviours set out in the appraisal forms. All new magistrates as part of their induction training are encouraged to undertake development, review their learning and keep a development plan and feed in to appraisal discussions. All new magistrates are supported by an experienced mentor for the first year of sitting.

# Court reform programme

## The court reform programme and magistrates' court closures

The Select Committee recommended:

The programme of court closures has created challenges for magistrates that have not necessarily been recognised and has led many to worry about the impact on other court users. We intend to return to this issue in our forthcoming report on court and tribunal reforms.

**We recommend that, as soon as practicable, the Ministry of Justice begins quarterly publication of national data on "failure to appear" rates in magistrates' courts, broken down by region and by individual courts.**

51. The decision to close a court is never taken lightly. Court closures have taken place following a public consultation and only when the Lord Chancellor was satisfied that effective access to justice could be maintained. We have closed courts allowing for resources to be concentrated into a smaller number of better quality and more flexible buildings. The courts which have closed were either underused, dilapidated or too close to another court. Continued access to justice will be the top priority when making decisions about the future of courts and tribunals buildings.
52. HMCTS released figures on failure to appear warrants in the Fit for the Future consultation response. These did not show a significant increase in the numbers of failure to appear warrants being issued over the time period covered since 2012 which included a significant number of court closures. In line with the Committee's recommendation, we intend to begin publishing statistics on failure to appear warrants quarterly. We will publish the first set of statistics in December this year and will be keen to hear feedback from users for the future development of these statistics.

## Digital processes and video links

The Select Committee noted:

Our evidence suggests that, while magistrates do not object in principle to the introduction of digital processes and video hearings, many have important concerns relating to access to justice, as well as concerns about the effect of reducing HMCTS staff at courthouses. We will consider these issues in more detail in the course of our inquiry into court and tribunal reforms.

53. As with decisions about HMCTS's physical estate, maintaining access to justice is the Government's top priority as we work towards a modernised system.
54. Video hearings have the potential to reduce disruption, costs and inconvenience associated with court users having to travel back and forth to court, or spend time in a waiting room to progress a straightforward matter. They could also allow urgent hearings to take place even when those involved are distant from one another. The arrangements we are working on will enable people to use their own computers, without the need for participants to access specialist video conferencing equipment.
55. Video hearings should enable courts to deal with certain proceedings, particularly progress hearings, in a more proportionate, flexible and efficient way. But video will only be suitable for some types of hearing and the final decision on whether a video hearing is appropriate will always be a judicial one, based on the specific circumstances of the case.
56. We look forward to receiving the Committee's full report of their inquiry into our court and tribunal reforms.



## The use of alternative court venues

The Select Committee recommended:

Since the 2016 Justice Committee report, there has been surprisingly little progress in developing alternative court venues to mitigate the impact of court closures, with the exception of limited pilot projects. We recognise that certain types of case may require the security standards of a conventional court room, but that many do not, and we believe that a triage system could identify suitable cases, particularly those where a vulnerable party is involved.

**The new principle for identifying supplementary venues is a valuable starting point, but we recommend that HMCTS take urgent steps to put this principle into practice, with a particular focus on locations where court closures have had the greatest impact.**

57. The Government is committed to ensuring access to justice and we are investing in making this easier for individuals by providing alternative routes, included on-line, digital and video. We recognise that in some cases court closures can mean increased travel times for some people, but we are committed to a making sure that everyone who needs to access the court and tribunal estate should be able to do so.
58. We agree that supplementary venues can help in some cases and this is considered carefully for all court closures and as part of the individual public consultation on court closures that are proposed. So far, we have established supplementary provision in a number of places in non HMCTS buildings or through the provision of a video link, for example in Northallerton, and are keeping others under review.

# Expanding the role of magistrates

## Magistrates' sentencing powers

The Select Committee recommended:

Our report on Prison population: 2022 welcomed the Government's change of direction on the use of short prison sentences. We consider that short custodial sentences are less effective than community sentences, but in cases where custody is unavoidable we consider that magistrates should have the power to impose custodial sentences of up to 12 months in cases that would otherwise be sent to the Crown Court for sentencing.

**As part of its review of sentencing, the Government should implement this measure, subject to establishing a positive evidential basis for doing this from a suitable modelling exercise on the effects of such a step.**

59. As the Committee will be aware, the Prime Minister announced in the Summer a rapid internal review of the sentencing framework. Based on the findings of the review, the Government will be bringing forward proposals for a comprehensive package of legislative reform. This will include amending the automatic release point for serious sexual and violent offenders, introducing Alcohol Abstinence and Monitoring Requirements across England and Wales, starting in 2020, and reforms for community penalties that offer an appropriate level of punishment, while tackling the underlying drivers of offending. It is very important to ensure that issues such as mental health and drug and alcohol addiction are addressed. Within that context, we agree with the Committee that any extension of magistrates' courts sentencing powers needs a clear evidence base. We have always been clear that increasing magistrates' custodial sentencing powers could have a range of knock-on effects on the criminal justice system. As we told the Committee's predecessor in 2016, modelling these relies on a range of assumptions that are complex and difficult to quantify accurately.

60. We would reiterate too that simply commencing the relevant provisions in the Criminal Justice Act 2003 to increase magistrates' custodial sentencing powers for either way offences would not be a straightforward matter, as these were designed in the context of the "custody-plus" sentence which was never commenced. Given the wide-ranging issues involved, we are unable to commit to any extension of magistrates' custodial sentencing powers at this stage.

## Magistrates' confidence in community sentencing

The Select Committee noted:

We are pleased that the Government's response to its consultation on probation services acknowledges the need to improve the confidence of sentencers in probation delivery. We expect the Government to clarify, by the autumn of this year, its strategy for increasing sentence confidence in community sentences.

61. Confidence in community sentencing starts with confidence in the probation services that deliver them. The Ministry of Justice took care to understand the concerns of sentencers regarding probation as part of the public consultation: Strengthening Probation, Building Confidence. We are determined to ensure that our planned reforms address these concerns and deliver a probation system that sentencers and the public have confidence in.
62. We set out in our response to the consultation, published on 16 May 2019, our proposals for streamlining probation delivery and improving the way partners in the system work together to deliver sentences served in the community. These will not only raise the quality of service delivery, but should also address sentencer concerns by improving the flow of information provided to the courts at the pre-sentence report stage. This will improve sentencers' visibility of community requirement interventions, necessary to properly inform sentencing decisions and raise confidence. By bringing the responsibility for supervision of all offenders under one organisation, the National Probation Service, this will improve communication around compliance and enforcement between Offender Managers and sentencers, which we know is a key area of concern. Our plans will also facilitate more sharing of positive outcomes by probation with sentencers who often only see cases where community sentences have failed.
63. We also recognise that sentencers have raised concerns over the quality and availability of rehabilitative interventions delivered by probation services in the community. We are addressing this by increasing wider availability and awareness of Accredited Programmes as the intervention of choice for eligible offenders, aiming to ensure that NPS court staff identify all eligible cases at the pre-sentence stage and propose an Accredited Programme when there are no barriers to attendance. Our probation reforms will ensure other rehabilitation interventions are available in every region, covering a defined range of need areas which evidence suggests are either strongly associated with reoffending or which provide the stabilisation that an individual needs. We are developing a Dynamic Framework to ensure a wide range of providers are involved in delivering good quality rehabilitation work, including specialist and

voluntary organisations with a strong track record of helping offenders turn their lives around.

64. We are working closely with health partners to support wider use of treatment programmes, and to ensure that offenders' health needs are identified and that information is made available to courts to support sentencing decisions.

65. The Draft Operating Blueprint published by the Probation Reform Programme in June 2019 built on the proposals within our consultation response and set out a range of specific measures around sentencer confidence. These are aimed at improving the quality of pre-sentence advice to court; encouraging greater engagement between probation providers and sentencers; and enhancing sentencers' understanding of community sentence delivery to ensure sentence requirements are tailored to the specific needs of offenders. We will provide further detail on these proposals as we develop a target operating model for the future system.

## Additional roles for magistrates

The Select Committee noted:

The potential value of magistrates' involvement in problem-solving approaches is well illustrated by the Northamptonshire example drawn to our attention. We welcome the Government's willingness to explore whether elements of a problem-solving approach, including court progress reviews, might be used to contribute to better outcomes for offenders in appropriate cases.

66. The Government is keen to support areas like Northamptonshire who wish to adopt innovative approaches such as improved information sharing between agencies and the court.
67. The youth justice system, in particular, includes a range of problem solving approaches in line with its statutory aim to prevent offending by children and young persons. This includes a statutory requirement for the court to consider the welfare of the child when sentencing to properly understand the child's circumstances and needs. The Crime and Disorder Act 1998 requires each local authority to have a multi-agency Youth Offending Team (YOT) which have amongst other statutory responsibilities, the duty of the 'responsible officer' to supervise a child or young person sentenced to a youth rehabilitation order or to supervise a young person on licence having served a term of detention and to implement referral orders. The role of supervision includes rehabilitation work to focus on addressing the underlying causes of a child's offending behaviour. The responsible officer also has the statutory power to bring breach proceedings before the court for failure to comply with a sentence.
68. We welcome insights from Northamptonshire and other projects such as the Sefton Complex Case Court, where magistrates incorporate voluntary based reviews and have regular oversight of community orders.
69. We recognise that elements of the problem-solving approach, including court progress reviews, might contribute to better outcomes for offenders in appropriate cases. Currently, the Drug Rehabilitation Requirement (DRR) imposed as part of a community sentence or a suspended sentence order specifically allows for the court to order review hearings to hear information about an offender's progress.
70. Problem-solving approaches are being employed to address the underlying mental health and/or substance misuse issues of offenders and divert these vulnerable people away from custody where appropriate. This work aimed at supporting individuals with such complex needs includes the use of Community Treatment Sentence Requirements (CSTRs) imposed as part of a community sentence or suspended

sentence order for adults as an alternative to imposing an immediate custodial sentence. NHS England's Liaison and Diversion (L&D) services work in partnership with other criminal justice agencies to identify offenders who might be suitable for diversion.

71. The CSTR protocol has been introduced to support the increased use of DRRs, alongside Alcohol Treatment Requirements and Mental Health Treatment Requirements (ATRs and MHTRs). The protocol sets out what is expected from all relevant agencies to ensure improved access to treatment for offenders who need it. It has been tested in five areas across England (as health is devolved in Wales) – these sites are Milton Keynes, Northampton, Plymouth, Birmingham and Sefton. The CSTR Process Evaluation has shown encouraging progress in the sites with over 440 CSTRs ordered during the testing period and strong partnerships identified as a key aspect of the programme's success. In light of this, the CSTR programme is due to expand in Autumn 2019 to include Greater Manchester and London.
72. The Sefton site (also the Complex Case court mentioned above) is District Judge led. In order to support engagement and compliance to the order, the court holds regular reviews for DRRs for those sentenced to this requirement.
73. The roll-out of L&D services supports our efforts to intervene early for vulnerable offenders and divert them into services that address the underlying causes of offending. These services place clinical staff at police stations and courts to identify and assess offenders for a range of vulnerabilities and make referrals to treatment and support. This means that, where appropriate, an offender may be diverted away from the criminal justice system altogether, away from charge, or from a custodial sentence to a CSTR. L&D is currently operating across 92% of England with full roll-out expected by 2020/21.



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