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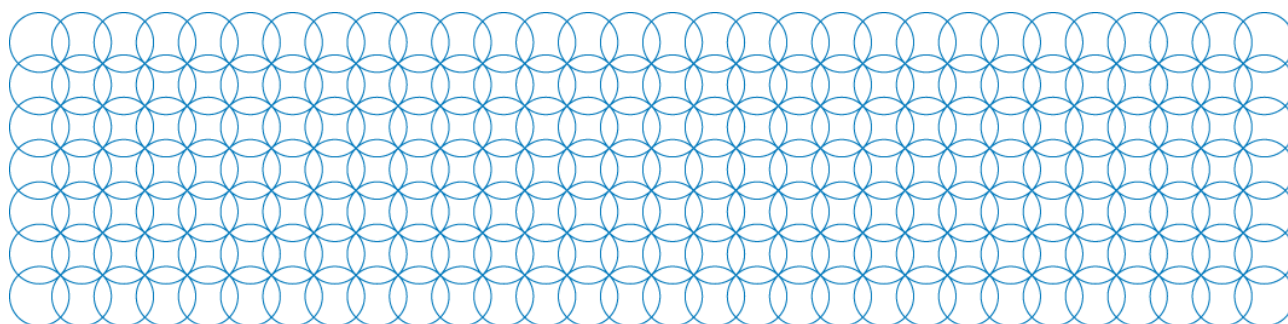
HM Courts &
Tribunals Service

Mechanisms and Governance for Overseeing the Recruitment and Conduct of Justices of the Peace

Proposed changes to the organisation,
management and functions of Advisory
Committees on Justices of the Peace.

This consultation begins on 12 October 2017

This consultation ends on 23 November 2017





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Mechanisms and Governance for Overseeing the Recruitment and Conduct of Justices of the Peace

Proposed changes to the organisation, management and
functions of Advisory Committees on Justices of the Peace

A consultation produced by HM Courts & Tribunals Service, part of the Ministry of Justice.
It is also available at

www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

About this consultation

To:	This consultation is aimed primarily at Advisory Committee members, Lord Lieutenants, the Judiciary and Justices Clerks however we welcome views from any interested party.
Duration:	From 12/10/17 to 23/11/17
Enquiries (including requests for the paper in an alternative format) to:	Legal Operations Team HM Courts & Tribunals Service Post point 2.16, 102 Petty France London SW1H 9AJ Email: legal.operations@hmcts.gsi.gov.uk
How to respond:	Please send your response by 23 November 2017 to: Advisory Committees Consultation HM Courts & Tribunals Service Post point 2.13, 102 Petty France London SW1H 9AJ Tel: 07951 328 729 Email: legal.operations@hmcts.gsi.gov.uk
Additional ways to feed in your views:	A series of stakeholder meetings is also taking place. For further information please use the "Enquiries" contact details above.
Response paper:	A response to this consultation exercise is due to be published by February 2018 at: www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

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Introduction

This paper sets out for consultation a number of options for changes to the organisation, management and functions of Advisory Committees on justices of the peace. The consultation is aimed at those individuals and groups with an interest in how the recruitment of magistrates and the investigation of disciplinary matters should be arranged in the future.

A Welsh language consultation paper is available at

www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

Copies of this consultation paper are being sent to:

Advisory Committee members

Criminal Procedure Rule Committee

Family Justice Council

Family Procedure Rule Committee

Judicial Appointments and Conduct Ombudsman (JACO)

Judicial Conduct Investigations Office (JCIO)

Justices' Clerks

Justices' Clerks' Society

Judicial Office

Lord Lieutenants

Magistrates

Magistrates' Association

National Bench Chairmen's Forum

This list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper

Advisory Committees and the rationale for change

There are currently 44 Lord Chancellor's Advisory Committees on Justices of the Peace (Advisory Committees) in England and Wales. Each Committee has responsibility for one or more of the 75 local justice areas (LJAs) which are the current geographical areas used for the distribution of work in magistrates' courts. On appointment, justices of the peace are assigned to one or more local justice areas to carry out their duties.

Advisory Committees are non-statutory public bodies that act on behalf of the Lord Chancellor and Lord Chief Justice. The Committees' functions are set out in summary in Part 1 of the Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace (The Directions)¹. Through their two main functions, they play a valuable role in securing and maintaining the reputation of the magistracy and the justice system as a whole. The two key functions are:

- **recruitment and recommendation of persons for appointment** by the Lord Chief Justice as Justices of the Peace, under s.10 Courts Act 2003 (as amended). This includes managing the recruitment process, from initial advertising to final recommendation for appointment, a process that is subject to the principles of public appointments as set out by the Office of Commissioner for Public Appointments (OCPA); and
- **investigation of complaints alleging personal misconduct** by Justices of the Peace, under the Judicial Discipline (Prescribed Procedures) Regulations 2014 and the Judicial Conduct (Magistrates) Rules 2014. This involves liaison with Bench leaders regarding pastoral intervention, full consideration of, and, where necessary, investigation of complaints and potentially a recommendation for removal from the role. This process is subject to review by the Judicial Appointments and Conduct Ombudsmen (JACO).

The membership of each committee normally comprises:

- a Lord Lieutenant, invited by the Lord Chancellor and Lord Chief Justice to chair the committee for their county;
- magistrates, who make up two thirds of the membership and are appointed via a selection process; and
- lay members, who make up one third of the membership and are appointed in accordance with the code of practice issued by OCPA.

In addition, each Advisory Committee is supported by a Secretary. Since 2012 this role has been held by a Justices' Clerk, with other administrative support provided by HMCTS.

Changes to the work and organisation of magistrates' courts

The way in which magistrates work and how they are organised has changed significantly in recent years. However the organisation and functions of Advisory Committees, has remained largely unchanged.

¹ <https://www.judiciary.gov.uk/publications/advisory-committees-justices-peace/>

There has been a gradual, but growing, trend for smaller LJAs to merge into larger areas, and listing has become more efficient. Cases are now being heard in fewer courthouses and work is increasingly carried out digitally and across wider areas. Further, a smaller workload and improved case management means the amount of court time, and the numbers of magistrates necessary to carry out the work, has reduced over recent years. Further change in the criminal jurisdiction is anticipated. The judicial leadership structure is currently under review in order to facilitate the creation of a single magistrates' court and greater alignment with the Crown Court.

Whilst Advisory sub-committees have altered because of Local Justice Area mergers, the geographical boundaries of the parent Advisory Committees have not changed and as a result there continues to be an uneven spread of business among them. Irrespective of any changes to judicial leadership structures, there is a high likelihood that, without modernisation, the existing disparity in volumes and types of activity across different Committees will increase.

In February 2017, HMCTS announced the creation of a new senior leadership structure for lawyers, under which a new regional operating model will be developed, as part of the wider reform of the courts and tribunals, with a Head of Legal Operations taking the regional lead. As justices' clerks currently act as secretaries to their local Advisory Committees, changes to the role will require new arrangements for the ongoing support provided to Advisory Committees.

The work of the Single Family Court continues to grow and this has resulted in a significant increase in the demand for magistrates to sit in that jurisdiction. The reduced number of magistrates needed to deal with general criminal and civil work has meant that recruitment of new magistrates has diminished significantly, reducing the pool from which family magistrates can be selected. In light of this issue the President of the Family Division supports direct recruitment of magistrates to the Single Family Court (as opposed to requiring new magistrates to be assigned to one or more LJAs and having to serve a two year qualifying period in crime before seeking authorisation to sit as a family justice).

Importantly, the Government has previously announced its intention to reform the current system of local justice areas and strengthen the Lord Chief Justice's role in making arrangements for the organisation of magistrates. This would establish a single magistracy that aligns more closely with other judicial structures. This would impact upon judicial leadership structures in the magistrates' courts, which would in turn impact upon the arrangements required to enable Advisory Committees to carry out their recruitment, pastoral and conduct functions because their current geographical boundaries, too, would be removed.

The proposals

HMCTS and the Senior Judiciary have a shared vision to modernise and upgrade our justice system so that it works even better for all court users, judicial and non-judicial, and including victims and witnesses.

In December 2016 HM Courts and Tribunals Service (HMCTS) set up a working group to consider what changes might be required in relation to the organisation, management, and functions of Advisory Committees on Justices of the Peace in light of the recent and proposed changes to the magistracy and its work. The group included members drawn from the various bodies interested in the changes: Lord Lieutenants, the Judicial Office, Advisory Committees, Justices' Clerks, the Magistrates' Association, the National Bench Chairmen's Forum, the Judicial College, MoJ Policy and the Justices' Clerks' Society.

The remit of the working group was to identify and discuss options for how recruitment of magistrates and the investigation of disciplinary matters – the two main functions of the committees – should be managed in the future. The working group considered options under the headings of: functions, structures, support and organisation, and processes management and administrative support. The working group recognised that further change to the management and organisation structures of the magistracy is likely in the future. This was reflected in their considerations.

Whilst the views of members differed on the extent of change required, all members acknowledged the excellent work carried out by Advisory Committee members and recognised the skills and expertise of Committee members on the working group. In light of that, it was agreed that Advisory Committees should continue to be the mechanism for dealing with matters of recruitment and discipline for magistrates, and the following principles were adopted to guide the work:

- any changes made should ensure that Advisory Committee members have a role which is rewarding and substantial enough to retain their competence;
- the work of the committees should be supported by knowledgeable staff and efficient processes; and
- Lord Lieutenants should, as the personal representatives of the sovereign, retain a role within Advisory Committees should they wish to do so.

1. Functions

The current responsibilities and functions of Advisory Committees are set out in Part 1 of The Directions, which were last reviewed in 2015. Investigations into complaints of misconduct are governed by the Judicial Discipline (Prescribed Procedures) Regulations 2014 and the Judicial Conduct (Magistrates) Rules. Other functions are designated to the Advisory Committee by the Lord Chancellor and Lord Chief Justice at their discretion.

A number of functions specified within the Directions are shared by the Advisory Committees and others, such as Bench chairmen, who, under current structures, provide leadership to magistrates within a specific local justice area. Pastoral support for magistrates has improved substantially over recent times with directions and guidance issued to Bench chairmen and magistrates being readily available on the Judicial Intranet. In addition, each region has access to a Judicial Office HR Advisor, who is available to assist Bench chairmen on such matters.

Inevitably, over time some of the functions have become duplicated, or have lacked clarity as to where responsibility should lie. There is therefore scope to streamline functions and remove duplication, to ensure clear lines of responsibility and accountability, whilst retaining a power to escalate to Advisory Committees and ultimately, through them, to the Lord Chief Justice and Lord Chancellor, matters where magistrates are considered to have failed to meet required standards. All functions, as set out in Part 1 of the Directions are described below, with details of any proposed changes.

Advisory committee functions

1. Recruit and recommend to the Lord Chancellor and Lord Chief Justice appointees for the magistracy (within parameters set by HMCTS) and membership of the advisory committee (and any subcommittees).
 - **Proposal:** These key functions will continue to be the responsibilities of advisory committees.
 - Under s.10 of the Courts Act 2003 as amended, the Lord Chief Justice appoints magistrates. The Lord Chancellor determines their terms of appointment. Judicial Office currently makes recommendations as to necessary changes to recruitment procedures, which Advisory Committees must follow. The appointment of advisory committee members is governed by the Directions.
2. Consider the data gathered by the secretary/justices' clerk as part of the annual judicial resource exercise and provide observations regarding possible recruitment numbers, based on the factual data. (Bench chairs and a representative of the Magistrates' Association also contribute to observations).
 - **Proposal:** This function will continue to be a responsibility of advisory committees.
 - Judicial resourcing falls within the Lord Chief Justice's functions under s.7 Constitutional Reform Act 2005, and the Lord Chancellor has a general duty to ensure an efficient and effective system to support the work of the courts (s.1 Courts Act 2003)
 - The data referred to here is sitting and workload data (current and projected). In future decisions regarding recruitment are likely to be taken in a much broader context, taking into account new business models. As the body responsible for recruitment, advisory committees should have input in the workforce planning exercise as they will play an essential role in promoting recruitment.

3. Establish (if needed), and oversee the work of, sub-committees to deal with recruitment and conduct issues.
 - **Proposal:** This function will continue to be a responsibility of advisory committees.
 - It is envisaged that some aspects of Advisory Committee work will continue to be carried out by sub-committees as part of its principal responsibilities, for example, recruitment interviews and conduct investigations. For this reason, this function must remain with advisory committees, irrespective of any changes to the structures of the parent committees.
4. Ensure that magistrates fulfil their undertaking to sit and complete any required training.
5. Draw the attention of bench chairmen and justices' clerks to magistrates sitting too little or too often, and take action accordingly.
 - **Proposal:** These will no longer be the responsibility of advisory committees.
 - In relation to sittings, minimum numbers may not be achieved for a myriad of reasons, which include medical unfitness, family bereavement, a move of house or a change in employment. Bench chairmen and in some areas deputy Bench chairmen monitor sittings and absences throughout the year in accordance with national guidance, and as part of their pastoral role, communicate directly with magistrates facing these or similar difficulties.
 - In addition, data is now more readily available through digital software and contact more reliable through e-judiciary, which makes Bench chairmen and their deputies best placed to effectively manage magistrates' ability to sit. Given that bench chairmen monitor sittings closely and manage the welfare of their magistrates it is proposed that they be given the authority to grant a leave of absence for up to 18 months, recommend a transfer to another Local Justice Area or to the supplemental list.
 - As regards training, the role of advisory committees has been overtaken by legislative change. Under s.19 Courts Act 2003, the Lord Chief Justice may make rules about training. Rules are made in consultation with the Lord Chancellor, the Criminal Procedure Rule Committee and the Family Rule Committee. Under s.19 the Lord Chief Justice must provide training material to magistrates, in consultation with the Lord Chancellor. These functions were, until April 2017 carried out locally by Training and Development Committees and Area Training Committees, who had responsibility for developing training plans but did not have the any real authority to deal with non-compliance.
 - Now, by virtue of the Justices of the Peace Rules 2016 (JPR 2016), the Justices Training Approvals Authorisation and Appraisals Committees (JTAAACs) and Family Training Approvals Authorisations and Appraisals Committees (FTAAACS) have responsibility for the provision and oversight of training in their areas. They have the authority to revoke an approval to preside in court; make a recommendation to the Lord Chief Justice for revocation of authorisation to sit in Family or youth, or make a recommendation for removal from office, in respect of any magistrate who has failed to reach or maintain the required standard.
 - In the light of the evolving capacity of bench leaders to monitor magistrates' sittings and absences and the powers of the new J/FTAAACs, it is proposed that

the role of advisory committees is concentrated on investigating those cases referred to them by Bench chairmen and by J/FTAAACs; and on making recommendations to the Lord Chancellor and Lord Chief Justice for any final sanctions or decisions where necessary.

Question 1

Should Bench chairmen have:

- ☐ overall responsibility for overseeing sittings and absences?
- ☐ the power to grant a leave of absence for up to 18 months?
- ☐ the power to recommend that a magistrate be transferred to another Local Justice Area?
- ☐ the power to recommend magistrates for inclusion on the supplemental list?

Question 2

Should advisory committees retain the power to make a recommendation for removal from office, in respect of any magistrate who has failed to reach or maintain the required standard? Or should that power be delegated to TAAACs?

6. Review decisions referred to it by the Bench Training and Development Committee (now the J/FTAAAC) that a magistrate has failed to reach the required standard and to make any formal recommendation for removal as a justice of the peace to the Lord Chief Justice and the Lord Chancellor in accordance with the Judicial Conduct (Magistrates) Rules 2014.
 - **Proposal:** This function will continue to be a responsibility of advisory committees.
 - The processes to be followed by Advisory Committees when dealing with magistrates who have allegedly failed to reach the required standard are outlined clearly in the Judicial Conduct (Magistrates) Rules 2014. Under s.11 Courts Act 2003, the Lord Chancellor may remove magistrates, in consultation with the Lord Chief Justice. The role of the Advisory Committee under the Judicial Conduct (Magistrates) Rules 2014, is to advise both the Lord Chancellor and the Lord Chief Justice on removal (Rule 43) and/or disciplinary action if it considers there has been misconduct (Rule 81). Under Rule 105 – the Judicial Conduct Investigations Office (JCIO) would refer a report prepared by an Advisory Committee conduct panel to both the Lord Chief Justice and the Lord Chancellor.
 - It is essential that advisory committees retain this role. However, referral to the AC is and should be the ultimate sanction, with practical management of the issue/problem resting with the relevant J/FTAAAC.
7. Investigate allegations of misconduct by magistrates and make decisions or recommendations to the Lord Chief Justice and the Lord Chancellor in accordance with the Judicial Conduct (Magistrates) Rules 2014
 - **Proposal:** This function will continue to be a responsibility of advisory committees.

Sub-Committee Functions

1. Recruit and interview candidates for the magistracy, as required by the Advisory Committee.

- **Proposal:** Advisory Committees will continue to be able to delegate work to sub-committees.
2. Contribute to the development of recruitment strategies.
 - **Proposal:** Members of sub-committees are also members of the parent advisory committees. Recruitment is a key function and, as such, it is proposed that this should remain a key function of sub-committees.
 3. Monitor the sittings of individual magistrates on their benches.
 - **Proposal:** This overlaps with function 4 for parent advisory committees, where it was proposed that Bench chairmen take responsibility for monitoring and managing sittings. For the reasons outlined above it is proposed that this function be removed.

2. Processes

As noted above the two main functions of advisory committees are recruitment and recommendation of persons for appointment; and the investigation of complaints alleging personal misconduct by Justices of the Peace. Whilst the processes involved with the latter are nationally consistent, a number of local recruitment practices have developed across Advisory Committees that have led to inconsistency in the way individuals are recruited to this important role. The Justice Select Committee, in its October 2016 report on the Role of the Magistracy, made recommendations aimed at improving the recruitment process.

The Lord Chancellor is responsible for the selection policy for the magistracy. The Judicial Office Magistrates HR Team supports the Lord Chancellor in maintaining the selection policy in consultation with the Ministry of Justice, and supports the Senior Presiding Judge in her role of appointing magistrates on behalf of the Lord Chief Justice. The Judicial Office is responsible for making recommendations to the Lord Chief Justice as to the procedures which Advisory Committees follow.

The time is right to modernise processes and, where possible, co-ordinate recruitment activity more effectively to achieve greater consistency of approach. Judicial Office is actively considering a number of significant changes to the recruitment process and has agreed to work closely with HMCTS to develop new processes that can be implemented nationally, irrespective of the structure and organisation of Advisory Committees, as any individual applying to be a Magistrate or subject to conduct proceedings, should be dealt with under the same processes regardless of where they apply or are appointed to sit.

The key recruitment changes currently under consideration include the development of an electronic process for recruitment, which has the potential to:

- improve decision-making timescales;
- drive consistency and best practice;
- increase use of technology to target recruitment activity.

In addition, Judicial Office are considering introduction of a sift and changes to the current interview structure. It is important to note that these are only proposals at this stage and will require agreement of the Lord Chancellor and Lord Chief Justice.

Question 3

Do you agree that, irrespective of where recruitment interviews take place, Advisory Committee interviews and recruitment procedures must be conducted through a consistent national process?

3. Structures

In 2012 the number of Advisory Committees reduced from 101 to 44. It was also decided that justices' clerks would have responsibility for providing secretariat to each Advisory Committee. The jurisdiction of the 44 Committees in England and Wales has remained unchanged despite changes to local justice areas and justices' clerks' areas.

The recruitment activity of Advisory Committees is largely reactive, based on a number of factors including current and projected workloads, the number of magistrates in any one area, and the number of retirements. A reduction in the criminal workload of magistrates' courts has resulted in reduced levels of recruitment activity among many Advisory Committees, resulting in some committee members feeling under-utilised and de-skilled.

However, as a result of retirements in coming years and the potential for direct recruitment to Family, there is need to develop a clear workforce planning strategy that should be owned and managed by advisory committees in conjunction with HMCTS. Increased recruitment activity would increase the work of individual Advisory Committees, however, the existing disparity in volumes of activity across different Committees would continue as the current structures restrict the effective co-ordination and consistency of recruitment activity.

In looking at options for structures, consideration has been given to the ability to process work more efficiently with improvements in technology. Video and telephone conferencing is available to support meetings and technology can support administrative support over a larger area.

Option 1 – Regional Structures

Whilst it would be possible to fully regionalise matters relating to the investigation of alleged personal misconduct, via reliance upon a number of highly trained committee members, recruitment activity, such as interviews and pro-active recruitment activity are likely to be carried out across smaller geographical areas. As such, regional Advisory committees would be supported by an agreed number of sub-committees as and where necessary.

The **benefits** attached to this proposal include;

- an opportunity for Advisory Committee members to develop greater expertise, competence and objectivity across a larger area than is possible at present;
- increased consistency of approach;
- the development and implementation of consistent processes;
- retention of local knowledge within recruitment sub-committees to assess social awareness.
- an ability to share best practice across the seven regional Advisory Committees creating a body of excellence recognised by the public, thereby engendering greater confidence in the magistracy.
- increased objectivity in investigating conduct matters. The further removed the Advisory Committee members are from the individual concerned, the greater the

reality and perception of objectivity, and the easier it is to avoid elements of conscious and unconscious bias;

- increased activity for committee members providing greater experience and improved competence;
- drawing members from a wider area reduces the risk of perpetuating cultures within a local area;

The **risks** attached to this proposal include:

- the perceived erosion of localism;
- a greater reliance on digital technology;
- the practicalities and costs of organising hearings regionally for conduct hearings and the appropriateness or otherwise of hearings in a single location. (An alternative might be to manage the system regionally but to convene disciplinary hearings within locations suitable to the magistrate and any witnesses)

The role of Lord Lieutenants within regional Advisory Committees would be developed to ensure that they continue to play an integral role in the two key functions.

Proposals for the split of the two functions between two committees is dealt with in option 3 below.

Question 4

Should we create a regional structure with the effect of reducing the number of advisory committees from 44 to 7?

Option 2 – Dealing with direct recruitment to family.

As the workload in family continues to grow it is increasingly difficult to cover family sittings. The projected recruitment need across family training approvals, authorisation and appraisals committee (FTAAAC) areas for the next 18 months will have a significant impact upon levels of recruitment for Advisory Committees. With the imminent introduction of direct recruitment to the family jurisdiction, the impact of this on Advisory committees was discussed in some detail by a number of family specialists, who felt strongly that it was unnecessary to create a separate family Advisory Committee. Instead, it was recommended that sufficient numbers of Advisory Committee members with family experience should be recruited, to ensure that at least one member of any sub-committee dealing with a family related appointment or conduct issue is a family magistrate.

There was a strong feeling that the recruitment process to become a magistrate should be consistent, with the only difference arising at the part of the interview where the applicant would have either crime or family related case studies, depending upon the jurisdiction to which s/he is applying.

Question 5

When direct recruitment to the Family Court is introduced nationally, should the application process to become a magistrate be the same, irrespective of whether an individual is applying to sit in Family or Crime? Please outline the reason for your answer.

Option 3 – Separation of the two main functions

The two main functions of an Advisory Committee are distinct, requiring different knowledge and skills. In addition, the time commitment for each function can vary

significantly. Investigations into allegations of misconduct are sporadic and unpredictable and need varying levels of time commitment. Recruitment, although also irregular, follows a predictable but demanding timetable. To address this, so that the membership and geographical remit can better reflect the workload, the two functions of Advisory Committees could be organised so that separate committees handle recruitment, and the investigation of alleged misconduct.

The **benefits** that could be achieved by separating these functions are:

- an increased opportunity for committee members to gain experience and maintain competence in their chosen activity;
- that the size and geographical cover for each committee can be designed to reflect workloads and the expected time commitment required of the membership
- the opportunity for improved training specifically tailored to meet the needs of the particular committee activity;

The potential **risks** attached to separating the functions include:

- the in-depth knowledge of the key qualities required for recruitment is also relevant and can support an investigation of alleged misconduct.
- an understanding of what is considered misconduct may assist at interview when scenarios are discussed.

The risks could be mitigated by building common material into training about both functions. Moreover, membership of one Committee should not be a bar to membership of the other.

If there was an agreement to split the two main functions a decision would have to be taken regarding the structure of the two committees and whether they are organised on a regional, national or alternative basis.

Question 6

(a) Should recruitment and conduct-handling be dealt with by the same committee? Or should the functions be split?

(b) If you think they should continue to be conducted by same committee, please give your reasons.

Option 4 – Creation of a National Conduct Investigations Advisory Committee

A national committee, made up of magistrates and lay members recruited based upon their skill set and adequately supported, could deal with all investigations into the alleged personal misconduct of magistrates.

The **benefits** of this approach include:

- maximise consistency of approach
- increased objectivity. The further removed the Advisory Committee members are from the individual concerned, the greater the reality and perception of objectivity, and the easier it is to avoid elements of conscious and unconscious bias;

- increased activity for committee members, providing greater experience and improved competence;
- drawing members from a wider area reduces the risk of perpetuating cultures within a local area;
- the creation of a national body of excellence recognised by the public, thereby engendering greater confidence in the magistracy.

The **risks** attached to this approach include:

- the perceived erosion of localism;
- a danger that strategic decisions may become more difficult to manage and implement on a national scale;
- risk of perceived or actual overlap with the Judicial Conduct and Investigations Office.
- the practicalities and costs of organising hearings nationally, including creating a manageable rota and the appropriateness or otherwise of calling into a central location every magistrate whose conduct is the subject of investigation. (An alternative might be to manage the system nationally but to convene disciplinary hearings regionally. See option 1 above)
- cost associated with setting up a national body

Whatever weight is attached to either the risks or the benefits of this option, one aspect is clear: it would require robust organisational and governance structures to ensure conduct issues were dealt with expeditiously, confidentially, and objectively. Consideration would also have to be given to ensuring the maintenance of the role of Lord Lieutenants within a national committee.

For clear practical reasons it is not proposed that recruitment, also, should operate nationally. Whatever the future size of the court estate, magistrates will sit in a large number of locations across England and Wales. Thus, it will be sensible to recruit them in and around those locations. It follows that it would unduly burdensome to expect applicants to be assessed for suitability at one central location, rather than at sites as close as practicable to their area.

Question 7

Do you agree with the arguments supporting the creation of a national committee to investigate the alleged personal misconduct of magistrates? Please outline the reason for your answer and identify any additional risks or adverse implications that may arise.

4. Management and Support

Since 2012, the Directions have stated that each Advisory Committee will have a secretary who will be appointed to the role by virtue of being the justices' clerk for the area. HMCTS, following a consultation exercise, which began in November 2016, is putting in place a new leadership structure for lawyers who work in the organisation. It will include changes to the role of justices' clerk. This restructure, and the broader changes which this consultation might mean for the functions and structures of advisory committees, presents an opportunity to reconsider how best HMCTS continues to provide secretariat support for the systems to manage the recruitment and conduct of magistrates.

It is proposed that a new, separate role of advisory committee secretary should be created within the new structure for lawyers in HMCTS. This should be an individual of sufficient seniority, who is able to provide the level of support which advisory committees require. It should be a discrete role in its own right to enable specialism to be developed. There should be seven such roles, to align with the new Heads of Legal Operations and, depending on decisions made about the structures for advisory committees, will provide secretariat for one or more committees (as some of the 25 justices' clerks do at present).

In many areas of England and Wales, the same person or team may already provide support to a number of advisory committees. In London, for example, the work is undertaken by a centralised unit covering the region, which also works together to timetable recruitment activity.

Should consideration be given to a national Committee with responsibility for investigation of conduct issues, consideration would be given to whether that required a separate support team or whether it could be undertaken within a regional team.

The **benefits** of regional secretariats include:

- an improved ability to co-ordinate recruitment activity;
- improved resilience and greater economies of scale;
- the creation of a specialist team dedicated to the role;
- greater consistency of approach;
- an ability to share good practice nationally across seven support units;

The **risks** attached to regional secretariats include:

- reduced local accountability/ownership of processes;

Question 8

Do you agree with the proposal to introduce specialist regional secretariats for Advisory Committees? Please outline the reason for your answer.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1

Should Bench chairmen have:

- ☐ overall responsibility for overseeing sittings and absences?
- ☐ the power to grant a leave of absence for up to 18 months?
- ☐ the power to recommend that a magistrate be transferred to another Local Justice Area?
- ☐ the power to recommend magistrates for inclusion on the supplemental list?

Question 2

Should advisory committees retain the power to make a recommendation for removal from office, in respect of any magistrate who has failed to reach or maintain the required standard? Or should that power be delegated to TAAACs?

Question 3

Do you agree that, irrespective of where recruitment interviews take place, Advisory Committee interviews and recruitment procedures must be conducted through a consistent national process?

Question 4

Should we create a regional structure with the effect of reducing the number of advisory committees from 44 to 7?

Question 5

When direct recruitment to the Family Court is introduced nationally, should the application process to become a magistrate be the same, irrespective of whether an individual is applying to sit in Family or Crime? Please outline the reason for your answer.

Question 6

(a) Should recruitment and conduct-handling be dealt with by the same committee? Or should the functions be split?

(b) If you think they should continue to be conducted by same committee, please give your reasons.

Question 7

Do you agree with the arguments supporting the creation of a national committee to investigate the alleged personal misconduct of magistrates? Please outline the reason for your answer and identify any additional risks or adverse implications that may arise.

Question 8

Do you agree with the proposal to introduce specialist regional secretariats for Advisory Committees? Please outline the reason for your answer.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 23 November 2017 to:

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Post point 6.16 Floor
102 Petty France
London SW1H 9AJ

Email: legal.operations@hmcts.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact HM Courts & Tribunals Service at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at

www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

Alternative format versions of this publication can be requested from legal.operations@hmcts.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in February 2018. The response paper will be available online at

www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality

disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment

There is no requirement to conduct an impact assessment for this consultation, however, the risks and benefits attached to each of the proposals are outlined within the body of the consultation.

Welsh Language Impact Test

These processes do not impact upon the delivery of MOJ services in Wales. A Welsh version of the consultation paper is available at

www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-recruitment-and-conduct-of-justices-of-the-peace-october-2017

Equalities

The Public sector Equality Duty came in to force in April 2011 and public authorities including the Ministry of Justice are now required to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010 to:

- (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

A key aim of the proposals within this document is to improve diversity across the magistracy, ensuring that underrepresented and minority groups are directly targeted during recruitment exercises. There are no proposals within this consultation that would impact adversely on individuals with protected characteristics.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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