

Title: Prisons and Courts Bill: Unifying the structure and leadership of and management of cases between the Crown Court and magistrates courts IA No: MoJ005/2017 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Her Majesty's Courts and Tribunals Service (HMCTS) Legal Aid Agency (LAA)	Impact Assessment (IA)			
	Date: 22/02/2017			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: general.enquiries@justice.gsi.gov.uk				
Summary: Intervention and Options				
RPC Opinion: Not Applicable				

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£50m	N/A	N/A	Not in scope	N/A

What is the problem under consideration? Why is government intervention necessary?

The Crown Court and magistrates' courts have always operated under markedly different jurisdictions and processes, despite the fact that both courts are responsible for trying defendants accused of breaking the law. Two major reviews of the criminal justice system since 2001 have found that the existing structure of the criminal court system in England and Wales is inefficient, thereby resulting in a sub-optimal use of judicial and court resources. This inefficiency wastes taxpayers' money. Government intervention is necessary because the fundamental structure of the criminal court system is governed by legislation, so any reforms must be made by Act of Parliament.

What are the policy objectives and the intended effects?

The policy objectives are to increase the operational efficiency of the court system in England and Wales and thus to improve value for taxpayers' money. These objectives would be achieved by reforming local justice areas, restructuring the leadership of the magistrates' courts' and amending criminal procedures. This will enable a system where the judicial and financial resources expended are proportionate to the type of criminal case and can be managed as the case evolves.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

0) Option 0/Do nothing – proceed with the non-legislative efficiency measures that are already planned.
 1) Legislate for a package of measures to create a more flexible and unified criminal court system.

Option 1 is the preferred option.

Will the policy be reviewed? There is no plan to review the policy.						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			Micro N/A	Small N/A	Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  **Date:** 22/02/2017

Summary: Analysis & Evidence

Policy Option 1

Description: Unifying the structure and leadership of and management of cases between the Crown Court and magistrates courts

FULL ECONOMIC ASSESSMENT

Price Base Year 2014/15	PV Base Year 2016/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 25	High: 75	Best Estimate: 50
COSTS (£m)		Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	NA	0.04	0.3
High	NA			0.09	0.9
Best Estimate	NA			0.14	0.6
Description and scale of key monetised costs by 'main affected groups'					
Monetised costs are expected as a result of changing court allocation arrangements. Assuming the rate of appeal remains the same, in permitting the Crown Court to send cases back to the magistrate's courts, the total number of appeals is expected to rise as a result of more cases being heard by magistrates' courts. The impact of this is expected to be small.					
Other key non-monetised costs by 'main affected groups'					
Negligible non-monetised costs may arise from required staff training e.g. new procedures for referring cases from the Crown Court to the magistrate's court and increased travel/subsistence costs for magistrates. These are not expected to rise significantly as in most cases magistrates will continue to work locally.					
BENEFITS (£m)		Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	N/A	4	26
High	NA			12	77
Best Estimate	NA			8	51
Description and scale of key monetised benefits by 'main affected groups'					
Monetised benefits are expected to arise as a result of changing court allocation arrangements. In permitting the Crown Court to refer cases back to the magistrate's courts, the total cost of hearing and sentencing these defendants is expected to be lower.					
Other key non-monetised benefits by 'main affected groups'					
Non-monetised benefits include broadening the experience of magistrates, reduced need for jury trials, a clearer leadership structure of the magistracy and greater flexibility in where in England and Wales defendants' hearings are heard.					
Key assumptions/sensitivities/risks					Discount rate
The monetised costs and benefits in this Impact Assessment are based on the following key assumptions. Further information is provided in the Risks/Assumptions section:					3.5
<ul style="list-style-type: none"> • Crown court referral rate • Rate of appeal • MoJ agency unit costs 					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
N/A			
Costs:	Benefits:	Net:	

Evidence Base

A. Background

1. The Government is investing over £1 billion to transform the courts and tribunals system. We will deliver a service that is just, proportionate, accessible to all and works better for everyone, from judges and legal professionals, to witnesses, litigants and victims of crime. This measure is part of a wider legislative package that underpins the court reform programme and collectively contributes to benefits of £252 million per annum at steady state from 2023-24. While most of the measures in the Bill produce significant direct savings, some do not. However, the measures are interdependent and all contribute to wider, indirect savings by streamlining processes, enabling more flexibility in judicial deployment, digitalisation, and effective deployment and utilisation of our staff and estates. In short, each measure is vital for us to deliver the reform programme and associated savings as planned.
2. The Crown Court and the magistrates' courts operate under separate administrative, legislative and procedural systems.
3. The Crown Court is a single entity which sits across England and Wales as a whole. Judges are appointed to a "circuit" area of the Crown Court by the Judicial Appointments Commission (JAC) and are assigned a base court where they normally do the majority of their work. However, there is a national jurisdiction and these judges are able to sit in any Crown Court if the need arises.
4. The magistrates' courts operate very differently. Prior to the introduction of the Courts Act 2003, each area of England and Wales had a separate 'commission of the peace' and each commission area was divided into 'petty session' areas (i.e., magistrates' benches). Magistrates' Courts Committees (MCCs) were responsible for the efficient and effective administration of the magistrates' courts within their areas and the former Court Service was responsible for the operation of all other criminal courts.
5. In response to recommendations in Lord Justice Auld's Review of the Criminal Courts in England and Wales¹ published in 2001, the 2003 Act introduced a single, centrally funded, agency, accountable to the Lord Chancellor, to replace the Court Service and MCCs with Her Majesty's Courts Service (HMCS) in April 2005.² The Act also created a single "commission of the peace" for England and Wales and replaced commission and petty session areas with local justice areas (LJAs).

LJAs

6. There are a number of administrative functions linked to LJAs. Fines and community orders, for example, need to be registered to and enforced by the court within the LJA in which the defendant resides. Enforcement of community order breaches and fines is therefore tied to LJAs and cannot be easily transferred, without a Transfer of Fines Order (TFO).
7. LJAs can only be specified or varied by secondary legislation following consultation with the Lord Chief Justice, magistrates and local authorities in the LJA concerned. This process is time consuming, making it difficult to alter boundaries and put arrangements in place quickly to help address any backlogs of work to ensure the courts run more efficiently. Moreover, Rules made under the 2003 Act (e.g., Justices of the Peace (size and Chairmanship of Bench) Rules and Justices of the Peace (training and Development Committee) Rules 2007) require that each LJA has its own magistrates'

¹ <http://www.criminal-courts-review.org.uk/>

² HMCS was later merged with the then Tribunals Service to create Her Majesty's Courts & Tribunals Service (HMCTS) in April 2011. ³ JBGs are non-statutory bodies established to manage the judicial business in an area broadly aligned to HMCTS Clusters. For further information on JBGs, see <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Protocols/protocol-responsibilities-judicialleadership-management-mcs.pdf>.

bench, with the attendant infrastructure of a bench chairman, some deputy chairmen, annual (and sometimes biannual and quarterly) meetings and a bench training and development committee.

8. When the 2003 Act came into effect, the newly created LJAs were kept the same as the previous petty sessions' areas. Since then, changes to the way that magistrates' courts operate mean that LJAs no longer have the same purpose or relevance as they did when they (and the predecessor "petty sessions" areas) were created.
9. The arbitrary borders between the existing 104 LJAs mean that court users cannot always attend the magistrates' court closest to them because it sits within another LJA. These boundaries also make it difficult to transfer defendants' cases to a court in a different LJA, which may have more listing time available. This means that cases are not always heard at the earliest opportunity or at the most expedient court location.
10. Recent changes to the organisation of the court estate and improvements in transport infrastructure, may also mean the court within a LJA is no longer most convenient for court users. Examples include Glossop, in the North Derbyshire LJA, whose nearest court is in a neighbouring LJA in Manchester. The court for the North Derbyshire LJA is twice as far away in Chesterfield. Moreover, a train journey from Glossop to Chesterfield necessitates travel through Manchester (and Sheffield). The existence of LJA boundaries are, in some instances, also a hindrance to sensible listing decisions.
11. Changes to the Criminal Procedure Rules, Criminal Practice Direction on Listing and the creation of Judicial Business Groups³ (JBGs) have all focused on increasing flexibility in the way the business of magistrates' courts is managed. However, the existence of LJAs restricts what can be done in this area because magistrates and defendants' cases cannot be moved between them easily. While, over time, some benches have merged to form 'super benches' of around 500 magistrates, others of 30 to 40 magistrates remain and the full potential of the single commission for the peace has not been achieved.

Assignment of magistrates

12. The Courts Act 2003 means that lay magistrates can hold office in any LJA of England and Wales. However, Section 10 of the Act places a statutory duty on, and provides arrangements for, the Lord Chief Justice to assign lay magistrates to a specific LJA. Every lay magistrate is capable of hearing cases in other LJAs, but can only do so in accordance with arrangements made under the Section 10 Directions.
13. Her Majesty's Court and Tribunal Service³ (HMCTS) and the judiciary have introduced greater flexibility through revisions of the Section 10 arrangements. Under current arrangements, proximity between magistrates and the court building continues to be an important consideration. However, there are a number of advantages in allowing lay magistrates to work across several LJAs, including sharing best practice, balancing excessive differentials in sitting levels between areas, making the best use of magistrates with particular skills (e.g., foreign languages) and enabling them to maintain a range of competencies. But, in the absence of primary legislation, the recent changes to Section 10 arrangements have gone as far as possible to address the constraints caused by LJAs.

Assignment of defendants' cases

14. An individual can be charged by the police for certain offence categories or by the Crown Prosecution Service (CPS). When the police are responsible for charging, the Police and Criminal Evidence Act 1984 governs the place where the police can direct the defendant for his court appearance, which is usually the same LJA as the police station at which he was charged. When the CPS charges a defendant, the prosecutor decides where to bring court proceedings.

³ Formerly the Court Service

15. Until they were changed recently, the Directions made under Section 30 of the 2003 Act⁴ effectively required defendants' cases to be listed in a magistrates' court acting for the LJA in which the offence was committed or where the defendant lived.⁵
16. A revision of the Section 30 Directions in March 2016 introduced more flexibility to the way in which JBGs can manage the work of magistrates' courts. While proximity between the offence and court continues to be an important consideration, they also take into account other factors – for instance, minimising delay; convenience for the defendant or victims and witnesses; the availability of facilities or services (such as appropriate technology, disability access, Independent Domestic Violence Advocates etc.); and efficiency derived from listing similar types of offences together.

Leadership arrangements in the criminal courts

17. The Crown Court and magistrates' courts operate under separate leadership structures. Primary legislation gives the Lord Chief Justice extensive powers and responsibilities for both courts. In the Crown Court, responsibility for the welfare, training and guidance of the judiciary is delegated to senior judges around the circuit.
18. The situation in the magistrates' courts is quite different. Although the Lord Chief Justice has statutory powers to appoint magistrates and make rules about their training, appraisal and the administration of benches, Justices' clerks⁶ have key responsibilities for the leadership and management of judicial business in the magistrates' courts and overall deployment of business between the magistracy and District Judges. Clerks act independently when undertaking certain duties and derive these powers from legislation. This means that, unlike the Crown Court, there is effectively no clear chain of command between Justices' clerks and the Lord Chief Justice.
19. A diagram of the current leadership structures in the criminal courts is set out in Annex A.

Unifying the criminal courts system

20. The structural differences between the Crown Court and magistrates' courts has resulted in a longstanding debate about the merits of moving away from the current bifurcated criminal court system. In his 2001 review, Lord Justice Auld concluded that, "the differences in practices, procedures, management and funding of the two [court] systems and their respective administrative cultures are inefficient and harmfully divisive. They also contribute to the fractured nature of the criminal justice system as a whole, aggravating its present difficulties in providing a fair and efficient criminal process for all."⁶ In particular, the Auld Review argued that:

- the public does not always know that there are two criminal court systems nor does it appreciate the differences between them;
- criminal court unification would encourage more consistency in judges' approaches to trial and sentencing;

⁴ These Directions are concerned with the distribution of magistrates' courts' business among local justice areas. For further information about Practice Directions, see <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>. Section 30 empowers the Lord Chancellor, after consulting the Lord Chief Justice, to direct where and when magistrates' courts are to sit. In making such Directions, he must have regard for the need to make court houses accessible by persons living in each local justice area. These Directions may, in particular, contain provisions that the defendant should be taken to a court in the local justice area: (i) where the offence was allegedly committed; (ii) where the person charged with the offence resides; (iii) where any witnesses reside; or (iv) where similar cases are dealt with. This provision was introduced to preserve the bench system in statute.

⁵ Courts could deviate from these guiding principles only when there are strong reasons for doing so – e.g., where cases are linked against the same defendant or to allow centralisation of certain types of cases, such as traffic cases which are currently heard in regional traffic courts. ⁶ In simple terms, a Justices' Clerk is an official of the magistrates' courts in England and Wales whose primary role is to provide legal advice to magistrates (also known as "justices of the peace"). For further information about the role of a Justices' Clerk, see <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldcref/125/125we27.htm>.

⁶ "A Review of the Criminal Courts of England and Wales", September 2001, Chapter 7, Pages 269-314, <http://www.criminal-courtsreview.org.uk/>

- unnecessary delays result from the fact that more serious cases have to commence in the magistrates' courts before being sent or committed to the Crown Court for trial or sentence; and
- the adoption of a single criminal code would be more straightforward if the judiciary and the administration of the courts were all part of the same structure.

21. Lord Justice Auld also set out his vision for a unified criminal court with a new District Court Division, which would hear all triable either way offences attracting sentences of up to two years. His proposals were based on the premise that defendants would no longer have the right to elect for jury trial and trial venue would, in all cases, be decided by judges. At the time of the report, there was support among the senior judiciary for the idea of a unified court, but there was opposition to certain aspects of Lord Justice Auld's proposals. However, many of the features of his recommended model were accepted and implemented, including the establishment of HMCS and HM Inspectorate of Courts and Tribunals, better court security and a leadership role for Resident Judges.⁷

22. Sir Brian Leveson, President of the Queen's Bench Division of the High Court, made clear his support for greater unification in his 2015 *Review of Efficiency in Criminal Proceedings*.⁸ The Review argued that three factors have impeded moves towards criminal court unification:

- the lack of single IT system across the England & Wales criminal court system;
- the separate physical estates of the two criminal court jurisdictions; and
- the lack of legislation to support the free movement of defendants between the jurisdictions.

23. The adoption of the CJS Common Platform⁹ and the HMCTS Reform programme¹⁰ are currently addressing the first two of these impediments. In respect of the third impediment, the Review stated that, "a unified court would allow for greater jurisdictional flexibility in the allocation of cases and the ability to match judicial resources to caseload."¹² It called for a case management function which recognises that criminal cases can change as they progress through the system. The Review argued that there are very limited ways for defendants' cases to be moved back to the magistrates' courts once sent.¹¹

B. Policy Rationale and Objectives

24. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more the needy groups in society).

25. The primary rationale and the fundamental policy objective for the options discussed in this Impact Assessment (IA) is efficiency: greater criminal court unification would increase the operational efficiency of the court system in England and Wales and thus to improve value for taxpayers' money.

⁷<https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/how-the-judiciary-is-governed/leadershipresponsibilities/>

⁸ <https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

⁹ <https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/572>. See also "A Digital CJS", Strategy and Action Plan – Implementation Update, July 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330690/cjsstrategy-action-plan.pdf

¹⁰ HM Courts & Tribunals Service Annual Report 2015-16, Pages 7-8,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536080/hm-courts-and-tribunals-service-annual-report-andaccounts-2015-16.pdf ¹² Section 10.4, pages 92-93.

¹¹ The report cited the example of a serious assault case where it was originally thought that the defendant had broken the victim's arm, but the evidence later revealed that it was badly bruised, which meant the case could have been tried as a summary offence.

26. In terms of the policy objective, the government agrees with the Leveson Review conclusion that, “A system needs to be in place so that the right judicial and financial resources are matched to the right type of case. Criminal cases evolve and this needs to be acknowledged and procedures put in place to manage this reality.”

27. The proposals would also build on the current programme of HMCTS Reform to ensure that there is more flexibility in how magistrates and defendants’ cases are assigned as well as to ensure that cases can be moved more easily between the Crown Court and the magistrates’ courts. More specifically, the legislative package of reforms would entail:

- reforming LJAs – current legislation means that busy courts are unable to minimise delays or increase convenience to victims, witnesses and defendants by moving cases to nearby courts with spare capacity;
- amending allocation arrangements so that it is easier for the Crown Court to return defendants’ cases to the magistrates’ courts where necessary; and
- restructuring the leadership and management arrangements for magistrates to facilitate the criminal court reforms above.

28. Ministers have no plans to abolish or limit a defendant’s right to elect for jury trial. The government does not support full unification of the criminal courts in a “big bang” reform because of concerns about the feasibility of attempting this scale of change in a single Bill. A partial unification over the coming years means that a complete unification would be simpler to achieve at a later date.

C. Affected Stakeholder Groups, Organisations and Sectors

29. A list of all the main groups that would be most affected by this reform package is shown below:

- defendants;
- victims and witnesses¹²;
- HMCTS, which administers the Crown Court and the magistrates’ courts;
- Prosecutors, including the Crown Prosecution Service (CPS);
- providers of legal services, especially barristers and solicitors, to Crown Court defendants;
- the judiciary, especially magistrates and District Judges in the magistrates’ courts and Circuit Judges and Recorders, who preside over Crown Court Trials;
- the Legal Aid Agency (LAA) who provide financial support to defendants in criminal trials;
- members of the public who act as jurors in Crown Court trials and, indirectly, their employers where relevant; and
- taxpayers, who ultimately meet the costs of Crown Court trials, including the expenses associated with serving on a jury.

D. Description of Options Considered

30. In order to meet the policy objectives, two options have been assessed in this IA:

- **Option 0/Baseline**
- **Option 1: Legislative measures to create a more unified criminal court system.**

Option 0: Baseline

¹² Including Police witnesses.

31. Under this option, the CJS Common Platform and the non-legislative reforms in the HMCTS Reform programmes would proceed as planned. These will create a single IT system for the Crown Court and magistrates' courts and a single national case progression function. Other parts of the Bill, if enacted, would also permit certain case management decisions to be made by authorised court and tribunal staff. The revised Section 10 and 30 Directions will continue to allow more flexibility in the allocation of magistrates and cases in the magistrates' courts.
32. However, there would be no legislative changes to bring into effect any of the more substantive criminal court unification proposed by the Auld or Leveson Reviews. Consequently, the existing bifurcation of the criminal court system would essentially continue, thereby allowing inefficiencies in case allocations and the enforcement of fines and community orders to continue.

Option 1: Legislative measures to create a more unified criminal court system

33. Under this option the government would legislate for a package of measures to create a more flexible and unified criminal court system in England and Wales so as to improve value for taxpayers' money. There would be three main parts to this legislation.

i) Reform of LJAs

34. This element of option 1 would amend the current provisions requiring the Lord Chancellor (with the concurrence of the Lord Chief Justice) to allocate work and the Lord Chief Justice to assign magistrates to LJAs. Primary legislation would be amended so that magistrates' courts are no longer divided into separate geographic jurisdictions so creating a more unified magistracy.
35. Allocation arrangements would instead specify the factors that would need to be taken into account when assigning the location of magistrates and their cases, thus giving courts the freedom and flexibility to manage their caseloads most efficiently. Proximity between courthouse and offence would remain the primary consideration while allowing for other factors to be considered, such as convenience for victims and witnesses or the relative speed at which a trial could be arranged. Magistrates would still be assigned to a particular bench such that being close to where they live would remain an important consideration. However, they would have the flexibility to work on other benches should they wish to do so and the need exists.
36. This option would support the work of the HMCTS National Compliance and Enforcement Team by allowing the enforcement of fines and community orders to be undertaken in any magistrates' court so they are not confined to a specific LJA as at present. For example, where a defendant arrested in Manchester for a new theft matter informs the court that he has outstanding warrants in Somerset for the non-payment of fines, current statutory restrictions prevent the court in Manchester from dealing with those other financial penalties. The fines would either have to be transferred by the court in Manchester or the defendant would have to attend the court in Somerset.
37. This option would mean that offenders would be able to pay fines more conveniently, or serve community orders supervised by the nearest court, with a reduced administrative burden on HMCTS. It would also benefit sentencing by making it easier for HMCTS to create a "national view" of offenders by allowing back office staff to provide magistrates with better information about offenders, their past financial impositions and payment histories.
38. This option would replace the current provisions for allocating work and magistrates to LJAs with a more flexible approach. Primary legislation would be amended so that magistrates' courts are no longer divided into separate jurisdictions and would instead create a more unified magistracy and a new set of principles for deciding how work and magistrates are allocated.
39. Through the creation of a single legal jurisdiction, this option would enable the enforcement of fines by any magistrates' court. Currently, fines can only be enforced in the LJAs in which the defendant resides. When fined, an account will be created for a defendant in the LJA the offence was committed

and this is then referred or transferred out (a TFO) to the LJA in which the defendant resides – if an account for the defendant already exists then the two will be consolidated.

40. The HMCTS Transforming Compliance and Enforcement Programme (TCEP) business case is predicated on the creation of a single national defendant database where all defendant debts are recorded in a single account removing the need to associate fines to originating LJAs and therefore the need to undertake TFOs. Allowing the enforcement of fines by any magistrates' court, through the creation of a single legal jurisdiction, is fundamental to the move to a single national database.

ii) Amending allocation arrangements

41. This element of Option 1 would build on changes which have already been made to the Allocation Guidance to ensure magistrates' courts retain cases where appropriate. It would extend the circumstances in which the Crown Court is able to return a defendant who has allegedly committed a triable either way (TEW) offence to the magistrates' courts for trial and/or sentence. The intention is that this transfer back to the lower court would happen if it becomes clear from subsequent evidence that the offence is less serious than originally thought such that, if the defendant were to be convicted, the magistrates' court would have sufficient sentencing powers to deal with the case.

42. In such circumstances, where the defendant pleads not guilty and does not wish to elect for jury trial, the Crown Court could return the case to a magistrates' court to be tried summarily. Where the defendant pleads guilty, the Crown Court could return the case to a magistrates' court for sentencing.

iii) Restructuring leadership and management arrangements for magistrates

43. Given the proposed removal of LJAs, the current arrangements for bench structures and chairs and deputy chairs would need to be amended. Under the proposed reformed system the organisation of magistrates would be a matter for the judiciary in the same way that other judges are allocated to particular court locations. This would give the senior judiciary stronger leadership powers in the criminal courts and better oversight of the way cases are managed and allocated in the magistrates' court. The detail of such arrangements would need to be non-statutory, by way of a protocol, to help ensure greater flexibility and judicial control. Consequently, the existing provisions governing the election of Chairmen and deputy Chairmen, rights to preside and size of bench, training and development and power to make rules would be removed from primary legislation.

44. In support of these changes, the government would work with the judiciary to realign the existing leadership structures of the Crown Court and magistrates' courts to create a clear "line of sight" back to the Lord Chief Justice and reinforce senior judicial accountability at every level. The magistrates' courts would be brought within the management and leadership of the Crown Court to address concerns that magistrates do not currently feel part of the judicial family and that the senior judiciary do not feel they have sufficient oversight of cases in the magistrates' courts. It would entail a single leadership judge having overall responsibility for the work of magistrates in that Circuit area. This could be a Designated Criminal Judge, who can oversee the day-to-day operation of the local bench. Such a model would align with the civil and family jurisdictions.

45. A diagram of what the new structure might look like is set out in Annex B.

E. Cost and Benefit Analysis

46. This Impact Assessment (IA) identifies the key monetised and non-monetised impacts on the MoJ, its agencies and other groups following implementation of the legislative measures to create a more flexible and unified criminal court system in England and Wales.

47. It is important to note that these estimates are based on a number of assumptions and should not be regarded as firm predictions. For more information relating specifically to these assumptions, please refer to the Assumptions and Risks section in this IA (section F).
48. Monetised and non-monetised impacts are compared to the 'Do nothing' option, i.e., the status quo in which the non-legislative reforms in the HMCTS Reform programme have been implemented and those that require legislation have not. As this would involve comparing the do nothing option to itself, its costs and benefits are necessarily zero as is its Net Present Value (NPV).
49. Therefore it has been assumed that the CJS Common Platform and the non-legislative reforms in the HMCTS Reform package would be completed as planned as are other proposed reforms elsewhere in the Bill. These reforms include:
- creating a single IT system for the Crown Court and magistrates' courts;
 - creating a single case progression function for managing defendants' cases through the court process as quickly and efficiently as possible;
 - permitting certain case management decisions to be made by Case Officers; and
 - developing multi-jurisdictional centres.
50. Unless stated otherwise, all monetised costs and benefits are in 2014/15 prices and, where necessary, have been re-based using HM Treasury's published GDP deflator series.¹³
51. Estimates of sentencing volume changes in this IA are based on 2015 outturns.
52. Estimates of the costs and benefits of the policy will be presented in this IA as a NPV over a 10 year horizon from 2016/17.

Option 1: Legislative measures to create a more unified criminal court system

53. Option 1 is comprised of three distinct and complementary measures. While these reforms will be legislated as a single policy, the costs and benefits of each measure is presented individually and then aggregated to produce a single NPV estimate. The three measures are:
- (i) Reforming LJAs;
 - (ii) Amending allocation arrangements;
 - (iii) Restructuring the leadership and management arrangements for magistrates.

Option 1 (i) Reforming LJAs

Costs of Option 1 (i)

Implementation Costs

54. The implementation costs for this provision are expected to be minimal.

Ongoing Costs

55. Ongoing costs would be minimal and may include some increased claims for travel from magistrates. However, some magistrates may have shorter journeys as a result of this provision.

Benefits of Option 1 (i)

Quantified Benefits

¹³ <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

¹⁵ 2013/14 prices.

Reduced administrative costs relating to fine enforcement

56. At present, approximately the equivalent of 20 full time court employees are required to process TFOs. Assuming an average salary for these individuals of £25,000 pa¹⁴; it is estimated that removing the requirement for TFOs could save HMCTS up to £500,000 p.a.

Unquantified Benefits

Administrative Savings

57. There are likely to be minor savings associated with a reduction in the administrative costs associated with each LJA, including training and annual meetings which would be organised on a more regional level.

Maximise the use of court time

58. Under the current arrangements it is only possible to transfer cases between magistrates' courts that sit within LJAs. This restricts the number of available courts to which an over-utilised court can refer cases. By removing these boundaries, it would enable cases to be allocated in a way that optimises court efficiency.

59. The benefit of reforming LJAs and having national enforcement is that offenders could be tracked more easily, even when they move to different areas of England and Wales. When making sentencing decisions, the court would have all the relevant information in one place, without having to refer to another LJA and would be able to take enforcement action, irrespective of where the case was originally heard. Along with more efficient case allocation this would generate savings, the scale of which have not been quantified in this IA.

Option 1 (ii) Amending allocation arrangements

Methodology for Option 1 (ii)

60. The volume of defendants who would be affected by this reform – i.e. the number of defendants referred back to the magistrates court for trial and/or sentencing – depends on two principal factors:

- defendants' rate of election in relation to trials; and
- the rate at which cases initially sent to the Crown Court for trial and/or sentence become suitable for the magistrates' court.

Defendant Election Rates

61. Other things being equal, the volume of TEW defendants that the Crown Court might refer back in any given period would depend on the rate at which TEW defendants exercise their right for a Crown Court trial. It is assumed for the purposes of analysis that defendants' rate of election would remain constant at about 7%, the rate of election for all TEW defendants tried in Crown Courts in England and Wales in 2015 (see Table 1 below).

Table 1 - 2015 Crown Court Election Decisions¹⁵

	Number of TEW	Proportion of all TEW
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¹⁴ Excluding national insurance and pension contributions.

¹⁵ Criminal Court Statistics Quarterly: January to March 2016 (Main Tables)

	defendants tried in the CC	defendants
All election types	57,476	100%
Direction of Magistrates	53,068	92%
Election of the accused	4,184	7%
Missing data	224	<1%

Case Referral Rate

62. There is currently no evidence to provide a suitable estimate of the rate at which defendants initially tried in the Crown Court subsequently become suitable for trial in the magistrates' court.
63. To reflect this uncertainty, several hypothetical referral rates are employed to represent a low, central and high scenario. The referral rates under each scenario is given in Table 2 below:

Table 2 - Case Referral Rate Scenarios

Low	Central	High
10%	20%	30%

Reduction in Crown Court Volumes

64. The estimated annual defendant volume reduction in the Crown Court under each scenario, compared to the base case, is presented in Table 3 below:

Table 3 - Estimated Reduction in 2015 Crown Court Sentenced Defendants

	Base Case	Low Scenario	Central Scenario	High Scenario
Sentencing Volume Reduction (%)	N/A	- 2,000 (- 3%)	-4,000 (-6%)	-6,000 (-8%)
Total Sentencing Volume	67,500	65,500	63,500	61,500

Figures may not sum due to rounding.

65. As a result of this policy, a given reduction in the volume of Crown Court defendants would cause an equal increase in the volume of defendants in the magistrates' courts, other thing being equal. The percentage increase in magistrates' courts volumes is much lower than the percentage fall in Crown Court volumes because the number of defendants in the lower court is substantially larger.¹⁶

Timeliness Impact

66. It has been assumed for the purposes of analysis that the total time taken for the defendant's case to be referred back to the magistrates' courts, tried and completed would be approximately equal to the time that the case would have taken to complete if the case had remained in the Crown Court. Consequently, there would be no overall time impact on victims, witnesses or defendants.

Costs of Option 1 (ii)

¹⁶ There were approximately 1.2m defendants sentenced in the magistrates courts in 2015 (Magistrates Data Tool 2015; Criminal Justice Statistics).

Implementation Costs

Judicial Training Costs

67. We would expect any training to be done by the Judicial College and included as part of the annual standard training sessions for judges. Hence we do not expect any additional costs to judicial training.

Ongoing Costs

Increase in Appeals

68. Given the number of defendants tried and/or sentenced in the magistrates courts would be expected to rise under this option, appeals against magistrates' decisions would be expected to rise also (assuming the *rate* of appeal remains the same). Each appeal would imply an additional cost to HMCTS.

69. In 2015 the Crown Court received 11,240 receipts of appeals against magistrates' decisions. In the same year, approximately 170,000 defendants were sentenced in the magistrates' court for a TEW offence. Assuming all those defendants who appealed against a magistrate's decision committed a TEW offence, the estimated rate of appeal would be around 7%. On the basis of this, Table 4 below shows the additional number of appeals, and the associated cost implications under the modelled scenarios using HMCTS cost data.

Table 4 – Cost of Additional Appeals against Magistrates' Decisions (annual)

	Low Scenario	Central Scenario	High Scenario
Additional appeals against magistrates' decisions.	130	270	400
Additional HMCTS Cost (£)	£40,000	£90,000	£140,000

Benefits of Option 1 (ii)

Ongoing Benefits

HMCTS, LAA and CPS

70. Currently there is no ownership of more serious defendants' cases as they progress from the magistrates' courts to the Crown Court and such cases are sometimes resolved in the Crown Court unnecessarily. It is estimated that, of all defendants sentenced at the Crown Court in 2015 for a TEW offence following conviction at the magistrates' courts, around 40% of this particular group received a non-custodial sentence¹⁷ or a custodial sentence of 6 months or less.

71. A primary objective of this option is to make the resolution of some TEW cases more cost-efficient. It is expected that based on projected volumes and a 20% referral rate (our central scenario), a more flexible criminal courts system might result in up to 4,000 defendants being returned to the magistrates' courts for trial. Referring these defendants back to the relatively quicker and cheaper

¹⁷ The specific non-custodial sentence types are: fines; community orders; compensation orders; discharges; and "otherwise dealt with". See data tools available at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015> for published figures by sentence type in 2015.

magistrates' court from the Crown Court is estimated to result in steady state annual financial savings for HMCTS, LAA and the CPS.

72. The latest published cost data estimates a HMCTS sitting day cost is approximately £1,500 in the Crown Court and £1,150 in the magistrates' courts.^{15,18} As a result of CJS Common Platform and the non-legislative HMCTS reforms, the average cost of a sitting day in the Crown Court and magistrates' courts is expected to decline over the coming years. The average cost to the CPS and the LAA of a case in the magistrates' court is also lower than the cost of a case in the Crown Court.

This publication was archived in June 2017.

¹⁸ HMCTS Annual Report and Accounts 2013-14, page 7.

73. The steady state annual financial savings for HMCTS, LAA and the CPS from 2018/19 onwards are shown in Table 5 below.

Table 5 - Estimated Annual Steady State Benefit to HMCTS, LAA and CPS

	Low Scenario	Central Scenario	High Scenario
HMCTS	£1m	£2m	£2m
LAA	£1m	£2m	£4m
CPS	£2m	£4m	£6m
Total Annual Benefit	£4m	£8m	£12m

Figures may not sum due to rounding.

Unquantified Benefits

Broadening the experience of magistrates

74. These proposals would increase the number and range of cases available to magistrates enabling them to maintain a more challenging and varied workload and to specialise where appropriate. It would extend their opportunities for gaining experience in different types of offences, for sharing knowledge and good practice with a variety of colleagues and for developing and maintaining skills across a wide range of competencies. This would also help ensure that we are using magistrates' time and skills to the best effect.

Jury Service

75. When a TEW defendant's case is tried in the magistrates' courts instead of the Crown Court, this avoids the need for a jury trial. Consequently, there would be a reduction in:

- the total costs incurred by HMCTS in summoning adults for jury service;
- the total expenses paid to serving jurors by HMCTS; and
- the indirect loss to UK GDP of having serving jurors temporarily diverted from their jobs.

76. Given the uncertainty around the estimated number of Crown Court defendants returned to the magistrates' courts for trial each year, the economic benefit of a reduced demand for jurors in England and Wales has not been quantified.

Net Impact of Option 1 (ii)

77. Table 6 provides the 10 year NPV for the net impact of Option 1(ii) from 2016/17:

Table 6 - NPV Summary: Amending allocation arrangements

Agency	Low Scenario	Central Scenario	High Scenario
HMCTS	£5m	£10m	£15m
LAA	£10m	£15m	£25m
CPS	£10m	£25m	£35m
NPV	£25m	£50m	£75m

Figures may not sum due to rounding.

78. In addition to the quantified benefits summarised above, there are several unquantified benefits expected to result from this reform:

- increasing the experience of lay magistrates in England and Wales;
- greater oversight of allocations to help ensure cases are not sent to the Crown Court unnecessarily; and reductions in HMCTS costs and indirect loss of UK GDP associated with facilitating jury service.

Option 1 (iii) Restructuring leadership and management arrangements for magistrates

Costs of Option 1 (iii)

Implementation Costs

79. Implementation costs are expected to be minimal.

Ongoing Costs

80. Ongoing costs are expected due to a possible increase in the travel and subsistence claims and training of a small pool of leadership magistrates. However, they are expected to be minimal.

Benefits of Option 1 (iii)

Ongoing Benefits

81. There is likely to be a slight overall reduction in administrative costs through the eventual combining of resources for management, training, recruitment, appraisal etc.

Unquantified Benefits

82. A relatively simple realignment of the existing leadership structures would establish clearer lines of responsibility and accountability at every level. Much of this can be achieved through non-legislative change, but current bench structures and arrangements for selecting bench chairs and deputy chairs are set out in statute and therefore have to be amended by Act of Parliament. This would assist the appropriate allocation of cases between magistrates' court and Crown Court

Overall Net Impact of Option 1

83. Through reforming LJAs, amending allocation arrangements and restructuring the leadership of the magistracy, the provisions set out in this IA are expected to deliver a positive net economic benefit to the MoJ and its agencies.
84. The quantified net economic benefit from improving allocation arrangements is expected to be accompanied by a range of unquantified net economic benefits from reforming LJAs and restructuring the leadership of the magistracy.

E. Risks and Assumptions

85. A description of key assumptions underpinning the analysis and a summary of the related risks are provided in Table 7 below:

Table 7: Key Assumptions used in the Analysis

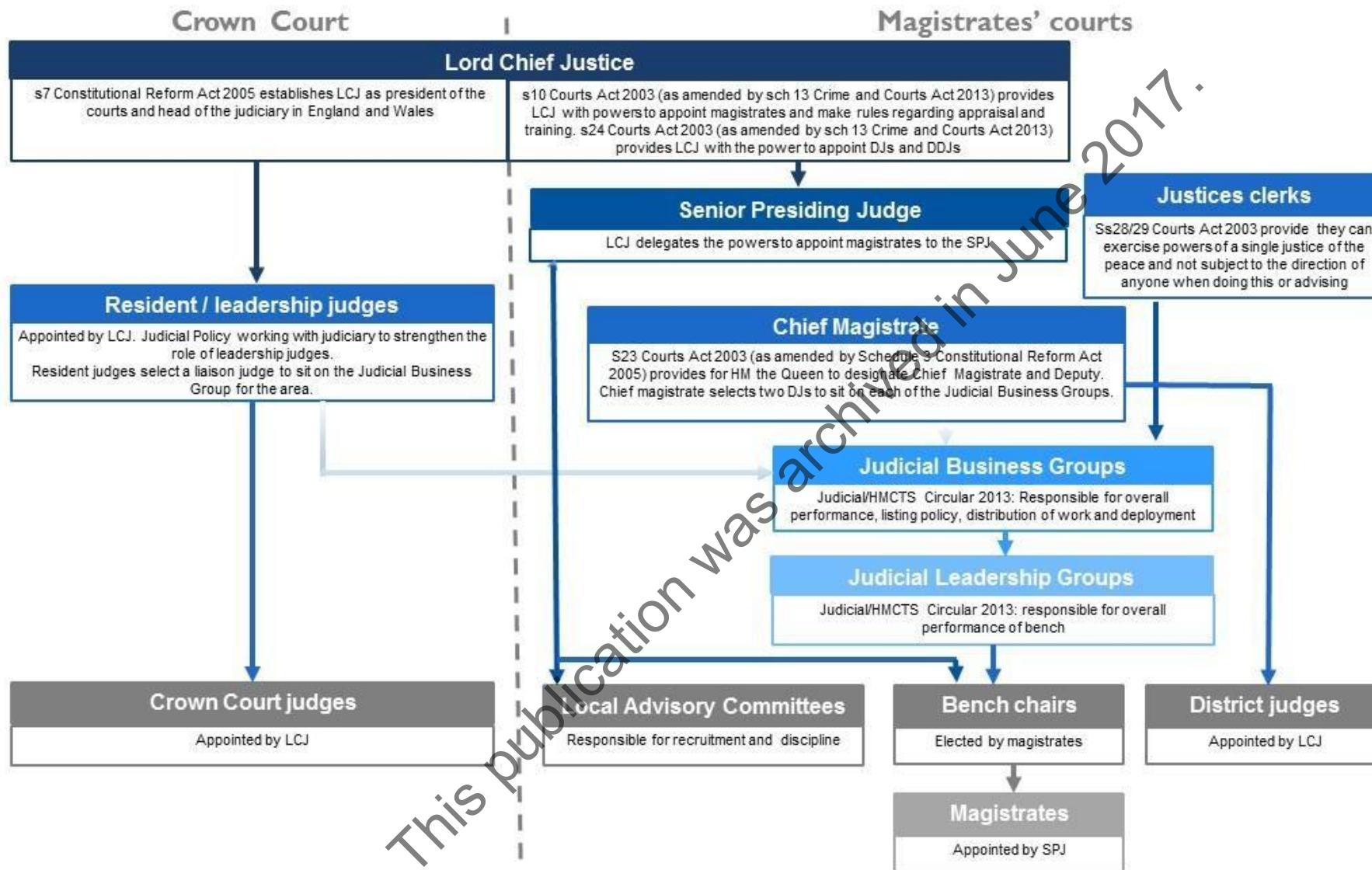
Assumption	Risk
Use of judicial discretion. The sentence a convicted TEW defendant receives in the magistrates' court will be the same as the sentence they would have received in the Crown Court.	There could be downstream cost implications for the criminal justice system, (e.g. the prison population), if magistrates use their judicial discretion in a way that significantly differs to the Crown Court.
Application of unit cost data. HMCTS and CPS average unit costs for hearing a TEW offence in the magistrates' courts and Crown Court have been applied to the movement of defendants between the courts. For the LAA, magistrates' court unit costs are estimated using the higher end of current magistrates' costs. Crown court average unit costs exclude the most serious offence categories, as these cases are unlikely to move to magistrates courts.	In reality the average unit costs for the cohort of retained defendants are likely to be at the lower end of Crown Court spectrum and the higher end of the magistrates' court spectrum. This would result in a smaller policy benefit.
Crown Court Costs. Cost of a Crown Court sitting day assumed to be £1,500 in 13/14 prices. This figures is taken from the 2013/14 HMCTS Annual Report and Accounts.	If the cost of a Crown Court sitting day is lower than that stated in the 2013/14 HMCTS Annual Report, or the cost of a sitting day falls, the realisable benefits from removing defendants from the Crown Court will reduce.
Magistrates Court Costs. Cost of a magistrate court sitting days is assumed to be £1,150 in 13/14 prices. This figures is taken from the 2013/14 HMCTS Annual Report and Accounts.	If the cost of a magistrates court sitting day is higher than that stated in the 2013/14 HMCTS Annual Report, or the cost of a sitting day changes in real terms, the realisable benefits from removing defendants from the Crown Court will fall.
Offence mix. The offence mix of the cohort of defendants referred to the magistrates' courts will depend on the offence mix across sentences given in the Crown Courts in each of the areas.	If the offence and sentence mix changes over the duration of the regional commencement the net benefit of could be different to those estimated in the cost and benefit section of this impact assessment.

Assumption	Risk
<p>Defendants' rate of appeal. Approximately 1% of all defendants tried and/or sentenced in the magistrates courts appeal against the magistrates' decisions. The increase in appeals is assumed to be minimal.</p>	<p>A higher rate of defendants may appeal against verdicts or sentences taken by the magistrates' courts. This would reduce the net benefit of the policy. However, depending on the particular offence, it is possible that in some cases a trial followed by an appeal against magistrates' verdicts/sentences could still be cheaper than a Crown Court trial.</p>
<p>Legal services market. There would be a decrease in volume of cases heard in the Crown court and an increase in volume heard in the magistrates' court in steady state. Litigators and advocates may be affected by a change in case mix in magistrates and Crown courts.</p>	<p>Although overall there would not be a reduction in the volume of defendants, there may be distributional impacts on the legal professions. There would be a reduction in the Crown Court workload coupled with an increase in cases heard in the magistrates' courts, as well as a change in case mix for both advocates and litigators.</p>
<p>Legal aid. The analysis is based on modelled fees under the current fee scheme in both courts.</p>	<p>As the analysis is based on modelled fees under the current fee scheme and may not reflect actual expenditure in year.</p>
<p>Completion date of cases referred back to the magistrates' courts. Defendants whose case is referred back to the magistrates' courts are assumed to have their trial complete and be sentenced at the same point in time as the base case i.e. if the defendant were tried and sentenced in the Crown Court.</p>	<p>If defendants are tried and sentenced sooner than they would have otherwise, there would be a short term increase in the prison population as defendants who received a custodial sentence are sentenced sooner. This is an in-year cost during the first year of the policy, its duration is at most 6 months, as this is the longest custodial sentence a magistrate can currently give. Following this a defendant would be released earlier than they otherwise would have been and so the cost is balanced by the benefit.</p>

This publication was archived in June 2017

This publication was archived in June 2017.

Annex A – Current judicial leadership structure in England & Wales



This publication was archived in June 2017.

Annex B – Potential future judicial leadership structure in England & Wales

This publication was archived in June 2017.

Crown Court

Magistrates' courts

Lord Chief Justice

s7 Constitutional Reform Act 2005 establishes LCJ as president of the courts and head of the judiciary in England and Wales

s10 Courts Act 2003 (as amended by Schedule 13 of the Crime and Courts Act 2013) provides LCJ with power to appoint magistrates and make rules regarding appraisal and training. s24 Courts Act 2003 (as amended by sch 13 Crime and Courts Act 2013) provides LCJ with the power to appoint DJs and DDJs

Senior Presiding Judge

LCJ delegates the powers above to the SPJ

Resident / leadership judges (Designated Criminal Judge)

Appointed by LCJ. Judicial Policy working with judiciary to strengthen the role of leadership judges

Crown Court judges

Appointed by LCJ

Regional Head of legal operations (formerly Justices Clerk)

Legislation required to amend Justice's Clerk role. Will be responsible for deployment of case officers.

Bench chairs

Selected by Leadership judge

District judges

Appointed by LCJ

Magistrates

Appointed by SPJ

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