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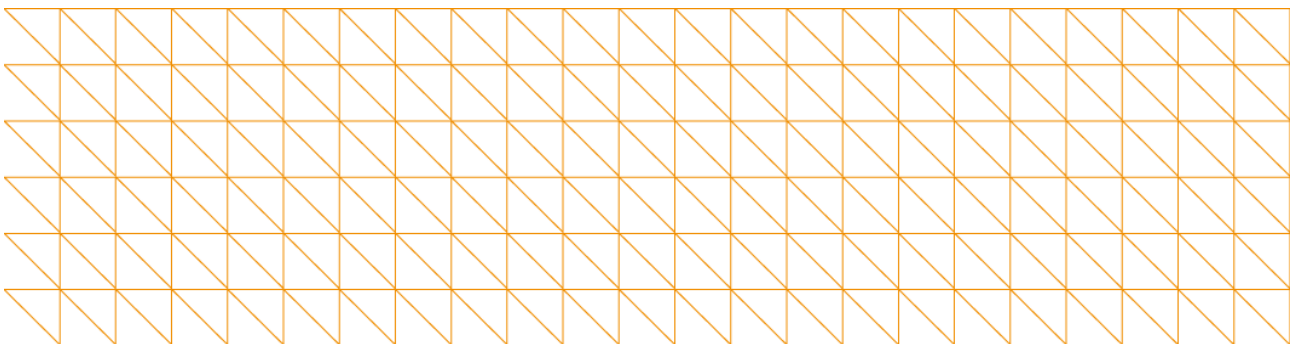


HM Courts &  
Tribunals Service

## **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 response is published on 29 March 2018







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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.

**Response to consultation carried out by Her Majesty's Courts & Tribunals Service, part of  
the Ministry of Justice. This information is also available at**  
[https://www.gov.uk/government/consultations/mechanisms-and-governance-for-overseeing-the-  
recruitment-and-conduct-of-justices-of-the-peace-october-2017](https://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 and contact details

This is a report on the responses to the consultation paper, *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.*

The report covers:

- the background to the consultation.
- a summary of the responses to the consultation.
- a detailed response to the specific questions raised in the consultation
- proposals for change.
- the next steps.

Further copies of the consultation paper and of this report and can be obtained by contacting **Jane Wignall** at the address below:

**Legal Operations Team**  
**Her Majesty's Courts & Tribunals Service**  
**102 Petty France**  
**London SW1H 9AJ**

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This report is also available at <https://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@justice.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.

## Background

1. The Lord Chancellor establishes advisory committees across England and Wales to recruit magistrates and to deal with any allegations of misconduct by magistrates. There are currently 44 committees, a figure set in 2008 when the number was reduced from 102. At that time there were around 30,000 magistrates. Today that number has halved. On 12 October 2017 a consultation paper *'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'* was published.
2. This consultation provided the first opportunity since 2008 to review the structure and operation of advisory committees in the light of the reduction in the number of magistrates. It was prompted also by a recognition of the need to clarify the committees' roles in relation to bench chairmen and magistrates' training arrangements, which have altered significantly since 2008; and to take account of recent and imminent changes within the justice system.
3. Further, it has become evident that recruitment arrangements and administrative support for advisory committees need re-examination to ensure they are consistent and in tune with current practices. The purpose of the consultation was not to seek ways to achieve financial savings for HMCTS.
4. In December 2016, HM Courts and Tribunals Service (HMCTS) set up a working group to consider how advisory committees might change in the context of these developments. The group included members drawn from the various relevant bodies: advisory committees, the Justices' Clerks' Society, the Judicial College, the Judicial Office, the Magistrates' Association, the Ministry of Justice and the National Bench Chairmen's Forum. The group considered several options for change identified under four headings: *Functions, Processes, Structures, Management and organisation*.
5. In addition to detailed engagement with the working group, HMCTS, supported by Judicial Office, held two workshops - in London and in Birmingham. It worked also with the Association of Lord-Lieutenants' Magistrates Committee to provide members of advisory committees and Lord-Lieutenants with an opportunity to discuss the issues with HMCTS before the consultation paper was published.

The consultation closed on 23 November 2017. This document summarises the responses to the consultation and sets out the decisions that the Lord Chief Justice and Lord Chancellor have made as a consequence.

A Welsh language response paper can be found at:

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

A list of respondents is at **Annex A**.

## Summary of responses

6. Seventy-three responses to the consultation paper were received. The majority were from, or on behalf of, advisory committee members, and represented the views of both judicial and lay members. A small number were received from individual magistrates and bench chairmen. Formal responses were received from the Association of Lord-Lieutenants, trade unions, the Judicial Appointments and Conduct Ombudsman (JACO), the Magistrates Association (MA) and the National Bench Chairmen's Forum (NBCF).
7. All responses were analysed for levels of support for each emerging proposal within the consultation; for any viable alternative proposals; and for evidence of the impact of such proposals. To ensure that respondents views are outlined as comprehensively as possible, a summary of responses to the specific consultation questions is available at **Annex B** and those responses are summarised below under the following headings;
  - Functions;
  - Processes;
  - Structures;
  - Management and Organisation; and
8. In addition, two particular issues were raised. The Association of Lord-Lieutenants felt that the future role of Lord-Lieutenants within advisory committees was not reviewed in sufficient detail. Several respondents questioned why a full analysis of the costs and benefits had not been carried out as part of the consultation process. This paper summarises responses to the specific questions posed in the consultation.

### Functions

9. Most respondents agreed that bench chairmen, rather than advisory committees, were best placed to manage magistrates' sittings and applications for leave of absence, transfer to another local justice area, or transfer to the supplemental list. This was because of their knowledge of, and responsibility for, individual magistrates. Nevertheless, many respondents maintained that advisory committees should retain some oversight of those responsibilities, supporting bench chairmen through clear referral routes and reporting mechanisms.
10. The MA argued for clear and transparent processes and felt a committee structure with clear oversight of these decisions, might maintain greater trust, as magistrates could be sure that the decision making process involved discussion and scrutiny.
11. There was clear agreement that only advisory committees should have responsibility for making a recommendation to the Lord Chief Justice to remove a magistrate from the active list. The NBCF recognised in their response that removal from office is a very serious sanction and argued that advisory committees, whose members are trained and have relevant experience are best placed to make such decisions and apply a consistent approach.

## **Processes**

12. The overwhelming majority of respondents accepted that for all applicants to the magistracy to be treated equally, it was essential to have a national recruitment process; and to ensure that it was applied consistently.

## **Structures**

13. There was support for a reduction in the number of advisory committees but there was a strong feeling that they should not be reduced from 44 to seven. A large majority (75%) objected to the creation of a national conduct committee. More than half felt that cross- fertilisation of skills for recruitment and conduct was essential and, therefore, that these functions should be dealt with by the same committee.
14. The JACO focussed on the conduct function of advisory committees. It supported the development of greater specialism by having fewer, larger, committees. It expressed concern that a lack of experience on advisory committees under the current system had, on occasion, led to some fundamental procedural errors. The JACO also suggested that the practice whereby local advisory committees and their secretaries investigated complaints sometimes created the perception on the part of the complainant and the magistrate involved, of a lack of objectivity. It argued that a regional body would mitigate this risk.

## **Management and Organisation**

15. There was significant support for the creation of a dedicated regional secretariat to support the work of advisory committees.
16. The trades unions raised concerns regarding the potential impact on their members who currently support the 44 advisory committees. They did not oppose the creation of regional advisory committees. However, they took issue with the proposed structures for HMCTS staff involved in the regional specialist support teams. They suggested that structures and technology should be developed to enable current post-holders to continue in their roles. They also noted that excessive demands on advisory committee members may undermine diversity and impair the involvement of those with family commitments.
17. Support for a specialist regional secretariat was contingent on the need to ensure:
  - secretariats are adequately resourced;
  - secretariats have knowledgeable staff;
  - bilingual staff in Wales;
  - advisory committee members are not expected to travel excessively;
  - effective technology to manage committee work remotely across large geographical areas.

## Recommendations

18. As a result of the consultation 10 recommendations will be implemented. They are explained below under the four main headings identified by the working group and set out in the consultation paper. The aims of the recommendations are to:

- clarify responsibilities of advisory committees, of bench chairmen and of TAAACs to avoid duplication of effort (recommendations 1-4);
- devolve greater responsibility to bench chairmen while retaining advisory committee involvement where necessary. (recommendations 1,2)
- ensure the investigation of alleged misconduct is dealt with objectively and efficiently. (recommendations 6-8)
- ensure all applicants to the magistracy are subject to a consistent, robust and transparent recruitment process, irrespective of the location or jurisdiction to which they apply. (recommendation 7)
- develop streamlined, clear and consistent national processes so that they meet user needs. (recommendation 7)
- develop new structures that reflect the way in which magistrates are, or may be organised. (recommendation 8)
- create knowledgeable and effective support teams that are accessible to advisory committee members. (recommendation 9)
- emphasise the link between the magistracy and the Sovereign by strengthening further the link between the magistracy and Lord-Lieutenants. (recommendation 10)

### **Functions**

#### **Recommendation one - Bench chairmen will be given responsibility for the management of sittings.**

19. Bench chairmen and their deputies are best placed to manage sittings. Bench chairmen have responsibility for the pastoral care of magistrates and will usually be aware of any issues relating to individual magistrates.
20. To protect the pastoral relationship between bench chairmen and their magistrates, it is proposed that bench chairmen have the option of referring any magistrate to the advisory committee if s/he feels this is necessary. On a referral by a bench chairman, the advisory committee can determine what action is required whether pastoral management by the bench chairmen, revised rota arrangements by HMCTS or investigation under the Judicial Conduct (Magistrates) Rules 2014.
21. To ensure advisory committees are aware of sitting levels and trends, Bench chairmen will provide a retrospective annual or bi-annual report outlining this

information, highlighting those magistrates whose sittings are below the minimum or above the maximum sittings required and explaining any decisions/action they have taken.

**Recommendation two - Bench Chairmen will be given the authority to grant a period or periods of leave of absence for up to 12 months in any 24-month period.**

22. Bench chairmen should review any leave at three-monthly intervals, up to the maximum period of 12 months. Where any period of absence exceeds 12 months in a 24-month period the bench chairman must refer the magistrate to the advisory committee.
23. A bench chairman may refer a magistrate to the advisory committee at any time prior to the 12-month maximum period, where s/he feels this is necessary. Magistrates may appeal to the advisory committee about any refusal by the bench chairmen to grant a leave of absence. Bench chairmen will provide a retrospective annual or bi-annual report to advisory committees on those magistrates to whom they have granted leave of absence.
24. This proposal recognises that a review by advisory committees of *any* grant of leave of absence of over three months would be disproportionate, create delay and unnecessary uncertainty for magistrates applying for such leave or for a renewal of current leave of absence. Moreover, bench chairmen are supported by HMCTS in carrying out such duties, providing assurance to advisory committees and magistrates concerned that any guidance issued by the Lord Chief Justice is properly applied.

**Recommendation three - Advisory Committees will continue to have responsibility for the transfer of magistrates from one local justice area to another.**

25. Advisory committees have overall responsibility for the movement of magistrates into and out of the magistracy. Whilst the transfer procedure relates to existing magistrates, their circumstances may have changed since appointment with the effect that they are no longer eligible to sit in any, or in a specific, local justice area. Advisory committees may seek the views of bench chairmen before making a final decision on transfer and they should consider also current recruitment needs and eligibility criteria.
26. Decisions regarding eligibility should remain with advisory committees. This would mean that an application to transfer must be made directly to the advisory committee responsible for the local justice area into which the magistrate is seeking a transfer. To increase the efficiency of such applications, the development of a more streamlined process is recommended.

**Recommendation four - Advisory Committees will continue to have responsibility for recommending the inclusion of a magistrate on the supplemental list.**

27. The basis for entry of names in the supplemental list is set out in the Courts Act 2003. There is almost no discretion where magistrates reach the age of 70 but approval by the Lord Chancellor is required in other circumstances. Advisory committees make recommendations to the Lord Chancellor accordingly.
28. Management of the supplemental list has implications for recruitment and conduct. Whilst bench chairmen or TAAACs may know an individual or be best placed to make a recommendation for inclusion on the list based upon their performance, advisory committees must be able to manage movement into and out of the magistracy in the

context of overall recruitment needs. Therefore, formal recommendations to the Lord Chancellor for list purposes must remain with them.

29. To increase the efficiency of such applications, the development of a more streamlined process is recommended.

**Recommendation five - Advisory committees will continue to have responsibility for making recommendations to the Lord Chancellor for the removal of a magistrate from office.**

30. In most situations this is already the position. However, there are limited circumstances in which a TAAAC has power to make a recommendation directly to the Lord Chief Justice that could result in the removal of a magistrate from office. This arises where a magistrate sits solely in Family, either via direct recruitment, or does not wish to sit in crime, or is precluded from doing so by his/her employment or other circumstances and revocation of an authorisation to sit in Family would result in removal from the magistracy. (*Rules 33 and 35 of the Justices of the Peace Rules 2016 give TAAACs authority to recommend to the Lord Chief Justice, without reference to the advisory committee, revocation of authorisation to sit in Family (and youth).*)
31. In the specific circumstances outlined above, any proposal by the TAAACs to recommend to the Lord Chief Justice removal of a Family authorisation that could result in removal from office, must be referred to the advisory committee for final recommendation.
32. For the reasons set out elsewhere in this document, advisory committees are well placed to make a recommendation for removal on any ground. In any event, they would be guided by advice from the Lord Chief Justice. In addition, committees could, at point of removal before a 70th birthday, be required to consider inclusion of the magistrate on the supplemental list.

**Recommendation six - Functions relating to recruitment and conduct will be dealt with by separate advisory committees.**

33. Benefits from the separation of functions include:
- the development of two separate committees that complement one another and provide opportunities for some members to be involved in both;
  - the creation of distinct advisory committees with clear lines of responsibility. This will enable proceedings to be managed and supported more consistently, effectively and efficiently;
  - greater opportunities for liaison with the JCIO on training and development, and thereby, the development of good practice;
34. Members of the conduct advisory committees should be drawn from the advisory committees with responsibility for recruitment, thereby providing a pool of conduct committee members who have a good understanding of the key qualities required of the magistracy, including judicial aptitude.

35. Clear guidance will be developed to specify the functions of these two separate committees. Proposals for the structure of the two distinct committees are discussed below under **Structures**.

## **Processes**

**Recommendation seven - A clear and consistent national recruitment process will be developed for, and adopted by, all advisory committees.**

36. All individuals applying for appointment as a magistrate should be subject to the same robust, efficient, and fair recruitment process, irrespective of the geographical area or the jurisdiction to which they are applying. It is accepted that jurisdiction-specific interview questions will be required to test judicial aptitude in either crime or Family and that in-court observations are not appropriate for applications to sit in Family. Subject to these obvious differences, all other elements of the recruitment process should be identical.
37. Recruitment should be supported by a national toolkit that encourages applications from diverse members of the community and provides supporting materials to enable that. The toolkit should include, up to date and relevant case scenarios, interview questions and training materials.
38. Additional strategies for using social media are also essential to the success of future recruitment campaigns. Appropriate use of social media will enable advisory committees to attract applicants from hard-to-reach communities.

## **Structures**

**Recommendation eight -**

- i. Twenty-four advisory committees will be created with responsibility for recruitment and deployment transfer in and the supplemental list; and**
- ii. Seven regional committees will be created with responsibility for alleged misconduct**

39. The only opposition to separation of the two committees was based on concerns that they would inhibit cross-fertilisation of experience. In response, it is argued that such cross fertilisation of experience is achievable under the proposed structure by recruiting members of each regional conduct advisory committee from the more local recruitment advisory committees and encouraging the development of consistent national processes.
40. Given the level of opposition to a reduction to seven committees, careful thought was given to developing a recommendation for recruitment advisory committees that would reduce the total number to more than seven but fewer than 44. Consideration was given to the current management structures across the magistracy and those suggested in the responses and whether it was necessary to have the same structure for conduct and recruitment committees.
41. Alignment with local justice areas, boroughs and counties would increase the total number of advisory committees significantly. Alignment to Crown court and/or legal services structures would reduce the number of recruitment advisory committees to



seven. After careful consideration it was felt that TAAAC areas are the most suitable sub-regional structure upon which to base recruitment advisory committees. The Senior Presiding Judge agreed the TAAAC areas and they provide a structure that is recognised by magistrates.

42. It is recommended that advisory committees responsible for recruitment are established in line with JTAAAC areas, save for London where it is recommended that this committee is aligned to the single Family TAAAC area. The rationale for this distinction is based on the current organisation and management of training and recruitment activity across London, most of which is already managed and processed centrally for the region.
43. A reduction in the number of advisory committees will not preclude the option of setting up sub-committees. It is envisaged that Lord-Lieutenants will (in line with the Directions) have an integral role within each committee. The Lord Chancellor with the agreement of the Lord Chief Justice will continue to invite Lord-Lieutenants to chair conduct advisory committees and/or recruitment advisory committees. This is subject to any recommendation by individual advisory committees to appoint a chairman who is not a Lord-Lieutenant. These proposals have been discussed and agreed with the Association of Lord-Lieutenants.
44. Transitional provisions will be required to establish these two separate committees. Thereafter, the number of members required will be determined by the secretary and agreed by the committee.
45. The benefits of this proposed structure include:

#### **Recruitment**

- A direct link to an area/structure that is recognised by the magistracy and senior judiciary;
- The ability to link new magistrates upon appointment to the area of the training committees responsible for their training and development;
- Local recruitment maintains ready accessibility of candidates.

#### **Conduct**

- A smaller number of conduct advisory committees with fewer members will provide greater exposure to, and experience of, conduct business;
- Seven specialist regional conduct advisory committees will enable the more effective development and implementation of national best practice;
- They will improve objectivity, thereby enhancing confidence in the fairness of the process.
- The development of bespoke conduct training in addition to greater exposure will lead to increased, improved and more consistent- practices.

### **Management and Organisation**

**Recommendation nine - We will develop regional secretariats to support advisory committees.**

46. Regional secretariats will be developed to enable staff to engage and work remotely using technology. Each secretariat will work under the leadership of a specialist lawyer. It is envisaged that the regional secretariats would form a network working with the Judicial Office and JCIO to develop common processes, training and best practice. Each regional secretariat will be responsible for the regional conduct committee and the committees in the region responsible for recruitment.
47. Any issue regarding grading of staff will be managed using MOJ policies and processes in liaison with DTUS.

**Recommendation ten - The Directions that enable the Lord Chief Justice to appoint a Lord-Lieutenant as chairman of an advisory committee will remain unchanged and initiatives will be developed to underpin/strengthen further the role of the Lieutenancy with advisory committees.**

48. The Association of Lord-Lieutenants support the proposals within this report and is keen to strengthen links with the magistracy. Subject to an application being made to the Lord Chief Justice to appoint an alternative chairman, the presumption will be that a Lord-Lieutenant will chair each recruitment advisory committee and each conduct advisory committee.
49. There are several areas in which the link between the magistracy and the Lord-Lieutenants could be strengthened and HMCTS will work with the Association of Lord-Lieutenants to develop any such opportunities in those areas and elsewhere.

## **Conclusion and next steps**

50. HMCTS are grateful for the responses received which have helped to shape the proposals outlined in this response.
51. HMCTS will continue to work with the Association of Lord-Lieutenants, the trade unions, the Judicial Conduct and Investigations Office (JCIO), Heads of Legal Operations, Judicial Office and the working group to effectively develop the proposals outlined above.

## Impact Test

52. A number of responses were received from Welsh-speakers. These responses highlighted the need to develop any change in a manner that recognises the linguistic consequences of policies affecting services provided to the people in Wales.
53. Reference was made to a geographical North/South divide and the need for Welsh speaking staff to support advisory committees. As a result, the final proposals have been developed to reflect recognised organisational structures already in place in Wales, and HMCTS gives an assurance that support will be available to advisory committees from Welsh Speaking staff.

A Welsh Language version of this response document is available at:

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

## **Equalities**

54. A clear aim of this consultation was to create a recruitment process that is robust transparent and effective in reaching potential applicants from hard to reach members of society. Successful implementation of recruitment strategies could potentially increase the diversity across the magistracy.
55. Any changes that may affect HMCTS staff will be managed in line with the managing operational change framework in close liaison with DTUS.

## **Consultation principles**

56. 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>

## **Annex A – List of respondents**

Association of Lords Lieutenants

National Bench Chairmen

Magistrates Association

Judicial Appointments and Conduct Ombudsman

Department of Trade Union

Cheshire Advisory Committee

Mr Peter Reed, Bench Chairman Avon & Somerset

Carole Freeman Dunn, Cleveland Bench- Teeside Magistrates

Chris Dickinson, VC Cleveland, Co Durham & Darlington

Colin Weston MBE JP, Dorset Bench Chairman

Jill Parker, Black Country Advisory Committee

Barbara Richardson, Bench Chairman Southern Derbyshire

Paul Broomhead, Bench Chairman West Yorkshire

Roger Mills, Bench Chairman South East London

Joanne Wilkinson, Bench Chairman Staffordshire

David E Laing, H.M Lord Lieutenant of Northamptonshire

Alexandro Roveri, Justice's clerk Wiltshire, Hampshire, Isle of Wight

David Subacchi, Bench Chairman Central North Wales

Graham Barnett, Magistrate East Yorkshire

David McCall, Bench Chair - West & Central Hereford

Chris Bell, Bench Chair - Sussex & Central

Aileen Jill Little, Bench Chair Co Durham & Darlington

Alexia Featherstonhaugh, Bench Chair Central London

Diane Marks, Bench Chair South West London

Andrew Nicholson, Secretary London West advisory committee

Sarah Jones, Bench Chair North & East London AC

Sean Evans, Birmingham & Solihull AC

Kathie Stevens, Bench Chair Oxfordshire

Jackie Alexander, Bench Chair NW London

Kate Hurt, Nottinghamshire AC

Stephen Baker, Bench Chairman South Cumbria

Paul Wright, Combined Lancashire Bench

Sarah Clarke, Bench Chair Buckinghamshire

Tim Smith, Secretary Devon & Cornwall AC

Jeffrey Kelly, BC Central & South London

Karmen McAllister, Cambridgeshire AC

Brenda Saturley, Avon & Somerset AC

Stephen Rogers, Bench Chair All Wales

Sally Veasey, Dorset AC

Helen Paige, Wiltshire AC

Suzanne Gadd, Bedford & Hertfordshire AC

Damien Thornton, North & West Yorkshire AC

Jane Hodgkiss, Greater Manchester

Danny Cain, Secretary for Suffolk advisory committee

Danny Cain, Secretary for Norfolk advisory committee

Jan Prescott, Bench Chair Merseyside Magistrates

Teresa Parr, Manchester Magistrates advisory committees

Ian Dudson, Staffordshire

Sandra Barnes, Lord Lieutenants of Wales

Sandra Barnes, West Glamorgan advisory committee

Sandra Barnes, North Wales advisory committee

Sandra Barnes, Mid-South Glamorgan advisory committee



Sandra Barnes, Gwent advisory committee

Sandra Barnes, Dwfed Powys advisory committee

Sandra Barnes, North East Wales advisory committee

Sandra Barnes, Central North Wales advisory committee

Anthony Dickinson, Cumbria advisory committee

Anita Smith, West Mercia advisory committee

Anita Smith, Staffordshire advisory committee

Anthony Dickinson, South Cumbria advisory committee

Anthony Dickinson, North & West Cumbria advisory committee

Anthony Dickinson, Fylde Coast & North Yorkshire advisory committee

Anthony Dickinson, Central & South Lancashire advisory committee

Anthony Dickinson, East Lancashire advisory committee

Alison Watts, Humberside advisory committee

Mike James, NE Wales

Alison Watts, South Yorkshire advisory committee

Jane Tovell, West Sussex advisory committee

Chris Knight, Shropshire



## **ANNEX B: Responses to consultation questions 1-8**

### **Question 1: Should Bench chairmen have:**

#### **Overall responsibility for overseeing sittings and absences?**

There was almost unanimous support for the day-to-day oversight of magistrates' sittings being managed by bench chairmen and their deputies. However, there was a clear consensus that advisory committees should act as a higher authority to support the relationship between bench chairmen and magistrate and to assist bench chairmen where necessary.

#### **The power to grant a leave of absence for up to 18 months?**

The consensus was that bench chairmen should continue to have authority to grant leave of absence. However, several responses questioned the period available to them to grant. Most felt that 18 months was too long and that three months - the present period - too short. Again, there was a very strong feeling that advisory committees should act as a higher authority, maintaining close oversight of more difficult cases, and being kept informed of any magistrates who are on a leave of absence, irrespective of the period granted.

#### **The power to recommend that magistrates be transferred to another Local Justice Area?**

The consensus from the responses was that bench chairmen, in liaison with the relevant Training, Approvals, Authorisations and Appraisals Committees (TAAAC) and Justices' Clerk (or appropriate post holder) could have the authority to make such recommendations to the Lord Chancellor. It was felt that advisory committees should continue to be involved in decision-making as they may need to:

- advise on potential disqualifications relating to eligibility;
- agree waiting lists where the bench is fully subscribed; and/or
- apply to the Senior Presiding Justice for a moratorium on transfers in where it would significantly hinder the ability to appoint sufficient new people to the bench from within that recruitment area.

#### **The power to recommend magistrates for inclusion on the supplemental list?**

Many responses argued that bench chairmen were best placed to recommend magistrates for inclusion on the supplemental list due to their knowledge of the individuals concerned. Others expressed no strong view either way. Again, most felt that this should be done with the involvement and oversight of advisory committees.

### **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?**

The overwhelming consensus (save for six responses) was that any recommendation that could result in the removal of a magistrate from office must rest with advisory committees. The rationale behind that view was that:

- lay members of advisory committees gave objectivity;
- within the magistracy there was a lack of confidence in current appraisal systems on which a recommendation would be based;
- advisory committees are experienced in analysing information and taking such decisions;
- they provide a consistent process for doing so.

Two respondents argued that neither advisory committees nor TAAACs should have responsibility, as removal is a specialist HR function and should be managed by a national HR committee. Three argued that TAAACs are best placed to make decisions regarding competence and achieving the required standards and one response felt the two committees should share this power.

**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?**

The respondents to this question were clear in their support for a consistent national process. Many underlined the need to create a streamlined recruitment process aimed at promoting diversity and that identifying judicial aptitude for those applying to become a magistrate was paramount.

Several felt the Directions provided sufficient guidance and they were satisfied with their own local arrangements but responses indicate that processes vary significantly across areas and that the recruitment process takes too long.

Responses indicated that many areas use two interviews over several weeks; some use one interview; others use two interviews in one day. In addition, respondents felt that the absence of national support or guidance for recruitment campaigns limited their effect.

**Question 4: Should we create a regional structure with the effect of reducing the number of advisory committees from 44 to seven?**

More than half of those who responded supported a reduction in the number of advisory committees. They argued that larger committees would provide more work for their members, build greater expertise, improve competence, reduce the risk of perpetuating local practices and improve consistency.

The majority in favour of a reduction argued that the proposed drop from 44 to seven did not take sufficient account of cultural and geographical differences across regions. Alternative structures were recommended by several respondent advisory committees. They included suggestions for a link to HMCTS clusters; counties and boroughs; and separate advisory committees for North Wales and South Wales. These proposals did not appear to have the support of other advisory committees from within the same region.

The minority in favour of retaining the status quo argued that regional advisory committees would be too large and would not have the benefit of local knowledge. Reference was made in a few responses to retaining local links and understanding what they termed soft intelligence when managing recruitment and conduct, e.g. knowledge of local personalities, issues and opportunities for recruitment activity.

The MA recognised the benefits of increased objectivity when dealing with conduct, but argued that any such benefit must be weighed carefully against an appreciation of individual circumstances and context. In relation to recruitment, they felt the erosion of localism may impact upon the ability of the applicant to show a connection to and understanding of the local area. The MA recommended a conduct structure linked to TAAAC areas and more local recruitment

Overall the NBCF supported a reduction to seven committees on the basis that Magistrate's Courts are already organised within seven clearly defined regions, structures are in place for seven regional heads of legal operations and increasingly work is being organised within the regional framework. Whilst raising concerns regarding those areas that are geographically very dispersed with key cultural differences, for example North and South Wales they accepted that a single advisory committee with oversight of HR functions, might be able to address these concerns by setting up sub-committees for recruitment.

The JACO response emphasised the importance of objectivity and independence in carrying out investigations into complaints alleging misconduct. It noted that there were real risks that complainants and magistrates subject to investigation perceived a lack of impartiality in advisory committees, given that their geographical area of responsibility would be likely to match that of the magistrate concerned.

The JACO suggested that a move to greater regionalisation with more potential conduct panel members would mean increased scope to allocate cases to those who did not know the magistrate complained of, thereby removing any perceptions of partiality and bias. The need to transfer cases between advisory committees – fairly routine practice at present - would be much less likely with a regional advisory committee dealing with conduct. Moreover, a regional pool would assist with the development of regional and national consistency of approach with the potential to drive up standards.

The response from the Association of Lord-Lieutenants noted the constitutional link between Lord-Lieutenants and the counties which has existed for many centuries, but also referred to the independent perspective they provide. They felt that those features, together with the presence of other lay members, enhance the integrity of the committee.

Under the current structures, Lord-Lieutenants do not always chair an advisory committee. (The Directions allow an application to be made by the advisory committee to the Lord Chief Justice for an alternative chairman to be appointed.) A number of Lord Lieutenants do not chair an advisory committee for the county they represent, as some committees have responsibilities for more than one county. Where a committee covers more than one county the Directions enable the selection of a Lord-Lieutenant from among the Lord-Lieutenants for those counties.

**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?**

It was acknowledged in almost all responses that, irrespective of whether magistrates sit in crime or Family, the key qualities required of a magistrate are the same. The MA highlighted the need for all advisory committee members to be familiar with Family matters. They advocated the current approach that at least one person on the interview panel is a family magistrate and all members of the committee are given a half day of familiarisation training about family court.

Almost all responses pointed out that the inability of applicants to the family court to observe Family proceedings called for a different approach. Many argued that the availability of high quality, effective explanatory material would maintain the privacy of parties to family proceedings but would provide the necessary insight for applicants.

**Question 6: Should recruitment and conduct-handling be dealt with by the same committee? Or should the functions be split?**

Throughout their response JACO indicated that more specialism and concentration in the investigation of Judicial Conduct matters could achieve benefits. Many other responses agreed that a smaller number of well-trained committee members who cover a larger geographical area could build up experience and expertise, increase objectivity and improve consistency in the application of the Directions and the Judicial Conduct (Magistrates) Rules 2014.

The NBCF considered that a regional committee should be responsible for the two functions to ensure advisory committee members are able to deal with all matters relating to the magistracy. The MA agreed that the interrelatedness of recruitment and conduct is clear, and that a single committee would be most professional. The did however argue that the volume of work for a single regional committee would be too large.

Most of those who argued for a single advisory committee managing all functions, based their argument upon the cross fertilisation of knowledge gained by sitting on both committees; the need to retain the leadership of Lord-Lieutenants; and the need to limit delay and bureaucracy. Concerns were also raised about the likelihood of recruiting sufficient numbers to two committees and the creation of more complicated structures, with one response pointing out the need to keep all HR matters under one umbrella.

**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.**

There was minimal support for the creation of a national conduct committee. Whilst many, including the JACO, recognised the increased objectivity that could result from a national body, the ability of a single conduct investigating body to provide the necessary logistical support to facilitate conduct panels throughout England and Wales was questioned by the MA and NBCF.

The JACO noted that if a national body were to be created, its investigating processes should mirror those that it applied, as there would be clear similarities in function. However, a concern raised by many respondents was that a national body would resemble the JCIO too closely and could cause confusion and duplication.

**Question 8: Do you agree with the proposal to introduce specialist regional secretariats for advisory committees? Please outline the reason for your answer.**

There was significant support for the creation of a specialist regional secretariat. Many responses, including the National Bench Chairmen's Forum and JACO, noted the potential benefits of a specialist secretariat to include increased levels of support, greater resilience and the development and retention of specialist expertise.

The large majority felt that a sufficiently experienced lawyer should provide the support needed, particularly in relation to conduct matters. A minority against regional secretariats argued that local support at a sufficiently senior level was necessary to maintain local knowledge. A small number questioned the need for legally qualified staff to act as secretary.

The MA noted that securing the requisite skills and knowledge was the most important issue, and felt that a regional approach that achieves this would be sensible.

DTUS questioned the proposed grading and structures for HMCTS staff involved in the regional specialist support teams. They noted that structures and any required use of technology should be developed in a way that enables current post holders to continue.



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