



Ministry
of Justice

Government Response to the Justice Committee's Sixth Report of Session 2016-17: The Role of the Magistracy

December 2016



Government Response to the Justice Committee's Sixth Report of Session 2016-17: The Role of the Magistracy

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

December 2016



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Introduction

1. The Government welcomes the report of the Justice Committee on the role of the magistracy.
2. The involvement of lay people is a central principle in the administration of justice. It helps safeguard our citizens, with crucial decisions affecting an individual's liberty made not by officials of the state, but by an independent bench of magistrates from the local community. Our judiciary is the most respected and independent in the world, part of a justice system that is widely admired at home and abroad. Magistrates contribute to this system in the most exceptional way; they give their time, skills and experience voluntarily.
3. The Justice Committee published their report into "*The Role of the Magistracy*" in October 2016. This was shortly after the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals announced the biggest transformation and investment in our courts and tribunals for a generation in their joint statement *Transforming Our Justice System*.¹ The Committee, as detailed at page 7 of their report, did not take into account the policy proposals with relevance to the magistracy announced as part of this reform statement. However, many of the Committee's recommendations reflect the thinking that went into these reform plans, as has been detailed throughout this response paper.
4. The Lord Chancellor and the Lord Chief Justice have made it clear that they want the strongest possible role for magistrates in this transformed and modern justice system. We therefore welcome the Committee's report to help inform that approach. We will continue to engage and work with the judiciary at all levels, including the magistracy, to create and sustain an effective justice system.
5. This response paper sets out the Government's response and, where the recommendation is also addressed to the judiciary, the views of the judiciary, whom we have consulted where appropriate. The numbering of each conclusion and recommendation refers to the numbering set out from page 53 onwards of the Committee's report.

¹ <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>

Court Procedure and Deployment

The Select Committee recommended:

1. We endorse the principle behind initiatives designed to streamline and modernise proceedings in the magistrates' courts, but we believe there is a risk of undermining magistrates' morale by imposing changes on them without consultation and by reducing administrative support to unsatisfactory levels. Although evidence does not indicate a universal problem, there is sufficient evidence of low morale within the magistracy to cause us concern.
2. **We recommend that magistrates be consulted as appropriate on any further changes to the criminal justice system on which their views are likely to assist policy development and/or which are likely to have an impact on their role**—in particular changes to administrative support to the courts, whether in their own locality or more widely across the court system.

6. A strong partnership between the Ministry of Justice (MoJ) - including Her Majesty's Courts and Tribunals Service (HMCTS) - judges and magistrates is fundamental to the work of the courts, and it is essential that effective and open communication at all levels is maintained. It was for this reason that statutory provisions were created to guarantee that magistrates are kept informed of matters affecting them, and they have the opportunity to give their views.
7. Section 21 of the Courts Act 2003 ensures that proper and effective communication with the magistracy takes place, and all parties are able to carry out their responsibilities in the management of the courts and the administration of justice. The Act states:

“The Lord Chancellor and Lord Chief Justice must take all reasonable and practicable steps –

 - (a) for ensuring that lay justices acting in a local justice area are kept informed of matters affecting them in the performance of their duties, and
 - (b) for ascertaining their views on such matters”
8. Alongside other opportunities for engagement, such as ad-hoc meetings on discrete topics, the Magistrates' Liaison Group meets regularly to discuss reform issues and enable smooth working partnerships. The group involves representatives from the judiciary, policy teams, the Judicial Office, Judicial College, the National Bench Chairs' Forum and the Magistrates' Association.

The Select Committee recommended:

3. We recognise that, in practice, there are difficulties in balancing the work of magistrates with that of District Judges and that District Judges must be kept occupied because of their salaried status and the need to maintain their competence. However, it is also important to retain magistrates' competence and to value their time as volunteers.

4. **We recommend that the Ministry of Justice commission qualitative research into relations between District Judges, magistrates and justices' clerks** in a sample of Local Justice Areas, with a view to understanding the source of potential tensions and identifying good practice.

9. The MoJ have always been clear, as have the judiciary, that District Judges and magistrates bring different, but equally valuable, skills to their courts. There is already a protocol in place which describes how cases should be assigned between District Judges (Magistrates' Courts) and magistrates.² We are doing further work to determine how a better model for allocating cases between the groups could be designed to enhance the role of magistrates further.
10. The current court reforms, in seeking to unify the criminal courts under a single leadership structure, will also provide an opportunity to assess further how the relationship between magistrates and District Judges works at present, and should do in the future. This assessment will also consider how best practice can be achieved.
11. In respect of justices' clerks, HMCTS recently launched an internal consultation on a senior leadership structure for lawyers working in the courts and tribunals.³ This proposes removing the role of justices' clerk from statute and creating a new, non-statutory role to provide leadership to lawyers across all jurisdictions at a regional level. It specifically discusses whether the statutory functions of justices' clerks should continue to be discharged by justices' clerks within the current framework, or if they could be exercised by others working to a new senior lawyer role.

² Criminal Practice Directions XIII, Annex 1, *General Principles for the Deployment of the Judiciary in the Magistrates' Court*

³ "A consultation on the creation of a new senior leadership structure for lawyers working within HM Courts & Tribunals Service: Proposals to make changes to the role of the justices' clerk" 10 December 2016

The Select Committee recommended:

5. We note that Lord Justice Fulford is considering the possibility of additional guidance for justices' clerks on the allocation of cases in magistrates' courts, a development that we would welcome.

6. We recommend that this take the form of an amended version of the protocol to support judicial deployment in the magistrates' court. We further recommend that consideration be given to allowing magistrates to sit without legal advisers when sitting with a District Judge.

12. The Senior Presiding Judge has told us that he will consider reviewing the Judicial Deployment Protocol in the magistrates' courts.

13. Section 26 of the Courts Act 2003 enables a District Judge sitting alone to do anything or exercise any jurisdiction which would otherwise require two or more magistrates. The exception is granting or transferring a licence. The circumstances in which a District Judge will sit with magistrates are therefore currently limited. We will, however, consider this recommendation, to allow magistrates to sit without legal advisers when sitting with a District Judge, carefully.

The Select Committee recommended:

7. The principle of open justice is central to our common law tradition and also underpins Article 6 of the European Convention on Human Rights. We recognise the efficiency gains of the Single Justice Procedure, but we note concerns have been expressed about any potential extension of the procedure to additional cases.

8. We welcome Lord Justice Fulford's intention to issue a protocol setting out guidance for magistrates on when they should sit in open court, and **recommend that these concerns be taken into account in the preparation of that protocol.**

14. The principle of open justice is fundamental to our justice system and will be maintained. We will make sure that interested parties, including victims, witnesses, the public and the press, have access to case listings, outcomes and proceedings where appropriate.

15. The Senior Presiding Judge has told us that he will seek feedback from magistrates on their experiences of the Single Justice Procedure before considering guidance about its practicalities to ensure the principle of open justice is maintained.

Workforce Planning and Diversity

The Select Committee concluded:

11. We recognise the valuable expertise of many older magistrates and we have particular sympathy with concerns about the shortages of magistrates qualified to sit in the Family Court. We conclude that the solution lies in workforce planning for the magistracy—including for specialist roles. **We support the maintenance of a retirement age of 70 for magistrates, the same as for judges, but we consider that on application by individual magistrates it should be possible in exceptional circumstances to extend their appointments**, taking into account the outcome of workforce planning.

16. The retirement age for judicial office holders is kept under review by the Government and the senior judiciary. Since 1995, the position of both the Government and the senior judiciary is that a uniform mandatory retirement age of 70 for all office holders is in the best interests of the justice system. Although for some offices, in certain circumstances, there is a power to extend an appointment for a year at a time beyond 70 (to no further than 75), such extensions are increasingly rare.
17. In 2014, the arguments for a mandatory judicial retirement age were tested when a retired Circuit Judge brought proceedings in the Employment Tribunal against the MoJ for age discrimination (*White v Ministry of Justice*⁴). The claim was unsuccessful and a key part of the Tribunal's judgment was that MoJ's policy objectives for maintaining a mandatory judicial retirement age were entirely legitimate. These included:
- Promoting and preserving judicial independence by having a single retirement age (albeit with limited provision for extension) rather than individual decisions in each case.
 - Preserving the dignity of the judiciary by avoiding the need for health and capacity assessments.
 - Maintaining public confidence in the capacity and health of the judiciary.
 - Workforce planning, ensuring that there is an appropriate number of judges at the necessary levels of seniority to meet the needs of various jurisdictions and enabling reasonably accurate forecasts of future need.
 - Sharing opportunity between the generations by balancing experienced judges' need to continue in office for a reasonable time against newer appointees' need for career progression opportunities (and thereby also promoting diversity in the judiciary).

⁴ *Mr G B N White v. Ministry of Justice*, London Central Employment Tribunal, 2201298/2013

18. Alongside these and other points raised in *White*, in the specific case of extending the retirement age for magistrates, we believe that it would not be desirable to do so at the current time for a number of reasons:

- The Government and the senior judiciary are committed to increasing judicial diversity. Older people are already over-represented amongst magistrates: over 85% are over 50, the average age is 59 and fewer than 5% are under 30.
- There is currently no business need for the additional judicial capacity that would be created.
- The already limited supply of vacancies through which new talent is brought into the magistracy would be further restricted.
- Magistrates are an integral part of the wider judiciary, and such a change would see them taken out of step with the other parts of the judiciary.

19. In respect of shortages in the family jurisdiction, the MoJ is aware that in some local justice areas there have been insufficient family magistrates to deal with the workload. Earlier this year, to help deal with this issue, the Government agreed to introduce a policy enabling sitting limits for family magistrates to be increased in areas where it is deemed necessary. We also agreed to relax the requirement that magistrates must have been authorised in family for five years before they can specialise (i.e. sit exclusively) in the family court.

20. Consideration has also been given to the introduction of direct recruitment of magistrates to sit in the family court. This would be a major change requiring the development of new selection methods and training, as well as an amendment to secondary legislation. It would also see an end to the long established concept of the magistracy as a role in which adult court experience is considered to be a prerequisite for progression to specialist jurisdictions.

21. We are therefore looking at this proposal as part of the wider work we are undertaking on the future role of the magistracy, and we propose to conduct an exercise to establish why relatively few magistrates appear to be interested in applying for family court authorisation.

The Select Committee recommended:

12. We urge the Ministry of Justice, in consultation with the senior judiciary, to undertake a workforce planning exercise for the magistracy at the earliest possible opportunity, taking into account the high proportion of serving magistrates who are expected to retire over the next five to ten years. **We also recommend that recruitment be undertaken on a continuous basis**, so that approved applicants are available to fill vacancies in their area, or in adjacent areas, as soon as they occur.

22. While the number of magistrates has reduced significantly in the last decade, it is important to make clear that this is not indicative of any difficulties with recruitment. The reduction in the number of magistrates is due primarily to changes in workload.

23. Annual resignation and retirement rates from the magistracy have remained relatively consistent over the last decade. This has combined with a reduced need for new magistrates, due to a reduced workload, to create a natural reduction in overall numbers. Generally, there tends to be no shortage of suitable applicants for the vacancies which do arise. It should also be noted that recruitment numbers have now started to rise again. In 2015/16 for example, 688 new magistrates were appointed compared to 388 in 2014/15.
24. The annual judicial deployment exercise monitors carefully the number of magistrates required for the forthcoming 12-18 months. It is based upon current and predicted future workloads. This detailed exercise will continue and in the future will factor in any changes likely to arise as a result of court reform.
25. Magistrates are recruited in accordance with the needs of the courts in each local justice area. The 44 advisory committees responsible for recruiting and selecting magistrates in England and Wales already have the flexibility to carry out recruitment as and when need arises. Recruitment takes place locally, up and down the country, throughout the year.
26. The prescribed selection process for the magistracy, which is set out in the Lord Chancellor's Directions to Advisory Committees, enables committees which have more suitable candidates than vacancies to a) establish whether surplus candidates can be offered appointments in neighbouring areas and b) consider offering surplus candidates a place on a waiting list for future vacancies.

The Select Committee recommended:

13. We conclude that having a large cohort of magistrates approaching the age of retirement presents a great opportunity to promote diversity among those who are recruited to replace them. We recognise the considerable efforts that have been made to encourage applications for the magistracy from a wider range of people, and we commend the imaginative approaches to improving diversity that have been drawn to our attention.

14. We recommend that the Ministry of Justice and the senior judiciary devise a strategy containing the following steps as a matter of priority to increase the diversity of applicants and recruits for the magistracy:

- Adopting a wider and more proactive advertising strategy for potential applicants, seeking in particular to attract magistrates from less conventional backgrounds
- Streamlining the recruitment process, so that applications are processed within six months
- Introducing a scheme similar to the 'two ticks' model to encourage disabled applicants, and working with the HMCTS to ensure that reasonable adjustments can be made where required
- Providing additional funding for Magistrates in the Community, together with active promotion of the scheme to potential corporate sponsors
- Considering the introduction of the 'equal merit' provisions for recruitment to the magistracy for the protected characteristics of race, disability and age.

27. Improving diversity at all levels of the judiciary is a key priority for the Lord Chancellor. The MoJ is working with the judiciary, the Judicial Appointments Commission and the legal professions to break down actual and perceived barriers to the most talented individuals entering, or progressing within, the judiciary

28. In respect of diversity of the magistracy, the department is working closely with the Judicial Office, the National Bench Chairs' Forum and the Magistrates' Association on such matters. It is worth noting that magistrates are statistically the most diverse group within the judiciary. More than half of all magistrates are women and 10% are from Black, Asian, and minority ethnic (BAME) backgrounds. Appointment data also shows that this picture is improving: in 2015/16, 22% of the 668 new magistrates were from BAME backgrounds and 40% were under 50 years of age (compared to just 14% of magistrates overall). We are clear, however, that there is much more to do.

29. We agree that the time is right to consider carefully our approach to recruitment with a particular focus on the Lord Chancellor's stated aim to increase judicial diversity, as echoed in the Justice Committee's report. This aim also pays strong regard to the skills, experiences and talent that magistrates bring to the bench. A more proactive approach is required to encourage applications to the magistracy from talented people of all backgrounds representative of the communities that they serve.

30. The current recruitment and selection system has many positive aspects, in particular that it enables valuable local input to the process. However, we do recognise that the

end to end process from application to appointment can take too long in some instances and that this can be discouraging for applicants.

31. Options to improve and speed up the process are already under consideration. For example, the Judicial Office, which supports the Senior Presiding Judge in his role in appointing magistrates on behalf of the Lord Chief Justice, is investigating options for moving to a fully online application process for the magistracy. Consideration is also being given to simplifying the post-application process, for example, by streamlining the current two-stage interview process.
32. The guidance for prospective magistrates contains a clear and unambiguous equality and diversity statement, which states that applications are welcome from any person who meets the eligibility criteria for appointment and who believes that they have the necessary qualities. It also stresses that applications are particularly welcome from members of currently under-represented groups, including people with a disability who are able, either unassisted or with reasonable adjustments, to carry out the full range of a magistrate's duties. It is a matter of policy that reasonable adjustments should be made to enable disabled candidates to attend interviews for the magistracy and, once appointed, to enable disabled magistrates to carry out the duties of their office.
33. The proposal to introduce 'equal merit' provisions for recruitment to the magistracy for the protected characteristics of race, disability and age is under active consideration.
34. We recognise that more needs to be done to improve diversity so that the magistracy better reflects the society it serves. The magistracy must be, and be seen to be, truly open to everyone of the requisite ability. We hope that the variety of initiatives being actively pursued – led by the Judicial Diversity Committee of the Judges' Council – will bring more diversity, more quickly.
35. The MoJ, HMCTS and the Judicial Office will work together closely to consider carefully each of the Committee's suggestions on this matter, in the context of the wider process of recruitment.

The Select Committee recommended:

15. Rebalancing the age profile of the magistracy is unlikely to happen unless more action is taken to overcome the barriers facing employed magistrates, including by encouraging employers in all sectors to support magistrates who work for them.

16. **We recommend that the Ministry of Justice and the senior judiciary create a kitemark scheme** that recognises and rewards employers who support the magistracy, thus encouraging other employers to do the same. **We also recommend that the Ministry of Justice review the current Financial Loss Allowances for employed and self-employed magistrates**, including consideration of whether rates might be increased in line with inflation.

17. **We further recommend that the HMCTS encourage court managers, when resources permit, to consider the potential for increasing out-of-hours court sittings** in order to maximise sitting opportunities for magistrates who are employed.

36. We will consider carefully the case for the creation of a kitemark scheme, and other approaches to increase employer engagement, as part of the aforementioned work on recruitment.
37. HMCTS is responsible for the administration of the magistrates' expenses policy. It acknowledges the Committee's recommendation that a review of current allowance rates be conducted, and consideration given to increasing the rates in line with inflation.
38. We will undertake a full review of judicial expenses policy during 2017. A review of magistrates' expenses policy was carried out in 2014, which resulted in *The Justices' Allowances Regulations 2015*. As part of the overarching review of judicial expenses we will evaluate these regulations, and a recommendation will be made to the HMCTS Board.
39. In respect of sittings, we believe that there could be merit in organising sittings outside of normal court operating hours. This ties into the wider courts reform programme. HMCTS has previously run pilots of extended sittings in magistrates' courts which have had relative success, although based heavily on the goodwill of HMCTS staff and other agency participants. Previous pilots have also largely focused on an immediate need to clear a backlog of cases and have not identified a sustainable sitting pattern for magistrates which could be currently implemented.
40. We will conduct further analysis of increasing out-of-hours court sittings, and work closely with all court users to understand the feasibility. Success for operating outside of normal hours will depend on extensive stakeholder engagement at both a national and local level given the range of court users from multiple organisations which are part of the justice system.

Training and Appraisal

The Select Committee recommended:

19. We received the clear impression that the landscape of magistrates' training is a somewhat crowded one and we welcome the decision by the Ministry of Justice to consult on proposals for rationalising the rules relating to training for magistrates.

20. In spite of assurances from the senior judiciary that the Judicial College receives adequate funding for magistrates' training and that the goodwill of HMCTS staff can be relied on to provide support, the evidence that we received in the course of this inquiry from a range of authoritative sources suggests that this is not the case.

21. We recommend that the Judicial College be provided with more funding to support magistrates' training and that a more realistic view be taken of the ability of HMCTS staff, in particular legal advisers, to assist with training given the current pressures on their time.

41. The Judicial College's ("the College") budget is allocated within that of the Judicial Office. The Judicial Office bids for resource to meet the business needs of the College, and these are considered as part of the normal spending review process.
42. There is a Protocol between the College and HMCTS which sets out their respective roles and responsibilities with regard to training arrangements for magistrates and their legal advisers. Under this protocol, HMCTS provides resources and support to enable legal advisers to develop and deliver training.
43. Pending changes to the legal structure in HMCTS, a further annex was recently added to the protocol (Annex H) for the 2016/17 financial year, which aims to make the process more robust. The annex means that legal advisers will assist with the design, drafting and critical reading of good quality training materials, within a time frame which reflects the needs of all those involved in training i.e. HMCTS, the College, legal advisers and magistrates.
44. The College supports the concept of magistrates as trainers working alongside legal advisers and on appropriate matters, such as soft skills like engaging with young people and mentoring. The College maintains that, as part of the reform process, when assessing job roles and numbers of legal advisers a realistic account of the time involved in training is factored in.

The Select Committee recommended:

22. We were impressed by magistrates' commitment to training and their willingness to give their time to doing it. However, we are concerned by evidence suggesting that training for magistrates is not always of sufficiently high quality. In addition we conclude that the range of training available is sometimes too narrow to equip magistrates for the role that they are expected to fulfil and to help them contribute to cultural change within the Criminal Justice System.

23. We recommend that the Judicial College, in consultation with others, undertake a comprehensive review of magistrates' training needs with a view to developing a training programme that supports a modern magistracy, taking proper account of the investment of time required from those who organise and deliver training. The review should also consider the particular training needs of magistrates who put themselves forward for specialist roles in the Youth and Family Courts, as bench Chairs and to sit as panel chairs.

45. Training packs for magistrates are needs-based (considering the needs of both the business of judging and the individual) and reflect the competence frameworks for each jurisdiction. The College periodically undertakes full reviews of training packs and jurisdictional areas, and training delivered centrally is comprehensively evaluated on an ongoing basis. This includes longer term evaluations of how training is put into practice, and the impact on the role in court.
46. The Framework of Standards for Magistrate Training and Development ("The Framework") supports trainers locally. Trainers report to the College on whether their training meets the required standards, and receive support to assist them with longer term evaluation. The Framework is also the bedrock of training developed centrally; it covers, amongst other things, identification of training needs, design and delivery, and the application and evaluation of training solutions.
47. College committees oversee magistrates' training, and have the benefit of advice from many sources. They are alerted to potential training needs arising from legislation or initiatives on an ongoing basis, and use that information to prioritise the work to be undertaken by the College.
48. The College will review the induction course for magistrates, taking into account the changes brought about by the recently announced reforms. This review will closely involve a range of interested parties, including the Magistrates Association and National Bench Chairmen's Forum. A similar review took place in 2014 following the family justice reforms, which resulted in a re-write of the magistrates' core family training.

The Select Committee recommended:

24. As part of the comprehensive review of magistrates' training needs, **we recommend that a balance be maintained between different ways of learning**, recognising that online training, in spite of its convenience and cost-effectiveness, cannot provide the quality of engagement and interaction provided in face-to-face settings. **We further recommend that a reasonable proportion of face-to-face training be offered at times that are convenient** to employed magistrates and those with other weekday commitments.

49. All HMCTS trainers are expected to have successfully completed a "train the trainer" course on how to design training solutions, and receive further guidance through the Framework.
50. College trainers are fully aware of the limitations of e-learning. The College considers carefully, at the start of each new project, how the training need is to be met, including the methods to be used. For example, skills-based training, such as communication with young people, should be delivered face-to-face.
51. E-learning is increasingly used in training programmes as it is accessible at the time and place that suits the magistrate; an issue of particular importance to employed magistrates. The College is offering more e-learning as a supplement to the face-to-face training that magistrates receive, and recently held a refresher course for key College trainers on blended learning.
52. The timing of training courses is decided locally, by those most familiar with the circumstances of each magistrate. Justices' clerks and deputies arrange training at the times and locations which best meet the needs of their courts and magistrates; the flexibility of this system allows for evening and weekend training, if that is determined at a local level to be the most suitable approach.

The Select Committee recommended:

31. We commend the Government's commitment to strengthening and updating the digital infrastructure in the magistrates' courts, but conclude that some of its aspirations have been undermined by the difficulties in delivery of changes on the ground.

...

33. **We further recommend that, in the context of the comprehensive review of magistrates' training that we have proposed, consideration be given to additional training needs created by increasing reliance on new technology**, including particular communication skills required when dealing with defendants, victims and witnesses by video link.

53. The College is alert to the demands of technology. When reviewing material and drafting new training it will continue to take this into account to make the training experience as realistic, accessible and up-to-date as possible.

The Select Committee recommended:

9. We agree that more challenging case management tasks may require the skills of a District Judge and should be allocated accordingly.

10. However, recognising that the Transforming Summary Justice initiative depends in part on effective case management of every contested case, **we recommend that all magistrates who sit as panel chairs should be offered training to assist them in fulfilling this role** as effectively as possible.

54. Training on case management forms a key part of magisterial training. The College has rolled out a number of training packs, to be delivered locally, on it since the Criminal Procedure Rules were brought into force in 2005. Case management training is emphasised in the core training which supports a magistrate to sit in the adult court (induction through to chairmanship) and reinforced in the Adult Court Bench Book, which provides guidance for magistrates who sit in the adult court.

55. The latest training pack on case management was a stand-alone pack. It was designated 'essential' training in relation to case management and disclosure as a result of the Senior Presiding Judge's *Magistrates' Court Disclosure Review* published in May 2014. Additionally, the Stop Delaying Justice and the Transforming Summary Justice initiatives have both further encouraged effective case management.

56. The aim for the future is that more case management will be conducted outside of the courtroom by specially trained staff under the supervision of judges. The *Transforming Our Justice System* joint statement said that

"We will ... use specially trained *case officers* to handle basic case management and case progression, to allow our judiciary to focus their time and expertise where it is really needed."

Whilst these changes might mean that magistrates have less direct involvement in the management of cases between hearings, they will still be responsible for it during hearings. They will see the benefits in more effective trials and sentencing hearings which will make better use of their judicial skills, knowledge and experience, and focus their contribution on the things which matter most to their communities.

The Select Committee recommended:

25. We conclude that the current system of appraisal for magistrates is inadequate, and we welcome the fact that this is currently under review. We are not convinced of the value of having a magistrates' accreditation scheme, but the evidence that we received gives clear support for the introduction of formal arrangements for Continuing Professional Development.

26. **We recommend the introduction of a more robust appraisal scheme for magistrates**, which can identify inadequate performance and impose remedial measures to address it, including reviewing the future of magistrates who have become insufficiently committed to their role. **The appraisal scheme should be linked to a mandatory scheme for Continuing Professional Development**, developed as part of a comprehensive review of magistrates' training.

57. The current appraisal scheme, though fully functioning, fair and transparent, needs to be more robust.

58. The *Justices of the Peace Rules 2016* will allow for the relevant Training, Approvals, Authorisations and Appraisals Committee (TAAAC) to review the competence of magistrates to sit in the adult court in a more robust way than the existing provisions. The relevant part of the Rules comes into force in April 2017.

59. Under the Rules, competence issues will be picked up much more quickly than before, and the TAAAC may take any action it considers appropriate following a review, including one or more of the following;

- confirming that it is satisfied as to the competence of the justice;
- requiring the justice to undertake training or further training;
- requiring the justice to undertake one or more appraisal or further appraisals;
- where satisfied that a justice has failed over a period of time to reach the required standard, instructing the justices' clerk to report the matter to the appropriate advisory committee.

60. To support the Rules, the College has already commenced a review of the appraisal scheme. A working party has met, started work and is reporting back to the committee with oversight of this project.

61. The College will consider the suggestions for a Continuing Professional Development scheme. This should, however, be viewed in light of the move by the professional bodies away from formal reporting requirements. It has been the case for many years that the College has advocated the keeping of a training log, which would support a magistrate in meeting the competences.

Magistrates' Court Estates

The Select Committee recommended:

27. We welcome the Ministry of Justice's commitment to developing a detailed implementation plan for each proposed magistrates' court closure, and in particular its willingness to look at alternative provision of services.

28. In determining the location of alternative venues, **we recommend that the Ministry ensure that at least 90% of magistrates' court users can reach the nearest venue by public transport within one hour.**

62. Access to justice is not just about proximity to a court. We believe that we can improve access to justice by reducing the number of underused, poor quality, permanent buildings and investing in digital access and, where appropriate, using other local public buildings for access or hearings.

63. When proposing changes to the court and tribunal estate, HMCTS takes into account the potential impact of the proposals on its users. This includes the impact on travel time and whether this would remain reasonable should the change take place. What is reasonable can vary depending on location and on the type of work undertaken in a particular building. In some cases, HMCTS will make alternative provision for certain types of users or in certain locations, such as part-time use of a local authority or other public building.

64. The National Estates Principles published with our consultation in 2015 stated that we would:

“Ensure continued access to justice when assessing the impact of possible closures on both professional and lay court and tribunal users, taking into account journey times for users, the challenges of rural access and any mitigating action, including having facilities at local civic centres and other buildings to ensure local access, modern ICT and more flexible listing, when journeys will be significantly increased.”⁵

⁵ See page 7 of the consultation “*Proposal on the provision of court and tribunal estate in England and Wales*”

The Select Committee recommended:

29. Use of alternative venues has assumed a key role in the Ministry's court estate strategy, so it is regrettable that inadequate forethought has been given to the security implications of holding court sessions in buildings that are not equipped with a secure dock.

30. We recommend that this matter be given urgent consideration, in consultation with magistrates, District Judges and court staff, to identify low-cost practical solutions to potential security risks.

65. All alternative venues will be subject to an HMCTS Security Risk Assessment. This covers the types of cases to be listed in the venue as well as the physical security features, such as room layout and the requirement for a separate judicial entrance to the hearing room. In addition, there will always be designated Court Security Officers deployed when the venue is in use. They will undertake appropriate searches, and specific arrangements will be made with local police who will be notified when hearings are being held at the venue.

66. Proposals to use an alternative venue will need to be approved by Local Leadership Groups which comprise of judicial office holders (including Bench Chairs) and operational managers. Local Leadership Groups are responsible for overseeing the effective implementation of change at a local level, and are intended to strengthen the partnership between the judiciary and HMCTS at a local level. Since listing is a judicial responsibility, the final decision regarding the listing of a case into an alternative provision will be made by a judge and we expect the types of cases which are listed into any alternative venues will be considered carefully.

The Select Committee recommended:

31. We commend the Government's commitment to strengthening and updating the digital infrastructure in the magistrates' courts, but conclude that some of its aspirations have been undermined by the difficulties in delivery of changes on the ground.

32. We recommend that full access to physical courts, including alternative venues, be maintained for the time being until facilities such as video links are fully operational. We also recommend that provision be made for upgrading inadequate video links and internet connections for courts with insufficient bandwidth.

67. HMCTS keeps its estate under review to make sure that it meets operational requirements. Any changes to the services being provided from court and tribunal venues will be implemented to ensure that the service provided to court users is maintained.

68. Over the past two years HMCTS has been replacing video links in a rolling programme. 64 of the high priority Criminal Courts were supplied with upgraded video links in early 2015 with another 120 Criminal Courts following later in that year and into 2016. In tandem 90 Civil, Family and Tribunals sites also had the same modern video

equipment supplied to them. The remaining 100 HMCTS sites (mostly civil) are planned to be upgraded in 2017.

69. These video links are already cutting down travelling to and from, and waiting at, court for prisoners. They have reduced the costs associated with prisoner movements and eradicated the risk of escape while prisoners are being transported. They are supporting our most vulnerable witnesses and reducing the wasted time caused by attendance of police officers at court. This work has already had an impact, with a record number of 125,000 cases heard via video link in 2015, up from 80,000 in 2013.
70. As part of our operating and maintaining of the Professional Court User (PCU) Wi-Fi network of around 200 combined and magistrates courts, we review the usage and capacity for each court each month, and make recommendations to improve performance based on this analysis and the predicted demand for the service. We are also expanding the Wi-Fi into new working areas of the court, for example, the recent Wi-Fi expansion at 40 Combined Courts to include Civil, Family and Tribunal working areas.
71. At present, the whole network (every court) is within the expected thresholds of number of users, number of devices and data usage.

Courts Reform

The Select Committee recommended:

34. We support increasing magistrates' sentencing powers to 12 months' custody, by commencing section 154 of the Criminal Justice Act 2003, and **we recommend that the Ministry of Justice provide a timetable for implementation. We recommend that the Sentencing Council's new Allocation Guideline be given time to bed down and the Council be given an opportunity to review its impact on the allocation of cases to the magistrates' courts. We further recommend that the Ministry of Justice publish any modelling of the potential impact on the prison population of extending magistrates' sentencing powers.**

72. We are keeping under review the case for increasing magistrates' courts' sentencing powers in the context of courts reform and the sentencing framework. Increasing magistrates' custodial sentencing powers would affect many parts of the criminal justice system. Partial commencement of provisions in the Criminal Justice Act 2003 to increase magistrates' custodial sentencing powers for either way offences only is not straightforward. For example, it could risk creating some anomalies in the sentencing framework. That is why we would need to consider carefully the impacts that any change might have before a final decision is made.
73. The new Allocation Guideline is a key step to encouraging magistrates' courts to take a robust approach to retaining more either way cases. The main purpose of the guideline is to encourage magistrates' courts to retain jurisdiction in more cases which at present, for a variety of reasons, they send to the Crown Court for trial or sentence. The guideline has been in force since March 2016.
74. We agree with the Committee's recommendation that the guidelines should be given time to bed down. The Sentencing Council is an independent body with a statutory duty to monitor the operation and effect of its sentencing guidelines. We understand that the Council began evaluating and monitoring the impact six months after the guideline came into effect.
75. We do not currently have modelling available to share on the potential impact of increasing magistrates' custodial sentencing powers, including prison population impacts.
76. At various times, the Ministry has modelled the potential impacts of increasing magistrates' courts custodial sentencing powers as part of policy development. Appropriate models, which may be more or less robust, have been developed for specific purposes during periods when the policy has been actively considered. Should we increase magistrates' custodial sentencing powers, we would publish any modelling as appropriate.
77. Increasing magistrates' custodial sentencing powers for either way offences could drive a range of changes in the criminal justice system. Modelling these relies on a range of assumptions that are complex and difficult to quantify accurately. Modelling is therefore only one way in which to examine the possible impacts of increased

magistrates' custodial sentencing powers. We are considering a number of ways we could develop an evidence-based understanding of any potential impacts.

The Select Committee recommended:

35. The evidence we have received suggests that many magistrates are eager to adopt problem-solving approaches when dealing with offenders sentenced to community penalties. We are sympathetic to this idea.

36. Regardless of the Government's future policy direction on dedicated problem-solving courts, **we recommend that legal restrictions be lifted so that suitably trained and experienced magistrates can supervise community orders in all courts**, provided that consistent sitting can be arranged.

37. We do not yet know if the Government will decide to develop a strategy for piloting problem-solving courts. If they do so, we conclude that magistrates will play a central role in ensuring the strategy is successful.

38. In these circumstances, **we recommend that magistrates be fully consulted on the approach that is taken.**

78. We are looking in more detail at the evidence of what works for Problem Solving Courts and are exploring how best to take this forward. This includes taking lessons learned from existing initiatives already developed in a small number of local communities across the UK, and considering the potential for use of review hearings.

79. Through this work, and by harnessing technology and innovation in our courts, we will ensure vulnerable offenders get the help they need to solve underlying problems and cut re-offending.

80. We welcome the interest of the magistracy on the future of problem-solving courts, and will set out our plans in due course.

The Select Committee recommended:

40. We accept that there is support among some sections of the magistracy for a more extensive judicial role within civil and tribunal jurisdictions, but we consider that it would be advisable at present to focus career development and training resources on maintaining and developing magistrates' core skills within the criminal and family courts. However, **we recommend that the feasibility of suitably trained and experienced magistrates undertaking prison adjudications by video link, with the support of a legal adviser, be examined.**

81. We will examine the feasibility of suitably trained and experienced magistrates undertaking prison adjudications by video link, with the support of a legal adviser.

The Select Committee recommended:

41. We also recommend that the role of magistrates serving on Out of Court Disposal scrutiny panels be made more consistent across the country by means of additional guidance.

82. The role of magistrates when serving on out of court disposal scrutiny panels is covered by guidance issued by the Senior Presiding Judge in June 2013.⁶
83. The Government is considering whether the existing scrutiny arrangements could be strengthened and whether additional guidance to such panels should be issued.

⁶ See: <https://www.judiciary.gov.uk/publications/spj-guidance-mags-scrutinity-ocds-17062013/>

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