

THE MAGISTRATES' ASSOCIATION

JUDICIAL POLICY AND PRACTICE COMMITTEE

The Way Forward for Magistrates' Courts Business 2011-2015 — HMCS Proposals

1. The Association welcomes the opportunity to comment on this HMCS document. It is useful to understand the thinking about the future for Magistrates' Courts Business although it apparently excludes family work, a growing element of the workload.
2. The Association has always been willing to work with HMCS in the interest of developing a modern, cost-effective and successful system for summary justice along with the civil *and family matters* dealt with in our courts. Our concern is that too often what is suggested is piecemeal reform not related to any underlying principles of justice in a modern community-focussed and decentralised democracy.
3. Much of what is in the HMCS paper reflects existing thinking re-written in new words. By only looking at some aspects of the whole situation there appears to be a continuing 'silo' mentality within parts of in HMCS. For instance, family work has been excluded, and there is not any mention of the Tribunal Service that also has facilities and is to be merged into the same service as HMCS. How does that merger impinge on the strategy? Additionally, the paper seems to present more of the 'salami-slice' approach to change rather than a fundamental re-think. This may be due to time pressures but can have unfortunate outcomes.
4. The paper demonstrates that HMCS has some vision of its objectives. Unfortunately the vision is limited. 'Service Delivery' is only the third theme in the vision statement whereas the Magistrates' Association (and, indeed, the Coalition Government) believe that it should be the first and foremost objective. The other two themes must be secondary; they are but the means by which a cost-efficient service is achieved. There is reference to links with other aspects of HMCS business, but so much does interlink that surely the strategy should start at a higher level.

Initially, however, it is essential to define what the Service Delivery should be and we suggest that this is to *'provide facilities and arrangements to allow communities to deliver, with full confidence, criminal, civil and family justice matters within the remit of a summary justice system'*.

5. Since the nationalisation of the administration of magistrates' courts under the 2003 Act there has been no clear policy steer as to the place of such courts, and indeed summary justice, in the provision of justice in England and Wales. The work of the courts has been subject to significant changes with all first tier licensing work removed to local authorities; some work de-criminalised and removed from the courts; new out of court penalties and sentences introduced and a fall in the levels of some crimes — whilst work in the family proceedings courts has increased. However, the discussions promoted by government are already seeing a reversal in policy as evidenced by recent announcements about the use of PNDs by at least one police force. Moreover, discussions within the Home Office about alcohol licensing reforms may impact on our courts to some degree. The fact that the HMCS proposals do not identify how such changes could be incorporated shows a lack of vision.
6. The use of parallel tracks for discussion of judicial and non-judicial matters is unfortunate as they are not entirely separate. The judiciary both full-time and volunteer need to be fully involved in discussions. To that extent it is unfortunate that the HMCS Board does not contain a magistrate and that the Directors' Board does not include judicial representation. The administration of justice cannot be separated from its delivery and to do so can lead to a failure to understand the underlying philosophy and values inherent in a successful judicial system in a mature democracy.
7. What follows are our comments on some of the various suggestions within the paper, and our ideas that contribute to the debate but do not currently form any part of the HMCS thinking.
8. The Magistrates' Association acknowledges that we live in a time of great austerity and that it may be the case of switching from 'doing things better' to 'doing better things'. This may mean a change in approach that is radical. But, change must be based upon agreed principles.
9. The Magistrates' Association believes that the work of our courts derives legitimacy from the participation of ordinary people in both deciding guilt and in determining sentence. The relationship between the courts and communities has been recognised as key in many countries, as evidenced by the influence of the Red Hook Court in New York on the North Liverpool Community Justice Centre. There is a tension between specialist courts and courts serving communities that is, as yet, unresolved. The ideal is no doubt a local court with sufficient specialist facilities so as not to delay justice.
10. Without the articulation of key values, any vision statement and the operating principles derived from that statement can only be about efficiency savings. The vision and strategy for business must be securely based upon principles derived from an understanding of the place of justice in society.

The following comments represent the Association's views on particular aspects of the proposals:

Question 1: Is the proposed vision statement right for MCB for the period to 2015?

The proposed vision statement contains no reference at all to justice, or access to justice. MCB is not a service separate from HMCS but an integral part of it. It exists to support the delivery of justice — and this is what should be described.

The vision outlined in the paper is too mechanistic, and not linked to the aims of the present coalition government as expressed in the document *The Coalition: our programme for government*. In seeking to achieve the vision outlined by HMCS little scope for radical reform along the lines suggested by the Magistrates' Association has been considered. Indeed, it is not clear what judicial input there has been into the development of a service that is essentially judicial in nature. It would be inconceivable that such a vision for the higher courts could have reached this stage of development without serious discussions with the judiciary. To describe the delivery of justice as a business is inappropriate. It is a service. Since a consultation is in progress relating to the closure of over 100 magistrates' courts, it is not clear how that exercise fits in with the vision and scope of this paper. The Magistrates' Association is developing an alternative blueprint for a cost-effective, and cheaper, summary justice system as a part of our national response to the closure consultation exercise. The executive summary of that document is attached to this response.

It is too late to implement a five year plan by 2015 and a longer term strategy is, in any case, necessary.

Question 2: Is the proposed scope for a MCB strategy right?

Magistrates' courts, and most importantly magistrates, deal with criminal, civil and family work and to separate part of the work cannot be efficient and must threaten utilisation, productivity and service delivery. In short, the Magistrates' Association considers that divorcing enforcement and family work from the business case strategy is wrong. For instance, it may be that a review of the rising levels of unpaid fines might require greater judicial involvement in enforcement with the agreement in court of payment regimes. This would impact on the time cases take to complete and affect items with this strategy. The Magistrates' Association recognises that throughout most of England and Wales 'family' magistrates are required to sit on criminal cases and listing issues between the two jurisdictions cannot and should not be divorced. There are similar issues over use of court time and 'ticketing' of legal staff. The failure of some regions to be able to tell the Magistrates' Association how many legal advisers are able to take family courts clearly demonstrates that the present system is not working. The proposed strategy does not close this gap in any way.

It is difficult to reconcile the two statements in paragraph 2.6. Indeed, if correct, the second could nullify the whole exercise.

Question 3: Are the proposed strategic themes right for a MCB strategy?

We would not argue with the general idea of ‘reducing bureaucracy and waste and ‘improved service delivery’, but ‘improving utilisation’ is a less general and more questionable idea. It implies a somewhat simplistic measure of success which does not take into account, for instance, the involvement of reluctant and/or vulnerable participants, nor the importance and complexity of the decisions taken.

Improving utilisation depends upon the model agreed for summary justice. Whilst assets should not be under-utilised, neither should that be the only driver. The following table with respect to virtual courts makes this point succinctly.

SITUATION	SUITABILITY FOR A VIRTUAL COURT
Charge – police bail granted	Not suitable <i>per se</i> because may be required to wait at a police station for a VC slot. This is a deprivation of their liberty that is not necessary
Charge – No bail and no request for a bail hearing	Suitable for a VC
Charge – No bail and request for a bail hearing	Not suitable for a VC as time taken will likely exceed any slot, unless whole VC is a ‘bail court’
Presentation and sending hearings from custody	Suitable for a VC
Warrant arrests	Might be worth considering if saves travelling time, as a part of a national scheme
Any of the above with use of interpreters	No suitable for a VC – court needs to see and hear all interactions between the parties

The Magistrates’ Association is in favour of reducing bureaucracy and waste, but no examples are provided of where and how this can be accomplished. Similarly, both CJSSS and the PYO campaigns are examples of successful cross-partnership working in which magistrates have enthusiastically participated. If similar methods could be demonstrated to reduce the level of cracked and ineffective trials and non-payment of fines, the Magistrates’ Association would no doubt be happy to support them. But, this paper makes no concrete proposals in this section.

Some more detailed proposals are highlighted in further questions in this document. Many are un-related to the purpose of summary justice.

Question 4: What are your views on the future integration of criminal court administration?

Administration

The Magistrates’ Association believes that effective integration of pre-court and post-court administration, where appropriate, can produce efficiencies and help create better career structures for administrative staff. However, the work of the Crown Court and magistrates’ courts is not identical and a national model for further integration may well run the risk of being too prescriptive. Speeding up the transfer of cases between the courts is an excellent objective, but deployment of staff from one court to the other is not a simple matter.

Moreover, the current ‘unification’ of administration at local (now sub-regional) level cannot be described as a success. Even senior personnel lack training and understanding of how magistrates’ courts operate.

This question cannot be divorced from other questions in this consultation which are discussed in more detail later.

Question 5: What are your views on the long term and short term use of technology to gain virtual access to the court proceedings and MCB services?

‘Virtual’ courts and the use of IT

The Magistrates’ Association supports the use of IT. All RiC and other hearings involving those in prison custody should be conducted by video link unless there is a compelling reason for the person to be physically produced in court and more courts should have video link facilities. Local courts also should have video links to probation and other agencies to allow for the preparation and delivery of reports. At present, considerable time is wasted with probation officers sitting in court waiting for a case that may require their services.

The use of links to DVLA, fines accounts and screen-based details of previous convictions can significantly speed up the business of the courts and further work should be undertaken to discover whether more time can be saved through better preparation. Magistrates’ consider on-line facilities to update bench books and other aides would save both time and money, and ensure all magistrates were using the most up to date sources.

The present ‘virtual courts’ project has not been a success so far and can increase overall costs to the system as a whole through longer periods in custody. The use of fixed slots compromises the ABC method of court resource accounting and can lead to magistrates (and, of course others such as legal advisors, prosecutors and witnesses) wasting time if the whole slot is not used and the next case is not yet ready. The remaining period of the trial project will see more flexible listing, but this has yet to be evaluated.

The basic (in court) links to DVLA records, fines accounts, previous convictions, court availability need to be set in place as a matter of some urgency. The Libra system is inefficient and can lead to problems such as insufficient space to record special reasons and inadequate court lists for magistrates. The lack of an FPC-oriented IT system for family work contributes to delays and inefficiencies both in and out of court.

Any IT system should also have the capability of identifying the make-up of the bench that made any particular decision.

This section leaves too many unanswered questions including security, access, human resources, cost to both public and private interests, space and facilities, compliance in all areas of the justice system, pressure on accused persons, human rights, proper consideration of facts and, above all, the interests of justice. More thought and discussion is required.

Question 6: Should HMCS develop a National MCB listing policy?

National Listing Policy

Listing is a judicial matter and it would neither be acceptable nor appropriate for HMCS to develop such a policy. However, if what is meant is a national approach to the task then this may be helpful. However, one size does not fit all and to remove local flexibility is to risk greater inefficiency by imposing national rules which are irrelevant in many areas. What would be unacceptable is a formulaic approach that does not recognise the key part played by magistrates as part-time judicial officers. Many benches have examples of administrative staff turnover resulting in catastrophic failure in listing systems. Whatever system is used it should be an essential function of JIGs or some other judicial body to both set policy and monitor the effectiveness of listing offices. HMICA should also report on their effectiveness.

The issue of *specialist v generalist* courts is also part of this question. A national judicially-determined debate on the outcome of pilots in various types of specialist courts should be held before any decision on policy is determined by officials.

Question 7: Should HMCS develop a single criminal court file?

This would be a good idea — different forms and files are examples of the artificial barriers that hinder working together. However, genuine differences in the work must be recognised; the concept of the single file must not take precedence over practical need.

The aim should be to reduce delays in reporting and especially in resulting that can lead to incorrect previous conviction lists for persistent offenders being reported to a court. Some flag for early entry of resulting for POs might be considered. Resulting of special reasons should be improved.

Technology should make this possible — however, it has to be said that the public sector record on IT does not inspire confidence.

Question 8: How should an MCB strategy support the delivery of services within a rationalised estate?

Estates

A longer-term strategy that recognises the place of summary justice and associated civil and family work of the magistrates' courts in communities is urgently needed. The Association would propose a minimum of one summary justice centre per district council, metropolitan district and London borough area of local government with additional centres where the authority covers a large geographical area and transport links prevent easy travel. Centres should form part of a local response to summary justice and in line with the principles of the coalition government be managed on a de-centralised basis under the strategic direction of HMCS. The estates strategy can then be built around an agreed notion of service delivery. The present consultation seems efficiency rather than service delivery driven. This has prevented a zero-sum look at less expensive options of delivery of estates. Such a policy could result in more closures of existing court buildings operated through HMCS, but an increased number of local courts of summary jurisdiction operated in association with local government.

Current and future needs must be carefully identified before the wholesale closure of courthouses. New courthouses must first be planned and built to match demographic indicators.

Question 9: What are your views on the development of an MCB back office model?

Back Office Model

This makes sense and if it also builds in a fully relational database at area level (which is not the case at the moment) magistrates might also benefit from better information. However, we are concerned that LEAN has not been seen to have worked and are worried by reports of extra work for legal advisers in preparing files for courts. A credible MCB strategy must focus on effective support for the judiciary and if centralisation of services does not increase (or at the very least maintain) the standard of service then it is an unhelpful development.

Question 10: What are your views on the centralisation of Saturday and bank holiday court hearings?

Saturday and Bank Holiday Courts

The use of 10-5 Monday to Friday court time is anachronistic, and should be reviewed. The Magistrates' Association would be happy to discuss both weekend and evening courts, subject to issues relating to religious beliefs. Evening and weekend sittings would also require thought to whether single or double sessions for magistrates were appropriate. Magistrates often sit beyond 5pm at present in order to help complete trials and such use of 'overtime' should be acknowledged in the statistics collected. Such a model would obviate the need for central Saturday courts that increasingly cover distances that breach the time to court principles, even in London. Saturdays should become a 'working day'. If the present arrangements are to continue then agreed principles for centralisation similar to those for closures should be agreed nationally. All magistrates, regardless of LJA should be entitled under their national jurisdiction powers to be able to sit in any deemed 'central' courts covering work from more than one LJA.

Magistrates' courts are required to provide a more comprehensive service than other courts and can be required to convene at any time of day or night. This is recognised by magistrates as part of their role — alongside dealing with search warrant applications and other duties that may arise at any time of day or night on a weekday, weekend or bank holiday. To retain any semblance of 'local justice' these functions do need to relate to the tiers of government, police and other agencies that need the facilities.

Question 11: How can a MCB strategy best support the continued standardisation of processes in the magistrates' courts?

Standard Operating Procedures

Standard Operating Procedures are a benefit.

Administration — provided that information is available on time for the courts this does not directly affect magistrates, but issues over resulting and the recent Leeds warrant problems do

highlight the importance of making sure that administration is undertaken correctly. People's lives are affected by judicial decisions. IT should be exploited as much as possible in this area.

LEAN — it is important that this process is made to work throughout the entire criminal justice 'chain'. Improvements within the court sector are of little benefit if the other agencies do not make a similar commitment to improvement — but we have received reports that they are, indeed, the weak links in the chain.

HMCS managers and staff need to understand how courts work and this does not always seem to be the case. There is a critical induction and continuation training need in this respect.

Question 12: Quarterly reviews of the ABC (MC) model are being conducted in 2010/11 and communicated to stakeholders. How should stakeholders be engaged on the use of the ABC (MC) model in future years?

ABC

This is an already accepted business model. As long as magistrates are better informed, flexibility maintained, and decisions based upon its findings have judicial involvement — this might help. However, where justice is involved, the basic idea of service must go beyond mere cost effectiveness and so ABC must be only a tool to support — not a driver of — business decision making. For instance, the evaluation of Virtual Courts project has highlighted the tension between ABC and fixed time slots.

By its nature, some work in magistrates' courts is unpredictable. ABC can provide benchmarks, but by itself cannot do anything to solve cracked trials, legal aid timings, attitudes to election for crown court trials, all of which can impact upon court time.

A permanent review board for ABC with judicial involvement should be created to monitor results alongside other data from in-court procedures.

Question 13: How should an MCB strategy take account of any change that will impact on the balance of work between the Crown and Magistrates Courts?

Either way indictable offences

It is clear to the Magistrates' Association that there is a real opportunity to alter the basis and methodology of cases going to Crown Court in some offences where there is an election, and for mode of trial guidelines to be reviewed in other cases. This should be taken forward through the judicial route, but could have implications for court utilisation rates and closures if more trials were retained in magistrates' courts. Changes to legislation will probably be necessary but a statement of principle should be agreed as quickly as possible and current guidelines reviewed.

Support is best indicated by mapping any changes to the balance of work against a time limit for acceptable delays between first hearing and trial date and thus identifying the required court space. This time interval already varies across the country in an unacceptable manner.

Question 14: Do you agree that court hours should be extended and if so, how?

See our reply to question 10 (above). Public transport availability needs to be considered for evening courts, also of course any curfew requirements which may be in effect.

Question 15: Are Justices' Clerks (delegated) powers right or should consideration be given to extending them?

Delegated Powers

The Magistrates' Association believes that separation between judicial and executive functions is an important part of any democracy. The present role of Justices Clerks is anomalous, and needs a complete re-think. To preserve the separation of powers, all legal staff working for HMCS and advising judicial officers and exercising any powers of a single justice should belong to an arm's length NDPB or similar body within HMCS. The present overlap between administration and legal service is not appropriate for the administration of justice. No civil servant should be allowed the powers of a single justice. Under CJSSS, there are no routine 'administrative hearings' any more.

Question 16: How can HMCS better support the deployment of magistrates and District Judges (MC) to meet business need and how should HMCS provide administrative support to the various judicial forums?

Judicial Capacity

JIGs should monitor the requirements for magistrates and inform Advisory Committees accordingly so that recruitment needs can be assessed. However, there needs to be a complete overhaul of the use of judicial staff in the summary justice courts with a view to reflecting both an agreed 21st century concept of summary justice and a cost-effective solution. The Magistrates' Association has already pointed out in its response to the court associate pilot that there will always be a minimum of two staff in any court. The court associate model replaced a qualified legal adviser with an unqualified administrative post. The saving on the total court bill will be insignificant compared to replacing the more expensive District Judge with an experienced magistrate on a fixed daily allowance. Such a magistrate would sit on trials with colleagues to ensure all decisions of guilt and innocence were taken by more than one person. This is in line with the historic British approach to justice going back to Magna Carta.

Agreed protocols for administrative support should be enforced nationally within the agreed bench structure. This includes support for bench chairmen in their management role.

All trials should be heard before a bench of three people.

Judicial forums

HMCS should understand that administrative support is an important part of its role. For example, meetings of the bench or its panels are vital to enable magistrates to meet and discuss points of interests, keep up to date, enable extra training or information sessions. Justices' Issues Groups (JIGs) have an essential judicial role. This is all part of the effective

delivery of justice and constant pressure to reduce support, or the number of meetings, on cost grounds shows a lack of understanding of the role of HMCS.

Question 17: How should the use of Court to Prison video links feature in a MCB strategy?

All remand, where bail is not an issue and process hearing from prison should take place over a video link unless a court orders otherwise. Such an order should be supported by reasons, such as the use of an interpreter.

Prisons should be encouraged to extend links to all local courts. We are told that the current restriction is the number of links the prisons can handle but with new technology it should be possible.

Question 18: How can HMCS best achieve such an ambition (CJS joint initiatives) through its MCB strategy?

Joint initiatives

Magistrates' courts are part of a set of inter-relationships that involves the police, CPS, district councils, enforcement arms of government department, the Law Society, the Bar Council and support services such as YOT, NOMS and CAF/CASS, victims and witness service and the media. The development of a PYO strategy was an outstanding example of a joint initiative.

The failure for many years to provide links to DVLA is an example of a lacuna that created many wasted court hearings. At present, it is not clear who is in the lead between CPS, police and HMCS. What is certain is that where properly developed the use of joint initiatives can be of great value as the absence of violence during the recent World Cup for the second tournament in succession demonstrated

Question 19: How should victims and witnesses needs be recognised within a MCB strategy?

Victims and Witnesses

Needs of victims and witnesses must be given priority over cost considerations. All courts where trials take place should have adequate facilities for vulnerable witnesses. As witnesses, who may be victims, are not usually present at first hearings, then it can be possible to hear first instance matters in courts without such dedicated facilities.

The inability of the CPS (particularly in London) to achieve attendance of witnesses leads to unnecessary delays and expensive cracked trials. Where there are good witness support schemes this is improved and such schemes should be extended.

The Magistrates' Association is also concerned about the ineffective compensation scheme for summary justice. At present, small amounts are often collected and then paid out. This results in two transactions, a collection credit and then a payment debit. The use of a Victim Fund, as advocated by the Association, would reduce this to one transaction; a collection credit in support of a single payment. This would have the added value of not constantly reminding vulnerable victims of the crime that they suffered.

The suggestion has been made that this would increase payment levels ordered by the courts. A pilot in a few courts just for pensioner victims would allow this proposition to be tested. The Scheme could be funded by extending the present victim surcharge to include motoring fixed penalties and PNDs.

The present fine collection system is not working and magistrates need much more information about who pays, and who doesn't. This would allow a more effective use of fines. Fines Courts should be re-introduced to allow anyone who is more than one payment behind to be re-assessed by a judicial officer. Collection Orders should only be confirmed when a defendant has returned to court to explain the payment rate agreed with the fines collection officer and have it approved by the court. The present system is put under strain by the requirement to collect non-court imposed fines.

Question 20: What are your views on streamlined and more efficient customer contact and how might we deliver that?

Customers

Everyone who enters a court is a potential 'user' of its services. The term customer relates to the commercial world, and is inappropriate in a judicial setting, and should never be used. The discussions over the provision of cash collection points reveal the problem with many who appear in magistrates' courts. Streamlined services may not be the most effective. If streamlined services were more effective, the fine collection rate would have increased, not decreased. Better use of internet terminals in job centres, libraries and other public buildings might be more cost effective than call centres with high overhead and fixed costs.

Question 21: What are your views as to how interpreter provision can be best improved?

Improved Interpreter provision

So long as magistrates' are fully involved in this key area of court work that has increased significantly during the past few years, we have no complaints. However, high standards must be maintained and if extended court hours are introduced interpreters must be available for all court sittings.

Every defendant has the human right to understand what is happening. The Association is signed up to the protocol that different interpreters should be used in court to those used by the police. However, we note that the provision of interpretation services is currently under review and a ministerial statement on this was made on 15 September.

Question 22: What are your views on the development of a triage concept for MCB and how would you like to see it work?

Triage

This should be explored, but it is a judicial matter. A judicial group should explore the use of magistrates within the wider justice system. The Association voiced its concerns about Conditional Cautions and other breaches of the boundary between the role of the executive in identifying and charging wrong doers and the judiciary in determining guilt (in summary justice) and deciding an appropriate sentence. The multiple use of PNDs for serial shoplifters

and even violent offenders and the creation of a 'third tier police' force of SIA-approved workers handing out PNDs, and with access to the police national computer, has raised issues about how criminal justice is handled.

At the same time, magistrates are better trained than ever before, have taken on board CJSSS and endorsed case management techniques that have helped release resources. Magistrates would like to be involved more closely in restorative justice and in recognising the progress offenders make towards becoming better citizens and reducing and eventually stopping offending. The work of some specialist courts has been helpful in this respect. Sentencing courts already act as gatekeepers in deciding community sentences and this could be extended provided sufficient community resources are available. Magistrates' Courts could be the focus for community resolution chaired by trained magistrates that might allow some work to be removed from the county court system. Compare the work that is already done by magistrates in the family court sphere where alternative dispute resolution and/or mediation are judicially supervised.

The present need to review resources expended on the justice system offers new opportunities for magistrates and their courts. The concept of local justice, even in urban areas, has been central to our justice system, just as it is in most other countries. The use of trained, but not legally qualified, individuals in a judicial role, together with the common law, is basic to our justice system: to lose either by default would be a serious error.