

## **MAGISTRATES' ASSOCIATION**

### **FAMILY COURTS COMMITTEE**

#### **Response to the Ministry of Justice consultation on the contents of a new Destination of Appeals Order**

The Magistrates' Association welcomes the opportunity to respond to the consultation by the Ministry of Justice on the routes of appeal against the decision of magistrates' courts in family proceedings.

We support in principle the proposal to re-route appeals from the High Courts to a Circuit Judge in the county court. We agree that this will clarify and simplify the appeals process, make more efficient use of available judicial resources and free the High Court to deal with more complex cases.

Currently the number of appeals to decisions made in the magistrates' court is small and we would hope that a simplified route of appeal does not lead to an increase in the number of appeals.

We respond to the questions as follows:

1. **Do you agree that the scope of the Order should be extended in this way?**

Yes.

The proposal that Appeals should be dealt with by a Circuit Judge or Recorder in the next tier up from the magistrates' court brings practices in the family courts in line with the criminal jurisdiction where appeals from magistrates' courts are heard in the Crown Court. In addition it confirms the principles set out in the Allocation and Transfer of Proceedings Order and Practice Direction that cases should be dealt with in the lowest appropriate tier of court.

2. **Should a Practice Direction be issued to place an obligation on the Magistrates Court to give reasons for its decision and retain notes of evidence?**

We understand that this is already a requirement under the existing rules and will remain so under the Draft Family Procedure Rules which are also currently subject to consultation. We do not therefore see the need for a Practice Direction on this point.

We do however find the situation regarding the decision of a District Judge (Magistrates' Court) confusing. Under the draft Family Procedures Rules the

requirement that District Judges (Magistrates' Court) record reasons is removed. The current obligation on magistrates' courts to give reasons and record evidence on all decisions covers both District Judges and Magistrates, and we shall therefore be proposing that the draft Family Procedure Rules are amended to enable this procedure to continue. We do not think there should be two different procedures within the magistrates' court and if this cannot be amended in the Family Procedure Rules then we would support a Practice Direction to bring this about.

3. **Does the Order as drafted achieve the objective of diverting all appeals from family proceedings in magistrates' courts to the County Courts?**

In our opinion this does not cover certain appeals under the Child Support/Child Maintenance legislation which fall outside the Children Act but are dealt with in the magistrates' courts. We refer specifically to appeals against committal to prison or removal of driving licence for non payment of child maintenance.

**January 2009**