



**National Response to  
Consultation on Court Closures**

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# THE MAGISTRATES' ASSOCIATION

## National response to consultation on court closures

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# THE MAGISTRATES' ASSOCIATION

## National response to consultation on court closures

### Executive Summary

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#### The consultation proposals

Magistrates' Association branches have taken the opportunity to respond in detail to the consultation on proposals to close a significant number of magistrates' courts. Overall, the Association has serious reservations about the whole consultation process and the specific proposals.

The Association accepts the need to reduce expenditure in the magistrates' courts service but considers that the proposals run counter to the coalition agreement on decentralisation of services. The Association believes that the principles of a summary justice system at the heart of communities across England and Wales should drive the estates strategy rather than closure proposals based merely on a superficial national estates strategy driving summary justice.

The indicated savings in the court closure proposals are but a tiny fraction of the whole HMCS budget, let alone the whole Ministry of Justice budget. The Association believes that courts should be placed at the heart of communities based upon crime statistics and realistic access to justice for all concerned and in particular victims and witnesses. There should be a coherent holistic strategy to overcome the years of salami slicing of the courts services and build on the need for flexibility in the use of courts in delivering justice and regulation.

The Association therefore proposes the following:

*a full review of the structure and purpose of the summary justice system especially incorporating the conclusions from the Family Justice review to provide a blueprint for a cohesive holistic justice system.*

The 'lay' magistracy is well established, and provides a professional, cost effective and transparent service to the justice system. A number of proposals for closure are premised on low utilisation figures, which are often questioned, suggesting that there is spare capacity in magistrates' courts. The Association believes that an increase in utilisation figures could be achieved through a number of positive measures to bring financial and other benefits. Delays in running trials at some Crown courts could be reduced by transfer to magistrates' courts. Courthouses could be shared by other jurisdictions such as tribunals, coronial service, county and Crown court.

The figures given in a Commons reply by the Minister on 9 September 2010 clearly indicate that magistrates are more economic than district judges. Given the diversity of magistrates and their increased competence through mentoring, training and appraisal there is more than enough capacity to deal operationally, professionally and economically with the existing court business plus increased work from other areas.

The Association therefore proposes:

*a detailed examination of the current judicial role of magistrates to consider wide-ranging developments particularly aimed at reducing the pressure and undue delays on the Crown Court by transferring more cases to the lower courts.*

*a detailed analysis of the judicial estate to rationalise the use of resources on a shared basis.*

*an immediate freeze on the appointment and replacement of district judges (magistrates' courts), to contribute a significant amount to the proposed savings to be allegedly achieved through the closure of a third of all magistrates' courts.*

Magistrates have a thorough knowledge of the court process and bring a wide ranging experience in business, commerce and financial strategy and practice to an understanding of service delivery. The Association believes that by capitalising on such experience further savings can be achieved and proposes that;

*magistrates should have a more formal role in the local management of magistrates' courts to ensure that the needs of communities and the judiciary are properly and adequately met to deliver justice more cost effectively.*

The consultation also proposes the merger of a number of benches ranging across various types of communities with the apparent objective of saving un-quantified administrative costs but without any consideration as to the impact on the community or the magistracy of very large benches. The Association notes with concern that there has been no research carried out to identify a range of bench ideal sizes given the function that benches are to perform. It therefore proposes that:

*research is undertaken on ideal bench sizes to inform any future bench mergers.*

The Association believes that savings could be made by a number of other measures including reduction of administration, greater use of local commissioning and procurement procedures, a re-structure of HMCS management levels and headquarters staff, and a return to a proper judicial oversight of court listing and rotas to ensure the most effective use of JPs. The Association proposes:

*a thorough examination of the whole structure of the court support services.*

The Association recognises the positive contribution the 'lean' programme has made in working patterns and reducing administrative costs. However, it shares concerns that this work is being undermined by a continuing serious disconnect between the three main agencies in the justice system – the Police, Crown Prosecution Service and HMCS because there is no integrated strategy to deliver financial effectiveness. Magistrates are also engaging with case management, but feel frustrated by the lack of urgency often practised by other agencies. The Association proposes:

*a review of the inter-relationship of these three agencies to ensure continuity, timeliness and more cost effectiveness in the preparation and presentation of cases in court.*

The collection of fines has largely become an administrative function in recent years and although it is recognised there has been an increase in the collection rate, nevertheless HMCS figures state an approximate 14% increase in the amount outstanding to £568m since 2007. A more proactive approach to the collection of fines alone would realise more than the required savings proposed through court closures.

In addition the collection of compensation has also seen victims not receiving their rightful or timely compensation imposed for suffering and injury. Savings could be achieved through a single payment system by eliminating wasteful multiple transaction costs that serve to repeatedly remind victims of their injury. The Association proposes that:

*a more proactive development of HMCS's blueprint for fines collection with greater involvement of the judiciary coupled with local performance driven collection facilities.*

*a clear purpose is implemented for the victim surcharge by using it to establish a compensation fund to pay victims immediately the compensation is awarded by the courts rather than wait for the defendant to pay part of it when it suits them.*

## **The consultation process**

Members have expressed grave disquiet over the whole consultation process by HMCS. The considerable number of anomalies that have arisen during the preparation of responses has given rise to major concerns about the accuracy of the data used to prepare the proposals and must surely undermine the efficacy of the documentation. Such issues include inaccuracies in maintenance figures which in some cases are purely notional and not based on proper business processes; in utilisation figures which ignore significant family work and in travelling times and costs. Many of the supplied figures have been discredited in a number of areas by local magistrates. Although we have been told that the proposals neither form business cases nor final decisions on closures, nevertheless, many magistrates have expressed severe uneasiness that the consultation took place over the summer break when Members of Parliament and senior officials were not always available for discussion and debate. The Associations' branches and individual members have expended a significant amount of their own time to gather relevant accurate information and data with which to respond. The responses submitted with cogent reasons for retention, where appropriate, are very well articulated and present comprehensive submissions. It is felt that full accurate data should have been included in the proposals and that a business case should have been made on which to consult.

The Association also has considerable concerns about the next stage of the process. It proposes:

*the establishment of a separate analytical body involving all stakeholders to ensure full consultation on impact assessments and business cases so that the proposals can be owned by all concerned.*

## **Conclusion**

The Magistrates' Association believes that the notion of a summary justice system for communities is too important to be decided alone by civil servants who have a limited appreciation of the value of citizen involvement in the administration of justice. The coalition's thinking on 'The Big Society' is well supported by a strong magistracy. This means that adequate facilities must be provided to put magistrates' courts at the heart of the community. To achieve this Government is urged to adopt the recommendations set out in this Executive Summary.

## Recommendations

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1. a full review of the structure and purpose of the summary justice system especially incorporating the conclusions from the Family Justice Review to provide a blueprint for a cohesive holistic justice system.
2. a detailed examination of the current judicial role of magistrates to consider wide-ranging developments particularly aimed at reducing the pressure and undue delays on the Crown Court by transferring more cases to the lower courts.
3. a detailed analysis of the judicial estate to rationalise the use of resources on a shared basis.
4. an immediate freeze on the appointment and replacement of district judges (magistrates' courts), to contribute a significant amount to the proposed savings to be allegedly achieved through the closure of a third of all magistrates' courts.
5. magistrates should have a more formal role in the local management of magistrates' courts to ensure that the needs of communities and the judiciary are properly and adequately met to deliver justice more cost effectively.
6. research is undertaken on ideal bench sizes to inform any future bench mergers.
7. a thorough examination of the whole structure of the court support services.
8. a review of the inter-relationship of these three agencies to ensure continuity, timeliness and more cost effectiveness in the preparation and presentation of cases in court.
9. a more proactive development of HMCS's blueprint for fines collection with greater involvement of the judiciary coupled with local performance driven collection facilities.
10. a clear purpose is implemented for the victim surcharge by using it to establish a compensation fund to pay victims immediately the compensation is awarded by the courts rather than wait for the defendant to pay part of it when it suits them.
11. the establishment of a separate analytical body involving all stakeholders to ensure full consultation on impact assessments and business cases so that the proposals can be owned by all concerned.

## CHAPTER I

### National response to consultation on court closures

#### Role of magistrates' courts in summary justice

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An effective summary justice system serves the community, ensuring that all citizens are able to see that those who transgress are dealt with appropriately. Confidence in such a system is enhanced when the public can see the courts punishing offenders or ordering them to make restitution, pay compensation or engage in rehabilitative activities.

Crucial to the successful delivery of a summary justice system is the role of the magistracy. In 2011 the judicial system of England and Wales celebrates the 650<sup>th</sup> anniversary of the institution in statute of the office of Justice of the Peace (JP) – the magistrate.

*'Primement q en chescun Countee Dengletre soient assignez, p<sup>r</sup> la grade de la pees, un Seign<sup>r</sup> , & ovesq lui trois ou quartre des meultz vauey du Countee.'*

*'First, that in every County of England shall be assigned for the keeping of the Peace, one Lord, and with him three or four of the most worthy in the County.'*

The essential principle of the magistracy is that ordinary citizens from all walks of life serve their communities by acting as lay judges in criminal and civil matters. This has been accepted as a fundamental principle of a democratic society since the Greek philosopher Plato promulgated the involvement of the ordinary citizen in judicial matters.

Magistrates are the embodiment of the current Coalition Government's thinking on the concept of a 'Big Society'. Through their many community links, their workplaces and private lives, magistrates contribute to the notion of a civilised and just society in a highly visible manner. As the 'bedrock of the justice system' magistrates provide a professional service as case managers, jurors and sentencers.

Presently there are about 330 magistrates' courts around the country contributing to community summary justice by dealing with over 95% of all criminal cases as well as a significant civil jurisdiction including family law both public and private. However the current consultation on the proposals to close 103 magistrates' courts could undermine that essential component of a democratic society. They outline a national estate strategy predicated on the principle of reducing expenditure and are not based upon any notion of what constitutes an effective summary justice system.

The Magistrates' Association recognises the need to reduce expenditure and appreciates that underutilised courts can be a drain on resources and there needs to be rationalisation of the court estate. However it believes that costs can be saved in a number of ways in addition to court closures and this report addresses a number of these issues.

#### A summary justice system

The Association believes that the time is ripe to re-examine the structure of the current justice system and that there are a number of drivers for ensuring not only a successful re-structure but also an effective and responsive contribution from the **courts** of summary jurisdiction. A number of factors must be considered in ensuring that such a system responds to the needs of communities.

Demographics have changed since the locations of the current magistrates' courts were originally chosen. It cannot be right that costly court estate is underutilised, but it also cannot be in the interests of justice to devise a percentage usage requirement without consideration of all the issues

surrounding the nature of communities. To expect that every court or community can meet a high specification for utilisation undermines justice and compromises are essential to meet relevant needs.

Another factor to be considered in relation to the under utilisation figures is whether the estate can be shared with other jurisdictions within the justice system – Crown court, county court, coroner’s court and tribunal services.

An essential element of a justice system must be ready accessibility - a principle enshrined in Magna Carta which guaranteed ease of access to the courts for all without financial burden. The public accesses magistrates’ courts either as complainants, witnesses or defendants or as supporters of one or the other and it is generally the case that those who access the courts in whatever manner are the less well off members of society. The Association believes that any proposals for court closures should be accompanied by a detailed analysis of the access routes to justice. This factor recognises a number of issues such as distance, access to and frequency of public transport and the relative costs of travelling at peak times and as well as easy access to legal advice.

In reviewing any blueprint for a developed summary justice structure and estate it is necessary to examine the prevalence of crime based data such as that provided by crime maps. Communities where crime is high have a right to expect the justice system to provide court facilities where those who offend against the daily life of that community can be seen to be held accountable for their criminal activity. It runs contrary to any principles of justice to propose the closure of the courthouse in the area of a county that has, not only, the highest crime rate in that county, but also, one of the highest in the country.

With a few minor exceptions, criminal cases in magistrates’ courts are heard within the local justice area (LJA) in which the alleged offences are committed. The LJAs are for the most part based on traditional local government areas with co-terminus boundaries which may have little connection with modern transport, working and leisure patterns. The proposals give no consideration to this important factor. The impact of this is that under the proposed closures many court users would face long and difficult journeys to distant courthouses in towns/areas which have little or no connection with where they live, work, play or, in the case of offenders, where they commit offences. However in many cases a re-alignment of boundaries would provide a more coherent estate providing access for all court users to hearing centres nearer the location of the offence.

With the prospect of further courthouse closures, the Association invites the Government to review the areas which are to be served by the remaining courthouses. The following principles should be applied:

- 1. Court users should have their cases heard at the court closest to the place where the offence was committed.*
- 2. Public transport links serving each courthouse should be considered in deciding where the boundaries should be set.*
- 3. Local patterns of work and recreational journeys should also be considered in deciding the most sensible and convenient justice boundary to be applied to each courthouse.*

A revision of the boundaries will result in greater accessibility by the public to courts and greater use of public transport rather than private transport. No boundary reorganisation will suit every case and every individual and an improved process for transferring cases between courthouses should also be considered.

The differing nature of work and the needs of communities based on the driving factors considered above will identify the most relevant locations for court venues in a re-structured justice system. Consideration could be given to locating courts according to the nature of the work that they

undertake within the justice system. Communities want justice delivered in proximity to where offences are committed, but it must of course depend on the prevalence of criminal activity. A balanced geographical siting of hearing centres will provide the necessary venues for the various types of hearings to ensure that all magistrates can maintain the wide range of competencies and skills.

The Association believes that although closures will save some money the amount is insignificant in comparison with factors such as collection of fines and other outstanding debts to the court. Significant savings could also be achieved by supporting many of these proposed developments with a wider use of IT to prepare, present, manage and complete cases in court.

This report addresses a number of ways in which the Association believes that costs could be reduced through measures that would extend and provide a re-structured summary justice system to be delivered in the community

## CHAPTER 2

### National response to consultation on court closures

#### Principles of summary justice — our service needs to be policy driven

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**Recommendation: a full review of the structure and purpose of the summary justice system especially incorporating the conclusions from the Family Justice Review to provide a blueprint for a cohesive holistic justice system.**

The extent to which a criminal justice system can be driven only by cost rather than principle is an issue for society. However, in an age of austerity there is a difference between reducing costs and cutting expenditure in a manner that fundamentally alters the underlying principle behind a justice service. Our summary justice system has been subject to a twenty year period of court closures and re-organisations with no clear direction — especially during the past few years. This is in part due to the fact that the administration does not take into account that criminal summary justice for adults and youths and its associated family and civil jurisdictions are overwhelmingly provided in a professional manner by ordinary citizens. Such citizens are not employed full-time but are part of an unbroken tradition of lay involvement in the administration of justice, reaching back 650 years with its roots in Magna Carta, a document whose 800<sup>th</sup> anniversary will be celebrated in 2015.

This principle of the involvement of the ordinary citizen in the justice system is a key feature of our common law based legal system that marks it out from the professional and inquisitorial systems found throughout most of the rest of the European Union. Until the passing of the Court Acts 2003, there was central oversight but no national administration of the summary justice system. The passing of the Courts Act 2003 and the Licensing Act of the same year fundamentally altered the structure of the summary justice system but led to no overall consideration of the relationship between the service and its ability to meet any key targets. Since then, the arrangements for the planning, direction and oversight of the summary justice system and in particular the financing of the system have been removed from any real judicial input at magisterial level. The present round of cuts and the associated HMCS Business Development Plan exercise do not seem to be based upon any clear set of principles for justice.

One of the clear principles of the Coalition Government is that of ‘decentralisation of services’. However the present closure proposals seem entirely based upon the opposite principle of centralisation. The impact of this principle is the proposed closure of court houses that do not meet requirements that can only be fulfilled by large urban areas. The Magistrates’ Association disputes this single view of summary justice - that it must be delivered in large centres to be cost effective. An alternative view is that justice can be delivered cost effectively if devolved to courtrooms located in communities and in association with the district councils (including unitary and London boroughs) tier of government. In many areas these courts do not need to sit every day, do not require elaborate buildings for much of their work, and can be staffed from the communities they serve. Indeed it is not clear why such a service should be staffed by civil servants paid national rates of pay which was not the case before the 2003 Act. A return to a decentralised service operated locally at district government level might have offered a proposal that could have saved more money than the present proposals that seem to lack any principle of summary justice.

The Magistrates’ Association proposes a full review of the manner in which criminal summary justice for adults and youths and its associated family and civil jurisdictions are provided across England and Wales based upon a realistic assessment of changes in practice that are evidence driven. Such a review needs to be led by those with judicial understanding of the role of magistrates’ courts across all their different functions and the likely developments resulting from changing attitudes to managing all crime, family disputes and civil matters dealt with at a summary level. A review should outline a

stable and secure structure for magistrates' courts built upon an agreed set of national principles in order to avoid the regular salami-slicing exercise that has accompanied many of the recent spending reviews.

If the present proposed closures are fully implemented there will be an inevitable drift towards a centralised service based solely on cost rather than other relevant and important factors. More importantly it will be remote from many of those involved whether as victims, witnesses, defendants or magistrates. There is a distinct lack of any clear principles behind the present proposals as evidenced by a number of anomalies.

The proposed closures would leave only one magistrates' court in an area bounded by Banbury, Swindon, Reading and Basingstoke – a significantly large area with a serious amount of crime. Another proposal would close a court with a 76.8% utilisation figure, moving the work almost 20 miles away, when there is another court within 7 miles with good transport links.

The proposals also appear misguided when other relevant factors are considered. Family justice is under review and the Home Office has consulted on a review of the 2003 Licensing Act. The changes as proposed by HMCS may have unfortunate and unforeseen consequences for the administration of summary justice when consideration is being given to the balance between cases heard in magistrates' courts and the Crown Court. In addition, whilst the Association supports wider use of IT in courts its introduction has been hampered by poor planning in the 'virtual court' pilot and a lack of judicial involvement.

A thorough and principled review would establish a set of principles for summary justice that provide a speedy, cost-effective service through the retention of links to the appropriate tiers of local government and the professional active support and participation of the citizens of England and Wales. Such a review would identify areas for further savings through a rational approach to the court estate.

A remote system of summary justice risks losing the support of the general population and will make the judicial system disappear from the consciousness of many citizens. A democracy needs the visual symbols of government, representing the legislative, executive and judicial functions. Town Hall, Council Chamber and magistrates' courts are essential features of our democracy that is already too centralised, as the Coalition Government recognises. These proposals make matters worse not better at a cost of saving a minute amount of money.

## CHAPTER 3

### National response to consultation on court closures

#### Using crime statistics

**Recommendation: a detailed analysis of the judicial estate to rationalise the provision of resources.**

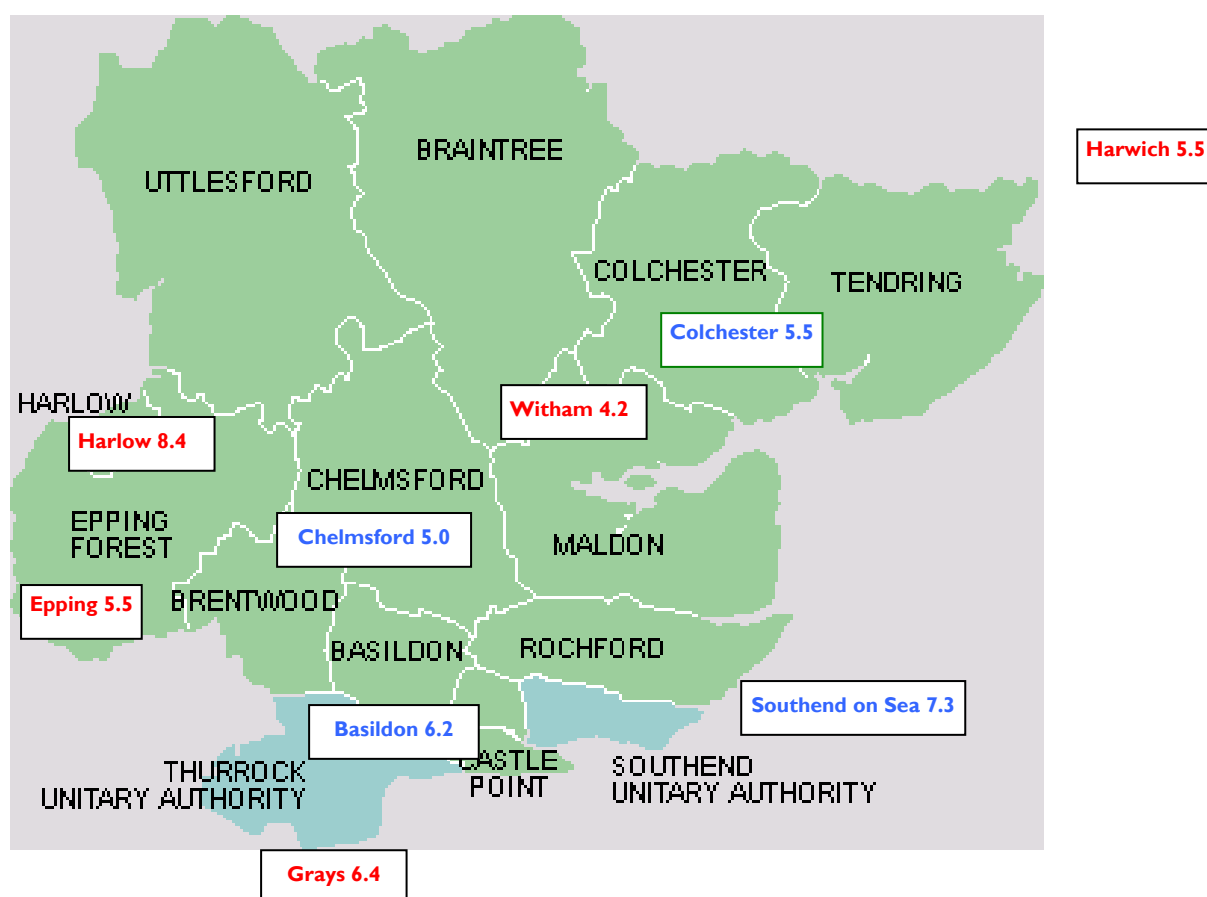
A principled review of a summary justice system would consider a number of aspects relevant to the delivery of justice for the communities which it serves. One important factor is the prevalence of crime and any effective system should provide hearing centres where crime is common and widespread. The information on crime levels is readily available through the Crime Mapping website.

This provides data for every local area and records the average crime rate for each month relative to the population (number of crimes per 1,000 population) for each local area/borough and allows a comparison to be made with all other areas in England and Wales. The crime level for each specific area is assessed as High, Above Average, Average, Below Average or Low

For the whole of England and Wales, five London Boroughs and North Manchester are in the High category and eighteen other urban areas are Above Average.

The Association has examined latest crime statistics for each police area in relation to the proposed court closures in the corresponding HMCS areas and has abstracted information for the periods June to August 2009/10.

**Figure 1: Magistrates' courts and crime rates in their districts of Essex**



The situation for Essex is described here as an example. The county includes two unitary authorities, Thurrock and Southend-on-Sea and the rest of the county is administered by Essex County Council and twelve District or Borough Councils.

**Figure 1** shows the administrative areas of Essex with the towns in which, at present, there is a magistrates' court. Those shown in red are on the list of proposed closures together with the Average Crime Rate per 1000 population prepared by Essex Police for the latest period available - June to August 2010.

The district of Harlow has a **High** crime rate compared with the rest of Essex and **Above Average** when compared with the whole of England and Wales. **Table 1** shows that the districts of Harlow, Epping Forest and Thurrock combined account for 26% of all the recorded crime in Essex. A third of robberies and vehicle crime also occurs in these three districts.

If one applies the factor of crime statistics to Essex then it seems incongruous that there is a proposal to close the Harlow courthouse.

An efficient summary justice system will be premised on a range of factors including crime statistics in particular. The Association proposes that it is essential to consider the crime levels in relation to the location of all courts in the country. In this particular example all the courts on the western side of Essex where a significant proportion of the crime occurs are on the list of proposed closures.

The Association believes that courts should be placed at the heart of communities based upon crime statistics with realistic access to justice for all concerned and in particular victims and witnesses.

**Table 1: Crime rates for Harlow, Epping and Thurrock districts**

Rate/1000 Population	All Crime	Burglary	Robbery	Vehicle Crime	Violence	Anti Social Behaviour
<b>Essex</b>	<b>5.4</b>	<b>0.6</b>	<b>0.1</b>	<b>0.5</b>	<b>1.2</b>	<b>4.3</b>
<b>Epping</b>	5.5	0.8	0.1	0.8	1.1	3.6
<b>Thurrock</b>	6.4	0.8	0.1	0.9	1.2	4.7
<b>Harlow</b>	8.9	1.0	0.1	0.8	2.0	6.1
Actual No. Crimes/Month						
<b>Essex</b>	<b>9146</b>	<b>1007</b>	<b>91</b>	<b>934</b>	<b>1965</b>	<b>7295</b>
<b>Epping</b>	673	94	10	98	133	448
<b>Thurrock</b>	997	125	13	140	193	734
<b>Harlow</b>	698	78	8	65	154	477
<b>Total (%)</b>	<b>2368(26)</b>	<b>297(29)</b>	<b>31(34)</b>	<b>303(32)</b>	<b>480(24)</b>	<b>1659(23)</b>

## CHAPTER 4

### National response to consultation on court closures

#### Management of magistrates' courts

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**Recommendation: magistrates should have a more formal role in the local management of magistrates' courts to ensure that the needs of communities and the judiciary are properly and adequately met to deliver justice more cost effectively.**

One of the other relevant factors is the management of community summary courts and magistrates have a valuable contribution to make in this area as they have a first-hand understanding of what is needed for the delivery of justice in their communities. This factor was recognised as vital to the system with the introduction of magistrates' courts committees.

#### Background

Magistrates' courts committees (MCCs) were established in 1949. Their function was to determine, after consultation with the county or metropolitan district council, the accommodation, staff and equipment required for the effective transaction of the court's business. They also appointed the clerk to the justices and his/her staff, provided instruction for justices and made recommendations for the division of the county or district into magistrates' courts. These committees made decisions about court closures, but they were not concerned with the court's judicial duties.

MCCs were appointed for each non-metropolitan county and each metropolitan district and contained one or more magistrates from each court. Magistrates by their very nature come from a variety of backgrounds which include business and the professions, such as architecture, surveying, personnel management and finance. Such specific knowledge and skills were useful assets for these committees and ensured a professional approach to the running of the local courts.

In April 2005 MCCs were abolished and Her Majesty's Courts Service was set up as the executive agency within the Department of Constitutional Affairs to manage the administration of the courts. Involvement of magistrates became limited to membership of newly formed Courts' Boards, whose role was non-executive. They took no part in running the courts, but could give advice and make constructive recommendations. The budget was now the responsibility of the area director (AD). The Courts Board agreed the area business plan drawn up by the AD and reviewed progress throughout the year.

Out of the seven members of a Courts' Board, only two magistrate members were appointed. Members of the judiciary who sat on this board have expressed some concern as to the usefulness of these boards.

In the Budget statement of March 2010 the previous Government resolved to abolish the Courts' Boards and the new Coalition Government has taken this forward.

The Magistrates' Association supports the Government's commitment to reduce expenditure within the context of the philosophy of 'the Big Society', which encourages the involvement of volunteers to work amongst their communities. The Association would contend that the magistracy is a prime example of this very idea. The concept of judgement by one's peers is a long-established one in this country and for centuries the use of lay unpaid members of the local community has provided a cost-effective summary justice system and increasingly a well-trained body of lay judges.

It is a prime consideration in appointing magistrates that they are drawn from a full spectrum of backgrounds, representative of the population at large. This means that they are likely to have a range of skills, knowledge and experience which are put to good use in the courtroom and could be utilised in strategic planning and management (as was the case with members of the MCC).

As illustrated above, court administration has become more and more centralised, thus moving away from the principle that justice should be delivered in the communities where it is most relevant. Although knowledge of the community in court is useful, but not essential – when it comes to administrative decisions, such as court closure, the Association believes that magistrates as active members of their communities have vital local knowledge, which should be taken into account.

A prime example of this is that the proposals for court closures have been based on a national estates strategy rather than principles of justice. There does not appear to be a real understanding of transport provision, particularly in rural areas, thus making the statistics for travel times for those attending court inaccurate. Magistrates have responded to these statistics with many examples showing that the proposed arrangements would make it impossible for those attending court to be there within the proposed time scales.

Members of the Association report back that despite increasing centralisation in the running of the courts, it appears from meeting colleagues from other areas of the country that there are still differences in the way in which individual courts are run. This is inevitable as one size cannot fit all – for example, rural courts face a completely different set of challenges from those of city courts and courts which include the points of entry to the country deal with a specific range of criminal offences not found in other parts of the country.

Members of communities served by the courts are best placed to know what problems can arise in their own area. Magistrates are therefore in a good position to anticipate any potential problems. Without any formal role in the running of the courts, they are able to influence any change developments **only** at the point of public consultation, which may be too late to undo any fundamental change. The Magistrates' Association believes therefore that magistrates should have a more formal role in the local management of magistrates' courts to ensure that the needs of communities and the judiciary are properly and adequately met to deliver justice more cost effectively.

## CHAPTER 5

### National response to consultation on court closures

#### Capacity of existing system – freeze on appointments of DJ(MCs), expansion of magistrates powers

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**Recommendation: an immediate freeze on the appointment and replacement of district judges (magistrates' courts), to contribute a significant amount to the proposed savings to be allegedly achieved through the closure of a third of all magistrates' courts.**

There are three main strands to this recommendation:

- **maintaining competence at times of falling workload**
- **sharing the work and impact**
- **financial implications**

#### Falling workload

Workload has fallen in magistrates' courts over the last five years, with a number of factors influencing this reduction. Firstly magistrates welcomed and fully implemented the introduction of simple speedy summary justice resulting in a significantly increased efficiency. Secondly, the wider, but inconsistent and inappropriate use of out of courts disposals reduced the number of cases brought to court. However, direct comparison cannot be made with earlier years because of the way that the collection of such data has changed, but over the last recorded twelve months where direct comparison can be made the fall has been 6%.

In recent years more and more offences have been dealt with outside the courtroom and while many of these are justified, many are not, particularly where there is an identifiable victim, where the offence is of a violent nature and where there is evidence of repeat offending. Current data shows that over 50% of offences committed do not come to court but are dealt with by simple cautions, fixed penalties, penalty notices for disorder and conditional cautions. There is a very limited rehabilitative element to such disposals and victims do not see justice delivered and often do not receive rightful compensation.

One impact of this development is a reduction in the number of active magistrates, down 2,000 in the last 2 years from over 30,000 to just over 28,000. There are reported to be many more that have already followed this route out of their magisterial role in the 2010 statistics and more will follow as a direct result of the closure programme.

The court closure programme will also result in the merger of benches, one of the largest being the merger of Salford (150 JPs) and Manchester (420 JPs). If all of these magistrates are to be merged into a single bench in a single court, with 18 courtrooms and if there is no reduction in the number of DJs(MC), then there is bound to be a reduction of sittings for magistrates.

It is estimated that within such a court, average magistrate sittings will fall considerably, down to the unacceptably low level of 31, which is below the suggested minimum average of 35 to retain competence.

## Sharing the work and impact of reductions

Magistrates provide a professional service, are mentored, trained and regularly appraised and the quality of justice provided by lay judges has never effectively been challenged or shown to be ineffective. They deal with a wide range of both criminal and civil matters and extended powers would allow more work to be undertaken in magistrates' courts by magistrates.

According to the *JSB Guide to Sitting in Magistrates' Courts as a District Judge* published as recently as March 2006, "District judges (magistrates' courts) are there to support the justices in their work and not supplant them". District judges (magistrates' courts) DJs(MC) provide a service to the summary justice system in parallel to magistrates and the advantage is that they can take on longer cases and those that might need a significant amount of legal argument. There is a place in a summary justice system for both levels of first tier judges. However, it is being reported that many DJs(MC) are now taking cases that could quite efficiently be managed and dealt with by magistrates.

At a time when workload is going down and magistrates' numbers are reducing there appears to be renewed pressure to appoint DJs(MC) an advertisement for another 30 DJs(MC) recently been published. Regardless of the claim that these appointments will merely prime the pool of the district bench, there do not seem to be any proposals to analyse the number of DJs(MC) in post or the need for replacements. Despite the reason given by the Judicial Appointments Commission for the recruitment of DJs(MC) would appear that in times of reducing workload and fewer courtrooms the resultant reduction in first tier judges is expected to be felt entirely by the lay bench.

In the current climate financial considerations are important and a debate around the relative cost of magistrates and district judges is important, recognising the high quality of justice provided by magistrates alongside their professional district judge colleagues.

## Financial implications

There has been much debate about the relative costs of district judges and magistrates. Morgan and Russell<sup>1</sup> suggested in 2000 that 9% of appearances in magistrates' courts were heard by DJs(MC) and 91% by magistrates. Additionally, in that same paper, Morgan and Russell made an assessment that the 'attributable' cost of a magistrate is £2,580 pa. This is not supported by the latest report on expenditure in magistrates' courts<sup>2</sup>, which calculates an attributable annual cost of £632 per JP. This suggests that further work needs to be carried out on the relative costs of DJs(MC) and JPs. Also the figures provided by the Minister in a written answer to the House on 9 September 2010 suggest that DJs(MC) are about six times as more expensive per hearing than a bench of magistrates.

However, if we accept the Morgan Russell assessment of the apportionment of work being heard, this would suggest that 9% of work (carried out by DJs(MC) in magistrates' courts costs £23 million, while the remaining 91% (carried out by magistrates) costs £18 million.

If all of the work that magistrates currently hear was to be carried out by DJs(MC) a further 1,000 DJs(MC) would need to be recruited, increasing the judicial cost of magistrates' court work from £41 million to over £180 million per annum.

A DJ(MC) may be more efficient in certain respects of their work, but this is largely due to the fact that they do not discuss their decisions concerning guilt or innocence with other decision-makers, as magistrates and a Crown Court jury do. Nor do they need to discuss the appropriateness of a

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<sup>1</sup> The judiciary in the magistrates' courts

<sup>2</sup> Courts expenditure 1999 – 2009: Centre for Crime and Justice Studies

sentence in the same way that three members of the local community do when sitting as magistrates.

The current Ipsos/Mori research project may address some of these issues but the Association recommends a freeze of new and replacement appointments in the current financial climate.

**Recommendation: a detailed examination of the current judicial role of magistrates to consider wide-ranging developments particularly aimed at reducing the pressure and undue delays on the Crown Court by transferring more cases to the lower courts.**

One of the factors in the proposals to close courts is under-utilisation. At the same time, there are increasing delays in arranging trials at the Crown Court. It is also true that hearings at Crown Court cost significantly (approximately ten times) more than those at magistrates' courts.

There are two significant ways that both of these issues could be addressed.

### **Increased powers for magistrates' courts**

Although section 154 of the Criminal Justice Act 2003 increased maximum sentencing powers of magistrates' courts to 12 months custody, this increase was never implemented. If this were now to be implemented many either way cases would be retained in the magistrates' courts. Currently 95% of cases are completed at magistrates' courts. It is estimated that such a move would increase this to 98%, a similar level to those heard in the Youth Court, thus reducing costs at Crown Court level.

### **Retention of more cases at magistrates' courts**

There is also a strong argument for retaining more current work at magistrates' courts which would not only reduce cost but would also increase the utilisation rate of magistrates' courts, thereby having a positive effect regarding magistrates' competence levels.

### **Election of Crown Court hearing for less serious either way offences**

The status of some either way offences needs investigation. Matters of theft, for example, may be heard either at magistrates' courts or at Crown Court. Many such cases involve theft of trivial amounts and yet a defendant retains the right to have his case heard at Crown Court. About 80% of all trials at Crown court for theft have a value of less than £200 which would receive a sentence well within the current powers of magistrates.

Not only is it taking up the time of judges and juries who ought to be concerning themselves with matters that are beyond magistrates' sentencing powers, but the cost is significantly higher.

Consideration ought to be given for a defendant to have that right removed for matters that are considered within magistrates' sentencing powers, or at levels which the Sentencing Council could decide.

### **Timeliness of plea**

It is often the case that on committal to Crown Court, there is no indication of plea, despite the request from a bench. This process needs to be investigated. If a defendant pleads guilty, then the sentencing process starts and increasingly is being completed at the first hearing. If the offence is so serious that it needs to be sent to Crown Court, then the process for that can take place immediately.

Too often we hear of cases where no plea has been taken only to hear that a guilty plea is given at Crown, often for an offence which could have been sentenced at magistrates' courts. While this right remains, defendants will continue to "play the system"

### **Guidelines**

The status of guidelines in Section 18(3) of the 1980 Magistrates' Courts Act on mode of trial decisions needs to be re-considered. Currently these suggest to a bench that they should refuse jurisdiction simply because the prosecution evidence must be taken at its highest, and often no defence argument is heard that might mitigate the offence.

We know that many of these when dealt with at the Crown Court receive a sentence that is within the power of the magistrates' courts.

Greater consideration of the evidence from defence as well prosecution should be made by a bench before a decision to commit is taken.

## CHAPTER 6

### National response to consultation on court closures

#### Court Support Services

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#### **Recommendation: a thorough examination of the whole structure of court support services**

Prior to the establishment of Her Majesty's Court Services (HMCS) in 2005, each court provided its own set of services to support the work of magistrates. Each magistrates' courts' committee (MCC) knew its own court and was able to identify the needs of all those who accessed that court in whatever capacity. Appropriate committees and working parties responded to the ideas and issues raised by court users.

In 2005 the support service was transferred to the newly created Her Majesty's Court Service, which has a three tier structure – national, regional and area with an increase in the number of staff engaged at each level. Since 2005 there have been two re-organisations of HMCS with reductions in the number of areas and regions; however the expenditure has still continued to rise.

The recent report entitled **Magistrates' Courts and Crown Court expenditure, 1999–2009**, published in September 2010, by Roger Grimshaw and Helen Mills, with Arianna Silvestri and Felicia Silberhorn-Armantrading of the Centre for Crime and Justice Studies, stated that total expenditure in real terms stood at £548.40m in 2005/2006 and rose to £717.43m in 2008/2009 with annual rises in expenditure varying between 5 and 14% per year, amounting to a rise of 31% from 2005/2006 to 2008/2009. Nevertheless expenditure on magistrates' courts is a very small percentage of the overall all Ministry of Justice budget and the proposed court closures will contribute very little to reductions in overall expenditure.

The report also states that although employee expenditure appeared to have dropped from 45% of total in 2005/2006 to 31% of the total by 2008/2009, in real terms, it had declined by only 8%, from £244.38m to £224.61m. However, the reports adds that according to information from the Ministry of Justice the figures do not include salaries of agency, regional and central support staff, which must proportionately impact on the budget of magistrates' courts.

The report also notes that judicial expenses had reduced by 37%, from £1.12m to £0.71m, but yet again additional information from the Ministry of Justice revealed that fees and salary costs for DJs(MC) and payments to magistrates had not been included in either the employee or judicial expenses categories with the magistrates' costs amounting to 4% of 'other expenditure' in 2008/2009. Nevertheless, since the inception of HMCS the overall costs, however apportioned, rose by 31% in four years.

Magistrates regularly comment on the reduction in the provision of support services in a number of areas but it is right to note that the provision and delivery of these services is inconsistent across the country and very much the individual responsibility of area or regional directors. Issues impact on the day to day running of courts whilst others impact the overall running of courthouses. Some of the issues raised include:

- repairs and maintenance take longer and need involvement and approval from the regional offices
- court facilities not always made available for magistrates meetings
- basic facilities for magistrates are unevenly delivered
- weekend courts not properly supported
- agreed listing policies not always implemented
- submitted statements from parties in civil proceedings not being available in court bundles on day of hearing
- delays in information parties of results of hearings
- lack of information on court sheets

The Association does recognise that the 'lean' procedures introduced in certain courthouses have improved the quality and timeliness of court processes but it is important that consistent delivery of high quality services are offered to every courthouse and every court. On the overall management of the magistrates' court service the Association questions the need for a three tier structure. Therefore, taking account of the report above and the varying experiences of magistrates across England and Wales, the Association believes that significant savings could be made by a number of other measures including reduction of administration, greater use of local commissioning and procurement procedures, a re-structure of HMCS management levels and headquarters staff, and a return to a proper judicial over-sight of court listing and rotas to ensure the most effective use of magistrates.

## CHAPTER 7

### National response to consultation on court closures

#### Inter-relationship of agencies in the criminal justice system'

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**Recommendation: a review of the inter-relationship of these three agencies to ensure continuity, timeliness and more cost effectiveness in the preparation and presentation of cases in court.**

The court system exists to deal with those who have committed criminal offences, have ignored civil commitments, or come to seek a resolution to a problem within their family, particularly in relation to their children. It relies on a number of other agencies to prepare the case for the hearing and to ensure that justice can be appropriately delivered.

In criminal cases there are three main agencies involved – the Police, the CPS and HMCS. Each agency has an individual role to play in bringing cases to the court and it is vital that there should be a seamless progression from arrest to the first and subsequent hearings in court whatever they may be. On 21 July 2006 the previous Government published “*Delivering Simple Speedy, Summary Justice*” which set out plans to improve the speed and effectiveness of the magistrates’ court system. The then Senior Presiding Judge introduced the *Criminal Justice Simple, Speed, Summary* (CJSSS) process and courts, with education events for magistrates with the specific intention of ensuring:

- improved preparation from arrest to first hearing
- defence are prepared and ready for the first hearing
- a plea is entered at first hearing, with a guilty plea being sentenced at that hearing, wherever possible, or in the event of a not guilty plea, the majority of cases should be listed for trial within 6 weeks
- a commitment to ensure cases are progressed out of court between first hearing and trial

Magistrates were enthusiastic about this process and very supportive as they recognised it answered many concerns that had been expressed over the years about delays and lack of real preparation of cases. In 2010 the current Senior Presiding Judge provided a number of events to encourage more robust management of cases and yet again magistrates were supportive.

However despite the willingness of magistrates to engage with these developments, reports are still being made that some procedures are not being fully applied and that delays and time scales are again rising. The following are some of the instances of lack of preparation reported:

- statement of witnessing and arresting officer not included in advance of information
- CCTV evidence on which the charge was based not collected or stored for availability to defence or court
- defendant summonsed to attend court but statement relates to a totally different defendant
- motoring offences not being summonsed until four or five months after the offence
- drunk and disorderly being adjourned because the ‘streamline process’ does not include a statement preventing the court from proceeding in absence
- case files not available in court
- essential witnesses not warned about trial dates
- pre trial applications not being made in time

In family proceedings there are real concerns about the availability of CAF/CASS reports, officers and guardians resulting in sometimes serious delays in certain cases, with the subsequent impact on the children involved.

All these incidents result in delays which greatly increase the costs of hearings and extend the time that it takes to bring cases to court. Public confidence is being eroded by cancellations of court hearings and magistrates are reporting longer lead times to trials due to lack of prosecutors or legal advisers to service the courts. Utilisation figures are reduced because courts cannot operate for similar reasons.

The Association, however, does recognise the positive contribution the 'lean' programme has made in working patterns and reducing administrative costs. Nevertheless, it shares concerns that this work is being undermined by a continuing serious disconnect between the three main agencies in the justice system – the Police, CPS and HMCS because there is no integrated strategy to deliver financial effectiveness. The flaws in the process are fully identified in a timeline survey conducted by the 'lean' team at a North West magistrates' court. Magistrates are willing to be more robust and engage with case management, but feel frustrated by the lack of urgency often practised by other agencies.

The Association believes that an inter agency strategy is required so that all members of each agency at whatever level are made aware of their significant contribution to timeliness and provided with the necessary support and training to ensure speedy delivery of cases to court.

## CHAPTER 8

### National response to consultation on court closures

#### Bench mergers

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**Recommendation: research is undertaken on ideal bench size to inform any future bench mergers.**

One of the strengths of the magisterial system is that a number of members of the community work together to deliver justice for their fellow citizens. Currently magistrates operate in a number of Local Justice Areas (also known as benches). This paper suggests a review of the summary justice system based on a number of factors such as crime statistics. Any review of the location of court/hearing houses would lead to the creation of new benches of magistrates. The effective operation of a bench is also based on a number of factors to include size, composition, training and meetings with colleagues on a regular basis and the building of relationships.

The consultation proposes a wholesale review of existing Local Justice Areas (LJAs) in all areas of England and Wales, resulting in the creation of 52 new LJAs but a net loss of over 70 LJAs. There are more changes in some HMCS regions than others. For example in the South West there is one review compared to 12 in the South East.

If the proposals go ahead, there will be changes to the size and shape of LJAs across England and Wales. The table below shows the spread of the total numbers of magistrates in the LJAs as a result of the changes.

Size of new Local Justice Area	Number within this range
Less than 100 magistrates	8
101 to 200 magistrates	17
201 to 300 magistrates	9
301 to 400 magistrates	14
401 to 500 magistrates	2
More than 500 magistrates	2
Total	52

The principle behind the mergers across various types of communities is the apparent unquantified objective of saving administrative costs. It is claimed that the savings would be achieved as a result of less servicing of benches, panels and committees. However the operation of larger benches would not necessarily provide monetary gains as there would be extra expenses for the magistrates and staff having to travel further to the necessary meetings. On the non-monetary side benches have their own identity which is highly beneficial to all including legal advisors and staff who serve the bench. Experience has shown that merger of benches is a considerable and delicate task and can cause immense friction which can take years to settle down.

Conventional wisdom amongst magistrates puts the ideal bench size as somewhere between 100 and 300 magistrates depending on the locality. Evolutionary biology has a concept known as 'Dunbar's Number'. This is a theoretical cognitive limit to the number of people with whom one can maintain stable social relationships. These are relationships in which an individual knows who each person is, and how each person relates to every other person. Proponents assert that numbers larger than this generally require more restrictive rules, laws, and enforced norms to maintain a stable, cohesive group. No precise value has been proposed for 'Dunbar's Number'. It is suggested that it lies between 100 and 230, but a commonly used value is 150. Could it be that this is appropriate for a

bench? However, it must be accepted that one size should not fit all. Bench size in a large urban area such as Birmingham may not suit a rural area such as Cornwall.

There is a wide range in the proposed mergers resulting in LJA from 42 magistrates to 569 magistrates with an average of 237 magistrates. It is clear from this and the table above that no clear logic, let alone the application of 'Dunbar's Number', has been used to determine the 'ideal' number of magistrates within LJAs. Without any clear logic to the proposals and given the consequences of such a decision it is proposed that some research is commissioned at minimum cost to inform the progression of future bench mergers.

## CHAPTER 9

### National response to consultation on court closures

#### Fines Collection

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**Recommendation: a more proactive development of HMCS's blueprint for fines collection with greater involvement of the judiciary coupled with local performance driven collection facilities.**

Magistrates' courts impose fines for a significant number of offences. Fines provide income to the justice system and it is vital that all fines imposed are properly collected so that they can offset other levels of expenditure.

In recent years the collection of fines has been changed from being predominantly a judicial function to that of being predominantly an administrative function. In the past fine defaulters were brought before the judiciary at regular specialist courts and payment was either obtained immediately, or through the imposition of payment plans, or the procedure for imprisonment was applied. Whilst custody was rarely used the threat was very often sufficient to produce payment.

This specialist court function was reduced dramatically by HMCS from 2007 on the grounds that money could be saved through not running the courts and transferring the function to the administrative staff. It was replaced by an internal facility involving court collection officers and the use of bailiffs. In answering questions in the house Government Ministers have over recent months given conflicting responses as the amount of fines still outstanding. However, the table below gives the latest information supplied by HMCS in September 2010.

#### **Fines imposed and outstanding in magistrates' courts and Crown Courts 2007 – 2010**

<b>Year</b>	<b>Total amount imposed (£000,000s)</b>	<b>Total amount outstanding (£000,000s)</b>
2007/08	377	501
2008/09	393	545
2009/10	407	589

The overall figure for 2009-2010 is higher than the total HMCS expenditure on magistrates' courts in 2006-2006. However, these overall figures mask a number of anomalies in different areas of England and Wales which shows varying percentages outstanding. Overall the amount of fines imposed has increased by 8% in line with magistrates' attempts to use fines more as a means of sentencing. However, in contrast the amount of fines outstanding has increased by 17%. It is also worth noting that the first time payment rate for out-of-court disposals, such as fixed penalties and penalty notices for disorder, is low, in the order of 50%. The unpaid portion is then transferred to a magistrates' court for collection at an extra unbudgeted cost to the courts system. This means that a large proportion of on-the-spot fines are never paid.

The overall collection rate in itself is worrying but also given the situation with on-the-spot fines this causes considerable concern about the ability of the current system to cope with the collection of fines no matter their origin. If only half of the amount of the outstanding fines were collected, it would be much more than the small sums to be saved by the closure of courts. The failure to collect a greater proportion of fines undermines the sentence of the court and sends out the wrong message to the public.

Whilst some efforts have been made in HMCS with initiatives such as 'Operation Crackdown', which collected some £900,000 earlier in 2010, this is just a drop in the ocean. What is needed is a fundamental route and branch review of the fine collection approach particularly given the situation where magistrates are being encouraged to use fines more as a standalone sentence.

This review should consider two main aspects for change. Firstly, the magistracy should be involved more in the collection of fines through the return to the use of more specialist fines courts. Secondly, the private sector should be used to carry out the sentence of the court. This involvement of the private sector could mean the introduction of an effective payment by results culture.

## CHAPTER 10

### National response to consultation on court closures

#### A compensation fund for victims

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**Recommendation: a clear purpose be implemented for the victim surcharge by using it to establish a compensation fund to pay victims immediately the compensation is awarded by the courts rather than wait for the defendant to pay part of it when it suits them.**

An effective summary justice system which supports the victims of crime will ensure that victims are not continually reminded of the hurt, stress and injury visited upon them during a criminal offence. Whilst the court can provide some recompense through a compensation order, if it is not paid in full the victim continues to suffer stress as they receive the compensation in irregular payments if at all. The victim surcharge does not address this real concern, Furthermore, the administration of current compensation system is a drain on resources and significant savings could be made if a more streamlined process as introduced

**The victim surcharge** as it is currently imposed, enforced and delivered causes a number of difficulties:

**It is limited:** Only offenders who are penalised with a fine and dealt with in court attract this charge. This leaves out any offender who pays a fixed penalty out of court and any offender who attracts a higher sentence for an offence that is deemed more serious, but which, because it is not financially focussed, does not attract a victim surcharge.

**It is unfair:** Any motoring offender who cannot for any reason pay a fixed penalty which currently does not attract a victim surcharge must come to court and be faced with one.

Common practice in many courts is to reduce the fixed penalty by the amount of the victim surcharge so that the offender is not disproportionately affected.

**It is not victim orientated:** The victim surcharge does not assist victims directly either in respect of offence leading to its payment, nor in respect of those who might benefit directly from it. Instead it is and was always intended to benefit organisations that exist to assist victims, a laudable aim, but one which often ignores individual victims and concentrates on victims who belong to a particular group. This also means a post code effect can exist across the country, so that particular victims might indirectly benefit in one area, but not in another. Any examination of the recipients of victim surcharge payments in different areas will highlight this.

**Compensation**, on the other hand, which is intended to directly benefit victims and which is a requirement for a sentencer to consider, is not managed at all well.

**It is paid spasmodically:** Compensation is rarely paid in a single payment. The more often payments are made, the more the victim is reminded of the offence. An example is highlighted as follows:

'A lady of 74 was knocked over in the street coming out of her local Marks and Spencer store. The two young men who pushed her were sentenced for a public order offence. They were also ordered to pay £100 compensation to the old lady. Part of this award is still outstanding some 15 months after it was awarded. The victim has been so alarmed by this event she has not set foot outside her house since and every time she receives a payment, she is reminded of the offence which led to her self imposed "house arrest". She is "disgusted" with the way she has been treated by the criminal justice system and has said that she would rather not have the compensation as it reminds her of her unpleasant experience.'

**Occasional payments are expensive to administer:** Each collection and payment is not without cost. The more often these are made, the more expensive it becomes. A compensation fund which paid out an award in a single payment would reduce this cost significantly.

**Compensation is rarely paid in full:** HMCS admits that records are not kept of how often compensation is paid in full.

In addition the records that are kept cannot identify different elements of financial awards made by the court (compensation, fine, costs or victim surcharge).

Any assessment of the true compensation situation can therefore only ever be an estimate, which suggests that the victim is the last person to be considered by those who manage the payment of compensation orders. This completely contradicts the idea that the victim is 'at the centre of the criminal justice system'.

Much good work is done with victims in the lead up to a court hearing and in the court hearing itself. Once the hearing is over the victim is largely forgotten and the way in which compensation is paid out demonstrates this.

No-one really knows how much compensation is paid. Data is not published which distinguishes the different types of financial penalties, whether they be fines, costs, compensation or surcharge. However the latest data from 2009 indicates that there was a shortfall of almost £25m in the payment of compensation, which equates to 40% of compensation due. Currently figures suggest that about £150 million in compensation remains unpaid. Trend analysis shows that this amount is increasing year on year by almost 20% per annum.

Compensatees are therefore becoming increasingly unlikely to receive all or part of the compensation that the court has awarded them either for loss of goods or for injury.

## **Conclusion**

If a surcharge were to be imposed on all offenders whether dealt with in court or via fixed penalties issued pre-court and at rates that reflected the seriousness of the offence, this could greatly increase the amount collectable from the current rate of below £8 million to over £100 million per annum.

Such a development would allow a significant sum to set up and administer a compensation fund and a victim support fund. Compensatees would therefore be paid out immediately. As offenders met their financial demands, the compensation element would be fed back into the fund. This would start to put victims at the heart of the criminal justice system post-court as well as pre-court.

## SECTION B

### National response to consultation on court closures

#### The consultation process

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##### The proposals

The consultation on the proposals relating to the provision of court services in England and Wales was announced by the Ministry of Justice on 23 June 2010. Separate proposals were announced for 16 areas. These areas were based on those administered by HMCS and included individual areas such as Wales and London but also Kent, Surrey and Sussex as one separate area. The consultation closed on 15 September 2010 a minimum time period of 12 weeks.

At the beginning of each of the proposals was 'HMCS Estates Strategy'. It was claimed that the following principles were adopted:

- improve utilisation to at least 80%
- provide greater flexibility through co-location of criminal courts and civil courts with tribunal hearing centres
- plan on a long term basis
- integrate developing policy and operational changes into estates planning
- ensure access to courts – enabling the majority of the public to be within a 60 minute commute of their nearest court by public transport
- ensure the estate supports the challenges of rural access
- wherever possible centralise back office functions
- have specialist facilities in large strategic locations only
- move towards larger courts
- maintain properties at an appropriate level
- share facilities with the Tribunal Service

It was further stated that feedback to the questions set out in the consultations would enable HMCS to ensure that courts remained in the most important strategic locations; that communities continued to have access to courts within a reasonable travelling distance, and that cases were heard in courts with suitable facilities which would in turn reduce the overall costs. At the same time, the proposals said that HMCS had been careful to ensure that there would be sufficient capacity within the remaining magistrates' courts should there be a decision to increase their sentencing powers in the future.

Finally it was further claimed that the consultation was being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office. This code included a number of criteria which in the Associations view were not followed during the consultation notably the following:

- **'When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.'

There was evidence available to the Association that in some areas decisions had already been made regarding the closure or change of use of a particular building. Agents for HMCS were observed in buildings either measuring or discussing proposals for the building after its closure – and in one case builders turned up to measure up for improvements needed to change the use of the building.

- **‘Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.’

The consultation period was during a period when most people took their summer holidays. There was some confusion at the beginning of the period as to who within HMCS would provide additional information or answer any queries. This often resulted in either officials not being available or a slow response to requests. Elected representatives notably MPs and local authority councillors were also not available. It would appear to have been sensible bearing in mind that these proposals affected one third of all courthouses to have extended the consultation period. Requests to the Minister for this extension were refused but no cogent reasons were given for the refusal.

- **‘Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.’

Whilst the proposals were clear enough the details did not contain clear and total costs or benefits. It is the Association’s case that a full business case should have been made on each proposal and contained in the consultation.

The information for each proposal started with an overview of the courthouse being considered for closure. This was followed by a summary of the workload which only commented on where the work would be transferred but did not include any detailed utilisation figures for that courthouse. In a number of areas this lack of utilisation figures was followed up to discover that the quoted overall utilisation figures for the area did not always include family work.

A scant description of the accommodation followed which contained whether or not it was DDA compliant. When discussing location the only information supplied was the distance and estimated journey times by car and actual train times and costs from the location of the court proposed for closure to location of the alternative court. The number of staff based at the courthouse was then quoted.

The costs information contained were often wildly inaccurate, as is shown in the next section. Neither was it complete given that the proposals were justified on three pieces of information.

1. Operating costs
2. Maintenance backlog
3. Travel times

This was not a comprehensive cost benefit analysis as would normally be presented in any meaningful consultation document.

### **Accuracy of consultation information**

Members have highlighted a considerable number of anomalies and inaccuracies in the data provided in the proposals. These are well above that expected in such a crucial consultation document. It suggests that the information was developed in haste to suit a particular stance and not a detailed analysis of the existing estate given the consultation principles mentioned above. This has given rise to major concerns about the whole of the consultation process and particularly about the accuracy and relevance of the data used to prepare the proposals. This in the Association view must undermine the efficacy of the documentation and proposals.

These inaccuracies were quickly recognised by HMCS in the information provided for Wales when there was an admission that the figures have been ‘transcribed incorrectly’ and revised data was issued. The revised data resulted in the original claimed savings being reduced by about £1.3 million.

However, even the revised data was inaccurate. The anomalies and inaccuracies in the data for England have never been accepted or admitted that they exist.

Listed are just two examples of many:

- Operating costs for the closure of Waltham Forest Court was quoted as £386,730 in the proposals. However, London Probation Service pays £120,400 per annum for rent and service charges for the use of the building. This figure was not offset against the expenditure. This would be a reduction in costs of some 31% making it one of the lowest in the entire estate in London. This error would appear to be common in a number of places where rental income is not subtracted from operating cost figures.
- Backlog maintenance costs for Skipton Courthouse were specified as £311,000. Consequently the bench with the assistance of a qualified building surveyor, a qualified architect and a qualified heating engineer reviewed the details of the backlog. Their estimate amounted to £53,000. Their estimate did not include any sum for air conditioning replacement, as there was no air conditioning equipment on site. However the HMCS figure included £15,000 for such replacement.

The maintenance backlog figures for the South East and South West have been studied by the Association in some detail. It is clear that standard costing for unit prices has been used to assess the cost of needed maintenance. This has led to some clearly peculiar examples:

<b>£25,850</b>	Mid Sussex Magistrates' Court St. Alban's Crown Court Watford Crown Court	Hazardous material Ventilation / air conditioning Ventilation / air conditioning
<b>£2,585</b>	Staines Magistrates' Court Stevenage Magistrates' Court	Surveys Hazardous material
<b>£258,500</b>	Reading Crown Court	Ventilation / air conditioning

The widespread use of these standard costing units for all buildings and all types of work within a region, encompassing hundreds of miles, questions the credibility of the information and therefore the resultant conclusions. The use of such an approach must be questioned and suggests 'back of an envelope' guesstimates. It is clearly not acceptable that such a vital consultation document should include critical data which seems to have been calculated in this way.

The other area that caused concern were the travel times and costs quoted in the proposals. These figures were for a straight train journey from the town centre of the court to be closed to the town centre of the alternative court. They took no account of journey times to the train station or waiting times for the train, nor that many offenders would have to travel at peak times paying peak fares. The fares quoted were generally off peak fares.

Sittingbourne is in the district of Swale which has a large rural area where access to public transport is irregular and infrequent. Journeys from one end of the district to the alternative courthouse took on average just a shade short of twice the criteria of 60 minutes laid down in the consultation paper. This was also reflected in the costs mentioned in the proposals which were just train costs, that were often found to be inaccurate and took no account of other public transport costs. In Sittingbourne's case an increase from £4.80 to £14.20. No assessment was made as to the catchment areas of alternative courts and no analysis was made of the alternative means for victims and witnesses to get to court.

What was clear through all of the submissions from various magistrates is the considerable doubt expressed by them about this information. Many, many, examples such as those highlighted above were listed in their submissions. Clearly considerable work had been put into these submissions and the Association is grateful for this.

### **Next stage of the consultation**

It is understood that all the representations about the proposals will be first considered by the respective area directors. Then business cases will be prepared by them for the closures of various courts based on these representations and further developed information. These business cases will then only be put to internal management teams and the full HMCS Board. This board does not have a direct representative of the magistracy on it. These business cases will then go to the Lord Chancellor who will make an announcement before Christmas 2010.

It is of considerable concern that further information will be developed to justify these closures. No doubt the inaccuracies highlighted by respondents will also be corrected. This additional information coupled with the substantial inaccuracies of the data on which the consultation was based must cast considerable doubt on the value or intention of the consultation process. Decisions are going to be made on information not available during the consultation. In these circumstances the consultation might be considered contrived or at best a meaningless sham.

It is not appropriate that those who develop the original proposals are now judge and jury on the proposals after consultation and using further undisclosed information. This is a difficult situation and to get all stakeholders to accept the conclusions of the further work they should be involved in its development. It is therefore proposed that:-

***‘The establishment of a separate analytical body involving all stakeholders to ensure full consultation on impact assessments and business cases so that proposals can be owned by all concerned.’***

If stakeholders are not involved then there must be doubt cast on the whole process and this is something that could in time be tested through the courts.

### **The ‘Big Society’ and the magistracy**

The Coalition Government has made positive statements about involving the community in the decisions that are made in and for the community. They have stated that it is intended that a policy programme will create a climate that empowers local people and communities, building a ‘Big Society’ that would roll back big Government, bureaucracy and Whitehall power. Among these policies is one designed to encourage volunteering and involvement in social action.

The magistracy is a prime example of this policy already in action. The Magistrates’ Association believes that the concept and practicalities of summary justice are too important to be left to civil servants who may have a limited appreciation of the value of citizen involvement in the administration of justice.

The Association strongly urges that a comprehensive strategy for the provision of the summary justice service is developed. This will enable adequate facilities to be provided thus supporting the ‘Big Society’ concept and also putting magistrates’ courts at the heart of the communities in England and Wales.