



# Magistrates Association

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Committee	<b>Family Court Committee and Youth Court Committee</b>
Draft response to	<b>Civil Society Alternative Report to UNCRC – Children’s Rights Alliance England</b>
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## **About the Magistrates’ Association**

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

Family magistrates are volunteer members of the judiciary who hear both public and private family law cases in England and Wales. Family magistrates receive training both before sitting in family courts as well as consolidation and continuing training whilst on the bench. Family magistrates hear a range of cases but as cases increase in complexity, they can be referred up too District Judges or Circuit Judges. Youth court magistrates are magistrates who receive training and accreditation to sit in the youth court. Magistrates hear the majority of criminal proceedings involving children.

## **General Measures of Implementation and General Principles**

### **Family Justice**

Family magistrates are concerned about the practical realities of hearing the voice of the child in family court proceedings as required by the general principle of participation enshrined in Article 12 of the UNCRC. Magistrates are acutely aware that the best interests of the child are paramount and that, when families are involved in proceedings that the best interests of the child means striking a balance between participation and exposing the child to harms associated with court proceedings and the possibility that a child may feel they are being made responsible for making a decision in a court hearing.

However, magistrates are concerned that the voice of the child is inconsistently heard in family law cases. Mostly, magistrates ‘hear’ the voice of the child through reports, social workers’ assessments, experts’ evidence, parents’ and witness’s commentary. Children are also not directly informed about decisions made about them. It is routine for decisions to be made behind closed doors in a private family courtroom. Magistrates have no oversight on how the decisions they make for a child are communicated to that child. Magistrates are rarely afforded opportunities or empowered to to inform the child of the decision directly.

Recent research highlighted that these reports as markers of children’s participation were only present in 47.9% of private family law cases ([Hargreeves et al. 2022](#)). This does not account for the fact that children’s voices are then filtered through the lens of an adult social worker. Magistrates



are not currently adequately empowered to seek greater participation for children. There is therefore work to be done on children engaging more directly with magistrates who make decisions about their lives such as through letters to magistrates and judges, meetings with magistrates, child friendly judgements and orders and ensuring that children are properly and appropriately informed about decisions made about them in court.

There is appetite amongst magistrates for improved participation but implementing this requires adequate funding and resourcing of court staff, social workers and associated agencies. Magistrates are aware that social workers in England and Wales are under resourced and see the impacts of this in the limited interactions social workers are able to have with children before producing reports to the court about the children's wishes and feelings.

Magistrates have long been concerned with the impacts of the reduction in legal aid post LASPOA 2012 on family proceedings including on the best interests of the child. The changes to legal aid have resulted in a shift away from parties being represented by legal advocates in family court. Magistrates observe that this reduces the opportunities to gather meaningful evidence on the basis of which decisions about and for the child are made. Litigants in person may have a limited understanding of the legal proceedings and therefore may not recognise the need or have the legal understanding to ask meaningful questions in cross examination. Magistrates are further concerned that structures such as support charities which offer free assistance to litigants in person are currently on a precarious footing with funding liable to change or be unstable going forward. Parents appearing before family courts must be adequately supported through legal proceedings as any negative impacts on family proceedings, in terms of fairness, accuracy or efficiency, impact on the children who are the subject of decisions made in the family courts.

### **Policing and Criminal Justice**

Magistrates who sit in the youth court are concerned that the operation of the National Referral Mechanism for children who are potential victims of modern slavery poses a problem when children are nearing the age of 18.

Where a child is identified as a potential victim of modern slavery, they are referred to the NRM for a reasonable and conclusive grounds decision. The NRM process is key to ensuring that certain youth court cases, children are identified as potential victims of exploitation, are dealt with fairly, and the welfare of any children is prioritised.

When NRM decisions are pending, any criminal court processes will be adjourned by magistrates until a decision under the NRM is reached. Best practice guidance is for magistrates not to take a plea until either a negative reasonable grounds decision is reached (child is not a victim of modern slavery) or the NRM conclusive grounds decision is reached. [Conclusive ground decisions can take upwards of 300 days to be reached](#). This adds significant delay into the youth court proceedings.

Delay of court proceedings is problematic for children who continue to develop during the period of delay. However, there is particular concern with this approach for those children with an upcoming 18<sup>th</sup> birthday.

Currently defendants are dealt with by the jurisdiction that aligns with their age at point of charge or first hearing. This means there for the cohort of young people who are under the age of 18 years at the time an alleged offence is committed, but who have their 18<sup>th</sup> birthday before the case comes to court, they are then dealt with in adult court, rather than youth court. This has two main impacts.



First, the court process in adult court is very different to youth court – it is more formal, and adjustments are not necessarily made in response to the young age of the defendant. Second, although remand and sentencing decisions in adult court should take account of the age of the defendant, the legal structures and principles followed are very different, the welfare of the child is not one of the primary considerations. It is therefore vitally important that cases where a suspect will be turning 18 are prioritised so that a plea is taken in youth court, rather than adult court.

Therefore, there is an inherent friction between the NRM and the best interests of the child who is turning-18. If the court is delaying taking a plea while waiting for a decision from the NRM process, the risk is that the cohort who are soon to turn 18 may inadvertently end up in adult court by the time a plea is taken.

In some areas, local protocols have been developed which aim to mitigate these risks. However, the approach is inconsistent. In other areas [pilots of a new decentralised NRM process](#) are aiming to reduce the time taken for NRM decisions. However, shortening the time taken for an NRM decision would not eliminate the inherent tension described above. It should also be noted that children who are within 100 days of their 18<sup>th</sup> birthday have been expressly excluded from these pilots.