

It shouldn't cost to volunteer: Findings from a survey of magistrates

October 2022

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Executive summary

Our survey of sitting magistrates painted a deeply concerning picture of an expenses regime that does not reflect the true costs incurred, and of a workload that is not properly recognised.

Respondents told us that they faced financial loss through fulfilling their duties as magistrates. It is a cornerstone of our judicial system that magistrates are not paid, but it is fundamentally unfair that those who volunteer for public service should find themselves out-of-pocket. It is also wrong that people on low incomes face exclusion from serving as magistrates because of the financial cost.

Our survey highlighted the inflexibility of the current expenses regime. The system does not recognise various types of activities undertaken for magisterial duties—such as remote sittings from home or preparation time before cases. Since the Covid-19 pandemic, sittings from home—while at first a temporary measure—have expanded and become a permanent element of the duties for many magistrates. Yet, the current expenses policy ignores this. The costs of essential computer equipment, as well as other extra costs incurred through sittings from home, should be covered by the expenses system. We recommend a digital hardship fund to assist magistrates on limited means to purchase and maintain the equipment required for at-home sittings. We also recommend a small flat-rate allowance for at-home sittings to cover other related costs.

The survey found that magistrates spend considerable time on duties as part of their magistracy work over and above court sittings. These additional roles, such as bench chairs and training or advisory committee members, are vital to the effective running of the magistracy. However, the time that magistrates put into them is not recognised nor claimable on a par with court sittings through the expenses system. We recommend that this changes as soon as possible, not least to bolster the morale and goodwill of magistrates. We also recommend that there should be greater transparency about the actual time commitment required during the recruitment process for new magistrates.

The justice system relies heavily on the goodwill of volunteers. More than 90 per cent of criminal cases are dealt with by volunteer magistrates; without their work, the justice system would seize up. This was highlighted during the Covid-19 pandemic when magistrates kept courts running through virtually the whole period, and quickly tackled the pandemic-related backlogs as soon as it was possible, including with nightingale courts and weekend sittings.

Yet, our survey showed that magistrates feel neither the Ministry of Justice (MOJ) nor His Majesty's Courts & Tribunals Service (HMCTS) understand their needs and motivations as volunteers. Instead, they feel that consultation on changes is usually inadequate, meaning that when change is introduced it is often poorly handled and makes their roles harder. Respondents said that change is too often done *to* them rather than *with* them. So, we recommend that the MOJ and HMCTS change their whole approach to working with the large volunteer force of the magistracy. We call for a Magistrates' Volunteering Compact, drawn up between government departments and agencies and magistrates' representatives, based on greater respect and understanding of the role of magistrates as volunteers in the context of participatory democracy. The compact should set out clear commitments and expectations including meaningful consultation on major changes, expected time commitments, and a statement that magistrates should not find themselves out-of-pocket.

This report highlights how external events can have a substantial impact on magistrates. The rise in fuel prices, for example, has come on top of a reduction in the mileage allowance for many magistrates that came into effect last year and hit many hard. One of our core recommendations is for the MOJ to establish a standing working group to explore key issues relating to the costs of

volunteering, which would include a regular evaluation of the expenses system to make sure that it always stays relevant.

Finally, our report makes the case for how all this impacts on the ability to attract and sustain a diverse magistracy. Our survey showed that the inequities of the current expenses system have a disproportionate impact on younger magistrates, those from lower socio-economic backgrounds, Black, Asian and minority ethnic magistrates, and those who are self-employed. This presents a significant barrier to recruiting magistrates from these groups—negatively impacting the diversity of the magistracy.

The magistracy has been described as a jewel in the nation’s democratic crown. It is one of our oldest institutions—involving thousands of ordinary people from all walks of life, giving service to their communities, for no financial reward, in the cause of justice. It has proved its resilience repeatedly, most recently in the way it kept justice going during the Covid-19 pandemic. But, at the same time, it is fragile. It is powered by goodwill, and that goodwill needs to be nurtured, not taken for granted. Our report sets out 20 recommendations for how that can be done.

You can read the full set of recommendations on page 39.

Introduction

Magistrates are volunteers, guided by the principle of service to their local communities. This has been an underpinning feature of the magistracy for its entire 660-year history.

The system relies solely on the commitment of those volunteers to make it work. No magistrate should, in theory, be out-of-pocket for volunteering. Magistrates can claim for expenses from His Majesty's Courts & Tribunal Service (HMCTS), to compensate them for financial costs incurred.

The magistracy has undergone much change in recent years. Half of magistrates' courts have closed since 2010, and the number of magistrates has halved too. Increased centralisation of administration has reduced the sense of localness, with magistrates having to travel longer distances, and the sense that the much-prized principle of local justice has been weakened. Poorly executed introductions of IT procedures and other processes have also served to significantly damage morale. Many members tell us that this has changed their bond with the role, and how valued they feel as volunteers. Against this backdrop it is perhaps no wonder that an expenses regime that leaves volunteer magistrates having to dip into their own pockets to make up the difference has added to the stress and discontent that magistrates feel.

The Magistrates' Association wanted to better understand the extent and nature of the costs associated with sitting as a magistrate. This report presents the results of a landmark survey of 1,362 sitting magistrate members and sets out 20 recommendations that we believe will make a real difference for magistrates.

Background

The issues surrounding the costs to volunteer as a magistrate cannot be separated from the wider external context.

What it means to be a magistrate

The National Council for Voluntary Organisations' (NCVO) 2019 report *Time Well Spent* presents the results of a national survey of volunteers.¹ It revealed that the top three motivations to volunteer are:

- wanting to improve things and help people (42 per cent)
- having spare time to do so (38 per cent)
- feeling that an organisation is of great personal importance (38 per cent).

Our survey also asked our members why they volunteer as magistrates, and the results closely reflected the NCVO's conclusions. Respondents said they are proud of being part of a public service; they cited a strong sense of civic-mindedness and their sense of duty to give back to the community as the most important reasons for which they volunteer. They also reported the opportunity to use skills and work in a stimulating environment as being a key motivator.

Our data also revealed that:

- Of 930 responses to a question about why they joined, commonly mentioned words in respondents' answers were 'community' (147 mentions), 'giving back' (76 mentions), and 'society' (46 mentions).
- Providing an important service to their community was by far the most motivating factor, with almost all (98 per cent) respondents agreeing with the statement 'I provide an important service to my community by being a magistrate'.
- Over three quarters (76 per cent) said they would still have applied to be magistrates had they known what they now know about the role, and nearly all (99 per cent of the 1,245 of those who

responded to the question) said they were committed to doing the job well.

These findings—and the intense focus on community they reveal—also demonstrate the importance of local justice, which is a defining feature of the role of the magistrate; magistrates are appointed to, and serve, their local area. Indeed, the Lord Chancellor's Directions to Advisory Committees²—which manage, among other things, the recruitment of new magistrates—clearly encourages applications from those who live locally to the area in which they wish to sit. This preserves this principle; it continues to be an important element of the role.

The wider context

The magistracy is impacted by the wider context and has experienced major changes and upheavals in recent times. Some notable examples are below.

Covid-19

The Covid-19 pandemic fundamentally changed the way that magistrates undertook their roles. A raft of measures was quickly instituted in March 2020 to slow the spread of the virus, which included an increase in the proportion of benches of two—rather than the usual three—magistrates, and an expanded use of remote links.

In April 2022, the Magistrates' Association published a report that summarised the impact of Covid-19 on magistrates' ways of working.³ Based on a survey of 865 magistrates, it revealed that remote sittings—although deemed necessary in the circumstances—negatively impacted magistrates' wellbeing due, in large part, to the pressure of managing hearings with inadequate technology. It also found that magistrates' morale had been adversely impacted by the inability of virtual hearings to fully convey the seriousness of the court nor enable effective participation and communication with defendants.

The Police, Crime, Sentencing and Courts Act 2022 expanded the circumstances in which a remote sitting can be used, although magistrates retain the discretion to decide on a case-by-case basis if this is in the interests of justice.

Court reform, digitisation and closure

Since the dissolution of local magistrates' courts committees in 2005, the running of magistrates' courts has been centralised to His Majesty's Courts & Tribunals Service (HMCTS) and the Ministry of Justice (MOJ). In 2016, the government announced its intention to undertake a major court reform programme. Its Transforming our Justice System's vision was to promote, as fully as possible, the use of technology throughout the courts estate and modernise existing buildings.⁴

An important part of the court reform programme has been the consolidation of the physical courts estate. This has involved, since 2010, a steady programme of court closures, motivated initially by austerity and a large reduction in the justice budget. The latest available House of Commons data show that 164 of the 320 England and Wales magistrates' courts (51 per cent) closed between 2010 and 2020.⁵

This has had an impact on the ease of access to a truly local court, a feature that best fits the definition of local justice. Data from the Bar Council reveal that 43 per cent of all courts in England and Wales have now been closed, with 373 parliamentary constituencies having no active local court.⁶

Plainly, therefore, the sense of local justice that motivates magistrates has been much eroded through court closures. Our survey found that where a court had closed or work had otherwise moved to a different court, this was a key factor in increased travel times for many magistrates. Data on travel times and their impact on magistrates are covered from page 16 onwards. This created an issue of affordability: travelling further costs money that HMCTS' expenses policy does not always cover and creates a cost for magistrates.

The recruitment campaign

Earlier this year, the MOJ launched a campaign to recruit 4,000 new magistrates. One of its stated aims is to ensure that magistrates better reflect the communities they serve.⁷ In April 2022, the then courts minister James Cartlidge MP confirmed that 33,580 expressions of interest had been received so far,⁸ and that people under 40 comprised 24 per cent of those. Individuals of Black, Asian and minority ethnic backgrounds accounted for a similar proportion (25 per cent). This bodes well for an institution that is already the most diverse part of the judiciary.

Magistrates' expenses

An HMCTS-administered policy governs what magistrates can and cannot claim for when volunteering. To claim, the policy specifies that financial loss can be demonstrated if made in direct service of a 'qualifying duty'. This includes in-person court sittings, certain types of training, and outreach work. The Lord Chancellor determines the rates of allowances claimable by magistrates, as well as the way in which they are administered.

HMCTS has a legal duty to ensure public funds are administered properly and appropriately. The Courts Act 2003⁹, along with the Magistrates' Allowance Regulations 1976, give HMCTS the authority to determine the eligibility of and administer magistrates' expenses. As such, the expenses policy asks for evidence to substantiate most claims made under it, and enables HMCTS to establish that an actual loss has been incurred in the performance of a qualifying duty.

In 2019, the MOJ's judicial policy team reviewed magistrates' expenses to:

- Assess whether the rules and rates for claimable expenses in the policy comply with the legislative framework and continue to be appropriate.
- Ensure the effective use of public money in magistrates' expenses.
- Have due consideration for any impact of diversity of the magistracy.

During this process, it convened a focus group of magistrates that included representatives

from the Magistrates' Association and the Magistrates' Leadership Executive. The MOJ subsequently made two important changes to magistrates' expenses:

- Increasing the financial loss allowance by 16 per cent, widening its scope to include zero-hours contracts and making it claimable for sittings cancelled within 48 hours.
- Reducing the claimable pence per business mile (ppm) for large cars from 58 to 45, to align it with His Majesty's Revenue and Customs' (HMRC) rates. This is, hereafter, referred to as 'the mileage change'.

Methodology

This report is based on a major survey of the Magistrates' Association's sitting membership, covering the financial and non-financial costs of being a magistrate. The survey comprised 95 questions about magistrates' backgrounds (to enable segmentation) and the various different aspects of being a magistrate.¹⁰

One thousand three hundred and sixty-two sitting members responded between 22 February and 8 March 2022, with an 89 per cent completion rate. On average, it took respondents 25 minutes to complete the survey; we are immensely grateful to our members who did this on top of their magisterial duties.

Demographic data

Gender

Nearly all (99 per cent) respondents declared their gender: 52 per cent identified as women and 47 per cent as male. With latest judicial diversity statistics¹¹ reporting that women comprise 57 per cent of the magistracy, this broadly matches wider trends.

Age

As with the general magistrate population, respondents tend to be older. Almost four-fifths (88 per cent) are over 50, and just five per cent are under 40.

Ethnicity

Just under seven per cent of respondents identified as being from Black, Asian and minority ethnic backgrounds. Judicial diversity statistics reveal that 14 per cent of all magistrates are from Black, Asian and minority ethnic groups.¹²

Date of appointment

Most respondents reported having been appointed since 2005. More than a third (around 38 per cent) said they were appointed in the last five years.

Table 1: Respondents' year of appointment

Date range	Percentage (n=1,362)
1982 or earlier	0.4
1983-1993	7.5
1994-2004	19.5
2005-2016	35
2017-2019	20.5
2020-2022	17

Jurisdiction

Members who sit in all types of magistrates' court responded to our survey. Magistrates often sit in more than one type of court, so were able to select all responses that apply.

Table 2: Respondents' jurisdiction

Court type	Percentage (n=1,362)
Adult	92
Crown court	36
Family	31
Search warrant panel	20
Youth	17
Specialist domestic abuse court	9
Single justice procedure	41

Additional roles

Respondents told us they held a wide variety of additional, voluntary roles to support the functions and governance of the magistracy. These roles are integral to core functions, such as pastoral support, training, and

recruitment of new magistrates. Our survey asked about 14 of these further duties, and the top six are below.

Table 3: Respondents' additional magisterial roles

Role	Percentage (n=1,362)
Presiding justice	55
Mentor	36
Appraiser	26
Magistrates in the Community: presenter or coordinator	20
Training, approvals, authorisations and appraisals committee member	14
Bench chair or deputy	10

Disability or health condition

Around 14 per cent of respondents said that they considered themselves to have a disability or health condition. The survey asked about the impact of their disability or health condition on their experience of being a magistrate, and on whether they have had to pay for any adjustments to carry out their magisterial duties. A summary of these findings is provided in the final chapter.

Employment

Although the largest proportion of respondents (47 per cent) are retired, many balance being a magistrate with working. Those who are employed full-time (>35 hours a week) comprised 20 per cent of respondents, those who are employed part-time (<35 hours a week) accounted for 12 per cent, and those who are self-employed constituted 13 per cent.

Table 4: Respondents' employment status

Role	Percentage (n=1,362)
Employed full-time	20
Employed part-time	12
Unemployed	1
Retired	47
Student	0.5
Freelancer	13
Carer	0.7
Zero-hours contract	0.7
Not currently working for another reason/other	4.8

Part one: do expenses reflect the true costs?

Key findings

- Respondents felt that the schedule of claimable expenses does not reflect true costs:
 - 73 per cent said that being a magistrate had created some level of financial cost to them.
 - 57 per cent said that sitting as a magistrate in March 2022 left them more out-of-pocket than it did a year earlier.
- They were most satisfied with the claimable rate for expenses that accurately compensated for actual losses incurred—such as for travel on public transport.

Subsistence

Subsistence aims to compensate magistrates for the cost of food and drink when at court (see table 5).

Table 5: Claimable subsistence – daytime

Duration of absence from home	Amount claimable
4-8 hours	£7.45
8-12 hours	£10.38
Over 12 hours	£19.60

The majority (85 per cent) of respondents said they claimed subsistence, and two-thirds (67 per cent) agreed this covered their needs. Of those who disagreed, two-thirds said the rates should increase. Many made the point that the subsistence allowance—last reviewed in 2010—is no longer adequate given rising prices (which have risen by around 40 per cent since then) and should, therefore, be benchmarked against inflation and regularly reviewed:

“[The rates] have been static for far too long; prices are increasing rapidly, and the allowance is not keeping up.”

A common complaint was the inadequacy of the tiered nature of subsistence. For example, respondents noted that although an absence from home of less than four hours may require them to purchase a meal or refreshments, this would not be claimable.

“The banding seems arbitrary. Five minutes under and I can’t claim the cost of a coffee.”

Those who perform half-day sittings—usually younger and/or employed magistrates—are more likely to be affected by this criterion, which may, in turn, have implications for the diversity of the bench. Respondents suggested adding a level of flexibility to the four-hour rule or reducing the minimum number of hours needed to fulfil the ‘absence from home’ requirement to help mitigate such effects.

Respondents also said the tiered arrangement falls short when court does not go on beyond lunch time, despite having been scheduled for a whole day. Magistrates may well have rearranged a full day’s commitment to be at court and/or need to purchase lunch. Magistrates who live near to court are also impacted in such instances, as their brief travel time precludes them entering a higher subsistence tier.

“I don’t understand the sliding scale of payment. I get less subsistence if court ends at 14:30 than if I sit until 17:30. I’ve still had to book the day out and if court finishes at 14:30 it’s likely that we’ve sat through lunchtime.”

Similarly, they reported that the 8-12-hour rate is inadequate to cover two meals or snacks away from home. This is problematic for those who need to leave home before breakfast to get to court on time:

“I travel an hour to and from court, so leave before the rush hour. The subsistence allowance doesn’t cover the morning coffee/snack, lunch and then a coffee or refreshments for the drive home.”

As well as a review of subsistence to cover inflation, many respondents felt that a standard daily rate would be better than the current tiered approach.

The current daily subsistence rules are non-index-linked and based on hours absent from home. They leave many magistrates out-of-pocket.

Recommendation 1: The existing three tiers of subsistence should be replaced with two: absences of 2-8 and 8-12 hours. This would ensure that magistrates whose full day sittings are shortened at late notice—and due to circumstances out of their control—are also able to claim. It would, in addition, be simpler to administer.

Recommendation 2: The subsistence rates should be index-linked to account for inflation.

The six magistrates who commented on overnight stays in support of judicial duties generally felt that the rates (see table 6) are insufficient.

“The amount paid for overnight expenses should reflect actual cost. I had to fund my own evening meal as the costs given did not allow for that in London.”

The need for subsistence when magistrates are working from home is addressed on page 21.

Table 6: Claimable subsistence – overnight

Category of overnight subsistence	Amount claimable
Outside London	£100
Within London	£120
Over 12 hours	£19.60

Overnight subsistence rates have not kept up with rising costs. Magistrates have reported difficulties claiming this type of expense when they need to.

Recommendation 3: Hotels booked through the MOJ’s travel agent should be covered in all cases. The cost of an evening meal, not exceeding a reasonable and index-linked upper limit, should also be claimable.

Financial loss allowance

The financial loss allowance (FLA) is administered as one flat rate for any magistrate who can show that a sitting has caused them to lose earnings (see table 7). This is usually claimed by employed magistrates whose employers give them unpaid—rather than paid—leave to perform their judicial duties, and self-employed magistrates.

Table 7: Claimable FLA by employment status

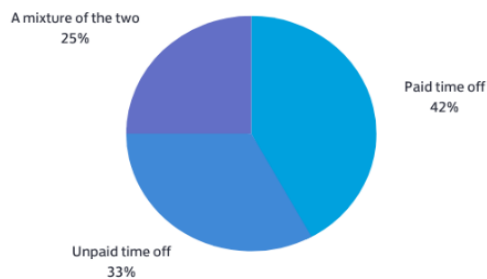
Duration	Gross rate for self-employed magistrates	Net rate for all other magistrates
Up to four hours	£67.48	£53.98
Over four hours	£134.96	£107.97

Around a tenth of survey respondents (nine per cent) said they claim FLA. This proportion was higher among Black, Asian and minority ethnic and young (under-40) respondents, at 12 and 29 per cent, respectively.

While statute says that employed magistrates should be given ‘reasonable’ time off,¹³ it does

not stipulate what is reasonable nor whether this should be paid. When asked whether they are granted paid time off, a sizeable proportion (42 per cent) of employed respondents confirmed this is the case (see figure 1). However, a third (33 per cent) reported having to take unpaid leave, and a further quarter (25 per cent) took some unpaid leave . It is these individuals who are likely to claim FLA. Figure 1 breaks this down.

Figure 1: If you are employed, what sort of time off does your employer provide? (n=330)

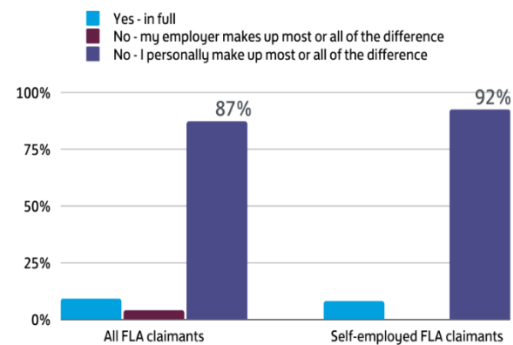


As figure 2 shows, 91 per cent nine out of ten FLA claimants reported that FLA does not cover their lost earnings, with nearly nine in ten (87 per cent) of those saying they make up the difference themselves. One respondent estimated that:

“Sitting as a magistrate in effect costs me approximately £50 per sitting day, as I make up the difference between my salary and the FLA.”

Respondents also questioned the administration of the FLA; this is addressed later in this report (see page 18 onwards).

Figure 2: Does the FLA cover your daily loss of earnings? (n=113)



Mileage and travel costs

Magistrates who drive into court can claim an HMRC-set mileage allowance¹⁴ to cover fuel, wear and tear, and depreciation in the value of their car when used for magisterial duties (see table 8), while those who take other forms of transport can claim a general travel allowance.

Table 8: Claimable mileage rates

Duration	Amount claimable (pence per mile)	
	First 10,000 miles	Above 10,000 miles
Car	45	25
Motorcycle	24	24
Bikes	20	20

Many magistrates travel significant distances to get to court. Nearly half (49 per cent) of respondents’ commute times were between 30 minutes and one hour, and a small but not insignificant proportion (16 per cent) said their journey takes over an hour.

Three quarters (75 per cent) of those who were able to claim the general travel allowance for other forms of transport reported that the rules meet their needs.

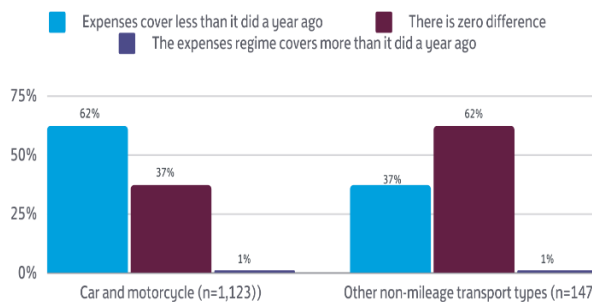
“Claimable amounts for train fares etc are fine; we are fully reimbursed. It’s the driving costs that are not covered.”

Others said the allowance needs adjusting to reflect the occasional requirement for taxi usage—something currently only covered in exceptional circumstances.

“The court’s use of my travel card is free, and I don’t mind that as there has been no additional cost to me or the court. However, very occasionally I’m late or tube trouble or line closures mean that I end up getting a taxi to get to the courthouse for about £12 with a receipt, but this expense is not permitted.”

All respondents said their travel costs had increased over the last year (see figure 3) and attributed this to factors including a change in the claimable mileage rates for cars with larger engines, and longer journey times arising from court closures, bench mergers, and the relocation of court work.

Figure 3: Compared to a similar sitting last year, would the same expense claim leave you more, or less, out-of-pocket?



Mileage change

In April 2021, the Ministry of Justice (MOJ) announced a reduction in the claimable amount for cars with larger engines (that is, those over 1550cc)—see table 9.

Table 9: Change in claimable mileage rates for cars

Car engine size	Amount claimable (pence per mile)	
	Before review	After review
Under 1550cc	Between 36-44	45
Over 1550cc	58	45

Analysis of almost 800 qualitative survey responses about this change revealed its unpopularity. Nearly half (400) of those who claimed mileage (n=993) felt it was inappropriate in the context of rising prices for fuel, vehicle upkeep and other external costs. Just 20 respondents recognised and supported the policy justifications provided for the reduction.

“Having to travel further means more wear on tyres, more likelihood of damage and more dirt...mileage rates used to pay for this. Now, however, with much higher fuel rates and journeys taking longer (so more fuel used sitting in queues), it is doubtful if it [even] covers fuel anymore.”

“The reduction of 13 pence per mile has resulted in an approximate £100 per annum loss to me, while motoring costs (such as fuel, insurance, servicing and maintenance) continue to increase.”

Respondents from rural areas especially reported feeling penalised by the changes; this is exacerbated by their reliance on cars to get to court due to the lack of alternative modes of travel.

“I lost a considerable amount of money per journey because of the rural nature of Dorset and the distances I have to travel.”

“We don’t have the public transport infrastructure. I can’t just hop on a bus or a train. It’s an hour’s drive to the station; buses take over an hour.”

There is also evidence in the survey that this change has disproportionately affected some disabled magistrates (see page 34).

Increased travel

Nearly half (43 per cent) of all respondents said that their travel time from home to court had increased since they were first appointed. Court closures and bench mergers were felt to be directly responsible in around 21 per cent of cases (200 respondents), with some magistrates saying not enough had been done to ensure they sit as close to home as possible—which would save costs:

“My first court was walking distance from home and two miles from work. Now, with county-wide benches, no consideration is given to getting magistrates to sit near home.”

The relocation of court work was also cited, with some magistrates needing to travel further to “encounter the broadest scope of work” and maintain their competencies.

“I sit in Crawley more frequently than I used to due to the variety of work, which is 31 miles away compared to my local court which is two miles away.”

Since the previous review of magistrates’ expenses three years ago, there have been major changes affecting magistrates—to their ways of working, and to external costs—that have made the current expenses schedule less fit for purpose.

Recommendation 4: A detailed post-implementation review of the expenses schedule should take place as soon as possible to address the impact of these internal and external pressures.

Rising prices, fuel, and the cost of living

Government statistics show the extent of increases in both the cost of living and fuel costs:

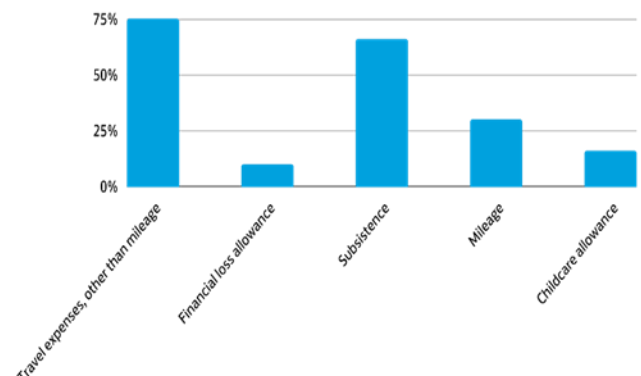
- The Consumer Price Index increased by 9.9 per cent in the 12 months up to August 2022.¹⁵
- Eighty-three per cent of adults reported that their cost of living had risen in March 2022 compared to 62 per cent of adults in November 2021.¹⁶
- A government statistical release found that petrol was 17.9 pence and diesel 10.6 pence higher per litre in June 2022 than in May 2022.¹⁷

The case for benchmarking

The guidance surrounding certain expenses, like the subsistence allowance, has not been reviewed for over a decade. Clearly, such expenses are no longer benchmarked to real-world prices and may, therefore, no longer be sufficient.

Our survey data showed that magistrates’ satisfaction with claimable expenses is higher when these mirror actual costs (see figure 4). For example, respondents were most satisfied with travel costs and subsistence—both expense types that either represent realistic costs or reimburse for all reasonable costs—at 75 per cent and 66 per cent, respectively.

Figure 4: Are you satisfied with the claimable amounts of the following expenses?



The expenses policy is currently too static to respond to changes in the external environment.

Recommendation 5: The MOJ should set up a standing working group on magistrates' expenses. This should be structured to:

- 1. receive regular input from magistrates and relevant organisations**
 - 2. track updates in employment law that may necessitate change in guidance or policy**
 - 3. regularly review the rates of expenses to ensure magistrates are not out-of-pocket.**
-

Part two: is the expenses regime too rigid?

Key findings

- Respondents reported that the expenses regime is, at times, applied unduly rigidly, which delays the processing of their claims.
- Respondents broadly felt that the evidential requirements for a financial loss allowance claim are unnecessarily cumbersome and need streamlining.

Respondents identified a need for a more common-sense approach when making claims.

“...those who process the claims seem to lack common sense when dealing with minor issues. For example, if one overclaims subsistence allowance the claim is returned rather than just being settled at the maximum claimable”.

This was seen most starkly in relation to the financial loss allowance (FLA), which 120 of our respondents claim.

Financial loss allowance: claims

The majority of respondents (61 per cent) said that the new online process for claiming FLA is ‘reasonably intuitive’, simple and quick, and a marked improvement on the old paper-based method. Nearly half of respondents (46 per cent) agreed that the process is transparent and the expenses team quick to resolve queries.

“The online claim form is now much improved and it seems to be processed more quickly.”

Despite this, a large proportion (62 per cent) said that the requisite supporting evidence for FLA claims is excessive (see figure 5). It was suggested that the burdensome evidential requirements (see box) could benefit from being streamlined, especially in relation to the annual declaration process.

Evidential requirements for FLA claims

The magistrates’ expenses policy states that an FLA claim must be supplemented with ‘adequate and independently verifiable documentary evidence’.

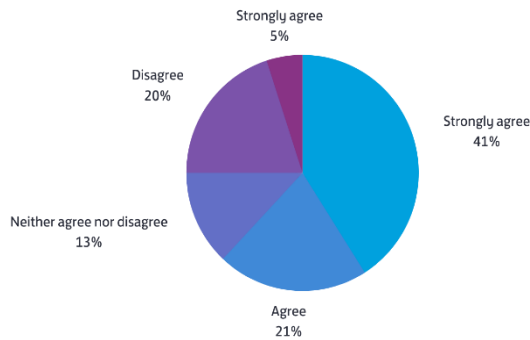
The Ministry of Justice’s (MOJ) Employers’ Guide¹⁸ specifies that magistrates must provide the following to evidence a claim:

- a letter from their employer advising what deductions from pay will be made, or what annual unpaid leave is taken, along with details of their working pattern
- a copy of their payslip.

Employers should make clear that the deduction from unpaid leave is because the employee is fulfilling their judicial duties as a magistrate.

Claimants must also fill in an annual declaration form once a year.

Figure 5: To what extent do you agree with the statement 'The evidence to support an FLA claim can be unnecessarily excessive?' (n=110)



Employed magistrates reported that providing satisfactory evidence—in particular, that they could have worked if they had not been sitting—was, at times, a very tall order. One respondent with a zero-hours contract explained:

“I have sometimes forgotten to demonstrate evidence that I could have worked and then had to ask my manager to provide this. I can always work—any day, any time. So, this felt like a huge waste of time for both of us. It took me about two months to get the evidence.”

Another self-employed respondent shared:

“Following the letter of the guidelines is untenable. As a freelance trainer, I would have to agree a date for a training course with a client, sign a contract for that date, and then cancel in order to receive FLA. I don't do this as I would lose all my clients.”

The evidentiary burden left some respondents feeling untrustworthy:

“The process is cumbersome and makes me feel untrusted [by the claims team]. My unpaid wages situation has not changed in six years, yet I still have to submit various documentation.”

Our survey found some support for the system being better integrated with other expense types and/or other relevant organisations' processes:

- One respondent suggested that the forms should be prepopulated with mileage figures.
- Another recommended including a link to the sittings rota so that a claim could be preloaded with relevant information and, perhaps in time, be used to pay out automatically.
- Four said that the system could benefit from some direct integration with an employer for the purposes of providing payslips and P60s.

A balance must be struck between His Majesty's Courts & Tribunals Service (HMCTS)/MOJ's responsibility to account properly for public money and the evidential hurdles that members tell us can, at times, be insurmountable. These, along with the unpopular and cumbersome annual declaration process, need streamlining so that volunteer magistrates are not unnecessarily inconvenienced.

Recommendation 6: HMCTS should fast-track any planned improvements to the FLA claims process, review the adequacy of all magistrates' claims processes, and store the annual declaration forms electronically so that it does not have to be re-completed every year.

Recommendation 7: The courts minister should take steps to remove the annual declaration requirement from the secondary legislation without delay.

The Magistrates' Association has been working with HMCTS' magistrates' expenses team to address the aforementioned issues. We will establish a working group of self-employed magistrates to better understand these and to identify feasible means of streamlining claims processes.

Childcare

The process to claim for childcare is another example of the inflexibility of claims processes. There was evidence that strict criteria and the lack of a common-sense approach precluded those with childcare responsibilities from claiming.

One respondent shared that over the course of a decade her mother or mother-in-law had often looked after her children while she was sitting as this was the only reliable ad-hoc childcare available. Despite her parents driving up to 115 miles each way and donating, therefore, a lot more than their time to enable her volunteering, the expenses policy provides no means of recognising this.

A similar story was recounted by another respondent who said that greater financial recognition of the costs of family-provided childcare is needed as family members are sometimes the only option for children with a disability.

We have also heard of magistrates returning from maternity leave and finding scant support and guidance to help them navigate the expenses rules.

The potential for these issues to create a level of indirect discrimination against those with childcare responsibilities—the majority of whom are women—must be fully understood and effectively addressed.

Recommendation 8: The MOJ must look specifically at the barriers faced by magistrates with childcare responsibilities. Claims processes, and their potential to create difficulty for certain groups of magistrates, must be a key priority for the proposed working group on expenses.

Part three: are there unrecognised costs?

Key findings

- Costs have been particularly great in the context of remote sittings; magistrates have had to pay for hardware and software for remote sittings, and there has been no support for this cost. There have also been unrecognised costs to time.
- Qualitative analysis revealed mixed views on satisfaction with IT, with support often patchy and unreliable—leaving magistrates frequently relying on each other for support.
- The proliferation of IT systems necessary for use as a magistrate has hindered the ability of the centralised IT team to fully understand individual magistrates' IT issues. This is especially true when magistrates have issues with their own devices.
- IT security requirements are cumbersome. Magistrates should not hold security responsibility for their devices by default.

When asked about the unrecognised costs of volunteering as a magistrate, respondents identified five core themes: at-home sittings, court dress, preparation for and follow up from court, additional judicial duties and administration, and IT support and obligations. Additionally, almost 80 per cent (933) of respondents shared their views on how they thought related financial burdens could be eased.

Sitting remotely

The term remote sitting describes a court hearing that takes place, in part or in full, away from the physical court building. For example, video links may be used to connect defendants to the court. Although the Covid-19 pandemic saw the use of remote elements substantially increase, they were also extensively used prior to this.¹⁹

"[Before the pandemic] there was an increasing need for magistrates to have access to devices other than a mobile phone in order to access training, resources etcetera."

Over a third (35 per cent) of the 528 magistrates who responded to a question about the inconveniences of sitting remotely reported lacking a suitable and confidential

space in which to hold such hearings. A similar proportion (36 per cent) said they routinely had to negotiate the use of computers and/or wi-fi with other household members.

Along with these unquantifiable impacts, our survey revealed major financial costs—as yet unrecognised in the expenses regime—associated with remote sittings. Particularly felt over the last two years, magistrates who sit on advisory committees—which help recruit new magistrates—and in family courts have been especially impacted (see figure 6).

"As a family magistrate, I have to sit remotely. I think we should be given some form of finance to cover the cost of laptops, electricity and wi-fi costs. I have had to purchase new electronic equipment to help me work remotely."

"Advisory committee work demands that you use much of your own equipment. For example, last year's interviews were conducted remotely and there was no provision for members buying extra equipment (like a working laptop or additional screens) to carry out this work."

Figure 6: Have you incurred additional costs through sitting remotely in the last two years?

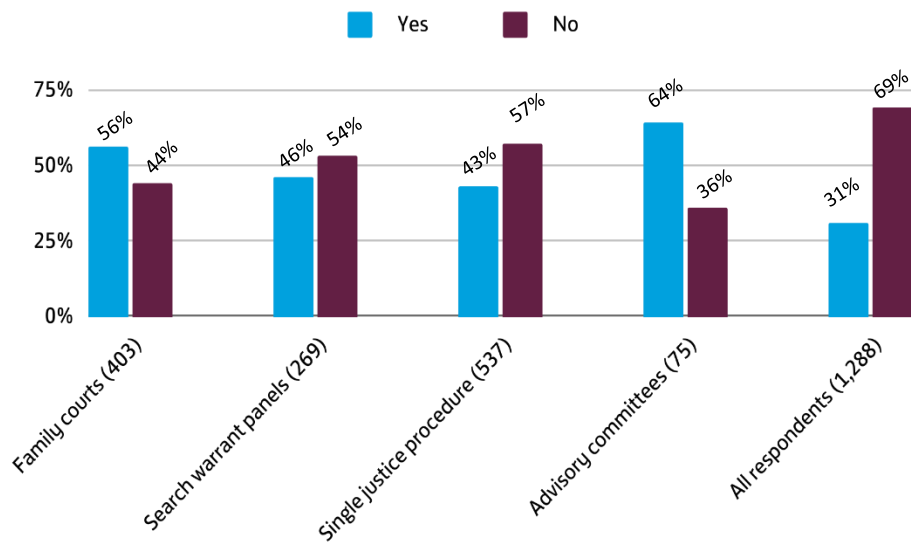
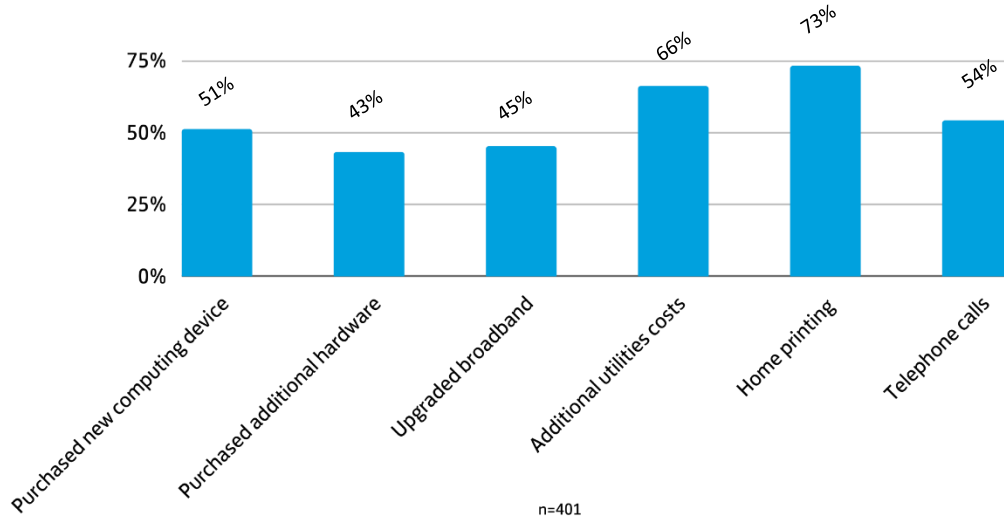


Figure 7: If you have incurred additional costs, please select all that apply.



Of the 401 respondents who specified the additional costs they had incurred to accommodate remote sittings, just over half (51 per cent) reported having purchased a computing device—for an average sum of £735—and sizeable proportion (43 per cent) said they had purchased additional equipment (such as a second screen, laptop stand or an office chair)—spending £359 on average.

A similar proportion (45 per cent) reported having upgraded their broadband or wi-fi—which cost them anywhere between £3 and £20 more per month—and more than a third (34 per cent) said they had incurred additional utilities costs. Nearly three quarters (73 per cent) reported having incurred additional home printing costs—with costs for ink and paper and/or £50-£100 if they had had to buy a printer—and more than half (54 per cent) said they had paid extra for line rental to boost telephone call capability. Respondents also identified other ancillary costs, such as the additional wear and tear on existing devices, and the purchase and use of personal devices for communication during sittings.

As the current expenses regime neither recognises these digital costs nor extends subsistence allowance to magistrates who participate in at-home hearings, many magistrates believe that a new, hidden class of sitting now exists. As such, 260 respondents suggested that recognising technology costs in a new digital home working allowance would help reduce the financial burden on magistrates who sit remotely.

Others called for the subsistence allowance to be extended to magistrates who participate in at-home hearings, with food, drink, and utilities and technology outside the scope of a digital home working allowance all proposed for reimbursement.

“I think there should be careful consideration given to expenses for

tech-related costs. My training was all done at home and online. This required me to use my laptop, broadband and electricity. While I would need these things anyway, I do think that magistrates' expenses should [accurately] reflect the costs that we incur. As it is, they do not”.

The expansion of remote sittings has intensified magistrates' discontent with their ineligibility to claim subsistence for at-home sittings. Despite the then Justice Secretary committing to revisit this, in a letter sent to our national chair in May 2021, there have been no changes. Magistrates must be assisted with the additional hardware and software costs they bear as a result of volunteering.

Recommendation 9: His Majesty's Courts & Tribunals Service (HMCTS) should institute a flat rate allowance—slightly lower than the current subsistence allowance—for magistrates who conduct at-home sittings.

Recommendation 10: HMCTS should establish a digital hardship fund to assist magistrates on limited means to purchase or upgrade the equipment required for at-home sittings where they do not have such equipment already. This could be administered by bench chairs.

Dressing for court

Guidance is not prescriptive on what a magistrate should wear when sitting; it only states that magistrates must dress in a way that 'reflects the dignity of the court'. The expenses policy does not, therefore, provide for attire-related claims.

While we are not recommending a clothing allowance, our survey strongly indicated that the ambiguity of the guidance has created a cultural expectation among the senior magistracy and bench chairs that formal wear is necessary.

“I know you keep saying that suits are not required when sitting but try telling that to bench chairs.”

“If you’re trying to attract a younger magistrate and younger parents, you have to also consider that money is tight for some age groups and that the cost of a suit plus shoes is not a small amount if you have never had to dress smartly for work.”

Care needs to be taken to avoid magistrates feeling pressured to dress more formally than HMCTS has specified.

Recommendation 11: HMCTS should write to all bench chairs to clarify the standards of court dress expected under the current regime.

Preparing for and following up after court

Magistrates spend a substantial amount of time preparing for sittings. Segmentation of survey data revealed that this burden hits family court magistrates hardest.

Table 10: Time spent every month preparing for a court sitting

	Family magistrates (n=404)	Full survey population (n=1,301)
0-5 hours	20%	67%
5-15 hours	53%	24%
15-30 hours	21%	8%
30-40 hours	3%	1%
40-60 hours	2%	1%
Over 60 hours	1%	0%

A weighted average of this data shows that family magistrates spent nearly 12 hours on average a month in direct preparation for a

sitting, compared to all respondents, who average six hours:

“...I spend at least another day in reading and preparing for family hearings and in writing up reasons afterwards. I put aside a whole day before sittings for preparation.”

Due to required preparatory and follow up activities such as pre-reading, magistrates volunteer far beyond the minimum 13 days that they are required—and perhaps initially had anticipated needing—to dedicate to the role.

Recommendation 12: Subject to the eligibility requirements being met, and when significant pre-reading is required, this time should be treated as a sitting. Any financial loss should be eligible to be claimed under the expenses regime.

Undertaking administration

Nearly half of respondents (49 per cent) reported spending up to four hours every month (about six days per year) on administrative activities—including checking court rotas and undertaking training (see table 11). Some said this should be covered by the expenses regime.

“I think that time [we spend completing] e-learning should be paid. I attended the common platform training and, because of the availability of sessions, I had to decline paid work”.

Table 11: Time spent every month on duties connected to being a magistrate

Time spent	Percentage (n=1,272)
0-4 hours	48.6
4-8 hours	30
8-12 hours	10
12-16 hours	2
16-20 hours	3.5
20-28 hours	3
28-36 hours	0
36-40 hours	0.7
Over 40 hours	2

Undertaking additional judicial roles

Our survey sought to understand how much time magistrates who undertake certain additional roles in the magistracy spend in these roles. A weighted average taken across specific such roles revealed:

- Bench chairs and deputy bench chairs spend an average of 9.1 hours extra a month on bench chair duties. This additional time commitment could be far in excess for some, with nine per cent of bench chairs and deputies reported spending 40 hours or over a month on these duties.
- Respondents who sit on Training, Approvals, Authorisations and Appraisals Committees (TAAAC) spend an average of seven hours extra a month to support this role.
- Advisory committee members told us they spend an average of eight hours extra a month.

This is time over and above their sittings, and it is not at all currently recognised by the expenses regime:

“[I am] currently a bench chair and spend a huge amount of time dealing with pastoral issues, putting together fortnightly briefing notes for the bench as well as attending virtual meetings. It is at least a part-time job if not more.”

Magistrates are spending far longer than the time they sit in hearings fulfilling duties connected to their role. This extra time currently remains unrecognised.

Recommendation 13: The proposed standing working group needs to think creatively about how best to recognise the extra time contribution of magistrates who undertake additional judicial duties.

Accessing IT support and understanding IT obligations

Quality, pace, and signposting

Our survey revealed that the availability and quality of IT support available to magistrates is inconsistent across England and Wales.

“It seems haphazard. In some courts it is good, and in others it is non-existent. It seems to depend on who is around on the day.”

Unsurprisingly, respondents’ related satisfaction levels also varied; almost equal proportions reported being content and dissatisfied: 21 and 25 per cent, respectively.

Those who reported being satisfied with the quality, speed and thoroughness of responses to their IT support requests also acknowledged that email-based support is, inherently, slower in nature. This was also voiced by respondents, who said that the negative impact of delays is

most felt in time-sensitive situations, such as when on-the-day support to set up a remote sitting is required. Given that a recent HMCTS evaluation on remote hearings found that nearly half (48 per cent) of the judicial office holders surveyed required technical support for remote hearings, this is concerning.²⁰

“Help desk is painfully slow... I had an IT issue that took months to resolve despite several requests listed. It caused massive confusion in court and, on some occasions, I wasn't able to access my e-Judiciary account and, therefore, court matters. Not good. This was only resolved by a bench chair being determined to force IT to fix it.”

Although respondents generally believed that central IT support teams try to help where they can, some even within this group said that they close tickets before a satisfactory resolution has been reached. They are at times, unable to assist at all. In such instances, respondents were unclear who else they could speak to, nor to whom the issue could be further escalated. Contact details for IT support staff appeared to be neither logged nor updated frequently for individual courthouses.

Respondents who had sought central IT support for their own devices said that it had been of limited assistance due to a one-size-fits-all approach that fails to consider the diversity of personal setup. This approach too often assumed “that you undertake updates and have equipment that is new enough to upgrade to the newest software”. This, coupled with telephone help being restricted to the most basic of issues, has created an unnecessary level of stress for magistrates who use their personal devices in the course of their judicial duties.

“The browser used as standard on an iPad is unable to access links containing information for TAAACs. Installation of a different browser

precluded access to personal apps, and no resolution was offered.”

Similar patterns were reported with regards to the training magistrates receive in using new IT systems. Many respondents said this is often insufficient and results in them teaching themselves via trial and error, which wastes time that could be better spent on magisterial duties.

“When being trained to undertake interviews via Microsoft Teams... no account was taken of each of us using different device types with different platforms. We therefore had to work it out for ourselves.”

“We are repeatedly asked to use new systems without proper training. In my experience, support has always been available when sought, but this takes time and is an inefficient way of learning how to use required systems.”

Several respondents said that the best support often originates locally and/or is provided by helpful peers on the bench or IT mentors—magistrates who take on the additional responsibility of providing low-level IT support to colleagues. One magistrate had even taken it upon themselves to run training sessions to keep their bench apprised of new technology and assist with set-up.

“[Central IT support is] not readily available and without digital mentors the system would grind to a halt.”

Assistance with different systems

Our survey respondents feel that IT support does not offer enough specialised assistance for the systems, software and portals that magistrates are expected to use, which include:

- Common Platform (contains case information)
- CourtStore (contains case information)

- eJudiciary
- Judicial intranet (repository of information and updates)
- Liberata (expenses claim portal).

The proliferation of these very different systems—used to view case information, check rotas, and make expenses claims—has continued, but our survey shows that IT support does not effectively tackle issues that magistrates experience using them:

“The IT systems we use as magistrates are quite cumbersome and not particularly user-friendly.”

“A number of times when using Common Video Platform [the video link system used in court to support parties appearing remotely during the pandemic] I would appear on my side. Twice I raised tickets, and these were dismissed as the IT desk said it couldn't possibly be its fault.”

Inadequate court technology

Our survey revealed a widespread trend of magistrates routinely—albeit reluctantly—using their own equipment when at in-person hearings due to the poor quality of court-issued laptops. Many believed that this had disincentivised HMCTS to fix or replace these laptops.

“I don't think I should have to use my own devices outside my home, but the unreliability of court laptops means I do so.”

“Laptops that are faulty are simply getting left in the cupboard without the fault being dealt with. It is definitely easier to use my own device”.

One respondent recounted a time a central update to family court computer systems had rendered it impossible for magistrates to log

onto a court laptop for several weeks. This meant they had to use their own devices at short notice:

“In any other organisation the laptop issues would have been fixed within 24 hours. Yet, it took several weeks to sort this out.”

Guidance and training

In the course of their duties, magistrates must save and look at highly sensitive documents. Although guidance on their data security obligations is available (see box), respondents felt this is incomprehensible for their less IT-literate peers. They also did not feel that HMCTS is sufficiently proactive in promoting and helping magistrates understand it. Concerningly, a substantial portion of respondents said they were unaware of any formal guidance governing security. Some, therefore, said dedicated training is needed.

“We have had emails advising about security, but as many magistrates have little computer skills and do not understand what is required. For example, simple things like deleting [court] bundles twice, rather than just sending them to the recycling bin. Many magistrates I talk to do not use, nor know how to use, the eJudiciary OneDrive so download bundles onto their computers or laptops.”

“I have worries about receiving family bundles on personal equipment. Advice is given about deleting files, but no training is offered.”

This echoes the findings of a recent HMCTS evaluation of remote hearings that revealed a lack of clarity about where judicial office holders should store files when working on their own devices.²¹

Magistrates' IT security obligations

A 14-page document entitled 'The responsibilities of the judiciary' sets out minimum expectations relating to the security of personal devices that are used for judicial duties, the proper use of the internet and wi-fi, and the storage and deletion of content from case systems.

Available on eJudiciary, it specifies that magistrates who use their own devices for court business must encrypt their hard drives or storage and install, enable and keep up-to-date anti-virus and anti-spyware software.

Many of the respondents to our survey also said that responsibility for ensuring the security of their devices should not only rest on magistrates' shoulders. In doing so, they often highlighted the unanticipated related financial outlay:

"It is a requirement to keep personal devices up to date with the latest software and security versions to carry out the role. There is no allowance for achieving this, nor is it mentioned as a requirement in the information about the role when applying."

These concerns echo earlier member feedback on this topic:

- In 2017, members of the Magistrates' Association who attended our annual general meeting supported the motion: "magistrates who use their own IT equipment for judicial work should not be held responsible for ensuring it meets security requirements."
- In 2021, we published a paper recommending that "[w]here the use of own devices is necessary, there must be

proper support and assistance to ensure that they are secure."²²

Magistrates are not currently provided with sufficient guidance on or training in IT, including security. As such, they too often feel unsupported, and are unclear on their responsibilities regarding the personal devices they use for court business. This is a cause for concern.

Recommendation 14: To build magistrates' confidence in using their own devices, regular short-burst training sessions on the use of different IT systems should be delivered.

Recommendation 15: This type of regular short-burst training should also apply to IT security and handling sensitive data, and magistrates should be asked to specifically confirm that they understand security responsibilities, in order to protect themselves.

Part four: how satisfied are magistrates?

Key findings

- Magistrates are committed to their role. Only one-third of respondents said they had considered resigning before the mandatory retirement age of 75. The majority of these (66 per cent) reported not feeling valued as the main reason for this. Other motivating factors for early retirement include:
 - The amount of wasted time waiting for court sittings or due to cancelled sittings.
 - Lack of support from senior judiciary and/or His Majesty's Courts & Tribunals Service.
 - Lack of training (digitalisation and IT skills).
- Respondents generally felt they had not been meaningfully consulted about changes affecting them, believed that change had been for the worse, and did not feel well-informed about upcoming changes in policy and legislation.

A 2019 report on the volunteer experience by the National Council for Voluntary Organisations (NCVO) found that fostering a culture of respect and trust was the most important factor in how satisfied volunteers felt in their roles.²³ During a period of immense change for the magistracy and magistrates' courts, a key element of this will be how magistrates feel changes have been handled, and whether they feel change is done 'to' them, rather than 'with' them.

We asked respondents how they felt about the nature and level of consultation, and about the way changes had been managed. Some key findings include:

- More than three-quarters (81 per cent) of respondents said their role has seen change that has impacted them; half of these felt the change had been significant.
- Forty-three per cent felt that the change had worsened their experience of being a magistrate; just under 14 per cent felt that the change had improved their experience as a magistrate.
- Over a third (36 per cent) felt there is a lack of information about policy affecting them, compared with just under a third (29 per cent) who disagreed.

Consultation

Respondents expressed a strong sense of a lack of consultation on changes affecting

them. The proportion who did not feel consulted outnumbered those who did by a factor of two to one (45 per cent compared with 23 per cent). Forty-two per cent disagreed or strongly disagreed with the statement 'I feel adequately consulted about changes which affect me'; just 19 per cent agreed.

The management of change

In the round, respondents tended to be supportive of change, especially the wider use of IT and the efficiency benefits that digitisation can bring:

"Better use of IT across many aspects of the work has improved things on a day-to-day basis (for example, electronic bundles in family court, using Common Platform, online Sentencing Guidelines etcetera)."

Their major concerns were about the way that reforms have been implemented. The prevailing view was that change management processes are poor in His Majesty's Courts & Tribunals Service (HMCTS), with inadequate testing of new IT and roll out happening too early before problems have been ironed out. This leads to the potential benefits not being realised, and certainly not before avoidable pain.

“[The way HMCTS] actually handles changes has varied tremendously... some colleagues haven't coped at all well, while some have embraced the changes wholeheartedly. Implementation of some changes has been very poorly managed—both administratively and technically.”

This has undermined the goodwill of some volunteers, and increased a sense of not being supported through change:

“The general expectation that magistrates will take on without question the 'drip, drip' feed of asks... While often there is consultation, I don't feel I've been consulted. Technology has overtaken the practice of being addressed face-to-face.”

There was a clear difference, throughout the survey, between the priorities of magistrate volunteers in the role and HMCTS. For example, the rationale behind many HMCTS decisions was not always clear to respondents. There was also a sense that the amount and level of change was not underpinned by any coherent strategy:

“HMCTS seem to ignore the fact [that] we are volunteers and expect us to keep up to date as if we were full-time.”

“[I] still want to do my bit, but this does not stop me feeling used.”

“[Things seem to be more focused on] HMCTS targets rather than concentrating on providing an effective and supportive service for the community or society.”

As a result of the perceived poor handling of changes, many respondents felt very negatively about the impact of the changes. Those who said that change has worsened their experience as a magistrate were nearly

twice as likely to say that they would not apply to the role, knowing what they now know about the associated costs.

Table 12: Responses to the question “Knowing what you know now about the costs associated with being a magistrate, would you still have applied to the role?”

	Yes	Maybe	No
Those who agreed or strongly agreed with the statement “change has worsened my experience as a magistrate”	60 per cent	31 per cent	9.5 per cent
All survey respondents to this question (n=1233)	76 per cent	19 per cent	5 per cent

The responses to this question underlined the strength of feeling:

“It is assumed too readily that magistrates will do the extra work; it presumes far too much on the individual.”

Many thought the role itself had changed dramatically, citing the loss of local justice and the diminished sense of camaraderie and community between magistrates.

Many felt that the decision to change mileage rates, which was received overwhelmingly negatively (see page 15), not only reduced claimable amounts but also amounted to a clear statement of how those in positions of power over the magistracy felt about magistrate volunteers:

“To reduce our financial compensation has been dispiriting and the opposite of motivating”.

There needs to be a greater understanding of the motivations and priorities of magistrates as volunteers—factors such as the importance of service, community and giving back to society—as well as how they relate to their role, and the causes of dissatisfaction.

The importance of support and recognition

Magistrates reported mixed feelings about the leadership of the magistracy, which comprises anyone with a designated role to support magistrates (for example, bench chairs, middle leadership in HMCTS, and the Magistrates' Leadership Executive).

Respondents were highly complementary about bench chairs; nearly all responses that mentioned bench chairs praised the support they provide:

"The bench chair and vice chairs are very communicative and express thanks and share support."

"Bench chairs have the interests of the magistracy at heart."

Views on support through the leadership painted a more mixed picture. Some respondents felt that leadership was broadly good; they appreciate its "general support" and believe that leaders fight "battles on our behalf". One magistrate with a leadership role themselves valued the greater opportunities to work with senior leaders and found them to be "helpful and interested".

The interactions between senior leaders and magistrates that appeared to stick in terms of value were the thank you emails, and regular thanks and appreciation for time given during training.

However, some respondents cited how difficult it was to advocate for real change among this group:

"It is very hard to get things done. Good ideas are welcomed but it takes an age to action."

"Despite occasional thank you messages, I often feel told—rather than asked—to do things."

Many respondents felt leaders to be remote and detached from the reality of court, with observed instances of remote decisions being made with no allowance for local differences.

The cumulative impact of changes, coupled with the issues discussed so far in this chapter meant that not feeling valued was the top resignation issue for respondents.

Table 13: Respondents' top four reasons for considering early retirement from the magistracy

Ranking	Reason (n=441)
1	Not feeling valued
2	The amount of wasted time waiting for court sitting or due to cancelled sittings
3	Lack of support from senior judiciary and/or HMCTS
4	Lack of training (IT digitisation and skills)

The required time commitment

As this report has shown, time spent is just as material an expense as financial loss. While magistrates commit to sit for 13 days a year (see box), respondents tended to feel that this was neither a transparent nor realistic assessment of the actual time commitment required.

In a question on whether they would recommend the role to somebody they knew, several respondents reflected on the time commitment:

"There is a time commitment not explained in the application above the minimum 13 days sittings in the first year of appointment: training and court observations."

"You begin the journey as a JP and are encouraged to do more, such as sitting on multiple panels, mentoring, appraising, being part of a TAAAC etcetera. All this increases training and time commitment, plus costs."

Magistrates' expected time commitment

Magistrates are expected to sit a minimum of 13 full days per year and to sit regularly throughout the year.

The Lord Chancellor's Directions to Advisory Committees explains that magistrates appointed "will aim to serve for a minimum of five years and be in a position to offer that commitment".²⁴ They outline that the average annual attendance figure for each bench, which includes sittings in the Crown Court, "should be between 17 and 23 sitting days" to ensure that sittings are fairly distributed among members of the bench.

However, this figure does not take into account the training requirements—which occur on an ongoing basis to ensure magistrates retain competence— and time connected to taking on other roles in the magistracy. These take the minimum time commitment far beyond 13 days.

Further guidance to Advisory Committees explains that a "higher level than this imposes an unnecessary burden on some magistrates, may cause difficulties for employers and fellow employees, and could undermine the diversity of the bench".²⁵

Our survey shows that magistrates feel the Ministry of Justice's (MOJ) and HMCTS's development and implementation of change has lacked meaningful consultation and involvement. This has undermined the bond that magistrates feel towards their role and how valued they feel in it. Magistrates still value the role as a means of making a worthwhile contribution to their community

and the justice system. However, damage to morale is endemic; if this is not addressed it risks becoming an existential issue.

Recommendation 16: To safeguard morale and recognise the hard work of magistrates, HMCTS and MOJ should work with magistrates' representatives to establish a Magistrates' Volunteering Compact. This would be an overarching document, based on greater respect and understanding of the role of magistrates as volunteers in the context of participatory democracy.

Recommendation 17: The compact should set out reasonable expectations of magistrates—such as the real required time commitment, and expectations in the use of their own devices—as well as what magistrates can expect from HMCTS and the MOJ. This should include a commitment to meaningful consultation and involvement of magistrates in decision-making that affects them, and a commitment to ensure that the expenses regime stays relevant and up to date, so that magistrates are not out-of-pocket.

Recommendation 18: The standing working group on magistrates' expenses that we propose in recommendation five should include a specific consultative element, to ensure magistrates' voices are heard.

Recommendation 19: The MOJ should ensure that the true time commitment required to be a magistrate is made clear. This transparency would be fairer to applicants and would increase the sense of recognition for magistrates' contributions.

Part five: are some magistrates disproportionately affected?

Key findings

- Our survey revealed disproportionate impacts of the expenses regime, with both young magistrates and Black, Asian, and minority ethnic magistrates much more likely to say that being a magistrate had created some level of financial cost to them.
- Not feeling valued was a resigning issue for all cohorts of respondents. Segmentation of data on the likely reasons for resigning by age and ethnicity revealed that:
 - Expenses and the lack of time commitment featured in young magistrates' top four reasons, though the same was not true for the general survey population. Time commitment was also a key issue for Black, Asian and minority ethnic magistrates.
 - Young magistrates were nearly three times more likely than the general survey population to report having considered leaving solely or mainly due to financial factors. Black, Asian, and minority ethnic magistrates were nearly two times more likely to say the same.

The magistracy is the most diverse part of the judiciary (see box) and is widely seen one of its key assets.

Diversity in the magistracy

Latest available official judicial diversity statistics reveal that as of 1 April 2022:

- Women comprised 57 per cent of magistrates
- Asian or Asian British individuals made up seven per cent of magistrates
- Black or Black British individuals constituted four per cent of magistrates
- Mixed ethnicity individuals comprised one per cent of magistrates
- Individuals from other ethnicities made up one per cent of magistrates.

In total, ethnic minority individuals constituted 14 per cent of all magistrates—a six percentage-point increase from 2014 when eight per cent declared themselves as being of a minority ethnic background.

However, there is much further to go, and increasing diversity is a stated aim of the current magistrates' recruitment campaign.²⁶

So far, this report has outlined issues in the coverage of the expenses regime in fairly general terms. Our survey collected data to see whether particular sections of the magistracy were exposed disproportionately to this.

Costs

The experience of young and/or Black, Asian, and minority ethnic magistrates

Answers to the survey's headline questions revealed the following disproportionate negative impacts on some magistrates:

- Magistrates who are young and/or Black, Asian and minority ethnic magistrates were at least 50 per cent more likely than respondents in general to say that being a magistrate had created significant financial cost to them.
- For those who are both Black, Asian and minority ethnic and young, the role had created some or significant level of financial cost for all of them—none of this cohort reported no financial cost.

Table 14: The extent of perceived personal financial cost of being a magistrate

	Significant financial cost	Some level of financial cost	No financial cost
Young magistrates	12%	70%	18%
Black, Asian and minority ethnic magistrates	14%	65%	21%
Magistrates who are both young and of a Black, Asian and minority ethnic background	14%	86%	0%
All survey respondents (n=1362)	8%	65%	27%

Why are some groups of magistrates disproportionately affected?

The survey responses cast a light on why particular groups of magistrates were more likely to report financial loss. The two case studies below highlight the costs faced by magistrates with disabilities and magistrates who are employed.

Magistrates with disabilities

One hundred and eighty-seven respondents said they have a disability. Most felt their reasonable adjustments are managed well with the assistance of His Majesty’s Courts & Tribunals Service (HMCTS) staff and bench chairs; for example, shielding, larger gaps between sittings due to the need for downtime, and the use of a hearing loop in court.

However, other responses revealed that magistrates with disabilities incur clear additional costs directly due to their disabilities. This arose in the context of questions about specific expenses:

- One magistrate, commenting on the mileage change, said: “I need a large car to transport my mobility scooter, which I use at my home, to court. I now feel I am being penalised because of my disability”.

The large car mentioned is eligible for less under the reduced mileage rate.

- Another said they had encountered difficulties claiming mileage when their spouse would drive them to court, when they were not well enough to do so themselves.

Other responses mentioned not being able to do other sittings or sit at short notice, which some felt it made it harder for them to meet the minimum number of sittings required.

There were a few responses from those with physical disabilities—sometimes necessitating the use of the wheelchair—having to travel further to an accessible court.

Employed magistrates

Employed magistrates balance the role alongside their jobs.

Last year, our young magistrates’ network published a paper that revealed that young magistrates often struggle with issues arising from the balance between their employment and their role as a magistrate, and do not feel supported to understand their rights under employment law. 27 These problems, made worse through lack of signposting and central guidance or support, have the potential to make it difficult for a magistrate to sit. The paper makes a series of recommendations that aim to increase the support offer for employed magistrates. These include a centralised repository of resources to assist young magistrate to manage issues and provide support, and a dedicated resource within HMCTS to provide pastoral support.

Work is ongoing, through the Ministry of Justice’s (MOJ) employed magistrates’ working group, to implement the recommendations of this report.

There is excellent work ongoing within MOJ to implement the recommendations of our young magistrates’ network’s paper on support for employed magistrates. In light of these survey findings, we will continue to work with the MOJ to ensure that employed magistrates are supported as far as possible in the role.

Implications for the future of the magistracy

Resignations

A question exploring the reasons why magistrates resign revealed the issues that affect different cohorts of magistrates. Magistrates were asked to choose the top four reasons they would resign before reaching the mandatory retirement age of 75—that is, the reasons they would leave the role.

Not feeling valued was a key resignation reason for magistrates in all groups who said that they would consider resigning before retirement, but the other top reasons for resignation between these groups varied. It showed that:

- Black, Asian and minority ethnic magistrates and young magistrates were less likely to be able to give the time commitment required.
- Young magistrates were the only group for whom affordability of the role was in the top four reasons.

Table 15: Respondents' top four reasons for having considered resigning before retirement, by cohort

Ranking	Young magistrates (n=21)	Black, Asian and minority ethnic magistrates (n=91)	All respondents (n=441)
1	The amount of wasted time waiting for court sittings or due to cancelled sittings	Not feeling valued	Not feeling valued
2	Can not afford the expenses or lost earnings of being a magistrate	The amount of wasted time waiting for court sittings or due to cancelled sittings	The amount of wasted time waiting for court sittings or due to cancelled sittings
3	Not feeling valued	Lack of support from senior judiciary and/or HMCTS	Lack of support from senior judiciary and/or HMCTS
4	Find it hard to give the time commitment	Find it hard to give the time commitment	Lack of training (IT digitisation and skills)

The survey received concrete evidence that this was making them consider their positions, in far greater numbers compared to the general population (see table 16).

Table 16: The extent to which respondents agreed with the statement "I have considered leaving the magistracy solely or mainly due to financial factors"?

	Agree or strongly agree	Disagree or strongly disagree
Young magistrates (n=60)	21.6 per cent	72 per cent
Black, Asian and minority ethnic magistrates (n=84)	15.4 per cent	76.2 per cent
All respondents to this question (n=1,245)	7.8 per cent	82 per cent

Recruitment

While not an explicit question nor aim of our survey, we received some evidence about lack of expenses at the application stages for the role of magistrate. A member reported the following:

"Some potential magistrates, during preparations to apply, may face quite expensive car parking fees when completing court observations before appointment—which they cannot claim since they are as yet unappointed, and before they gain access to rear of court parking... I have been told that this, in itself, has been a significant enough issue in itself to dissuade potential magistrates from applying."

It is concerning that there may be barriers in the application process for people on lower income, and the MOJ should seek to remove these.

Recommendation 20: We recognise that the Applicant Tracking System has been recently initiated to collect diversity data of new recruits. In 12 months, when there is enough data, it should be analysed on an intersectional basis.

Conclusion

This research aimed to evidence the costs involved in being a magistrate, based on a major survey conducted in March 2022 of 1,362 sitting magistrates. Our survey found that magistrates, in large numbers, reported having to make up the difference between the amounts recoverable through the expenses regime and actual costs. Magistrates are consistently out-of-pocket.

The arbitrary amounts recovered do not reflect actual losses. This is currently a feature, not a bug, of the expenses regime, and causes widespread discontent. This leads us to conclude that the expenses regime is not fit for purpose. Our central recommendation is that the Ministry of Justice (MOJ) establishes a standing working group to consider a magistrates' expenses that meets regularly to monitor and act on this issue to ensure it is not deprioritised. This working group would discuss updates in policy and legislation with representatives from the Magistrates' Association and other key stakeholders and would ensure the expenses regime was as reactive as possible to external changes that affect its coverage.

We also recommend a three-year post-implementation review of the 2019 changes to magistrates' expenses is conducted. Our survey found that the mileage decrease from this review had an overwhelmingly negative effect that left magistrates measurably out-of-pocket and significantly dented their morale. On this topic alone, the Magistrates' Association received over 300 emails, many of which represented benches and wider groups.

Further, we found that the expenses regime is characterised by a level of inflexibility that created administrative burdens that could at times be insurmountable for our members, who then chose not to claim at all. While recognising the need to properly handle public money by checking claims carefully, we

question whether the sheer weight of evidence required to support a claim for financial loss is always necessary. We found similar hurdles affecting claimants for childcare. Our recommendations offer simple ways to lessen the administrable burdens for ordinary magistrates.

Separately, our survey found that magistrates' workload was not fully recognised. Significant amounts of time spent in roles essential to the magistracy, such as sitting on an advisory committee or being a bench chair, remain completely unrecognised. Furthermore, family magistrates spend a substantial amount of time reading large bundles in preparation for a court sitting; this also is not properly recognised.

The impact of unrecognised costs is most palpably felt, however, in the context of remote hearings. These hearings, whose use exploded at the start of the Covid-19 pandemic, continue not to attract any form of ability to claim back expenses. This is despite our survey's evidence of significant expenses, most notably in the purchase of own devices and in the use of own utilities. Available support to magistrates, such as for IT, was also found to be wanting. Our report questions why a digital hardship allowance cannot be administered for those unable to afford the cost of their own devices, why greater IT support cannot be provided for those with own devices, and why the existing subsistence regime cannot be extended to cover other costs of sitting as home?

New legislation, which extends the use of remote sittings and places them on a permanent footing, means that remote sittings—currently mostly unrecognised by the regime—will be the norm for many magistrates. Our survey showed that time and money were particularly important considerations for young and Black, Asian and

minority ethnic magistrates, reflecting a nuanced and disproportionate impact on those from lower socioeconomic backgrounds. The context of rising costs of living and fuel prices provides an opportune moment for His Majesty's Courts & Tribunals Service (HMCTS) and the MOJ to take a fresh look, once again, at the coverage of the entire expenses regime. This, coupled with an ongoing recruitment campaign that will bring the largest and most diverse influx of new magistrates the magistracy has ever seen, means they need, now more than ever, to be more agile in responding to these factors.

The starkest findings came from those costs that were the hardest to measure but had the most significant impact: the costs to magistrates' morale. Magistrate volunteers, like all volunteers, want to feel that they're giving something back to their organisations and want to feel supported and consulted on changes. However, respondents to our survey often felt that changes to the expenses regime were made unilaterally, with minimal consultation with them directly.

There is now an urgent need to reassess the relationship that senior leaders in the justice

system have with volunteer magistrates, and to reaffirm their commitment to them through a volunteer compact. This should expressly affirm a commitment both to the magistracy and to the volunteers whose dedication and hard work is unparalleled.

Our evidence is clear. Our recommendations provide simple ways to implement changes that will benefit all magistrates. The Magistrates' Association is ready to support policymakers to ensure that there are no costs to volunteer as a magistrate, and that the expenses regime that supports them to undertake this essential role becomes an effective and dynamic ongoing process.

It is difficult to understate the importance of working with a large volunteer force to ensure that morale, expectations and responsibilities are met. To ignore the issues raised in this report is a high-risk strategy that could undermine the magistracy. By contrast, we believe that our recommendations will help to restore the goodwill and morale on which the magistracy depends.

Recommendations

Based on our survey's findings, the Magistrates' Association recommends:

1. The existing three tiers of subsistence should be replaced with two: absences of 2-8 and 8-12 hours. This would ensure that magistrates whose full day sittings are shortened at late notice—and due to circumstances out of their control—are also able to claim. It would, in addition, be simpler to administer.
2. The subsistence rates should be index-linked to account for inflation.
3. Hotels booked through the Ministry of Justice's (MOJ) travel agent should be covered in all cases. The cost of an evening meal, not exceeding a reasonable and index-linked upper limit, should also be claimable.
4. A detailed post-implementation review of the expenses schedule should take place as soon as possible to address the impact of these internal and external pressures.
5. The MOJ should set up a standing working group on magistrates' expenses. This should be structured to:
 1. receive regular input from magistrates and relevant organisations
 2. track updates in employment law that may necessitate change in guidance or policyregularly review the rates of expenses to ensure magistrates are not out-of-pocket.
6. His Majesty's Courts & Tribunals Service (HMCTS) should fast-track any planned improvements to the financial loss allowance claims process, review the adequacy of all magistrates' claims processes, and store the annual declaration forms electronically so that it does not have to be re-completed every year.
7. The courts minister should take steps to remove the annual declaration requirement from the secondary legislation without delay.
8. The MOJ must look specifically at the barriers faced by magistrates with childcare responsibilities. Claims processes, and their potential to create difficulty for certain groups of magistrates, must be a key priority for the proposed working group on expenses.
9. HMCTS should institute a flat rate allowance—slightly lower than the current subsistence allowance—for magistrates who conduct at-home sittings.
10. HMCTS should establish a digital hardship fund to assist magistrates on limited means to purchase or upgrade the equipment required for at-home sittings where they do not have such equipment already. This could be administered by bench chairs.
11. HMCTS should write to all bench chairs to clarify the standards of court dress expected under the current regime.

12. Subject to the eligibility requirements being met, and when significant pre-reading is required, this time should be treated as a sitting. Any financial loss should be eligible to be claimed under the expenses regime.
13. The proposed standing working group needs to think creatively about how best to recognise the extra time contribution of magistrates who undertake additional judicial roles.
14. To build magistrates' confidence in using their own devices, regular short-burst training sessions on the use of different IT systems should be delivered.
15. This type of regular short-burst training should also apply to IT security and handling sensitive data, and magistrates should be asked to specifically confirm that they understand security responsibilities in order to protect themselves.
16. To safeguard morale and recognise the hard work of magistrates, HMCTS and MOJ should work with magistrates' representatives to establish a Magistrates' Volunteering Compact. This would be an overarching document, based on greater respect and understanding of the role of magistrates as volunteers in the context of participatory democracy.
17. The compact should set out reasonable expectations of magistrates—such as the real required time commitment, and expectations in the use of their own devices—as well as what magistrates can expect from HMCTS and the MOJ. This should include a commitment to meaningful consultation and involvement of magistrates in decision-making that affects them, and a commitment to ensure that the expenses regime stays relevant and up to date, so that magistrates are not out-of-pocket.
18. The standing working group on magistrates' expenses that we propose in recommendation five should include a specific consultative element to ensure magistrates' voices are heard.
19. The MOJ should ensure that the true time commitment required to be a magistrate is made clear. This transparency would be fairer to applicants and would increase the sense of recognition for magistrates' contributions.
20. We recognise that the Applicant Tracking System has been recently initiated to collect diversity data of new recruits. In 12 months, when there is enough data, it should be analysed on an intersectional basis.

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