

# SINGLE JUSTICE PROCEDURE

**MARCH 2024**



## SUMMARY

1. The Single Justice Procedure (SJP) deals swiftly with the least serious offences and contributes hugely to the efficiency of the court system. It alleviates backlogs and minimises delays to more serious cases in the magistrates' courts. The latest available [figures](#) show that between 1 April 2019 and 30 September 2023, 3,102,392 criminal cases were received into the SJP platform, the Single Justice Service.
2. While the SJP deals with the least serious cases in the system, they are still serious to those subject to it. Defendants—charged with offences from having no TV license to fare evasion—deserve fair and transparent justice. They should know that their case has been dealt with fully, with any mitigation they may have supplied being properly considered.
3. It is important that the SJP is not, and should not be seen as, a 'fast-track' or 'justice-light' process. It must operate and be resourced accordingly.
4. While still supportive of the aims of the SJP, our position statement stresses the importance of transparency and robustness within the SJP. This will help to boost public confidence.
5. We make 12 recommendations, based on the experience of our member magistrates undertaking the SJP. We recommend:
  - 5.1 It becomes a requirement that prosecutors see all pleas and mitigations before the cases are heard by the magistrate. This would give the prosecutor the opportunity to see and read the mitigation and to withdraw the case if they then believe it is no longer in the public interest to pursue it.
  - 5.2 Single Justice Procedure (SJP) training should be formalised and specific to the process. It must emphasise the ability of magistrates to use their discretion fully and without reservation (including the ability to refer cases back to the prosecuting authority), and that the speed of dealing with cases is up to the magistrate rather than the legal adviser.
  - 5.3 There must be a review of both SJP training provided to legal advisers and of wider policies surrounding SJP, to ensure that they do not unwittingly put magistrates under any pressure to complete a certain number of SJP cases within a certain amount of time.
  - 5.4 To sit alone on SJP cases, magistrates should have passed their threshold appraisal and sat for one additional year in the adult criminal court, to ensure that they have a high level of experience and confidence.
  - 5.5 The government should make provision for SJP sittings to be observable by accredited journalists.
  - 5.6 The Transparency Working Group recently set up by the Lady Chief Justice should include SJP in its considerations.
  - 5.7 Journalists should be able to see short explanations from magistrates where the magistrate has deviated from sentencing guidelines. This will in turn help the public to understand why a particular decision has been made. It also aligns with the duty to give

reasons in open court. While this will inevitably slow down the process, it is an important safeguard.

- 5.8 HM Courts and Tribunals Service (HMCTS) and the Ministry of Justice should publish more data on SJP, such as how many defendants plead guilty, how many make no pleas, how many ask to come to court, and how many subsequently attend, nationally and broken down by region. These could provide an indirect measure of defendant engagement with the process and could be scrutinised by the media and the public.
- 5.9 That further research is undertaken on how improvements can be made to the process for those with learning difficulties, communication challenges, or any groups who may be less able to engage with the process.
- 5.10 HMCTS should work with prosecuting agencies to review the paperwork sent to defendants, to make it simpler and easier to understand. It should seek a Crystal Mark from the Plain English Campaign for the documents.
- 5.11 That consideration be given to a link between HMRC payroll or benefits data and SJP removing the need for a 'Means Form' to be submitted by the defendant.
- 5.12 We would like to see a concerted effort to publicise the importance of responding to official court letters. This must also make the rights of the defendant clear, for example, that they can opt out of the SJP and ask for their case to be heard in open court.

## BACKGROUND

Development of the Single Justice Procedure and the MA's position

6. The Single Justice Procedure (SJP) allows magistrates to handle the lowest level offences in a manner that prioritises efficiency, simplicity, and speed while maintaining the fairness and transparency expected from a judicial process.
7. The SJP involves one magistrate sitting alone to determine cases, with the assistance of a legal adviser. There is also a newer form of SJP referred to as '3:1' which involves three magistrates sitting independently, with a legal adviser on standby to support magistrates who require assistance.
8. The MA last published a [written position](#) on SJP in May 2021. There, we outlined our positions on three key areas, as below:
  - 8.1 We supported efforts to make the justice system more efficient, and we welcomed the potential advantages of using the SJP to deal with some low-level offences.
  - 8.2 We said that increased public confidence is linked to increased public scrutiny of the process. We emphasised the importance of transparency and that this should not be confined to publishing outcomes but should also allow access to the process itself.
  - 8.3 We called for better engagement with defendants before the process comes to court, outlining the effort necessary to ensure their full understanding of the process.

## Single Justice Procedure

9. Since our 2021 position statement, we have continued to support the process in principle and in practice.
10. SJP allows for more efficient use of court time, which means speedier justice and a focus on more serious offences. There is no doubt of its impact in reducing the court backlog and delays, which is positive for victims, witnesses and defendants.
11. Now that the SJP has been in operation for a number of years, it is time to review our position. We now have more information from our members about the way that the process works (including via a snapshot survey of our members that we conducted in January 2024), we can see how the scrutiny procedures are being used, and we can take into account the rollout of the 3:1 form of SJP.
12. In addition, the SJP—and the role of magistrates in the process—has come under increased scrutiny from the media, which we welcome. This has highlighted distressing individual cases, as well as perceptions (and sometimes misperceptions) about the SJP and the role of prosecutors and magistrates.

## OUR POSITION

13. We acknowledge how stressful and difficult it can be to find oneself caught up in the criminal justice system, both for the person charged with an offence and for their family, especially when age, poverty or ill health is involved—as we have seen with many of the cases highlighted by the media.
14. Our reasons for supporting the SJP, as part of efforts to modernise and speed up the justice system, remain. However, now that SJP has been operating for almost a decade, we believe that improvements can be made in the way it operates to improve fairness and boost public confidence in the process.

### Clarifying misperceptions

15. While calling for issues with the SJP to be addressed, we also want to make it clear that some of the criticisms levelled at SJP have been features of our justice system for much longer than the SJP has existed.
  - 15.1 While treating people compassionately, magistrates must apply the law as it has been set down by Parliament, fairly and equally to all. That is the oath that they take when they become magistrates. This means that even in cases where there might be considerable sympathy for the defendant, the law must still be applied.
  - 15.2 We argue strongly that the government should make greater efforts to help defendants subject to the SJP understand and engage with the process. However, poor defendant engagement for minor offences has been a problem that has existed since long before the SJP was created.

## Single Justice Procedure

The ability to submit written guilty pleas, which is a key element in how the SJP process works, has been in place since 1957, long before the SJP was introduced in 2015. If a defendant does not respond to court letters, they are effectively 'tried in absence' on the information that magistrates have before them. Trials in absence have been part of our justice system for the past 300 years—if the SJP did not exist, trials in absence for these lower-level offences would still take place.

Society and technology have changed a lot over the years, and the number of cases of low-level offences will have increased partly because of the increased use of cameras to detect offences. Arguably, the ability to go online, as well as respond by post, has made the process of responding easier.

- 15.3 Many lower-level offences—the type of offences that the SJP covers—have been deemed by Parliament as so-called 'strict liability offences'. This means that defendants can be convicted of strict liability offences even if they were genuinely ignorant of one or more factors that made their acts or omissions criminal.
- 15.4 For example, somebody might genuinely believe that their car is insured, but the direct debit might have been inadvertently cancelled and their insurance has been cancelled—this still constitutes an offence even though the offender does not have a guilty state of mind.
- 15.5 Unless Parliament decides to change 'strict liability' this would still be the case, even if SJP did not exist.

### SJP and the role of prosecuting authorities

16. As the SJP has come under increased scrutiny, so has the role of prosecuting authorities in the process. There are concerns that mitigation statements, which are intended to provide reasons or explanations for the offence, are not seen by the prosecutor. Again, it is worth noting that this is not something that started with SJP—there has never been either a process or even a legal requirement for the prosecution to review all guilty pleas.
17. However, there is a concern that prosecuting authorities may sometimes pursue cases that are not in the public interest, particularly when the defendant is vulnerable. This could mean that the pursuit of legal action is disproportionate or unjust given the circumstances.

Recommendation 1: We would like to see it become a requirement that prosecutors see all pleas and mitigations before the cases are heard by the magistrate. This would give the prosecutor the opportunity to see and read the mitigation and to withdraw the case if they then believe it is no longer in the public interest to pursue it.

### Training and guidance

18. Our members have told us that specific training on the SJP—separate from the very thorough training that magistrates receive to fulfill their role—is primarily 'on-the-job'. It focuses on how to use and navigate the system and processes and is led by a legal adviser. There is also online training available about using the 3:1 system.

## Single Justice Procedure

19. Members have told us that this training is generally of a good standard, and it is clearly important that they are competent in using the systems involved. Because SJP is a judicial process like the other duties that magistrates undertake, their general training as magistrates will be relevant. However, we believe there would be merit in introducing additional training to reinforce:
- 19.1 That magistrates can and should use their judicial discretion when making judgements in SJP cases as they would if the case had been in court. This would include the totality principle when imposing fines, surcharge and costs.
  - 19.2 That magistrates can and should take as long as they need to consider the individual cases before them.
  - 19.3 That if magistrates need more information—or that if any element of the case impacts their confidence in their decision—they can consult with the legal adviser to see whether the case should be referred back to the prosecutor.
  - 19.4 That magistrates should refer a case to open court, if they believe that it would benefit from further scrutiny, by adjourning and requesting the case to be listed as a court appearance. Magistrates cannot of course insist that a defendant comes to court, and if further clarification is received so that the case can subsequently proceed via SJP, that is always an option.
20. While many members told us they are confident in sending a case back to the prosecutor if they do not consider they have enough information, this does not diminish the importance of training to reinforce this. It is already the case that only magistrates who have successfully passed their threshold appraisal (which takes place roughly one year after they have been sworn in and after completing mentored sittings) can undertake SJP work.
21. Because magistrates sit alone on SJP work rather than as a bench of three, we believe there is a case to extend this further to ensure that magistrates have more experience and confidence for this work. This could also include two magistrates sitting together so there are opportunities for observation and collaboration before undertaking this work alone.

Recommendation 2: SJP training should be formalised and specific to the process. It must emphasise the ability of magistrates to use their discretion fully and without reservation (including the ability to refer cases back to the prosecuting authority), and that the speed of dealing with cases is up to the magistrate rather than the legal adviser.

Recommendation 3: There should be a review of both SJP training provided to legal advisers and of wider policies surrounding SJP, to ensure that they do not unwittingly put magistrates under any pressure to complete a certain number of SJP cases within a certain amount of time

Recommendation 4: To sit alone on SJP, magistrates should have passed their threshold appraisal plus sat for one additional year in adult criminal court, to ensure that they have a high level of experience and confidence.

## Transparency

22. We recognise that important steps have already been taken to improve the transparency of SJP. Accredited journalists can now review listings and outcomes for all SJP cases across the country

## Single Justice Procedure

online. This is not available to the same extent for non-SJP cases, where journalists have to attend a court in person and can only see the cases being heard in that courtroom on that day.

23. With the number of journalists attending court in person dramatically reduced in recent years due to changes in the media industry, this generally means that non-SJP cases are not reported. The recent media coverage of SJP cases is only possible because of the improved transparency of outcomes for SJP.
24. However, just because journalists get more information for SJP cases than for non-SJP cases, we recognise concerns that it is not the same as physically observing sittings, as they would have the right to in open court. Therefore, we would like to see transparency go even further. Rather than publishing outcomes alone, transparency must also allow observation of the process itself. We reiterate our calls for the government to ensure that observation of SJP is as accessible to accredited journalists as it would have been in open court.

Recommendation 5: The government should make provision for SJP sittings to be observable by accredited journalists.

Recommendation 6: We would encourage the Transparency Working Group recently set up by the Lady Chief Justice to include SJP in its considerations.

Recommendation 7: Journalists should be able to see short explanations from magistrates where the magistrate has deviated from sentencing guidelines. This will in turn help the public to understand why a particular decision has been made. It also aligns with the duty to give reasons in open court. While this will inevitably slow down the process, it is an important safeguard.

Recommendation 8: HM Courts and Tribunals Service (HMCTS) and the Ministry of Justice should publish more information and data on SJP, such as how many defendants plead guilty, how many make no pleas, how many ask to come to court, and how many subsequently attend, nationally and broken down by region. These could provide an indirect measure of defendant engagement with the process and could themselves be scrutinised by the media and the public.

### Engaging defendants involved in the process

25. Despite our 2021 position statement's emphasis on better defendant engagement and understanding, we are disappointed that issues in this area persist. Not engaging with the process will mean that magistrates are unaware of any mitigating factors that they could consider when reaching a verdict and sentencing.
26. Additionally, there is a concern that the 'remoteness' of SJP exacerbates issues for defendants with neurodiverse conditions, learning difficulties, and communication challenges. Our 2022 [report](#), 'Covid-19 and the courts' made clear the negative impacts of remote hearings on effective participation; for some defendants engaging with processes such as SJP, these challenges are compounded significantly.

Recommendation 9: we call for further research on how improvements can be made to the process for those with learning difficulties, communication challenges, or any groups who may be less able to engage with the process.

27. It is our view that the papers sent to defendants could be simplified, to encourage them to engage with the process and return forms giving their plea and/or explaining any mitigating factors. Defendants can also enter a plea online. The vast majority of defendants will not have

## Single Justice Procedure

legal representation, and it is important that they are not discouraged from engaging due to poor communication and excessive legal jargon. Where information may already be held about defendants, it may be possible to reduce the requirements for form-filling—for example, by linking with information held by HMRC or benefits agencies about a defendant's income.

Recommendation 10: HMCTS should work with prosecuting agencies to review the paperwork sent to defendants, to make it simpler and easier to understand. It should seek a Crystal Mark from the Plain English Campaign for the documents.

Recommendation 11: Consideration should also be given to a link between HMRC payroll or benefits data and SJP, removing the need for a 'Means Form' to be submitted by the defendant.

Recommendation 12: We would like to see a concerted effort to publicise the importance of responding to official court letters. This must also make the rights of the defendant clear, for example, that they can opt out of the SJP and ask for their case to be heard in open court.