MAGISTRATES' ASSOCIATION

DATE	31ST JANUARY 2025
RESPONSE TO	INDEPENDENT REVIEW OF THE CRIMINAL COURTS
ISSUED BY	MINISTRY OF JUSTICE
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ABOUT THE MAGISTRATES' ASSOCIATION

The Magistrates' Association (MA) is an independent charity and the membership body for the magistracy.

We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 11,500 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

INTRODUCTION

1. We appreciate the opportunity to present the views of the Magistrates' Association to the Independent Review of Criminal Courts. We welcome this critical work to explore options and recommendations for reforming the criminal courts, ensuring cases are handled proportionately and efficiently. The Magistrates' Association has long advocated for a holistic review of the criminal justice system to address the interconnected pressures it faces. This review into the courts' functioning and structure represents a vital piece of that justice jigsaw.

2. This response outlines the Magistrates' Association's recommendations on how magistrates can contribute to court reforms, alleviating the strain on crown courts and ensuring justice is delivered swiftly and fairly to victims, witnesses, and defendants. Our members are at the forefront of the judicial process, with more than 90% of criminal cases beginning and ending in magistrates' courts. These recommendations are grounded in their extensive experience.

3. This response focuses on structural reforms to the court system as they pertain to magistrates. Later this spring, we will provide a follow-up paper addressing potential efficiencies, including the need for improved stakeholder collaboration, more comprehensive published data on both courts efficiency and case outcomes, and vital development of ICT systems and the use of artificial intelligence.

4. While we believe the structural reforms outlined here can enhance case throughput and reduce the backlog of serious criminal cases, reform alone cannot replace adequate resourcing. Without proper funding, even the most well-intentioned reforms risk failure. Magistrates' courts have significant potential to alleviate crown court backlogs, but this will require strategic additional investment. We have identified areas where such investment is most needed.

5. We have also submitted evidence to the ongoing Independent Sentencing Review, in which we have called for:

    - More constructive, flexible and creative sentencing options for magistrates
    - Increased capacity for the probation service to support more community sentencing options
    - The retention of short custodial sentences, for use as a last resort when there are no other suitable alternatives available.

MAGISTRATES' ROLE IN THE REFORM OF CRIMINAL COURTS

6. Magistrates are ready and willing to support initiatives aimed at reducing the pressure on crown courts. As unpaid members of the judiciary, their primary motivation is serving their local communities. Time and again, they have demonstrated their adaptability and commitment to taking on new responsibilities or embracing new ways of working. For example, during the Covid-19 pandemic, magistrates continued to perform their duties by working in court buildings that remained open or taking part in sittings online from home. Additionally, when the retirement age for magistrates was increased from 70 to 75, approximately 1,500 retired magistrates returned to service to address the shortage in magistrate numbers. If this review proposes additional responsibilities for magistrates, the Magistrates' Association is confident that they will respond positively and constructively.

7. The involvement of active citizens—whether as part of a jury or a bench of magistrates—has been a cornerstone of our justice system for centuries. The current division of cases between magistrates' courts and crown courts has always been somewhat arbitrary. Should the review recommend shifting this division so that crown courts with juries focus exclusively on the most serious cases, magistrates must play a central role in handling other cases to maintain the public confidence of peer involvement. While magistrates differ from juries in key ways—they are volunteers, serve regularly (often for years), and undergo extensive training—they are representative of society as a whole. Magistrates reflect a gender balance, ethnic diversity, and a variety of professions, from bankers to bus drivers, teachers to tradespeople. Like juries, magistrates also benefit from collective decision-making, where diverse perspectives come together to reach decisions.

8. Magistrates possess the skills and experience necessary to take on additional responsibilities. Thanks to the Judicial College, they receive comprehensive training and are well-equipped to handle complex cases. The recent extension of magistrates' sentencing range—from six months to one year—has been implemented smoothly, with no significant issues arising.

CAPACITY AND FLEXIBILITY

9. **Magistrate capacity**
   Magistrate capacity has improved significantly, thanks to a large-scale recruitment drive by the Ministry of Justice over the past two years. This effort resulted in a record 2,006 new magistrates in 2023/24, with a similar

number anticipated for 2024/25. However, while some areas now have surplus capacity—leaving magistrates struggling to meet the minimum requirement of 26 half-day sittings annually—this sudden influx has also caused challenges. Shortages of presiding justices, mentors, and appraisers have emerged in some regions. Other areas, however, still have a shortfall of magistrates and additionally, a wave of retirements is expected as those who returned to the bench when the retirement age was raised to 75 reach that age and retire again.

10. The Magistrates' Association has called for recruitment to continue at the current rate until the number of magistrates reaches 18,000 (an increase from the current 14,000) and for this level to be maintained. To address retention, the Association has urged the Ministry of Justice to tackle the issues prompting magistrates to leave prematurely. Notably, while magistrates do not expect financial compensation for their service, they should not incur personal costs. A recent survey by the Association revealed that three-quarters of magistrates are not fully reimbursed for expenses, a key factor in early resignations. We are encouraged by the Ministry of Justice's upcoming review of the magistrates' expense system, as its outcome will be critical to sustaining magistrate morale and goodwill.

11. **Youth courts and young adult defendants**
In recent years, the number of cases involving under-18s in court has declined steadily due to the increased use of out-of-court disposals. Consequently, many youth courts and youth magistrates across the country now have spare capacity. Youth magistrates receive special training on how to communicate with children and young people as defendants, and on the special needs of young people in the justice system. In 2021, the Magistrates' Association published research on the maturity issues affecting 18-25-year-olds in magistrates' courts. It recommended providing magistrates with additional training to better understand how maturity impacts court participation and sentencing decisions. Given the underutilisation of youth magistrates, we propose that in cases where a defendant is aged 18-25, at least one magistrate but ideally more on the bench should be a trained youth magistrate. Considering the proportion of cases involving that age demographic, this may require more magistrates to be trained, and will require changes to HMCTS listing practices.

12. **Legal adviser shortages**
The most significant constraint on magistrates' court capacity is the shortage of legal advisers. An estimated 10% of allocated sitting days were cancelled in 2023/24 due to this issue, with a similar percentage expected in 2024/25. The primary cause appears to be retention rather than recruitment. Legal advisers in magistrates' courts often receive lower pay and hold lower grades than comparable roles in other public sector positions, leading to high attrition rates after training.

13. **Probation service challenges**
The second most critical issue affecting magistrates' court capacity is the probation service's limited resources. Magistrates depend on the probation

service for timely pre-sentence reports and access to a comprehensive range of non-custodial sentencing options. However, members report inefficiencies and delays in both areas, contrasting their experiences with adult courts to those in youth courts, where greater attention to detail is provided. Additionally, access to Mental Health Treatment Requirements (MHTRs) often depends on NHS input, and the availability of charitable initiatives varies widely, creating a fragmented system.

14. **Utilising courtroom capacity**
Empty courtrooms represent untapped potential to increase capacity. We recommend extending court sittings into weekday evenings and weekends. Current weekend sittings have proven popular among magistrates with full-time employment who need to meet minimum sitting requirements. With the recent recruitment of younger magistrates, the demand for out-of-hours sittings is likely to grow. However, significant coordination with stakeholders is essential, particularly in addressing legal adviser shortages, service contracts for security and prisoner transport, and potential resistance from key stakeholders such as the CPS and the defence community.

15. **Addressing inefficiencies and reviewing the role of HM Courts and Tribunals Service**
In addition to extending court hours, daytime court usage could be optimised. Courts often sit empty due to shortages of legal advisers, listing issues, late delivery of defendants on remand, interpreter unavailability, and other inefficiencies.

16. HM Courts and Tribunals Service (HMCTS) is responsible for ensuring an efficient and effective courts system. Beyond resourcing issues, we are concerned about HMCTS's performance in the management of contracts, stakeholder engagement, oversight of projects such as the Common Platform IT system, building maintenance, and communication with magistrates. Given these challenges, we believe there is a strong case for a review of HMCTS's functions and how they might be more effectively delivered in the future.

Recommendations:

i. **Magistrate readiness:** Magistrates have the motivation, skills, capacity, and experience to take on additional responsibilities to ease crown court pressures.

ii. **Young adult defendants:** In cases involving 18-25-year-old defendants, at least one magistrate should be a trained youth magistrate.

iii. **Recruitment:** Maintain the current level of magistrate recruitment until the number of magistrates increases from 14,000 to 18,000.

iv. **Onboarding:** Involve local magistrate leaders in drawing up a comprehensive workforce plan to ensure the right numbers are recruited in

the right places, with suitable levels of training, induction and onboarding support.

v. **Retention:** Address magistrate retention issues by reviewing the expenses system to ensure magistrates are not out of pocket.

vi. **Extended hours:** Consider extending court sittings into weekday evenings and weekends to increase magistrates' court capacity.

vii. **Resolving bottlenecks:** Focus on addressing key capacity limitations by:

- Improving the recruitment and retention of legal advisers, ensuring their remuneration aligns with similar public sector roles.
- Enhancing the probation service's capacity to provide timely advice and a full range of non-custodial sentencing options.

MAGISTRATES' SENTENCING RANGE

17. In November 2024, the range of offences that magistrates can hear was expanded to include those with a maximum custodial sentence of 12 months in adult courts. All magistrates have undergone training to exercise these new powers, and the government estimates this change will free up approximately 2,000 crown court sitting days annually.

18. Magistrates have long handled cases in youth courts where the maximum custodial sentence is 24 months. This arrangement has proven effective, with magistrates adhering to sentencing guidelines as they do in adult courts.

19. Some concerns have been raised that increasing magistrates' sentencing range in adult courts could result in a rise in custodial sentences, placing additional pressure on prisons. However, magistrates follow strict sentencing guidelines that state immediate custody should only be imposed if no suitable alternative exists. Consequently, only a small proportion of cases heard in magistrates' courts result in immediate prison sentences. The government acknowledges that while there may be a short-term increase in the prison population from the extended sentencing range, this is attributed to the faster resolution of cases rather than a greater tendency by magistrates to impose custodial sentences. However, in the medium term it should result in a decrease in the prison population, especially in the overstretched reception prisons, because of the freeing up of capacity in crown courts.

20. The level of appeals against magistrates' court verdicts or sentences is consistently low and has been declining in recent years. This reflects the broad confidence in the fairness and quality of decisions made in magistrates' courts.

21. We believe that the most effective and straightforward way for magistrates' courts to further assist in reducing the crown court backlog is to extend magistrates' sentencing range in adult courts to 24 months, aligning it with youth courts. This change could be implemented relatively easily and would not require additional training. As with the extension to 12 months, it may result in a short term increase in the prison population because of faster through-put, followed by a medium-term reduction.

Recommendation:

viii. **Sentencing range:** Extend the sentencing range for magistrates in adult courts from 12 months to 24 months.

EITHER-WAY OFFENCES

22. For certain offences, defendants currently have the right to choose a summary trial in a magistrates' court or opt for trial in a crown court. This 'right to elect' has existed since the reign of Queen Victoria. However, while the justice system has evolved significantly since that time, this right remains, although not in Scotland.

23. The removal of this 'right to elect' has been debated for decades. The Royal Commission on Criminal Justice examined this issue in 1992, followed by Lord Justice Auld in his 2002 report, and again in the 2015 Leveson Report. The Rt Hon Jack Straw MP, during his tenure as Home Secretary, introduced a Bill in Parliament to abolish this right, though it was ultimately defeated in the House of Lords and not pursued further.

24. We believe it is an anomaly that defendants can choose the type of court for their trial for certain offences. This system can be exploited, particularly when crown court backlogs are significant. Some defendants may choose to delay proceedings strategically, knowing that crown court hearings may take years to be scheduled and may eventually be dropped.

25. We propose that the category of 'either-way offences' is removed, or even that the entire categorisation of offences into summary only/ either-way/ indictable is abolished. Instead, decisions about the appropriate court for a trial should be made by the magistrates' court, either by magistrates or the district bench, during the first hearing. The court would assess whether the case is within the powers of the magistrates' court and decide the allocation of the case.

26. In certain circumstances, such as cases involving multiple summary-only offences against the same victim, magistrates may determine that the case's seriousness justifies crown court referral. Both the prosecution and defence could present arguments regarding which court the case should be heard in; however, the decision would rest with judicial office holders. This

approach aligns with current case management practices, where judicial office holders are responsible for key procedural decisions. To facilitate this process, the Crown Prosecution Service (CPS) would need to provide relevant documents to the defence in advance of the first appearance.

27. This reform would enhance efficiency, as magistrates' courts could address allocation decisions during a single sitting. As recommended in the 2015 Leveson Report, any appeals against allocation decisions could be reviewed by a nominated circuit judge.

Recommendation:

ix. **Either-way offences:** Abolish the category of 'either-way offences' and transfer the decision on case allocation between magistrates' courts and crown courts to the magistrates' court during the first hearing.

INTERMEDIATE COURT

28. A suggestion has been made to establish a new category of court, referred to as 'intermediate courts', to address the least serious cases currently heard by crown courts. These courts would consist of a panel of one district judge and two magistrates, with the removal of the requirement for a jury trial. This would accelerate case resolution and provide flexibility in venue use, as intermediate courts could sit in either crown court or magistrates' court buildings. Non-court buildings, such as those utilised as Nightingale courts during the Covid-19 pandemic, could also be considered to accommodate the backlog. However, introducing intermediate courts would necessitate additional courtrooms, ushers, and administrative staff, and this logistical burden must be factored into planning. There is potential for these courts to become 'courts of record', maintaining official recordings of proceedings.

29. The Magistrates' Association supports this proposal but acknowledges that implementing intermediate courts would require significant reorganisation. Compared to the simpler and faster reform of extending magistrates' sentencing powers, this measure is more complex. The two proposals, however, are not mutually exclusive, and both could be pursued concurrently.

30. We would consider that Intermediate courts could handle cases with maximum custodial sentences ranging from two to five years, which could complement the extension of magistrates' sentencing to a maximum of 24 months. This would free crown courts to deal with cases where the maximum custodial sentence was in excess of five years.

31. Another potential function of intermediate courts could be hearing appeals on verdicts or sentences from magistrates' courts, replacing the current

practice of such magistrates' courts appeals being heard in crown courts. The crown courts would hear appeals from intermediate courts.

32. We propose that all magistrates who have passed their threshold appraisal should be eligible to sit in intermediate courts, rather than limiting eligibility to a specific panel. This approach would maximise flexibility and enhance the skills and competencies of more magistrates.

33. It has been suggested that the panel of three in intermediate courts could share responsibility for determining the verdict, while the district judge alone would handle case management, bail decisions, and sentencing. We oppose this suggestion. Magistrates possess the necessary skills and experience to participate equally in all aspects of decision-making, including sentencing. The principle of collective decision-making – Lord Justice Auld's adage of "several heads are better than one" - is particularly relevant here. The panel of three should work collaboratively on all key decisions, including verdict, bail, and sentence, in accordance with sentencing guidelines.

34. Magistrates' involvement in all aspects of the case is crucial, especially in the absence of a jury, to maintain public confidence and ensure the lay perspective. Limiting their role to fact-finding could undermine their contribution, affect morale, and lead to retention challenges. It is also unrealistic that two members of the bench should have no views, or no part, in deciding sentence having heard all the facts and pleas/mitigations of the case. All three members would have access to – and are trained in - the same sentencing guidelines.

35. To support intermediate courts, additional district judges may need to be recruited. Adjustments could also be made to the workload of existing district judges in magistrates' courts to free up time, such as reallocating some youth court responsibilities to youth panel magistrates, who currently have spare capacity.

36. District judges are accustomed to working independently and may require training on collaborating as part of a bench. This training could be adapted from existing programmes for prospective presiding justices in magistrates' courts. The district judge on the bench would provide legal advice, potentially eliminating the need for a legal adviser in the intermediate court. Instead, a court associate might suffice.

37. Intermediate courts might also take on:

    - Sentencing responsibilities for cases referred from magistrates' courts (up to the limit of five years).

    - Cases currently awaiting sentencing decisions in crown court backlogs.

Recommendation:

x. **Intermediate courts:** Establish intermediate courts to handle cases with maximum custodial sentences of two to five years, composed of a bench of

one district judge and two lay magistrates working jointly for both fact-finding and sentencing.

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