



Justice Committee

Oral evidence: [The role of the magistracy](#), HC 595

Tuesday 22 March 2016

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Written evidence from witnesses:

- [Prison Reform Trust](#)
- [Transform Justice](#)
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Members present: Robert Neill, (Chair); Richard Arkless; Alex Chalk; Alberto Costa; Philip Davies; David Hanson; John Howell; Dr Rupa Huq; Victoria Prentis; Marie Rimmer.

Questions 1 – 100

Witnesses: **Penelope Gibbs**, Transform Justice, and **Peter Dawson**, Deputy Director, Prison Reform Trust, gave evidence.

Chair: Good morning, Ms Gibb and Mr Dawson. Thank you very much for coming to give evidence. This is the first of our hearings in our inquiry into the role of the magistracy. For the sake of good order and for the public, we have to declare any interests that we might have. I am a non-practising barrister.

Victoria Prentis: So am I.

Richard Arkless: I am a non-practising solicitor.

Alex Chalk: I am a practising barrister.

Alberto Costa: I am a practising Scottish, English and Welsh solicitor.

Q1 Chair: There are no magistrates, practising or otherwise. Thanks very much for the evidence that both your organisations submitted to the inquiry, which we have read carefully. Let me start off, Ms Gibb, with the magistracy “in crisis”. That sounds a bit over the top, doesn’t it? Would you like to elaborate on exactly what you mean by that?

Penelope Gibbs: You could say that it is an extreme word, but I think it is facing a big set of decisions and so on. One aspect is the numbers. The numbers, as you have seen, have

fallen by a third in about the past eight years. That has had a huge impact on the diversity of the magistracy, in terms certainly of age and, a bit, of ethnicity. That puts it in a crisis. If the magistracy is not representative of the people, what is it?

The other aspect of the crisis is magistrates' voice and their ability to be part of the community, to influence what is happening both in the court and in the community. What I feel, and have seen some evidence for, is that they have been gradually withdrawn from participation both in community activities and in criminal justice activities—sitting on boards and so on. To me, the very point of having a lay magistracy is for them to be part of the community and to be able to influence, in a positive way through their own experience, things happening in the criminal justice system and in the community. Obviously it has to have limits. Previously, magistrates ran their own courts. Magistrates courts committees ran courts 12 years ago. That gave them local influence and local decision-making ability, which they have completely lost now.

Q2 Chair: Should we go back to the old magistrates courts system?

Penelope Gibbs: I would not go back to magistrates courts committees, but I believe that the fact that magistrates have been almost entirely deprived of the ability to administer their own courts has taken away a key element of what it was to be part of the magistracy and local justice.

Q3 Chair: I understand that point. Most of your submission talks very strongly about magistrates in community roles, in a raft of ways. Just help me here. If they are going to be proactive, almost as community representatives, as you put it, how do you square that with the oath they take and their responsibility as independent judicial officeholders to judge cases on their facts, regardless of what the community thinks, one way or the other?

Penelope Gibbs: I still think you can do it if you take on the right people, give them the right training and get them to understand the right protocols.

Q4 Chair: Is there not a possible expectation of conflict?

Penelope Gibbs: There are always possibilities of conflict. For instance, someone could sit in the House of Lords or in the House of Commons as a recorder, and people still would not stop them commenting on criminal justice policy. Yet as a councillor who is also a JP, you are now not allowed to sit on the community safety committee or anything to do with criminal justice. It seems to me not to respect people's ability to make judgments and to declare interests where necessary. It also deprives us of the experience that being in court produces.

Q5 Chair: I understand. Do you have any idea who drove those sorts of decisions? Where did this come from? I have come across that among magistrates in my constituency, who are not able to do that any more.

Penelope Gibbs: It has been driven partly through the way that the magistrates, having lost MCCs, have become part of a hierarchy, with the senior judiciary at the top. There is a culture within the senior judiciary and the paid judiciary of independence, which I am not convinced magistrates should follow to exactly the same letter. Inevitably, they are members of the community. That is why they are there. There are huge question marks

over what magistrates can and cannot do, but I think we have drifted towards a clamping down without the evidence that what we did before was causing huge problems.

Q6 Chair: That is one of the principal concerns you had. Mr Dawson, I get the sense that you see it from a different perspective. You think there are issues and problems. Do you share those concerns, or do you think there are different concerns?

Peter Dawson: On that specific issue I would support what Penelope is saying, particularly in the context of the magistracy's relationship with probation. Only very recently, magistrates have been entirely removed from any influence over probation. As for what has driven that, it is probably a centralising theme in Government, with an agenda driven very much by the need to make savings. I said in my submission that they are effectively spectators now, which is very curious. The community and rehabilitation companies are accountable, fundamentally, to contract managers who work in the Secretary of State's Department, who have no local presence at all.

Q7 Chair: I understand that. If you had to encompass what is lost by that, what would you say?

Peter Dawson: What is lost by it is the accumulated knowledge and experience of dealing with many cases. It is accountability locally. Who does someone complain to locally if they are not happy about the way the CRC is working? My personal background is running prisons for over a decade. With the day-to-day experience of seeing who is coming through the gate, listening to their life stories, you build up a huge store of hindsight. You have to be careful about that, but it is relevant and it is useful to those preparing advice to courts and to the communities that deal with the consequences of sentencing.

Q8 Chair: Do both of you get a sense from what you have done in terms of research that there is bit of a disconnect; that magistrates almost lose touch with what happens once they have passed a sentence? They are not allowed to do otherwise at the moment.

Penelope Gibbs: I think they do. That is not a new problem.

Q9 Chair: But is it a problem?

Penelope Gibbs: It is a problem, and it is particularly a problem given that, in training, the reduction in prison visits and so on means that they might not understand the reality of what is happening in prisons at the moment. Previously, there were more visits to probation and more outreach. Cuts and the culture of magisterial independence have shrunk those activities.

I sat as a magistrate and, looking back on it, I am horrified at how little I knew about what was happening in terms of sentencing. If magistrates are going to do a good job, they need to know quite a lot of detail about what is going on with sentences.

Peter Dawson: I would see it as a missed opportunity. Desistance from crime is not a one-off event. Most people do not commit one crime and then stop. A few do. Most people follow a path with some steps forward and many steps back, but most eventually desist. Understanding that process would certainly be informed by seeing the impact not of every

sentence—most sentences need to reflect disapproval of what has happened and to bring matters to a close—but of those that look to have a rehabilitative or restorative impact. Of course, sentencers would be better informed and better able to use those sentences appropriately in the future if they were tracking the progress of the ones they passed in the past.

Q10 Chair: I will move on to another specific aspect, but can I come back to you again on one point you made, Ms Gibbs? I am intrigued by it. You talked of your concern about the culture of magisterial independence. Would you be concerned about a culture of judicial independence? Would you say the same about a circuit judge?

Penelope Gibbs: The paid judiciary?

Chair: Yes.

Penelope Gibbs: I would, but we would be getting on to a different issue. What we need is an open debate. I do not have all the answers about whether there should be different rules for the paid judiciary and for magistrates, and whether the rules we have at the moment are proportionate. It is about proportionality in the end, but I would have the same concerns about the paid judiciary.

Q11 Chair: You would agree that it would be very difficult, given that they are both carrying out judicial functions, essentially, to have one set of rules for one and a different set for the other?

Penelope Gibbs: As I say, a debate would be good, wouldn't it?

Q12 Chair: Okay. In terms of the solutions that you come up with, there are a couple of specific ones that you raise, Ms Gibbs. There is just one that I have picked out. You are quite keen on the idea of lay magistrates sitting with district judges, because district judges are now very much the established part of the system, more often than they used to be. Is that not creating a mini-jury trial?

Penelope Gibbs: It is different. Magistrates have been through a specific recruitment procedure, and they are part of a very set group. I would set it in a context where, particularly, very serious consideration is going to be given to increasing their sentencing powers, which personally I would not do without a lot more information about what the impact would be.

In complex trials, that would be helpful both for training for the magistrate and for mutual understanding between judges and magistrates. Sometimes it happens anyway and a magistrate's feedback is very helpful. It would be particularly appropriate for complex trials at the more serious level of offending, particularly given that the new allocation guidance is trying to bring more down from the Crown court—more serious cases that, at the moment, could be heard in a magistrates court. I would not like to create a whole layer of bureaucracy, and one would have to have criteria for which cases, but I think it would be a good thing. It would also mean that you would get three people deciding, say, on the trial of somebody, not one. Frequently, as I have learned from other research I am doing at the moment, there are unrepresented defendants in the criminal courts; certainly for trials there are at least 10%. I think it would be more reassuring for the public to feel that there

were three people making a decision in such difficult circumstances, rather than one. Again, I think these things should be explored.

Q13 Chair: Sure. It is fine having a debate, but we have to think about some practical solutions, don't we? Does that not obviate the point of having a district judge who is used to sitting on her own? The whole point of the DJ is that they can get through the thing at speed. He is going to have to give reasoned decisions, the same as the panel of three will give.

Penelope Gibbs: If he was chairing, he probably would—

Chair: Or she.

Penelope Gibbs: He or she would still get through at speed, I would have thought. Equally, I am only thinking of it for a certain, very small number of cases, which would be trials, and it would not be trials for everything. In general, yes, it would be a change for district judges, but you should invite the chief magistrate and ask him. I think they would be quite keen. If you read the Judicial Office's response, they seem quite keen on this kind of model.

Q14 Chair: Mr Dawson, from your point of view, you would rather completely take away all the magistrates' powers to impose custodial sentences.

Peter Dawson: Yes. We are inviting you to take the opportunity to think radically. We are conscious that our evidence will be different from much that you will hear. It cannot stand in isolation; it would have to be part of a root-and-branch review of the way the sentencing framework operates. It starts on the premise that most crime is dealt with in the community. We have talked for many years about alternatives to custody. We should actually think about custody as the alternative to the much more normal and appropriate disposal, which is something that is done in the community. That is because the purposes of sentencing are better served for most cases in the community. Punishment is probably the only purpose of sentencing that does not require some action in the community.

We think it would send an important symbolic message and would start a process of change for the magistracy to be seen as the experts in dealing with crime in the community. The imposition of a short prison sentence only ever postpones the action that needs to be taken in the community to resolve the problem. That postponement often creates damage and additional difficulty in solving the problems that put the person there in the first place and that damaged the victim of the crime.

Q15 Chair: I understand that point. Most people do not want custody to be imposed unless it is absolutely necessary, but can't magistrates be trusted to take that decision?

Peter Dawson: It is absolutely not a question of trust.

Q16 Chair: What is your problem, then?

Peter Dawson: It is absolutely not a question of trust. It is about our approach to custody and the fact that we are profligate in our use of custody at present. We know that it is extraordinarily expensive, particularly when it is imposed for short periods. With our current prison system, there are interesting alternatives internationally, where short

custodial periods actually have a positive effect, but we spend a great deal of money postponing a problem that we then have to solve at the conclusion of the sentence.

Chair: I am trying to see how that point relates to restricting the powers of magistrates.

Q17 Alex Chalk: Petty theft, common assault and driving with excess alcohol are all matters that can carry a custodial sentence. Are you saying that magistrates should not be involved in adjudicating on guilt or innocence in those matters?

Peter Dawson: I am saying that we need to review our whole sentencing framework to decide what we think—

Q18 Alex Chalk: Forgive me, but I am not asking about the sentencing framework. Parliament has indicated that common assault carries a six-month penalty. Are you saying that magistrates should not decide on guilt or innocence in common assault?

Peter Dawson: In this evidence, we are saying that magistrates should be removed from the power to impose custody.

Q19 Alex Chalk: What are they going to deal with? You have theft—theft of a Mars bar—excess alcohol, someone driving while disqualified, common assault and petty, non-residential burglary. That is the bread and butter of the magistracy, and it carries a custodial sentence. Are you saying they should not sit in trials?

Peter Dawson: No. I am not making myself clear. They should deal with those cases, but the option of sending someone to custody should not be open to them as the resolution of them.

Q20 Alex Chalk: But isn't it really important when a court tries an individual, hears the facts, listens to the prosecution witnesses and decides that someone is guilty or not guilty, that, if they are guilty, it is that court and those magistrates who should be deciding the appropriate sentence?

Peter Dawson: That is not a principle we currently adhere to in all cases. Magistrates can already refer cases for sentencing.

Q21 Alex Chalk: Of course there is a power to commit for sentence under section 3 of the 2000 Act, but in the overwhelming majority of cases, the magistrates who hear the evidence decide the penalty. Very often, they have listened to the evidence from the defendant.

Peter Dawson: In the overwhelming majority of cases already, a disposal in the community is the appropriate and sensible outcome.

Q22 Alex Chalk: Isn't it really treating magistrates with contempt to suggest that they are not in a position to decide? For example, if somebody has shoplifted on seven previous occasions, has been given every opportunity and, on each occasion, has decided to breach their sentence, when a humane, patient, decent magistrate says, "It's the end of the line and, in my judgment, you need three months inside," are you seriously saying that they should not have that power?

Peter Dawson: That is the perfect example. It is absolutely not a comment on the competence or indeed the humanity of magistrates. I am saying in the case of the prolific offender that, if it has got to that point, the magistrate is dealing with a failure of the system. The response to failure should not be to go to a disposal that we know represents a further failure; the magistrate should be the expert and should have influence over the way all the agencies could prevent that happening. That is a failure. They should be closely involved in making sure that those failures do not happen.

Q23 Victoria Prentis: There is no evidence that it is the magistrate who is the problem, is there? Following your argument logically, it might mean that we need to do things to our sentencing framework and give whoever is sentencing greater powers, but there is no evidence to suggest that magistrates use their powers to send people to prison disproportionately, is there?

Peter Dawson: But there is a strong current of argument at the moment that the answer to the challenge that we are facing, including that type of case, is to increase their sentencing powers. It appears to approach custody as some kind of virility test.

Q24 Victoria Prentis: But there is no evidence that that is actually happening, is there?

Penelope Gibbs: In terms of the greater sentencing power debate, I would urge the Committee to ask the Ministry of Justice for some figures.

Q25 Chair: We are going to come on to sentencing powers more specifically in a moment. I get the sense that the whole of your evidence, Mr Dawson, comes from a view, which may be a legitimate one, about the desire to resist custody, and your view of everything else flows from that. Is that the right way to approach it?

Peter Dawson: We are the Prison Reform Trust, so the contribution that I think we can sensibly make to your inquiry is to reflect the consequences of our current use of imprisonment. We are not competent to reach a view as to whether individual magistrates reach sensible decisions, and we are not seeking to do that.

Q26 Chair: The inquiry is about the powers of magistrates. I am not sure how you are helping us very much so far.

Peter Dawson: But surely, in considering the powers of the magistrates, you have the closest possible interest in what the effect of the exercise of those powers is. The current effect of the exercise of those powers is a huge waste of public money. To use the Secretary of State's words, it is a huge waste of potential that people who should be assets are in fact liabilities. I think that is relevant. In considering powers, you should be considering closely what the impact of their use might be.

Chair: I see. We will move on.

Q27 Alberto Costa: Can I turn to the effect of court closures on the role and work of the magistracy? Ms Gibbs, you have mentioned three times that magistrates are part of the community and that they are representatives of the people. The idea of delivering local community justice has always been central to the role of a magistrate. Do court closures risk undermining that, in your opinion?

Penelope Gibbs: I think they do, but they are a done deal, so one has to look at mitigating the effects. Inevitably, if you close a lot of courts, the likelihood of the magistrate sitting on a particular case knowing the area where a particular crime took place—even the roads, the shops and so on—is limited. In that sense, it threatens local justice. I am also worried about magistrates themselves getting to court. Some magistrates travel huge distances now. As I put in my evidence, you more or less have to have a car to be a magistrate, certainly outside the inner cities. That will limit to a great extent the number of people and the kind of people who apply for the magistracy. They are already worried, in terms of recruitment, that the people who apply are only those in the immediate environs of the magistrates court that we are talking about. It is a threat both to local justice and to a broad recruitment of magistrates from across the country, including rural areas.

Q28 Alberto Costa: Mr Dawson, in answer to an earlier question you said that a disposal in the community is the appropriate outcome. I am focusing on the word “community”. What are your views about the effect of these court closures on local community justice?

Peter Dawson: It ties into the potential for the magistracy to play a role in restorative justice and problem-solving justice, which might not take place in a court setting. Certainly with the current predominance of the court, it is potentially damaging, but there are ways in which magistrates could oversee pre-court disposals that would not rely on courtrooms, which could be facilitated by IT and could take place in different settings. The examples of problem-solving, particularly from overseas, take the role of the magistracy to a place that is earlier than what they do currently.

Q29 Alberto Costa: Ms Gibbs, you mentioned the effect on magistrates of travelling. My constituency is a semi-rural one. Do either of you have any comments on the direct effect that this might have on individual magistrates who are in rural areas?

Penelope Gibbs: My understanding is that the ones who are very far from the court are more liable to retire early, to resign or not to apply in the first place, but I do not have documentary evidence for that.

Q30 Alberto Costa: Where have you gleaned that opinion?

Penelope Gibbs: I talk to magistrates, and I read what they say and so on. I know that some magistrates are doing two-hour journeys—an hour there and back. That is quite a big journey for a volunteer. They do it, but I would have thought that, when trying to get recruits, if there are fewer local courts it will inevitably be more difficult to get people who live far away even to apply.

Peter Dawson: Forgive me for talking about prisons yet again, but exactly the same issue arises with the design of the prison estate. For rural areas, access to a prison often means very long journeys, which—

Q31 Alberto Costa: I want to concentrate on the role of the magistrate, if I may. Sorry, Mr Dawson. Can I move on to another question? Our predecessor Committee’s report into “Crime reduction policies” concluded that, by prioritising efficiency savings, HMCTS was placing at risk the “adoption of problem-solving approaches”. Do you think that closing particular courts might cause the loss of innovative practices, at a cost to the wider criminal justice system?

Penelope Gibbs: To me, it is less about the closure of courts—although that is related—than the management of courts. I talked about the abolition of MCCs, which I would not bring back. I would bring back some other form of local magistrates and local people having influence over their courts. If you have a centralised system, it tends to stifle local innovation. One example is the West London drugs court. There was quite a thriving drugs court in west London. It was run quite a lot on the American model, with a cadre of trained magistrates, district judges and so on. A decision was made to close it down. It was not the people in the court or the judges who wanted that. I say “close it down”, but it has been reformed in such a way that people would not see it as a drugs court. That decision was made at a level above, somewhere—not in Whitehall, but somewhere above. I truly believe that localisation fosters innovation, and localisation involves people at ground level feeling that they have real influence over how to manage that court.

Q32 John Howell: Can I approach the subject of diversity in the magistracy? The project to diversify the magistracy seems to have run into the sand, partly because of the difficulty of recruitment. Would you like to comment on that and suggest what can be done?

Penelope Gibbs: A key problem is numbers. If you are recruiting very few people, which is what has been happening in the last few years, inevitably the rest of the people are going to get older, and your potential to change the profile of the whole is limited. At the moment, the latest figures show that they are doing reasonably well in terms of new recruits, certainly on age and ethnicity; but it is a question of the ability of the new recruits to change the whole profile when you recruit so few people.

One of the issues is whether we can recruit bigger numbers, even with the falling workload. I am not an expert on exactly what the workload is or on how the numbers match up, but some magistrates are what are called heavy sitters—I am going to get a lot of trouble about this, because they like sitting a lot. I have information that over 200 magistrates are sitting for over 50 days a year. It is great that they are doing it, but I am afraid that that is an opportunity that could be taken for new magistrates to come in. If we cut the maximum number of sitting days to 35 a year, it is still a very big slice of volunteering for people. If we made an absolute maximum of 35 days a year, I think you could recruit another 200 a year.

Somebody needs to gather the information on this—I do not have it—but I often hear that there are a lot of sittings when there are benches of two, rather than three. Clearly, that is an opportunity in terms of numbers. If the pool of magistrates was bigger, presumably we could have more benches of three, which is better from a justice point of view, as well as everything else. In terms of numbers, we could recruit, say, another 200 or maybe 400 a year by limiting the number of days. There is also the very tricky issue of tenure—fixed tenure or renewable fixed tenure.

John Howell: I was going to come on to that.

Penelope Gibbs: But it is part of the answer to the diversity question.

Q33 John Howell: You suggested that we should appoint magistrates on a fixed tenure in order to decrease the age profile. How is that going to work in terms of making sure that they have the right expertise and specialist skills?

Penelope Gibbs: I am open to renewable fixed tenure as well. It should be part of the debate, if we are looking at radical solutions to improve diversity. In Scotland, children's hearings panel members are all on a renewable fixed tenure basis. They have to renew every three years to be a panel member again. In Scotland, justices of the peace have to renew their position every five years. I am also open to that. One would have to test it out to see if it encouraged the kind of churn one would require.

There is another thing that could be introduced pretty easily. An amendment was tabled to a Bill that provided that when the Judicial Appointments Commission was looking at paid judiciary recruitment, and two candidates were absolutely the same at the very last stage, they could favour the candidate from an unrepresented group. That was not enacted for magistrates. It was only enacted for gender and ethnicity, I think, whereas with magistrates it would be appropriate to do it for age. We are not talking about positive discrimination. We are saying that, if two candidates at the end of the process offer the same, you can favour the candidate from an unrepresented group, as the JAC can now.

Q34 Chair: It would be the younger one in practice, wouldn't it?

Penelope Gibbs: If there was a 30—

Chair: That is your complaint—that the magistracy is too old.

Penelope Gibbs: We need magistracy that is representative of the people, and the age profile at the moment is not representative of the people. I am not saying that it should be an exact match in any way, but it is skewed so far towards older at the moment that it is not as representative as it should be.

Q35 John Howell: But if you are going to make the magistracy younger, is not the real problem that employers refuse to release people to serve as magistrates?

Penelope Gibbs: It is a problem, and I have various solutions. You can go from the very hard one, which is legislative change to force them, as with the Territorial Army, to let people sit as magistrates, to the soft one, with a campaign from the Government and the judiciary to kind of woo companies. The NHS apparently used to be pretty good about letting their employees be magistrates. No longer, apparently. They will let you do some of your days in working time, but for the rest you have to sit on Saturday or whatever. I have heard that about other public sector employers. I would have thought that there could be a protocol across government, with public sector employers, to facilitate that. It is also about the mood music—celebrating companies that let their employees be magistrates and selling the benefits to the company or organisation.

Q36 John Howell: I am conscious that I have asked you all the questions, Ms Gibbs. Mr Dawson, do you have a view on this?

Peter Dawson: I have very little to add. My view on tenure, which we put in our evidence, is that fixed tenure with the possibility of renewal is sensible. That is more about organisational dynamics. Any organisation should be confident enough, if it wishes to renew its membership, to believe that it can attract people of the right quality, that it can train them, and that there is a point at which it is perfectly safe to tell someone that they have given their service. That is just about self-confidence.

I agree with Penelope: the messages that Government can send about the importance of this sort of public service are very powerful. The corporate sector has understood corporate social responsibility over the last 10 years or so in commercial terms. It is not a sudden outbreak of philanthropy; it is self-interest to respond to that Government-set agenda, and the magistracy is a very good example of a way in which the corporate sector as well as the public sector could contribute constructively.

Q37 Dr Huq: I want to ask a couple of questions about training and CPD, once people have made it through. We have heard that the induction training, in particular, has been criticised, and that it could be improved. Have you heard that, and what do you think about it?

Penelope Gibbs: I did some research: “Fit for purpose: do magistrates get the training and development they need?” which is partly summarised in my report. I did a survey of magistrates, some of whom were unhappy with the induction. My concern about the training is that they ask magistrates on a tick-box sheet at the end of the training session whether it has satisfied various things. We should take a step back and ask practitioners and all those who use the courts what the competences of magistrates should be, and how they fall down most at the moment. Thus we would know better what the training needs were. For instance, defence practitioners—barristers and solicitors—are never asked about magistrates in general. I am not asking them to pick on particular people, but what skills and competences are magistrates most good and least good at? The induction course could be improved. One thing that is missing is to ask, “Who is the offender?” and “What is the evidence about what works in terms of sentencing?” That sounds pretty basic, but, to my knowledge, it is not there. I would also be concerned that issues of diversity are not covered as well as they might be, and so on. That induction course is a huge opportunity, because some people do only that and practically nothing else.

Peter Dawson: I hope that, perhaps later in your inquiry, you might take evidence from the Centre for Justice Innovation. Its evidence about problem-solving courses is fascinating—and about the importance of procedural fairness. In terms of the qualities that you are looking for from magistrates and whether or not they are performing, there are some very interesting measures about how people perceive the manner in which something is done, as well as the outcome.

Q38 Dr Huq: On the post-induction point, magistrates are not required to do regular training. In other professions, there is built-in CPD. Some of them do, but is it time to introduce a sort of in-built continuing professional development scheme? Who would oversee that? I think that, at the moment, it is the local justices’ clerk. The syllabus can vary according to local need. Should there be one, and who should oversee that? The obvious candidate is the Judicial College.

Penelope Gibbs: There should be one. I am agnostic as to who oversees it. The design is crucial. I come back to the fact that we need a proper research-based assessment about what the training and development needs of magistrates actually are.

It is the case at the moment, unfortunately, that keen magistrates do not get access to enough training and end up spending their own money on outside events. Other magistrates do not do enough. There is not a framework whereby they more or less have to do it. In Scotland, under the children’s hearings panel system, when they go for reassessment, they have to bring evidence with them of all the CPD courses they have

done. Presumably, there is a tough discussion, when they ask to be reappointed, if they have not done any CPD in that time. I think that CPD is crucial.

Chair: Mr Chalk, do you want to return to another aspect of the discussion?

Q39 Alex Chalk: In some ways I have asked already about sentencing powers, so I will not go back to that. We have your submissions, for which we are grateful. The Committee recently visited problem-solving courts in the USA. Do you think magistrates could take on an enhanced role in supervising community orders if the number of problem-solving courts were increased?

Penelope Gibbs: Magistrates would be great for problem-solving courts. In them, they would find a job satisfaction that they are not necessarily getting at the moment. It would involve training and, dare I say it, slight relaxation of the independence rules. I went to the States, too, and I spent a month looking at problem-solving courts and going to the pre-meetings that the judges have with all the criminal justice practitioners and so on. I do not think that could happen in this country, because of the rules; I am not sure if they are not core to problem-solving courts.

Problem-solving courts might also lead to a different way of looking at magistrate specialisation. That would be a good thing. The gamut of training that they should have in theory is so broad and enormous that a problem-solving court where a smaller group can specialise in a certain thing would make a lot of sense, particularly for the youth court. There are moves to look at making the youth court more of a problem-solving court. One of the problems at the moment is that youth court magistrates are not sitting enough, they are not allowed to specialise and so on. If it was all one package, with a problem-solving youth court, an ability to specialise, better training and meetings with local practitioners, it would be fantastic for magistrates.

Q40 Alex Chalk: This is a question for Mr Dawson. I wonder if you could consider this. If that change is to take place, is it not really important that, ultimately, magistrates retain the sanction of a custodial sentence, so that there is the stick as well as the carrot?

Peter Dawson: In our evidence we suggest that they should retain that for breach of the original order, so, yes, there has to be a stick at the end of it.

Q41 Alex Chalk: Hang on. You are saying that they cannot sentence, but they can remit people to custody for breach. Is that what you are saying?

Peter Dawson: That is our proposal, yes. I entirely endorse what Penelope says about the potential for problem-solving courts. It seems to me that the challenge is to make sure that they are used in the right cases at the right time. The emphasis on speed is very important. In my past, I briefly ran a unit for teenagers, and one of the things I learned was that delayed consequences are useless. On the other hand, the current need for speed risks hurrying us through to conclusions that do not work. With problem-solving courts, it would be essential that the cases that went to them were susceptible to that approach and might benefit from it. The current approach, for example, of pre-sentence reports tends to move things through the court very quickly in the interests of speed, sometimes to the detriment of justice and an effective outcome. We have done a lot of work on people with learning disabilities and difficulties and people with mental health problems. A lack of

sensitivity to those issues is absolutely a problem for justice when the process moves too fast. Problem-solving courts would solve that.

Q42 Alex Chalk: This is my very last, very quick question, if I may—a super-quickie. I am slightly teasing. Supposing a defendant in your court showed contempt in the face of the court, which I have seen on several occasions, and they started being abusive and clearly were not taking the court seriously. Would you retain a magistrate's power to commit someone to prison for contempt, or could they say whatever they liked in your court and get away with it?

Peter Dawson: No, they could not say whatever they liked and get away with it. We need to be more imaginative about what the proper consequence is.

Q43 Alex Chalk: But is it yes or no? Can you help me? Yes or no—would the magistrates have the power to commit to prison for contempt?

Peter Dawson: For a very short period of time.

Q44 Alex Chalk: You are making this up as you go along, aren't you?

Peter Dawson: It is not a question that I have contemplated before. I could refuse to answer it altogether, but that would be impolite.

Q45 Philip Davies: I want to go back—seeing that Alex did not—to sentencing powers. It seems to me that Transform Justice is suggesting that greater sentencing powers for magistrates would lead to longer prison sentences.

Penelope Gibbs: We do not know. The Ministry of Justice has a model for the impact of greater sentencing powers—this increase in sentencing powers, if it was brought down to the magistrates court. They have it. I do not have the power to get it from them, but perhaps the Committee would like to ask the MOJ for their model of the impact, which they have. They have said that they have it. There are hints in previous research the MOJ has done that some practitioners think that there is a high likelihood of greater imprisonment for a similar crime if you increase magistrates' sentencing powers. We do not know. We need more information; otherwise, we are just swimming in a fog of ignorance in this discussion. I know it would just be a model, but it would be useful, because similar cases go to the Crown court, which are then sentenced, as they have been in the magistrates court. We have this big move of saying that we should bring cases down from the Crown court under existing legislation. Why do we not give that at least a year to bed down and see if it is working? That would increase the number of serious cases that the magistrates courts were dealing with anyway.

Q46 Philip Davies: The problem with the assertion is that the Ministry of Justice provide figures—I have them; I asked for them, as it happens—about what the imprisonment rates were for either-way offences dealt with in the Crown court and the magistrates court and what proportion of people were sent to prison. On either-way offences, the Crown courts send vastly more people to prison than magistrates courts do. They send them to prison for longer in triable either-way offences. You have no evidence at all. There is literally no evidence at all.

Penelope Gibbs: No. I am saying that there is no evidence, but what they have, which is not that, is a model. There is a huge range of either-way offences. You are more likely to get serious either-way offences in the Crown court than in the magistrates court. They have a model for the impact, from six to 12 months, of what would happen to prison sentences if that happened.

Q47 Philip Davies: The number of maximum sentences handed out is 0.2%.

Penelope Gibbs: I am just saying let's get their model and base a discussion on that.

Chair: Rather than on the evidence that we have heard from Mr Davies.

Penelope Gibbs: As you know, there is a huge range of either-way offences. What you need is modelling based on similar offences and similar offenders and what is happening at the moment in the Crown court and the magistrates court.

Q48 Philip Davies: Let me try another one on you. At the moment, magistrates have the power in the youth courts to hand down a maximum two-year sentence. I have not heard anybody ever raise that as a massive issue of concern. They are allowed two years. If they are allowed to hand down two-year detention and training orders in youth courts, what is the problem with their having a 12-month maximum sentence in an adult court?

Penelope Gibbs: The dynamic in the youth court is very different. The whole framework of legislation is different. The practitioners in the court are different. I take my hat off to magistrates for being part of a movement to reduce the child custody population by two thirds. It is a different dynamic, and I would still say that we need more information about the potential impact of increasing their sentencing powers.

Q49 Philip Davies: The thing is that we have the information. In the youth court, where there is a 24-month maximum detention and training order, there is no evidence at all that magistrates are trigger-happy in terms of the sentences they give. I asked on how many occasions magistrates handed down the maximum sentence. In 2012, it was 15 times; in 2013, it was 17 times, and in 2014, it was 13 times in the whole year. There is no evidence at all that magistrates use those enhanced sentencing powers to send people to prison willy-nilly, sending people to prison for huge lengths of time.

Penelope Gibbs: They do not send people to prison willy-nilly.

Q50 Philip Davies: What have you got to fear by giving them 12-month sentencing powers?

Penelope Gibbs: I would say, read "The strength and skills of the Judiciary in the Magistrates' Courts" 2011, which is the MOJ report looking at district judges and magistrates. Although there are no hard numbers there, there are practitioners—justices' clerks and so on—who say that they are concerned that there might be more imprisonment.

Q51 Philip Davies: What this really boils down to with both of you has nothing to do with magistrates or with magistrates' powers in comparison with those of the Crown court. It is just that you do not want anyone to go to prison. That is the long and short of it. You do not want anyone to have the power to send anyone to prison. If you had your way, you would

probably not allow judges to send anyone to prison, because you just do not like people being sent to prison. That is the long and short of it, isn't it?

Peter Dawson: Absolutely not. To be absolutely clear, I spent a very large part of my career dealing with people in prison, and I met very many people who richly deserved to be there.

We have lost sight of what the length of imprisonment actually means for somebody. We have become careless about what the definition of a long sentence is. We are unusual in the length of sentences that we pass in this country. We are unusual by comparison with ourselves 20 years ago. We have inflated sentences as a matter of policy without really understanding what that policy sought to achieve. In my opinion, it has not achieved anything beyond a short-term response to difficult individual cases. That is not to say that imprisonment is not a necessary part of the system; it is to say that we know, and have known for a very long time, that sending people to prison for less than 12 months in the way that we currently organise our prison system does more harm than good. It merely postpones solving the problem. That does not serve the interests of victims, any more than it serves the interests of defendants and their families.

Philip Davies: Mr Chairman, that is a different issue, which we do not want to get on to. I shall hopefully disprove that point with the Prison Reform Trust at some future point, but I do not think it is relevant to this inquiry.

Chair: I will now move back to magistrates specifically.

Q52 Richard Arkless: Moving away from sentencing, I am interesting in the curtailing of magistrates' community role, which you criticised in your evidence, and the balance between the independence of the judiciary and community roles. Are those restrictions not necessary to retain the independence of the magistracy?

Penelope Gibbs: Some restrictions are necessary. Are the restrictions as they are practised at the moment completely necessary? I gave the example of the recorder. He announces in the House that he is a recorder before he comments on criminal justice policy. You all understand that he has expertise as well as opinions, evidence and so on. The same can go for magistrates. There have to be restrictions. There have to be rules. The evidence I have is that we have drifted to the isolation of magistrates and the clamping down of what they can do, and I wonder about the evidence base for that. Do we really need to go that far? When I went to America, I found that the judges there are absolutely proud of their judicial independence, and all the people around them respect it, too. Their porousness to the community was very different from what we have in this country.

Q53 Richard Arkless: You trust them to have a community role, perhaps, but not to dish out custodial sentences.

Penelope Gibbs: I have not said "No custodial sentences."

Q54 Richard Arkless: Okay. The recent report of the CPS found that a lot of criminal justice partners are committed to the Government's transforming summary justice agenda, but there seems to be a culture change that has not happened yet. In your view, is there any role that the magistracy can play in bringing about this cultural change? How can they affect it? Is it required?

Penelope Gibbs: In terms of the efficiency of the courts?

Richard Arkless: In terms of the whole buy-in. To make the transforming summary justice reform agenda work and progress, there needs to be a culture change. We are hearing that that culture change is not taking place. How can the magistracy, in particular, affect that culture change? How can they be brought along with that culture change?

Penelope Gibbs: If there is a problem—I do not have evidence that magistrates are part of a problem with culture change—it is about their training, which has been reduced a lot in recent years. A lot of transforming summary justice is about different procedures and processes. Training is part of the answer, but it is not just training; it is about development, feedback, conversations with district judges and so on. In my experience, magistrates are usually pretty good about trying to get on board with new reform programmes and so on. One of their only concerns sometimes is that they are not consulted way upstream in the development of new policies and practices.

Peter Dawson: I am always extraordinarily nervous of the phrase “culture change” unless the description of the new culture is included within it. If the suspicion is that there is a culture of deliberate or careless delay, of not bothering about whether cases are concluded quickly and not bothering about inefficiency in the court, it would be harsh to place that at the door of magistrates.

Q55 Richard Arkless: Fair enough. On the scope for drawing on models in other countries, you helpfully mentioned Scotland, but I understand that New Zealand has a system similar to what you may be advocating in your evidence. Is that correct? To what extent can you draw on models from other countries?

Penelope Gibbs: It is difficult, because lay justices are few and far between. I am very interested, but we would all benefit from more information about the New Zealand model that has been introduced. They have basically got rid of justices of the peace and brought in paid community magistrates or justices, as they call them. Part of their remit is to retain their links with the community. Presumably, because they sit two or three times a week, the issues of competence and training are different. I do not think there is a model that we should follow, but we can learn a lot, particularly from the children’s hearings model regarding their training; and they are looking at recruitment and so on. New Zealand has a different model, possibly. Equally, they are floating among magistrates and district judges the idea of a different model in terms of the chair and the wingers. It is not as radical, but it would be the case that the wingers would be jury members-lite. The recruitment was not that sophisticated and the training was not that sophisticated, and all the emphasis was placed on the training, recruitment, development and appraisal of the chair of the bench.

Chair: Thank you both very much for your time and your evidence. We have also had a lot more in writing. Thank you.

Examination of Witnesses

Witnesses: **Jo King**, Executive Chair, National Bench Chairmen’s Forum, and **Alwyn Lloyd Ellis**, National Bench Chairmen’s Forum, gave evidence.

Q56 Chair: Welcome, Ms King and Mr Lloyd Ellis. Thank you very much for coming to give your evidence to us. You did not hear some of the earlier evidence. It is not like witnesses—you are allowed to sit in beforehand; it is not quite like giving evidence in court. I am conscious that, because you are judicial officeholders, there are certain questions of a political nature one should not go into and I promise you we won't.

Jo King: Thank you.

Q57 Chair: Would you regard the magistracy as in crisis?

Jo King: No.

Victoria Prentis: Good.

Q58 Chair: It has been asserted to us that that is the case. Please tell me why you say no.

Jo King: We are obviously going through a period of great change. We have been going through change for quite some time. To say that we are in crisis implies that the magistracy is somehow falling apart, and I would say we are far from that. There is a lot of uncertainty at the moment, which of course causes anxiety. We work very closely with our colleagues in HMCTS and through our justices' clerks, and I think we will be resolving some of those issues fairly soon, but I certainly would not say that it is in crisis.

Q59 Chair: It has also been suggested that a culture of independence has grown up in the magistracy, which is creating isolation from the community, and that you have become more akin to judges feeling that they must stand aside from all other matters. Is that something that either of you recognise?

Jo King: For magistrates, the judicial officeholder role is a difficult one. They come from their community, and they take on the role only on a very part-time basis; most magistrates sit for perhaps two days a month. Inevitably, they are heavily involved in other aspects of life, whether through working or other community involvement, or just through family and social contacts. Whereas a member of the full-time judiciary can separate their judicial officeholder role quite neatly from their private and personal life, for magistrates it is much more difficult. However, we are judicial officeholders, and it is very important that we follow the same conduct proceedings and uphold the same standards of behaviour as our salaried colleagues.

We need to be independent. We are there to decide on people's futures. They need to make sure that we have no conflicts of interest or any biases towards any particular part of the community. It can be difficult for magistrates. I would not say that we are becoming isolated. Magistrates do a lot of work in the community in many different forms, outside their courtroom duties, and they manage to balance that very well.

Q60 Marie Rimmer: In your written evidence, you commented on magistrates' falling workload, and you made suggestions on other areas into which they could perhaps expand, including civil courts in relation to crack house closures, antisocial behaviour orders, licensing appeals or even small claims. Do you think there is a danger that that might be spreading their expertise a little thinly?

Jo King: Some of those roles were held in the past. Magistrates used to deal with licensing, and we still get involved in some stages of the appeals process. Magistrates' key skills are their ability to evaluate the evidence placed before them and to make sound and reasoned judgments from that.

We sit in a number of jurisdictions at the moment. We cover some civil work already within our jurisdiction. We cover family and youth specialisms, as well as crime. In all those circumstances, we rely on our legal advisers who provide us with legal advice. We are not legally qualified and we are not experts in that sense. I see an extension of the role being possible where those skills can be utilised—where the key requirement is for the ability to evaluate evidence and make judgments, with the support of a legally qualified legal adviser to provide us with the expertise. When we are looking at possibly expanding the role of the magistracy, it is very important that we do not take on anything that undermines that judicial officeholder status. That should not be diluted; we should not take on anything that directly conflicts with that role.

Q61 Marie Rimmer: Do you think that also applies to the adjudication of breaches of prison discipline via video link?

Jo King: At the moment, they are done by district judges. If there is no dilution or conflict for a district judge in undertaking that role, I do not see an issue for magistrates, should that be deemed appropriate.

Q62 Marie Rimmer: We have had evidence that there are sometimes tensions between magistrates and district judges, who are seen as getting the more complex and interesting cases. Do you agree with that?

Jo King: No, I do not. I think the relationship between magistrates and district judges is largely very positive at the moment. We work very well with our colleagues on the district bench. Over the last few years there has been much more joint working. We have recently had a whole series of trial blitzes, where district judges and benches of magistrates worked very closely with each other. Both reported that as being mutually beneficial. District judges are getting much more involved in the training of magistrates, which is really positive.

District judges are ticketed for some areas of work, such as serious sex cases in the youth courts. Only they will hear those cases. There is also some specialist work such as extradition work, which is only handled by district judges. In terms of the more general work, there are protocols that the listing staff and our justices' clerks follow when they are allocating work to either the district bench or the magistrates bench. That covers a number of things. There is a protocol that may determine, for example, that if something is particularly legally complex it may go before a district judge, because that will probably shorten the proceedings. It is obviously in the interests of the parties if we keep proceedings to a reasonable length.

Other than that, there is an overriding principle that both magistrates and district judges need access to the full spectrum of the work, so that they can maintain their competencies. That perception may arise when people are perhaps not aware of the way work is allocated. Magistrates sometimes come in and see a very small section of the overall work,

and they may have an experience that leads them to believe that, but, overall, it is not my belief that district judges are cherry-picking the more interesting work.

Q63 Marie Rimmer: What helps to maintain a constructive relationship between the two groups? Where I come from I see evidence that there are constructive relationships. In your opinion, what helps to maintain a constructive relationship?

Jo King: Communication. District judges need to be visible, and frequently they are. They come into retiring rooms to meet magistrates. They take part in joint training. They attend lots of meetings with magistrates. They sit on our judicial business groups, which oversee the business arrangements for local justice areas. They often attend magistrates meetings—spring training meetings and that type of thing. Where we have the opportunity to work alongside them, both magistrates and district judges largely take those opportunities and find them very positive. In my area, for example, we had a period when magistrates were invited to sit with a district judge when they were doing what we call NGAP courts—not guilty anticipated plea courts—so that we could learn from the district judge. Every district judge I spoke to about those courts said that they had learned something from the magistrates as well. It is just a normal process for keeping communication.

Q64 Chair: And is that your experience in particular from a Welsh dimension, Mr Lloyd Ellis?

Alwyn Lloyd Ellis: Yes, it is. We have one district judge in north Wales. He divides his time between the courthouses along the coast. We work very well with him. He is very approachable.

Chair: It was certainly my experience when I was a practitioner a long time ago. I still try to keep in touch, at any rate.

Q65 Mr Hanson: There is an ongoing court closure programme—it has been live. We are not here to discuss the political decision on the court closure programme, although you mentioned it in your submissions. There is potentially an impact on court users and on magistrates. I am interested for the Committee to get a feel of whether the court closure programme has impacted on the recruitment, retention, travelling time or stresses of magistrates in their daily work. Perhaps I can start—as a north Wales MP—with Mr Ellis, with a Welsh perspective.

Alwyn Lloyd Ellis: There are two courts in north Wales that will be closing: Dolgellau and Prestatyn. The work from Dolgellau will transfer to—sorry, there are three: there is Holyhead as well. Apologies for that. Dolgellau is 43 miles from the Caernarfon criminal justice centre, where the work will go. At the present time, the magistrate who sits in Dolgellau also sits in Caernarfon. Because of the falling workload, particularly in Dolgellau, I think they welcome the opportunity to come to Caernarfon, because they have a full day, rather than possibly trials going off in their local court.

As far as Holyhead is concerned, Holyhead and Anglesey are much closer to Caernarfon but, like Dolgellau, that is subject to the alternative provisions caveat in the closure document, which is being looked at. Prestatyn going over to Llandudno could create a problem. Denbighshire is a large county, as you know. Some magistrates based in the

south of the county will be closer to other benches and other courthouses, rather than the main courthouse in Llandudno. They need to consider that in terms of transferring to other benches, and perhaps an alteration in the local justice area boundaries. That is something that needs to be looked at. In doing so, we need to maintain the balance of membership of each bench. We do not want too many on certain benches where they do not get the minimum sittings, while other benches struggle and magistrates are asked to sit a great deal.

There is a recruitment programme at present. Applications are being invited, and time will tell whether some withdraw their applications because of the decisions. It has been well publicised that certain courts are earmarked for closure, and we will see whether that has an effect. If people really want to become a magistrate, I am sure they will be prepared to sit at a further distance from their local court.

Q66 Mr Hanson: Again, there is the diversity issue that we talked about in the previous session. If you have more time potentially to be free to be a magistrate, the extra travelling from Llandudno to Mold—for those who do not know north Wales—is a good hour and a quarter. The loss of Prestatyn, and of Flint in my patch a couple of years back, means that there is now a massive gap in the middle. Moving away from Wales, I suppose the question is whether there is an issue anywhere else. Is it a problem, in terms of travelling, for magistrates to stay in post?

Jo King: It is undoubtedly true that, as you reduce the court estate and ask people to travel further, it will cause some magistrates some difficulty. We have 18,000-plus magistrates, who come from a very wide range of backgrounds and circumstances. It would be ridiculous for me to sit here and suggest that it is not going to affect any of them.

We have had similar situations in the past. In fact, my colleagues tell me, it is not that long ago that there was a courthouse in virtually every town, and indeed in some villages. We have been contracting the estate over a considerable period of time. I already travel for nearly an hour to my local courthouse. Although I live in the south-east, I can completely understand the difficulties that are being experienced throughout the country. It is not just a matter of rural versus urban. Sometimes in major cities, although the geographic distance is quite small, because of congestion or transport links it takes time to travel. We are concerned that, as the court estate reduces, there will be an impact on magistrates and on court users. We need to look at ways, certainly for court users, to mitigate some of those effects.

We have to look carefully at the recruitment of magistrates. Because of the reduction in the workload, we have not had a really active recruitment process going on. It is fair to say that we have concerns about the visibility of the magistracy, whether the general public really understand the role and whether we are attracting a broad enough pool of candidates. If you are only looking for small numbers, it is difficult to justify a really good publicity campaign. I can remember times in the past when there were adverts on the radio or on the backs of buses, which really helped us to target some of those difficult-to-reach areas and to get across the message that magistrates are people like you; I am not referring to the people in front of me here but to people in the general population.

Chair: I hope we are not too far removed from the general population—but I get your point.

Jo King: Dare I say, if I look around, that we have issues with diversity in lots of areas of public life, which we would like to address. It is not as easy a problem to solve. Otherwise, I think we might have solved it already.

Q67 Mr Hanson: You mention in your evidence the need for a wider estates strategy and the discussions around that. Before this inquiry commenced, we had some discussions and there were suggestions from other sources that we might look at going back to the localised use of non-traditional buildings in areas where there were particular challenges. From the magistrates' point of view, is there any mileage in that at all?

Jo King: Alternative provision is very much part of the estates strategy that is in place at the moment. Alwyn has made reference to that already. It is fairly early stages. The recent closures were announced only about four weeks ago. Until they are announced, it would not be reasonable to start putting in place plans to provide alternative provision, because it would be perceived to prejudge the outcome of the consultation.

In the last four weeks, a lot of work has been done to look at what sort of model might work. It is likely to be on a very local basis. For eight courts, there is alternative provision that is contingent on its being in place before the court can be closed. For some of those, it may be that the most appropriate outcome is to find an alternative venue that could be used for physical hearings. For some, it may be a matter of providing video link facilities, for example, to video link victims and witnesses to a court location elsewhere.

It is very early stages, and lots of different aspects are being looked at. There are a lot of factors that need to be taken into consideration: for example, security. If you are moving a physical court hearing to something like a council chamber, you have to look at the types of cases you might list there. You will not have a secure dock facility. There is the security of the magistrates. It is not just in the most serious cases we deal with that we sometimes have problems with security; sometimes something that seems as straightforward as council tax can be very emotive. Sometimes you get people responding in ways that you do not anticipate, so we would need to look very carefully at the security of the court users. We are moving over much more to a digital system. Can that digital work environment be provided in an occasional venue; in what are sometimes called pop-up courts? All those things are factors that need to be considered.

There is not an answer at the moment, but we have the undertaking that those courts will not be closed until alternative provision is in place. Local judiciary, magistrates included, are being involved in those discussions and are feeding into the proposals that are being made at the moment. I cannot tell you what the answer will be at the moment, but there is certainly a lot of work going on looking at how we can mitigate some of the effects. It does not necessarily solve the problem for magistrates if they have to move to or work in a distant location even if the victims and other people are being video-linked.

For magistrates, we have to look carefully at the impact that it will have. We need to look at recruitment. We need to make sure that we are not just recruiting from the immediate vicinity of large urban courthouses, and that we are able to reflect the communities in every aspect, as far as possible. For that, we need to target and raise the profile of the magistracy much more among the general population and encourage people to apply.

Alwyn Lloyd Ellis: Unfortunately, there is not a definition of alternative local provision, which may slow up the process.

Mr Hanson: It was suggested that, now we have closed a 1,000-year-old court in Flint, we could use the 1,000-year old town hall next-door instead, which seemed to be slightly ridiculous, but there we go.

Q68 Chair: Have you spoken at all to the Local Government Association about the way rural councils, particularly rural district councils, sometimes deal with the pressures on local councillors, who may have to travel a very long distance to get to the civic centre, for example, for meetings? It is sometimes possible for them to deal with their committees by video link and other things.

Jo King: I understand there are some discussions between HMCTS and local authorities about different ways of working. From the magistracy point of view, we look to HMCTS to provide us with the facilities and support we need in order to carry out our role. We do not necessarily go beyond that in terms of going out and finding the provision ourselves. We are involved in the decision—

Q69 Chair: Perhaps you should do that a bit more.

Alwyn Lloyd Ellis: Tomorrow, in fact, I am meeting HMCTS staff. The premises on the island of Anglesey and in Dolgellau are council premises. In reality, they are the only ones that are sufficiently large.

Q70 Chair: They are the only ones that are likely to be available.

Jo King: I think we have to be careful of our role and not to—

Q71 Chair: That is what I was getting back to, with the point about you cutting yourself off needlessly from what might be the blindingly obvious to most people.

Jo King: If I were to suggest to magistrates that they went out and sourced their own courthouse, effectively—

Q72 Chair: We are not saying that; it is just talking to people.

Jo King: We do.

Q73 Chair: Some of your magistrates will also be district councillors.

Jo King: Absolutely.

Q74 Chair: They can share their experience.

Jo King: It is a matter of talking to people, sharing ideas and learning from people's experiences. We have people who are local councillors who sit as magistrates.

Q75 Chair: You have a Magistrates Association. That can talk to the LGA, can't it?

Jo King: Absolutely. We do that. I suppose there is a line between the talking and the coming up with the ideas and actually securing the provision, which I would like to see rest with HMCTS.

Q76 Chair: Do you have confidence in HMCTS to do that?

Jo King: I do, yes. We work very closely with them.

Q77 Dr Huq: Back to the diversity point, it seems that the workload is reducing, but you need to recruit more to get more diverse people. Where do you currently advertise? There is often this quite patronising thing whereby local authorities put job adverts in *The Voice* and *Eastern Eye*. People like me would not read them in the first place. I am just curious about whether you are getting a wide enough range of recruits.

Jo King: I do not think we are getting a wide enough range of recruits. Very little advertising is done. A lot of it relies on the gov.uk website, which is the portal that magistrates have to use to apply now. Recruitment lies with the advisory committees, and some advisory committees will be much more proactive in going out to target or talk to groups. As far as I am aware, no centralised advertising has been done for several years. Various informal methods are tried, but it is not always easy to identify the groups that might be interested or the appropriate people to speak to within those groups. A lot of work happens on a local basis, some of which is more successful. I am very keen that we try to widen it and get as broad a pool as possible. Then we can select the best candidates from that. If we have a very narrow pool, we will never be able to address the diversity issues.

There is much more work that can be done. We have to accept that there are very limited resources. It is about where those resources are spent and how they are prioritised. It is not within our gift as magistrates to determine how those resources are spent on advertising. We can and do apply pressure, and we continue to make requests. The issue of recruitment is becoming more apparent as a number of factors, not just diversity but rurality versus urban and so on, become much more of an issue.

Q78 Dr Huq: Age as well as gender and ethnic—the whole lot. Disability.

Jo King: Yes. Age is a difficult one. Inevitably, we all get a year older year on year. Magistrates are appointed until they are 70. There is not a process, other than disciplinary procedures, to get rid of them, for very good reasons to do with judicial independence and so on. Where there is limited recruitment, there is going to be an increasing age profile.

In terms of attracting younger magistrates, I would like to see much more being done with employers. Very few employers now give magistrates time off to attend court. We used to have quite active engagement with employers, and support from Government to reach employers. It is a great pity that, in the main, Government Departments and local authorities no longer allow magistrates paid leave to attend court. There is a lot that the Government could do in looking at that in their own Departments first, and then encouraging and supporting employers. We would undoubtedly like to attract more working-age magistrates.

Q79 Dr Huq: Would you agree with fixed-term contracts, which were floated by the last panel?

Jo King: No, I would not. That presents all sorts of difficulties within the bench. We have to look at succession planning, and we need magistrates who are willing to take on

leadership roles. To have a fixed term of office would cause us enormous problems within the magistracy, and I think the disadvantages would outweigh the advantages.

Q80 Dr Huq: They said it could be renewable.

Jo King: If it is easily renewable, do we get away from the position that we are in at the moment? You need to make sure that you have people in place who see that they have a longer future and are willing to invest the additional time that bench chairmen, deputy chairmen, TDC chairmen and family panel chairmen give over and above their court responsibilities to assist with the running of the courts. If you tell them that they may be leaving 10 years after joining, you will find fewer people who are willing to undertake those roles. We will then suddenly have real issues with how we lead the magistracy.

Alwyn Lloyd Ellis: In north Wales we held two open evenings last month. They were quite well attended. Magistrates took interested applicants around the court building. They showed them the courts and the cells and answered any questions they had. That was advertised on local radio, some of it through the medium of the Welsh language. It is a problem, however, because it is difficult to advertise, and we do not have a budget to do so.

Q81 Chair: Do you have any issue with recruiting Welsh-speaking magistrates?

Alwyn Lloyd Ellis: In certain areas, such as where I am from in north-west Wales, it is not a problem, but in certain other areas the balance needs to be addressed. It is in line with the population.

Chair: Sure—I understand.

Q82 Victoria Prentis: On engagement with employers, perhaps you could tell us, Mr Lloyd Ellis, whether you did anything specifically in your open evenings to reach out to employers.

Alwyn Lloyd Ellis: The answer to that is no. Sorry to be short. It was explained to applicants who were showing an interest what was expected of them in terms of commitment. Every applicant is encouraged, before they put their application form in, to speak to their employer and see what their reaction is. Some are positive and some are not. The last thing we want is for a new magistrate to be appointed, but when they turn up they say, “I can’t sit next week because my employer won’t let me.”

Q83 Victoria Prentis: Do you have any good-news stories to share about engagement with employers?

Alwyn Lloyd Ellis: It could well be that we need to set up some sort of forum with employers—perhaps the CBI, the Federation of Small Businesses or chambers of commerce—to inform them about what the magistrate does and the benefit to their business of having a magistrate as a member of staff. It is something that needs to be looked at. Otherwise, you will have an imbalance on the bench, with many retired people and people who are self-employed. It needs to be looked at.

Q84 Victoria Prentis: Ms King, do you have any ideas about that?

Jo King: It is quite a difficult thing to do on a local level, because some small employers find it particularly difficult to release people on a regular basis. Larger employers' decisions are made on a national or sometimes international basis. I always try to support my magistrates, and I have offered—although it has not been taken up—to speak directly with an employer if they felt it would assist. Often the employer-employee relationship, particularly given the financial situation that many businesses have found themselves in over the last five years, is quite a difficult one anyway. A lot more needs to be done centrally. On a local basis, it is very difficult. You might be able to engage with an individual employer.

Q85 Chair: It sounds as if I am repeating a record. The points you raise about the age of people, whether or not they are self-employed, and about the difficulty of getting employers to give time, are exactly the same issues that you find in local government when it comes to recruiting councillors. Interestingly, the LGA has done quite a lot. It has quite a lot of recruitment material, so I sometimes think it might be worth a bit of cross-fertilisation. You are often fishing in exactly the same pond and trying to resolve exactly the same problem. The LGA has been quite proactive about it. It might be useful.

Jo King: Indeed. We will take that back.

Chair: It is an important issue that you have rightly raised.

Q86 Richard Arkless: Training for magistrates is obviously crucial. Keeping up to date with new developments and the ability to move into more specialised roles is obviously crucial. I understand that, although at the moment it is not mandatory, there is an appraisal system. Perhaps your view may be that it is not robust enough. Could you speak about how you think the training could be delivered more effectively?

Jo King: Some training is mandatory. Initial training and training for specialisation on panels is mandatory. There is an authorisation system and process to ensure that magistrates are adequately trained before they sit in those specialisations. There is a lot of additional training, which is not mandatory and can cover a host of different aspects, including changes to legislation and sentencing guidelines and that sort of thing.

The mandatory training is largely very good, I would say, and magistrates are happy with it. The non-essential training is delivered in a number of different formats, often on a local basis. There can be variations in how that is delivered and in the quality of the training. We get very good support from the Judicial College, which provides lots of the mandatory training. We provide some of the consolidation and update training, which is delivered locally.

Magistrates would always welcome more training. As the NBCF, we would like to see clearer guidance on more of the training that is not currently mandatory being deemed essential, so that all magistrates are kept up to date with areas where there are very important changes to legislation and so on. There is a lot of other training that magistrates get involved in, or would like to get involved in, which might not directly impact on their courtroom role but is useful background information or contextual training.

Historically, we have not been very quick to grasp new technology for training. We are just starting to do distance training—e-learning and that sort of thing. I can see that being

very useful and expanding. There will always be a need for high-quality face-to-face training, particularly when we are looking at courtroom skills and managing a courtroom environment. It is difficult to see how that could be done on a distance or e-learning basis. If we had the budgets, no doubt we would have more and higher quality training.

Q87 Richard Arkless: What about the appraisal system?

Jo King: The appraisal system is currently under review. We would welcome it if that review were to happen more speedily than it seems to be happening at the moment. Magistrates are appraised every three years in each of the specialisations they sit in. They are appraised by their peers. It would be good if that were more robust and we felt more confident that we were identifying magistrates who had issues with competency that could be addressed through additional training. At the moment, the number of magistrates identified as needing some additional training is very low, and that gives us cause for concern. Statistically, it is likely that there will be more people who perhaps have not attended training, and there may be gaps in their skills. Support for magistrates through a robust appraisal system is something we very much support.

Q88 Richard Arkless: Should training remain the direct responsibility of the Judicial College?

Jo King: Yes, I think it should. The Judicial College does not just train magistrates; it trains all members of the judiciary. It has good oversight of the needs of the judiciary and an understanding of the particular requirements of judicial officeholders. It is a fairly small group of people on a fairly small budget, and there are inevitably some strains within that, but I would say that it is doing a good job.

Q89 Richard Arkless: We have touched on some court closures in north Wales, Mr Lloyd Ellis. In relation to training for magistrates in rural areas, is technology the key? Is this how we can perhaps deliver it more effectively in the future?

Alwyn Lloyd Ellis: I think that e-training would be very attractive to magistrates who struggle to get time off work. Coming to training means an extra day off in terms of their sittings. If their employer is limiting the number of days they get, that would be very attractive to them.

As far as north Wales is concerned, we are pretty flexible, in that the training, if it is mandatory—as Jo said, it is very well attended—may well be at the major centres. My experience is that magistrates will turn out to those sessions, rather than turning out to annual and biannual meetings. Attendance can be pretty low at times, even though it could be considered as a training forum as well. Invariably, we try to bring some topics to the table that are of interest to them. I think e-training is the way forward. It will assist in terms of the budget and in terms of the time having to be spent by the majority of magistrates—time they do not have. I do not think it is exclusive to rural areas. They are mobile, and they will make the effort.

Q90 John Howell: I want to look at the issue of sentencing powers. I want to start by looking at it in terms of how you retain cases in the magistrates court. We went to the US recently and saw a number of problem-solving courts. I wonder how you see the magistracy dealing with that and with supervising community orders, for example.

Jo King: There are a number of questions there. Problem-solving courts are a very interesting idea. At the moment, a working group is looking at how they may be applied to the criminal jurisdiction. We already have some element of problem-solving courts in the family court with family, drug and alcohol courts. They seem to be working very well. We need to allow the working group to look at the full implications of problem-solving courts in crime. They are resource-intensive, and they rely on other stakeholders, third-party providers and so on being able to provide resources to those courts. It is certainly an interesting development and one that, if we can get the right model, we would certainly support.

On retaining cases in the magistrates courts, we have recently had the changes to the allocation guidelines, which strengthen our ability to keep more serious but less complex cases within the magistrates courts—to hear the trial there and then to commit them to the Crown court for sentence if our sentencing powers are inadequate. I see that as very valuable in assisting us to relieve some of the pressure in the Crown court and make more use of the magistrates courts for cases that can be dealt with by a summary process.

Q91 Alex Chalk: As you know, six months is currently the statutory maximum that you can impose. The Criminal Justice Act 2003 said that it could be 12 months, but those provisions were never brought into force. Your position, I think, is that you are in favour of the magistrates having sentencing powers of up to 12 months. How can you be confident that it would not just lead to sentence inflation, and that community penalties would not end up as custodial penalties and short custodial sentences would not end up as longer custodial sentences?

Jo King: We have our sentencing guidelines, which we follow very carefully. When we deviate from them, we have to give reasons why. If we were able to hear more serious cases that have increased sentencing guidelines, I do not see that we would suddenly throw them out of the window and become custody happy. If you look at the youth court, for example, youth magistrates have the ability to sentence up to two years in detention. We do not see that magistrates have suddenly become committed to sending everybody into custody. In fact, for all magistrates, custody is very much a last resort. Provided that we have good, robust community orders, they will always be used in preference, where they are appropriate, to a custodial sentence.

Q92 Alex Chalk: Magistrates are well able to apply guidelines is the short answer.

Jo King: Absolutely. They are able to apply the guidelines.

Alex Chalk: I respectfully agree. Chair, I am so sorry, but I have to ask a health question in the House. May I be excused?

Chair: Of course.

Alex Chalk: Thank you very much.

Chair: We would not want to deny the Chamber.

Q93 John Howell: I was going to finish off by asking the same questions as Mr Chalk raised, as well as raising one myself, about retaining cases in the magistrates court and dealing with problem-solving courts.

Alwyn Lloyd Ellis: I have no experience whatsoever of problem-solving courts. I think that Jo has answered that point on my behalf.

On retaining cases, it is beneficial to the victim that cases are retained, because it means that they get justice a lot quicker than they would if matters were sent to the Crown court. Sometimes, for defendants, there are tactics in terms of deciding to go to the Crown court, hoping that the witness will not turn up because of delays, and cases will be dropped.

What can be done to retain cases in the magistrates court? That is a very difficult question to answer. My personal viewpoint is that defendants could perhaps be encouraged to do that by putting a cap on the costs they would face. The costs at the Crown court are a great deal more. If they know beforehand what they are going to have to pay by way of costs if they go to trial in the magistrates court, that may encourage them. Another idea is to have more credit for a guilty plea. They receive a third off at the moment. That is something for another day, I think. It might well open the floodgates for a guilty plea when the sentence, at the end of the day, does not really fit the means.

Jo King: Magistrates find it very frustrating when we accept jurisdiction for an either-way offence that is clearly suitable for a summary trial but the defendant elects Crown court trial. Obviously, the issue of the right to elect is not one for magistrates, but we are keen to see some offences where there is a very broad range of behaviours included within an either-way offence. For example, cultivation of drugs can range from a single cannabis plant on a windowsill through to a commercial enterprise with highly specialised equipment, abstraction of electricity and so on. We can accept jurisdiction on the single cannabis plant case, and the defendant can elect the Crown court. As Alwyn indicated, sometimes we feel that there are tactical reasons why somebody may do that. They are putting off the day when they have to face the consequences. There is a perception sometimes that the CPS may take a view that it is not in the interests of justice to pursue a Crown court trial for a very minor offence. Witnesses may not turn up. There will be inevitable delays because of the backlogs in the Crown court. That all means that the case may fall at the last hurdle.

If we could remove some of the low-level offences where the sentencing is clearly within our jurisdiction and make them summary-only offences, we could increase the number of cases that magistrates courts heard and reduce the number of very minor matters going before a Crown court and a jury, with all the expense and delays that that entails, as a result of election.

Q94 Chair: Coming back to some of the broader things, we talked about the digital roll-out. I think that is important. We talked about training. Some people have suggested that there should be a system of CPD points. Do you see merit in that?

Jo King: Along with the appraisal system, we are very open-minded about that—anything that encourages magistrates to undertake training and to keep up to date. A lot of magistrates undertake extra work or extra training on their own initiative. To recognise that would be good. Certainly, I see value in a continuous professional development system being rolled out.

Q95 Chair: I get the sense that the role of the bench chair has grown over the years. You have a leadership role. You have to do more to encourage others to be a public face. You

have to deal with training issues. Do you have any views about what support can or should be given to bench chairs specifically, either within their own jurisdiction area or otherwise?

Jo King: The role of the bench chairman has changed immeasurably over the last five years. Now, bench chairmen are very much key decision makers, and they are asked to be strategic thinkers. They do not just have pastoral support responsibilities for their benches, which are in many cases becoming much larger; they also have other business responsibilities outside the courtroom. The role has been overlooked slightly, and we need to recognise that some of the changes that are taking place are going to increase the burdens on bench chairmen even further. We need to look at how they are supported, and whether they need additional training over and above. We have a bench chairman's course, but there are perhaps strong arguments that bench chairmen should be supported with additional leadership training, and the resources in the administration teams that HMCTS provides us with to get basic secretarial functions carried out. It is about valuing those individuals, who are willing to put in what can often be almost a full-time job on an unpaid basis.

Chair: Yes, that is what I was thinking.

Alwyn Lloyd Ellis: It is difficult to adopt a single model because of the size of the benches.

Chair: I understand that.

Alwyn Lloyd Ellis: In Manchester there are over 1,000; I have 45 magistrates on my bench, so Manchester's requirements are obviously greater than mine.

Q96 Chair: They are very different, yes. I understand that. There is a final thing I am interested in. You have both been magistrates for a number of years. Was it helpful when you had members sitting on the old probation boards? Did you find that made for a better linkage between the magistracy and the broader criminal justice system? I pluck that out as an example, although it has changed now. Was there value in it?

Jo King: There is always value in liaison with external agencies and stakeholders. It can take many different forms. I am not sure that that model was any better than alternative models. At the moment, there is a feeling of disconnect between the community rehabilitation companies and magistrates. There are obviously some very good reasons for that. They are commercial companies, and we have to retreat occasionally into our independent role when we are dealing with profit-making organisations. We would not want CRCs lobbying us to promote certain sentencing options, for example.

Q97 Chair: What about things like restorative justice panels or youth referral panels?

Jo King: In terms of liaison with them?

Chair: Yes. Do you have expertise that can be brought to bear there, perhaps?

Jo King: One of my roles, as bench chairman in my area, is that I sit on scrutiny panels for the police. A lot of the out-of-court disposal work that the police are doing now is restorative justice. We see that operating with quite a lot of court diversion work. A lot of it started within the youth jurisdiction. One of the successes has been the work that youth

offending services do with young people, both before they get to a situation where they are at risk of going to court and once they are in that situation. A lot of work is happening with schools in preventing and diverting people from offending behaviour before they commit serious offences.

The youth offending panels work very closely with the police, and they divert people away from the court system wherever possible. That has to be applauded. It is essential to reduce the criminalisation of young people. I think that we can extend that into the adult jurisdiction. Work is being done at the lower level. Work is being done very successfully with some very serious offences post-sentence. We need to look very carefully at the use of restorative justice prior to sentencing and whether that affects the sentence that an individual receives.

Q98 Chair: Do you think that there is expertise in the magistracy that could be made more use of?

Jo King: I certainly think there is expertise within the magistracy that we could accommodate and use more in restorative justice. We need to look at the bigger picture and see how that fits in with sentencing and what we are doing with sentencing.

Q99 Chair: Indeed. On the final thing that I was going to ask about, we were recently in north America—in New York and Boston—looking at problem-solving courts. That requires a very high degree of input into the follow-up by the sentencer.

Jo King: It does.

Q100 Chair: Can you see a means whereby that could be adopted in the United Kingdom? Would there be some practical problems?

Jo King: There are some practical difficulties, particularly with continuity. It is more difficult for magistrates, because of the way they sit and their availability, to maintain continuity, although we do it within the family court, where it is needed. In the past—they are not so prevalent at the moment—we have overseen drug rehabilitation requirement orders. Often, there would be continuity on those. You would have the same panel of magistrates listed to sit on a three-monthly cycle so that you could achieve that.

There are ways of doing it. It complicates how we list and rota people, but that is not insurmountable. We need to look at where the evidence lies to see whether there is value in that sentence supervision and whether the outcomes are improved. Then we can find a way to accommodate it.

Chair: That is very helpful. Thank you both very much for your time and your evidence.