

Justice Committee

Oral evidence: [The role of the magistracy – follow up](#), HC 1654

Tuesday 27 November 2018

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Members present: Robert Neill (Chair); Janet Daby; Mr David Hanson; Gavin Newlands; Victoria Prentis; Ms Marie Rimmer.

Questions 1 - 75

Witnesses

[I](#): Duncan Webster JP, National Leadership Magistrate, Mrs Jo King JP, Co-Chair of the Magistrates' Engagement Group, and John Bache JP, Chair of the Magistrates Association.

[II](#): Penelope Gibbs, Director, Transform Justice, and Phil Bowen, Director, Centre for Justice Innovation.

Examination of witnesses

Witnesses: Duncan Webster, Mrs Jo King and John Bache.

Chair: Good morning, everyone. Welcome to our evidence session following up our previous report on the role of the magistracy. I welcome our witnesses. For those of you who are not familiar with the process, we have to start off with Committee members making a declaration of their interests. I am a non-practising barrister and consultant to a law firm.

Victoria Prentis: I am a non-practising barrister.

Q1 **Chair:** I will ask the panel to introduce themselves and the role that they play within the magistracy, of which we are aware, but those watching may not be.

Mrs King: My name is Jo King. I am a magistrate. I sit in Sussex Central Bench, and at the moment I have the role of the magistrate reform lead.

Duncan Webster: My name is Duncan Webster. I am the new national lead magistrate and have been a magistrate for 20-something years. I sit in North Yorkshire.

John Bache: I am John Bache. I am chairman of the Magistrates Association. I am from Cheshire and have been a magistrate since 1989.

Q2 **Chair:** Thank you all very much. You are all experienced magistrates, as we know, and some of you helped us directly or indirectly with the evidence to our previous inquiry. One of the things that struck us in that earlier inquiry was the evidence we had of the concern about low morale among magistrates. A number of reasons were posited as to why that was the case, as we will all remember, and I know it has been discussed since. What is your view on the current state of morale among the magistracy now that we have moved on a bit of time from that report?

Mrs King: Perhaps I could start. There was a survey of magistrates done at the end of last year that was designed partly to understand better the issues around morale. I think it is fair to say there was a mixed picture. Magistrates reported very high satisfaction with certain aspects of the role, particularly giving back to the community and the work that they do in court. But they also expressed frustrations with certain parts of the process—delays in courts, inefficiencies in court hearings, frustrations with CPS disclosure issues and suchlike.

Certainly, at the moment, that picture is maintained. There are high degrees of satisfaction with some areas but still the same frustrations with other parts of the role. We are also in an environment where there is a lot of change, which is causing some disquiet for magistrates because change is a difficult process to bring people through. That is certainly true of the reform programme.

Q3 **Chair:** There was a suggestion that part of that change problem was because change appeared to be done to magistrates rather than with



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them, and that it was a rather top-down process and they were not much involved. Has that changed?

Mrs King: A series of jurisdictional documents were produced by the senior judiciary with regard to reform earlier this year. They were the Judicial Ways of Working documents. They were sent out to all judiciary, and everybody was invited to read them and respond to those that were relevant to their particular areas of work. In addition, there were 38 visits around England and Wales in which the senior judiciary and I took part, at which magistrates were present.

Q4 **Chair:** Are we talking about the presiding judges?

Mrs King: There were some where the deputy senior presiding judge and other leadership judges attended to talk about reform, and to gather views. The combination of the responses to those visits and the survey meant that views on reform were received from either individuals or bodies representing 10,000 judicial office holders. There is certainly consultation taking place.

We are, of course, dealing with reform, which is an iterative process, to use HMCTS's words, which means that it is quite difficult to articulate what the end state will be. It is a programme that is being developed and built on. As each level is tested, the next level is developed.

Q5 **Chair:** Do you actually know where you are going?

Mrs King: There is a framework, and HMCTS has certainly set out where it expects us to be in terms of digitalisation, increased use of video and so on in the courts. What the impact will be for magistrates is slightly more difficult to anticipate at this point.

Chair: It is unclear.

Mrs King: So, that leads to uncertainty, and uncertainty leads to issues of low morale.

Chair: I understand that entirely.

Duncan Webster: One of the indicators of low morale was the high resignation rate of the magistracy for a while. In one year, quite a significant number of magistrates resigned. I think a lot of that was to do with the introduction of technology into the courtroom that they were not up to speed with at that time. In some areas—in fact nationally—the training for magistrates in the new technology left something to be desired, and therefore their confidence in the technology perhaps was not as high as it should be. All those things have now been overcome, and therefore we do not have that high resignation rate now. If you take resignation rates as an indicator of low morale, I think it is probably on the up.

Q6 **Chair:** Mrs King talked about the visits done by the judiciary. What about the engagement by officials of HMCTS, who are sometimes the people



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who have the ability to make your life more or less comfortable on a day-to-day basis?

John Bache: There is a group called the Magistrates' Engagement Group, which is jointly chaired by Jo and a district judge. That is where HMCTS presents to us its ideas on reforms and listens to our comments. I think that is appreciated because the magistrates feel that, via that group, they have some input into the reform. There are groups for different areas. There is family, magistrates and the High Court as well. They are involving the users at the coalface.

Mrs King: There are also magistrates on virtually all, if not all, the individual programme working groups involved with specific projects to do with reform.

Q7 **Chair:** You are involved, but do you get a sense that your concerns are taken on board and acted on, as opposed to being politely listened to?

Mrs King: I would say we are very, very well supported by the senior judiciary.

Q8 **Chair:** What about HMCTS?

Mrs King: The nature of reform and our role means that it is not really for us to negotiate directly with HMCTS. We have to respect the constitutional divide between ourselves. Our concerns are being fed through the Judicial Engagement Groups, of which the Magistrates' Engagement Group is one, through to the senior judiciary, who will be having that dialogue with HMCTS. I know there are a number of key areas that all judicial holders are very concerned that we uphold, such as open justice and access to justice.

Q9 **Chair:** Mr Bache, do you think membership morale is better now or not?

John Bache: I think it is improving, for a number of reasons; yes, I do. The big thing that affects morale is obviously court closures, and they are ultimately decided by HMCTS. There has to be a balance between efficiency and justice, and where that balance lies is the difficult question. But court closures have a big effect on the morale of individual magistrates, and a lot of magistrates feel that local justice has effectively disappeared, which is a big shame and affects morale, obviously. You want to support your local community and work for your local community, but, on the other hand, if it is a more efficient system at the end of it, that can be justified to a certain extent. It is a question of balance really.

Q10 **Chair:** I understand. Mr Webster, you can probably help me on this. There have been changes to the leadership structure. You personify that in a sense because you have moved away from the National Bench Chairmen's Forum, which was an elected body, to an appointed role, which is you as the lead magistrates with the Magistrates Leadership Executive now.



Duncan Webster: That is right.

Chair: Can you give me a sense as to how that works in practice and what your relationship is, for example with Mr Bache and his association, and with the rest of the magistracy, and indeed with the Ministry of Justice and HMCTS? What additionality does the new structure bring?

Duncan Webster: I have a very positive view of those changes that were introduced on 1 October. First, they align the leadership structures of the magistracy with the rest of the judiciary. I think the process has the support of the magistracy. For example, for my position of national leadership magistrate, there were a good number of applicants, and there were some strong applicants as well for the post of the regional leadership. I think the magistracy is engaged with the process. People put themselves forward for those roles.

The terms of reference for the Magistrates Leadership Executive give a very strong mandate to those officers to engage with the local magistracy, to have strategic relationships and build good relationships with the senior judiciary. We act through a Magistrates' Liaison Group. The Magistrates Association and the Chief Magistrate's Office are involved in that, together with HMCTS officials. That is where it all comes together formally, but, informally, there is a very good working relationship between the MLE, the Magistrates Association and the Chief Magistrate's Office.

Q11 **Chair:** What is your take on it, Mr Bache?

John Bache: I would agree with that. The most senior decision-making group as far as the judiciary is concerned is the Magistrates' Liaison Group, which is a senior presiding judge, the Chief Magistrate, the chairman of the MA and the chairman of the MLE. That is the group that makes the final decision—well, technically the Lord Chief Justice does, but on the recommendation of the Magistrates' Liaison Group. We get on very well. We are all trying to achieve the same thing, which is an efficient but fair justice system, with emphasis on the word "fair." We are all trying to do the same thing. We are not fighting amongst each other in any way.

Q12 **Chair:** Has it helped the lines of communications that we were talking about that were a bit of a problem, or has it made no difference?

John Bache: I think it has helped, because the four of us know each other very well and we see each other an awful lot. The Magistrates' Liaison Group, the MA, the SPJ and the Chief Magistrate meet very frequently. When there are things that need discussing—for example, the age at which magistrates should retire—we have a formal discussion about that in MLE and come up with a decision with which we all agree.

Duncan Webster: The role that MLE has, in particular, is to support bench chairmen. They are the locally elected leaders of the magistracy, and our role is to support them in giving them timely and relevant information so that they can communicate that to their benches. If we



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can support bench chairmen to be more effective in that role, hopefully the greater church of the magistracy will be better informed. Communications with up to 15,000 part-time people is a challenge in any event. There will be some who will be very interested; others will take a more casual interest. It is trying to get that balance right.

Q13 **Chair:** I understand. Mrs King?

Mrs King: I am not sure I am best placed to comment because I was very heavily involved in signing the new structure.

Q14 **Chair:** You would prefer not to; that is fair enough. The other thing that was picked up in our report, which had some impact on morale, was getting the balance right between lay magistrates and the role of the district judges in the sense that sometimes the cases were cherry-picked and therefore there was a bit of frustration about the sort of court work that the lay justices got to do as opposed to the DJs. Has that balance changed? What is the relationship like now?

John Bache: I think that is very much a problem of the past. We are working together very well. The Chief Magistrate and I have had discussions about that. Basically, the district judges and magistrates have the same powers, but there are cases that are far more appropriate for district judges. They do all the work that magistrates do as well. Occasionally, things go wrong, and a high-profile case is managed by the district judge, but there is almost always a reason why that happens. I think that is very much a thing of the past. That, in itself, has increased morale, because magistrates now enjoy working with district judges. They sometimes sit with magistrates and everybody is encouraging a good relationship. It is a symbiotic relationship. We are both there; we are both needed; and we are working together a lot better than was the case some years ago.

Q15 **Chair:** More use of mixed benches was something that both your association and our report had advocated.

John Bache: That is right.

Mrs King: I would certainly agree that the relationship in general between district judges and the magistracy is very strong. As you have heard, we have an excellent relationship with the Chief Magistrate. On benches, district judges are often to be found helping both formally and informally train magistrates. There are, of course, some cases that are particularly complex or very sensitive, and it is right that they are reserved to a district judge for case management and trial. But it is certainly not the case that all sensitive cases or cases in which the public have a lot of interest automatically go to district judges, and we do see benches doing those fairly routinely, particularly here in London where there is a high proportion of those types of cases. I think that is a good news story.



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Duncan Webster: There are very clear criteria for it, and I think the lay bench totally appreciates that. The old arguments and divisions of the past are no longer.

Chair: That is unanimity on progress; that is good.

Q16 **Janet Daby:** You have touched on a couple of my points already, but I will see where we go with these. You have already mentioned there being around 15,000 part-time magistrates. Do you think this is enough for the work that is at hand?

John Bache: No. We need to recruit more magistrates. There are not sufficient magistrates. They are sitting now on benches of two quite frequently, including for trials, which is not as it should be and obviously has potential problems. We need to increase the number of magistrates. The number might be correct throughout the whole country, but in an individual bench there are often too few magistrates. That is generally recognised, and it does not help morale.

There are two ways of increasing the numbers. The first, and by far the best way, is to increase recruitment; we particularly want to increase recruitment. We want to improve diversity within the magistracy. At the moment, there are too many older magistrates.

The gender balance is about right. It is about 46% men and 54% women, so that is fine.

The ethnicity—BAME—is a lot better than it used to be. I think the latest figure is about 11%, which is not that far off the national average.

The big problem is age. What we want to do is encourage employers to let younger people off work to be a magistrate. We really are working on that, and we can come back to that in a minute.

The other thing we could do, of course, is to change the age of retirement. At the moment you have to retire at 70. The Magistrates Association passed a motion last month saying that that should be looked at again. We are looking at that in the Magistrates' Liaison Group next month. We could increase the age across the board to, say, 72, or probably a better plan, alternatively, is to do it according to need. For instance, in the family court, there is a real problem with a shortage of magistrates. If magistrates could be allowed to continue for a year or two, if necessary, then that might be the answer. The problem is particularly with presiding justices who have a lot of experience but are coming up to 70.

The ideal way to increase numbers is to increase younger people coming into the magistracy, and we need to encourage employers to ensure that they let people off work to become magistrates. There are obviously benefits to employers through having employees who are magistrates, such as the ability to make a judgment, the ability to listen to different arguments, to weigh evidence and to make difficult decisions, and



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communication skills. There are a lot of advantages to an employer from having an employee who is a magistrate, but we really need to emphasise that, to encourage more young people to become magistrates.

Q17 Janet Daby: That is very good. The Ministry of Justice intends to reduce by about half the number of advisory committees and introduce a national recruitment process. Do you think that is a positive development?

John Bache: I think it is. The number of advisory committees was a bit high. It is going to be reduced, as you say. The important thing about that is that it is going to be a national strategy, so each advisory committee is going to be working on the same basis as every other one. The advisory committees are going to be divided into two: those for recruitment and those for discipline. Not many magistrates get into trouble, but a few do, and hopefully there will be a certain amount of experience within each region with those—I cannot remember the word; it is not discipline. I think it is going to be positive.

Mrs King: Since the Committee reported in 2016, HMCTS and the Judicial Office, with strong support from the magistracy, have worked very hard on looking at improving recruitment. We had a system where many of those advisory committees were operating slightly different systems, which it was felt was wrong. Anyone applying to the magistracy should be confident they are applying to a consistent process and they are judged by consistent standards. That is behind some of the drive to reduce the number of advisory committees so that there is better oversight and better co-ordination. I think a tremendous amount of work has been done that is going to be very positive on recruitment and streamlining and speeding up the process. The Committee expressed concern in the last report about the length of time it takes to recruit. Obviously, that causes difficulties with some applicants, who may well give up before they get to the end of that process. So really positive steps have been taken to improve the recruitment process, which I think we should welcome.

In addition to the age question that my colleague has mentioned, the other area of diversity that has become a little overlooked recently, particularly when we have had very low levels of recruitment, is social diversity. We need to ensure that we are recruiting from as broad a range of people as possible. There is still a tendency for the public to think of magistrates as being perhaps professional people, who are retired, and that is a very outdated view of magistrates. We really need to support and encourage those people in what perhaps might have been called white or blue-collar jobs, who in my experience make excellent magistrates.

The issue around employers releasing them is a very valid one for all backgrounds, but I would be particularly keen to see the social diversity of the magistracy improve.



Q18 **Janet Daby:** Is there a strategy around this to do this?

Mrs King: We are in the fairly early stages of some work to try to address that. HMCTS and the Judicial Office are going out to talk to some non-standard groups—for example, a housing association, not just in terms of their employees but people who are in housing association accommodation—raising awareness of the magistracy within the non-traditional groups so that people can identify themselves as having that potential. We have suffered quite badly from the lack of any real awareness-raising among the public, and, after all, that is the pool of candidates from which we are going to be drawn. If the general population do not identify themselves as potential magistrates, then however good our recruitment process is, we are going to be dealing with a very limited pool of candidates. That wider engagement is absolutely vital to change that demographic.

Duncan Webster: We are also piloting or trying a new deployment protocol; in other words, we are going to be looking at the numbers needs of the magistracy for a longer period. Rather than doing it on an annual basis, we are going to do it on a two-yearly basis to try to plan more effectively for the numbers of magistrates that we are going to need.

One of the suggestions that has been put forward in the past, particularly in trying to get over the issue of employers releasing people, is to make it a legal requirement for employers to release staff for a public service like the magistracy, particularly as they do for, say, jurors. I do not know whether that would find favour in certain quarters. Given that everyone says the magistracy completes 95% of criminal cases, it is an essential part of the judicial system. If it is that essential, why not support that essential need with the status of some legislation behind it?

Janet Daby: Thank you for that.

Q19 **Ms Marie Rimmer:** Can you explain to us why it is important for magistrates to continue with training after the initial induction stage, please?

Mrs King: Magistrates' training throughout their careers is absolutely essential. We work in a very dynamic environment in which all sorts of aspects of our work change constantly. We have new legislation, changes to sentencing guidelines and so on. I would say that a commitment to continuing training is required of all magistrates, not just the formal training that the Judicial Office offers but also keeping up to date with changes in the society in which we work. We have had a recent update to the "Equal Treatment Bench Book", for example, which is not something on which magistrates will be formally trained but is presented in a very accessible way so that people can self-learn from it. I think that is widely seen as a very positive move.

Duncan Webster: My view would be that magistrates' training certainly needs to be reprioritised at a higher level than it currently sits. The



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annual report on training indicates that the minimum training was delivered across the country, but I have two observations on that which are perhaps relevant.

Certainly, there are the considerable and continual changes in law practice and procedure, and the fact that magistrates are learning to do their work on a minimum number of sittings of 26. In any other kind of working environment you would have far more practice at it than 26 half days a year. You also have to recognise that magistrates are doing the same job as district judges. District judges are doing the job daily, whereas magistrates are doing it for 26 half days a year as a minimum.

I think training should be reprioritised. There should be an increase in the minimum training requirement to tie in now with the new appraisal scheme, where a presiding justice is going to be appraised every two years. You should really extend the minimum of six hours every three years to six hours every two years to bring it in line with the appraisal cycle.

Much of the training is currently delivered in courthouse accommodation. As that estate reduces, many of the buildings are not fit to deliver training. I think the training budget needs to be looked at by HMCTS in terms of the amount of training that is delivered. I do not think that meeting the minimum requirement is sufficient. Magistrates like to be competent. Being competent gives them confidence, and confidence equals morale.

John Bache: I think the public have a right to expect magistrates to be up to date as well. At the end of the day, magistrates can put people in prison for six months, or two years for children, and they can take people's children away from them. That is quite a powerful thing to do. I think the public have a right to ensure that magistrates are up to date. Magistrates want to keep up to date as well.

I would like to comment on what Duncan has just said. The 26 days is the minimum number of sittings. A lot of magistrates do an awful lot more than 26 sittings per year, but that is the minimum number.

Mrs King: We have a new appraisal system, and it will be very interesting to see whether that is effective in identifying those magistrates who are not keeping up to date and competent.

Q20 **Ms Marie Rimmer:** Is there sufficient funding for magistrates to get the ongoing training they need? In our last report we asked for more funding because training was seen as inadequate. Do you think there is sufficient funding to provide the training?

Mrs King: The amount spent per head has decreased.

Duncan Webster: Massively.

Q21 **Ms Marie Rimmer:** Increased.



Mrs King: Decreased.

Q22 **Ms Marie Rimmer:** It went from £72 to £30.

Mrs King: I think it is now around £26 per head per year, which is a concern. I will need to check that because I do not have the exact figures in front of me at the moment. If it is any different from that, I will let the Committee know.

Q23 **Ms Marie Rimmer:** Would either of you like to comment, or is that sufficient for you?

Duncan Webster: I think that supports the comment I made earlier that training needs to be reprioritised, both financially and in the line of how we deliver training and what we deliver training on.

John Bache: The other thing to mention briefly about training is that there is essential training—which, as it says, is essential, and that has to be delivered—but there is also an awful lot of training that is not essential but is still very relevant to magistrates. The Magistrates Association in particular could contribute to that, but, understandably, if magistrates finish a day at work and then go to evening training, it is not unrealistic for them to expect at least coffee and biscuits and their travelling expenses. That is not unreasonable, I do not think.

Q24 **Ms Marie Rimmer:** The previous Committee's report set out the complex structure of training responsibilities for the magistracy, which is supervised by the Judicial College. Are the new training, approvals, authorisations and appraisals committees working more effectively in overseeing magistrates' training than the multiple committees under the previous structure? Do you think they are working more effectively?

John Bache: It is early days yet. It has only been in existence since April. One problem they have had is recruiting people to be on the JTAAACs and FTAAACs—we cannot keep on saying all those authorisations, approvals and so on, so we just call them JTAACs and FTAACs. They had difficulty recruiting people because the workload is quite excessive.

The forms for people to fill in are a lot more sensible than they were, but we have not really had time yet to analyse the efficacy of the changes.

Duncan Webster: There is a feeling from bench chairmen that the JTAACs, as we call them, and FTAACs are in some way disconnected from the running of the benches. That may be an issue. The JTAAACs and FTAAACs run in larger areas than perhaps the benches do. I think that can be overcome.

There is a concern, though, in looking to develop individuals. Appraisals should also develop the organisation—i.e. the performance of the justice system. Where you quite get that connect with the new structure has yet to be teased out properly, I think. I have some ideas about that, but it is



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still embryonic, and we need to see how these JTAAACs and FTAAACs perform. They potentially have a huge job to do as well because we are short of presiding justices in a lot of the country. They have a lot of new magistrates to recruit, train, appraise and get sitting in court. They have a lot on their plate at the moment.

Q25 Ms Marie Rimmer: Have you had sufficient time to spot any disadvantages in the new system compared with the old one? Have you had enough time to comment on that?

Mrs King: I think the relationship with the bench chairman is different, and that needs more work to be done. The JTAAACs and FTAAACs operate on a larger geographical basis than the benches in most areas, whereas in the old system the training committees were bench based. That relationship is one that is still in its formative stages. We need to see how to improve that dialogue between them.

Q26 Ms Marie Rimmer: Have you spotted any disadvantages that you would like to comment on yet?

John Bache: Certainly, recruitment to the committees has been a real problem. The workload is quite excessive, but other than that I do not think so.

Q27 Victoria Prentis: I would like to talk about court closures. I should start by saying that I represent both Bicester mags, which closed several years ago, and Banbury mags, which is earmarked to close in February. This is something in which I have always taken a very close interest.

Earlier you touched on recruitment and court closures being connected. I know that we are likely to lose five magistrates locally, with Banbury closing. Is that something that is repeated across the country?

Mrs King: It is fair to say that, where courts have closed, for some individual magistrates the journey to the receiving court, if I can put it that way, may be just too far for them. I do not have figures for it, but, anecdotally, I am aware that most courts that have closed have lost some magistrates on the back of that closure.

Q28 Victoria Prentis: Are you worried about diversity? My concern is that there is a large area of rural middle England—Northamptonshire, Warwickshire and North Oxfordshire—where we will not be recruiting any longer.

Mrs King: Yes. Again, there are no official statistics to back this up, but from my experience—and I sit in Brighton, which covers Sussex Central, which includes Brighton & Hove but also half of East Sussex, which is a very rural and dispersed community—we had a court in Lewes until 2011. I have noticed that a very high proportion of the recruits in recent years come from the Brighton area and very few from areas such as Wadhurst, which is right in the extremes of our area and it would take an hour and a half to get to Brighton. In fact, I cannot think of any recently.



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Common sense tells us that, if courts are reduced and become more centrally located in large urban areas, it is likely that the role of the magistrate will be less attractive to those who live a long distance from the court. These are unpaid roles. We already have magistrates in some areas who travel for two hours to get to their local court.

Q29 Victoria Prentis: The previous Committee heard some very powerful evidence from Wales.

Mrs King: Indeed; I was here with my colleague from Wales, and I recall that. I have frequent contact with colleagues in Wales, but it is not just Wales. There are other areas of the country where similar problems exist.

John Bache: There is a big difference between rural and urban, because the cities are less of a problem in that respect. In all the shire counties the distances are very big, and of course they are equally big for the defendants, witnesses and the victims.

Q30 Victoria Prentis: Before we move on to users, as it were, did magistrates feel that they were adequately consulted or that their responses to the consultation process were heard?

Duncan Webster: Certainly, they had the opportunity to consult as a member of the public would. They were given the consultation documents. They could write in responses. Tactically now, the magistracy would rather write individual responses because we are told that numbers do count. There is no point in one bench chairman writing in for 200 magistrates because it is just considered to be one consultation response.

The extent to which they are listened to—

Q31 Victoria Prentis: With the last round of court closures, all bar one were closed, despite our responses.

Duncan Webster: Yes. I am in North Yorkshire and Northallerton. There was huge public concern about the closure of that courthouse. Nearly every magistrate on the bench wrote. County councils wrote, as did district councils, parish councils and members of the public.

Q32 Victoria Prentis: Even MPs got involved.

Duncan Webster: Yes, they did. There were over 800 responses. It was one of the largest responses out of that round of closures, yet Northallerton is closing.

Mrs King: I think it is very important that we get the response to the other consultation that took place at the same time as the Northallerton and Banbury ones. Eight courts were proposed for closure. We have had the response to those consultations, but we have yet to have the response to the "Fit for the future" consultation, which HMCTS launched on the same day. That is really about how future court closures will be decided. I think magistrates and other judiciary, as well as the public, will



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be very much looking forward to seeing that response and seeing on what basis decisions may be taken in the future.

- Q33 **Victoria Prentis:** Can we try to move on? I know it is difficult for all of us; I think we are coming from the same place on this. Earlier, you reminded us that what we are talking about is access to justice for often the most vulnerable people in society. It is not just the defendant but the victim and the witnesses. Of course, we are talking about magistrates and how difficult it is for them to travel to court, but I think all of us agree that we are really worried about the other people who do not necessarily have cars and the ability to travel.

Are there things we can do? Can we consider mobile magistrates courts, for example? I should say that I took two of my magistrates to see the Minister yesterday, to ask if we could pilot such a scheme in Banbury for the most vulnerable court users—specifically youth courts and family courts, as well as a bit of some other courts. Are you happy for that sort of thing to be explored?

Mrs King: There have been various attempts and various terms for alternative provision of pop-up courts. We have some examples. Tunbridge Wells, fairly close to me, is one where it is working quite well, but that is not for crime. Then we have other areas such as Anglesey, where it has been very difficult for that court to work. I think there are differences between crime and family. With family, there are generally fewer security concerns, for example.

- Q34 **Victoria Prentis:** Let me push you on that. With the youth system, truthfully, very few people get sentenced to custody at the end of a hearing.

Mrs King: Indeed.

- Q35 **Victoria Prentis:** Is that something you would push back on?

Mrs King: No. I would say that youths are a particularly important area that we need to look at, and I do not think we have devoted enough time to looking at them within the criminal justice system. I am very concerned about the time and distances that some youths have to travel to get to court, both those on bail and on postal requisition, but also very importantly those that have been remanded in custody, who often have to travel extremely long distances in prison vans that are completely unsuitable for them. In my view, it makes perfect sense to try to take the court to them rather than them to the court.

John Bache: There was talk some years ago of a justice bus. It was almost a joke, but in fact I think there is a very good argument for it. I do not see why not. As Jo has just said, the court goes to the individual rather than the individual to the court. It cannot be beyond the wit of man. At the end of the day, that is what judges were doing centuries ago when they were going out on circuit. The High Court judges still do.



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Q36 **Victoria Prentis:** Exactly, and in the coronial system as well. Would you support my pilot, even sometimes for crime, if we can work the security aspect?

John Bache: Yes.

Mrs King: We would certainly look to trialling something like that.

Q37 **Victoria Prentis:** Is it something that you would be interested in looking at, Mr Webster?

Duncan Webster: Yes. I would say cautiously, because they have been tried and it is limiting in the amount of work. Some of that work is now going to what we call the single justice procedure, which is being held in rooms without the defendant or witnesses being called.

We also have to look to the reform programme and the advent of better technology. I know for example—I do not mean to keep harping back to North Yorkshire—that one of the conditions of the closure of Northallerton was that some videolink facility is available so that vulnerable witnesses and people—

Q38 **Victoria Prentis:** That could be placed in CABs, for example, in towns such as Northallerton and Banbury.

Duncan Webster: Yes, and then it is beamed to a more central courthouse so that witnesses, vulnerable people and victims do not necessarily have to travel to the courthouse to give their evidence. It could be done somewhere more local.

Q39 **Victoria Prentis:** One of my big concerns is that road traffic hearings are now primarily to do with disqualification, if we are honest. I am concerned that people are effectively being set up to fail if they cannot walk home afterwards or have accessible public transport home afterwards. Would you be concerned about that sort of case being heard locally?

Duncan Webster: A lot of disqualifications are now dealt with through the single justice procedure, and people can be disqualified in their absence. I have concerns about that in terms of setting people up to fail, because they might not know that they have been disqualified. The onus is on them to contact the court afterwards to check the outcome of their case, but we know that people do not do that. They are then, in effect, caught for driving whilst disqualified, which is an incredibly serious offence for which you can go to prison—and there they are, not knowing. Of course, that means they are then uninsured as well, so it does have consequences.

Yes, most people will come to court, if for no other reason than to show cause why they should not be disqualified. Of course, if their application fails, they then have to make their own arrangements to get home. Yes, you are right.



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Q40 **Chair:** But they would be on notice, would they not, in a sense?

Duncan Webster: They would; yes. I hope they would come prepared for that eventuality.

Q41 **David Hanson:** The Prime Minister says she wants to see problem-solving courts. Caroline Dinenage, the then Minister in June 2016, supported a working group recommendation. This Committee has supported the potential. Has anything happened?

Duncan Webster: No.

Q42 **David Hanson:** Why?

Duncan Webster: The problem-solving initiative that gained momentum under Mr Gove has not been resurrected.

Q43 **David Hanson:** Should it be?

John Bache: Yes, I think it should, definitely.

Duncan Webster: Magistrates have taken some of this problem-solving work into their own hands, actually. For example, in Northamptonshire there is currently a model being used where the magistrates get involved with the youths via the YOT teams. They talk to the young people about their referral orders. It is happening informally where magistrates want to be involved, but in terms of any national pilots it has not seen the light of day.

Q44 **David Hanson:** Have you made any further representations to Government about it happening since June 2016?

Duncan Webster: The MLE has not, no.

John Bache: It is on the statute book, but it has not actually been enacted. If magistrates could monitor people post sentence, that would be incredibly beneficial because it would give us more confidence in community sentences; it would give the person being sentenced the idea that the magistrates were still keeping an eye on them; and it would be to everybody's benefit. It is on the statute book, but it has not been enacted.

As Duncan says, there is an initiative in Northamptonshire that is specifically with youths and that is actually being presented at a youth justice conference today. That shows a lot of potential because magistrates would see young people post sentence every six weeks or whatever, ensuring that they are making progress. That would give us more confidence and would definitely, in my opinion, help the defendant as well.

Q45 **David Hanson:** You have mentioned community sentencing. Where are we with confidence from magistrates in the exercise of community penalties?



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John Bache: Very recently, we have been allowed to communicate directly with the community rehabilitation companies. There was a time when we were very heavily discouraged from having direct contact. That meant that we were sentencing but we were not entirely sure what we were sentencing to, which did not give us great confidence in the community sentences. That has now been rectified. The senior presiding judge is now encouraging magistrates to contact directly the community rehabilitation companies, and that will give us more confidence.

Q46 **David Hanson:** Let me phrase the question in another way. The Government have put great store on reducing the number of people going to prison for under 12 months, and certainly for under six months. To do that, they need to have an increase in the number of community-based penalties issued by magistrates or other courts. My question is: is that likely to happen, given the level of confidence or arrangements you currently have?

Mrs King: The Committee heard from the Lord Chief Justice last week on this matter as well, and I would support his comments. Transforming rehabilitation has been problematic in many ways. I think there has been a drop-off in confidence in community sentences. The one-step removal of the community rehabilitation companies from magistrates has not helped. There has been a lot of concern around whether breaches are being brought appropriately and in a timely manner. We have heard many anecdotal concerns from magistrates about very high levels of breaches before people are being brought back.

It is absolutely essential that we have confidence in those community sentences so that they can be used as a really viable alternative to custody.

Q47 **David Hanson:** What needs to change, if anything?

Mrs King: We are in a process at the moment. The Government have consulted on transforming rehabilitation. It was a very broad consultation. I do not believe it has reported yet. We need to look at the way the contracts are let for those companies, the supervision of them and the reporting back to benches. We need to reinvigorate and make sure that magistrates are confident when they impose a community sentence that it is a robust sentence, which meets the objectives that they identified for that particular sentence, and that we get adequate feedback from the CRCs and the national probation service on how an individual is performing on that order so that we can use them appropriately.

Q48 **David Hanson:** Finally, do you have any views on giving magistrates greater powers to increase the length of sentence to 12 months?

John Bache: We are in favour of that. Again, it is on the statute book, but it has not actually been enacted. If magistrates had 12-month sentencing powers, that would obviously relieve the pressure on the Crown courts to a very large extent. At the moment, the Crown courts



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are dealing with a lot of cases that really should be in the magistrates courts, but for whatever reason they are being dealt with in the Crown court.

I think the Government are worried that the number of people in custody would increase. I do not think there is any evidence for that at all. When magistrates' powers were increased from six months to two years in the youth court, the number of young people in custody decreased very dramatically, from about 3,500 to about 900.

Q49 David Hanson: Have you made representations recently to the Government to enact this power?

John Bache: The problem is that it has been on the book since 2003. Eventually you wonder if it is ever going to happen. We would very much encourage it to happen, but that is up to the Government and not up to us.

Duncan Webster: I think that, on the last occasion here, Mr Vara said to you that he would certainly indicate that he would look at pilot areas.

Q50 David Hanson: I think he has had two jobs since then.

Duncan Webster: Yes. I am certainly not aware of any pilots. Also, they said that the MOJ would undertake some modelling of the potential impact on the prison population, but I am not aware of any modelling that has taken place either.

What was also said last time was that the new allocation guidelines had not in fact bedded in. Well, they have well and truly been bedded in now, and the national statistics indicate something along the lines of nearly 80% of either way cases are retained in the magistrates court. Certainly, 20% of them find their way to the Crown court. What I do not know is the statistics of that 20% and how many of them would receive a sentence that could be imposed by magistrates if they had the 12 months for a single offence.

Q51 David Hanson: In summary, because time is pressing, basically we should ask the Government about problem-solving introduction; about introducing community sentence strengthening, and when the 12 months is going to be enacted.

Mrs King: I think justice has taken a fairly low profile in terms of priorities at the moment, which is very disappointing for us. We know that there are other things on the Government's mind, but justice is extremely important.

Duncan Webster: The Government have also said that they would look at what other opportunities there would be available to expand the role of the magistracy. As far as I am aware, that has really hit the buffers as well. On the last occasion, adjudications on prison discipline were mentioned, and that is something that the magistracy is still interested



in. It is obviously also interested in continuing to look at a more extensive role for the magistracy within the civil jurisdiction. That is perhaps a longer-term strategy, but it is something that I know magistrates could be interested in.

Q52 Ms Marie Rimmer: After taking extensive evidence, the previous Committee concluded that the magistracy was facing a range of unresolved issues relating to its role and its workload. The Government have not taken any steps to develop a national strategy for the magistracy that was put forward by us.

We understand that there is now a judicially-led working group developing a national strategy for the magistracy but that the Ministry of Justice is not involved in it. Could you tell us what the strategy is hoping to achieve and whether you think the lack of Government involvement will hold back its ambitions?

Mrs King: I was actually involved in starting that strategy. Duncan has taken over the chair of that. It came from a realisation that there was not a great deal of co-ordination between all the different bodies that were doing work on magistrates. Initially, it was to try to bring together under one umbrella the work that was being done on recruitment, advisory committees and so on and so forth, so that there was an oversight process and we could identify the gaps, and then work with the agencies, whoever they may be, but in particular the MOJ, in resolving some of those. I was involved in setting up that strategy group until I handed over the leadership role to Duncan at the beginning of October. In terms of a future look, Duncan may be best placed to comment.

Duncan Webster: The Magistrates Leadership Executive is leading on the development of this strategy now. We are working with the Magistrates Association and the Chief Magistrate's Office in the development of it. In October of this year, we issued our first discussion paper to the magistracy as a whole. We are now seeking feedback and views on that.

The strategy will basically set out a three-year plan. It is a plan of action to develop the magistracy, keep it relevant and improve it. That plan will be driven by the magistracy, and we will involve the MOJ on any matters that we wish to progress with them that require their involvement. We will work alongside them. There will be some things that we can probably do ourselves, but on other things, yes, we will need MOJ involvement. We hope that they will contribute positively to that.

Q53 Ms Marie Rimmer: Is the lack of Government involvement holding back any of your ambitions though? Would you be much more ambitious? Could we get more?

Duncan Webster: The one area that is holding us back is the availability of resources, not only in terms of just more funding for more initiatives, but the MOJ and the HMCTS are losing a lot of staff. That is through both the reform programme, which is one area, but also the setting up of



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service centres. A lot of staff are leaving, and the initiatives that we want to take forward need the support and the resources of HMCTS staff. Things have to wait in a queue until they have staff available to support us in delivering some of these initiatives.

Q54 **Ms Marie Rimmer:** So these are not posts being reduced; this is people just leaving.

Duncan Webster: Both.

Mrs King: Under reform, the HMCTS staff will reduce from 16,000 to 10,000, and they will be working in a different way. The courts and tribunal service centres will be centres of administration. That process has started of people moving into centralised administration hubs. Just as with magistrates, change is very difficult for the staff, so there have been quite a high number of people leaving for various reasons. Some of them have been replaced on a temporary basis; others have not.

Q55 **Ms Marie Rimmer:** So it is the lack of resources. Are the resources going to be available? If the posts and that work have gone it is not going to be available, but if people have left and the posts have not been deleted you can hopefully get that in the future. Is that the case? Is it holding back your ambition? Would you be much more ambitious?

Duncan Webster: I do not think there is a lack of willingness for HMCTS to support us in what we want to achieve and certainly work with us. Their priorities may not be our priorities.

Mrs King: I think there are some areas that the Committee identified on the last occasion. For example, we have been pushing for a review of magistrates' expenses. That has yet to take place. Expenses rates are still as they were in May 2010, which again is perhaps a limiting factor when we are looking at recruitment. Magistrates should not be subsidising HMCTS, I would suggest.

Q56 **Ms Marie Rimmer:** Would you like to comment on it?

John Bache: I disagree with what is being said, actually. It does come down to resources. It comes down to a balance between efficiency and justice, and HMCTS is going for efficiency—which is absolutely fine and that is its job—but the judiciary obviously wants a fair balance. It is a question of getting that balance right. We are all trying to achieve an efficient and fair system of justice, but the trouble is that the resources are decreasing. We can see the efficiency of digitalisation, but a lot of the people who come in front of us are not particularly equipped to deal with that. There are problems with the reforms, and it comes down very largely to resources and to people as well.

Q57 **Ms Marie Rimmer:** You think you have the maximum efficiency you can have with justice. You think it is going right.



John Bache: Yes. There are always areas that can be improved. We are dealing with human beings and things can go wrong in court on a specific day, but I think we work reasonably efficiently, yes.

Mrs King: There are certainly some aspects of reform that I think are long overdue. You heard from the Lord Chief Justice about the digital case system in the Crown court. In the magistrates court we are dealing with high volume and low complexity. We are really desperately in need of a single digital file that travels the whole way through the system to avoid those issues of duplication of effort, re-keying and all the errors and so on. There are further efficiencies that can be made, and hopefully reform will enable us to do them.

Q58 **Ms Marie Rimmer:** It is right to do that.

Mrs King: Absolutely. We are probably 20 or 30 years behind in terms of modernisation of the court system, so there are some to be made, and obviously it is right that we do that in an appropriate way.

Duncan Webster: I would be willing to make the point that, from my experience, the magistracy is fully behind reform. We know that we need to reform. We know that we need to improve. We need the money to do that, and therefore there are consequences for things such as the court estate and resources. We have to be realistic and optimistic.

John Bache: We can have reform, but the most vulnerable must not suffer because of the reform process.

Ms Marie Rimmer: Thank you for that.

Chair: That is a very clear message at the end. Thank you very much, ladies and gentlemen, for your evidence. I thank you personally for the work you do as magistrates, and to all magistrates, who I know do a great deal on a voluntary basis without which the system could not function. I hope you will take that on behalf of everyone as well as yourselves. Thank you very much for your evidence, and we look forward to seeing you again.

Examination of witnesses

Witnesses: Penelope Gibbs and Phil Bowen.

Q59 **Chair:** Thank you very much for coming, Ms Gibbs and Mr Bowen. Would you briefly introduce yourselves for the record and then we will get on to the questions?

Penelope Gibbs: I am Penelope Gibbs. I am director of a charity called Transform Justice.

Phil Bowen: I am Phil Bowen. I am director of a charity called Centre for Justice Innovation.



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Q60 **Chair:** We are interested in your take, as people who represent the non-governmental sector, on some of the issues that you have heard us discussing with the representatives of the magistracy. Do you think that the criminal justice system values magistrates enough? Does it? Should it?

Penelope Gibbs: I think the criminal justice system values magistrates enough. I am not convinced that the Government or the paid judiciary value them as much as they should. Just as a small illustration, that is shown by the training budget. We heard that each magistrate—each one—has £26 spent on them for a whole year. I looked at the figures for that year from the Judicial College. That same year the Judicial College spent over £10 million altogether on judicial training. It is about £340,000 for all the magistrates and £10 million altogether. So I think there is a lack of value.

Phil Bowen: The only thing I would add is that I think there are policy trends over the last five to six years that have directed the justice system towards a more centralised system. We have been closing courts. The magistracy is essentially a local system, and we have seen a drift towards a more centralised system. Therefore, I think the magistracy has suffered from that. Alongside practical things such as the training budgets going down, there has been a shift towards a system that is rightly looking to introduce new technology, but that has meant closing courts. I think that does undermine the legitimacy of the magistracy.

Chair: Mr Hanson, did you want to come in on the training point, because I know you had some issues around that?

Q61 **David Hanson:** Essentially, the question is this. Are there currently areas where that lack of budget means that magistrates are specifically not getting sufficient training?

Penelope Gibbs: I would say that, currently, the magistrates are woefully undertrained and that they need better and longer initial training. They only get two days' initial training, and then we get this six hours every three years beyond that. I looked at remand and the overuse of remand. I am looking at children now, but I have also looked at adults. I was really quite worried. Among other agencies possibly making mistakes about remand, there is an overuse of remand. It was partly because of risk aversion on the part of magistrates and their taking the prosecution case at its highest too often. That is an example where I think improved training would improve remand decisions and we would get better justice.

Phil Bowen: The only thing I would add is that we are publishing some research in January that is looking into the relationship between probation and sentences, and confidence in community sentencing. What is clear from the discussions we have had with magistrates and with probation practitioners is that there has been a gap in information and training around new policy such as the rehabilitation activity requirement



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and knowledge of what community rehabilitation companies do, which has led to a fraying of the confidence of sentencers in community sentences. We can also see the lack of proper training translating into impacting on what people get in terms of the sentences that are given out by the courts.

Penelope Gibbs: I will always go back to the fact that, when I sat as a magistrate, looking back on it, I am terrified at how little I knew, and I do not think it is any better now.

Q62 **David Hanson:** You will have heard the previous discourse we had with regard to problem-solving approaches to community sentences and to giving magistrates problem-solving powers. I suppose the question is: do you support the idea, and how far away are we from getting it?

Phil Bowen: My organisation has written extensively and pushed extensively for problem solving. We are big supporters of it. It is important for the Committee to know that, for example, in Scotland there has been a flourishing of problem-solving courts. There is, for example, a new problem-solving court open in Aberdeen that has recently been evaluated. It shows positive outcomes.

This week I am travelling to Belfast where there is a new substance misuse court. There is a new domestic violence court that has been extended in Derry. Even in England and Wales, we have recently got permission from the senior judiciary and the Court Service to do new research into problem solving in the youth system.

There are some positive developments, and we have indeed been lobbying the Government over the summer. If they are serious about doing something to the short-term prison population, problem solving is one of a number of things they could do to strengthen the role of community sentences and bring down the short sentence prison population.

The discussions we have had with officials have been positive, but as yet there is no announcement. I know they have committed to this Committee to set out a vision for problem solving. I do not think they have got round to that yet.

Q63 **David Hanson:** For the benefit of the Committee, you said that you have talked to officials. Officials do not decide; Ministers do. Where are the Ministers on this, do you think?

Phil Bowen: I have spoken to Rory Stewart about this stuff. He was very interested in some of the ideas. I have been pursuing that with officials. No decision has been made, but I hope that the ideas we have promoted, and indeed the practice that exists across the rest of the UK, has been taken into consideration. Whether they are going to announce anything as a result of the probation consultation, I do not know.



Penelope Gibbs: I am all for problem-solving courts, but I am concerned that the existing hearings we have are sometimes not of sufficient quality and there is not enough problem-solving thinking put into them because there are huge pressures on time. There are not enough probation staff to produce reports and so on for the very hearings that we have at the moment. I would be keen to get those done better really.

Q64 **David Hanson:** Parallel with that, we had a discussion with the previous panel about the introduction of magistrates being able to increase their sentencing powers to 12 months. I just want to get a flavour of what your views were on that.

Penelope Gibbs: I have always been opposed. I feel that there is not a huge problem with a balance between Crown court work and magistrates court work now. Also, I could not support it without seeing this modelling. Two years ago, or whenever you looked at it, the Ministry of Justice said that it had taken a look at the impact on custodial sentences if you increased it. I do not think any of us can have a proper discussion about it without having that information. It could already look at it because there are Crown court sentences that are given for offences that could have been in a magistrates court. It could already look at that data now, and we need to know that.

Phil Bowen: I have certainly always publicly supported the idea that the magistrates court should have higher sentencing powers. The Crown courts currently have too wide a diversity of cases to deal with. The delays in the Crown court are getting worse. I have always favoured the fact that our lower courts should have increased sentencing powers. I think that would bring them into line with a lot of international practice, where lower courts tend to have longer sentencing powers.

A question that has been in my mind for the last 18 months, seeing magistrates having less training and their morale being affected, is whether we need to have a proper inquiry into whether we still need a lay magistracy or whether we should replace the lay magistracy with paid judges in our lower courts. I am not saying I agree with that, but that is a question that is being asked within Government circles, and I think we should have an honest debate about it.

Q65 **David Hanson:** We touched on the issue in the previous panel about magistrates having a role perhaps in out-of-court disposals or in prison adjudications and that type of activity. What is your general view on that extension of the role?

Penelope Gibbs: I am happy for them to have an extension of their role, but at the moment we have a bit of a workforce crisis in the magistracy. We have lots and lots of benches of two sitting. There are lots of magistrates doing what is called "heavy sitting," which is not ideal. They are sitting one or two days a week. Magistrates are being phoned every week, begging them to sit because of holes in the listings. The fact is that



we do not have nearly enough magistrates to do existing hearings. I would say that we are at least 3,000 short at the moment. Yes, at some future date it would be great to get them to do other things, but we do not have enough at the moment.

Phil Bowen: All I would say is that it depends on what our vision of the lower courts is. If, as the Government have made moves towards, it is looking to do more cases out of court and looking to move court cases online, then what is the caseload left for the lower courts? That makes me wonder about whether, as I said before, we should have a paid judiciary rather than a lay magistracy. If that is the case, we still have 15,000 volunteers whom I think we could use. The Ministry of Justice really needs to set out what its vision is for summary justice, and then we can make proper decisions about where magistrates fit into that. I am not saying that they should not be sentencers; I am just saying that that question now needs to be asked.

Q66 **Chair:** And that vision does not appear to be there at the moment.

Phil Bowen: I do not think the vision is there.

Penelope Gibbs: No. You referred to it when you were talking to the previous panel—about whether the Ministry of Justice was involved enough in this future strategy for the magistracy. I think it is disastrous that it is not. It is an important piece of policy. It should be open policy making involving wider stakeholders beyond the magistracy, including lawyers, district judges, NGOs and so on. At the moment, it is just being done behind closed doors, and all the Ministry of Justice work is on the paid judiciary and not the magistracy.

Q67 **Gavin Newlands:** Is there sufficient diversity within the magistracy?

Penelope Gibbs: No, definitely not. We have talked about age diversity; 85% of magistrates are over 50, which is a really poor figure. We have BAME at 12%, but they are within specific BAME groups. It is way behind; 0.85% of magistrates are mixed race, whereas in the population it is 2.2%. Asian magistrates are 5.8% versus a population of 7.5%. If you look at tribunal magistrates, then 17% of lay tribunal magistrates are from BAME communities, so it is possible to do it.

Class is the elephant in the room. No data is collected on it. It is collected for paid judges. Again, why is it collected for paid judges and not for magistrates? Neither for recruits nor for existing magistrates do we have any data about class. I am absolutely sure that it is very skewed at the moment. Obviously, a lot of them are retired, which affects the diversity of who is there.

Q68 **Gavin Newlands:** That is a pretty clear answer. What steps should therefore be taken, and who should be responsible for this?

Penelope Gibbs: Again, I would say the Ministry of Justice should put some resources behind it. You need a proper policy team and a proper



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strategy led by the Ministry of Justice itself with an open process. You need some money for recruitment. You cannot recruit in a diverse way without having a proper bit of research about why diverse and under-represented communities are not applying now. Do they find the process a barrier, and how do they find it once they get there? Do they find it alienating to be sitting among people who are so different from themselves?

First of all, you want a major piece of research that could be done and was done under Lord Falconer, actually. Lord Falconer was really active, and it was the Ministry of Justice that was active in this. Then you decide what strategy and what budget you will put behind it. At the moment, most magistrates are recruited because they know somebody. That is not a way to get diverse recruitment.

- Q69 **Gavin Newlands:** I am curious. If there were resources diverted into this, how quickly do you think it could be resolved? In saying that, do you think that one solution potentially could be to encourage those who are already employees to apply to be magistrates and encourage their employers to release them to serve? That could help with numbers and, potentially, diversity. Do you think that is a potential solution?

Penelope Gibbs: Definitely. They did a survey, and two thirds of magistrates who responded to that survey said that they did not have an employer at all. Of those who had an employer, 40% said that their employer did not give them the paid time off that they needed.

Under Falconer there was money, resources and thinking put behind this. I think you could definitely get employers round. You need to have a strategy to do so and some resources.

- Q70 **Victoria Prentis:** Moving on to court closures, but not specifically because I like the big picture thinking that we have going on, do you think that local justice still matters?

Phil Bowen: Yes, I do. In order for the justice system to have legitimacy, people need to feel that it is responsive to them and understands where they are coming from. I am agnostic about whether that actually means that you have to have a court building in your local town. The person making the decision in your case needs to understand the sort of person that you are, the circumstances in which you have been living, the options that are available and the sentences they can give. Aside from the fact of whether you can physically get there in a timely way, I am not saying that whether there are courts in your local area is not an issue, because it is obviously a big issue if people are travelling long distances; but, if we understand the justice system in that way, then I agree with HMCTS that there is a role for video technology to break down those barriers.

I think the justice system needs to be rooted locally. It is one of the objections that my organisation has had to probation reform, which has



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taken probation away from being a local service. I would like to see it much more aligned around police force areas and much more responsive to what police and crime commissioners want to do. We are big supporters of localism.

Q71 Victoria Prentis: Do you think, if that is the case, that the sentencer is aware of what provisions are out there?

Phil Bowen: Absolutely. For example, there is a service in north London that was set up by a couple of magistrates whom we help support that provides referral for defendants to get advice on housing and so on. That was set up by magistrates with a keen concern for social justice. There are services out there that people need to go to. Those kinds of mechanisms absolutely should be supported, and more widely, by HMCTS. I think those things are as important as the physical location of courts.

The other thing we have always supported is this notion of pop-up courts. How can we get the courts back out on to the road? I think the question of security has been overdone on that.

Q72 Victoria Prentis: I could not agree with you more. Would you support my pilot locally as a concept?

Phil Bowen: Yes. As an organisation we help people set up new projects, so take my email and we will have a conversation.

Q73 Victoria Prentis: I will come and see you. I had a great deal of experience when I was at the Treasury Solicitor's Department in appearing in courts that were not held in traditional surroundings. Would you agree that the court is a concept and not necessarily a place?

Phil Bowen: Absolutely. We have written on this issue. One of the things that we are currently doing with HMCTS, and which they asked us to be part of, is their consultation on defendant engagement and voice. One of the ideas we are trying to push is this idea of pop-up and flexible courts. I am not saying that they agree with it, but we definitely have at least started that engagement.

Q74 Victoria Prentis: I will carry on the campaign. Narrowing my question now from the big picture to the real worries I have about access to justice, is that something you would agree with? Do you think distance, location and type of building can get in the way of court users getting to court?

Penelope Gibbs: It definitely can. There is a study done by all local government in Suffolk looking at the closures of Bury St Edmunds and Lowestoft. It shows that the failure-to-appear rate for defendants now who live in the area around Bury St Edmunds where there is no longer a court is higher than the failure-to-appear rate for people in the area around Ipswich. They have shown that witnesses are having to stay in hotels. Once you live in Suffolk, in order to get to Ipswich court, you have



to pay huge amounts even on public transport. It is a significant issue about local justice that goes beyond just magistrates.

Q75 Victoria Prentis: Has any study crunched the figures for the most vulnerable end of the system—young people, both witnesses and defendants—and the worst type of cases in the family court where a young woman might be threatened with having her children taken into care? Is there any evidence about their attendance, because it is them that I am most worried about?

Penelope Gibbs: I think you should ask the Ministry of Justice to do that research because, to my knowledge, the only study is this local study in Suffolk that threw up a few problems about younger people but was not extensive enough to really talk about big numbers.

Phil Bowen: I know, anecdotally, that in some of the family courts that have a family drug and alcohol court they use video technology to do regular reviews. The teams that I speak to say that that works quite well. That is not the vast majority of cases that come to family courts, but, as I said, if we had closed courts but had a strategy in place for widening access to justice, including pop-up courts and video technology, that would be one thing. I think that has been the lacuna in policy. We have just shut courts and are hoping that our video technology works as it comes on stream. I do not think that is an adequate policy response.

Victoria Prentis: That is very helpful. Thank you.

Chair: Are there any questions from any of my colleagues? Thank you very much. That has been extremely helpful. You have given very succinct answers, which certainly does not diminish the value of the evidence. I am very grateful to both of you for your evidence and your assistance today. It is very much appreciated. The hearing is concluded.