

Justice Committee

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

Tuesday 12 February 2019

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Members present: Robert Neill (Chair); Robert Courts; Janet Daby; David Hanson; John Howell; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 76 - 196

Witnesses

[I](#): Lady Justice Macur, Senior Presiding Judge; Senior District Judge Emma Arbuthnot, Chief Magistrate; and Lady Justice Thirlwall, Deputy Senior Presiding Judge.

[II](#): Lucy Frazer QC MP, Parliamentary Under-Secretary of State, Ministry of Justice.

Examination of witnesses

Witnesses: Lady Justice Macur, Senior District Judge Arbuthnot and Lady Justice Thirlwall.

Chair: Good morning. Welcome, ladies. Thank you very much, all of you, for coming to give evidence to us for this inquiry into the role of the magistracy. Before we get into the questioning, we have to go through the formal process of declarations of interest at every meeting. As some of you know, I am a non-practising barrister and a consultant to a law firm.

Victoria Prentis: I am a non-practising barrister, married to a judge.

Robert Courts: I am a door tenant at 3 Paper Buildings.

Ellie Reeves: I am a non-practising barrister.

Q76 **Chair:** There are no magistrates, anyway.

Thank you very much for coming to help us. Would you like to introduce yourselves and your roles, to give context for those who are watching outside?

Lady Justice Macur: I am Julia Macur. I am the senior presiding judge of England and Wales.

Lady Justice Thirlwall: I am Kate Thirlwall. I am the deputy senior presiding judge of England and Wales.

Senior District Judge Arbuthnot: I am Emma Arbuthnot. I am the senior district judge and Chief Magistrate of England and Wales.

Q77 **Chair:** Dame Julia, would you like to give us a quick heads-up as to the role of the presiding judge?

Lady Justice Macur: The senior presiding judge of England and Wales is the person who has delegated powers from the Lord Chief Justice to ensure the efficient performance of the delivery of justice on the circuits, below High Court. I am responsible for circuit judges and district judges, civil. I have a role in relation both to district judges, crime, and to the magistracy.

Q78 **Chair:** Dame Kate, I think you support the senior judge.

Lady Justice Thirlwall: Yes, I do. Principally, we have divided the work over the last year between business as usual and reform. Although we both have an interest in both, I have taken more responsibility in relation to reform. Julia has the real heavy lifting of business as usual.

Q79 **Chair:** Lady Arbuthnot, can you tell us about your position as senior district judge?

Senior District Judge Arbuthnot: I report to Julia, but I run and lead about 130 district judges in the magistrates court and about 100



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deputies. That can be everything from deployment to ticketing to work in court. It is quite a wide-ranging role, covering management, personnel and court work.

Q80 **Chair:** Does that extend to those doing family work, for example?

Senior District Judge Arbuthnot: Yes, absolutely.

Q81 **Chair:** The whole work of salaried district judges.

Senior District Judge Arbuthnot: Yes. There are about 90 salaried district judges who do family as well. Although one of my titles is Chief Magistrate, I am not actually the lead magistrate, which confuses quite a few people.

Q82 **Chair:** That is one of the things we were going to start with, from the point of view of both the public and, perhaps, other people. There is a sense that we have rather a confused structure. Lay magistrates are doing 95% of the work, but there are also district judges—what we used to call stipendiary magistrates, when I was around, as both of us will remember. There is a leadership structure, which has changed, where there is a separate role from the senior district judge but in a national leadership structure. Can you help us around that? We will start with you, Dame Julia. We have had this change. How do you feel it is working? What was the logic behind making the change?

Lady Justice Macur: The change came about predominantly in January 2017, when a submission was made to the Lord Chief Justice to allow the magistracy to reformulate its management—its governance structure. The Magistrates' Liaison Group is chaired by me and constitutes a forum in which the views of the magistracy are given, represented by the chair of the Magistrates Association and the chair of what was then the National Bench Chairmen's Forum and is now the Magistrates Leadership Executive. Fortunately for us, it also has the Chief Magistrate on board. We have support from HMCTS and Ministry of Justice officials.

It was determined that we needed to be ready for the change that would be brought about by the reform process, with the change in local justice areas and the change in advisory committees. I think it was deemed necessary to bring the magistracy far more into the family of the judiciary and to align it with the circuits. That is what we did.

With the support of the Lord Chief Justice, we constituted a new system. At the same time, the National Bench Chairmen's Forum became the Magistrates Leadership Executive, the lead magistrate becoming appointed rather than elected. All of that came together at a time of great change, with the reform programme going on in the background, the change in governance and, I think, the embedding of the magistracy in the judicial family proper. That is what was intended. I think it is working.

Q83 **Chair:** Where did the submission come from? Was it from the magistracy



or from elsewhere in the judiciary?

Lady Justice Macur: Predominantly, yes. It was very illuminating that the magistracy—particularly at that time, through Jo King—was having those ideas, was very innovative and wanted to move the magistracy forward. There had been an idea in the far distant past that there was a them and us between the salaried judiciary and those who gave of their time voluntarily. It was necessary that we started to align the two, because the magistracy is so crucial a part of the system.

Q84 **Chair:** What was the logic behind the movement from an elected person to an appointed person?

Lady Justice Macur: The submission that was made followed a debate at the Magistrates' Liaison Group. It was determined that the election process might not have the status that would be required for such a lead magistrate. Therefore, there were expressions of interest, there was a formal interview process, and the appointment was made by the Lord Chief Justice in July last year.

Q85 **Chair:** Did they not have the status?

Lady Justice Macur: It was the status of the role—the status of having the approval of the salaried judiciary in the new role that was being created. It was not something that was a popularity contest. It was something that required skills, to be demonstrated to those who demonstrated them in their salaried positions.

Q86 **Chair:** There was an element of control, to put it gently, in the event that a pure election process might not produce someone of the requisite experience.

Lady Justice Macur: The election process probably would have done that.

Q87 **Chair:** It probably would.

Lady Justice Macur: There was a feeling from those who propagated and promoted the idea, and it was debated quite robustly at an annual general meeting of the National Bench Chairmen's Forum. There were differing views, but the view that prevailed was that the new position should be seen to be free from any taint of groups banding together to come to their favourite leader.

Q88 **Chair:** What I detect from that is that it is the result of a debate within the magistracy itself.

Lady Justice Macur: Absolutely.

Q89 **Chair:** It is important to have that.

Lady Justice Macur: These are very independent individuals who are not shy about articulating their views.

Q90 **Chair:** That is very helpful. It gives us a background context.



What about the potential issue of confusion between the lead magistrate, the chairman of the Magistrates Association and your position as the Chief Magistrate, Lady Arbuthnot? How does that work? There were issues in the past. There was a bit of concern that the DJs could cherry-pick a little and that relationships were not good.

Senior District Judge Arbuthnot: I think relationships are much, much better. There is new leadership and a new approach. It is so important that we are working together. District judges are specialists, it must be said. They are there to do the most complex work and the long-running work—things like the six-week RSPCA case. I think it really works. I sometimes get emails on the basis that I am the chief of the magistrates. I politely say, “No, you’ve got the wrong person,” and direct them elsewhere. The Chief Magistrate role goes back to 1735, I think. The title of senior district judge and Chief Magistrate may be a bit of a mouthful that could do with some sorting out. I am not against that at all, but I think it works.

What I like is that the Magistrates Leadership Executive is now based on circuits. That is what we have as well. I have a link judge in each circuit. They have a good relationship with the Magistrates Leadership Executive member in that circuit. That seems to work pretty well. It is still early days, but I think it is all working out.

Q91 **Chair:** I promise you that confusion is not unique to that area. Once, this Committee was asked how we set about appointing justices, on the assumption that that was what the Justice Committee did. It does happen. What’s in a name?

Generally, because of that greater integration and, I hope, greater connection, do you find that there is an issue of remoteness any more, Dame Kate? That was raised with us in a previous inquiry. Or do you think people are better embedded in the system, and issues of morale are better dealt with?

Lady Justice Thirlwall: My perspective is slightly different. At the moment, I come across magistrates and district judge magistrates most in relation to my work on reform. All I see is co-operation between them, actually. In the end, we are all searching after the same goal, which is access to justice and the administration of justice, and doing it better, where we can, than we do it now. From the people I meet, I do not have any sense that there is an issue of remoteness any more or that magistrates feel in some way disconnected from district judge magistrates. I would have said that it was the contrary. There is much more communication between them now.

Q92 **Chair:** Do you get a sense that there is now a better understanding than we found in our previous report of how cases are allocated between the DJs and the lay magistrates?

Lady Justice Macur: I do. There are obviously tensions when magistrates are stood down, sometimes because of an unavailable legal



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adviser. They see a district judge sitting and say, "Why them, not us?" That is very rare. What has been absolutely stunning is the approach that Emma has been able to lead—by example, I must say—sitting with lay magistrates and showing that there does not have to be any separation of power. I think there is an understanding of allocation, but, as I have said, that does not alleviate the tensions if there is a lack of resources elsewhere. The allocations do not tend to prove problematic.

Senior District Judge Arbuthnot: The allocations are not a judge choosing to do something. It is the justice councils or the LTMs—the legal team managers—who make that decision, I am afraid, not the judges themselves.

Q93 **Chair:** Could you tell us about the initiative you have undertaken in relation to sitting with lay magistrates? How widespread is that among your colleagues now?

Senior District Judge Arbuthnot: It really depends on the personalities. It is very interesting. I am afraid that some judges are shy and are not particularly good at working as a team. I had a wonderful day in Newport just before Christmas, when I was able, by chance, to sit with two justices. It was a wonderful experience. I have encouraged that. I have meetings with the lead judges on a regular basis. At virtually every meeting in the last two years, I have said, "Do this whenever you have an opportunity, particularly if people are sent away." They have taken a day off work and have come to court, but something has happened and the case has gone out. The judge is there and, obviously, has to go on sitting; they are paid, at the end of the day. I say, "Why don't you sit with the justices? You can't sit with all three, but sit with two. You can ask." Sometimes they are quite keen not to stay, but they will sit otherwise. I am not saying that it is happening everywhere, but it is something that I am encouraging and it is happening more than it was.

Q94 **John Howell:** I understand that there are about 15,000 magistrates at the moment. The first question is, do you think that is enough?

Senior District Judge Arbuthnot: No.

Q95 **John Howell:** I understand that sometimes they sit in pairs, which can lead to conflicting decisions, if they cannot agree.

Lady Justice Macur: Yes. There are too few magistrates at the moment. It differs from area to area, but only in an exceptional case should you have two magistrates sitting on a panel. I am afraid that, far too often in the last year or two, two magistrates have had to sit as a matter of course. There have been some very unfortunate consequences.

If there is a difference of opinion in a case, whether on a determination of the facts or a decision as to the exercise of a discretion, particularly in family cases, that case must be adjourned for another bench. There is therefore a delay. It is particularly inimical in the case of children and the cases that concern them, but it could be equally disastrous for someone



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who wants to have a trial disposed of and is waiting to know whether they are going to be convicted of a criminal offence that may deter them from travelling or job prospects. It is rather unfortunate. The answer is a straightforward no, there are not sufficient magistrates at the moment.

Q96 John Howell: As a rough guess, what percentage of magistrates courts sit with two magistrates?

Lady Justice Macur: That is a difficult question to answer, because it can vary. Sometimes two-magistrate panels occur on the day because someone has failed to attend, whether through ill health or a misunderstanding of their rota, and it has been impossible at the last moment to get a third member of the panel. Other panels in some areas are just depleted.

I visited Newport on the Isle of Wight on Friday last week. The panel is down to 41. They are waiting for three other members to be appointed. They have been signed off and are waiting to be sworn in and trained. That panel covers the island. It must deal with family work, youth work and adult work. On occasions, they are overburdened and, sometimes, they just cannot make a three-man, three-woman or three-magistrate panel. It is not possible to say what percentage of benches sit as two rather than three because it is not reported on, other than anecdotally.

Q97 John Howell: Do you have anything to add, Lady Arbuthnot?

Senior District Judge Arbuthnot: It is not unusual, but it is difficult to give a percentage.

Q98 John Howell: Is there something we can do with employers to encourage them to release people to become magistrates?

Lady Justice Macur: That is part of a bigger recruitment question. One of the problems with recruitment at the moment is lack of knowledge as to what qualifies you to become a magistrate. That applies to would-be applicants and to those who would thereafter have to release applicants, if they were successful in appointment. The problems are exacerbated by the fact that small firms cannot afford to lose employees for a half-day or a full-day session. The benefits of the magistracy that are taken back to the workforce—the teamwork, the analytical skills that are achieved and the public service that, effectively, is provided by the company, as well as the magistrate—are all lost in the financial aspects of running a small business. Unfortunately, some of the public authorities—national health trusts and educational establishments—cannot afford to allow their employees the time away from work.

What has started to occur is the celebration of employers who are prepared to make magistrates available. In the last year, the Magistrates Association initiated a prize for the employer of the year. It is hoped that that award will encourage others in the sector. It happened to be the National Westminster Bank¹, by the way. It is hoped that it will encourage



the other banking communities that this is something they, too, should aspire to.

Q99 **John Howell:** It would improve the age profile, wouldn't it?

Lady Justice Macur: It would certainly assist. Young people on a career ladder are unlikely to want to rock the boat with their employer. It is a big commitment that they make, and it is very difficult. It would be unfortunate if you had to think about legislating to force an employer to permit this public service, but, at the end of the day, that is what must happen to allow a juror to serve.

Q100 **John Howell:** What about doing something at the other end of the scale, at the retirement age? Do you think there is a need to be much more flexible about the retirement age?

Lady Justice Macur: Yes, in certain circumstances. There is now a position that has been taken by the senior judiciary, discussed at the Judicial Executive Board, that will, at the appropriate time, support bringing the magistrates' retirement age, and their ability to sit in what would otherwise be retirement, into line with the salaried judiciary. As you may be aware, a salaried judge may be extended to the age of 72, in 12-month incremental stages, but it is subject to a business case—business need—and, effectively, the continuing competence of that salaried judicial office holder. Equally, a judge in retirement can sit as a deputy. Subject to business need and the continuing competence and training of that judicial office holder, they are entitled to sit until they are 75, subject to the consent of the relevant heads of division, the Lord Chief Justice and myself.

The Judicial Executive Board was asked to consider a submission made by the Magistrates' Liaison Group to bring the magistracy into line with the salaried judiciary, to cover deficiencies that arise because of experience—effectively, having to retire; the presiding magistrate on the bench, or the bench chair in family or youth, has to retire and is not able to pass on the baton. Where there is a business need and there is continuing competence to be appraised, we would certainly support that. However, it is right to say that the Judicial Executive Board thought that it should be seen in a more holistic way. There needs to be a review of the terms and conditions of the salaried judiciary, and it should be seen at the same time. Legislation will be necessary.

John Howell: Thank you for the heads-up on that.

Q101 **Janet Daby:** Good morning. I am sure that you will be pleased to know that only last year I wrote a reference for someone to become a magistrate. He is now waiting for his training.

Lady Justice Macur: Excellent.

¹ Note by witness: The Magistrates' Association prize was awarded to Lloyds Bank, rather than to the National Westminster Bank.



Q102 Janet Daby: On the subject of training, most magistrates are keen to be kept up to date with training, but we have heard that the annual budget for magistrates is £26. I would like to have some information on that. How do we achieve the high quality of training that magistrates need on that budget?

Senior District Judge Arbuthnot: Training has changed. A few years ago, training took place out of the courts, at conference centres and so on. It is now more in-house. Continuing training is almost always conducted in the courts. The cost is quite a difficult concept. It depends on how you calculate the costs of the legal advisers and whoever is delivering training.

As I go around England and Wales, I do not think, "Goodness, there is a real lack." I see very committed people, doing a fantastic job. I do not think, "Gosh, there is training that is lacking here." Having said that, I know that people are looking at the training. There are different phases. When he becomes a magistrate for the first time, your friend or colleague will get a three-day induction training at the very beginning. Then you are mentored. Then, after 18 months, you are appraised for the first time. After that, there is training every three years. If you are a chair, it is every four years. There is continuing training.

I know that the Judicial College is looking at things like digital training online, so there are other things you can look at. Magistrates are also able to get on to the LMS, which is a digital training platform held by the Judicial College, and where there is a lot of information. If they want to go on training themselves, they can just go on to the LMS and read about it. I think that the £26 is not giving you the entire picture. I agree that it sounds like very little.

Janet Daby: Yes, it does.

Senior District Judge Arbuthnot: Of course, it is considerably less than the full-time judges get. I see that.

Q103 Janet Daby: Do you feel that magistrates are receiving the ongoing training they need? Are they taking it up?

Senior District Judge Arbuthnot: They are certainly taking it up. The new strategy group, led by Duncan Webster, is looking at training. I know that he feels that there is not sufficient training and that more training is required. What magistrates sometimes lack is confidence in their own abilities. They are very good people and have lots of common sense, but sometimes they lack confidence a little. If that could be built up, through training and experience, it would undoubtedly be a good thing, but I am not entirely sure how you get training to do that.

Q104 Janet Daby: You have already mentioned appraisals. We have heard from magistrates that appraisals can vary greatly. It is not always taken up when appraisals do not take place. In some instances, they are based on minimum competence, rather than performance improvement. The



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conversations we were having suggested that that needs a new focus and, probably, a more consistent approach.

Senior District Judge Arbuthnot: I know that a new system has only just been brought in. It is fairly straightforward. It is more for ticking boxes, to make sure that the minimum is there, as you say. A lot of appraisals that are carried out on judges now are much more complex affairs. For example, for my judges, we use all the Judicial Appointments Commission competences. We have to give examples, because some of my judges will be applying to become recorders and circuit judges. The national strategy group, led by Duncan Webster, is looking at that at the same time, so I suspect that it is going to recommend some changes. I want to see what it comes up with. There is a general feeling that a little bit more needs to be done, but the new system is still bedding in.

Q105 **Janet Daby:** Obviously, appraisal is connected to training.

Senior District Judge Arbuthnot: Absolutely. It should feed in.

Q106 **Janet Daby:** The two should work together, to identify training needs. It is also about appraising somebody's performance, so a bit of work needs to be done there.

Senior District Judge Arbuthnot: The Magistrates Leadership Executive is very conscious of that. They are looking at it as a dual thing.

Q107 **Victoria Prentis:** I want to talk about court closures. Between 2010 and 2018, almost half of magistrates courts closed or were threatened with imminent closure, including my local court in Banbury, which has just shut its doors. Can you tell us whether you think that the closure programme has had an impact on the profile and morale of magistrates?

Lady Justice Macur: The straightforward answer is yes of course, because at times of uncertainty there is always anxiety. Sometimes the anxiety is well founded and can be articulated, and at other times it is fear of the unknown: what is going to happen? Predominantly, the magistrates I have spoken to during these times of court closures have been concerned for those who use the courts and not for themselves. They have been inconvenienced on occasions when they have had to travel further afield and think about joining other local justice areas, but their predominant fear has been about the impact on the administration of justice locally.

Undoubtedly, there are those who have said, "I cannot travel further than I have been travelling and, therefore, I will resign," but it is wise to be cautious about those decisions, because it can often be an accumulation of things. The figures I researched prior to speaking at the last Magistrates Association annual general meeting as to the decline in the numbers of the magistracy were quite stark. The largest number of resignations, rather than retirements, appeared to be at the time of the introduction of digital working.



Victoria Prentis: How interesting.

Lady Justice Macur: That caused a lot of people great concern. Whatever their own personal abilities in technology, they could not feel comfortable with the idea of a less personal rota system. They had been used to being able to phone up the local member of staff who would say, "We can't fit you in on that day, Mrs Price, but what about such and such a day?" To go on to a computer bank, as it were, was very demoralising for a large number of magistrates, as was the requirement that they should start to work digitally.

After a period of approximately 12 months, there was a complete deceleration and people became familiar with the new ways of working; they were adapting to different courts and colleagues, and it was marvellous to see the steps being taken by the bench chairs who were merging to bring together in a social setting the magistrates who would then be sitting together, trying to mix the benches. So it was not, "Now we have the Banbury magistrates coming to sit in Oxford, so we'll have a special court for them." There was an integration, but undoubtedly it will have had an impact on their sense of security and their morale.

Q108 **Victoria Prentis:** Do you think that generally it has an impact on the concept of the provision of local justice? We have heard lots of evidence of magistrates' concerns about access to justice in the very real sense, worrying about vulnerable people reaching court. Do you think that the idea of local justice is itself important?

Lady Justice Macur: It will depend on the particular case. I personally think there is a real issue about the community having ownership of certain events, particularly in youth offending where there needs to be a knowledge of the steps that could be taken to divert, hopefully, young people away from the courts. There is an obvious need for familiarity with a setting for those who access the courts for family reasons. When we get down to environmental causes and public interest causes, there is a real local interest—public issues of local interest.

Q109 **Victoria Prentis:** Do you think magistrates felt sufficiently consulted on court closures? We heard evidence from a gentleman from Northallerton who said that everybody from his bench had written and written and was not listened to. The Minister has just come in. She was kind enough to meet some of my local benches so I feel they were listened to, although their wishes were not necessarily accommodated. Is it a common complaint that magistrates made representations that were not heard?

Senior District Judge Arbuthnot: I know that 800, or about that number of people, responded to the Northallerton one. I think they were consulted. If your comments are not taken into account, inevitably you feel they were not listened to. I am afraid that is the way it is.

Q110 **Victoria Prentis:** Do you have anything further to say about access to justice, Dame Kate?



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Lady Justice Thirlwall: I do not want to add anything. The point is well made; people make their views known, and in the end the decision is for Ministers.

Q111 **Chair:** We understand the point, Dame Julia, about why people might resign. One piece of evidence raised by Jo King was not so much about why people might resign, but about recruitment. She used the example of Sussex where Lewes magistrates court had closed and the evidence seemed to suggest that, because it was sitting in Brighton, most of the new recruits came from the Brighton and Hove coastal strip and fewer from rural areas of the county, and that might have a longer-term effect than the resignations.

Lady Justice Macur: That is inevitably so. If you are not aware of a local resource, you are unlikely to want to become part of it. It is the immediacy and proximity of the bench that will entice people to say, "I think I could do that."

Q112 **Victoria Prentis:** That is borne out by the evidence that most new magistrates come from urban centres. Is that something you have noticed?

Lady Justice Macur: The appointments I make tend to indicate that that is so, unless there are associations with other magistrates. It is often the case that the best recruiting tool we have at the moment is a magistrate making clear among their colleagues, friends and social circle what a worthwhile thing it is. That connection can bridge gaps.

Q113 **Victoria Prentis:** One of the things we have discussed as a possible solution is the provision of mobile or pop-up courts in local buildings, particularly in the youth and family sphere, which we have heard the most compelling evidence about. Is that something you would be prepared to investigate or pilot?

Lady Justice Macur: We are very conscious of the need for security for all who use the courts, be they judicial office holders, members of staff who support those officers, or those who come to court as witnesses or defendants. There are some cases where the threat of abuse and violence is less. If you are coming to renew your fishing licence, for example, there is little chance that you will necessarily throw a strop, but there are very difficult cases involving families or hard decisions to administer penal punishment and that can cause real disturbances in the court.

Q114 **Victoria Prentis:** How would that be harder to manage in a district council building, for example, than in a court building?

Lady Justice Macur: I visited the facility that has been made available in Kendal. First, there has to be a facility to separate different parties, if possible; there needs to be staffing and the facility to manage behaviour in the room being used as a courtroom. Unfortunately, sometimes you need a secure dock. In family cases, you need to separate parents who



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may not be seeing eye to eye on many things, or separate parents from local authority social workers.

Q115 **Victoria Prentis:** Do you think a large proportion of magistrates' cases need a secure dock?

Lady Justice Macur: No, but sufficient numbers do, to require, for example in Kendal, there to be triage of cases.

Q116 **Victoria Prentis:** That was something we also thought was essential if we were going down the pop-up route. In family cases, it would be very rare to use a secure dock.

Lady Justice Macur: Absolutely.

Q117 **Victoria Prentis:** What you need in those cases are separate rooms in which to put different parties.

Lady Justice Macur: At the beginning of the process you probably do. You also need in a room sufficient space between the parties not to be provocative. You have to remember that sometimes parents appear from custody to participate in public family proceedings. That is not as rare an occurrence as it used to be, but they are entitled to attend.

Senior District Judge Arbuthnot: There are more problems with family cases in my experience. I sit in family cases as well. It is the unpredictability that is the issue. You might think that it is going to be a very straightforward case.

Q118 **Victoria Prentis:** And it all goes wrong.

Senior District Judge Arbuthnot: You have people with mental health problems and issues with alcohol or drugs, and in family it can happen at any time.

Q119 **Victoria Prentis:** We heard some very compelling evidence about young women whose children were going to be removed from their custody having difficulty travelling long distances to court. It is not that we have a particular axe to grind; we are just trying to see a way through to a sensible, practical recommendation. Is that something you could help us with?

Senior District Judge Arbuthnot: I remember an occasion in Croydon when a mother refused to give up her baby. There were screams and the police had to get involved. We had all thought it would be a fairly straightforward case. It was obviously very sad, and nothing prepared us for what then happened.

Q120 **Victoria Prentis:** With respect, it does not really matter what building you are in.

Senior District Judge Arbuthnot: I absolutely agree, but you need the support.



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Q121 **Victoria Prentis:** You absolutely need support and security staff, but it does not really matter whether you are in this room, a modern room or a hotel with sufficient space.

Lady Justice Macur: But you have to be in a room that conveys the business being done within it.

Q122 **Victoria Prentis:** Yes, that's fair.

Lady Justice Macur: One of the inhibitors in the past for the behaviours of those who perhaps are not now so inhibited has been a room or setting that bespeaks the administration of justice, the rule of law. In the situation Emma described a moment ago, a mother being separated from her child would be the most dreadful thing that could be contemplated by any civilised person; any inhibition would be gone, regardless of the setting or the room, but the nature of the dignity that she could have been dealt with in a court setting, rather than in a hotel foyer or reception room, would have significance, and we have to think about that too.

Q123 **Chair:** I was in the old magistrates court at Kingston the other day. It is now a register office. Quite what message that conveys I do not know. They had taken the dock out.

Lady Justice Macur: I am told that one of the newest London hotels still has the dock in it.

Q124 **Chair:** I suppose the point is that there are certain types of civic building that might be capable of conveying precisely a sense of the importance of the occasion and the seriousness of the matter.

Lady Justice Macur: Yes.

Q125 **Robert Courts:** I want to ask about problem-solving approaches and how we could involve magistrates more in those. There is quite a lot of evidence that that approach can be helpful in cases involving drugs, alcohol, domestic violence and mental health. A working group was set up about three years ago, but I do not think a great deal of progress has been made on its conclusions. Northamptonshire has on its own initiative taken that approach. What do you think about how we could usefully involve magistrates in a problem-solving approach?

Lady Justice Macur: The answer is very well, because they have shown from various initiatives that they are not just in it for the business of saying, "You are guilty; this is the sentence." You mentioned Northamptonshire. In Northamptonshire, the youth offending team has commenced a review of community penalties for youth that involves voluntary attendance by the youth at sessions once every six weeks or so, where their progress is discussed. It is voluntary because it is yet to be enacted as a statutory provision, but it was thought to be beneficial to the youth concerned that they should not feel that, once their sentence had been imposed, that was the end of the matter.



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In July, I witnessed one of those sessions. I sat very quietly at the back. Two members of the youth panel—volunteers—changed into what they thought was casual dress. I thought it was very smart, but they thought it was very casual. Together with the youth offending team, they dealt with two young men individually who had been dealt with for very serious offences, one a serious sexual offence and one for an offence of serious violence. The contrast between the two was remarkable, but the aptitude of the magistrates was absolutely convincing. They demonstrated empathy and indicated their pleasure at the progress one had made and disappointment at the other.

All the safeguards had been thought through. Those two volunteers would never again sit on a panel that dealt with any formal breach proceeding taken in relation to those offences. They observed strict confidentiality; they would not discuss the cases with their colleagues. They demonstrated to me that their willingness to be involved in such solutions was something we would be well advised to harness, if it was well supported. Problem-solving courts take considerable resource. They are very expensive to run and must be maintained; it cannot be a here today, gone tomorrow idea.

It is also right to say that a lot of magistrates also sit on out-of-court disposal oversight committees and bring to bear a great deal of experience. In the midlands, the DPP has authorised the use of conditional cautions for appropriate domestic violence and abuse cases. I still have some concerns as to how those particular conditional cautions will be policed, but it is something in which magistrates have been invited to be engaged, and they bring an expertise from their sitting that is invaluable.

Q126 Robert Courts: You sound very encouraged by a more interventionist approach by magistrates, rather than simply sitting in judgment on the issue on the one occasion.

Lady Justice Macur: I think you will find that magistrates are keen to do that, but we go back to recruiting sufficient numbers and people being allowed to take time away from work and not be penalised.

Q127 Robert Courts: Does anyone else have a comment on that? What about community sentences? Does that go hand in hand with confidence on the part of the magistracy with regard to the effectiveness of community sentences? Do the two issues go hand in hand?

Lady Justice Macur: Partly. May I ask that the Chief Magistrate answers this? We frequently discuss these matters and our concerns about some of the community penalties and problems in the past.

Senior District Judge Arbuthnot: They are the problems of the present, I am afraid. We are still getting cases where defendants have not been brought back to court when they have breached their order over and over, or they have not started the order delivered by the court a few



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months before. That is an ongoing problem. I was hearing about the problem yesterday. I checked with my bench at Westminster yesterday and they gave me examples of it happening yesterday. It is still happening.

Q128 **Robert Courts:** Where do you see those problems stemming from?

Senior District Judge Arbuthnot: I assume from a service that is not as efficient as it ought to be. When we give a community order, we expect the service to pick up the defendant and make sure that he starts complying with it, whether it is unpaid work or perhaps an alcohol treatment requirement. Curfew seems to work pretty well; if you give a curfew, it seems to be imposed immediately. Interestingly, there is confidence in that, but in the other orders we can make—I have given you two examples—I think there is still very little confidence. The worrying thing is that, if you do not have confidence that the punishment you are imposing will be carried out, you might think, “What about a prison sentence?” That is the danger. I am not saying it is happening, but it must be a risk.

Q129 **Chair:** Is it a problem because you never see the person who is carrying out the order? They do not come to court. The national probation service comes to court, but usually it is the CRC that is carrying out the order and sees the people involved. Do you see that as a difficulty?

Senior District Judge Arbuthnot: I don’t really know. I am afraid I am not so aware of that.

Q130 **Chair:** That was the evidence we had from some of the lay magistrates. You get to know the members of the probation service who come to court.

Senior District Judge Arbuthnot: Yes, because we had our local people in court.

Chair: The order is being carried out remotely by some other organisation.

Q131 **Robert Courts:** I want to ask about section 154 of the 2003 Act and 12-month sentencing. What is your view? We have heard a lot of evidence that magistrates would like to see that enacted. How do you feel about it?

Senior District Judge Arbuthnot: I would be very cautious. Ideally, I would like to see it being brought in first in one area, probably a city area, to see the effect. I would be a bit worried that there would be an increase in prison sentences, but maybe I am wrong. I do not have a strong view, other than thinking it ought to be tested out, ideally in a city area first. How you measure the sentences you get as a result of the 12 months and how you know whether, if it had gone to the Crown court, it would have been different, I am not sure, but I would be a bit cautious.



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From what I have heard, prisons are very full at the moment and I would not want them to be fuller than they are already.

Q132 **David Hanson:** We have looked previously at a number of issues about a national strategy for magistrates. I know that in October last year you initiated a review group to look at that. We have had some informal feedback from magistrates in meetings we have had that they want to see a national strategy of some sort. I want to get a sense of your understanding of what is going to happen, what the timescale is, what the objectives are and how it is going to be developed over the next period of time.

Senior District Judge Arbuthnot: I think they are looking at a three-year plan, very sensibly. I said earlier that they were looking at appraisals, training and a whole series of other pieces of work. They have quite a lot of work to do. I think they are bringing proposals, possibly to you, Julia, in March or April. It is quite soon. We have done some work on the deployment of judges and how that works, and we have had some very satisfactory discussions about that, so we are looking at something coming out later this year.

Q133 **David Hanson:** Fairly shortly.

Senior District Judge Arbuthnot: Yes.

Q134 **David Hanson:** Can you give us any indication of where you think the Ministry of Justice is on that? We will ask the Minister about it but, if proposals are coming forward, the normal procedure is to produce proposals that may have some chance of success or development. I want to get a sense of where you think the proposals that might come out next month will lead in relation to the MOJ.

Senior District Judge Arbuthnot: HMCTS is obviously involved first. There are various steps to go through before it would go to the MOJ. I assume the first step would be via Julia and the Lord Chief Justice.

Lady Justice Macur: Yes.

Q135 **David Hanson:** The MOJ is having challenges with funding as a whole. I want to get a sense from you as to how realistic any national strategy proposals can be in the current funding climate.

Senior District Judge Arbuthnot: It is difficult for me to answer that.

Lady Justice Macur: It is difficult to know until we see how ambitious a strategy is being developed. It is very interesting that the working group has a very good relationship with HMCTS magistrate lead, Jane Wignall. Jane provides effective advice and is able to provide steers as to sustainable ideas, or not. She brings a wealth of experience to bear. When they are developed, what has been notable to date is that they have liaised with the correct personnel. Emma was involved in deployment issues and a very satisfactory outcome has been reached, which will not impact whatsoever on any budgetary requirements for the



magistracy going forward. Training and appraisal may produce a request for greater finance.

Q136 **David Hanson:** In April or March, when it is produced, will it be a public document at that stage, or is it likely still to be an internal document?

Senior District Judge Arbuthnot: It is more likely to be internal.

Lady Justice Macur: It will be internal at that stage.

Q137 **David Hanson:** At what stage can we see publicly the product of the discussions?

Lady Justice Macur: It would come, via the MLG, to the Lord Chief Justice. He would then no doubt discuss it with the Judicial Executive Board before discussing it with the Lord Chancellor or the Minister. I do not think that the strategy they are devising is likely to be controversial or expensive; they are working within self-imposed constraints, but innovatively.

Q138 **David Hanson:** As a guess, when do you think members of the Committee will be able to see it?

Lady Justice Macur: At a guess?

David Hanson: Yes.

Lady Justice Macur: It is sometimes said that, if you use a season, it gives you a long leeway.

Q139 **David Hanson:** What about a season and a year?

Lady Justice Macur: Spring 2020.

Senior District Judge Arbuthnot: Or July.

Lady Justice Macur: Maybe.

David Hanson: We will hold you to that.

Chair: That is very helpful. Dame Julia, Dame Kate and Lady Arbuthnot, thank you very much for your time, evidence and candour.

Examination of witness

Witness: Lucy Frazer.

Q140 **Chair:** Minister, thank you for your patience. You heard a good deal of the evidence from the senior judiciary. Bearing in mind what you have just heard, back in August 2013, your then predecessor said that the Government were going to consult magistrates on maximising their responsibilities and modernising their role. If we go forward to early 2014, his successor said that it would not be reviewed until after the rehabilitation and summary justice reforms had bedded in. We are now five years on from that. Isn't it about time that the Government dusted



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off Damian Green's proposal back in 2013 and had a proper review of the role and modernisation of magistrates?

Lucy Frazer: It is a good question. As always, it is a pleasure to be here.

I have read some of the written evidence you received. I hope you have heard that we have a very good relationship with the magistrates. HMCTS liaises regularly with them. One of the first meetings I held as a new Minister was with Jo King, who gave evidence. I went to the Magistrates Association annual conference. We are very open to hearing what thoughts they have, and we are working very closely with them on their strategy. We have worked very closely with them on recruitment issues. They have seen a significant amount of reform within the magistracy with our reform programme, which we developed with them, but, as you heard, they are putting forward a new strategy and we are working very closely with them on that.

Q141 **Chair:** Do you think the timeframe is broadly accurate and deliverable?

Lucy Frazer: They are working very closely with my officials. I was very pleased to hear that they welcome the work Jane has been doing with them. They work very closely at all levels of HMCTS. I look forward to seeing their proposals in due course, and I am sure those will be developed, as the senior presiding judge said, with some input from us.

Q142 **Chair:** Given that they will be driven by the judiciary and practitioners, the Government are politically supportive of taking that forward.

Lucy Frazer: We work very closely with the judiciary. I spoke last week with two members of the senior judiciary, following the LASPO review, to keep them engaged on that. The Lord Chancellor, the Lord Chief Justice and I have a trilateral this week, so we are trying to work hand in hand to deliver justice for individuals at every stage and every level.

Q143 **Chair:** I think the Government recognise the value and worth of the magistracy; they have said so frequently, but we have seen a situation where recently we have been losing about 1,000 magistrates a year. That cannot be a satisfactory state of affairs, can it? What is the Government's proposal to deal with that?

Lucy Frazer: We have lost a number of magistrates. I was interested to read that there is a view, which I have heard, that some of that has come about because of our reform programme, the technology and the age of the magistrates, but over the last 12 months we have recruited over 1,000 magistrates. I hope that, while we lose some, we will get new blood. We are getting new blood at the same time.

Q144 **Chair:** We have heard reasons for resignation. Sometimes, court closures make it more difficult for people to get there, and there has been a certain amount of evidence in the past about a sense of remoteness in terms of how decisions are taken, and that affects morale. What is the Government's assessment of the morale of the magistracy?



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Lucy Frazer: I was very pleased to see that, judging by recruitment, morale is up, on the basis that fewer people are resigning and we are recruiting more. That is shown in the statistics. Some people want to take part in local community work. Localism is important, but we have a very big programme where we are trying to recruit more widely and diversely. We are using new methods of recruitment, including social media. We need to encourage a large variety of types of people to come to the magistracy in the future.

Q145 **Ms Marie Rimmer:** Following the previous report, the then Secretary of State, Liz Truss MP, stated in a letter of February 2017 to the Committee that she accepted that it was desirable to take a long-term view of the size of the magistrates' workforce, and had asked officers to examine that. What progress has been made since then?

Lucy Frazer: We are developing a plan, which we will be rolling out in June, that gives us a three-year strategy in relation to recruitment. That will give us an idea of how many and what sort of magistrates we need; it will look at areas. We are testing it at the moment with the judiciary and others, but we hope to roll it out in June, so we have made some progress on that.

Q146 **Ms Marie Rimmer:** We know that the local advisory committees have a national recruitment plan and that a working group is looking at how to raise the magistracy's profile and increase diversity, which you have just mentioned, including by engagement with organisations and communities. What support is your department giving to that?

Lucy Frazer: We are working very closely with the magistrates on their recruitment strategy. They have set up a number of working groups, and HMCTS is leading on the recruitment working group. We are going to bring forward a national strategy, which will significantly reduce the delay. In the old system, the DBS check used to be done at the end and held up the process; we are going to frontload DBS. You used to have two interviews three months apart; we are looking to offer both interviews in one day instead. We have introduced a sifting process rather than an arbitrary cut-off. We hope that all those measures, which have been developed both with HMCTS and the magistracy, will significantly speed up the process of recruitment.

Q147 **Ms Marie Rimmer:** We were told informally that most people apply to be magistrates because they know someone who is already in that role; indeed, it was mentioned this morning. Can the Ministry afford not to invest in an inclusive outward-looking recruitment campaign? You just mentioned that you are hoping to recruit from a wider and more diverse group. Exactly how do you think you will do that?

Lucy Frazer: We are doing a number of things to try to increase diversity. We use social media. We advertise recruitment on social media—on LinkedIn and Twitter. We target particular organisations. Someone mentioned social housing. We are working to ensure that we



access different groups, and not just on social media. We have had mosque visits, and we work with local universities. I held a round table the other day on a completely different subject, which was domestic violence. A number of people who had been subject to domestic violence said that judges did not always see things from their perspective. Someone at the round table said to them, "Why don't you apply to become a magistrate?" We need to get different types of people in, and we are already trying to do that in a number of ways.

Q148 Ellie Reeves: Thinking about getting more people to serve as magistrates, there is a sense that more could be done to support employees who want to be magistrates, including encouraging employers to release them to that role. Various suggestions have been put forward, such as legislation compelling employers to allow employees time off, or awards to companies or a kitemark scheme. The Government have said that a kitemark scheme is something they would consider carefully. Can you give an update on that? Has it been considered? What is the outcome? Are the Government looking at other things to support employees to become magistrates?

Lucy Frazer: You are right; it is really important. If you want to be a magistrate but you work and you cannot get time off, there is no point in wanting, because your ambition will be thwarted. When I was at the Magistrates Association annual event, I met someone who had been sponsored by Lloyds, which recently won an award as a very supportive employer. We recognised that at the MOJ by sending someone along to Lloyds, so we are supporting individual employers. In the MOJ, we allow people 21 days off to do it. We need to look at a number of ways. At the moment, we are not pursuing a kitemark scheme, but we are looking at a number of ways to try to encourage employers to allow their employees to take time off.

Q149 Ellie Reeves: Can you tell us any more about the different ways you are thinking about to encourage employers?

Lucy Frazer: At the moment, we are thinking about other ways we can do that.

Q150 Chair: It was necessary to legislate so that people could have time off to serve on juries. Are we getting to that stage?

Lucy Frazer: That is not something we can think about.

Q151 Chair: But we regard it as a public duty in our society that people should be able to do it.

Lucy Frazer: It is a public duty. A lot of companies are aware of their social responsibility. There are a number of things people can do that companies allow time off for, and we need to ensure that the magistracy is one of them.

Q152 Ellie Reeves: The financial loss allowance for magistrates has not been



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increased since 2010. I think Jo King told the Committee that magistrates should not be expected to subsidise HMCTS. When is the allowance going to be reviewed?

Lucy Frazer: We are looking at allowances generally more broadly, and we will be looking at the magistrates' allowance in due course.

Q153 **Ellie Reeves:** Is there a timeframe for that?

Lucy Frazer: I can get back to you on that.

Q154 **Chair:** Nine years is a long time, Minister.

Lucy Frazer: Yes, it is.

Q155 **Chair:** What does due course mean in that context?

Ellie Reeves: Is it going to be a decade without an increase?

Lucy Frazer: We are looking at judicial expenses as a whole. Judicial expenses are the first stage, and magistrates will follow after that.

Q156 **Ellie Reeves:** It could be a good few years, by the sound of things.

Lucy Frazer: I can come back to you with a specific timetable, if you would like.

Ellie Reeves: That would be helpful.

Q157 **Chair:** You will get the sense that the evidence to us, Minister, imparted a degree of frustration by the magistracy. Perhaps we can also make the point that the evidence to us was that the system, as well as the level, was described by one witness as labyrinthine. Is that being examined by the review?

Lucy Frazer: I can now tell you that it will be this year.

Chair: I am glad to hear it; that is good news.

Q158 **Janet Daby:** My question is about investing in the quality of our magistrates, encouraging them to improve their own abilities. It is about training. The annual budget per magistrate is £26. I find it quite astonishing that it is so low. In discussions with magistrates, ideally they would like to have not just remote training, where they learn, gain expertise and read online, but training with comrades and other magistrates, so that there is some traditional-type training as well. I want to get your response to that.

Lucy Frazer: Training is a judicial function. It is for the Lord Chief Justice, with the support of the Judicial College, to decide what training is needed and to manage the budget; it is not an MOJ determination. On the amount, some costs have been taken out that do not relate necessarily to the core training that is, as you mention, online. Some non-training costs, like the use of external venues rather than internal ones, have allowed some cost savings.



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Q159 **Janet Daby:** What I am getting at is that, in discussion with magistrates, they said that was insufficient and more needs to be invested not just financially but in the type of training.

Lucy Frazer: I do not disagree with you that training is important; it is fundamental. As a former barrister, I know that we had to do continuous training. The law changes; there are different approaches; new ideas come in, and we have had a reform programme. I am with you that training is important, but it is a judicial function, and it is for the Lord Chief Justice to make financial provision for it. The funding comes from the Judicial Office budget, and the training delivered is determined by the judiciary.

Q160 **Janet Daby:** If the judiciary said to you that more funding was needed, would your Department support that in the area of training?

Lucy Frazer: That is a decision made annually in relation to funding, but the provision is about training the judiciary overall, and then it is up to the judiciary to determine how it allocates that among every part of its jurisdiction.

Q161 **Chair:** Under the Constitutional Reform Act, the judiciary has a particular right to assert its requirements for supply in order to do its job independently. I am sure the Government are cognisant of that. You would say that is part of that conversation.

Lucy Frazer: Of course.

Ellie Reeves: I want to move on to court closures and reforms. Ms Prentis has several questions.

Victoria Prentis: The poor Minister has had the benefit of my views several times.

Q162 **Ellie Reeves:** Before we get to that, do the Government still intend to abolish local justice areas?

Lucy Frazer: That is something we are still looking at.

Q163 **Ellie Reeves:** If they are to be abolished, how do you propose to mitigate the impact on magistrates of having to travel to courtrooms further away, losing their strong connection to the local magistrates bench and so on?

Lucy Frazer: If they were abolished, there would be some advantages, because not all hearings take place with those involved in the hearing in the same building. When you had remote or video hearings, it would not matter where the case related to. There would be some benefits to a magistrate being able to hear something outside their normal area without disadvantaging anyone at all.

It is an important point. From speaking to magistrates, I know they want to serve in their local area; local justice is important to them. That is important, but we also need to ensure that we deliver an efficient, fair



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and proportionate justice system that works well. If we can do that through other means, we should look at them.

In relation to court closures, in 2016-17 we were in a position where 41% of our courts were operating at half their available capacity. As the Ministry of Justice, we have to ask ourselves: do we keep open certain courts that are not being used well from a cost perspective when we could use that money better in other ways, or do we keep open a physical building because it has some advantages? We need to look very carefully at the best use of our money in the Ministry of Justice.

Q164 Victoria Prentis: Minister, you are almost starting to sound like me. Would you agree with me that access to justice, which, as we heard from the previous panel, is what most magistrates are most motivated and worried by when we talk about court closures, can be allowed or extended by providing courts in different sorts of places? As you have just said, it is not necessarily all about the building.

Lucy Frazer: I know this is a matter you are very interested in. Our approach in the Ministry of Justice is that we must serve the people who use our courts, and those are primarily the people who have the cases. They are the users of the courts. We need to ensure that we give them justice, wherever and however that is, through the means most suitable and efficient for them. That might be in a traditional court building; it might in a civil case be with an online system, conducted completely remotely; it might be through some sort of video function; and it might be an alternative provision. We are looking at all of those different methods of delivering justice. We have very open minds on all of them; we are willing to look at all of them, but we need to find out what works for individuals, at the same time as spending taxpayers' money wisely.

Q165 Victoria Prentis: Thank you for that answer. Are you overly concerned about security worries? Initial conversations with some of your officials worried me because I thought there was an emphasis on security issues that was not real. Is that something you have got over, and the Department is opening its mind?

Lucy Frazer: Security is one of the issues we need to think about. When we think about how we should deliver justice, different people often have different perspectives. Judges have a perspective; professionals have a perspective; users have a perspective and we as constituency MPs have a particular perspective, but one of the things that has come up from a different number of those cohorts is security. The senior presiding judge raised it. It was also an issue raised with me by the Law Society when we talked about flexible operating hours for family courts. It is something we need to think about and take into account.

Q166 Victoria Prentis: But you are happy to consider the use of, say, district council buildings, so long as the people who provide the security can go into them, as opposed to a traditional court building.



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Lucy Frazer: We have an open mind on what works, but we have to satisfy everyone. That might be the victim of domestic abuse. There have to be sufficient facilities for them if that is the type of hearing that is taking place. We hear from the judiciary that they are concerned about their own security, so we have to take that into account. We have to weigh those things against our needs and the duty of the Lord Chancellor to provide a fair and efficient court system.

Q167 **Victoria Prentis:** Is real analysis being done about no shows and why people do not turn up to their hearings?

Lucy Frazer: People have always not turned up to their hearings. During the last round of court closures, I was advised by my officials that our own evidence showed that closing courts did not have an impact on failure to appear. Locally, there might be particular evidence in some courts, but nationally overall there is not.

Q168 **Victoria Prentis:** Are you doing after-the-event analysis as to what has actually happened? We heard some particularly troubling evidence about family hearings and no shows in those situations. Very young women, threatened with their children being removed from them, are simply unable to travel for two or three hours by public transport, which may or may not exist, to another centre. Is somebody collating that?

Lucy Frazer: That is very important evidence, and if we looked to close further courts, we would have to look at those issues very carefully.

Q169 **Victoria Prentis:** Have you collated whether or not that is the current position? We have heard anecdotal evidence from witnesses before us, but I do not know whether the Department is collecting national statistics as to whether that is the case.

Lucy Frazer: We have data on failure to appear.

Q170 **Victoria Prentis:** Is that something you would like to share with us?

Lucy Frazer: I think the statistics are officially produced. Perhaps I can get back to you on that.

Q171 **Robert Courts:** I want to ask about videolinks. Some courts are closed on the basis that a videolink can fill the gap, as it were. We have also heard some evidence to suggest that the quality of the technology is not much improved from what I would have recognised a few years ago. Is that fair?

Lucy Frazer: Some people find video evidence extremely advantageous, but there are voices that are not so keen. There are issues in courts about the IT. We saw a major issue a few weeks ago.

Q172 **Robert Courts:** It is quality of sound, connections dropping off and so on.

Lucy Frazer: There are issues, and we need to ensure that they are rectified.



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Q173 **Robert Courts:** Can you be confident that the administration of justice is unaffected by videolinks?

Lucy Frazer: We will be making an evaluation of our reforms, and that is one of the things we will be looking at very carefully. I was in a court the other day where there was videolink evidence from Bratislava. Without that videolink, it is possible that the evidence would not have been heard. Video evidence plays an important role.

I was talking to some family judges who said they often speak to people to work out where individuals might be placed and taken out of their immediate family. They regularly speak to a grandma in Portugal. I did a round table yesterday with some vulnerable defendants. I asked them about video evidence. We recognise the issues that people have raised and want to address them. I asked whether it changed the majesty of the court for the evidence to be given by videolink. I asked one particular gentleman whether it meant it was less serious because he was on video and he said, "When I turned off the video I realised I was still in Pentonville, so yes, it was serious." We need to look at it very carefully and make sure that the technology works, but there are some advantages to video evidence.

Q174 **Chair:** Is the ability to take video evidence from foreign jurisdictions going to be compromised in any way in the event of our leaving the European Union? Does it depend on that, or are there bilateral arrangements?

Lucy Frazer: I would have to get back to you on that.

Q175 **Chair:** It is a genuine matter of interest as you mentioned Bratislava and one or two other cases. It is clearly valuable to be able to take that evidence. It is a genuine inquiry. If you could get that information for us, it would be helpful.

Lucy Frazer: I am very happy to do that.

Q176 **David Hanson:** I refer to problem-solving approaches to criminal justice matters. You may have heard Mr Courts ask the previous panel about problem-solving approaches.

Lucy Frazer: Yes.

Q177 **David Hanson:** We had a warm response to that. Magistrates have said to us informally and in evidence that they are warm to the idea of problem-solving approaches. Where are we on that?

Lucy Frazer: As you can understand, it would be helpful in some cases to have problem-solving approaches. We have such approaches across the criminal justice system outwith courts. I went to an FDAC in London. It was very interesting to see it in operation and see how the multiagency approach worked. The judge I sat with was a real advocate of FDACs.



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Interestingly, local authorities are not taking up the opportunity to do FDACs, and my counterpart in the Department for Education and I are looking very closely at why that is the case. Often, they are doing their own thing; local authorities are doing something similar, but it is not the FDAC model. The short answer to your question is that it looks like they work, but not everyone is taking them up when they are offered, so we need to think about it carefully.

Q178 David Hanson: Can I take you back to February 2016, one Prime Minister ago? The then Prime Minister launched a review that, in June 2016, your predecessor, Caroline Dinenage, said was progressing and would be reporting. That is now nearly three years ago. In the response to the previous Committee's report, the Government said they were exploring how to take forward problem-solving approaches and would set out their plans "in due course." When is due course?

Lucy Frazer: I am not sure that problem-solving courts within the adult and youth criminal courts are specifically being taken forward, but that does not mean that problem-solving approaches are not being employed.

Q179 David Hanson: What has happened to the recommendations that Caroline Dinenage made on the back of the former Prime Minister's commission?

Lucy Frazer: It is something we need to continue looking at, but, as you heard from the senior presiding judge, they need a lot of support in the court and out of the court. While we can see FDACs working very well, they are not being taken up.

Q180 David Hanson: Are you able to produce for the Committee a list of the recommendations that Caroline Dinenage published in June 2016, and a list of whether or not any of those recommendations have been taken forward by the Government?

Lucy Frazer: I am happy to write to you on that.

Q181 David Hanson: That would be helpful. When you do that, it would also be welcome if you could say whether or not you personally or the Ministry of Justice feel there is merit in taking it forward, because at the moment it is hanging in the air, and it will or will not happen. If there has been progress, we need to know what is happening to those recommendations.

Lucy Frazer: I am very happy to do that.

Q182 Chair: A lot of people support FDACs, and it seems a strange message that funding for the FDAC national unit should be cut, if, as you rightly say, Minister, you personally and the Government are supportive of the concept.

Lucy Frazer: FDACs were funded primarily by the Department for Education. I am working very closely with the relevant Minister. We have been talking to the national unit; we are looking nationally at why the



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offer has not been taken up by local authorities. Some local authorities are operating their own FDAC-type things but not using the FDAC model.

Q183 **Chair:** Is that perhaps an argument for a national drive and consolidation to make sure good practice is rolled out?

Lucy Frazer: We are looking at it closely.

Q184 **David Hanson:** We have also had representations, and indeed the Government's response, on previous correspondence and reports where we talked about increasing magistrates' sentencing powers, and there is legislation on the statute book with regard to giving magistrates a wider brief to date. Is there any progress on that?

Lucy Frazer: That is still under review.

Chair: Since 2004.

Q185 **David Hanson:** The legislation was passed when Tony Blair was Prime Minister, and that is quite a long time ago. I say this not because it is a long time, which it is, but because the Government, in response to this Committee, said they would potentially look at the issue. When does your review complete its deliberations?

Lucy Frazer: It is still under consideration.

Q186 **David Hanson:** Is it ever not going to be under consideration? Will there be a conclusion to the consideration?

Lucy Frazer: You know that the Ministry of Justice is looking at sentences as a whole, including short sentences. The Magistrates Association is a key organisation with which we will engage in that discussion, and I am sure that is one of the questions that will be discussed.

Q187 **David Hanson:** Just between us, roughly when is this announcement likely to be made?

Lucy Frazer: It is something you will have seen in the press; you may have taken evidence on it. You will know it is something we are looking at. Are you talking about the 12 months?

Q188 **David Hanson:** I never mentioned the 12 months; you have mentioned it, Minister. You have rolled the 12 months into the wider magistrates' sentencing powers. I am interested in when we can have a resolution as to the position with regard to a definitive view from the MOJ on whether or not it wants to increase magistrates' sentencing powers. If that is rolled into the 12-month review, at what stage will we expect further discussion on these matters?

Lucy Frazer: All I can say is that it is under review.

Q189 **Robert Courts:** I want to ask about the strategy for the magistracy. The former Secretary of State wrote to the Committee back in February 2017



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talking about the overarching judicial strategy for the magistracy. I just want to ask how that strategy is progressing.

Lucy Frazer: We are working very closely with the magistracy. As I said at the outset, we have a very good relationship with them. They perform a vital function in justice and in society. Most cases in the criminal sphere go through the magistracy, and we, and HMCTS in particular, are working very closely on that strategy.

Q190 **Robert Courts:** What support are you giving? You say you are working closely. Can you outline for us what that support is?

Lucy Frazer: There are a number of working groups on which HMCTS leads. I mentioned recruitment. It provides the secretariat. You will have heard one of the members of the previous panel say they were working very closely with Jane from HMCTS. She is a key part of the HMCTS team. We work with them on many issues.

Q191 **Chair:** How many officials do you have in the Department who work on the magistracy? Do you have a dedicated policy team?

Lucy Frazer: We have officials in a number of Departments who work on a variety of matters connected to and concerning the magistracy. We have people in the reform team. The magistracy are engaged at every stage of our reform. There would be liaison with the magistracy on reform. There are other parts of judicial liaison where HMCTS liaises with the magistracy. There is no dedicated team but they span a number of policy areas.

David Hanson: The previous panel talked about the national strategy for magistrates being developed.

Q192 **Chair:** As I see it, when you are looking at sentencing, you want to put that into the broader review of sentencing, such as 12 months and other matters. Is that right?

Lucy Frazer: It is still under review.

Q193 **Chair:** In terms of a national strategy, which has been talked about, you see that as part of the broader judicial strategy. Is that the approach?

Lucy Frazer: It could be.

Q194 **Chair:** What strikes us is that, back in 2016 under the Prisons and Courts Bill, there was a serious attempt to set out a strategy. When that Bill was lost, the strategy seemed to go.

Lucy Frazer: The strategy is being worked on. You heard the previous panel say that, and we are working extremely closely with the magistracy.

Q195 **Chair:** Do the Government remain committed to reform along the lines of that Bill?



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Lucy Frazer: We listen very hard to all people in the justice system, and the magistracy is a key part of our justice system. When recommendations are made to us by the magistracy, we obviously work with them and consider their recommendations very carefully.

Q196 **Chair:** And the Government accept their obligation under the Constitutional Reform Act to make sure that the magistracy is adequately funded, as with any other part of the judicial system.

Lucy Frazer: As the Lord Chancellor has a duty to ensure that we have a fair and efficient court service, obviously funding is part of that.

Chair: Minister, thank you very much for your time and your evidence. We are very grateful to you.