

**MAGISTRATES'
ASSOCIATION
EVIDENCE:
EMPLOYMENT
RIGHTS BILL**

INTRODUCTION

The Magistrates' Association (MA) is the only membership body and independent voice of magistrates in England and Wales.

There are currently 14,576 magistrates in England and Wales,¹ who hear cases across three jurisdictions: adult criminal, youth criminal and family. All criminal cases begin in the magistrates' court, and over 90 per cent of cases are concluded there. In 2023, magistrates' courts received 1.37 million cases compared to a crown court caseload of 105,000.² All magistrates are volunteers; they receive no payment for this work, although they can claim expenses for some financial losses.

OUR RECOMMENDATIONS

The MA believes the Employment Rights Bill represents an important opportunity to improve the legal accommodations made for magistrates to ensure they can fulfil their vital public duty.

The MA suggests the Bill should be amended to require that:

- Employers allow those who serve as magistrates sufficient time off to fulfil their 26 half-day sittings in addition to their normal annual leave allowance, and
- That this time off is paid at their normal salary, and
- Employers be able to claim these costs in whole or in part – as is currently the case with jury service.

These amendments would make a considerable positive contribution to improving the diversity of the magistracy so that it best reflects the communities it serves, by specifically advantaging younger, working people and ensuring they are not excluded from the magistracy. Such a provision would affect only a very few, less than 10,000³ of the UK's 33 million working people, who make an outsized contribution to the wellbeing of their communities and the proper function of a civic society.

THE PROBLEM: FINANCIAL CHALLENGES AND THEIR IMPACT ON A DIVERSE MAGISTRACY

¹ <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2024-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2024-statistics#magistrates-in-post>

² <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/>

³ Data on what proportion of the magistracy is employed is not publicly available. This figure is an estimate based on 14,576 magistrates in England & Wales, of whom 81 per cent are 50 or more years old.

Recent magistrate recruitment campaigns have – rightly – focussed on ensuring the magistracy is diverse and reflects the communities it serves. Despite this, only 23 per cent of those who applied to the magistracy between 1 April 2023 and 31 March 2024 were under 40 years old.⁴ Only 19 per cent of magistrates in post on 1 April 2024 are under 50 years old.

The MA's Young Magistrate Network is clear that greater support from employers, required by law, would support more younger people applying to the magistracy. Qualitative research conducted with young magistrates and the University of Sheffield advocated for the expenses and remuneration processes to be reconsidered.⁵

REQUIREMENTS OF MAGISTRATES

Magistrates must attend court and fulfil their role ('sit') for a minimum of 26 half-days per year. In addition, in magistrates' first year up to 13 half-days are required for training. From the second year onwards, magistrates may require two to four half-days per year for training as required by the Judicial College.

Magistrates are drawn from the communities they serve. To achieve a diverse magistracy that properly reflects its communities, it is important that employers support their employees to fulfil this public duty, so that more people of working age step forward for this role. Only 41 per cent of appointments made to the magistracy in 2023/24 were aged 49 or under.⁶

MAGISTRATES ARE LEFT OUT OF POCKET

Research by the Magistrates' Association published in October 2022⁷ shows that 73 per cent of magistrates experienced financial loss as a result of fulfilling this public role, and this particularly affected employed magistrates. Of those surveyed, only 42 per cent of employed magistrates received paid time off from their employer for all sitting days, with 33 per cent receiving no paid time off at all for their time serving as a magistrate. The Financial Loss Allowance (FLA) is an expense that can be claimed to account for lost earnings and is administered as a flat rate, differentiated between self-employed and all other magistrates, and separated by up to four hours and over four hours of earnings lost. Around one in ten magistrates surveyed claim this expense, but this figure is higher amongst Black, Asian and minority ethnic and young (under-40) magistrates, at 12 and 29 per cent respectively. 91 per cent of FLA claimants reported that the FLA does not cover their lost earnings.

Court business takes place during working hours. Employers are legally obliged to allow time off work for employees to volunteer in public roles, but how many days they allow and whether this time off is paid or unpaid is currently at the discretion of employers. Those who qualify for time off include magistrates, local councillors, school governors, trade union members and others.⁸ There is no specific provision in law to ensure that working magistrates have time

⁴ 'Diversity of the judiciary 2024 statistics: data tables', <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2024-statistics>

⁵ <https://www.magistrates-association.org.uk/blog/bridging-research-and-practice-in-the-magistracy/>

⁶ <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2024-statistics>

⁷ <https://www.magistrates-association.org.uk/publication/it-shouldnt-cost-to-volunteer/>

⁸ A full list is available here: <https://www.gov.uk/time-off-work-public-duties>

away from work to complete their duties, despite the regularity of this role and its importance to a functioning civic society.

The law, as it currently stands, leaves considerable discretion to employers. This variability prevents some people from becoming magistrates and prevents serving magistrates from continuing in this role if they change employer. Younger magistrates (those under 40) are disproportionately affected by this variability as they are most likely to be employed.

MAGISTRATES BENEFIT THEIR EMPLOYERS

The skills acquired by magistrates can be of great benefit to employers. Being a magistrate means developing skills of critical analysis, decision making, giving and receiving constructive feedback, conflict resolution, teamwork, communication, time management and more. Magistrates receive extensive training in these areas, both on-the-job and formally through the Judicial College.

WHAT OUR MEMBERS SAY

In preparation of this evidence, working members of the Young Magistrate Network were asked about their experiences.

Those with roles in the civil service or the NHS generally found the level of support to be very good, with sufficient paid leave to fulfil all or most of the minimum sittings, although some variability between NHS Trusts was identified.

“Allowing the kind of leave policy that is ubiquitously in place across the NHS to be in place for all employers would, without doubt, widen participation of people who want to apply to be magistrates.”

For those magistrates working in the private sector – where organisational size varies much more – the picture was very different. Members reported that employers were unhappy to learn they were applying to be magistrates. Reaching an agreement with employers about getting time off to serve as a magistrate is often an ad hoc, individual process, and the degree of support provided by the employer is subject to the perspectives of individual line managers. One member reported their line manager was very supportive as their partner serves as a magistrate, whilst a different member reported their employer was “very annoyed” when they asked for paid leave to fulfil their role and they have reverted to using annual leave to meet their sitting requirements. They are now “uncomfortable discussing anything related to my sittings.” It is evident that many members are using their annual leave to meet their sitting requirements, either because their employer will not provide enough leave for them to complete their public duty, or because this leave is unpaid and they cannot afford to do so, or a combination of both.

“If it weren't for securing my current position [in the Civil Service] I would have resigned as a magistrate; working fulltime [in the private sector] and then using half my annual leave allowance to be magistrate meant I was not left with sufficient leave to rest and have a work/life/magistrate balance.”

Where members referenced the FLA, they universally said the amount received did not cover the pay being lost as a consequence of fulfilling their role as a magistrate. It is costing members money to volunteer for their public role.

“[I’m] delighted with my employer’s support ... they do much more than the statutory minimum, but I feel let down by the fact that, in practice, it costs me money to volunteer because the MOJ’s loss of earnings allowance is insufficient.”

“I will be financially worse off by sitting as a magistrate.”

Several members noted the impact of challenges – getting time off to serve as a magistrate and not being left out of pocket by doing so – particularly affects younger people, who are more likely to be employed, from applying to be magistrates with a negative impact on judicial diversity.

“The current system is totally against employed magistrates having an easy path to volunteer and discourages new and particularly younger employed people to apply.”

“I can sit no more than the minimum sittings. I’d love to sit more but I can’t afford to!”

“I have friends working for other employers who are a similar age to me (some younger, some raising a family). They would love to serve as a magistrate but are unable to do so because they cannot get paid time off work to do

