

## Part 3 – The magistrates selection process

### Guiding principles

3.1. The principles below apply to the handling of all applications to the magistracy:

- applications should be handled fairly, consistently and expeditiously;
- candidates must be assessed solely on merit against the six key qualities – no other factors may be taken into account;
- candidates should be treated with courtesy and respect;
- candidates must not be excluded from the selection process on the basis of disability; and
- information about an individual gained through the selection process is confidential. (This point should be stressed at the start of all interviews.) The selection process itself is not confidential.

### The Key Qualities

3.2. The key qualities required of all magistrates are:

<b>Good character</b>
Magistrates must: <ul style="list-style-type: none"><li>• have personal integrity, be circumspect and able to maintain confidences; and</li><li>• have nothing in their private or working life, or in the lives of their family or close friends, which could bring them or the magistracy into disrepute.</li></ul>
<b>Understanding and communication</b>
Magistrates must: <ul style="list-style-type: none"><li>• be able to communicate effectively with colleagues, court users and court staff; and</li><li>• be able to comprehend relevant facts reasonably quickly, follow evidence and arguments, and concentrate, often for long periods of time.</li></ul>

<b>Social awareness</b>
Magistrates must: <ul style="list-style-type: none"> <li>• appreciate and accept the need for the rule of law in society;</li> <li>• display an understanding of wider social issues, such as the causes and effects of crime; and</li> <li>• have respect for, and some understanding (to be developed through training) of people from different ethnic, cultural or social backgrounds.</li> </ul>
<b>Maturity and sound temperament</b>
Magistrates must: <ul style="list-style-type: none"> <li>• be able to relate to, and work with, others;</li> <li>• have a sense of fairness and be considerate and courteous; and</li> <li>• be open-minded and willing to consider the views and advice of others.</li> </ul>
<b>Sound judgement</b>
Magistrates must: <ul style="list-style-type: none"> <li>• be able to think logically, weigh arguments and reach a balanced decision; and</li> <li>• be objective, and have the ability to recognise and set aside their prejudices.</li> </ul>
<b>Commitment and reliability</b>
To help ensure the speedy and efficient conduct of court business, sittings in the magistrates' court will almost always be planned on a full-day basis. To meet this need, magistrates must: <ul style="list-style-type: none"> <li>• be willing and able to undertake the minimum sitting requirement of 13 days, or (where that is not possible) 26 half-days per year*, and mandatory training; and</li> <li>• be able to undertake their duties on a regular basis.</li> </ul> <p>*see guidance at <b>paragraphs 5.5 and 5.15</b></p>

### Welsh language-essential posts

- 3.3. Advisory committees in Wales which need to recruit to vacancies deemed to be 'Welsh language-essential' should follow the guidance at **Appendix 3A**.

## The application to become a magistrate

- 3.4. A standard application form and notes for guidance are available online at [www.gov.uk/become-magistrate](http://www.gov.uk/become-magistrate)
- 3.5. Hard-copy application forms will only be provided in exceptional circumstances, for example, for applicants who are genuinely unable to access the internet.
- 3.6. Application forms in Braille can be obtained from the Magistrates HR Team. Please be aware when making a request that there can be a delay in obtaining stock of these.
- 3.7. Advisory committees must not use locally produced versions of application forms or notes for guidance, or send out any information which conflicts with these Directions. However, it is good practice to provide applicants with helpful local information such as details of magistrates' courts and how to arrange pre-application visits (see below).

## Visits to a magistrates' court

- 3.8. Applicants are informed (in the applicant's notes for guidance) that they must make an observational visit to a magistrates' court when it is sitting in general session, at least once, but preferably two or three times, within the year before completing their application form (see also **paragraphs 3.19–3.20** below).
- 3.9. Reasonable adjustments should be made to enable anyone with a disability to visit court.

## Receiving and dealing with applications

### Receipt and acknowledgement

- 3.10. Applications should be acknowledged in writing within **five working days** of receipt.
- 3.11. If no recruitment is planned when speculative applications are received, committees may either return the application form to the applicant and invite them to consider applying at a later date, or hold the form on file pending future vacancies. Applicants should be informed if the committee proposes to retain their form and for how long. If possible, they should also be given an estimate of when vacancies are expected to arise.

### Record-keeping

- 3.12. Committees should keep a record of all applications received within the last **five years**. Additionally, the original application form for each magistrate should be retained while they remain active, and for at least **five years** after they leave the bench.

- 3.13. A written record must be kept of the reasons for a decision not to proceed with an application. Committees should keep in mind that this information may need to be conveyed to the candidate if they request feedback, or a review of the decision, and may have to be disclosed as evidence in the event of legal proceedings.

#### **Checking for factors which lead to automatic disqualification**

- 3.14. Secretaries should identify any applicant who is automatically disqualified from appointment under **Part 2** of these Directions and inform them within **ten working days** of receipt of their application why they cannot be appointed.
- 3.15. A list of any applicants sifted out due to automatic disqualification should be made available to the committee. And, members should be permitted to see the application forms on request.

#### **Procedure where disqualification depends on the particular circumstances**

- 3.16. Secretaries should identify any applicants who *may* be disqualified for appointment under **Part 2** of these Directions.
- 3.17. The decision on whether to invite such applicants to interview rests with the advisory committee or sub-committee, and should be considered at their next scheduled meeting.
- 3.18. If a meeting is not taking place within a timescale that would allow a decision to be taken and communicated to the applicant within **20 working days** of receipt of their application, the matter should be considered by a quorum consisting of the committee chairman (or their deputy) and two committee members, one of whom must be a non-magistrate member.

#### **Failure to undertake court visits**

- 3.19. Advisory committees are not obliged to interview candidates who have failed to undertake the required visits (see **paragraphs 3.8–3.9** above).
- 3.20. Secretaries should refer applications to the advisory committee or sub-committee for consideration (see **paragraphs 3.17–3.18** above). Committees must be consistent in their decisions about these cases.

#### **Previous applicants**

- 3.21. Advisory committees are not required to interview candidates who have applied within the past **three years** and failed to demonstrate the six key qualities. The decision as to whether or not to call such persons to interview rests with the advisory committee or sub-committee and should be dealt with as in **paragraphs 3.17–3.18** above.

### **Personal knowledge about candidates**

- 3.22. Where a committee member suggests that it would be inappropriate to proceed with an application on the basis of personal knowledge about a candidate, the advisory committee (or sub-committee) should discuss the matter. A decision not to proceed must be a decision of the full advisory committee or sub-committee.
- 3.23. Interview panel members must not conduct their own research into candidates, for example by doing internet searches against their names or other known details about them. Nor should research be done in any other form of social media, for example by putting out a message via an online “blog” entry or “twitter” account asking for background information on a candidate. Interview panels must work only from the papers: i.e. the completed application form and references, and completed first interview assessments at second interview.

### **Obtaining references**

- 3.24. **Three references** must be obtained using the standard form at **Appendix 3B**.
- 3.25. Where a candidate has moved into an area within the last two years, it is not mandatory for them to provide a reference from someone local.

### **When to obtain references**

- 3.26. Advisory committees can decide when to request references, but they must be available to panel members in advance of the second stage interview.
- 3.27. Committees should make clear to referees the date by which references should be received.

### **Procedure if references are not received by the deadline**

- 3.28. Advisory committees should make what they consider to be reasonable and proportionate efforts to chase any late references, for example, by asking the candidate to contact the referee.
- 3.29. If the candidate states that the delay is caused by the referee being away, they should be required to identify an alternative referee.
- 3.30. Committees do not have to proceed with an application if all references have not been received and reasonable effort has been made to obtain them. The candidate should be informed of the decision in writing and informed that they may apply again when future vacancies arise.

### **Restrictions on who can provide references**

- 3.31. Referees must not be related to one another or to the candidate.
- 3.32. References should not be provided by anyone who is likely to appear before the court to which the candidate might be appointed.

- 3.33. If a solicitor or barrister who gave a reference is subsequently due to appear before the court, the magistrate and their justices' clerk should carefully consider if there is a real possibility of bias in any case in which their referee appears.

#### **Confidentiality of references**

- 3.34. References must be kept confidential.
- 3.35. Committees are free to explore **in general terms** relevant issues raised by references insofar as they pertain to the key qualities. However, references must not be discussed in a way that could enable the candidate to identify the individual referee.

#### **Managing the number of applicants to be interviewed**

- 3.36. Advisory committees must be mindful of resource implications when deciding the number of candidates to invite to interview. To ensure that the process is manageable, advisory committees should pay regard to the business need for new magistrates that has been established with HMCTS.
- 3.37. Provided that fair and transparent procedures are followed (see below) it is not mandatory to interview everyone who applies.
- 3.38. As a general guideline, committees should aim to interview an average of **three candidates** for each vacancy, but committees may use their discretion in setting a ratio of candidates to interview as local circumstances can differ. The important aim is not to waste time and resources in interviewing a disproportionately large number of candidates for the number of vacancies the committee has to fill.
- 3.39. Committees should always be clear in any recruitment advertising and associated information for applicants that it may not be possible to interview everyone who applies. (This is also made clear in the standard application materials.)

#### **Cut-off dates**

- 3.40. Where the number of applicants is expected to exceed that necessary to achieve the recommended ratio, secretaries are advised to consider setting a cut-off date for the receipt of applications. This could also include setting in advance a limit on the number of eligible applications that would be considered should the number received, even when using a cut-off date, greatly exceed the number of candidates who would reasonably be needed to be invited to interview. This should be decided before recruitment activity begins and the cut-off date should be shown in any advertising materials or associated information.

#### **Limiting the number of interviews**

- 3.41. Where a cut-off date has not been set, committees faced with more candidates than they can interview without placing an undue burden on their time and resources may limit the number of interviews.

- 3.42. The sole criterion for deciding which candidates fall within or outside the limit should be the order in which their applications have been received. No other criteria may be used.
- 3.43. Once the limit has been established, advisory committees should first ascertain whether any surplus applicants can be offered interviews in neighbouring areas.
- 3.44. Committees may also place candidates on a waiting-list to be interviewed for future vacancies. This is only advisable if vacancies are likely to arise within the next **18 months**.
- 3.45. Applicants whom the advisory committee intends to place on a waiting-list should be informed and given an estimate of when further vacancies are expected to arise.
- 3.46. Where a waiting-list is in operation, candidates should be called for interview in the order corresponding to receipt of their applications. No other criteria may be used.
- 3.47. Committees should seek confirmation from candidates who have been on the waiting-list and who are to be called for interview that there have been no material changes in their circumstances since their application was submitted.
- 3.48. Where it is decided not to operate a waiting-list any surplus applicants should be informed that they will not be called for interview and why. They should also be reminded that they may apply for future vacancies.
- 3.49. Applicants who subsequently reapply should be treated as new applicants, with the exception that it is open to committees to decide whether to require completion of a new application form.

## **Practical arrangements for interviews**

### **Location**

- 3.50. Interviews must be held in a public building, normally in the HMCTS courts estate. Venues must be accessible to all candidates, including those with disabilities.

### **Reimbursement of expenses to candidates**

- 3.51. Candidates will not generally be reimbursed for the cost of travelling to and from interviews, or for any other expenses incurred in the process of pursuing their application.
- 3.52. To manage expectations and mitigate the risk of subsequent complaints, letters inviting candidates to interview should make clear that expenses will not generally be reimbursed unless there are exceptional circumstances. It should also be made clear that candidates wishing to seek reimbursement due to exceptional circumstances must contact the advisory committee with their reasons before committing to the expenditure.

- 3.53. What constitutes a circumstance that would justify reimbursement of expenses is a matter for local discretion. However, any decision to reimburse costs to individual candidates would need to be given prior approval by the relevant HMCTS senior official.
- 3.54. Following their interview(s), the candidate would need to submit proof of expenditure (e.g. a rail ticket). Payment of reimbursed costs should then be arranged by the advisory committee via the non-invoice payment authority (NIPA) process.

#### **Photographs of candidates**

- 3.55. Photographs of candidates should not be used during the paper sift or at first stage interview, but may be used as an aid to memory at the second stage interview and beyond.

#### **Panel members' responsibility for note-taking**

- 3.56. Panel members should make their own notes during the interview when they are not talking to the candidate. To facilitate this, panels should agree the order of questioning prior to the interview.
- 3.57. Due to the need to make optimum use of administrative resources, separate note-takers should not be used at interviews.
- 3.58. The panel chairman will be responsible for writing-up the assessment form at the end of each interview.

#### **The role of secretaries in relation to interviews**

- 3.59. Secretaries should not sit in on interviews. However, there should always be a secretary (or their delegate) available to advise panels on any administrative or policy issues in connection with the selection process.
- 3.60. Secretaries, or their delegate, can also quality-check completed assessment forms and should raise any issues or concerns with the panel chairman.

#### **Tape-recording interviews**

- 3.61. Advisory committees can decide whether or not to tape-record interviews, having regard to the following considerations:
- candidates must be informed in advance when it is proposed to tape-record an interview;
  - suitable contingencies must be put in place to prevent disruption in the event of problems with the equipment;
  - committees are responsible for safe and secure storage of tapes in compliance with applicable statutory and other obligations. (They must also seek approval, in writing, from the Magistrates HR Team for their proposed storage arrangements at least **one month** in advance of the interviews);

- if a candidate subsequently requests a review of the panel's decision, a typed transcript will need to be produced with the cost being met from the relevant local HMCTS budget; and
- the Magistrates HR Team cannot fund the provision of recording equipment.

### Interview panels

- 3.62. Advisory committee members **must** have attended the standard selection training course before participating in the selection process. Newly trained committee members have equal standing with more experienced colleagues on an interview panel.
- 3.63. Interviews should normally be conducted by a **three member panel** (including a chairman), at least one of whom should be a non-magistrate.
- 3.64. If committees experience difficulties in securing sufficient interviewers, they should seek assistance from neighbouring committees.
- 3.65. If a first stage interview panel member drops out and cannot be replaced in time, candidates must be informed that a panel of three is the norm and asked if they are content to proceed with the interview. Candidates must not be forced to proceed before a two-person panel if they are not content to do so and should be offered an interview at a later date.
- 3.66. All second stage interview panels **must** have three members. If practicable, one of the panel members should have been present at the first stage interview.
- 3.67. The chairman does not have to be the committee (or sub-committee) chairman. They can be either a magistrate or non-magistrate member.
- 3.68. Observers should not be allowed in interviews, other than an official from the Magistrates HR Team (or someone authorised by the Lord Chancellor to observe), the advisory committee chairman, the secretary (or his or her deputy), or a single new committee member.
- 3.69. Bench chairmen must not be present at interviews.

### Treatment of candidates at interview

- 3.70. The sole purpose of the interview process is to assess candidates on merit against the key qualities.
- 3.71. Interview panels should keep in mind that candidates have put themselves forward for a voluntary unpaid role, will come from a variety of different socio-economic backgrounds, and have varying degrees of interview experience. While candidates should leave the interview feeling they have been properly tested, they must do so with the impression that this has been done with courtesy and professionalism.

- 3.72. Panels should concentrate on gathering reliable evidence to underpin their decisions. Verbatim quotes are the best form of evidence to put down on the assessment form to back up the panel's decision as to whether a key quality has been demonstrated. Candidates must not be asked questions about aspects of their background which are not directly relevant to the key qualities, or questions that could not be put to all candidates, such as about childcare arrangements.

### Candidates who have a disability

- 3.73. Reasonable adjustments should be made to enable candidates to attend interviews. If they cannot be made, an alternative solution should be sought, for example, changing the interview venue.
- 3.74. Candidates with a disability must not be asked any questions at all about their disability, or how they think it might affect their ability to serve as a magistrate. This includes questions about getting to court/access to buildings. If a candidate attempts to discuss this topic at their interview, they should be informed that it is not appropriate to do so, and reassured that the purpose of the interview is to assess them solely on merit. (see also paragraphs 3.130–3.133).

### The first stage interview

#### Timing

- 3.75. First stage interviews should normally last around **30–45 minutes**. They should not last for less than 30 minutes unless the candidate wishes to terminate the interview earlier and this must then be recorded in writing by the panel chairman.

#### Preparation

- 3.76. Before the interviews, panel members should have carefully read the application form and references (if obtained) for each candidate, and made a note of any issues that may need to be explored.
- 3.77. The candidate should be given a clean copy of their application form before the interview begins. They should then be asked at the start of the interview, by the panel chairman, if there have been any material changes since the form was submitted.

#### Purpose and content

- 3.78. First stage interviews play a full part in the selection process and not all candidates will proceed to a second stage interview.
- 3.79. The key qualities of **good character** and **commitment and reliability** must be fully assessed at the first stage interview. This will enable the second stage interview to be devoted to the other key qualities and to assessing potential judicial aptitude.

- 3.80. The first part of the interview should focus on what the candidate has recorded on the application form.
- 3.81. The panel chairman should put the **good character and background question** (verbatim) to the candidate early in the interview. This is to allow sufficient time for any issues to be fully explored:

**The good character and background question**

“Is there anything in your private or working life, or in your past, or to your knowledge in that of your family or close friends, which, if it became generally known, might bring you or the magistracy into disrepute, or call into question your integrity, authority or standing as a magistrate?”

- 3.82. The remainder of the interview should focus on more general topics. This should include some discussion of criminal justice issues agreed on by the panel members, for example, the impact of drugs on crime and society, drink-driving, and juvenile crime.
- 3.83. Panels may ask the candidate about what they perceive to be significant local crime issues in their community, but should bear in mind that the candidate may not have been resident for long in their current neighbourhood, and that local knowledge, while desirable, is not a prerequisite for appointment.
- 3.84. Panels should invite the candidates to talk about their visit(s) to observe proceedings at a magistrates’ court; what they saw, their impressions of how the cases were dealt with, what they perceived to be the causes of the offences etc.
- 3.85. Panels should also confirm the candidate’s awareness of the general expectation that they will offer at least **five years** of service and seek an indication that they expect to be able to do so. However, candidates must not be required to give an undertaking to serve for this period, as this would not take into account that their personal circumstances might change.

**Completion of assessment forms**

- 3.86. The first stage interview assessment form at **Appendix 3C** should be completed after each interview.
- 3.87. Where a candidate is not to be put forward for a second stage interview, the assessment form must clearly set out the reasons for the decision and the relevant evidence.
- 3.88. The completed forms for candidates who are to proceed to a second stage interview should include a clear note of any issues which require further exploration by the second stage panel. The form should also highlight any particular points for the panel to be aware of, for example, an affirmative answer to the good character and background question.

- 3.89. **The following general guidance applies to both first and second stage interviews.**
- 3.90. Each panel member should complete an assessment form before anyone expresses their views about the candidate. The chairman should then ask each member for their views, before giving their own view.
- 3.91. In the event of a disagreement, the panel should discuss the issues and reach a consensus.
- 3.92. The panel chairman should complete the finalised assessment form, ensuring that it is thorough, concise and legible.
- 3.93. It is vital that the form records valid and reliable evidence, particularly in the event of a request for a review of the panel's decision or a legal challenge (in which case the form may have to be used as evidence). It is strongly recommended that **verbatim quotes** from candidates be used to evidence decisions against the key qualities.
- 3.94. Advisory committee secretaries should not hesitate to request clarification from panels if the assessment form is not clear, evidenced, and in line with the Directions.

**Discretion to consider candidates who have not met some of the key qualities for a second interview**

- 3.95. If the assessment of the panel at first stage interview is 'not demonstrated' against one or more key qualities (with the exception of good character and commitment and reliability), the panel may still consider whether the candidate has demonstrated sufficient potential to recommend them for a second stage interview. This decision rests entirely with the panel and there is no expectation as to the proportion of such candidates who will go forward to a second stage interview.

**The second stage interview**

**Timing**

- 3.96. Second stage interviews should ideally take place between **five–15 working days** after the first stage interview and normally last for around **45 minutes to 1 hour**.
- 3.97. There is no objection to both first and second stage interviews being held on the same day if it is practicable to do so. However, if this approach is taken the structure of the day must be made clear to candidates in advance. Being mindful of the fact that some candidates will have to take the day off work to attend for interview, committees will also need to be clear as to what candidates can do to occupy their time if there is a significant wait for them on the day between their first and second interviews. Careful thought will also need to be given to the local procedure for informing candidates on the day that they will not be progressing to a second interview.

### Preparation

- 3.98. Candidates should be given the two interview exercises (see **paragraphs 3.104–3.106** below) **30 minutes** before the interview (and should have been asked to arrive sufficiently early for this purpose).
- 3.99. Candidates must be asked to bring a **photograph** and at least **three forms of identification** to enable their identity to be confirmed. These should include at least one from the following category (and must be originals):
- passport; or
  - driving licence; or
  - full birth certificate.
- and** at least one from the following category:
- utility bill; or
  - bank statement; or
  - credit card statement (or similar).
- 3.100. The candidate should be asked for their proof of identity before the interview. (A suitable time would be when they are given the two exercises to consider.)
- 3.101. The documents must not be photocopied or retained by the committee.
- 3.102. The panel chairman must tick the box on the second stage interview assessment form (**Appendix 3D**) to confirm that the candidate's identity has been checked and record the details of the documents produced, for example, passport number, date of birth, issue date, and nationality.
- 3.103. Panel members will need to be familiar with the case-studies being used, as well as the content of the first stage interview assessment form and any matters identified as requiring clarification or further exploration.

### Interview exercises

- 3.104. The interview exercises should comprise one list of ten or so offences/serious matters, from which candidates will be asked to rank the four most serious offences in order of their perceived degree of seriousness. The other exercise should be a case-study that focuses on one fictionalised offence being considered by the bench for sentencing.
- 3.105. Committees can produce their own versions of the exercises. These should be submitted to the Magistrates HR Team for approval at least **30 working days** prior to the interviews.
- 3.106. It is advisable for committees to change the exercises they use at least every **two years**.

### **Purpose and content**

- 3.107. The primary purpose of the second stage interview is to test potential judicial aptitude.
- 3.108. Panels may produce their own written framework of topics to explore at interviews, but must not use standard lists of questions which are put without variation to every candidate. Questioning should be an “organic” process; valid evidence will emerge through carefully listening to the candidate’s account of aspects of their life-experience and through the discussion of general topics.
- 3.109. When discussing the case-study or other hypothetical scenarios, the candidate may be asked what they would hope to achieve through sentencing. However, they must not be asked to suggest an appropriate sentence, as they cannot be expected to know about this.
- 3.110. Panels should avoid using legal terms or jargon, for example “mitigating factors” – it is better to ask the candidate what they think makes the offence more or less serious.
- 3.111. At the end of the interview, the chairman must put the good character and background question verbatim to the candidate again.

### **Completion of assessment form**

- 3.112. The second stage interview assessment form at **Appendix 3D** should be completed after each interview.
- 3.113. **The general guidance at paragraphs 3.86–3.94 above also applies to second stage interviews.**

### **Scoring candidates’ performance**

- 3.114. Second stage interview panels are required to operate the following scoring system against the key qualities of **understanding and communication; social awareness; maturity and sound temperament; and sound judgement.**

- 0** Not demonstrated – little or no positive evidence
- 1** Demonstrated – generally positive evidence
- 2** Well demonstrated – positive evidence
- 3** Very well demonstrated

- 3.115. Good character and commitment and reliability do not need to be scored.
- 3.116. A candidate who has demonstrated good character and commitment and reliability and scored at least **one** against each of the other qualities has met the minimum standard for appointment.
- 3.117. A candidate who has reached the minimum standard must not be rejected on the basis of scoring lower than other candidates. Ranking based on scores only becomes necessary where there are more suitable candidates

than vacancies (see also '**Procedure where there are more suitable candidates than vacancies**' below).

- 3.118. If some candidates have achieved equal total scores and there are insufficient vacancies to accommodate them all, panels should revisit their assessments and decide which candidates to recommend on merit. It should be possible from the recorded evidence for the panel members to agree that there is at least one example of 'Candidate A' performing better than 'Candidate B' even where the overall scores are identical. This approach recognises that it does not follow that candidates who attain equal scores are *identical* on merit.

### **Benchmarking**

- 3.119. To promote consistent scoring, committees are encouraged to conduct benchmarking exercises before interview programmes commence.

## **Post assessment procedures**

### **Advisory committee meeting**

- 3.120. The committee should aim to meet to decide on the candidates to be recommended within **15 working days** of an interview programme ending.
- 3.121. It is important that the main advisory committee meets to discuss and approve those candidates who will be recommended to the Lord Chancellor for appointment. It is not acceptable for these decisions to be taken solely by the committee chairman, as the whole committee (subject to any members who, for good reason, are unable to attend the meeting) needs to take collective responsibility for the recommendations that are made.
- 3.122. Members should be provided with copies of each candidate's application form, references and first and second stage interview assessment forms. This should happen sufficiently in advance of the meeting to enable them to familiarise themselves with the documents.
- 3.123. To reduce the administrative burden, it is acceptable to provide copies of the second stage interview assessments only. However copies of application forms and references should be available at the meeting.

### **Procedure where there are more suitable candidates than vacancies**

- 3.124. Where the number of candidates who have achieved the minimum standard required for appointment exceeds the number of vacancies, the secretary should take the following steps:
- check with HMCTS whether it would be practicable and in line with established business need to appoint all of the successful candidates, or whether some appointments could be delayed for up to **one year**;
  - check whether nearby areas can offer appointments;

- consider offering surplus candidates a place on a waiting-list for future vacancies (only advisable if vacancies are expected in the next **18 months**).
- 3.125. Candidates must be made aware that being placed on a waiting-list is not a guarantee of appointment and they will have to reapply if no vacancies arise within 18 months. Committees must bear in mind that candidates with a total score of four are suitable for appointment. If such candidates are placed on a waiting-list they should be offered vacancies that arise on the bench within the next 18 months before any new recruitment is undertaken.
- 3.126. Where, after exploring the options above, the number of candidates who met the minimum standard for appointment still exceeds the number of vacancies, the committee should recommend the highest-scoring candidates. No other criteria should be used.

#### **Notifying candidates about the outcome of their application**

- 3.127. Candidates should be notified of the outcome of their application within **five working days** of the committee's decision.
- 3.128. Committees are not obliged to volunteer detailed reasons to candidates about why they are not being recommended for appointment, but they are free to do so if they (or the secretary to the committee) wish, when the letter notifying of the outcome to the interview is sent by the secretary. However, letters to unsuccessful candidates must make clear that they may seek feedback if that is not given in the letter notifying the candidate about the outcome of their application.
- 3.129. Where feedback is sought it should be provided by the secretary to the committee in writing (or by email) and be based solely on the evidence on which the decision was made. The feedback should be clear, concise, meaningful, and tactful.

#### **Candidates with a disability**

- 3.130. Where a candidate with a disability has demonstrated each of the six key qualities at interview, the committee must recommend them for appointment using the same criteria that apply to all other suitable candidates. For example, when, because of limited vacancies, the committee needs to recommend only some of the suitable candidates, if a candidate with disabilities has scored sufficiently highly they must be recommended. Reasonable adjustments should not be a consideration at this stage (see below).
- 3.131. To ensure compliance with the Equality Act 2010 the Magistrates HR Team will write to all candidates recommended to the Lord Chancellor for appointment, asking whether the candidates require reasonable adjustments to assist them in carrying out the duties of a magistrate, such as specialist equipment or adaptations to court buildings.

- 3.132. If a candidate requires reasonable adjustments, officials will contact the advisory committee to discuss how arrangements will be put in place locally to assess the practicability of providing those adjustments.
- 3.133. The presumption must always be in favour of finding ways in which a suitable applicant with a disability can be appointed. Committees should be as flexible as possible in considering how that could be achieved. This may include exploring the possibility of serving on a different bench to the one to which they would normally be assigned, if adaptations to the court buildings are not possible.

#### **Disclosure and Barring Service (DBS) clearance**

- 3.134. Once the advisory committee has agreed on its recommendations for appointment, the secretary should send those candidates a **DBS disclosure application form** (available from the Magistrates HR Team) with the **declaration and undertaking form**. See **Part 4** of these Directions for further guidance.

#### **Review of a panel's or committee's decision**

- 3.135. Candidates not recommended for appointment are entitled to seek a review of the decision. They should be made aware of this in the letter notifying them of the decision and be given a deadline of no more than **one month** from date of the letter to submit their request for a review. Candidates should also be informed that a request received after the deadline will not be taken forward.
- 3.136. Before a review takes place, the candidate should be informed of the reasons for not recommending them and invited to comment in writing.
- 3.137. Committees should note that the Lord Chancellor reserves the right to review any decision made in relation to the non-recommendation of a candidate and candidates must be told that they have a right to appeal to the Lord Chancellor if an appeal is rejected at advisory committee level.

#### **Request for review of a sub-committee's decision**

- 3.138. The parent advisory committee is responsible for reviewing the decisions of its sub-committees. It should aim to do so within **28 working days** of receiving a request for a review.
- 3.139. If it is not possible for the committee to meet to consider the request within the timescale above, consideration by a quorum is acceptable. These instances should be kept to a minimum.
- 3.140. The quorum should be composed of one magistrate member of the committee and one non-magistrate member (either of whom may be the committee chairman). The committee secretary (or their delegate) should also be available to advise the quorum on any queries.
- 3.141. Members of the sub-committee who interviewed the candidate and decided not to recommend them should not take part in the review.

- 3.142. The advisory committee (or quorum) may decide to uphold the decision of the sub-committee. Alternatively, they may decide that the candidate should be interviewed (if they have not already been interviewed), or re-interviewed by a different panel.
- 3.143. Candidates should be notified within **five working days** of the outcome of the review and be given reasons for the decision made.

**Request for review of an advisory committee's decision**

- 3.144. Where there are no sub-committees, or where a candidate does not accept the outcome of an advisory committee's review of a sub-committee's decision, the candidate may request a review by the Lord Chancellor.
- 3.145. If the advisory committee receives a request for such a review this should be forwarded, with all the relevant papers (including a transcript of the interview if it was tape-recorded), to the Magistrates HR Team. Because the completed assessment form will be shown to the Lord Chancellor, if it is not clearly legible the committee will need to include a typed version of the form approved and signed by the panel chairman (or verified as an accurate copy by the committee secretary).
- 3.146. The advisory committee should inform the candidate and provide contact details for the official to whom the matter has been referred. (Details of the relevant official are circulated regularly and are available on request from the Magistrates HR Team.)
- 3.147. The target for completion of a review by the Lord Chancellor is **33 working days** from receipt of all relevant papers. However, occasional delays may occur because of demands on the Lord Chancellor's time.
- 3.148. The Lord Chancellor may decide to uphold the advisory committee's decision or that the candidate must be interviewed (or re-interviewed). The Lord Chancellor will write personally to the candidate once he has completed his review. This letter will be copied to the secretary to the advisory committee.
- 3.149. If the Lord Chancellor overturns the decision of a committee, the Magistrates HR Team will request and provide the secretary with a summary of any reasons he has given.
- 3.150. Sometimes, even if the Lord Chancellor upholds the panel and committee's decision on the appellant's suitability, there can be issues of concern about the way the candidate's application or interview was handled. The Magistrates HR Team will give feedback to the committee secretary in these matters if it is called for.