

Part 4 – Submitting recommendations for appointment

Timing

- 4.1. Advisory committees may submit recommendations for appointment at any time, and any number of times, during the year. Submissions should be sent to the Magistrates HR Team. For added security paper submissions should be double wrapped in a second envelope when sent through the post.

Composition of the submission

- 4.2. The submission should comprise the following:
- covering letter from the secretary;
 - **photocopy** of the application form for each candidate recommended for appointment;
 - completed candidates' submission details form (**Appendix 4A**);
 - completed applicants and recruitment summary form (**Appendix 4B**);
 - **photocopy** of each candidate's declaration and undertaking form (**Appendix 4C**); and
 - any completed consent forms for joining the Magistrates' Association.

The covering letter

- 4.3. The covering letter must confirm that the submission contains all the documents listed above and include any additional information that needs to be highlighted about the candidates (see **paragraphs 4.4–4.13** below).

The application form

- 4.4. Secretaries must ensure that applicants have answered every applicable question on the form. Questions which are not applicable should be marked as such. No question on the forms submitted with the recommendations should be left blank or crossed-out.
- 4.5. For any forms that have been completed more than **one year** ago, the advisory committee must have verified with the candidate that the details on the form are still correct. If they are not, the secretary should amend the form and make a note of any changes in the covering letter. (Where there are several changes, committees may ask the candidate to complete a new form.)

Issues which may require clarification

- 4.6. Secretaries should include any further information on the issues below in the covering letter.

Age

- 4.7. As the Lord Chancellor will not generally appoint anyone over 65, committees should give their full reasons for recommending such a candidate.

Candidates' occupation

- 4.8. Where a candidate falls into any of the categories that could act as a possible bar to appointment (see **Part 2** of these Directions), committees must give their reasons for recommending appointment.

Candidates' spouse/civil partner/partner/family members/relatives

- 4.9. Where the candidate's spouse, civil partner, partner, family member or relative is employed in any of the categories listed as a possible bar to appointment, committees must give their reasons for recommending appointment.

Criminal convictions and civil proceedings

- 4.10. Candidates must have disclosed details of any of the following:
- any proceedings to which they are, or are expected to be, a party;
 - any convictions, however minor, including motoring offences where either a fixed penalty was payable and penalty points endorsed on their licence, or for which they attended a driving awareness course;
 - any criminal or civil orders to which they are or have been subject, including details of divorce and maintenance orders, penalty notices for disorder, warnings for possession of cannabis, Anti Social Behaviour Orders (or any successor to these); and
 - all forms of formal recorded caution.
- 4.11. Information about disclosure of any of the above should be included with, where appropriate, the full reasons for recommending appointment.
- 4.12. Where a candidate has been divorced and has children under 18, committees should ascertain whether there are any maintenance orders in force, whether payments are up to date, and at which court they are enforceable. If the order is enforceable in the same local justice area to which the candidate may be appointed, the committee must confirm that it will make arrangements to transfer the order should it need to be enforced.

Good character and background declaration

- 4.13. If the candidate has answered "yes" to the good character and background question, full details must be provided in the covering letter.

The declaration and undertaking form

- 4.14. Advisory committees must ensure that any conviction or formal caution or order listed in the form corresponds with those listed on the application form.
- 4.15. Advisory committees must keep the original forms for active magistrates, and for at least **five years** after they leave the bench.

Disclosure & Barring Service (DBS - formerly the Criminal Records Bureau)

- 4.16. Candidates recommended for appointment as magistrates (or as new non-magistrate committee members) must have **enhanced level** DBS clearance.
- 4.17. Once the advisory committee has agreed its recommendations for appointment, it must send those candidates a **DBS disclosure application form** with the **declaration and undertaking form** within **five working days**. The candidate must return the completed forms to the secretary. Committees may exercise their discretion in asking candidates to complete DBS applications at an earlier stage in the process, for example when attending for second stage interview.
- 4.18. The DBS application forms must be obtained from the Magistrates HR Team, not requested direct from the DBS.
- 4.19. The Magistrates HR Team will accept and begin processing appointment submissions where DBS clearance for a candidate is still pending. **However, recommendations cannot go before the Senior Presiding Judge or the Lord Chancellor until DBS clearance has been received.**

DBS countersignatory procedures

- 4.20. At least one person at each advisory committee should be registered with the DBS as a countersignatory. This person is authorised to countersign the disclosure application forms before they are sent to the DBS.
- 4.21. If the advisory committee does not have a countersignatory, or needs more of them, the secretary should contact the Magistrates HR Team who can provide the appropriate application form. The completed form must then be returned to the Magistrates HR Team to be signed by the lead signatory before being sent to the DBS for processing.

Completion of disclosure application forms

- 4.22. Disclosure application forms for candidates should be completed and sent to the DBS as soon as possible. As mentioned above, candidates can be asked to complete the form at the second stage interview to minimise the potential for delay.

- 4.23. It is vital that the forms are completed properly, otherwise they will be returned by the DBS, causing delay and potentially resulting in DBS penalty charges being incurred.
- 4.24. Brief guidance on completing the disclosure application form follows. If an advisory committee has any questions, they should contact the Magistrates HR Team. The DBS also publishes useful guidance online. This information can be accessed via two separate websites:
- www.gov.uk/disclosure-barring-service-check – where information can be found for applicants to assist them in completing the DBS application form (this can be printed out and enclosed with application forms to those candidates who do not have easy access to the internet); and
 - www.gov.uk/government/organisations/disclosure-and-barring-service – where general information can be found for registered bodies – this includes advisory committees – who use the DBS's services; and where corporate information and publications about the DBS can be found.
- 4.25. The applicant (candidate) should complete **sections A, B, C (if appropriate), and E**. Responses are mandatory to all questions in boxes highlighted in yellow.
- 4.26. The advisory committee countersignatory or designated advisory committee staff should complete **sections W and X**.
- For Section X, the following information should be added:
 - 61. Position Applied For: The first line should be completed with the following **'Child and Adult Workforce'**. The second line should contain the name of the position, **'Magistrate'** (for new non-magistrate committee members it should be: **'Justice of the Peace Adviser'**);
 - 62. Organisation Name: **'Magistrates HR'**;
 - 63. Level of check required **'Enhanced'**;
 - 64. Are you entitled to know whether the applicant is registered to work with children? – **check with a cross in the box marked 'yes'**;
 - 65. Are you entitled to know whether the applicant is registered to work with vulnerable adults? – **check with a cross in the box marked 'no'**;
 - 66. Does this position involve working with children or vulnerable adults at the applicant's home address? – **check with a cross in the box marked 'no'**;
 - 67. Application type – **check with a cross in the box marked 'new post holder'**;
 - 68. Is this application for a free of charge volunteer? – **check with a cross in the box marked 'yes'**. **(Failure to do so will generate a DBS penalty charge. The Magistrates HR Team will endeavour to check this box prior to distribution but we ask committees to be extra-vigilant.)**

- 4.27. Please feel free to contact the Magistrates HR Team if you need any assistance with the above process.
- 4.28. The countersignatory should complete section Y by **signing the form** and entering their unique **countersignatory number** as confirmed to them by the DBS upon their appointment as a countersignatory.

Sending disclosure application forms to the DBS

- 4.29. Completed disclosure application forms should be sent to the DBS by **recorded or registered post**.
- 4.30. The secretary to the committee should contact the Magistrates HR Team immediately in the event of any concerns about the DBS misplacing completed disclosure application forms.
- 4.31. Advisory committees should allow a minimum of **30 working days** for DBS checks to be completed.
- 4.32. Advisory committees should store their copies of DBS disclosure record forms in a secure, non-portable cabinet. Forms should not be retained for more than **six months** (unless the disclosure is being disputed with the DBS.)

If there is a delay with DBS checks

- 4.33. Countersignatories can track the progress of a DBS check via the online tracking tool which can be accessed via:
www.secure.crbonline.gov.uk/enquiry/enquirySearch.do
- 4.34. In cases of substantial delay with DBS checks, committee secretaries should consider asking the Magistrates HR Team to remove the candidate(s) temporarily from the appointments submission to allow the rest of the recommendations to proceed where the other candidates are DBS checked and cleared.
- 4.35. If advisory committees are experiencing exceptionally serious delays in receiving the results of disclosure applications they should contact the Magistrates HR Team.

Magistrates HR Team procedures

- 4.36. When submissions are received in Magistrates HR, a member of the team will acknowledge safe receipt. This will normally be done by email. The Magistrates HR Team aims to process the submission, gain the approval of the Lord Chancellor and Senior Presiding Judge, and inform the advisory committee of the new appointments within **30 working days** of the date on which a submission is received. This target is dependant on all documentation being present and correct, including all DBS clearances.

Procedure after candidates have been appointed

- 4.37. Where the Lord Chancellor has approved the recommendations contained in a submission, with the concurrence of the Senior Presiding Judge, the

candidates will be appointed to the Commission of the Peace for England and Wales and assigned to a local justice area.

- 4.38. Officials in the Magistrates HR Team will send the candidates a letter and certificate of appointment. Letters will be copied to the secretary along with a list confirming the details of the new appointments.

Swearing-in of newly appointed magistrates

- 4.39. Advisory committee secretaries must arrange for newly appointed magistrates to be sworn-in.
- 4.40. Committees are strongly advised to wait until they have received notification that the recommendations have been approved before setting the swearing-in date. Alternatively, committees should fix the date well in advance to allow for the possibility of unforeseen delays.

Annual sittings report and bench list

- 4.41. Advisory committees should complete the annual sittings report (**Appendix 4D**) and send it to the Magistrates HR Team at the end of the financial year (end March). This information is used to respond to statistical inquiries, for example, about national average sitting levels.
- 4.42. A copy of bench list(s) should also be sent at this time to enable cross-checking against the central database and rectification of any discrepancies.