



**SECTION 21:**  
**ensuring that magistrates are kept informed and their**  
**views are ascertained about matters that affect them in the**  
**performance of their duties**

**SECTION 21 PROTOCOL:  
ensuring that magistrates are kept informed and that their views are ascertained  
about matters affecting them in the performance of their duties**

## 1. Introduction

The partnership between Her Majesty's Courts Service (HMCS) and magistrates is fundamental to the work of the courts. A Government Amendment was made to the Courts Bill with the support of the Magistrates' Association to ensure that proper and effective communication with the magistracy takes place and all parties are able to carry out their responsibilities in the management of the courts and the administration of justice. Section 21 of the Courts Act 2003 states:

"The Lord Chancellor must take all reasonable and practicable steps –  
(a) for ensuring that lay justices acting in a local justice area are kept informed of matters affecting them in the performance of their duties, and  
(b) for ascertaining their views on such matters"

The effect of section 21 is to guarantee that effective communication is maintained between HMCS and magistrates about the operation of the courts system and the administration of the courts, as it affects them. This will provide assurance to magistrates that the new agency is listening to their views.

Baroness Scotland of Asthal, in introducing Section 21, acknowledged this:

"The partnership between judges, magistrates and the agency is fundamental to the work of the courts; therefore, good communication at all levels is essential...Our amendment offers magistrates a guarantee that they will be kept informed of matters affecting them, and they will be given the opportunity to give their views."

This protocol ensures clear principles are defined right from the start of the new agency setting out how effective communication with the magistracy can be maintained.

There is a Justices' Issues Group (JIG) and an Area Judicial Forum (AJF) in each of the 42 areas<sup>1</sup> that meet at intervals throughout the year. The AJF, which is chaired by a circuit judge, is a wholly judicial forum and outside the scope of this protocol. It considers judicial matters in relation to the business of the Magistrates' Courts and co-ordination with the Crown Court and the other family courts. The HMCS Area Director's<sup>2</sup> office in each Area will be able to provide contact details for the AJF Chair. The JIG is a crucial part of the new working arrangements between magistrates and the agency. A formal meeting point between the judiciary and the executive, it is an essential part of the framework that will enable the smooth working partnership for the future envisaged in this protocol and indeed in Section 21. The JIG will meet at regular intervals throughout the year and concentrate on specific issues. The remit and membership of the JIG has been agreed and is set out in the July 2004 edition of 'Judiciary' which is annexed to this protocol. Section 21 of the Courts Act 2003 and this protocol apply to all matters that affect magistrates. They apply every day and to every relevant situation.

---

<sup>1</sup> At the time of writing, the London Region has five JIGs and five AJFs.

<sup>2</sup> London has a different structure to other Regions of HM Courts Service. In respect of London, please read this and any subsequent references to 'the Area Director' as being to 'the Regional Director or the REMIT Team'.

This protocol follows consultation with magistrates and managers within HMCS. We have also sought the views of relevant bodies including the Magistrates' Association, Justice's Clerks' Society, Association of Justices' Chief Executives and the Judicial Studies Board.

The protocol does not and could not contain an exhaustive list of issues that Area and Regional Directors will need to discuss with the magistracy. Such a document would be unwieldy and unnecessarily bureaucratic. Instead the protocol gives examples of the types of issues on which the administration will need to engage with magistrates.

## **2. The focus of the protocol**

There are several matters that magistrates regard as fundamental to their being able to perform their duties properly. HMCS and the Department for Constitutional Affairs (DCA) must identify these matters and then ensure that magistrates are informed and their views ascertained where necessary. These matters form the main focus of the protocol, but they should not be considered to be the only issues on which the magistracy will need to be engaged:

- Administrative arrangements for magistrate sitting rotas – balancing the interests of justice, the bench and individual magistrates (both in development and maintaining competence) and ensuring that they are properly taken into account;
- Administrative elements of court sitting patterns and listing arrangements – making effective use of magistrates' time;
- Other administrative issues - agreed arrangements for magistrates to raise their concerns with managers at different levels in the administration, engage in mutual problem-solving and to receive necessary support;
- Independent legal advice and support for decision making – access to timely, high quality independent legal advice from justices' clerks and their legal advisors;
- Training and development – tailored to well defined needs based on competence, is delivered locally through flexible and accessible arrangements and is in line with overall judicial responsibility for training.
- Case management – ensuring that magistrates are fully informed about arrangements relating to the conduct of cases;
- Consideration of District Judge (DJ) posts/ use of DJs and Deputy DJs in line with the existing protocol for consultation on the creation of a DJ post.
- Pilot schemes – ensuring that magistrates are engaged and receive necessary support and training.

## **3. Local communication and engagement**

The way in which magistrates are informed about the matters identified above will vary at a national and a local level and also according to area. Therefore, rather than recreating all of the varying procedures that are employed, this protocol contains high level guiding principles. These principles offer a guarantee to magistrates that they will be notified about matters that affect them in the performance of their duties and given the opportunity to express their views, whilst also offering managers the flexibility to choose how to do this according to the circumstances.

There are differences involved in liaising with national bodies, such as the Magistrates' Association and the Justices' Clerks Society, as compared to bench, branch and panel

chairmen at a local level, as well as individual magistrates. It is also clear that Justices' Clerks will continue to have an important role in the dissemination of information and feeding back the views of the magistracy to the courts administration, the DCA and the Judicial Studies Board. The following paragraphs set out the principles for engagement between HMCS, DCA and the magistracy at all levels. The managers of HMCS will need to work with magistrates to ensure that the methods of engagement that have worked well for the Magistrates' Courts Service are continued and improved upon.

#### 4. Keeping Individual Magistrates Informed and Ascertaining Their Views

***All magistrates will be kept informed about matters which affect them in the performance of their duties. The Area Director will need to ensure adequate mechanisms are established to engage with magistrates and make use of the JIG.***

Proposals to relocate, open, reopen and to close courts will be made by an Area Director in the context of the business plan for the area in conjunction with the local Courts Board. There must be a formal process of consultation with all magistrates who are affected by proposals to close a court, amalgamate courts or to reorganise local justice areas. During this time, all magistrates have the opportunity to respond and give their views on such proposals.

The Area Director will ensure that all magistrates are kept informed of all organisational and procedural developments in their local justice area. This will include making the business plan available and keeping magistrates up to date with technological developments in the magistrates' courts. Some Area Directors may find it useful, in conjunction with justices' clerks, to issue letters to magistrates outlining these types of issues and developments in their area.

The Area Director should advise all affected magistrates of senior appointments (justices' clerks and legal advisors) and magistrates should be able to expect that legal advisors know and are able to give sound legal advice, particularly when changes to the law are implemented.

***A magistrate will be informed about day to day changes in the court that affects them personally.***

Individually affected magistrates will be kept informed of any day to day changes in the court via their court managers. This will include changes to facilities and any minor alterations to listings. Magistrates will work with court managers to arrange minor changes to their rotas.

#### 5. Keeping Bench and Branch Chairs Informed and Ascertaining Their Views

***At a local level Area Directors must ensure that bench chairs are informed about matters and their views ascertained about issues that affect the magistrates within their area as a whole. The engagement with magistrates must be as comprehensive as possible and Area Directors would naturally want to make use of every means of engagement, including the Magistrates' Association local branch structure. This process should be conducted in an open and transparent manner, with timely information about these arrangements being readily available to all magistrates. Some information will need to be disseminated further and the views of magistrates sought.***

Many benches and branches have mechanisms in place, for instance bench management or executive committees, in order to pass on information and gather views and HMCS and DCA are committed to building on existing good practice. The role of

Bench Deputy Chairmen is also important in this respect. The Area Director will also use the Justices' Issues Group (JIG) as a means of engaging with magistrate representatives at a local level.

When a significant impact upon courtroom use or rotas is anticipated the bench chair and the HMCS management team will discuss how to deal with changes. This may be as a result of an initiative by a local agency and the bench chair and the management team will be expected to discuss how to implement any such initiatives.

Area Directors and their management teams will be encouraged to be represented in some way at bench meetings and forums. If members of a bench wish to raise specific issues with an Area Director at a meeting appropriate notice will be given.

If the Lord Chancellor were to assign a justices' clerk from one area to another local justice area, there must be formal consultation with the bench chair. When senior management appraisals are to be conducted Area Directors are encouraged to seek views on performance from bench chairs, both to highlight areas where particular praise would be appropriate or to highlight where improvement is necessary and to ascertain an overall view of their performance.

At a national level, HM Courts Service and the Judicial Studies Board will work together in communicating with magistrates on matters that affect their training. The Judicial Studies Board will also agree processes for consultation and communication on magistrates training matters as appropriate.

## **6. Keeping National Groups or Organisations Informed and Ascertaining Their Views**

***The Magistrates' Association and any other relevant groups will be informed of any proposals which may have an impact upon the magistracy as a whole.***

For example, although any proposals to change the law (e.g. new measures to tackle anti-social behaviour) will not fall within the remit of Her Majesty's Courts Service, the Magistrates' Association will continue to have the opportunity to be consulted about any such proposals. Similarly, if there are proposals to change policy or procedure, HMCS and the Department for Constitutional Affairs will work with the Magistrates' Association and other relevant groups in implementing them.

## **7. Review**

This protocol will be reviewed in April 2006 and at appropriate intervals after thereafter.