

Protocol to support judicial deployment in the Magistrates' Courts

November 2012

1. This protocol was drawn together by a working group consisting of the Deputy Senior Presiding Judge, Lord Justice Gross, the Magistrates' Association, National Bench Chairmen's Forum, Senior District Judge and HMCTS. One of the key aims is to ensure optimal use of both Magistrates and District Judges (Magistrates Courts), each essential to the administration of summary justice and the family justice system. Another is to eliminate or minimise friction between Magistrates and DJ (MC)s ensuring that the focus, above all, is on the administration of justice.

GUIDING PRINCIPLES

2. The Group has been guided by the good sense of the Venne Report¹ in formulating the principles and presumptions which follow.
3. The principles ("the Principles") are as follows:
 - i) The touchstone is the administration of justice. The fundamental consideration is the establishment of arrangements providing for the fair and efficient administration of justice in the public interest.
 - ii) A non-partisan approach is essential. The focus is on service to the public rather than the interests of the providers, whether DJ (MC)s or Magistrates, in having interesting, varied or challenging work, important though that is.
 - iii) The Justice System needs both Magistrates and DJ(MC)s; both play an important and much valued role in the administration of summary justice and the family justice system.
 - iv) The District Bench and the Magistracy should, and generally do, work together in partnership. When allocated to a Court, DJ(MC)s should be involved in the work of that Court as a whole.

WORKING PRESUMPTIONS

4. The working presumptions which follow are intended to provide an acceptable framework. Undue rigidity is to be avoided; the system must be capable of adaptation to meet particular needs, whether of locality or caseload. In any event, the presumptions which follow are illustrative not exhaustive.
5. DJ(MC)s should generally (not invariably) be deployed in accordance with the following presumptions ("the Presumptions"):
 - i) Cases involving complex points of law and evidence.

¹ The Role of the Stipendiary Magistrate (February 1996)

- ii) Cases involving complex procedural issues.
 - iii) Long cases. (The Group supports this presumption on grounds of practicality.)
 - iv) Interlinked cases (given the need for consistency, together with their likely complexity and novelty).
 - v) Cases for which armed police officers are required in court, such as high end firearms cases.
 - vi) A share of the more routine business of the Court, including case management and pre-trial reviews, (for a variety of reasons, including the need for DJ(MC)s to have competence in all areas of work and the desirability of an equitable division of work between Magistrates and DJ(MC)s, subject always to the interests of the administration of justice).
 - vii) Where appropriate, in supporting the training of Magistrates.
 - viii) Occasionally, in mixed benches of DJ(MC)s and Magistrates (with a particular view both to improving the case management skills of Magistrates and to improving the culture of collegiality).
 - ix) In the short term tackling of particular local backlogs (“backlog busting”), some times in combination with Magistrates from the local or (with the SPJ’s approval) adjoining benches.
6. In accordance with current arrangements certain classes of cases necessarily require DJ(MC)s and have therefore been excluded from the above presumptions; these are as follows:
- i) Extradition;
 - ii) Terrorism;
 - iii) Prison Adjudications;
 - iv) Serious sex cases in the Youth Court;
 - v) The Special Jurisdiction of the Chief Magistrate.
7. In formulating the Presumptions, over and above the guidance furnished by the Venne Report, the Group has been informed by the following considerations:
- i) It is important to underline that the listing of cases is here, as elsewhere, a judicial function. In the context of summary justice, on a day to day basis, this is a function handled by Justices’ Clerks, upon whose skill listing arrangements rest.

- ii) Equally, the training of Magistrates is a responsibility of Justices' Clerks.
- iii) It is best not to treat "high profile" cases as a separate category but to consider their listing in the light of the principles and presumptions. The circumstances surrounding high profile cases do not permit ready generalisation, save that they are likely to require especially sensitive handling. Listing decisions involving such cases will often benefit from good communication at a local level between the Justices' Clerk, the DJ(MC) and the Bench Chairman.
- iv) Account must be taken of the need to maintain the competences of all members of the judiciary sitting in the Magistrates' Courts.

A NEW PROTOCOL

8. The new protocol is set out below:
- i) The judicial complement of a cluster² should be looked at as a whole, thus considering Magistrates and DJ (MC)s together in the same exercise. This exercise should also reflect the wider judicial requirement in relation to family work.
 - ii) There should be an annual review of the judicial complement and the distribution of work between Magistrates and DJ (MC)s in each of the clusters in the Circuit or region, led by the PJJ and Delivery Directors.
 - iii) The decision to recommend recruitment of additional Magistrates and DJ (MC)s should rest with the relevant PJJ and Delivery Directors. Appointments, as at present, are for the Lord Chancellor.
 - iv) The annual review should be based upon data provided in a standard format, following a timetable which ensures that the Chief Magistrate, the (relevant) Bench Chairmen and a representative of the Magistrates' Association (MA) have the opportunity to comment upon the factual data.
 - v) There should be a single data collection exercise, combining the forecasting which already takes place for recruitment purposes with the review of the judicial complement (outlined above).
 - vi) The annual review reports should be collated by Justices' Clerks and include a commentary on the distribution of work between Magistrates and DJ (MC)s, so facilitating a review of compliance with the Principles and Presumptions.

² From 1st October, 2012, a cluster will be coterminous with a "clerkship", which is the area of responsibility of a Justices' Clerk, with the exception of London and Lancashire and Cumbria (where there is a cluster for each county).

- vii) Imbalances identified in the annual review would inform decisions on recruitment to the Magistracy and the District Bench, crucially, as part of a single process.
- viii) Before deciding on recruitment, PJJ and Delivery Directors should have regard to:
- the long-term consequences of District Judge appointments (especially in the context of a falling workload) and the flexibility provided by Deputy DJ (MC)s;
 - the flexibility provided by Magistrates' sitting requirements and the need to provide at least the minimum number of sittings;
 - transfers of both Magistrates and DJ (MC)s between areas;
 - possible changes to working practices which may bring about increased efficiency and therefore a reduced sitting need; and,
 - the financial position and its relationship to the number of sitting days in the Courts.
- ix) For the avoidance of doubt, the above process and considerations govern the transfer of DJ (MC)s and the replacement of retiring DJ (MC)s, as they do the appointment of new DJ (MC)s.
- x) Where a member of the judiciary, directly concerned by the decision of the PJJ and/or Delivery Director, is aggrieved on the ground that it did not conform to the Principles and Presumptions, an appeal will lie to the SPJ and the Chief Executive of HMCTS (or their delegates). In the case of the magistracy, appeals must be channelled through the relevant Bench Chairman or MA representative. For District Judges, appeals must be channelled through the Chief Magistrate. The decision of the SPJ and Chief Executive of HMCTS will be final.
- xi) The decision making process above is intended to be exhaustive, providing as it does for taking account of the views of all interested parties, judicial input and a route of appeal. There is neither room nor need for external influence to intrude on this process. Likewise, negative comment by one branch of the judiciary about another is not expected.