JUNE | JULY | 2020

Magistrate

100 YEARS

ESSENTIAL READING FOR MAGISTRATES

Parental alienation and the family courts

A complex issue facing family magistrates

The lay magistracy in the 21st century
Can the modern magistrate adhere to judicial independence?

Amy Rees, Director General for Probation
The important relationship between probation and the judiciary

The early history of the MA
Changes in attitudes following the Second World War

Magistrates Association

The MA's response to coronavirus

The current coronavirus pandemic has had a significant impact on the justice system and on the magistracy. In response, in addition to our normal work the MA has been working on behalf of our members to ensure that the magistracy and magistrates' courts are considered in the decisions being made about how best to respond to Covid-19.

Working with key decision-makers

The MA has made a number of practical suggestions – many originating from our members – to help address the current situation. John Bache, the MA's National Chair, has been in contact with the Senior Presiding Judge Lady Justice Thirlwall, the Deputy Senior Presiding Judge Lord Justice Haddon-Cave, the Chief Magistrate Emma Arbuthnot, the National Leadership Magistrate Duncan Webster JP and senior officials from HM Courts and Tribunals Service, discussing the response to the coronavirus pandemic. John is also on the Magistrates' Courts Hearings Working Group looking at the operation of magistrates' courts.

Engaging with parliament

In addition, John gave evidence to the Justice Select Committee on 4 May, discussing how the justice system is responding to coronavirus, and had a one-to-one meeting with the committee's Chair, Sir Bob Neill MP. The MA also submitted three briefings to the Justice Select Committee for their inquiry on the response to coronavirus and did a briefing for MPs on the Coronavirus Bill. We also submitted evidence to the Women and Equalities Committee's inquiry on the impact of coronavirus on people with protected characteristics. They are all available on our website.

Appearing in the media

John also wrote an article in *The Times* on 5 May calling for magistrates' jurisdiction to be extended, so that they can retain any cases that would involve a sentence of up to 12 months in custody for a single offence, in order to reduce pressure on the crown court. His evidence to the Justice Select Committee was mentioned in *The Financial Times*, on *The Guardian's* website and in *The Independent*. John also appeared on the *Today* programme on 20 April, discussing some of the challenges faced by the justice system in responding to the coronavirus outbreak. He was quoted in an article in *The Guardian* on 20 April about the sentencing of coronavirus-related offences.

Advice for our members

The MA has also been collating the latest advice and guidance for our members on our website, to make sure that all available information is in one easily-accessible place. You can find it at https://bit.ly/magistrate2083. We have also put together advice on video meetings for those who are less comfortable with them, which is available on pages 14-15 of this issue.

Over the summer we are planning some more materials around self-directed learning to help people stay engaged, so if you have seen any great learning resources that you think your colleagues would enjoy please email Jude Zendle at judith.zendle@magistrates-association.org.uk to let us know.

MELODIE HYAMS
EDITOR
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The Magistrates Association (MA) supports magistrates who want to keep their skills up-to-date and want the magistracy's voice to be heard.

With the majority of magistrates as members, we are the only independent organisation in England and Wales advocating on behalf of the magistracy. We are fully governed and funded by our members.

We support local and national networking, provide free training and guidance and represent the magistracy at the highest levels of government.

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INTRODUCTION

JON COLLINS, MA CHIEF EXECUTIVE
jon.collins@magistrates-association.org.uk

Welcome to the June-July 2020 issue of MAGISTRATE.

I am writing this in the midst of an unprecedented public health emergency, which is having such a significant impact on all of our lives.

Firstly, on behalf of the MA I would like to offer my condolences to all those members who have lost loved ones to coronavirus and to the friends and families of magistrates and members of the broader justice community who have lost their lives. My thoughts, and those of my colleagues on the staff team and the MA's Board of Trustees, are with you all.

Secondly, the coronavirus pandemic has caused significant disruption to the justice system, with many court buildings closed altogether and many magistrates sitting rarely or not at all over the last two months. Despite the circumstances, however, the courts have continued to deal with the most urgent cases and magistrates have played their part in this, whether by agreeing to conduct the single justice procedure from home, taking part by telephone in urgent hearings in the family court, or staying at home to protect their health and avoid putting further strain on our public services. In the last few months, as always, I have been very proud to work for the MA.

Despite its significance, however, the current situation is so fluid that we have not focused on the pandemic in this edition of the magazine, as there was a risk that it would be out of date before you received it. Please do, however, take a look at my colleague Jude Zendle's article on online learning and communication during the pandemic on pages 14-15 and at members' 'lockdown stories' on pages 38-39, which provide some insight into what our colleagues up and down the country have been up to in recent months.

I also wanted to take this opportunity to let you know that due to the current circumstances the MA's Board of Trustees has taken the difficult decision to cancel this year's annual conference and awards ceremony, which was due to take place in London on Saturday 17 October. The art exhibitions that we were due to hold in Birmingham, Cardiff, London and Manchester as part of our centenary celebrations have also been cancelled. The AGM will be held online and we are working on what we can best do to put some elements of the conference, if possible, and the art exhibition online. This decision was taken just days before this issue went to print so more information on this will be provided in due course.

Elsewhere in the magazine, I would like to draw your attention to details on pages 12-13 of how to stand for election for the MA's Board of Trustees. Any member who is a sitting magistrate with three years or more until retirement can stand for election and we hope to see candidates from across England and Wales put themselves forward. Please do consider standing if you would like to play a leading role in shaping the future of the organisation. We are also recruiting to the MA's policy committees – please see page 24 for details.

I hope that you enjoy this edition of the magazine and that you stay safe and well in these challenging times.

MA ACTIVITY FOR YOU

- **Promoting the magistracy**
  MA Chair John Bache was interviewed by the *Today* programme about challenges the justice system faces in response to coronavirus. He was also quoted in *The Guardian* on sentencing coronavirus-related offences. *The Times* published an article by John on striking a balance between justice and efficiency in the justice system. BBC Radio Manchester interviewed the Chair of the MA's LGBT+ Special Interest Group, Paul Brearley, about diversity and recruitment.

- **Influencing the agenda**
  The MA provided parliamentary select committees with a number of briefings about relevant issues that have arisen due to coronavirus. We responded to a rapid review looking at remote hearing for family court proceedings, referencing the experiences of Family Court Committee members. We also worked with other stakeholders to draft the first stage of a Judicial College/HM Courts and Tribunals Service review into magistrates' training.

Advert

THE MA 2020 CONFERENCE AND AWARDS DINNER ARE CANCELLED

It is with great regret that we announce the cancellation of our annual events. The Board of Trustees has decided that it is in the best interests of the organisation, and our members, to no longer hold the 2020 Conference and Awards Dinner.

As there is no indication as to when the current lockdown situation will abate, and to what extent, we will no longer have sufficient time to plan and deliver these events. We are naturally also concerned with the safety of our members and feel it would be inappropriate to plan a large non-essential gathering to which many would be required to travel.

All who have already purchased tickets will have their payments refunded automatically.

The AGM will take place virtually. Details will be made available to you shortly.

This is our centenary year and we had hoped to hold a series of events to celebrate and commemorate 100 years of serving the magistracy. As circumstances have made this impossible, we can only express our sadness at these events and apologise to our members for any inconvenience.

If you have any queries, please email us at info@magistrates-association.org.uk.

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The early history of the Magistrates Association in England and Wales

Part two, 1945-1970

As part of the MA's centenary celebrations we are featuring a series of articles on the history of the MA. For the second in this series, the University of Kent's Dr Anne Logan explores the influences and change in attitudes following the Second World War

Legislation affecting the lay magistracy

After the Second World War, the MA continued to pursue its founding objectives of collecting and disseminating information relevant to the work of magistrates to its members. It also performed as a pressure group, presenting its corporate views to government ministers and members of parliament. The period 1945-1970 was bookended by two bursts of governmental and legislative activity regarding the lay magistracy: the du Parcq Royal Commission (1948), followed by the 1949 Justices of the Peace Act at the start of the period, and the changes introduced by Lord Chancellor Gerald Gardiner from 1964 onwards at the end. It is no accident that these were both spells of Labour Party rule, although much of the resultant legislation was not especially controversial in a party-political way. The 1949 Act imposed a retirement age of 75 for JPs (65 in the juvenile court) and instigated a system of travel expenses for journeys over three miles. The former change upset some older magistrates, including Miss Tooke of Gateshead, who complained to her local press that 'I am not retiring or resigning, I have been taken off!', but it was strongly supported by the MA and penal reform groups. At the end of the period, and after much debate among magistrates, the 1968 Justices of the Peace Act legislated for JPs to receive loss-of-earnings payments, although this measure was not activated before the general election of 1970. At roughly the same time the rights of so-called ex-officio justices – such as local mayors – to sit as magistrates were removed, ending one of many anachronistic features of the courts system.

28 Fitzroy Square

Membership of the MA

Whereas in the 1940s, MA members were only a minority of justices, by 1970 most JPs belonged to the Association. The du Parcq Commission, which was the first body to attempt to conduct a census of JPs, found that fewer than 8,000 of an estimated 18,000-19,000 magistrates were MA members. By the late 1960s membership had doubled to approximately 16,000, equating to roughly three-quarters of all JPs. Growth in membership brought some problems in its wake, as divisions opened up between the mostly reform-inclined leadership in the executive and the more conservative members. In the early 1950s differences emerged over the question of a hypothetical reintroduction of corporal punishment for juveniles, which had been abolished in the 1948 Criminal Justice Act. As a result, the MA was restructured in 1956 with the introduction of local branches in place of the previous 'bench' membership, while council members were henceforth to be elected by branches. Nevertheless the leadership remained close to the government, since the sitting Lord Chancellor was automatically Association president and successive chairmen (Lords Templewood and Merthyr) were peers. Furthermore, the executive retained a good deal of power over policy. A milestone in MA history was reached in 1968 when the new headquarters at 28 Fitzroy Square was officially opened by Lord Merthyr. Purchased for £50,000, it remained the centre of operations for nearly 50 years.

Annual meetings continued to be held in London every October, and newspaper reports suggest – the Lord Chancellor's annual address aside – that these could be lively events, even though they were attended by a minority of members. For example, at the 1955 meeting attendees voted in favour of legalising abortion – albeit with (according to the *Manchester Guardian*) a 'considerable dissenting majority' – while rejecting a recommendation from the council that homosexual conduct in private should be decriminalised. At the 1959 meeting there was a row over a proposal to extend police supervision of public houses to drinking clubs when some of the members present objected on the grounds that it would cover supposedly respectable institutions such as Conservative clubs and golf clubs. Nevertheless the resolution was carried. Meanwhile, MA sub-committees continued to do important policy work, for example the European Study Group (later the Overseas Committee) established in 1957 under the energetic chairmanship of Gloucestershire JP, Clare Spurgin.

Magistrates' training

Providing education for magistrates remained a fundamentally important aspect of MA work. However, progress towards compulsory training was very slow. As early as 1946 the Association launched an optional correspondence course, aimed mainly at new

UPPER RIGHT: ATLANTIC-KID/ISTOCKPHOTO.COM

appointees, but open to all. For five guineas the self-financing students received by post a 20-week lecture course and a final test paper. The syllabus covered 'elementary' knowledge of court procedure, criminal law and the law of evidence (*The Times*, 19 October 1946). A few years later it was reported that 1,200 members had enrolled on the course. Following the 1949 Act local magistrates' committees were supposed to facilitate training, but efforts at this time appear to have mainly consisted of plans for high court judges to address JPs whenever they held assizes in the vicinity. Voluntary training at this time comprised a course of six lectures and a series of visits to courts and penal institutions. Educational opportunities for magistrates may have even worsened in the 1950s with the closure of two long-standing local clubs, the Hampshire Women Magistrates Association and the Gloucestershire Women Magistrates Society. Despite their titles, these bodies had for many years offered educational events to both male and female JPs in their immediate localities and beyond. One member in Hampshire reacted to the closure with a message of appreciation: 'I feel I owe almost everything I know about magisterial work to the Association', she wrote. In the early 1960s, disquiet over sentencing practices reignited the debate about magistrate training so Lord Chancellor Dilhorne appointed an advisory committee to examine this issue. Dilhorne's successor, Lord Gardiner, at last made training compulsory in 1966, albeit only for new appointees.

After 1945 the MA continued to lobby the government on issues relevant to its members. These naturally ranged over many policy areas: among several official committees and Royal Commissions to which the Association's leadership presented evidence were ones covering matters as diverse as betting (1949-51), divorce (1951-55) and police service reform (1960-62). The organisation also engaged in an apparently fruitful fact-finding partnership with the British Medical Association, resulting in joint, medicolegal reports on 'the problem girl' in 1947, homosexuality in 1949, suicide law in 1958, and alcoholic offenders in 1961. A close and mostly harmonious relationship with those in power was important to the MA leadership.

The policy issues of the day

Many of the same policy issues which occupied and bedevilled the MA before 1939 re-emerged after the War ended in 1945. The problems of youth justice continued to be a major preoccupation (see 100 years of juvenile justice and the MA, April-May 2020 MAGISTRATE) and as mentioned above, the status of private members' clubs which served alcohol continued to vex licensing magistrates. Above all, the myriad problems associated with

By the late 1960s the magistracy was starting to modernise, but there was still much to be done

Street scene on Bridge Street, Chester, UK 1960

magistrates' handling of motorist offenders proved highly controversial as car ownership soared. By the early 1970s half of all households in Britain had at least one car, but sadly the number of road fatalities also rose, from approximately 5,000 in 1950 to 8,000 14 years later. As in the 1930s, courts' handling of road traffic offences – which made up roughly three-quarters of all cases – was a major factor in mounting criticism of magistrates. In 1959 Lord Lucas of Chilworth, a former transport minister with a motor-trade background, launched a bitter attack on magistrates for not doing enough to enforce penalties under the Road Traffic Acts. Lord Merthyr tacitly acknowledged there was a problem and promised the MA would hold a special meeting. A few years later criminologist Roger Hood, then of Durham University, was commissioned by the MA to study the sentencing of motoring offenders for the sum of £5,700. But while the council called for tougher penalties for offenders, including driving bans, Hood's survey (published in 1972) showed magistrates were often reluctant to use their powers fully and confirmed the suspicions of many people that there were seemingly inexplicable sentencing disparities between benches.

Gardiner attempted to address these issues through his training reforms and better sharing of information about penalties, both strategies that the MA was well-placed to assist with. By the late 1960s the magistracy was starting to modernise, but there was still much to be done. By the time Hood's survey began, nearly one-third of JPs were women (up from 22% in 1949) but in 1965 Gardiner was the first Lord Chancellor to explicitly advocate even greater diversity, stating that he wanted to see men and women from all walks of life – even 'factory workers' – on the bench as well as what he referred to as 'coloured' magistrates in 'appropriate places' (*The Guardian*, 16 October 1965). For Gardiner's vision to be realised, not only the provision of loss-of-earnings allowances but also reform of JP selection practices would be needed. So it is reasonable to suggest that the magistracy was in transition in 1970. Compulsory training had at last arrived and the retirement age had been reduced to 70, but recruitment via Lord Lieutenants' committees was still secretive and tainted by party politics. Yet the MA now represented the majority of magistrates and it was therefore well-placed to work with governments on further reform.

Dr Anne Logan is the author of *The Politics of Penal Reform: Margery Fry and the Howard League*, published by Routledge in 2018.

Parental alienation workshop

Parental alienation and the family courts

Dr Adrienne Barnett, Senior Lecturer in Law for Brunel University, analyses a complex issue facing family magistrates

This article explores the emergence and development of the concept of parental alienation (PA) in England and Wales and highlights key issues and concerns about its use and consequences for parents and children involved in private law family court proceedings. The article draws on the author's research,[1] as well as key issues arising from a workshop on PA held in January 2020 at Brunel University London.[2]

PA has no official or accepted definition, but it is generally described as the unreasonable rejection of a parent by a child as a result of the manipulation of the child by the (usually) custodial parent, with the aim of excluding the non-resident parent from the child's life. There is little, if any, credible scientific support for the theory of PA. An earlier version of the theory, parental alienation syndrome (PAS), proposed by US child psychiatrist Richard Gardner in the 1980s, was discredited in the early 1990s on grounds of gender bias, harm to children and lack of scientific credibility, after which it fell into disuse. Attempts were nonetheless made in a number of jurisdictions internationally to disseminate Gardner's theory. Dr Ludwig Lowenstein, a psychologist supported by fathers' rights groups, purported to 'diagnose' PAS in contact cases in England and Wales. He was discredited as an expert witness by the Court of Appeal in the leading case of *Re L, V, M, H (Contact: Domestic Violence)* EWCA Civ 194.

The theory resurfaced in the US and England and Wales in the mid-2000s as 'parental alienation', at a time when the political and legal terrain had become populated with images of 'implacably hostile', gatekeeping mothers, during a UK government consultation on 'making contact work'. Arguably today, there continues to be no credible scientific backing for the theory of PA. The World Health Organization (WHO) included the term as an index item in its draft new *International Classification of Diseases, 11th Revision* (ICD-11) but clarified that this did not 'indicate WHO endorsement or any sort of formal recognition' and that parental alienation 'is not a disease or disorder', contrary to misunderstandings that WHO has recognised PA as a health condition.[3] It is not clear yet whether 'parental alienation' will be included as an index term in the final ICD-11.

The author's research comprised an analysis of all official reported and published court judgments in which PA or PAS were raised or referred to, producing a total sample of 40 cases between 2000 and May 2019. Although the reported cases cannot provide a representative sample of all child arrangements/contact cases, they provide insight into the way in which some trial judges respond to PA and into the attitudes and responses of the higher courts. In January 2020 a workshop to identify and explore issues arising from the use of PA in the family courts was held at Brunel University London, attended by 20 academics, professionals, and domestic abuse and child welfare stakeholder organisations such as Barnardo's, Support Through Court and Women's Aid. The discussion that follows summarises the key findings of the author's research and the outcomes of the PA workshop.

Key findings of research

The case law analysis revealed a clear pattern of, initially, PAS and subsequently PA being raised in family proceedings and in political and popular arenas shortly after concerns about and measures to address domestic abuse were being raised in legal and political spheres. The emergence of PAS in England and Wales coincided with the publication of ground-breaking research by Hester and Radford in 1996, which brought to the attention of courts and policymakers the harmful effects on children of the promotion of contact between children and violent parents.[4] After PA appeared intermittently in

BELLA LI PHOTOGRAPHY

reported judgments during the ensuing years and little attention was given to PA outside of family court proceedings, PA suddenly leapt into the spotlight in 2016. Again, this coincided with a renewed focus on the issue of unsafe child contact with perpetrators of domestic abuse as a result of Women's Aid's 'Child First' campaign, underpinned by its *Nineteen Child Homicides* report.[5] From mid-2016, articles and programmes on PA appeared in the media and the legal press and the issue was debated in parliament. There was a notable resurgence of PA claims in case law from 2017 and a growing acceptance of such claims. Workshop participants reported that claims of PA in child arrangements cases are now prolific. Recent national empirical research in the US by Professor Joan Meier strongly supports the indication from this chronology that PA may be used to divert attention from and even negate domestic abuse in private family law.

Stark findings

One of the starkest findings of the case law analysis and the PA workshop discussions was the high incidence of alleged or proven domestic abuse perpetrated by parents (principally fathers) who were claiming that resident mothers had alienated the children against them, and the minimal application or even reference to Practice Direction 12J in such cases. In many of these cases, allegations of abuse were never determined, or abuse may have been proved but then glossed over, minimised, or considered too old to be relevant. Research by Birchall and Choudhry, published by Queen Mary University and Women's Aid, found that allegations of domestic abuse could even be used as 'evidence' of PA. PA workshop participants reported survivors of domestic abuse being discouraged from raising domestic abuse by their own representatives, for fear of being accused of PA. A linked concern revealed by the case law and the PA workshop discussions was how PA can dominate cases to the exclusion of all else, becoming the sole focus of courts and professionals when making decisions about children, at the expense of a full analysis and assessment of the child's best interests.

A significant feature of the recent case law is the increasing number of PA experts, who have played a key role in the propagation and success of PA in the family courts. Yet the case law analysis revealed that some of these experts imported PAS into proceedings under the guise of PA. In one case, for example, counsel for the mother and the guardian criticised the expert for applying Gardner's 'eight signs' of parental alienation syndrome when diagnosing PA. On the other hand, participants in the PA workshop reported that expertise in domestic abuse is not always finding its way into family court proceedings.

A further problem is that PA marginalises or may even invalidate children's wishes and feelings. While some judges in the cases reviewed took children's wishes and feelings very seriously, other judges, encouraged by PA experts, discounted children's expressed wishes and feelings and attributed them to coaching by mothers. These findings were echoed by PA workshop participants' experiences – of children not being listened to and their experiences not understood. Specialist participants reported that this increases children's powerlessness and can impede work in helping children to heal. However, large-scale empirical research analysing court file data found that the vast majority of mothers are supportive of contact between children and non-resident fathers, even in the circumstances of domestic abuse, and bend over backwards to 'make contact work', with only a small minority of cases being found to involve unjustified refusals of contact.

Case law analysis

The case law analysis found that, although transfers of residence were rare (five cases), the most recent judgments suggest an increased willingness to transfer the care of children from 'alienating' resident mothers to non-resident fathers. While three transfers of residence took place over an eight-year period, the other two cases were decided since 2017, and in a further two recent cases which were ongoing, transfers of residence appeared likely. The numbers of transfers of residence ordered by the lower courts, whose decisions are not usually reported, may be higher than those featuring in the reported cases. Birchall and Choudhry's research found a high proportion of mothers whose children had been removed from them based on accusations of PA, or had lost contact with them.[6] However, the outcomes of four of the five reported cases in which changes of residence were ordered suggests the children did not benefit from the change. In two cases, children were returned to their mothers mentally and emotionally damaged, and in two cases it appeared likely that the fathers were frustrating the mothers' contact.

The gendered nature and operation of PA is revealed by the case law analysis, which found that mothers achieved little to no success in achieving transfers of residence or in successfully claiming PA against fathers. In these cases, it was evident either from the courts' findings or from the author's reading of the cases that the fathers were abusive and controlling. There is considerable research revealing how perpetrators intentionally try to undermine and disrupt the mother-child relationship and turn children against their mothers by demeaning, belittling, criticising and insulting women to and in front of children, and encouraging children to participate in the abuse of their mothers, which can continue to be perpetrated through child contact.

The author's research concluded that while PA has had a chequered history and is not without its critics, it has become part of the discursive repertoire of current family law, with increasingly harsh consequences for survivors of domestic abuse and children.

Footnotes

1 The study is reported in 'A genealogy of hostility: parental alienation in England and Wales', *Journal of Social Welfare and Family Law*, 42(1), 18-29, Barnett A, 2020. It can be accessed via the Brunel University website at https://bit.ly/magistrate2061

2 https://bit.ly/magistrate2062 The workshop was funded by Brunel's Global Lives Research Centre.

3 This statement can be found in the ICD-11 platform, access to which can be obtained by registering with WHO.

4 *Domestic violence and child contact arrangements in England and Denmark*, Bristol: The Policy Press, Hester M and Radford R, 1996.

5 *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts*, Bristol: Women's Aid, 2016.

6 *What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts*, Birchall J and Choudhry S, Bristol: Women's Aid, 2018.

Dr Adrienne Barnett is a Senior Lecturer in Law at Brunel University in London. She was called to the Bar of England and Wales in 1981 and practised at the independent Bar London for over 30 years, for most of which she specialised in family law, primarily representing parents and children in serious care cases and in private law cases involving allegations of domestic abuse.

More details of Dr Barnett's research, including references to research studies referred to in this article, can be found in the full article published in the *Journal of Social Welfare and Family Law* available at https://bit.ly/magistrate2067.

The Auld Review

'Without fear or favour, affection or ill will': the lay magistracy in the 21st century

Law lecturer Ursula Smartt JP questions the representativeness of lay magistrates and looks at recruitment trends and recent diversity statistics. She asks whether the modern Justice of the Peace (JP) with a 'day job' can adhere to judicial independence and compares the salaried professional judiciary with the lay magistracy

The Lord Justice Auld Review

At the start of the 1990s, two major government reports impacted on the administration of the criminal justice system: The Home Office report *Criminal Justice: the Way Ahead* (2001) and Lord Justice Auld's review of the criminal courts in England and Wales (2001).

The Auld Review had been tasked, among other things, to establish whether the lay magistracy was fit for the 21st century in dealing with 95% of all crime? Auld concluded that the lay magistracy should continue 'for the time being', but he was critical of its lack of diversity, when he wrote: 'The magistracy is not a true reflection of the population nationally or of communities locally', concluding that 'urgent steps must be taken to remove its largely unrepresentative nature'. Auld also suggested the (eventual) replacement of the lay bench with professional salaried district judges (DJs).

The salaried judiciary

The recruitment of professional judges changed with the Constitutional Reform Act 2005, which introduced the Judicial Appointments Commission (JAC) in April 2006, in order to strengthen judicial independence. The JAC is an executive non-departmental public body, sponsored by the Ministry of Justice (MOJ); its objectives are agreed with the Lord Chancellor.

Latest MOJ statistical trends show that the professional judiciary is becoming increasingly diverse, particularly in the tribunal system. Apart from some 152 senior judges (supreme and appeal courts), there are now well over 600 circuit judges, more than 500 DJs (civil and criminal) and almost 1,600 deputy high court judges, recorders and deputy district judges (DDJs), who sit as fee-paid judges in our various courts.

Of the total 3,210 salaried judges in 2019, 32% were women with fewer female judges in more senior roles. The highest level of representation of women DJs is in county courts, highest in the South East (41%) and lowest in the South West (24%). Between 2014 and 2019, the proportion of black, Asian and minority ethnic (BAME) court and tribunal judges increased by 2% in each group. London and the Midlands have the highest representation of BAME court judges (10% and 9% respectively); the lowest is in Wales (3%). This partly reflects the ethnic diversity of the general population in these regions. BAME representation for DJs and DDJs in magistrates' courts is 7%; for DJs and DDJs in county courts the representation is higher at 9% (MOJ 2018 and 2019 statistics).

How are magistrates recruited today?

Lay magistrates are not recruited or appointed by the JAC. The Lord Chancellor's Advisory Committee (LAC), a local recruitment panel, made up of volunteer citizens appointed by the Lord Chancellor, selects candidates. Typically, a regional lord lieutenant chairs the LAC (there are 98 lord lieutenants, from Shetland to Cornwall, County Tyrone to South Glamorgan).

In 2013 the then Lord Chancellor, The Right Honourable Chris Grayling, issued new guidelines for the 'HR functions' of advisory committees. The eligibility criteria for the magistracy was changed for prospective candidates who were either directly or closely involved in the work of the criminal justice system – to the extent that there could be a perception of, or real risk of conflict of interest, bias, or compromised judicial independence.

The new 'eligibility' criteria list now cites 52 professional occupations in the form of a 'tick' list for the LAC, which potentially excludes JP applicants directly or indirectly (via friends, partners or relatives) involved in the criminal justice system or a related agency. The check list includes less obvious occupations, such as social worker, officer for the Royal Society for the Prevention of Cruelty to Animals, relationship counsellor, party political agent, prison visitor, member of the Independent Monitoring Board (IMB – for prisons) or neighbourhood watch member.[1]

Judicial independence and impartiality: the judicial oath

One of the characteristics of the UK uncodified constitution is the independence of the judiciary. This fundamental feature is at the heart of British democracy which makes the judiciary accountable and acting within the rule of law, and thereby holding the executive to account.

> **Every new member of the judiciary, including magistrates, has to swear the judicial oath, ending in: '... I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.'**

It is then understood, according to the judicial oath, that the judiciary has to ensure its impartiality and independence from the executive, such as public authorities and central and local government, and should resist pressures from the media, businesses or pressure groups. Since judicial decisions affect the daily lives of citizens and have an impact on people's confidence in the law, this remains a complex area in which courts must be seen to deliver justice.

Can this standard of complete independence be achieved by today's magistrate, who usually has a 'day job' which might well bring him or her in contact with one of the many criminal justice or public authorities? Can the notion of judicial accountability and independence be totally achieved by a modern JP, especially since the post is non-salaried and does not exist on a formal contractual basis under the legal definition of 'worker' (s. 1 Employment Rights Act 1996)?

There is a difference between 'independence' and 'impartiality' – and this matters. Independence is a state of being. It signifies the separation of judicial power from that of both the legislature, whose enactments it is for the courts alone to construe and apply, and the executive, whose acts the courts will respect so long as they stay within the rule of law. It is independence which – in the case of the lay magistracy – is more difficult to achieve for most JPs who either have a 'real job' or have worked and are now retired. Their judicial independence can be undermined by fear, displeasure, bias or even 'hobnobbing' with members of the executive (eg police, prison escort services, social or children's services or animal protection agencies). Judges and magistrates are expected to recuse themselves from judicial hearings where the danger of bias becomes a reality.

Judicial bias at top level: the Pinochet case

The main ground for General Augusto Pinochet Ugarte's judicial review in 2000 was judicial bias, since one of the three composing the majority, Lord Hoffmann, was at that time chairman of a trust which conducted Amnesty International (AI)'s charitable work in the UK; his wife was also an employee of AI. By a majority of 3:2 (Lords Hoffman, Nicholls and Steyn), their Lordships allowed the appeal and held that the respondent was not entitled to state immunity, ie should be extradited to Spain.

Pinochet's lawyers applied to the Appellate Committee of the House of Lords to set aside its own judgment on the ground of apparent bias (see: *R v Bow St Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte* [2000] 1 AC 61). It seems extraordinary that Lord Hoffmann, the most senior member of the judiciary, had not recused himself from the case, resulting in the Chilean dictator not being extradited to Spain to stand trial for genocide.

Is the lay magistracy still sustainable today?

The roots of lay participation lie in the notion of participatory democracy, specifically 'judgment by one's peers'. The use of juries and lay magistrates offers an inclusive form of justice involving people without legal education passing judgment on fellow members of society.

MOJ statistics reveal that a decade ago there were around 33,000 lay magistrates (England/Wales). Since then numbers have decreased by 43%, from 25,170 in 2012 to 14,348 in 2019. There are a number of reasons. Primarily employers are reluctant to allow JP employees to 'take time out' to undertake sittings. Secondly, the continued closure of regional magistrates' courts since 2013 has meant that JPs are now obliged to travel long distances to court houses. The unrelenting reduction in JP headcount is also a consequence of falling workloads in the magistrates' courts with increasing numbers of salaried DJs and DDJs taking the bulk of the workload from JPs in more serious either-way cases or in grave crimes, including rape, in the youth courts. Additionally, after the abolition of committal proceedings in 2013, there has been a downturn in JP recruitment alongside relatively consistent annual levels of resignations and retirements. The ultimate cause for resignations and despondency has been the introduction of 'e-judiciary' in 2016, when all magistrates had to acquaint themselves (too) quickly with digital technology, such as the use of iPads, paperless courts and sentencing apps.

Lessons from Scotland

Since 2004, Scotland has practically abandoned the lay JP role, which has been replaced by legally qualified and salaried sheriffs. The Summary Justice Review Committee recommended qualifications for such a post being five to seven years in legal practice as a solicitor or advocate. These recommendations were swiftly implemented in 2004-5, and today's sheriffs deal with the majority of civil and criminal cases. There are six sheriffdoms, each administered by a Sheriff Principal who previously served as either advocate or solicitor.

Conclusion

Nothing much has changed since the Auld Review in 2001. The lay magistracy remains overpopulated by women and early retirees. It is not fully representative or as diverse as the clientele which appear before a typical bench of magistrates. In 2019, in all regions, over half of magistrates (56%) were women; 12% of magistrates declared themselves as BAME. As of April 2019, there were very few magistrates aged under 40 (5%) compared with more than half of magistrates who were aged over 60 (52%). Although magistrates can be appointed from the age of 18, there were very few magistrates aged under 30 (1%) and the mean average age of magistrates was 58 years (MOJ judicial statistics 2019).

We have now arrived at a lay magistracy which barely counts 14,000 in England and Wales and the majority of benches deal with summary only matters with DJs and DDJs taking the bulk of either-way cases. It has been argued that judicial independence of the lay magistracy is impossible to achieve. Furthermore, some may think that the office of Justice of the Peace is outdated, leading to the conclusion, if we are to take a lead from Scotland and Northern Ireland, that this ancient office should be phased out, thereby finally realising the recommendations of Lord Justice Auld some 20 years ago.

Footnote

1. Ministry of Justice (2013) Lord Chancellor's Directions, Guidance on eligibility for lay magistrates. Appendix 2B, July 2013.

Ursula Smartt is a lecturer in law at New College of Humanities, London, and a Researcher in Media and Entertainment Law at the University of Surrey. Alongside her teaching, Ursula has conducted extensive research and published a number of books, articles and given papers across the globe. She has also worked with the BBC, including contributing to Radio 4's *Woman's Hour*. Ursula served for 17 years on the West London (Ealing and Acton) and later on the Surrey Bench and left the magistracy in December 2019. You can contact Ursula at ursula.smartt@nchlondon.ac.uk.

Interview with Amy Rees, Director General for Probation and Wales

Amy Rees reflects on the important relationship between probation and the judiciary and outlines her plans to pursue reforms that will put both in the best possible position for the future

Amy was appointed Director General for Probation and Wales for HM Prison and Probation Service (HMPPS) in January 2019. Amy is responsible for leading the probation service, managing the deployment of rehabilitation services across both custody and community, and is accountable for public protection across both the National Probation Service (NPS) and community rehabilitation companies (CRCs). She also has responsibility for all HMPPS operations, including prisons, in Wales. Her previous posts include Executive Director for HMPPS in Wales, Principal Private Secretary to the Secretary of State for Justice and Governor of HMP Brixton.

Introduction

Thank you so much for this opportunity to feature in the MA magazine. I was very much looking forward to coming to speak to you in May at your council meeting in Birmingham and hope there will be an opportunity for me to do that in the not too distant future. I am of course writing this during unusual times – instead of attending meetings such as yours and speaking about the probation system and the ambitious changes we are making, I am writing from my home in Wales, between Skype meetings and attempting to keep a home-based version of school going for my children. Our relationship with magistrates and the judiciary is crucially important to us so I hope you and your families are well despite coronavirus and that we can meet before too long. We have much to discuss, and we will need to work together to recover both the courts and the probation service following lockdown and to pursue reforms that will put us in the best possible position for the longer term.

How has probation adapted to respond to the challenges presented by Covid-19?

Probation is fundamentally a people business – and for our offender managers and other staff, knowing the individual, their circumstances and context, is crucial in managing risk and protecting the public. So Covid-19 and social distancing have brought real challenges. Our starting point has been absolutely to prioritise managing the most serious risks and protecting the public. We are also doing all we can to support the vulnerable people we supervise in our communities while keeping our staff and service users safe. We have adapted how we work to accommodate staff absences, government guidance on social distancing and Public Health England advice. To do this we implemented a set of 'Exceptional Delivery Models', which set out the minimum service that we can provide with the staff available. At the same time, we have had to pause some things – including the delivery of some unpaid work and accredited programmes – while they cannot be done safely or remotely but have sought to ensure that we maintain the delivery of all other requirements of community sentencing. We are using a range of methods to supervise offenders in the community, including increased use of video and phone calls, door-step visits to maintain contact where needed and prioritising office appointments for cases of most concern. We are working closely with partners across the criminal justice system to share our plans and collaborate – including with HM Courts and Tribunals Service (HMCTS) to support the ongoing delivery of court work and development of virtual courts. I was pleased that we were also able to train and introduce bail information officers at short notice to assist courts.

What are your plans for next steps?

We continue to closely monitor the situation and review how we are working centrally. At the time of writing, we have started to plan for our organisational recovery in readiness for when the government restrictions are amended or lifted. We have learnt a great deal during this period and there are some aspects of how we have been working that we may want to keep – for example where some offenders have engaged better or differently with their probation officer over the phone. We are having regular discussions with partners including HMCTS on how we move forward as continuing to collaborate closely is going to be crucial across the criminal justice system. My overall priority in terms of what we do next is to minimise any further disruption for our staff and service users and to keep safely delivering public protection, while we start switching on other parts of the service.

What is your vision for probation?

I was really pleased that probation was recognised as an essential public service by the government in setting out its Covid-19 response. That is exactly what we are. Our work is crucial to protecting the public and keeping communities safe and I want to build a strong probation system that allows us to do exactly that. So I want our service to continue to grow and evolve to deliver the best possible outcomes for the public and the people under our supervision. I also want our staff to receive the professional development and recognition they deserve and our stakeholders (including magistrates) to have confidence in our practice and advice. We will deliver this change despite Covid-19 but we will have to chart a course from the service as it currently is to the service we want for the future over the coming months.

Why do you think probation is important in court?

We take great pride in the role we play in court. I hope you would agree our court staff play an essential role, providing expert advice and independent assessments to support the delivery of justice. Our aim is to ensure we give a quality service that delivers consistently high standards of professional assessment and advice. We strive to provide pre-sentence reports and advice that are clear, well informed, evidence-based, and that can assist the court in deciding on a suitable sentence.

We recognise people who appear before you come from differing backgrounds and some are very vulnerable. We are committed to our public-sector equality duties and to promoting the principle of fair and equal treatment in the justice system. My staff are there to ensure that courts are advised of any equality and diversity considerations, complex circumstances, and specific needs in relation to cases. We aim to provide proposals that balance the needs of public protection, punishment, and the rehabilitative aspects of sentencing by considering a range of disposal options. We also ensure that the voices of victims, alongside their needs and protection, are at the core of our assessments and recommendations.

Finally, if people do not comply with the requirements of community sentences, our role in swift enforcement and bringing them back before the courts is very important to ensure you and the public have confidence that we are robustly managing the orders of the court.

What do you see as probation's priorities within the court setting?

Our priorities in court are the same as those we have for all our work: to protect the public and support vulnerable people in our communities. These inform all our work in court from assessments, reports and sentencing proposals to enforcement. We take great pride in being present in court as a criminal justice partner to support the delivery of justice. Our aim is to deliver an excellent service to the courts and for you to have confidence in all we do.

What is the Probation Programme and how will it impact on the judiciary?

The Probation Programme was established in 2018 to take forward the proposals set out in the government's consultation 'Strengthening Probation, Building Confidence'. We published our Target Operation model in March to describe the system we want to build.[1]

We want to create and implement a sustainable long-term model for probation services that provides public protection and visible and credible options for sentencers, deals effectively with individuals who have offended repeatedly and gives the right rehabilitative support to address offending behaviour. Our programme has been affected by Covid-19 as we prioritise frontline operational delivery but we continue to maintain a focus on this work where possible and will ensure that our work on organisational recovery aligns with our programme plans.

The unified model will bring responsibility for the management of all individuals subject to probation services into the NPS by integrating CRCs and NPS Sentence Management. One organisation will then be responsible for the whole offender journey from court to sentence end. We have already commenced this in Wales by transferring the responsibility for offender management into the NPS. We have received positive feedback from sentencers who say the unified model in Wales has provided clarity on offender management responsibility and simplified arrangements for providing advice to courts.

Our structure in England is also now beginning to change and we are moving to a model where probation services are organised around 11 regions plus Wales, each overseen by a regional probation director. We hope this will be a positive step towards achieving my aim of improving judicial engagement. We will be asking our regional probation directors to introduce themselves to you as soon as possible and they will be keen to hear your feedback on our services to your courts.

We will continue to update you on our progress with the reforms over the coming months and, as always, appreciate any feedback that you have for us.

What is the HMPPS Judicial Engagement Charter and why is it necessary?

I have already emphasised the need to increase engagement and communication between HMPPS and the judiciary at a critical time of change in probation. Our aim is to refresh and improve arrangements that support good communication, with a view to increase understanding and confidence in probation delivery.

We have listened to feedback from the judiciary suggesting a preference for regional information that feels personal and accessible as opposed to 'corporate' in message and tone. The Judicial Engagement Charter sets out our commitment to do this by:

- Regional probation directors attending regional meetings at least bi-annually to provide updates on performance and local news and respond to any local concerns
- Regional probation directors sending personalised quarterly updates to judges and magistrates in your area updating on key local issues on behalf of HMPPS
- Measures to support training and shadowing opportunities in regions for all judicial office holders in both community and custodial settings

Footnote

1 https://bit.ly/magistrate2076

To support this important work, we have recruited two national sentencer and stakeholder liaison managers within our Effective Practice and Service Improvement Group. They can be contacted at emily.campbell@justice.gov.uk or natalie.stableford@justice.gov.uk if you would like to share feedback or ask them any questions.

Could you be a trustee of the MA?

The Board of Trustees are the custodians of the MA and our work. They set our strategic plan, annual work plan and budget, and hold the staff team, through the chief executive, to account for delivery.

Any ordinary member with three or more years left to sit on the bench is eligible to stand for election as a trustee.

It is a challenging and enjoyable role. As a trustee, you will get involved in:

- Developing and regularly reviewing the strategic aims and objectives of the MA
- Ensuring that the policies and practices of the MA are in keeping with our charitable objectives
- Ensuring that the MA complies with our legal and statutory obligations and strives to achieve best practice
- Supporting the MA's fundraising activities, and contributing your skills and interests for the benefit of the MA
- Being an active and collegiate member of the board in exercising its responsibilities and functions, and maintaining collective responsibility at all times

The board meets four times each year at the MA's offices in London and there is also an annual strategy 'away day'. Board meetings take place during the day and travel expenses are paid. Trustees also attend the biannual meetings of the MA's council and the MA's AGM and annual conference.

To find out more about what the role is like, and what your colleagues on the current Board of Trustees value and get out of being a trustee, see their testimonials below.

There will be three vacancies on the Board of Trustees this year. If you are considering putting yourself forward for election, please visit https://bit.ly/magistrate2065 for more details or contact the MA's Chief Executive, Jon Collins, at jon.collins@magistrates-association.org.uk.

The deadline to put yourself forward is 30 June 2020.

Elections will be held in September and new trustees will take up their roles at the AGM in October.

Chair and Deputy Chair nominations

Nominations are also currently open for the MA Chair and Deputy Chair positions. These positions are only open to current members of the Board of Trustees and chairs of the MA's policy committees, who have all been provided with information on how to stand. If there are more candidates than there are positions, then elections to these roles will be held contemporaneously with the election for the Board of Trustees.

John Bache, MA Chair (Cheshire MA)

If you care passionately about the future of the magistracy, please consider applying to become a trustee of the Magistrates Association – the only independent voice of the magistracy.

It is fascinating to work with such a diverse group of people. The first obvious difference between them is that they come from all areas of England and Wales. This is fundamentally important because we need to understand the different ways in which changes and policies affect different areas. For example, court closures can have very different implications in big cities compared to rural areas. Trustees are democratically elected at national level, not selected to represent their own regions. They bring their individual experiences and use them to advise future national policies in the interests of the magistracy. They are answerable only to those who elected them – you, our members.

There are two essential qualities for a good trustee. Firstly, you must be prepared to put forward your own point of view but be equally prepared to listen and respect the views of colleagues. Secondly, you must be prepared to follow the collective decisions of the board, once those decisions have been agreed.

If you think you are not the type of person we are looking for, you are wrong! We want people who are not afraid to express their views. If you are elected, I guarantee you will enjoy working with such a diverse and enthusiastic group of people, all of whom are determined to do their very best for our Association, for the magistracy and for a justice system which is fair to all its users.

Go on, give it a go! Good luck!

If you care passionately about the future of the magistracy, please consider applying to become a trustee of the Magistrates Association – the only independent voice of the magistracy

In the MA's centenary year, we are inviting members to put themselves forward for election to the MA's Board of Trustees

Sarah Clarke, MA Trustee (Buckinghamshire MA)

I am a relatively new addition to the Board of Trustees having been co-opted on to the board early last year and elected as a full member at the AGM last October. I have been actively involved with the MA for many years, both at branch and national level on the policy committees, where the focus has been outward facing, promoting the MA through our consultation responses and involvement with outside agencies. Joining the Board of Trustees was an opportunity to take on a more inward facing role within the MA; to agree its organisational strategic direction and ensure that the MA is run in the interests of its members and in line with its charitable aims.

On the board we have trustees who are new magistrates as well as magistrates who have been sitting for many years, all acting as a critical friend to the MA. Challenging when necessary but all with the same aim of ensuring the MA continues to be the independent voice of the magistracy and remains true to its charitable aims; promoting the sound administration of the law, educating magistrates and others in the law, the administration of justice, the treatment of offenders and prevention of crime.

I have found the experience of working with fellow trustees, who bring their own experiences both as magistrates but also from outside the magistracy, to agree the strategic direction for the MA to be immensely rewarding. As trustees we have a responsibility to ensure the MA remains financially sustainable so that it can continue to represent the voice of the magistracy and ensure that voice is heard within the reform agenda. The board encourages debate and also provides an opportunity to become further involved in working groups, working alongside the MA staff, using existing skills and developing some new ones.

As a trustee I have thoroughly enjoyed the opportunity to work with my fellow trustees and MA Chief Executive Jon Collins. If you are interested in getting involved in shaping the future of the MA then I would encourage you to apply to become a trustee.

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Luke Rigg, MA Trustee (Central and North London MA)

2020 was always going to be an exciting year for the MA as it marks 100 years of its existence, but recent global events have brought new and continuing challenges to the criminal justice system. Magistrates have a unique role to play in supporting this system through its recovery. The MA, therefore, is more important than ever in providing a national voice for magistrates.

My journey as a trustee started last year when I was elected in October and formally appointed at our AGM in November. Since joining the board, I've been able to participate in key decisions for the organisation, such as plans to mark our centenary and our long-term financial sustainability. The other trustees have been extremely welcoming and the MA staff have supported me throughout, particularly as a first-time trustee of a charity.

I would encourage anyone who cares about the future of the MA to consider standing to be a trustee. It is a unique role that requires strategic thinking at a national level – representing all MA members in England and Wales.

As well as being a trustee, I am the Chair of the MA's Young Magistrates Special Interest Group. With this in mind, I would also particularly encourage MA members from underrepresented groups to consider standing. We are very lucky to have a diverse Board of Trustees at present; we represent all three jurisdictions, presiding justices and wingers, and different regions of the country. However, there is always room for improvement!

It is a privilege to have the opportunity to influence the direction of such an important charity as the MA. Good luck to any applicant.

I would encourage anyone who cares about the future of the MA to consider standing to be a trustee. It is a unique role that requires strategic thinking at a national level – representing all MA members in England and Wales

Keeping engaged with the magistracy – ideas for online learning and communication

MA Training and Development Officer Jude Zendle provides some resources and tips for magistrates in lockdown

The need to reduce the spread of Covid-19 has meant many courts closing, and only urgent work is still being done in those courts that are open. So, many magistrates may find that they are sitting substantially less or not at all. In preparation for when you do return to sitting as normal, it's important to keep engaged with your own learning and development. This article outlines some of the different learning resources that you can use, as well as ways to keep in contact with your branch or bench colleagues.

What MA resources can I use?

- **Winger Workbooks** – Produced in conjunction with the Judicial College, these are a set of 14 workbooks and 11 elearning modules (structured around the three winger competences) and provide a helpful refresher on all parts of the court process. Following the progress of a court day, these take you from preparation for court through to sentencing, and consider a range of topics, from discussions in the retiring room to avoiding and challenging prejudice. While these modules are intended for newer wingers, everyone will have something useful to learn from them. Find them on the Judicial College LMS in the Magistrates > Resources section, or on the MA's website, in the members-only Training section.
- **Becoming a presiding justice** – Produced in conjunction with the Judicial College, this workbook and set of four elearning modules provide an introduction to the role of the presiding justice. The topics covered include making effective decisions, working with colleagues and the legal adviser, and communication skills. They were designed for those who are thinking of becoming a presiding justice, but would be equally useful as a skills refresher for those who are already a presiding justice, or for wingers to gain insight into the role. Family and youth magistrates will find specific sections tailored to their jurisdictions at the end of the elearning modules. Find them on the Judicial College LMS in the Magistrates > Resources section, or on the MA's website, in the members-only Training section.
- **Catch up with the Victim Experience Project** – In October 2018, the MA held a roundtable with a number of different charities and statutory organisations to better understand the experience of victims when attending the magistrates' court. The subsequent report and a list of associated resources can be found on the MA's website, in the members-only Training section.
- **Understanding maturity in the criminal court** – This is a short, 20-minute elearning module looking at young adult maturity and its relevance to court. The module explores some of the science behind maturity, as well as information on identifying and responding to a lack of maturity and how lack of maturity is considered in sentencing decisions.

Other resources

- **Mental Health, Autism and Learning Disabilities in the Criminal Court** – This resource, specifically written for magistrates, provides an overview of the signs to be aware of when someone has a mental health condition, learning disability, autism or communication difficulty.
- **Equal Treatment Bench Book** – This was updated in March 2020, and aims to increase awareness and understanding about the circumstances of different people who appear in court. And, of course, the Adult Court, Family Court and Youth Court Bench Books are all invaluable resources.
- **British and Irish Legal Information Institute** – This website has a vast number of records of different case law and legislation to browse through.
- **Advocate's Gateway toolkits** – These useful toolkits were originally intended for advocates, but are useful to give everyone some further information about communicating with vulnerable witnesses and defendants.

How can I stay in contact with my colleagues?

You may also be interested in learning more about methods to communicate with branch or bench colleagues. This might be for branch business, or just to keep in contact!

Here are some examples of different online tools you can use to do this. For some of these, there will be limitations on the number of people you can add to each call – so check this before you set a meeting up. Each of these will have a different 'getting started' guide. The MA has a page with links to these in the members-only Training section of the MA website. All the following apps/software can be used to make online video or phone calls free of charge (for basic services). Remember to always read the Terms and Conditions before using any of these options.

- Zoom – www.zoom.us
- Skype – www.skype.com/en
- Google Duo – duo.google.com
- WhatsApp – www.whatsapp.com
- FaceTime (Apple devices only) – www.support.apple.com/en-gb/HT204380

The quality of any of these options is dependent on a good internet connection, so before setting up a meeting you will need to make sure that colleagues have adequate internet access.

Other options, such as dialling in using a telephone, may be more suitable for those who have limited access to the internet. Conference calls can be set up on Android or iPhone handsets for a small number of people, or some of the online conferencing

options will provide a number and/or passcode for participants to join the meeting by telephone. Remember that making these calls may incur a charge.

This article does not reference tools used for more formal remote court work, as HM Courts and Tribunals Service will offer guidance on these if you need to use them. For example, links to guidance for Skype for Business are available from the Magistrate Matters tile at the eJudiciary site.

Case study – Susan Grace, Training Committee Chair

As I write this, my remote involvement in formal sittings in adult and family courts has merely involved me offering to do search warrants by phone and single justice procedure work from home, as needed.

In the meantime, there is much other out of court communication with my colleagues and branch committee. We ran our recent branch meeting using a phone dial-in service. We seemed to do all the essential business in an amicable, efficient, and enjoyable way. Our kind Judicial Support Unit had helped us set this up. Last week we ran our Justices' Training, Approvals, Authorisations and Appraisals Committee by similar means and with excellent chairing we had the same success. We have also set up a WhatsApp group.

I am attending fortnightly Skype for Business Justices' Clerks' Society Training Committee meetings on behalf of the MA. This gives the MA a good insight into (and a 'voice' in) the very hard work the legal advisers are currently doing, not only in running courts, but also ensuring that training goes ahead wherever, and in whatever form it can, for now.

For many, this kind of virtual communication is a new experience. Once we get over the strangeness, we can make all this technology work to our huge benefit and even gain satisfaction from some of our new skills and streamlining of processes. Good luck and keep well.

Tips for holding virtual meetings

1. Preparation

- Dress as if you were meeting in person.
- Try to find a quiet space which is well lit.
- Make sure you have a comfortable place to sit.
- Check the technology you will be using ahead of the meeting.
- Warn anyone you live with (partners, children and pets!) when the meeting is occurring so they know not to disturb you.
- Try to reduce possible distractions, for example you may want to put your phone on silent or turn off alerts before the meeting starts.
- Ensure you have access to any documents you may wish to reference during the meeting.

2. Participating

- Mute yourself when you are not speaking.
- If using video conferencing – remember that you are on camera even if you are not speaking. So, you may want to keep your movements to a minimum, so as not to distract others. You may also want to double check what can be seen in the background of your video before you begin participating!
- If you are only using audio, remember to say who you are and speak slowly and clearly.

3. Chairing a meeting

- Ask everybody to introduce themselves at the start.
- Some apps allow you to record the meeting. If you do want to do this (for example to take notes from later) you should inform all of the participants beforehand. Be aware of the content of the meeting in case there is anything sensitive being recorded that could be accessed by unauthorised sources in the future.
- Confirm if minutes are being taken and by whom.
- Set clear ground rules at the start. These should include:
  - a) How people should indicate when they wish to speak – you may want to use the chat facility if using video conferencing or ask people to raise their hand
  - b) Ask people to give their name before they comment (especially important if on a conference call)
  - c) Be very clear about the agenda items and try to keep discussion focused
- Remember, if you have some people calling in and others on video, you should check with those on the phone to see if they wish to comment before moving on to the next item on the agenda.
- Before you conclude the meeting:
  - a) Check there is no further business to discuss
  - b) Confirm if minutes will be distributed (ensure you have contact details)
  - c) Confirm the date of the next meeting if applicable
  - d) Thank everyone for attending

Security tips

- Make sure you have a firewall operating, if available.
- Make sure your anti-virus protection is up to date and operating.
- Make sure any passwords you use are secure – don't use easy to guess ones like 'password1234'.
- As above, ensure that everyone introduces themselves at the beginning of the meeting so that you know exactly who is there! If you are hosting the meeting, make sure you turn on the alert for when someone joins, so you know who is present.
- Keep any software that you are using up to date – that way you will know you always have the most secure version available.
- Click the Security tile in eJudiciary to read more information and guidance.

Footnotes

Winger Workbooks
https://bit.ly/magistrate2077

Becoming a Presiding Justice
https://bit.ly/magistrate2078

Victim Experience Project
https://bit.ly/magistrate2079

Understanding Maturity in the Criminal Court
https://bit.ly/magistrate2080

Mental Health, Autism and Learning Disabilities in the Criminal Courts
www.mhldcc.org.uk

Equal Treatment Bench Book
https://bit.ly/magistrate2082

British and Irish Legal Information Institute
www.bailii.org

Advocate's Gateway
www.theadvocatesgateway.org/toolkits

Magistrate Matters
Magistrates can access this by logging on to their eJudiciary account and clicking on the Magistrate Matters tile

A nervous-looking man being brought by military men into the presence of a table-full of magistrates, who appear to be having a convivial time. From The Leisure Hour, A Family Journal of Instruction and Recreation, May 1864

The power and decline of the magistracy from 1689 to 1820

Wessex MA's Michelle Fox-Rousell JP traces the powers of rural justices in England and Wales to their eventual decline in the face of a more robust democratic government

In the one and a half centuries which followed the so-called Glorious Revolution of 1688-1689, justices of the peace reached the height of their powers. They introduced new laws without reference to parliament and without much risk of censure, and had significant political influence on voters and lawmakers alike. The justice was in this period judge, administrator and police in one.

The justices in the 58 County Commissions of England and Wales were usually there at the recommendation of the lord lieutenant, but appointments were also heavily influenced by party politics and hereditary rights; sons and grandsons of justices were common. The property qualification was strictly enforced. From 1439 this meant that a justice must be in possession of land to a rateable value of £20 (!), but in 1774 this was changed to a yearly rateable value of £100. This actually allowed many of the so-called middle class to apply to the bench, since for the period it actually represented a lower sum. It was also at this time that the ancient name 'magistrate' came to apply to justices.

The industrial revolution

The industrial revolution brought many nouveau riche men (there were no women of course) to the bench, and a large number of clergy, who were knowledgeable in law, also became justices. For example, the Reverend George Cooke, Chairman of Gloucester Quarter Sessions, served for no fewer than 20 years. This was just as well because in some areas there was actually a shortage of justices, with many having to travel long distances to deal with misdemeanours of all kinds.

The justices operated through quarter sessions, which, as the name suggests, were local courts held four times a year. Dining inns featured largely at these times, which was where most quarter sessions were held before the advent of custom built courthouses. Attendance at these varied from lord lieutenants and high sheriffs, down to a few justices, the latter being paid four shillings for each day they attended. Usually the clerk of the peace was the only legally qualified person there, in spite of some of the offences being very serious, including murder until 1842. The clerk took fees and gave advice when required.

In addition, there were the petty sessions, later to become known as police courts, which dealt with more minor crimes of theft, drunkenness etc. A single justice – sitting in his parlour at home – could also deal with a wide variety of offences, giving fines and punishments, which, for example, included whipping for those who refused to be bound over.

The petty sessions grew substantially in this time with the quarter sessions often acting as a court of appeal for those few who could afford it. It is the sheer volume and breadth of work that was dealt with by the justices that is so astonishing today. The most authoritative textbook at the time – and the justice's 'Bible' – was the Rev Richard Burn's *The Justice of the Peace and Parish Officer*, published in 1755. The fact that it dealt with no fewer than 106 powers and duties, gives us some idea of the wide scope of the justice's authority. Only an outline can be given here.

WHITEMAY/ISTOCKPHOTO.COM

Judicial

This was some of the most time-consuming work, and the justices' jurisdiction extended to all crimes barring treason. Some minor crimes were dealt with in a brutal manner and whipping and use of the stocks and pillory were common.

From 1688 to 1820 there was a large increase in the number of statutory capital offences; more than 220 by 1820, and these were dealt with by judges in the assize courts. Sentencing was primarily concerned with the humiliation and punishment of the offender, which might include children above the age of seven.

Transportation as an alternative to hanging was used by both the quarter sessions and assize courts.

The sentences given by the justices were very rarely appealed, and in fact judicial decisions were subject to less scrutiny by the higher courts during these times than before or since.

Finance, customs and excise

The justices levied rates for the relief of the poor and inmates of hospitals and alms houses, together with highways, bridges and gaols. Evasion of custom duties and smuggling were common, and two justices could order confiscation of carriages and vessels etc without right of appeal. There were many instances where justices were strangely reluctant to implement these laws however!

Militia

Responsibility for the militia rested primarily with the lord lieutenants and deputies, but justices also frequently became involved since many deputies were also JPs.

Highways

Maintenance of the highway could be enforced, with parishioners being fined if they failed to maintain the highway. The justices could also order the closing or diversion of a public right of way if they required, under an Act of 1815. This became a most unpopular order.

Policing

Arrangements for policing remained much the same as in Tudor times, and it was the responsibility of the justices to apprehend criminals and bring them to justice with the help of their constables. Pickpockets, highwaymen and the looting of shipwrecks were all dealt with by the justices. The increase in industrial unrest due to the huge expansion in trade and industry from the 18th century onwards led to problems. The Riot Act of 1715 made it a capital offence for 12 or more persons to remain together for more than an hour after a justice had told them to disperse. Much violence and injustice followed this Act.

Maintenance of gaols and houses of correction

Justices could order building and repair.

Paupers and vagrants

A large portion of justices' time was taken up in the administration of the poor law; a very difficult and time-consuming area for them.

Licensing

Justices had wide discretion as to who they gave licences to, often rather too liberally!

Game laws

This was probably the most criticised of their duties, and usually portrayed as the oppression of the lower orders. Certainly some justices committed some shocking acts of violence in their execution. Hunting was regarded as the exclusive privilege of the landed gentry, which of course the justices were, which gave them a vested interest in prosecutions. It was claimed early in the 19th century that one in four prisoners in English gaols was an offender against the game laws.

With such a tremendous workload it is not surprising that these part-time, unpaid – and untrained – magistrates came in for a lot of criticism. Taxation was always a source of complaint, followed by the over-vigorous prosecution of the game laws, and the stopping of public rights of way.

A shift in power

However, it was the system itself that was wrong; most individual justices did their duties to the best of their ability, were no worse than many of their class at the time and probably better. Certainly most of the rural justices did a lot for the communities in which they lived, although this was not always appreciated at the time. Only in the late 19th century did democratic government begin to take over and justices became unable to adapt to the changing world and the decline of the absolute power of the aristocracy. To quote the Rev Sydney Smith, in reference to the licensing of alehouses:

> 'What in truth could we substitute for this Unpaid Magistracy? We have no doubt that a set of rural Judges in the pay of the Government would soon become corrupt jobbers, and odious tyrants, as they often are on the Continent. But the Magistrates, as they now exist, really constitute a bulwark of some value against the supreme power of the State.'

As a footnote, it must be stressed that this article has dealt with the rural justices. Matters in the urban Middlesex/London area were completely different and much worse. It was in these areas that the so-called 'trading' justices were lampooned by the novels of Fielding and Smollett, and which eventually led to the stipendiary magistrates and the beginnings of the system of policing we have today. However, this is a story in its own right, for another time.

Footnotes

History of the Justices of the Peace, Volume 2, Sir Thomas Skyrme, Barry Rose Law Publishers Ltd, 1994

Only in the late 19th century did democratic government begin to take over and justices became unable to adapt to the changing world and the decline of the absolute power of the aristocracy

members SPOTLIGHT

A JP in the family
Henry Cawte and Erica Taylor

IT Lead for North Yorkshire Bench Erica Taylor reflects on her inspirational great-grandfather, Henry Cawte, a leading light of his day, who went from carpenter in America to founding his own building firm in Hampshire and finally becoming mayor of Southampton

HENRY CAWTE JP	ERICA TAYLOR JP North and West Yorkshire MA
Born: 1852, Twyford, Hampshire	**Born:** 1952, Southampton, Hampshire
Appointed as a JP: 1905	**Appointed as a JP:** 2005
Bench: Southampton (including Chairman)	**Bench(s):** York and Selby Bench (including Chairman) then North Yorkshire Bench (including Chairman)
Service: 1905-1922	**Service:** 2005 to present

Henry Cawte

My great-grandfather Henry was born exactly 100 years before I was, and about 10 miles away from my birthplace in Hampshire.

Like me, he was a magistrate, being brought up in a family with a strong sense of civic, social and public duty. On the day of his funeral in September 1930, Southampton Borough Police Court stood for a minute's silence and a fellow magistrate stated that he was 'a man of shrewd judgement, of excellent executive ability, with a kindness and generosity of disposition, which commanded the esteem of all who knew him. He was a good friend.'

His obituary in the *Southern Evening Echo* of 2 September 1930 stated that 'in business and in every phase of life he was one of the most honoured and respected men in Southampton.'

As a young man he left Hampshire aged 20 to live in America and worked in Ohio, Salt Lake City and California as a carpenter and joiner, while training to be a stonemason. Returning after eight years, he married my great-grandmother, Catherine with whom he had two sons, Henry and Charles and a daughter, Mabel. He founded a building firm, later bringing both his sons into the business. If you ever sail on a cruise out of Southampton you will pass the Harbour Board Office, built by H Cawte and Sons in 1925.

Great-grandad believed girls should be educated as well as boys, so Great-Aunt Mabel moved to London to train as a nurse, later becoming a ward sister at the Royal Free Hospital in London.

His involvement in Southampton life involved his being a Southampton Borough Councillor, Mayor, Alderman, member of the Chamber of Commerce, Chairman of a Friendly Society providing pensions for his workers, Director of a Building Society and a Freemason. In the family church of St James, Shirley he was Churchwarden for 28 years.

Big shoes to fill!

Different times

Despite being a committed magistrate, Great-Grandad Cawte would not recognise what we do today in court. Speaking with my father about him I know that the following of Sentencing Guidelines would not have come naturally!

There would not, of course, have been any women sitting on the bench when he first became a JP, though he was still serving in 1920 when the first women JPs started sitting in Hampshire. He was keen on girls' education, so I think he would have welcomed this move towards diversity and equality.

He would not have had to travel far to sit as a JP; indeed he lived within walking distance of his court in 1920. Contrast that with his great-granddaughter driving for over an hour to sit in three of the four courthouses in North Yorkshire. Summary justice was truly local in his day.

The biggest change he would see, were he able to walk into one of our courts, would be the use of technology. He was not a stranger to modern ways of working, having founded a building firm which built three iconic Southampton buildings. His grandson, my father, bought a ZX Spectrum[1] when they first came out, a matter of only a couple of years before he died, so I am sure Great-Grandad would have mastered the iPad.

Following in his footsteps

I like to think he would have been proud of his great-granddaughter for following in his family's footsteps by becoming a JP. Not in Southampton, where he lived between the River Test and the River Itchen, but in York, where she lives between the River Ouse and the River Foss. I'm sure that he would be pleased that she was using her experience and training in IT to help her colleagues as IT Lead for North Yorkshire.

Are he and I so different? The mechanics of being a magistrate may have changed, but not the promise we both made to do right to all manner of people after the laws and usages of the Realm without fear or favour, affection or ill will.

MAYOR HENRY CAWTE JP, 1905, FROM THE COUNTY BOROUGH OF SOUTHAMPTON YEARBOOK 1906, COURTESY OF SOTONOPEDIA, THE A-Z OF SOUTHAMPTON'S HISTORY/ERICA TAYLOR PHOTOGRAPH BY DAVID TAYLOR

Meeting magistrates

John Garforth JP describes his early passion for law and his journey to the family court

Appointment: 20 February 2019
Branch: Greater Manchester
Bench: Greater Manchester Local Justice Area (family court)
Jurisdiction: Family (direct family recruit)

In his day job John manages a team of officers in a local authority covering trading standards and licensing, a role he has held since 2004. This involves the regulation of businesses and individuals including pubs, bars, off-licences, manufacturers, distributers, tradespersons and taxi drivers. His job involves having to present cases to local authority councillors and give evidence in court when the council is prosecuting. He also has to make decisions on behalf of the council under delegated powers, therefore seeing some similarity with the judicial role he now holds. Here's his story.

I have always been interested in law and at school I jumped at the opportunity of a two-week office placement at Oldham Magistrates' Court. In 1988 I applied and got the position. I loved being in the hustle and bustle of a busy office and observing cases in court, sat next to the legal adviser.

At college in 1990, I was lucky enough to go back to Oldham Magistrates' Court again for work experience. At the end of my two-week stint I was pleased to find out that a clerical assistant post had become vacant. The court administration manager told me to go away, buy a suit and come back in August to start work, which I did! I remember that first day as if it was yesterday, sitting at the front of the top deck of the bus as the civic buildings at Oldham loomed up in the distance.

After two years in the crime team I moved into the family team, dealing with the fairly new Children Act 1989 and other ancillary matters. I became acting team supervisor there until I took up a post in a bigger, busier family team at Salford Magistrates' Court in 1995. I then became leader of two merged teams covering family, licensing, fines and enforcement, a job I really enjoyed.

When licensing moved from the courts to the control of local councils in 2005, I began to manage Oldham Council's Licensing Team, with additional responsibility since for overseeing Trading Standards and Animal Welfare. I really love passing on my knowledge to others in this role, seeing the difference that can be made by effective regulation, and protecting the public.

I was inspired to apply as a family only magistrate by a family legal adviser friend, Pat. She told me about the direct entry recruitment campaign starting for family only justices and thought I'd make an ideal candidate. So in January 2018 I applied. After interviews, scenarios and a lot of waiting, I finally got a letter confirming my appointment on 13 February 2019. An induction meeting, court observations and three days' training followed and in the final meeting in May 2019 it was announced that I was in the first batch of eight new family direct entry justices appointed in Greater Manchester. 'Making history' we were told.

Then came swearing-in day, on 20 June 2019. Despite having been in courtrooms all my working life, I took a sharp intake of breath when the Lord Lieutenant of Greater Manchester, the Recorder of Manchester, the Designated Family Judge and four other circuit judges walked into Court 43 at Manchester Civil Justice Centre – in full regalia.

I duly took my oath – remembering to say 'heirs' not 'hairs' – and sat down with sweaty palms and a sigh of relief.

I am blessed with a lovely mentor who is really encouraging, supportive and experienced. I am, of course, not a stranger to the family court but am seeing it from a different angle now. There have been changes since I left the employ of the courts, but most things are the same. Existing justices on the bench have been really friendly and welcoming.

I've been sitting now for nine months and haven't looked back. I'm enjoying seeing the positive difference that the family court makes to children's lives. While some decisions have been hard, and emotions sometimes run high, one must remember that it's the child that matters and we are there to protect and secure their wellbeing.

It is clear to me though that professionals are stretched and sometimes struggle to meet the timetables set; many improvements could be made and cases finalised earlier. I regularly hear of a struggle with technology, although recently I have heard some positive movement on this.

What I am certain of though is that the family court has enthusiastic, passionate and dedicated volunteers who want to make a difference and work together to deliver the best outcomes for children and their families.

I look forward to many years ahead serving on the bench and continuing to 'do right to all manner of people ... without fear or favour, affection or ill will'.

members
SPOTLIGHT

Past meets future

Jean Cameron and Matthew Howgate

As part of the MA's centenary celebrations we have commissioned a series of articles featuring meetings between some of our oldest and youngest members, where they have the opportunity to ring in the changes and compare experiences of life on the bench.

In this feature aspiring actuary Matthew Howgate meets retired teacher Jean Cameron at her home in Beeston, Nottinghamshire

JEAN CAMERON	MATTHEW HOWGATE
Date appointed to the bench: 1962	**Date appointed to the bench:** 9 May 2018
Branch: Nottinghamshire	**Branch:** Cheshire
Jurisdiction: Adult, Youth	**Jurisdiction:** Adult
Age: 94	**Age:** 23

Matthew met Jean at her lovely home in Beeston, along with her beloved Jack Russell, Pip, who she was very relieved to have with her as recent hip surgery had meant Pip boarding with friends while she recovered. She'd also been receiving treatment at a memory clinic so we are very grateful to her for agreeing to meet Matthew in spite of these setbacks. The important matter of her four-legged friend's name out of the way, Matthew was keen to compare notes!

MATTHEW: What did you do when you were working?

JEAN: I was a tutor in London; in Dulwich actually, in a girls' school. I'm pretty ancient you see, and there had been a war on. There was a shortage of teachers, particularly in the sciences, so when I was about 30, I was offered jobs at either Keele or Nottingham University. I spoke to some of my friends about where I should go and, being sports mad at the time, they said there was no choice – 'To Nottingham you must go. It's got a football ground and a cricket ground!'

What do you do?

MATTHEW: I'm a student myself actually, I'm studying for a Master's degree in maths. Ironically, I came here to Nottingham University when I first left school, though I didn't stick it out too long as it wasn't the right thing for me at the time. I'm in my final year at Liverpool University. I work in the National Health Service also over the summer holidays, doing an administrative job in my local fracture clinic. When I graduate I've got a job lined up, to begin training to be an actuary.

JEAN: Oh wonderful, my degree is in biological sciences, and I did my Master's in education in London.

MATTHEW: How long were you a magistrate for?

JEAN: I found my certificate from when I retired, I was on the Nottinghamshire bench for 32 years from 1962 to 1994. I was sworn in with Britain's first black magistrate too, Eric Irons OBE.[i] He was a marvellous chap.

MATTHEW: That was a really pioneering year for the magistracy then, because you yourself were only in your thirties too – something still uncommon today.

JEAN: Nottingham was a mining and engineering town when I started too, though it isn't any more. It's changed so completely. When I joined the bench, I thought the other magistrates would all be in mining too; they weren't of course. Lots of them were higher up, more managerial. We went through the awful upset of the miners' strikes too, which influenced the thinking of the courts. There were certainly people around me who were affected and students became very agitated.

When some of the miners came to court, it was very hard for us because the issues were very different to the ones we usually dealt with. We had excellent guidance though, from the clerk of court.

MATTHEW: Yes, we call them 'legal advisers' nowadays, these things change. They do a wonderful job, I've really got a lot of respect for them.

JEAN: Not long after I came to Nottingham someone in my department was on the bench and they were looking for new people, so I was approached to join – it wasn't something I had long yearned for. I did have an interest in people and justice though, so becoming a magistrate meant that everything fell into place.

MATTHEW: I similarly had an interest in justice and wanted to do something proactive with my spare time while at uni. 'Idle hands make work for the devil' is my mantra. I'd not long moved house and my new neighbour was a magistrate, he suggested to me I join because there was a shortage of young magistrates. I thought I would give it a go and here I am today, having served for almost two years.

What did your colleagues at the time make of you being a magistrate, especially as you were only in your thirties?

JEAN: I think they thought it was a bit of a laugh! But you know, what could they say? They were very pleased I was interested in justice and people, they were very supportive.

MATTHEW: When I started all my colleagues were fantastic and very supportive. They helped make sure I was up to speed with things!

JEAN: Towards the latter end of my time on the bench I did some juvenile work. I didn't find that so interesting though; I think I was elected to do it because nobody else wanted to! I was usually the most experienced on the bench so it might have been that. Juvenile work was much more friendly than the adult court and there were fewer judgments to make because we had the support of probation officers, who were so helpful.

MATTHEW: There's a special team now dedicated to providing advice in the youth court, the Youth Offending Team.

JEAN: Yes, I think it was quite an important realisation that a different kind of court was needed for young people.

MATTHEW: Of course.

Is there a memory that you've got that sticks out in your mind, a most memorable experience?

JEAN: There were one or two persistent offenders in my court who would remind me in their subtle way each time they came of what I'd said before! So you got to know the troops!

MATTHEW: You had repeat customers then!

Were there any cases that you found particularly challenging?

JEAN: I was very perplexed by the upset with the miners because I didn't really understand all the issues. At the same time, I was running a hall of residence at a girls' school. The students were very much involved and tried to persuade me to get involved too, but I didn't.

MATTHEW: That's probably the best thing to do in that scenario – we've got to remain impartial haven't we.

JEAN: Absolutely.

MATTHEW: I think for me, my most challenging part was my first sitting. I remember one of my very first cases was a student. She was charged with drink driving and pleaded guilty. This young girl in the dock started crying. And it really hammered home for me that some of our decisions can be life changing. I remember she was studying criminology, so there's a touch of irony there.

I'm interested in sitting in the youth court, though you need to have been on the bench for five years. It's a lot more open in comparison to the adult court, it's got a distinct layout and the purpose of sentencing is different, there is more emphasis on preventing further offending rather than punishment. What big changes did you see in your 32 years on the bench?

JEAN: While on the juvenile bench the attitude of magistrates was much less demanding, they were looking for solutions, unlike in the senior courts where helping wasn't a priority. Over the years I remember seeing a change to magistrates being more constructive; with a focus on rehabilitation. As time went on, the people appearing before the courts were more educated too, so you could engage with them more to find reasons for their offending. It was a good change, I think it was important to realise that we're all people and that we try to understand what makes some people offend.

MATTHEW: That sounds like a really good change to me. It's not us and them; it's us together.

JEAN: After I retired at 70 I still felt like I had more to give. I was a school governor at the time, so I was able to devote more time to that.

MATTHEW: You know what, the MA are lobbying parliament to try and change the retirement age to 75. I think it's a good thing. I recently had a brilliant colleague retire who was very supportive and helpful for me. I don't think he wanted to retire, he had so much more to give too. It's a real shame that we're losing some brilliant magistrates at 70.

My bench is short on magistrates at the moment and I'm trying to help attract more students to apply to be magistrates. What do you think of more students being magistrates?

JEAN: Well I'd never thought of any of my students being magistrates. I'm going to be old-fashioned now – far too young! They don't know what life is!

(Both laugh)

MATTHEW: Well, I suppose it depends; would you measure life experience in years or by what you've done with your life? I think it's a good thing, to have that extra point of view from a different walk of life.

Do you have much family?

JEAN: I don't have any family; that's why I was able to give so much time to the public. I don't think my parents were very much interested in children. My early life was spent as a very young child at school in Malta because my father was away with the admiralty, working for Mountbatten. For much of the time after that he was building a harbour in Ceylon for American ships.

MATTHEW: Do you have any children, Jean?

JEAN: No, so I had to do something useful didn't I! And I'm very grateful because I've met the loveliest people, like yourselves.[ii]

MATTHEW: Do you have any words of wisdom for the next generation of magistrates?

JEAN: I liked to talk about my cases with friends – without of course revealing any names. I found it extremely helpful to have a fresh perspective. Some of the cases can be quite nasty. Do you talk through your cases sometimes?

MATTHEW: Yes, and I agree it does provide some perspective. For me, talking about cases with close family or friends can help me process it all in my head a little. Some cases are unfortunately rather nasty and I don't think it's good to bottle things up.

Footnotes

i For more information about Eric Irons see https://bit.ly/magistrate2063.

ii Jean is referring to Matthew and the photographer Ian Stratton who was also present.

Langley House Trust – 61 years of helping ex-offenders to live crime-free

In an era where it is easy to focus on what doesn't work in the criminal justice system, it is refreshing to hear of a charity that is changing lives and breaking the cycle of reoffending. Dee Spurdle, Head of Fundraising and Communications, shares the story of Langley House Trust, which is successfully enabling men and women to live crime-free

I first became aware of Langley House Trust when the Kainos Community 'Challenge to Change' programme merged with them in 2013. I was part of the delivery team with Kainos Community and, knowing the issues our participants faced while in prison and on release, it was great to merge with an organisation who were on the front line, supporting individuals to live crime-free lives.

Langley House Trust has had some incredible results, with a reconviction rate of under 3%. It's one of the lowest rates in the country and it's something that I'm incredibly proud of – ultimately it means fewer victims of crime, a safer society and more men and women being supported to live crime-free. Our long-term impact on reducing reoffending has been validated twice by the Ministry of Justice. We were delighted to win Charity of the Year (for larger charities) in the Charity Times Awards in 2018 and Care and Support Provider of the Year in the 24Housing Awards in 2019.

Over the last seven years, we have seen significant changes in the criminal justice system, a continued squeeze on funding and prisons facing their highest levels of violence on record. The Probation Service has undergone one of its biggest transformations as a result of Transforming Rehabilitation and is set to undergo further change this year (2020). There is an ongoing debate about the effectiveness of short-term prison sentences and whether creating more prison places is the answer. Against this backdrop, six justice secretaries have held office in the last eight years and a sustained focus on sizeable events (including Brexit and the coronavirus) has made it almost impossible to create any lasting change within the criminal justice system.

Nevertheless, we have continued to do what we do best – enable men and women to live crime-free and thrive.

From humble beginnings

Langley was formed in 1958 by a group of brave, committed individuals whose mission was simple – to provide 'a home, a house with built-in family to which the offender could come straight from prison to find support, assistance and love – commodities which the average prison is short of.'

Our founders were motivated by their Christian faith to offer hope, support and the belief in redemption to men coming from prison. This was a powerful motivator and is still at our core today. Regardless of a person's history, our passion is to change every life for the better, working with people of all faiths and none.

While our housing model has changed drastically – we now have project managers rather than house parents for instance! – the support and care shown for our clients hasn't.

We started with only one project in Winchester, supporting a handful of men. From those small beginnings, we have grown and developed into a national charity, with over 16 projects spanning most of England. Not only do we provide housing, support and care

in the community, we also work in prisons, running a six-month offending behaviour programme in HMP Lancaster Farm (Lancashire) as well as providing specialist advice in almost 20 other prisons. Today, we work with between 800 and 1,200 men and women each year. It's a significant achievement to have worked with over 10,000 people in the last 61 years.

Our clients

I've had the privilege of interviewing many of our clients over my time at the Trust. Some of the clients had never lived crime-free in the community before coming to Langley. Others had long histories of drug and alcohol addiction, mental health issues or had faced homelessness. A number of clients had experienced trauma and abuse in childhood which had led to destructive and chaotic behaviour in later years.

Some of our other clients have personality disorders, have failed in other placements and have even been written off by other professionals. Many have been in institutions for years, sometimes decades. We certainly don't 'cherry pick' our clients – they are some of the hardest-to-place and hardest-to-engage people in the criminal justice system.

When clients first come to us, so many of them don't believe that they can change or have lost the hope that they can have a different future. Often it is our staff's belief in them that eventually helps them to regain that hope.

I will always remember the story of George (not his real name). He started drinking when he was 11, was smoking cannabis when he was 12 and was homeless by the age of 16. He used alcohol and drugs as his 'staple diet' to combat loneliness and isolation. He drank so much that he burnt a hole in his throat and almost died. When George came to Langley, he didn't really want to accept help from staff – it was almost a year before he started to put their advice into practice. (It can take time for staff to build trust with clients but they persistently work day in, day out, to do just that and this is part of the reason why we achieve the results that we do.) When I interviewed George, he was proud of the progress he had made. He was gaining GCSEs for the first time in his life – he had left school with no qualifications – and was preparing to move on into the community. It was a remarkable turnaround for a man who had spent so much of his life in a chaotic lifestyle that had almost destroyed his life.

Jonathan, a Langley House Trust client

Another client, James (not his real name), had abused drugs from a young age to cope with abuse from his stepdad. From being a bright young boy at school, he ended up an angry young man, addicted to drugs and in and out of prison for many years. Prison was where he felt accepted and safe – it was his world and where he felt most at home. After many years of hating society, James slowly started to turn things round. He said: 'Prison was my world – I was respected, feared. I dreaded coming out. I didn't come to Langley to change. I came because Probation forced me to. When I came here I just took things step by step. I [slowly] started to appreciate what had happened and what I could achieve. I've hated people all my life but now I need to make amends for what I've done by being there for someone. It's a daily battle and I will win. I'd like to work for Langley, like to volunteer. This is a new life for me. I could never go back.'

Our services

These stories show the incredible impact that the right housing and support can make on a person's life. Our accommodation includes registered care homes, hostels, community houses and individual flats. People stay with us for anywhere between six months and two years (in our supported housing projects) and longer for those in our care homes. Every client has a dedicated key worker who works with them, supporting them to develop the skills to live crime-free and move towards greater independence. Our prison work involves giving specialist advice on housing, debt and finance, as well as reintegration into society for long-serving prisoners. Challenge to Change, our six-month offending behaviour programme in HMP Lancaster Farm, helps men to challenge and change their thinking and behaviour so that they successfully live crime-free on release. Most recently, Clean Sheet has become part of the Langley House Trust Group, helping people with convictions into employment.

The challenges we face

It's not all been plain sailing. We face constant funding challenges. Local authority funding for offender rehabilitation programmes has been drastically cut. A few years ago, two local authorities decided to end their funding for offender programmes altogether which put two of our projects at risk of closure. We were fortunately able to change their model at the time but struggles with sustainable funding finally led to the closure of our first project, Elderfield, earlier this year. The threshold for clients to attract care funding continues to rise. Funding 'battles' between different areas can leave clients in limbo as different authorities argue over whose responsibility it is to pay for the care that they need.

We have also seen a worrying trend in the sector – we are now funded to provide care services for people with significant care needs or housing management services to people who are mostly independent. There is very little support for people in the middle, who don't have high enough care needs to qualify for care but who need more support to deal with drug, alcohol or mental health issues than our housing management services provide. This is an ongoing concern and something that the government will need to address if there is going to be a solution to reduce reoffending.

Ultimately, we are here to stay for as long as there is a need – we're in the business of seeing people's lives restored and transformed, breaking the cycle of reoffending and helping men and women to live crime-free.

To find out more about Langley, visit www.langleyhousetrust.org.

Recruitment to the MA's policy committees

The MA is inviting members to apply to join one of our policy committees and play a key role in the MA's policy work

Our work to inform and influence the development of policy related to the magistracy and the broader justice system is a key part of the MA's work with and on behalf of our members. This work is only possible because of the contribution made by our members to our policy committees, which are central to our policy work.

About the committees

The policy committees are at the heart of the MA's work to ensure that magistrates play a leading role in the national policy-making process. There are four committees:

- The **Adult Court Committee** (ACC), which covers all work within the adult criminal jurisdiction as well as organisational structures relating to magistrates. The ACC also plays a leading role in our engagement with a variety of stakeholders, including the Sentencing Council, HM Prison and Probation Service and a number of voluntary sector organisations.
- The **Family Court Committee,** which is responsible for the MA's work relating to the family justice system. This includes addressing issues such as direct recruitment of family magistrates, allocation and reforms to the family courts, and liaising with relevant stakeholders such as the Family Justice Council and the Family Procedure Rules Committee.
- The **Training Committee**, which is responsible for the MA's work to inform and influence the provision of training to magistrates and for informing the training and guidance offered by the MA to its members.
- The **Youth Court Committee**, which leads on the MA's work relating to youth courts and the youth justice system. It involves working with key stakeholders, including the Youth Justice Board and children's charities, and ensuring that issues specific to the youth court are considered in broader reforms to the magistracy and the justice system.

The MA's policy committees meet biannually but work together remotely throughout the year to support the development of MA policy positions and inform our engagement with key stakeholders and our responses to consultations and calls for evidence from parliamentary select committees or other inquiries.

Why apply?

Joining an MA policy committee will give you real opportunities to influence national legislation and policy decisions. You will be invited to engage in discussion and debate on some of the most important issues currently facing the justice system and contribute to developing the MA's policy positions on key current issues.

As a committee member, you will learn more about the law and policy development and be able to use your own experiences to inform our work. You will get to work with colleagues from across the country and build networks with magistrates from other areas.

The MA's policy committees not only make a huge contribution to the MA but also make a real difference by influencing national policy on issues of importance to our members. Joining a committee is a chance to be a part of that, working with fellow magistrates to make a difference to the magistracy, the courts and the justice system as a whole.

The application process

All four committees are recruiting this year. The Adult Court Committee has three vacancies, the Family Court Committee has six vacancies, the Training Committee has five vacancies and the Youth Court Committee has five vacancies.

Members who want to apply to join a policy committee should complete and submit an application form, which is available from information@magistrates-association.org.uk or https://bit.ly/magistrate2066. The deadline to submit an application is **Monday 7 September 2020**.

The applications will be reviewed by the MA's Policy Board – made up of the chairs of the MA's policy committees and the national officers – in September and successful candidates will be appointed at the MA's AGM on 17 October 2020.

Members of policy committees must be sitting magistrates. You don't need to be London-based as much of our work is done online and travel expenses are covered. If you have any questions about membership of a policy committee or the committees' work please contact Dr Jo Easton, the MA's Deputy Chief Executive and Director of Policy and Research, at jo.easton@magistrates-association.org.uk.

Timetable for applications

1 June 2020	Applications open
7 September 2020	Applications close
Late September 2020	Policy Board selects new committee members
17 October 2020	New committee members appointed at the MA's AGM

Working for you

MA Chair John Bache reflects on recent events, how they have affected the court service and offers a message of thanks and hope to all

There is an inevitable delay of at least five weeks between submitting a piece for the magazine and its arrival through your letter box. I sent my *Working for you* for the April-May edition to the editor on 29 February 2020. Even at that stage, although aware of the presence of coronavirus, I had no idea how much our work and our lives would change during March and into April.

I am submitting this on 30 April 2020. At long last the newspapers have found some good news to report: Boris Johnson and Carrie Symonds have had a baby boy. The questions on everyone's lips are when and how the lockdown will be lifted. It would be foolish of me to predict the situation when you read this at the beginning of June.

During the first half of March, I attended a board dinner of the Solicitors Regulation Authority; the second New Bench Chairs' Course at the University of Warwick; the Magistrates' Liaison Group (chaired for the first time by the new Deputy Senior Presiding Judge, Lord Justice Haddon-Cave); and Leicestershire and Rutland MA centenary celebrations, hosted by the Lord Mayor of Leicester.

By mid-March, our excellent staff were following government advice and working from home; and working as hard and conscientiously as ever, which they courageously continue to do. I thank them all most sincerely. They are fantastic.

Then came lockdown.

We were all advised to stay at home, with few exceptions. Supermarkets ran out of toilet rolls, baked beans and pasta. Some courts were closed completely, some were closed to the public, some remained functional, although the number of cases dealt with was dramatically reduced. Meetings, including several MA meetings to which I had been invited, were postponed or cancelled. We rapidly became familiar with telephone-enabled or video-enabled meetings.

Remote meetings

My Skype (or equivalent) adventures have included meetings with HM Courts and Tribunals Service and the Magistrates' Leadership Executive, and with Sir Bob Neill MP, Chair of the House of Commons Justice Select Committee. I was also invited to a Skype overview of the Cloud Video Platform, which enables the judiciary, legal advisers, prosecution, defence and other court users to be situated in various locations, and virtual hearings to be conducted remotely. The demonstration was impressive, and this clearly has enormous potential to change our future way of working, but it raises many questions which will need to be addressed in the not-too-distant future.

There have been some appearances in the media. I was interviewed for the *Today* programme on BBC Radio 4 (the effect of coronavirus on the courts). I published a letter in *The Times* on emergency measures for the justice system. I was quoted in *The Daily Mail* (disqualification with penalty points) and *The Guardian* (sentencing for Covid-19 offences).

Video-enabled hearings

Some radical changes have been introduced in order to keep the courts functioning during this unprecedented situation. Some cases have been conducted using technology such as video-enabled hearings, particularly in the family court and the crown court. When we return to some semblance of 'normality' – and, as I write, no one really knows when that will be or what 'normality' will then look like – it is essential that we calmly and carefully review the practices which we have been using, and determine whether or not they can and should become routine for the business of the courts.

We must not be Luddites and insist that all the old practices are restored; that is not going to happen, nor should it. But equally we must not allow standards to slip. The fact that an innovation is possible does not necessarily mean it is desirable. It will not be easy to achieve a balance which satisfies everyone. But I make no apologies for repeating my mantra: at the end of the day, justice must always trump efficiency.

A message of hope

We are all going through a horrible time and many members have written to us with their own encouraging lockdown stories.[1] It is inspiring to see how many people throughout the criminal justice system are courageously rising to the challenge. We owe them our profound respect and gratitude. We have an untrodden path before us, but this current situation will not continue forever. Thank you so much for all you personally have done during this unprecedented time.

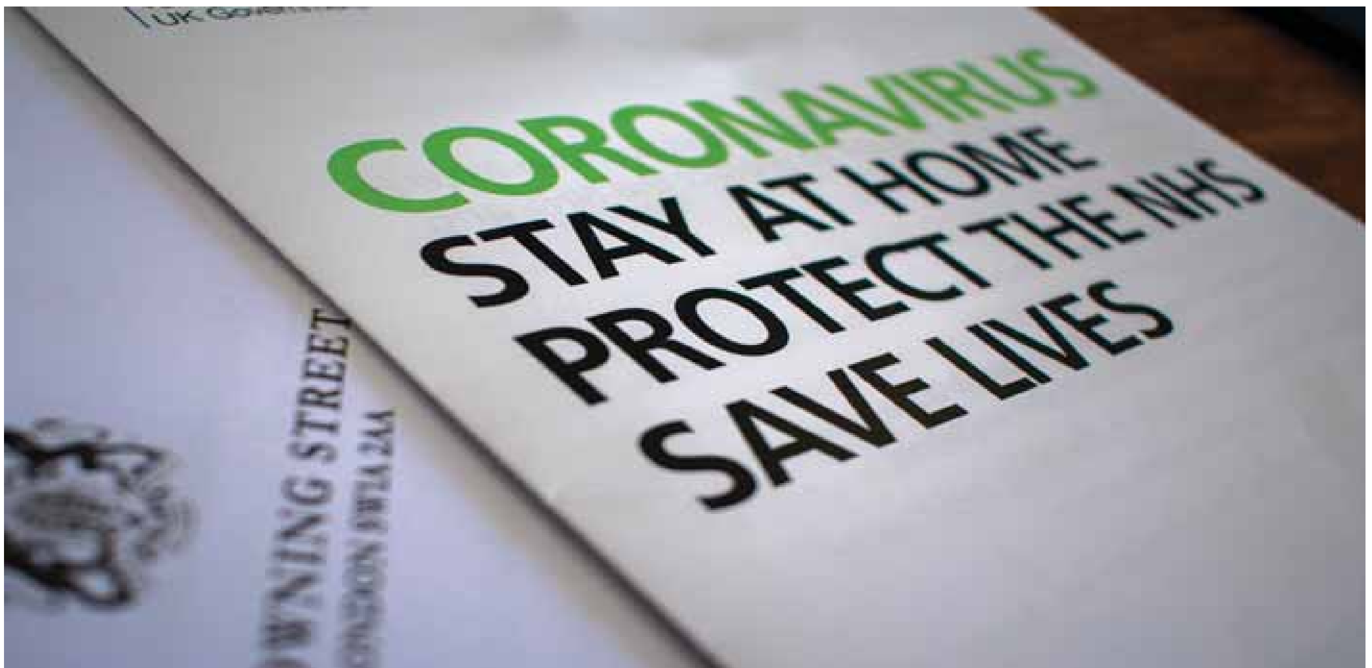
I trust that you and those you love will stay safe and well.

Happier times will return.

1 See JP LOCKDOWN STORIES, p38

Policy Watch

IN DEPTH



New laws introduced to reduce transmission of coronavirus

The new Coronavirus Act 2020 was passed in parliament in only three days, and provides the government with wide-ranging powers covering various vital services as well as emergency measures to prevent the transmission of coronavirus. The Act is in force for at least two years, with the option of extension for periods of six months at a time.

Some parts of the Act relax existing standards in relation to various public duties, where a reduction in available staffing levels does not allow these standards to be met. This includes reducing the requirement on two doctors approving decisions to section some-one under the Mental Health Act, and less stringent requirements on local authorities in relation to social care duties of care.

The Act also introduces powers in Section 51 for public health officers, constables or immigration officers to force an individual to have an assessment or be treated for coronavirus, as well as requiring them to give information when requested or prevent them taking part in certain activities. This is only in place when the Secretary of State has declared a period of transmission control. Appeals can be made to magistrates' courts, which can be dealt with via video link.

The Act also introduces powers in Section 52 for the government to prevent gatherings and close down premises such as pubs during a period declared as a public health response.

It is now a summary, non-imprisonable offence to fail to comply with directions under either Section 51 or 52.

Finally, the Act has made changes to allow audio and video link to be used to deal with criminal hearings (Sections 53-56 and Schedules 23 to 26), with specific limitations on when audio only or video may be used (set out in the new Schedule 3A of the Criminal Justice Act 2003). Final decisions as to the use of either remain with the bench, with certain criteria being set out in the legislation, including ensuring that all parties can make representations, Youth Offending Teams are involved for those under the age of 18 years and that the use of audio or video is in the interests of justice. Considerations of when it is appropriate in a specific case will include the facilities being used to access the hearing, and the ability of parties to effectively participate.

In addition to the restrictive powers introduced by the Coronavirus Act, new Health Protection (Coronavirus, Restrictions) Regulations have also been passed which give police wide-ranging powers to enforce social distancing and the closure of certain premises. They have since been amended twice – further details can be found on

VICTORIA HUNTER/ADOBE STOCK PHOTO

the MA website. Regulation 6 states that during the emergency period, people cannot be outside their home without a reasonable excuse, which includes:

a) To obtain basic necessities
b) To visit a public open space for the purposes of open-air recreation to promote their physical or mental health or emotional wellbeing either alone, with one or more members of their household or with one member of another household
c) To take exercise (alone, with members of their household or with one member of another household)
d) To seek medical assistance or other critical services
e) To provide care or assistance to vulnerable people
f) To work or provide voluntary services when that cannot reasonably be done from home
g) To donate blood
h) To attend a funeral in certain circumstances
i) To fulfil a legal obligation such as attending court
j) To undertake various activities related to moving house
k) To avoid injury or escape a risk of harm

Existing arrangements for shared parenting can continue, including transporting children between households.

There are also restrictions on a group of more than two people who are not from the same household gathering in a public place (Regulation 7).

Regulation 8 empowers the police to direct people to return home, or disperse gatherings and they may use reasonable force to remove someone from a gathering, if necessary. If children or young people under the age of 18 are not complying with requirements or police direction, those with parental responsibility are expected to make sure they comply.

Regulation 9 states that any failure to comply with requirements relating to closing businesses, travel restrictions, public gatherings or to follow police directions (as set out in Regulation 8) is a possible criminal offence. Police are able to issue a fixed penalty notice (FPN) to anyone over the age of 18 years who they believe has committed an offence under Regulation 9. The first FPN is for £100 (£50 if paid within 14 days), but a second FPN issued to the same person should be £200 and any further notices can be for double the amount of the previous one, up to a maximum of £3,200 for a sixth and any subsequent FPN.

Similar restrictions were introduced in Wales through separate regulations.

The Health Protection (Coronavirus, Restrictions) Regulations
https://bit.ly/magistrate2084

WILLIAM BARTON/ISTOCKPHOTO

IN BRIEF

Victim surcharge increases

Before the general election at the end of last year, the government committed to increasing the victim surcharge by 25% to ensure offenders made a larger contribution to victim and witness services. Income from the surcharge contributes to the Ministry of Justice (MOJ)'s Victim and Witness Budget. This is used to fund police and crime commissioners to contract local support services for victims and also funds nationally-commissioned provision such as rape support centres, the court-based Witness Service and the National Homicide Service.

The MOJ wrote to MA Chair John Bache to inform him of the first step they are taking to fulfil this commitment. A statutory instrument was laid before parliament to increase the victim surcharge by 5% – which will be rounded to the nearest pound, increasing the amount offenders pay by between £1 and £9, depending on their sentence. This came into force from 14 April 2020.

The government is considering how to meet their pre-election pledge in full and any further increases to the victim surcharge will form part of the Victims Law consultation.

In addition, a recent judgment by the Court of Appeal has determined how the surcharge should be calculated appropriately where there are multiple offences, reversing the approach taken in the current Sentencing Council guidelines. This means that in the short term, with immediate effect, the Sentencing Council calculator will be inaccurate in its calculation of the surcharge for multiple offences and should be disregarded. It is otherwise safe.

Sentencing Council letter to magistrates on this issue
https://bit.ly/magistrate2069

Justices' Clerks' Society urgent guidance
https://bit.ly/magistrate2070

Amendments to both Criminal and Family Procedure Rules to delegate powers to legal advisers

The new rules regarding what functions can be delegated to legal advisers and authorised court officers came into force on 6 April, through amendments to the Family Procedure Rules (Amendment) 2020 and the Criminal Procedure Rules (Amendment) 2020, along with new Practice Directions for both jurisdictions. These changes implement the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.

The Criminal Procedure Rules Committee (CPRC) carried out a consultation on the proposed changes, and you can find the MA's response to this consultation on the MA website. The CPRC responded to the consultation, setting out the confirmed changes to be made. The new rules include some general restrictions in relation to powers that cannot be delegated including any functions relating to committing someone to prison or authorising a person's arrest. Rule 2.8 (2) sets out what functions may be carried out by an authorised court officer in a magistrates' court, with Rule 2.8(4-11) listing additional functions that can only be delegated if the authorised court officer is legally qualified.

The Family Procedure Rules Committee (FPRC) also consulted on the proposed changes for the family court, to which the MA responded. Rule 2.5 of the Family Procedure Rules 2010 is amended, which now signposts to a new Practice Direction 2C. The new Practice Direction 2C: Justices' Legal Advisers sets out the functions of the family court or a judge of the family court that may be carried out by a justice's legal adviser. A table lists the functions that can be delegated to legal advisers, with any relevant exceptions or restrictions also described.

The Criminal Procedure (Amendment) Rules 2020
https://bit.ly/magistrate2071

Family Procedure Rules Committee consultation on draft rules for delegated powers
https://bit.ly/magistrate2072

Criminal Procedure Rules Committee on delegated powers rules 04 07 19
https://bit.ly/magistrate2073

Youth justice statistics 2018-19

The MOJ and the Youth Justice Board have released the most recent youth justice statistics for England and Wales, for the year to March 2019. The findings show:

1. Arrest rates were down overall, but black children are four times more likely to be arrested than white children. Just over 60,200 children aged 10-17 were arrested, a decrease of 5% on the previous year.
2. 21,700 children received a caution or sentence, 19% fewer than the previous year and a decrease of 83% over 10 years.
3. Use of youth remand increased by 12% over the past year, accounting for 28% of all children in youth custody.
4. Overall numbers of first-time entrants into the justice system decreased but disproportionality increased.
5. Incidents of restrictive physical interventions in youth custody increased by 16% on the previous year to around 6,300 incidents.
6. Self-harm incidents increased by 3% to around 1,800.

PXL.STORE/ADOBE STOCK PHOTO / LEO PATRIZI/ISTOCKPHOTO

Data from the additional annexes showed a 52% rise in the average time taken for a youth criminal case to be processed, from an offence being committed to the final decision at court, between 2010-2011 and 2018-2019. The biggest increase in delay was from the time of the offence to charge, with a smaller increase in the time taken from charge to first listing.

Youth justice statistics
https://bit.ly/magistrate2074

Second report published by the Private Law Working Group

The Private Law Working Group, convened by Mr Justice Stephen Cobb at the President's invitation in 2018, has published its second report, entitled *The Time for Change. The Need for Change. The Case for Change*. A consultation followed the publication of the first draft of the report in 2019, which the MA responded to, and this second draft was written after consideration of the responses received. The report sets out the main themes which emerged from the consultation and the working group's responses to these. It summarises key points arising from a scoping event, a focus group, early discussions of a Family Solutions Working Group and the development of 'alliances' in Dorset and Kent, which follow the Supporting Separating Families Alliance model outlined in the first report. The report also outlines necessary next steps, identifying initiatives being trialled by some courts, and discusses piloting some recommended initiatives.

Key messages of this report include recognising the need for services to support separating families outside of the court process, the importance of public education about the effects of parental conflict on children, and the work of professionals, beyond lawyers and judges, to ensure parents receive the best assistance and support.

Alongside the Private Law Working Group's work, the MOJ has an established panel which is considering how the family court responds to and deals with domestic abuse and other serious offences. This second report has been written before final recommendations are set out by the MOJ panel, and as such will be followed up by subsequent reports – the current document is 'a description of work in progress'.

The MA will continue to be represented on the Private Law Working Group and will keep members updated about further reports published.

Private Law Working Group second report
https://bit.ly/magistrate2075

MA MEETINGS SINCE THE LAST ISSUE

The MA has met with:

- GamCare
- Home Office
- JUSTICE
- Sentencing Council
- The Howard League
- The Law Commission
- The Ministry of Justice
- The Sentencing Academy

The MA has attended the following policy meetings:

- Attorney General's Pro Bono Committee
- Criminal Court Sentencing: Thinking about Reform event at Middlesex University
- HM Prison and Probation Service Judicial Forum
- Interdisciplinary Alliance for Children
- Mayor's Office for Policing and Crime Victims Board
- MOJ Youth Justice: Quality of Advocacy Working Group
- National Digital Practitioners Working Group
- Nuffield Family Justice Observatory roundtable on remote justice
- Youth Justice Board External Stakeholders Engagement Group

The MA has responded to the following consultations:

- Attorney General consultation on guidelines on disclosure and the Criminal Procedure and Family Procedure Rule Committee Legal Bloggers consultation
- Home Office police powers pre-charge bail consultation
- Investigations Act code of practice
- Sentencing Council consultation on drug offences
- Sentencing Council consultation on Magistrates' Court Sentencing Guidelines and associated explanatory materials

LEGAL MATTERS

Legal update

CLOSURE ORDERS

Guidance on closure orders was given by the high court in upholding the decision of magistrates sitting at Birmingham in *Taylor v Solihull MBC 2020*.

Hearsay evidence is admissible (eg a witness statement made by a frightened neighbour), provided notice is given to the defendant. But the hearsay statement should only be admitted if there is evidence that the witness is too frightened to attend court: *R (Cleary) v Highbury Corner Magistrates' Court 2006*. And the court should balance the right of the defence to cross-examine the witness against the witness' fear. If the court does allow the hearsay statement to be used it will not carry as much weight as oral evidence, because of the lack of cross-examination.

The fact that D might say something in evidence that could be used against him in criminal proceedings is not a reason to adjourn the closure order application. D does not have to give evidence, and must be given the warning about self-incrimination. If he does then say something which incriminates him, it is not unfair for it to be used against him in subsequent criminal proceedings. The validity of the closure notice is not an issue to be decided at the hearing, nor a reason to adjourn to allow judicial review.

Evidence may be given that D was arrested, that his home was searched and drugs found, and that he is subject to a criminal investigation. But that does not prove that D is selling drugs, and it does not need to, because the issue is whether *someone* was drug-dealing from the premises, and the finding of drugs there helps to prove that. Evidence of what was found, given by a police officer who was involved in the search, is not hearsay, it is direct evidence of what was found. Evidence of D's police interview is also admissible.

A closure order may only be made if the court is satisfied (civil standard) that it is necessary for one of the grounds in s80(5) Anti-Social Behaviour, Crime and Policing Act 2014, eg that a person has engaged, or is likely to engage, in disorderly, offensive or criminal behaviour on the premises. That person may be, but does not have to be, D.

Making a closure order interferes with D's human rights, so magistrates must be satisfied that an order is necessary and proportionate to prevent disorder or crime; but neither the police nor the local authority applicant have to show that they have tried other measures first. If an order is made, it should be for the shortest period necessary, with a maximum of three months. Similarly, if limiting the category of person who is to be prohibited from entering the building would deal with the problem, without excluding D from the property, it is not necessary to include D in the prohibition.

In *Taylor*, D said he was selling drugs from his home under coercion. The magistrates were right to use that, not as evidence that he was committing an offence – that would be decided in any subsequent criminal proceedings – but as proof that the premises were being used for a criminal purpose. It supported their finding that it was necessary to include D in the closure order because if he continued to live there he would be subject to the same coercion to sell drugs.

The magistrates in the *Taylor* case (Mrs Lyle, Mr Chauhan and Mrs Pittaway) and their legal adviser (not named) deserve praise for the considerable skill involved in their decisions on several complex issues during the hearing, and for their excellent case stated.

Magistrates may order costs, including whether they should be ordered, who should pay and how much; but if D successfully challenges the application for a closure order, costs should not be awarded against the police or local authority unless their conduct justifies it: *Bradford MBC v Booth 2000*.

Compensation may be ordered from central funds for financial loss resulting from a closure order made or refused, or from a closure notice, if the factors in s90(5) of the 2014 Act apply, unless D's conduct makes it inappropriate to compensate him: *R (Qin) v Metropolitan Police Commissioner 2017*.

David R Goodman OBE, Barrister

ALEXANDER KUZMIN/ADOBE STOCK PHOTO

LEGAL MATTERS

Case digest; Family law update

CASE DIGEST

HOUSEHOLDER DEFENCE AND DEFENCE OF PROPERTY

Self-defence, including the householder defence and defence of property, does not allow someone to use force against the offender to recover property after it has been stolen; self-defence only applies while the offence is being committed: *R v Williams 2020 EWCA 193*.

INTENTION TO COMMIT AN OFFENCE

Where a person cannot be convicted unless it is proved that he intended to commit the offence (eg theft, where recklessness is not enough to convict), his intoxication at the time will not be a defence if the prosecution can prove that, although drunk, he definitely intended to commit the offence: *R v Mohammedi 2020 EWCA 327*.

BAIL FOR DEFENDANT ON A POSTAL REQUISITION

A court does not have to grant bail when a defendant appears on a postal requisition if a remand in custody is necessary: *R (Iqbal) v Canterbury Crown Court 2020 EWHC 452*.

WHEN TO DECIDE IF TWO OR MORE LOW-VALUE SHOP THEFTS CAN BE CATEGORISED AS EITHER-WAY OFFENCES

The time for deciding whether two or more low-value shop theft offences total over £200, and are therefore either-way offences, is when they are together before the court, not the dates on which they were charged: *R v Harvey 2020 EWCA 354*.

PROSECUTING VICTIMS OF HUMAN TRAFFICKING

Although Crown Prosecution Service (CPS) guidance allows the CPS not to prosecute victims of human trafficking, it is not an abuse of process if they do: *R v DS 2020 EWCA 285*.

EXPERT EVIDENCE IN CONTROLLING OR COERCIVE BEHAVIOUR CASES

In a trial of controlling or coercive behaviour, expert evidence is not needed to decide whether the defendant's conduct caused serious alarm or distress to the complainant, which had a substantial effect on the complainant's life; the court can decide that from the evidence: *R v Dandpat 2020 EWCA 244.*

APPOINTMENT OF AN INTERMEDIARY FOR A DEFENDANT

An intermediary for a defendant should only be appointed if there are compelling reasons to do so and other steps would not meet his needs. An expert's recommendation that the defendant needs an intermediary should be considered, but it is the court's decision whether the defendant can have a fair trial using other safeguards: *R v Thomas 2020 EWCA 117*.

RESTRAINING ORDERS AND CONTACT WITH CHILDREN

If a court making a restraining order agrees that the defendant should have contact with their children, a rider should be added to the prohibition of 'no contact with the complainant' setting out the practical steps to enable contact: *R v Awan 2019 EWCA 1456*.

David R Goodman OBE, Barrister

FAMILY LAW UPDATE

The role of Cafcass in respect of children who are not the subject of proceedings

A County Council v Children and Family Court Advisory and Support Service (Cafcass) [2019] EWHC 2369 (Fam), Keehan J, Judgment: 20 September 2019

This was a judgment about the function of Cafcass in relation to carrying out a Re W assessment as to whether a child should give evidence, if the child is not the subject of the case. It involved a public law hearing, but may be relevant to private law cases as well.

The case concerned care proceedings, which involved allegations that the father had sexually abused a young person 'AB' who was not party to the case. A Re W assessment of 'AB' was required, and initially the judge ordered Cafcass to carry out this work. However, they objected that it was outside their remit, as set out in statute, as it related to a child who was not the subject of the case. To prevent unnecessary delays, an independent social worker was ordered to do the assessment.

The case was referred to Judge Keehan, to provide clarity around the expectations on Cafcass. His judgment found that it was outside the statutory scope of Cafcass to undertake work or assess children who were not subjects of proceedings.

Arguments heard by Judge Keehan focused on how to read Section 12 of the Criminal Justice and Courts Services Act 2000, which details the principle functions of Cafcass.

Judge Keehan judged that parliament cannot have intended to create a requirement for Cafcass to have unlimited scope, and therefore the role and function of Cafcass should be read as limited to any children who are parties of proceedings. He did agree that a children's guardian may have to provide a court with advice about a non-subject child (such as a step-sibling) but only in respect of how it impacts on the best interests of any children who are the subjects of proceedings. This comes under the requirement that a guardian must carry out enquiries on a wide range of issues, and covering different people, in providing the court with advice about relationships of the child who is the subject of a case.

SENTENCING STEPS

Coronavirus-related threatening behaviour

Examining the following steps may help you with similar cases in the future

SCENARIO

Defendant: Bernard Jones (49)

Charge: At Redmore on 19 April 2020 used threatening, abusive or insulting words or behaviour, contrary to section 4 Public Order Act 1986

Plea: Guilty at first hearing

Prosecution case

On 19 April police officers were called to reports of a disturbance in Redmore. PCs Corbett and Williams went to Ashton Street and saw the defendant in the middle of the road, shouting and swearing. The officers approached Mr Jones, who was drunk, and asked him to calm down and go indoors. Mr Jones came up to PC Williams, pushing his face against hers. He told her to f*ck off or he would spit all over her. This was, of course, at the height of the coronavirus pandemic.

PC Corbett told the defendant to go indoors, and said he should not be in the street without good reason. Mr Jones went right up to PC Corbett and shouted 'This isn't a Nazi state, so f*ck off before I cough on you. I've got Covid-19'. PC Corbett warned the defendant he would be arrested unless he went inside. The defendant turned away and started shouting and swearing at neighbours, one of whom started to come towards the defendant. Mr Jones turned his attention to the man, offering to fight him. It was clear that there was going to be a physical confrontation, so PC Williams stepped between them and told the neighbour to go home. PC Williams warned Mr Jones that this was his last opportunity to go indoors. He shouted 'Not till I've f*cking sorted him out', at which the neighbour turned round and started to come back towards the defendant. PC Corbett again told Mr Jones he would be arrested unless he calmed down and stopped threatening people.

Mr Jones said 'Go on then, Hitler' and walked up to PC Corbett, giving a Nazi salute. PC Williams thought Mr Jones was going to spit at PC Corbett so used her pepper spray, which incapacitated the defendant long enough for handcuffs to be placed on him. PC Williams formally arrested the defendant. He was taken to the police station and charged with the present offence. He was initially also charged with leaving his home, contrary to regulation 6(1) of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, but that was not pursued as he claimed it was necessary to do so to escape the risk of harm from his wife.

Mr Jones was released the following morning when he was sober. He was apologetic when told what he had done. Both officers were distressed at the threats, and I produce their victim statements. Mr Jones has one previous conviction, three years ago, for being drunk and disorderly. I apply for costs and also compensation for the officers.

BRIAN JACKSON/ADOBE STOCK PHOTO

Defence mitigation

Mr Jones expresses his regret and through me he apologises to the two officers. My client has little recollection of the incident. He remembers arguing with his wife after being, as he put it, 'cooped up in the flat with her, 24/7 for weeks on end'. He went outside to get away from her. He had been drinking because he says he had nothing else to do. He remembers being told to go indoors, but in his drunken state he believed they had no right to make him do so. He doesn't remember saying he had coronavirus, and indeed he doesn't have it. He is unemployed as a result of the pandemic, but offers to pay any financial penalty at £8 per week.

Pre-sentence report

Mr Jones is 49 and unemployed. He lives with his wife in a rented housing association flat. They have no children. Mrs Jones objected to her husband sitting around drinking all day and an argument started. Mr Jones says he was upset – he had lost his job because of the coronavirus pandemic, having been working as an assembler at a small pipe factory which closed down. His risk assessment, to the public and of reoffending, is low. Mr Jones says he intends to give up drinking. I find it difficult in the present circumstances to suggest a community order, as a curfew is of no effect and unpaid work is difficult to arrange without contact. Mr Jones does not need any rehabilitation support. I would suggest a fine.

YOUR SENTENCE

Sentencing discussion

The Sentencing Guideline is 'Threatening behaviour – fear or provocation of violence'. Does it amount to a 'sustained incident' for the purposes of high culpability? I believe it would, but it is open to argument. Did his threats to his neighbour amount to 'intention to cause fear of serious violence', another high culpability factor? I think 'serious violence' is intended to mean more than that. Harm: Although the defendant's actions caused the police officers to fear serious harm (because of the coronavirus), that is not – perhaps strangely – a factor in putting harm into the higher category. That a victim feared serious violence is such a factor, but it is arguable that although they feared serious harm, that was not as a result of a threat of serious violence.

If the bench find that the offence comes into category A2, the starting point is a medium level community order, ranging from a band C fine to 12 weeks' custody.

It is now even more important that emergency workers are protected, by imposing sentences to deter such offences

MAGISTRATES' COURT SENTENCING GUIDELINE

Threatening behaviour – fear or provocation of violence/ Racially or religiously aggravated threatening behaviour – fear or provocation of violence

Crime and Disorder Act 1998, s.31(1)(a), Public Order Act 1986, s.4

Effective from: 1 January 2020

https://bit.ly/magistrate2060

Two issues arise: Does the fact that the offence was committed against emergency workers make it more serious? And, does the fact that it was committed during the coronavirus pandemic make it more serious? First, although the provisions relating to emergency workers are in the Assaults on Emergency Workers (Offences) Act 2018, section 2(6) makes it clear that the court may treat any offence as aggravated by the fact that it was committed against an emergency worker, whether the offence involves an assault or not.

In *R v McGarrick 2019* the Court of Appeal said 'The 2018 Act was enacted to improve protection for emergency workers. It is perfectly clear that parliament intended the sentencing regime for such offences to be more severe. We must also bear in mind the clear legislative intent that assaults on public servants doing their work as part of the emergency services should be sentenced more severely than hitherto'. And that was before coronavirus took hold; it is now even more important that emergency workers are protected, by imposing sentences to deter such offences.

The fact that the offence was committed during the coronavirus pandemic is a serious aggravating factor. The effect of the threat is likely to cause greater fear or distress, given the effects of the virus. On 20 March 2020, the Director of Public Prosecutions said 'Emergency workers are more essential than ever as society comes together to tackle the coronavirus pandemic. I am appalled by reports of police officers and other frontline workers being deliberately coughed at by people claiming to have Covid-19. Serious criminal charges will be brought against offenders'.

The cases reported to date show that courts are imposing immediate custodial sentences for coronavirus-related offences. In each case, however, the court will have to go through the process of considering alternatives and the definitive guideline on the imposition of community and custodial sentences. *R v Kelly 2019*, which reminds courts that an immediate custodial sentence may be called for, even if the factors in favour of suspending apply, is likely to be particularly relevant where the standard offence is committed against emergency workers during the coronavirus pandemic.

The victim surcharge must be ordered unless the court orders compensation to be paid to the police officers and considers that the defendant will not be able to pay the victim surcharge as well, in which case prosecution costs should not be ordered either.

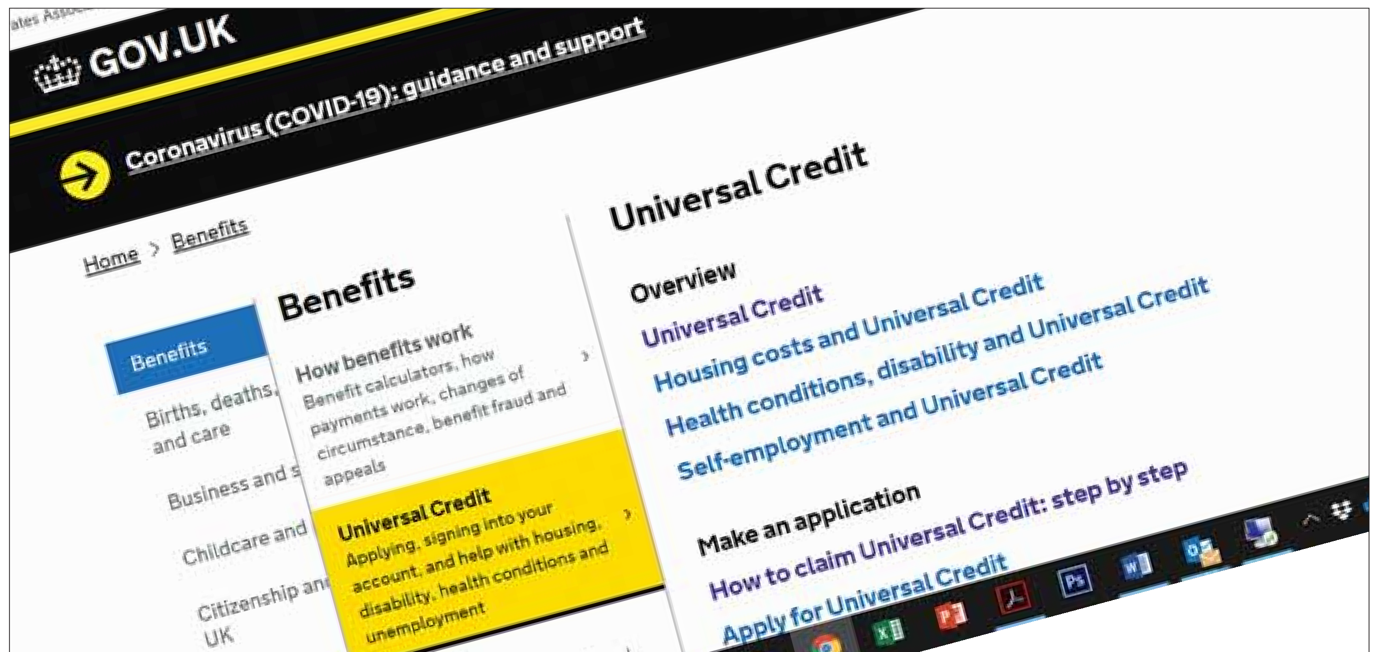
If concern is expressed that imprisonment puts Mr Jones at risk of contracting the coronavirus, my advice would be that unless the government decides to prohibit immediate custodial sentences or the defendant is particularly vulnerable this should not be a factor.

With thanks to David R Goodman OBE, Barrister

MAGISTRATES ASSOCIATION CUT-OUT-AND-KEEP GUIDE TO:

Universal Credit and deductions

June 2020



What is Universal Credit?

Universal Credit is being rolled out by the Department for Work and Pensions (DWP) to overhaul the welfare system. It will replace the following benefits and tax credits:

- Child Tax Credit
- Housing Benefit for working-age claimants
- Income Support
- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Working Tax Credit

Universal Credit is made up of a 'standard allowance', which is a basic allowance paid as a monthly payment per household.

There will then be additional allowances based on personal circumstances, for example, children and childcare, limited capability for work and caring for a disabled adult.

Applicants who wish to claim Universal Credit will need to meet a set of 'basic' and 'financial' conditions before being accepted. It is paid once a month, always on the same date. New claims can take up to six weeks to be assessed and processed.

Timelines for Universal Credit

Universal Credit is being rolled out in stages. It has been fully rolled out to all job centres (therefore given to all new claimants of benefits) and roll-out is intended to be complete by 2024.

The roll-out means that anyone who has claimed benefits or tax credits (such as the above, sometimes called legacy benefits) will currently continue to receive them, unless they:

- Have a significant change in their circumstances which triggers a new claim for Universal Credit (called natural migration)
- Are moved over to Universal Credit by the DWP (called managed migration – this is currently being piloted as of July 2019, and once this pilot has concluded it is expected to be rolled out further)

Can deductions be taken from Universal Credit?

As with previous benefits systems, deductions can be taken directly from Universal Credit. Deductions will be taken from the monthly standard allowance, and can range from a minimum of 5% to a maximum of 30%.[1] Court deductions can be taken up to a maximum of £108.35.

Up to three deductions can be taken at a time which will add up to the maximum of 30%. So, if only one deduction is taken, it will be 30% but if three are being taken they could each be at 10%. If more than three deductions are requested, then they will be prioritised and only the top three will be payable. There are 25 different types of deduction. These include (for example) electricity, gas and water arrears, mortgage arrears and rent arrears. Court financial impositions are ninth in the list of priority.

MAGISTRATES ASSOCIATION CUT-OUT-AND-KEEP GUIDE TO:

Universal Credit and deductions

Deductions and the law

The law[2] states that there are two circumstances in which you **must** apply for a deduction from benefits order (DBO). These are:

a) Where compensation has been ordered to be paid, and/or

b) The defendant is an existing defaulter.

In these circumstances, this can be done **without** the defendant's consent.

The court should apply for a DBO unless it is determined to be inappropriate or impractical:

- When might it be inappropriate? For example, if compensation can be paid much more quickly to the victim within a specified period.
- When might it be impractical? For example, if the defendant is on and off benefits, is self-employed, likely to be changing from benefits to paid work or to a joint claim.

These examples are not exhaustive – check with your legal adviser in individual cases.

The rate of repayment through a deduction is set by the DWP. This rate will not be known by the court upon imposition so the court cannot find it inappropriate or impractical purely on the basis that they do not know what the deduction rate will be or they are concerned the weekly amount might be higher than the court might have imposed.

Deductions outside of these examples

Where a financial imposition is imposed and the law does not require the court to apply for a DBO as outlined above, the court should look at:

a) Asking for immediate payment in full

b) Asking for payment in full within a set period

c) Agreeing for it to be paid by instalments

d) Asking the defendant whether they consent to a DBO being applied for. (They can consent to a DBO even if compensation was not ordered and/or they are not an existing defaulter).

As in the Magistrates' Court Sentencing Guidelines,[3] normally a fine should be of an amount that is capable of being paid within 12 months, though there may be exceptions to this. However, the bench should encourage payment as soon as reasonably possible.

As mentioned previously, it is important for magistrates to remember that if a DBO is made, the deduction rate will be fixed by the DWP not the court. The magistrates should therefore not state in open court what figure or percentage is likely to be deducted.

Deductions may be affected by a number of variables which will change the rate at which the fine is paid back via deductions. For example, a change in family circumstances or a change in the priority order of deductions.

What is the process for applying for a DBO?

Once the court has ordered a DBO, the application will be sent to the DWP for processing. These applications are expected to be processed and accepted or rejected in six weeks.

The court is expected to provide the following information to the DWP:

- The name and address of the offender, and, if it is known, their date of birth
- Their national insurance number
- The date the financial imposition was imposed
- The name and address of the court imposing the financial imposition
- The amount of the financial penalty ordered
- Whether the offender is an existing defaulter

When the court imposes a collection order following an application for a DBO they must state the reserve terms. The Justices' Clerks' Society guidance states that these should be set at 14 days if the offender is present, or 21 days in absentia. This means that if the DBO fails, once the offender is notified, they will have to make full payment within that period or contact the National Compliance and Enforcement Service to negotiate other payment options.

The court does not have the power to vary the deduction rate. However, the court may see applications coming back before them whereby offenders are applying for their DBOs to be removed and replaced with payment terms. The court must scrutinise these applications carefully, as a DBO is one of the most effective fine enforcement tools for people on Universal Credit. It should be remembered that if other deductions are still being taken, even if a DBO is removed in relation to a court fine payment, then the maximum of 30% will still be taken for the other deductions. The court should conduct a full means enquiry and scrutinise the offender's income and outgoings, determining what are essential and non-essential payments. The court must ensure that financial imposition is paid in full within the shortest time frame possible.

Footnotes

1 Sometimes they may be taken at over 30%, if it is thought to be in the individual's best interests, eg home repossession or fuel disconnection. In October 2019 the maximum deductions were changed from 40% to 30%, therefore accounts still subject to the 40% maximum may still be being enforced.

2 Courts Act 2003, Schedule 5, Part 3, 7A and 8

3 https://bit.ly/magistrate2064

With thanks to Janet Carter and the Justices' Clerks' Society for letting us adapt their respective guides.

2020 Vision: 100 Years of Justice

will now be exclusively online!

Taking into account the current government guidance, the uncertainty as to when and to what extent the lockdown will be lifted, and our concerns for the optimum safety of our members, the MA has decided to cancel all physical exhibitions. The action will instead be brought to you exclusively online at http://ma100yearsofjustice.com.

The website will feature all the artwork; artists' biographies, images and links to interviews with each of them; and interactive public programming. The site will fully launch on 1 September, but you are welcome to pop by at any time in the interim to look at the artists' existing work.

Pride in London 2019 © Jack Smith (PAST: Freedom of expression)

'My painting "Pride in London 2019" depicts our right to express ourselves and celebrates that freedom.'

Our 20 artists are from a range of backgrounds and locations throughout England and Wales, and were selected from a whopping 110 entries to our exhibition.

Artist	Theme	Where examples of their work can be viewed online
Kristina Nabažaitė	PAST: Rights of the child	www.instagram.com/dukrapalaidune
Unity	PAST: Gender and the justice system	www.millimagic.com
Rebecca Hiscock	PAST: The role of prison in society	www.rebeccahiscock.com
Rachel Rea	PAST: Ownership of information	www.rachelreaart.co.uk
Amber Akaunu	PAST: Race and criminal justice	www.amberakaunu.com
Jez Dolan	PAST: LGBT+ rights	www.jezdolan.com
Jack Smith	PAST: Freedom of expression	www.jacksmith.art
John Walmsley	PAST: Freedom of association	www.bit.ly/FlickrWalmsleyAlbums
Emmanuel Unaji	PAST: Victims' rights	www.emmanuelunaji.com
Frances Hodson	PAST: The concept of justice	www.instagram.com/fmhodson
Nicola Hepworth	FUTURE: Rights of the child	www.nicolahepworth.com
Sara Harrington	FUTURE: Gender and the justice system	www.saraharrington.co.uk
Erika Flowers	FUTURE: The role of prison in society	www.recordedinart.com
ElMal Art	FUTURE: Ownership of information	www.elmalart.com
Jonnie Turpie MBE	FUTURE: Race and criminal justice	www.printsanew.jonnieturpie.com
Lady Kitt	FUTURE: LGBT+ rights	www.lladykitt.com
Alison Carpenter-Hughes	FUTURE: Freedom of expression	www.ajcgallery.com
Barbara Majek-Oduyoye	FUTURE: Freedom of association	www.instagram.com/__bar.bara___
Helen Knowles	FUTURE: Victims' rights	www.helenknowles.com
Gary Mansfield	FUTURE: The concept of justice	www.garymansfield.co.uk

Letters should ideally be no longer than 300 words and sent to: MAGISTRATE, Magistrates Association, 10A Flagstaff House, St George Wharf, London SW8 2LE.

Email: melodie.hyams@magistrates-association.org.uk

We do not publish addresses, phone numbers or email addresses.

Letters may be edited before publication.

LETTERS

A question of balance or justice on the cheap?

Terry Knights JP Northamptonshire MA (Supplemental)

I was delighted, and to some extent saddened, by the comments of John Bache in the February-March 2020 MAGISTRATE. As the last Bench Chair of Corby Magistrates' Court, prior to its closure by HM Courts and Tribunals Service (HMCTS), it brought back some of the arguments about why Corby (and other courts) should not have been closed. Everything that John mentioned was also part of our argument, plus a whole lot more. Sadly, from our perspective it seemed that irrespective of what was said prior to announcing the court's closure, the decision had been made well before that.

The one thing that was absolutely true, the judiciary was in need of a review, but this?

We (the communities) have lost our local justice but the real losers have been all court users and society. This includes all our local communities, magistrates, HMCTS staff, law firms, the Crown Prosecution Service, Probation, witnesses, victims and offenders.

Justice on the cheap? I doubt it is as cheap as HMCTS said it was going to be; have they sold any of the properties they said they would? Add on to that the true cost of new systems and implementation. There is also the cost incurred by those who 'fail to attend'. Do we (the public) now have a super efficient judicial system?

The one thing John was absolutely right about is the determination that magistrates put justice first. I only hope there will be enough magistrates around in future years to maintain this precious institution.

Maturity in the magistrates' court

Malcolm D Peckham JP Buckinghamshire MA (Supplemental) and Fellow of the Howard League

Can I congratulate the MA on an excellent set of papers on maturity (April-May 2020 MAGISTRATE). I have re-read them a number of times which I am not sure I would have done had the magazine been sent electronically!

David Goodman hits the nail on the head: '...mental health issues and/or immaturity are so often claimed to be a major factor in a defendant's offending'.

Defence lawyers have an increasing propensity to throw in mental health and maturity issues in mitigation and not always in my experience with appropriate substantive evidence.

Training is vital and I would suggest the opportunity should be taken with the MA articles to organise debates/seminar in all courts.

Magistrates have incredible knowledge from working life. Colleagues from the teaching, medical, care and human resources professions, to name a few, could all contribute to roundtable discussions and generate a greater understanding of maturity and thereby promote better decision making.

21st century thinking

Christopher Masters JP East Sussex MA

The terrible virus situation has given me the opportunity to catch up on my reading, including Simon Rutter's letter 'The dignity of the court' (February-March 2020 MAGISTRATE).

In the new 'post-virus' world we live in there is a fantastic opportunity to look at every aspect of the magistracy and adopt 21st century thinking.

Many of the new processes and systems will embrace technology, which requires investment that is long overdue. There are many opportunities to increase speed of handling, ease of access and greater understanding of the process for court users.

Another aspect that, in my view, requires some 21st century thinking is the dress code. Simon talks in his letter of 'sloppy dress'. This links to an expectation that male magistrates must wear ties.

There are two issues:

- It's right to respect the court but when male prime ministers, presidents and monarchs regularly do not wear ties I think the magistracy needs to move with the time.
- The bigger issue is one of equality. The organisations I work with do not have discriminatory dress codes. In court I sit with many women colleagues who wear open neck clothing. In my view, it is wrong to ask or expect men to wear ties.

Correction: Combining special measures

Joyce Plotnikoff DBE Founder of Lexicon Limited

On page 38 of the April-May 2020 MAGISTRATE, attention is drawn to 'a shortcoming in court procedure', ie that 'a witness cannot ask to give evidence by both video link and be screened'. This is a commonly held belief but is in fact incorrect. Criminal Practice Direction 18A.2 states that 'Special measures need not be considered or ordered in isolation. The needs of the individual witness should be ascertained, and a combination of special measures may be appropriate. For example, if a witness who is to give evidence by live link wishes, screens can be used to shield the live link screen from the defendant and the public, as would occur if screens were being used for a witness giving evidence in the court room'.

Confused thinking

Andrew Melling JP South and South East London MA (Supplemental)

The exchange on page 37 of the February-March 2020 MAGISTRATE betrays confused thinking. The sentencing range is not the Guideline: it is part of the Guideline. A court that sentences outside the range, giving reasons for doing so, is following the Guideline not departing from it.

An appreciation of this simple logic would avoid much wrangling and, perhaps, the occasional report of a circuit judge commenting that he would have sentenced differently if not constrained by the Guideline!

JP LOCKDOWN STORIES

SEND US YOUR STORIES If you have a courtroom (or retiring room) story – funny, enlightening, bizarre, heartrending, anything you think others will want to read – do send it to us at jpstories1@gmail.com (please note that doing so amounts to permission to edit and use the story for a future edition of this page and/or any subsequent anthology). We need your name and bench (which will not be published as we need to keep all stories suitably anonymous). We look forward to reading your contributions!

*This inbox will be accessed by a magistrate who will be compiling this item for the magazine. By sending your story to this email address you are agreeing to its potential publication and to potentially receiving replies from the same email address.

Fetchingly floral

Dr Nicola Perry JP Kent MA

I am a GP, so during the lockdown period, I have set up an assessment centre for 67,000 patients in Kent with my GP colleague. As GPs we are trying to do all our consulting over the phone but some patients need to be seen face to face. This centre allows us to have a purpose built, safe area which patients drive through.

As we have no protective equipment, I have commissioned a local clothing factory to make us some scrubs and gowns. The company usually makes women's nighties, so our gowns are pink and floral – some of our male colleagues look very fetching!

We have liaised with the design and technology department of the local school who have done a fantastic job making visors for us. Overall I have been overwhelmed by the generous response of donors and volunteers who have helped us set up the centre.

I am missing working in the magistrates' court but look forward to normality at the end of all of this.

Being at home in-between shifts with my children and husband has been wonderful.

Loving the gowns!

Lockdown lambing

Sally-Anne Roggendorff JP West Sussex MA

Sally-Anne Roggendorff sent us this wonderful picture of lambs during lockdown – *we think it's lambtastic!*

Caution advisable

Jenny Kerr JP South West London MA

A friend of mine works as a practice manager in primary care and her current role is to source PPE for the doctors and nurses working on the front line. She asked me for help and after a few hiccups with some truly unsuitable products purchased online (what you see is not necessarily what you get!), I found a company in Ireland who could help. After closing their factory at lockdown, they had put their equipment and workforce to good use making components for face shields.

They are not assembling them as this requires a reasonably sanitised environment. This is where I step in with latex gloves, sanitised stapler, and hygienic surroundings. I have taken over our dining room (there's no entertaining going on) and apart from a little repetitive strain from stapling, I've become quite adept. I can assemble a face shield in under a minute. I've made 880 so far, and there are 500 in the pipeline.

We are relying on friends and family for donations and I have raised over £3,000 to purchase the kits. Delivery is ongoing and the recipients include several local charities as well as the NHS. I'll go on doing it as long as I have the time and funding.

Surreal times

Paul Walton JP South and West Devon MA

In these very surreal times, there has been plenty to read to keep us magistrates informed – and conference calls for FTAAAC and JTAAAC for which I am the South West MA representative. Plenty of spare time too for DIY, the garden and painting...

We love your beautiful paintings Paul – keep up the good work.

An empty diary!

Jane Cook JP Birmingham MA

I'm a psychotherapist but all work has stopped apart from phone sessions. It's very strange, the longest I've not seen my clients in 20 years. I am also a foster carer for Birmingham Children's Trust, so have a house full of four young people aged 12, 14, 16 and 17 and one who has stayed on with us after leaving care.

Being at home and not going out has been good for us as a family, and they all get on really well. Everyone just wants to know what they are going to eat next, which means being creative in the kitchen.

Most of the day is taken up with home schooling. We can't continue this for long – we aren't teachers. We spend a lot of time together doing craft, jigsaws, playing cards, cooking, gardening and watching TV.

We became grandparents this month. Not being able to see our new granddaughter and give our support has been hard, but they are all safe and well, and we stay technologically connected.

The strangest thing is having an empty diary and, for the first time in adult life, lots of time.

A key worker

Pete Young JP North and West Yorkshire MA

As a train manager I am classed as a key worker, so I am still working daily. The biggest part of my job is explaining to groups of elderly people that going out on the train for a group ramble isn't possible and they should stay home, and ejecting the drug users. Some get quite rude and aggressive – and that's just the pensioners.

Although this virus doesn't frighten me it does concern me; not if I will get it but when. Sadly a colleague passed away yesterday having contracted the virus. So I try to take care.

To take my mind off things I look forward to when this is all over, sitting in court again alongside the fantastic people I have met there. I do miss them.

I have cut every blade of grass to within an inch of its life, polished two cars down to the primer and serviced two motorcycles so much they're now moped-size. The dog is worn out – and her warranty has expired so there's no taking her back. My wife has painted everything that doesn't move including our son who is actually missing being at school.

Thoughts from a garden bench

Graham Forrester JP South West London MA

For my grandchildren, Josie, 10 and Juliette, 6

Mahonia, splashing yellow like dandelions, but there is a dilution.
Daffodils fade and wave to proud bright tulips displaying in their pots.
A bumble bee invites his smaller cousins as their collective humming reverberates in the now still air.
The stock brick walls are honeyed in the sun as the nectar is trailed on invisible paths to the sticky lair.
A solitary plane gouges its monstrous intrusive furrow to climb like the virus to another land.
Peace again, with a chill wind and isolation waiting for a solution.

Your poem is very moving Graham – thank you for sending it in.

Keep those stories coming and keep safe all.

SNIPPETS

Have you got a Snippet for us? If so, please send it in, but remember to keep stories as succinct as possible and that copy has to be finalised six weeks prior to publication. Please send your stories to melodie.hyams@magistrates-association.org.uk.

Over 200 years' service by Gwent magistrates

The Lord Lieutenant (centre), High Sheriff (3rd from left) and Gwent Bench Chair Stephen Cox (behind LL) with attendees.

Over 200 years cumulative service from Gwent magistrates was recognised in a combined retirement and 20-year service awards ceremony held at the Sessions House, Usk on 3 March 2020. The event was hosted by the Lord Lieutenant of Gwent, Brigadier Robert Aitken CBE, who presented certificates to the recipient magistrates. Also in attendance was the High Sheriff of Gwent, Dame Claire Clancy DCB DL. The Gwent Bench Chair Mr Stephen Cox, along with his deputies, members of the advisory committee and Gwent MA Chair Nicola-Jayne Holland, joined the celebrations. After the presentations attendees were invited for tea and cakes in the Sessions House library. Our thanks go to the Lord Lieutenant and High Sheriff for taking the time to attend this ceremony.

The Sessions House is a fine example of a Victorian court house having opened in 1877 as the Quarter Sessions Court for the whole of Monmouthshire. The court subsequently became a magistrates' court and held its last sittings in 1995.

Sonia Andrews

Although Sonia Andrews officially retired from the MA in 2010 she has been supporting the Board of Trustees as minutes secretary since then, totting up some 27 years' service to the MA! Many members will remember Sonia from the MA's Fitzroy Square days where she supported a number of committees for many years and was a familiar figure at MA Council meetings. She was highly valued by staff and members alike as a warm and supportive member of the MA team. We are very grateful to her continued help since the MA moved to St George Wharf and wish her all the very best for her retirement.

BRANCH NOTICES

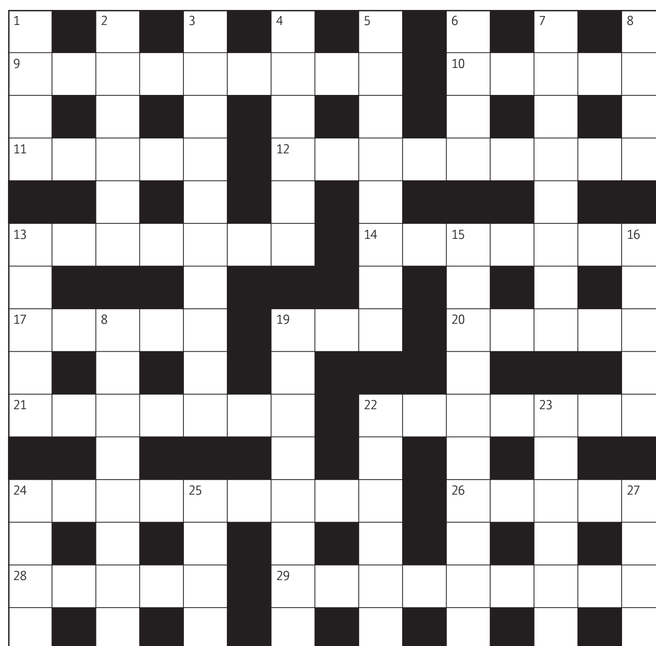
Please send your items for Branch Notices to: melodie.hyams@magistrates-association.org.uk

North and West Yorkshire MA

The AGM and training event for North and West Yorkshire MA, which was due to take place on Saturday 16 May 2020, had to be postponed because of the coronavirus pandemic. The branch hopes to stage the event later in the year and will keep branch members informed via email.

CROSSWORD

Compiled by Mark Taylor



ACROSS

- **9** Demand for coloured letter (9)
- **10** Initially let all understand good humour and produce this (5)
- **11** Slump held back in tempo or drama (5)
- **12** Rug detail to become bound (9)
- **13** Watch observer (7)
- **14** States race I am to alter (7)
- **17** My handicap rises to include island (5)
- **19** Insect in unrestrained panto (3)
- **20** Void at first back in London unless nobody new arrives (5)
- **21** Gags cry out to be wasted (7)
- **22** A small block made to be blamed (7)
- **24** Quad with craft for romance (9)
- **26** Conceal shrub, perhaps (5)
- **28** Guide a young ox (5)
- **29** Responses about legal cases (9)

DOWN

- **1** Lincoln died, asleep perhaps (4)
- **2** Feline surrounds against alternative caper (6)
- **3** Taking charge and tell all about smoked fish (10)
- **4** Jumps in underground places (6)
- **5** Tire and sound out to become obvious (8
- **6** Unexciting dwelling (4)
- **7** Daily caretaker (8)
- **8** Lost clothes at outhouse (4)
- **13** Cricket targets less French and centres of candles (5)
- **15** An epic team perhaps can liberate (10)
- **16** First class took the lead but suffered (5)
- **18** Court liar came from mixed half of Jersey in more chaste surrounds (8)
- **19** Develop New Year with start of holidays in no fixed places (8)
- **22** Sounds like church bell's review (6)
- **23** Time, because a sonnet contains it (6)
- **24** Suit container (4)
- **25** It's wrong to jog back (4)
- **27** Analyse trial (4)

NAME

ADDRESS

Send your entries for the June/July competition with your name and address to macdonaldjwimac@sky.com or to Ian Macdonald JP, 24 Worsley Road, Worsley, Manchester M28 2GQ by 7 July 2020. First correct entry opened on that date will receive a £15 book token. The winner of the April/May competition is **Brian Cheney**

SOLUTION TO THE APRIL/MAY PUZZLE. ***Across:*** 1 Firearm; 5 Endorse; 6 Evil Doers; 10 Super; 11 Minaret; 12 Atelier; 13 Normality; 16 Alarm; 17 Pages; 18 Care Order; 21 Outrage; 22 Deleted; 25 Acorn; 26 Recession; 27 Ensured; 28 Scruffs. ***Down:*** 1 Freeman; 2 Reign; 3 Adder; 4 Maestri; 5 Ecstasy; 6 Desperado; 7 Reprimand; 8 Eardrum; 14 Righteous; 15 Abstainer; 17 Probate; 18 Cleared; 19 Reduces; 20 Rodents; 23 Laser; 24 Thief.

If submitting a crossword for the magazine, compilers need to use a 15-square grid as in leading British newspapers. **All** grid entries must appear in *The Shorter Oxford*, *Collins* or *Chambers* dictionaries. Well-known proper nouns may also be used occasionally. Three or more entries must be in court or legal vocabulary.

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