

Specialisation of Family Magistrates

and the balance of sittings between the adult court and the family proceedings court and/or the youth court.

Consultation Paper

CP 28/05

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This consultation will end on 10/02/2006

A consultation produced by Her Majesty's Courts Service,
part of the Department for Constitutional Affairs.

Contents

Executive summary	3
Introduction	5
The proposals	7
Questionnaire	13
About you	16
How to respond	17
The Consultation Criteria	19
Consultation Co-ordinator contact details	20

Executive summary

This consultation document seeks views on how sitting for youth magistrates and family magistrates might be split between the adult court and family proceedings courts (FPCs) or youth courts and whether magistrates should be able to specialise in family work only.

At present, 26 half-day sittings is the minimum specified for magistrates who sit only in the adult court, and 31 half days per year if a magistrate also sits in the family proceedings or youth courts. Depending on local circumstances, the actual level of sitting days may be much higher and this may mean that many magistrates could be excluded from family and youth work.

The Lord Chancellor and the judiciary recognise that there is a need for a more effective allocation of work between the courts, including transfer of work appropriate to the magistrates' court from the county courts. Family proceedings courts at present have the capacity to take on more work, and it has been suggested that they would be in a better position to do so, if family magistrates were able to sit for longer.

It has been suggested that there are some magistrates who would be keen to opt for family only work and it may be beneficial to enable those who wish to do so to specialise in family work only, after a given period of sitting in both the adult and family courts.

The consultation paper proposes:

- that 12 half-day sittings should be the minimum level of sittings in any area of work, but the overall minimum for those who sit in either the family or youth court alongside the adult court will remain 31 half days.

- Subject to the over-riding need to demonstrate competence in both fields, the exact balance between minimum sittings in the different jurisdictions should be flexible. A more equal split between adult and family or youth would be acceptable, as would a clear majority of sittings in either one or the other.

Introduction

This paper sets out for consultation how sitting for family magistrates might be split between the adult court and family proceedings courts and whether magistrates should be able to specialise in family work.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 19, have been followed.

An initial Regulatory Impact Assessment does not indicate that any groups are likely to be particularly affected. The proposals are unlikely to lead to additional costs and savings for businesses, charities or the voluntary sector, or on the public sector. Consequently, this paper does not contain a Partial Regulatory Impact Assessment. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to:

- Association of Magisterial Officers (AMO)
- Criminal Procedure Rule Committee
- Family Procedure Rule Committee
- Her Majesty's Courts Service – Chief Executive, Regional Directors and Area Directors
- Justices' Clerks' Society
- Magistrates' Association
- Magistrates' Courts Rule Committee
- Magistrates' Training Forum
- Senior District Judge and Chief Magistrate on behalf of District Judges (Magistrates' Courts)
- Judicial Studies Board
- The Right Honourable the Lord Chief Justice
- The Right Honourable the Chancellor of the High Court
- The Right Honourable the President of the Family Division

- The Right Honourable the President of the Queen's Bench Division
- The Right Honourable the Senior Presiding Judge

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Introduction

1. This consultation document seeks views on how sitting for family magistrates might be split between the adult court and family proceedings courts and whether magistrates should be able to specialise in family work. In the latter, this would mean magistrates sitting in the family proceedings court and hearing family cases only, therefore having no involvement with the adult court.

Balance of sittings

2. Magistrates must sit sufficiently often to become and remain competent in every area of their work. At the same time efforts are being made to improve the diversity of benches so that it is able to accommodate the needs of magistrates who cannot sit more than the minimum number of sittings required of them. These magistrates – often younger, and at the early stages of their careers – are immensely valuable to the magistracy. Magistrates are required to sit a minimum of 26 half days a year. However, average sittings can be higher than this and where there have been recruitment difficulties or a heavy workload some magistrates have had to sit for more than the current maximum sittings level of 70 half days per year. This can put off some people from entering the magistracy and can also be seen by some employers as unacceptable.

3. The current position is that entry to the magistracy should be through the adult court. The Magistrates' National Training Initiative (MNTI 2) training scheme requires magistrates to demonstrate competence in the adult court before being considered for appointment to the family panel. Under MNTI 2 the elements and performance criteria for all magistrates' work are the same in whatever jurisdiction they sit. The behaviour and knowledge required in the family jurisdiction is markedly different from the adult and youth jurisdictions.

4. The adult criminal court covers a very wide area of work and magistrates are expected, through the core competences, to deal effectively with all elements of the work rather than restrict themselves to a narrow range. Having a variety of work both increases interest and competence for magistrates and guards against any narrowness of view.

5. Magistrates who also do family or youth work bring their knowledge of the adult court with them and this brings several benefits. Dealing with the breadth of adult work means experiencing a wide variety of peoples' backgrounds and this can increase understanding of some circumstances heard in the family and youth courts, thereby leading to an improvement of expertise and quality of service. This also adds an extra dimension to work in the adult court. Subjects such as domestic violence cross the boundaries of family, youth, and adult work and experience across these areas is one of the magistracy's strengths.

6. At present the Secretary of State and Lord Chancellor's Directions for Advisory Committees on Justices of the Peace specify 26 half-day sittings as the minimum number to achieve and maintain competence for magistrates who sit only in the adult court. If a magistrate sits in the family proceedings court or the youth court as well, the minimum numbers are 18 half-day sittings in the adult court and 13 half-day sittings in each other court, increasing the total minimum commitment for those doing family or youth work to 31 half days¹.

7. Minimum sittings should ideally be spread across the year so magistrates can hear a wide range of cases to broaden their experience, develop their knowledge and maintain their competence. This also helps to ensure judicial continuity, which is very important in case progression.

8. Some magistrates may be willing to sit more frequently, and they will be encouraged to do so where it is required. However, the need for the magistracy to be open to the widest possible range of volunteers and properly to reflect the community that it serves is as crucial for family and youth work as it is in the adult court. Making the minimum too high excludes many able magistrates from family and youth work.

Proposal one - 12 half-day sittings should be the minimum level of sittings in any area of work, but the overall minimum for those who sit in either the family or youth court alongside the adult court will remain 31 half days.

¹ It is proposed that, in future, if a magistrate moves to an area where there is no space on the Family bench or the Youth bench, the authorising body may decide not to revoke the magistrate's authorisation to sit in that jurisdiction. In such a situation, the magistrate will remain a family or youth magistrate, but will not be able to sit in the relevant court. This will mean that the magistrate is unable to meet the minimum sittings requirement. Such a situation should be treated as an exception to any minimum sittings requirement.

Proposal two - Subject to the over-riding need to demonstrate competence in both fields, it is proposed that the exact balance between minimum sittings in the different jurisdictions should be flexible. A more equal split between adult and family or youth would be acceptable, as would a clear majority of sittings in either one or the other.

Q.1 Do you agree that there should be flexibility in the balance of sittings for magistrates sitting in Adult Court and on panel cases, based on an overall minimum of 31 half-days a year?

Q.2 Do you agree that the minimum number of sittings in any area, for magistrates sitting in Adult Court and on panel cases, should be 12 half-days per year?

Q.3 Do you think that having a minimum of 24 half-day sittings for magistrates specialising in family and youth work would prove more favourable among employers? This could be achieved by means of 12 full days per year, which is one day a month.

Q.4 Should there be changes to the maximum number of sittings? If yes, what?

'Specialist' family magistrates

Introduction

9. The previous section considered changing the balance of sittings between the adult and family/youth court. This section considers whether family magistrates could or should sit exclusively in the family jurisdiction.

Background

10. In 1992 52,924 private law Children Act applications were made to the county court. By 2004, this had increased to 89,560 whilst over the same period applications to the family proceedings courts fell from 51,527 to 17,463. This represents a significant increase in family work for the county courts and a decrease in work for the FPCs. In proportionate terms, the approximately 50/50 division of private law work between county courts and FPCs has transformed to an 80/20 majority carried out at the county courts.

11. The family court system as a whole is getting busier and the ongoing need to reduce delay remains a key issue. The Lord Chancellor and the judiciary recognise that there is a need for a more effective allocation of work between the courts, including transfer of work appropriate to the magistrates' court from the county courts. The need to ensure that work is handled at the lowest appropriate level of judge is particularly pressing in the family jurisdiction.

12. FPCs at present have the capacity to take on more work, but it has been suggested that FPCs would be better equipped to take on more work and longer cases from the county courts if family magistrates were able to sit for longer in FPCs. This would allow family magistrates to gain greater experience and would also promote judicial continuity in long-running cases. FPCs provide a good quality service to the customer, so this could improve it and would thereby enable FPCs to deal with more complex proceedings. It might also result in fewer cases being transferred up to the county court, which could also improve customer service by reducing delay.

13. The previous section outlined the proposal to increase the minimum number of family sittings, whilst reducing but maintaining a minimum number of adult criminal sittings. The argument that current arrangements might exclude large numbers of potential and current family magistrates may remain true, to a lesser extent, even if the number of required adult sittings are reduced. In order to enable magistrates to sit more in the family courts, it may be necessary and beneficial to enable those who wish to do so to specialise in family work only, after a given

period of sitting in both the adult and family courts. Anecdotal evidence suggests that there are some magistrates who would be keen to opt for family only work.

14. With a few exceptions, there is no difference between the jurisdiction of FPCs and county courts. Practitioners who currently choose the latter may be more likely to use the FPCs if there were wholly specialist family magistrates. We must be clear however, that by creating these specialist family magistrates, we are not diminishing or undervaluing those who do not specialise and there is no suggestion that all family magistrates would be required to specialise in this way.

15. If a system of full specialisation for some magistrates were to be introduced, consideration needs to be given to the practical questions arising from a scheme that allows volunteers to choose to specialise. The first question is who would decide on how many specialist magistrates should be appointed. The advisory committees or committees which authorise family/youth magistrates could, in consultation with Area Directors on business needs, decide on the maximum number of sittings required to deal with the forecast business.

16. The balance of numbers of wholly and partly specialist magistrates might turn on whether there were too many or too few – perhaps no – volunteers. This may introduce some lack of consistency of approach between different areas. If too many magistrates were allowed to specialise it would provide less opportunity for those who are unsuccessful in being authorised as family only magistrates. Not having those expectations met could in turn cause low morale. It would therefore be necessary for appointments to be limited by a decision on how many specialised magistrates were needed. If too many magistrates apply, who would make decisions on which magistrates would be selected?

17. Magistrates who were authorised to sit only in family cases would continue to be appraised in line with MNTI guidance. Your views are invited on whether regular appraisal would be sufficient to monitor competence or whether all family-only magistrates should be authorised for a fixed period only. Fixed term authorisations would ensure that there were regular reviews of competence for family-only magistrates, and would provide opportunities for new magistrates to apply for family-only work. Against this must be set the additional burden, on the authoriser and the magistrates being authorised, of regularly re-authorising magistrates to continue in a role they have already filled successfully for years. If you are in favour of fixed term authorisations we would also welcome your views on the appropriate term.

18. Diversity is a key issue. The current requirement to be experienced in the adult court before applying for specialisation may tend to attract many older magistrates. The impact of this in the adult court could result in a loss of experienced adult magistrates and/or bench chairs. If this happened, it could result in a loss of mentors and appraisers. The impact on the diversity of the bench and on the family panel must be fully considered. An alternative view is that the family panel balance may be weighted towards older magistrates but the panel could benefit from the experience they would bring.

19. As stated earlier (paragraph 3) entry to the magistracy is currently through the adult court. If there were to be a change to that position, diversity may be maintained or improved if there were no requirement to sit in the adult court before moving into family work. Training for the specialisation may be affected if training needs cannot be linked with existing courses. Different skills are needed for the adult and family courts. If some magistrates were fully specialist, it might be argued that total numbers could be reduced thus reducing the volume of training needed. However, if the objective of increasing the proportion of family cases dealt with in the FPCs is realised, it is likely to offset any potential reduction in overall numbers of family magistrates.

20. It should be made clear that flexibility is extremely important – if there is a business need for criminal work then family only magistrates may be required to resume sitting in the adult court if needs arise in addition to some family sittings. Business needs must remain paramount. However, after a period of sitting in family only, a magistrate may not be sufficiently up-to-date with developments and changes in the work of the adult court. Magistrates could be offered a period of training to ensure the competencies needed for the adult court are maintained.

21. Under the current system, magistrates are expected to sit in the adult court before (if they so choose) taking on additional work in the family or youth courts. If a change is decided as a result of consultation, implementation would necessarily be on a phased gradual move area by area, depending on numbers and local business needs.

22. Various benefits and drawbacks have been identified in this paper to magistrates fully specialising in family work. The answers you provide to the following questions will help us further in considering this option.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

- Q.1 Do you agree that there should be flexibility in the balance of sittings for magistrates sitting in the Adult Court and on panel cases, based on an overall minimum of 31 half-days a year?**
- Q.2 Do you agree that the minimum number of sittings in any area, for magistrates sitting in the Adult Court and on panel cases, should be 12 half-days per year?**
- Q.3 Do you think that having a minimum of 24 half-day sittings for magistrates specialising in family and youth work would prove more favourable among employers? This could be achieved by means of 12 full days per year, which is one day a month.**
- Q.4 Should there be any changes to the maximum number of sittings? If yes, what?**
- Q.5 Do you agree that there should be magistrates wholly dedicated to family work? Please give reasons.**
- Q.6 What would be the main benefits of magistrates wholly dedicated to family work?**
- Q.7 What would be the main drawbacks of magistrates wholly dedicated to family work?**
- Q.8 What would be the implications on the adult court of having magistrates wholly dedicated to family work?**

- Q.9 Do you feel permitting magistrates to specialise in family work may prove more attractive in recruiting magistrates, whether directly into family or not?**
- Q.10 What would the training implications be for those magistrates wishing to specialise in family work?**
- Q.11 Should family only magistrates have to sit more frequently than magistrates who sit in adult and family courts?**
- Q.12 Should there be a requirement to obtain adult criminal experience first, moving to mixed crime/family, before moving on to all family?**
- Q.13 If so, how long should magistrates sit in the adult and family court before opting to specialise in family work only?**
- Q.14 Who should be responsible for deciding the number of specialist family magistrates that should be appointed?**
- Q.15 Would removing the requirement to obtain adult criminal experience first affect the volume/diversity of applicants for the magistracy?**
- Q.16 What would be the impact on the diversity (e.g. older/younger, more/less experienced, male/female balance) of the Family court and the Bench in general?**
- Q.17 Should magistrates be authorised to work in family only –**
- (a) until they retire**
 - (b) for a fixed term**
- If (b), please suggest the fixed term you consider appropriate and explain why.**
- Q.18 Should specialist family magistrates be able to return to the adult bench if they wish?**

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 10/02/2006 to:

Folashade Shodeinde
Department for Constitutional Affairs
Civil and Family Procedures Branch
5th Floor
Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 1568

Email: Folashade.Shodeinde@hmcourts-service.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

Publication of response

A paper summarising the responses to this consultation will be published in March 2006, which as far as possible should be within three months of the closing date of the consultation] months time. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to

information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at: consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 17.

