

Specialisation of Family Magistrates

Response to Consultation
CP 28/05
18-11-2005

Specialisation of Family Magistrates

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

Response to consultation carried out by Department for Constitutional Affairs and Her Majesty's Courts Service. This information is also available on the DCA website at www.dca.gov.uk

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Specialisation of Family Magistrates - Summary of Responses

Introduction

This document is the post-consultation report for the consultation paper, *Specialisation of Family Magistrates*, published on 18 November 2005 (CP 28/05).

It covers:

- the background to the consultation; and
- a summary of the responses to the consultation;

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Background

The consultation paper *Specialisation of Family Magistrates* was published by the Department for Constitutional Affairs (DCA) and Her Majesty's Courts Service (HMCS) on 18th November 2005. It invited comments on how sittings for family magistrates might be split between the adult court and family proceedings courts (FPCs), and as to whether magistrates should be able to specialise in family work. This specialisation would mean that magistrates sitting in the Family Proceeding Court would only hear family cases and will have no involvement with the Adult Court.

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

The Consultation period closed on 10 February 2006 and this report summarises the responses.

The issues raised and conclusions drawn from the consultation paper are subject to further discussion between the Lord Chief Justice and the Lord Chancellor.

A list of respondents can be found in Annex A.

Summary of responses

A total of 291 responses to the consultation paper were received. Three-quarters of these responses were from members of the judiciary (including the magistracy) and associated bodies representing sections of the judiciary. The remaining were from individuals and other bodies such as the Law Society, Resolution, the Family Procedure Rule Committee, British Association of Social Workers, Public and Commercial Services Union, and the Association of Lawyers for Children.

Proposal one

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

259 respondents answered this question, of whom 166 (64%) agreed and 93 (36%) disagreed with the proposal.

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, based on an overall minimum of 31 half-days a year. 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.

261 respondents answered this question, of whom 245 (94%) agreed and 16 (6%) disagreed with the proposal.

As to whether magistrates should be allowed to sit exclusively in the family jurisdiction, 260 respondents answered this question. Of these 67 (26%) felt that magistrates should have the option of specialising in family work, while 193 (74%) were opposed to the idea.

Responses to Specific Questions

The consultation paper invited comment on 18 questions. Some respondents chose to answer only 'yes/no', whilst others made comments in support of their answers. This summary of responses is a collation of the views of individuals and composite bodies from across the wider magistrates' community.

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?

261 respondents answered this question, of whom 245 (94%) agreed 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. 16 respondents (6%) disagreed with this proposal.

The majority of respondents recognised that magistrates need to sit regularly in order to remain competent in every area of their work while some are of the view that the proposal allows certain flexibility to meet personal circumstances and the differences of the panels.

There were those who agreed with the need for flexibility but they had some concerns. For example, a family panel member commented that whilst he agreed with the need for flexibility, 31 half-days a year was still a very low level for magistrates trying to remain up to date in two specialisms, be it family and youth or family and adult.

One respondent agreed that flexibility was needed and that 31 sittings was adequate to maintain competence, but that 36 would be more acceptable and 42 would be even better.

Another one said he agreed there should be flexibility in the balance of sittings, but feels the reference to a minimum number of sittings is misleading. He accepts the need to attract younger magistrates and those in employment but just to talk of sittings is wrong. *"Magistrates must be prepared to attend training courses and meetings and, therefore, the commitment by magistrates is far more than just a minimum number of sittings. Where do future mentors and appraisers come from? Their commitment is way beyond any minimum."*

It should also be remembered that family magistrates are required to do quite a lot of reading before any hearing. For a final hearing this can take a half-day or even a full day and this is done in ones own time and is not counted as a sitting. I know there is concern over the workload in the county courts and the need for more to be done in the Family Proceedings Courts but this can be achieved fairly easily on the current basis with the flexibility that currently exists. There are in existence many well-trained family magistrates who have the capacity to do more. What is needed is a determination and confidence to prevent work being sent to the county courts unnecessarily”.

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?

259 respondents answered this question, of whom 166 (64%) agreed 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. 93 respondents (36%) disagreed with this proposal.

The majority of respondents felt that 12 half-days per year was an appropriate number of sittings in order to maintain competence and expertise. However, there were those who, although agreed by answering ‘yes’ to the question, still had some concerns and felt that 12 half-days per year was not enough to retain currency and expertise.

One respondent disagreed; he felt that 12 half-days per year was not sufficient to maintain competence. He further commented that, as both a criminal court Chairman and as an appraiser, he could see the effect when a winger with a low number of sittings was unable to keep up with the pace of change.

Another one who did not agree with the proposed minimum number of sittings commented that there should be at least 15 sittings.

One respondent who agreed with the need for flexibility questioned whether an overall minimum of 31 half-days a year would be sufficient to maintain competence in more than one area of work, especially as those for family are intended to secure an enhanced degree of skill.

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.

191 respondents (66%) answered this question of whom 99 (52%) felt that having a minimum of 24 half-day sittings for magistrates specialising in family and youth work would prove more favourable among employers. 92 respondents (48%) disagreed with this.

One respondent stated that employers and employees both prefer to sit in court one day a month rather than half-days which also meant that magistrates would sit more easily on all-day trials. Another magistrate commented that the proposal would prove very attractive to employers as they could plan their rotas and replacement cover.

A respondent stated that in his experience, the fewer days away from work the better as far as employers are concerned. As regards 24 half-day sittings, they would have to be the very bare minimum. He said he would prefer a few more, perhaps 30, to maintain skill levels.

A composite body agreed that 24 half-day sittings would be necessary in order for magistrates to carry out their duties competently. However, they said that if 24 half-days are to be shared between sittings in family proceedings courts and youth courts then account must be taken of how much experience a magistrate gains in either setting. They feel that the issues of the respective courts are different and so magistrates must have a wide-ranging knowledge base in order to cover both those areas.

Some respondents commented that making the magistracy more favourable among employers should not be an issue, but that ensuring magistrates maintain their level of competence should take precedence.

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

225 respondents answered this question, of whom 82 (36%) answered yes, and 143 (64%) answered no. Of those who answered yes to this question:

- 26 said that a maximum should not be set;
- 17 respondents said that 100 sittings would be appropriate; and
- 6 said that it should be increased to at least 80.

One respondent said that he has never been convinced of the need for a maximum – *“If the work exists and magistrates are willing and able to do it, without depriving others of opportunities, then why should an artificial maximum be imposed?”*

Another one stated they believe that 70 is a realistic level for those colleagues that are able to offer more time to the work. They accept that some courts do have colleagues with high numbers of sittings when there are high work levels or magistrates required at short notice or for multiple-day cases. However, overall 70 should be the general maximum and supports the message that magistrates are not ‘professional magistrates’ but members of wider society who give up some of their time.

And one also agreed that the maximum should be reduced to 70 sittings per year. *“This is twice the recognised average annual sitting numbers and therefore two magistrates would need to be found when this person retired. Also an excessively high level of sittings gives the wrong message to employers”.*

Q.5 Do you agree that there should be magistrates wholly dedicated to family work? Please give reasons.

260 respondents answered this question, of whom 67 (26%) agreed that there should be magistrates wholly dedicated to family work. 193 respondents (74%) disagreed with the proposal.

Of those who were in favour of magistrates specialising in family work, 22 stated that specialists can quickly build up a level of expertise, whilst ten said that

specialisation must be voluntary. Four felt that specialisation would result in more cases being heard in the FPC rather than the county court.

One magistrate agreed that there should be magistrates wholly dedicated to family work as it could ensure more work remains to be done in the magistrates' courts and that matters could be dealt with more quickly.

The view of 'Resolution' is that family magistrates should be wholly dedicated to family work. If FPCs are to deal with more of the work currently dealt with by the county courts, magistrates should have frequent and regular experience of dealing with family cases. This would enable them to build up some knowledge of the issues concerning those using the courts, the dynamics of family breakdown and some familiarity with the legal requirements and precedents. This in turn would lead to a more consistent approach and enable them to reach their decisions more expeditiously.

Of those who were opposed to specialisation 91 stated that JPs need a broader role/understanding of criminal work. 17 stated that specialisation will split the magistracy/cause a possible two-tier level of magistracy. Five felt that there would not be enough work to warrant the specialisation of family magistrates, whilst four said that it would be difficult to recruit enough magistrates to specialise in family work only.

One respondent who was opposed to the specialisation of family magistrates said that the magistracy has always been a unitary force; albeit that some magistrates add additional competences to sit in family, youth, licensing etc over time – *“To break this would be to seriously undermine the institution.”* He further commented that *“specialisation of family work, where more and more areas are merging family panels and reducing hearing centres, would create a completely separate cadre of magistrates. As a result they would have no real sense of identity since all those magistrates who continued to sit on criminal work would continue to have an affinity to their home bench.”*

Another respondent commented that a continuing knowledge of adult court work was an essential background for all magistrates.

Q.6 What would be the main benefits of magistrates wholly dedicated to family work?

243 responses were received to this question, including answers from those who opposed specialisation but felt that there may (or may not) be any benefits.

- 137 felt that specialisation would lead to greater expertise;
- 82 answered this question by stating that there would be no benefits to magistrates specialising in family work only;
- 43 felt that specialisation would lead to judicial continuity in proceedings;
- 13 felt that specialisation would lead to increased job satisfaction and commitment;
- ten felt that specialisation would lead to increased public confidence in the administration of family justice;
- eight felt that more cases would be dealt with in the FPC as a result of specialisation due to the skills gained; and
- eight felt that there would be a reduction in delay with public law care cases.

One respondent said that magistrates who devote all their time to family work would inevitably be able to offer more availability and flexibility in terms of sittings, and would acquire a greater degree of experience and therefore potentially, expertise in that particular jurisdiction.

Another respondent made the following comment: *“The magistrates involved in family work will have to agree to undertake cases that last for several days. The Secretariat Office would not have the existing problem of finding people who can sit for more than one day. Magistrates will gain greater knowledge and be able to produce the reasons for their decisions, with expedition. Magistrates will feel they are part of the Family Division of the Judiciary. Family Proceedings work would be carried out in non-criminal court buildings to the benefit of those using the Family Proceedings Court. The magistrates involved in Family work only, could possibly sit alongside a District Judge in the County Court to gain additional Family Court experience.”*

One respondent commented that the benefits of specialisation would be:

- increased skills;
 - judicial continuity as required by the Protocol and Private Law Programme;
 - an opportunity to keep longer cases rather than transfer to the County Court due to magistrates' unavailability to sit for more than 3 days locally; and
 - best use of magistrates' availability.
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Q.7 What would be the main drawbacks of magistrates wholly dedicated to family work?

There were several responses to this question, the majority of the common themes are set out below:

- 133 felt that magistrates would lose contact with the wider criminal context from which many family court cases start, e.g. domestic violence, resulting in a limited range and experience;
- 31 felt that specialisation would lead to a two-tier magistrates system;
- 23 felt that specialisation would lead to a loss of flexibility in the courts;
- 16 said that fewer magistrates would be available to sit in the adult court;
- nine felt that there would not be enough magistrates willing to specialise, with a further nine respondents saying that there was a lack of family panel work;
- eight felt that there would be less diversity on the bench; and
- nine felt that specialist magistrates could feel isolated and become too distanced from the bench.

One respondent said the panel felt that specialist family magistrates would tend to come from those who could sit for long periods of time, therefore stereo-typically those people would be retired, or those not in employment e.g. those whose partners work. This would not provide for a diverse and balanced panel.

Another one said *“the main drawbacks of magistrates wholly dedicated to family work would be lack of flexibility between the adult court and family panels thus frustrating business needs. It could also divert experienced magistrates and chairmen from the adult court.”* He further commented *“the training and experience gained in the adult court would be a great loss to a specialist family court. The recruitment of appraisers for a specialist family court could prove difficult dependent on the size of the panel, and urban as against rural.”*

One respondent said that colleagues on her family panel felt that the main drawback would be the lack of knowledge of the social circumstances of the area from where the work is drawn. *“By dealing with a variety of criminal work covering remands through to London Buses the magistrates feel that they have a good knowledge of the local area and its’ associated problems. This knowledge is invaluable when dealing with family cases, in particular public law cases. There is also a groundswell of feeling that a sole diet of family work would not interest the majority of magistrates, and that this would frequently mean that younger members of the magistracy would not be keen to join a dedicated family panel and therefore the mean age of the magistrates who do family work would increase. There is always the difficulty of younger magistrates finding the time from their work and family commitments to deal with longer cases (1 – 5 days)”*.

Q.8 What would be the implications on the adult court of having magistrates wholly dedicated to family work?

There were several responses to this question. The following is a selection of common views from the majority of responses received:

- 148 felt that there would be a loss of experienced magistrates from the adult court;
- 44 said there would be less flexibility in the adult court;
- 30 stated that there would be a need to recruit more magistrates to work in the adult court.
- 16 felt there would be a development of two separate benches;

- seven said there would be an increase in sittings for magistrates in the adult court; and
- seven said that there would be no impact in the adult court.

One respondent commented that there would be a potential loss of experienced magistrates and chairmen, mentors and appraisers. They said that it would lead to a loss of wider experience and a perception of different tiers and types of magistrate, and that it was very important to ensure that all magistrates working in a local justice area feel part of the bench - this would be difficult as some magistrates specialise in family work only.

Another commented that the most significant implication for adult court work would be that in some Benches the departure of Bench members to undertake specialist work would mean that there would be fewer magistrates left to undertake adult court work. Presently family court magistrates contribute significantly to meeting the workload of the adult court. It would not be easily practicable to replace those Justices and the contribution they make.

A further respondent was concerned that judicial resources would be diverted away from the criminal jurisdiction, and another felt that to change the character of the bench and role of the magistrate would result in a loss of breadth of experience of magistrates (e.g. Youth Court work, DV cases, background of family knowledge important to adult work). It would also change the role of the bench chairman.

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?

225 respondents answered this question, of whom 51 (23%) felt that permitting magistrates to specialise in family work may prove more attractive in recruiting magistrates, and 174 (77%) did not.

“The Law Society strongly believes that permitting magistrates to specialise in family work will prove more attractive in recruiting magistrates, whether directly into family work or not”. They believe that “permitting magistrates to specialise will be more attractive to those volunteers who have a strong preference for a particular area of law, or a strong dislike for a particular area of law. Specialisation will enable

magistrates to utilise existing knowledge if they have experience in the particular field, and will allow magistrates to develop a more comprehensive understanding of a particular area of law, allowing for more confident decision making”.

The Family Procedure Rule Committee commented that it would encourage potential justices with appropriate skills and experience for family work, who may be put off from applying due to the requirement to sit in the adult court, particularly as it can be many years before there is an opportunity to apply to be on the family panel.

One respondent commented that as a group they do not feel that specialising in just family work is going to be more attractive overall. However, they have had instances of existing family magistrates indicating that they would like to specialise if given the opportunity because they feel it is more rewarding than criminal work. However, they do not feel that specialisation will be as attractive to men and already find it difficult to recruit men to the existing panel. Given the drive to recruit younger people to the magistracy they are not sure how popular specialising in family work would be given many magistrates enjoy this work because they feel that they have an understanding of it as a result of their own experiences.

Q.10 What would the training implications be for those magistrates wishing to specialise in family work?

There were several responses to this question, the following is a selection of common views received:

- 70 felt that no additional training would be needed to specialise in family work;
- 67 felt that additional training would be needed;
- 22 felt that there would be less training needed;
- seven felt that specialisation would allow more time to be dedicated to specialist family training;
- seven felt that MNT12 would need to be re-written/amended;
- four said that training and re-training would be costly; and

- four said that on the job training would be needed, e.g. court visits.

One respondent said that they would need the same basic training and specialist family training as magistrates do at present. However they would need extra training to cover areas covered by induction training e.g. equal treatment, human rights etc.

Another said that *“there are training issues for those wishing to specialise in the work of the FPC or to join the bench via that route, but they are not insuperable”*. The reasons are *“the JSB would have to devise a training module which would allow the direct entrants to the FPC to gain the MNTI 2 competences. There is no reason why this cannot be done. MATCs already have family representatives (including the Designated Family Judge or his nominee), who would wish to support this work. The Consultation Paper on Authorisation presents a particularly good model in the Family Training and Development Committees which would integrate with this work very well. Even if other models were adopted it would not mean that training could not be put in place (although something might be lost in effectiveness)”*.

One respondent felt that there would be major implications. The Branch felt that specialist family magistrates would be trained totally separately and would not be subject to MNTI adult training. A question arises as to how these basic adult competences would be maintained and what happens if a specialist family magistrate wishes to resume adult court work after a significant period doing only family work.

Another one suggested that *“adult court training be broadened slightly to enable those magistrates who wish to sit in and observe in both youth and family courts, before they apply to specialise - especially for family work. This might give a brief insight into what these specialist panels are about and may be helpful for the individual magistrate to decide whether this is for him/her or not. I often wonder whether otherwise, the magistrate has any idea what he/she is letting himself in for”*.

Q.11 Should family only magistrates have to sit more frequently than magistrates who sit in adult and family courts?

208 respondents answered this question, of whom 38 (18%) said that family-only magistrates should have to sit more frequently than magistrates who sit in the adult and family courts. 170 (82%) did not feel it was necessary for family only magistrates to have to sit more frequently than magistrates who sit in the adult and family courts.

One respondent said they would assume that specialist family magistrates would have to sit as frequently as a magistrate who only sat in the Adult Court and that it would be difficult to justify any other situation.

Another, responding on behalf of the Association of Lawyers for Children, said they did *“not feel that it necessarily follows that family magistrates should have to sit more frequently than magistrates who sit in the adult family. The benefits of specialisation can be achieved within a limit of, say, 24 half-days, although the benefit would be greater for those magistrates who sat more frequently”*.

One respondent who answered ‘no’ to this question said that there is no justification for this as it implies there is a difference between magistrates sitting solely in family and those sitting in criminal and family proceedings.

Q.12 Should there be a requirement to obtain adult criminal experience first, moving to mixed crime/family, before moving on to all family?

226 respondents answered this question, of whom 200 (88%) said that there should be a requirement to obtain adult criminal experience first, moving to mixed crime/family, before moving on to all family. 26 (12%) felt it was not necessary to obtain adult criminal experience first in order to specialise in family work.

One respondent said that a requirement to obtain adult criminal experience before specialising in family would diminish the benefits that could be obtained at the recruitment stage. However, by requiring an adult route, those who make the appointment decisions would be in a better position to assess the suitability of a potential family specialist.

Another respondent agreed with the proposal and said that there is a benefit to both family and adult/youth jurisdictions in the experience gained in the other. Magistrates are kept in touch with the conditions in the community and the influences under which families live.

Another said that providing the training provided for family magistrates is of sufficient quality and depth, they do not feel that such a prescription is necessary. Flexibility is the key and those magistrates who wish to obtain adult criminal experience as a precursor to moving into family should be permitted to do so. Such flexibility would ensure benches with diverse and differing experiences.

Q.13 If so, how long should magistrates sit in the adult and family court before opting to specialise in family work only?

There were several responses to this question. The following is a selection from the majority of the common views received:

- 82 felt that magistrates should spend two years in the adult and family court before opting to specialise in family work only;
- 26 felt that magistrates should spend three years in the adult and family court before opting to specialise in family work only;
- 16 felt that magistrates should spend four years in the adult and family court before opting to specialise in family work only;
- 15 felt that magistrates should spend five years in the adult and family court before opting to specialise in family work only;
- 11 felt that magistrates should spend one year in the adult and family court before opting to specialise in family work only;
- four felt that magistrates should spend between two and three years in the adult and family court before opting to specialise in family work only; and
- four felt that magistrates should spend between three and five years in the adult and family court before opting to specialise in family work only.

One commented that at least two years' experience was needed in order to learn the skills of judicial decision making. Practices vary but in some courts two years means 52 half-days which is not a lot of time.

The Association of District Judges also felt that at least two years' experience would be appropriate but would prefer the qualifying period to be expressed in terms of sitting days, rather than years. In that way, it can be ensured that all those who apply to specialise in family work have the same number of days' experience of sitting in the adult court.

One respondent said he has mixed thoughts about this issue. *“On the one hand, I feel that experiencing the general Adult Court criminal jurisdiction before specialising may make for a more rounded magistrate, in terms of experience. Set against that I am aware that some members of the professional judiciary dealing with Family cases have no history as a practitioner or otherwise, of dealing with criminal work”.*

Q.14 Who should be responsible for deciding the number of specialist family magistrates that should be appointed?

There were several responses to this question, the following is a selection of the common views received:

- 59 felt that the Bench Training and Development Committee (BTDC) should be responsible for deciding the number of specialist family magistrates that should be appointed;
- 45 felt that either the Family Panel Chair or the Bench Chair should be responsible;
- 34 felt that the Bench Legal Adviser/Justices' Clerk should be responsible;
- 20 felt that it should be the Family Training and Development Committee (FTDC);
- 15 felt that the Family Panel Chair in conjunction with the BTDC should be responsible;
- 11 felt that the Local Advisory Committee should be responsible;

- nine felt that it should be the Area Directors; and
- ten felt that the family panel with advice from the Justices' Clerk should be responsible for deciding the number of specialist family magistrates that should be appointed.

One respondent said that the *“decision should be made by the panel (or chairman after consultation with the panel), advised by the listing officer”*. He further commented that it should *“be based on the level of work and ease with which the requirements of the bench could be met. It is a very difficult decision to make as at the moment a downturn in work does not leave magistrates without regular courtroom experience. Family-only magistrates could deteriorate if left without work for a long time”*.

One Magistrates' Court felt that the Advisory Committee would be best placed to decide, as such decisions can only be taken locally by those who are fully aware of court peopling problems.

The Law Society commented that the number of magistrates permitted to specialise in family work should be dependant on the amount of family work being undertaken by the family proceedings court. This will need to stay under constant review.

Q.15 Would removing the requirement to obtain adult criminal experience first affect the volume/diversity of applicants for the magistracy?

189 respondents answered this question, of whom 128 (68%) felt that removing the requirement to obtain adult criminal experience first would affect the volume/diversity of applicants for the magistracy. 61 (32%) felt that removing the requirement to obtain adult criminal experience first would not affect the volume/diversity of applicants for the magistracy.

One respondent felt that there would be a completely different type of person applying, and would miss out on the great diversity of the current magistracy, which is diverse and is becoming even more so.

Another respondent said that this was a difficult question to answer, but added that some people may be more attracted if they did not have to sit in the adult court.

However, they felt that one should ensure that only suitable people (i.e. with the right qualities) are appointed albeit they only sit in the family court.

Another one said that *“removing the requirement to obtain adult criminal experience first would increase the volume and diversity of applicants for the magistracy and attract those with experience and interest in the family field, including more men and younger people. It might also make recruitment for the magistracy easier if the possibility of adjudicating only in adult courts was clear from the outset. Many current magistrates do not wish involvement in the emotionally charged cases that come before the family court or the special problems of children and adolescents in the youth court. They are [thus] in effect specialists in the adult jurisdiction.”*

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?

There were several responses to this question; the majority of the common themes are set out below:

- 51 felt that older applicants were likely to apply to specialise in family work;
- 40 felt that more female applicants were likely to apply to specialise in family work;
- 32 believed there would be no impact on the family court or the bench in general;
- 17 felt that diversity was likely to be reduced for those wishing to specialise in family work.
- 15 said specialisation would result in a negative impact in the family court and bench, but ten felt that there would be a considerable impact;
- eight believed that young people in relevant careers such as social workers, health visitors etc would show an interest in specialising in family work so that they could enhance their experience and career prospects;
- eight felt that specialising in family work would unbalance the bench; and

- six felt that more unemployed/self employed people would apply to specialise in family work.

One group of respondents felt that the impact would be to attract more younger female applicants and also applicants with experience of working with children and families (although there would need to be a mechanism for preventing reduction in diversity caused by the over recruitment of family and child care professionals). There is likely to be a need to encourage more young men to apply to become specialist family magistrates, this being already a universal problem in recruiting magistrates.

A bench legal manager felt that there would be insufficient male applicants given the difficulties they are experiencing at the present time. They feel that specialist family work is less attractive to the younger age range because of the possible lack of personal experience of 'family life' in the round. They also feel that there is a risk that you would attract a larger number of 'professionals' involved in child care work which may dilute the benefits of having magistrates from all backgrounds sitting on these cases.

One respondent said that judging by existing family panels, it is likely that the family court would have older, more experienced female magistrates. The bench in general would be affected by this as well, particularly in the potential loss of chairmen, mentors and appraisers.

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.

190 respondents answered this question of whom:

(a) 116 (61%) felt that, if specialisation went ahead, magistrates should be authorised to sit until they retire; and

(b) 74 (39%) felt that if specialisation went ahead, magistrates should be authorised to sit for a fixed term.

Of those who suggested a fixed term:

- 39 felt that three years would be an appropriate period before renewal of authorisation;
- 19 felt that five years would be an appropriate period before renewal of authorisation;
- six felt that somewhere between three and five years would be an appropriate period before renewal of authorisation.
- five felt that two years would be an appropriate period before renewal of authorisation.

Two respondents felt that Authorisation to the FPC should be for three years as under the current system. Reasons: It is accepted that, for the reasons set out in the Consultation Paper on Authorisation (Proposal 16), a fixed term is appropriate. Present experience outside London has demonstrated that appointment to the Family Panel for a fixed period of three years has worked. It is appropriate that the authorising body has the power to revoke authorisation in the proposed circumstances. Such further power adds to the justification of the work being done by FTDCs, which should be appropriately constituted for that task.

They also feel it is an essential part of a magistrate's training that he/she should gain and maintain experience sitting within a particular jurisdiction. Even a relatively experienced magistrate can become out of touch and skills not used can become 'rusty'. The 3 year term allows this aspect to be monitored within the context of regular appraisal. In those areas where regular appraisals have not been taking place, it will ensure that they do in future.

One respondent also agrees that a fixed term of three years would be appropriate, as this allows for the application of MNTI to the family court and for a three yearly system of appraisal to apply.

Another respondent stated that although the panel is not in favour of magistrates specialising in family work only, if it were to be permitted, perhaps in London or the larger cities, it should be for a fixed term only. They suggest that a term of five years would be reasonable to gain good experience and make a real contribution.

Q.18 Should specialist family magistrates be able to return to the adult bench if they wish?

209 respondents answered this question, of whom an overwhelming 199 (95%) felt that specialist family magistrates should be able to return to the adult bench if they wish. A large number of those respondents added that they should only be allowed to do so after a period of re-training. Only 10 (5%) felt that specialist family magistrates should not be able to return to the adult bench.

The Association of District Judges answered 'yes' to this question, further commenting that providing that they gained general adult criminal experience prior to specialisation and that they have sat a minimum number of days in adult criminal work each year during their period of family specialisation. *"If the proposal for appointing specialist family magistrates is adopted such magistrates could not return to the adult bench as they would never have sat on an adult bench. They would effectively have to be treated as if newly appointed and undergo the normal training process."*

One respondent said he cannot think of any reason why a magistrate who had specialised should not be allowed to return to a more general diet of work and rejoin the adult bench. He felt that the adult criminal jurisdiction is such a dynamic environment these days that a magistrate who had specialised would need to re-train almost from scratch, if he/she had been out of the general work for more than about 12-18 months.

Another one stated that for specialist family magistrates returning to the adult bench this would present great difficulty as a period away from the criminal bench of only a few months would mean loss of confidence, competence, and knowledge for most magistrates. Inevitably training would be required, together with appraisal. It would be very difficult and completely impractical, to 'call them back in' at short notice to resume sitting in the adult court in order to meet a business need – i.e. a shortage of magistrates. There would have to be a time lag.

In addition, if changes to the criminal justice system continue at the pace they have occurred over the past few years, there would be a great burden of additional training and few family-only magistrates would be willing to undertake this in order to get back up to speed.

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 on page 3.

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 timescale 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.

Annex A – List of Respondents

Responses from the Judiciary, including court staff and legal staff/representatives - Sub-total = 223

Responses from organisations

Magistrates' Association, South Cheshire Family Panel & Cheshire Branch

Magistrates' Association, Branch Secretary

Magistrates' Association, Chief Executive

Magistrates' Association, Northampton Branch

Magistrates' Association, Family Proceedings Committee

Magistrates' Association, Middlesex Branch

Magistrates' Association, Inner Manchester Branch

Southeast London Magistrates' Association

Justices' Clerks' Society

Public and Commercial Services Union

Family Procedure Rule Committee

Association of District Judges

British Association of Social Workers (BASW)

Resolution X2

Association of Lawyers for Children

Law Society

Sub-total = 17

Responses from individuals and other bodies

Joint response from His Honour Judge Donald Cryan and the President of the Family Division

Malcolm Richardson, former Chairman of the Family Proceedings Committee, Magistrates' Association

Mike Littlewood OBE

Keith David Taylor, Chairman of BTDC & MATC, North Yorkshire

Huddersfield BTDC

Central Kent Branch BTDC

South Wales Magistrates' Area Training Committee

Other respondents (44)

Sub-total = 51

Total number of respondents = 291

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