



Ministry of JUSTICE

PROTOCOL FOR CREATING A DISTRICT JUDGE (MAGISTRATES' COURT) POST

1.0 Introduction

1.1 The Courts Act 2003, provides by section 1(1)(c)

*“The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of –
(c) Magistrates’ Courts,
and that appropriate services are provided for those courts.”*

1.2 Paragraph 29 of the Concordat between the Lord Chancellor and Secretary of State and the Lord Chief Justice provides that the Lord Chancellor and Secretary of State, after consultation with the Lord Chief Justice, is responsible for determining the overall number of judges required for each Division, jurisdiction and Region and the number required for each level. Paragraph 30 of the Concordat provides that the Lord Chief Justice, after consulting the Lord Chancellor and Secretary of State, is responsible for determining which individual judge should be assigned to which Division, Region, District or Court in accordance with the requirement.

1.3 The Protocol set out below establishes, in accordance with the provisions set out above, an open and transparent process for the creation of a new District Judge (Magistrates' Courts) (DJ (MC)) post.

2.0 Objective

2.1 The protocol sets out the open and transparent procedure to be followed in each HMCS (Area) when a request is made for the appointment of a new or additional DJ (MC) post for that Area.

2.2 Magistrates and District Judge (MC)s play a vital role in the delivery of justice in magistrates' courts and Youth Courts across England and Wales, which dispose of over 95% of the criminal cases in the courts. These arrangements work best when there is a strong and balanced partnership drawing upon the strengths of both parts of the judicial family. The paper: *“Responsibilities for the leadership and management of the judicial business of the Magistrates’ Courts”* makes clear that DJ(MC)s, where appointed, and Bench Chairmen are two of the key parties in providing judicial leadership and management of the magistrates' court. As professional judges, DJ(MC)s are positively encouraged to aid in the leadership of their local courts through active involvement in JIGs, Local Judicial Leadership Groups and (taking account of the role of the Justices' Clerk) Bench training.

2.3 The objective of this protocol is to ensure that HMCS continues to be able to ensure that there is the right balance between magistrates' and DJ(MC)s and to ensure that any such appointments are open, transparent and easily understood by all parties to the process.

3.0 Principles for the creation of new DJ(MC) posts

- 3.1 The consideration of an appointment of a DJ(MC) should not be treated lightly, nor should it be treated as a criticism of the local magistracy. The success of the magistrates' court relies upon a strong working relationship between all criminal justice agencies and partnership with the judiciary. The key driver behind a decision to consider the creation of a new DJ(MC) post will be business driven. HMCS will only seek to create a new DJ(MC) post where that is necessary to "ensure that there is an efficient and effective system to support the carrying on of the business of Magistrates' Courts"¹.
- 3.2 Arrangements for deploying are set out in separate protocols (www.judiciary.gov.uk/docs/responsibilities_paper10102007.pdf). Consistent with those guidelines, whilst DJ(MC)s are appointed to specific local areas they are a national resource and there is an expectation that they will be used flexibly both nationally, regionally and across an area where there is a business need. Area Directors are encouraged to consider whether it may be necessary to ask the Presiding Judge or Senior District Judge for the deployment of a DJ(MC) or Deputy DJ(MC) temporarily to their area to assist with performance issues (including trial blitzes)/particular problems/particular cases).

4.0 Factors for determining whether consideration is necessary

- 4.1 HMCS will consider whether there is a potential business need for the creation of a new DJ(MC) post in any case where:
- Performance of the local courts (e.g. timeliness of hearings) is regularly below national expectations based on HMCS Key Performance Indicators – but balancing the fact that some aspects of performance may be outside the control of the court;
 - The area has, or can expect, a significant backlog of work (e.g. magistrates' court trial waiting times are over 12 weeks);
 - There is a significant record of genuine and evidenced concern about local magistrates' court throughput by other local agencies (e.g. low levels of weighted caseload per sitting hour);
 - The area is experiencing significant magistrate recruitment difficulties (taking into account average sitting days etc);
 - The area is unable to ensure sufficient judicial continuity/consistency in appropriate cases;
 - An appointment is thought necessary because of the characteristics of the area (e.g. the area suffers very high crime rates, is a major urban area, or is part of a national initiative to tackle certain types of crime);
 - The courts need to manage complex or unusual work particularly where this involves novel points of law;
 - There is an intention to use a DJ(MC) to assist with Crown Court matters, family matters or matters reserved exclusively for DJ(MC)s;

This list of factors replaces the recommendations in appendix 3 of the Venne report.

- 4.2 It is a matter for the Area Director to determine the point at which these factors necessitate consideration of a DJ(MC) post. However in the spirit of

¹ Section 1 of the Courts Act 2003

this protocol and the role of JIGs, where the primary reason for consideration is the performance of the local magistrates' courts, that performance must have been discussed with the JIG before beginning the process. This should help ensure that JIGs understand the underlying concerns and indeed may fully support the need for an appointment. If the Area Director fails to discuss performance problems with the JIG prior to bringing forward a business case it will inevitably cause disquiet and may subsequently be escalated to the Presiding Judge.

4.3 If three or more of the factors at 4.1 are invoked the Area Director is required formally to consider the creation of a DJ(MC) post and inform:

- the relevant Regional Director
- The relevant Presiding Judge
- The Senior District Judge (MC) (as designated under s23 of the 2003 Act)
- The Justices' Issues Group
- The Area Judicial Forum
- The Local Advisory Committee
- The LCJB for the Area
- The Courts Board for the Area
- If for family work, the Family Justice Council for the Area

4.4 The Area Director may propose the creation of a DJ(MC) post in other circumstances but must state the reasons for so doing. If they do so they must consult the same people.

5.0 Procedure for consultation

5.1 Where consideration of a new DJ(MC) post is invoked, the Area Director must circulate a paper setting out the business justification of the factors that have triggered consideration of a new DJ(MC) post. The paper must also set out any likely workload trends (and other matters listed in annex A). The paper must be supported by statistics of workload and future trends, consulting HMCS/ MOJ centrally to obtain any up to date information on national trends and the LCJB on future local trends and policies. Annex B is a pro forma.

5.2 The Area Director must then invite general comments from interested parties (listed above) for the Area.

5.3 Unless there is exceptional urgency (which must be explained), the Area Director should allow as a minimum 6 weeks for comment.

5.4 Having carefully considered all arguments and submissions placed before them, and weighing in balance the Lord Chancellor's duty to provide an efficient and effective justice system the Area Director must decide whether there is a case for recommending a new DJ(MC) post. In doing so he must take into account the potential impact on the minimum sitting day requirement for magistrates of 26 half day sittings and the recommended average of 35-45 half day sittings.

5.5 The Area Director must inform the interested parties listed at 4 above of his decision and the reasons for that decision.

6.0 Submission of the business justification to the Regional Director and Presiding Judges and Director of HMCS Resources

- 6.1 If, after the consultation referred to the Area Director decides to proceed to request the appointment of an additional or new DJ(MC) post, the Area Director will submit the completed business case to the Regional Director, Presiding Judges and the Family Division Liaison Judge (if for family work) together with any observations from those consulted on the matter.
- 6.2 The Regional Director and Presiding Judges, and the Family Division Liaison Judge if consulted, will then consider whether the business case should proceed.
- 6.3 If they so decide, the Regional Director will then submit the business case, together with any observations, to the Director of HMCS Finance copied to the Director of Performance and Operations for information. The Director of Finance's only role is to ensure that the recommended appointment is an effective use of resources.

7.0 Submission to the Lord Chancellor and Secretary of State

- 7.1 If the Regional Director, Presiding Judge, Family Division Liaison Judge (for family work) and HMCS Resource Director decide to recommend that a new post should be established the Area Director will submit that recommendation to the Lord Chancellor and Secretary of State.
- 7.2 In the first instance consideration will be given as to whether the post can be filled by transfer of an existing DJ(MC) post from the existing complement of DJ (MC)s or whether an additional DJ (MC) post is required through an increase in the overall complement of full time DJ(MC)s in England and Wales.
- 7.3 If the Lord Chancellor and Secretary of State decides that a new post should be established, but that it can be filled from the overall existing complement of DJ (MC)s, the relevant Presiding Judges and the Senior District Judge (MC) will make the necessary arrangements for transfer of a DJ(MC) from the existing overall complement of DJ (MC)s in consultation with HMCS.
- 7.4 If the new post cannot be filled by the overall existing complement of DJ(MC)s in England and Wales, then the HMCS will make the appropriate arrangements with the Judicial Appointments Commission for the appointment of a new DJ(MC) in accordance with the general arrangements then in force for the appointment of judges.
- 7.5 The Area Director, the Regional Director, the relevant Presiding Judges and the Senior District Judge (MC) will then be informed as to the decision reached by the Lord Chancellor (with reasons if not accepted).
- 7.6 The Area Director will notify interested parties (as set out in paragraphs 2.2 and 2.3) of the Lord Chancellor's decision.

8.0 Timing of taking up a post

- 8.1 The Presiding Judge and the Senior District Judge (MC) will, in consultation with the Area Director, make necessary arrangements for the transfer of an

existing DJ (MC). If a new DJ (MC) is to be appointed, the MOJ and the Area Director (having consulted the Presiding Judges and the Senior District Judge (MC), will agree the timing of the taking up of the appointment. If the need for a DJ(MC) is predicated on family cases then it is important that the judge appointed has the necessary experience and aptitude to take on that work.

- 8.2 In deciding on the timing of the appointment, the Area Director will take into account any rota point for Magistrates that have been already set or, if changes are unavoidable, to making the appointment take effect where the maximum possible notice of changes to rotas can be given. Following appointment of a new DJ(MC) the local Liaison and Presiding judges will agree a phased and mutually agreed approach for the introduction of the new member of the judiciary to the local judicial family. Where appointed it is vital that a new Judge is given the earliest possible opportunity to meet with the Bench Chairmen and attend relevant Bench meetings etc. In devising rotas and sitting patterns, it is important for the local area to ensure that they continue to provide magistrates with an opportunity to meet their competences.

9.0 Exceptional Circumstances

- 9.1 There may be exceptional circumstances where the Lord Chancellor and Secretary of State considers it necessary to appoint immediately a new DJ (MC) to a particular Area; if so, after consultation with the Lord Chief Justice, the Lord Chancellor and Secretary of State will do so without following the procedures set out in the Protocol.
- 9.2 If by reason of ill health or otherwise there is a need for immediate temporary reassignment of a DJ(MC) to an area, the Senior District Judge may do so with the approval of the Presiding Judge and Regional Director.

10.0 Retirement

- 10.1 When a DJ(MC) retires or moves area, there is no requirement for an Area Director to re-submit a business case similar to that required for a new post. He/she must however use the criteria in "Factors for determining whether consideration is necessary" in deciding whether the appointment of a DJ(MC) continues to be a legitimate use of public funds, discuss the matter with his or her JIG and the Senior District Judge (MC) and inform interested parties of that decision in writing. In making that decision the Area Director must also consider the role of DJ(MC)s in prison adjudications. There is no appeal against that decision, however if a local Bench is concerned about that decision they may escalate the matter to the local Presiding Judge/Regional Director for further consideration. It may be escalated from there if necessary.

11.0 Projections of DJ(MC) numbers

- 11.1 Whilst decisions on the appointment of DJ(MC)s remain a local matter, HMCS may discuss and agree with interested parties a ratio of magistrates to DJ(MC)s nationally and agree potential numbers of appointments. HMCS will keep under review DJ(MC) numbers and seek to review overall numbers and their location once every 5 years. In reviewing such matters, HMCS will take account of the criteria and benefits of having a DJ(MC), set out in this protocol, actual and projected changes to Magistrates' Court workload, and the

importance of ensuring that magistrates maintain their minimum sitting days across England and Wales.

HMCS
July 2009

Annex A

(This forms the framework for compiling the business justification and would depend on the discussions on the revised protocol)

Factual matters to be covered in the business justification

Area Directors must set out a full business case as to why a new DJ (MC) post is required. Factual matters that must be covered include the following:

- What are the current and projected workloads for the Area?
- It is of substantial importance that the Area Director consult within HMCS/MOJ centrally as to future national trends and forecasts and set out any local factors that may influence the work of the Magistrates Courts (such as policies of the local police or CPS and trends in the use of disposals that do not require a court determination – Fixed Penalty Notices, Cautions and Conditional Cautions)?
- Are the existing judicial resources (Magistrates and DJs(MC)) sufficient for cases to be dealt with in a timely and appropriate manner, taking into account future forecasts?
- Are there delays in disposing of court cases? If so, specify the delays and set out the reasons for the delays – both court related and causes not related to the court?
- What is the required complement of Magistrates? (Data for the Area must be provided – to include a quantitative assessment of the required number of magistrates based on weighted caseload and throughput ,court sitting hours and magistrates annual number of sittings, including those sitting below the recommended minimum and above the recommended maximum, and details of the number of sittings undertaken by a bench of two).
- How many Magistrates are there in post? Are there any difficulties in recruitment? If there are difficulties with recruitment, these must be specified and details of the recruitment campaigns provided (the data for the number of magistrates should include an assessment of the expected requirement for the future).
- Are there any DJ (MC)s in post in the Area? If so, specify the number and work they do.
- Do DJ (MC)s (or Deputies) sit in the Area on an occasional or temporary basis? What work do they do? Why is it necessary to change this arrangement and require a full time DJ(MC) post?
- Is sufficient and appropriate work available for (1) Magistrates and (2) District Judges, relating to the distribution of work between Magistrates and DJ(MC).
- What recommendations or requests have been made for the creation of a new DJ(MC) post. Specify the source of the recommendation or request and briefly summarise its terms.
- Outline any views expressed by those informed under paragraph 2.2 and set out the views of the Justices Issues Group and Advisory Committees.

Benefits to be covered in the business case

Area Directors must set out the potential benefits that the new DJ posts(s) will provide. The business case will need to cover at least the following:

- What are the benefits of creating a District Judge post in the Area?
- What are the long term or short term benefits of creating a DJ post?

- What are the potential risks if DJ post(s) is/are not created?
- Would the appointment cover other Areas within the Region and can the benefits be distributed across the Region?
- How will the appointment improve the just and timely disposal of cases?

Timing, number and jurisdiction

Area Directors must provide sufficient information about the business needs of the Area: The business case must cover at least the following

- When is the appointment required?
- If more than one is required, set out the reasons in detail as to why more than one is required. Do they have to be provided at the same time or can they be appointed at yearly or other periodic intervals?
- Is any special jurisdiction or speciality desirable?
- For posts in Wales, whether the ability to conduct cases in Welsh is essential?

_____ Name of Area _____

Annex B _____
Business Justification
For Creating a District Judge (MC) Post

Justification:

Provide a broad outline of the reasons why the DJ(s) are required – drawing on available evidence. e.g. inspectorate recommendation, evidence of performance (supply data), and unforeseen reasons e.g. increased workload etc. and any actions already taken to mitigate the effects of judicial resources. The Business case should focus on the factors (as set out at section 4 of the protocol).

Benefits:

Outline the potential benefits of creating a District Judge post in the area with reference to how they are going to be achieved and measured. Give an assessment of potential risks, which may impact on your ability not to realise the anticipated benefits and analyse how the benefits realised will be distributed across the area

Business Requirements:

State how many DJs are required, when and where they are required to sit and any desirable special jurisdiction or skill.