

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

Introduction

The Courts Act 2003, provides by section 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

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.

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 in any of the 42 Areas of Her Majesty's Court Services (HMCS). The protocol effectively replaces Section 18 of the Lord Chancellor's Directions and takes effect with the formal establishment of the new HMCS on 1 April 2005.

Exceptional Circumstances

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.

If the Senior District Judge (MC) decides there are exceptional reasons which require the immediate assignment of a DJ (MC) to an Area on a temporary basis (other than for a particular case or series of cases), the Senior District Judge (MC) may do so with the approval of the Presiding Judges for the Region and the Regional Director.

THE PROTOCOL

1. Objective

The protocol sets out the open and transparent procedure to be followed in each of the 42 Areas of HMCS (Area) when a request is made for the appointment of a new or additional DJ (MC) post for that Area.

2 Procedure for consultation

2.1. The Area Director should consider, in the light of the existing and forecast workload for the Magistrates Courts and the criteria set out in Annex A whether there is a need for creating a new or additional DJ (MC) post.

2.2. If the Area Director considers that there may be such a need, the Area Director should

- Prepare in draft a business case based on the criteria set out in Annex A, fully supported by statistics of existing work load and future trends, consulting HMCS/DCA centrally to obtain up to date information on national trends and the LCJB on future local trends and policies.

- Inform the following of the intention to prepare a business case:
 - The local Branches of the Magistrates' Association in the Area;
 - The local Bench(es) for the Area
 - The LCJB for the Area
 - The Courts Board for the Area
 - If for family work, the FJC for the Area
 - The Senior District Judge (MC)

2.3. When the Area Director has prepared the business case in draft, the Area Director will consult

- the Justices' Issues Group for the Area
- the local Advisory Committee(s) for the Area;

on the draft business case.

3. Submission of the business case to the Regional Director and Presiding Judges

3.1. If, after the consultation referred to in paragraph 2.3, 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 and Presiding Judges, together with any observations from those informed or from the Justices Issues Group or Advisory Committee.

3.2. The Regional Director and Presiding Judges will then consider whether the business case should proceed.

3.3. If they so decide, the Regional Director will submit the business case, together with any observations, to the Service Policy Director (Crime) of HMCS (SPDC). If they decline to allow it to proceed, the Regional Director will inform the Area Director.

4. Evaluation of the Business Needs

4.1 The SPDC and the Service Policy Director (Civil/ Family) will then consider:

- the business case in light of (a) resources available (consulting HMCS Finance Division), (b) forecast workloads and (c) competing priorities.
- whether there is a DJ (MC) in another Area who is insufficiently used or deployed

4.2 The SPDC will seek the views of the Senior District Judge (MC), on whether a new DJ (MC) post should be established for that Area, and if so, whether that post should be filled by transfer of a DJ(MC) post from the existing overall complement of DJ(MC)posts in England and Wales or by a new appointment to increase the overall complement of DJ(MC)s within England and Wales;

5. Submission to the Lord Chancellor and Secretary of State

5.1 If the SDPC decides to recommend that a new post should be established, the SDPC will submit that recommendation to the Lord Chancellor and Secretary of State with advice 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 DJ(MC)s in England and Wales.

5.2 If the Lord Chancellor and Secretary of State decides that a new post is to be established which cannot be filled by the overall existing complement of DJ(MC)s in England and Wales, then the DCA will make the appropriate arrangements for the appointment of a new DJ(MC) in accordance with the general arrangements then in force for the appointment of judges.

5.3 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 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 and in accordance with paragraph 6.1.

5.4 The Area Director, the Regional Director, the Senior District Judge (MC) and the Presiding Judges will then be informed as to the decision reached by the Lord Chancellor (with reasons if not accepted).

5.5 The Area Director will notify the Lord Chancellor's Decision to those informed or consulted as set out in paragraphs 2.2 and 2.3.

6. Timing of taking up a post

6.1 The Senior District Judge (MC) will, in consultation with the Area Director, make necessary arrangements for the timing of taking up of any transfer of an existing DJ (MC).

6.2 If a new DJ (MC) is to be appointed, the DCA, in consultation with the Senior District Judge (MC) and the Area Director, agree the timing of the taking up of the appointment.

6.3 In deciding on the timing of the appointment, the DCA, the Area Director and the Senior District Judge (MC) will take into account the importance of avoiding changes to rotas for Magistrates that have been set or, if changes are unavoidable, to making the appointment take effect where the maximum possible notice of changes to rotas can be given.

Annex A

BUSINESS CASE CRITERIA FOR CREATING A DISTRICT JUDGE (MAGISTRATES' COURT) POST

The Venne Criteria.

DJ(MC)s' are a limited resource and should therefore be assigned work for which experience has shown them to be particularly suitable, that is :-

- Cases involving complex points of law or evidence
- Novel points or issues arising from new legislation
- Cases involving complex procedural issues
- Pre- Trial Reviews and case management
- Long cases (over two days)
- Some interlinked cases requiring a consistency of approach
- Cases involving considerations of public safety
- Cases involving intimidation of witnesses
- Cases involving immunity applications
- Serious environmental and public health cases
- Breach of community penalties and review of drug treatment and testing orders, where consistency and continuity important

Factual matters to be covered in the business case

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 with include the following:

1. What are the current and projected workloads for the Area? It is of substantial importance that the Area Director consult HMCS/DCA 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)
2. 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?
3. 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?

4. What is the required complement of lay 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)
5. How many Lay 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)
6. Are there any DJ (MC)s in post in the Area? If so, specify the number and work they do
7. 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?
8. Is sufficient and appropriate work available for (1) Lay Magistrates and (2) District Judges in accordance with the Venne Criteria?
9. 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
10. 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:

1. What are the benefits of creating a District Judge post in the Area?
2. How will the benefits of creating a District Judge post be measured?
3. What are the long term or short term benefits of creating a DJ post?
4. What are the potential risks if DJ post(s) is/are not created?
5. Would the appointment cover other Areas within the Region and can the benefits be distributed across the Region?
6. 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

1. When is the appointment required?
2. 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?
3. Is any special jurisdiction or speciality desirable?