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The Responsibilities of Justices' Clerks to the Magistracy and the Discharge of their Judicial Functions

Introduction

1. With the abolition of Magistrates' Courts Committees and the creation of HM Courts Service, Justices' Clerks have become employees of HMCS and members of the Civil Service. They are line managed by the Area Directors who have considerable discretion as to how they allocate responsibilities to their management team. Justices' Clerks will, however, continue to exercise judicial functions and owe specific duties to the Magistrates they serve.
2. This document is intended to clarify the basis on which Justices' Clerks will discharge their judicial functions and their duties to the magistracy within the framework of HMCS. Its objective is to give practical effect to s.29 of the Courts Act 2003 which provides:
 - i. A Justices' Clerk exercising –
 - a. a function exercisable by one or more justices of the peace,
 - b. a function specified in section 28(4) or (5) (advice on matters of law, including procedure and practice), or
 - c. a function as a member of the Criminal Procedure Rule Committee or the Family Procedure Rule Committee,is not subject to the direction of the Lord Chancellor or any other person.
 - ii. An Assistant Justices' Clerk who is exercising any such function is not subject to the direction of any person other than a Justices' Clerk.
3. For day to day purposes, many of the functions described in this document will be discharged by Assistant Justices' Clerks in line under the direction of the Justices' Clerk.

Legal Advice

4. The primary responsibility of the Justices' Clerk to Magistrates is to be the sole provider of legal advice to the lay magistrates in cases heard in his or her area,

either in person or through the Assistant Justices' Clerks allocated to work in his area.

5. The independence of a Justices' Clerk in providing this advice is expressly set out in s. 29 of the Courts Act; the Justices' Clerk cannot be directed to adopt a particular view other than by the High Court on judicial review.
6. The Justices' Clerk is responsible for ensuring that advice given on his/her behalf by Assistant Justices' Clerks is consistent and accurate. Where an Assistant Justices' Clerk requests guidance, either directly or through another member of the legal team, the Justices' Clerk may direct that assistant on the advice to be given, both generally and in any particular case. The Justices' Clerk will participate in, and will normally take responsibility for, the legal forum for legal advisers, which will ensure that consistent advice is given, and will provide a venue for debating legal problems arising in that area.

The Role of the Legal Adviser in the Retiring Room

7. The legal adviser has a responsibility to give advice to the Justices, whether they have requested that advice or not. Wherever possible, this advice should be given in an open court before the Justices retire, but on occasions it may be necessary for the legal adviser to enter the retiring room at the invitation of the Justices to give advice.
8. Before the legal adviser attends the retiring room, the request and the reason for it must be given in open court. The advocates must have an opportunity to make representations on any fresh advice given in the retiring room.
9. If the legal adviser feels that they have a duty to give advice to the Justices which has previously not been given, the legal adviser should provide that advice in open court. The Justices can then decide on whether to take it into account. If the legal adviser realises that the Justices should have received advice on a particular issue before retiring, the legal adviser should either invite the Justices to return to Court and give the advice, or detail the advice to the court, and then deliver the advice to the Justices in the retiring room.
10. Any other reason for visiting the retiring room should be clearly outlined in open court.
11. Whilst the legal adviser has a duty to advise, the ultimate decision is always a matter for the Justices.

Leadership of the Legal Team

12. As head of the legal team for the Magistrates' Courts in his area, the Justices' Clerk is responsible for the deployment of lawyers at court sittings. He/she will ensure that every sitting of a lay bench is supported by an appropriately qualified and experienced legal adviser. He/she will also provide leadership to the team, and will ensure that each individual is able to develop experience across as wide a range of courts as possible including both family and youth courts.

13. The Practice Direction on Criminal Procedure defines the role of the Justices' Clerk and his/her assistants while in court, and he/she is responsible for ensuring that those terms of the Practice Direction which relate to Justices' Clerks are implemented in the courts for which he/she is responsible. In the family court he /she is responsible for ensuring that the terms of the Public Law Protocol and any other similar protocols are fully implemented by the lawyers under his/her direction.

Judicial Functions

14. The Justices' Clerk has a range of statutory powers, most of which are set out in the Justices' Clerks Rules, being functions which can be exercised by a single justice. When exercising those powers he/she is carrying out a judicial role, and is required to act as a judicial office holder. These powers may be delegated to specified Assistant Justices' Clerks, subject to the Justices' Clerk being satisfied as to their experience and suitability having regard to the demonstration of competences.

Liaison Role

15. The Justices' Clerk is a member of and has the responsibility for making arrangements for the Judicial Leadership Group, comprising him or herself, the Bench Chairman (or Chairmen for Court groupings, The District Judge (MC) (or the designated DJ (MC) where there are more than one), and the HMCS administration Manager.
16. Each Area has a Justices' Issues Group and an Area Judicial Forum, established following the production of the paper "Liaison Structures with Her Majesty's Courts Service." The Justices' Clerk is a member of both bodies, and will play a full role in their activities. In particular, he/she will seek to uphold judicial independence within the magistrates' courts, and will ensure that any issues that relate to that independence are brought to the attention of the Justices' Issues Group, and, if necessary, the Area Judicial Forum.
17. The full responsibilities of the Judicial Leadership Group, the JIG and AJF are covered in the document dated December 2006, issued by the Senior Presiding Judge entitled "Responsibilities for the leadership and management of the judicial business of the Magistrates' Courts".
18. Within the Magistrates' Courts for which he/she is responsible, the Justices' Clerk, in accordance with the directions given by the Lord Chancellor, with the concurrence of the Lord Chief Justice, is responsible, in consultation both with the Bench Chairman (at local level) or the Justices Issues Group (at Area Level), and with the Area Director, for giving directions and resolving any problems relating to listing, subject to any general guidance given by the Liaison Judge or the Presiding Judges.
19. In addition to providing legal advice, the Justices' Clerk will provide general guidance to justices in his/her area relating to their role on the bench and will discuss any difficulties in relation to their duties as Magistrates which they may be encountering, subject to the overriding duty to explain to a Magistrate that the Justices' Clerk cannot keep confidential any matter disclosed that might impair the ability of a Magistrate to discharge his/her duties.

20. The Justices' Clerk and the Chairman of either the Bench (at a local level) or the Justices Issues Group or Area Judicial Forum (at an Area level), decide on the appropriate representation of the Magistrates in any discussions which may be necessary with the CPS, police, probation service or other agencies, subject to guidance given by the Presiding Judges/Liaison Judge.
21. The Judicial Leadership Group requires Justices' Clerks (as well as District Judges, Bench Chairmen and Court Managers) to ensure, in so far as resources are provided and used to maximum efficiency, that the judicial business of the courts is conducted in a speedy and efficient manner in the interests of justice. Therefore Justices' Clerks can and should actively participate in meetings with representatives from criminal justice agencies rather than simply acting as observers. Justices' Clerks should conduct themselves in accordance with the Senior Presiding Judge's letter of 22 December 2004 on the relationship between the judiciary and Local Criminal Justice Boards.

Training and Development

22. The Judicial Studies Board has an overall responsibility for the training of the Magistracy.
23. At Area level, the Justices' Clerk is responsible with the Magistrates Area Training Committee (MATC) for ensuring that appropriate training is provided to the lay bench and that they are able to develop and maintain the requisite competences in accordance with MNTI2 and any protocol entered into between the JSB and HMCS.
24. This will include acting as Secretary to the Bench Training and Development Committees in his/her area and as a member of the MATC. He/she will also play a role in the quality of training, both in the form of programmes provided by the JSB and developed locally in response to local needs. As manager of the legal advisers who train magistrates he/she is also responsible for the standard of the delivery of magistrate training.

Relations with the Professional Judiciary

25. The Justices' Clerk will act as a key link between the Magistracy and the full time judiciary.
 - **The District Judge (Magistrates' Courts).** The District Judge is not a member of the bench for a particular Local Justice Area, and as a lawyer does not require the support and advice given in the courtroom to Magistrates by the Justices' Clerk or Assistant Justices' Clerk. However, the Justices' Clerk is entitled to draw to the District Judge's attention any practice relating to listing that operates in the court where he/she is sitting, and any approach to sentencing that may have been adopted locally. As a District Judge (Magistrates' Court) is, for the purposes of section 25(1) of the Courts Act a 'Justice of the Peace', the Justices' Clerk may also give advice to the District Judge on matters of law and practice generally.

- **The Liaison Judge.** The Justices' Clerk or his representative, together with the Bench Chairman, will meet regularly with the Liaison Judge and discuss with him/her any issues relating to sentencing, committals to the Crown Court, or bail which may be giving cause for concern in the area. Where guidance on these issues is given by the Liaison Judge, the Justices' Clerk is responsible for ensuring that this reaches the bench and members of his/her legal team. The Justices' Clerk may also discuss with the Liaison Judge any issues that may arise in connection with the exercise of his/her judicial functions.
- **The Resident Judge.** The Justices' Clerk will also liaise as necessary with the Resident Judge to ensure that satisfactory arrangements are in place for lay magistrates to sit on appeals at the Crown Court. He/she will also discuss with the Resident Judge, when necessary, such issues of mutual concern to the Magistrates' Courts and the Crown Court. It is recognised that the precise arrangements for liaison with the Resident and the Liaison Judge will vary according to the numbers of each type of judge in the Justices' Clerk's area.
- **The Designated Family Judge.** Where the Justices' Clerk is responsible for one or more family proceedings courts, he/she will liaise with the Designated Family Judge, in conjunction with the chairman of the family panel, over issues such as the transfer of cases between the two courts (both upwards and downwards), the effective operation of the Public Law Protocol and the facilitation of observations in the Care Centre by family court justices and legal advisers.

Relations with Court Users

26. The Justices' Clerk in conjunction with the Area Director will be responsible for convening meetings of the Court User Group for benches in his/her area, and will ensure that any recommendations made by the Group and decisions made by the Magistracy consequent upon such meetings are communicated accordingly to court users and to the bench.

The Application of the Civil Service Code to the Clerk's Advisory and Judicial Functions

27. As civil servants, Justices' Clerks are subject to the terms of the Civil Service Code, subject to the recognition that its terms are inapplicable if they conflict directly or indirectly with the independent responsibilities of the Justices' Clerks as set out in s.29 of the Courts Act 2003.

END

Lord Justice Leveson
Senior Presiding Judge for England & Wales