

## **Fit for purpose: do magistrates get the training and development they need?**

By Penelope Gibbs  
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# About Transform Justice

**Transform Justice** is a national charity campaigning for a fairer, more humane, more open and effective justice system.

**Transform Justice** was set up in 2012 by Penelope Gibbs, a former magistrate who had worked for five years to reduce child and youth imprisonment in the UK. The charity will help create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. **Transform Justice** will enhance the system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes. Transform Justice has produced reports on the centralisation of magistrates' courts, on criminal appeals against sentence, on justice reinvestment and on magistrates and diversity.

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# About Penelope Gibbs

Penelope Gibbs worked in radio production and at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before she joined the Prison Reform Trust to run the Out of Trouble campaign, to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. Penelope set up Transform Justice in 2012 and it became a registered charity in 2013.

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# Executive summary

“As someone who has been involved in education all her life I am truly shocked by the lack of professional training in what should be a professional role... I believe constructive and worthwhile training to be essential for the bench to keep up to date with not only developments in law, but in changing society too”

“It would be helpful to review my learning and development needs with someone, and ensure I am on track”

“New approaches to training and learning are essential. The Judicial College and Her Majesty’s Courts and Tribunals Service are not the best placed organisations to devise, design or deliver an educational programme”

*(quotes from current magistrates)*

Do our magistrates have the skills and knowledge they need in today’s courts? Magistrates have to decide between guilt and innocence; sentence offenders who often have very complex needs; and ensure that cases are swiftly and efficiently managed.

While it is good news that there has been a drop in the number of criminal court cases, this means that the number of magistrates is falling. So few new magistrates are being recruited and, over time, the magistracy is failing to keep up with the increasing diversity of our population. Perhaps surprisingly, the magistracy today is less representative of the population in terms of age and ethnicity than it was 25 years ago.

Against this background, it is more important than ever that magistrates should get the training and support they need, and that magistrates with poor skills and knowledge are identified and helped to improve.

But the compulsory training magistrates receive is incomplete. It does not examine the causes of crime, the effectiveness of sentences, or include visits to see community sentences in action. Magistrates are never required to do training in equality, domestic violence, drug addiction or mental health. They are not obliged to do continuous professional development, or even to keep a personal record of what courses they have done.

As budgets have tightened, the amount of free training offered to magistrates has reduced. Keen magistrates who want to extend their learning through going to seminars and conferences run by experts and external organisations, are seldom reimbursed for the conference fees or their travel expenses. Meanwhile, organisations which want to engage with magistrates find it hard to gain access and, when they do put on free training events, they say only the “usual suspects” attend.

Magistrates – good and bad – are appraised every three years. But appraisal is based on just one day's observation by a fellow magistrate, whom they may know. The weakness of the appraisal system means that magistrates who perform poorly, may continue to do so, potentially leading to court delays and poor decisions.

The inadequacy of the status quo has been recognised by some. In Scotland, the training, development and appraisal of children's hearing panel members has been reformed and is an example of what can be done. Like magistrates, panel members are also volunteers. But they cannot start sitting until they have undertaken a longer, more rigorous and accredited training course which is focused on children's welfare, needs and rights. Scottish panel members are appraised twice a year by non-panel members and they have to reapply every three years to continue sitting. There are other examples of good practice in this report.

The English and Welsh magistracy would benefit from support and continuous training of this kind.

## Sources

**This report is based on a number of sources:**

1. Desk research of academic articles and public documents on magistrates' training and development.
2. Interviews with sitting magistrates, with practitioners and with voluntary sector staff who work with magistrates.
3. A survey of 47 sitting magistrates from different parts of England and Wales (designed with the help of Amy Kirby). Given the small number, the evidence from this survey is qualitative.

Research in this area is difficult. No-one has done in depth research into magistrates' training in the last twenty years, though some academics have touched on aspects. In addition, very few documents are available in the public domain and many are exempt from the Freedom of Information Act. In comparison, all information about the new training for the Scottish Children's hearing panel members is obtainable online.

# The recent history of magistrates' training and development

Before 1949 most magistrates had no training before sitting, or while they were on the bench. However a Royal Commission on the Magistracy suggested that training for magistrates should be increased given that judicial competence was a “specialised discipline or technique that has to be learned”, and in 1953 a model training scheme was introduced by the Lord Chancellor. But “not all benches adopted the scheme and, even when available, not all magistrates participated”.<sup>01</sup> In this era, all training was under the control of Magistrates' Courts Committees – local committees which ran the administration of local courts. The Magistrates' Association (MA) lobbied for compulsory training and in 1965 the first compulsory training was introduced – induction training before new magistrates started sitting, and a second course to be completed within the first year.

Responsibility for the education and training of magistrates was transferred to the Judicial Studies Board in 1985, six years after it was set up, but local MCCs retained responsibility for organising local training and held the budget.

New Labour brought in radical reforms to the administration of the courts, and to the recruitment and training of magistrates. The Magistrates New Training Initiative was introduced in 1999 – a completely new system of competences and appraisal. (This replaced a previous obligation to do at least 12 hours training every three years). This was welcomed in principle by Lord Justice Auld in his Review of the Criminal Courts of England and Wales<sup>02</sup> but severely criticised for the patchiness of its implementation and for its complexity. He pointed out that, even two years after their introduction, many appraisals had not been completed and that “the problem of lack of consistency extends beyond the core training provided under the MNTI framework. Some MCCs do not distribute the Judicial Studies Board's material to individual magistrates. And some have produced their

own training material, which they do not always copy to the Board. With the exception of the Human Rights Act programme, all training for magistrates has been essentially voluntary, and has been criticised by those making submissions to the Review as haphazard and lacking in structure”.

Auld's report prompted two major changes affecting magistrates' training – the introduction in 2003 of a revised training initiative (MNTI 2) and the abolition of Magistrates Court Committees by the Courts Act 2003. Another act (the Constitutional Reform Act 2005) gave responsibility for all (courts) judicial training to the Lord Chief Justice. So a probably haphazard, but locally managed system of training, was replaced by a hierarchical system, whereby local magistrates had a role in monitoring and advising, but key decisions were made in the centre, by the body to which the Lord Chief Justice delegated responsibility – the Judicial Studies Board, which became the Judicial College in 2011.

<sup>01</sup> Mark Davies (2005) A new training initiative for the lay magistracy in England and Wales—a further step towards professionalisation? International Journal of the Legal Profession, 12:1, 93-119, DOI: 10.1080/09695950500081390

<sup>02</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.criminal-courts-review.org.uk/ccr-00.htm>

# What training do magistrates have to do?

Compulsory training for lay magistrates is designed and directed by the Judicial College. This is part of the Judicial Office and is led by a board of judges of which one is a sitting magistrate. Training is organised locally by HMCTS (Her Majesty's Courts and Tribunals Service) and delivered by local justices' clerks and legal advisors, following a programme set out by the College. All new magistrates do a three day training course before starting to sit. All those who want to sit in the family court or the youth court also do a specialist induction course before they start sitting, as do those who want to sit as a Chair in adult, youth or family courts. The judicial college distinguishes between compulsory (the courses mentioned above) and essential training which is "deemed necessary to enable magistrates to fully demonstrate their competence". All magistrates are expected to do a minimum of six hours "essential" training every three years, in the form of refresher courses, though there is no sanction for those who do not do "essential" training. All other training is "desirable". The list of desirable courses appears to have shrunk in recent years. Domestic violence good practice and community engagement were "desirable" courses in 2012,<sup>03</sup> but they are not included in 2014/15 annual agreement on the national minimum training provision for magistrates.<sup>04</sup> In 2014/15 "desirable" courses include a day's training to prepare magistrates to sit on appeals in the Crown Court or Major Issues Training ("the Judicial College may on occasion recommend training on a specific issue eg Domestic Violence").<sup>05</sup> Most Judicial College designed training is delivered locally to groups of magistrates, face to face. Figures are not collated for the number of people who do "desirable" courses.

Magistrates who responded to our survey thought their induction training was in the main excellent, but some thought it could be improved: a couple thought too much was crammed into three days. One wrote: "some internet training would help along with some videos

showing how the court works in practice", while another wanted "more role play and practical examples". A magistrate, who already knew a lot about the criminal justice system through her work, felt the course was good but did not contextualise where magistrates sit in the wider criminal justice system and was too short.

Magistrates' induction training lasts three days and is shorter than the training of most other comparable volunteers. Parole Board members receive a week of residential induction training; those who want to sit on the Oxfordshire Referral Panel are trained for six days; the foundation course for special constables joining the Metropolitan Police lasts 23 days and the induction course for panel members for the Scottish children's hearing system lasts 7 days.

Just because a course is long, doesn't mean it is delivered well or that the content is right. However, the magistrates' induction course is both short compared to others, and criticised by some for omitting important issues, and by others for not catering to different learning styles.

**Compulsory induction training focusses on law and court practice. It is structured around the three core competences for magistrates: managing yourself, working as a member of the team and making judicial decisions. There is no slot in the induction training for:**

- Why people commit crime and what factors, or drivers are most important in reducing offending; magistrates' role in the criminal justice system
- The social, family and health profile of offenders
- An understanding of diversity and equality issues (though there is a short section on prejudice) or basic disability awareness

<sup>03</sup> National Training Programme for Magistrates May 2012

<sup>04</sup> Annual Agreement on the National Minimum Training Provision for Magistrates, HMCTS, Judicial College March 2014<sup>03</sup> House of Commons Home Affairs Committee third report 1995-6 Jap II

<sup>05</sup> Ibid

- The role of probation and any detail on what community sentences involve, and why an offender (eg a woman) might be better suited to a particular programme
- What works in reducing offending: the statistical and research evidence base for the outcomes of the most frequently used sentences
- The victim's role in and experience of the court process

Howard Riddle, the Chief Magistrate thinks magistrates' training should concentrate on fact-finding rather than law: "in what circumstances might apparently convincing witnesses be mistaken about a positive identification? Why do innocent defendants sometimes lie to the police or even on oath? Can we tell from a person's demeanour whether that witness is lying?"<sup>06</sup> However, he believes that the complexity of current legislation and legal processes is a barrier to magistrates concentrating on fact-finding.

Even within a relatively short course, time could be saved to accommodate a focus on fact-finding, and on important issues such as the victim's role. In the current induction course, half a day is devoted to the law concerning motoring offences. Instead, new magistrates could complete an online programme on motoring offences as homework, and take part in a short discussion on how to deal with them on the course.

The induction course and other Judicial College courses are all delivered by justices' clerks and legal advisors. In most compulsory courses, no practitioner (eg probation officer) is included as a speaker. There was a lot of praise for the quality of trainers in our survey of magistrates, but some criticism too: "domestic violence was led by legal advisors but needed the input of multidisciplinary professionals as

some content lacked research evidence", "appraisal training appalling – shortened time...no group work, hand-outs on law promised but none materialised... Magistrates should be trained by those who want to train others and are qualified to do so".

Judicial training is unusual. There are few workplaces where the trainers are not specialists in training, or experienced "peers". A long-serving magistrate wrote: "some legal advisors are natural teachers – others definitely aren't. Some don't need to learn, some do need and can, some do need but can't. There is no logic in assuming legal advisors can (or cannot) teach". If the content of training is to be broadened beyond the legal and court process, the Judicial College might consider using professional trainers, or incorporating criminal justice practitioners in the training team. Even for the core modules, some sections might be delivered by experienced magistrates or by district judges.

Compulsory training for magistrates tends to be held during the day on weekdays. This is fine for most who do not have jobs, but difficult for the many employed magistrates who struggle even to get their employers' permission to sit. A number of survey respondents asked for more courses to be held in evenings and at weekends. Another way of making training more flexible would be to put more courses, or parts of courses, online and reserve actual course time for discussion, reflection, role-play and practice.

<sup>06</sup> The Heart of Summary Justice by Howard Riddle in *The Magistracy at the Crossroads* edited by David Faulkner



# The youth court: a specialist court requiring specialist training

"A 15 year old girl was in court who had gender identity issues – you could easily tell by the way she dressed. The magistrates seemed oblivious to this and the Chair asked the girl "what goals do you have in life...don't you want to be a wife and mother?" He was trying to be helpful, but it just showed how little he understands the values of vulnerable children" YOT court officer, Southern England.

The youth court works to different laws, with a distinct client group (10-17 year olds) and to different court rules. Some youth court magistrates have experience of interacting with children in their working lives, and all youth court magistrates and district judges do receive specialist training, but practitioners question whether it equips them properly to deal with troubled and vulnerable children. The induction training for youth court magistrates is only six hours long, though a magistrate needs to have sat on the adult bench for three years before applying to sit in the youth court.

Three separate inquiries/commissions in the last five years have recommended improvements to youth court magistrate training. The most recent of these was the Youth Courts Inquiry led by Lord Carlisle:<sup>07</sup> "In addition to concern about declining youth specialisation, many submissions asserted that youth specialist judiciary training requires additional content on key issues, including child welfare, communication needs, and child development. John Bache (Deputy Chair of the Magistrates' Association) argued that such training was necessary to enable the judiciary to identify and respond to children's needs in court:

"If you realise there is a problem, whether it's a learning difficulty or a welfare issue or a speech and language difficulty whatever. Once you realise there's a problem, then you're on to it and you can deal with it... The big problem is not realising there's a problem in the first place".<sup>08</sup>

The other two commissions (the Independent Commission on Youth Crime and Anti-social Behaviour<sup>09</sup> and that by the Centre for Social Justice)<sup>10</sup> mirrored the recommendations of the Youth Courts Inquiry for more extensive training, particularly in child welfare issues.

One of the challenges of maintaining and developing the skills of youth court magistrates is that there are arguably too many youth court magistrates for the number of youth court sittings available. This means many magistrates sit on the youth court only a few times a year, which makes it practically impossible to retain knowledge and skills and is a disincentive to doing further specialist training.

<sup>07</sup> The Inquiry specifically recommends « Comprehensive training on speech, language and communication needs, child development, mental health needs and welfare issues » for Youth Court magistrates and district judges  
[http://ncb.org.uk/media/1148432/independent\\_parliamentarians\\_inquiry\\_into\\_the\\_operation\\_and\\_effectiveness\\_of\\_the\\_youth\\_court.pdf](http://ncb.org.uk/media/1148432/independent_parliamentarians_inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf)

<sup>08</sup> Ibid

<sup>09</sup> <http://www.police-foundation.org.uk/publications/inquiries/independent-commission-on-youth-crime-and-antisocial-behaviour>

<sup>10</sup> <http://www.centreforsocialjustice.org.uk/publications/rules-of-engagement>

# The feedback loop

Feedback plays an important role in improving performance. Feedback provides positive reinforcement and constructive criticism, helping the receiver to gain confidence and to reflect on how they could improve. New magistrates receive feedback from their mentors, and all magistrates get feedback from their appraisers (see p19). But there is no system for regularly giving and receiving individual feedback. It is good practice for a bench to sit down at the end of the day for a “wash-up” (post sitting review) with their legal advisor, to discuss how the day went and what could be learned from it. But this is not compulsory, and apparently often doesn’t happen, particularly if court ends late: “I feel there should be more direct feedback after every sitting so that people who are not suitable are weeded out or have their behaviour corrected”; “debriefing sessions at the end of sitting are often overlooked” (magistrates for Transform Justice survey). When post court reviews do happen, they focus almost exclusively on the cases heard and legal implications, rather than on the behaviour of the magistrates concerned (even though the latter would help more in development).

Appeals would also provide a good opportunity for magistrates to learn. Offenders who were sentenced in the magistrates/youth court can appeal their conviction or their sentence (or both) in the Crown Court. A Crown Court judge sits with two magistrates to hear appeals, and to either support or overturn the bench’s decision. The magistrates who sit on appeals learn to critically appraise their colleagues’ decisions. Unfortunately, neither district judges nor magistrates often have the opportunity to learn from appeal decisions. There is no system to inform district judges and magistrates that their decisions have been appealed, nor any effective mechanism for them to be informed of appeal decisions. So a valuable opportunity to learn is lost, as a magistrate pointed out: “after an appeal is heard, there is no routine notification of the result to the sentencers, despite

the fact that most magistrates, and the wider bench, would be keen to know ‘because clearly it’s very useful – it’s education to know whether you’re getting it right or not’. The information is available if one makes an effort to find out, or if one hears by chance, but there is no formal mechanism for feedback”.<sup>11</sup>

Magistrates also lack feedback about the offenders they sentence. They only see offenders again if they breach, are reconvicted or subject to sentence review (which happens rarely). They seldom hear success stories. And magistrates don’t routinely receive feedback on local recidivism or custody rates. More feedback both on individual offenders and on offenders in general would help magistrates improve their practice.

<sup>11</sup> [http://transformjustice.org.uk/main/wp-content/uploads/2013/12/Transform-Justice\\_Appeals-report.pdf](http://transformjustice.org.uk/main/wp-content/uploads/2013/12/Transform-Justice_Appeals-report.pdf)

# Community engagement and problem solving justice

"As members of the judiciary drawn from the community, magistrates have a special responsibility to be active in their communities by engaging with the public and contributing to a wide range of discussions about crime prevention, policing policy, community punishment and rehabilitation etc...Today's magistrate must know the community that he or she seeks to serve – and that knowledge can only be acquired and maintained through active engagement. This approach has far-reaching implications for recruitment and appointment; training; and roles in and out of court."<sup>12</sup> (*Magistrates' Association 2012*).

New Labour tried to promote a new way of judging – problem solving justice – and a new focus on community engagement, both of which were dependent on developing magistrates' skills and awareness. Lack of training proved a strong barrier to achieving these changes. The introduction of anti-social behaviour legislation highlighted a need for magistrates to engage more with the community. Policy makers envisaged that judges and magistrates would be trained in "problem solving" anti-social behaviour. Instead of sitting in court, waiting for cases to be prosecuted, magistrates were supposed to go out into the community to discover what issues were causing most difficulties to residents.<sup>13</sup> This never happened to any great extent, partly because magistrates were not systematically trained, and partly because this approach was so alien to the culture of the courts and the judiciary. Dr Jane Donoghue found that in one area, magistrates discontinued an existing practice of making visits within the community, because they were concerned not to be seen to be influenced by local residents. In only one of the 17 areas she studied was it felt that magistrates had a high level of engagement with the local community and were willing to talk to residents, attend local meetings and become involved in the life of the community. Lord Thomas of Gresford, in a debate in the House of Lords in November 2011, bemoaned the failure of community justice:

"Dr Donoghue's conclusion is that most courts have not yet embedded into their structure the principles of community justice. Magistrates still see their role as adjudicators of fact and mete out punishment and no more. If the concept of the big society is to have flesh put upon its skeleton, community engagement and problem solving in partnership with community groups and agencies should become a formal, standardised part of a magistrate's training and part of continuing professional development for existing district judges and magistrates".

Proponents of problem solving justice see training as a key (though by no means the only) barrier to its use: "magistrates courts in England and Wales, as currently constituted, are ill equipped to achieve problem solving objectives/goals; not because magistrates lack competence, but because problem-solving has been introduced centrally, resulting in the expansion of magistrates' responsibilities in the absence of the necessary training for the bench and other members of the court team... Government policy documents and guidance have previously referred to magistrates' "training" in a rather simplistic and tokenistic way and without any detail of what this training should entail and how it should be undertaken... (politicians) must actively determine how the new competencies they are asking magistrates to develop are to be inculcated in order for sentencers to exercise these powers effectively".<sup>14</sup>

The Magistrates' Association in their 2012 report on the future of the magistracy,<sup>15</sup> suggested "community engagement could become part of standard training for individual magistrates and benches could take responsibility to devise engagement strategies". However there is less training in community engagement now than there was then and, as courts have closed and budgets tightened, even confident magistrates are less able to engage.

<sup>12</sup> <http://www.magistrates-association.org.uk/dox/association%20views/magistracy%20in%20the%2021c.pdf>

<sup>13</sup> ANTI-SOCIAL BEHAVIOUR, COMMUNITY ENGAGEMENT AND THE JUDICIAL ROLE IN ENGLAND AND WALES

Jane C. Donoghue\* BJC (2012) 52 (3): 591-610.

<sup>14</sup> Transforming Criminal Justice: Problem-solving and Court Specialisation Jane Donoghue Routledge 2014

<sup>15</sup> <http://www.magistrates-association.org.uk/dox/association%20views/magistracy%20in%20the%2021c.pdf>

# Individualised learning

An ideal training programme is one oriented towards an individual's needs, as assessed by them and those they work with. When recruiting a new magistrate, the Advisory Committee (the recruiting body) makes a note of the particular development needs of each candidate, based on their application form and interviews. Unfortunately this information is not communicated to the Bench Training and Development Committee (for data protection reasons), nor to the magistrate's mentor, and so each new magistrate initially receives the same training, whatever were the "gaps" identified on recruitment.

A new magistrate's mentor and, later, their appraiser, should discuss with a magistrate what their individual training needs might be but, given the paucity of courses on offer, it is seldom possible for those suggestions to be tailored to the individual. In addition, appraisers seldom mention specific training or development needs which could be followed up.

A magistrate said that each magistrate used to have their own training and learning log in which they entered the details of any training courses they had done. These training logs were kept by court staff, but magistrates could have access to them at any time. The magistrate recalled that, around five years ago, all the magistrates in her court were told that they could either take their learning logs home, or the logs would be destroyed.

The judicial college recommends to new magistrates that they should keep a development plan and the Magistrates Association has advocated that members keep a personal development log (though they are still considering how best that might be done).

It is not clear today how many magistrates keep a record of their personal development, nor are there any central records of all the courses any one individual has taken.

## A specialist drug court and its implications for training

Specialised problem-solving courts are very popular in the USA where they are run by individual judges who access training mainly through professional associations. Drug courts, which deal with offenders who are addicted to prescription or illegal drugs, are the most popular type of problem solving court. There are a dwindling number of drug courts in the UK. The West London Drug Court has recently closed, though some continue elsewhere, as does the Family Drug and Alcohol court in London. Each drug court is presided over by a small group of lay and professional judges, who undergo specialist training and review drug rehabilitation requirements.

In the case of drug courts, they are trained by addiction practitioners and psychiatrists in: the causes and consequences of addiction, the relationship between addiction and crime, and the most successful ways of helping people overcome addiction. Through initial and ongoing training, the lay magistrates and district judges who preside over these cases develop expertise, a relationship with offenders and an understanding of what success looks like in the context of an offender with drug issues. Now the West London Drug Court has closed, drug offenders have their sentences reviewed by any of the magistrates on the bench (or by any district judge), most of whom have had no specialist training in addiction.

# Visits and experiential learning

"It is important that all magistrates – not just some eager ones – know what their local probation service is doing... Custody should never be used because a sentencer is not aware of a programme or a service which could have been a better alternative. This is sometimes tragically still the case today. While the pre-sentence report and information leaflets give a flavour, there is absolutely nothing to match or beat seeing and talking to the providers and the offenders. Quite simply, seeing is believing".

*Baroness Linklater House of Lords 20th March 2012.*

All new magistrates are expected to visit a prison in their first months. Most do. Of the eleven respondents to this part of our survey, all had visited a prison, over half had visited a secure facility for children, but only a third had visited a probation office or service. All were convinced of the importance of prison visits: "it's important to see the places that you might be sending people to – to understand what they can and cannot do", "it gave me an insight into the facilities and programmes that were available in custody". However penal reformers feel that magistrates are often shown only the best aspects of prison life, and that visits may give an overly positive impression of services available.

Practitioners and penal reformers are also concerned that prison visits are given greater priority than visits to probation facilities and programmes. In 2005 it was a key conclusion of the Rethinking Crime and Punishment (RCP) programme<sup>16</sup> that magistrates' lack of detailed knowledge of community sentences was a key barrier to their greater use. The RCP team set up a learning programme for magistrates in the Thames Valley (they did a separate one for Crown Court judges). In 2006/7, twenty-five magistrates went on a series of structured visits focussing on offender management, substance misuse, accredited programmes and unpaid work. On these visits they met practitioners, and observed their work with offenders. They also talked to offenders on community programmes. The idea was

that the group should disseminate their learning to their colleagues.

**The programme was very enthusiastically received by the magistrates. One said of the substance abuse visit:**

"it was really good to meet someone who had been through the system– the personal account means a lot and really helped me understand the process from the offender's point of view".<sup>17</sup>

**Another thought it was outstanding. "The demonstration of just how effective one on one sessions can be went a long way to persuading me that it was worth waiting for programme availability".<sup>18</sup>**

**Most importantly, this programme of visits (experiential learning) improved understanding and, in so doing, changed attitudes to community sentences: "a significant majority of participants reported that the project had had a positive impact on them. Being better informed about the sentences generally had a positive impact on their confidence levels".<sup>19</sup>**

This programme overcame one of the key barriers to magistrates visiting probation and other programmes – concerns (often voiced by justices' clerks) that magistrates' independence might be compromised by talking to outside agencies or, particularly, to offenders. The programme leaders prepared the ground by taking the local justice's clerk and other key decision-makers through the programme and getting their approval.

Despite the success of the RCP sentencers' learning programme, it was never replicated. Rob Allen, former Director of RCP, says the programme was fairly resource intensive, so needed public funds and a body to co-ordinate it. Neither of the latter were forthcoming.

<sup>16</sup> RCP was a strategic initiative funded by the Esmée Fairbairn Foundation to raise the level of public debate about the use of prison and alternative forms of punishment in the UK <http://rethinking.org.uk/>

<sup>17</sup> Rethinking Crime and Punishment 2: Increasing the confidence of sentencers in community penalties. John Hedge June 2007

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

Evidence to the Make Justice Work enquiry into the alternatives to short prison sentences confirmed the need for greater awareness.

“During the Enquiry, members of the judiciary argued that they were often unaware of the community alternatives – and what they entailed – available in their areas. At the Bradford Enquiry, Nicola Stell, Chair of the Magistrates’ Association Sentencing Policy and Practice Committee, made clear that she is constantly surprised by the magistrates who are unaware of the existence of the Intensive Alternative to Custody”.<sup>20</sup>

During the passage of the LASPO bill in 2012, Peers campaigned for new laws to oblige each Probation Trust to provide magistrates with information about “all programmes and options” it offered, and “opportunities to observe such programmes”. The government agreed that magistrates should be encouraged to visit prison and probation regularly, but disagreed that any change in the law was required.

The challenge of educating magistrates about community programmes remains as alive as ever. Probation and youth offending teams still put huge effort into getting magistrates to visit programmes in the community, and into organising training events. Yet attendance is often “embarrassingly limited” according to an experienced magistrate. And the future split of probation into two services may make it even more difficult for magistrates to learn about community sentences.

“The Probation service has become rather inward looking since the RCP programme and one of the dangers with the creation of new community rehabilitation companies is that liaison with benches may suffer. Some have questioned whether it will be proper for JPs to get too close to profit making companies”

*(Rob Allen, former Director of RCP).*

<sup>20</sup> <http://www.makejusticework.org.uk/wp-content/uploads/National-Enquiry-Final-Report-14th-Sept-1.pdf> 2011



# A group with particular needs: do magistrates know enough about women offenders and the services available for them?

Women form a minority of those in the courts. Their pattern of offending is different to that of men, as are their needs, and they are more likely to be sent to prison for non-violent offences such as theft than men.<sup>21</sup> In some areas of the country, women offenders have access to a community sentence designed specifically for them. Women's centres offer a holistic programme of training and support (women's community services or WCSs) to help women offenders turn their lives around but, since the launch of the first centre in 1985, they have struggled to reach magistrates and district judges. The research of Gillian Hunter and Polly Radcliffe suggests that lack of awareness of women's centres and the paucity of specialised training about women offenders, has reduced the use of gender-specific sentences, particularly as an alternative to imprisonment:

"Our own recent interviews with magistrates (Radcliffe and Hunter, 2013) and other research has suggested magistrates' awareness of WCSs remains disappointingly low (see for example, Jolliffe et al., 2011) and this persists even where promotion has been attempted through activities such as service open days, information leaflets and local training seminars run by WCS staff".<sup>22</sup>

**This is not for want of some magistrates being keen to learn. A magistrate who had a Women's Centre in her area said:**

"I would be extremely interested to know more about it. I am interested in women's issues... It's quite upsetting to me as a magistrate that I do not know more about the project".<sup>23</sup>  
(Magistrate for 2 years).

**Another interviewee pointed to the lack of training about women per se:**

"In all honesty, I don't think we've had any [training or information], not that I can remember, that specifically targeted women offenders and ways of reducing this. I mean women offenders come up in general training but it's never been that focused".  
(Magistrate for 7 years).<sup>24</sup>

Magistrates interviewed by Hunter and Radcliffe cited three key barriers to better training about women's community services.

- Cuts to training budgets and expenses for training
- The difficulties of keeping up with and remembering information when magistrates sit infrequently, over a wide variety of courts
- The high number of magistrates to be trained

<sup>21</sup> Why focus on reducing women's imprisonment? A Prison Reform Trust briefing, June 2014, and Bromley Briefings Prison Factfile Autumn 2014, pp 35 - 41.

<sup>22</sup> Gillian Hunter & Polly Radcliffe (2013) Are magistrates doing justice to women?, Criminal Justice

<sup>23</sup> Matters, 92:1, 34-35, DOI: 10.1080/09627251.2013.805376

<sup>24</sup> Ibid

# “Unofficial” training and development

Magistrates receive or are offered lots of “training” which is not delivered by local advisors or designed by the Judicial College. Local providers of community sentences and services for offenders, experts, and representatives of voluntary organisations do workshops and presentations. These are either slotted into Bench meetings (bi-annual meetings of all the magistrates who sit in a particular area), or held at lunchtime or after hours in the courthouse, or hosted by the local Magistrates’ Association branch. Nearly all “unofficial” training is offered free, ie the provider pays staff and any other costs involved. One interviewee (who sat on her local Magistrates’ Area Training Committee and Bench Training and Development Committee) said that the Judicial College sent out instructions around two years ago that all Bench meetings should have a training “slot”. They were told that this slot should be at least half an hour long, with an aim, an objective and an outcome. However the subject of the training was not specified, nor the training need it should fulfil.

**The provision of unofficial training by the MA/in court buildings seems to be dependent on several factors:**

- Whether a provider has proactively offered a presentation to the court/MA, or a particular magistrate is keen enough to help organise a specialist session
- Expenses (see p16)
- Whether the legal advisor/clerk approves of that particular provider. Legal advisors may be concerned that certain organisations have an agenda

and may prejudice magistrates’ decision-making. A magistrate I interviewed has tried for many months to organise a workshop by the Clean Break theatre company about women offenders. But she has so far failed to get permission

Permission for training events is complicated and the guidance not entirely clear. A circular from the Judicial College (June 2005) says that “all applications from individuals or agencies to provide guidance or training to magistrates must be considered by the justices’ clerk or their delegated representative”,<sup>25</sup> but the rest of the circular refers just to training offered by government agencies. It is not clear how the guidance should affect decisions about charities or private companies, or what the actual definition of “training” is.

The guidance does not specifically mention events or talks organised by the Magistrates Association. MA guidance recommends that branches should get official approval for any “training” events, but mainly so that magistrates’ travel expenses to the event might be funded.<sup>26</sup>

Some magistrates who are keen to extend their learning attend “open access” conferences and talks organised by independent organisations, but they usually organise these themselves, according to their personal interests.

<sup>25</sup> Outside agencies involved in training – JCS circulation 2006

<sup>26</sup> [http://www.magistrates-association.org.uk/members/dmdocuments/branch\\_training\\_guidance.pdf](http://www.magistrates-association.org.uk/members/dmdocuments/branch_training_guidance.pdf)



There are several problems with the access magistrates have to “unofficial” training:

- Providers of community sentences say some events are poorly attended and it is only “the usual suspects” who come
- Magistrates who are keen and/or have more time, end up with better knowledge and skills
- Only providers willing and able to fund the training or presentation they provide can access magistrates, though travel expenses are sometimes offered
- Only organisations which are approved by the clerk/legal advisor can provide presentations, but the criteria for approval is unclear
- The subjects covered in “unofficial” training can be quite random – the choice of subject is sometimes influenced by personal contacts and interests and/or whether a presentation has been proactively offered by an organisation or individual. This allows for local discretion, but may result in significant issues being neglected
- An individual magistrate currently gets no “credit” for independently extending their learning and there is no system for them to disseminate what they have learned amongst their peers

The training committee of the Magistrates’ Association has been developing a continuous professional development (CPD) programme which they are proposing would apply to all magistrates, except those in their first year. The proposal is for magistrates to do a minimum of 12 hours CPD each year in addition to the current recommendation of 6 hours essential training. The MA proposes that the CPD should cover three broad areas: non-courtroom skills (eg being a mentor, attending a bench meeting), courtroom skills (eg HMCTS courses, reviewing of new bench book updates) and other (eg attending an MA event or an event with outside speakers of an “informational nature”).<sup>27</sup> Though most members support CPD, there are some concerns: “we are doing OK as we are”, “CPD belongs in the work place, not for volunteers”, it may result in more red tape, it will be difficult to combine with employment.<sup>28</sup> The MA is responding to these concerns and discussing the introduction of CPD with the Judicial College and HMCTS, but the plans have not yet been announced.

<sup>27</sup> CPD and the magistracy by Mark Beattie JP. The Magistrate June/July 2014.

<sup>28</sup> CPD: some varied views. The Magistrate Oct/Nov 2014

# Care not Custody: an example of a successful collaboration with the voluntary sector to provide “training” for magistrates

Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system (The Bradley Report, 2009) recommended awareness training for criminal justice staff and members of the judiciary. In 2012, following a conversation with the then Chair of the Magistrates’ Association, the Prison Reform Trust and Rethink Mental Illness agreed to work together to develop a learning “resource” for magistrates. A small advisory group was convened to help develop the resource. The group included representatives from the MA, the Justices’ Clerks Society and the Judicial College.

The resource was made available in October 2013, in hard copy and online ([www.mhldcc.org.uk](http://www.mhldcc.org.uk)) and widely disseminated, through the Magistrates’ Association website and through articles in specialist media. The Prison Reform Trust (PRT) has also organised presentations and workshops for magistrates, justices’ clerks and district judges to increase awareness of the needs of such offenders. Many of the presentations involve an offender who has a learning disability. PRT has asked people to assess the resource.

One magistrate wrote: “I am shocked, firstly by the size of the difference of those suffering from mental health disorders within the justice system, and those outside. Also the above being the case, that we as magistrates aren’t given more training on the matter, I now feel that it is likely that most of us have been guilty of sentencing someone harshly due to a mental health disorder”. Magistrates felt that they would be able to use the learning in their court work: “It has opened my eyes to the problems and offers guidance for dealing with them”, “It’s given me the confidence to ask for support in assessing defendants with suspected mental health or learning disability problems, both before judging them and before sentencing them”.

Jenny Talbot, of the Prison Reform Trust, who runs the Care not Custody programme, feels that all magistrates and judges should have some training in mental health and learning disability – they don’t need to be able to recognise each condition but they should know what the main conditions are, how they influence the individual, how to recognise that someone has support needs, how to make reasonable adjustments, and how to sentence or make bail decisions in view of these conditions.

The website on mental health and learning difficulties in the criminal courts has had c 6715 users and the MA has also developed a network of “champions” who organise training locally. The website has an impressive level of usership but, clearly, the proportion of magistrates who have accessed the website and/or the training still represent a fraction of the 21,626 magistrates in England and Wales. This begs the question – if Lord Bradley identified a genuine need for magistrates to have mental health and learning disability awareness training, should it not be part of compulsory training or at least provided as a course locally?

# The financing of magistrates' training

Resourcing magistrates' training is complicated because money comes from different pots. While the training of district judges is entirely paid for from Judicial College budgets, magistrates' training is funded both by the Judicial College and HMCTS (Her Majesty's Courts and Tribunals Service). This funding pays both for the compulsory and essential courses, and extra courses organised and delivered by local legal advisors. The funding for this "official" training has reduced considerably in recent years, though the total number of magistrates has reduced steadily, as has the number of new magistrates to be trained.

In 2008/9 HMCTS spent £3.2 million on magistrates' training. In 2013/14 they spent £559,000. When combined with spend by the Judicial College this equates to a reduction in spend from £110 per magistrate in 2008/9, to £26 per magistrate in 2013/14.<sup>29</sup> In 2013/14 the Judicial College spent £168,000 on training district judges and deputy district judges in magistrates' courts – £629 per judge (minimum £248 per deputy district judge). In Scotland, the government spent £213 per head on training for children's hearing panel members in 2013/14.<sup>30</sup> The Citizens' Advice Bureau estimates that the initial cost of training and recruiting a volunteer is £2,800 while ongoing training costs are £1,700 per person.<sup>31</sup> Training staff costs are included in panel member and CAB costs, but not in those for magistrates. Even so the difference in investment is large.

Training which is not part of the Judicial College programme is funded at the discretion of local court officials and the legal advisor. Magistrates' Association training is funded by the MA and is usually open to all local magistrates. Any training by other agencies – the Probation Service, the Youth Offending Team etc – is funded by them. A controversial area relates however to travel expenses, and reimbursement for the costs of conferences and courses organised by outside organisations. HMCTS has limited funds for the reimbursement of expenses. They will pay travel expenses for training sessions organised by the MA, which have been approved by the legal advisor, but have no set policy in relation to other training, whoever it is delivered by. Occasionally they will fund travel, most often not. It is rare for HMCTS to fund conference fees, and the cost of training or presentations provided by outside providers, however relevant that training might be. As an example, youth court magistrates attending the Youth Justice Board convention generally have their expenses met either by the YJB, or their local Youth Offending Teams.

<sup>29</sup> These figures do not include overhead and staff costs for HMCTS and the Judicial College

<sup>30</sup> Children's Hearings Scotland, Annual Report and Accounts. Training of children's hearing panel members £533,000 for 2013/14 p30

<sup>31</sup> CAB Volunteering – how everyone benefits. May 2014

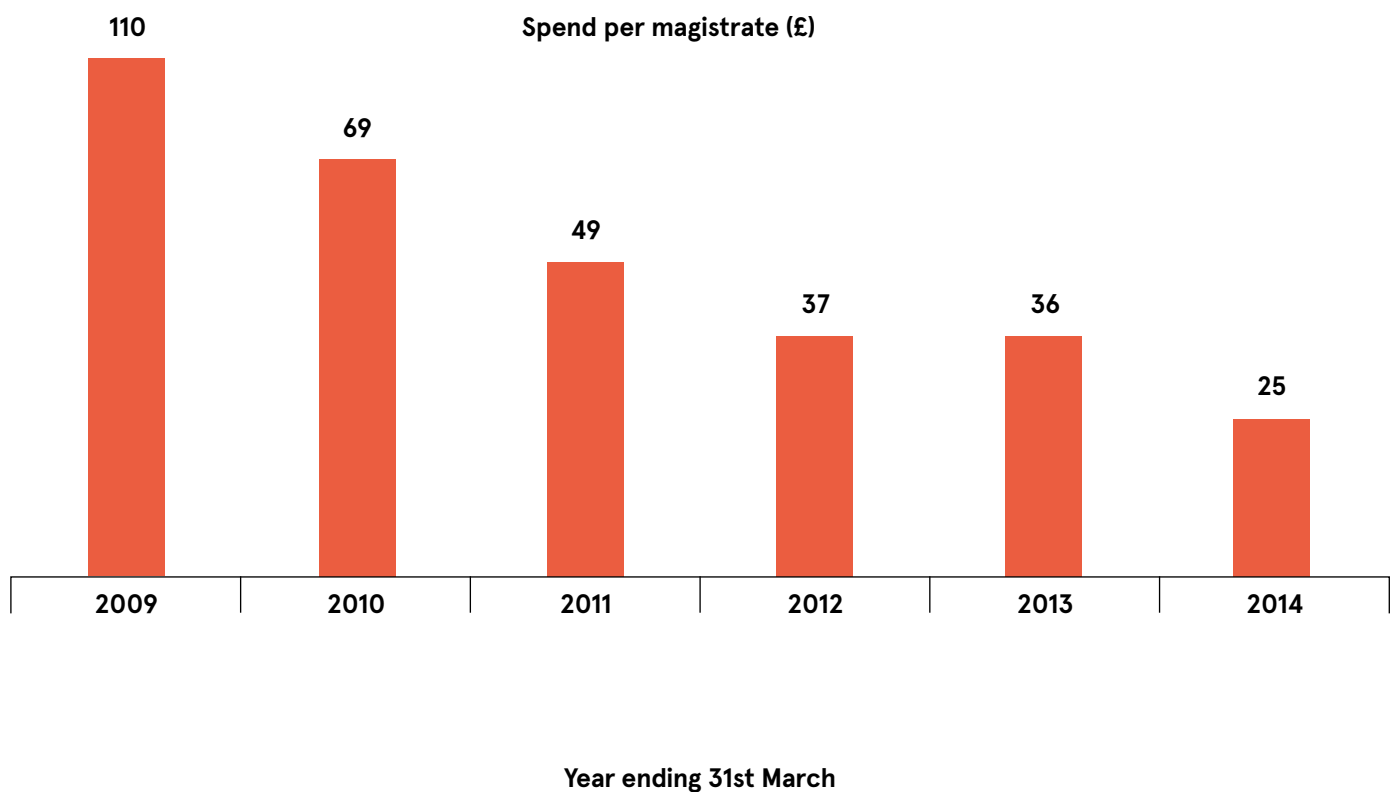
The issue of expenses has been a huge bone of contention for magistrates who want to extend their learning. As volunteers, they feel they should not be out of pocket for extending their learning and their understanding of the criminal justice system. But magistrates have had requests for travel expenses for training turned down, even when that training is provided by the local youth offending team (YOT). In 2012, Brighton YOT organised a workshop on reducing imprisonment on a Saturday morning for local magistrates. The YOT organised for a range of expert speakers to present, including a defence advocate from Just for Kids Law charity and a specialist in learning difficulty and disability. Magistrates were keen to attend, even on a Saturday morning, but those who did had to pay their own travel expenses.

**Has the limited budget for travel expenses harmed magistrates' training? No-one has researched this but anecdotal evidence suggests:**

- Only very keen magistrates with spare time and money pursue wider learning opportunities for which they cannot claim travel expenses/conference fees
- Magistrates are less likely to further their learning outside the courtroom
- Probation and other statutory agencies find it harder to interact with magistrates, and sometimes have to subsidise magistrates' training through using their resources to fund expenses

# Spend on training per magistrate since 2008

**Source:** Judicial Office – spend is by HMCTS and the Judicial College but excludes in house staff costs



# How magistrates' competence is assessed

Magistrates are alone amongst judges in being subject to regular appraisal of their competence. Most district judges are appraised but it is not yet compulsory. Senior judges are not appraised.

New magistrates are appraised within the first year of sitting and, after the first appraisal, magistrates are appraised every three years in all the roles they fulfil (youth court magistrate, adult chair etc). Experienced magistrates act as appraisers. They arrange to sit together with their appraisee on a particular day. The appraiser observes how the magistrate prepares for court, acts in the courtroom and in discussions in the retiring room. At the end of the day, the appraiser will give feedback to the appraisee and discuss any training or development needs with them. They will then submit the appraisal report to the local training and development committee. If the magistrate is deemed really incompetent, he or she may be referred to the local Advisory Committee who have the power to recommend the dismissal of magistrates. They then refer the magistrate to the Judicial Conduct Investigations Office, which makes the final decision. Dismissal for lack of competence happens rarely. The Judicial Conduct Investigations Office dismissed one magistrate for this reason in the year ending October 2014.<sup>32</sup>

The current appraisal system has the advantage of being managed by magistrates, and of being relatively simple. But many magistrates, including appraisers, think it could be improved – to be more rigorous, more supportive and have more influence on improving standards. At the 2013 Magistrates Association AGM, a motion was passed that "this AGM believes the current appraisal system for magistrates is out of date. It calls upon the MA to work to introduce a new system for monitoring performance based on good practice essential for the delivery of justice". The MA is currently developing that new system.

A major criticism is of the choice of appraiser. Magistrates are concerned that appraiser and appraisee are often too closely connected – they are likely to know each other and/or sit on the same bench. This means that the appraiser is less likely to make an independent appraisal or to be critical. Some benches get round this through getting appraisers to appraise someone on a different bench, but this is not mandated. Another problem with the current system is that it is based on a snapshot of magistrates' performance, from one individual's perspective. The appraisee knows they are being judged and may change their behaviour accordingly. 10 of 35 magistrates who answered the Transform Justice survey felt that the appraisal system was ineffective in testing the competence of magistrates: "the present system is a box ticking sham and it's more or less impossible to fail. It should have real objectives which can be measured, and those who don't shape up should be out".

**Magistrates suggested improving the system in a variety of ways:**

- "On-going peer review, Occasional simple tests"
- "By a system of continuous development, similar to the type of systems adopted by many professions. This could involve ongoing self-assessment with a requirement every two to three years of producing a portfolio evidencing development"

<sup>32</sup> Parliamentary answer given to Lord Beecham

<http://www.theyworkforyou.com/wrans/?id=2014-11-11a.29.1&s=%28lord+beecham%29+section%3Awrans#g29.2>

- “By skilled assessors privately in a more systematic way. I have overheard assessments being done casually and on the hoof. I have never been appraised as a family magistrate”

Many workplaces, including the NHS and the Civil Service, have adopted a way of appraising performance which is based on the views of a range of people and on their general performance, not on a snapshot. The 360° appraisal gathers feedback from colleagues, people who work for the appraisee and those they work for. This feedback is usually presented and discussed by the appraisee’s manager. The advantage of 360° appraisal is that it reflects someone’s interactions with different types of colleagues and is designed to be constructive. The process of gathering feedback for 360° appraisal is normally done online. Colorado USA uses a multitude of sources to provide an evaluation of their judges (see p21).

360° appraisal could work well for chairs, since they have an impact on all court users as well as behind the scenes court staff. Feedback could be gathered from magistrates who have sat with them, legal advisors, ushers, defence advocates, Crown Prosecution Service, probation/youth offending team and even from defendants and witnesses. Stakeholders would not be asked about the decisions made by the bench, but about the way decisions were communicated and court users addressed. Though wingers (who sit either side of the chair) do not speak in court, feedback could still be gathered from magistrates who have sat with them, and from court staff.

Magistrates are concerned that the “softness” of the current appraisal system means that it does not contribute to improving the performance of magistrates, nor prevent incompetent magistrates continuing to sit. They say an effective system would ensure that magistrates who were not performing well overall, or in one aspect, would be forced to improve their skills, re-train or to step down. But this seldom happens.

One option would be to have appraisal attached to a re-validation process, as happens to Scottish children’s hearing panel members and to doctors in the NHS. “Medical revalidation is the process by which the General Medical Council (GMC) confirms the continuation of a doctor’s licence to practise in the UK”<sup>33</sup> and involves reviewing each doctor’s last five years appraisals and data on performance. If magistrates were to have renewable tenure (as oppose to unlimited tenure as now), their performance could be reviewed and their role revalidated every three/five/ten years.

<sup>33</sup> <http://www.england.nhs.uk/revalidation/about-us/what-is-revalidation/>

# The Colorado Commission of Judicial Performance – the gold standard in judging judges?

Different states in the USA approach the performance management of judges in very different ways. In most states where they don't elect judges, judges are on fixed tenure and renewal is influenced by feedback from local lawyers and colleagues. Colorado does elect judges but the state government helps the voters make an informed choice. Their State Commission of Judicial Performance ([www.coloradojudicialperformance.gov](http://www.coloradojudicialperformance.gov)), on which sit six non-lawyers and four lawyers, was set up in 1988. It organises a comprehensive evaluation of each judge according to these criteria: integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public.

"The trial judges' evaluations are developed through survey questionnaires completed by a random sample of persons who have appeared in court before the judge: attorneys (including prosecutors, public defenders, and private attorneys), jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, victims of crime, and appellate judges. In addition, commissions consider a self-evaluation completed by the judge, courtroom observations, review of decisions, review of judge statistics such as relevant docket and sentencing statistics, and a personal interview with the judge".

The commission gives advice to the electorate on each judge – retain/do not retain/no opinion. The descriptions of each judge's feedback are full and detailed. Of one judge:<sup>34</sup>

"attorney survey responses indicate that Justice Márquez' performance is strong in the areas of being courteous toward attorneys, treating parties equally regardless of race, sex, or economic status, and allowing parties to present their arguments. Numerous attorneys commented that Justice Márquez is intelligent and well prepared for oral argument. The survey responses and comments of district court and appellate judges similarly indicate that Justice Márquez writes thoughtful opinions, is hard working, and contributes to the community".

Each evaluation details the judge's best and worst points and whether the lawyers surveyed thought he or she should be retained. All the data from the evaluation survey is published.

<sup>34</sup> <http://www.coloradojudicialperformance.gov/retention.cfm?ret=834>



# Who reviews magistrates' training and how?

Before 2005, magistrates controlled much of their training locally. Magistrates' Courts Committees held the budget for training and it was managed by the local Bench Training Committee. Under the Constitutional Reform Act 2005, responsibility for magistrates' training was given to the Lord Chief Justice.

There is still some local management of magistrates' training. Each bench has a Training and Development Committee (BTDC) which organises mentoring, appraisals, visits to prisons etc for the bench. Some members of this committee also sit on the Magistrates' Area Training Committee (MATC), which organises training over a wider area and reports every year on performance to the Lord Chief Justice. Each MATC has to report on what training has been completed, how many appraisals done etc. The Chair of the MATC then receives a letter back from the Lord Chief Justice with an evaluation of performance.

Official documents mention that an annual report on magistrates' training is produced for the Lord Chief Justice, as a statutory requirement, but this document is not in the public domain. In response to a request from Kate Green MP to see the document, Minister Mike Penning said the report was an internal document: "the college has a statutory responsibility to prepare the National Summary of MATC Annual Reports for the Lord Chief Justice, as Head of the Judiciary, and its purpose is to satisfy him that magistrates training is being appropriately addressed. The most recent report (for 2012/13) shows the intended learning was delivered and that magistrates felt it met their needs".<sup>35</sup>

There are some reports on magistrates' training online<sup>36</sup> but they give only the briefest information about the courses. We know that 71% felt their learning outcomes were met, but nothing about what those learning outcomes were, nor what participants felt was missing. These scores are based on end-of-course feedback forms.

Information about the training and appraisal performance of each area is not even available to other areas. So each MATC annual report is sent to the Judicial Office, but is never disseminated. Thus no MATC truly knows how their performance compares to others and they have little opportunity to learn from each other. Neither is there a forum or conference at which training committee members might meet and share practice.

<sup>35</sup> <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140909/text/140909w0002.htm>

<sup>36</sup> [http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/eLetters/Annexes+for+Review+of+Activities+2012\\_13\\_final.pdf](http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/eLetters/Annexes+for+Review+of+Activities+2012_13_final.pdf)

# The Scottish children's hearing system – a great example of training and development for public sector volunteers

Children's hearing panels consist of three lay members who hear "cases" involving children in the welfare and youth justice system, who may need supervision and/or care. Their decisions have the force of law and can result in children being removed from the care of their parents, or kept in secure care if their offending is very serious. Panel members are volunteers who go through a rigorous recruitment process and agree to undergo initial and ongoing training, delivered by local and national experts.

All panel members have to be trained before they can sit on a hearing. Initial training is a seven day compulsory course spread over 3 – 4 months (usually weekends). During this time trainees undertake two out of three units of a Scottish Qualification Authority Professional Development Award for Children's Hearings in Scotland: Panel Members.<sup>37</sup> This course is a mixture of skills based activities dealing with the mechanics of being in a hearing, including communicating with children and professionals, and knowledge based activities such as child development, children's services, child protection, youth justice, law and procedures etc. Trainees observe three hearing sessions, do a significant amount of homework between training days, and complete reflective logs. All the learning and assessment material is available on a virtual learning environment (VLE), a password protected website.

The initial seven day training course also includes practice ("simulated") hearings and a session where participants hear directly from young people who have experienced the care system. Participants need to pass the first two units of this qualification before they can start sitting. An assessor will go through a workbook each person has filled in during the course, and only pass that person if it has been completed to a national standard. Every panel member must pass all three modules of this accredited programme within 18 months. As well as the seven days induction, they

have one day training after 4–6 months, to reflect on their experiences, and another two day course at the end of the year on management of hearings. So each panel member receives a minimum of ten days training in the first 18 months after being accepted. This is supplemented by on-going local training events. The local Area Support Team (a group of volunteers who support panel members at a local level) organise evening presentations on relevant themes such as child sexual exploitation, living with addiction and autism, and visits to places like secure children's homes and residential schools.

Panel members have to attend compulsory training every year – this year it is two half days on contact and permanence. They also have to prove that they have done other CPD and gone to local events which have increased their understanding of local issues and services. All panel members are observed at least once a year by independent volunteers – panel practice advisors. These advisors may have sat on a panel previously, but none are current panel members.

Each panel member is assessed for reappointment every three years. Representatives of the local Area Support Team (AST) interview the panel member, and ask what training and development the panel member has done, over and above compulsory training. The panel member is expected to bring their learning log to the meeting. The AST decides whether a panel member can sit for a further three years on the basis of this interview, the record of training and on the observations the panel member will have undergone. An AST may recommend the panel member is reappointed subject to specific training to fill gaps.

The training reforms in Scotland are recent and no decision has yet been made as to whether CPD should be compulsory. But there is an expectation that panel members attend two local CPD events per year that are organised by their local area representatives.

<sup>37</sup> [www.sqa.org.uk/sqa/controller?p\\_service=Content.show&p\\_applic=CCC&pContentID=68430](http://www.sqa.org.uk/sqa/controller?p_service=Content.show&p_applic=CCC&pContentID=68430)

<sup>38</sup> <http://www.chscotland.gov.uk/media/20427/National-Standards-colour-.pdf>

In the National Standards for children's hearings,<sup>38</sup> the National Convenor commits to "make sure panel members are well supported and we will deliver consistent standards of quality assured training" and also to "be open and honest in all our communication with panel members. We will encourage, listen to, respond to and learn from their feedback, so that their experiences and views positively inform our practice".

# Conclusion

Since responsibility for magistrates' training was delegated to the judiciary in 2005, there has been no major independent review of its quality and whether it meets the needs of today's courts. The feedback forms of magistrates, and our survey, suggest that magistrates are broadly happy with the training they receive, though some would like more. But practitioners, experts and lawyers are critical of magistrates' lack of skills and knowledge. Whether on women, diversity, children or mental health, those who interact with magistrates feel many lack the understanding to communicate effectively with offenders and make the best decisions.

The new approach to training Scottish children's hearing panel members shows that volunteers can undergo a rigorous programme of training and revalidation. But these volunteers have one focus only – vulnerable children. The challenge for lay magistrates is whether they can continue to preside over very different kinds of hearings, and still maintain competence and sufficient knowledge on all issues. Should youth court magistrates be able to specialise only in the youth court and thus acquire the level of expertise and competence of panel members North of the Border? Should magistrates be able to specialise in mental health or drugs? It is unlikely that while budgets are being squeezed, more money will be found for magistrates' training. Greater specialisation might enable the money to go further and make the best of magistrates' time.

The squeeze on budgets should also prompt a re-examination of the way training is provided. Most official courses are now provided on a traditional face to face model by legal advisors, exclusively for magistrates. Instead, much of the content could be delivered online, through webinars and on-line courses, while the opportunity to deliver some of the sessions could be opened up to practitioners, experienced magistrates, district judges and experts from the voluntary sector.

# Recommendations

## 01. Reform official training

- Review the content, length and delivery of magistrates' compulsory and essential training; ensure it covers: fact-finding, the context of offenders' lives, the place of the magistracy in the criminal justice system and the outcomes of the most commonly used sentences.
- Ensure that magistrates, especially new ones, visit community practitioners and programmes as well as prisons.
- Consider using new approaches to delivering training including e-learning, peer learning, coaching and webinars; and using independent trainers and/or magistrates themselves as peer trainers.
- Facilitate more joint training for magistrates with district judges and/or practitioners, for instance on new legislation. This would save money and also foster better understanding and links between the different groups.
- Review whether the judicial college, HMCTS and legal advisors are best placed to design and deliver magistrates' training. Should the task be delegated to specialist trainers as in Scotland?

## 02. Support magistrates to do continuous professional development

- Open up opportunities for outside organisations and experts to access magistrates and ensure that the criteria used to permit "outsiders" to present to magistrates is transparent and rational.
- Make CPD compulsory, and encourage magistrates to interact with practitioners, advocates and academics at independently run conferences, seminars and workshops. Give each magistrate a small annual expenses allowance for attending "outside" learning events.

## 03. Encourage magistrates to engage with their community and to develop expertise in one or more area

- Consider enabling magistrates to specialise in a particular issue/type of offender, and adjust listings accordingly. This would enable magistrates to focus their training and development, become peer trainers and to preside over cases in which they had particular knowledge and skills.
- Through training and development (courses, peer mentoring), give magistrates confidence to engage with community groups and organisations, and encourage them to do so.

#### **04. Promote more feedback and reflection**

- Encourage regular and constructive feedback through post court reflection sessions.
- Enable magistrates to learn from appeals, through ensuring that the results of appeals are communicated to the original bench and that those who wish to learn more can discuss the appeal judgement with an experienced magistrate/judge.

#### **05. Rigorously review magistrates' performance**

- Replace the current appraisal system with a 360° appraisal and/or more regular observation by magistrates who are not connected to their bench.
- Ensure that magistrates who have poor skills, are retrained and reappraised, or made to retire.
- Keep unlimited tenure but introduce a reapplication and revalidation process to be done every 3/5 years, as in Scotland.

#### **06. Increase openness and knowledge about magistrates' training**

- Make information about the content of magistrates' training transparent and publish annual MATC reports, the annual national report on magistrates training, MATC minutes and minutes of the relevant Judicial College committee meetings.
- Provide a forum for members of MATCs and TDCs to learn from each other.
- Commission an independent analysis of magistrates' awareness and training needs and of the quality of current provision.

#### **07. Invest more in magistrates' training and make existing resources go further**

- Increase the availability and standard of magistrates training in order to improve the quality of decisions and the experience of court users.
- Promote reflective practice, peer training and online study, all of which are free or low cost.

Penelope Gibbs talked to the following as part of her research but the views in this report are of course her own

#### Interviewees

Rob Allen

Criminal justice consultant

Jenny Earle

Prison Reform Trust

Ben Estep

New Economics Foundation/Centre  
for Justice Innovation

Roma Hooper

Former Director Make Justice Work

Sue Jordan

Leicestershire Probation

Jenny Twite

Just for Kids Law

#### Magistrates

Tony Book

Jenny Cody

Karen Dibble

Nick Harrington

Del Hunter

Jim Ludlam

Greg Thomson

Erica Zimmer

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The logo for Transform Justice, featuring the word "Transform" in a bold, black, sans-serif font, with a small red dot above the letter "T". Below "Transform" is the word "Justice" in a bold, black, sans-serif font.