

**Magistrates:
— representatives
of the people?**

By Penelope Gibbs
February 2014

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.

This research and production of this report has been kindly supported by the Hadley Trust.

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.

Contact

For further information contact:

Penelope Gibbs
Director

Transform Justice
43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk

Registered charity number 1150989
Company number 08031781

Contents

01	Why does diversity of the magistracy matter?
02	Background
03	Executive summary
04	The magistracy in 20th Century: make-up, recruitment and efforts for reform
05	How magistrates used to be recruited
06	The magistracy and New Labour
09	Did the drive to increase the diversity of the magistracy work?
10	The magistracy now: diversity and recruitment challenges
13	The importance of diversity: the magistrates' view
17	What motivated current magistrates to apply?
19	How the recruitment process works today
20	Magistrates' views of the application and interview process
22	How to recruit more diverse magistrates
25	The challenges of combining employment with the magistracy
28	How lay magistrates differ from judges and from other volunteers in their diversity
29	Can we learn from the recruitment of salaried judges?
30	Government policy on magistrate diversity and recruitment
31	Recommendations
34	Conclusion

Why does diversity of the magistracy matter?

“If the feeling is that the magistrates are just a bunch of blue-rinse Tories who don’t represent anyone – do you say then, you get rid of magistrates, or do you say let’s go back to first principles and think: what is the point of having a lay magistracy? ...If you believe in that, make it work. Don’t let it become unrepresentative... this is really important for the reasons we’ve said – justice, perceptions of justice, and wider social cohesion.”
(Magistrate, 2013)

It’s unusual in the western world to use lay judges to preside over criminal cases. But England and Wales has done so for centuries. Lay people bring the experience and skills of the non-legal world into the courtroom. They live in and work in the communities in which they sit, and have a range of jobs and life experiences to bring to discussions and decision making. Lady Neuberger in her 2010 report on the diversity of the paid judiciary wrote: “not only should there be equality of opportunity for those eligible to apply, but in a democratic society the judiciary should reflect the diversity of society... Judges drawn from a wide range of backgrounds and life experiences will bring varying perspectives to bear on critical legal issues. A judiciary which is visibly more reflective of society will enhance public confidence”. The same applies to unpaid magistrates.

The legitimacy of magistrates rests on their being representatives of the people and of their community. “In many ways, magistrates can be said to be the embodiment of the ‘big society’ – if this is a society based on transparency and accountability in which everyone can feel that they have a stake. For this to be a reality, we should expect the magistracy to be accessible to all and as diverse as the society from which it is drawn” (Magistrates’ Association 2012).

But magistrates are becoming less diverse – certainly older and less representative of black and minority ethnic groups, possibly more middle class and more heterosexual. This trend, unless reversed, threatens the support they currently enjoy and the very purpose of having a lay magistracy – judgement by peers.

Background

This report looks at diversity in the magistracy and the role recruitment plays in facilitating diversity.

Diversity can encompass many dimensions including faith, disability, political affiliation and sexual orientation. In this paper we focus on age, class and ethnic origin, and touch on sexual orientation, disability and geographical exclusion. Gender is at parity in the magistracy. In examining how diverse the magistracy is, and how that diversity could be increased, the report looks at how opportunities are being promoted, how the recruitment process operates, and who is recruited.

This report is based on desk research, (thanks to Simon Parsons and his team in the Judicial Office for their help providing data), and on a series of focus groups facilitated by Dr Jessica Jacobson and Amy Kirby of the Institute for Criminal Policy Research (www.icpr.org.uk). These groups were held with sitting magistrates in four locations in England and Wales.

Of the 56 magistrates who took part in the research 42% were male, 58% female. 51% were employed / self employed, 42% retired and 7% carer / student / unemployed. 80% were white British and 20% black and minority ethnic (BAME). The average (mean) age was 58.

This research was set up with the help and support of the Magistrates' Association, and recruitment was done through local branches. However the research was analysed and the recommendations formulated by Transform Justice alone.

Executive summary

Magistrates are no longer seen as “ladies and gentlemen bountiful”, as they were in last century. But misconceptions still abound about the volunteers who deal with the vast majority of criminal court work. Many believe magistrates are paid, have to be legally qualified or to have a degree.

New Labour, spurred on by the Auld report (2001), determined to demystify and diversify the magistracy through reforming recruitment and using new ways to promote opportunities. The programme made some headway, but has had little sustained success. Diversity in terms of age and ethnicity is now worse than in 1999, partly because very few magistrates are being recruited.

Magistrates interviewed for this report are concerned that magistrates are increasingly unrepresentative of their community. They suggest that whole ethnic communities are excluded from the bench, and that working class magistrates are poorly represented. But they also identify many other excluded groups including Muslims, gay and disabled people, those on benefits, and people who live in poorer areas. Magistrates are convinced that targeted and innovative recruitment techniques could increase applications from under-represented groups. But they also perceive structural barriers, including the opposition of employers and a recruitment process unsuited to working class people.

If we want greater diversity in the magistracy it's not necessary to reinvent the wheel. Many of the recommendations put forward by Lord Justice Auld for diversifying the magistracy were echoed by the magistrates we spoke to. But if we want a magistracy that represents the communities it serves, government needs to break down the barriers to increasing diversity.

The government and the judiciary have focussed since 2007 on increasing the diversity of the paid judiciary. Despite huge efforts, and a reform of the recruitment process, the progress towards greater diversity in the paid judiciary has been slow. Their focus should now turn to the magistracy which, if radical steps are not taken, will become increasingly remote from the communities it serves.

This report outlines how the profile of the magistracy has changed, and calls for a new drive to increase diversity.

The magistracy in 20th Century: make-up, recruitment and efforts for reform

Magistrates or Justices of the Peace originally gained their legitimacy from wealth and power. They were landowners and men of substance, and were appointed by Lord Lieutenants in the country, and nominated by the Lord Chancellor in the towns. The recruitment of magistrates was reformed at the beginning of the twentieth century to meet concerns that they were dominated by Conservatives, and excluded women. But, by the end of the century, magistrate recruitment was again the target of criticism.

Lord Hailsham, the Lord Chancellor, told the Magistrates' Association in 1984:

“there is, I verily believe, no people's court... which is as representative of the responsible elements of society as the lay bench of England and Wales”.⁰¹

But many disagreed with him. Anthony Gifford in 1985 described lay justices as “white, middle class, middle-aged people sitting in judgement over young, working class and often black defendants”,⁰² and Geoffrey Robertson ten years later as “ladies and gentlemen bountiful”, politically unbalanced and unrepresentative of ethnic minorities and women.⁰³

There is only poor data on the composition of the magistracy before 1997. Most information comes from a major inquiry undertaken by the Home Affairs Committee, chaired by Chris Mullin, 1995/96. This suggested that of 875 new magistrates, only 22% were under 40 and that in 1990s only 4.4% of annual appointees were from ethnic minorities. In those days all applicants had to declare their political affiliation. In 1994/95, 27% of appointees were Labour voters, 41% Conservative and “benches where the average age is over 55 are not uncommon”.⁰⁴

The Home Affairs Select Committee in 1995/96 examined, among other issues, whether magistrate recruitment was biased in favour of freemasons, and heard that in Portsmouth more than a third of justices were freemasons. The Magistrates' Association wanted greater diversity and campaigned to the committee for legislative changes to help create a more “balanced” bench: outlawing discrimination against magistrates in employment, updating the loss of earning allowance and repealing the loophole in the Employment Protection Act 1996 which allowed employers to avoid releasing employees to sit as magistrates.

⁰¹ Quoted in <http://eprints.kingston.ac.uk/12214/> 1997) For the new Lord Chancellor – some causes for concern about magistrates. Criminal Law Review, Dec, pp. 861-874. ISSN (print) 0011-135X Penny Darbyshire

⁰² Where's the justice? A Manifesto of Law Reform; 1985 (Penguin Books)

⁰³ House of Commons Home Affairs Committee third report 1995-6 Jap II

⁰⁴ P.Darbyshire op. cit

How magistrates used to be recruited

Before 1992 the process of recruiting magistrates was opaque and secretive. All recruitment was done by advisory committees, but E. Burney in 1970s found "personal recommendation from committee members still forms a very important source of recruitment,"⁰⁵ and that many magistrates were recruited by their friends without interview. Vacancies were often promoted by circulating local organisations, though some advisory committees were imaginative and energetic in advertising - for instance by leafleting all households. Despite some good practice, secrecy, recruitment by invitation and limited promotion of opportunities were the norm, and led to accusations that the magistracy was a "closed shop".

The magistracy and New Labour

When New Labour got into power they were interested in wholesale reform of the system. Two reports commissioned early in their administration called for a more diverse magistracy:

- **Criminal Justice: the way ahead**

As part of the response to the Stephen Lawrence inquiry, the Lord Chancellor's department set up a working group which looked at ways of making the magistracy more diverse in its ethnicity. Their report fed in turn into Criminal Justice: the Way Ahead⁰⁶ (February 2001) which suggested that, though becoming more representative of Britain's ethnic communities, the magistracy was still insufficiently racially diverse in some areas and that there was an imbalance of age range.

- **Review of the Criminal Courts of England and Wales (The Auld Review)**

In parallel, Lord Irvine asked Lord Justice Auld to examine the system of criminal justice, how it was judged and how courts were managed. To inform his review, the government commissioned The Judiciary in the Magistrates' Courts (2000), a review of the skills and make-up of lay magistrates and district judges. The authors, Rod Morgan and Neil Russell quoted official records that 4% of magistrates nationally were under 40, whilst 32% were in their 60s. The ethnic diversity of the bench was particularly difficult to measure since 11% were recorded as unknown, though the latter were assumed to be mainly white. On this assumption "the composition of the lay magistracy nationally is now approaching ethnic representativeness, that is two per cent black, two

per cent of Indian sub-continent or Asian origin and one per cent other".⁰⁷ But the authors were concerned that ethnic representation was patchy and "the fit between local benches and the make-up of the local communities they serve is in several instances wide".⁰⁸ They also surveyed a number of benches to assess occupation - 40% of the magistrates were retired and 69% gave as their current or former occupation a professional or managerial position - and concluded the latter occupations were "over-represented in the ranks of the magistracy by between two and four times".⁰⁹

Lord Justice Auld published his Review of the Criminal Courts of England and Wales in 2001, and concluded that the lay magistracy should continue to have a role in presiding over the majority of criminal cases. But he criticised the lack of diversity:

"the magistracy is not a true reflection of the population nationally or of communities locally"¹⁰

and urged that "urgent steps must be taken to remove its largely unrepresentative nature."

When Lord Falconer became Lord Chancellor in 2003, his department predicted a large increase in workload for magistrates, and he determined that new recruits would be more diverse and recruited in a different way.

That year the department published a National Strategy for the Recruitment of Lay Magistrates.¹¹ This quoted Auld's recommendations on how to achieve a more diverse bench: "reviewing the community relations and educational initiatives of benches with a view to better inform the public of their work and to attract more suitable candidates for appointment;

⁰⁶ <http://www.archive.official-documents.co.uk/document/cm50/5074/5074.htm>

⁰⁷ "The Judiciary in the Magistrates' Courts - Morgan, R & Russell, N <http://library.npia.police.uk/docs/homisc/occ-judiciary.pdf>

⁰⁸ Ibid

⁰⁹ Ibid

¹⁰ <http://webarchive.nationalarchives.gov.uk/+http://www.criminal-courts-review.org.uk>

¹¹ http://217.35.77.12/archive/England/papers/justice/pdfs/natstrat_magrecruit_full.pdf

supporting the local Advisory Committees by establishing a properly resourced National Recruitment Strategy aimed not only at candidates for the magistracy but also at their employers; equipping local Advisory Committees with the information to enable them to submit for consideration for appointment candidates that will produce and maintain benches broadly reflective of the communities they serve, including the establishment and maintenance of national and local databases of information on the make-up of the local community and the composition of the local magistracy; instituting a review of the ways in which the role and terms of service of a magistrate might be made more attractive and manageable to a wider range of the community than is presently the case; and persisting with the current search for a substitute for political affiliations as a measure of social balance.”

This strategy led to an extensive research programme, and to an increase in the budget for recruitment. Over £600,000 was spent on advertising on buses to boost recruitment. Research was conducted into the barriers to applying on the part of individuals, into employers’ attitudes to employees becoming magistrates and into the experience of ethnic minority magistrates. The government also announced a lowering of the minimum age to be a magistrate from 27 to 18. This became law in 2004.

Research into the barriers to magistrate recruitment found:

- **Lack of awareness as to whom can apply and how**
- **A strong sense that applications from members of ethnic minorities would not be looked on favourably**
- **A perception among younger non-professional applicants that they would not be considered/ appointed**

There were also concerns about the level of commitment, possible loss of earnings and the potential reaction of employers. The DCA (Department for Constitutional Affairs) announced the launch of a new recruitment website (magistrates.gov.uk), local pilots of ways to boost recruitment, and the handover of responsibility to recruit magistrates to the Judicial Appointments Commission (though the latter didn’t happen).

Lord Falconer focused on diversity of age and ethnicity:

“data from our research reveals that communities feel less confidence in the magistracy if their local bench is not sufficiently reflective of the community.”

The strategy called for some changes to the recruitment process:

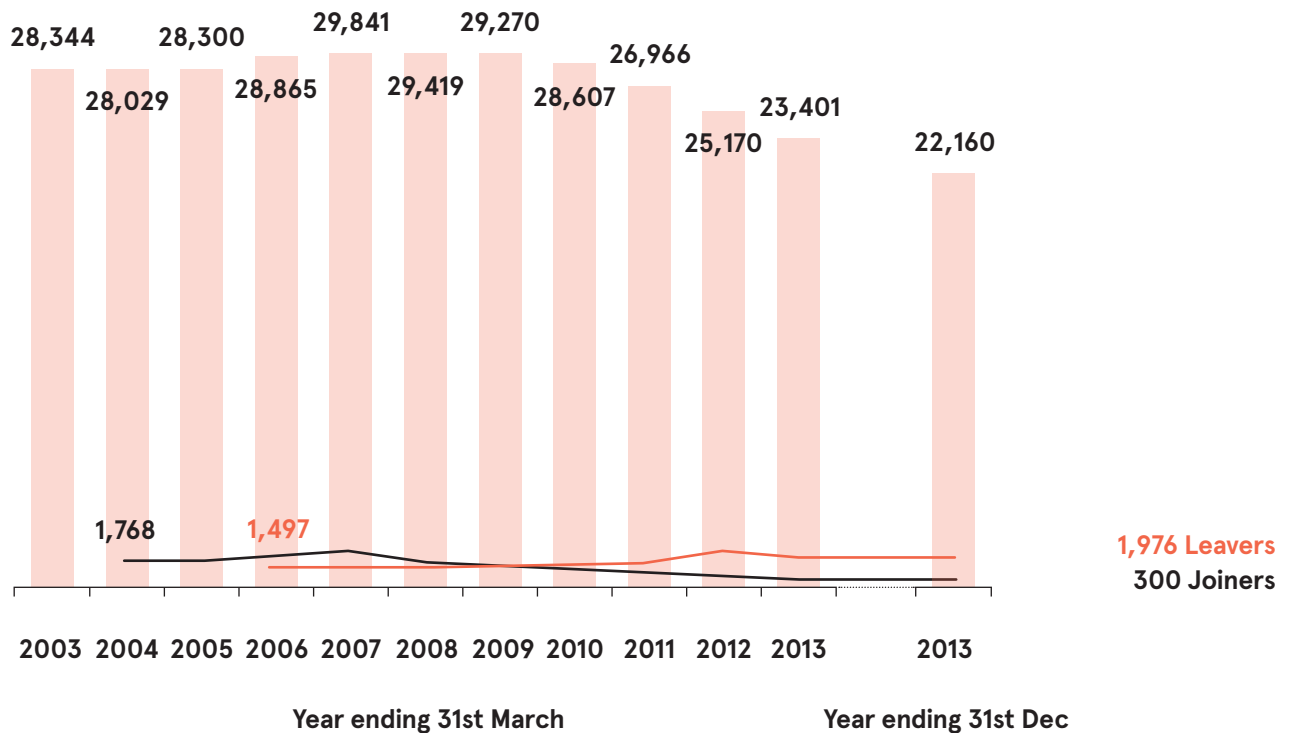
- **A quicker “overall process for appointments”**
- **The introduction of a national call centre for all phone inquiries about the magistracy**
- **The production of a communications toolkit to help local communities with their advertising**

The department also committed to engaging closely with employers “raising the profile of the magistracy more generally”, and to continuing support for a scheme to encourage black and minority ethnic (BAME) applicants run by Operation Black Vote.

In January 2007 the DCA introduced a recruitment toolkit, the last act in the huge burst that started in 2000. This toolkit included guidance on advertising, on targeting under-represented groups, and on engaging with local employers. But in Feb 2007 the 0800 number which had been used for recruitment queries nationally was decommissioned, and the decline in recruitment activity began.

Number of serving magistrates since 2003, showing joining and leaving trends

Source: Judicial Office



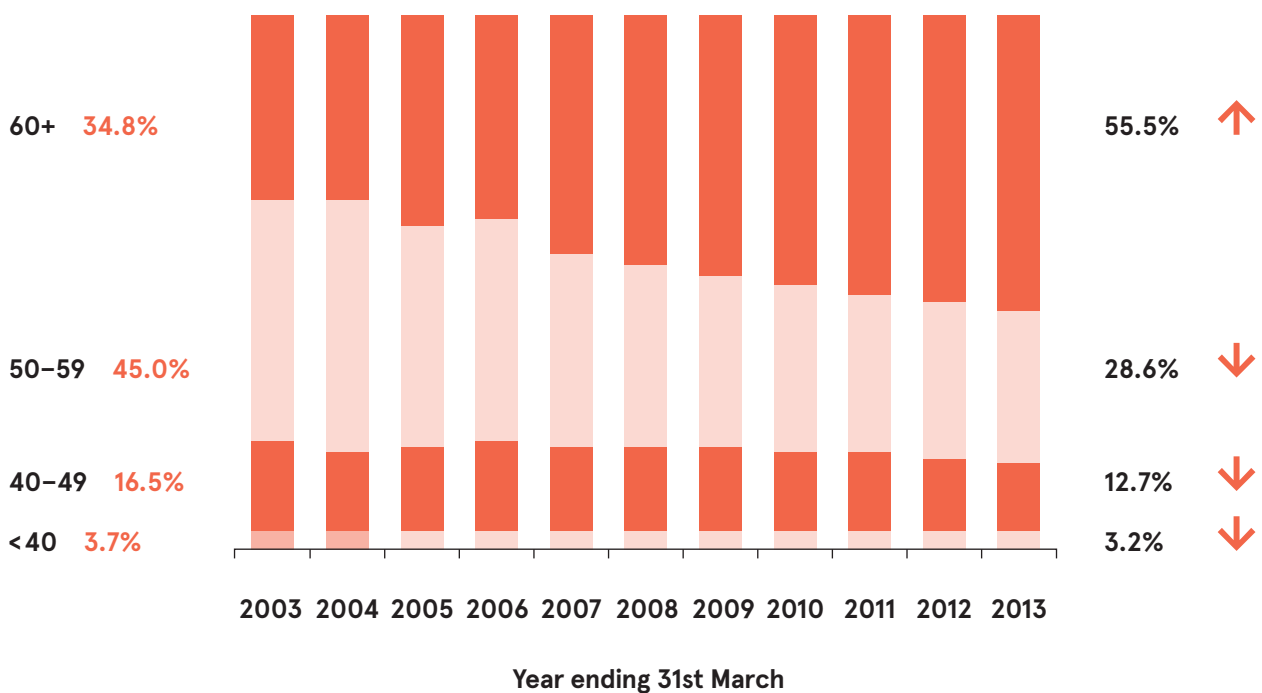
Did the drive to increase the diversity of the magistracy work?

The programme to increase diversity had some positive effect. The proportion of new recruits under 40 did increase in the four years to 2008, but the proportion aged 40-49 decreased. The proportion of BAME magistrates went up, but did not keep pace with the proportion in the population.

There is no research on the campaign to increase diversity, and the reasons why it did not appear to have a significant and lasting impact. Perhaps the communications did not reach the right groups, or the campaign was not sufficiently motivating? Maybe the campaign was simply too short-lived? Or was the recruitment process biased in favour of the usual suspects – white, middle class and older people? Or did, and does, the model of the lay magistrate need radical reform – does the time commitment, financial compensation and culture need changing in order to attract more diverse candidates?

Magistrates by Age Band, as % of total since 2003

Source: Judicial Office



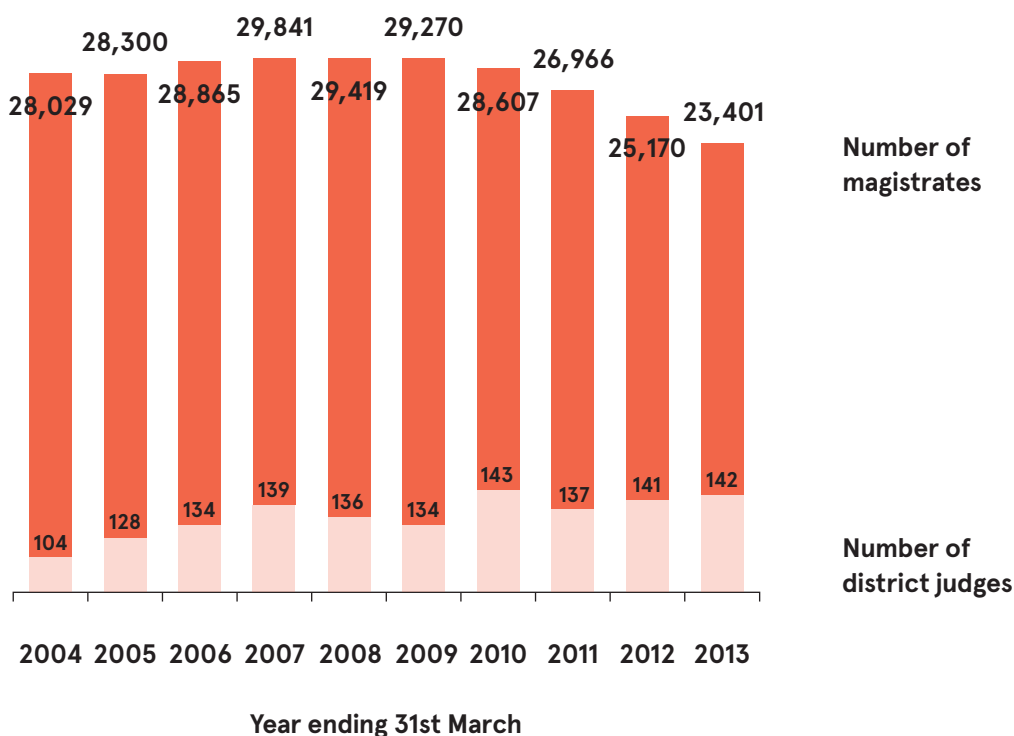
The magistracy now: diversity and recruitment challenges

Since 2007, numbers of magistrates have declined from 29,841 to 22,160 in 2013 – a drop of 8499 or 28%. The number of magistrates has declined because most of those who have resigned or retired have not been replaced. Work in the courts has reduced, as fewer people are prosecuted and processes have become more efficient. More of the work available may be being taken on by district judges, since the numbers of full time district judges working in magistrates' courts has increased from 96 in 2000 to 142 in 2013.¹² Recruitment of lay magistrates is frozen in most areas. The current government web information for those interested in becoming magistrates,¹³ shows only one area (Hampshire) actively recruiting and many areas saying they are unlikely to recruit till 2015.

The number of magistrates needed may also be profoundly affected by a new government proposal to allow magistrates to sit alone on less serious "regulatory" cases (TV licence evasion, uncontested motoring offences). This will reduce the number of magistrates required for court work still further. The impact assessment¹⁴ for the Criminal Justice and Courts Bill suggests the change will save £49-67 million, but does not state what impact the proposal would have on magistrate numbers.

Number of magistrates and district judges over time

Source: Judicial Office



¹² <http://www.judiciary.gov.uk/publications-and-reports/statistics/diversity-stats-and-gen-overview>

¹³ <http://www.justice.gov.uk/downloads/courts/magistrates-advisory-committees.pdf>

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277809/regulatory-cases-ia.pdf

How diverse are magistrates now?

Magistrates in 2013 are considerably older, whiter and more middle class than the general population, so the diversity profile has not significantly improved for a long time. In fact, in the last year it got worse, partly because of the freeze in recruitment. 55.5% magistrates are now 60 and over (up 1.6% in 2012/13 versus the year before) and 15.9% are under 50 (down 0.9 in 2012/13 versus previous year). In 14 areas of England and Wales, over 60% of magistrates are over 60.¹⁵

In recent years there has been a significant increase in new recruits over 60. In 2013 a quarter of new recruits were over 60. This has raised the average age of new recruits to 51.2 in (from 49.2 in 2008/09). The real contrast is with magistrates in 1999. Then one third were in their 60s and a quarter under 50.¹⁶

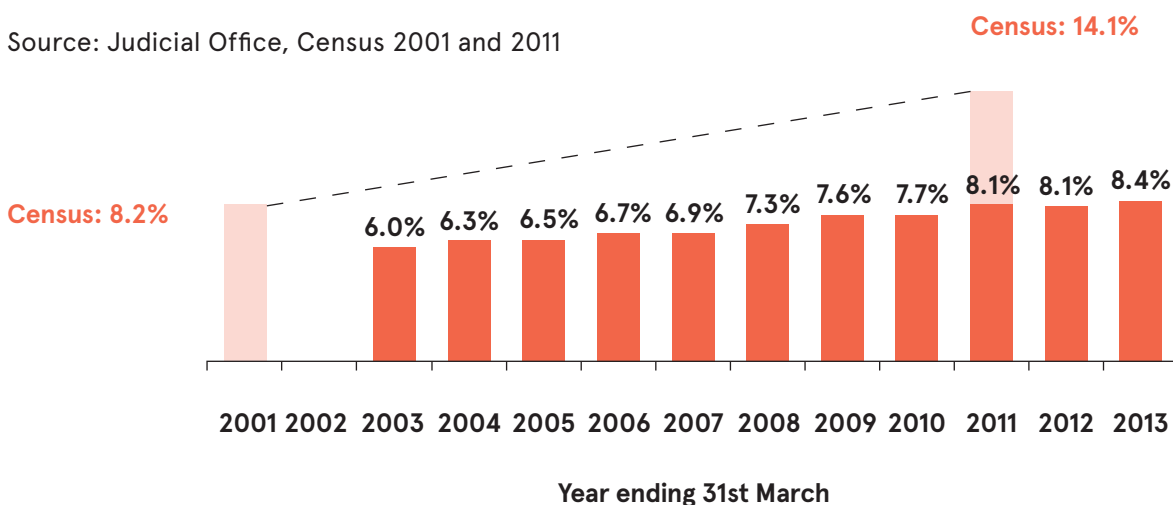
The proportion of magistrates who are white has reduced steadily 2004-2013. Over this period BAME groups have fared differently, with mixed race increasing as a proportion of new recruits and those of Asian origin decreasing. But the number of BAME people in the population has increased at a faster rate than in the magistracy, so it is not now representative

of the national nor, in most cases, local BAME populations. 91.7% of magistrates are white compared to 85.9% of the population. Magistrates of Asian origin are particularly under-represented with 4.3% compared to 6.8% in the population. All BAME groups are under-represented, with some particularly worrying and unexplained recent declines – in the year to April 2013, the number of black magistrates dropped by over a third. However, there are some grounds for hope: 14% of new recruits were BAME last year.¹⁷

The socio-economic profile of magistrates is poorly measured. Most magistrates are only asked once (when they are appointed) what their job/occupation is and the information is never updated. So the data for serving magistrates does not reflect the numbers who have retired since starting. And the occupational groups do not match the census. However the statistics suggest that magistrates are still disproportionately middle class, with over half in manager, senior official or in professional occupations (compared to 28% in the population), and only 1.5% from sales or customer service (compared to 8% in the population).¹⁸

Black & minority ethnic magistrates as % of total since 2003, showing actual recorded population trend

Source: Judicial Office, Census 2001 and 2011



¹⁵ <http://www.judiciary.gov.uk/publications-and-reports/statistics/magistrates-statistics>

¹⁶ <http://library.npia.police.uk/docs/homisc/occ-judiciary.pdf> Appendix A, figure A1

¹⁷ <http://goo.gl/b5f6LM>

¹⁸ <http://www.theyworkforyou.com/wrans/?id=2013-02-01a.368.6&s=beechem+magistrates#g368.7>

Local differences

There are considerable differences in the diversity profile of the magistracy across geographical areas, but comparisons with the population are extremely difficult to make given that the census categorisation of ethnicity is different to that used by the judiciary, and given that magistrate areas are neither the same as local authorities nor government regions.

Some areas have much greater diversity challenges than others. A comparison of regions using the census shows that London magistrates, though more ethnically diverse than any other area, are in fact more dissonant with the local population than any other region. There is a 16.8% difference between the representation of the ethnic population in London and London magistrates, whereas that difference is only 0.6% in Wales and 0.9% in the South West. There is a similar pattern with age, where the difference in the proportion of the population 18-39 between the area and magistrates is most pronounced in London (54.5% in area, 6.6% of magistrates) and least in the South West (39.9% vs 2.3%).

The importance of using local census data is also shown by a comparison of two areas. Lincolnshire, though one of the whitest benches in the country, is in line with its population, while Leicestershire and Rutland is not representative. The Leicestershire and Rutland bench is 85.5% white while the local population is only 78.4%. This discrepancy is for the most part accounted for by the under-representation of those of Asian origin – they make up 13.3% of the population but 9.7% of the bench.

The importance of diversity: the magistrates' view

“We have a very long and a very fine tradition of lay justice, and that’s why it’s essential that we get representative benches.”

“The bench has become skewed. It was very representative at one time, but it isn’t at the moment.”

All the magistrates who attended the focus groups felt that it was important for the magistracy to reflect their community, that is to encompass different characteristics and groups. Magistrates were asked their views on age, ethnicity and class, but they also brought up disability, sexual orientation, and where magistrates live, as important issues. All interviewees were asked to fill in a survey on the importance of the magistracy reflecting the local population. Three quarters of them said it was important/very important that magistrates reflected their community in terms of age and class; even more - 82% - said ethnic representation was important/very important. These magistrates were asked whether they thought their bench did reflect these characteristics. Only 17% felt the magistracy reflected the age profile of their area well, only 15% felt social class was reflected well and 31% thought ethnicity was reflected well. The interviewees did not know the actual data, but many said they would like to.

Employment was also seen as a diversity issue - magistrates wanted the bench to represent those who worked, who were full time mothers/carers, the unemployed and the retired.

“Different parts, chapters of your life bring a different perspective on life. And I think you need somebody who’s in with it all, going to work, dealing with the commute, dealing with the drama of trying to survive, make a living - and likewise you need someone who’s been through all that ... But they [the courts service] really just cater for people who have retired”

Magistrates felt that they should represent the community, because diverse views made for better decision-making, and for a greater understanding of the context of defendants’ lives, and because a lack of diversity on the bench may lead to presumptions of prejudice:

“There is disproportionate representation of Afro-Caribbean, Bangladeshi and Pakistani young men in the criminal justice system. You can’t help but think if there were better role models for them in their communities, if there were more magistrates, more police officers, more probation officers, just more representation across the criminal justice system, perhaps, even if it is an unwitting discrimination going on, then perhaps that could be checked if there were more ethnic minority people actually involved in the administration of the system.”

“It’s like in any business, you try to make sure staff match the community they work in. You all learn collectively from each-other. Having a range of ethnic backgrounds, age, gender just makes you think, allows you to challenge each other - ‘that’s not what it is

like in my world'. It makes you think, yes, I've only got my own little closeted bit"

"You've got to – if not connect, at least perhaps understand some of the people that are appearing before you in court... It's only by relating to them and understanding them that you can deal fairly with them."

"When I started sitting, I remember joining a group of magistrates and hearing some very frightening views about young people, and people with ethnic origins, and I was really scared – and the more I attended, the more I realised I needed to be there. Because it shocked me"

The disproportionate number of older magistrates was clear to all current magistrates, and many felt that the age profile had got older:

"I lose count the number of times the three sitting on the same bench are like me; three grey haired chaps of a certain age"

"I have never seen a young person on the bench, no one in their 20s. We need those people otherwise we are going to miss a whole generation."

Most interviewees felt that young people, if chosen correctly, had sufficient maturity, but one or two interviewees disagreed – they felt there should be a spread of age, but that those in their 20s were too immature. The biggest barriers to recruiting younger

people were perceived to be the challenge of combining employment and/or looking after young children, with sitting as a magistrate (see p25 for employment).

A diversity issue that divided interviewees was retirement age. Many magistrates felt that it was wrong to force magistrates to retire at 70, particularly when jurors are to be allowed to continue to 75.

"I think it is an anomaly that there is still any form of retirement age for magistrates when that no longer exists in employment ... You are being forcibly retired, when we are living in an aging population when 70 is no longer an indication of biological or mental decline"

Others did not agree that the retirement age should be extended to 75 – they felt that monitoring the competence of magistrates over 70 would be difficult, and that the change would make an already aging magistracy even older.

Most interviewees felt that ethnic diversity could and should be improved. Magistrates (particularly those from ethnic minorities) felt that the proportion of BAME colleagues was too low overall, and that many communities were not represented at all.

"I'm often on the bench with people like myself who are white, retired, women – a bench of three women all like me in the adult court when the majority of offenders are young Pakistani men, Polish people, young Romanian people. Our bench is 450 magistrates. Maybe across the board some of that reflects the diversity of the population, but it's not my experience of the bench."

In nearly all the focus groups in England and Wales, magistrates were concerned that East European people were not represented on the bench at all, even where the communities (such as Polish) were very

large. In other areas, magistrates felt particular communities were absent from the bench, eg the Turkish and Cypriot community in North London, or the Somali community in a Welsh city.

One respondent felt that ethnic minority magistrates were often not representative of the ethnic communities they came from – BAME magistrates are the “very vocal”, but young Muslims and the Bengali community are unrepresented. A few magistrates felt that religion itself might be a barrier – that devout Muslims are not interested in becoming magistrates: “there is a big problem in that some of the more strictly orthodox levels of the Muslim religion don’t necessarily accept our law, they are looking more to Sharia law, which is why you won’t get Imam support.” But others were convinced that sustained engagement with Muslim community groups could inspire applications to the magistracy.

In a Welsh city, one of the magistrates also felt that, even amongst Asian magistrates, representation was partial:

“I don’t see anyone Chinese among the magistrates, though there’s a large Chinese community in X. For some weird reason, all the Asian magistrates are Sikhs. I haven’t seen any Muslims.”

All interviewees felt the magistracy was skewed in term of class. They felt there were not enough working class people, of whatever ethnic background. BAME magistrates felt that their peers tended to be community leaders, and/or “highly professional”. There was a perception that the social mix of the magistracy had improved considerably up until c.2007, but had then declined. Magistrates who had been sitting for many years recalled a bench c.1980 dominated by “old red-faced colonels” and ladies in hats – “the big hat brigade...they used to turn up in the big hats in court!” But another magistrate said that when he first joined “there were a lot of magistrates who were either coming from jobs within nationalised industries or from the unions. And that doesn’t happen really any more”, partly because those companies

have been privatised. Others said that working class magistrates had been recruited through the Labour party and the Unions.

Today some magistrates felt that the bench had reverted a little to the days when only the wealthy could afford to sit:

“I’ve never had so many recommendations for golf courses let me tell you! ... Pretty much every male magistrate I talk to plays golf, and they often play golf with each other!”

Many magistrates pointed to a parallel and linked issue to that of class – geographical inclusion and exclusion. They believed passionately in local justice: “as local citizens, I think what we bring is: how would the community feel about this sentence. I think that’s one of the things we have to consider. Will they think it’s fair – has justice been done?” They felt that it was important to know the roads, shops and meeting places in their area so they could better judge the context of each crime. So they wanted magistrates to be drawn not just from the local area, but every part of that local area.

Interviewees felt that magistrates were overwhelmingly drawn from certain (more expensive) areas within the court’s catchment area, with no magistrates drawn from poorer areas. This meant that there was no collective knowledge of those communities and the local streets. The magistrates in one focus group were so concerned by the exclusion of large parts of their city from their bench, that they wanted to map where all the local magistrates lived by postcode. Interviewees were also concerned that the closure of courts would make people who lived far away less likely to apply, and more likely to resign if already sitting.

Other aspects of diversity that were brought up were sexual orientation and disability. Magistrates expressed concern that disabled people were under represented, and that the court environment was not adapted for the needs of many who were physically disabled:

“we’ve had magistrates who are wheelchair users, one of whom was told that she couldn’t leave her electric wheelchair outside the courtroom because it was a hazard.”

There are no statistics on the representation of lesbian, gay, transsexual and bisexual magistrates, but one magistrate felt they too were under-represented:

“I’ve met a few gay people sitting on the bench and as far I’m aware there’s not enough – because we are representing the community, and we get gay defendants... When three men sit together it can sometimes become a bit of a club, and I think that is very detrimental to the magistracy and to decision-making.”

This is supported by research from Stonewall. Their report, *Gay in Britain*,¹⁹ found that half of lesbian, gay and bisexual people would expect to face barriers to becoming a magistrate because of their sexual orientation, and one in six would expect worse treatment than a heterosexual person if appearing before a magistrate for a minor criminal offence.

¹⁹ http://www.stonewall.org.uk/documents/gay_in_britain.pdf

What motivated current magistrates to apply?

Many of the magistrates interviewed had become aware of the magistracy, or had their awareness jogged, by seeing advertisements. One was a social worker but “didn’t know they (magistrates) were volunteers until she saw an ad on the tube.”

Some had a chance exposure to the courts and became inspired. One man (of Chinese origin) had no idea who magistrates were, until he saw a poster in the retiring room when he was doing jury service. He was intrigued, researched on the internet and even did a one day course (which he paid for) on how to become a magistrate. Another visited a court as part of a “Common Purpose” leadership programme, and was encouraged to join by a magistrate there. A soldier had to go to court to support subordinates who had got into trouble with the law. Their lawyers suggested she apply.

Sitting magistrates played an important role in persuading people they knew to apply. A black woman was pulled aside by her boss, who said she would make a “really good magistrate.” Another BAME magistrate went to an event for potential magistrates run by Operation Black Vote, which was attended by 100 people. This sowed the seeds of interest, but it was not until she met a magistrate through work that she actually applied:

“I was a bit nervous because I thought it would have to be people who were qualified, with degrees, or professionals – like headmasters and doctors and so on; and I’m just a non-clinical manager in the NHS. But he really encouraged me to apply, and he said – just try, because they’re looking for people from different backgrounds.”

Sitting magistrates played a powerful role in disabusing potential applicants of misconceptions about the kind of people magistrates were, and in giving those from under-represented groups confidence that their applications would be welcome.

Others who were involved with the courts, or involved in civic life outside the courts, encouraged people to apply to the magistracy. One had her “arm pretty firmly twisted” by the local justice’s clerk. Another “was put forward by a well-known solicitor who was chair of the health authority. It was his idea that I went for this.” Another was a volunteer for Victim Support, and a probation officer suggested applying. Several had been encouraged to apply by their employers – one worked for KPMG, which was “doing a big recruitment process” for the magistracy, another for HMRC.

Magistrates had a wide range of motivations for applying to the magistracy, from altruistic to personal. The most common reason was to “give something back to society.” Magistrates felt that they had enjoyed the fruits of civic life, good government and, in some cases, wealth and wanted to contribute to the benefit of others. One said that being a magistrate “makes a real difference and enables you to pay back something to the society in which you’ve been brought up”, another that “it’s the highest form of civic duty anybody can perform in this country.”

Some magistrates had been motivated by a particular passion for the law and justice. One interviewee had a:

“feeling of unfairness in the way the justice system treats particular groups – both ethnic and economic; [and a] feeling the judiciary is out of touch and not adequately monitored or fully accountable”,

while another wanted to “see whether we could help bring the law into this century – because it’s archaic.” In some cases, this interest in the law had been sparked by jury service.

Some magistrates from ethnic minorities, and/or working class backgrounds, had applied because they felt strongly that people like them should be better represented on the bench, and they had a duty to fill the gap. One wanted to make:

“a contribution as an 'ordinary' person - I felt that there were few working class magistrates and that women were not well represented on the bench.”

Many interviewees wanted to make good use of free time and/or skills in retirement. A nurse was approaching retirement and “wanted to keep my brain active”, another felt that the magistracy “would present new challenges.” One magistrate had been in HR and had “what I thought were transferable skills.”

Some wanted to join the magistracy for career or personal development. One wanted to develop skills to “manage people, conflict resolution, listening, analysing what people are saying.” Another wanted to give back to the community and “it was also something for my own learning – I came to this country age 27, so I’d missed the childhood learning and knowledge of how things are done.” Magistrates saw joining as an opportunity to learn more about their own area and community: “I love X to bits. It’s a great community and I thought what’s my role here?” Another had moved to a new city, and “wanted to get involved somehow.”

One of the strongest common denominators amongst the interviewees was their involvement with wider civic life. They were often already governors of schools, councillors, or volunteering in other ways in their community, very much part of the “civic core”.

How the recruitment process works today

Currently if someone is interested in becoming a magistrate, and their area is one of the few recruiting, they have to contact the secretary to the advisory committee, an official of HMCTS (Her Majesty's Courts and Tribunals Service).

The applicant cannot actually apply to be a magistrate until the window for applications opens. That window tends to be short – often just one month in two years – and applications in most areas are capped.

A first come, first served policy is applied, whereby priority is given to those who apply first. For instance in Berkshire in 2013 there were five vacancies, but only the first twenty applications were considered. This restriction is applied so that fewer interviewees need to be rejected, and so that the time taken by interviews is contained. The problem with capping applications, is that all those who apply before applications are cut off may be from groups that are already well represented (white, middle aged, middle class), while younger and employed people may not be available to send an application at the right time. So it's possible for 50 BAME/under 30 candidates to apply, and all 50 not have their applications considered.

Very few people, not even those with criminal records, are excluded from applying to the magistracy. So technically almost anyone aged 18–70 can apply. The criteria for selection through the first and second interviews are:

- **Good character**
- **Understanding and communication**
- **Social awareness**
- **Maturity and sound temperament**
- **Sound judgement**
- **Commitment and reliability**

There is currently no reference in the guidance to Advisory Committees to diversity of candidates, by age, ethnicity or any other factor. The only under-represented group mentioned are disabled candidates – to ensure reasonable adjustments for interviews and that disability should not be discussed in the interview. However, in terms of social awareness, all candidates should “have respect for, and some understanding (to be developed through training) of, people from different ethnic, cultural or social backgrounds”.²⁰

Individual advisory committees do make efforts to encourage applications from under-represented groups. The Central Kent Advisory Committee recently recruited five magistrates. They ideally wanted some younger and more socially diverse candidates and advertised in the Sittingbourne area because it is a particularly mixed community. However there is no central budget allocated for the promotion of magistrate vacancies, and recruitment costs have to come from local (very constrained) budgets.²¹

²⁰ <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/part-1-nov-2012-revised-lord-chancellors-directions.pdf> p23

²¹ <http://www.theyworkforyou.com/wrans/?id=2013-12-11a.125.6&s=speaker%3A25009#g125.7f> p23

Magistrates' views of the application and interview process

There is an overwhelming consensus that the process has improved in the last thirty years. Older magistrates had been, or knew of others, appointed without any kind of open process whatsoever. In 1970s and 1980s, suitable candidates were phoned up and visited at home by one magistrate who assessed their suitability. Only the "great and good" were considered: "it was a very closed shop at one stage."

Things improved when proper recruitment processes were introduced – open applications, and interviews by a panel. But even then, the process was cloaked in secrecy. In 1983 the Chairman of the Bench said to the candidate they were interviewing "I'm really sorry but I cannot tell you my name and I cannot introduce you to my colleagues." Six years later another woman saw some magistrates who had interviewed her at her swearing in ceremony, but got into trouble when she approached them and referred to their role in interviewing her.

"They used to say to you, 'We were never here and if you see us in court when you get through, don't ever acknowledge us'. It was like joining the freemasons."

It's not clear why secrecy was imposed, but in 1990s the cloak was lifted and today the process is seen by magistrates as fairly open.

The greatest criticism of the process, then and now, is the length of time taken. This seems to have been a problem for at least twenty years, with many candidates waiting two years from initial application to swearing in, and one year being quite common. Now that many areas are only recruiting once every two years, it can easily take four years for someone very motivated to get through the process.

Magistrates were concerned about the slowness for a number of reasons:

- **It made the whole process more stressful as candidates waited for months to learn if they had progressed, "at each stage you are told when you are likely to hear, and in my experience every single time it didn't happen when they said it was going to. It was another two months, three months further on."**
- **Many were concerned that "if it takes too long, people can lose interest" and take on other voluntary commitments.**
- **Some believed the length of the process could blight career prospects. One woman felt unable to apply for promotion for nearly five years: "It took 6 months for me to persuade my employer to let me do it [apply]. Then it took almost 2 years to get appointed, during which time I couldn't apply for a new role because I had to say that I've applied for this thing, but I don't know what impact it will have on my job. It held my career back by that period of time. And once I was appointed, I wanted to be doing it for a year or two before applying for a new role, to see how it worked out. So it left me in limbo."**

There was also criticism of the time taken between appointment and beginning to sit. One woman booked time off work after appointment, in order to concentrate on her initial training and sittings, only to be told that she was not going to start sitting for months. She threatened to resign if the administrators did not re-organise the schedule.

All interviewees appreciated that it took time to check references and get CRB checks. A few interviewees felt this explained the long time taken, but most felt the process could be speeded up, and some knew of candidates who had been processed within weeks.

All candidates fill in an application form in which they have to cite three referees. They also have to get the agreement of their employer (if they have one) before they apply, and get them to be a referee. Some magistrates felt that it would be difficult for many, particularly for students, for those not in work or casually employed to get three personal references, including a current employer. Others thought that the length and nature of the form might be off-putting to younger and less educated people:

“some people might find completing the form a tad difficult and yet they might have an immense amount of common sense – streetwise.”

One interviewee suggested that some candidates might benefit from help filling in the form, “for example a ‘buddy’ approach, to help people. Because people know what they know, but they can’t always express it in a formulaic way.” But some thought the form was quite fair: “it’s just about whether you fit the criteria.”

Views on interviews were mixed, and some were based on experience several years ago. No-one found the interviews easy, and some found them too aggressive: “horrendous, worst experience of my life.” Another recalled:

“I was exhausted. Every inch of me had been put under the microscope and everything that I’d ever thought and held dear was completely questioned.”

However, the very difficulty of the interviews meant candidates who succeeded felt a huge sense of achievement.

One magistrate, who was familiar with the current process, felt the whole interview process should be reformed:

“we’re trying to do something in 2013, but applying the methods we used in 1813, when it comes to selecting people. In particular their experience of interviewing people, and being able to draw them out.”

Another felt that the interview process may be biased against those not used to debating: “when they start to challenge you, I think there is a bit of an effect of your background and your occupation on whether or not you feel you can debate back actively, or whether you feel that’s the wrong answer and you have to give another one.” One magistrate felt that the justice’s clerk should be an observer, not secretary, of the interview panel, and another felt that the whole process should be handed to a different body:

“there’s a need for an independent appointments commission, as opposed to the local appointments.”

How to recruit more diverse magistrates

“There are many barriers to diversity, some are personal barriers to people, some are perceptions, and some [potential magistrates] aren’t interested because there is no money in it.”

Interviewees felt it would be totally possible to recruit from the kind of groups which were under-represented, but that it needed resources (time and money), new approaches and determination. The greatest single barrier to overcome was public lack of knowledge of the criminal justice system, and of the role of magistrates in it. A new recruit (of Chinese origin) asked friends from the Chinese community, who were second and third generation in England, about becoming a magistrate but ‘nobody had ever heard about it’. Many interviewees said people assumed magistrates were paid, and/or had legal qualifications, and one felt that “a lot of the communities see us as part of the police”.

One magistrate of Asian origin felt that many of his own community would never be attracted to volunteering: “my circle of friends from minority ethnic groups, if there is no money they don’t want to know, they are so focused into earning money and not everyone wants to give their spare time or their time free”. But another BAME magistrate disagreed: “when I tell people what I do, and how I do it, they think I’m bloody brilliant! And they ask me – well, how can we get involved? They see it as a privilege, they see it as something special”.

Magistrates felt that targeting was crucial. Many ideas were put forward for recruiting under-represented groups, including:

• Advertising

“The work we are doing is not highlighted enough. We are not going on Twitter or Facebook and explaining to youngsters or others about what’s actually going on; what sort of things we are involved in ... Community is what you make of it and we are not saying anything like that to people; people say this is somebody else’s business but not mine”

Given that many of the interviewees had been prompted to apply by an advertisement, they were supportive of using mainstream, specialist and social media to spread the word.

• Outreach

“Go to big events; have a stand, explaining what we offer. Meet the public, talk to them, explain the role.”

One interviewee felt swearing in ceremonies could be exploited “they could invite schools, colleges, or whoever they are targeting. The swearing in could be made more of a civic thing, like they do with citizenship ceremonies.”

Another magistrate said that they should use their quarterly meetings to spread the word: “they used to be held at a golf club. The last place on earth I think we should hold quarterly meetings! They could be held for example at the Sikh temple – and then say at the end: if you’re interested, come and join us.”

Many pointed out that the Magistrates in the Community programme already did valuable work in increasing public awareness of the role of magistrates in the criminal justice system. However others were concerned that those attracting new recruits needed to reach into unfamiliar territory.

“Do we go into organisations that aren’t the stereotypical ones and speak to them? Do we forsake the rotary alliance, the roundtables, the ladies circles, the church groups; do we go wider?”

“I think they don’t try hard enough... There’s a different approach you take with different ethnic groups. You always get the same kind of people who will respond to things, who are proactive, who complain about things, get involved ... But we want the people who don’t do that. You have to communicate to them [using] different mechanisms... There’s community groups ... local schools, there’s the local pub”.

• Support to apply

In the case of some communities, interviewees felt that the barriers to inclusion in the magistracy were more fundamental.

One magistrate, who sat on her local advisory committee, said the whole system was set up for highly educated people. She felt that working class people would never be represented:

“unless you have support structures in place for people who leave school early, do not necessarily know how to communicate in a way that a court needs, cannot skim read.”

This magistrate felt that working class candidates needed mentoring through the application process, as well as ongoing support. Other magistrates felt the employment issue was a big barrier to attracting working class candidates – that it’s impossible for people on low wages to sacrifice a shift, if their employer would not pay them for it. One magistrate pointed out that even the childcare allowance is better suited to middle class mothers. It will cover the costs of registered childcare. But the costs of informal childcare – care by a friend or relative – are not covered. Since working class mothers are more likely to use informal childcare, they face an additional barrier.

Many perceived language to be a key barrier to attracting some BAME communities. Most interviewees felt that this barrier was insuperable, but a few disagreed. One interviewee felt that “to encourage greater diversity, you need to think about language” and gave Tower Hamlets Council as an example of a civic organisation which had facilitated those with poorer language skills through having meetings which are “semi-conducted in Bengali”, with translators.

Not all interviewees felt that the application process should be adapted to better suit people with poorer language, literacy and oral skills. They felt that the role required a fairly high level of those skills, and the recruitment process had to reflect that.

- **Use positive discrimination**

Magistrates who had sat on advisory committees said that, in years past, they had been able to use diversity in their criteria for selection. They were allowed to factor in all aspects of diversity, including occupation:

“for example if you had too many civil servants (as we did) or too many teachers, you would appoint someone else in preference bearing in mind things like gender, age and ethnicity.”

Since c.2007 they were not allowed to consider any criteria apart from merit in selection. This was seen as a “retrograde step, because it does take away that ability to balance a bench, to make it represent the community.”

The challenges of combining employment with the magistracy

The problem of reluctant employers was perceived as one of the biggest barriers to attracting under-represented groups to the magistracy, both younger people, but also BAME and working class candidates.

The law supports those who want to combine employment with being a magistrate:

“You must, by law, allow an employee who is a magistrate reasonable time off work to carry out their duties”²².

Reasonable time off is quoted as the minimum number of sittings – 13 full days, or the equivalent in half days. But in reality, employees are required to ask their employers for permission to apply to the magistracy, and few employers seem aware of their legal obligations. The process of challenging an employer who makes life difficult for a prospective or sitting magistrate places the onus on the individual to launch a grievance. Unsurprisingly, no-one does.

Some employers were said to be accommodating, a few even supportive. One said of his boss “his view is that by supporting two magistrates, it’s his payback. It’s his social payback to the city.” A magistrate worked for the Welsh government: “we are actively encouraged and it isn’t a problem whatsoever.” Some had even been encouraged to apply by their employer: “they had a celebration when I was appointed, they marked it in their journal which goes round the firm. But it’s important that I keep reminding them how lucky they are to have a magistrate on their staff! It’s your responsibility as well as your employers.”

Some employers have been and are supportive, but the overwhelming view of interviewees was that potential and sitting magistrates who are employed face huge barriers and that these barriers had got worse in recent years. Reluctant employers stop people applying.

“My son did jury service, enjoyed it, so I suggested he become a magistrate. He got all the information and his company flatly refused to give him time off. They said if you want to do it, you need to take time out of your holiday. And that’s not fair, is it?”

Another magistrate worked in local government: “My boss applied and didn’t get it, and he stopped me from having the special leave, so I had to go over his head to see if I could get it approved.”

Some employers felt that the magistracy took too much time and asked their employees to stop:

“so many employers’ attitudes have hardened. Where I used to work, because I was in HR, I used to sit one day a fortnight because then I could catch-up from home. But since I’ve left there have been people who have had the conversation ‘do you want a job or do you want to be a magistrate?’”

²² <https://www.gov.uk/giving-staff-time-off-for-magistrate-duty>

Some magistrates who were employed made huge sacrifices in money and time in order to sit. Many magistrates used some of their leave or weekend to sit, because their employer refused them the time off to comply with the minimum sitting requirement (13 days p.a). A manager in the NHS was allowed eight days off work time, but had to take the remaining five days in her own time. A new BAME recruit had approached his employer (a bank) for permission to apply and was told he could not have any working time off, so was using up his leave for all thirteen of his sitting days.

Many employees did overtime in order to sit. A teacher in a college had to work evenings to make up for the time he'd missed during the day. Another recollected: "I used to go back to work after court, and be working on my own in a 5 storey building." Even a magistrate employee of HMCTS (Her Majesty's Courts and Tribunals Service) was said to have had problems with her employer. Her colleagues related that she was not allowed to take paid time or annual leave to sit.

Interviewees were convinced that being a magistrate could be a barrier to promotion. One had sat on interview panels where candidates who were magistrates never got appointed, though this was not cited as the reason. Another "was told I'd never be considered for another position in the firm while I was sitting."

Many suffered significant financial loss through sitting. Employers do not have to pay employees for the time taken sitting as a magistrate. Where employers won't pay, the magistrate can claim an allowance of up to £93.27 a day, which may be less than their equivalent pay.

Self-employed people and freelancers can, in theory, claim up to £116.58 per day for loss of earnings but interviewees said this was, in reality, difficult to claim since they had to provide evidence of what they would have earned:

"if I had a day to sit then that was a day [on] which I could not look for work and so I couldn't get paid. I couldn't claim expenses because

I couldn't prove what I was losing; I was effectively subsidising the magistracy for my entire time."

Another echoed this view: "for self-employed magistrates, the hurdle now to get loss of earnings is so great that many don't bother."

Many interviewees felt that the situation had got worse – that public sector employers like schools, the civil service and the NHS were more reluctant to give employees time off, and that the court service did not understand the needs of employed magistrates "because of the hours, the flexibility, the way they expect you to drop everything at the drop of the hat – and they send you 'snotty emails' complaining that you haven't done all your sessions." Some magistrates said a new rota system for timetabling sittings was playing havoc with magistrates' ability to juggle work and the bench. And the financial squeeze inspired resentment:

"if you are having to pay for the privilege of coming to court and you are having to pay for updates on your magistrates guidelines which you now have to do, then you start to think I'm a volunteer and I'm having to pay for this privilege!"

Some magistrates were, however, sympathetic to the difficulties faced by employers. One had moved from the public to the voluntary sector: "in reality I've been really grateful for my employers giving me any time off to do it, because when you are working for a voluntary organisation, you not being in the office for a day is money they are losing."

Another magistrate had been part of the Territorial Army and felt that magistrates could learn from their approach – the TA promotes itself actively to businesses. He felt those promoting the magistracy should say to employers: "actually you are going to get a lot more back if someone is a magistrate."

Some interviewees felt the difficulties faced by working magistrates could not be resolved by tinkering –that the government were only paying lip service to wanting greater diversity “if we do not change this system, and the attitudes.” One called for a proper financial allowance, similar to that received by councillors. Another suggested employers should receive recompense for absent employees, and a third advocated a change in the law:

“obviously people have to put their careers first. So unless there’s some kind of legislation which says it’s protected, like jury service, up to a certain number of days – these things will always be a problem.”

Other magistrates pointed out that, as well as employed people, the magistracy also lacked unemployed people – that they had met very few magistrates (if any) on benefits.

How lay magistrates differ from judges and from other volunteers in their diversity

A comparison with volunteers and paid judges who fulfil a similar role shows that greater diversity can be achieved. In Scotland, Children's Panels make decisions as to what should happen to children who have serious welfare issues, or have offended. Each panel is similar to a combined family court and youth court, and is presided over by volunteers. The age profile of Scottish panel members is considerably younger than lay magistrates with 18.3% under 40 compared to 3.2% in England and Wales, and 28.5% over 60 in Scotland compared to 55.5% in England and Wales. In terms of gender, Scottish panels are less balanced than magistrates, since women make up 61% of members.

District judges in England and Wales do more or less the same "job" as lay magistrates – presiding over crime and family cases in magistrates' courts. District Judges work full time in the courts and Deputy District Judges sit part time – a minimum of 15 days a year. District Judges in magistrates' courts are predominantly male (70%) and there is no good data on their social background. But they are younger than lay magistrates (41% of DJs and 29% of Deputy DJs are over 60) and, though less ethnically diverse, look as if they will catch up soon – 2.8% of DJs and 7.6% Deputy DJs are BAME.

Can we learn from the recruitment of salaried judges?

Recruitment to the paid judiciary and the lay magistracy are organised in different ways by different organisations.

• Lay magistracy

Recruitment is led by local advisory committees. Each advisory committee is a non departmental public body and consists of magistrates and non magistrates and is chaired by the local Lord Lieutenant (appointed by the Queen). Advisory committee vacancies are publicly advertised. 71% of those who sit on Advisory Committees are over 55. The Advisory Committee is tasked with recruiting the requisite number of magistrates each year – that number being given to them by HMCTS. Each Advisory Committee is supported by HMCTS administrative staff. The process and criteria for appointment are laid down in detailed guidance.²³

• Paid judiciary

The paid judiciary has always been appointed using a different process. Before 2003 the criteria and system for appointment were opaque and informal. Those whom the Lord Chancellor wished to appoint were often literally tapped on the shoulder, and accepted without interview. This process was considered unfair and discriminatory. But in recent years that process has been completely reformed, partly to increase diversity.

In 2003 Lord Falconer announced that judicial appointments were to be taken out of the control of government ministers. The Constitutional Reform Act 2005 established the Judicial Appointments Commission (JAC) – an independent body which now recruits all paid judiciary except the Supreme Court and some other very senior posts.

The JAC has a remit to increase the diversity of the judiciary and has focussed on increasing the number of women and BAME judges. The JAC has introduced equal opportunities principles into judicial recruitment, and succeeded in slightly increasing the representation of certain groups.

However, it has been criticised for making insufficient progress. So much so, that new legislation was introduced in the Crime and Courts Act 2013 to enable the Judicial Appointments Commission to “allow for positive discrimination where two persons are of equal merit in order to increase diversity within the group of persons who are the judges of the relevant court.”²⁴

The same bill also provides for the encouragement of diversity across of the whole of the judiciary:

“each of the Lord Chancellor and the Lord Chief Justice of England and Wales must take such steps as that office-holder considers appropriate for the purpose of encouraging judicial diversity.”²⁵

There has been more progress in increasing the diversity of the paid judiciary than there has recently in the magistracy. The JAC has expertise in recruitment and is now allowed to use positive discrimination in some circumstances. Advisory Committees are not permitted to do the same. Thus there may be advantages in the JAC either taking on, or having an advisory role in, magistrate recruitment.

²³ <http://www.judiciary.gov.uk/publications-and-reports/guidance/2011/advisory-committees-justices-peace#headingAnchor1>

²⁴ <http://uksblog.com/crime-and-courts-bill-a-brief-update>

²⁵ <http://www.legislation.gov.uk/ukpga/2013/22/schedule/13/part/2/enacted>

Government policy on magistrate diversity and recruitment

The era of encouraging applications to the magistracy from under-represented groups appears to be over. A drive for diversity does not appear in any current national communication about joining the magistracy, nor in any of the guidance for advisory committees about recruitment. In fact even where there are more suitable candidates than vacancies, the committee cannot use diversity as a criterion in choosing whom to appoint.

The only policy which attempts to influence diversity is that on appointing magistrates over 65. Magistrates are allowed to sit until they are 70, but anyone 64 or over, who applies for the magistracy, receives a letter²⁶ strongly encouraging them to withdraw their application.

The incumbent Senior Presiding Judge, Lord Justice Gross, spoke in 2012 of the declining work in the magistrates' courts and said recruitment must adjust:

“a freeze on recruitment would no doubt help with sittings (where we have too many magistrates) but, if persisted in, would leave the Magistracy with a very curious age profile and some unfortunate gaps within a few years. Recruitment cannot therefore be a simple arithmetical/mechanistic exercise.”²⁷

It is not yet clear how the judiciary and government intend to avoid the “curious age profile” or, as directed in the Crime and Courts Act 2013, encourage judicial diversity in the case of lay magistrates.

The Senior Judiciary published a statement on judicial diversity in December 2013 stating that they:

“are convinced of the benefits of a more diverse judiciary and are committed to supporting the development of the judiciary in ways that support greater diversity.”²⁸

They proposed that trends should be monitored annually by a new diversity committee and they have commissioned a strategy for increasing the diversity of the judiciary of England and Wales. However, no mention is made in this document of lay magistrates.

²⁶ <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/appendix-2a-letter-applicants-aged-65-and-above-or-would-be-at-time-of-appointment.pdf>

²⁷ <https://judiciary.sut1.co.uk/docs/news/speeches/speech-gross-lj-nbcf-210912.pdf>

²⁸ <https://judiciary.sut1.co.uk/docs/news/speeches/speech-gross-lj-nbcf-210912.pdf>

Recommendations

“It comes back to the question, does the man in the street actually know what magistrates do, and that anyone can apply and it doesn't matter who you are. I think they have got this picture of what a magistrate is – a grey haired man or woman sitting on the bench”

The numbers of magistrates being recruited each year is small – in 2013, it was 300. Within the constraints of this low recruitment, the following changes could increase diversity:

01 Increase awareness of the magistracy among under-represented groups, and promote joining

At the moment there is very little active promotion of the magistracy to anyone, let alone people from under represented groups, and no budget for that promotion. So it is likely that the tiny number of applicants who are interviewed are the usual suspects.

02. Map the gaps: find out more about current and potential magistrates

Little is known about the class, occupation, sexual orientation, faith, ethnicity, disability, employment and location of sitting magistrates, of those who apply to the magistracy and those who are accepted. Greater knowledge of these aspects of diversity, and how the magistracy compares with the population as a whole and in each area, would enable recruiters to know what the gaps are and be able to target them.

03. Improve retention

919 magistrates resigned in 2013, of which a worrying 12.3% were BAME. Find out the real reasons why magistrates are choosing to leave and particularly focus on retaining younger, BAME and working class magistrates.

04. Change the application process

Review the whole application process to ensure it is accessible and inviting to under-represented groups who wish to become magistrates. Consider a “buddy” system to support applicants with little education. All applications for vacancies should be considered, not just the first who apply. Consider positive action in putting forward candidates for interview – ensuring that however many candidates are interviewed, a proportion are from under-represented groups. This would at least ensure that representatives of under-represented groups have a chance of becoming a magistrate. Allow interview panels to favour a candidate from an under-represented group, where two candidates are equally suitable (as already happens for paid judiciary).

05. Change the recruiting body

All paid judiciary appointments are handled by the Judicial Appointments Commission, which has an expertise in recruiting from under-represented groups and in ensuring that the application process does not discriminate against them. They could take over the recruitment of magistrates from advisory committees. However, if this policy were pursued, the government should give magistrates a key role in recruiting through the Judicial Appointments Commission.

06. Exploit the power of the personal ask

Despite low morale in the magistracy, interviewees for our research were keen to help recruit more diverse candidates. They had contacts, ideas and enthusiasm, but said no-one ever asked them to get involved. Research shows that the most powerful motivator to volunteer, is being asked in person by someone you know and respect. Sitting magistrates, particularly those from under-represented groups, need to be involved in any recruitment drive.

07. Make it easier to be a magistrate with a job

Potential and sitting magistrates feel on their own in dealing with unsupportive employers. Employers stop people applying, make those who choose to become magistrates sit in their holidays, and impede their career prospects. Given that sitting as a magistrate is a public service, this is an unsustainable situation. The government has a number of options:

- i. Use nudge theory to encourage employers to be supportive of the magistracy. Give public praise to those who encourage employees to apply, and who support those appointed. Market the magistracy to employers as a route to improve the skills of employees (as the Territorial Army does)
- ii. Persuade large public sector employers (including the civil service) to support the magistracy
- iii. Offer legal advice and support to applicants and sitting magistrates who have difficult employers
- iv. Change the law so people have an absolute right to time off to sit
- v. Include support for magistrate employees in the commissioning criteria for large public contracts
- vi. Work with the corporate social responsibility teams at large national employers with existing diverse workforces

08. Review the model of the magistrates' "contract"

The terms and conditions of being a magistrate (expenses, financial recompense, number of compulsory sittings and their timings), may pose considerable psychological as well as practical barriers to the recruitment and retention of magistrates from under-represented groups. In New Zealand they have introduced paid community magistrates. They are non lawyers and sit part-time, but they receive a standard payment per day that they sit.²⁹ Radical proposals like this are worth considering for England and Wales.

These changes may benefit magistrate diversity but, without increasing magistrate recruitment, they are likely to have limited impact. The current challenge is that the work available in magistrates' courts is contracting, so there is less demand for judges in those courts. The government's new proposal to allow magistrates to sit on their own is likely to reduce the work available for magistrates still further. So, it may be necessary to significantly increase recruitment in order to have a substantial impact on diversity.

09. Increase the number of magistrates recruited

- i. By delegating more crown court work to magistrates' courts and ensuring the extra work is done by magistrates. One way of achieving this would be to increase magistrates' sentencing powers
- ii. By restricting the maximum number of sittings each existing magistrate does
- iii. By introducing fixed tenure for magistrates, of say ten years to allow an increase in "churn"
- iv. By freezing recruitment of district judges ie not replacing those who retire

Conclusion

Magistrate recruitment is facing a crisis. The amount of court work is falling, so fewer magistrates are needed. The number of magistrates is in free-fall with a decline of 26% since 2007, with the steepest fall ever in the last two years (down 3010 April 2012–Dec 2013). Magistrates are both retiring and resigning, and not being replaced. Recruitment is frozen in most areas with those who do recruit using a first come, first served principle to limit the number of candidates considered. This method is likely to reduce diversity. Lay magistrates are in some ways less diverse than in 2000 – certainly older, less representative of England and Wales’ BAME population and possibly more middle class. And thousands of magistrates are due to retire in the next few years. Magistrates themselves are calling for their retirement age to be increased from 70 to 75. The crisis lies in the lack of policy or strategy to deal with the situation. A lot of government and judicial attention has been paid to improving diversity in the salaried judiciary, particularly at higher levels. Indeed the Judicial Appointments Commission was set up to ensure the appointments process is fair and open. But the situation of magistrates needs as much attention. The recruitment process is dealt with by HMCTS (Her Majesty’s Courts and Tribunals Service), the Judicial Office and advisory committees, but the shrinking and aging magistracy seems not to be on the agenda of politicians. If the lay magistracy is to remain a key part of the criminal justice system, it must become more representative of the communities it serves. This involves thinking radically about who magistrates are, how they are recruited and what their commitment needs to be.

Transform Justice
43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk

**Transform
Justice**