

Future Courts



A new vision for summary justice

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Executive Summary

Background

The Ministry of Justice is dealing with one of the most challenging budget settlements of any government department. Its services are largely demand-led and it has very little meaningful control over the volumes of people who use them; it cannot easily influence the numbers entering the courts system, requiring legal aid or those sentenced to probation or prison terms.

In the autumn of 2010, when Policy Exchange conducted a review of every major department's prospects for being able to reduce spending by 25%, we concluded that the Ministry of Justice was in a very difficult situation. In fact, we said that there was a risk that cuts of more than 25% might threaten key government policy objectives – or even, in extremis, risk public safety.

Three and a half years on, and three years before the end of the current Spending Review, it must be said that the Department appears, on the surface, to be coping relatively well. The last Justice Secretary Ken Clarke sought to arrest the predicted rises in the prison population, negating the need for significant additional capacity. He also closed a large number of underused and inefficient courts, as Policy Exchange had suggested in that 2010 paper.

The current Justice Secretary, Chris Grayling, has implemented controversial restrictions to legal aid entitlements and scrapped a programme of prison competition in favour of spreading a low-cost staffing model across the entire prison estate. He also plans to outsource a large part on the probation service by the end of 2014, with innovative plans for payment-by-results to drive performance improvements and cut reoffending.

However, the department is only halfway there. Real challenges remain and further savings will be required – some of which may fundamentally change the future shape and size of the justice system. The courts system in particular is facing a huge challenge, needing to deliver a 38% saving between 2012 and 2016.

There is also a risk that, in the understandable push for savings at this scale, the department may neglect the thing that, in our view, really holds the justice system back – the lack of innovation and risk-taking on the front-line. As ever, we desperately need reforms that encourage the conception, adoption and scaling of new ideas – and a department that is interested in those ideas, willing to facilitate their development and ready to work with local areas to make them happen on the ground.

This paper is an attempt to look in depth at one of the areas that is likely to come under especially serious pressure in the next few years – the magistrates' court. We aim to outline a positive vision for these courts – one which values, protects and advances the principle of local, neighbourhood justice. At the same time, we propose steps that would create a more innovative culture – one more

geared towards changing the behaviour of offenders and stopping them coming back into the system again and again.

Three trends changing the face of the magistrates' court

Volunteer magistrates hear over 90% of criminal cases in England and Wales. They preserve the unique principle that our fellow countrymen cannot be convicted, and remain convicted, of a crime unless lay people (either in the form of juries or magistrates) agree on the matter of the defendant's guilt.¹ But this system of magistrates' courts, which recently celebrated its 650th anniversary, is gradually being transformed. Three long-term trends are slowly, surely but fundamentally changing the face of how the criminal justice system works.

1. **Court closures:** Large programmes of court closures and mergers by successive governments have reduced the overall footprint of the court estate and, in the process, reduced the running costs of the courts service.
2. **Reduced business:** A long-term decline in crime combined with the proliferation of out-of-court disposals (such as simple cautions or fixed penalty notices) has seen courtrooms increasingly sitting empty, as the volume of court business continues to drop.
3. **Decline of the magistracy:** The number of lay magistrates dispensing justice in criminal courts is falling, with increasing use instead of paid, legally qualified judges. Meanwhile, recruitment of new magistrates is grinding to a halt. This has coincided with the creeping centralisation of the courts service, impinging on magistrates' discretion and ability to run their own courtrooms.

There is little doubt that these trends will have, by accident or design, reduced the cost of administering justice over the past decade. It is equally certain that policy levers such as further court closures will be under active consideration by the Ministry of Justice as it attempts to deal with its difficult budget settlement.

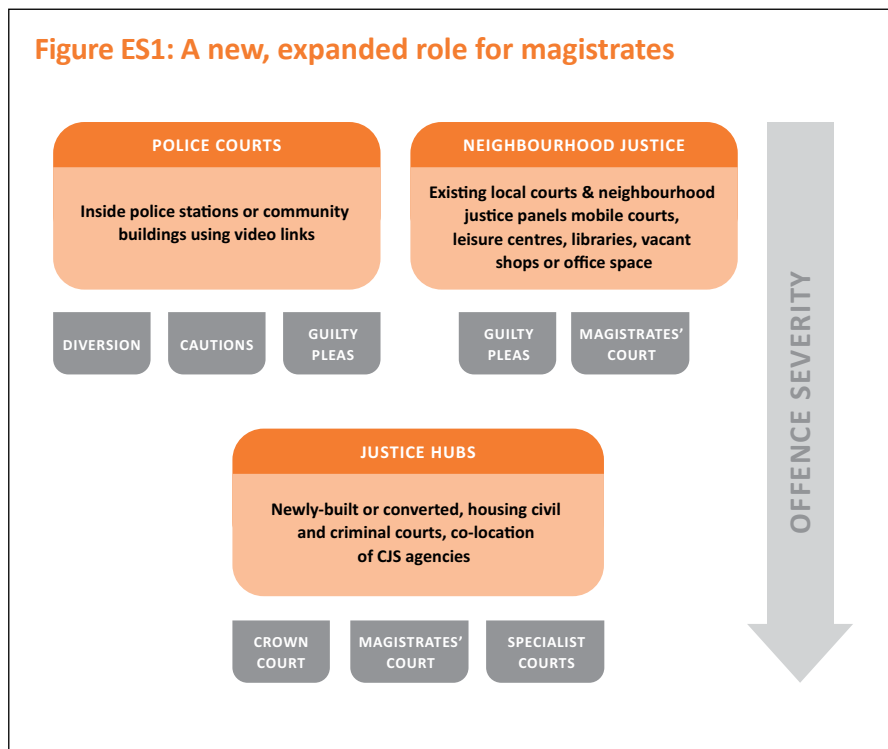
If these trends accelerate quickly (as may be inevitable), our contention is that, without reform, the result could well be an unintended yet rapid and wholesale change in the way justice is done. A failure to reform in the right way in the next few years could produce a terminal decline in the use of lay magistrates, courts that are more remote and inaccessible to the public, and a criminal justice system that might be more efficient but will actually be less effective.

We do not believe it is an exaggeration to say that the notion of local justice could come under threat, as perhaps never before. But we are realistic about the choices facing policymakers. We have not, for instance, found anyone who believes that the court estate, as currently constituted, is fit for purpose. But if we are indeed to close hundreds of existing underused courts, the key questions should be: how do we protect and grow the local, neighbourhood justice landscape? And how can we take the opportunity of this burning platform to reconfigure what the court system looks like and improve the service as a whole?

In fact, despite the changes coming down the track, these straitened times do offer real opportunities to reshape, rethink and revitalise a courts system and a magistracy that has spent a decade feeling demoralised and under-appreciated, and reimagine a local justice landscape that has pockets of innovative practice and creative promise, but too often suffers from a risk-averse, 'ask permission' culture.

¹ They also perform a variety of civil functions, not least in the family court. But this report's main focus is the criminal justice system

Our vision is of a courts system that reacts in the right way to the structural changes in the offering: a system that is not constrained by old thinking about buildings or procedures; a system where instead of asking permission from the centre, practitioners are inspired to innovate and try new things; a system that is more connected to local communities and services, not less; above all, a system that is no longer process-focused and mechanistic, but is more structured around solving problems and really geared towards driving behaviour change.



At the heart of our vision for future courts is a new role for the lay magistracy. These volunteers currently sit in the magistrates' court for around 20 days a year. Their basic job, of hearing cases as a bench of three, has not changed for centuries. But our vision is of a much wider role, with magistrates not only sitting in conventional courts, but also playing a more active role in dispensing summary justice, using their authority to supervise offenders in the community and building public confidence in the justice system.

A new vision for neighbourhood justice

Swifter justice, dispensed locally, should be central to future courts. We outline a series of proposals that would deliver this, including a proposal to locate magistrates inside police stations. Newly-created Police Courts would see magistrates administering justice on the spot with those who have pleaded guilty, radically reducing the timespan between offence, charge and sentence. Magistrates in police stations would also be in a position to oversee the administration of out-of-court disposals such as cautions for more serious offences. They would also be able to manage offenders who have been diverted from the criminal justice system, with offenders reporting to police stations. In the same way,

they would be in a position to review sentences, holding offenders much more accountable for progress.

Future courts will also look different. Magistrates should be dispensing justice not only in conventional court buildings, but making use of community buildings, unused shops, leisure centres and office space – with mobile courts that change their location over time.

Assuming the right commercial model and partners can be found for consolidating and redeveloping the court estate – including by closing underused courts, upgrading existing sites and building brand new courthouses – a court closure programme could represent a real chance to develop the modern, fit for purpose estate that is required. Newly-built or converted ‘Justice Hubs’, located to serve major population areas and co-located with other justice agencies, could make a real contribution to a more effective criminal justice system. Justice Hubs could accommodate different criminal courts (e.g. magistrates and Crown Courts), civil courts and tribunals under the same roof, as well as housing the full range of justice services and custody facilities.

We also envisage a new set of ‘community-owned courts’, with Police and Crime Commissioners coming together with local magistrates and service providers to take over and operate courts – especially those that would otherwise be sold by Her Majesty’s Court Service to developers – as a community asset, run for the benefit of local citizens.

A new culture of innovation and specialist courts

Future courts should aim to solve problems, not simply process cases. That means we need to learn the lessons of aborted attempts between 2005 and 2010 to spread problem-solving techniques across the courts system. It means recognising that specialist, problem-solving models cannot be forced onto local areas from the top-down. Instead, if we want to encourage the kind of innovation that has seen Drug Court and Sobriety Courts (and the use of new technology) spread across the United States, then local areas – court managers, district judges, magistrates, justice’s clerks, rehabilitative services providers – need to be empowered and inspired to begin their own projects – with help from the centre instead of barriers and objections.

We believe that, rather than pushing down one particular model from the centre, the key to making this happen is to create the right set of incentives for the innovation, to offer the information and toolkits that practitioners need to begin new projects, to help facilitate the partnerships required for it to succeed and to hold the key actors in the system much more accountable for the outcomes they deliver. These steps, if done properly, would help to drive the kind of new thinking that will allow us to develop our own successful court models.

A new kind of magistrate

Many of the proposals in this paper – placing reducing reoffending at the heart of a new and refocused role, reviewing sentences in more informal court settings, dispensing immediate justice at police stations or by video link, and overseeing out-of-court disposals – represent a significant cultural departure from what being a magistrate is all about. They are changes that are needed to bring the role into the twenty-first century, protect it from the external developments that

are changing the structure of the criminal justice system, but most importantly to inject new dynamism into the way our courts work. A new kind of role will necessitate, we believe, a new generation of magistrates with a more diverse make-up, outlook and background.

We outline proposals that would radically increase the number of new magistrates, by around 10,000 – taking the overall total to 33,000. Those recruited should be a predominantly younger set of magistrates, with new working patterns (including a stipulation that a third of their volunteering time be spent outside of a conventional court room), and a new period of tenure of 10 years, to ensure there is greater turnover and more opportunity for people to apply. Finally, we make recommendations to change the culture of the magistracy, including through specialist training, opportunities for the exchange of problem-solving techniques and the recruitment of a small number of reformed offenders and addicts.

Recommendations

We make the following key proposals:

- **Protect local justice:** The Ministry of Justice should not undertake a further, wholesale reorientation of the court estate without taking meaningful steps (such as outlined in this paper) to protect, develop and expand the infrastructure and capacity of the justice system at the local level.
- **Refashion the role of the magistrate:** The Ministry of Justice, the Magistrates' Association and magistrates themselves should reshape the role of magistrate in a much more imaginative way, including by placing much more emphasis on the role they play in reducing reoffending and engaging local communities. Their traditional role, of dispensing justice in a conventional court setting, needs to be expanded.
- **Review the constraints of judicial independence:** The senior judiciary will likely object to many of the new responsibilities we outline on the grounds that they might, in some way, compromise the notion of judicial independence. However, these concerns must be overcome. Judicial independence seems only ever to be defined in the negative (as a reason not to do things) and, in any case, it is questionable whether it should have the same strict meaning for lay magistrates, who might sit for two days a month at the most, as it does for full-time judges.
- **Devise a new strategy for summary justice:** The Home Office and Ministry of Justice should reconfigure our arrangements for summary justice. The two Departments should formulate a new, joint strategy built on the notion of neighbourhood justice with an expanded role for magistrates.
- **Introduce new Police Courts:** As part of a new strategy for neighbourhood justice, the Home Office and Ministry of Justice should introduce new Police Courts, with magistrates based inside police stations administering much swifter justice after charge for offenders who plead guilty.
- **Put Police Court magistrates in charge of out-of-court disposals:** The Ministry of Justice's on-going review of the use of cautions should recommend that magistrates in police stations should be newly-responsible for scrutinising and administering out-of-court disposals.

- **Allow magistrates to play a ‘sentencer supervision’ role:** The Government should amend s178 of the Criminal Justice Act 2003 to remove the current barrier to sentencer supervision. Courts that want to call offenders back before them to report on their progress should be able to do so.
- **Link the probation and prison reforms to new court reforms:** as part of the current Transforming Rehabilitation reforms, the Ministry of Justice should include a new financial incentive to reduce criminal justice demand as part of the overall payment mechanism to providers. This would encourage the providers of probation services to seek to strip out demand at every juncture and would see them developing new court models such as drug and sobriety courts, as well as the expansion of services such as diversion schemes and alternative-to-custody programmes.
- **Provide outcome data to judges and magistrates:** If judges and magistrates were provided with comparative information about what works to reduce reoffending – including their own court’s aggregate performance in terms of reoffending – this might nudge the judiciary into innovating with court procedure and adopting new problem-solving techniques. The Ministry of Justice should quickly devise simple metrics that would allow for the comparison of the reoffending rates of particular courts. These metrics should be communicated to the courts and made public, helping to encourage judges, magistrates and court staff to focus on reducing reoffending and to think about new approaches to courtroom processes and services.
- **Identify and train magistrates to train others:** the Ministry of Justice, the Judicial College and the Magistrates’ Association should devise a new, specialist training package for a small (perhaps fewer than 500) set of pioneering magistrates and judges. The aim would be to create a group of ‘problem-solving champions’ who would commit to passing on the training and developing their colleagues’ skills. This package should be developed in conjunction with expert international bodies such as the National Association of Drug Court Professionals and the Centre for Court Innovation in the United States, and the Centre for Justice Innovation in the UK.
- **Introduce a ten year tenure period for magistrates:** this would generate greater turnover of magistrates and offer more opportunity for younger magistrates to volunteer. Magistrates would be able to reapply, but only following a thorough appraisal and updated training.
- **Expand magistrates’ responsibilities:** The government should ensure that magistrates use at least a third of their volunteering time outside of the conventional court setting, playing the wider role outlined in this paper.
- **Recruit 10,000 new magistrates:** In the short term, the Ministry of Justice is likely to seek to remove hundreds of thousands of cases that currently go before the magistrates’ court, such as uncontested motoring cases. At the same time, there may well be further court closures and consequent reductions in magistrate numbers. Proper planning for the future capacity of the magistracy is essential and it is possible that numbers will fall in the short term. However, we believe that in the medium term, if their roles are expanded as we recommend, the requirement will be for more magistrates, not fewer. The Ministry of Justice and HMCTS should direct Advisory Committees to recruit an additional 10,000 magistrates over a five year period, as the role

of the magistrate is expanded and enhanced. These additional magistrates will meet the additional capacity requirements for new Police Courts and a stipulation that a third of all magistrates' time is spent outside of court settings undertaking community engagement work or training.

- **Recruit younger magistrates, including ex-offenders:** This new generation of magistrates should be predominantly younger. This should be helped somewhat by the wider role outlined in the paper, including evening and weekend work – allowing younger professional people to take part. We also believe that a small number of ex-offenders should be proactively recruited to bring some 'user experience' to the magistracy and help accelerate the culture change we need.

Conclusion

The 38% operational savings the courts system must deliver between 2012 and 2016 is a considerable challenge. There are policies – including mass court closures, increasing court fees and centralising administrative services – that could help the Ministry of Justice get close to meeting it. At the end of it all, we might well have a more efficient criminal justice system for the future. But without reform, and a real focus on the local justice landscape, it's unlikely that the system will be any more effective – either at stopping people from coming back into it, or at generating public confidence.

For that reason, this paper is in part a challenge to government – to facilitate and encourage the reforms that could preserve, and actually enhance, the principle of local justice. But it is also a challenge to the volunteer magistrates and judges who dispense justice in the magistrates' court. For it is they who hold the key to adapting to these new circumstances, embracing the opportunities that are presenting themselves and helping to build the new ecosystem for local justice that will be required.

Introduction

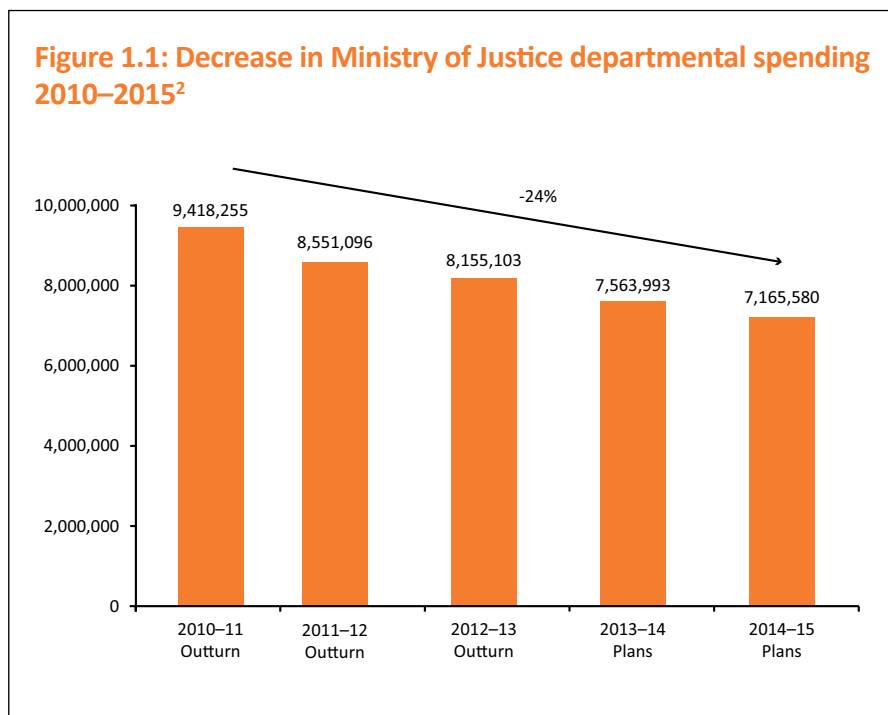
We begin this pamphlet by highlighting the acute financial challenges faced by the Ministry of Justice and Her Majesty's Courts & Tribunals Service (HMCTS). Next, we analyse the three trends identified and their impact on magistrates' courts. We set out how each of them may be about to accelerate, driven by the urgent need for a more efficient service. Having set out the risks, we go on to outline a positive vision for a future courts system with a new kind of magistracy, a new infrastructure for delivering a local justice system and a new mission for those working in it.

1

The Threat to Local Justice

Financial pressures

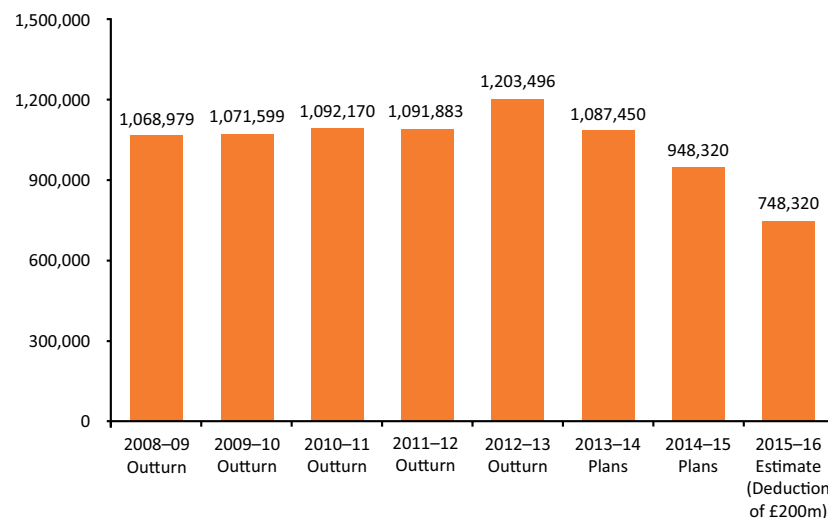
It is well known that fiscal consolidation is forcing the Ministry of Justice to make substantial savings following the 2010 spending review. Over the current Spending Review period, the department must cut its budget by 24%, a total of £1.3bn.



These savings are being achieved through a substantial reduction in headcount at the centre (i.e. within the Ministry of Justice and its major agencies), the outsourcing of a large part of the probation service, establishing a new, leaner staffing model across the prison estate, and the reform and restriction of Legal Aid entitlements. Her Majesty’s Courts and Tribunals Service (HMCTS) is already making substantial savings through court closures and more centralised administration, but the pressures are becoming more and more acute.

² Ministry of Justice, Public Expenditure Financial Tables 2012–13

Figure 1.2: HM Courts and Tribunals Service departmental spending (£000)^{3,4}



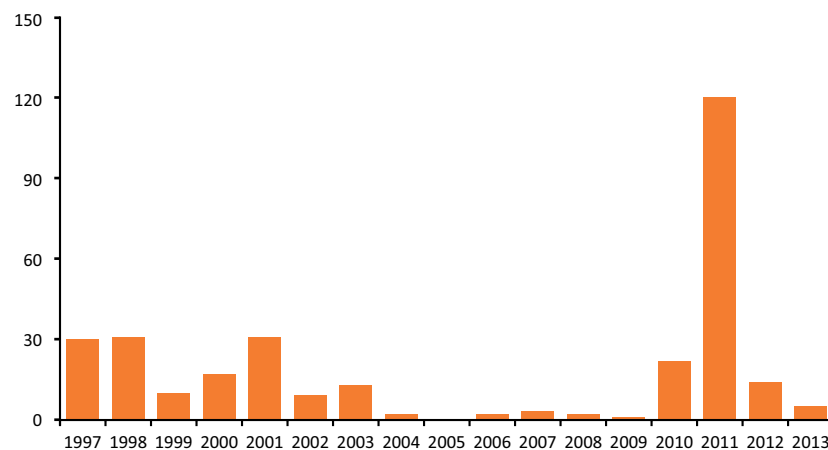
Further cuts of 10% to the Ministry of Justice budget were announced in the latest spending round, meaning that by 2015/16 the department must shed an additional £500m in expenditure. It was announced that courts specifically would need to deliver an additional saving of £200 million by 2015–16.⁵

This means that overall HMCTS has to deliver a 37.8% reduction in its budget from 2012 to 2016. This is an extremely challenging cut to a public service that has little control over demand levels, to be delivered in an extremely short timeframe. There is now an imperative for quite radical, wide-ranging reform.

Trend 1: Fewer courts

We have a lot of courts. There are over 500 court buildings in use today in England and Wales, many with separate and distinct functions (e.g. Crown Court, magistrates’ court, tribunal, county court, etc), meaning the footprint of the estate remains large.

Figure 1.3: Total number of court closures in England and Wales 1997–2012⁶



³ Ministry of Justice, Public Expenditure Financial Tables 2012–13

⁴ 2015–16 estimates taken from HM Treasury, Central Government Supply Estimates 2012–13 HC 1919

⁵ HM Treasury, Spending Round 2013, Cm 8639

⁶ HC Deb, 2 September 2013, c158W Table A

Merging functions within the same buildings can reduce overheads, cut administration and staff costs, and reduce duplication of services (stemming from having two separate courts – one civil and one criminal, for example – in the same town). It also reduces maintenance costs, which remain high. In 2011 alone (the latest date for which the Ministry of Justice supplied us with figures), the maintenance backlog alone for the courts service stood at £185 million.⁷

Estate rationalisation has understandably been one of the first ports of call for savings within the court system, especially when court utilisation rates (the amount of available time a court is actually in use) remain low.

Court Estate Reform Programme

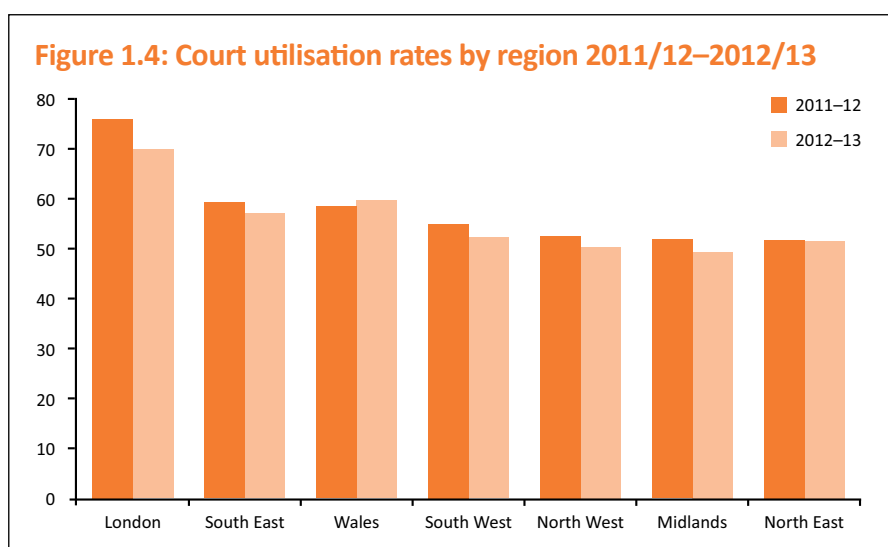
The most recent changes to the court estate have been made as a result of the current government's Court Estate Reform Programme (CERP) in 2010, resulting in the closure of 142 courts across England and Wales. The objectives were to increase utilisation rates to 85% (from 58.1%), dispose of surplus or substandard buildings, improve the co-location of civil courts, criminal courts and tribunal services, and 'move towards' larger courts whilst maintaining access to justice.⁸

Savings

Over 95% of the programme is now complete, and the remaining courts are due to close by September 2014.⁹ To date, the CERP has attracted disposal receipts of over £17 million.¹⁰ Upon completion of the Programme, £60.6 million in resource savings from the closures and gross capital proceeds of £33 million from the sale of the buildings are expected.¹¹

Utilisation rates

However, despite the closures, new figures obtained by Policy Exchange from the Ministry of Justice show that utilisation rates in England and Wales have not improved, and have in fact become worse in most regions. Overall, court utilisation rates stood at 58.1% between 2011 and 2012, and decreased to 55.7% between 2012 and 2013.¹² The utilisation rates below¹³ highlight how the courts are still sitting empty despite an intense programme of court closures over a short period.



7 Freedom of Information Request FOI/84367 (August 2013)

8 Ministry of Justice, Court Estate Reform Programme, Equality Impact Assessment (June 2010)

9 HM Courts & Tribunals Service, Annual Report and Accounts 2012–13, HC 239

10 Freedom of Information Request FOI/84366 (August 2013) Annex B

11 HM Courts & Tribunals Service Annual Report and Accounts 2012–13, HC 239

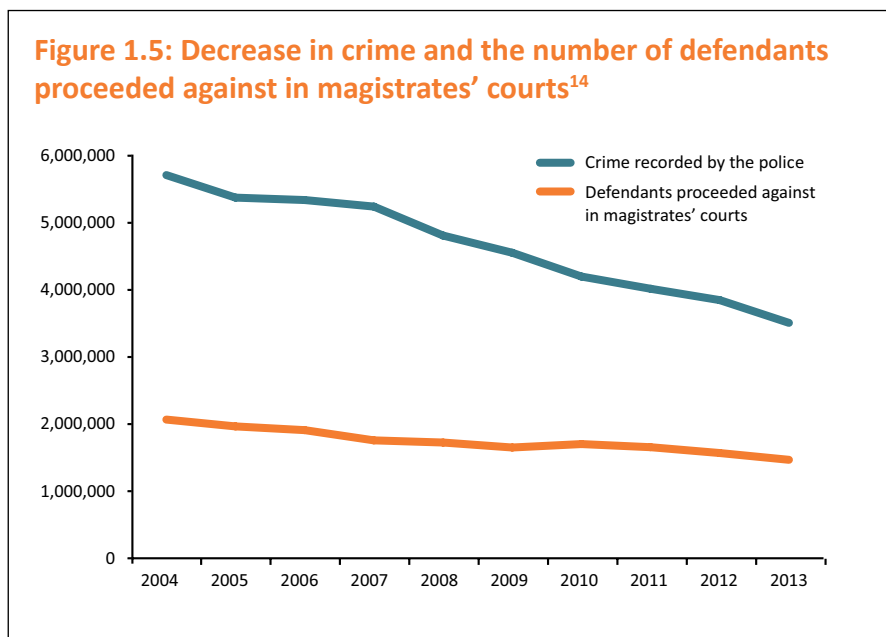
12 Freedom of Information Request FOI/84367 (October 2013)

13 Freedom of Information Request FOI/84367 (October 2013)

Trend 2: Reduction in magistrates' workloads

The percentage of crimes recorded by the police that been dealt with by criminal courts has actually increased in recent years – for example, up from 36% to 42% between 2009 and 2013. However, in part as a result of rapidly falling crime rates (according to both police statistics and the British Crime Survey,) magistrates' courts have, in fact, seen a consistent reduction in the number of cases coming before them. For example, there were more than 2 million defendants coming before magistrates in 2004, falling steadily to just 1.45 million in 2013.

Figure 1.5: Decrease in crime and the number of defendants proceeded against in magistrates' courts¹⁴



Out-of-court disposals

A number of out-of-court disposals are now commonly used as a means of dealing with certain offences, avoiding the often lengthy and expensive process of taking a prosecution through the courts. Out of court disposals now used include;

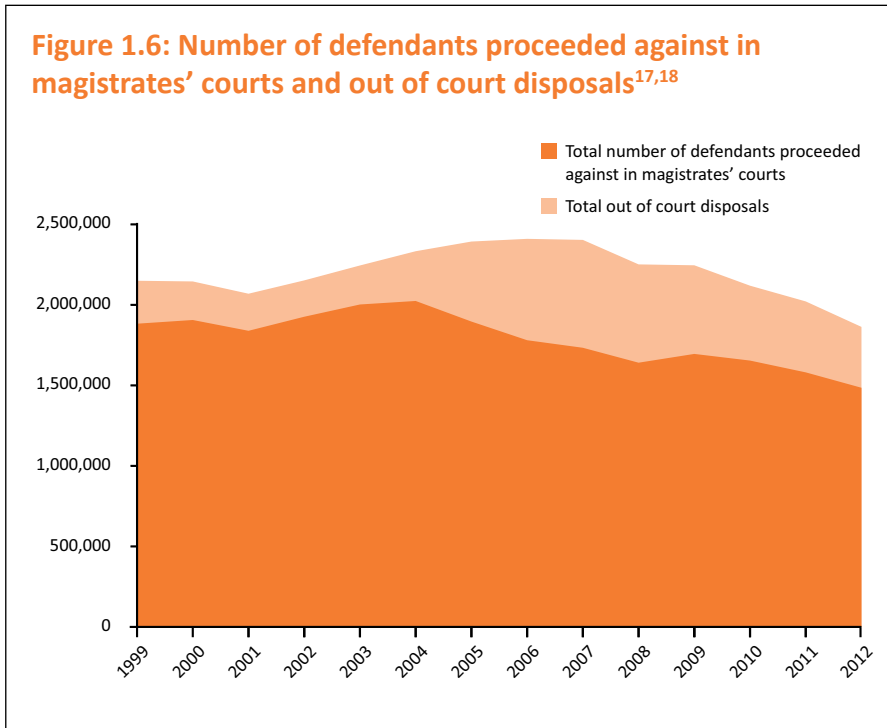
- **Simple cautions;** which can be administered for summary or either-way offences by the police;
- **Penalty notices for disorder;** which enable the police to issue 'on the spot' financial penalties for certain low-level offences, introduced by the Criminal Justice and Police Act 2001;
- A system of **conditional cautions** introduced by the Criminal Justice Act 2003; allowing the CPS to decide that an offence serious enough to warrant prosecution could be dealt with by a caution subject to certain conditions;
- A system of **formal warnings for simple possession of cannabis;** for personal use, was introduced in 2004.¹⁵

Out-of-court disposals now constitute one-third of all offences brought to justice,¹⁶ and as a result a significant stream of business traditionally dealt with by the courts is now gone.

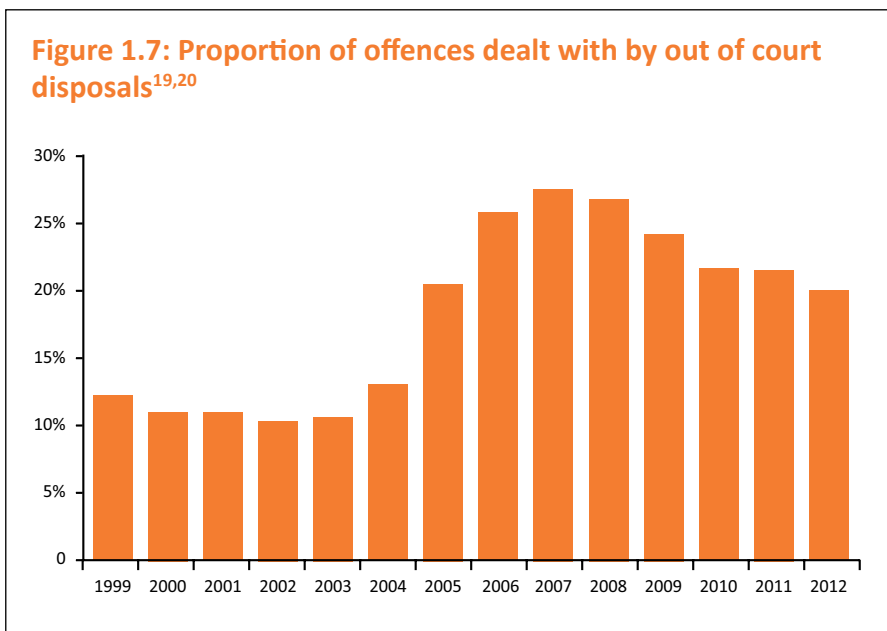
¹⁴ Ministry of Justice, Criminal Justice Statistics Quarterly - March 2013, Main tables Q1.1 and Q1.5

¹⁵ K Sosa, Policy Exchange, Proceed with Caution, (July 2012)

¹⁶ Ibid.



Though their use is now levelling-off from the peak of 2007/08, the proliferation of out-of-court disposals in the early 2000s represents a structural change that has permanently reduced the volume of work in the magistrates' court.



Trend 3: The slow decline of the magistracy

The number of sitting magistrates in England and Wales has also been on the decline in recent years. These reductions are associated in part with the decline in their workload combined with subsequent court closures (i.e. magistrates needing to be replaced more slowly). But there has undoubtedly been an unstated

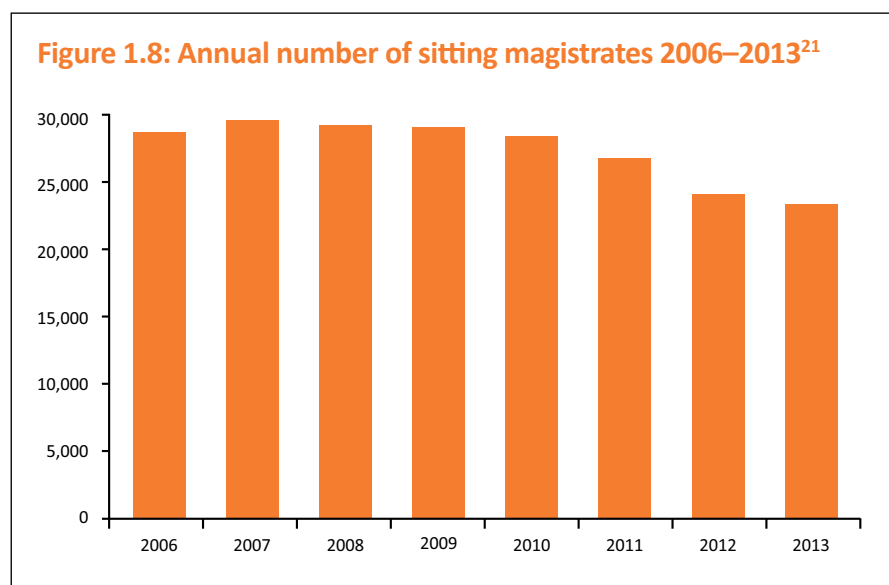
17 Ministry of Justice, Sentencing Statistics England and Wales 2009, Main Bulletin Tables, Table 1

18 Ministry of Justice, Criminal Justice Statistics Quarterly - December 2012, Main Tables, Q1.1 for 2008 figures onwards

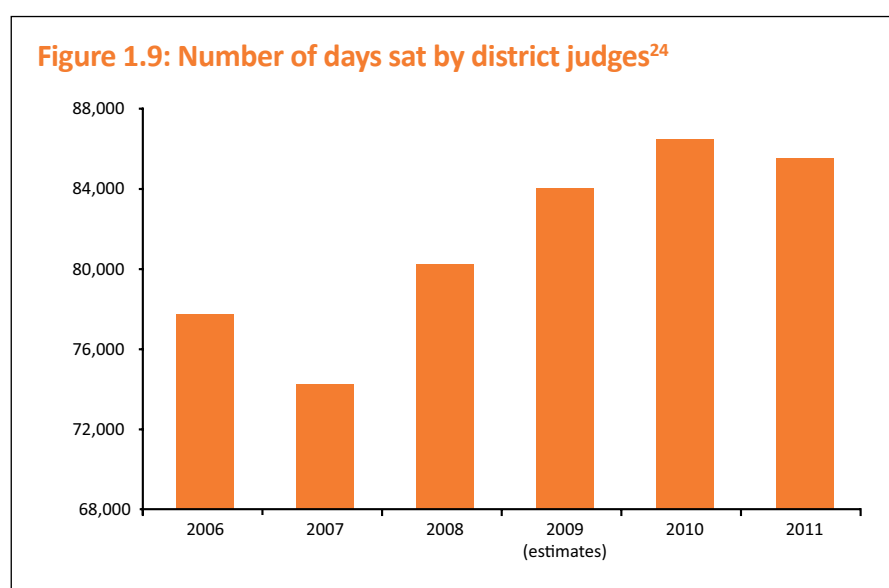
19 Ministry of Justice, Sentencing Statistics England and Wales 2009, Main Bulletin Tables, Table 1

20 Ministry of Justice, Criminal Justice Statistics Quarterly - December 2012, Main Tables, Q1.1 for 2008 figures onwards

policy to increase the number of cases heard by district judges, who are paid, legally qualified members of the judiciary who sit in the magistrates' courts.



District judges have been sitting in courts more frequently in recent years, as identified in Figure 1.9. They hear cases alone and there is a tendency in listing practices for district judges to be used for complex, lengthy or serious cases.²² For example, many of the 2011 riots cases were allocated to district judges. This may also have been a reflection of the political imperative to hear cases and dispense justice to the perpetrators more quickly, as research suggests that district judges manage cases more quickly than magistrates.²³ As a result, their use is likely to increase at a time when greater efficiency is a significant prize.



21 Ministry of Justice, Court Statistics Quarterly July - September 2013, Additional Tables, Table 8.4

22 Ipsos MORI and Ministry of Justice, The Strength and skills of the Judiciary in the Magistrates' Courts, Research Series 9/11 (November 2011)

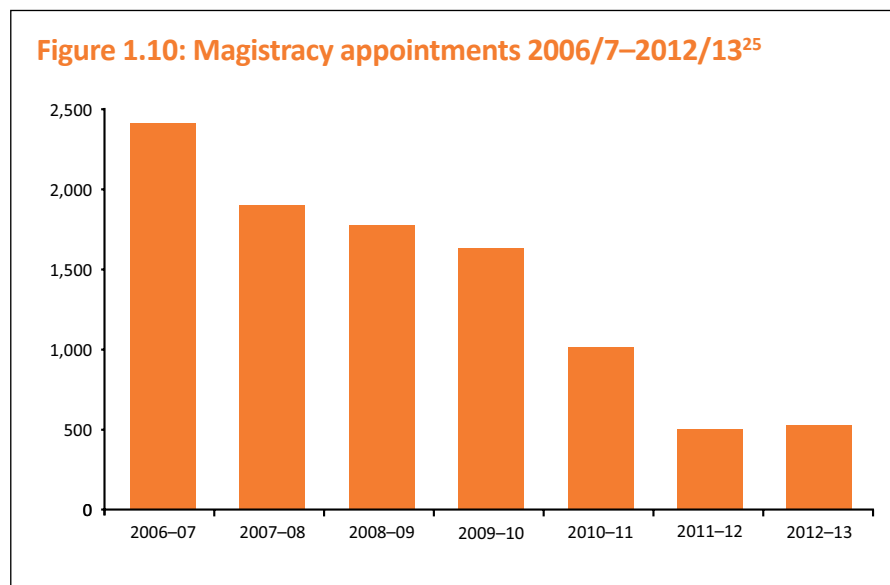
23 Ibid.

24 Ministry of Justice, Judicial and Court Statistics (annual) 2011, Chapter 10, Table 10.1

Our discussions with magistrates indicate that some feel that because district judges are allocated the most challenging (and therefore interesting) cases, this amounts to a diminution of magistrates' roles. But the alternative point of view

is that, far from ‘asset-stripping’, district judges are in fact also performing far more of the high-volume, monotonous work (e.g. motoring offences, where the offender rarely turns up to court, that are completed in bulk). Whatever the truth, it is clear that there is a perception from magistrates that they are being gradually displaced by district judges.

In addition to the total number of magistrates decreasing, the number of appointments to the magistracy has fallen off a cliff in recent years, down from around 2,400 in 2006/7 to fewer than 500 in 2011/12.



A more centralised courts service

Magistrates’ courts have also become much more centrally managed over recent years. Our discussions with magistrates indicate that increasing centralisation has led to a loss of local ownership and has undoubtedly contributed to a feeling of demoralisation within their rank.

Prior to 2003, local courts were managed by Magistrates’ Courts Committees (MCCs). The aim of MCCs was for magistrates’ to operate their courts on a local basis, with a large degree of autonomy.²⁶ MCCs were responsible for the administrative management of their local courts, dealing with the budget, hiring staff, and organising training and contracted services for all courts in their area.²⁷

However the MCCs were scrapped by the Courts Act 2003, discharging these responsibilities instead to the Department for Constitutional Affairs. Although new courts boards were originally set up to ensure magistrates would continue to have a say in arrangements affecting their local courts,²⁸ these were soon abolished, saving £450,000 a year.²⁹ As a result, any meaningful formal links for communication or decision making between central government and local magistrates ceased to exist.

The management of local courts was then taken over by the creation of Her Majesty’s Courts Service in 2008, which in 2011 merged with the Tribunals Service to become HM Courts and Tribunals Service (HMCTS). This single central agency is now responsible for the administration of all criminal, civil and family courts and tribunals.³⁰ Although there is judicial representation on the HMCTS Board, the magistracy itself remains entirely unrepresented.

25 Ministry of Justice, Court Statistics Quarterly July - September 2013, Additional Tables, Table 8.5

26 The Right Honourable Lord Justice Auld, A Review of the Criminal Courts of England and Wales (September 2001) Chapter 3

27 P Gibbs, Transform Justice, Managing magistrates’ courts (May 2013)

28 Judicial Governance in the Magistrates’ Courts: Report of the Governance Working Group (September 2013) www.magistrates-association.org.uk/wp-content/uploads/2013/09/judicial-governance-in-the-magistrates-courts-19-september-2013.pdf

29 P Gibbs, Transform Justice, Managing magistrates’ courts (May 2013)

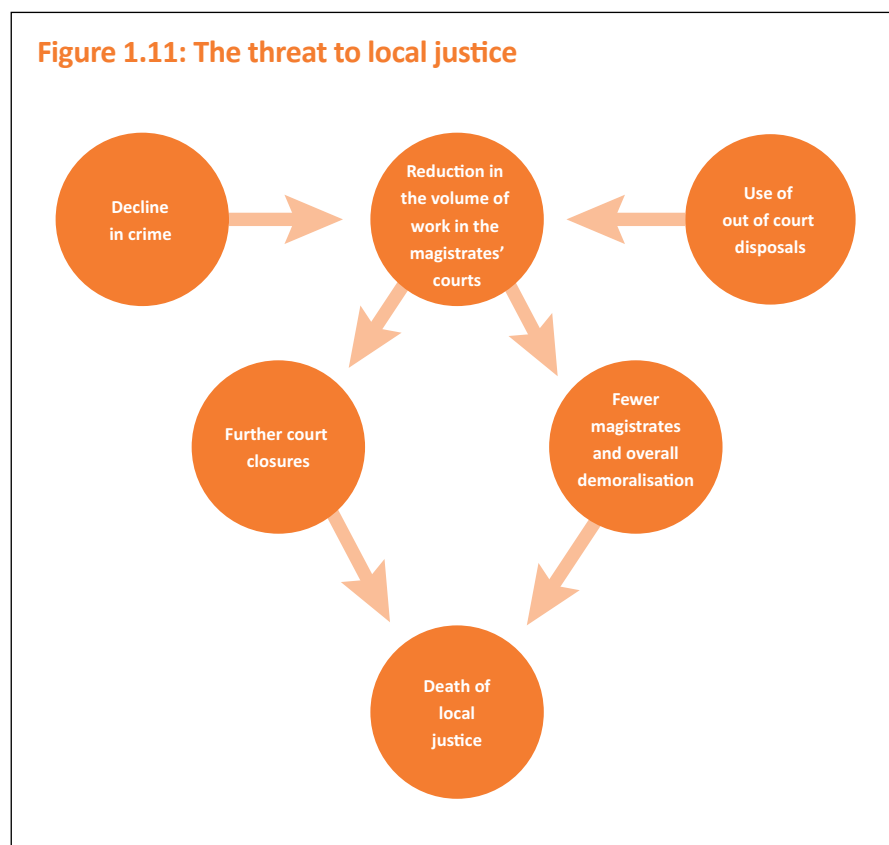
30 Responsible for tribunals in England and Wales, and non-devolved tribunals in Scotland and Northern Ireland.

Meanwhile, the new duty imposed on courts to follow, rather than simply have regard to, Sentencing Guidelines has harmonised sentencing decisions and practices, but now arguably constrains magistrates’ ability to reflect local concerns and use their discretion.

Although centralisation has achieved economies of scale, more consistent sentencing and more efficient administration, this has left local magistrates with little or no say in the running of their own courts. It is no surprise that this has led to increasing disempowerment and demoralisation within the magistracy.

The threat to local justice

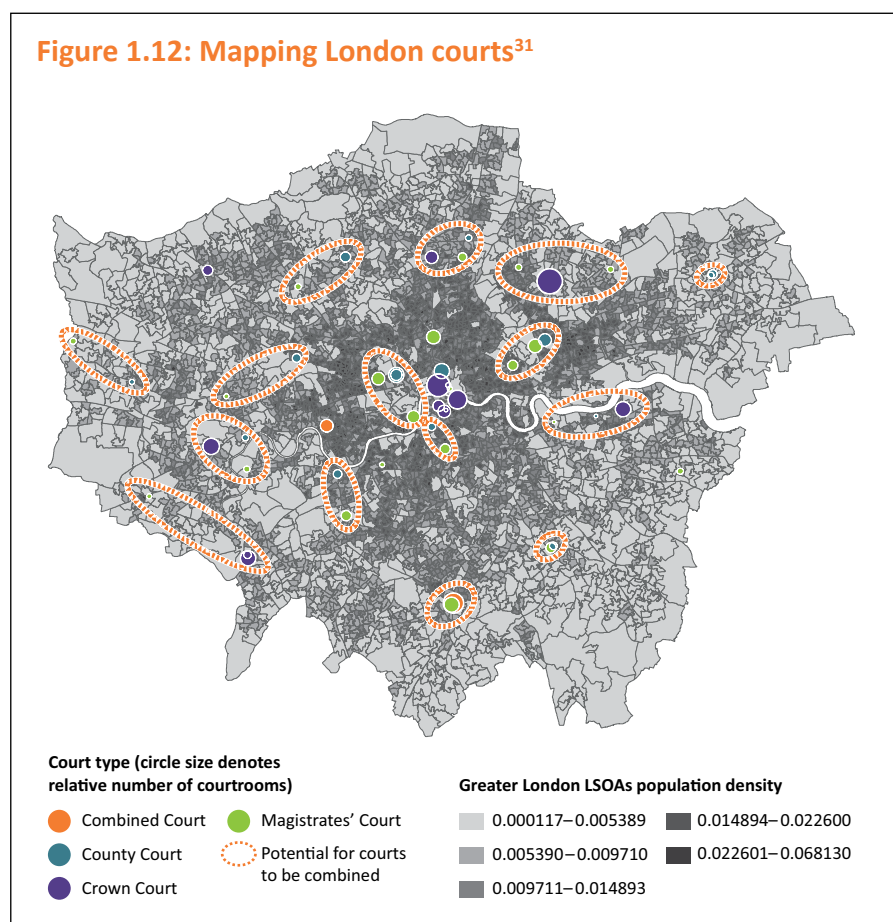
As described in the previous sections, court closures, a reduction in magistrates’ workloads and falling numbers and recruitment of magistrates are all trends that have steadily emerged, deepening year on year, over the last decade. There is no detectable shift in policy or imminent change to any external conditions to suggest any of these trends will dissipate. Indeed, our contention in this report is that they are all likely, in the context of the need to make such substantial savings in the courts budget, to accelerate rapidly. Without reforms now, we contend that accelerations will come to represent a significant threat to the notion of local justice as we know it today.



As discussed above, court closures have often been one of the first levers pulled by policymakers in making savings in the court system. Although recent closures have produced savings in operating costs and have produced some capital receipts, utilisation rates have yet to improve (and have in fact worsened).

How government might accelerate court closures

The overall footprint of the court estate could be reduced substantially by merging county courts and magistrates together, without substantially affecting access to justice. For example, reducing the number of courts from 500 to around 300 might be achieved without harming the principle of local justice. The example of London is instructive. Here, there are at least 20 different county and magistrates courts that could potentially be merged (either housed in existing buildings or in new buildings), reducing operating and maintenance costs while keeping courts in roughly the same location. Figure 1.12 is a map of the locations of county, magistrates' and combined courts in the London HMCTS region, identified by the number of courtrooms of each building, with examples of where mergers could take place.



However, given the scale of the Ministry of Justice's fiscal challenge, another limited round of court mergers and closures are likely to be an insufficient response. The latest programme produced £60 million in annual operating savings, yet the Ministry of Justice needs to save £450 million (or 37.8%) annually within the next three years and beyond.

Given this pressing situation, it is possible that the Department will need to seek to more radically and substantially reshape the court estate and system of court administration. This might involve reducing the number of buildings further (e.g. to fewer than 300) and centralising large parts of the administration and infrastructure supporting their operation in regional or national hubs. This

³¹ Contains Ordnance Survey data © Crown copyright and database right 2013, contains public sector information licensed under the Open Government Licence v2, and court data taken from Freedom of Information Request FOI/84366 Annex A (August 2013). This map excludes the Rolls Building and the Royal Courts of Justice

would see the introduction of much larger combined civil and criminal courts, housing dozens of court rooms and other services, located strategically according to demand, and with good transport links and public access. These courts would, like the Civil Justice Centre in Manchester, house around 50 courtrooms, instead of today's average of 6. Assets like this would be utilised more commercially, generating income with mixed-use, flexible office and retail/leisure space.

A radical restructuring and refreshing of the court estate such as this would require a significant capital outlay for the construction of new, fit-for-purpose court buildings, in order to 'lock-in' lower operating costs for the future. It is highly likely that, given the Department's financial position and available capital budget, private finance would need to be accessed to achieve such a wholesale reorientation of the estate.

There are precedents in the public sector for this kind of reform programme, including the creation of the Defence Infrastructure Organisation (DIO) which oversees all of the Ministry of Defence's infrastructure and facilities management, and is due to save £1.2bn across the defence estate with the help of a private sector partner, who will offer property and infrastructure services, provide up-front capital and bear financial risk.

It is without question that a more substantial effort such as this to reduce the footprint of the court estate, however feasible and necessary, would impact on access to justice. On the face of it, it would mean magistrates having to hear cases in buildings that were not actually in their local communities, might force them to sit as part of benches where they did not know their colleagues, and would mean travel to court for court staff, legal representatives and offenders would be made more difficult. In rural areas or other places with poor transport links, these problems would be more acute.

However, there are various advantages that would stem from a system of fewer, larger courts – particularly if they were converted or built to modern standards. It is also worth pointing out that there are currently 230 magistrates courts in England and Wales, but yet just 180 NHS Accident and Emergency Departments (which, by definition, need primarily to be accessed in emergencies). Looked at in this way, a strong prima facie case could be made that reducing the number of magistrates' courts in the way envisaged above will not make attending court overly difficult. However, it is, we believe, hard to argue that justice would remain 'local' if it was increasingly dispensed in large, urban courts with little real connection to local communities.

A rapid, terminal decline of the magistracy

Lay magistrates are a vital cornerstone of our justice system and for over 650 years have dispensed justice locally. Even today, they deal with over 90% of all criminal cases. Why have we hitherto valued magistrates so highly?

Magistrates are lay representatives:

- This provides the opportunity for defendants to be tried by their peers;
- They bring experience from a varied cross-section of society (at least theoretically); and
- They are voluntary and work on the basis of goodwill and a desire to contribute to their community.

Magistrates provide a stream of local connections and knowledge:

- They are aware of local needs and have specific knowledge about their area and its priorities; and
- They are tuned in to local services, agencies and voluntary bodies.

Justice must be seen to be done:

- Lay involvement in the justice system ensures it does not become too remote from the public.

Despite these advantages, it is our contention that the current structural issues and on-going external trends affecting the courts service mean that the magistracy as we know it stands on the precipice, with the very real prospect of a rapid and terminal decline.

Further significant rationalisation in the court estate may well compel some magistrates to retire, faced with the choice of travelling to a new court with new colleagues, likely further from their home. Our discussions with magistrates paint an already worrying picture of demoralisation, caused by substantive issues such as their perceived marginalisation caused by the increasing use of district judges, and other vexing concerns such as cuts to training and difficulties in obtaining their expenses for undertaking community engagement work.

There may also be a temptation, as the estate rationalisation takes place, for the Ministry of Justice to accelerate the recruitment of district judges to take on a much higher volume of cases in larger courts – because they are believed by many in the bureaucracy to dispense quicker, more efficient justice (despite the fact that they are salaried).

A sudden reduction in the number of available magistrates caused by estate rationalisation could be compounded by the diminishing pipeline of new magistrates (just over 500 were appointed last year), causing a sudden and quick drop in the numbers of magistrates and the proportion of cases being heard by them. This could provide even more impetus for recruitment of additional salaried judges.

Recognising the threat

We have argued that the criminal courts system, and the magistrates' courts system in particular, are about to experience a major set of reforms made necessary by the Ministry of Justice's budget challenges. These reforms are likely to continue current trends that, even in good times, were producing a smaller, less local and more centralised courts system. Our concern is that when these reforms accelerate, there may be serious and unforeseen consequences for the system of justice, underpinned by lay magistrates, that has served us so well since 1361.

It is not inevitable that the magistracy as we know it today will survive the next 20 or 30 years. Indeed, there are few systems of lay representation in criminal courts that have survived significantly anywhere in the world, including even in those common law jurisdictions that took their original cues from the English legal system. We believe that the time is fast approaching for policymakers to recognise this impending threat and respond decisively.

Policymakers have two options to mitigate this looming threat to the notion of local justice. The first option is to do nothing; allow the principle of local justice to be weakened, take the risk that the magistracy may disappear, and accept that the public may become more remote from the justice system. Justice may be more efficiently run in a system of larger, technology-enabled urban courthouses, but many of the advantages of a lay, local system will vanish. In other words, we will have a more efficient but probably less effective system.

This is a genuine option. There are those who believe that the gradual ‘professionalisation’ of the magistracy that we have seen over the last 50 years (including enhanced compulsory training, mentoring and appraisal schemes, and other management reforms) should be taken to its logical conclusion – of paid, legally-trained professionals. It is a fear felt keenly by the magistrates, having faced a decade of perceived indifference (or downright hostility) from politicians – not least from the former Home Secretary and Justice Secretary, Jack Straw MP, who had initiated a review of the role of magistrates in 1999 and subsequently criticised them in 2007 for sending cases to the Crown Court that they could have dealt with themselves.³²

Policy Exchange strongly believes that lay magistrates are an invaluable (and underused) asset, not something to be inadvertently lost, or apathetically discarded. From this perspective, the second, more desirable option is to tackle the situation head on; first, by reformulating and reimagining what local justice can mean in the 21st century, even in an era of declining resources. This will demand a more innovative, creative approach to dispensing justice, and one that is both more integrated with local services and more effective at solving social problems. Secondly, the threat to local justice can be mitigated by revitalising and refreshing the magistracy, making it more diverse and representative, with a new role of not only dispensing justice, but of re-engaging the public in the justice system and taking a more active role in the communities they serve.

Recommendation: The Ministry of Justice should not undertake a further, wholesale reorientation of the court estate without taking meaningful steps (such as outlined in this paper) to protect, develop and expand the infrastructure and capacity of the court system at the local level.

The Ministry of Justice, the Magistrates’ Association and magistrates themselves should reshape the role of magistrate in a much more imaginative way, including by placing much more of an emphasis on reducing reoffending and engaging local communities. Their traditional role, of dispensing justice in a conventional court setting, needs to be expanded.

32 As pointed out by Frances Gibb in Chapter 5, The Linchpin of the Justice System; The Magistracy at the Crossroads (2012)

2

Mitigating the Threat

Whatever happens in respect of court closures and estate rationalisation, magistrates will likely continue, in the medium term, to play a vital role in the conventional administration of justice, in traditional court settings. After all, they currently hear over 90% of all criminal cases. But a lot will be asked of them in this new world. They will be travelling further, moving away from benches they might have served as part of for decades and areas they have sat in for just as long. Some may also be increasingly sitting alone or hearing specialist or bulk cases.

We make recommendations for how the Ministry of Justice and HMCTS should support magistrates to be a key part of this new world in the final part of this report. We also go on to outline the many possible advantages for efficiency, integration of services and specialisation of adjudication that will stem from the creation of much larger courthouses. But the clear risk from these new Justice Hubs (as we christen them), is that they become mere factories for processing cases – a form of “assembly-line justice”.

As government moves towards more centralised, efficient criminal courts that are fewer in number, there will inevitably be a local, “neighbourhood justice” gap. It is our contention that any new network of larger, urban courthouses should be supported by a new, more local justice infrastructure – one that is able to better address lower-level offending and dispense summary justice more flexibly, efficiently and effectively.

In filling this neighbourhood justice gap, there are real opportunities for magistrates to expand their horizons, enhance their knowledge and expertise, and take on a more rewarding, interesting and fulfilling set of responsibilities.

Building a new community justice ecosystem

Over recent years, some attempts have been made to import a ground-breaking American innovation – problem-solving justice – into England and Wales. The idea behind problem-solving justice is that courts should do more than simply process cases. They should instead seek to build community confidence, aid victims, change the behaviour offenders and improve public safety in local neighbourhoods.³³ Problem-solving justice is about building on the (sometimes latent) wishes of the judiciary and court practitioners to develop more creative, effective responses to local crime concerns (such as anti-social behaviour or crime fuelled by substance misuse).

In their two decades of existence in the United States, problem-solving courts – which have been shown to reduce re-offending, improve compliance with court

33 G Berman and J Feinblatt, Good Courts: The case for problem-solving justice (2005)

orders, and increase public confidence in justice – have moved from the margins to the mainstream of the American criminal justice system.

Problem-solving justice in the United States

Greg Berman and Aubrey Fox are two pioneers of the problem-solving justice movement in the USA who have previously authored reports on the subject for Policy Exchange. They highlight a number of features of the problem-solving approach that mark it out as distinct from conventional court processes. These include:

1. **Community engagement:** by actively engaging local people in identifying, prioritising and solving local problems, problem-solving justice builds community confidence, enhances feelings of public safety and drives more cooperative behaviour.
2. **Individualised justice and offender accountability:** by approaching each case individually (including with sophisticated assessment tools), more nuanced, effective decisions can be taken. And by insisting on rigorous compliance monitoring, offenders are held much more accountable, encouraging behaviour change.
3. **Collaboration:** by reaching out to partners beyond the courthouse, problem-solving courts seek to develop more integrated solutions, build better communication between different agencies and foster new responses to problems.
4. **Outcomes:** by focusing relentlessly on the outcome data, judges and practitioners are able to make mid-course corrections, devise improvements and ensure that the local community is aware of successes and failures.³⁴

Box 2.1: Red Hook Community Justice Center³⁵

Launched in June 2000, the Red Hook Community Justice Center was the United States' first multi-jurisdictional community court. Operating out of a refurbished Catholic school in the heart of a low-income Brooklyn neighbourhood, the court seeks to solve neighbourhood problems like drugs, crime, domestic violence and landlord-tenant disputes. At Red Hook, a single judge hears neighbourhood cases that under ordinary circumstances would go to three different courts – Civil, Family and Criminal.

The goal is to offer a coordinated, rather than piecemeal, approach to people's problems. The Red Hook judge has an array of sanctions and services at his disposal, including community restitution projects, on-site educational workshops and classes, drug treatment and mental health counselling – all rigorously monitored to ensure accountability and drive home notions of individual responsibility. But the Red Hook story goes far beyond what happens in the courtroom. The courthouse is the hub for an array of unconventional programmes that engage local residents in "doing justice." These include mediation, community service projects that enlist local volunteers, and a 'youth court' where teenagers resolve actual cases involving their peers. The idea is to engage the community in proactive crime prevention, solving local problems before they even come to court. Key features of Red Hook include:

³⁴ G Berman and A Fox, *The future of problem-solving justice: An international perspective* (2010) 10 *University of Maryland Law Journal of Race, Religion, Gender and Class*

³⁵ This case study is adapted from G Berman and A Fox, *Policy Exchange, Lasting Change or Passing Fad?* (2009)

Coordination: Red Hook handles low-level criminal cases (including some felonies), as well as selected juvenile delinquency and housing matters. In hearing these cases, the court recognises that neighbourhood problems do not conform to the arbitrary jurisdictional boundaries of the modern court system. By having a single judge – the Honorable Alex Calabrese – it can handle matters that ordinarily are heard by different decision makers at different locations, Red Hook offers a swifter and more coordinated judicial response.

Restitution: By mandating offenders to restore the community, the court makes justice more visible to local residents and acknowledges that communities can be victims just like individuals. Restitution projects include painting over graffiti, sweeping the streets and cleaning the courthouse

Help: By linking defendants to drug treatment and by providing on-site services like domestic violence counselling, health care and job training, the court seeks to strengthen families and help individuals avoid further involvement with the court system. Services are not limited to court users but are available free of charge to anyone in the community.

Accountability: Compliance with social service and community restitution sanctions is rigorously monitored by the Red Hook judge, who requires defendants to return to court frequently to report on their progress and to submit urine tests. State-of-the-art technology helps ensure that cases do not fall between the cracks.

Prevention: Red Hook actively seeks to resolve local problems before they become court cases. Its prevention programs include community mediation, a Youth Court that offers intensive leadership training to local teenagers, and the Red Hook Public Safety Corps, which provides 50 local residents with full-time community service jobs each year.

The results of this new model of community justice have been encouraging: once labelled one of the most “crack-infested” neighbourhoods in the United States by Life Magazine, today Red Hook is home to the safest police precinct in Brooklyn. As crime and levels of fear have gone down, investment and levels of confidence in justice have gone up. While Red Hook still has its problems, it is fair to say that the dark cloud of drug and disorder no longer hangs over the community.

Problem-solving justice in England and Wales

It is to the credit of the Ministry of Justice (and Home Office before it) that significant efforts have been made since over the last decade to embed problem-solving justice principles in England and Wales. Two of its early champions (their interest piqued by visits to Red Hook) were the then Home Secretary David Blunkett MP, along with the then Lord Chief Justice, Lord Woolf.

A number of problem-solving initiatives have been initiated since 2005. These have included a number of community courts (based predominantly on the Red Hook model), as well as a number of more specialist courts in the form of dedicated drug courts, mental health courts and domestic violence courts.

Perhaps the most prominent community court initiative has been the North Liverpool Community Justice Centre (NLCJC), which opened in 2005 and served the wards of Anfield, County, Everton and Kirkdale. It aimed to be a community resource – a one-stop-shop for addressing local crime that would tackle the underlying behaviour of offenders, build public confidence in the justice system and offer a wide range of services to offenders, victims and local people.

Box 2.2: North Liverpool Community Court

The NLCJC was modelled on the Red Hook Community Court. The centre comprised a magistrates, youth, crown and county court and had the authority to review offender compliance with court orders. It was initially run by a single judge, David Fletcher.

Cost and utilisation: Initial investment in the Centre was £4.2m, and operating costs for 2012/13 stood at £980,000.³⁶ In late 2013, these high costs prompted the Ministry of Justice to close the court and transfer its caseload to nearby Sefton Magistrates’ Court, saving £2m between 2014 and 2017.³⁷ Utilisation levels at the NLCJC were below 55% in 2012/13, and the budget has been estimated at three times more than a conventional magistrates’ court, albeit with a similar number of courtrooms and workload.³⁸

However, making an assessment of the Centre in pure cash terms can be misleading. As the Centre for Justice Innovation has pointed out, *“this court was put in a custom-designed building that was constructed at a higher level of specification than similar courts. As a result, estates costs represented twice as large a proportion of the Centre’s budget as in other comparable courts.”* Secondly, the staff costs are different: *“in order to facilitate the quick establishment of the Centre, the decision was taken that HMCTS would directly fund the costs of all the co-located staff based at the Centre, both in the Courts Staff and the Community Team. The costs of these seconded staff represented almost half of the total budget for the Centre. Leaving aside these unique costs, the cost of managing and trying cases at NLCJC was similar to that of other comparable local courts. Indeed, on some like for like comparisons, the Centre is actually cheaper.”*³⁹

Results: Although the NLCJC achieved greater efficiency – dealing with cases in fewer hearings than average – and achieved success in tackling problems (with 79% of offenders agreeing they had been helped to address their needs by the court), some results showed failures including higher breach rates of court orders than comparable offenders dealt with by conventional courts and no statistically significant reduction in reoffending. Although statistically there has been no improvement in community confidence, the Police and Crime Commissioner for Merseyside challenged the Ministry of Justice’s conclusion, saying:

*‘This centre has been an enormous benefit to North Liverpool and the communities it serves. I have seen the impact that dedicated teams of staff, drawn from criminal justice partner agencies, can have on the offending behaviour of some of the most troublesome and prolific offenders. Working together with the presiding judges the centre has provided clear direction and motivation to change the lives of offenders and thereby help the local communities.’*⁴⁰

Despite the positive steps that have been taken towards greater experimentation with problem-solving justice, Policy Exchange has previously contended that

36 Ministry of Justice, Impact Assessment on Her Majesty’s Courts and Tribunals Service proposals on the proposed closure of North Liverpool Justice Centre (July 2013)

37 Ministry of Justice, Impact Assessment on Her Majesty’s Courts and Tribunals Service proposals on the proposed closure of North Liverpool Justice Centre (July 2013)

38 Ministry of Justice, Impact Assessment on Her Majesty’s Courts and Tribunals Service proposals on the proposed closure of North Liverpool Justice Centre (July 2013)

39 As argued convincingly by the Centre for Justice Innovation in their response to the closure consultation

40 www.liverpoolecho.co.uk/news/liverpool-news/plans-close-pioneering-liverpool-court-5798149

its implementation has sadly displayed all the hallmarks of a classic, top-down reform.

Indeed, despite the admirable efforts of all involved in this particular project in many ways, the North Liverpool court is, regrettably, a prime example of how not to do pilots. One of the consistent themes of Policy Exchange’s work is that, in the criminal justice system, innovations are too often centrally conceived and tested, rolled out from the centre in local areas and then often abandoned or left to rot because the personalities at the centre – the champions of the innovation – change so quickly from one year to the next. Often, local areas do not fully understand the innovation, buy-in to its potential, nor have sufficient resources to make it work – and understandably often feel simply that the latest, flavour-of-the-month solutions are being imposed on them from Whitehall.

North Liverpool was led and championed at the centre by the Ministry of Justice, and amply funded in the first instance. But once the key protagonists have moved on, its existence became threatened, particularly because of a lack of robust data collection and consequent inability to demonstrate its value.

This was, in many ways, an “all singing, all dancing” pilot and, because of its perceived expense, was always unlikely to sustain the confidence of new personnel within the Ministry of Justice. As we detail below, there are in fact many ways in which the principles of community courts such as Red Hook and North Liverpool could be more cost-effectively embedded within a new local, neighbourhood justice infrastructure.

“Innovations are too often centrally conceived and tested, rolled out from the centre in local areas and then often abandoned or left to rot because the personalities at the centre change so quickly from one year to the next”

The role of magistrates in problem-solving

It is sometimes pointed out that the most successful problem-solving courts in the US and in England and Wales are those run by single judges, who can not only more readily change the culture of a courtroom but can also provide the continuity of relationship with an offender and the wider criminal justice and other agencies. This is partly a statement of the obvious, because the US does not have a system of lay magistrates (courts there are presided over by professional, full-time judges⁴¹), but it is also an important recognition of a fundamental barrier to magistrates’ full involvement in certain kinds of problem-solving courts.

In those courts that are highly-specialised, have a therapeutic focus and are centred on offending related to substance abuse (drug and sobriety courts), mental health or domestic violence, the continuity of relationship with the offender is hugely important. But as magistrates are only available to sit for a few days a month, and sit on a panel of three, this continuity of relationship – coming back before the same set of magistrates – is extremely hard to achieve. Some courts in England and Wales have got around this issue by ensuring that a district judge also sits on a panel of three and provides the consistency, but this does little to disguise the difficulty.

It is not just an issue of continuity. The American problem-solving justice community have built a very sophisticated, data-driven understanding of how best to run specialist courts. There are intricate systems of sanctions and

⁴¹ In fact, judges at the local level are elected by voters. District court judges are also elected or in some case appointed by elected officials. The majority of judges in America has formal legal training and experience in the legal field.

incentives, data-driven science about how and when to apply them to change behaviour and encourage compliance, and a depth of knowledge that we have not yet really recognised in England and Wales, and certainly not put into practice. Such expertise can most readily be developed by judges who are running specialist courts on a regular basis, rather than magistrates who may do it on just a few occasions a year. There are obviously also significant training implications to implementing specialist courts in this “leading-edge” way.

Forward-thinking magistrates often express a willingness to be more involved with this kind of work. It is not impossible for them to do so effectively, but we believe that the primary opportunity for magistrates in the problem-solving arena may not be in the more complex and specialised areas of addiction, mental health and domestic violence, but could instead be in making a reality of the community justice or neighbourhood justice model – where the idea is less about working intensively with offenders to solve deep and complex behavioural and addiction problems, and more about delivering swift justice in a way that solves specific local crime problems, generates solutions to community issues such as anti-social behaviour, and aims to transform community confidence in the justice system.

A new vision for local justice

If magistrates are to seize the opportunity of playing a far greater role in delivering neighbourhood justice, this begs the question of in what setting this can be achieved and for what kinds of cases. If conventional courts were to be increasingly used for more serious cases, or more specialised problem-solving, what then could be the future of summary justice?

At the moment, we have a relatively incoherent, three tier system of summary justice. On the one hand, there are the cases that go to the magistrates’ court. Next, there are those offenders dealt with administratively by the police through out-of-court disposals such as cautions. Thirdly, newly-created neighbourhood justice panels will now begin to deal with low-level cases, finding restorative, local solutions.

This summary justice system is where the vast majority of proven criminal offences are dealt with, so one might expect there to be a degree of sophistication in the decisions that are taken in it. Key decisions are taken by the police, including whether an offender should be charged with an offence and go to court, be dealt with on-the-spot through a penalty notice, be given a caution or other pre-court disposal, or diverted entirely from a formal process. But there is no detectable crime reduction strategy in respect of how summary justice is dispensed – no science about which offenders should receive which kind of disposal, and little evidence taken into account about the impact of what impact particular courses of action will have in terms of crime prevention.

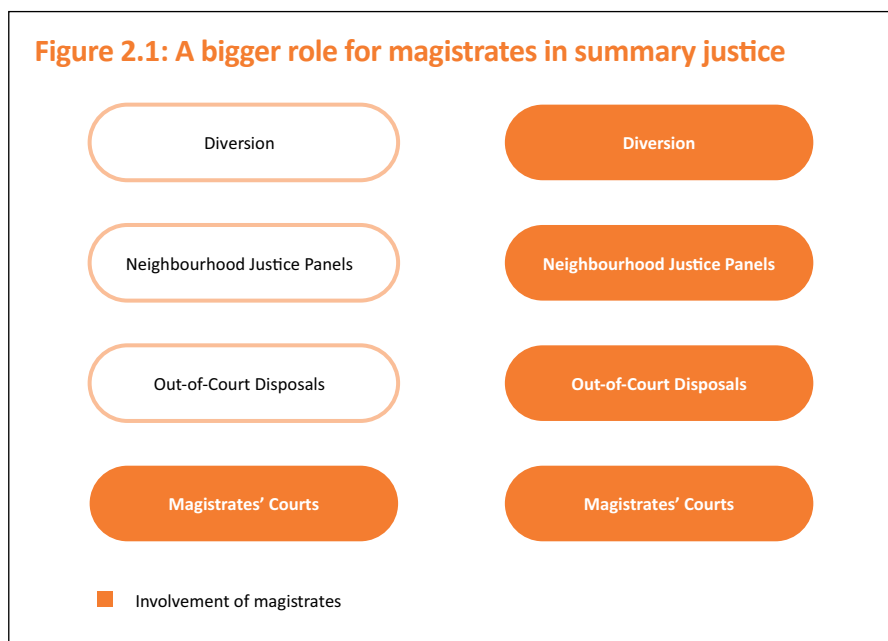
Below, we set out a number of proposals for creating a new, more flexible neighbourhood justice infrastructure, underpinned by a new, expanded role for magistrates in dispensing local justice. The aim is to encourage the expansion of local, well-connected mechanisms for doing justice that are geared towards reducing reoffending, but without the exorbitant cost of running high-end, bespoke pilots.

All of it involves a new role for magistrates – including an expansion of their responsibilities outside of the conventional court. Under our proposals,

magistrates would deliver a greater volume of cases, in a broader range of formal and informal settings, and with a new focus on reducing reoffending.

Recommendation: The Home Office and Ministry of Justice should reconfigure our arrangements for summary justice. The two Departments should formulate a new, joint strategy built on the notion of neighbourhood justice with an expanded role for magistrates.

Our proposals would mean magistrates playing a more central role at every stage of the summary justice landscape.



Swifter, more certain justice

There is compelling evidence that the swiftness and certainty with which a sanction is applied to an offender can be far more important than its severity in driving behaviour change. In many ways, this principle dates back to Beccaria, whose seminal work on penology in 1764, proposed “a number of innovative and influential principles: punishment had a preventive (deterrent), not a retributive, function; punishment should be proportionate to the crime committed; the certainty of punishment, not its severity, would achieve the preventive effect; procedures of criminal convictions should be public; and finally, in order to be effective, punishment should be prompt.”⁴²

A casual glance at our criminal justice system will confirm that policymakers appear to have misplaced Beccaria’s important insights somewhere along the way. For instance, today in the magistrates’ court, it takes an average of four and half months from the offence to sentence, and 59 days from the time of charge to the completion of the case. There is an average 36 days until the first hearing, with a further 23 days until completion (e.g. sentencing) – usually to allow for a second hearing.⁴³ This two month delay is damaging for victims, but it is also damaging for offenders, weakening the connection further between the offence, the charge and the punishment. Clearly, complex cases take time to prepare and process, but the vast majority of cases are minor, or actually uncontested. There

42 Cesare Beccaria, *On Crimes and Punishment* (1764)

43 Ministry of Justice, *Court Statistics Quarterly April – June 2013*, Main Tables, Table 3.8

is no good reason for our criminal justice system to operate according to such a leisurely timetable. This has been recognised by the current Government, with its white paper on Swift and Sure Justice seeking to tackle the problem at every level. However, momentum appears to have stalled since its publication and new efforts are needed to inject these vital principles, which were championed particularly by the former Policing Minister Nick Herbert MP, into the criminal justice system.

A number of innovative international programmes are clearly demonstrating the power of the ‘swift and certain’ principle. Consistent sanctions, delivered quickly after the offence or infraction is committed, can have a transformative impact on offenders’ behaviour and substantially cut reoffending.⁴⁴ For instance, offenders sentenced to the HOPE (Hawaii’s Opportunity Probation with Enforcement) programme are sent straight to jail if they breach the terms of their community order. Crucially, following these jail sentences (which are normally only for one or two nights) they are returned to the community-based programme. HOPE is more than twice as effective as conventional probation programmes in the community and shows that that “two days in jail is as good a deterrent to drug use as six weeks, as long as the two days actually happen, and happen every time.”⁴⁵

The principle of swift and certain sanctions is why Policy Exchange has always supported the use of on-the-spot and out-of-court disposals in principle, but only where the response is proportionate to the offence and not used inappropriately for repeat offenders. It is precisely this concern, expressed in our report, *Proceed with Caution*, which has recently led the Justice Secretary to review the use of cautions and other out-of-court disposals.

Police Courts

In a world where there is likely to be fewer conventional magistrates’ courts, there is a strong case for involving local magistrates in running new ‘Police Courts’ (based at, or close to, police stations) to provide swifter justice at a more local level. Policy Exchange has previously called for the closure of some underused police stations, but those larger stations with larger custody suite facilities would, we believe, provide sufficient capacity for Police Courts.

Police Courts would involve a single magistrate, or bench of three magistrates, sitting in a more informal court inside or close to a police station. They could operate permanently, or at peak times (e.g. in the evenings and at weekends), to dispense summary justice in a quicker and more efficient way.

- Low level offences would be dealt with immediately after charge, with legal advice given by their solicitor or the duty solicitor, and a verdict and sentence administered on the spot. This would only take place when the offender had pleaded guilty. If single magistrates were used for this purpose, this would involve an expansion of single magistrate powers under s49 of the Crime and Disorder Act 1998.
- Procedural safeguards would be put in place to allow magistrates to refer the case to a conventional court where a not guilty plea is entered or if it was otherwise in the interests of justice to do so. Equally, provision could be made for a defendant to elect to have a hearing in the magistrates’ court. This could be done virtually, via video link.

⁴⁴ See, for instance, the Hawaii Opportunity with Enforcement (HOPE) programme. There will be further Policy Exchange work in this area in 2014.

⁴⁵ Kleiman, M.A.R. Smart on Crime (2013)

- Additional incentives could be offered to offenders to plead guilty and receive sentence on the day (e.g. an automatic reduction in the sentence). This would reflect the enormous cost savings for the justice system – especially in terms of avoided CPS and police costs in building the case, and court costs in terms of hearings.
- Provision might also be made for the public to witness proceedings (recognising the importance of the censure involved with sentencing taking place in public – a vital part of procedural justice).

Police courts would create swifter, more certain justice – with offenders facing the consequences of their actions much more quickly. They would also result in greater efficiency, with significant cost savings due to reduced use of police cells, fewer decisions to remand offenders in custody and far fewer offenders needing to be transported to court at taxpayers' expense.

Recommendation: As part of a new strategy for neighbourhood justice, the Home Office and Ministry of Justice should introduce new Police Courts, with swifter justice administered after charge for offenders who plead guilty.

Recommendation: In the meantime, Police and Crime Commissioners should trial Police Court models in their local areas.

Scrutiny of out-of-court disposals

Basing magistrates at police stations on a semi-permanent basis would offer a range of other new possibilities. As discussed above, out-of-court disposals are now a common mechanism through which justice is dispensed. However, critics argue they take the administration of justice out of the hands of courts and give too much power to the police without sufficient safeguards or oversight.

Although some police forces are beginning to use magistrates to scrutinise out-of-court disposals retrospectively and by undertaking a dip sample, this does not go nearly far enough in dealing with public concern about the inappropriate use of these disposals.

With magistrates in police stations, for the first time proper scrutiny and real-time approvals of the use of out-of-court disposals would be possible. In this model, magistrates might play a role in the administration of cautions, granting final approval before cautions are given, or reviewing cases. Arrangements for the precise involvement of magistrates could be determined locally, but depending on their availability could range from directly scrutinising or approving each decision, to simply meeting with officers on a periodic basis to discuss decisions about out-of-court disposals, or particular concerns magistrates might have. Given the concern over the seemingly inappropriate use of some out-of-court disposals for some serious offences such as rape, grievous bodily harm and sexual assault, we would expect that magistrates would want to directly take decisions on these sorts of more serious cases.

Recommendation: The Ministry of Justice's review of the use of cautions should recommend that magistrates be placed in police stations to scrutinise and administer, out-of-court disposals.

Recommendation: Police and Crime Commissioners should experiment with different models of this scrutiny, including with magistrates observing or overseeing all or some decisions in real-time, as well as review them after the fact.

Sentence reviews and sentence management

Currently, save for a few designated areas where problem-solving courts have been trialled, judges and magistrates do not have the power to review sentences and provide sentence supervision. Apart from being bad for sentencers, who gain no sense of the effectiveness or quality of the community sentences being delivered (it is an oft-repeated refrain that they only see bad news, when offenders come back before them again having committed new crimes), this is also bad for offender accountability.

As we will discuss later, a key part of the specialist problem-solving courts (e.g. drug courts, sobriety courts) is their structured approach to sentences, with offenders regularly appearing before them again to discuss progress and with judges able to apply sanctions or use incentives to drive behaviour change. This principle – of enhanced accountability and therefore improved compliance – is one that could apply more widely to neighbourhood justice.

Organisations such as the Centre for Justice Innovation have called for changes to s178 of the Criminal Justice Act 2003, which gives the Justice Secretary the power to allow an individual court to periodically review a community order.⁴⁶ We agree strongly with this recommendation. This legislation should be changed so as to allow any court to use this power, where resources allow, without having to seek the approval of a politician. It is exactly this sort of central control-freakery that takes responsibility away from local actors and prevents people from taking the initiative and trying new things.

Permitting magistrates to review orders could also lead to a more flexible interpretation of sentence supervision. For instance, rather than all three magistrates reviewing an offenders' progress, single magistrates could be allocated a caseload of offenders who might benefit from periodic review. Sentence supervision could also be provided informally in an out-of-court setting or a police station, and in addition to face-to-face review, could include verbal and written dialogue with private and voluntary probation providers, the National Probation Service (NPS) and directly with the offender themselves. These steps would not only strengthen magistrates' and judges' oversight of the sentences they are handing down, they would also strengthen offender accountability and could have a very positive impact on compliance (and therefore public confidence) in non-custodial sentencing.

Recommendation: The Government should amend s178 of the Criminal Justice Act 2003 to remove this barrier to sentencer supervision. Courts that want to perform this task should be able to do so.

Recommendation: The Ministry of Justice should convene a working group with members from ACPO, the Magistrates' Association and National Probation Service to develop a small range of sentencer supervision models which could see offenders reporting to magistrates in the community.

⁴⁶ P Bowen and S Whitehead, *Better Courts: Cutting Crime through Court Innovation* (2013)

Community engagement and public confidence

A core part of strengthening the principle of local justice is about engaging with the local population and driving up confidence in the justice system. There are various ways in which the best community courts do this, including by:

Providing visible community payback: In North Liverpool, the community court involved the local community in determining the unpaid work undertaken by offenders.⁴⁷ In New York, Bronx Community Solutions invites community groups to participate in advisory boards and help to identify hotspots and eye-sores for projects. These boards also play a role in the on-going operations of the court.⁴⁸ Similarly, at the Midtown Community Court, justice is made visible with offenders wearing bright blue vests and sweeping the streets and cleaning local parks.⁴⁹ At Red Hook, this sort of community involvement has seen 94% of local residents rating the court favourably (compared with 12% when it was simply a conventional court).⁵⁰ Crucially, these projects are also delivered swiftly: At Midtown Community Court, offenders begin projects within 24 hours of receiving their sentence, sending a strong message to them – and to the community – that crime has consequences.

Offering innovative community engagement and education: In North Liverpool, practitioners held mock sentencing events and other community engagement exercises outlining the work of the Centre. Judge David Fletcher led a lot of this activity, holding an average of 13 events every month, reaching around 800 local people every month.⁵¹ Similarly, at Red Hook, a range of community outreach initiatives have been created, including a court-sponsored baseball league, aiming to build community institutions and strengthen residents' ties to the community and normative commitment to obey the law.

Co-locating services: At North Liverpool, provision was made for a range of services to be available to the community as a whole, include housing advice, legal and financial advice from Citizen's Advice Bureau, and help with drug and alcohol problems. Red Hook also links defendants to drug treatment and provides on-site services, seeking to strengthen families and help individuals avoid further involvement with the court system. Again, services are not limited to those involved with the courts system.

Recommendation: the amount and quality of community engagement work undertaken by magistrates should be measured and made a formal part of a magistrates' training and regular appraisal.

Recommendation: rather than the Ministry of Justice paying expenses to magistrates for undertaking community engagement activity (a process universally complained about by magistrates we have spoken to), the department should set aside a per-magistrate stipend for which the magistrate would need to account for at the end of each year.

Courts as community assets

As difficult and potentially unpopular decisions are taken to close some local courts, there may well be an opportunity for local leaders to take action to protect these

47 Mair and Millings, Doing justice locally: The North Liverpool Community Justice Centre (2011)

48 www.courtinnovation.org/project/midtown-community-court

49 www.courtinnovation.org/project/red-hook-community-justice-center

50 NCSC, A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center (2013)

51 Mair and Millings, Doing justice locally: The North Liverpool Community Justice Centre (2011)

assets in the first place. For instance, Police and Crime Commissioners (PCCs), together with local judges and magistrates, may wish to take ownership of courts as community assets, in the same way that local parks and green spaces are increasingly being run by groups of concerned citizens for the benefit of local residents.

If a PCC was minded to keep a court open, he or she might earmark some of the police force's budget, and come together with the local authority and relevant local agencies (e.g. probation, drug and alcohol treatment teams, social services, mental health teams, the Crown Prosecution Service) to assess the feasibility of embedding new services within the court building (generating new revenue) and keep the court running. The Ministry of Justice might take a policy decision to dispose of assets to buyers like these at a significant discount, and allow the new owners a longer period to service the debts, or come to an arrangement over future maintenance costs and liabilities. Community groups may also wish to partner with the private sector, who could provide up-front capital, financial guarantees and expertise in managing the asset (for instance, utilising parts of the building for commercial purposes).

Recommendation: the Ministry of Justice should provide an opportunity for PCCs and others to take ownership of courts in advance of any further consolidation programme. PCCs should, in the meantime, identify particular sites which they might want to protect, and consider the feasibility of doing so as via a community-owned commercial vehicle, perhaps capitalised by the private sector.

New court locations

Mobile courts

One part of a more flexible neighbourhood justice landscape would be to create a system of mobile courts. If there are to be a fewer number of larger, urban courthouses serving the major population areas, justice needs to be administered at the local level in more innovative ways. Mobile courts would have mobility in the sense that their location would change, according to demand and available space – including setting up temporary courts in community buildings such as leisure centres, libraries and local authority buildings, or vacant shops or office space. This would again allow the timings of hearings to be flexible, for example, on a Saturday or Sunday morning to cater for those arrested for alcohol-related offences the previous evening.

Mobile courts could also be truly mobile – for instance, with a court inside a Justice Bus, allowing magistrates to visit more rural areas. One is already running in the North of England, set up by local magistrates. Not only could this provide an innovative means of administering justice for low level offending, it could also be used for educational purposes, with the means to engage communities about the workings of the justice system.

Recommendation: the Ministry of Justice should allow magistrates to sit in more informal settings outside of the confines of the existing court estate. They should publish clear guidance on doing so and make available security personnel from existing contracts for this purpose, where necessary.

Justice Hubs

If, as we suggest, there will be an increasing trend for a smaller number of large, urban courthouses (complemented by a more flexible network of smaller Police Courts, community-owned courts and mobile courts), there are a number of new opportunities to be seized in terms of court location.

Assuming the right commercial model and partners can be found for consolidating and redeveloping the court estate – including by closing underused courts, upgrading existing sites and building brand new courthouses – this could represent a real chance to develop the modern, fit for purpose estate that is required. New ‘Justice Hubs’, located to serve major population areas and co-located with other justice agencies, could make a real contribution to a more effective criminal justice system.

What Justice Hubs could look like

- **A wider range of services:** Justice Hubs could accommodate different criminal courts (e.g. magistrates and Crown Courts), civil courts and tribunals under the same roof, as well as housing the full range of justice services and custody facilities. Although the majority of court buildings already allow justice agencies and voluntary organisations to provide services, this is often simply in the form of temporary rooms as and when they are needed. If agencies were permanently brought under one roof, as the evidence from the Warwickshire Justice Centre shows below, the potential cost savings and enhanced collaboration between agencies would bring radical improvements – not only in the courts service but extensively across our justice system.
- **Flexibility:** Court buildings currently house an average of six courtrooms.⁵² Justice Hubs would accommodate a much larger number of courtrooms, providing flexibility for floater cases to be heard where cases are adjourned rather than courts sitting empty, as well as additional ‘overspill’ capacity, ultimately driving up utilisation rates. More courtrooms would also provide adaptability to house specialist courts.
- **Streamlining and specialisation:** Bringing many more cases together in one location will allow for greater streamlining and specialisation, including ensuring that high volume, low level cases (e.g. motoring) are heard in dedicated courtrooms with a single magistrate. This should drastically improve efficiency, particularly considering over 90% of summary motoring cases involve either a guilty plea or are dealt with in the absence of a defendant.⁵³
- **The opportunity for modernisation:** A design-led approach should see well-equipped newly-built or converted Justice Hubs, providing digital courtrooms to maximise efficiency and improved services and standards for the support of victims and witnesses. The facilitation of special measures, video conferencing equipment, the digital presentation of evidence and the use of tablets should all be prioritised.

“The facilitation of special measures, video conferencing equipment, the digital presentation of evidence and the use of tablets should all be prioritised”

⁵² Freedom of Information Request FOI/84366 Annex A

⁵³ www.gov.uk/government/news/traffic-courts-in-every-area

Case Study 2.1: Warwickshire Justice Centre

Year opened: Nuneaton in 2004, Leamington Spa in 2010

Main features:

- The Centres house 24/7 policing; shared custody (police and courts); part of the Crown Prosecution Service; courts; probation services and accredited training facilities; Youth Justice Service; HM Coroner and victim and witness support services
- Described as ‘the only centres in the country where all the justice agencies and their services, from operational policing to sentencing, is delivered in one easily accessible location’⁵⁴
- Over 800 staff employed at the centres and over 1,000 people a day in total visit the centres to access services.⁵⁵

Why this is successful:

The co-location of agencies has brought a number of benefits:

- Agencies located at the Leamington Spa Justice Centre have saved a combined £26 million on building projects that would otherwise have been required, and their ongoing running costs have reduced by £800,000 per year⁵⁶
- The number of offenders in the area brought to justice has increased by 52%⁵⁷
- Jury utilisation has increased from 30 to 70%, and the ineffective trial rate is 9%⁵⁸ (compared to a national average of 18%⁵⁹)
- Collaboration between all criminal justice agencies working together under one roof; with a clear governance structure implemented to oversee the building as a whole⁶⁰
- The easy transfer of offenders in custody between police and courts, reducing the time taken for them to appear in court, and an increased opportunity for cases to be transferred from magistrates’ courts to the Crown Courts and dealt with on the same day.⁶¹

54 Warwickshire Police Authority, ‘Warwickshire Justice Centre, Leamington Spa: Report of the Senior Responsible Officer’ (February 2011)

55 Ibid.

56 Steria and Cranfield School of Management, Innovation in Justice: New delivery models and better outcomes (December 2011)

57 Richard Lyttle, Programme Director, Warwickshire Justice Centre Programme, for PublicService.co.uk (October 2007)

58 Steria and Cranfield School of Management, Innovation in Justice: New delivery models and better outcomes (December 2011)

59 Ministry of Justice, Judicial Court Statistics (Annual)2011, Chapter 3 Table 3.4

60 National Audit Office, Improving the Criminal Justice System – lessons from local change projects (2012)

61 Ibid.

Case Study 2.2: Manchester Civil Justice Centre

Year opened: 2007

Main features:

- The largest civil justice centre in England and Wales, with 47 courtrooms, 75 consultation rooms and 13 working floors
- Small, large and ‘super’ courtrooms available for use, designed with a ‘natural’ theme; including air vents, natural light, and ‘wind scoops’ to improve the experience for court users
- Agencies, tribunals, various civil courts, the Personal Support Unit and HMCTS offices are all co-located under one roof.

Why this is successful:

- Large, accessible building located in the centre of the area reachable for all court users

- Modern adaptable courtrooms available for different uses; depending on number and size of parties involved, accommodating for cases with media interest, vulnerable or intimidated witnesses and other required facilities
- A large number of consultation rooms available, providing privacy for discussions or out of court resolutions (particularly useful for family cases)
- One stop shop centre for court users and the public to access all services under one roof.

A new direction for specialist courts

We have outlined above how magistrates might, even in an era of declining resources and fewer conventional court locations, provide a stronger and more locally-connected form of local justice. We have also suggested that, in the main, they should focus on delivering elements of the ‘community court’ model – aiming to improve the visibility of justice, solve local crime problems and improve public confidence. We have also proposed changes that would provide swifter summary justice and greater accountability for police decisions over cautions and other out-of-court disposals.

However, magistrates undoubtedly should – and will – continue to play a role in a normal court setting, where a large number of summary cases will still be held. What might these courts look like in future, and how might the opportunities of a reformed court estate be seized?

The opportunity of specialist courts

We have seen above that there have been a number of relatively recent innovations in England and Wales that have sought to deal creatively with local, low-level crime problems such as anti-social behaviour, or more efficiently with volume cases – such as the emerging plans for centralising the administration of motoring offences.

However, there are also a significant number of specialist courts – such as drug courts, sobriety courts, veterans’ courts, re-entry courts, mental health courts and domestic violence courts – that successive governments have tried (tentatively and largely unsuccessfully) to mainstream in England and Wales.

Drug courts and sobriety courts – perhaps the best known of these specialist models – work on the premise that offering treatment, but combining it with real accountability, is the key to driving behaviour change. Offenders are held accountable in two key ways: first, there is no room for uncertainty about whether they are drinking or using drugs, because new technology puts the issue beyond doubt. Secondly, the offender is brought back before the same judge regularly to review their progress. This continuity of relationship, together with the use of swift and certain sanctions for non-compliance, helps to change offenders’ behaviour and reduce their reoffending. To complement this new accountability, meaningful behaviour change and reductions in reoffending are driven by co-locating agencies at court and delivering services to dovetail with the court model.

Drug courts

The first drug court was founded in Miami in 1989, and by combining drug treatment with the authority of a judge the team was able to demonstrate lasting

change in the lifestyle and behaviour of drug court participants. This sparked a revolution, and as of 2014 over 2,800 drug courts were in operation across the US.⁶²

What are drug courts?

In the usual court process, a judge has three options; jail, probation or dismissal. There is no long-term, viable option to resolve an offender's drug problem. In American drug courts, a single judge ensures accountability by imposing requirements on participants to return to court frequently – often weekly – to report on their progress in treatment, submit urine tests, and demonstrate their compliance with court orders. The judge uses a broad array of non-custodial tools to deliver swift sanctions, such as drug treatment and community resolution projects, as well as rewarding the participant for compliance and progress in treatment. Graduates typically have the charges against them dropped, while those who fail receive a pre-determined jail sentence or prison sentence.⁶³

The judge, prosecution and defence explicitly acknowledge that the goal is to change behaviour, moving from addiction to sobriety and from a life of crime to law-abiding behaviour. The idea is that if you don't tackle the offender's addiction, you haven't really solved the problem – either for the community or the offender. Drug courts provide benefits for an offender to break the cycle of drugs-crimes-jail, the courts as they no longer has to spend scarce resources on the same offender repeatedly, and the public because streets are safer.

The ten key components of drug courts

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defence lawyers promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court programme.
4. Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participation is essential.
8. Monitoring and evaluation measure the achievement of programme goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court programme effectiveness.⁶⁴

Outcomes: crime reduction

- 78% of drug courts significantly reduce crime,⁶⁵ and reoffending rates are on average 8 to 26 percentage points lower than for other justice system responses⁶⁶

62 www.nadcp.org/learn/what-are-drug-courts/drug-court-history

63 G Berman and A Fox, Policy Exchange, Lasting Change or Passing Fad? (2009)

64 NADCP and the Drug Court Standards Committee, Defining Drug Courts: The Key Components (1997)

65 D.K. Shaffer, Reconsidering Drug Court Effectiveness (2006)

66 W Huddleston, and D.B. Marlowe, Painting the Current Picture: A National Report on Drug Courts and other Problem-Solving Court Programs in the United States (2011)

- The best drug courts reduce crime by as much as 35 to 40%⁶⁷
- Reductions in recidivism have been shown to last three years post-entry⁶⁸
- In addition to significantly less involvement in criminal activity, drug courts also significantly reduced illicit drug and alcohol use, improved family relationships, lowered family conflicts and increased participants' access to needed financial and social services.⁶⁹

Outcomes: cost reduction

- When drug courts target their services to the more serious, higher-risk offenders, the average return on investment was determined to be \$3.36 for every \$1 invested⁷⁰
- Net economic benefits to local communities range from approximately \$3,000 to \$13,000 per drug court participant.⁷¹

Drug courts in England and Wales

Drug Treatment and Testing Orders (DTTOs) were introduced here in 2000 as a new community sentence, aimed at breaking the link between drug use and crime. Courts could make an order requiring offenders to undergo treatments either as part of another community order or as a sentence in its own right. The sentence could last from 6 months to three years.

DTTOs were then phased out and replaced by Drug Rehabilitation Requirements (DRR), introduced in April 2005. The key difference was that a DRR would enable a court to check progress and compliance throughout.

Though a step forward, the DRR was a much watered-down version of the drug court model. For example, courts were disallowed from reviewing orders any more regularly than every month, and there was no provision made for offenders to come back before the same judge. Although DRRs are used throughout the country, the volumes are small, with just 13,310 orders made in 2012/2013.⁷²

Examples of drug courts in England and Wales

Beginning in 2005, the government tested two dedicated drug court models (that did not have the flaws identified above), which then extended to six sites in 2007. For example, the West London Drug Court at Hammersmith Magistrates' Court seeks to address drug-related offenders, working with those who have tested positive for Class A drugs on being arrested. A small amount of funding was initially allocated to the court to pump-prime its development, but it (along with the handful of other drug courts that are still in operation) now operates without additional funding.

Crucially, West London Drug Court builds on the DRR by additionally filtering drug-related cases into dedicated weekly drug court sittings staffed by specially trained professionals. Drug offenders will enter the dedicated drug court either at arraignment or sentencing and from that point will have their cases heard by the drug court until the completion of their order.⁷³ Today there are just a handful of recognised criminal drug courts still in operation in England and Wales.

Elsewhere in the family justice system, a pioneering judge, Nick Crichton at the Inner London Family Proceedings Court in Fitzrovia, has also started to use

67 D.K Shaffer, *Reconsidering Drug Court Effectiveness* (2006)

68 Gottfredson et al, *Long-term effects of participation in the Baltimore City drug treatment court: Results from an experimental study* (2006)

69 W Huddleston, and D.B. Marlowe, *Painting the Current Picture: A National Report on Drug Courts and other Problem-Solving Court Programs in the United States* (2011)

70 *Ibid*

71 *Ibid*

72 *Offender Management Statistics (quarterly) April – June 2013*

73 P Bowen and S Whitehead, *Better Courts: Cutting Crime through Court Innovation* (2013)

drug and sobriety court techniques to help keep children out of care and families together. Unlike the other drug court pilots which were centrally driven, this involved a single judge witnessing these techniques as part of a visit to the US and coming back here to apply them. Judge Crichton eventually persuaded three local authorities to contribute funding and resources (by way of co-located treatment and other staff) and began his own drug court.

The Family Drug and Alcohol Court (FDAC) ensured that families see the same judge – either Crichton or district judge Kenneth Grant – every fortnight. As Judge Crichton said in an interview with the Guardian, “Continuity is absolutely crucial.” He likens the process to WeightWatchers, “with the judge as the scales”.⁷⁴

An independent evaluation by Brunel university found that nearly half of FDAC mothers were no longer misusing drugs or alcohol by the time of the final court order (as against 39% in regular family courts), and 36% of FDAC fathers were clean compared with none in the comparison group. Crucially, nearly twice as many FDAC mothers were reunited with their children as in a family court. By addressing the families’ needs and keeping children out of care, the Brunel report concluded that FDAC saves the taxpayer money.⁷⁵

Sobriety courts

A new kind of specialist court has also spread across the United States since Policy Exchange last examined this area in 2008. Beginning in South Dakota, which initiated a ‘24/7 Sobriety’ scheme, Sobriety Courts, facilitated by new alcohol monitoring technology, have begun to deliver significant results with offenders whose criminality has been fuelled by alcohol misuse. Sobriety Courts operate on a very similar basis to their drug-focused counterparts, but with participants tested for the presence of alcohol, instead.

Box 2.3: Continuous alcohol monitoring

Transdermal alcohol monitoring technology, developed in the United States, allows individuals’ alcohol consumption patterns to be monitored through an ankle bracelet. The bracelet samples an individual’s skin for the presence of alcohol once every thirty minutes (or 48 times a day). Based on the frequency of the testing, they offer what is known as ‘Continuous Alcohol Monitoring’ (CAM). The bracelet has tamper detection alerts and is water resistant.

The bracelet stores and records the test results that are collected throughout the day. At a pre-determined time (e.g. once a day) the transdermal test results are then uploaded via a base station that is connected to a telephone line or mobile adaptor. If offenders do not have a telephone line, they can report to their supervising agency (e.g. probation, police) to have the data collected periodically.

The results are interfaced with a secure web based portal. The software enables the supervising agency to view the offender’s data, print reports and manage inventory. Some of the most cutting-edge ankle bracelets incorporate radio frequency (RF) technology which means that sobriety orders can be combined with conventional curfews.

The most prominent evaluation of these ‘sobriety schemes’ has been undertaken by RAND, which looked at the ‘24/7’ scheme in South Dakota. It found “strong

74 www.theguardian.com/society/2012/jan/31/nicholas-crichton-judge-family-man

75 FDAC Research Team, Brunel University, The Family Drug and Alcohol Court (FDAC) Evaluation Project Final Report (March 2011)

support for the hypothesis that frequent alcohol testing with swift, certain, and modest sanctions can reduce problem drinking and improve public health outcomes.”⁷⁶

Subsequent studies have demonstrated not only an impact on problem drinking, but also offending while participating in the scheme and statistically significant reductions (between 14% and 42%) in recidivism thereafter.⁷⁷

Case study 2.3: Policy Exchange field visits

In July 2013, Policy Exchange visited a number of American states and cities to observe Drug Courts and Sobriety Courts in action. In Colorado, we spent a morning observing a ‘Sobriety Court’ which operates out of Denver’s Justice Center (a large court building in the city centre, with a large detention facility attached serving the entire city’s police department). The Sobriety Court programme functions as a community scheme for probationers. This visit demonstrated the potential role of a court (with a single, enthusiastic and charismatic judge) in helping to reinforce the core elements of a sobriety scheme.

Focusing on drink-drivers, violent offenders (including domestic violence perpetrators) and other non-violent offenders, this visit showed how courts (in addition to probation staff) can play a key role in holding offenders accountable for their compliance, and in applying a set of meaningful sanctions and incentives to encourage the successful completion of the sentence.

Key features

- Judge-led: In this scheme it is primarily the judge, with the assistance of probation staff, who holds offenders accountable – deciding on a range of incentives and sanctions to reward or punish offenders, depending on their compliance.
- Therapeutic: With co-location of key treatment providers and other social services, the aim of the court is as much therapeutic as it is enforcement-focused – based largely on a Drug Court-type model.

Sobriety courts in the UK

In 2011 and 2012, the Mayor of London and Deputy Mayor for Policing and Crime successfully pushed for the introduction of a new sentencing power, the Alcohol Abstinence Monitoring Requirement (AAMR) to tackle the significant problem of alcohol related crime. As a result the power to impose an AAMR was introduced by sections 76 and 77 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012.

The new power allows the courts to impose a requirement that, as part of a conventional community order, an offender abstain from alcohol for a fixed time period (recommended to be between 90–120 days) and be regularly tested to ensure compliance. If the test is breached, the idea is that there will be rapid enforcement – with quick arrest and a speedy reappearance at the magistrate’s court and an immediate sanction.

However, the Act provides that the power to introduce AAMRs generally in England and Wales may not be exercised until a pilot has been undertaken. This pilot is due to take place in London throughout 2014. This need for Secretary of State approval is another example of central government being, in our view, a

76 B Kilmer et al., Efficacy of Frequent Monitoring With Swift, Certain, and Modest Sanctions for Violations: Insights From South Dakota’s 24/7 Sobriety Project (January 2013) *American Journal of Public Health*: Vol. 103, No. 1, pp. e37-e43.

77 VE Flango and F Cheeseman, When should judges use alcohol monitoring as a sentencing option in DWI cases? (2009) *Court Review* Vol. 44: 102–106

little too risk-averse in a way that might inhibit a wider take-up of these ground-breaking programmes.

However, a number of pioneering Police and Crime Commissioners are pushing ahead with their own schemes and are trying to find ways to mainstream the technology and the approach within existing legislation, rather than relying on the new Act. This kind of experimentation should be encouraged rather than prevented.

The future of specialist, problem-solving justice

It is certainly true that we have a number of pockets of excellent practice and innovation, but efforts to spread problem-solving, specialist techniques more widely have been thwarted. In a 2009 green paper, the then government made clear their ambition to spread problem-solving techniques across the entire courts system by March 2012,⁷⁸ but we appear to be as far away as ever from that today.

“To do it we need to strip away the barriers that are preventing us from inventing our own versions of these specialist models”

We need to learn the lessons of past efforts to inject these principles into the system in a top-down fashion. Top-down implementation tends to undermine buy-in from front-line police officers, magistrates, lawyers, and probation officers. This is particularly

important for problem-solving justice, which seeks to engage local actors in solving local crime problems.

However, the right strategy – with the involvement of government, but importantly with the leadership of judges and magistrates themselves – could reignite this agenda and allow us to create our own organic and locally-driven ecosystem of court innovation.

To do it we need to strip away the barriers that are preventing us from inventing our own versions of these specialist models – not just drug and sobriety courts, but perhaps new anti-social behaviour courts, prolific and priority offender courts, prisoner re-entry courts, veterans’ courts and domestic violence courts.

How government can help to facilitate court innovation

Central government has, in lots of ways, inadvertently hampered the development of these forms of specialist justice. Funding expensive pilots, poorly translating international models for the UK context, and then de-funding them if they don’t work right away is, unfortunately, a familiar story of centrally-conceived and government-led innovation. This is not to say that piloting cannot work, but there are very few successful instances in the criminal justice system of centrally-led pilots being tested, commanding the support of policymakers and those on the front-line for the duration of the trials, and then rolled-out triumphantly to every area.

The justice system is still highly-centralised – creating a culture where the people who work in it often feel that they have to ask permission from central government to do anything innovative, and therefore don’t ask enough. For example, a recent survey of HMCTS staff found that only 30% of court staff felt it was safe to challenge the way things are done in the agency.⁷⁹ So, as with the

⁷⁸ Ministry of Justice, Home Office and The Attorney General’s Office, *Engaging Communities in Criminal Justice Green Paper* (April 2009)

⁷⁹ HM Courts and Tribunals Service, *Autumn 2011 Survey Report 2011*

original drug courts, innovation is driven from the centre by necessity – meaning that once the key protagonists (e.g. the politicians and a civil servant or two who have sponsored the reforms) move on to their next job, there are no champions in government left to continue the momentum. At other times, central government is just a plain old barrier to new developments, as with Sobriety Courts, perhaps because of personality issues or squabbles over the ownership of reforms. This is how once exciting ideas and, indeed, live projects are too often left to drift, decay and slowly die off.

So how can government actually be a help, not a hindrance, and allow the creation and expansion of the sorts of specialist courts and new contributions from partner agencies that could make such a difference to the outcomes in the criminal justice system?

We believe that, rather than pushing down one particular model from the centre, the key to this is instead to create the right set of incentives for the innovation, to offer the information and toolkits that practitioners need to begin new projects, to help facilitate the partnerships required for it to succeed and to hold the key actors in the system much more accountable for the outcomes they deliver. These steps, if done properly, should help to drive the kind of new thinking that will allow us to develop our own successful court models.

Creating the right incentives

At the moment, we believe that the primary opportunity for embedding a really new approach to court processes – and, indeed, to diversion from police stations – is to think about court reform in the context of the major structural changes in the offing to the probation and prison services.

The Government is about to outsource a large part (between 50% and 70%) of the probation service to the private and voluntary sector, pay providers by results in reducing reoffending, and ask the providers to not only save money but also to provide a brand new ‘through-the-gate’ service to short-sentenced prisoners.⁸⁰

At the same time, the Ministry of Justice is embarking on a substantial reorganisation of the prison estate – with the creation of a network of 70 resettlement prisons across England and Wales, meaning that the vast majority of offenders are released from prisons in, or close to, the area in which they will live.⁸¹

This welcome announcement was made following pressure from Policy Exchange, in our Expanding Payment-by-Results report, to ensure that the prison service was properly connected to the probation reforms.⁸² We argued that the reforms could fail if there were not sufficiently new and aligned incentives for prisons to cooperate with the new providers, and if they were left completely untouched by such a substantial reorganisation.

Linking the Transforming Rehabilitation agenda to court reform

We now seek to apply that same kind of pressure in respect of the court system. Does it make sense to only focus new financial incentives on improving the criminal justice system at the ‘back-end’, once people have served a prison sentence? Does it make sense to keep the sentencing structure and the court procedures exactly the same, and leave them out of this Rehabilitation Revolution?

⁸⁰ See our report, *Expanding Payment-by-Results; Strategic choices and recommendations* (February 2013) for more detail on these reforms.

⁸¹ Ministry of Justice ‘70 resettlement prisons announced for England and Wales’ (July 2013) <https://www.gov.uk/government/news/70-resettlement-prisons-announced-for-england-and-wales>

⁸² M Chambers, Policy Exchange, *Expanding Payment-by-Results; Strategic choices and recommendations* (February 2013)

There are, of course, limits to the capacity and ability of the Ministry of Justice to revolutionise every service at the same time. But court reform, in the specialised way described in the previous section, would complement the changes to the probation and prison systems, materially strengthen the new probation providers' ability to deliver the outcomes being asked of them, and thus increase the chances of success for the policy.

How could it happen? We are not advocating the imposition of a new specialist court model from the centre. Instead, in addition to the financial incentives offered to providers for reducing reoffending (the payment-by-results element), we believe that a new financial incentive should be introduced – one for the reduction of criminal justice demand. Probation providers should be rewarded not only if they cut reoffending at the back-end, but should also be able to access reward payments for reducing the number of people who come into the criminal justice system in the first place, in addition to reducing the costs of sentences (e.g. the number of prison sentences).

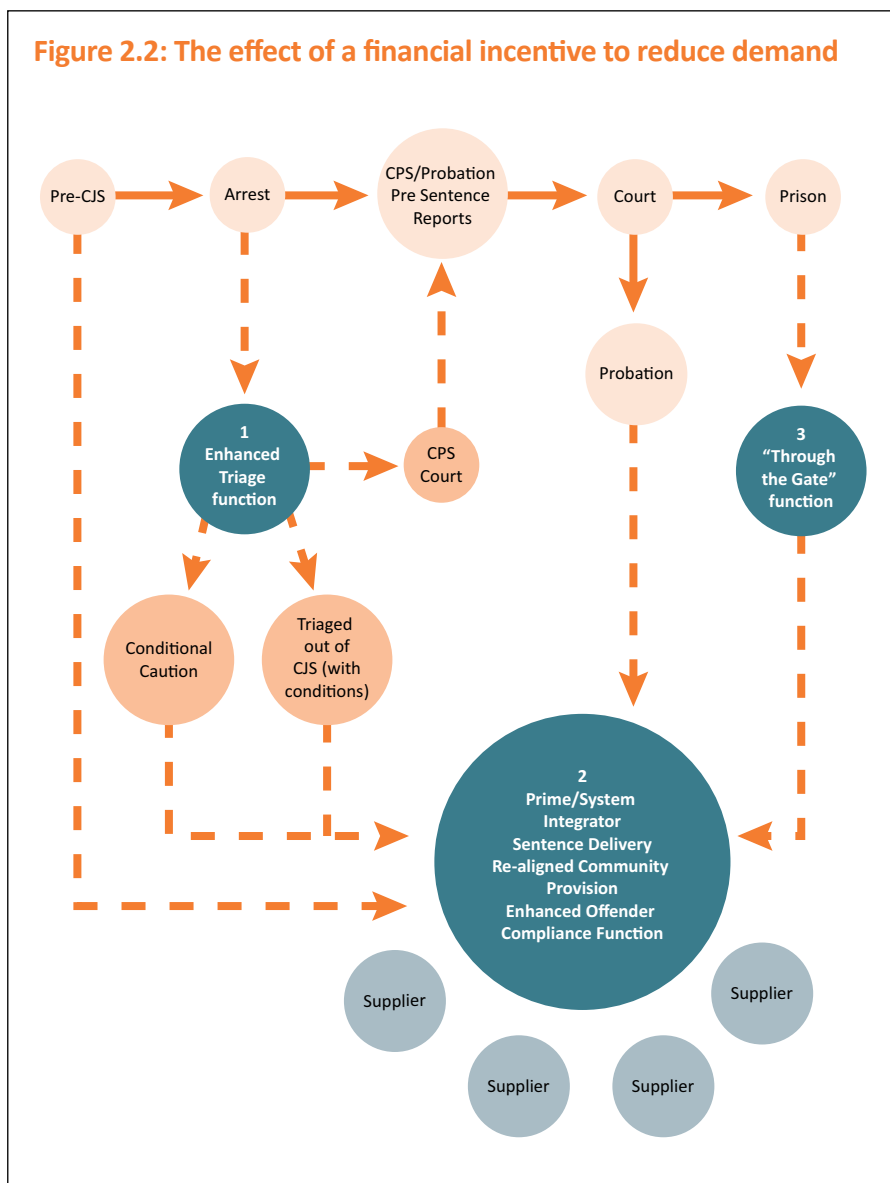
The impact of a new demand reduction incentive

What kind of behaviour would such a financial incentive achieve? We believe it would drive exactly the sort of innovation that led to the bottom-up, practitioner-led innovation that led to the creation of drug courts and sobriety courts (and other specialist courts) in the first place. First, providers might create new high-quality diversion schemes based at police stations to triage offenders out of the system – meaning those who would be better dealt with elsewhere avoid prosecution and, in the process, stripping out demand from upstream justice services. This could lead to the delivery of the sort of new approaches to conditional cautioning and the use of swift and certain regulatory regimes we suggested earlier in this paper.

Secondly, providers might create new alternatives to custody schemes that, if proven to be more effective than short custodial sentences, would command the confidence of the judiciary and thus reduce the costs of the justice system. This is the key point – offering the incentives to the probation provider means that the demand can only be reduced through the success of the services. If the police have confidence in diversion services, they will use them. If magistrates and judges have confidence in alternatives to custody and community sentences, they will use them. Such an incentive would also protect those good, existing projects that probation staff already make a contribution to.

These financial incentives could be filtered down by prime provider to the public sector, too – meaning that treatment providers, mental health teams and social workers would all be incentivised (or actually directly funded by the probation provider) to contribute resources to models like drug courts, diversion schemes and alternatives to custody.

A financial incentive to reduce demand would mean not one new service for short-sentenced prisoners, but three. The diagram below shows how a provider might structure their services:



Recommendation: as part of the current Transforming Rehabilitation reforms, the Ministry of Justice should include a new financial incentive to reduce criminal justice demand as part of the overall payment mechanism to providers. To enable proper the department to ensure they can properly attribute the outcome to the interventions of the providers, this might only be paid to those providers whose efforts have seen their Contract Package Areas exceed the average, or substantially exceed another appropriate national baseline.

Helping practitioners to innovate and facilitating the right partnerships

The second part of encouraging court innovation and the kinds of international models we have highlighted is the help and support that is offered to the local leaders and front-line practitioners. It is they who will ultimately be the key to initiating and sustaining new models, and government can do a huge amount, for

very little cost, to support their efforts.

First, government can do more to inspire people on the front line by providing information and promoting particular initiatives. In the United States, huge efforts are made by central coordinating organisations such as the National Association of Drug Court Professionals (NADCP) and Centre for Court Innovation. For example, the NADCP hold a huge annual conference for over 5,000 drug court practitioners (including judges, probation officers and treatment specialists). Policy Exchange attended this conference in 2013 and marvelled at the hundreds of seminar sessions put on over a four day period, with each attracting large audiences of engaged and motivated people. The box below gives a flavour of the kind of training that is offered. There is simply nothing remotely like this in England and Wales.

Box 2.4: Example seminar sessions in one part of the NADCP Annual Conference 2013⁸³

- Effective Strategies in Juvenile Drug Court
- Health Care Reform: Understanding and Navigating the Affordable Care Act
- Changing Behavior Through Effectively Implementing Incentives and Sanctions
- Substance Abuse Treatment: Best Practices
- The Nuts and Bolts of Trauma Treatment
- Sober Days: Learn How Drug and DUI Courts are Using Established Technologies to Get Upwards of 99% Compliance, Each and Every Day, with Their High-Risk, Alcohol-Dependent Clients
- The Critical Role of the Team: Best Practices
- Co-Occurring Disorders: Effective Treatment, Supervision, and Case Management for Your Problem-Solving Court
- Collaboratively Courting Success: Using Data Collection to Align Arkansas Adult Drug Courts with Best Practices
- Incorporating Non-Addictive Medication in Drug Courts: Real World Experiences
- Drug Testing: Best Practices
- Re-entry Court on Steroids
- Sustainability: Funding Information from a Panel of Federal Experts National
- A Critical Discussion: The Cornerstone Concepts of Family Drug Courts
- Legal Issues in Adult Drug Court: Best Practices
- Domestic Violence Courts, Community Courts, Prostitution Courts, ETC: A Discussion of Other Problem-Solving Courts
- Data and Evaluation: Best Practices
- Trauma Informed Judicial Decision-Making
- Target Population: Best Practices
- The Role of the Judge: Best Practices
- The Latest Drug Use Trends and How to Stay Ahead of the Curve

⁸³ NADCP, 19th Annual Training Conference Program www.nadcp.org/sites/default/files/nadcp/Cybercafe/2013/agenda.html

Training

Imagine what could have been achieved if, instead of spending millions of pounds on pilots that have now been de-funded, just some of that money had instead

been spent on training a set of judges, magistrates and treatment providers in how to run problem-solving courts? Ambitious, forward-thinking judges and magistrates should have been identified, their enthusiasm harnessed and their efforts supported. We could have implemented a 'train a trainer' model whereby a group of the judiciary and magistracy had received on-going, high-quality training in return for promising to train a further set of practitioners locally and champion these sorts of innovations. By now we could have trained thousands of staff in these techniques, piqued their interest in this new way of doing business and offered the assistance and international expertise they needed to set up their own locally-devised, locally-owned projects.

Peer support

Other parts of government get this right – for instance, the Home Office and Department for Work and Pensions are pursuing a programme to tackle gang-related violence, following the riots of 2011. Rather than inventing a new programme and imposing it onto diverse local areas, the departments are playing a more supportive, strategic role – helping local authority coordinators, the police and troubled family workers by spreading best practice, connecting innovative local leaders together, and offering peer support from central government officials, who are on hand to advise, support and unblock national barriers or obstacles.⁸⁴

Partnership working

New financial incentives and concrete steps to identify and help the next generation of innovators are just part of the picture. Government can also help to encourage the kind of partnership working that will be required for new court models to thrive. They will require, for instance, the resources, buy-in and understanding of key agencies such as the new probation providers, the National Probation Service (NPS), Drug and Alcohol Action Teams (DAATs), mental health teams, local housing providers and employment services. This might manifest itself in co-location of services inside courts, with dedicated personnel attached to specialist courts.

Police and Crime Commissioners

A key champion for these partnerships will be local Police and Crime Commissioners. As our previous reports have predicted, and our recent publication *The Pioneers* has demonstrated, PCCs are already proving themselves to be extremely effective at identifying promising practices and fostering new approaches at the local level. It is notable that since their creation, the impetus for initiating new Sobriety Schemes, for example, has increasingly come from PCCs as opposed to central government.

So a lot of the onus will be on PCCs to compel local agencies to play their part. Theirs will be a persuading, cajoling and coordinating role – aiming to demonstrate the benefits of a new approach and the savings it will produce downstream. For example, PCCs should be persuading the local Health and Wellbeing Boards to take strategic decisions to put dedicated resources into specialist courts, on the basis that successfully solving problems such as addiction and mental health issues will prevent more acute and expensive incidents later on (e.g. hospital admissions).

⁸⁴ Based on discussions with departmental officials and analysis of the Ending Gangs and Youth Violence Partnership Action Plan

“It is judges and magistrates who hold so many of the tools for making courts work better. Given the notorious conservatism of so many of their ranks, how can they be persuaded to become innovators, too?”

There is also a role for national government here. Ministers and key government departments can unblock the local barriers PCCs are facing. As we have previously argued in our report, *Power Down*, government departments need to be working hand-in-glove with PCCs to ensure that they have the powers and clout locally to help other agencies to contribute to crime reduction. When it comes to court reform, especially the kind of reform which would see health and other services based more permanently at courts in one-stop-shops, PCCs should have the full support of the Ministry of Justice and the Justice Secretary, who can use their positions and influence to ensure that the Department of Health and other agencies are not only ‘bought-in’ and cooperative, but are actively engaged.

Recommendation: the Ministry of Justice, the Judicial College and the Magistrates’ Association should devise a new, specialist training package for a small (perhaps fewer than 500) set of pioneering magistrates and judges. The aim would be to create some ‘problem-solving champions’ who would commit to passing on the training and developing others. This package should be developed in conjunction with expert bodies such as the National Association of Drug Court Professionals and the Centre for Court Innovation in the United States, and the Centre for Justice Innovation in the UK.

Recommendation: officials in HMCTS and the Ministry of Justice should become Peer Advisors to those working in the court system who want to innovate and set up special projects or depart from existing guidance, bureaucracy or other constraints. These advisors should feed into a central hub whose role should be to identify national barriers to local innovation and spread best practice throughout the rest of the country.

Recommendation: Police and Crime Commissioners, HMCTS staff and others working in the court system should be given strategic support by Ministers and government departments in helping to persuade agencies outside of the criminal justice system to devote resources to local court innovation projects.

Accountability for the judiciary

New financial incentives and more high-quality support for local champions of innovation will make a real difference, not least in allowing those practitioners who are already itching to try new things to do so. But we could and should go even further, especially with the judiciary. It is judges and magistrates who hold so many of the tools for making courts work better. Given the notorious conservatism of so many of their ranks, how can they be persuaded to become innovators, too?

It may be time to use some soft power – some nudges – with the judiciary. A useful starting point may be the work that was done by the Prison Reform Trust and others in respect of young offenders in 2008 onwards. Policy Exchange published a report in 2008, *Arrested Development*, which identified disparities in

the per capita incarceration rates between different areas and recommended that, if areas that used custody a lot improved their practices (for instance, by taking basic steps such as sending a social worker to a remand hearing), the use of imprisonment could be reduced. The Prison Reform Trust and others subsequently began a project that communicated these disparities to individual courts and individual judges, in a bid to ‘normalise’ their use of custody.

Though no study has yet attempted to prove (or disprove) the link, it does appear to have worked in part, with the youth custody population falling substantially since 2009 (and no other convincing explanations have been put forward to explain the reduction). Just as experiments have shown that we substantially reduce our household energy consumption if we are provided with information about our neighbours and local averages,⁸⁵ perhaps judges and magistrates might be similarly open to this sort of positive influence.

If judges and magistrates were provided with better comparative information about what works to reduce reoffending – including their own court’s aggregate performance in terms of reoffending – this might encourage new thinking and new engagement with best practice for court procedure and problem-solving. It should already be possible to assess a court’s reoffending ‘performance’ (e.g. Salford Magistrates Court) according to the characteristics of the cohort of offenders who came before it, and their predicted reoffending levels.

Creating some competition, for example in the form of comparative data, might be the kind of spur that some judges and magistrates need to think differently about their roles. Our suggestion is not that their role suddenly shifts to become solely focused on cutting reoffending – clearly it is and must be wider than that – and their primary role must always be to ensure justice is administered fairly and proportionately. But what is required, if we are to have a more effective justice system, is a recognition that it is a major part of their role. We need to convince the judiciary that cutting reoffending is part of their job, that there are models out there that they can use to do it better, and that the outcomes of their court are important and can be improved.

Taken together, we believe that a successful strategy for fostering court innovation can be delivered – one based on new financial incentives which will allow new resources to be brought to bear, better help and training to inspire a new generation of court innovators, and stronger accountability and more transparency over performance to help compel widespread culture change.

Recommendation: the Ministry of Justice should quickly devise simple metrics that would allow for the comparison of the reoffending rates of particular courts. These metrics should be communicated to the courts and made public, helping to encourage judges, magistrates and court staff to focus on reducing reoffending and to think about new approaches to courtroom processes and services.

Recommendation: The Ministry of Justice should publish comparative data on the reoffending performance of individual courts, according to a predicted rate. This should be communicated on an annual basis to all courts, court managers, judges, justice’s clerks and magistrates – and should also be published formally by the department.

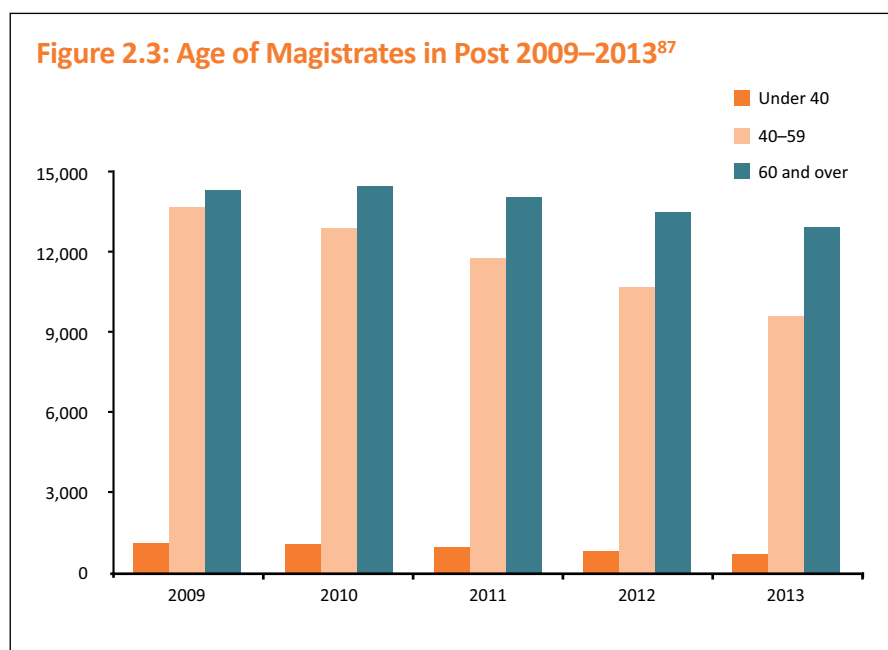
85 H Allcott, MIT and NYU, Social Norms and Energy Conservation (October 2009)

The future magistracy

This paper has argued for a bigger, more flexible and much more imaginative role for magistrates. Many of the proposals in it – placing reducing reoffending at the heart of a new and refocused role, reviewing sentences in more informal court settings, dispensing immediate justice at police stations or by video link, and overseeing out-of-court disposals – represent a significant cultural departure from what being a magistrate is all about. They are changes that are needed to bring the role into the twenty-first century, protect it from the external developments that are changing the structure of the criminal justice system, but most importantly to inject new dynamism into the way our courts work. A new kind of role will necessitate, we believe, new kinds of magistrates with a more diverse make-up, outlook and background.

The diversity of the magistracy

As lay representatives, it is important that magistrates represent the public as far as possible. Although steps have been taken to improve the diversity of the magistracy, and the gender balance has improved to 48% female and 52% male,⁸⁶ statistics show that there is still significant room for improvement.



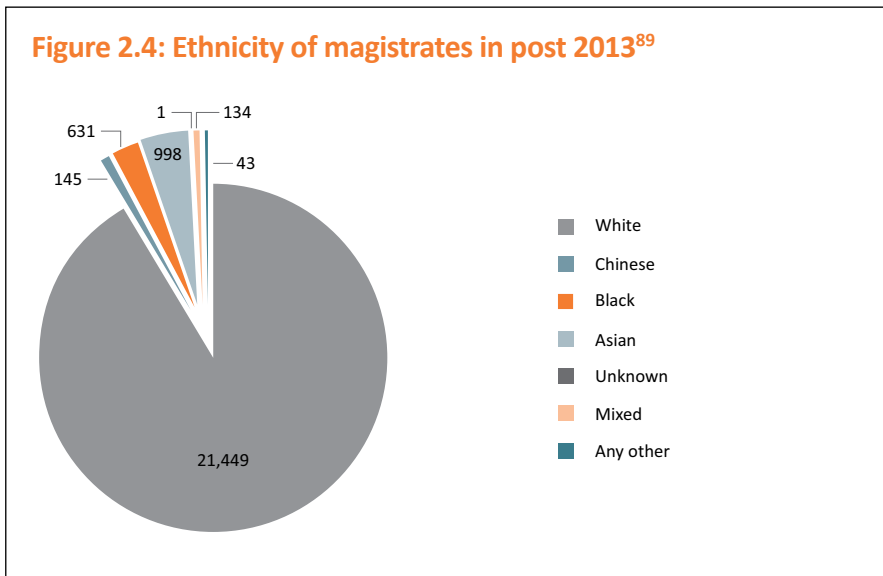
As the organisation *Transform Justice* has recently pointed out,⁸⁸ magistrates are actually becoming less representative over time. Today 55.5% magistrates are 60 and 15.9% are under 50. Yet in 1999 just a third of magistrates were in their 60s and a quarter under 50. The proportion of ethnic minority magistrates has grown (to 8.4%) since 1999 but the ethnic minority population of the country has grown at a much greater rate (to 14.1%).

In addition to age and racial diversity, there is also a real issue with turnover. As we have highlighted, there are very few opportunities for new magistrates to come into the system, with very few areas in the country currently recruiting. This is caused mainly by the fact that magistrates retire at 70, whenever they were appointed.

⁸⁶ Judiciary of England and Wales, *Magistrates statistics on gender, age, ethnicity and disability 2013* (March 2013)

⁸⁷ *Ibid.*

⁸⁸ P Gibbs, *Transform Justice, Magistrates: representatives of the people?* (January 2014)

Figure 2.4: Ethnicity of magistrates in post 2013⁸⁹

The system is also weighted against ex-offenders. Many will not be suitable, due to a lack of relevant skills or the nature of their criminal history. However, as an effort to drive culture change, the system could surely benefit from the expertise of a small number of ex-offenders who have been through the criminal justice system, turned their lives around and become good role models in their local communities.

Recent guidance from the Lord Chief Justice showed how difficult it was for ex-offenders to become magistrates:

- In relation to motoring offences, even after ten years following a conviction an applicant would only be appointed ‘after careful consideration of the circumstances’;
- The Lord Chancellor would not appoint anyone convicted of a serious offence or a series of minor offences, dependant on the advisory committee’s view of public confidence in the applicant as a magistrate; and
- A spouse or partner’s criminal convictions were also considered in the application process.

Since Policy Exchange highlighted these stringent restrictions in the press, the guidance has been changed and now simply states that “the Lord Chief Justice will not appoint anyone in whom the public would be unlikely to have confidence.” The direction that an applicant will be assessed based on their spouse or partner’s criminal convictions has been scrapped, as has the determination of motoring offences up to ten years on.

Magistrate recruitment

Recruitment is led by local areas have Advisory Committees, whose role is to recruit and recommend candidates for the magistracy to the Lord Chancellor and Lord Chief Justice. Interview panels are made up of magistrates themselves and one non-magistrate member. The Lord Chancellor and Secretary of State issue guidance for the recruitment of magistrates,⁹⁰ outlining the process and criteria

⁸⁹ Judiciary of England and Wales, Magistrates statistics on gender, age, ethnicity and disability 2013 (March 2013)

⁹⁰ Ministry of Justice, The Lord Chancellor and Secretary of State’s Directions for Advisory Committees on Justices of the Peace (Issued 2011, revised 2013)

for appointment. The current guidance fails to encourage recruitment of a diverse magistracy. For example, it:

- Suggests that in the interests of time that Committees interview just three candidates per vacancy
- Compels Committees to set cut off dates, including limiting the number of applications that they will consider
- Requires Committees to provide comprehensive reasons why they choose to recommend a candidate if they, or a relative or close friend, have previous convictions for criminal (including motoring) offences or cautions.

Previous attempts to improve the diversity of the magistracy

There have been previous attempts to improve diversity, but in recent years this has lapsed. In 2003, the Lord Chancellor's Department published a National Strategy for the Recruitment of Lay Magistrates, the objectives of which were to recruit and retain magistrates from a diverse spectrum of the population; to raise the profile of the magistracy and dispel generally-held misconceptions about its make up and the entry requirements; and to support the appointments process.⁹¹ The strategy led to a £600,000 campaign of bus advertisements, and a lowering of the minimum age to become a magistrate from 27 to 18.⁹²

In 2005, the Department of Constitutional Affairs published a National Recruitment Strategy,⁹³ recommending various changes to the recruitment process; including the production of a toolkit for local communities with their advertising, a quicker recruitment process, and a national phone line dedicated to inquiries about the magistracy. The DCA introduced the recruitment toolkit, which included guidance on targeting under-represented groups, as well as a national phone line for recruitment queries. In 2007 however, the national phone line was decommissioned.⁹⁴

Despite these improvements and historical efforts, the sort of culture change we need in the magistracy will not be driven by a mere change to technical rules, combined with the currently passive approach to recruitment. They will also not be changed while committees of other magistrates are in total control of the appointments process – making it highly likely that existing magistrates will appoint in their own image.

Improving the diversity of the magistracy

We believe that the first step in improving the diversity of the magistracy is to radically increase the turnover of magistrates, allowing new people to come into the roles. We must also seek to increase the overall numbers of magistrates, to meet the new, expanded role envisaged for them in this paper.

These steps should be complemented by a more pro-active recruitment process, allowing younger people who are in employment to become magistrates. We also believe that, to drive the kind of culture change we need, a small number of ex-offenders should be encouraged to become magistrates – bringing direct 'user experience' of the criminal justice system and a new perspective on managing offenders.

Tenure for magistrates: Following their appointment magistrates continue to work until they choose leave, or until they reach the age of 70. This means that

91 Department for Constitutional Affairs, National Strategy for the recruitment of Lay Magistrates (October 2003)

92 P Gibbs, Transform Justice, Magistrates: representatives of the people? (2014)

93 Department for Constitutional Affairs, National Magistrates Recruitment Strategy (March 2005)

94 P Gibbs, Transform Justice, Magistrates: representatives of the people? (2014)

the magistracy is dominated by older people. If a tenure system was introduced, volunteers would be able to serve a lengthy period of public service (e.g. 10 years), but would then move on and allow younger people to volunteer.

Change the typical magistrate’s working pattern: virtually all of a magistrate’s time is currently spent in the courtroom hearing cases – typically between 17 and 23 sitting days per year.⁹⁵ There is also a maximum number of sitting days, with 35 days being the most a magistrate can sit in a single year.⁹⁶ We propose scrapping the maximum number of days (if someone is able and wants to sit every Friday, why should the rules stop them from doing so?), but at the same time stipulate that over a 12 month period, one third of a magistrates’ volunteering time should be spent outside of the conventional magistrates’ court. This would see magistrates sitting in police stations, reviewing sentences in informal settings, overseeing administrative out-of-court disposals, and helping to improve public confidence in the community as part of their duties.

Recruit around 10,000 more magistrates: in order to play the new role outlined in this paper, focused on hearing more summary cases, engaging the local community and playing a key role in reducing reoffending, we believe that more magistrates will inevitably be required. It seems absurd to us that there are very many able, willing people who want to volunteer but find that their local Advisory Committees are not currently taking applications. We must take advantage of these would-be public servants who want to give something back to society, and find ways for their talents to be brought to bear in improving the outcomes of the criminal justice system. We believe that to cater for the wider role we are proposing, steps should be taken to recruit an additional 10,000 magistrates. These additional magistrates will meet the additional capacity requirements for new Police Courts and a stipulation that a third of all magistrates’ time is spent outside of court settings undertaking community engagement work or training.

Pro-active recruitment of younger, more diverse magistrates: we believe that a new generation of younger, more diverse magistrates should be the aim of this new recruitment drive. We need people who are willing to innovate and inculcate a new culture within the magistracy. This is not to say that we should not value the experience (and life experience) of older magistrates who have been sitting for a very long time. However, it is clear to us (and to many of the most-forward thinking magistrates) that the system needs a shake-up and an injection of fresh blood. This should include ex-offenders who, as has been identified in the context of the probation reforms (the Justice Secretary wants to see greater use of ex-offender mentors), are in a unique position to make a positive contribution to the criminal justice system.

Pro-active policies to encourage businesses to allow employees to become magistrates: with no legal requirement to pay employees for their time volunteering, it is difficult for many people in full-time employment to become magistrates. The Magistrates Association should continue to play a key role in reaching out to organisations, to encourage them to support employees volunteering as magistrates.⁹⁷ Other steps might include making it mandatory

“It is clear to us (and to many of the most-forward thinking magistrates) that the system needs a shake-up and an injection of fresh blood”

95 Ministry of Justice, The Lord Chancellor and Secretary of State’s Directions for Advisory Committees on Justices of the Peace (Issued 2011, revised 2013)

96 Ibid

97 M Pinto-Duschinsky and L Middleton, Policy Exchange, Reforming Public Appointments, 2013

for recipients of central government outsourcing contracts to allow employees to become magistrates on a paid basis. Those in full time work should also be more able to volunteer if Police Courts are predominantly used in the evenings and at weekends (as we expect), and other court environments extend their opening hours.

Review of the appraisal system: Appraisals for magistrates currently occur every three years and involve a simple 'tick box' process of ensuring they have sat the minimum number of days required. There is no focus on their performance. If we are truly committed to reinvigorating their role, there need to be improved appraisals, with levers to ensure magistrates' continue in post according to their performance, and no longer retained simply until they reach retirement.

Taking advantage of magistrates' talents: many magistrates are experts in their professional fields, but this experience is not currently being taken advantage of. We are aware that the Magistrates' Association is currently doing some thinking about how to do so. One very good way might be to create a central Innovation Forum, with members volunteering to take part in helping to spread new ideas across the magistrates' court system. This would allow the courts to take full advantage of the knowledge of the doctors, psychologists, business owners, IT specialists, finance experts and teachers who make up their rank.

Recommendation: Introduce a ten year tenure period for magistrates to generate greater turnover and allow more opportunities for people to volunteer.

Recommendation: Ensure that magistrates use at least a third of their volunteering time outside of the conventional court setting, playing the wider role outlined in this paper.

Recommendation: The Ministry of Justice and HMCTS should direct Advisory Committees to recruit an additional 20,000 magistrates over a three year period, as the role of the magistrate is expanded and enhanced. This new generation of magistrates should be predominantly younger. This should be helped somewhat by the wider role outlined in the paper, including evening and weekend work – allowing younger professional people to take part.

Recommendation: The Magistrates' Association should devise a much better performance management system, including more meaningful, practice-based appraisals.

Recommendation: A new Innovation Forum should be set up by the Magistrates' Association to drive improvements in the operation of magistrates' courts. The Forum should publish an annual paper with recommendations for HMCTS and should establish new channels to spread best practice to fellow magistrates.



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