



Improving Remand Decisions in the Magistrates' Courts

Recommendations based on JUSTICE research
evidence and stakeholder consultation

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Executive Summary

Despite the recommendations made in JUSTICE's 2023 research paper on pre-trial remand decision-making in the Magistrates Court little substantive progress has been made to address the challenges identified. This report presents a targeted set of recommendations to address persistent issues in pre-trial remand decision-making within the Magistrates' Courts of England and Wales. The proposals are designed to (i) ensure custodial remand is genuinely used as a last resort, (ii) enhance the quality and lawfulness of decisions, (iii) reduce unnecessary pre-trial detention, and (iv) foster a fairer justice system.

The recommendations within this latest report are informed by a combination of quantitative data and qualitative evidence gathering, and have been tested through discussions with key individual and organisational stakeholders.

Improving Diversity and Accessibility in the Magistracy

- a. The current lack of diversity in the magistracy undermines the perceived legitimacy and the quality of decision-making.
- b. Structural barriers to joining and remaining in the magistracy should be removed, including simplifying the application process and eliminating the requirement for employer references at the pre-selection stage.
- c. Enhanced data collection on recruitment and attrition is required to identify obstacles faced by underrepresented groups, with the aim of building a magistracy that better reflects the communities it serves.

Strengthening Decision-Making Processes

- a. Decision-makers frequently fail to adhere to established legal rules and principles, resulting in remand decisions that are poorly reasoned or unsupported.
- b. The Judicial College should introduce structured flow charts to guide bail decisions and pronouncement cards should include clear, case-specific explanations in language that is accessible to defendants.
- c. Training must support effective communication, especially for neurodiverse and non-English-speaking defendants.
- d. Procedural rules should be amended to require full disclosure of relevant information to the defence including police recommendations, prior to first appearances.



Supporting Legal Advisers and Magistrates

- a. Increasing pressures on legal advisers, and a lack of structured training and appraisals for magistrates are negatively impacting the quality of their decision- making.
- b. Post-sitting reviews should be prioritised to support ongoing learning and development.
- c. Magistrates training should be audited to ensure it is responsive to local needs.
- d. Appraisals should be regular, robust and linked to a program of continuing professional development.

Addressing Disproportionality and Vulnerability

- a. Significant disparities remain in remand decisions for different groups of defendants, particularly in relation to nationality and ethnicity. Evidence suggests such decisions are often rooted in bias, rather than factual justification.
- b. Decision-makers should receive specific training and warnings on the risks of bias, particularly regarding racialised and foreign national defendants.
- c. Interpreter provision must be improved (in terms of both availability and quality).
- d. Defendants should appear in the central court area unless there is a demonstrable security risk necessitating their placement in a secure dock.

Promoting Alternatives to Custodial Remand

- a. Pre-trial remand is being overused by decision-makers, compounded by a lack of awareness of alternative options.
- b. Magistrates should have access to comprehensive resources and an online platform detailing available community-based interventions and bail conditions.

Cultural Change and Systemic Reform

- a. There is a cultural tendency to overlook the rights of the defendant when making pre-trial decisions, but this is necessary to ensure decision-makers appreciate the weight and impact of these decisions.
- b. The power to remand for a defendant's own protection or welfare should be abolished, with greater emphasis on community-based alternatives.
- c. Incorporate the perspectives of those with lived experiences of custody into mandatory training for magistrates.
- d. The piloting of specialist remand courtrooms is recommended to improve decision quality and reduce unnecessary custodial remand.



Introduction

Section

1

Introduction

In November 2023, JUSTICE published a research paper examining pre-trial remand decision-making in the Magistrates Court.¹ The paper, based on observations from 742 pre-trial remand proceedings, highlighted several concerning trends in remand decision-making in this context.

Remand decision-making is primarily governed by the Bail Act 1976 (the “Bail Act”). Section 4 of the Bail Act creates a presumption in favour of bail for defendants awaiting trial.² A defendant can only be remanded in custody pre-trial if there are substantial grounds for believing that one of the statutory exceptions to bail applies, or for their own protection.³ The test is, in principle, a stringent one: a defendant should only be remanded in custody where necessary.⁴ Before remanding a defendant in custody, the court must therefore consider whether instead conditions could be imposed on bail.⁵ The Bail Act and Criminal Procedural Rules (“CrimPR”) require courts to ensure that sufficient time is given to remand decision-making,⁶ and to give reasons for decisions in language the defendant can understand, with

reference to the circumstances of the defendant and the facts of the case.⁷

Our 2023 report found that the legal processes for determining whether or not to remand an individual in custody pre-trial did not always appear to be properly followed, undermining the fairness of remand decision-making and increasing the likelihood of custodial remand being used unnecessarily.⁸ Our findings also raised concerns about the quality of remand decision-making. Decision makers rarely provided reasons for their decisions, in line with the requirements of the Bail Act and Criminal Procedure Rules.⁹ Our data also revealed worrying disparities in outcomes, particularly for foreign national defendants, defendants appearing via video-link, defendants in a secure dock, and defendants lacking representation.¹⁰

We called on the government to do more to uncover the extent of the issues identified, making a series of recommendations aimed at improving nationwide data collection and monitoring of remand decision-making. Since then, little progress appears to have been made

1 See JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023).

2 This presumption also exists for those awaiting sentencing, where proceedings have been adjourned for the production of pre-sentence reports.

3 Bail Act 1976, Schedule 1; Whilst the criteria for detaining a defendant pre-trial vary depending on the alleged offence, all pre-trial remand decisions should involve consideration of whether any of the exceptions to bail are satisfied. See CPS, *Bail: Legal Guidance* (2023), Annexes One, Two and Three.

In taking a decision under one of the exceptions, Schedule 1, section 9 of the Act provides that the court must have regard to the nature and seriousness of the offence; the character, associations and community ties of the defendant; the defendant’s previous record of being granted bail; and the strength of the evidence that the defendant has committed the offence in question. In addition, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced the ‘no real prospect’ test, which states that defendants should not be remanded into custody if the offence is such that they are unlikely to receive a custodial sentence if convicted.

4 *R (Thompson) v Central Criminal Court* [2005] EWHC 2345 (admin), para 10; *R (Fergus) v Southampton Crown Court* [2008] EWHC 3273 (admin), para 20.

5 *Ibid.* No condition may be imposed unless it is necessary to address the exceptions to bail, or to ensure that the defendant attends an interview with a legal representative or makes himself available for inquiries or reports to be made to assist the court in sentencing. Bail Act 1976, s. 3(6) and Schedule 1, para 8(1).

6 Criminal Procedure Rules 2020, Rule 14.2(1)(d)(ii).

7 Bail Act 1976, section 5; Criminal Procedure Rules 2020, Rule 14.2(5).

8 JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023).

9 *ibid.*, pp.19 – 23.

10 *ibid.*, pp.32 – 38.

on this front.¹¹

In the context of an increasingly high remand population, and the impact of this on the prison capacity crisis, it is more important than ever to understand why and in what circumstances decision-makers are favouring custodial remand over bail.

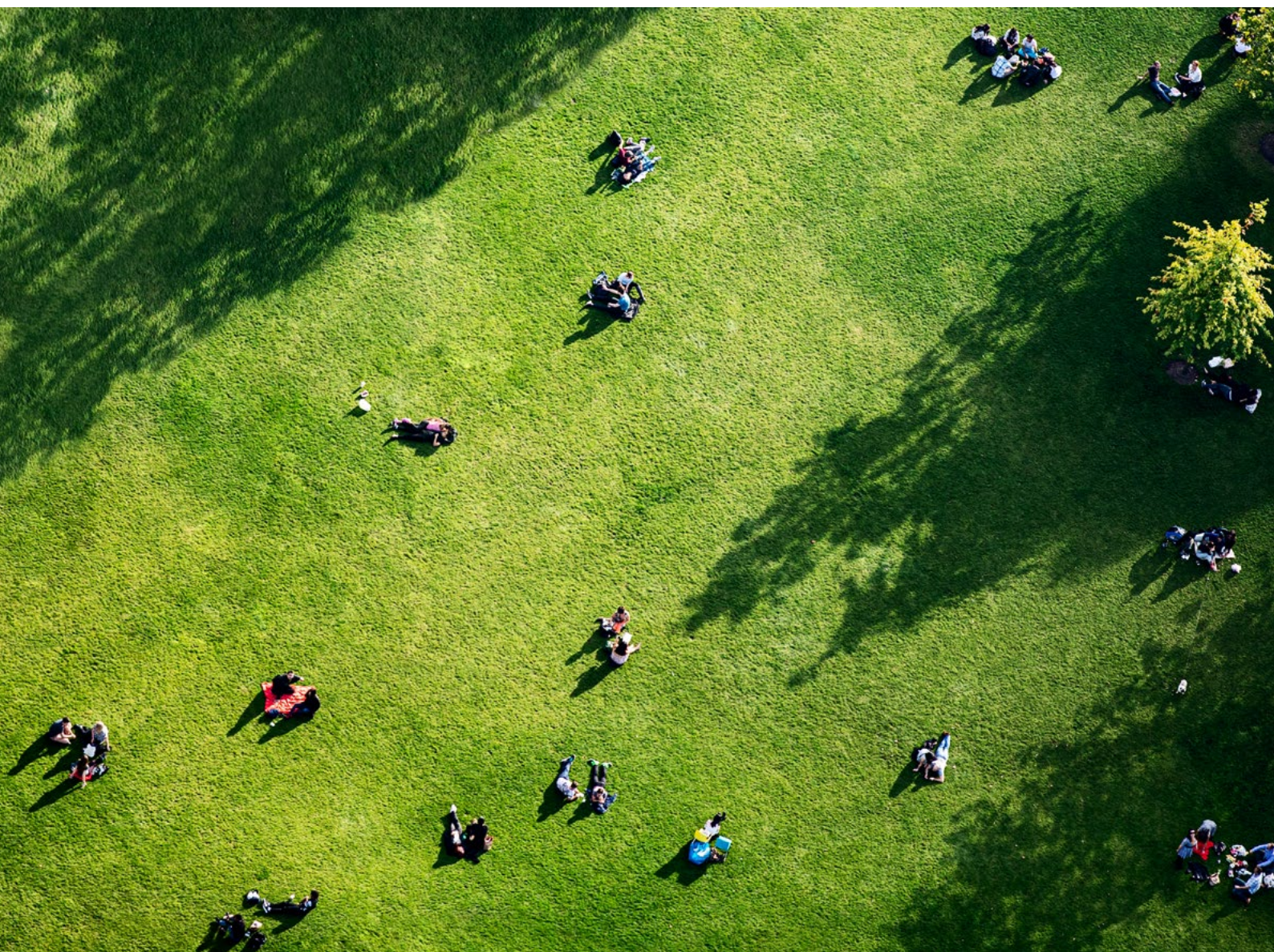
We therefore continue to urge the Government to prioritise data collection and evaluation as a means of identifying and developing effective solutions for addressing problems in this area. This report, and the recommendations made therein, should therefore be read alongside our 2023 recommendations.

Scope and Approach

This report builds on the findings of our previous paper, by providing a series of recommendations aimed at ameliorating some of the shortcomings with pre-trial remand decisions identified in that report.

The introduction to this report sets out the current landscape in which remand decisions are being made, and why reducing pre-trial remand is so important. Part 1 examines magistrates' recruitment and makes recommendations to improve decision making by ensuring a diverse magistracy that reflects the communities it serves. Part 2 explores

11 Whilst the government's data first program promises to provide linked datasets from the magistrates and Crown Courts to researchers, the data sets do not include cases recorded on the Common Platform. Per the data first dataset catalogues this means that "coverage of magistrates' court cases in the dataset will decrease overtime (particularly for cases received from mid-2021)". At time of writing there is no timeframe for when cases recorded on the Common Platform will be included. See Ministry of Justice, [Data First: Guidance](#) (2020), Data First magistrates' courts defendant data catalogue.



how to improve adherence to decision-making processes and the overall quality of remand decision-making in the magistrates' courts. Part 3 includes recommendations aimed at reducing unnecessary custodial remand by establishing a culture amongst decision-makers of custodial remand as a last resort and facilitating the use of alternatives to custody.

To develop these recommendations, we supplemented our quantitative data with qualitative evidence gathering. This involved interviewing and corresponding with over 35 individuals and organisations, including academics, policy-makers, professional organisations, lawyers, magistrates, and others with experience in the Magistrates Courts. Our recommendations address shortcomings flagged to us during this consultation process, as well as those identified in our previous report. To ensure their workability, we tested our

recommendations at a roundtable attended by academics, and representatives of key actors in the magistrates' courts.

Why Improving Remand Decisions Matters

Our previous report was published at a time when the remand population was sharply increasing.¹² We highlighted the strain that a burgeoning remand population was placing on an already overcrowded prison system, and the consequent impact on remand prisoners, the prison population as a whole, and the public purse.¹³ We argued that understanding pre-trial remand decision making was critical to improving decision-making in this context, and thereby to reducing the number of unnecessary custodial remands.

12 Russell Webster, 'Prison and Probation Trends Spring 2023', (2023); JUSTICE, [Remand Decision-Making in the Magistrates' Court: A Research Report](#) (2023).

13 JUSTICE, [Remand Decision-Making in the Magistrates' Court: A Research Report](#) (2023).



Since our report was published, the situation has worsened. As of June 2025, the number of individuals on remand is 17,071 - a record high - representing 20 percent of the total prison population. Most of these individuals - 11,629 - are on remand awaiting trial.¹⁴ The pre-trial remand population rose by 5 percent as compared with June 2024.¹⁵ The number of women on remand is at an all-time high, and rose 22% compared with June 2024.¹⁶ Individuals from racialised backgrounds continue to be disproportionately subject to, and impacted by, custodial remand. Prisoners from racialised backgrounds represent 32 percent of the remand population compared with 26 percent of the sentenced population.¹⁷ Defendants from racialised groups are more likely to be remanded in custody by the courts, than White British defendants.¹⁸ Whilst equivalent analysis is not available for the magistrates courts, research suggests that racialised defendants remanded

pre-trial by the Crown Court are more frequently found not guilty than their white counterparts.¹⁹ Research has also shown that once remanded in custody racialised defendants, and in particular Black defendants, spend longer in prison on average.²⁰

The increasing remand population, including those remanded pre-trial, is a key factor driving the ongoing prison capacity crisis.²¹

The increasing remand population, including those remanded pre-trial, is a key factor driving the ongoing prison capacity crisis

As recognised by the Lord Chancellor, prisons in England and Wales are “at the point of collapse.”²² A series of emergency measures have been

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- 14 In June 2025 11,629 defendants were in custody pretrial. Ministry of Justice, [Offender management statistics quarterly: January to March 2025](#).
- 15 Ibid. Note that the increase in the pre-trial remand population is likely driven by a combination of people being remanded in custody and people spending longer on remand.
- 16 Ministry of Justice, [Offender management statistics quarterly: January to March 2025](#), Prison Population: 30 June 2025, Table 1 Q2. Women in Prison, [Together in power: a plan for real justice for women 2025-2030](#) (2025). P.16.
- 17 Ministry of Justice, [Offender management statistics quarterly: January to March 2025](#), Prison Population: 30 June 2025, Table 1 Q7.
- 18 Women in Prison, [Policy briefing, The disproportionate use of remand for Black, minoritised and migrant women](#) (2024); Ministry of Justice, [Statistics on Ethnicity and the Criminal Justice System](#), 2022 (2024), 5.3; Kitty Lympieropoulou et al, [Ethnic Inequalities in the Criminal Justice System](#) (2022); May Robson, A suspect population? [An examination of bail decision making for foreign national women in criminal courts in England and Wales](#) (2020), Griffins Society.
- 19 Fair Trials, [‘England and Wales: Justice system completely broken as hundreds face fourth Christmas on remand’](#) (2022).
- 20 Mark Wilding and Rajeev Syal, [‘Black people spend 70 percent longer in prison awaiting trial and sentencing’](#) (2023), Liberty Investigates
- 21 Whilst the most recent offender management statistics show that the number of sentenced prisoners has decreased, as stated above the remand population continues to increase. See Ministry of Justice, [‘Offender management statistics quarterly: July to September 2024’](#) (January 2025).
- 22 [HC Deb, 18 July 2024, vol 752](#), col 175.

brought in, by both the current and previous Government to ease the crisis.²³ However, these measures are not intended to provide long term solutions.²⁴ In November 2024, legislation came into force increasing the sentencing powers of magistrates. One of the stated aims of these changes was to reduce the Crown Court backlog and thereby reduce the number of people in custody awaiting trial.²⁵ However, this can only be part of the solution. As the rest of this report examines, reducing the remand population also requires improving remand decision-making, and in particular decisions to remand individuals in custody pre-trial.²⁶ This is a crucial part of a sustainable strategy, capable of contributing to a reduction in the prison population in the longer-term.

Overcrowding in prisons also has a significant negative impact on the prison population. It

contributes to a lack of educational and training provisions and reduced physical and mental health care.²⁷ In July 2024, HM Chief Inspector of Prisons, reported that across many prisons, prisoners are spending barely two hours a day out of their cells.²⁸ Staff shortages, coupled with increased frustration from prisoners spending the majority of their day with nothing to do, has resulted in prisons becoming increasingly dangerous, for both prisoners and staff.²⁹ Limited access to rehabilitative programs, not only impacts the quality of life of those in custody, it also contributes to the risk of reoffending once released.

Even without the negative effects of overcrowding, the impact of custody on prisoners on remand is particularly severe. Remand prisoners face some of the worst conditions in the prison estate and have even

23 In September 2024, a law came into force reducing the percentage of a sentence to be served by an offender before automatic release from 50% to 40%. When announced this was broadly accepted as a necessary short-term solution. However, concerns have been raised about the strain this will place on the already stretched probation service and the police, and the risk that a large proportion of offenders, released without proper support, will go on to commit further offences, or breach their conditions of release, and end up being recalled to prison. This has serious implications both in terms of public safety and confidence in the justice system, and in terms of long-term effectiveness. See Criminal Justice Act 2003 (Requisite and Minimum Custodial Period Order 2024); Claire Brader, '[Government plans to ease prison capacity pressure and manage the needs of vulnerable prisoners](#)' (2024), *House of Lords Library*; Rajeev Syal, '[Police 'left to deal with fallout' of poorly planned early release of 1,700 prisoners](#)', (September 2024), *The Guardian*; Double Jeopardy: The Law and Politics Podcast, '[Starmer's first move: Ending our addiction to prison?](#)', 14 June 2024, 03:17–24:34; Trapped: The IPP Prisoner Scandal, '[Prison Crisis: The Chief Inspector of Probation, Martin Jones CBE speaks...](#)', 23 July 2024, 03:20–04:36; Robyn Winter, '[Prisons need reform': service let down those who need help, freed inmates say](#)' (September 2024), *The Guardian*; Phil Sim, '[Scotland's prison population higher after early release scheme](#)' (September 2024); Jackie Long, '[Prison population soars despite early release scheme](#)' (March 2025), *Channel 4*.

Other measures include, Operation safeguard, which allows police cells to be used to house prisoners on a short-term basis where a place in prison is unavailable, and Operation Early Dawn which enables defendants to be held in police custody and not called to a magistrates' court, until a place in the prison estate is ready for them should they be remanded into custody. These measures have been in near-continuous use since late 2022. Concerns have been raised over the suitability and cost of extended stays in police custody. See Javed Ahmed, '[What is Operation Early Dawn and why has it been triggers to tackle prison overcrowding](#)' (2024), *The Independent*. Matthew Cundall, '[Government spends millions on overspill prison cells in police stations, exclusive data reveals](#)' (2023), *Channel 4*; Vikram Dodd and Rajeev Syal, '[Government triggers crisis measure to ease prison overcrowding](#)' (2024), *The Guardian*.

24 '[Speech: New Lord Chancellor sets out measures to avert prison capacity crisis](#)' (2024), *Gov.uk*; Claire Brader, '[Addressing prison capacity pressure](#)', (2024) *House of Lords Library*.

25 Ministry of Justice, '[Increase sentencing powers for magistrates to address prison crisis](#)' (2024).

26 Untried remand prisoners represent 66% of the total remand population. Ministry of Justice, '[Offender management statistics quarterly: July to September 2024](#)', Prison Population: 30 December 2024, Table 1 Q2 and Table 1 Q7.

27 HM Chief Inspector of Prisons, '[Chief Inspector's blog: Why the prison population crisis is everyone's concern](#)' (2023), *The National Archives*.

28 HM Chief Inspector of Prisons, '[Prisons within prisons: what can we learn from how we manage our most dangerous offenders?](#)' (2024), *HM Inspectorate of Prisons*.

29 See note 27; HM Chief Inspector of Prisons, '[Easier said than done: resolving prisoners requests](#)' (2025), *HM Inspectorate of Prisons*.

fewer opportunities than sentenced prisoners.³⁰ Individuals remanded in custody are more likely to suffer from mental health problems and are more likely to have problems accessing substance misuse or mental health services.³¹ Remand prisoners, and especially those remanded pre-trial, have higher rates of self-inflicted deaths than sentenced prisoners.³² Those remanded in custody, and particularly those remanded pre-trial, face significant uncertainty over their fate. This can lead to increased anxiety and frustration,³³ further exacerbated by the increased length of time many of those remanded in custody now spend in prison.³⁴

Individuals on remand are at risk of losing their employment and accommodation, and severing ties with their family, community and support services.³⁵ For individuals remanded pre-trial, this is the case despite not having been convicted of an offence. Many remand prisoners found not guilty at trial, or given a non-custodial sentence, do not receive resettlement

support prior to or after release.³⁶ Following the unification of the Probation Service and associated changes to resettlement provision, remand prisoners are no longer included in prison contracts with accommodation support agencies.³⁷ Remand in custody may have a criminogenic effect, worsened by the lack of support post release. For instance, employment problems, homelessness, and drug use, all of which can be created or exacerbated by long periods on remand, are correlated with an increased risk of offending.³⁸ There is also evidence to suggest that being remanded in custody, has a disproportionate impact on women, who are more likely to be held further from home owing to the small number of places in the female estate,³⁹ and are more likely to be found not-guilty or to receive a non-custodial sentence.⁴⁰

In addition, defendants remanded in custody face difficulties in accessing legal advice and representation, and may not have the facilities or information needed to adequately prepare

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- 30 Catch 22, *Life Skills Programme: Impact Report HMP Wandsworth* (2024); 'Meeting diverse learner needs in a remand prison' (2024), *Gateway qualifications*; Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023).
- 31 Catch 22, 'The unique needs of a rising remand population' (2023).
- 32 Prisoners on remand have higher rates of self-inflicted deaths than sentenced prisoners. For the year 2024, the rate of self-inflicted deaths per 1000 prisoners was 1.8 for all prisoners on remand, 2.5 for untried remand prisoners, and 0.8 for sentenced prisoners. Rate for untried prisoners calculated using figures in Ministry of Justice and HM Prison and Probation Service, *Deaths in Prison custody 1978 to 2024* (2024), *Gov.uk*, Table 1.7 and Ministry of Justice and HM Prison and Probation Service, *Prison population: 31 December 2024* (2024), *Gov.uk*, Table 1.2.
- 33 Catch 22, *Life Skills Programme: Impact Report HMP Wandsworth* (2024); Criminal Justice Joint Inspection, *Impact of the pandemic on the Criminal Justice System* (2021), p. 23.
- 34 In 2015, the mean number of days spent on remand was 128, in 2023 this figure rose to 207. Mark Wilding and Rajeev Syal, 'Black people spend 70 percent longer in prison awaiting trial and sentencing' (2023), *Liberty Investigates*.
- 35 Justice Committee, Tenth Special Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system: Government Response to the Committee's Seventh Report* (2023), p.29.
- 36 Catch 22, 'The unique needs of a rising remand population' (2023); HM Inspectorate of Prisons, *HM Chief Inspector of Prisons for England and Wales: Annual Report 2022-2023* (2023); HM Inspectorate of Prisons, *HM Chief Inspector of Prisons for England and Wales: Annual Report 2021-22* (2022).
- 37 HM Inspectorate of Prisons, *HM Chief Inspector of Prisons for England and Wales: Annual Report 2021-22* (2022), p.64.
- 38 Ministry of Justice, 'The factors associated with proven re-offending following release from prison: findings from Waves 1 to 3 of SPCR' (2013); National Offender Management Service, 'A compendium of research and analysis on the Offender Assessment System (OASys) 2009-2013' (2015).
- 39 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023), p.26; Office for National Statistics, *Reporting on the Sustainable Development Goals: People on remand in custody in England and Wales* (2018), p. 5.
- 40 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023), p.13, 26.

their case.⁴¹ A report by the Association of Prison Lawyers, published in 2024, found that lawyers often have significant problems getting access to their clients, either in person or over video link, with some prisons refusing to allow lawyers to use video link.⁴² Additional problems included a lack of private facilities for having confidential discussions, and prisoners not being produced due to short-staffing or other problems in the prison.⁴³ Defendants for whom English is a second language, may face further barriers due to issues with the provision of interpreters.⁴⁴ In this way, custodial remand has potential implications for the defendant's right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights ("ECHR").⁴⁵

Custodial remand involves a loss of liberty and therefore engages Article 5 ECHR. It also "*implicitly challenges the presumptions of innocence.*"⁴⁶ The European Court of Human Rights has made clear that where an individual is remanded in custody pre-trial, this should be in conditions consistent with their position as an un-convicted person.⁴⁷ The fact that pre-trial prisoners appear to experience harsher conditions and more challenges than others in the prison estate, casts doubt on the extent to which this principle is reflected in England and Wales. Moreover, like all deprivations of liberty, custodial remand can only be justified "*in accordance with a procedure prescribed by law*" and where necessary and proportionate.⁴⁸

Problems with remand decision-making, outlined in greater detail in Part 2, raise further questions as to the compatibility of current practice with the ECHR.⁴⁹

Given the substantial negative consequences that remand in custody can have on an individual, and the negative consequences of an increase in the use of custodial remand on the prison estate, it is vital that custodial remand is a last resort and that decisions concerning remand are made with proper regard to due process and the law. The remainder of this report provides recommendations aimed at improving pre-trial remand decision-making and reducing the unnecessary and inappropriate use of custodial remand.

It is vital that custodial remand is a last resort and that decisions concerning remand are made with proper regard to due process and the law.

41 Tom Smith, '[Rushing remand](#)'? Pretrial detention and bail decision making in England and Wales (2021), *The Howard Journal*, 60(1).

42 The Association of Prison Lawyers, [Justice Barred: The difficulties lawyers face in seeing clients in prison](#) (2024).

43 The Association of Prison Lawyers, [Justice Barred: The difficulties lawyers face in seeing clients in prison](#) (2024).

44 HM Inspectorate of Prisons, [HM Chief Inspector of Prisons for England and Wales: Annual Report 2022-2023](#) (2023); Gillian Hunter et al, [Language barriers in the criminal justice system](#) (2022), Institute for Crime and Justice Policy Research.

45 Tom Smith, '[Rushing remand](#)'? Pretrial detention and bail decision making in England and Wales (2021), *The Howard Journal*, 60(1); HM Inspectorate of Prisons, [Remand prisoners: A thematic review](#) (2012), pp. 61-63.

46 *ibid.*

47 See also the Council of Europe's [Recommendation \(2006\) 13](#) on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, which highlighted the need to ensure that those remanded pre-trial "*are not held in conditions incompatible with their legal status, which is based on the presumption of innocence.*"

48 [Guide on Article 5 of the Convention: Right to Liberty and Security](#), Council of Europe.

49 See p. X below.



Magistrates' Recruitment

Section

2

Magistrates' Recruitment

Our 2023 report examined, as far as possible, the demographics of decision-makers in the cases in our data set. We found that whilst magistrates were more diverse than district judges, they still failed to reflect the communities they served, and less the defendants in relation to whom they were making decisions.⁵⁰ This lack of diversity is reflected in nationwide statistics, both from the data collection period and at time of writing.⁵¹ We also found a lack of diversity in the composition of the bench; 67% of cases we observed were reported as involving an all-white panel.⁵²

There remains a persistent lack of diversity in the magistracy, both in terms of magistrates in post and those applying for the role. Efforts made so far to alleviate this issue have fallen short of ensuring that magistrates reflect the communities they serve. This lack of diversity has implications for the legitimacy of the magistracy and their decision-making, as well as the quality of decision-making itself.

Whilst we appreciate that magistrates tend to be more diverse than the judiciary, particularly regarding racial diversity, there is still significant work to be done. Anyone can, in theory, be a magistrate. However, in practice this is not the case. Dismantling structural barriers to being a magistrate is crucial for achieving peer-led justice, and ensuring decision-making that encompasses a broad range of perspectives.

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This is especially important in the context of the Independent Review of Criminal Courts, which is considering proposals to introduce an intermediate court between the magistrates' courts and the Crown Court. This would remove the right to a jury trial for a substantial number of cases, which would instead be presided over by a judge and two magistrates. JUSTICE has voiced its reticence to the introduction of intermediate courts in its submission to the Review.⁵³ However, for the purpose of this report, it is worth highlighting that a lack of diversity within the magistracy significantly undermines the claim that the lay representation provided by a jury can be suitably replaced by lay representation through the magistracy.⁵⁴

We also recognise that many decisions in the magistrates' courts are made by district judges, and that judicial diversity remains an important part of improving decision-making in this context. Steps must therefore also be taken to improve diversity within the judiciary. JUSTICE's previous reports on increasing judicial diversity provide a series of recommendations aimed specifically towards addressing barriers faced

50 JUSTICE, *Remand Decision-Making in the Magistrates' Court: A Research Report* (2023) pp.10-12.

51 For the year 2024, 81% of magistrates were over 50, compared to 38% of the population of England and Wales. 13% were from racialised backgrounds, compared to 18% of the population of England and Wales. Lack of diversity is particularly stark in areas with high numbers of racialised people. For instance, in London 31% of magistrates were from racialised backgrounds, compared with 46% of the population. Population figures are taken from the 2021 census. Minister of Justice, *Diversity of the judiciary: 2024 statistics* (2024), data tables; *Ethnicity facts and figures: age groups*, Gov.uk; Office for National Statistics, *Ethnic group, England and Wales: Census 2021*; Trust for London, *London's geography and population* (2024);

52 JUSTICE, *Remand Decision-Making in the Magistrates' Court: A Research Report* (2023), p.10.

53 JUSTICE, *Response to call for evidence from the Independent Review of the Criminal Courts* (2025).

54 *Times Crime and Justice Commission* (2025), *The Times*, p.88.

by underrepresented groups seeking to embark on a judicial career.⁵⁵

This section of the report sets out steps that have been taken to improve diversity so far and why having a diverse magistracy is important to improving decision making. It also examines some of the possible barriers to increased diversity and recommends ways that these could be addressed.

Magistrates Diversity

A diverse magistracy is fundamental to ensuring the legitimacy of magistrates' decisions in the eyes of those involved in the system and the wider public, and to the quality of decision-making. As we argued in our 2023 report, one of the key justifications underpinning the lay magistracy is that magistrates can provide local and peer-led justice. Magistrates should offer "*a link between the community and the judiciary,*" and "*make their assessments... based on the normal standards of ordinary members of the public.*"⁵⁶ A magistracy that fails to reflect the community it serves seriously undermines this. Moreover, a lack of diversity amongst magistrates also reflects an inequality of opportunity for underrepresented groups to participate in an important aspect of public life, should they so choose to do so.

A lack of diversity amongst magistrates also reflects an inequality of opportunity for underrepresented groups to participate in an important aspect of public life

Moreover, increased diversity amongst decision-makers improves the quality of decisions. First, it is necessarily the case that a consequence of a lack of diversity is that the magistracy is not benefiting from the best available talent.⁵⁷ As recognised by Lord Neuberger, former president of the Supreme Court, in relation to the judiciary, lack of diversity "suggests, purely on a statistical basis, that we do not have the best people."⁵⁸ It cannot be that the best decision-makers are predominantly white middle-class people over 50.

Further, there is extensive research to show that different perspectives are better for collective decision-making than homogenous ones.⁵⁹ This is vital when making decisions as a panel, as is the case for magistrates. Ensuring the magistracy includes individuals with a range of characteristics and life experiences is fundamental to bringing these different perspectives, and therefore, to improving decision-making.

55 JUSTICE, [Increasing Judicial Diversity](#) (2017); JUSTICE, [Increasing Judicial Diversity: An Update](#) (2020).

56 Justice Committee, Sixth Report of Session 2016-17, [The role of the magistracy](#), HC 165 (2016), p. 5.

57 As recognised by Lord Neuberger, former president of the Supreme Court, in relation to the judiciary, lack of diversity suggests, purely on a statistical basis, that we do not have the best people because there must be some women out there who are better than the less good men who are judges.

58 House of Lords Select Committee on the Constitution, Oral evidence (16 November 2011), Q251, cited in Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (2012), Routledge Cavendish, p.193; Helen Mountfield, *Judicial Diversity: Speech for Canadian Judges* (lecture, Queen's College Cambridge, 2 July 2019), p.24.

59 Iris Bohnet, *What Works* (2016), Harvard University Press, Ch. 11, pp.229-30; James Surowiecki, *The Wisdom of Crowds* (2005), Anchor, Ch. 2; Deborah L. Rhode, *Lawyers as Leaders* (2015), Oxford University Press, p.47: famously, some American presidents surround themselves with a "team of rivals" to avoid the "perils of insular thinking" (including Presidents Lincoln and Obama); The Rt. Hon. Sir Terence Etherton, 'Liberty, the archetype and diversity: a philosophy of judging' (2010), *Public Law*, p.11.

Relatedly, a lack of diversity amongst decision-makers may compound the risk of biased decision-making. Several reports have raised concerns about possible bias in magistrates' decision-making, including in the context of remand, particularly in relation to Black and racialised defendants.⁶⁰ Whilst improving diversity is not sufficient to address the institutional racism in the criminal justice system, it can “*breed more understanding, empathy and action on behalf of those treated as out-groups*,”⁶¹ and create space for contesting biased narratives that may impact some decisions.

In part due to a lack of diversity and in part due to a general need for more magistrates, the Government in 2022 launched a campaign to recruit 4,000 new magistrates across England and Wales. The campaign, which cost £1 million and was the largest recruitment drive in the 650-year history of the magistracy, aimed to attract people from a broad range of socio-economic backgrounds, and in particular young people and people from racialised backgrounds.⁶² A new digital recruitment system was launched alongside the campaign, and an application tracking system was introduced to collect data

on magistrates' recruitment, including diversity data.

The recruitment drive appears to have had some success in increasing the number of magistrates overall.⁶³ However, diversity data concerning recruitment – made available by the introduction of the application tracking system – suggest that more steps need to be taken to ensure that the magistracy reflects a broad range of backgrounds and perspectives. The magistracy continues to disproportionately attract middle class applicants, aged 50 and above.⁶⁴

Although there has been an increase in the percentage of new appointees from Black and minority ethnic backgrounds, candidates from these backgrounds still appear less likely to be appointed than their White counterparts – in 2024/25 non-White candidates made up 27% of applicants and just 23% of appointments, whereas White candidates made up 72% of applicants and 77% of appointments.⁶⁵ This suggests possible structural barriers and biases in the recruitment process itself.

Further, the proportion of Black and minority ethnic magistrates overall has remained static

60 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), University of Manchester, p.19; David Lammy, *The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017); Maslaha, *Young Muslims on trial: A scoping study on the impact of Islamophobia on criminal justice decision-making* (2016).

61 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), University of Manchester. p.35.

62 Ministry of Justice, ‘[Magistrate recruitment campaign launched](#)’ (January 2022).

63 From April 1 2022 to March 31 2024, 9,141 people applied to be magistrates. During that timeframe, 2,928 new magistrates were appointed, 2,195 of whom applied on the new recruitment system. This compares to 1,866 new appointments for the 2-year period from April 1 2020 to March 31 2022. See Ministry of Justice, *Judicial Diversity Statistics*, 2020- 2024 statistics, data tables.

64 In the year 2024/25, 56 percent of applications were from candidates aged 50 or over, and 59 percent of those appointed belonged to this age group. This is compared with 38% of the general population. As of 01 April 2025 this age group represents 81 percent of magistrates in post. In terms of socio-economic background 79 per cent of applications were from professionals or those in management positions, just 3% of applicants had manual or service jobs. This translated into 81% and 3% of appointments respectively. Minister of Justice, *Diversity of the judiciary: 2025 statistics* (2025), data tables.

In the year 2023/24, 53 percent of applications were from candidates aged 50 or over, and 59 percent of those appointed belonged to this age group. This is compared with 38% of the general population. As of 2024 this age group represents 81 percent of magistrates in post. In terms of socio-economic background 77 per cent of applications were from professionals or those in management positions, just 6% of applicants had manual or service jobs. This translated into 81% and 5% of appointments respectively. Minister of Justice, *Diversity of the judiciary: 2024 statistics* (2024), data tables.

65 Minister of Justice, *Diversity of the judiciary: 2025 statistics* (2024), data tables.

for the past 5 years,⁶⁶ and the percentage of those leaving has risen during this time period from 7 to 11% suggesting issues with retaining magistrates from Black and minority ethnic backgrounds.⁶⁷

The magistracy continues to disproportionately attract middle class applicants, aged 50 and above

Eliminating barriers to diversity

Further research is required in order to get a fuller understanding of why the current efforts to increase the diversity of the magistracy are not having their intended effect. This should include better data collection on individuals' reasons for leaving the magistracy to identify trends driving attrition, in particular amongst underrepresented groups.⁶⁸

For instance, whilst at 1 April 2024 under 30s represented 1.2% of the magistracy, in the year to 31 March 2025 they represented 2.4% of leavers. Those in the 60-69 age bracket

66 Applications from racialised individuals constituted 24% of magistrates' applications submitted in 2022-23, 30% of applications in 2023-24, and 27% of applications in 2025. However, the number of magistrates in post has remained at 13% -14% for the past 5 years. Ministry of Justice, [Judicial Diversity Statistics](#), 2021-2025 statistics, data tables.

67 *ibid.*

68 We understand that the Magistrates' Leadership Executive does provide exit surveys for magistrates, it is not clear the extent to which magistrates are encouraged to provide reasons why they are leaving, or whether these surveys are used to identify potential issues with retention amongst different demographics of magistrates



represented 43% of the magistracy, and just 33% of leavers.⁶⁹

For instance, whilst at 1 April 2024 under 30s represented 1.2% of the magistracy, in the year to 31 March 2025 they represented 2.4% of leavers. Those in the 60-69 age bracket represented 43% of the magistracy, and just 33% of leavers.

However, whilst more data is needed, through our research we have identified several apparent barriers to increased diversity and suggest solutions to address them below.

Improving the application process

Anyone between the ages of 18 and 74 can apply to be a magistrate.⁷⁰ Candidates are assessed against 5 key attributes through the application process: candidates are required to show that they can understand different perspectives; communicate with sensitivity and respect; work and engage with people professionally; make fair, impartial and transparent decisions; and show self-awareness and an openness to learning.⁷¹ To maintain the principle of local justice, candidates are meant to apply to an area close to where they live or work.⁷²

Recruitment is undertaken by recruitment advisory committees.⁷³ At least one-third of a committee's members must be non-magistrates. Recruitment committees also recommend new committee members to the Lord Chancellor for appointment. There is no publicly available information about the composition of local advisory committees, and little information as to what qualifies someone to sit on an advisory committee.

The application process for becoming a magistrate consists of three stages:

- e. Stage 1: applicants must complete an online application form, which includes questions to establish eligibility. For those applying to be a magistrate in the criminal courts, this includes providing written reflections on two required court visits. Applicants must also provide two references at this stage. For those in employment, one of these must be from their current employer.⁷⁴
- f. Stage 2: Applicants who meet the eligibility criteria, are invited to take the magistrates recruitment qualifying assessment. This involves being presented with a series of situational judgment questions, based on scenarios magistrates might encounter.
- g. Stage 3: applicants who pass the qualifying assessment are interviewed by 2 to 3 members of their local advisory committee. These interviews take approximately 75 minutes and focus on behavioural questions relating to the five key attributes.⁷⁵

There has been a significant streamlining of the application process. Candidates no longer have to answer questions on how they meet the personal

69 Ministry of Justice, [Diversity of the judiciary: 2025 statistics](#) (2025), data tables, 3.6; Minister of Justice, [Diversity of the judiciary: 2024 statistics](#) (2024), data tables, 3.6.

70 There are some limited exceptions to eligibility – i.e. candidates in the process of or intending to seek asylum or apply for indefinite leave to remain in the UK are ineligible, there are also some bankruptcy disqualifications. [Lord Chancellor's Directions to Advisory Committees on Justices of the Peace](#) (October 2023), Part 2.

71 'Become a magistrate', [Gov.uk](#).

72 [Lord Chancellor's Directions to Advisory Committees on Justices of the Peace](#) (October 2023), Part 2, para 2.7.

73 [Lord Chancellor's Directions to Advisory Committees on Justices of the Peace](#) (October 2023), Part 1, para 1.4.

74 [Lord Chancellor's Directions to Advisory Committees on Justices of the Peace](#) (October 2023), Part 3, para 3.39; [Application Guidance](#), [judiciary.uk](#).

75 [Application Process](#), [judiciary.uk](#).

qualities for being a magistrate on the initial application form.⁷⁶ In general, this appears to have been received by magistrates as a positive step towards making the application process more accessible to a wider range of candidates. However, there remain several issues with the accessibility of the current application process.

First, we heard concerns from magistrates that demonstrating some of the 5 key attributes may be difficult for those with limited work experience, or with experience in non-professional and non-managerial roles. In particular, it was felt that candidates in these categories may find it more difficult to provide examples of working and engaging with people professionally, or making fair, impartial and transparent decisions. There is a lack of information for candidates on how such qualities could be demonstrated. Interview guidance simply states that candidates can draw on “*examples from your work life, past or present, or from any experiences you think are relevant.*”⁷⁷

To ensure that the application process does not favour individuals with a certain type of professional background, **detailed guidance should be provided on what each key attribute means, how it is put into practice, and how it can be demonstrated.** The guidance provided to individuals applying to the Independent Monitoring Board, provides a helpful blueprint for this.⁷⁸ **Guidance for magistrates on the key attributes should also include a bank of examples drawing on non-work-related experiences, as well as experiences from a broad range of occupations.** For instance, the ability to engage with people professionally could be demonstrated through engagement with

professionals in a personal capacity, for instance doctors, teachers, or other service providers.

More generally, magistrates who had recently gone through the application process cited a lack of clear streamlined guidance for applicants and would-be applicants as a potential barrier. Currently, available guidance and information is distributed between various pages on the government and judiciary websites. Some of the guidance is out of date; for instance, step by step guidance notes on the application form do not reflect the current form and refer to the 6 key qualities of a magistrate, rather than the 5 key attributes.⁷⁹ Other pieces of guidance provide a conflicting picture of what the process involves. For instance, the “Application process” webpage on judiciary.uk sets out a three-stage process: online application form, qualifying assessment and interview.⁸⁰ However, the “Application guidance” page of the same website states that those who are successful in the online application form will be invited to interview, with no mention of the need to pass a qualifying assessment.⁸¹

The process for becoming a magistrate is time consuming and lengthy. Whilst we understand that finding suitable candidates and operational limitations may make this inevitable, the lack of accurate, clear and structured guidance for candidates adds an additional layer of complexity. This may well be off putting to candidates, particularly those in employment, education, or with caring responsibilities, or those less used to multiple stage competency-based application processes. To alleviate this, **for each stage of the application process there should be up-to-date, step by step guidance available to applicants, this guidance should be clearly**

76 C.f. current application form and previous guidance on filling out application form. Application form accessible [here](#). [Magistrates’ application guidance notes](#), Gov.uk.

77 Ministry of Justice, [Interview Guidance](#). Note that guidance on interviews available through [judiciary.uk](#) is even less details. See [Application Guidance](#), [judiciary.uk](#).

78 See [Applying to the IMB: Information for applicants](#) (2024) section 4.

79 [Magistrates’ application guidance notes](#), Gov.uk

80 [Application Process](#), [judiciary.uk](#).

81 [Application Guidance](#), [judiciary.uk](#).

signposted, and accessible from the ‘How to volunteer’ page of the judiciary.uk website.⁸²

We also heard from magistrates that requiring employed candidates to provide an employer reference at the beginning of the recruitment process could present a barrier to applicants. Whilst employers are required by section 50 of the Employment Rights Act to permit employees to take time off for magistrates’ sittings,⁸³ they do not have to provide a reference. Without an understanding of the benefit of their employees being magistrates, something explored in further detail below, employers may be reluctant to support applications. Equally, some employees, particularly those in more junior positions, may be reluctant to approach their employers for a reference at such an early stage, when there is no guarantee that they will be appointed.

We understand that reference checks can take a long time, and efficiency requires they be provided at the start of the process. However, given that employer references are not required for those not in employment, we question the need for this requirement for those who are employed. One possible reason could be to ensure that employees don’t face difficulties from their employers once they are appointed – employed candidates must confirm that their employer is willing to release them from work in order to undertake magisterial duties.⁸⁴ However, as mentioned above, employers are required to allow their employees to sit as magistrates. This is undermined if employers are essentially able to block their employees at the application stage. **To make it easier for those in employment to apply, the requirement that one reference must be from a current employer should be removed.**

Finally, whilst not yet publicly available, we have heard from the Ministry of Justice that the new recruitment system allows data to be collected on dropout rates at each stage of

the application process. This data is crucial to developing a fuller understanding of the impact of the application process on ensuring a representative magistracy and identifying priority areas for change. **We therefore urge the government to analyse this data to identify whether different demographics of candidates are more likely to drop out of the application process, and if so at what stage. This analysis should be made publicly available.** In the interim, we consider that the above recommendations, identified through conversations with those with experience of the process, represent proportionate initial steps to improve the accessibility of the process, particularly for groups currently underrepresented in the magistracy, such as young people and those not in professional or managerial roles.

Financial barriers

Outside of the application process, there are a number of other structural barriers which might prevent individuals from underrepresented backgrounds applying to be magistrates or staying in the role once appointed. There remains substantial, and sometimes hidden, financial costs which disproportionately impact magistrates from underrepresented groups. A survey conducted by the Magistrates Association found that young magistrates and magistrates from racialised backgrounds were far more likely to say that being a magistrate had created some level of financial cost to them. Young magistrates were nearly three times more likely than the general survey to report having considered leaving the role solely or mainly due to financial factors. Magistrates from racialised backgrounds were nearly two times as likely.⁸⁵

82 [How to volunteer](#), [judiciary.uk](#).

83 Employment Rights Act 1996, s.50.

84 [Application Guidance](#), [judiciary.uk](#); Magistrates Association, [Written Evidence on the Employment Rights Bill](#) (2024), p.4. Magistrates Association members have reported that their employers were unhappy to learn that they were applying to be magistrates.

85 Magistrates Association, *It shouldn’t cost to volunteer: findings from a survey of magistrates* (2022), p.33.

There remains substantial, and sometimes hidden, financial costs which disproportionately impact magistrates from underrepresented groups.

Magistrates are volunteers, which means that they do not receive payment for their sitting days. Whilst employers are required to allow magistrates to take reasonable time off to perform their duties,⁸⁶ there is no requirement that this leave be paid. Unsurprisingly, there is significant variation in employers' approaches to providing leave for magistrates. Whilst some employers will provide paid leave, others will require employees to make up their hours, or provide unpaid leave.⁸⁷ Some magistrates have reported having to use annual leave to meet their sitting requirements.⁸⁸ Individuals in full-time employment whose employers do not provide additional paid leave, or provide a combination of paid and unpaid leave, are substantially financially disadvantaged compared to those who are retired, or work part time.

Whilst magistrates can claim expenses for loss of income, this allowance is provided at a flat rate. In a survey conducted by the Magistrates Association 9 out of 10 magistrates that claim the financial loss allowance reported that it did not cover their lost earnings.⁸⁹ Moreover, as the Magistrates Association has highlighted, there are problems with how the financial loss allowance is administered. Stringent,

and sometime insurmountable, evidential requirements⁹⁰ can pose a real challenge for employed and self-employed magistrates trying to make a claim. **We agree with the Magistrates Association's recommendation that HM Courts and Tribunals Service ("HMCTS") undertake work to review and streamline the claims process.⁹¹ This review should also consider the feasibility of requiring employers (or certain employers) to provide paid leave, or some paid leave, for magistrates to perform their duties.**

Other inadequacies in the expenses system generate further hidden costs for magistrates, especially those who are employed or have caring responsibilities. The expenses system often does not account for costs incurred when sittings are cancelled at short notice. For instance, magistrates who require childcare to attend sittings have been left out-of-pocket when sittings were cancelled with insufficient notice to cancel their childcare arrangements.⁹² Similarly, those who take time off work and then have their sitting cancelled, are not able to claim lost earnings and may still lose that day's income, for instance, if they are a shift worker and are unable to pick up their shift at short notice. To address this, we recommend that **where sittings are cancelled with fewer than 2 working days' notice, magistrates should be entitled to claim any expenses or loss of earnings incurred on the basis of that sitting being cancelled.**

In addition, encouraging employers to support their employees to become magistrates is key to ensuring more diversity. Both the Ministry

86 Employment Rights Act 1996, s.50; <https://magistrates.judiciary.uk/employer-advice/>; <https://www.gov.uk/giving-staff-time-off-for-magistrate-duty>; <https://www.magistrates-association.org.uk/About-Magistrates/Employing-a-Magistrate/>.

87 Magistrates Association, *Written Evidence on the Employment Rights Bill* (2024), pp.3-4; Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022), p.14;

88 Magistrates Association, *Written Evidence on the Employment Rights Bill* (2024), pp.3-4.

89 Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022), p.14.

90 For instance, employees are required show that they could have worked if they had not been sitting. This can be hard for self-employed magistrates and those on zero hours contracts. Some surveyed by the Magistrates Association flagged that demonstrating this could require them to agreeing to work, then cancelling, with obvious implications for their reputations. Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022), pp. 18-19.

91 Ibid, p. 14.

92 See also *Times Crime and Justice Commission* (2025), *The Times*, p.87.



of Justice and the Judicial College have recognised the role that employers can play in reducing the financial burden on those wishing to volunteer as magistrates. The Ministry of Justice has produced various resources for employers on the benefits of employees sitting as magistrates.⁹³ In March 2025, the government called on employers to actively promote and support the voluntary role of magistrates within their workforce.⁹⁴

We also understand that some outreach has been conducted, particularly with large employers. In March 2023, an employment recognition scheme was launched in Hertfordshire and Bedfordshire, facilitated by the counties' chambers of commerce.⁹⁵ Under the initiative, employers pledge different levels of support to magistrates, for instance days of paid leave, to receive a bronze, silver or gold supporter award.⁹⁶ The Judicial College in its 2021-25 strategy committed to exploring the potential for this kind of accreditation scheme.⁹⁷ However, it is unclear what has been done in this regard.

We recommend that the effectiveness of existing accreditation initiatives be monitored by either the Judicial College or Ministry of Justice. If such initiatives are found to be successful, a nationwide accreditation scheme should be rolled out by the Ministry of Justice.⁹⁸ In developing this kind of scheme, the Ministry of Justice should look to work with local chambers of commerce, who are better placed to promote the scheme

in their areas. If current accreditation initiatives are found not to be successful, the Ministry of Justice should consult with a range of small and large employers, on how such a scheme could be made more attractive, and on what other kinds of incentives could be effective.

Time commitments and lack of flexibility

Magistrates are required to sit for 13 full days or 26 half days and are expected to remain in post for a minimum of 5 years.⁹⁹ In addition to this, magistrates must attend mandatory training sessions, and are encouraged to attend additional training, or take on additional roles, for instance, as bench chairs or as training or advisory committee members.¹⁰⁰ As with financial costs, the Magistrates Association survey found that young people and those from racialised backgrounds were more likely to cite the time commitment as a problem.¹⁰¹ Whilst this wasn't specifically measured by the survey, those with children, or in full-time employment or education may also find it harder to fit their duties as a magistrate around their other commitments.

We appreciate the need for magistrates to do a relatively high number of sitting days. Regular court experience enables magistrates to solidify their training by putting it into practice. Moreover, requiring magistrates for

93 Ministry of Justice, '[Employees who volunteer as magistrates prove good for business](#)' (2023), *Gov.uk*.

94 "The government is calling for employers in England and Wales to actively promote and support the voluntary role of magistrates within their workforce. Employers are being encouraged to support their staff in balancing both their personal and judicial duties, as well as add the magistracy to volunteering policies or CSR guidance for staff. The appeal comes from Lord Ponsonby, Parliamentary Under-Secretary of State in the Ministry of Justice." '[Employers must play their part in boosting access to justice for their employees](#)' (March 2025), *HR Director*.

95 Courts and Tribunals Judiciary, '[New magistrates' employer recognition scheme launched](#)' (2023), *judiciary.uk*.

96 Hertfordshire Chamber of Commerce, [Magistrates' Employer Recognition Scheme](#).

97 https://www.judiciary.uk/wp-content/uploads/2022/07/Judicial_College_Strategy_2021-2025_WEB.pdf p.14.

98 In 2016 the Justice Committee made a similar recommendation. Justice Committee, Sixth Report of Session 2016-17, [The role of the magistracy](#), HC 165 (2016), para 57.

99 '[Become a magistrate](#)', *Gov.uk*.

100 Magistrates Association, '[Magistrates' Training](#)'; Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022).

101 Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022).

a minimum number of days ensures that the courts' capacity needs are met, and that the costs of recruiting and training magistrates are justified. However, there are various ways to mitigate the impact of this time commitment without reducing the number of sitting days for magistrates.

First, **we recommend that sitting magistrates should be able to exempt themselves from jury duty.** This would ensure that magistrates are not required to undertake additional public duties whilst in post. Jury duty usually lasts for up to two working weeks, and sometimes longer.¹⁰² As with magistrates' duties, employers are required to provide time off for jury duty but there is no requirement that this be paid. Enabling magistrates to excuse themselves from jury duty, would help mitigate financial challenges arising from the additional time off needed by magistrates who are also called for jury service.

There are several ways this could be done. Prior to the Criminal Justice Act 2003 ("**CJA 2003**") magistrates were not eligible to serve as jurors. This could be re-introduced. Alternatively, magistrates could also be excused "as of right." This was previously the case for certain groups of people, such as medical professionals, but was abolished by the CJA 2003.¹⁰³ This would require magistrates to apply to a summoning officer for an excusal, but it would be accepted as of right. Finally, statutory guidance for summoning officers¹⁰⁴ could be updated to make explicit that serving magistrates should be granted an excusal or deferral. When considering the best approach, the Ministry of Justice must have regard to the need to ensure such excusals are applied consistently, and the fact that many magistrates may want to do jury duty.

In addition, the Ministry of Justice and HMCTS should consider the feasibility of allowing magistrates to do condensed sitting days. For instance, rather than committing to 13 days every year for 5 years, magistrates could instead commit to 21 days a year for 3 years. This would make it more attractive for students to sit as magistrates and may also make it easier to fill sitting days over summer, when we have heard it can be difficult to find available magistrates. As magistrates would still have to sit for a consistent number of days each year, we don't envisage that providing this option would interfere with scheduling, or the planning of recruitment rounds.

Finally, we have heard that magistrates can find it difficult to get time off in relation to their role as magistrates. In particular, it can be difficult to get time off for training.¹⁰⁵ The Employment Rights Act requires that employees be provided with reasonable time off for the purpose of performing "any of the duties of office." This presumably includes mandatory training. However, there does not appear to be guidance for employers on the subject or for magistrates to support their conversation with employers. We agree with the Magistrates Association that **there needs to be a central repository of resources to assist magistrates to manage issues with their employers, get support, and understand their rights under employment law.**¹⁰⁶

102 Ministry of Justice, '[Jury service: How jury service works](#)', *Gov.uk*.

103 See [Criminal Justice Act 2003 Explanatory Notes](#), para 879.

104 See Ministry of Justice, '[Statutory guidance: Guidance for summoning officers when considering deferral and excusal applications](#)' (2023), *Gov.uk*.

105 This appears to be a persistent problem, see also: Justice Committee, Eighteenth Report of Session 2017-19, [The role of the magistracy: follow-up](#), HC 1654 (2019), p.19, para 62.

106 Magistrates Association, *It shouldn't cost to volunteer: findings from a survey of magistrates* (2022); Magistrates Association, *Providing support for employed magistrates: a discussion paper by the MA's Young Magistrates Network* (2021), pp.8-10.

Recommendations

Recommendation 1: The Ministry of Justice should publish up to date step-by-step guidance on the application process. This should:

- a. include detailed guidance on what each key attribute means, how it is put into practice, and how it can be demonstrated;
- b. include a bank of examples drawing on non-work-related experiences, as well as experiences from a broad range of occupations;
- c. be clearly signposted, and accessible from the 'How to volunteer' page of the judiciary.uk website.

Recommendation 2: remove the requirement for those in employment to provide a reference from their current employer.

Recommendation 3: improve collection and analysis of data in respect of:

- a. the application process, to determine whether different demographics of candidates are more likely to drop out, and if so at what stage. This analysis should be made publicly available; and
- b. peoples' reasons for leaving the magistracy, to identify trends driving attrition rates, particularly amongst underrepresented groups.

Recommendation 4: HMCTS should review the expenses scheme in order to:

- a. streamline the process for claiming financial loss allowance;
- b. ensure that where sittings are cancelled with less than 2 working days' notice, magistrates can claim any expenses or loss of earnings incurred on the basis of that sitting day being cancelled; and
- c. assess the feasibility of requiring employers (or certain employers) to provide an amount of paid leave for magistrates.

Recommendation 5: the effectiveness of existing employer accreditation initiatives should be monitored by either the Judicial College or Ministry of Justice. If such initiatives are found to be successful, they should be rolled out nationwide.

Recommendation 6: in order to deal with issues around the required time commitment:

- a. magistrates should be able to exempt themselves from jury duty; and
- b. the Ministry of Justice and HMCTS should consider the feasibility of allowing magistrates to do condensed sitting days. For instance, rather than committing to 13 days every year for 5 years, magistrates could instead commit to 21 days a year for 3 years.

Recommendation 8: The Ministry of Justice should create a central repository of resources to assist magistrates to manage issues with their employers, get support, and understand their rights under employment law.



Decision-Making Processes

Section

3

Decision-Making Processes

Our 2023 report identified several issues with remand decision-making in the magistrates' courts, in particular relating to adherence to the proper process for making remand decisions, the quality of reasoning, and engagement with the adversarial process:

Failure to follow Bail Act 1976:

Decision-makers failed to reference the exceptions to bail in the Bail Act 1976 in most cases observed, including in cases where the outcome was conditional bail or remand in custody. Under the Bail Act, an individual should not be remanded in custody pre-trial unless any of the exceptions to bail apply.¹⁰⁷ Similarly, conditions should only be imposed where they are necessary to address these exceptions.¹⁰⁸

Our data showed high rates of custodial remand amongst defendants accused of low to moderate severity offences. For a portion of these cases, a custodial sentence would not have been a likely outcome on convictions. This suggests that decision-makers may also not be paying sufficient regard to the “no real prospect test”¹⁰⁹ which states that, save in certain limited circumstances, unconvicted defendants should not be remanded in custody where they are unlikely to receive a custodial sentence. Other data suggests that this may be a particular issue in cases involving women - 40% of women remanded into custody do not go on to receive a custodial sentence.¹¹⁰

Failure to follow relevant Criminal Procedural Rules:

Even when the legal test in the Bail Act was referenced, and remand or conditional bail was the outcome, decision makers failed to explain their decisions by setting out the exceptions to bail, with specific reference to the facts of the case and circumstances of the defendants, as required by the Bail Act and CrimPR.¹¹¹

Decision-makers frequently failed to act where evidence was incomplete or served late by the prosecution. This is despite changes made to the CrimPR in 2017, placing a duty on the court to ensure that where information about the prosecution case is supplied later than usually required, the defence is allowed sufficient time to consider it.¹¹²

Lack of interrogation of submissions:

Decision-makers rarely interrogated advocates' submissions regarding bail. Defence advocates' submissions were more than twice as likely to be challenged than prosecution advocates. This raises questions about the extent to which decision-makers engage with the adversarial process.

The above concerns were not exclusive to magistrates; district judges' decision-making also exhibited many of the same problems. However, in most areas the issue was more acute for magistrates. For this reason, the below focuses primarily on improving magistrates' decision-making. That said, some of the recommendations set out in the following

107 There are some, limited, exclusions to this general right to bail. However, these circumstances did not arise in our data set. For the exclusions see Bail Act 1976; CPS, Bail: Legal Guidance (2023).

108 In considering whether to impose a condition the court is not obliged to have substantial grounds. It is enough that they perceive a real risk of the consequence concerned. BA 1976, sch1, para 8(1).

109 Introduced by Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 11. See Bail Act 1976, Schedule 1.

110 Justice Committee, Seventh Report of Session 2022-23, [The role of adult custodial remand in the criminal justice system](#), HC 264 (2023), p.26.

111 Bail Act 1976, section 5; CrimPR 2020, r. 14.2(5). Note that the CrimPR require that the court explain its decisions where it remands a defendant in custody, imposes or varies conditions on bail, or grants bail where the prosecution opposes it.

112 Ministry of Justice, Ministry of Justice Explanatory Memorandum to the Criminal Procedure (Amendment) Rules 2017 No. 144 (2017); CrimPR 2020, r. 8.4 and 14.2(1)(d)(i).

section are also capable of improving the decision-making of district judges in relation to remand.

Through our research, we have identified several factors which appear to be contributing to poor decision-making in the magistrates' courts.

First, we have heard that the law on bail is perceived as complex and diffuse and that a lack of guidance on its application means that decisions are insufficiently structured.

First, we have heard that the law on bail is perceived as complex and diffuse and that a lack of guidance on its application means that decisions are insufficiently structured.

Second, the increased pressure on legal advisers, in terms of time and administrative tasks, means that they are less able to focus on supporting magistrates in their decision making. Third, there is a lack of monitoring of remand decision-making in the magistrates' courts, and insufficient mechanisms are in place to enable issues with decision-making to feed into training at either the local or national level. The recommendations below seek to address these shortcomings.

Finally, it is important to highlight a further overarching factor impacting decision making in this context— namely that too little time is spent on remand decisions.¹¹³ The impact of this on decision-making is well documented.¹¹⁴ We appreciate that more time spent on remand decisions would require more resources and could have implications for court backlogs. However, this must be weighed against the long-term costs of rushed decision-making.

The cost of inappropriate imposition of custodial remand is substantial, both from the perspective of individual liberty, and in terms of the resources required to keep someone in custody. For this reason, it is crucial that magistrates and legal advisers be supported and empowered to make appropriate interventions, even where this may slow down decision making.

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Why improving decision-making processes is important

As explored in our previous report and below, failure to follow proper processes when making decisions concerning remand, risks decisions being unlawful and has the potential to (i) contribute to the unnecessary use of custodial remand; (ii) lead to disparities in decisions between different groups of defendants; and (iii) impact outcomes elsewhere in the criminal process.

First, failure to reference the test in the Bail Act or to provide fully reasoned decisions has implications for the lawfulness of bail decisions,

113 Tom Smith, [The Practice of Pre-trial Detention in England and Wales – Changing Law and Changing Culture](#) (2022), *Eur J Crime Policy Res*, 28; Tom Smith, 'Rushing remand'? [Pretrial detention and bail decision making in England and Wales](#) (2021), *The Howard Journal*, 60(1). Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), University of West England.

114 Ibid; Mandeep Dhani, [Psychological models of professional decision making](#) (2003), *Psychological Science*, 14(2), p.178; Lucy Welsh, [Informality in the magistrates' courts as a barrier to participation](#) (2023), *International Journal of Law, Crime and Justice* 74.

both under domestic law and the European Convention on Human Rights.¹¹⁵ Whilst Article 5 ECHR allows for the deprivation of liberty in certain circumstances, including those set out as exceptions to bail in the Bail Act, such a deprivation is only permitted “*in accordance with a procedure prescribed by law*”.¹¹⁶ This means that it must conform to the substantives and procedural rules of national law.¹¹⁷ However, if courts are failing to reference, correctly and consistently, the Bail Act in the majority of cases, as our data and prior research suggests, then this latter condition is arguably not being met.

Moreover, the European Court of Human Rights has repeatedly emphasised that decisions to remand an individual in custody cannot be justified on the basis of “*general and abstract*” arguments and cannot use “*stereotyped*” forms of words.¹¹⁸ Those decisions appear to be being justified with generic references to the Bail Act, and without reference to the facts of the case or circumstances of the defendant, may well fall foul of this, in addition to falling foul of the requirements in the Bail Act and CrimPR.¹¹⁹

Second, failure to follow proper procedure, or to

engage sufficiently with the adversarial process, plausibly contributes to the unnecessary and inappropriate use of custodial remand. Failure to follow the law and procedure concerning bail increases the risk that non-legally relevant factors or biased perception of risk will impact decision making.¹²⁰ This risk is compounded where there is a lack of relevant information available to decision-makers, for instance due to late or incomplete service of evidence, and where decisions are made under time-pressure.¹²¹

Ours and others research also shows that decision makers tend to be deferential to, or unduly influenced by, the prosecution position, which may also result in unnecessary or inappropriate use of custodial remand.¹²² Issues around late or minimal provision of evidence to the defence, and decision-makers’ failure to intervene, also contribute to this by making it more difficult for the defence to meaningfully engage with remand decisions.¹²³

Lack of challenge of the prosecution position can also entrench biases from earlier on in the criminal process. Police recommendations have a significant influence on Crown Prosecution

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- 115 Note that a domestic court exercising its powers in a way which is compatible with the Convention rights should refuse bail only where it can be justified under both the ECHR, as interpreted by Strasbourg, and domestic legislation. David Ormerod CBE, KC (Hon) and David Perry KC, *Blackstone’s Criminal Practice* (2024), OUP, D. 7.38.
- 116 [Guide on Article 5 of the Convention: Right to Liberty and Security](#), Council of Europe.
- 117 Del Río Prada v. Spain [GC], § 125
- 118 Boicenco v. Moldova, 2006, 142; Khudoyorov v. Russia, 2005, 173; Smirnova v Russia, 2003; Yagci and Sargin v Turkey (1991) 20 EHRR 505, [52]; Caballero v UK (2000) 30 EHRR 643, 652 [21]; ; Rubtsov and Balayan v Russia Apps nos. 33707/14 and 3762/15 (10 April 2018), paras. 30-32.
- 119 Bail Act 1976, s.5 (1)-(4). Criminal Procedural Rules 2020, Rule 14.2(5).
- 120 Mandeep Dhami and Yannick van den Brink, [A Multi-disciplinary and Comparative Approach to Evaluating Pre-trial Detention Decisions: Towards Evidence-Based Reform](#) (2022), *European Journal on Criminal Policy Research*; Mandeep Dhami, [Written Evidence to the Justice Committee’s Inquiry into the role of adult custodial remand](#) (2022); Mandeep Dhami, [From discretion to disagreement: explaining disparities in judges’ pretrial decisions](#) (2005).
- 121 Ibid. Tom Smith, ‘[Rushing remand](#)’? Pretrial detention and bail decision making in England and Wales (2021); Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), University of West England.
- 122 Diana Grech, [Culture before law? Comparing bail decision-making in England and Canada](#) (2017) PhD Thesis, University of Leeds, Ch. 4; Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), University of West England; Mandeep Dhami, [Psychological models of professional decision making](#) (2003), *Psychological Science*, 14(2), Anthea Hucklesby ‘[Court culture: an explanation of variations in the use of bail by magistrates’ courts](#)’ (1997), *The Howard Journal of Crime and Justice*, p.133; Anthea Hucklesby, Remand Decision Makers (1997), *Crim LR* 269, pp.137-40; Anthea Hucklesby, [Bail or Jail? The Practical Operation of the Bail Act 1976](#) (1996), *Journal of Law and Society* 23(2).
- 123 Tom Smith, ‘[Rushing remand](#)’? Pretrial detention and bail decision making in England and Wales (2021), *The Howard Journal*, 60(1).

Service (“**CPS**”) decisions to apply for custodial remand, and police accounts and evidence are heavily relied on by prosecutors seeking remand in custody.¹²⁴ Deference to the prosecution can therefore indirectly amount to a failure to question the police.¹²⁵ Police decisions regarding bail also have a more direct impact on decision-making: research has shown that if a defendant appears in court from police custody their likelihood of custodial remand significantly increases.¹²⁶ This is especially concerning as Black defendants appear more likely to be remanded in custody by the police than White British defendants, for similarly serious offences.¹²⁷ Given the ongoing institutional racism in the criminal justice system, and particularly within the police,¹²⁸ decision-maker faith in prosecution and police positions may result in decision-making that compounds racial bias in particular.¹²⁹

Third, insofar as failure to follow proper decision-making processes allows more scope for subjective assessments influenced by non-legally relevant factors, deficiencies in

decision-making may also result in disparate outcomes for different groups of defendants.¹³⁰ For instance, our research revealed that those who appeared in a secure dock were far more likely to be remanded in custody, than those who appeared in the central court room,¹³¹ despite appearance in a secure dock being influenced by court-specific, rather than solely defendant-specific factors.¹³² Whilst a range of factors likely contributed to this disparity, research suggests that decision-makers may be influenced by generalised, and potentially biased, perceptions of the risk posed by the defendant arising from their presence in a secure dock.¹³³ Whilst bail decisions do necessitate an assessment of risk, these assessments should be defendant specific, relating to the facts of the case and exceptions in the Bail Act. The requirement for decision-makers to provide detailed reasons for their decisions acts as a potential safeguard insofar as it encourages decision-makers to go beyond generic assessments and consider the facts in front of them.¹³⁴

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- 124 Anthea Hucklesby, [Keeping the Lid on the Prison Remand Population: The Experience in England and Wales](#) (2009), *Current Issues in Criminal Justice* 21(1). p.9; Anthea Hucklesby, [Bail or Jail? The Practical Operation of the Bail Act 1976](#) (1996), *Journal of Law and Society* 23(2).
- 125 *Ibid.*
- 126 Anthea Hucklesby, [Keeping the Lid on the Prison Remand Population: The Experience in England and Wales](#) (2009), *Current Issues in Criminal Justice* 21(1). p.8.
- 127 Kitty Lymperopoulou et al, [Ethnic Inequalities in the Criminal Justice System](#) (2022).
- 128 See for instance, Baroness Casey of Blackstock DBE CB, [An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service](#) (2023); See also the Director of Public Prosecutions acknowledgement of racial disparities in CPS decision making, [‘CPS sets out Action Plan to tackle disproportionality in charging decisions’](#) (2024), CPS.
- 129 Keir Monteith KC et al, [Racial Bias and the Bench](#) (2022), University of Manchester.
- 130 See note 120.
- 131 Defendants appearing in a secure dock were more than 8 times more likely to receive an outcome of custodial remand compared to defendants sitting in the central area of the court. This disparity persisted, albeit to a slightly lesser extent, for defendant appearing for low to moderate severity offences. JUSTICE, [Remand Decision-Making in the Magistrates’ Court: A Research Report](#) (2023), p. 37.
- 132 This finding has since been reiterated by those with experience working in the magistrates’ courts.
- 133 Meredith Rossner et al, [The dock on trial: courtroom design and the presumption of innocence](#) (2017), *Journal of Law and Society*, 44(3). This study examined the prejudicial impact of the secure and standard dock on juror perceptions of the defendant. It found, amongst other things, that appearance in a secure dock appeared to trigger prior prejudiced. Notably the impact of a secure dock was particularly apparent upon older people and those with professional occupations – demographics that are overrepresented in the magistracy. See also JUSTICE, [In the Dock: Reassessing the use of the dock in criminal trials](#) (2015).
- 134 Kitty Lymperopoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#) (2024), *The British Journal of Criminology*, 64(5), p.1202; National Centre for State Courts, [Strategies to Reduce the Influence of Implicit Bias](#) (2012).

Finally, decision-making processes are important because of the impact these decisions have on defendant outcomes further down the line. Defendants can, in effect, make two applications for bail in the magistrates' courts.¹³⁵ A defendant must be produced in court within eight days of the initial decision to remand them in custody, at which point they can make their second application.¹³⁶ We heard from one magistrate that they felt there was an attitude amongst some magistrates that it was less important to get initial decisions to remand in custody "right," as the decision would be reviewed relatively soon after, at this subsequent hearing. This perception was supported by other consultees with experience working in the magistrates' courts, who expressed concern that this reasoning may in some cases be relied on to justify, whether consciously or unconsciously, more risk-averse decision-making.

Whilst anecdotal, if this is indeed the case, it is concerning for several reasons. First, it undermines the presumption in favour of bail and has obvious detrimental consequences for defendants, who end up spending time in custody, possibly in instances where the test for denying bail is not made out, or where the

exceptions to bail could have been addressed through conditions on bail. Moreover, whilst data is not available for the proportion of defendants who are initially remanded in custody and then released on bail by the magistrates courts', others have observed that this likely happens infrequently.¹³⁷ Evidence suggests that decision-makers may tend towards confirming previous decisions of the bench to remand a defendant in custody.¹³⁸ This, despite the fact that the ECHR has made clear that reviews of decisions to remand an individual in custody, must not simply reproduce previous decisions.¹³⁹ In addition, defendants remanded in custody face practical challenges when applying for bail, such as difficulties accessing legal advice.¹⁴⁰

Moreover, beyond their second application, it becomes much harder for defendants to make an application for bail in the magistrates' court.¹⁴¹ As the court does not need to hear factual or legal arguments it has heard previously, defendants in effect have to demonstrate a change in circumstances.¹⁴² The Law Commission Paper, 'Bail and the Human Rights Act' contains guidance that the courts should be willing at regular intervals of 28 days, to consider arguments that the passage of time

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- 135 While the presumption in favour of bail requires that a court must consider bail at each hearing, after the second hearing magistrates need not hear arguments that it has previously heard. Bail Act 1976 Sch.1 Part 2A (3). This means that in practice a defendant would need to be able to show that there are relevant matters that had not previously been considered.
- 136 If the magistrates' court refuses bail, or if the defendant wants to appeal their bail conditions, they can apply to the Crown Court for bail. The Crown Court should hear the application no later than 1 business day after it is served.
- 137 Anthea Hucklesby, [Written Evidence to the Justice Committee's Inquiry into the role of adult custodial remand](#) (2022).
- 138 Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), *University of West England*, pp.51 and 99- 102; Mandeep Dhami, [Psychological models of professional decision making](#) (2003), *Psychological Science*, 14(2).
- 139 ECHR 8 June 1995, *Yagci and Sargin v Turkey*, Nos. 16419/90, 16426/90.
- 140 Tom Smith, ['Rushing remand'? Pretrial detention and bail decision making in England and Wales](#) (2021), *The Howard Journal*, 60(1). The Association of Prison Lawyers, [Justice Barred: The difficulties lawyers face in seeing clients in prison](#) (2024).
- 141 Note that following their second application in the magistrates' court, the defendant can still apply to the Crown Court for bail. The Crown Court should hear the application no later than one day after its received. If an application to the Crown Court is unsuccessful, a further application can only be made if there is new evidence. David Ormerod CBE, KC (Hon) and David Perry KC, *Blackstone's Criminal Practice* (2024), OUP, D7.
- 142 Whilst the presumption in favour of bail means that the court must nominally consider whether the defendant ought to remain in custody at subsequent hearings, it does not need to hear factual or legal arguments it has heard previously, meaning that the defendant can only make a case for release if there has been a change of circumstances. Bail Act 1976, schedule 1, part 2A, para 3 and schedule 1, part 2A, para 1.

itself constitutes a change in circumstances.¹⁴³ However, defence practitioners have raised concerns that pre-trial detention is not subject to regular review beyond the second fully argued bail application.¹⁴⁴ This further highlights the need to improve decision-making both in the first instance, and at the second fully argued hearing.

There is evidence to suggest that pre-trial detention can also impact outcomes at the plea-bargaining and sentencing stage.¹⁴⁵ Pre-trial detention has been found to hold a strong association with imprisonment,¹⁴⁶ and may increase the likelihood of a defendant pleading guilty.¹⁴⁷ In this way pre-trial detention can form a gateway “*deeper into the forest of criminal justice...with all the implications that has.*”¹⁴⁸ As highlighted elsewhere, “*greater transparency and accountability of pre-trial detention processes...is needed to enable better assessments regarding risks posed by defendants,*”¹⁴⁹ in subsequent stages of the criminal process.

Supporting better decision-making

The Law on Bail and Structuring Decision Making

Remand decisions are some of the most difficult decisions magistrates make.¹⁵⁰ Determining whether to remand a defendant in custody, requires a nuanced assessment of the risk of the exceptions to bail coming to pass should a defendant be released. This involves consideration of a potentially broad range of relevant factors. Moreover, the stakes are high. Individuals remanded in custody pre-trial lose their liberty, without having been convicted of any offence. Equally, magistrates have expressed concerns about the potential risk posed by offenders, particularly those who are alleged to have committed serious offences, if released on bail.

The law governing pre-trial remand decision-making is primarily governed by the Bail Act 1976. It is also subject to procedural rules set out in the CrimPR. Whilst there appears to be a general consensus that the legislative framework governing bail is itself sufficient,¹⁵¹

143 David Ormerod CBE, KC (Hon) and David Perry KC, *Blackstone's Criminal Practice* (2024), OUP, D 7.70

144 See also Tom Smith and Ed Cape, *The Practice of Pre-trial Detention in England and Wales: Research report* (2016), University of West England, p.95

145 Kitty Lymperopoulou, *Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales* (2024), *The British Journal of Criminology*, 64(5), p. 1193.

146 *Ibid*, p.1202.

147 *Ibid*; Fair Trials, *Locked-up in Lock Down: Life on Remand During the Pandemic* (2021), pp. 37 – 39.

148 Tom Smith, ‘*Rushing remand*’? Pretrial detention and bail decision making in England and Wales (2021), *The Howard Journal*, 60(1).

149 Kitty Lymperopoulou, *Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales* (2024), *The British Journal of Criminology*, 64(5), p.1202

150 Justice Committee, *Oral evidence: The role of adult custodial remand in the criminal justice system*, HC 264 (2022), Q92.

151 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023), paras 28-37.

as set out above, ours and other research demonstrates there are problems with the way it is operating in practice. One suggested reason for these deficiencies in decision making, is that the Bail Act does not, in and of itself, provide structure to decision-makers.¹⁵² Whilst it is important that the law governing bail itself isn't overly prescriptive, there are several areas in which more structured guidance would be helpful.

As explained above, unconditional bail should be the starting point for decision-makers. Where there are substantial grounds to believe that any of the exceptions apply, the court must first consider the possibility of addressing these by imposing the least restrictive conditions necessary, with custodial remand being a measure of last resort where this is not possible. However, this kind of staged approach is not explicit in the legislation, and our research has revealed divergence in how decision-makers approach the question of remand.

Additionally, whilst the onus is on the court to justify any refusal of bail, defence practitioners we spoke to said that they sometimes felt the onus was on them to satisfy the court that the exceptions to bail were not made out in a particular case.¹⁵³ Some highlighted that the language of "bail application" in the context of pre-trial remand hearings was not helpful, as it suggests that the defence have to apply for bail, rather than this being the default legal position for unconvicted defendants.¹⁵⁴ It is crucial that decision-makers appreciate that it is not for the defence to prove to the court that none of the exceptions apply in a particular case, or that conditional bail would be sufficient to address any exceptions.

Finally, there is no indication in the Bail Act, or elsewhere, as to the relative weight to be placed on each exception to bail, and which factors should inform considerations of each of these exceptions and to what extent.¹⁵⁵ Moreover, ours and other research has revealed confusion amongst some magistrates between the exceptions to bail, and factors that should be considered when determining whether those exceptions are made out, with an overreliance on factors such as offence seriousness.¹⁵⁶

To improve decision-making in practice, steps should be taken to provide decision-makers with greater clarity and structure. **We recommend that the Judicial College develop flow charts for pre-trial decision-making. These should be made available to decision-makers and legal advisers and should be referred to by decision-makers when determining bail.** The flow-charts should be developed in consultation with experts, including lawyers and those with expertise in decision-making psychology, as we understand was the case with the initial development of sentencing guidelines.

Whilst the exact content and structure of the flow charts would be determined through consultation, we envisage that it would provide clarity on the steps which need to be followed when making a decision, and the order in which these steps should be taken. In this way, a flow chart would assist in emphasising that custodial remand is a last resort, by clarifying that unconditional bail is the starting point, and clearly directing decision-makers to consider whether conditions would be sufficient to address any exceptions to bail before

152 Mandeep Dhami, [Lay magistrates' interpretation of "substantial grounds" for denying bail](#) (2010), *The Howard League Journal of Criminal Justice*, 49(4); Mandeep Dhami, [From discretion to disagreement: explaining disparities in judges' pretrial decisions](#) (2005), *Behavioural Sciences and the Law* 23(3).

153 See also Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), *University of West England*, p.115.

154 Save in a limited number of circumstances, see note 10.

155 Mandeep Dhami, [Written Evidence to the Justice Committee's Inquiry into the role of adult custodial remand](#) (2022).

156 Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), *University of West England*, pp.71 and 73 -75.

remanding an individual in custody. The CPS Simple Bail Structure cards provide a useful starting point.¹⁵⁷

Additionally, the flow charts should make clear that the onus is on the court to justify refusal of bail, or the imposition of bail conditions, and that the defence is not required to satisfy the court that bail should be granted. The flow chart could also provide guidance on what factors are likely to be relevant to each exception to bail, making clear that these factors cannot themselves be determinative. If necessary, the chart could include warnings to mitigate potential biases.¹⁵⁸ The existence of this kind of flow chart would also ensure that the relevant processes and considerations are all available for reference in one place. For instance, relevant provisions of CrimPR, such as the requirement that the court ensures sufficient time be given to decision-making,¹⁵⁹ and requirements relating to the provision of evidence by the prosecution, could also be included.¹⁶⁰ This may result in improved consideration of legal requirements not contained in the Bail Act.

As well as improving decision-making in general, there is reason to believe that encouraging a more structured approach would assist in reducing any biases that may impact decision-making. As highlighted by Dr Kitty Lymperopoulou, the existence of sentencing guidelines, which provide clear structured guidance on the factors to be taken into account in sentencing, may explain the lower extent of ethnic disparities in sentence length, compared to pre-trial detention.¹⁶¹

Improving Pronouncements

As well as promoting structured decision-making in compliance with the law, more needs to be done to encourage decision-makers to give reasons for their decisions, in language the defendant can understand, with reference to the facts of the case and circumstances of the defendant, as required by the CrimPR.¹⁶² Doing so will not only improve defendant understanding of decisions, but also generate greater consistency, transparency and accountability in decision making.

When announcing bail decisions, magistrates have access to pronouncement cards which are meant to provide a template for explaining their decisions.¹⁶³ We have heard that magistrates should be instructed during their training to always use these cards. However, our research and subsequent consultation suggests that this may not always be happening.¹⁶⁴ It is not clear whether this is because some magistrates are not made aware of these cards during training, or if some are otherwise choosing not to announce their decisions concerning bail in line with the pronouncement cards.

The **Judicial College should commission independent research to identify why and to what extent magistrates are neglecting to use pronouncement cards when announcing their decisions.** This should involve surveying magistrates and district judges and should include an examination of the extent to which cultural resistance to perceived incursion on independence plays a part.

157 See CPS, *Legal Guidance* (2023), Annexes.

158 For example, in recognition of ethnic disparities in sentencing for certain offences some sentencing guidelines include a warning drawing sentencers' attention to these disparities. See '[New sentencing guidelines for drug offences published](#)' (2021), *Sentencing Council*; [Sentencing Guideline: Possession of a controlled drug](#), *Sentencing Council*.

159 CrimPR, Rule 14.2(1)(d)(ii).

160 CrimPR, Rule 8.4 and 14.2(1)(d)(i).

161 Kitty Lymperopoulou et al, *Ethnic Inequalities in the Criminal Justice System* (2022).

162 CrimPR 2020, Rule 14.2(5).

163 [Judicial College pronouncements – builder](#), *Sentencing Council*.

164 See also Tom Smith, *The Practice of Pre-trial Detention in England and Wales – Changing Law and Changing Culture* (2022), *Eur J Crime Policy Res*, 28.

A further concern is that pronouncement cards as they are currently formatted invite generic explanations of decisions.¹⁶⁵ Our research showed that even where magistrates referred to the exceptions in the Bail Act, only 29% did so with reference to the specific facts and the case and circumstances of the defendant.¹⁶⁶ Lack of specificity in reasoning was also a significant problem for district judges.¹⁶⁷ This is despite evidence suggesting that most decision-makers are at least aware of the requirement that explanations of decisions need to be linked to the specific feature of the case.¹⁶⁸ More, therefore, needs to be done to encourage and assist decision-makers to provide more detailed reasons for their decisions. **Pronouncement cards must expressly state that decision must be explained with reference to the circumstances of the defendant and the facts of their case.**

In addition, and bearing in mind the need for simplicity in pronouncement cards themselves, decision-makers may also benefit from more detailed guidance on how to link the exceptions to bail and considerations in the Bail Act with the specific facts and circumstances of the case. For instance, if the character of the defendant was a relevant factor, pronouncement cards, or other guidance, could prompt decision-makers to be specific about what aspects of the defendant's character have informed their decision. **The Judicial College should explore whether more detailed pronouncement cards – which make clear how and where to reference the specific facts of the case - would be helpful to magistrates, or whether other forms of guidance or resources would be more suitable. For instance, a bank of example**

pronouncements, showcasing the level of specificity required and how the facts and circumstances of the case should be integrated.

Finally, more needs to be done to ensure defendants understand remand decisions and proceedings. In the cases observed for our research project, observers reported that defendants appeared to have limited or very little understanding of the proceedings over 10% of the time. Other research has raised similar issues in relation to the defendant's ability to understand and participate in proceedings in the magistrates courts.¹⁶⁹ Ensuring defendant understanding is recognised in the Equal Treatment Bench as a key principle underlying the entire legal process.¹⁷⁰ Making sure defendants understand why they are being remanded in custody makes it less likely that such decisions are perceived as unfair, and enables defendants to better participate in future hearings concerning remand. Moreover, failing to explain bail conditions to defendants in a way that is comprehensible, may increase the likelihood that conditions will be breached, potentially resulting in them being remanded in custody further down the line. **Pronouncement cards must expressly state that decisions must be explained in language the defendant can understand.**

The need to explain decisions to defendants in a way that's accessible, may also partially explain some magistrates' failure to use pronouncement cards. Some magistrates have told us that current pronouncement cards require too formal an approach, and that citing the law may not be comprehensible to many defendants. However, it's important

165 See, various pronouncements for remand in custody pre-conviction, [Judicial College pronouncements – builder, Sentencing Council](#).

166 See also Tom Smith, [The Practice of Pre-trial Detention in England and Wales – Changing Law and Changing Culture](#) (2022), *Eur J Crime Policy Res*, 28.

167 JUSTICE, [Remand Decision-Making in the Magistrates' Court: A Research Report](#) (2023).

168 Tom Smith, [The Practice of Pre-trial Detention in England and Wales – Changing Law and Changing Culture](#) (2022), *Eur J Crime Policy Res*, 28, p.441.

169 Fionnuala Ratcliffe and Penelope Gibbs, [The Wild West? Courtwatching in London magistrates' courts](#) (2024), *Transform Justice*; Shaun Yates, [Over-efficiency in the lower criminal courts: understanding a key problem and how to fix it](#) (lecture, London Metropolitan University, 11th June 2024).

170 Judicial College, [Equal Treatment Bench Book](#), (2024), p.5.

that decision makers are consistent in both citing the relevant law and explaining its application to the case in a way the defendant can understand.¹⁷¹ Further concerns have been raised about neurodiverse defendants, who may face additional challenges in understanding the language used in court.¹⁷² Decision-makers should be **provided with training on how to explain decisions to defendants**, this training should include a more general reminder to decision-makers not to assume a certain level of knowledge and understanding from defendants. The Judicial College should design this training in consultation with court users who may face particular challenges understanding court decisions and processes for instance those who are neurodiverse, their families, lawyers and intermediaries.

Promoting equality of arms

Decisions to remand individuals in custody or impose conditions on bail must follow an adversarial hearing, with equality of arms between the parties ensured. This is a requirement made clear by both Strasbourg and domestic case law.¹⁷³ As set out above, our 2023 research suggested that magistrates may not be doing enough to engage in the adversarial process, for instance by failing to challenge submissions of advocates, or when submissions are challenged, by challenging defence advocates submissions more frequently than the prosecution. In addition, we also

found issues with late or minimal provision of evidence to the defence, with decision-makers failing to intervene where this was the case. This lack of adversarialism and failure to ensure equality of arms, is not only contrary to the law, but also generates worse decisions, based on insufficient information.

Whilst decision-makers and legal advisers (discussed in more detail below) bear some of the responsibility for this, our 2023 research also found that advocates often failed to make submissions on the Bail Act exceptions.¹⁷⁴ Decision-makers should be hearing an application from the prosecution, setting out the relevant grounds and reasons to remand, followed by submissions from the defence, however, we have heard from magistrates that hearing representations from both sides has become a “vanishing rarity” in remand hearings.

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171 Lucy Welsh, [Informality in the magistrates’ courts as a barrier to participation](#) (2023), *International Journal of Law, Crime and Justice* 74.

172 See also specific recognition of difficulties faced by neurodiverse defendants in the criminal justice system in the Equal Treatment Bench Book. Judicial College, [Equal Treatment Bench Book](#), (2024), Chapter 4, para 94.

173 Göç v Turkey, App. 36590/97, 11 July 2002, para 62; ECHR 28 October 1998, Assenov v Bulgaria, No. 24760/94; Woukam Moudefo v France (1991) 13 EHRR 549; *DPP, ex parte Lee* [1999] 2 All ER 737.

174 In cases where the prosecution opposed unconditional bail, prosecution advocates introduced and relied on the Bail Act exceptions just 46.3% of the time. Where the defendant was represented, the defence set out their representations in this way in just 35.7% of cases.

One reason for this is the pressure on advocates, like all those involved in these hearings, to deal with cases quickly.¹⁷⁵ However, defence practitioners have also highlighted that the lack of information provided to them in advance of hearings significantly hinders their ability to properly argue their client's case, and to identify and put forward a suitable package of bail conditions. This is further supported by our 2023 finding that the conditions imposed on bail generally matched those put forward by the prosecution.¹⁷⁶ Whilst some of this reflects the fact that prosecution and defence advocates may negotiate bail conditions prior to the hearing, defence practitioners face the same challenges regarding lack of information when engaging in these types of negotiations.

This inequality of arms between the defence and prosecution is a particular problem where a defendant is appearing from custody. Where this is the case, CrimPR 8.3(a) only requires the defence to be provided with a summary of the circumstances of the offence, and the defendant's criminal record if they have one.¹⁷⁷ Although the case of *DPP, ex parte Lee* [1999] 2 All ER 737 establishes a right to disclosure of prosecution evidence for the purposes of making a bail application, we have been told by lawyers practicing in the magistrates courts

that this is rarely cited in remand hearings. There was a perception that attempts to make this argument would not be welcomed by decision-makers, particularly where addressing a lack of disclosure would require the hearing to be adjourned. Defence lawyers also cited the need to avoid adjournments as a reason for not raising issues with the provision of evidence, given the significant negative impact further delays can have on defendants.

Whilst some of the stakeholders we spoke to for this report highlighted examples of a culture of evidence sharing between parties in certain courts, given that others raised the concerns outlined above, it is clear that this is not the case across the board. Moreover, there is a risk that reliance on goodwill from prosecutors, further undermines the ability of hearings to be adversarial.¹⁷⁸

To ensure equality of arms between parties we consider that **CrimPR 8.3 be amended to require the prosecution to disclose all information to the defence that would assist them in making submissions concerning bail, an early abuse of process application, or otherwise as required in the interests of justice and fairness, including where the defendant appears from police custody. The prosecution should also be required**

175 "For the CPS – also affected by cuts to funding over the last decade – increasing caseload per prosecutor and the use of less experienced associate prosecutors arguably has implications for both speed and quality of the remand process (Soubise 2017). For defence lawyers, the financial pressures of legal aid cuts also raise the risk of remand decisions being regarded as small beer in comparison with more complex (and/or profitable) work (Newman 2013; Welsh 2017). For magistrates and judges, the message has been clear for many years that cases should be dealt with as swiftly as possible, demonstrated by the variety of initiatives (such as Transforming Summary Justice (Crown Prosecution Service 2015); criminal justice: Delivering Simple, Speedy, Summary Justice (Department of Constitutional Affairs 2006)); reviews (Leveson 2017); and cases (*DPP v. Petrie* [2015]; *Visvaratnam v. Brent Magistrates' Court* (2010)) that have emphasised this. Combined, all parties involved in remand decision making operate in an era characterised by demands (driven by both ideology and practicality) for quicker proceedings and lowered costs, where possible." Tom Smith, 'Rushing remand'? Pretrial detention and bail decision making in England and Wales (2021), *The Howard Journal*, 60(1), pp. 61-62.

See also Shaun Yates, [Over-efficiency in the lower criminal courts: understanding a key problem and how to fix it](#) (lecture, London Metropolitan University, 11th June 2024); Lucy Welsh, [Informality in the magistrates' courts as a barrier to participation](#) (2023), *International Journal of Law, Crime and Justice* 74; Tom Smith and Ed Cape, [The Practice of Pre-trial Detention in England and Wales: Research report](#) (2016), University of West England, p. 115; Lucy Welsh, Bureaucracy, standardization and efficiency in the summary criminal justice process (2013), University of Sussex.

176 JUSTICE, [Remand Decision-Making in the Magistrates' Court: A Research Report](#) (2023), p. 25.

177 CrimPR, r.8.3. Where a defendant is not in custody prior to their initial hearing, the prosecution must additionally provide the defence with any account given by the defendant in interview, any written witness statement that the prosecution considers material to plea, allocation or sentencing.

178 Lucy Welsh, [Informality in the magistrates' courts as a barrier to participation](#) (2023), *International Journal of Law, Crime and Justice* 74.

to certify that all material that would assist the defence in making submissions regarding bail has been provided to the defence. In addition, we consider that **police recommendations and observations on bail should be disclosed to the defence before a first appearance where the defendant is appearing from custody.** Currently, these only form part of the material provided to the prosecution. This would not only allow the defence to know the case they must meet, but knowledge that this would have to be disclosed may also make these recommendations more considered, evidence-based and particular to the case.

These changes would not alter the law as established in *ex parte Lee* but would make the requirement to provide evidence that might assist the defence more salient. We appreciate that adjourning a hearing for the provision of further material, will often not be an attractive prospect to either the court, or the defendant. We anticipate that by clarifying the requirement on the prosecution to provide evidence to the defence for the purposes of bail, this would

promote evidence sharing prior to the hearing and would only exceptionally require an application to the court.

The role of legal advisers

Legal advisers play a crucial role in ensuring the quality and lawfulness of magistrates' decisions. Unlike lay magistrates, legal advisers are legally qualified. Their job is to advise magistrates on the law, practice and procedure.¹⁷⁹ This includes making appropriate interventions, for instance to ensure the court has sight of relevant evidence, and that the defence has sufficient time to consider evidence provided late. In addition, where a defendant is unrepresented a legal adviser must assist them.¹⁸⁰

Legal advisers are also key to ensuring that magistrates can fully engage with and interrogate advocates' submissions, by flagging what points should be challenged or what the court would benefit from further information on. Magistrates, legal advisers and lawyers consulted for this report expressed concerns

179 CrimPR 2020, r. 2.12.

180 Ibid.



that without this steer magistrates may struggle to identify relevant issues or may lack the confidence to raise them. Legal advisers are also supposed to provide support and training to magistrates in the form of a post-sitting review. These reviews should take place at the end of the court day and provide an opportunity for magistrates to ask questions and raise concerns, and for legal advisers to provide ad-hoc feedback on their decision-making.

A key concern raised by those we spoke to, was the extent to which legal advisers are currently able to fulfil many of the above functions. Legal advisers have come under increasing strain in recent years. There was broad agreement amongst everyone we spoke to including legal advisers, magistrates, advocates and managers that the drive to reduce the court backlogs has put pressure on legal advisers to ensure cases move through the courts quickly. This pressure is exacerbated by an overall shortage of legal advisers, driven by difficulties with both recruitment and retention.¹⁸¹ In addition, the introduction of the Common Platform in 2021 has required legal advisers to spend more time on administrative matters during court sittings themselves. Our understanding is that this is due both to problems with the functionality of the platform itself and the platform requiring more information to be recorded.

The culmination of these factors mean that legal advisers now have less time to provide legal advice to magistrates, with obvious implications for the quality of decision making. We have heard that post-sitting reviews have become a rarity, despite being identified by magistrates as an important source of additional learning. Time and capacity constraints have also significantly reduced the ability of legal advisers to assist unrepresented defendants. This not only has

consequences for defendant participation and access to justice but may also reduce the ability of the court to identify and impose suitable bail conditions.¹⁸²

Concerns have also been raised by those with experience working in the magistrates' courts about the quality of advice provided by some legal advisers. We have heard from HMCTS that many experienced legal advisers have left the profession, meaning that a large number of legal advisers are currently in training. Additionally, legal advisers have expressed concerns that staff shortages have had an impact on the level of support and training received by new legal advisers. For example, a lack of available mentors has meant that trainee legal advisers may end up on their own in court sooner than expected.

To improve decision making more needs to be done to ensure legal advisers can focus on providing advice and support to magistrates and, where relevant, defendants. This requires an increase in legal adviser capacity. Increased capacity would also contribute to improved decision-making by ensuring that new legal advisers receive sufficient training to enable them to confidently carry out their duties. There has been a drive from the government to recruit more legal advisers. However, retaining those in post remains a challenge.¹⁸³

One issue appears to be how the role is advertised to, and perceived by, would-be candidates. Being a trainee legal adviser offers a route to qualification as a solicitor,¹⁸⁴ making it a potentially attractive option for those wishing to pursue a career in law. The role is also open to those who have completed the Bar Training Course or equivalent.¹⁸⁵ However, despite offering a route to qualifying as a solicitor, and a way of gaining valuable legal

181 Catherine Baksi, '[Crowded house](#)' (2024), *The Law Society Gazette*; Mark Beattie, '[Things to Look Out for in 2024](#)' (2024), *Magistrates Association Blog*;

182 Defence advocates play a key role in working with prosecution to agree bail conditions. Anthea Hucklesby, [Written Evidence to the Justice Committee's Inquiry into the role of adult custodial remand](#) (2022).

183 Monidipa Fouzder, '[Legal advisers 'need pay parity' with CPS](#)' (2025), *The Law Society Gazette*; Catherine Baksi, '[Crowded house](#)' (2024), *The Law Society Gazette*.

184 The training process takes 2 years and is "likely to coincide with the participation of a Solicitors Regulation Training Contract." See job advert for legal adviser through [Justice Jobs](#).

185 *ibid*.

experience for those with ambitions elsewhere in the legal profession, we understand that little (if any) outreach is done with university law departments. This is a missed opportunity: recent students and law faculty staff we have spoken to agree that the legal adviser role would be an appealing option for recent graduates, and expressed frustration that so little was known about it. To address this, **HMCTS should conduct concerted outreach with university law departments.** This could involve running online open days; providing information packs on the role of legal advisers, including the skills involved, tips for applying and the fact that it offers a route to qualification; and advertising openings through university careers services.

A further barrier to both retaining and attracting talented applicants is the lack of career progression for legal advisers once qualified. To progress from Tier 1 to Tier 2, legal advisers must develop a portfolio for assessment. We have heard that there is little support or guidance available to assist legal advisers with this. Tier 2 legal advisers can then progress by applying for Legal Team Manager roles,¹⁸⁶ or for roles within the wider civil service.¹⁸⁷ However, Legal Team Managers have a more operational, than legal role and there is comparatively limited scope to continue to progress within the legal profession. Legal advisers can apply for judicial appointments, but this is not part of the “Legal Adviser Career Structure.” Moreover, whilst advertisements for legal adviser roles state that HMCTS is “supportive of applications for judicial appointment,”¹⁸⁸ we are not aware of any official initiatives in place that proactively support and encourage legal advisers to progress their career in this way.

Given the nature of the role, experienced legal advisers may be well placed to apply for positions as district judges in the magistrates’ courts.¹⁸⁹ This would represent an attractive career path for those interested in developing their career as a legal professional, rather than in the operational capacity offered by Legal Team Manager roles. **Stakeholders, including HMCTS (as Legal advisers employer), the Law Society, the Bar Council, the Judicial Office and the Judicial Appointments Commission should work collaboratively to develop a programme aimed at encouraging Legal advisers to apply for district judge positions and providing development opportunities aimed at building the necessary skills.** These stakeholders already have a number of outreach programmes aimed at individuals from underrepresented groups in the judiciary;¹⁹⁰ best practice learning from these programmes should be used to develop the Legal adviser specific programme. **Demonstrating these skills could form part of the portfolios legal advisers are required to build in order to progress through the Legal Adviser Career Structure.** Increased career progression from legal adviser to district judge could also have a potentially positive impact on the diversity of decision-makers in the magistrates’ courts. Whilst research on legal advisers is relatively limited, our 2023 report found that there was substantially greater racial diversity, for instance, amongst legal advisers, than district judges or magistrates.¹⁹¹

In addition to increasing the capacity of legal advisers through recruitment and retention, other steps must also be taken to ensure that legal advisers are able to utilise their time most effectively. The requirements to record information on the Common Platform places

186 See job advert for Tier 3 Legal Team Manager through [justice jobs](#).

187 See job advert for legal adviser through [justice jobs](#).

188 Ibid.

189 Subject meeting eligibility requirements for judicial appointment, including qualification as a solicitor, barrister or a fellow of the Chartered Institute of Legal Executives (CILEX). See Tribunals, Courts at Enforcement Act 2007, s.50 -51 and related legislation.

190 For example, the Pre-Application Judicial Education Programme, Targeted Outreach Programme, Judicial Mentoring and Work Shadowing Schemes, the Solicitor Judges Network and mentoring for barristers.

191 JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023), pp. 10-11.

a significant strain on legal advisers, who are now essentially required to do two roles – one legal and the other administrative. One former legal adviser we spoke to told us that whilst under-staffing was the most significant issue, the introduction of the Common Platform was, for some, the “straw that broke the camel’s back.” We understand that since its introduction several changes have been made to alleviate the administrative burden on legal advisers in the courtroom. For instance, legal advisers can fill in some of the required fields after sittings have finished. However, they are still expected to record significant information during hearings themselves.

The introduction of the Common Platform was, for some, the “straw that broke the camel’s back.”

We have heard from those with experience working in the magistrates’ courts that in practice there is variation in the extent to which the Common Platform is filled out, with some understandably choosing to prioritise legal advice. We have also heard that there is a seemingly unprincipled distinction between the amount of information that the system requires be recorded for different types of hearings. For instance, for bail hearings legal advisers must capture the representations that were made by the parties. However, we understand this is not the case for sentencing. We recommend that **HMCTS undertake a review of the amount of information currently recorded on the Common Platform and when, weighing up the vital need for legal advisers to be available to give advice and assistance during court sittings.**

In addition, greater recognition should be given by HMCTS to the important role that post-sitting reviews fulfil in relation to the ongoing training and development of magistrates, and sufficient time and resources should be dedicated to them

accordingly. Post-sitting reviews provide an opportunity for poor practice to be corrected, and for additional training needs to be identified (see below).¹⁹² As recognised by the government, they are a “fundamental part of the personal development process” for magistrates, and play a crucial part in ensuring magistrates feel supported in the role.¹⁹³ Moreover, these reviews need not be lengthy, 5 to 10 minutes may be enough in many cases. **The need to facilitate and prioritise these reviews as a core part of the role of legal advisers, must be impressed upon Legal Team Managers and legal advisers. Where, exceptionally, these cannot take place in-person immediately after a sitting, there should be an expectation that such a review is conducted remotely or by email at the soonest possible opportunity, and no more than one week post sitting.**

Training, Appraisals and Audits

Deficiencies in the training and appraisals of magistrates is also a potential factor contributing to problems with decision-making. We have heard some concerns that, as it stands, there is limited scope within the system for independent monitoring of magistrates’ decision-making, or for potential issues to be identified and addressed through training, either at the local or national level. In addition, we have also heard more generally about deficiencies in training provision in relation to remand decision-making, and inefficiencies in how training is delivered.

Training

All new magistrates complete compulsory core training and are assigned a mentor who provides supervision and support. Within the first two years of being appointed, magistrates receive about 10 days of

192 Ministry of Justice, *Government Response to the Justice Select Committee’s Eighteenth Report of Session 2017-19: The Role of the Magistracy*, (2019).

193 Ministry of Justice, *Government Response to the Justice Select Committee’s Eighteenth Report of Session 2017-19: The Role of the Magistracy*, (2019).

training.¹⁹⁴ This includes induction training and mentored sittings.¹⁹⁵ In 2023-24, it also included consolidation training on allocation, bail, verdict, sentencing, enforcement and case management.¹⁹⁶ However, this training does not appear in the most recent judicial college training programme for magistrates.¹⁹⁷ Magistrates must attend compulsory training on unconscious bias.¹⁹⁸

Following the first two years, magistrates have one or two days of compulsory training per year.¹⁹⁹ This includes continuation training, which provides “*an insight into the role of the presiding justice in order that they can develop their skills as a winger.*”²⁰⁰ Magistrates must also attend other training as required by the judicial college, for instance on domestic abuse or mental disability,²⁰¹ or on changes to legislation, practice and procedure.²⁰² Optional training is available through the Magistrates Association which hosts learning and development events for members, and provides online materials – some of which are co-developed with the Judicial College – through its learning portal.²⁰³

The structure of magistrates training provision is complex.²⁰⁴ Until recently, the majority of magistrates training was managed by HMCTS, with oversight from the Judicial College, and was planned and implemented locally by

Justices’ Training, Approval, Authorisation and Appraisal Committees.²⁰⁵ We understand that magistrates training has recently been transferred to the Judicial College. Planning and delivery now lie with the Judicial College,²⁰⁶ and HMCTS is no longer involved in managing training. The purpose of this has been to improve consistency in how training is delivered, and to reduce costs.²⁰⁷

We support this centralisation and its concomitant improved consistency of training. However, we did hear concerns from individuals with experience delivering magistrates training that this model may make it more difficult for training to be responsive to local needs and challenges. Targeted local training may be required to address knowledge gaps, or deficiencies in decision-making in local courts. Equally, there may be instances where additional training is required because of specific issues arising in cases in a particular area.²⁰⁸ For instance, in the context of remand decision making a court dealing with high numbers of foreign national defendants may benefit from training on the provision of interpreters.

We understand that at present local JTAAACs continue to be involved in training. Indeed, the Justices of the Peace Rules 2016 have not

194 [Frequently asked questions: How much time will I need to commit to the role?](#), *judiciary.uk*.

195 *ibid.*

196 Judicial College, [Judicial College Prospectus 2023-24](#) (2023) pp. 11-12; Magistrates’ Association, ‘[Magistrates’ Training](#)’.

197 Judicial College, [Judicial College Prospectus 2024-2025](#) (2024) p. 12.

198 *Ibid.*

199 ‘[Become a magistrate](#)’, *Gov.uk*.

200 Judicial College, [Judicial College Prospectus 2024-2025](#) (2024) p. 12.

201 Judicial College, [Judicial College Prospectus 2023-24](#) (2023), p.12 ;Judicial College, [Judicial College Prospectus 2024-2025](#) (2024) p. 12.

202 [Frequently asked questions: How much time will I need to commit to the role?](#), *judiciary.uk*.

203 Magistrates’ Association, ‘[Magistrates’ Training](#)’.

204 Justice Committee, Eighteenth Report of Session 2017-19, [The role of the magistracy: follow-up](#), HC 1654 (2019), para 60.

205 *Ibid.*, paras 60-69.

206 Judicial College, [Judicial College Prospectus 2024-2025](#) (2024) p. 3.

207 Judicial College, [Judicial College Strategy 2021-2025](#) (2021), p.14.

208 Tom Franklin, ‘[RIP Local Justice? Let’s Hope Not!](#)’, *Magistrates’ Association*.

yet been updated to reflect the new training arrangements meaning that JTAAACs still have a legal duty to identify the training needs of magistrates in its area and prepare, deliver and evaluate training.²⁰⁹ In practice, under the new system JTAAACs are meant to work with the Judicial College to develop training programs, for instance by communicating the needs of the area to regional learning partners, who are employed by the College to plan and implement Magistrates training within their region.²¹⁰ There is, however, no formal mechanism for identifying or communicating local needs, and it's difficult to see how this can happen effectively.

First, JTAAACs themselves may struggle to identify the needs of benches in their areas. This was recognised prior to the transfer of training to the College. In his evidence to the Justice Committee's follow-up inquiry into the role of

the magistracy, the then National Leadership Magistrate flagged that magistrates experienced JTAAACs as "disconnected from the running of benches."²¹¹ In addition, magistrates are expected to self-report their training and development needs, which are then referred to JTAAACs.²¹² It is questionable whether individual magistrates are best placed to identify gaps in their own knowledge and training. According to the government in its response to the Justice Committee's report on the role of the magistracy, this feedback forms part of the post-sitting review process²¹³ – which, as highlighted above, have become increasingly rare.

Second, even if training needs can be identified, we have heard that whether these are effectively communicated and informed training provision in an area depends on the

209 The Justices of the Peace Rules 2016, r.21(2).

210 See job advert for Learning Partner for London through [justice jobs](#).

211 Justice Committee, [Oral Evidence: The role of the magistracy – follow up](#), HC 1654 (2018), Q24.

212 Ministry of Justice, [Government Response to the Justice Select Committee's Eighteenth Report of Session 2017-19: The Role of the Magistracy](#), (2019), p.18.

213 Ibid.



relationship between a local JTAAAC and the regional learning partner. In this way, the move to the Judicial College creates potentially more distance between the needs of benches and the development and provision of training.

Third, whilst regional learning partners are also expected to develop relationships with the local magistracy and legal advisers, in order to “ascertain current and future training needs within their region”²¹⁴, again there is no clear mechanism for these needs to be identified or communicated, particularly at a more systemic level. Given the current pressures on magistrates and legal advisers, it may be difficult for them to provide this kind of assistance, particularly absent a clear streamlined process for doing so. This dependency on the relationship between JTAAACs or benches and court staff and the College is liable to generate inconsistency in how and to what extent local needs can be accounted for in local or national training plans and provision.²¹⁵

To ensure that the transfer of training to the Judicial College does not lead to local training needs being neglected, it is crucial that the College develops effective processes for identifying problematic trends in decision-making, knowledge gaps and other court or area specific training needs. **Regional learning partners should work with HMCTS, and JTAAACs to undertake annual audits of magistrates and legal adviser appraisals. Appraisals should include specific questions on training needs. The audit should aim to identify trends and knowledge gaps at the local level, which can then be collated nationally. The outcomes of this should feed into training provision, either through local, or ad hoc training, or national training, depending on the issues identified and their scope.**

Given the specific issues identified with remand decision making, **remand decisions themselves should also be audited. This should be carried out by the Judicial College working with HMCTS to identify trends in decision-making both nationally and locally, which in turn should be used to inform training.** This could be done, in part, using information recorded on the Common Platform. This would allow for local and national trends in the frequency of custodial remand to be identified, as well as trends in the number and type of conditions imposed on bail, and the frequency with which these conditions are breached. It would also allow for the identification of courts and areas where unconditional bail is rarely granted. This information should be collated and made publicly available.

We appreciate that whilst the audit described above may enable trends in remand decisions themselves to be identified, it will not be sufficient to identify where decision making processes are not properly understood or followed by decision-makers. For this reason, **we recommend the piloting of bail decision champions in magistrates’ courts.** This position could be fulfilled by either a district judge or Legal Team Manager who, where necessary, could fulfil this position in relation to several courts within an area. The role would include providing periodic online drop-in sessions for magistrates and legal advisers to ask questions and voice concerns about bail decision-making. It would also involve observing a certain number of remand hearings per year to identify possible deficiencies in decision-making or examples of good practice. Bail decision champions would be responsible for reporting the findings of their observations and drop-in sessions to Judicial College regional learning partners and HMCTS on a yearly basis, or more frequently should specific, acute issues with decision-making be identified.

214 See job advert for Learning Partner for London through [justice jobs](#).

215 This was raised to the Justice Committee as an issue prior to both the introduction of JTAAACs and the more recent transfer of training to the Judicial College. In its 2016 report on the role of the magistracy, the Committee highlighted that the College’s ad hoc reliance on HMCTS staff to assist with training was resulting in inconsistency. It recommended that “a more realistic view be taken of the ability of HMCTS staff, in particular legal advisers, to assist with training given the current pressures on their time.” Justice Committee, Sixth Report of Session 2016-17, *The role of the magistracy*, HC 165 (2016), paras 65 – 69.

Whilst we appreciate that this would require some additional resource, we consider that it has the scope to improve remand decision-making both by addressing individual concerns at drop-in sessions, and by contributing to evidence-led, need-responsive, training provision for magistrates and legal advisers, at both the local and national level.

In addition, HMCTS should collate information on the outcome of Crown Court bail appeals, which overturn earlier decisions in the magistrates' courts or remove conditions that the Crown Court considers to be unnecessary. This should be fed back to individual magistrates and district judges, and Judicial College regional learning partners. We understand that magistrates already receive information on appeals against sentence or conviction. Where a pattern of remand decisions being overturned or conditions varied is identified for a particular decision-maker, they should be required to reattend training on remand decision-making and magistrates should be subject to a specific appraisal conducted by a legal adviser to identify problems with their decision-making in this context. Collating this information would allow Judicial College regional learning partners to better identify acute issues with remand decision making in particular areas and provide targeted local training accordingly.

We appreciate that there is a need to distinguish between cases where there has been a change of circumstances and those where there has not. However, this is not insurmountable. First, a defendant's first Crown Court application does not require a change of circumstances, and a notice of intention to apply must be served on the court as soon as practicable after the magistrates' decision and include what further information or legal argument, if any, that has become available since the decision.²¹⁶ It should therefore be clear where new arguments are

being advanced. In addition, we have been told by defence practitioners that, in practice, notices of intention to apply are generally drafted immediately following a decision. After the notice is served the application should be heard no later than the business day after.²¹⁷

We understand that there is an intention to remove training from the remit of JTAAACs altogether. However, to the extent that JTAAACs would still be responsible for appraisals in their areas, they should also continue to play a role in identifying court needs and knowledge gaps. The replacement of local justice areas with a single justice area, a change brought in by the Judicial Review and Courts Act 2022²¹⁸ and yet to be implemented, may prompt further reforms to JTAAACs, including their possible abolition. We agree with the Magistrates Association that the government, when determining what will replace local justice areas, must ensure that provisions are in place to retain a link between training and local need.²¹⁹

Appraisals

In addition to feeding into training, further changes are required to the appraisal process itself to ensure that magistrates are encouraged to continuously develop their decision-making skills, and that issues can be effectively identified and addressed.

Magistrates undergo their first appraisal within 12-18 months of being appointed. Subsequently, appraisals are carried out at least every four years, or two years for presiding justices.²²⁰ Appraisals are carried out by trained appraiser magistrates, who will observe a court sitting of a magistrate who is being appraised and fill out a form. The form includes a "*statement of identified tasks and behaviours which reflect the competences all*

216 CrimPR 2020 14.8.

217 CrimPR 2020, r 14.8.

218 Judicial Review and Courts Act 2022, s. 45.

219 Tom Franklin, '[RIP Local Justice? Let's Hope Not!](#)', *Magistrates' Association*

220 Magistrates' Association, '[Magistrates' Training](#)'.

magistrates are expected to demonstrate under the [Adult Court Competency] framework."²²¹

The appraiser is required to tick yes where a behaviour is observed, no when it's not, or not applicable where there was no opportunity to demonstrate the behaviour on the day, for instance because there were no bail hearings in that sitting.²²² Where a behaviour is not observed, an appraiser is prompted to provide further evidence. The form also includes a narrative component, which allows feedback from the legal adviser from the sitting, the appraiser and the appraisee. In line with the above recommendations concerning the auditing of appraisals to inform training, **these sections should provide an opportunity for all of those involved in the appraisal to set out training and development needs identified. The appraisal form should make this explicit.**

There have been longstanding concerns about the (in)frequency of magistrates' appraisals,²²³ that they are carried out by other magistrates who often know those being appraised,²²⁴ and that they constitute a 'tick-box' exercise "focused on minimum competence rather than performance improvement."²²⁵ **We consider that appraisals could be made more independent and robust, by providing that legal advisers co-approve the appraisal forms.** The legal adviser for the sitting being appraised is already required to provide comments for the appraisal form. We consider that, given this, granting legal advisers an enhanced role in co-approving appraisal forms would not add much of an additional burden.

We appreciate that the infrequency of magistrates' appraisals is linked to a lack of

availability of suitable appraisers. However, given that appraisals are so infrequent, it is particularly important that they are comprehensive and that their outcomes shape the development goals of the magistrate being appraised. For instance, it is concerning that a magistrate may never be appraised on the tasks and behaviours relevant to bail decisions simply because they happen to not arise during the appraised sitting.

We agree with the recommendation of the Justice Committee in 2016 and again in 2019, that appraisals be linked to a mandatory scheme for continued professional development.²²⁶ The exact structure of this scheme would need to be developed through consultation with relevant stakeholders. However, to ensure that minimum competencies are maintained, it could include structured, interactive, online refresher modules on core skills, with brief situational assessments which magistrates must pass between appraisals. This would mean that even where certain behaviours could not be directly appraised through observation, there would still be some evidence that the magistrate in question had continued to retain that competency.

Linking appraisals to professional development could also provide a more effective means of addressing any shortcomings identified. As it currently stands, appraisals can be used by JTAAACs to identify areas in which a magistrate would benefit from additional training, however this appears to be a relatively uncommon occurrence. Even less common is a referral for removal from the magistracy. Absent extreme and obvious competency issues, appraisals are

221 Ministry of Justice, *Government Response to the Justice Select Committee's Eighteenth Report of Session 2017-19: The Role of the Magistracy*, (2019), para. 48.

222 Note Corby Magistrates' Bench, *Written Evidence to the Justice Committee inquiry into the role of the magistracy* (2015), para 4.3: "[a] decent appraisal is also too dependent on the sitting on the day".

223 Justice Committee, Sixth Report of Session 2016-17, *The role of the magistracy*, HC 165 (2016); Corby Magistrates' Bench, *Written Evidence to the Justice Committee inquiry into the role of the magistracy* (2015).

224 Justice Committee, Eighteenth Report of Session 2017-19, *The role of the magistracy: follow-up*, HC 1654 (2019), paras 70-73; Justice Committee, Sixth Report of Session 2016-17, *The role of the magistracy*, HC 165 (2016); Phil Lloyd, *Written evidence to the Justice Committee's inquiry into the role of the magistracy* (2016), para 4.12.

225 Justice Committee, Eighteenth Report of Session 2017-19, *The role of the magistracy: follow-up*, HC 1654 (2019).

226 Justice Committee, Eighteenth Report of Session 2017-19, *The role of the magistracy: follow-up*, HC 1654 (2019); Justice Committee, Sixth Report of Session 2016-17, *The role of the magistracy*, HC 165 (2016).

therefore currently of little consequence. Linking appraisals to a formal scheme of professional development would allow for less serious issues to be addressed and identified, by measuring magistrates' performance with reference to a set of development goals, and providing additional training were necessary to ensure those goals are met going forward, even where acute issues are not identified.

Addressing disproportionality

Our 2023 report identified concerning disparities in remand decisions for different groups of defendants. In particular, we found that:

- a. Non-UK nationals were almost 50% more likely to be remanded in custody than their UK national counterparts.
- b. Defendants appearing for high to very high severity offences²²⁷ without legal representation were 44% more likely to be remanded in custody than their represented counterparts.
- c. Defendants appearing in a secure dock were more than 8 times as likely to be remanded in custody, compared to defendants who appeared in the central area of the courtroom.

Moreover, other research suggests racial disproportionality in remand decisions, particularly for Black and mixed-ethnicity defendants.²²⁸

Moreover, other research suggests racial disproportionality in remand decisions, particularly for Black and mixed-ethnicity defendants.

As set out above, ensuring that decisions are sufficiently structured and reasoned has the potential to decrease the risk of non-legally relevant factors, including possible biases, impacting decision making. Ensuring that decision-makers provide detailed reasons for their decisions, which are announced in open court, increases accountability for such decisions. The following expands on some of the issues with decision-making in relation to specific groups of offenders and makes recommendations to improve decision-making in relation to these groups. We also identify where improving decision-making may not be sufficient, and where other measures are necessary to decrease heightened risk of custodial remand.

Foreign national defendants

Research and anecdotal evidence suggests that non-UK nationals may be perceived by decision-makers as posing a greater risk of absconding than UK-nationals, in particular due to perceived lack of community ties.²²⁹ This is despite there being little evidence that foreign national defendants fail to surrender to

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- 227 Severity of offence was classified by the Crime Severity Score (CSS) measure. The CSS is derived by calculating the mean number of days imprisonment that offenders were sentenced to serve after conviction for each type of offence. The measure converts non-custodial sentences into nominal days of imprisonment as outlines in the Office for National Statistics (2022). Low to moderate severity offences have been classified as those which attract (equivalent) sentences of between 1 and 364 days. High and very high severity offences are those which attract sentences of over 365 days.
- 228 Kitty Lymperopoulou et al, *Ethnic Inequalities in the Criminal Justice System* (2022); Youth Justice Board, *Ethnic disproportionality in remand and sentencing in the youth justice system* (2021).
- 229 Fair Trials, *Assessing Flight Risk in pre-trial detention decision-making: a European comparative study* (2024); JUSTICE, *Remand Decision Making in the Magistrates Courts* (2023); May Robson, *A suspect population? An examination of bail decision making for foreign national women in criminal courts in England and Wales* (2020), Griffins Society; Commons, *The State of Innocence: how the requirement to declare nationality is undermining equality before the law*, (2020); Hibiscus Initiatives and Prison Reform Trust, *Still No Way Out: Foreign national women and trafficked women in the criminal justice system* (2018).

the court more frequently than UK-nationals.²³⁰ This perception has been shown to contribute to a reluctance amongst decision makers to consider or apply alternatives to custody, leading to a disproportionately high number of foreign nationals in pre-trial detention.²³¹ This is despite the proven effectiveness of alternatives to custodial remand in mitigating flight risk.²³²

This overemphasis on the lack of community ties is liable to produce unnecessary custodial remands. Moreover, as the ECHR has made clear, it is not acceptable to cherry-pick criteria when determining custodial

remand.²³³ The Council of Europe has formulated recommendations to Member States that a lack of community ties is not “*sufficient to conclude that there is a risk of flight*” and emphasised the need for decision-makers to always consider alternatives to custody that could address the risk of a defendant absconding.²³⁴

Given the issues faced by foreign national defendants, we consider that **the structured flow charts for bail decision-making recommended above should include a warning for decision-makers of the risk of over-reliance on lack of community ties when considering a case**

230 May Robson, *A suspect population? An examination of bail decision making for foreign national women in criminal courts in England and Wales* (2020), Griffins Society.

231 Fair Trials, *Assessing Flight Risk in pre-trial detention decision-making: a European comparative study* (2024); Fair Trials, *A Measure of Last Resort: The practice of pre-trial decision making in the EU*

232 Ibid.

233 Ibid.

234 Fair Trials, *Assessing Flight Risk in pre-trial detention decision-making: a European comparative study* (2024) p.16; Recommendations CM/Rec (2012)12 of the Committee of Ministers to Member States concerning foreign prisoners 10 October 2012.



involving a non-UK national. In addition, **the Judicial College should provide specialist training to courts dealing with a high number of foreign national defendants.** This training should address and challenge biased perceptions and emphasise the availability of effectiveness of alternatives to custody.

In addition to the above, foreign nationals with limited understanding of English may face challenges with participation, which may in turn affect their outcomes. Our 2023 report found that 21% of defendants who were reported as having a poor understanding of English were not provided with an interpreter by the court.²³⁵ We have heard anecdotally from lawyers that pressures on decision-makers have resulted in a reluctance to adjourn cases including to provide an interpreter. We have heard that magistrates in particular may lack the confidence to do so, unless prompted by their legal adviser. In addition, the possibility was raised that some magistrates may not know that the facility exists to get interpreters over the phone.

We have heard anecdotally that where interpreters are requested, they may be slow to arrive or fail to attend.²³⁶ This may be a factor dissuading decision-makers from adjourning to request an interpreter. The impact of delays and no-shows could be mitigated by making better use of the interpreters that are already at court. For instance, as it currently stands interpreters are assigned to a particular defendant. However, they may only be needed to provide translation services for a small portion of the time that they are assigned. In these cases, interpreters may offer to assist other defendants, but they are not expected to. **We recommend that HMCTS and the Ministry of Justice consider developing a process to**

allow interpreters already at court to provide translation services for other defendants as needed. This may be particularly useful for courts with a high proportion of defendants who share the same first language, as we have heard is often the case.

Additionally, concerns have been raised about the quality of interpreters.²³⁷ In 2022, Baroness Coussins put forward an amendment to the Police, Crime, Sentencing and Courts Bill (now Act) that would have introduced minimum qualifications for court interpreters, along the lines of the Police Approved Interpreters Scheme.²³⁸ In response to this, the government committed to an independent inquiry into the qualifications, experience and overall standards

of the different types of interpreters required for court work. This was published in March 2025 and highlighted several concerns with interpreter requirements including a lack of consistency with how they are applied to different languages.²³⁹ Whilst it stopped short of recommending minimum qualifications, the report did recommend a number of measures aimed at improving consistency and ensuring interpreters demonstrate all relevant competencies with reference to certain minimum standards.²⁴⁰ The Government has accepted the recommendations made in this review. However, **we urge the Government to give particular consideration going forward to whether the training received by, and requirements on, interpreters are sufficient to enable them to adequately explain and ensure that defendants understand decisions made in relation to them, and the implications of those decisions.**

235 JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023).

See also Magistrates Association, Written evidence to the House of Lords Public Services Committee inquiry into the quality of interpreting and translation services, (2024).

236 See also House of Lords Public Services Committee, 2nd Report of Session 2024-25, *Lost in translation? Interpreting services in the courts*, HL Paper 87 (2025), para 48.

237 *ibid*, paras 42-47.

238 *HL Deb 12 January 2022, vol 817*, cols. 1146-1148.

239 Ann Carlisle, *Independent Technical Review of Qualifications and Experience Requirements for the Provision of Spoken Language Interpreting* (2025), Ministry of Justice. See e.g. p.34: “The current requirements are driven less by adherence to published standards and more by the need to specify qualifications and experience requirements that can be applied across a large and very diverse range of languages, each of which has its own complexities. This means that in practice, different standards are being applied to different languages at each of the complexity levels.”

240 *ibid*.

Tackling racial disproportionality

Whilst this remains an under-researched area, available evidence suggests racial disproportionality in remand decision-making.

Racialised defendants, and in particular Black defendants, are disproportionately represented in the remand population and are more likely to be remanded in custody than White defendants.²⁴¹

Racialised defendants, and in particular Black defendants, are disproportionately represented in the remand population and are more likely to be remanded in custody than White defendants.

Whilst likely not the only factor, there are reasons to think that bias in decision-making itself, including racial stereotyping, plays a part in the disproportionate use of custodial remand for racialised defendants. Practitioner surveys, for instance, provide qualitative evidence

of racial bias impacting decision-making,²⁴² including in the context of remand decisions.²⁴³ In addition, Black defendants remanded in custody appear more likely to be acquitted.²⁴⁴ This suggests a tendency for decision-makers to place less weight on the strength of the evidence against racialised defendants, one of the factors the court should consider when determining whether any of the exceptions to custody apply,²⁴⁵ or to perceive or assume that the evidence against them is strong, even where this may not be the case.

In addition, it is likely that racial disproportionality is exacerbated by decision-makers' deference to the prosecution, who are heavily reliant on police accounts.²⁴⁶ Moreover, there is evidence to suggest that where defendants appear having been remanded in custody by the police, decision-makers tend to reproduce this decision.²⁴⁷ Given the substantial evidence of institutional and individual racism within the police, as well as evidence of racial disproportionality in CPS decision-making,²⁴⁸ this deference has significant scope to entrench racial biases arising at earlier stages of the criminal process.

As we recommended in our 2023 report, **research should be undertaken to understand the extent of racial disproportionality in**

241 Women in Prison, *Policy briefing, The disproportionate use of remand for Black, minoritised and migrant women* (2024); Ministry of Justice, *Statistics on Ethnicity and the Criminal Justice System*, 2022 (2024), 5.3; Kitty Lymperopoulou et al, *Ethnic Inequalities in the Criminal Justice System* (2022); Youth Justice Board, *Ethnic disproportionality in remand and sentencing in the youth justice system* (2021), paras 40 and 176; David Lammy, *The Lammy Review, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017), p.60.

242 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), University of Manchester; Maslaha, *Young Muslims on trial: A scoping study on the impact of Islamophobia on criminal justice decision-making* (2016).

243 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), University of Manchester; p.14

244 Mark Wilding and Rajeev Syal, 'Black people spend 70 percent longer in prison awaiting trial and sentencing' (2023), *Liberty Investigates*.

245 Bail Act 1976, Schedule 1.

246 Tom Smith and Ed Cape, *The Practice of Pre-trial Detention in England and Wales: Research report* (2016), University of West England, p.53; Anthea Hucklesby, *Keeping the Lid on the Prison Remand Population: The Experience in England and Wales* (2009), *Current Issues in Criminal Justice* 21(1), p.9; Anthea Hucklesby, *Bail or Jail? The Practical Operation of the Bail Act 1976* (1996), *Journal of Law and Society* 23(2), p.46-47.

247 *ibid*.

248 See for instance, Baroness Casey of Blackstock DBE CB, *An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service* (2023); See also the Director of Public Prosecutions acknowledgement of racial disparities in CPS decision making, 'CPS sets out Action Plan to tackle disproportionality in charging decisions' (2024), *CPS*.

remand decision-making, and the reasons for it. This should include an examination of the role of decision-maker bias, as well as the experiences of different racialised groups, and the impact of other characteristics such as gender or disability. In line with the Lammy Review’s “explain or reform” principle,²⁴⁹ steps should also be taken to mitigate the risk of biased decision making. As set out above, ensuring more structured decision-making, and more transparency and accountability is important for limiting, as far as possible, scope for bias. Our recommendations above concerning the development of a flow-chart for decision-making and encouraging the use of more detailed pronouncement cards, will go some way to addressing this.

However, in recognition of the particular risk posed to racialised people, **the Judicial College should ensure that when making remand decisions, decision-makers are provided with a specific warning that they should be aware in making their decision that there is evidence of disproportionality in relation to decisions to remand Black and racialised defendants in custody, and that Black and racialised defendants are more likely to be remanded in custody than White defendants.** This would mirror similar warnings in the Sentencing Guidelines concerning evidence of disparity in sentencing outcomes for certain offences. **Such a warning should be included in the flow charts recommended in the previous section. In the alternative, and whilst such a flow chart is being developed, such a warning should be included on pronouncement cards.**

This information must also be provided to decision-makers during their compulsory training. We are aware that magistrates are required to

attend unconscious bias training. However, we have been told that this is relatively perfunctory. One suggested reason for this is that there is an expectation that racial bias will be weeded out at the recruitment stage. However, nothing that we have seen suggests that the recruitment processes would be particularly effective at doing this, particularly as unconscious bias is generally very difficult to identify and account for.²⁵⁰

Research conducted by the University of Manchester suggests that current training regarding racial bias is ineffective.²⁵¹ As recommended in its report, *Racial Bias and the Bench*, a robust accountability and implementation strategy must be put in place to ensure that progress made to reduce racial bias “is substantial rather than merely procedural or performative”.²⁵² Oversight of the strategy should be provided by “an independent and diverse committee of experts, including lawyers, legal organisations, academics, legal reform organisations, and campaign groups.”²⁵³

As part of this strategy the Ministry of Justice and the Judicial College should seek to understand the effectiveness of the training and recruitment process in addressing racial bias in the magistrates’ court, this could include monitoring and reporting on complaints against individual magistrates, and other decision-makers; conducting attitude surveys with decision-makers, including on their attitude to the unconscious bias training; and surveying court staff and users in relation to their experiences. Racial literacy and a commitment to anti-racism should be considered a key competency for becoming a judge or magistrate.²⁵⁴

Finally, it is worth noting that racialised defendants who are remanded in custody are

249 David Lammy, *The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017).

250 Kai Inga Liehr Storm et al, *Unconscious bias in the HRM literature: Towards a critical-reflexive approach* (2023), *Human Resource Management Review*, 33(3).

251 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), *University of Manchester*.

252 *ibid*, p.7.

253 *ibid*.

254 *ibid*.

more likely to receive a custodial sentence.²⁵⁵ This combined with higher pre-trial detention rates amongst racialised groups, contributes to the ‘cumulative disadvantage’ faced by racialised defendants in the criminal justice system.²⁵⁶ This speaks to the importance of ensuring that racialised defendants in particular are not remanded in custody unnecessarily pre-trial. In addition, it has been suggested that improving information in pre-sentence reports regarding the reasons for pre-trial detention may be an important way of mitigating the disproportionate outcomes for racialised defendants at the sentencing stage, by enabling better assessments of the risks posed by defendants.²⁵⁷ However, this can only be done, where these reasons are available. This further supports the vital need for decision-makers to provide sufficiently detailed reasons for their decision, which reference both the law on bail, and how it has been applied to the specific facts of the case and circumstances of the defendant. The recommendations above, concerning the introduction of a structure flow chart to assist decision-making and more detailed pronouncement cards will assist with this.

Racialised defendants who are remanded in custody are more likely to receive a custodial sentence

In addition, the Judicial College and HMCTS should also make clear to decision-makers and legal advisers, both through training and on pronouncement cards and the Common Platform that providing and recording clear, case and defendant specific reasons, are important for pre-sentence reports.

As noted above, requiring legal advisers to record detailed reasons with respect to decisions should not be too onerous, given that once a decision has been made, the need for legal advisers to give legal advice is reduced. This would especially be the case if pronouncement were improved and the administrative burden posed by the Common Platform during the hearing itself could be reduced.²⁵⁸ Whilst outside the scope of this report, the effectiveness of this recommendation would also require that the probation service has access to and are encouraged to use this information in pre-sentence reports. Providing more information on the reasons for pre-trial detention has the potential to reduce the impact of pre-trial detention on sentencing outcomes for all defendants but could have a particular benefit for racialised defendants who are particularly likely to be impacted by bias and stereotyping in relation to the risk they pose.²⁵⁹

255 Kitty Lymperopoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#) (2024), *The British Journal of Criminology*, 64(5), p. 1200.

256 Kitty Lymperopoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#) (2024), *The British Journal of Criminology*, 64(5), p. 1202.

257 Kitty Lymperopoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#) (2024), *The British Journal of Criminology*, 64(5), p. 1202.

258 See above, pp. x-x and x-x.

259 Kitty Lymperopoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#) (2024), *The British Journal of Criminology*, 64(5), p. 1192; Keir Monteith KC et al, [Racial Bias and the Bench](#) (2022), University of Manchester; Patrick Williams and Pauline Durrance, Resisting effective approaches for BAME offenders in England and Wales: the triumph of inertia in *Evidence-Based Skills in Criminal Justice* (2017), Bristol University Press; Maslaha, [Young Muslims on trial: A scoping study on the impact of Islamophobia on criminal justice decision-making](#) (2016); Patrick Williams, [Criminalising the Other: Challenging the race-gang nexus](#), (2015) *Race & Class*, 56(3).

The use of secure docks

Defendants appearing in a secure dock appear significantly more likely to be remanded in custody, than defendants appearing in the central courtroom. Some of this might be attributable to the fact that defendants appearing in a secure dock may have been accused of more serious offences. This aligns with other research, set out above, suggesting a tendency to over-rely on offence seriousness when assessing risk in the context of remand.²⁶⁰ However, our research also found that defendants appearing in a secure dock accused

of moderate to low severity offences were also far more likely to be remanded in custody, compared to those accused of comparably serious offences sitting in the central area of the courtroom. This could suggest that appearance in the secure dock itself may trigger perceptions of risk,²⁶¹ as opposed to this simply reflecting perceptions arising from offence seriousness.

Defendants appearing in a secure dock appear significantly more likely to be remanded in custody

260 See note 156.

261 See note 133.



Additionally, appearing in a secure dock can also negatively impact a defendant's ability to participate in their hearing, and communicate with their legal representative.²⁶² There is also evidence from some courts that defendants in the secure dock may not be able to adequately hear proceedings.²⁶³ This is not only concerning from a procedural justice perspective; inability to effectively participate also plausibly increases the risk of custodial remand being imposed inappropriately.²⁶⁴

Whilst there is no statutory basis for the use of a secure dock, the reason for its use is to prevent escape or violence.²⁶⁵ However, our data suggested that appearance in a secure dock more likely reflected court specific factors, rather than any risk posed by the defendant.²⁶⁶ Anecdotal evidence from those with experience working in magistrates' courts confirmed that whether or not a defendant appears in the dock tends to be informed by the court-layout, court staff preference, or convenience, rather than factors specific to a defendant.

The lack of principle and consistency in how the secure dock is used from court to court, courtroom to courtroom and even day to day, raises significant issues of fairness. In most cases it would be possible for a defendant to sit in the central courtroom with their representative (should they have one). Evidence suggests that the threat of violence or escape

posed by defendants in the magistrates' courts is low. However, even where a real risk of escape or violence was identified, these generally could be adequately addressed through the use of discrete restraints, for instance heavy Velcro restraints.

We have previously recommended that the Lady Chief Justice issue a practice direction setting out that defendants should generally sit in the well of the court, next to or behind their legal representatives, save where a security risk is identified, which we reiterate here.²⁶⁷ However, we understand that in magistrates' courts it is often the court or custody staff who make the decisions about whether the defendant appears in a secure dock. Given this, we recommend that **HMCTS introduce a policy that defendants should appear in the central area of the court, unless there is reason to believe that not doing so would create a real risk of violence or escape that could not be addressed otherwise. HMCTS and the Ministry of Justice should also explore alternative measures to the dock, remaining mindful of the need for such measures to be concealed from the decision maker and comfortable for the defendant.**

262 Abenaa Owusu-Bempah, [Understanding the barriers to defendant participation in criminal proceedings in England and Wales](#) (2020), *Legal Studies*, 40(4), p.20-24; JUSTICE, [In the Dock: Reassessing the use of dock in criminal trials](#) (2015), pp.12-17; Linda Mulcahy, [Putting the defendant in their place: why do we still use the dock in criminal proceedings?](#) (2013), *British Journal of Criminology*, 53.

263 Transform Injustice, [The Wild West? Courtwatching in London magistrates' courts](#) (2024), p.18; JUSTICE, [In the Dock: Reassessing the use of dock in criminal trials](#) (2015), p.15.

264 Participation can assist in achieving factually accurate decisions. Abenaa Owusu-Bempah, [Understanding the barriers to defendant participation in criminal proceedings in England and Wales](#) (2020), *Legal Studies*, 40(4), p.10.

265 JUSTICE, [In the Dock: Reassessing the use of dock in criminal trials](#) (2015), pp. 2, 25-27.

266 JUSTICE, [Remand Decision Making in the Magistrates Courts: A Research Report](#) (2023), p. 37-38.

267 JUSTICE, [In the Dock: Reassessing the use of dock in criminal trials](#) (2015), p. 34.

Unrepresented defendants

11% of defendants in our 2023 report dataset appeared without representation.²⁶⁸ This is despite the fact that defendants appearing for the first time in the magistrates' courts can receive representation from a duty solicitor to assist them with making an application for bail.²⁶⁹ Whilst it is possible that all those without representation had chosen not to be represented, this finding still warrants further investigation, particularly given that our data also suggested that lack of representation may increase the likelihood of custodial remand for defendants charged with more serious offences.²⁷⁰ **The government should collect data on how many defendants entitled to representation by a duty solicitor aren't utilising this. Depending on the scale of the problem, research should be undertaken to understand the possible reasons for this.** This should be done in addition to the more general data recommendation set out in our 2023 report.²⁷¹

Where defendants are not represented, it is vital that they still be supported to participate. As mentioned above, this is one of the roles of legal advisers. However, as also highlighted, the capacity of legal advisers to do this has become increasingly limited. In addition to the strain on legal advisers and decision-makers, evidence suggests that there may also be

insufficient understanding of the importance of facilitating defendant participation for ensuring that decisions are fair and are perceived as such.²⁷² Additionally, in the context of bail, defendant participation is also vital to ensuring that conditions on bail are proportionate and can be complied with by the defendant. We recommend **that training for magistrates and legal advisers should emphasise the importance of defendant participation and provide information on the challenges that defendants might face, including defendants from marginalised communities, who are neurodiverse, who have intellectual disabilities or additional support needs, and how participation can be better facilitated. This training should include the relevant parts of the Equal Treatment Bench Book.**

268 JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023), p. 34-35.

269 Legal Aid, Sentencing and Punishment of Offenders Act (2012), s.15; [2022 Standard Crime Contract Specification](#) (Effective from 6 December 2024), s.10.

270 *ibid.*

271 *ibid.*

272 Transform Injustice, *The Wild West? Courtwatching in London magistrates' courts* (2024), p.18; JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023); Lucy Welsh, *Informality in the magistrates' courts as a barrier to participation* (2023), *International Journal of Law, Crime and Justice* 74.

Recommendations

Recommendation 9: The Judicial College should develop flow charts for pre-trial decision-making. These should be made available to decision-makers and legal advisers and should be referred to by decision-makers when determining bail. These should be developed in consultation with relevant experts, including lawyers and those with expertise in decision-making psychology.

Recommendation 10: Pronouncements.

- a. Pronouncement cards must, at a minimum, expressly state that decisions must be explained in language the defendant can understand with reference to their circumstances and the facts of their case.
- b. The Judicial College should commission independent research to identify:
 - Why and to what extent magistrates are neglecting to use pronouncement cards.
 - Whether more detailed pronouncement cards – which make clear how and where to reference the specific facts of the case – would be helpful to decision-makers, or whether other forms of guidance or resources would be more suitable. For instance, a bank of example pronouncements, showcasing the level of specificity required and how the facts and circumstances of the case should be integrated.

Recommendation 11: Decision-makers should be provided with training on how to explain decisions to defendants in a way that is accessible. The Judicial College should design this training in consultation with court users who may face particular challenges understanding court decisions and processes, for instance those who are neurodiverse, their families, lawyers and intermediaries.

Recommendation 12: Equality of arms.

- a. CrimPR should be amended to require the prosecution to:
 - disclose all information to the defence that would assist them in making submissions concerning bail, an early abuse of process application, or otherwise as required in the interests of justice and fairness, including where the defendant appears from police custody; and
 - certify that all material which would assist the defence in making submissions regarding bail has been provided to the defence.
- b. Police recommendations and observations on bail should be disclosed to the defence before a first appearance, where the defendant is appearing from custody.

Recommendation 13: To address the lack of awareness of legal adviser roles, HMCTS should conduct concerted outreach with university law departments.

Recommendation 14: Stakeholders, including HMCTS (as Legal Advisers' employer), the Law Society, the Bar Council, the Judicial Office and the Judicial Appointments Commission should work collaboratively to develop a programme aimed at encouraging Legal Advisers to apply for district judge positions and providing development opportunities aimed at building the necessary skills. Demonstrating these skills could form part of the portfolios that legal advisers are required to build in order to progress through the Legal Adviser Career Structure.

Recommendation 15: HMCTS should undertake a review of the amount of information currently recorded on the Common Platform and when, weighing up the vital need for legal advisers to be available to give advice and assistance during court sittings.

Recommendation 16: Post-sitting reviews.

- a. HMCTS must impress upon Legal Team Managers the need to facilitate and prioritise post-sitting reviews, as a core part of the role of a legal adviser. Sufficient time and resources must be dedicated to them accordingly.
- b. Where exceptionally these reviews cannot take place in person immediately after a sitting, there should be an expectation that such a review is conducted over the phone or by email as the soon possible opportunity, and no more than 1-week post-sitting.

Recommendation 17: Identifying training needs.

Regional learning partners should work with HMCTS, and JTAAACs to undertake annual audits of magistrates and legal adviser appraisals. The audit should aim to identify trends and knowledge gaps at the local level, which can then be collated nationally. The outcomes of this should feed into training provision.

- a. Remand decisions themselves should also be audited. This should be carried out by the Judicial College working with HMCTS to identify trends in decision-making both nationally and locally, which in turn should be used to inform training. This could be done, in part, using information recorded on the Common Platform.
- b. HMCTS should collate information on the outcome of Crown Court bail appeals, which overturn earlier decisions in the magistrates' courts or remove conditions that the Crown Court considers to be unnecessary. This should be fed back to individual magistrates and district judges, and Judicial College regional learning partners.

Recommendation 18: We recommend the piloting of bail decision champions in magistrates' courts. This position could be fulfilled by either a District Judge or Legal Team Manager who, where necessary, could fulfil this position in relation to several courts within an area. The role would include:

providing periodic online drop-in sessions for magistrates and legal advisers to ask questions and voice concerns about bail decision-making;

- a. observing a certain number of remand hearings per year, to identify possible deficiencies in decision-making or examples of good practice; and
- b. reporting the findings of their observations and drop-in sessions to Judicial College, regional learning partners and HMCTS on a yearly basis, or more frequently should specific, acute issues with decision-making be identified.

Recommendation 19: Magistrates' Appraisals.

In line with the above recommendations concerning the auditing of appraisals to inform training, appraisal forms should include specific questions on training needs;

- a. Appraisals could be made more independent and robust, by requiring legal advisers to co-approve appraisal forms; and
- b. We agree with the recommendation of the Justice Committee in 2016 and again in 2019 that appraisals be linked to a mandatory scheme for continued professional development.

Recommendation 20: To address disparities in outcomes for foreign national defendants, the Judicial College should:

- a. ensure that when making remand decisions, decision makers are provided with a specific warning of the risk of over-reliance on lack of community ties when considering a case involving a non-UK national.
 - This should be included in the structured flowcharts for bail decision-making (see recommendation 9). In the alternative, and whilst such flow charts are being developed, such a warning should be included on pronouncement cards.
- b. provide specialist training to courts dealing with a high number of foreign national defendants.

Recommendation 21: To improve the provision and quality of interpreters:

- a. HMCTS and the Ministry of Justice consider developing a process to allow interpreters already at court to provide translation services for other defendants as needed; and
- b. Particular consideration should be given to whether the training received by and requirements on interpreters are sufficient to enable them to adequately explain and ensure that defendants understand decisions made in relation to them, and the implications of those decisions.

Recommendation 22: To address disparities in outcomes for racialised defendants:

- a. research should be undertaken to understand the extent of racial disproportionality in remand decision-making, and the reasons for it. This should include an examination of the role of decision-maker bias, as well as the experiences of different racialised groups, and the impact of other characteristics such as gender or disability;
- b. the Judicial College should ensure that when making remand decisions, decision makers are provided with a specific warning that they should be aware in making their decision that there is evidence of disproportionality in relation to decisions to remand Black and racialised defendants in custody, and that Black and racialised defendants may be more likely to be remanded in custody, than White defendants.
 - This should be included in the structured flowcharts for bail decision-making (see recommendation 9). In the alternative, and whilst such flow charts are being developed, such a warning should be included on pronouncement cards.

c. per the Racial Bias and the Bench report:

- a robust accountability and implementation strategy must be put in place to ensure that progress made to reduce racial bias “is substantial rather than merely procedural or performative”.
- oversight of the strategy should be provided by “an independent and diverse committee of experts, including lawyers, legal organisations, academics, legal reform organisations, and campaign groups.”²⁷³

d. As part of this strategy the Ministry of Justice and the Judicial College should seek to understand the effectiveness of the training and recruitment process in addressing racial bias in the magistrates’ court, this could include:

- monitoring and reporting on complaints against individual magistrates, and other decision-makers;



273 Keir Monteith KC et al, *Racial Bias and the Bench* (2022), University of Manchester, p.7.

- conducting attitude surveys with decision-makers, including on their attitude to the unconscious bias training;
- surveying court staff and users in relation to their experiences.

Recommendation 23: The Judicial College and HMCTS should also make clear to decision-makers and legal advisers, both through training and on pronouncement cards and the Common Platform that providing and recording clear, case and defendant specific reasons for bail decisions is important for pre-sentence reports.

Recommendation 24: We recommend that HMCTS introduce a policy that defendants should appear in the central area of the court, unless there is reason to believe that not doing so would create a real risk of violence or escape that could not be addressed otherwise.

Recommendation 25: HMCTS and the Ministry of Justice should explore alternative measures to the dock, remaining mindful of the need

for such measures to be concealed from the decision-maker and comfortable for the defendant,

Recommendation 26: The government should collect data on how many defendants entitled to representation by a duty solicitor aren't utilising this. Depending on the scale of the problem, research should be undertaken to understand the possible reasons for this.

Recommendation 27: Training for magistrates and legal advisers should emphasise the importance of defendant participation and provide information on the challenges that defendants might face, including defendants from different communities and those with additional needs, and how participation can be better facilitated. This training should include the relevant parts of the Equal Treatment Bench Book.





Changing the Culture and Understanding of Custodial Remand

Section

4

Changing the Culture and Understanding of Custodial Remand

The ECHR has repeatedly emphasised that pre-trial detention should only be imposed in exceptional circumstances and may only be justified where less stringent measures have been considered and found to be insufficient.²⁷⁴ However, as set out above, there are reasons to think that custodial remand may not be being treated as a last resort. For instance, the apparent tendency to favour the prosecution position, instances of rubber-stamping previous decisions to remand in custody, and an increasingly risk-averse approach to remand decision-making, unduly influenced by factors like offence seriousness or impacted by non-legally relevant factors.²⁷⁵

Some of this failure to treat remand as a measure of last resort likely stems from problems with decision-making addressed above. However, there is also a need to address factors, beyond the quality of decision-making, that contribute to a culture where remand is overused, and alternatives are overlooked. These include a lack of understanding of the impact of custodial remand on those subject to it; the ability to remand an individual in custody for their own protection; a lack of awareness of, and confidence in, alternatives to custody; and challenges with identifying suitable and effective measures. In addition, there is evidence of a concerning tendency for courts to overlook the rights of defendants in relation to pre-trial detention decisions.²⁷⁶ This again has

the potential to contribute to a culture where the vital importance of avoiding unnecessary custody is given insufficient weight in decision-making.

There is also a need to address factors, beyond the quality of decision-making, that contribute to a culture where remand is overused, and alternatives are overlooked

Understanding the Impact of Custodial Remand

We have heard concerns that those making decisions concerning custodial remand do not have a sufficient understanding of the impact of custody on defendants. Fostering this kind of understanding is crucial to ensuring decision makers appreciate the gravity of their decisions. This is an important part of custodial decision-making in general. For instance, sentencing guidelines make clear that the impact of custody on the defendant can be a relevant consideration when considering whether a custodial sentence would be proportionate. In terms of custodial remand, understanding

274 *Ambruszkiewicz v Poland*, App 38797/03 (ECHR, 4 May 2006) para 31; *Ladent v Poland*, App 11036/03, (ECHR, 18 March 2008) para 55 -79. See also David Ormerod CBE, KC (Hon) and David Perry KC, *Blackstone's Criminal Practice* (2024), OUP, D 7.38; *R (Thompson) v Central Criminal Court* [2005] EWHC 2345 (Admin) [10]: "Only if persuaded that it is necessary should a remand in custody take place. It would be necessary if the court decides that whatever conditions can be reasonable imposed in relation to bail there are nevertheless substantial grounds for believing that the defendant will fail to surrender..."; *R (Fergus) v Southampton Crown Court* [2008] EWHC 3273 (Admin) [20].

275 Mandeep Dhami and Yannick van den Brink, *A Multi-disciplinary and Comparative Approach to Evaluating Pre-trial Detention Decisions: Towards Evidence-Based Reform* (2022), *European Journal on Criminal Policy Research*; Diana Grech, *Culture before law? Comparing bail decision-making in England and Canada* (2017) PhD Thesis, University of Leeds, Ch. 4; Tom Smith and Ed Cape, *The Practice of Pre-trial Detention in England and Wales: Research report* (2016), *University of West England*, p.115; Anthea Hucklesby, *Keeping the Lid on the Prison Remand Population: The Experience in England and Wales* (2009), *Current Issues in Criminal Justice* 21(1); Mandeep Dhami, *Psychological models of professional decision making* (2003), *Psychological Science*, 14(2), Anthea Hucklesby 'Court culture: an explanation of variations in the use of bail by magistrates' courts' (1997), *The Howard Journal of Crime and Justice*, p.133; Anthea Hucklesby, *Remand Decision Makers* (1997), *Crim LR* 269, pp.137-40; Anthea Hucklesby, *Bail or Jail? The Practical Operation of the Bail Act 1976* (1996), *Journal of Law and Society* 23(2).

276 Fionnuala Ratcliffe and Penelope Gibbs, *The Wild West? Courtwatching in London magistrates' courts* (2024), *Transform Justice*; JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023); Tom Smith, 'Rushing remand'? *Pretrial detention and bail decision making in England and Wales* (2021), *The Howard Journal*, 60(1).

the impact of custody is important to ensuring that decision-makers strive to impose the least restrictive measures possible to address any exceptions to bail, as required by both domestic law²⁷⁷ and the ECHR.²⁷⁸ Indeed, the importance of impressing upon magistrates the seriousness of their decisions with regard to custody is recognised to a degree in the fact that they are expected to complete a prison visit as part of their training.

However, this approach is not enough. First, since the COVID-19 pandemic, visits to prisons have dramatically reduced, and we have been told that there remains a backlog of magistrates waiting to complete their visits. Moreover, when these visits do happen, no opportunity is provided to hear from those with experience in custody. We are aware of several organisations that have run ad-hoc training sessions with magistrates bringing in the voices of those with experiences of the justice system. We have been told that events such as these are extremely popular and provide a meaningful opportunity to fully appreciate the impact of custody. **Given this, lived experience perspectives should be incorporated into mandatory training. Those with experience in custody should be employed to deliver sessions focusing on the impact of being sent to prison, including the specific effects of pre-trial detention. The sessions should provide opportunities for Magistrates to ask**

questions. To address capacity and resource concerns, these sessions could be held online and attended by a larger group of magistrates that would be possible in in-person sessions.

In addition to the problems with a lack of understanding of the impact of custody and in particular custodial remand, there is also insufficient awareness of the disproportionate impact custodial remand can have on different groups of defendants. For instance, pre-trial detention can be a particularly damaging experience for women.²⁷⁹ Only seven prisons in England hold women on remand (with no provision in Wales), this means that they “*tend to be held further from home, creating difficulties in maintaining contact with their families and within the remit of local services.*”²⁸⁰ Mothers remanded in custody are at risk of their children being taken into care.²⁸¹ In 2023, women accounted for 36% of self-harm incidents amongst the untried remand population, despite representing around 5% of it.²⁸² Similarly, we have heard that issues with the provision of interpreters in prison can severely impact the ability of those on remand who speak English as a second language to prepare their case.²⁸³ Custodial remand may also have implications for immigration status, for instance where a defendant’s visa expires whilst on remand, leaving them in breach of immigration conditions without access to advice or support.²⁸⁴

277 *R (Thompson) v Central Criminal Court* [2005] EWHC 2345 (admin); *R (Fergus) v Southampton Crown Court* [2008] EWHC 3273 (Admin) [20].

278 *Idalov v Russia* [GC] App no 5826/03 (ECHR, 22 May 2012) para 140; *Ladent v Poland*, App No. 11036/03 (18 March 2008), paras 55–79; *Jablonski v. Poland*, App no. 33492/96 (21 December 2000), para 83.

279 Howard League for Penal Reform, ‘[Reset: Rethinking remand for women](#)’.

280 Justice Committee, Seventh Report of Session 2022–23, [The role of adult custodial remand in the criminal justice system](#), HC 264 (2023), para 89.

281 Howard League for Penal Reform, ‘[Reset: Rethinking remand for women](#)’.

282 Ministry of Justice, [Prison population: 31 March 2024](#), Table 1.Q.3; Ministry of Justice, [Self-harm in prison custody 2004 to 2023](#), Table 2.6.

283 See also [Prison Reform Trust response to Justice Committee Inquiry on Interpretation and Translation services and the Applies Language Solutions contract](#) (2024); The Association of Prison Lawyers, [Justice Barred: The difficulties lawyers face in seeing clients in prison](#) (2024); HM Inspectorate of Prisons, [HM Chief Inspector of Prisons for England and Wales: Annual Report 2022–203](#) (2023); Gillian Hunter et al, [Language barriers in the criminal justice system](#) (2022), Institute for Crime and Justice Policy Research; Hibiscus Initiatives and Prison Reform Trust, [Still No Way Out: Foreign national women and trafficked women in the criminal justice system](#) (2018).

284 All-Party Parliamentary Group on Women in contact with the Justice System, [Minutes of the meeting: The Disproportionate Use of Remand for Black, minoritised and migrant women](#) (Portcullis House, 5 December 2023).

Whilst not a specific consideration listed in the Bail Act, Ministry of Justice policy documents have provided that decision-makers can take into account “*an individual’s specific circumstances and needs when considering whether or not to grant bail.*”²⁸⁵ Insofar as it relates to a defendant’s specific case, this necessarily includes a consideration of whether they belong to a group particularly impacted by custodial remand. This kind of assessment can only take place if decision-makers are made aware of the disparate impact of remand on different groups of defendants.

Some of the responsibility for making magistrates aware of these issues falls to defence advocates. However, magistrates must also develop their own understanding of the ways in which custodial remand impacts different groups of defendants. First defence advocates, or indeed defendants, will not always be aware of the structural and systemic factors that make custodial remand more challenging for certain groups. In addition, and as mentioned previously, submissions from the defence regarding remand have become, in the words of one consultee, a “vanishing rarity”. Moreover, even if defence advocates have sufficient awareness, and make representations

concerning remand, they may be reticent to include these kinds of arguments unless they know that magistrates are likely to understand and be receptive to them.

Decision-makers must therefore be supported to educate themselves on the differential impact of custodial remand. Earlier this year, the Magistrates Association held an event on women in the criminal justice system, including information about the specific vulnerabilities they often have and the impact of custody, which we understand was very well-attended. This shows that there is interest and willingness amongst magistrates to learn more about these issues. However, ad-hoc events, given the inevitable limitations on capacity and geographical restrictions, are not sufficient. As part of their mandatory training, **magistrates should be provided with video resources and brief fact sheets setting out the challenges faced by different groups when remanded in custody. These resources should include case studies and interviews with people with lived experience. Magistrates must be made aware during training that they are permitted to take into account individual circumstances when making decisions concerning remand.**

285 Ministry of Justice, *Female Offender Strategy Delivery Plan 2022 – 25* (2023), p. 15.



Abolishing Remand for own protection

In addition to the exceptions to bail in the Bail Act, defendants can be remanded in custody for their own protection, or if they are a child or young person, their own welfare.²⁸⁶ The court can do this even where the defendant is not facing a criminal charge that could result in a prison sentence. There is no statutory guidance, either in the Bail Act or elsewhere, to clarify when the use of this provision would be appropriate.

The extent to which individuals are remanded for their own protection is not clear, as the government does not gather or publish data on the practice. However, there is evidence that decision-makers are willing to use custodial remand to address social issues, such as homelessness, drug addiction, or mental illness.²⁸⁷ Women and girls, and particularly those experiencing acute mental health crises, appear disproportionately likely to be subject to be remanded in custody for their own protection.²⁸⁸

As articulated previously by JUSTICE, and many others, remanding individuals in custody ostensibly for their own protection or welfare is counterintuitive.²⁸⁹ It depends on a mistaken

belief that prisons are suitable places for vulnerable people, when in fact social issues and vulnerability are often exacerbated by incarceration.²⁹⁰ This is particularly so for those on remand pre-trial, who are often held in poor conditions, with the least access to health care, support services, and rehabilitative initiatives.²⁹¹ It is plausible that the very availability of custodial remand for a defendant's protection contributes to a culture of custody-mindedness on the basis that it may be in the best interests of the defendant.

In partial recognition of the inappropriateness of custody for vulnerable defendants, the Mental Health Bill (2025) includes provisions which, if passed,²⁹² will prevent courts from remanding defendants for their own protection where the sole concern is the defendant's mental health.²⁹³ JUSTICE is supportive of this change. However, further legislation is required to remove the use of remand for a defendant's protection in other circumstances, and to remove the use of remand for a child or young person's welfare. We agree with the Justice Committee that "*prisons should not be regarded as a solution to the failings of care and protection in the community.*"²⁹⁴ This is true not just for those suffering from mental ill-health but all circumstances in which a defendant might be remanded for their own protection.

286 Bail Act 1976, Schedule 1.

287 Prison Reform Trust, *Resetting the approach to women's imprisonment* (2025), p.4; JUSTICE, *Remand Decision Making in the Magistrates Courts: A Research Report* (2023); All Party Parliamentary Group on Women in the Penal System, *Prison for their own protection: The case for repeal* (2020); Penelope Gibbs, *Presumed innocent but behind bars – is remand overused in England and Wales?* (2018), *Transform Justice*, p.11; Tamara Pattinson, *Prisons as a place of safety for women with complex mental health needs* (2016), *Griffin Society*.

288 Susannah Hancock, *Delivering The Best for Girls in Custody* (2025), *Ministry of Justice*, p.9; Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023), para 56; Justice Committee, First Report of Session 2022-23, *Women in Prison*, HC 265 (2022), paras 129-130; All Party Parliamentary Group on Women in the Penal System, *Prison for their own protection: The case for repeal* (2020).

289 See Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023) paras 53 – 61; Justice Committee, Fifth Report of Session 2021-22, *Mental Health in Prison*, HC 72 (2021), paras 99-104.

290 This is also recognised in the Equal Treatment Bench Book specifically in relation to custodial remand: "prison can be wrongly viewed as a speedy and reliable place of safety for vulnerable individuals". See Judicial College, *Equal Treatment Bench Book*, (2024), p. 95.

291 See above paras 12-14.

292 At time of writing the Bill is passing through Parliament.

293 Mental Health HL Bill (2025), cl 51.

294 Justice Committee, *Draft Mental Health Bill call for evidence* (2022).

As highlighted by Charlie Taylor, HM Chief Inspector of Prisons, in relation to the changes contained in the Mental Health Bill: *“It is hard to think who could or should be remanded to custody for their own protection. If the change by the Ministry of Justice means that mentally ill people should not be remanded for their own protection, who are the people who should be remanded for their own protection?”*²⁹⁵

Prisons should not be regarded as a solution to the failings of care and protection in the community

We recommend that the government remove the power to remand individuals in custody for their own protection, or welfare. In addition, more needs to be done to ensure that there is appropriate provision in the community. A Health and Justice Hub is currently being piloted in the Northeast in a bid to “reduce inappropriate remands into custody solely on mental health grounds.”²⁹⁶ The hub, run in partnership with NHS England and HMCTS, aims to improve the way that courts, health services and prisons work together to support defendants with mental health needs. Reducing custodial remand, and both the long- and short-term costs associated with it, requires sustainable government investment in effective alternatives to custody, including community-based interventions aimed at addressing the vulnerabilities that those in contact with the criminal justice system often present with.²⁹⁷

In addition, we have heard anecdotally from lawyers consulted for this report that even where a defendant’s own protection is not the formal reason given for custodial remand, comments from decision-makers belie an underlying paternalism which fundamentally misunderstands the reality of prison. We have heard, and other evidence suggests, that this is particularly the case for female defendants.²⁹⁸ The recommendations made in the above section will go some way to challenging the belief amongst magistrates that custody can be a suitable environment for defendants experiencing vulnerability. However, we have also been told that at bail hearings, it is incredibly rare for vulnerable defendants to be referred to services that could address underlying social issues. This is so even where such services would be available.

Whilst we consider that the government should remove remand for an individual’s own protection, in the meantime all magistrates must be made aware during their training that custodial remand must not be the first port of call for vulnerable defendants in need of protection, and that efforts must first be made to find suitable alternatives in the community. This approach is recognised in the Equal Treatment Bench Book.²⁹⁹ **Magistrates should also be encouraged to identify opportunities to divert vulnerable defendants out of the justice system at the earliest possible opportunity.** For instance, in the case of non-imprisonable offences, or offences unlikely to attract a custodial sentence, which evidence suggests

295 Justice Committee, [Oral evidence: The role of adult custodial remand in the criminal justice system](#), HC 264 (2022), Q181. Note that this statement was made in relation to the previous government’s draft Mental Health Bill. However, the provisions concerning remand for own protect remain the same in the 2025 Bill.

296 House of Commons, [Written Question UIN 20484 by Helen Morgan to the Secretary of State for Justice](#), 25 March 2024, answered 15 April 2024.

297 Prison Reform Trust, [Response to the Justice Committee inquiry “Tackling drugs in prison”](#) (2025); Criminal Justice Joint Inspection, [Neurodiversity in the Criminal Justice System: A review of evidence](#) (2021); Agenda Alliance, [Young Women’s Justice Project literature review](#) (2021); National Institute for Health and Care Excellence, [Mental health of adults in contact with the criminal justice system](#) (2017), ch..2;

298 See note 288.

299 Judicial College, [Equal Treatment Bench Book](#), (2024), p. 95.

may account for a significant proportion of instances where individuals are remanded in custody for their own protection.³⁰⁰ This could include training on how to work effectively with Liaison and Diversion services and relevant voluntary sector organisations working within their areas.

Alternatives to Custodial Remand

As set out above, the presumption in favour of bail dictates that a defendant should only be remanded in custody pre-trial where the exceptions to bail cannot be addressed through alternatives to detention. There are a range of alternatives to custody available to the court: decision makers can impose a raft of different conditions on bail, including electronic monitoring. Our 2023 research showed that there was at least some awareness of the availability of alternatives to custody.³⁰¹ However, improving decision-makers' awareness of, and confidence in, the range of alternatives available remains crucial both to reducing unnecessary custodial remands, and to ensuring that any conditions on bail are suitable, and capable of being complied with by the defendant.

Some work is already underway by the government in this area. First, we understand that HMPPS has begun delivering training to magistrates on electronic monitoring,

including on its effectiveness. We recognise that electronic monitoring can provide an alternative to custodial remand that is attractive to decision-makers, and that without electronic monitoring the remand population would likely be much higher.³⁰² However, it is important to recognise the limitations of electronic monitoring, both in terms of its effectiveness and accuracy, and in terms of its implications for privacy, especially for those who are not yet convicted of an offence.³⁰³ This is particularly in light of concerns that the introduction of electronic monitoring has contributed to a 'net-widening,' whereby defendants are subject to more stringent monitoring and conditions, than they would have done in the absence of electronic monitoring.³⁰⁴ This is despite the fact that electronic monitoring should only be imposed in circumstances where the threshold for custodial remand is otherwise met.³⁰⁵ It is crucial that training regarding electronic monitoring makes clear to decision makers that electronic monitoring is only to be used as an alternative to custody, and not where less stringent conditions would otherwise be imposed.

In addition, work is ongoing to roll out a Bail Information Service, which provides courts with reports containing "factual objective and verified information on which to decide whether or not to remand a defendant in custody".³⁰⁶ The reports are written by dedicated Bail Information Officers whose job it is to assess defendants and liaise with relevant services. These reports do not make recommendations

300 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023) paras para.36.

301 JUSTICE, *Remand Decision-Making in the Magistrates' Court: A Research Report* (2023).

302 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023); Anthea Hucklesby, *Written Evidence to the Justice Committee's Inquiry into the role of adult custodial remand* (2022); Anthea Hucklesby and Ella Holdsworth, *Electronic monitoring in England and Wales* (2016), *University of Leeds*.

303 Ibid. American Civil Liberties Union, *Rethinking Electronic Monitoring: A Harm Reduction Guide* (2022); Anthea Hucklesby et al, Comparing electronic monitoring regimes: Length, breadth, depth and weight equals tightness (2020), *Punishment & Society* 23(1); Mike Nellis, *Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring* (2015), *Council of Europe*.

304 *ibid*.

305 Bail Act 1976, s. 3AB.

306 Justice Committee, Seventh Report of Session 2022-23, *The role of adult custodial remand in the criminal justice system*, HC 264 (2023), para 131.

on the imposition of bail as such but can include suitable bail packages. The previous Government ring-fenced £53 million in funding to these services until 2028,³⁰⁷ However, it is not clear whether that funding will continue following the budget review underway at the time of writing.

The existence of a Bail Information Service is an important step, in so far as it has the potential to ensure that decision-makers are aware of the relevant alternatives to custody. Moreover, and given evidence of disproportionality in both the imposition and impact of custodial remand,³⁰⁸ we are pleased to see that HMPPS has made a commitment to “*proactively target and provide a bail service to those individuals with ‘protected characteristics’ to ensure that vulnerable people, women BAME and young adults are ensured a bail service.*”³⁰⁹ We have also been pleased to hear that the training for Bail Information Officers will include reference to cultural and gender sensitivities.

However, whilst initial plans for the Bail Information Service envisaged full-time Bail Information Officers stationed both in prisons and in the court buildings themselves, the emphasis to date appears to have been on delivering services in prisons. In February 2024, for instance, there were 26 full-time officers in prisons, and just 5 in the magistrates’ courts.³¹⁰ Recent recruitment drives have also focused on recruiting Bail Information Officers for the prison estate.³¹¹ Whilst the provision of these services in prison is important, officers stationed in prisons are only able to prepare reports in relation to defendants who are already

subject to custodial remand – for instance, for their second and subsequent bail hearings.³¹² However, this service is equally important for defendants at their first appearance, before any decision about bail had been made in relation to them, to ensure that they don’t end up being unnecessarily subject to custodial remand in the first place. If the Bail Information Service is to be effective in reducing custodial remand, **its services should be made available not just to those already on remand, but to all defendants at risk of being remanded into custody.**

Moreover, the effectiveness of the Bail Information Service in reducing custodial remand, also depends on decision-makers being responsive to the contents of the reports provided. There isn’t any publicly available information on what impact the service has on the use of custodial remand, or the extent to which decision-makers use such reports in their decision-making. We haven’t been able to ascertain whether an analysis of this kind is currently being undertaken by the government. Whilst research on the impact of previous bail information schemes is generally positive, some research suggests that the impact of these schemes on decision-making is limited.³¹³ There is also some evidence to suggest that initiatives which provide recommendations rather than just information, as is the case with pre-sentence reports, may be more impactful.³¹⁴

More research is required into the impact of the Bail Information Service. However, what is clear is that confidence in alternatives to custodial remand is vital both for the effectiveness of

307 House of Commons, [Written Question UIN 23906 by Rachael Maskell to the Secretary of State for Justice](#), 26 April 2024, answered 8 May 2024.

308 See above at pp. x-x.

309 Youth Justice Legal Centre, [COVID-19: New Bail Information Service to assist courts during the pandemic](#).

310 House of Commons, [Written Question UIN 14181 by Ruth Cadbury to the Secretary of State for Justice](#), 16 February 2024, answered 26 February 2024

311 See recent job descriptions for Bail Information Officers in e.g. the [East Midlands](#), [East of England](#), [London](#).

312 *ibid*.

313 Mandeep Dhami, [Do Bail Information Schemes Really Affect Bail Decisions?](#) (2003), *The Howard Journal of Crime and Justice* 41(3).

314 *Ibid*; Andrew Forrester et al, [Alternatives to custodial remand for women in the criminal justice system: A multi-sector approach](#) (2020), *Criminal Behaviour and Mental Health* 30(2-3).

the service, and for increasing the use of alternatives to custodial remand more generally. To increase decision-maker confidence, **where reports are produced by the Bail Information Service, they should include information about the effectiveness of alternatives to remand, in addition to their content and availability.** This echoes a recommendation made by the House of Lords Justice and Home Affairs Committee in 2023, in relation to information provided on community sentences in pre-sentence reports.³¹⁵ In addition, and particularly given the current limited scope of the Bail Information Service, steps need

to be taken to increase awareness amongst magistrates more generally about the range of alternatives to custodial remand and their effectiveness.³¹⁶ This could be done through the development of a resource for decision-makers on alternatives to custodial remand. This is explored in greater detail below.

As well as encouraging the use of alternatives to custody, it is also crucial that where conditions on bail are imposed that they are proportionate and capable of being adhered to by the defendant. The imposition of inappropriate or unduly onerous bail conditions increases

315 House of Lords Justice and Home Affairs Committee, 1st Report of Session 2023-24, [Cutting crime: better community sentences](#), HL Paper 27 (2023)

316 Justice Committee, Seventh Report of Session 2022-23, [The role of adult custodial remand in the criminal justice system](#), HC 264 (2023).



the chances that they are not complied with, potentially resulting in custodial remand following a breach.³¹⁷ However, there is no guidance on the circumstances in which conditions of bail can be used, or when specific conditions should and should not be imposed.³¹⁸ We have heard for instance that alternatives to custody may be imposed with insufficient sensitivity to the gender or culturally-specific needs of the defendant. We understand that the Ministry of Justice was considering a resource for decision-makers on cultural competency in remand decision-making. However, since the election, this appears to have stalled.

It is also crucial that where conditions on bail are imposed that they are proportionate and capable of being adhered to by the defendant

The breadth of discretion given to decision-makers in imposing conditions on bail, presents an opportunity for referral to services to address defendant vulnerability. For instance, if there is a concern that a defendant may commit further offences whilst on bail due to substance addiction, a suitable condition could, in the right circumstances and depending on availability, be that they attend a community-based intervention aimed at addressing this. However, there is an apparent tendency amongst decision makers to rely on a small range of common conditions, such as residence requirements, curfews, and prohibitions on contacting particular people, or on electronic monitoring.³¹⁹

To ensure awareness of the range of alternatives to custodial remand available and their effectiveness, and to support the development of bail packages that are suitable and proportionate, a comprehensive resource should be developed for magistrates on alternatives to custodial remand. This should include information on

the types of conditions that could be applied, including conditions that could be imposed to address vulnerabilities. The resource should include information on the circumstances in which particular alternatives may or may not be appropriate, as well as an Annex of case studies. It should also provide guidance on making gender and culturally responsive decisions. This resource should be made available to magistrates through the magistrates learning platform, and a copy should also be available in each court. The contents of this resource could also be incorporated into interactive training for magistrates. For instance, an online module where magistrates are can select conditions based on different sets of defendant circumstances, before being shown their possible impact on the defendant.

Finally, whilst such a resource would be useful for providing information on the types of conditions available, and for encouraging a nuanced approach to conditional bail, we understand that problems with imposing a suitable package of bail conditions can also stem from the difficulties faced by lawyers and decision-makers in identifying what is available at a given time in the area. We heard from defence practitioners that this can make it difficult for them to put forward suitable packages, especially when working in areas that they are less familiar with. **To address this an online platform should be introduced that allows all those involved in the decision-making process to access information on possible conditions on bail, including community-based interventions, available in the area.** Such a platform could also be expanded to assist decision-makers with sentencing, and in particular community sentencing.

This platform could be broadly modelled on the “effective proposal framework” platform already available to the probation service with regard to community sentencing, tailored to include bail conditions, including community

317 Anthea Hucklesby, [Written Evidence to the Justice Committee’s Inquiry into the role of adult custodial remand](#) (2022).

318 *ibid.*

319 Justice Committee, Seventh Report of Session 2022-23, [The role of adult custodial remand in the criminal justice system](#), HC 264 (2023).

interventions that could be utilised by decision-makers in bail hearings. However, we have heard that the technological capacity exists to significantly improve this kind of platform. For instance, **any platform introduced should at a minimum enable providers of interventions to directly update the capacity available in their services at a given time.** This would make referrals to appropriate services easier and quicker. Whilst this would rely on the buy-in of those providing interventions, we have heard that there could be an appetite for this amongst some providers as it would increase referrals and allow interventions to better demonstrate their cost effectiveness. We also appreciate that some providers may have concerns about the additional capacity this would involve. To address this HMCTS must work with providers to make the process for updating the platform as streamlined and straightforward as possible, including through the development of tech-based solutions allowing for communication between providers' systems and the platform.

In the future, there is the possibility that such a platform could also be used to measure the effectiveness of bail conditions and packages, including for different types of defendants, albeit utmost care would be needed to remove the risk of bias and disproportionality in these assessments.

The Case for Specialist Remand Courts

HMCTS should consider whether decision-making concerning custodial remand could be improved by streamlining pre-trial bail decisions into specialist courtrooms and/or sittings, by piloting specialist remand courtrooms. These courtrooms would deal only with cases where pre-trial bail decisions are likely to arise, namely first appearances for offences

where a custodial sentence is available, and review hearings. These courtrooms would be presided over by specially trained and ticketed magistrates and district judges. We understand that in some courts these cases already tend to be heard in one courtroom, suggesting that operational barriers to implementing a system like this would be surmountable.

Specialist remand courts have the potential to improve the overall quality of remand decision-making in a number of ways. First it would ensure that decisions are made by decision-makers with enhanced, specialist training without increasing the overall training burden on magistrates. Given the issues that could potentially arise in these courts, bail court magistrates would still require training on general sentencing principles, and non-custodial sentencing, pleas and allocation, and basic case management.³²⁰

However, most of their training could focus on issues relating to pre-trial bail, for instance, on structuring decisions, the human rights implications of pre-trial detention, the impact of custodial remand on defendants, and identifying effective and suitable bail conditions. District judges wanting to sit in the bail court would also receive this additional training. Decision makers in these courts would also get more experience making these kinds of decisions. This stands in contrast to the current position where magistrates may only deal with a handful of pre-trial detention decisions during their time in post.

Moreover, creating a cohort of decision-makers who specialise in bail decision-making would provide an opportunity for wholesale cultural change in relation to pre-trial detention decisions. As set out earlier in this report, there appears to be a sense amongst some decision makers that these decisions not that important,³²¹ particularly in the first instance,

320 Defendants appearing for the first time in the magistrates' courts are generally sorted into "anticipated guilty plea" and "anticipated not guilty plea." As a result, most guilty pleas would be filtered out. If a defendant does plead guilty, bail court decision-makers would be able to impose a non-custodial sentence. However, if a custodial sentence was considered appropriate, the case may need to be adjourned and transferred to the main court. Where applicable, decision-makers would also be able to commit defendants to the Crown Court for sentencing.

321 See also Tom Smith, *The Practice of Pre-trial Detention in England and Wales – Changing Law and Changing Culture* (2022), *Eur J Crime Policy Res*, 28, pp.441 -442.

given the possibility for review. However, and as also detailed above, this is far from the case. As well as establishing the importance of decisions concerning pre-trial detention, the culture of these courtrooms should be shaped by the principle that custody in this context must always be a last resort.

Creating a cohort of decision-makers who specialise in bail decision-making would provide an opportunity for wholesale cultural change in relation to pre-trial detention decisions

It has been suggested that specialisation may result in more custody-minded decision-making, as decision makers become more hardened to the cases in front of them. However, we consider that increased training and experience, coupled with an overarching emphasis on avoiding custodial remand where possible, could foster an environment where decision-makers are empowered to make more nuanced assessments of risk.

There is evidence that the introduction of specialised courts embedding the principle of custody as a last resort can provide an effective way of reducing custodial outcomes. Whilst different in many ways, this can be seen, for instance, with problem-solving courts.³²² Examples in this context demonstrate the potential benefits of developing an understanding amongst court professional of the needs and risks of the specific group in respect of whom they hear cases³²³ and of providing tailored training and support to promote confidence in the imposition of appropriate non-custodial measures.³²⁴ Specialist bail courts would also ensure that decision-makers develop relationships with Bail Information Officers were available, enabling

them to work together more effectively in identifying suitable and effective bail packages.

Specialist bail courtrooms should be piloted in both a busy urban court, and if possible, a more rural location. The pilot would need to be developed in partnership with the Judicial College and the local magistracy. The effectiveness of the pilot should be monitored against a clear set of criteria, this could include but should not be limited to, whether there was a reduction in the use of custodial remand, in particular, and for as long as it still exists, remand for a defendant's own protection, whether there was an increase in the imposition of community interventions as part of bail packages, and whether there was a decrease in defendants returning to court having breached bail conditions. In addition, **observational and qualitative research should be undertaken to assess any improvements in the quality of decision-making, and the extent to which defendants were supported to effectively participate.**

We appreciate that a pilot such as this would require some additional resources, and the development of further specialist training on remand. We consider that more training should be developed and made available to those making decisions concerning pre-trial detention, irrespective of whether such decisions are streamlined into special courtroom. More detail on what this could include is provided in the previous sections. For this reason, even if the pilot is ultimately discontinued, any training materials produced in support of it would be usable in the training of magistrates more broadly.

322 Phil Bowen and Stephen Whitehead, [Problem-solving courts: an evidence review](#) (2016), *Centre for Justice Innovation*.

323 Ministry of Justice, *Process evaluation of Intensive Supervision Courts pilot* (2024); Aikaterini Mentzou and Natasha Mutebi, [Problem Solving Courts](#) (2023), *UK Parliament POST*; Centre for Justice Innovation, [Problem solving courts: A delivery plan](#) (2016); Phil Bowen and Stephen Whitehead, [Problem-solving courts: an evidence review](#) (2016), *Centre for Justice Innovation*.

324 *ibid*; Ministry of Justice, [The Concordat on Women in or at risk of contact with the Criminal Justice System](#) (2020).

Recommendations

Recommendation 28: lived experience perspectives should be incorporated into mandatory training:

individuals with experience in custody should be employed to deliver mandatory sessions for magistrates. To address capacity and resource concerns, these sessions could be held online; and

Magistrates should be provided with video resources and brief fact sheets, setting out the challenges faced by different groups on remand. These resources should include case studies and interviews with people with lived experience.

Recommendation 29: Magistrates must be made aware during training that they are permitted to take into account individual circumstances when making decisions concerning remand.

Recommendation 30: The government should remove the power to remand individuals in custody for their own protection, or welfare. In the meantime, all magistrates must be made aware during their training that custodial remand must not be the first port of call for vulnerable defendants in need of protection, and that efforts must first be made to find suitable alternatives in the community.

Recommendation 31: Magistrates should also be encouraged, through training, to identify opportunities to divert vulnerable defendants out of the justice system at the earliest possible opportunity.

Recommendation 32: Bail information service

The Ministry of Justice must ensure that the Bail Information Service is made available to all defendants at risk of being remanded into custody, not just those already remanded in custody; and

Reports produced by the Bail Information Service must include information about the effectiveness of alternatives to remand, in addition to their content and availability.

Recommendation 33: To ensure awareness of the range of alternatives to custodial remand available and their effectiveness, and to support the development of bail packages that are suitable and proportionate, a comprehensive resource should be developed for magistrates on alternatives to custodial remand.

Recommendation 34: An online platform should be introduced that allows all those involved in the decision-making process to access information on possible conditions on bail, including community-based interventions, available in the area at a given time. Any platform introduced should enable providers of interventions to easily update the capacity available in their services.

Recommendation 35: HMCTS should evaluate whether decision-making concerning custodial remand could be improved by streamlining pre-trial bail decisions into specialist courtrooms and/or sittings, by piloting specialist remand courtrooms. At a minimum, this pilot should:

be developed with the Judicial College and the local magistracy.

be measured against a clear set of criteria including, but not limited to, whether there was a reduction in the use of custodial remand, in particular remand for a defendant's own protection, whether there was an increase in the imposition of community interventions as part of bail packages, and whether there was a decrease in defendants returning to court having breached bail conditions; and

Include observational and qualitative research to assess any improvements in the quality of decision-making, and the extent to which defendants were supported to effectively participate.

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