



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

LORD JUSTICE GROSS, SENIOR PRESIDING JUDGE:

ADDRESS TO THE NATIONAL BENCH CHAIRMEN'S FORUM CONFERENCE

11TH SEPTEMBER 2013

"A REVIEW OF THE YEAR"

Introduction

1. We meet on the sombre anniversary of the appalling events of 9/11 – a stark reminder that our legal system and country do not exist in a vacuum. National defence apart, there are few (if any) areas more important than our justice system and I am delighted to attend the National Bench Chairmen's Forum's Annual Conference for the second year running.
2. It is a pleasure to join you again and to have had the opportunity to meet and speak with many of you last night. It is clear that Bench Chairmen share a sense of enormous dedication to the work they do and I thank you for it. I note that the themes of this conference are "working together", "managing change" and "delivering justice." All three go to the heart of a Bench Chairman's role.
3. I would like to take this opportunity to pay a particular tribute to your Chairman, Eric Windsor. We have worked closely together over the last 18 months or so – and for me it has been a pleasure. Inevitably, we do not always agree but in Eric you have an excellent ambassador who ensures that your views have been well and attractively canvassed before any conclusions are reached. I am aware that his period of office

comes to an end later this year. I will greatly miss my regular meetings with Eric - much as I look forward to working closely with his successor.

4. As you know, the Senior Presiding Judge has a significant involvement with the Magistracy, principally through the Magistrates' Liaison Group (MLG) which I chair.
5. The MLG's meetings are enormously valuable; it is a forum where proposals regarding the Magistracy can be developed, tested and scrutinised. Eric Windsor's contribution to the work of the MLG has been significant and, as already foreshadowed, I have greatly valued his forthright contributions. To repeat, while I cannot guarantee that what I do or the MLG decides will always be in accordance with your views, I can say that I have throughout had the advantage of knowing what your views are.

A review of the year

6. It is clear that we are operating in increasingly turbulent times. However, I am pleased to note that much good work has been carried out to improve and enhance the role of the Magistracy in the justice system, not least through joint working between the various arms of the judiciary in the forum of the MLG. I do not think it unwarranted to say that significant progress has been made since I was here last year. If I may, I would like to highlight some examples of work done or in progress, under the following convenient headings:

- (i) Deployment;
- (ii) Stop Delaying Justice;
- (iii) Governance;
- (iv) Out Of Court Disposals;
- (v) HMCTS Reform.

7. I shall deal with each in turn but, before doing so, I venture to mention one other matter. Thanks to the initiative of a Magistrate, Peter Jewell and with the particular support of John Fassenfelt, a Judiciary XI (including both Judges and Magistrates) had the pleasure of playing on the Worcestershire County Cricket Club County ground, New Road, against a team of former professionals. Over and above the enjoyment of the occasion, the fixture served to raise a significant sum of money for two charities – Magistrates in the Community and Victim Support. We shall explore the feasibility of a repeat performance next year.
8. **Deployment:** First: deployment, in particular the new protocol governing the appointments of DJJ (MC). The new protocol was produced by the Deployment Working Group (DWG) with the considerable contribution, *inter alia*, of the NBCF, via Eric Windsor. Notably, this work reflects a high degree of agreement between the senior judiciary, the Magistracy, the District Bench, the Justices' Clerks and HMCTS.
9. The new protocol is based on the key idea of an annual recruitment round, having regard to the judicial complement of the cluster as a whole; Magistrates and DJJ (MC) alike. The needs of the summary jurisdiction are thus considered in the round. The new approach will take time to settle down but, importantly, it ensures that the views of both the Magistracy and the District Bench are ascertained - without either having a veto on any appointments.
10. All concerned with the development of the new protocol hope that the approach will go some way to drawing a line under the sterile animosity that has on occasions arisen between Magistrates and DJJ (MC). To repeat what I have said frequently before: both Magistrates and DJJ

(MC) play a vital role in the summary justice system and both are here to stay.

11. Stop Delaying Justice: Members of the MLG have recently been working with Peter Lewis, the Chief Executive of the Crown Prosecution Service, on a judicially led reinvigoration of the Stop Delaying Justice (SDJ) initiative. The aims of the initiative are two-fold:

(i) to ensure that police and CPS preparation of cases enables guilty pleas to be taken and dealt with in one hearing, unless adjourned for pre sentence reports;

(ii) to ensure that all contested cases are properly case managed at the first hearing, and actively progressed after the first hearing, so that they can be disposed of at the second hearing.

12. It is vital that the SDJ initiative is treated as a priority, so that it may fulfil its objective of improving efficiency in the Magistrates' Courts. My aim is that case management will become second nature in all Courts – the Magistrates' Court as well as the Crown Court and regardless of whether a DJ(MC) or a Bench Chairman is presiding. Over the next few months, members of the judiciary will work with CPS and HMCTS to build on the achievements of last year and to ensure that momentum is maintained. The MLG will maintain oversight of this work. I should also mention that the SDJ initiative dovetails with the review of disclosure in the magistrates' courts, currently being undertaken by the Senior District Judge (Chief Magistrate) Howard Riddle and HHJ Kinch QC. It is most important that the two pieces of work are complementary.

13. Governance: The MLG's most recent project, carried out through the auspices of the Governance Working Group (GWG), has been to examine the governance arrangements for Magistrates' Courts- JIGs, AJFs etc. It is of fundamental importance that the correct structures are in place to support the proper conduct of business. In this regard, the structures that were put in place for very good reason at the creation of HMCS (as was) in 2005 have been re-examined to determine whether they remain appropriate today and for the future.

14. It would be wrong for me to anticipate the conclusions of the GWG, which will themselves be subject to consultation. However, obvious questions arise as to whether the existing structure remains appropriate and sustainable. There is much to be said for the view that there are too many groups, often with the same membership and duplicating remits.

15. By way of examples:

- Do we still need Area Judicial Fora ("AJFs") or have they outlived their usefulness? Do we need a formal group for members of the Judiciary to discuss issues affecting them?
- Given that HMCTS now manages resources at clerkship/cluster levels (rather than individual court levels), do we need the many Justices' Issues Groups ("JIGs") we currently have?
- Conversely, is there not a need for a cluster/clerkship level group providing an appropriate forum for judicial input and decision making at that level?

16. Pausing there, our discussions thus far suggest that, at Bench level, there is much to be said for retaining the Judicial Leadership Groups

("JLGs"), which have a strong grounding in making the courts work well at the local level.

17. While, for the moment at least, it necessarily remains a personal view, these reflections would support proposals that:

- (i) AJFs are abolished and not replaced.
- (ii) JIGs are abolished and replaced by a single clerkship level group, the Judicial Business Group (JBG) – as a robust, decision making group, tasked with ensuring that the judicial business of the courts is conducted efficiently, in the interests of justice.
- (iii) At Bench level, Judicial Leadership Groups (JLGs) are retained.

18. That is as far as I can or should go today – but I am sure you will be hearing more on this topic in due course. Ideally, we will have a new structure in place by January 2014.

19. **OOCDs:** Scrutiny of out of court disposals. Often, when I travel across the country on visits to the Circuits, a concern raised by Magistrates has been police use of out of court disposals. Such disposals are often criticised for a lack of consistency and transparency. They are, at times, criticised for being used in cases that should have gone to court and, on other occasions, for use in cases where there is concern that the individual made the subject of the caution did not (or not fully) appreciate the consequences.

20. Earlier this year, I published guidance for magistrates involved in the scrutiny of out of court disposals, which I hope you will by now have had the opportunity to read. This guidance benefits from the input of representatives from both the Magistracy and the senior Judiciary. Indeed, both Eric and the Chairman of the MA, John Fassenfelt, played

a leading role in persuading the Senior Judiciary that this was a proposal to be encouraged and implemented.

21. In principle, I see merit in Magistrates' involvement in retrospective arrangements to examine the decisions of police forces in dealing with offenders through the use of out of court disposals, where the aim is to enhance consistency, transparency, and public confidence.
22. The guidance issued in June makes it clear that scrutiny will always be retrospective and will not involve magistrates endorsing, rescinding, or otherwise changing individual out of court disposals in any way. As I have already said, the assistance of magistrates in this way is to support the administration of justice and to enhance consistency and transparency. Under no circumstances should these groups perform an appellate function. It is, perhaps, arguable that more could be done to distinguish appropriate cases to receive OOCs from those which should go to a court hearing and, in part, magistrates' involvement in scrutiny is designed to assist in this regard.
23. Pausing here, I do not of course stray into politics; that is no business of the judiciary. But it is encouraging that the Minister of State for Policing and Criminal Justice, The Rt Hon Damian Green MP, has already taken so keen an interest in the future of the Magistracy. Long may this continue. Mind you – one can never believe everything one reads in the newspapers; according to some press coverage of Mr. Green's recent major speech, you were about to acquire appellate powers to interfere with individual OOCs. Rather like that splendid series, Judge John Deed, that suggestion bears no resemblance whatever to reality.

- 24. Independence of Magistrates:** It is convenient at this point to say a few words on the independence of magistrates as judicial office holders. The discussions around magistrates' participation in scrutiny of out of court disposals has underlined the sensitivities that must be considered when assessing any proposal for magistrates' involvement in activities external to their judicial office. Magistrates are community based volunteers who make a vital contribution to the criminal and family justice systems by bringing with them valuable strengths and experience outside the law. We must strive to preserve this, but there is an overriding duty to ensure that magistrates meet the requirements common to all members of the judiciary.
25. To elaborate; the principles of judicial independence and impartiality must be recognised by all who hold judicial office. If, for example, it would be inappropriate for me as a judge to do something because it might lead to a perception of bias, then it is likely to be inappropriate for any magistrate to do it. As Bench Chairmen, you have a pastoral role in this regard and I know that you take this responsibility very seriously.
- 26. The Future (Reform)** Many of you will be aware of press coverage this summer which suggested that "a wholesale privatisation" of the courts is being considered. I must emphasise, as the Justice Secretary did at the time, that this is simply wrong.
27. The Judiciary has been engaged in discussions with both MoJ and HMCTS for some months as to the future structure and funding of the latter organisation. Given reductions in government spending, it would have been irresponsible not to have done so. Those negotiations, however, have been premised on the safeguarding of judicial

independence and on the maintenance of access to justice for all; the Judiciary's stance in this regard has been understood and accepted throughout.

28. Discussions are ongoing and further comment at this stage would be premature, but as soon as we are in a position to say more, we will do so.

Conclusion

29. I hope that these relatively brief remarks have given you some insight into the ongoing work to improve and enhance the role of the Magistracy in the justice system. It has indeed been a busy time.

30. I am delighted that the Magistracy enjoys a strong relationship with the Judiciary as a whole and I believe magistrates value their place within the judicial family. Throughout my time as Senior Presiding Judge and Deputy, I have sought to preserve and enhance the relationship. Its importance cannot be underestimated. The breadth of experience and knowledge magistrates, as dedicated volunteers, bring to the judiciary is widely recognised. I commend the work you do individually, as Magistrates, in leadership roles as Bench Chairmen and as members of this important and responsible organisation, the NBCF.

31. Without doubt, the continued success of the Magistracy rests largely on the goodwill of those who volunteer as Magistrates. This goodwill cannot be taken for granted and must be nurtured. In this regard, Bench Chairmen have a leadership role to play and I am confident that you will continue to undertake that role. Thank you all for your hard work in leading your benches through this time of change. In spite of the challenges, my view is clear, the Magistracy is here to stay and to flourish.

32. It has been a pleasure to be here. Thank you for giving me the time to address this Conference. I hope you have a successful and enjoyable day.

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