PART 2

Confidential Filing

Pay of Magistrates' Courts staff.
Justices' Clerks and their assistants: 1980 Pay.

The Management of the Magistrates Courts Service.

HOME AFFAIRS

Part 1 : June 1979

Part 2 : November 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~24.11.80~~		21.2.92					
~~12.12.80~~							
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NBPM

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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

21 February 1992

Dear Kenneth

will request if required.

Thank you for your letter of 12 February seeking HS Committee's approval to publish your White Paper on the reform of the arrangements for the management and organisation of magistrates' courts, the policy for which was agreed by HS Committee in July 1991.

Ian Lang replied on 12 February supporting your proposal, and detailing similar proposed improvements which had been set out in the Scottish Justice Charter, published in November 1991. No other colleague has commented on the proposal. You may take it therefore that you have HS Committee's approval to proceed.

I am copying this letter to the Prime Minister, other members of HS Committee, Sir Robin Butler, Sir Angus Fraser and First Parliamentary Counsel.

Yours sincerely

WADDINGTON

The Rt Hon Kenneth Baker, MP

24.02.
F132

From: THE PRIVATE SECRETARY

cc PU
Press office

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

21 February 1992

ABPM
Heather Wilkinson informed by 'phone

Dear Andrew,

MAGISTRATES' COURTS WHITE PAPER

The Home Secretary sought agreement on 4 February to the publication of a White Paper "A New Framework for Local Justice", which sets out the Government's legislative proposals for the reform of the magistrates' courts foreshadowed in his announcement on 19 December. The Home Secretary and the Lord Chancellor now propose to publish the White Paper jointly on 26 February: there would be no Parliamentary oral statement but a press conference to launch the White Paper led by the Lord Chancellor. This would provide a good opportunity to bring out clearly the way in which the reforms are in line with the Government's aim, set out in the Citizen's Charter, of improving public services. I should be grateful for confirmation that the Home Secretary and Lord Chancellor can proceed on this basis.

I am copying this letter to the Private Secretaries to the recipients of the Home Secretary's letter of 4 February.

Yours,

Heather.

MISS H J WILKINSON

Andrew Turnbull, Esq., CB.
No 10 Downing Street
LONDON, S.W.1.

Home Affairs : Magistrates Courts Pt 2

FS

ECPA

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon The Lord Waddington QC
Lord Privy Seal
Privy Council Office
Whitehall
LONDON
SW1A 2AT

12 February 1992

Dear David,

Kenneth Baker kindly copied to me his letter of 4 February to you seeking agreement to the terms of a White Paper on the reform of the arrangements for the management and organisation of the magistrates' courts in England and Wales.

I am content, for my interest, with the terms of the proposed White Paper. The magistrates' courts have no Scottish analogue, but the Justice Charter for Scotland, which Peter Fraser and I published last November, set out our proposals to improve the services which the sheriff courts give; at the same time we encouraged the local authorities, who are responsible for the district courts, to make similar improvements.

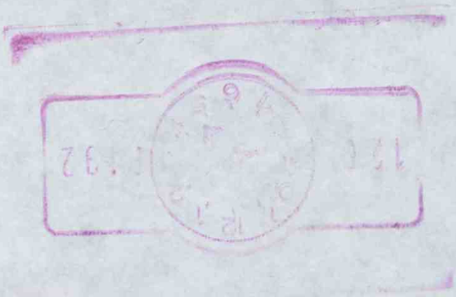
I am copying this letter to the Prime Minister, other members of HS, the Minister for Agriculture, Fisheries and Food, Sir Robin Butler and Sir Angus Fraser.

Yours ever,

Ian

IAN LANG

JRE00810.022



HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

4 February 1992

Dear Douglas,

I am writing on behalf both of myself and the Lord Chancellor to seek agreement to the issue of the enclosed White Paper on the reform of the arrangements for the management and organisation of magistrates' courts.

The decisions to be announced are those agreed by HS in July and are as follows:

- magistrates' courts committees to have a more clearly-defined management role, with a wider range of membership and effective administrative support;

- area services to be combined to produce a less fragmented system of local justice, and one better able to achieve effective liaison with other criminal justice services;

- senior managers to have clearer personal accountability to courts committees for performance standards, as envisaged in the Citizen's Charter;

- systematic planning and performance review and clearer consultative arrangements between benches and magistrates' courts committees throughout the service within a new overall policy framework;

- the creation of a magistrates' courts inspectorate, to spread best practice and supervise service standards, reflecting the principles of the Citizen's Charter.

The net effect of these changes will be to yield improvements in efficiency, effectiveness and value for money in the service, in a way that should continue to ensure the active participation and support of the lay magistrates and court staff.

The Rt Hon the Lord Waddington QC
Lord Privy Seal
Privy Council Office
Whitehall
London SW1A 2AT

/2

The Lord Chancellor and I will liaise closely about the arrangements for the White Paper's publication. We shall also, with the assistance of the Charter Unit, ensure that the publicity surrounding the publication fully brings out the relevance to the Citizen's Charter of the changes announced.

Unless I hear to the contrary by 12 February, I hope that the Lord Chancellor and I may take it that the White Paper may be sent for printing and publication.

I am copying this letter to the Prime Minister, the other members of HS, the Minister for Agriculture, Fisheries and Food, Sir Robin Butler and Sir Angus Fraser.

DRAFT
(28.1.92)

Introduction by the Lord Chancellor and Home Secretary

The Rt Hon the Lord Mackay of Clashfern and Rt Hon Kenneth Baker MP

As most readers will know, the Government has decided that the arrangements for the management of the courts should continue to be locally based but that there is a need to modernise the management structure to improve performance and accountability. This White Paper outlines how the Government has decided that this should be done.

The Government has decided that because of the nature of the changes to take place it would be appropriate for responsibilities for the finance, organisation and management of the magistrates' courts should be transferred from the Home Secretary to the Lord Chancellor from 1 April 1992.

The purpose of this change is to ensure a more coherent approach to court management within government. It does not signal a change of policy. The magistrates' courts will continue to be a locally based service. We are determined to ensure that the hard work and dedication of those involved in the present arrangements are carried forward so that the best possible service is provided for court users in terms of both quality and efficiency of service.

There are of course strong and historic links between the office of Lord Chancellor and the magistracy. The Government's decision develops these links by uniting within the Lord Chancellor's Department all Ministerial responsibility for the management, operation and financing of magistrates' courts. It underlines our efforts to improve cooperation between the different tiers of courts within the criminal and civil justice systems, and to build on the well established role the Lord Chancellor's Department already exercises in relation to the appointment and training of magistrates. The change will make for simpler lines of communication between the magistrates' courts and the Government. The Lord Chancellor looks forward to meeting the challenges arising from this new responsibility.

We hope that this document will be widely read by magistrates, justices' clerks, staff and key court users. The reforms it outlines will be the most important changes in the statutory framework relating to the organisation, administration and financing of these courts for more than 40 years. There is much to be done in working out the details of the various decisions set out within through the consultations that will follow. The Government will publicise key developments in this process and explain the reasons for the decisions that it takes. In this way we hope that the new statutory framework will be developed through an effective partnership between the Government, the magistracy and those who work in magistrates' courts and in a manner which recognises at all times the independence of the judicial process.

ak.2/lordchan.int

DRAFT

(28.1.92)

A NEW FRAMEWORK FOR LOCAL JUSTICE

The Government's plans for the future of the magistrates' courts service

Introduction and summary of decisions

1. The Government's aim is that the magistrates' courts should provide an efficient, high quality and timely system of local justice which commands public confidence. Whilst the Government intends to maintain both their local base and, of course, the independence from government of judicial decision-making, the achievement of this aim requires substantial improvements in the management and organisation of the courts service. The Government has also decided to bring to an end the divided Ministerial responsibility for the magistracy. This document sets out the Government's proposals for the future of the service, which take account of extensive consultations with interested bodies following the report of a Scrutiny in 1989, and are in line with the guiding principles of the Citizen's Charter. The contents are organised as follows:

* Objectives of change (paragraphs 2-6)
* Background to the decisions (paragraphs 7-13)
* Resources and timetable for change (paragraphs 14-15)
* The Government's decisions (paragraphs 16-34)

Objectives of change

2. The changes announced in this document are intended to achieve the following objectives:

* to provide clearer lines of accountability for the service, both locally and with central government

* to guarantee the judicial independence of magistrates and their legal advisers in a framework of local justice

* to yield improvements in the efficiency and effectiveness of the service, as measured by the time taken to complete cases coming before the magistrates' courts, the unit costs of those cases, the collection of fines and compensation ordered by the courts and the quality of service provided to the public and professional court users

* to secure maximum cooperation in the management of the service with other parts of the criminal justice system

3. The achievement of these objectives will present the service with new challenges. There will need to be extensive changes to long-established local practices and attitudes. The Government wants to see the service managed in a more business-like way, while at the same time benefitting from the continued involvement of lay magistrates in its local direction. Their knowledge, energy and skills will be as crucial to the success of the reform process as that of justices' clerks and court staff. The Government will therefore ensure that the changes outlined in this document are developed in detail and introduced in full consultation with the service.

4. Some of the proposals will require legislation. The necessary proposals will be brought before Parliament in due course. On others an immediate start can be made.

5. The key elements in this process of modernising the management structure and organisation of the service are as follows:

* from 1 April 1992 responsibilities in relation to the finance, organisation and management of magistrates' courts hitherto exercised by the Home Secretary will be exercised by the Lord Chancellor

* magistrates' courts committees to have a more clearly-defined management role, with a wider range of membership and effective administrative support

* area services to be combined to produce a less fragmented system of local justice, and one better able to achieve effective liaison with other criminal justice services

* senior managers to have clearer personal accountability to courts committees for performance standards, as envisaged in the Citizen's Charter

* systematic planning and performance review and clearer consultative arrangements between benches and mccs throughout the service within a new overall policy framework

* the creation of a magistrates' courts inspectorate, to spread best practice and supervise service standards, reflecting the principles of the Citizen's Charter.

6. No immediate change is envisaged to the present arrangements for funding the service. The costs will continue to be shared between central government (80% direct grant distributed under the arrangements explained in the appendix) and local authorities. This reflects both the national interest in an effective and efficient system of justice and the important local base of the magistrates' courts. While in many areas professional input from local authority officers is, and will continue to be, of benefit, for example in the context of the courts building programme, local authorities should not be directly involved in the day to day management of the service and should not enjoy a monopoly in supplying support services. **Courts committees will therefore be free to seek competitive tenders from the private as well as the public sector in respect of personnel, building maintenance and other support services** where this might result in better value for money and more flexible services. The role of local authorities in relation to the service in the longer term will need to be kept under review in the light of the operation of the changes set out in this document and of the progress of the review of the present local government structure.

Background to the decisions

7. The magistrates' courts have a long and proud history. The present structure dates from the 1940s. Since then the volume of criminal and civil cases has more than trebled; the law has also become more complex. The other criminal justice agencies have been modernised or restructured. Public expectations and mobility have increased while social attitudes have changed in a way which has made the task of providing local summary justice increasingly demanding. Magistrates and court staff have shown great dedication and resilience in responding to these challenges. A good recent example is the major effort required to prepare for the implementation of the Children Act, which entrusts the magistrates' courts with important new responsibilities and which brings about wide-ranging changes of law and procedure.

8. But the Magistrates' Courts Scrutiny 1989 demonstrated that an organisational structure established 50 years ago is no longer adequate for today's needs and expectations, and hampers efforts to achieve good value for money for the public. The role of the lay magistracy is not and never has been in question. The Government is wholeheartedly committed to the concept of summary justice provided by lay people drawn from their local communities. The problem lies rather with the way in which the network of local benches is organised and managed. The Scrutiny found that at the national level the Home Office had unclear responsibilities and limited powers, with the result that the 105 area services could go their own ways with widely varying results in terms of efficient performance and standards. The local structure was found to be just as confused, with over 250 justices' clerks appointed by but not properly accountable to the 105 courts committees, which in turn did not provide effective management supervision or direction. The funding bodies - central government and local authorities - were judged not to provide effective budgetary controls. Justices' clerks themselves had little control over the resources with which they worked and insufficient management information; and there was no proper definition of the balance between their legal and management responsibilities.

9. These are not simply faults identified by management theory: they show themselves in practice. Although the resources committed to the service have more than matched increases in workload, the unit costs of dealing with cases and enforcing fines, together with delays have continued to increase. These have a direct effect, for example, on the cost to the Government of legal aid, and the costs borne by defendants generally and the quality of service that they receive. The Government believes that all those who rely on the magistrates' courts and contribute to their cost have an interest in continued progress towards improved performance. The statutory framework should support this progress.

10. The Scrutiny's analysis was widely accepted within the service. Since its publication the Government has initiated a number of important measures which did not need to await decisions on the future management organisation of the service. These include:

* the introduction of cash limits on government grant from April 1992 (over a five year transitional period grant will be progressively allocated on the basis of standard national assessments of workload and performance)

* a major programme of management training

* the development of a standard court computer system

* the formation of a best practice group which has issued guidance on a number of important subjects

* a wide-ranging review of court procedures

11. These initiatives have required and received the support of the service. And at local level too the Scrutiny has proved a catalyst for change. In a number of areas committees and court staff have to their credit responded positively to the Scrutiny's findings and reviewed local organisation and accommodation; have taken steps to improve local management information; have acquired new management skills; and, sometimes for the first time, have

laid the foundation for longer term planning, focusing critically on the quality of service provided.

12. The Government believes that the activity initiated as a result of the Scrutiny is timely and directed at the right ends. But by itself it is insufficient. There remains a need for a major reform of the service's organisation if the faults identified by the Scrutiny - which, it has to be stressed, are institutional and not personal faults - are to be remedied and the service is to be modernised.

13. The Scrutiny's preferred option was the reconstitution of the service on a national basis managed as an executive agency. The Government has carefully considered the cost of implementing this option, which external consultants have confirmed would be substantial. It has also paid great attention to the views expressed by magistrates and court staff opposing the dilution of local justice which they feared a national service would entail. On balance the Government has concluded that its reforms should build on the best features of the present locally-based system and on the willingness of magistrates and court staff to participate actively in that process.

Resources and timetable for change

14. The proposals in this document will produce some additional costs for both central and local government. It is estimated that the transitional costs flowing from rationalisation of the present management structure, the creation of an inspectorate and the provision of additional administrative support for courts committees will involve costs of about £5m a year. The Government will take this into consideration in determining future grant provision for the service, but believes that the efficiency gains yielded by the proposals together with the changes already in progress should when realised more than offset these costs.

15. The proposals in this document will be implemented in different ways and on different timetables, depending on whether legislation is necessary. Taking account of what is said above

about consultation with the service, the key milestones will be as follows:

* Summer 1992 decisions about strategic planning framework

* Autumn 1992 preparation of detailed guidance on management and organisational changes which do not require legislation

* Summer 1993 inspectorate to be fully operational

THE GOVERNMENT'S DECISIONS

Magistrates' courts committees

16. The present number of committees - 105 - needs to be reduced. The Justices of the Peace Act 1979 provides for the combination of service areas on application by the magistrates concerned, but this provision has not been used and cannot be relied upon. The Government would like to see a progressive reduction in the number of separate management units, and judges that something between 50 and 60 in due course would provide a good balance between the local character of the service and operational needs. The establishment of committee areas will need to take account as necessary of the review of local government boundaries which has now begun, but will not be driven by that review. Obvious candidates for combination include courts committees covering metropolitan districts, London boroughs and the smallest counties.

17. **The Government accordingly proposes to bring forward legislation to give the Lord Chancellor power, after consulting all those concerned (and taking into account the review of local government), to combine committees or otherwise adjust their areas.** (This power in relation to areas subject to review by the Local Government Commission and adjoining areas is already included in the Local Government Bill currently before Parliament.) This provision need not always affect commission areas, which define the boundaries of judicial powers: these may remain in some parts of the country as the 1979 Act provides. Pending legislation there will need to be consultations with the service about the criteria for combination which areas should be

combined first and on the funding and other arrangements for committees with more than one paying authority.

18. Another part of the process of improving the ability of courts committees to discharge their responsibilities is to define them more clearly. Each committee should become the local board of management for its area, directly accountable to the Lord Chancellor for determining priorities, allocating resources and setting the staffing and management policies for the area. For committees to be accountable for the performance of staff they employ they must be able to direct that performance.

19. **The Government accordingly proposes to bring forward legislation which would both define the role and responsibilities of committees and replace the present statutory provisions under which justices' clerks hold office at the pleasure of committees and are not subject to direction by them in the management of court staff.** There needs to be a standard contract of employment between committees and justices' clerks providing for the latter to manage courts within the policy framework laid down by committees and working to defined performance objectives.

20. It is hard to expect courts committees to give effective direction if they are themselves too large. The Government considers that, in contrast to the present upper limit of 35, no committee should have more than 12 members. **It accordingly proposes to bring forward regulations under the 1979 Act to define a new upper limit.** The regulations will need also to define the arrangements by which members should be elected. While committees will need to take account of the views of all the benches in their areas, the expectation that members should represent individual benches should not continue. Instead the Government will seek to strengthen arrangements for consultation with benches and individual magistrates as part of the reforms indicated in paragraph 22 of this White Paper.

21. The Government welcomes attempts in a number of areas to ensure that members of committees are elected on the basis not of seniority but of relevant management skills and experience. But it believes that more needs to be done. While it is essential

that magistrates, on whose voluntary contribution the whole system of local justice depends, should continue to play a leading part in its direction at committee level, there is also scope for the membership of committees to be broadened to include local people with energy and relevant skills who are not magistrates. **The Government accordingly proposes to bring forward legislation to give the Lord Chancellor power to allow committees to coopt a minority of members who need not be magistrates (within the new overall upper limit of 12) or to appoint them himself. Legislative proposals will also provide for the appointment of chairmen of committees, who would continue to be drawn from magistrate members, to be subject to the Lord Chancellor's approval.** In the meantime the Government intends to prepare guidance for magistrates, drawing on good practice that some areas have developed, about the criteria for election to membership and chairmanship of committees, recognising the reinforcement of the directive role which this document envisages.

22. Likewise also building on what the most dynamic committees are already seeking to achieve, the government would like to see all committees producing each year a strategic plan embodying a review of performance, a statement of objectives (including national and additional local targets) and an assessment of the resources needed or measures taken to achieve them. The publication of comparative performance reviews would promote the accountability of committees to their communities and to the Lord Chancellor (assisted by his new inspectorate). For its part the Government recognises the need to engage the service more directly in the process of planning public expenditure, so that local plans can both inform and be informed by national requirements and performance targets. **It accordingly proposes to issue guidance to committees about the preparation of strategic plans, prior to legislation requiring them, and to establish machinery for the regular review of resource and performance issues between itself and the service.**

23. It is essential, as the Scrutiny stressed, that committees should have access to reliable and timely management information to work effectively. The development of a standard magistrates' courts computer system (MASS) will play an important part in this

respect. **The Government also proposes to encourage in the meantime the greater use of performance measures and targets as local management tools, through their incorporation in the mechanism for allocating grant and through the continuing improvement of the magistrates' courts Management Information System.**

24. The overall effect of the above changes will be to create committees which are each responsible for areas large enough to permit strategic planning and decision-making, and which are constituted in a way which encourages effective planning and decision-making. The service will be less fragmented and parochial. Committees will need proper administrative support which many now lack. But the Government has confidence in the ability and willingness of the lay magistracy to rise to these new challenges.

Justices' clerks and senior management

25. The Government endorses the Scrutiny conclusion that justices' clerks should continue to have a dual role: lawyers who are also managers. Expertise in both areas is essential if the courts are to provide an effective and efficient service. The senior management development programmes initiated since the Scrutiny will continue to be provided. The Government considers, however, that more systematic arrangements are needed to ensure that those entrusted with the professional management of the service under the direction of courts committees have the necessary skills and qualities. The requirement in the 1979 Act for the Home Secretary (to be vested from 1 April 1992 in the Lord Chancellor) to approve the appointment of justices' clerks does not at present involve any proper assessment of the personal merits of those concerned. **The Government intends that these powers (to be extended to other senior staff when a legislative opportunity permits) should be used to provide an effective screening of candidates for appointment, on similar lines to the police and probation services.**

26. The Government is also persuaded that structural changes in the professional management of area services are required to

complement the changes to courts committees, and to provide clear lines of accountability throughout the service. In each committee area there should be a single corporate management team, accountable to the committee, with an integrated responsibility both for advising the committee and for carrying out its policies. There needs also to be a clear line of command. These requirements are already met in those areas where there is a single justices' clerk who is also clerk to the committee, and who is assisted in areas where there is more than one bench by a senior legal adviser for each bench to whom magistrates look for day to day legal guidance and support. The Government endorses this structure. **It accordingly proposes to bring forward legislation to provide that in each committee's area there should be a single head of all the committee's paid staff, who would be the committee's principal adviser and responsible for the line management of all the staff working in the magistrates' courts.** In order to ensure high standards of service he or she would have to have the same legal qualifications as justices' clerks now have. The Government recognises the value which individual benches place on having their own justices' clerk, with whom they can have a special relationship of confidence and support. It is accordingly willing to retain the present arrangements at bench level. The new structure could indeed be implemented on the basis that the senior legal adviser supporting each bench (sometimes more than one bench as at present) of magistrates would continue to be its justices' clerk, with the head of the management team in each committee's area to be designated chief justices' clerk for that area. In this way also the judicial powers available to justices' clerks would not have to be extensively restructured to correspond with management changes.

27. Pending legislation the Government will encourage the adoption of this structure by committees, while having regard to the proposed combination of committee areas.

28. This document has already recorded the Government's view that all justices' clerks should work under contracts of employment incorporating performance standards (paragraph 18). These contracts should be for fixed terms (extendable after review). They should provide for remuneration to be related to performance.

The Government intends to issue guidance to committees about the introduction of such contracts and to bring forward legislation which would give the Lord Chancellor express power to approve or vary the terms of service for senior staff.

29. The changes outlined in this document, while inevitably reducing the number of top posts in the service, will nevertheless establish a better overall career structure. There will be a new range of chief justices' clerks posts to which the ablest staff will be able to aspire. The work of justices' clerks serving under them will continue to be demanding both legally and managerially. The combination of areas will enable staff at all levels to broaden their experience. The new emphasis on personal responsibility and performance will offer new personal challenges and rewards. The Government is keen that the service should attract and retain able lawyers and other staff at all levels.

Magistrates' courts inspectorate

30. The Home Secretary (from 1 April 1992, the Lord Chancellor) is accountable to Parliament for 80% of expenditure on the magistrates' courts. In the Government's view it is essential that he should have enhanced powers to ensure that the administration and management of the courts service, strengthened locally as described above, provides the necessary standards of performance and good value for money. No modernisation of the structure of the service would be complete without a redefinition of the relationship between courts committees and the source of most of their finance.

31. **As a first step the Government intends to set up an inspectorate, to advise and assist the Lord Chancellor to raise performance standards within the service.** The inspectorate will carry out a rolling programme of efficiency and effectiveness inspections of the administration and management of all courts committees' services. It will also undertake thematic inspections of key aspects of the service's work and organisation, taking over the role of the present best practice advisory group. The inspectorate will also have an essential role in contributing to the task of improving coordination and efficiency within the

criminal justice system as a whole. The inspectorate will be independent of the service: while some will be selected from the most able justices' clerks and deputies, a significant proportion will have a different background and bring to the inspection task a new range of skills. The Government proposes to place the inspectorate on a statutory basis and at the same time to seek Parliament's agreement that the remit of the Audit Commission should be extended to include the magistrates' courts service, to provide an additional and independent source of review and advice. It will be necessary to consider the interrelationship of the forms of audit as the proposals in this White Paper are developed.

32. The Lord Chancellor must be able to act upon the advice of the inspectorate if the need arises: if the service in any area is seriously or consistently underperforming and the responsible committee is taking insufficient remedial action. **The Government accordingly intends to bring forward legislative proposals to give the Lord Chancellor default powers of last resort to cater for such circumstances, and to require any committee to provide a report to him on such matters as he may direct.** These measures will increase the accountability of courts committees for the services they direct.

London

33. The Government recognises that there are special features of the magistrates' courts in London. It has concluded, however, that the service in London needs to be brought more into line with the rest of England and Wales, to benefit from the improvements set out above and to break down the barriers that have grown up within the service. The present structure of a single service covering the inner London boroughs and a ring of separate outer London borough services is not conducive to effective management and coordination with other criminal justice services. **The Government intends to consult further about a new structure for London with a view to primary legislation when possible.**

Judicial independence

34. The proposals set out in this document will ensure that the arrangements for the management of the service match present and future needs and expectations. They are not intended in any way to encroach upon the necessary independence of magistrates in making judicial decisions in cases coming before the courts. Nor is there any reason why they should. Nevertheless, the Government considers that there would be advantage, in the context of legislation to restate the respective roles of courts committees, justices' clerks and government, in reaffirming in statutory form the fundamental principle that judicial decision- making in the magistrates' courts is not subject to management direction, whether by courts committees or government. There are two guarantees of this principle: a thriving lay magistracy and the professional duty of court staff to give independent legal advice reflecting their legal knowledge and best judgment. **The Government accordingly proposes to introduce legislation to make it clear that the professional head of the service in each committee's area is not liable to direction in respect of the legal advice given to individual benches by his or her staff,** except of course as a result of the orders or decisions of the higher courts. There is no conflict between the interests of efficiency and those of judicial independence, and a new statutory provision on these lines will help to ensure that high legal standards are not placed at risk. The Government's concern is with the overall quality of the service provided by the magistrates' courts.

CONCLUSION

35. This document sets out how the Government intends to strengthen the management and performance of the locally-based magistrates' courts service. It has taken account of the 1989 Scrutiny, but also of the progress made in a number of areas since then. There is now to be an intensive period of further consultation to help the Government put these decisions into early effect. There is much to be done, and it is important that all those with responsibilities for the service work together to achieve it.

ENQUIRIES

36. Any enquiries about this document should be addressed to Mr T J Wilson. His current address is Room 359A, Home Office, 50 Queen Anne's Gate, London, SW1H 9AT, but after 1 April 1992 it will be: Second Floor, Lord Chancellor's Department, Trevelyan House, 30 Great Peter Street, LONDON, SW1P 2BY.

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APPENDIX

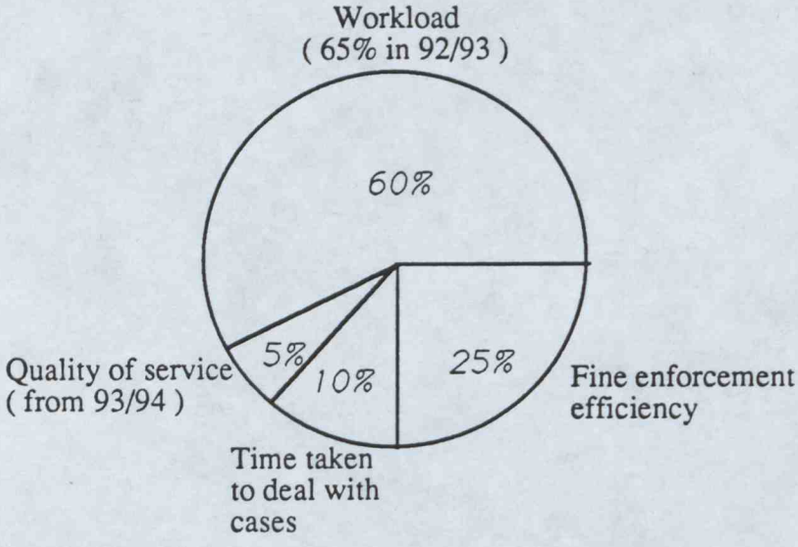
ARRANGEMENTS FOR DISTRIBUTING CASH LIMITED GRANT TO MAGISTRATES' COURTS COMMITTEES.

Purpose

To ensure that the total amount of grant available to finance magistrates' courts in England and Wales is divided among magistrates' courts committees in a manner that reflects (on the basis of standard national assessments) the workload, efficiency and quality of service in each area.

The formula

Each area receives an allocation based on its performance (compared with other areas) as measured in four key respects. The amount of the total national grant allocated ~~primarily~~ to each measure is indicated below:



Phased introduction

To enable committees to make any adjustments necessary because of the redistribution of resources as a result of formula funding this will be phased in gradually :-

1992/93 - *10%* 1993/94 - *25%* 1994/95 - *50%* 1995/96 - *75%* 1996/97 - *100%*

The Inner London Magistrates' Courts Service and the City of London are cash limited on the basis of a budgetary assessment; the formula will be applied from a date to be announced later.

Extra grant is paid to finance court clerk training; regional training development officers; higher staff costs in the South East; the extra cost of providing services in sparsely populated areas; certain police charges; 75% of rates expenditure; in some cases, rents; increased costs of occupying new buildings; and specific new posts for the first three years.

cst.ps/dr/2dm18.12

RESTRICTED

NLH
AT
23/12

FROM: CHIEF SECRETARY
DATE: 23 December 1991

PRIME MINISTER

RESPONSIBILITY FOR THE MAGISTRATES' COURTS

You have agreed that responsibility for the Magistrates Courts should be transferred from the Home Secretary to the Lord Chancellor, and that the change should be announced this week.

2. My concern in this exercise has been that a transfer of responsibility should not put at risk either the smooth introduction of cash-limits - from next April, or the implementation of the White Paper reforms. Both of these changes have been long in preparation, and are of critical importance to improving the efficiency of the Magistrates' Courts.

3. Against this background, I very much welcome the reassurances which the Lord Chancellor has given on these points. It will now be important to devote the management effort necessary to ensure the success of these changes, working of course within the resources agreed as a result of the 1991 Survey.

4. I am sending copies of this minute to James Mackay, David Waddington, Kenneth Baker, Ian Lang, David Hunt, Peter Brooke, Patrick Mayhew and Sir Robin Butler.

DAVID MELLOR

CONFIDENTIAL: MANAGEMENT IN CONFIDENCE

KW

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

16 December 1991

See pencil amendments subsequently registered with Cabinet Office and Home Office
AT 17/12

Dear Paul.

MAGISTRATES' COURTS

Thank you for your letter of 16 December. In my letter of the same date to Colin Walters I recorded the Prime Minister's agreement to an announcement this week. The only suggestions I wish to make to the draft answer relate to the paragraph at the top of the third page. This paragraph can be included with the following changes.

Insert the Prime Minister after My Right Honourable Friend.

Replace last sentence by "The change will be made at the next opportunity".

The sub-text is that the Prime Minister proposes to undertake this at the next reshuffle. The sentence in the draft implies the announcement could come at any time.

I am copying this letter to Jennie Rowe (Lord Chancellor's Office), Nicholas Holgate (Chief Secretary's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely
Andrew Turnbull

ANDREW TURNBULL

Paul Pugh Esq
Home Office

CONFIDENTIAL: MANAGEMENT IN CONFIDENCE

KW

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

cc PJU
R

covering CONFIDENTIAL and
MANAGEMENT-IN-CONFIDENCE

16 December 1991

Dear Andrew

MAGISTRATES' COURTS

... I attach a copy of a draft arranged answer on magistrates' courts. I would be grateful if you could let me know whether the Prime Minister is content. The Home Secretary would like to table the question on Wednesday for answer on Thursday.

I am copying this letter and enclosure to Jennie Rowe (Lord Chancellor's Office), Nicholas Holgate (Chief Secretary's Office) and Sonia Phippard (Cabinet Office).

Yours

Paul Pugh

PAUL PUGH

Andrew Turnbull Esq, CB
Private Secretary
10 Downing Street
London SW1

DRAFT ANNOUNCEMENT

To ask the Secretary of State for the Home Department, what plans the Government has for the future management of the magistrates' courts service.

DRAFT REPLY

The Government has now completed its review of the organisation of the service. In addition, because that review made it timely to do so, it has also considered how responsibility for the service should be allocated within Government.

As to organisation, the Government has concluded that, in the light of extensive consultations following the Scrutiny of the magistrates' courts service and of a study of costs undertaken by independent consultants, it would not be right to bring forward legislative proposals to reconstitute the service as an executive agency. However, there has been a widespread acceptance of the need to modernise the management structure, strengthening lines of accountability while at the same time maintaining the independence of the judicial process and the valuable contribution of local magistrates in the local management of the service.

Some useful first steps have already been taken since the Scrutiny. But in order to achieve these aims and to take forward the application to this service of the principles of the Citizen's Charter we propose to work with the service to introduce a range of improvements, upon some of which an early start can be made whilst others will require legislation. They include progress towards the establishment of an inspectorate,

to provide an effective audit of court administration and to promote the spread of best practice; a strengthening and clarification of the management role of magistrates' courts committee; the introduction of systematic performance review and planning throughout the service; and a more coherent geographical structure, taking account as necessary of the review of the structure of local government as a whole which has now begun. On the other hand, no immediate change is envisaged in the balance between central and local financing of the service.

It will be important to ensure that the new arrangements are strong but flexible, enabling the service to adapt to changing circumstances while at the same time guaranteeing a satisfactory career structure for court staff, high standards of performance, and effective working relations with other parts of the criminal justice system throughout England and Wales. The Government intends to set out these proposals in more detail in a White Paper and to continue to consult interested bodies.

As to responsibility, my Rt Hon Friend the Prime Minister has concluded that, in the light of the proposals outlined above, it will be appropriate for the responsibilities in relation to the finance, organisation and management of the magistrates' courts which are now assigned to the Home Secretary under the Justices of the Peace Act 1979 and related legislation to be exercised from 1 April 1992 by the Lord Chancellor in the same way as he holds those responsibilities for the Crown Court. This will have the benefit of bringing together under a single Minister responsibilities in relation to the magistrates' courts which are at present divided. It should result in the improved co-ordination of court services at all levels throughout England and Wales.

Scott

~~[In addition~~ my Rt Hon Friend has decided that it will ~~in principle~~ be appropriate for him to appoint to the Lord Chancellor's Department a Minister who will answer for the Lord Chancellor in the House of Commons. ~~A further announcement will be made in due course.]~~

The necessary instruments will be brought before Parliament as soon as possible. I shall continue to answer to Parliament for the criminal and procedural law of the magistrates' courts in the same way as for the Crown Courts.

VLB

PLR

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

16 December 1991

Dear Colin

RESPONSIBILITY FOR MAGISTRATES' COURTS

The Prime Minister has seen the Home Secretary's minute of 10 December responding to Sir Robin Butler's minute of 22 November on the review of Ministerial responsibility for the magistrates' courts service. The Prime Minister is grateful to the Home Secretary for agreeing to the transfer proposed in the review.

The Prime Minister has also seen the Lord Chancellor's minute of 12 December. He agrees it would be better to announce the change this week.

He also agrees in principle that a Junior Minister in the House of Commons should be appointed to the Lord Chancellor's Department to take on responsibility for the magistrates' courts. The number of Ministers is currently at the maximum allowed under the statutes and the Prime Minister is not able immediately to identify a transfer from another Department. He therefore would prefer to make this change when he is next making other Ministerial changes. He would be content for the announcement to contain a statement along the lines of "it is the Prime Minister's intention to appoint a Junior Minister in the Commons in the Lord Chancellor's Department at the next opportunity."

I am copying this letter to Jennie Rowe (Lord Chancellor's Department), Gillian Kirton (Lord Privy Seal's Office), Alan Fraser (Scottish Office), Judith Simpson (Welsh Office), Tony Pawson (Northern Ireland Office), Nicholas Holgate (Chief Secretary's Office), Juliet Wheldon (Attorney General's Office) and to Sir Robin Butler (Cabinet Office).

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

Colin Walters, Esq.,
Home Office.

SL

E

Ref. AO91/3265

MR TURNBULL

Minister for the Lord Chancellor's Department

You will have seen that the Home Secretary has now minuted the Prime Minister agreeing that responsibility for Magistrates' Courts should pass to the Lord Chancellor's Department from 1 April next. The way is now therefore clear for No 10 to indicate the Prime Minister's agreement. The Home Office and LCD would like to announce the transfer next week.

2. I mentioned in my submission the case for appointing a junior Minister in the LCD to assist with the extra workload, which includes 80 PQs, 4-5000 letters and 25 delegations each year. I understand that the Lord Chancellor would very much welcome an additional Minister in his Department, at Parliamentary Under Secretary level and sitting in the Commons. He believes that this would forestall political criticism that the Commons would no longer be able to ask questions about Magistrates' Courts. Ideally he would like this to be announced at the same time as the transfer of responsibility. The appointment itself need not necessarily be made at the same time, but the Lord Chancellor would be grateful for support earlier rather than later. The Law Officers support the Lord Chancellor's view.

3. The Ministerial and Other Salaries Act places upper limits on the number of salaries payable, and the total limit of 83 Ministerial appointments is now reached. The most straightforward way of finding room would be by transferring a PUSS post which need no longer be filled. The possibilities might include DES (where there are three PUSSs as a result of the transfer of the Minister for Sport), DoE (where there are 4 Ministers of State and 3 PUSSs), MOD (where all headquarters

staff are being cut by 20 per cent; there are currently five Ministers) or any other Department where there is Ministerial support in depth or an apparently light workload, for example DSS (1 Minister of State and 3 PUSSs) or the Department of Transport (2 Ministers of State and 2 PUSSs) or the Department of Energy (2 PUSSs).

4. It is not necessary to reach a decision on where the post was to be transferred from before an announcement that the post was to be created. A transfer could be made sometime in the New Year. It could even be made following the General Election, although if that followed 1 April the Lord Chancellor would carry a heavy burden for a time; and there might be political criticism that the function was not adequately covered in the House of Commons in the meantime.

5. I should be grateful if you would let me know whether the Prime Minister is content that the Home Secretary should announce that the Prime Minister intends to appoint a Commons Minister to the Lord Chancellor's Department to deal with the work arising from the transfer of responsibility for Magistrates' Courts. A text of the announcement should be ready for clearance in the next few days.

R.B.

ROBIN BUTLER

13 December 1991

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

D

CONFIDENTIAL AND MANAGEMENT - IN CONFIDENCE

Prime Minister

12:12:91

WITH AT / PM's BOX

The Home Secretary copied to me his minute to you of ~~10~~ December about the outcome of the Machinery of Government review of ministerial responsibility for the magistrates' courts service.

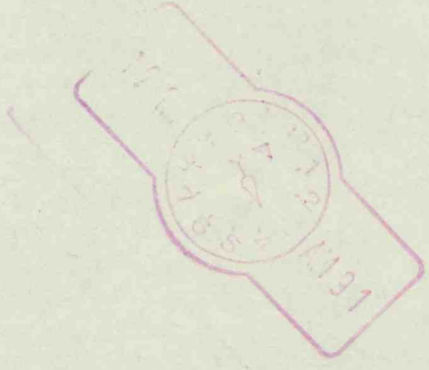
I quite understand the concerns that the Home Secretary has outlined in paragraph 2 of his minute and these are areas to which we will clearly need to pay careful attention during the transfer and thereafter. I am, however, grateful that he has felt able to agree to the transfer taking place.

In paragraph 3 of his minute, the Home Secretary says that we could announce the transfer of responsibilities either next week or leave it until after Christmas. I must say that I would much prefer the former, if at all possible. I suspect that speculation is mounting about the possibility of a transfer, with the consequent risk of a leak. Moreover, there is a considerable amount of work to be done to effect a smooth transfer by 31 March next and it would be a great pity to lose the opportunity of beginning work immediately.

As I believe you know, the Machinery of Government review referred to the possibility of there being a junior minister from the House of Commons in my Department should I take on responsibility for magistrates' courts. I have given a good deal of thought to this and have reached the view, with which the Law Officers agree, that there would indeed be merit in having a junior minister here, as from the date of the transfer. Further, I believe there would be merit in announcing this at the same time as we announce the transfer of responsibility, since otherwise there might be unnecessary criticism that we were removing responsibility to a Department answerable only in the House of Lords. However, I place greater weight on an announcement of the transfer than on including a reference to a junior minister in that announcement.

Copies of this minute go to Kenneth Baker and to the other recipients of his.

MJC



Prime Minister
N Baker has given in in the face of overwhelming odds. I will explore dates for announcement – it would be a pity for this to be swamped

CONFIDENTIAL AND MANAGEMENT IN CONFIDENCE

Prime Minister

RESPONSIBILITY FOR MAGISTRATES' COURTS

I have seen Sir Robin Butler's minute of 22 November to you about the outcome of the Machinery of Government review of Ministerial responsibility for the magistrates' courts service.

2 I remain of the view that to transfer responsibility from the Home Office to the Lord Chancellor's Department will not make it any easier for me to promote better co-ordination across the criminal justice system as a whole. I fear too that it will stimulate the debate about the need for separate Ministries of Justice and of the Interior: many commentators will see the change as the first steps down the road in that direction. But I accept that my colleagues place less weight on these concerns than I do and so I am ready to agree that responsibility for the magistrates' courts service should be transferred from me to the Lord Chancellor. If you endorse that conclusion, I will of course ensure that the Home Office does all it can to make the process of transition as smooth as possible and to make the new arrangements work effectively.

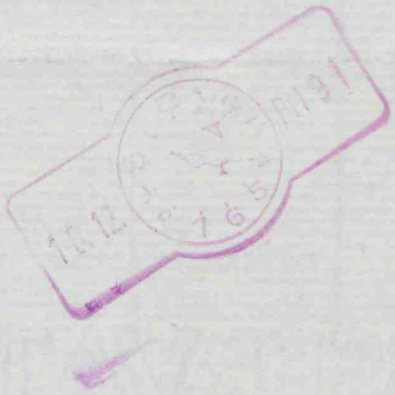
3 We must present this in a positive way emphasising the benefits that would accrue. The question of whether the magistrates' courts should be funded centrally is bound to be raised. I think that we should eventually move to that but to announce a firm commitment at this stage would raise opposition from the Justices' Clerks and the permanent staff, and probably from some magistrates concerned about the possible loss of their local links.

4 We could announce this in the week beginning 16 December or leave it until after Christmas. In any event we will need to publish in the New Year a White Paper on other aspects of the magistrates' courts.

5 I am sending copies of this minute to the Lord Chancellor, the Lord Privy Seal, the Secretaries of State for Scotland, Wales and Northern Ireland, the Chief Secretary to the Treasury, the Attorney General and Sir Robin Butler.

10 December 1991

Home Affairs
Magistrate Courts



T46 PG

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

RESPONSIBILITY FOR MAGISTRATES COURTS

The Prime Minister discussed with you your minute of 22 November. He found the arguments for transfer of responsibility for magistrates' courts to the Lord Chancellor's Department to be compelling. He was reluctant, however, to convene a meeting of all the parties to this issue as this would leave the Home Secretary conspicuously isolated. He suggested that you talk first to Sir Clive Whitmore to get him to indicate to the Home Secretary that there was no support for his position and to seek to persuade him to withdraw his objections to the transfer. You might also want to talk to the Home Secretary yourself.

Before minuting out these conclusions to all the Ministers involved, I will await the outcome of your discussions with Sir Clive.

AT FERB mtg with Whitmore on 29/11.

ANDREW TURNBULL

25 November 1991

cc BUP

A word on Monday. 4/.

Prime Minister
The arguments are set out fully Policy Unit and I feel LCD and Law Officers can be transfer d responsibility is concerning. If you agree you will read & give Mr Baker a chance to make his case in person.
MT 22/11

Ref. A091/2895

PRIME MINISTER

Responsibility for Magistrates Courts

Before the summer recess, you agreed that there should be a machinery of government review of ministerial responsibility for the magistrates' courts service. A White Paper announcing the Government's conclusions on an efficiency scrutiny completed in 1989 has been prepared, and a decision on ministerial responsibility is desirable before the White Paper is published.

2. The review has not reopened the questions decided by HS Committee. It has assumed that the magistrates' courts will remain a local service, with no transfer of responsibility or staff from local to central government.

3. The review has not been able to reach a unanimous conclusion on ministerial responsibility. I have discussed the report below with the Permanent Secretaries of the Lord Chancellor's Department and the Home Office, together with senior officials from the Treasury and the Law Officers' Department. This submission reflects their Ministers' present views.

4. The options are as follows:

a) to announce in the White Paper that ministerial responsibility for the magistrates'courts will be transferred to the Lord Chancellor's Department as soon as administrative preparations have been made. This should be feasible by 1 April 1992.

b) to leave responsibility with the Home Office; and defend the rationale for doing so in the White Paper;

c) to defer decision until a further review, in two and a half years time, when the issue could be reconsidered in the light of implementation of the package of reforms in the White Paper and the introduction of cash limits for magistrates' courts expenditure from April 1992. In order not to undermine the position of the Home Office, the intention to undertake a further review should not be announced.

5. Option a) is favoured by the Lord Chancellor, who believes that there would be significant advantages in combining responsibility for the magistrates' courts with his existing responsibilities for the higher courts and for legal aid. Option b) is favoured by the Home Secretary, who believes that the practical improvements envisaged by LCD can be secured effectively, and without delay, by pressing ahead with the existing programme of reforms, and that there would be severe disadvantages in separating responsibility for the magistrates' courts from his wider responsibilities for criminal justice, and for other local authority administered services supported by grant - probation and police.

6. The Treasury initially preferred option (c) : no transfer of responsibility while the introduction of cash-limits and the White Paper reforms are in train. They have been long in preparation, and their safe and undistracted implementation should be the overriding priority. A prolonged period in which a transfer to LCD had been announced but not implemented, and during which key decisions on cash limits and other proposed reforms were reopened could be damaging. However now that LCD accept that transfer from April 1992 would be practicable, and on the understanding that the Lord Chancellor would not wish to reopen the agreed position on key reforms or the 1991 PES settlement, the Treasury would not, subject to the views of their Ministers, resist option (a).

7. The Attorney General and Solicitor General both find the arguments in favour of a transfer to LCD compelling. They are not persuaded by the arguments for deferring decision or leaving the function with the Home Office, and take the view that announcing a transfer would help with the implementation of reforms in terms of their acceptability, and could also strengthen the Government's position in the debate about a Minister of Justice.

The Lord Privy Seal agrees with the Lord Chancellor's view that Ministerial responsibility for the Magistrates' courts should be transferred to his Department (option (a)). He thinks it difficult to justify responsibility for both the magistrate's courts and police lying within the Home Office, and thinks that it would underline the importance of the separation of executive and judicial powers to make the Lord Chancellor's Department responsible for all the Courts instead of only some.

8. In view of the length of the attached report, it may be helpful if I summarise the pros and cons of the case for transfer under six broad headings: (i) principle, (ii) efficiency, (iii) ministerial workload, (iv) costs and resources, (v) timing, and (vi)presentation.

(i) Principle

9. For more than a century there have been commentators who have felt that the triple division of responsibilities for justice between the Lord Chancellor, the Law Officers and the Home Secretary is unsatisfactory. The proposed transfer would address one element of the division. It would create single ministerial responsibility for the courts in England and Wales, although as the magistrates' courts would remain a local service, it would not create a single national courts system.

10. Transfer would separate responsibility for the magistrates' courts from the Home Secretary's responsibility for other elements of the criminal justice system, including locally run probation services, prisons, and the criminal law. This can be seen as an advantage, in that it would increase the separation of executive and judicial powers and enable a more active approach to court management without suspicion that the executive was seeking to interfere in judicial independence. On the other hand it can be seen as a disadvantage, diminishing the Home Secretary's overview of resource management and priorities within the criminal justice system, opening suspicions that the unstated long-term intention of the Government is to centralise by amalgamating administrative support for the magistrates' courts with LCD's courts service, and raising wider questions about a Ministry of Justice which might lead on to pressure to transfer further functions such as responsibility for criminal law and the probation service. (LCD are clear that they would not be looking for such further transfers, nor do they believe that transferring responsibility for the magistrates' courts would imply that the allocation of other functions needed to be questioned.)

(ii) Efficiency

11. The Efficiency Scrutiny of the magistrates' courts in 1989 revealed an unhappy state of affairs, and a lack of clear accountability for the effective management of the magistrates' courts. All are agreed that this needs to be put right, and that the introduction of cash-limits and the package of reforms agreed by HS is the right approach, and a matter of urgency.

12. The reforms will address organisational failures, and the need for greater clarity of accountability. New management information and financial systems are being established which will, with cash-limits and a power to withhold grant, create penalties for poor performance. The Lord Chancellor has felt it

necessary to reserve his position on the detailed implementation of these reforms, but this does not imply any intention to revisit the key issues, and he is content with both the principle of cash-limits, and the formulae for their implementation.

13. Increased efficiency in the magistrates' courts would benefit court users, and witnesses (there is a Citizen's Charter dimension); it would benefit the higher courts who rely on orderly submission of cases from the magistrates' clerks, and if the right specific measures can be taken it would improve control of legal aid costs. But efficiency would also benefit police, probation, escort and custody services, whose time can be wasted by inefficiency in the courts. Both LCD and the Home Office therefore have an interest in increased efficiency.

14. The Lord Chancellor's Department already administers the legal aid schemes and all the higher courts; and the Lord Chancellor appoints all judges and all magistrates in England and Wales (except in the Duchy of Lancaster). The Lord Chancellor's Department therefore has a continuing contact and familiarity with the magisterial world. They believe that their experience of courts administration and their regionally structured courts service would provide a strong framework for working with the magistrates' clerks to strengthen administration. The Home Office regard these claims as unproven, and feel that they would be best placed to get on quickly with reforms which should secure most of the objectives LCD regard as important. They believe that a transfer of responsibility would not in itself deal with the problem of containing legal aid expenditure. They suggest that transfer to LCD would tend to lead on to greater centralisation whereas, if the magistrates' courts are to remain a local service, responsibility and grant payments can be most efficiently managed alongside other locally administered elements of the criminal justice system.

(iii) Ministerial Workload

15. A transfer would add significantly to the ministerial workload of the Lord Chancellor. The Home Office report some 80 PQs, 4-500 letters and 25 delegations to Ministers on magistrates' courts business each year. Local cases will become more controversial as cash-limits and the power to withhold grant bite. In the event of a transfer you may wish to discuss with the Lord Chancellor his views on the appointment of a junior Minister for his Department in the House of Commons. The Law Officers, who already answer some 250 questions a year on behalf of the Lord Chancellor in the Commons, would support such an appointment.

(iv) Costs and resources

16. In the absence of detailed plans as to how LCD would organise to absorb a transfer, it has not been possible to quantify the direct cost implications. On the administration of grant payment there could be a small net increase in staff and computer systems, because the work could no longer be run in parallel with other specific grants on police and probation services. The Lord Chancellor would not wish to reopen the 1991 PES settlement for the magistrates' courts, and subject to a transfer of staff and running costs from the Home Office, would seek to find offsetting savings for any unavoidable cost increase in the short term. In the long term, although transfer of responsibility would not be a panacea for problems over legal aid, it should help to bring rising costs under control by simplifying the present extremely complex chain of accountability.

(v) Timing

17. The Home Office believe that swift and undistracted implementation of cash-limits and the White Paper reforms should be the priority. LCD's first thought was that they would prefer some 12 months lead time between any decision in principle, and implementation of a transfer of responsibility. In response to concern that this would undermine and complicate the Home Office's position in the meantime, all parties have reconsidered the position and agreed that if a transfer is decided it would be better to implement it quickly.

18. Transfer from 1 April 1992 would be feasible, although it would impose some additional work and distraction on staff who are already facing the demanding task of introducing reforms and cash limits. While a lengthier preparation time might seem attractive, if it were public knowledge that a transfer was planned the position of the Home Office in pushing through reforms might well be undermined. Effective decision-making would be difficult because of the need to involve both Departments, and interested parties might seek to play one Minister off against another.

19. Deferring decision until the issues can be looked at again in the light of progress with the package of reforms in 2 years time (option c) would keep options open and sustain Home Office incentive to demonstrate real improvements in efficiency, at the cost of losing opportunities to mould detailed implementation to a shape which would ultimately be suitable for transfer to LCD.

(vi) Presentation

20. The Review has been confidential, without consultation outside Government. It has not therefore been possible to establish with certainty how each of the three options would be received.

21. There is some evidence that a transfer might be positively received by magistrates, on whose voluntary effort we depend to deal with over 95% of criminal cases. The Law Officers and the Lord Chancellor believe that it will be all the more important to demonstrate support for judicial independence during a period when pressures to penalise poor management are being increased. The Lord Chancellor's constitutional position, emphasising the separation of powers, would support this. On the other hand the magistrates' clerks and their staff might see a transfer as the prelude to further centralisation in the longer term. If such suspicions took root they might impede effective cooperation with the local authorities.

22. There are proposals from the Labour Party and the President of the Law Society for a wider rearrangement of ministerial responsibilities for justice and legal administration. A transfer would no doubt be criticised in some quarters as a partial attempt to remedy a more deeply rooted problem, but it might be welcomed in others as a step in the right direction, and the Law Officers believe it would strengthen the Government's position in the wider debate about responsibilities for justice.

Conclusion and recommendations

23. You will wish to take account of the Home Secretary's strongly held view that responsibility for the magistrates' courts should remain with the Home Office, that his credibility as the Minister with lead responsibility for criminal justice would be diminished by a transfer, that some of the carefully prepared momentum of planned reforms and cash limits might be risked if transfer takes place in the near future, and that the most efficient arrangement while the magistrates' courts remain a local service is for responsibility to lie alongside other locally administered criminal justice services. If you are inclined to decide in favour of a transfer, you will wish to give

the Home Secretary an opportunity to put his case personally at a meeting to which the Lord Chancellor, the Lord Privy Seal, a Treasury Minister and the Law Officers should also be invited.

24. In my view the balance of the argument is in support of the view of the Lord Chancellor, the Law Officers and the Lord Privy Seal in favour of an early transfer, both because the balance of arguments on principle and efficiency point in that direction, and because the timing, to coincide with major management and financial reforms to stimulate much needed efficiency improvements, is right.

25. If you so decide, after hearing the Home Secretary's case, the next step would be to settle a statement announcing the transfer, which might be made in association with publication of the White Paper, and to prepare a transfer of functions order which should be laid as early as possible in the New Year to take effect from 1 April. It would be subject to the negative resolution procedure.

26. I am copying this minute to the Lord Chancellor, the Lord Privy Seal, the Home Secretary, the Chief Secretary, Treasury, and the Attorney General; and, for information, to the Secretaries of state for Scotland, Wales and Northern Ireland.

R.R.B.

ROBIN BUTLER

22 November 1991

MAGISTRATES' COURTS: ASSESSMENT OF THE CASE FOR A TRANSFER OF FUNCTIONS FROM THE HOME SECRETARY TO THE LORD CHANCELLOR

INTRODUCTION

1.1 This paper assesses the case for transferring responsibility for the magistrates' courts service from the Home Secretary to the Lord Chancellor. The proposal to review ministerial responsibility arose in correspondence on the Home Secretary's proposals for reforming the magistrates' courts following an Efficiency Scrutiny. The Home Secretary argued against a transfer of responsibility. The Lord Privy Seal and Lord Chancellor thought that the question should be considered. The Prime Minister acknowledged that the arguments were finely balanced but agreed that there should be a swift Machinery of Government review, without any prior commitment to change, to remove doubts and to be absolutely sure of the right way forward. The review has been conducted by a working group of officials from the Lord Chancellor's Department (LCD), the Home Office, the Law Officers' Department, and Treasury, with Cabinet Office (MG Division) chairing. It has been confidential, with no consultation outside Government.

BACKGROUND: CURRENT POWERS AND RESPONSIBILITIES

Numbers and functions of magistrates' courts

2.1 The magistrates' courts service comprises some 29,000 lay magistrates, 83 stipendiaries (legally qualified magistrates) and 10,000 support staff. It is administered by 105 magistrates' courts committees, with senior management in the hands of 270 justices' clerks serving over 500 benches of justices. Financial and other support services are provided by local authorities and, in inner London, by the Receiver of the Metropolitan Police. Local authority spending is supported by the Home Office through specific grant at a rate of 80%.

2.2 The business of the courts is predominantly criminal; they discharge 96% of all criminal cases, with some 1.9m proceedings annually. There is some civil work (eg enforcement of community charge payments) and a range of childrens' and other proceedings.

The Home Secretary's responsibilities

2.3. The Home Secretary's powers in respect of magistrates' courts are derived from the various sections of the Justices of the Peace Act 1979. The powers are in the name of the Secretary of State at large. A full list is at Annex A. The most

important are to pay grant to local authorities to support the cost of the service; to resolve disputes between local authorities and magistrates' courts committees about budgets or the provision of courthouses; to amalgamate petty sessional divisions; and to approve the appointment of justices' clerks.

2.4 The Home Secretary's responsibilities for the criminal justice system include keeping criminal law and procedure under review and initiating changes as necessary. In some respects, for example sentencing powers and the law of evidence, these responsibilities extend to both the magistrates' courts and the higher courts. In others, for example bail legislation and the statutory procedures governing summary trial, they are specific to the magistrates' courts (except in so far as cases are subject to appeal or judicial review).

2.5 The Home Secretary also has a general responsibility to secure best value for money from expenditure on the magistrates' courts service. This has been pursued through a management training strategy, best-practice guides, the introduction of a management information system and development of a common computer system for magistrates' courts. Magistrates' courts expenditure will be cash-limited from April 1992. Grant will be distributed by a formula designed to allocate resources more efficiently and penalise poor performance, measured in respect of timeliness, unit costs, fine enforcement and quality of service.

<u>The Lord Chancellor's responsibilities</u>

2.6 Since 1971 the Lord Chancellor has been responsible for the administration of all higher and county courts in England and Wales. The courts are run by 2,600 full and part-time judges and district judges and over 10,000 administrative staff, who are civil servants in the Lord Chancellor's Department. The staff are organised in six circuits (regions), with a small central headquarters. The majority of the administrative staff (around 75%) are employed in civil business in the county court; the majority of judicial time is spent in the Crown Court and the High Court. The number of cases disposed of in the Crown Court in 1990 was over 130,000 and in the county courts some 3.5m. The vast majority of cases disposed of in the Crown Court start in magistrates' courts.

2.7 Under the Justices of the Peace Act 1979 the Lord Chancellor has the power to appoint (and remove where appropriate) lay magistrates (except in the Duchy of Lancaster) and to recommend to The Queen appointments (and removals) of stipendiary magistrates. The Lord Chancellor is responsible for ensuring that magistrates receive appropriate training. This is currently funded by the Home Office, but agreement has been reached in principle that it should pass to LCD. The Lord Chancellor is responsible for legal aid, including legal aid in magistrates' courts, where authorisation of payments is made by

the justices clerks and audited by the Home Office.

Reforms agreed by the Home and Social Affairs Committee

2.8 Following an Efficiency Scrutiny completed in 1989, HS Committee has agreed on certain measures the Home Secretary should take in order to strengthen accountability and ensure the achievement of performance standards. The Scrutiny's recommendations that the magistrates' courts service should be a national one, funded entirely by Government and reconstituted as a Next Steps Agency, were rejected. The main reforms agreed by HS would: rationalise and strengthen the management of magistrates' courts committees, drawing in new expertise; reduce the number of separate management units; create an Inspectorate to spread best practice and review management performance and service delivery, in close cooperation with the Audit Commission; establish more effective control over senior appointments; introduce performance review and planning throughout the service; and give the Home Secretary default powers.

2.9 Some measures can be implemented by management action, but legislation is required to place the Inspectorate on a statutory basis, to give Ministers default powers, power to make grant conditional on efficiency, controls over appointments and numbers, and powers over reporting requirements and combination of committee areas. Legislative time is not available this session. The Home Secretary has deferred the White Paper announcing these changes until decisions are taken on ministerial responsibility.

Machinery of Government Review in 1971

2.10 The last Machinery of Government review in this area was in 1971 in response to a recommendation by the Royal Commission on Assizes and Quarter Sessions that magistrates' courts in towns with Crown Court Centres should be administered by the Lord Chancellor's Department. The Lord Chancellor favoured centralisation, the Home Secretary did not. The question went to Cabinet which decided that although in principle centralisation had advantages, it was not appropriate to make a change at that time because it was felt that local authorities would have enough to contend with in respect of the effects of the Local Government Bill then before Parliament.

THE GOVERNMENT'S OBJECTIVES FOR THE MAGISTRATES'COURTS

3.1 The Government's objectives for the magistrates' courts are to:

a) guarantee the judicial independence of magistrates and their clerks in a framework of locally delivered justice;

b) secure improvements in the efficiency and effectiveness of the service; an important element will be to deliver the

objectives of the Citizen's Charter, including increased awareness and receptiveness to the needs of witnesses and victims, reduced delays and waiting times, and better comparative information on performance leading to action to correct weaknesses;

c) provide much clearer lines of managerial accountability, both locally and with the centre; there is a need for better accountability for legal aid, as well as for the direct resource costs and performance of the courts;

d) ensure effective cooperation with the rest of the criminal justice system; this includes the higher courts, police, probation and custody services, the Crown Prosecution Service, and DVLA on motoring offences.

3.2 There is agreement to a large extent on what needs to be done to improve efficiency. Extensive work has gone into preparations for the introduction of cash limits, supported by a management information system which measures and provides a foundation for improved performance. The package of additional reforms approved by HS is agreed by the Lord Chancellor, although he reserves the right to reconsider details of implementation if transfer to his Department is agreed. The disagreement is not in the main about what needs to be done, but about which Department would be best able to carry it through.

THE CASE FOR A TRANSFER OF MINISTERIAL RESPONSIBILITY

<u>The Present Proposal</u>

4.1 The proposal considered in 1971 was that the magistrates' courts should become a centralised service under the Lord Chancellor. No gains were expected from transferring responsibility unless magistrates' courts were to be incorporated within the centralised LCD courts service. The Lord Chancellor's present proposal is that ministerial responsibility for the management and finance of the magistrates' courts, and for making the procedural rules, should be transferred from the Home Secretary to the Lord Chancellor. There would be no centralisation in the sense of transfer of functions from local to central Government. Justices' clerks and support staff would not become civil servants. The proposals do not involve any transfer of the Home Secretary's responsibilities for criminal law, except on matters relating to court procedure. A transfer of functions order under the Ministers of the Crown Act would be required, subject to the negative resolution procedure.

4.2 It has not been possible to reconcile the views of LCD and the Home Office. **The Lord Chancellor's view**, as expressed in his letter of 3rd July, is that there is a strong case for transfer on both political and practical grounds. In LCD's view their courts service, which has a regional structure, would provide a

sound basis for working with magistrates' clerks to tackle a range of shortcomings, which they believe to be exacerbated by lack of single ministerial responsibility for the courts system. LCD believe that they would be better placed to ensure greater cohesiveness in the courts system as a whole, and to tackle the present unsatisfactory arrangements for legal aid in the magistrates' courts.

4.3 **The Home Office** argue that the problems identified can be tackled without a transfer, that there is no evidence that LCD would tackle them more effectively, and indeed that a transfer would delay and distract management attention from the action approved by HS Committee following the Efficiency Unit Scrutiny. They also argue that LCD's proposals would result in a highly unsatisfactory partition of policy responsibility for the management of the criminal justice system as a whole, and create political difficulties by stimulating debate on the Opposition's proposals for the creation of a Department of Legal Administration, with a Minister in the House of Commons.

4.4 The issues are considered below under six headings:

a) principle
b) efficiency
c) ministerial workload
d) costs and resources
e) timing
f) presentation

a) Principle

5.1 LCD argue that it is right in principle that a single Minister should be responsible for all courts in England and Wales. If the courts system were being established from scratch, it is unlikely that responsibility would be split between two Ministers. There are considerable overlaps between lower and higher courts. Many criminal cases can be heard either in the magistrates' courts or the Crown Court. Under the Children Act, public law cases concerning children will start in the magistrates' courts, but will transfer to the county courts or to the High Court if certain criteria are met (see 6.5 below.) Legal aid in the magistrates' courts is granted by the court on the basis of tests undertaken by the court, but paid by the Legal Aid Board, for which the Lord Chancellor is responsible. There is at least a prima facie case that the difficulties inherent in these overlaps would be reduced if one Minister were responsible for all aspects of the system.

5.2 The Lord Chancellor has no view on the advantages of centralising or decentralising the administration of the magistrates' courts, although he regards a strong local element in the way they are run as essential. If his Department were responsible, he believes that it would be possible without any move towards centralisation to use the LCD regional structure to

monitor the performance of individual magistrates' courts and to provide liaison between courts separated by local authority boundaries and between magistrates' courts and higher courts. Opportunities for the more efficient use of accommodation and for the consistent handling of case papers could be exploited. And the LCD courts service could provide the basis for a more centralised administration should such a decision be taken in future.

5.3 On the argument that transfer would fragment responsibility for the criminal justice system, LCD point out that little or no difficulty arises from the present situation in which the higher courts, which are LCD's responsibility, try criminal cases, while the Home Secretary is responsible for criminal law. They see strong arguments for saying that the courts should be in some ways at a remove from the police and prosecuting authorities.

5.4 The **Attorney General** supports the proposition that a court service should constitutionally not be under the direct control of the Minister who is responsible for the police and prisons. He believes that the enhanced responsibilities envisaged in the Home Secretary's current package of proposals would make it difficult to maintain this principle; the public perception would be one of increasing executive influence over the courts. A similar point has been made by the Master of the Rolls.

5.5 The Home Office's argument for retaining responsibility relates to their wider responsibilities for the criminal justice system. They argue that the Home Secretary's wide portfolio enables the Government to ensure that a single minister is (and is seen to be) responsible for providing an overall and coordinated response to crime. His total programme expenditure in this field exceeds £5bn each year. He exercises his responsibilities so as to promote maximum efficiency, effectiveness and economy not only for the services for which he is directly answerable, but also across the broader criminal justice system as a whole. His ability to act as the leading edge within Whitehall to maximise interdepartmental and cross-agency cooperation depends both on the range of services for which he is accountable and the public perception of his grasp.

5.6 In both respects magistrates' courts play a pivotal role because their responsibility for processing all criminal cases and determining 96% of them is understood to be a key factor in the operation of the criminal justice system as a whole. The fact that the Home Secretary is responsible for their resourcing and general efficiency but <u>not</u> for individual decisions is a vital link in the perceptions of his public role and in his ability to ensure that the operations of the separate parts of the criminal; justice system are kept in balance.

5.7 As practical examples of these links the Home Office cite the prison, police and probation services. Since magistrates' courts in practice regulate all access to custody prior to sentence there is a direct relationship between magistrates' courts and prison services. There are important information flows about criminal records and process preparations between magistrates' courts and the police. The close organisational and funding link between magistrates' courts and the probation services assists the promotion of inter-agency cooperation and the early identification and resolution of difficulties. Both are 80% funded by central government and managed by area committees and the organisation of both services is to be modernised on parallel lines. Since the flow of business through the magistrates' courts is, and as a result of the Criminal Justice Act 1991 will increasingly be, strongly influenced by the ability of the probation service to respond to the courts' requirements there could be adverse operational consequences from breaking the present administrative link. For example, there is provision in the court building programme for adequate probation facilities at all new courthouses. This assists new arrangements for pre-sentence reports under the Criminal Justice Act 1991 which in turn, if effective in diverting more defendants from custodial sentences, should result in substantial savings in prison service costs.

5.8 The Home Office believe they are better placed than LCD to protect and be seen to be protecting judicial independence in the magistrates' courts. Their reasoning is as follows. If a transfer were to be agreed, it would include responsibility for magistrates' courts law and procedure as well as finance and management. It would not include responsibility for substantive criminal law issues. However, at local level, transfer of responsibility would not be so clear cut. While the professional judiciary are well able to distinguish aspects of court performance from matters touching on judicial independence, the relationship of lay magistrates and their clerks is a different matter. The present division of responsibilities, in the view of the Home Office, makes it easier for clerks and magistrates to appreciate that Home Office officials, while pressing hard for improvements in performance, may not venture into matters touching on judicial independence.

5.9 Finally the Home Office point out that LCD's management of the higher courts is centrally directed, albeit regionally structured. HS has accepted that the magistrates' courts should remain a local service. LCD lack experience of dealing with local authorities and their management bodies in areas such as local pay arrangements and grant administration. The Home Office see considerable implications here for the administration of central Government grant and coordination of local authority expenditure policy.

Assessment of arguments on principle

5.10 The key issue is whether fragmentation of responsibility for the criminal justice system would be more damaging than is the present fragmentation of responsibility for the courts. Fragmented ministerial responsibility for the courts has long been the status quo, but it frustrates moves towards a more cohesive courts system, and may well mean that some inefficiencies in the conduct and allocation of court business are more persistent than they might otherwise be.

5.11 It was recognised by Cabinet in 1971 that a unified courts system might be desirable in principle, but the moment was not thought right for change, and transfer of ministerial responsibility was not at that time considered worth doing if the magistrates' courts were to remain a local service.

5.12 LCD's case now is that they could deliver greater rationality, uniformity of practice, and efficiency without centralisation. And they believe that they would have a better chance of pushing through management reform than the Home Office, because they would be seen as more likely to protect judicial independence.

5.13 So far as civil and public law cases are concerned, there is little doubt that it would be more convenient if LCD had overall responsibility for the courts. Only 100,000 or so criminal cases go on from the magistrates' courts to the higher courts. The great majority (1.9m) are settled in the magistrates' courts, which the Home Office therefore regard as a critical link in their overall responsibility for the response to crime.

5.14 The practical disadvantages of reducing the Home Secretary's control over the administration of the magistrates' courts are debatable. On one constitutional view, such control could adversely affect judicial independence and is exactly what he should not have. If it is a sound principle that the same Minister should not have responsibility for both the courts and the police and penal systems, the arrangements have long been in breach of it. It may be significant that among the advocates of a Ministry of Justice or a Ministry of Legal Administration, the Law Society would have no objection to combining ministerial responsibility for courts and prisons, although they would separate that for courts and police. Neither the Labour Party's nor the Law Society's proposals give responsibility for the courts to the Lord Chancellor, though they would combine responsibility for all courts and tribunals in a renamed LCD.

5.15 The Home Office argue that they would be seen as stronger champions of judicial independence than LCD, on the grounds that their control underlines the distinction between judicial and administrative matters. This is a subtle argument, and one that overlooks the view that the separation of powers is a primary

function of the Lord Chancellor, who as both judge and minister can insulate the judiciary from political pressures.

5.16 The need for administration of the magistrates' courts to remain with a Minister who has overall responsibility for resource inputs and outputs across the Criminal justice system is also debateable. Until now grant has not been cash-limited. There can have been few points at which it was possible to trade off resources for the magistrates' courts against the demands of other Home Office areas of responsibility. The efficiency scrutiny found that the Home Office, while providing most of the funds for magistrates' courts, had no say in how resources are allocated or used, or even the total level of spending, other than by operating detailed approvals which can themselves be an obstacle to value for money.

5.17 The introduction of cash limits, and plans for relating the distribution of grant to performance and for withholding grant in certain circumstances, will greatly increase control over resources. Either Department could use these powers to stimulate efficiency; the Home Office could conceivably use them to alter criminal justice priorities, but that is not the main intention.

5.18 The stronger argument for retaining Home Office control is to ensure successful coordination and interaction between the magistrates' courts and other agencies within the criminal justice system for which the Home Secretary is responsible. One or more of these agencies is involved in every criminal case dealt with by the magistrates' courts, and the Home Office have an advantage in overseeing national coordination with the courts on, for example, the national criminal records system. A much smaller proportion of cases involves exchanges between magistrates' courts and the Crown courts. Yet the police and probation services are local, and local cooperation, if not national coordination, should survive a transfer of ministerial responsibility. LCD should be no less able than the Home Office to ensure coordination with third parties - such as the Crown Prosecution Service. And they should be able to build up, as have a number of other Departments, the practical experience required to run a specific grant and deal with local authorities.

5.19 On balance the group concluded, Home Office dissenting, that if principle were the only consideration the balance of advantage lay with transferring responsibility for the magistrates' courts to the Lord Chancellor's Department.

b) Efficiency

6.1 In many ways questions of principle and efficiency overlap. LCD argue that the lack of single ministerial responsibility for the courts system has resulted in many inefficiencies. This section examines these, and lists improvements which they believe would be facilitated by transfer. It goes on to explain why the Home Office consider that transfer is neither necessary nor helpful as a means of achieving these benefits.

LCD's case
Allocating cases to the right tier of court

6.2 Making one Minister responsible for courts at all levels would make it easier to ensure that cases are heard in the right tier of court. LCD regard it as being of key importance to ensure that cases are matched to the appropriate court or tribunal in respect of weight, completion and type of case. Divided ministerial responsibility for higher and lower courts makes this significantly more difficult to achieve.

6.3 It is common for committal papers to be sent to the wrong tier of the Crown Court because the magistrates' court has wrongly classified the offences, and for the committal documents to be incomplete. All such errors lead to delay. It would be easier to eliminate the deficiencies if all the courts concerned were the responsibility of the Lord Chancellor.

Illogical responsibilities for recovery of debt

6.4 The present split of cases concerning the recovery of debt between the magistrates' courts and the county courts is illogical. Even where money is owed to the State, jurisdiction is split with, for example, non-payment of TV licences being classified as a crime and dealt with in magistrates' courts and unpaid taxes being recoverable as a civil debt in the county courts. Bringing the magistrates' courts under the Lord Chancellor would facilitate a more rational approach to the allocation of business between level and category of court.

Implementation of the Children Act

6.5 The Children Act 1989 came into force on 14 October, creating concurrent jurisdiction across the magistrates', county and High Courts with the aim that childrens' cases are heard at the appropriate level by trained and experienced judiciary. Public law proceedings under the Act will generally start in the magistrates' courts. About 75% of cases will remain at that level. If the case is one of exceptional gravity, importance or complexity, if part of the case is necessarily being conducted there, or if the case is urgent and upward transfer would necessarily result in an earlier hearing, cases will transfer to

a higher court. Justices' Clerks will determine whether any of these criteria for transfer apply. Although the operation of the criteria will be monitored, nevertheless if magistrates' courts and Justices' Clerks were to come under the LCD, the LCD's power over allocation through the operation of the criteria would be more robust.

Cases which progress from Magistrates' to Crown Courts

6.6 The magistrates' courts are an essential part of the machinery for delivering cases to the Crown Court in good order so that they can proceed to trial without delay. A recent LCD review of the administration of the Crown Court found that one of the most significant problems was the inconsistent flow of work from the magistrates' courts. Work tended to be received in large batches. If details and case papers in the magistrates' courts could be prepared in a format that could enable them to be used in the Crown Court, the flow of information between the courts would be accelerated, the flow of cases in the courts would be speeded up and waiting times reduced. These possibilities are being pursued through the Home Office, but this inevitably introduces an additional step into the process.

6.7 Delays in the transfer of committal papers from magistrates' courts to the Crown Court are common. In the London Crown Courts in June 1991 most cases were delayed in transmission by up to four weeks. This affects the performance of the Crown Court and of the criminal justice system as a whole.

Rationalisation of attachment of earnings orders

6.8 Both county courts and magistrates' courts may make attachment of earnings orders to secure maintenance, and magistrates' courts may also make the orders to secure payment of fines. Employers' organisations are unhappy about the burden that the administration of such orders places on them, in particular where they may be required to operate a large number of orders sending payments to different destinations. LCD proposes to set up a single attachment of earnings payment centre for county court orders which would result in employers only being required to make one payment. It would benefit employers still further if orders made in magistrates' courts could be covered as well, but this will be difficult without a harmonisation of procedure between the two tiers of court, or without concentrating the work in one jurisdiction.

Bailiffs

6.9 Warrants in the county courts are executed by bailiffs who are employees of the court service and those in magistrates' courts by private or certificated bailiffs. There has been considerable criticism recently of the activities of private bailiffs. Although it is a judge in the county court who grants

a bailiff's certificate (and not all private bailiffs are certificated), it is difficult to monitor the conduct of private bailiffs when their work is carried out on behalf of courts over which the Lord Chancellor has no control. Reforms are planned to the present procedures for certificating bailiffs and it would be easier both to monitor and evaluate their success if the magistrates' courts were brought under the LCD.

Court Accommodation

6.10 At present some cases are heard in poorly equipped court accommodation while some much better-equipped premises are under-utilised. If magistrates' courts buildings and those in LCD's estate could be treated as common stock, it would allow rationalisation and a flexibility of use of premises generally, and could result in an overall improvement in the standard of court accommodation.

Consistent Management Information

6.11 Managers need to plan effectively using timely and accurate management information on the passage of cases through the system; such information is difficult to define and collect when responsibility is split. At present standardisation of court forms is almost impossible because individual magistrates' courts produce their own forms and file covers. If magistrates' courts were to come under LCD forms etc would be centrally designed and produced with the consequent advantages of standardisation. Leaflets and other information for the benefit of court users would cover magistrates' court processes and procedures.

Statistics

6.12 There are considerable differences between LCD's statistics in respect of the higher courts and the Home Office's in respect of the magistrates' courts. Bringing responsibility for the magistrates' courts under LCD would allow unnecessary discrepancies to be removed, and also make possible a centralised unit for processing and analysis. The result would be management information which is more comprehensive. The ability to monitor the performance of the magistrates' courts in terms both of standards and of service and resources used would be much enhanced, as would the opportunities to assist and encourage the poor-performing courts to improve.

Legal Aid

6.13 Finally, the LCD argues that a transfer would help to ensure that magistrates' courts are not operating in ways which create unnecessary costs for legal aid. The costs of legal aid in the magistrates' courts, net of contributions and charges, are rising steeply from £144m in 1988/89, to £197m in 1990/91, with a

further increase to £267m projected by 1992/93. LCD are concerned that in granting legal aid Magistrates' courts regularly disregard financial and non-financial criteria; fail to seek contributions and pursue them when unpaid; and have inadequate machinery for logging the amount of time spent on each case and other details relevant to the costs. The clerks have a conflict of interest, in that some practices which are convenient to the running of the court - eg listing all cases for 10am and encouraging defendants to have legal representation - may conflict with the control of aided costs and diligent application of means tests.

6.14 A recent report by LCD auditors on the legal aid system in the magistrates' courts found that there was an absence of clearly defined lines of accountability: magistrates' courts are part of a separate line of accountability which has no responsibility for the cost of legal aid decisions, and no incentive to change practices which are convenient to the court but increase legal aid costs. For example the average cost of a solicitor's bills has increased by 20% in the three years to 1990-91. A quarter of this is attributable to increased waiting times on the day of hearing, where it has long been normal practice to list all cases for 10.00am, at the expense of witnesses, defendants, police and probation workers, as well as legal aid costs.

6.15 A draft NAO study of legal aid in the magistrates' courts is being considered by Departments. It is critical, and picks up the failings already exposed by the audit study. It would be desirable for Departments to demonstrate an effective response by the time of any PAC hearing, which as things stand will involve both LCD and Home Office Accounting Officers.

Efficiency - The Home Office's Response

6.16 On the LCD's efficiency grounds for transfer, the Home Office comment that the practical problems identified by LCD are small in terms of the total volume of work, and imply a centralising approach already rejected by HS. They feel that there is no evidence that LCD could tackle more effectively the reforms that have been agreed, and a transfer would delay and distract management attention, thus effectively denying credibility for the reforms during the remaining months of the present Parliament and risking the weakening of cash limits as a mechanism for forcing change when these are introduced in April 1992.

6.17 The Home Office make the following observations on LCD's detailed points:

i) on ensuring that cases are heard in the right tier of court: the Lord Chancellor's Department is already responsible for rules on the allocation of civil cases, including the implementation of the new Children Act on which they are issuing guidance direct to the magistrates' courts; so far as criminal cases are concerned, only a small proportion (3-4%) move from the magistrates' courts to the higher courts. LCD accept that the Home Secretary would remain responsible for the statutory framework for criminal proceedings, including policy on which matters are criminal offences and which are not and in which tier of court offences are triable. Within the statutory framework, individual case decisions are made either by magistrates or defendants, and it would be improper for either department to interfere in judicial decisions. But to detach responsibility for the management of the courts in which the great majority of criminal cases are handled from responsibility for the overall framework of the criminal justice system is bound to make coordination of the latter more difficult. It would introduce dual control where at present there is a clear separation between judicial and administrative functions.

ii) pressures for more efficient management: using its comprehensive management information system the Home Office will be able to use cash limits to place pressure on under-performing magistrates' courts committees to process cases more quickly and cheaply (with consequential benefits for the legal aid fund and the Crown Court), enforce fine payments more effectively (thus reducing further the gross cost of the system) and improve quality of service (in line with the commitments in the Citizen's Charter.) A computerised courts administration system (MASS) is being developed for introduction in the magistrates' courts from 1993. This will lead to greater standardisation of forms and procedures, the production of management information more frequently and quickly for local managers, and permit easier exchange of data with other services. Work is also in hand to standardise forms.

iii) better coordination between courts and other agencies; The Home Office is actively seeking to promote coordination between agencies, and to make the criminal justice system as a whole more efficient for all agencies, not just those for which the Home Secretary is responsible. For example the introduction of pilot schemes for the electronic exchange of data with DVLA has an important bearing on the cost and timeliness of work in respect of approximately 50% of prosecutions. Their wider perspective is important because some changes would not necessarily benefit all agencies. For

example speedier committals in the magistrates' courts would reduce escort and legal costs, but in the short term could add to pressures and waiting times in the Crown courts.

iv) on rationalisation of court accommodation: there are already many examples of accommodation shared between the magistrates' courts and the higher courts; cash-limited grant from April 1992 will give courts committees the strongest incentive to optimize court usage and rationalise accommodation; local authorities own most magistrates' court buildings, providing accommodation worth at least £20m per annum at no cost to central Government. This, rather than the division of ministerial responsibilities, constrains further rationalisation.

v) on legal aid costs: action is being taken to reduce both pre-trial delays and unnecessary waiting time on the day of hearings; waiting-time on the day of trial will be one of the key performance indicators in the new magistrates' courts management information system which determines grant support from April 1992. The problems over legal aid must be reviewed whether or not there is a change in ministerial responsibility, and options which do not entail transfer (for example putting court functions with regard to legal aid on a repayment basis, or putting the staff from the legal aid board into the courts to carry out such functions themselves) should be explored.

Efficiency advantages of keeping administration of grants for local authority criminal justice functions together

6.18 Given that no change is planned in the funding of magistrates' courts by way of specific grant to local authorities for the time being, the Home Office believes that the present brigading of local authority law and order services enables it not only to achieve administrative economies of scale but also to secure consistency between them in terms of public expenditure and value for money controls. Whereas the Home Office already regulate a number of grant-aided local authority services, the LCD does not. A transfer of responsibility would entail the LCD having to establish new arrangements for dealing with local authorities, including grant payment and accounting systems. They perceive a lack of experience in LCD in dealing with local authorities and their management bodies in areas such as local pay administration and grant arrangements.

Assessment - efficiency

6.19 The efficiency case for transfer rests ultimately on LCD's belief that they would be able to increase efficiency in the magistrates' courts and in the courts service as a whole if they had responsibility for both. It is hard to prove what efficiency gains would arise from transfer over and above those

that will in any case be sought by the package of measures which HS have agreed. LCD cannot quantify what they would hope to achieve.

6.20 Since the 1971 Courts Act they feel they have had a chance to build up specialised experience in the administration of courts systems. They point to their track record:

a) changes in the arrangements for tightening determination of legal aid costs were quickly and effectively made in all Crown Courts;

b) the regional line management system is well-established and enabled tightly controlled changes in civil procedures to bring about significant and beneficial reforms;

c) one computerised management system (CREST) for all courts is in the process of being implemented;

d) the implementation of TV links and video evidence has been smoothly and effectively coordinated through the regional structure.

6.21 The Home Office do not accept that LCD have the edge on efficiency, and point to their own track record, for example in introducing custody time-limits, unit fines and in preparing and beginning to implement the programme of reforms following the 1989 efficiency scrutiny. They believe that a transfer of ministerial responsibility at the present time would disrupt and delay this programme. Effort which should be directed towards changes which are calculated to deliver clear efficiency and performance gains would inevitably be absorbed in the transfer.

6.22 The Law Officers believe there is considerable scope for making the overall court structure more cohesive. Much of the system is the result of historical accident rather than considered restructuring. The interface between Magistrates' and Crown Courts as regards crime and the Crown Courts on the new arrangements under the Children Act might well benefit from single Ministerial responsibility. Administrative procedures such as attachment of earnings and fine enforcement may also be amenable to rationalisation.

6.23 If the question were to be decided exclusively on grounds of efficiency, the Home Office's view is that LCD's case is not proven, and now is the wrong time for a transfer. Others felt that a single ministerial overview of all courts would, in the longer term, be likely to promote greater cohesion and efficiency across a range of business on which the higher and lower courts interact, and in the control of legal aid.

c) Ministerial Workload

7.1 The proposed transfer would have consequences for ministerial workload. The Lord Chancellor is the single Minister at LCD, where as well as responsibilities as head of Department, he oversees an ambitious programme of civil law reform in addition to his responsibilities as a judge, speaker of the House of Lords, senior Minister on major Bills affecting his responsibilities, and Cabinet Minister.

7.2 At present the workload of Home Office ministers on magistrates' courts business is about 80 PQs, five arranged, and some 400-500 letters a year. There are visits and speeches to national bodies. Some 25 local delegations are received a year to discuss such matters as courthouse closure proposals, on which local feelings can be strong. The volume of representations is bound to increase as cash limits and other aspects of the package of reforms result in rationalisation and amalgamations within the service, which will be resisted by local interests.

7.3 There will also be consequences for the workload of the Attorney General and the Solicitor General who answer questions on the Lord Chancellor's behalf in the House of Commons, although they do not take administrative or policy decisions on LCD case work. In 1990/91 they answered 258 questions on behalf of the Lord Chancellor.

7.4 Transferring responsibility to a Department that has no Minister in the House of Commons could open questions about accountability at a time when the introduction of cash limits may generate hard local decisions and constituency interest. The Lord Chancellor would be able to give evidence directly to the Home Affairs Select Committee of the Commons on the administration of the magistrates' courts under their newly extended orders of reference. But direct accountability to the Commons for increasingly important v.f.m issues would be reduced.

Assessment- Ministerial Workload

7.5 Ministerial workload is not a matter for officials, but the Prime Minister may wish to discuss with the Lord Chancellor the implications for his personal workload if a transfer is decided, and consider how the operation of Commons accountability would be best addressed.

d) Resources and costs

8.1 The estimated outturn of local authority expenditure on the magistrates' courts in 1990-91 is £306m of which £264m is central government support provided by the Home Office through 80% specific grants on current expenditure, which will be cash-limited from April 1992, and on capital expenditure, which is

already cash limited, and also credit approvals. These figures exclude grant on outstanding loan charges. The 20% provided by local authorities current and capital expenditure attracts further central government support through the Revenue Support Grant. In addition the Home Office provides for expenditure of some £1.3m for magistrates' courts staff training and about £0.5m for the audit of justices' clerks accounts.

8.2 The Home Office division responsible for the management of the magistrates' courts service and for law and procedure specific to magistrates' courts is part of the Criminal Justice and Constitutional Department of the Home Office. The division currently has 43 staff headed by a Grade 5 with running costs of about £0.3m. It is supported by a further 20 fte posts in other divisions with specific staff resources assigned to such functions as internal audit, the collection and analysis of management information, and grant payment. The LCD has two Grade 5s and a small support staff responsible for advising the Lord Chancellor on the appointment and training of magistrates. There are some 10,000 administrative staff in the LCD engaged in the administration of the higher and county courts.

8.3 Were responsibility for the magistrates' courts to be transferred to LCD, most of the 43 posts exclusively dedicated to such work in the Home Office would, following the usual practice with such transfers, be transferred with the work.
The exception would be any posts responsible for advising the magistrates' courts on criminal law matters.

8.4 Transfer of posts responsible for grant administration would be less straightforward. LCD would need to replicate grant machinery which already exists in the Home Office, but which, because it is not dedicated to magistrates' courts, cannot be transferred as a dedicated block of staff. The work constitutes part of the time of one Grade 7, one SEO and two HEO posts, equivalent to 1.25 full post. The LCD would need to provide computer facilities for processing some £300m receipts p.a. from fines and fees, and make arrangements for taking back internal audit functions which are being transferred to the Home Office.

8.5. Until a detailed action plan is worked out, LCD cannot give absolute assurances that a transfer would be cost-neutral, although they accept that the Treasury would look to them to absorb any unavoidable cost increases. They point out that the Home Office proposals have cost implications, particularly in respect of the Inspectorate and additional support for magistrates' courts committees. As part of their consideration of the detail of Home Office plans they would want to look at whether some of this additional expenditure could not be spent better in other ways. They would not expect additional expenditure to exceed that envisaged in the Home Office proposals, and believe that any costs directly related to transfer would be small in relation to the potential savings from

more effective control of legal aid, which they see as one of the main potential advantages of the transfer.

Assessment - costs

8.6 Given the lead-time LCD envisage to prepare for the transfer, staffing and operational consequences should be manageable. There could initially be some as yet unquantifiable net increase in running costs because the Home Office would be unlikely to be able to release in full the 20 fte posts working only part of the time on magistrates' courts business, or the small team responsible for grant payment, and some or all of these would have to be set up as new posts in LCD. There should in the longer term be scope for economies of scale in running central government responsibility for the magistrates' courts in parallel with LCD's larger courts service.

e) Timing

9.1 LCD accept that implementation of the proposed transfer would need careful preparation. Their initial inclination was that a lead time of 12 months or so, leading to implementation of a transfer in early 1993, would be desirable. However, further examination has revealed no insuperable obstacles to transfer on a shortened timescale on 1 April 1992. This would involve additional work and distractions for staff who are already facing the demanding tasks of introducing reforms and cash limits. While a lengthier preparation time might seem attractive, if it were public knowledge that a transfer was planned, the position of the Home Office in pushing through reforms might well be undermined. Effective decision making would be difficult because of the need to involve both Departments, and interested parties might seek to play one Minister off against another.

9.2 The Treasury's view is that the smooth implementation of the major changes planned in the financing and organisation of the magistrates' courts, and in particular the introduction of cash limits, is of overriding importance. The changes have been long in preparation (the introduction of cash-limits was agreed by Ministers in 1987) and considerable effort has gone into their design and explaining to the clerks and committees how they will work. The introduction of cash limits constitutes a fundamental change, and despite all the preparatory effort is bound to prove difficult and complex. The HS package of reforms is also wide-ranging, and includes the introduction of a system of targets and performance review throughout the service.

9.3 While the Treasury see no compelling reasons for transferring ministerial responsibility before the implementation of these changes has bedded down, they agree that it could be damaging to announce transfer and then leave the function with the Home Office for 12 months or so before

implementation. The Home Office already regulates a number of grant-aided local services, and the experience of the more senior staff in finance divisions (whose responsibilities range wider than magistrates' courts finance but who have been closely involved in developing the forthcoming changes) will be difficult to replicate quickly in LCD. If consideration of a transfer were deferred for 2/3 years, it could be reassessed in the light of experience of reorganisation proposals and cash-limiting. A review at that time could take in broader questions as to how the courts should be funded. In the meantime a small working party could be established to examine, within existing trilateral arrangements (ie Home Office, LCD, LOD/CPS), how best to improve coordination under the present division of Departmental responsibilities. The Home Office would prefer this course.

Assessment- timing

9.4 The options are as follows:

a) to announce in the White Paper that ministerial responsibility for the Magistrates' courts will transfer to the Lord Chancellor's Department as soon as administrative preparations can be made. This should be feasible by April 1992;

b) to leave ministerial responsibility with the Home Office, and defend the rationale for doing so in the White Paper;

c) to defer decision until a further review, in two or three years time, in the light of implementation of the package of reforms in the White Paper and the introduction of cash limits for magistrates' courts expenditure from April 1992. In order not to undermine the position of the Home Office the intention to undertake a further review should not be announced.

9.5 Option (b) is the right course if the responsibility is to remain with the Home Office.

9.6 If option (a) is preferred, there is general agreement that it should be implemented quickly, and it should be feasible to do so on 1 April 1992. An implementation team would need to be swiftly established by LCD, and full cooperation would be needed from the Home Office.

9.7 Option c) keeps options open; it would provide an opportunity to reassess the question of responsibility in a wider context when some experience of cash limits and planned efficiency improvements has been gathered. If reforms are not materialising effectively the Government might also wish to reopen at that point the question of a more centralised magistrates' courts service financed wholly by central

government, with much sharper accountability for the resources deployed. The disadvantage of the option, if transfer to LCD is accepted as a desirable ultimate objective, is that LCD would have less chance to influence the planned reshaping of the system, and any advantages of the transfer in terms of reassuring the courts that judicial independence was not threatened by proposed reforms and efficiency measures would be diminished.

f) Presentation

10.1 The Lord Chancellor's view is that the likely opposition of local interests to a number of the proposals for reform of the magistrates' courts, and in particular to a new inspectorate reporting to the Home Secretary, should not be underestimated. However misguided, many will be concerned that this could be used by the Minister with overall responsibility for the police and criminal justice system to influence the ways in which the magistrates' courts operate, with the risk that they will no longer be perceived as providing a fair and impartial forum. This danger would be reduced if responsibility were transferred to the Lord Chancellor, and magistrates would be likely to favour the change. The ability of the Government to carry through the proposed reforms would be enhanced if it were known at the outset that LCD was to be responsible.

10.2 The Home Office believe on the contrary that the prospect of a forthcoming transfer followed by unspecified modifications of policy and a new role for LCD's regional structure would reduce the credibility of reforms with the magistrates' courts service. There might be fears of creeping centralisation. A transfer of responsibility would invite anxieties and apprehensions in the magistracy because it could signal to them a commitment to move to 100% funding by central government in due course, together with the integration of magistrates' courts management into the LCD circuit structure. They point to widespread support within the magistracy and senior staff for the introduction of an inspectorate.

10.3 While the Magistrates' Association supported the idea of a transfer of responsibility this view was not shared by court staff. The Justices' Clerks' Society has proposed no change to the present position (except in so far as the appointment of justices' Clerks is concerned). The Association of Magisterial Officers, representing the majority of court staff, has sought no changes of ministerial responsibility.

10.4 Finally the Home Office see political disadvantages in a transfer. Adjusting responsibilities for the courts would reopen public debate on wider rationalisation of criminal justice and court functions, including in particular the Opposition's proposals for a Minister of Legal Administration. Beginning to

adjust ministerial responsibilities for the administration of justice may be the thin end of a wedge leading to wider debate on the allocation of responsibilities for justice.

Assessment - presentation

10.5 As the Opposition's proposals for a Ministry of Legal Administration are on record, and likely to be repeated in due course in their Manifesto, public debate is not avoidable. For the Home Office the question is whether the relatively limited but significant loss of responsibility for the courts which determine the pace and efficiency of nearly all prosecutions (the "engine room" as it were of the criminal justice system) would be seen as an unacceptable diminution in the Home Secretary's role. For LCD, whether transfer would help to secure acceptance to the reforms on which the Government has decided.

10.6 A transfer might defuse part of the case for a Ministry of Justice, by introducing more coherent responsibility for the courts, but by placing additional responsibilities on a Department with no direct presence in the House of Commons it could also reheat the debate.

SUMMARY

11.1 The advantages proposed by LCD for a transfer of ministerial responsibility include:

a) single ministerial responsibility for the courts system;

b) use of LCD's regionally structured and experienced courts service to promote:

i) more rational and consistent allocation of business between different tiers of courts;

ii) more consistent and efficient handling of cases which move between courts; fewer errors and better prepared case papers which would assist faster flow and reduce waiting times;

iii) more consistency in enforcement arrangements including

- the possibility of a single centre for processing attachment of earnings orders;

- closer monitoring and supervision of private bailiffs who execute magistrates' courts warrants;

iv) more efficient use of resources, including court buildings;

v) more standardised and effective management information, leading to closer monitoring and pressure to improve standards of service and resource use;

vi) more clearly defined accountability for and control over legal aid in the magistrates' courts, where costs are at present rising steeply.

c) they believe that transfer would be welcomed by the magistrates, and would facilitate the implementation of the package of reforms approved by HS committee by introducing a stronger guarantee of judicial independence. The Lord Chancellor is broadly content with this package, but would wish to look again at some details.

11.2 The Home Office believe that:

a) interactions between the magistrates' courts and higher courts occur in a small minority, albeit the most serious, of criminal cases. For the great majority of cases interaction with other agencies, in particular the police and probation services and DVLA, is more significant;

b) many of the reforms envisaged above are already in the pipeline, or can be achieved by other means, without transfer of responsibility;

c) transfer would delay and distract from implementation of the reforms approved by HS Committee;

d) transfer would result in a significant diminution of the Home Secretary's role, seriously impair other Home Office functions and introduce new fragmentation into responsibility for the Criminal Justice system:

i) it would impair the Home Secretary's ability to take an overview of criminal justice resources;

ii) transferring one of several similar direct grant systems to LCD would be inefficient, with diseconomies of scale and a risk of inconsistencies;

iii) there would be particular difficulties for the probation service if the Home Office no longer controlled the magistrates' courts;

iv) the Home Secretary would retain responsibility for criminal law, and hence a need for a network of contacts with magistrates' clerks who advise lay justices on the law;

e) although welcomed by the magistrates a transfer has not been supported by their clerks; it would open anxieties that the Government ultimately intended to absorb what is now a local service into the Lord Chancellor's Department;

f) transfer would stimulate wider debate on proposals for a Ministry of Justice or Legal Administration; and it might be seen as making the Government less accountable to the Commons for the magistrates' courts service.

11.3 A summary and recommendations are given in the Cabinet Secretary's covering minute.

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

CONFIDENTIAL

26 July 1991

Dear Kenneth,

MAGISTRATES' COURTS

Thank you for your letter of 23 July.

I agree with you that, in the circumstances, it would be better to postpone any announcement on the proposed changes for the management of the magistrates' courts until the machinery of government issue is settled.

I am copying this letter to the Prime Minister, the Lord Privy Seal and other members of HS Committee, to the Minister of Agriculture and the Attorney General, and to Sir Robin Butler.

Yours ever,

James.

The Right Honourable
Kenneth Baker MP
Secretary of State for
the Home Department
Home Office
50 Queen Anne's Gate
London SW1H 9AT

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

23 July 1991

MAGISTRATES' COURTS

The purpose of this letter is to follow up the invitation of HS Committee to us on 9 July that we should consider what, if anything, could appropriately be announced in the near future about my policy proposals for the future management of these courts, given that a machinery of government review will be taking place.

I am sure that it would be a good thing to make an announcement now if we can. It would desirable to bring the continued uncertainty amongst magistrates and their staff to an end. Accordingly, my first thoughts were that it might prove possible to adapt the draft arranged PQ enclosed with my letter of 2 July to the Lord Privy Seal for this purpose.

On further consideration, however, I do not think it would be feasible to go down that route. The short point is that making an announcement is incompatible with the decision to hold a machinery of government review. Making public our policy proposals would have to be done with all the clarity and authority that we could muster. There would be bound to be questions of detail by way of follow-up and it would not be possible to deal with them all authoritatively, granted your understandable wish that, if it were decided to transfer responsibility for the magistrates' courts to you, you would wish at that juncture to satisfy yourself about the detail of the proposals.

In addition, we would almost certainly be asked whether the Government had taken a decision about proposals for transfer and, if not, when such a decision could be expected. Again, we could give no firm answer and it would be undesirable to disclose that a machinery of government review was in fact under way. Though it is probably true that magistrates and their staff are hoping for a decision before the Recess, I do

The Rt Hon The Lord MacKay of Clashfern
House of Lords
London SW1A 0PW

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HOME AFFAIRS : MAGISTRATES COURT PAY

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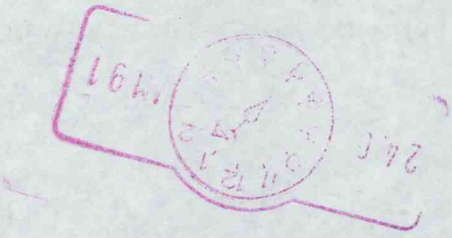

not judge that there is irresistible pressure in this respect or that we will be unable to hold things until the machinery of government issue is settled. If you agree, therefore, I suggest that we should return to this when the Prime Minister has received and decided the Cabinet Secretary's recommendations.

I am copying this letter to the Prime Minister, the Lord Privy Seal and other members of HS Committee, to the Minister of Agriculture and the Attorney General, and to Sir Robin Butler.

Yours ever

Kenneth

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

12 July 1991

Dear William,

MAGISTRATES' COURTS

Thank you for your letter of 8 July.

The proposals by the Home Secretary and the Lord Chancellor were considered by HS Committee on Tuesday 9 July and the Committee agreed to recommend that there should be a swift Machinery of Government review of the case for transferring responsibility for the Magistrates' Courts from the Home Office to the Lord Chancellor's Department. I understand that formal advice will now be submitted to the Prime Minister by Sir Robin Butler.

The Home Secretary had proposed an initial announcement of his proposals by Written Answer before the summer recess, to be followed by a White Paper in the autumn. HS Committee agreed that he and the Lord Chancellor should consider what, if anything, could appropriately be announced in the near future, given that the Machinery of Government review would be taking place. The Lord Privy Seal would be grateful if the Home Secretary would circulate his proposals for an announcement, prepared after consultation with the Lord Chancellor, to the Prime Minister and to himself as Chairman of HS, in good time for comment before the date on which it is proposed the announcement should be made.

I am copying this letter to the Private Secretaries to the Home Secretary, the Lord Chancellor and other members of HS Committee and to the Minister of Agriculture and the Attorney General, and to Sonia Phippard.

Yours sincerely,
Gillian Kirton.

GILLIAN KIRTON
Private Secretary

William Chapman Esq

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 July 1991

Dear Gillian,

MAGISTRATES' COURTS

The Prime Minister has now been able to consider the letters of 2 July from the Home Secretary and of 3 July from the Lord Chancellor, respectively, to the Lord Privy Seal.

The Prime Minister does not wish to pre-empt the decision of HS on this delicate issue. He acknowledges that the arguments on responsibility for the Magistrates' Courts are finely balanced. Given the fact that there was much to be said on both sides, the Prime Minister considers that there may be a case for a swift Machinery of Government review, without any prior commitment to change, to remove doubts and to be absolutely sure of the right way forward.

The Prime Minister is, of course, concerned that work on performance measures should not be delayed, whatever decision HS reaches.

I am copying this letter to the Private Secretaries to the Members of HS Committee and to the Minister for Agriculture, the Attorney General and to Sonia Phippard.

Yours sincerely,
William.

(WILLIAM E. CHAPMAN)

Miss Gillian Kirton,
Lord Privy Seal's Office.

Prime Minister ①

I attach the correspondence ~~between~~ from the Lord Chancellor and Home Secretary. You need not read the lengthy report attached to Mr Baker's letter.

Agree the review recommended by Carolyn and the Lord Chancellor?

Content for me to minute out accordingly on Monday?

W.E.C.
5/7.

PRIME MINISTER ①

5th July 1991

MAGISTRATES COURTS

There is a disagreement between James Mackay and Kenneth Baker over responsibility for Magistrates Courts. These currently come under the Home Office, but James Mackay favours a quick machinery of government review on the merits of bringing them under his own Department, so that court administration would be under one Ministry.

The issue comes to HS Committee on Tuesday 9th July. I recommend that you indicate before the meeting that you support James Mackay's arguments for a quick review.

Background

Magistrates Courts are actually run by local magistrates' committees. These have a loose connection with local authorities who supply 80 per cent of the funding.

In 1988-9 the Home Office carried out a scrutiny of the Magistrates Courts. They found an inefficient shambles and recommended that the running of the Courts should be done directly by the Home Office. This would have paralleled the direct responsibility of the Lord Chancellor's Department for running the higher Courts.

Magistrates hated the scrutiny recommendations:

a) because they dislike being under the Home office anyway. They would rather be under the Lord Chancellor's Department because they feel that this would enhance their status as part of the judiciary;

I don't think there is charact this (probably) the advantage is with the Magistrates' Courts going to Ld. Mackay. ~~He~~. But I do not wish to undercut Mr. Baker's point the day before the Committee: no way to treat a senior Minister. If I could have seen him last week about this it would

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... have been different.

So :-

(1) Privately, tell Ld. Waddington our preference

(2) Minute that - altho' I do not want to pre-empt its decision - that there does seem to be a case for a swift review (w/out commitment to change) to remove doubts + be absolutely certain of the right way forward. But this must not hold up work on performance measures.

A gentle minute please.

7.7

b) because they resented the prospect of tighter controls, deliberately confusing administrative efficiency with an attack on their judicial independence.

The Home Office sat on the scrutiny report for nearly two years. Then in April, Kenneth Baker proposed a compromise package of measures which would leave control of the Courts in local hands, but involve a closer grip on performance, including the establishment of a Home Office Inspectorate.

His package is not bad if you accept the premise that it would be too contentious to establish central control of the Magistrates Courts. It is, however, likely to be contentious with some magistrates given their view of the Home Office.

Arguments for Transferring Responsibility to the Lord Chancellor

If we were starting now we would never divide responsibility for the courts in this way. The Citizen's Charter exercise has thrown the disadvantage of the separate arrangements into sharp relief. It is harder to drive two Departments forward in parallel (three with the Attorney General's Office) than one. And although they liaise, liaison breaks down from time to time to the annoyance of judges and magistrates.

A machinery of government review could be conducted in 2-3 months. It need not have the ramifications Kenneth Baker suggests. Nor need it hold up further work on performance measures. This could go ahead because if it were decided to give the Magistrates Courts to the Lord Chancellor, the same measures would need to be pursued by officials anyway.

Conclusion

This is classic Whitehall turf warfare. Moving the Magistrates Courts to the Lord Chancellor's Department would be popular with everyone except the Home Office. For the magistrates, it would sweeten the pill of the tighter controls which are needed for greater efficiency.

Kenneth Baker and his officials have behaved pretty high-handedly over this. James Mackay is not a little irritated. Patrick Mayhew supports him.

So much time has elapsed since the original scrutiny report that it is well worth waiting another few months before making an announcement. This would give time for a quick review.

CAROLYN SINCLAIR

227.cs

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MAGISTRATES' COURTS

Note by the Home Office

INTRODUCTION

The purpose of this paper is to set out in more detail (a) the considerations which led the Home Secretary to make to HS the recommendations in his letter of 16 April and (b) to show the extent to which those proposals provide a quicker, cheaper and more effective way of addressing the inadequacies identified by the 1989 Scrutiny than any of the feasible alternatives.

OBJECTIVES OF CHANGE

2. The Scrutiny made it clear that it was necessary to achieve changes:

(a) which guarantee the judicial independence of magistrates and clerks in a framework of locally delivered justice;

(b) which provide much clearer lines of managerial accountability both locally and with the centre;

(c) which enable the delivery of policies for the administration of the service which ensure the maximum possible co-operation with the rest of the criminal justice system; and

(d) which secure improvements in the efficiency and effectiveness of the service.

INTERIM ACTION

3. Following the Scrutiny report action was put in hand at once on a variety of fronts to deal with those deficiencies which could be tackled - or at least a start made - within the present organisational framework for the service. An implementation

report on this action has been agreed with the Efficiency Unit: a copy of the report is at Annex A.

4. While some progress has been made it was always clear that, as Chapter 10 of the Scrutiny report noted, the scope for substantial improvements was limited by the inadequacies of the present organisational framework.

ORGANISATIONAL OPTIONS

5. Ministers have accordingly examined a number of major organisational options, with a view to meeting the objectives set out above.

6. An analysis of those options is at Annex B: this explains why the Home Secretary concluded that a thoroughgoing reform of the present organisational framework while retaining its local base and magisterial involvement would be better and less disruptive than nationalising the service.

KEY FEATURES OF PREFERRED OPTION

7. Annex C sets out the Home Secretary's 16 April proposals in a form which shows how they will address the Scrutiny findings and meet the required objectives for change.

8. They constitute a mutually reinforcing package of measures. Some involve legislation. Others can be initiated quickly. All build on the work already begun and set out in Annex A. For example, the work of the best practice group, which has already produced guidance on court user groups, the use of court clerk time and fine enforcement management, will be taken over by the proposed inspectorate.

9. While the proposals are radical and challenging,, they will also be less disruptive than other options.

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ANNEX A

MAGISTRATES' COURTS SCRUTINY: INTERIM IMPLEMENTATION REPORT

Annex A.2 lists the recommendations of the Scrutiny report. The following pragraphs are based on this numbering.

Recommendations 1-36, 39, 49, 50, 52

1. These recommendations all relate to the future organisation and management of the service (see Annex C for how it is proposed to address them).

Management training: Recommendations 37, 38

2. Stage 1 of the training and development needs analysis project (covering senior and middle management) was completed in July 1990. The outcome was a report setting out a matrix of required competences and introducing the concept of personal development plans which was launched in June 1990. To help deliver these competences C2 Division has:

a) appointed the Ashridge Consulting Group to run a concentrated practically orientated senior management development programme for 100 staff a year, with the first intake starting in November 1990;

b) contracted with Bristol and Oxford polytechnics to provide 50 places a year on tailored courses leading to the Diploma in Management Studies;

c) asked magistrates' courts committees to form consortia for the employment of regional training and development officers (RTDOs): as at February 1991 12 are in post;

d) provided, with the assistance of the RTDOs 17 management workshops throughout England and Wales (with another 4 planned).

3. Stage 2 of the needs analysis project is being undertaken by the RTDOs: they are on course to complete this by April 1991.

4. It is too soon to relate training undertaken to performance achieved; but the profile of management training within the service has been substantially raised and the action needed to be taken by local management clearly identified. The Ashridge and DMS programmes are to be formally evaluated by C2 Division by October 1991.

IT: Recommendations 40-42, 104

5. The interdepartmental committee for the coordination of computerisation in the criminal justice system has agreed a strategy based on maximising data interchange through system, data and communication standards. The development of a standard magistrates' courts computer system is proceeding in accordance with this strategy. The specification for the system is on course for completion in October 1991 and has been informed by the data volume assessment completed by consultants in October 1990 (Action Plan, paragraph 24). A business case to support the applications software development has been prepared for the 1991 PES. Subject to the outcome a development contract is to be let by January 1992.

Resource approval: recommendation 43

6. The ability of the Home Secretary to withhold grant in respect of unapproved manpower or capital expenditure has been placed beyond doubt through the Local Government and Housing Finance Act 1989.

Charges for police services: recommendations 44, 45

7. Home Office Circular 7/1990 made it clear that grant would not be paid in respect of police charges for executing warrants or summonses or providing court security. Any charges now made in respect of gaolering duties will cease to apply when the provisions of the Criminal Justice Bill relating to the

contracting out of prisoner escort and custody functions are brought into force.

Best practice: recommendation 46

8. A group of court service practitioners was set up in January 1990 under the chairmanship of the Home Office Magistrates' Courts Adviser, to identify and disseminate best practice. It meets monthly. It has produced guidance on court user groups, the best use of court clerk time and fine enforcement, supported by regional seminars. Further guidance on fine enforcement and court listing has been drafted and will be published by April 1991.

9. Best practice suggestions are also disseminated through a newsletter for the service issued every 2 months by C2 Division.

Local reorganisation: recommendation 47

10. The Home Secretary has confirmed 12 orders submitted in 1989 and 1990 by magistrates' courts committees proposing the amalgamation of petty sessional divisions. In addition approval was given in 1989 for the appointment of a single justices' clerk to serve each of the divisions in Northamptonshire. A report showing that this reorganisation resulted in 6% savings on the approved budget after one year of operation was sent to the courts service representative bodies in October 1990.

11. The case for further integration of local management structures is under consideration by Ministers in the context of decisions on the Agency proposals.

Cash limits: recommendation 48

12. As recorded in the Action Plan (paragraph 57) Ministers rejected the recommendation that cash limits on current grant should not be introduced within the present organisational framework. Legislative provision for cash limits is included in

the present Criminal Justice Bill and the scheme is on course for implementation on 1 April 1992.

Listing officers: recommendations 53, 54

13. Best practice guidance covering the role and grading of listing officers has been prepared (see paragraph 8 above) but its publication has been held up pending completion of the review of pre-trial procedures undertaken in 1990 by an Interagency Working Group under LCD chairmanship whose remit, as agreed by Ministers, included listing and timetabling practice.

Adjournments: recommendations 55, 60

14. C2 Division commissioned a video on reducing adjournments: this was introduced to all magistrates' courts committees by the Lord Chancellor at a launch in February 1990 and has since featured in local training undertaken by justices' training officers.

15. Pilot training courses in pro-active court clerking have been undertaken by C2 Division in conjunction with RTDOs: the 1991-92 programme provides for 400 places (30% of all court-takers).

16. Despite these initiatives and Ministerial encouragement to reduce delays through firmer control of adjournments their average number and length continues to increase. The reasons are complex and often depend on factors outside the courts' direct control eg the number of solicitors in all areas undertaking legal aid work or the incidence of community charge default. Under the proposed cash limits arrangements the bulk of grant support will be allocated according to completed caseload, thus providing incentives for the speedier completion of cases and reductions in adjournments. It is also hoped that action flowing from the recommendations of the pre-trial issues working group (see paragraph 13 above) will contribute to reductions in delays occasioned by lack of prosecution preparedness.

Court user groups: recommendations 56-59, 64

17. Best practice guidance was issued in June 1990 encouraging the establishment of court user groups and setting out a model constitution for them. Visits undertaken by the Magistrates' Courts Adviser indicate that groups have either been formed or are in the process of formation.

Costs against defence solicitors: recommendation 61

18. Provision for magistrates' courts to order costs against defence solicitors who unreasonably delay proceedings was made in the Courts and Legal Services Act 1990: it is due to be brought into force in April 1991.

Legal aid: recommendations 62, 63, 65, 89

19. These recommendations are for LCD. Recommendations 62 and 63 are still being considered in discussion with the Legal Aid Board. LCD plan to introduce standard fees for certain magistrates' courts proceedings in October 1991, and are undertaking a workload survey for this purpose. Recommendation 89 has been included in an LCD internal audit study, which is due to report in March 1991.

Pre-trial reviews: recommendation 67

20. Pre-trial reviews are taking place on a trial basis in Leicester, Bradford, Leeds and Teesside magistrates' courts. They are being evaluated by the Home Office Research and Planning Unit. The evaluation will be completed in January 1992. Best practice guidance will provide the vehicle for disseminating any lessons of general application.

Fine enforcement measurement: recommendations 68, 69

21. A set of new fine enforcement performance indicators based on average debtor days, payment terms and days in arrears was introduced into the magistrates' courts Management Information System in October 1990. Guidance on evaluation of performance and

target setting is included in the best practice guidance on fine enforcement published in January 1991.

22. National targets have been set amounting to a 5% improvement in performance as measured by the new indicators by the end of 1991. Performance should also be helped by the proposed cash limits scheme, under which 20% of available grant will be allocated on the basis of the new indicators (or fine accounts closed other than by write-off in the first year of operation).

Unit fines: recommendations 70, 71

23. Provision requiring fines to be assessed in units of disposable income and to be paid within a year is included in the present Criminal Justice Bill.

Fine payment methods: recommendations 72, 73

24. Pilot systems for payment by bank giro and credit card are in operation in several magistrates' courts. These have yet to be evaluated: the target date for evaluation is June 1991.

Variation of fines and payment terms: recommendations 74, 75

25. The Committee reviewing Magistrates' Courts Procedure (to which paragraph 8 of the Action Plan refers) has recommended that the power to vary payment terms should be delegated. Subject to Ministerial approval the necessary changes to statutory rules will be made by November 1991 (as part of a package of rule changes). The committee does not support recommendation 75 which would in any event require primary legislation, and subject to Ministerial approval no further action is to be taken. They considered that the Scrutiny recommendation was too wide; however, agreed that a court should have power to remit all or part of a fine if the defendant's circumstances had changed or if he had been found guilty in absence and no statement of means had been available (this will now be overtaken by the arrangements for Unit Fines).

Bail warrants: recommendation 83

26. This recommendation has been endorsed by the relevant sub-group of the Procedure Committee. Subject to the committee's views and Ministers' endorsement it will be put forward for legislation when the opportunity arises.

Fine enforcement: recommendations 76-80, 85

27. Guidance on techniques and on the appointment and supervision of bailiffs has been prepared by the best practice group and is to be published in March 1991. Courts have been encouraged to make greater use of bailiffs, especially in connection with road traffic fines, since 1989. That use has not been centrally monitored, but their performance will be reflected in MIS key indicator 3. The initial reaction of the Committee reviewing Magistrates' Courts Procedure was to doubt the efficacy of the Scrutiny view on the use of summonses as part of the enforcement process and on the use of distress or arrest warrants following a reminder. These suggestions will be kept under review, however, in the light of experience of the provisions of the Criminal Justice Bill dealing with unit fines and the attachment of income support - which it is hoped will have a significant impact on problems of fine enforcement.

Fine enforcement officers: recommendations 81, 82, 92

28. Since 1989 new fine enforcement posts have been approved, and all applications to convert police into court posts have been answered within the 2 month target set in the Action Plan. Their performance has been monitored and the results fed back to all justices' clerks. The median cost/recovery ratio is £0.57 per £1 recovered, the best performance being £0.11 per £1 recovered.

Attachment of earnings: recommendation 84

29. The administration charge has been reviewed interdepartmentally and the Lord Chancellor is shortly to invite

colleagues to agree that he should increase it to £1 per transaction.

Attachment of benefit: recommendation 86

30. Provision for the attachment of benefit to pay outstanding fines is included in the present Criminal Justice Bill.

Write off: recommendation 87

31. The Treasury have agreed that justices' clerks should have authority to write off fines up to £100 with effect from April 1991.

Maintenance default: recommendation 88

32. Provision for blanket authority to be assigned is included in the present Maintenance Enforcement Bill.

Prisoner custody: recommendation 90

33. Provision for contracting out of prisoner custody and court escort services is included in the present Criminal Justice Bill.

Court security: recommendation 91

34. Home Office Circular 8/1990 confirmed that the police should not be responsible for security on a routine basis and set out guidelines for local discussions between magistrates' courts and police forces about police presence at courts. Provision for the appointment of court security officers employed by or on behalf of courts committees and for their powers and protections is included in the present Criminal Justice Bill.

Fees: recommendation 93

35. New levels of fees for civil business to reflect the current costs of providing the services concerned were discussed with representative bodies during 1990. Revised proposals for uprating

after more extensive consultation are to be put to Ministers this month.

Initiation of process: recommendation 94

36. The Committee reviewing Magistrates' Courts Procedure has endorsed this recommendation and its view was reported to Ministers in December 1990. It will be proposed for legislation when the opportunity arises.

Committals: recommendation 95

37. Responses to the interdepartmental consultation paper setting out options for reforming the committal procedures were inconclusive. The results were reported to Ministers in October 1990, who agreed that further work should be done to examine options with CPS and LCD in the light of new statistical information. The revised target date for putting firm proposals to Ministers is May 1991: any change would however require legislation.

Management Information System (MIS): recommendations 96-98

38. MIS is being maintained on the basis a) that it provides a tool for local management for which there is no substitute in prospect and b) that it is a necessary element of a successful cash limits scheme. A 4th key indicator, reflecting quality of service, has been incorporated in MIS from January 1991 with the full agreement of the service, and will be the basis for allocating 5% of current grant.

39. Follow-up questionnaires have been discontinued since 1989.

PES: recommendation 99

40. Since 1989 courts committees have been asked to assess their needs within the rolling 3 year PES horizon; and a sample of budgets has been scrutinised in detail to check pay and other inflation factors. The results have been of little practical use:

courts committees are not at present well-equipped to undertake planning functions and in any event there is substantial local variation in need and efficiency. Further work is not judged to be useful pending the implementation of cash limits and Ministerial decisions on the main organisational options, which all involve some degree of change to present resource management and planning functions. In the meantime every effort will be made to estimate as accurately as possible pay and other price movements in both revenue and capital expenditure.

Pay: recommendations 100, 101

41. Since 1989, national pay agreements have incorporated substantial new flexibility for court clerks and related grades to take account of local labour market conditions. Court clerk vacancies have been reduced from 11.2% in 1989 to 7.6% at the end of 1990.

Court clerk diploma: recommendation 102

42. The Home Secretary announced in November 1989 his conclusion that the diploma in magisterial law would remain a sufficient qualification for court clerks. At the same time the diploma course has been strengthened to include a practical skills element and entrance qualifications have been raised.

Court clerk hours: recommendation 103

43. Quantified targets are included in the best practice guidance issued in September 1990. No machinery exists for systematic evaluation of compliance but the results should be reflected in the first and second MIS key indicators.

Requiring no further action: recommendations 51, 66

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SCRUTINY OF MAGISTRATES' COURTS REPORT

SUMMARY OF RECOMMENDATIONS

VOLUME 1

Chapter 7 - What is required

1. (para 7.6) Courts need to be efficiently run if they are to dispense justice summarily. Any management arrangement should seek to ensure that the courts are helped to perform their functions as effectively and efficiently as possible.

2. (para 7.8) Professional management of the delivery of legal advice within a larger unit than a clerkship is a proper objective for a new management structure.

3. (para 7.10) It is essential that any move to more direct management control of the court service by Government is accompanied by a clear and formal distinction between functions relating to the administration of the courts and to the exercise of the judicial function of magistrates.

4. (para 7.11) The powers of justices' clerks under the Justices' Clerks' Rules 1970 need to be redefined as essentially administrative, with a realistic statement of the level at which they are to be exercised.

5. (para 7.13) The decision on management and funding arrangements should be based on what seems likely to produce the most effective and efficient service to support the delivery of justice in local courts by benches composed of local lay people.

6. (para 7.14) The present split in the funding arrangements should end.

7. (para 7.15) Magistrates' involvement in management should end.

8. (para 7.18 and 7.22) The service must become explicitly a national one, funded entirely by Government.

9. (para 7.18) Within any national structure management and control of resources should be located locally so far as possible.

10. (para 7.19) Individual benches should continue to have someone to whom they can turn locally as an authorative source of legal advice.

11. (para 7.19) The local manager will need to take into account the convenience and wishes of magistrates, as unpaid volunteers, and serve as a contact point whom they can approach about their domestic needs.

12. (para 7.20) There is a need for a local court manager, responsible for the totality of court and office business and accountable within a larger organisation for both performance and costs.

Chapter 8 - Options for a national structure

13. (para 8.13) Neither direct management by a Government Department on the traditional Whitehall model, nor status as a NDPB would wholly meet the requirements for a new management structure. However, the executive agency approach now being introduced into Government is capable of meeting those requirements.

Chapter 9 - A magistrates' courts agency

14. (para 9.2) The role of the Agency headquarters should be to develop detailed management policies as required in the framework agreement; and then implement them through an annual management plan in turn drawn up in consultation with the management of each area. The execution of policy should be essentially a matter for management at area level.

15. (para 9.2) The service should be based on roughly 30 areas, themselves based on the old metropolitan counties and groupings of two to four shires.

16. (para 9.2) Area management should agree an annual management plan with headquarters and with managers at court levels .

17. (para 9.2) Day to day management of courts should rest with court managers at roughly the same level as current medium to large size clerkships.

18. (para 9.3) The Agency should have a Director-General and management board appointed by the Home Secretary and accountable to him.

19. (para 9.3) The national framework agreement and the Director-General's annual report should be published and laid before Parliament.

20. (para 9.5) Guidance on judicial policy should issue from the Home Office and the Agency should be prohibited from issuing such guidance.

21. (para 9.5) A consultative committee with representatives of the agency (including court managers) and of the magistracy should be established for the Criminal Justice Department of the Home Office to consult on proposed changes in the law.

22. (para 9.6) A national framework agreement should set out clear overall objectives and priorities for the service, approved by the Home Secretary.

23. (para 9.7) Policy statements should be drawn up on matters such as pay, conditions of service, grading, personnel management, training, application of information technology, development of financial and management information systems, budgetary delegation and building standards.

24. (para 9.8) An initial framework agreement should set broad objectives in such areas and the agency itself should draft detailed policy statements which, when agreed by the Home Office, would then be published.

25. (para 9.8) The nucleus of the agency would need to be established some considerable while before it assumes direct management responsibility.

26. (para 9.9) The framework agreement should set out the resources to be provided and how they are to be managed and controlled.

27. (para 9.9) Area managers should have maximum freedom to achieve the best results within the terms of the local management plan, including the cash limit. They should be free to:

a) match pay to local and professional conditions;

b) recruit staff (within the cash limits);

c) (within the area's cash limits) acquire and manage their own resources for information technology and buildings within the terms of national policy statements;

d) delegate management responsibilities to court managers, again within the terms of the national policy statement.

28. (para 9.10) The agreement should set out each year the objectives and targets for the year; initially, there will need to be expressed both in terms of a national average and a range in variation.

29. (para 9.16) Two magistrates in the area should be appointed by the agency headquarters on the recommendations of the area chief executive as non-executive members of the area management board.

30. (para 9.18) The area chief executive need not become involved in day to day management of courts and should have no locus in individual cases.

31. (para 9.23) The court manager must be a qualified lawyer.

32. (para 9.24) Appointments to the post of court manager should be made on the basis of aptitude for management and on appointment he or she should undergo an intensive programme of training on various aspects of management.

33. (para 9.24) Appointment of court managers should be made by area chief exectives with advice from their heads of legal services; there may be a case for a magistrate sitting on the appointment board.

34. (para 9.25) The process of grouping of clerkships should be accelerated, so that in all but the larger urban courts, a court manager would be responsible for a number of benches.

35. (para 9.27) It would not be helpful to lay down a blueprint for the staff structure within courts, but there principles need to be established.

a) the service will be wholly integrated with the ending of the semi-autonomous status of clerkships;

b) an entirely new grading structure is required;

c) there must be a much sharper distinction between the work of court clerks and administrative staff;

d) the calibre and training of administrative staff, particularly senior ones, must be improved;

e) the Agency must attach high priority to the development and implementation of a statement of personnel management policy.

Chapter 10 - Interim recommendations

36. (10.4) The Chief Executive designate and his team shculd be appointed as soon as possible to carry forward preparatory work for the establishment of the Agency, leaving C2 Division of the Home Office to deal with the existing system.

37. (para 10.5a) The assessment of training needs now in progress should be completed as soon as possible.

38. (para 10.5a) A programme of courses of shorter, more practically orientated and less academic training in management and value for money should be developed. Larger urban clerkships are a priority.

39. (para 10.5b) We caution against any significant increase in the size and complexity of the Management Information System. Instead an outline of the financial and management information systems that area managers will need should be developed.

40. (para 10.5c) Present plans to develop a common information technology strategy should be carried forward as soon as possible.

41. (para 10.5c) Greater emphasis should be given to making fuller use of existing systems and data interchange with the police and other agencies.

42. (para 10.5c) Consideration should be given to systems analysis of workflows in magistrates' courts offices.

43. (para 10.5d) The earliest legislative opportunity should be taken to put beyond doubt the Home Office's powers to exercise detailed controls on resource approvals through the sanction of withholding payment of grant.

44. (para 10.5e) The legal uncertainty regarding local charges for police services to magistrates' courts should be resolved as soon as possible.

45. (para (10.5e) Police charges should only be incurred where a clear statement of the standard of performance to be delivered, including productivity assumptions is agreed with the magistrates' courts committee.

46. (para 10.5f) A 'best practice' branch should be established which would inform the development of policy and spread "best practice" perhaps through a Home Office newsletter or seminars on particular subjects. Fine enforcement and management of court business merit early attention.

47. (para 10.5g) The Home Office should approve local proposals for more integrated local structures.

48. (para 10.7) Cash limiting within the present legislative structure would not promote better value for money and would be likely to further confuse management responsibilities.

49. (para 10.8) The improvements in the short term should focus on steps preparatory on the setting up of the agency and matters under direct Government control.

Chapter 11 - Costs

50. (para 11.9) The Home Office should set up a study as soon as possible under a project manager, possibly using outside consultants, to report on direct ocsts and savings arising from the establishment of an Agency.

VOLUME TWO

Chapter 1 - Delays: the efficient management of court business

51. (para 1.4) Before further criminal justice policy initiatives are introduced there should be an assessment of the effect on delay in the magistrates' courts.

52. (para 1.21) The court manager should be responsible for managing court business, setting targets for different aspects of court management and reviewing performance through the year, consulting closely with the magistracy.

53. (para 1.23) The court listing officer must become a more positive figure, exercising firm control over all aspects of the listing process, especially over first appearance dates and liaising with parties in contested trials to check readiness to proceed.

54. (para 1.23) The power held by justices' clerks to adjourn cases out of court which have been before the court and where both parties agree should be delegated to the listing officer. Listing officers will need strong but tactful personalties, be given suitable training and have clear management accountability to the head of administration, with ready access to and backing from the justices' clerk when need be.

55. (para 1.24) The Home Office and Lord Chancellor's Department should ensure that effective training is available for magistrates in dealing with requests for adjournments.

56. (para 1.25) Each justices' clerk should establish a court user committee if one does not exist already and it should meet at least quarterly.

57. (paras 1.26 & 1.27) The court user group should draw up a code of standards by which to judge the progress of cases, which should be available to the bench and the public.

58. (para 1.28) The court user groups should serve as a forum to discuss wider issues of interest to users and develop awareness of each others' costs.

59. (para 1.29) Where a court makes a formal complaint about the conduct of a case to a statutory service, the local management of that service should investigate and send a formal reply to the court.

60. Courts should be more willing to use existing powers to refuse adjournments, insist that cases go ahead or dismiss cases for want of prosecution. They should be unwilling to issue summonses where cases have been reinstated unless it is clearly in the interests of justice to do so.

61. (para 1.29) The law should be changed to enable orders for cost to be made against defence solicitors who unreasonably delay proceedings.

62. (para 1.29) The Legal Aid Board should issue clear instructions to local offices that they should take account of representations from magistrates' courts about poor performance and give reasons to courts if they do not reduce the sum payable to a defence solicitor.

63. (para 1.29) Identifying numbers should be introduced on forms notifying the grant of legal aid so that they can be linked with subsequent bills.

64. (para 1.30) Justices' clerks should be required to make an annual report on performance against local standards and the use of sanctions as well as wider interdependence issues.

65. (para 1.31) The Lord Chancellor's Department should consider the introduction of fixed fees in magistrates' courts or to consider a system which paid less for appearing when a case was adjourned.

66. (para 1.32) Courts should make it clear that late guilty pleas will attract a lesser discount on sentence.

67. (para 1.34) It is worth evaluating "live" pre-trial reviews in selected areas, including those which are already planning to introduce them.

Chapter 2 - Fine Enforcement

68. (para 2.16) Justices' clerks should set clear targets for enforcement and back these up with management information systems which enable them to identify the most effective methods of enforcement.

69. (para 2.17) The Home Office should adopt a scheme for measuring the effectiveness of fine enforcement which shows average debtor days, average payment terms and average days in arrears.

70. (para 7.19) The Home Office should carefully evaluate current experiments in setting fines as expressed as units of a weeks disposable income.

71. (para 2.20) There should be a statutory provision that in magistrates' courts fines should be payable within 12 months unless there are exceptional circumstances.

72. (para 2.71) Discussions should be opened with the Post Office on payment of fines through National Giro.

73. (para 2.21) An experiment should be mounted at one court into the use of credit cards to pay fines and the costs and benefits of such a scheme carefully analysed.

74. (para 2.22) Justices' clerks should be given the power to delegate authority to vary payment terms where defendants can provide proof that they need more time to pay.

75. (para 2.23) The court should have power to reduce a fine which is too high in relation to a defendant's means.

76. (para 2.24) Summonses should no longer be used as part of the enforcement process.

77. (para 2.25) After the issue of a strongly worded reminder 14 days after the issue of the fine notice, the next stage should be the issue of a distress or arrest warrant.

78. (para 2.78) Courts should make much greater use of bailiffs in future.

79. (para 2.26) Courts should appoint bailiffs to act for them after a formal tendering process with a fixed period contract.

80. (para 2.26) Courts should use bailiffs to execute bail warrants where it proved impossible to levy distress, provided that a satisfactory charge is negotiated.

81. (para 2.27) The process for approving applications for additional civilian enforcement officer posts should be made more speedy.

82. (para 2.27) Courts should make more use of CEOs who should be employed by them.

83. (para 2.29) The power to issue warrants backed for bail should be delegated to justices' clerks.

84. (para 2.31) The administration charge payable to the employer for attachment of earnings orders should be reviewed and increased to reflect the true cost.

85. (para 2.31) Courts should be willing to make attachment of earnings orders even without the defendant's consent.

86. (para 7.32) Provision should be made for the attachment of benefit unless the practical objections are overwhelming.

87. (para 2.33) Authority should be delegated to courts to write off fines. The Home Office should pursue this.

88. (para 2.34) Courts should adopt the practice of obtaining annual blanket authority to begin enforcement against a maintenance defaulter.

89. (para 2.35) The Lord Chancellor's Department should gather and assess information on the total level of legal aid contribution orders made and the amount and length of time outstanding.

Chapter 3 - The Police Role (Civilianisation)

90. (para 3.6) Although special skills are required we do not believe that police officers must be used to hold prisoners in custody at magistrates' courts; we understand that legislation will be required to clarify the powers of civilians who are dealing with prisoners.

91. (para 3.7) The police should not be responsible for court security on a routine basis. Courts should employ staff to maintain order, perhaps using contractors.

92. (para 3.9) Fine enforcement warrants should normally be executed by civilian enforcement officers employed by the courts, which can monitor their performance.

Chapter 4 - Other value for money issues

93. (para 4.3) Where the courts provide a service they should charge economic fees to cover the full cost involved. Fees should be increased accordingly, and reviewed regularly thereafter.

94. (para 4.6) The Home Office should consider whether the present system for bringing persons facing criminal charges before the courts should be retained.

95. (para 4.7) The home Office should consider the value of paper committals, and whether full committals

are the most efficient and effective procedure to enable magistrates to decide whether to commit defendants for trial.

ANNEX E

96. (para 20) The existing Management Information System should be maintained but caution should be exercised in making resource decisions on the basis of the indicator of costs per case, or other indicators which rely on the attribution of staff time to specific functions.

97. Caution should also be exercised in any further expansion of the MIS apart from specific improvements such as one refinement of the measure of fine enforcement.

98. The proposal for a fourth group of indicators should not be proceeded with and C2 Division shoud reassess the need for some of the present action on MIS, such as the follow up questionnaires.

ANNEX D

99. (para 13) The accuracy of the PES process could be improved by improving forecasts of inflation, pay movements and capital spending.

ANNEX G

100. (para 12) It is essential that the magistrates' courts service does not artifically inhibit its ability to pay deputies and some senior administrative staff the market rate in smaller clerkships.

101. (para 14) Management needs to ensure not only that pay rates for court clerks are competitive, but also that other conditions of service are improved.

102. (para 21) It is essential that a firm view is taken as to whether the diploma in magisterial law is adequate for a court clerk; whatever decision is taken must be adhered to for the foreseeable future.

103. (para 26) The Agency should set targets for the number of hours to be spent in court by court clerks.

ANNEX I - INFORMATION TECHNOLOGY

104. (para 8) The efficient exchange of information between criminal justice agencies is essential for the effective running of the system as a whole and a statement of objectives and priorities for inter agency co-operation should be carried forward.

August 1989

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ANNEX B

ORGANISATIONAL OPTIONS

There are four main options, disregarding the status quo.

(a) A national service: (i) Next Steps Agency

1. The Scrutiny's key recommendation was that the magistrates' courts should be reconstituted as a national service entirely funded by Government and accountable for its performance (except in respect of judicial decisions) to the Home Secretary. The recommended model was a Next Steps executive agency (to keep the service at arms' length from Government). The Scrutiny report envisaged 31 operational areas (coterminous with CPS areas). The scrutiny acknowledged that in the time available it had not been able to cost the proposals adequately. This gap was filled by a special costing study by Coopers and Lybrand Deloitte. All the changes would require primary legislation which would be detailed, lengthy and highly contentious.

(b) A national service: (ii) NDPB (Non-Departmental Public Body)

2. The Scrutiny report identified as a possible option the reorganisation of the service substantially as proposed above but under the direction of an NDPB, as opposed to a Director-General, but argued against it on the grounds that it would provide no greater freedom to manage resources efficiently than an Agency while creating a risk that the service could develop policies at variance with those of the Home Secretary and the Lord Chancellor. However, because it is a variant which would be received by many magistrates with less hostility than the preferred Scrutiny model, Ministers declined to rule it out from consideration.

(c) Local NDPBs

3. Ministers decided last year that Coopers and Lybrand Deloitte should be asked to cost not only the preferred Scrutiny model but an alternative model, based on 31 separate management units which, while funded 100 per cent by central government,

would be independently managed by local boards. Each board would have a much reduced magisterial representation in comparison with the present magistrates' courts committees, and - in contrast to courts committees at present and in line with the thrust of the scrutiny - a full time executive team. Under this model the boards would not have a direct line of accountability to the Home Secretary. They would in effect constitute a network of local NDPBs. The Home Secretary would have an Inspectorate to review their activities and performance.

(d) Improvements within the existing framework

4. Careful examination was made of a package of measures (viz that annexed to the Home Secretary's letter of 16 April) by which progress could be made towards achieving the objectives set out in paragraph 2 of the paper without abolishing the present courts committees or relying - at least initially - on legislation. The most substantial of the measures (ie the creation of an Inspectorate) could be implemented without legislation. Although the package would in fact change the service in major ways, it was capable of being presented as a development of the present statutory organisational framework rather than as a clean break with the past.

ASSESSMENT OF OPTIONS

(a) A national service: (i) Next Steps Agency

5. Assuming Parliament could be persuaded to endorse it, and viewed solely in management and efficiency terms, this option would meet the objectives set out in paragraph 2 above, in the medium and long term. But that does not exhaust the considerations which fall to be weighed.

6. The Scrutiny report envisaged a high degree of management delegation to 31 areas. It would be possible to reduce this number. Indeed Coopers and Lybrand Deloitte indicated their view that, although asked to cost the 31 area model recommended by the Scrutiny team, an Agency could be managed satisfactorily with half this number. The pros and cons of doing so are discussed

below. In neither case would there be any unavoidable impact on judicial boundaries, so an Agency structure could therefore continue to accommodate the local character of the service at the basic court level.

7. An Agency would, however, clearly have less local magisterial input in decision-making than exists at present - the main reason for magisterial opposition to the Scrutiny proposals, which envisaged little more than a token consultative role at bench, area and national levels. Whilst providing for some formal consultative machinery (for example to ensure that benches had a say in the selection of their clerks) would be possible, it would not, however, meet the fundamental concern of magistrates that they would lose the power to decide how their courts should be run. Furthermore, the fewer operational areas into which the service was organised the more remote magistrates would feel from the decision-making process.

8. Under an Agency model local authorities would cease to have any part to play in the management of the service, and such downward pressure on costs as they now exert in various parts of the country would have to be applied in other ways.

9. The costs of creating a uniform national service would be substantial. Coopers and Lybrand Deloitte estimated a need for a headquarters staff of nearly 100 and for about 20 staff in each area office. Their assessment was that the net additional cost of the national agency model with 31 area offices would be some £15m per annum (at 1989 prices), after assuming savings in local authority and other support costs of nearly £10m, and the start up costs would be in the region of £30m spread ie a net additional cost of £100m (at 1989 prices) over the first 5 years. With only 15 area offices the net additional running costs would be about £10m a year. These costs are obviously substantial on any reckoning, but it is also relevant that the costs of the service as at present provided are not static. The consultants found that - on average - local authorities are understating for grant purposes the costs of the support services they provide for courts committees. If they charged at higher levels before the introduction of cash limits, then the offsetting savings might

be increased by perhaps about £2m-£3m a year. There are no means of controlling such charges.

10. The timescale for creating a national service would be extended. Legislation would be needed. Additional provision would also have to be secured in PES to undertake the necessary preparatory work. A 2 year lead time would be needed for an Agency to be fully operational. Under the most favourable conditions (ie legislation in the 1992-93 Session and a successful late bid in the 1991 PES) the earliest start date would be in 1994-95: a more realistic target data would be the 1995-6 financial year.

11. The necessary legislation would also be controversial. There are clear indications that the magistracy would heavily lobby Members of Parliament against Agency proposals. The experience of the CPS has, rightly or wrongly, led to a deep suspicion about the consequences of nationalising locally run services (and about the accuracy of cost estimating).

12. The Agency option would therefore be difficult to implement and would carry high political risks. Costs could turn out to be higher than estimated, even though current estimates are substantially higher than those included in the Scrutiny report. There is also a real risk of short term disruption whose lasting effects would be difficult to calculate, even though a new Agency would give the service a better ability to deliver national policies, and to link effectively with the rest of the system.

13. A cheaper and perhaps more cost-effective configuration would obviously involve 15 rather than 31 operational areas. There are two substantial difficulties. First, this would heighten anxieties about the dilution of local justice and the creation of remote and inscrutable local bureaucracies. Second, the benefits of having areas coterminous with CPS areas and roughly coterminous with police and probation areas would be foregone. The price to be paid for avoiding these real difficulties would be about £5m a year.

(b) A national structure: (ii) NDPB

14. In terms of decentralisation, local authority involvement and timescale there is little in practice between this option and an Agency structure. Costs too are likely to be similar except that an Inspectorate to advise the Home Secretary would be necessary, adding about £1m a year overall. The main advantage of an NDPB is that it would be more acceptable to the magistracy, especially if magistrates were guaranteed substantial (though not necessarily a majority) representation on the executive board. The operation of the service would be seen as remaining clearly at arms' length from government, and there would be an uncomplicated, single accountability for all its aspects.

15. Against this it would be unclear in practice how far an NDPB could be relied upon to meet the objectives set out in paragraph 2 of the main paper. Once the members of the board had been appointed by Ministers they could, as the Scrutiny team argued, develop their own approach to the operation of the service. Indeed this would be their raison d'etre. It follows that the scope for public arguments about adequacy of funding could be substantial if the board's view of what was achievable over what timescale differed from that of the Government. In practice, the Government's ability to influence the performance of the service might be limited, even with an Inspectorate, to the relatively blunt tools of funding changes and decisions on appointment or reappointment of board members. It would be far more difficult to ensure adequate value for money and accountability for the substantial resources being provided.

(c) Local NDPBs

16. This option would include a substantial strengthening of management at local level but it would by definition be less centralised than either of those considered above: there would be no machinery for the coordination of the area boards other than within the Home Office itself in terms of resource allocation and performance review.

17. There would also be more scope for local magisterial input than under an Agency model, in the sense that some members of each area board would be magistrates representing the interests of their colleagues (even if not representing individual benches) whereas in an Agency structure their input could be no more than consultative.

18. Local authority input would, however, be no greater: the area boards would be 100% funded by central government and local authorities' involvement in the operation of the service would be confined to the provision of support services on a contracted-out basis where this was the most cost-effective arrangement in local circumstances.

19. The costs of this option were estimated by Coopers and Lybrand Deloitte as about £18m a year (at 1989 prices, net of direct offsetting savings) ie £3m more than a 31 area Agency structure. Start up costs would also be about £30m over 5 years.

20. The consultants also concluded that a series of area boards would be less likely than an Agency to deliver the required efficiency gains to make this level of investment justified. This is partly because there would be natural pressures for the areas to diverge, for which the absence of central management machinery would make it harder to correct. The Government would have to rely on the appointment of board members, the work of an Inspectorate and on the allocation of grant based on output measures. There would also be less scope for the transfer of resources in-year across area boundaries to deal with operational problems.

21. The timescale for this option would be no shorter than for the establishment of an Agency. Legislation would be needed, and the same preparatory planning effort would be needed.

22. Although the local board model was developed with more than an eye to magisterial opinion, there is little evidence, following consultation, that it would be regarded by magistrates as more acceptable than the Agency proposals. Their concerns about the cost of change and loss of control over the management

of courts would remain. The necessary legislation would therefore still be controversial.

23. It follows that this option would be no easier to implement than the Agency proposals. And it would less successfully meet the stated objectives. In particular it would not constitute a service able to speak to other criminal justice agencies with a single voice and to deliver commitments agreed at national level.

(d) Development within the existing framework

24. Annex C sets out this option in a form which shows how the proposals address the Scrutiny findings. This option would be more decentralised than any other considered and, through the retention of courts committees, would provide for more magisterial input in the management of the service. For these reasons it would be more acceptable to the majority of magistrates - although for some the extent of the proposed changes, particularly on the composition and structure of committees would come as a surprise and a salutary reminder that this is emphatically not a "do nothing" option. Above all, it has to be remembered that the impending introduction of cash limits will produce a substantial engine of change upon which this option would capitalise and also significantly reinforce.

25. The costs of this package would be about £4.2m a year, of which about a quarter would be central government expenditure. The main costs would be:

i) an Inspectorate (£1.3m from 1992-93 at current prices);

ii) administrative back-up for courts committees. Many are at present clerked on a spare-time basis by justices' clerks with little more than secretarial support. We estimate a need for 2 additional members of staff per committee, at a cost of £3m a year from 1992-93; and

iii) consultancy and other costs arising from the amalgamation of courts committees. It is not possible to

enforce amalgamations without legislation which could not realistically be in place before 1993-94. Provided that amalgamations were staged (2 groups a year over 5 years) we could manage the programme within planned Home Office staff resources but there would be a need for £0.1m-£0.2m by way of consultancy support for the committees concerned.

26. Efficiency savings of 1.5% would be needed to offset these costs. This is a realistic target which ought to be within reach, although the main tools available to the Home Secretary - an Inspectorate, a requirement on committees to produce strategic plans and performance reports, appointment of committee chairmen and default powers - are untested in the courts context. We have no doubt that, allied to cash limits, improvements in efficiency and effectiveness could be better influenced and promoted than under the present arrangements. It would be cheaper than the Agency model precisely because there would be less management input, operating through a variety of local management structures.

27. Provided that the financial and legislative resources necessary for the Annex A package were secured, and attempts to dilute it fended off, it should be relatively straightforward to implement over the next 3-5 years, with low risks of failure.

CONCLUSION

28. There are four major problems with the Agency option at the present state of the service's development, although it would be clearly the right option if we were starting from scratch, since it would deliver all the stated objectives. First, the start up costs are substantial. (Moreover, however realistic they may appear at the time, there are always risks of cost escalation). Second, magisterial opposition would be very strong and could be fatal if sustained and effectively mobilised in Parliament. Third, it would take at least 3 years (and require legislation) to convert the present structure into a single national service. Interim structural changes eg to the composition of courts committees would not be practicable. But early action of this kind is necessary now because the introduction of cash limits

from April 1992 will apply severe pressures on the service which it is not well-equipped to handle in its present form (as the Scrutiny report emphasised). Fourth, nationalisation would be strongly disruptive of the service, in terms of work and staff turnover (some would leave). Experience of change elsewhere in the criminal justice system, especially the creation of the CPS, suggests that this could have unforeseen knock-on effects.

29. The NDPB and mini NDPB options would not avoid the costs or the political risks of the Agency option but be less certain to deliver all the goals sought. The remaining - and recommended - option would be the cheapest; implementation could commence straightaway; and because it runs the smallest political risks it would in practice be the most likely to achieve the changes desired. It would meet the stated objectives and would enable the service to respond to the challenges which the introduction of cash limits from April 1992 will impose. Cash limits have the potential to provide powerful new incentives to improved management. But on their own, and without <u>early</u> measures to improve local management and organisation, there is a risk that they will generate local budgetary crises, service failures and appeals to the government to bale courts out. Moreover, the development of the service in the manner proposed, if not in the event sufficient to deliver all that is required, would achieve sufficient improvements to make further changes in due course less difficult.

ak.5/magcrts.ppr

Issue	Aim	Objectives over next 18 months	Objectives for following period assuming legislation 92/93)
1. **NATIONAL LEVEL: FRAMEWORK FOR SERVICE** Lack of: a) clear accountability for central government expenditure; b) national policy framework for service	To strengthen: a) accountability to Home Secretary and public by magistrates' courts committees; b) powers for Home Secretary to control expenditure, enforce performance standards and promote inter-agency coordination NB while maintaining independence of judicial decision-making **Success to be measured by:** ° Management audit (Inspectorate and Audit Commission) ° Correspondence of outturn and planned service expenditure ° Reports from inter-agency liaison groups ° Completion rate for annual reports/plans (100% compliance 12/93)	1. Introduce cash limits on current grant from April 1992, using performance-related allocation formula (ongoing). 2. Establish magistrates' courts Inspectorate, drawing on Audit Commission advice (start recruitment 1/92; operational 10/92; first reports 3/93). 3. Secure participation of service in regional/national liaison machinery for criminal/family proceedings (Home Office circular 1/92). 4. Ask courts committees to prepare annual performance reports (50% compliance 10/92; 75% compliance 3/93). 5. Set performance targets to be reflected in annual strategic plans to be prepared by each committee (see also section 2).	6. Place Inspectorate on statutory basis (7/93; dependent on objective 2). 7. Extend Audit Commission remit to magistrates' courts service (7/93) and agree commission/ Inspectorate collaboration (12/93). 8. Establish power to make grant conditional on Inspectorate efficiency assessment (7/93; dependent on objectives 2, 6). 9. Establish direct default powers over local service for Home Secretary in case of inefficiency or policy divergence; prepare criteria for use of powers (7/93). 10. Place on statutory basis requirement on committees to prepare annual report and to report to Home Secretary on any specific matter on

ANNEX C

Overall review and assessment

- ° Interim progress assessment when need to seek colleagues' agreement to legislative proposals (by 7/92)
- ° Interim progress assessment before new statutory powers brought into effect (12/93)
- ° Full review of progress after Inspectorate is operational in either 1994 or 1995 depending on progress up to 1994

- consultation on core requirements completed 6/92; guidance issued 10/92
- 75% compliance 3/93
- plans to target Management Information System key performance indicators; courthouse and court office stock and future requirements; manpower needs

6. More timely MIS data collection (eg data available this year to reflect performance during first 6 months of this year)

request (7/93; 100% compliance 12/93).

11. Place strategic planning requirement on statutory basis (7/93; dependent on objective 5; 100% compliance 12/93).

12. Inspectorate to review annual reports and plans (20% of committees by 3/93; 100% by 6/94; dependent on objectives 2, 5, 6).

Issue

2. AREA LEVEL: MANAGEMENT AND STRUCTURE

Fragmentation of service into 105 areas; lack of definition of management role of courts committees; inadequate management systems and skills; lack of management support

Aim

To equip courts committees to undertake effective management and secure VFM at area level

Success to be measured by:

- Magistrates' courts Management Information System key indicators for delay, unit cost, fine enforcement effectiveness and quality of service. Home Office to set challenging targets (both vfm and quality of service) in which process Treasury will be involved with the aim of
  - firm targets for 92/93 by 12/91
  - firm targets for 93/94 by 12/92, which will also serve to clarify inspectorate's initial priorities

Objectives over next 18 months

1. Issue guidelines on courts' committees' management role, relationship with benches, criteria for election (start consultations 11/91; issue guidance 6/92).

2. S.I. to reduce committee size (6/92).

3. Provide resources for full-time management support for committees (3/92, dependent on 91 PES).

4. Committees to prepare annual reports and plans (as in section 1)

5. Prepare new management structure for Inner London (start consultations 10/91; Ministerial decisions 6/92).

6. Encourage MCCs to introduce arangements where single clerk is chief executive/ senior legal officer to MCC (65 committes to have this structure 1/93).

Objectives for following period (assuming legislation 92/93)

9. Establish guidelines on role etc on statutory basis (7/93; dependent on objective 1).

10. Extend committee membership beyond magistrates (7/93; appointments 1/94).

11. Take power for Home Secretary to approve chairmen and prescribe non-magistrate membership (7/93; appointments 1/94).

12. Take power to compel combination of committee areas, reducing number by up to 50% (power available 7/93; thereafter 2 sets of combinations a year till 97).

13. Implement Inner London structure plan (3/94, dependent on objective 5).

14. Take power to control number of clerkships (7/93; reduce number below 150 7/94).

° Service performance targets (currently agreed)

- improvement in court enforcement officers' cost/ recovery ratio (91/92 target: 5%)
- reduction in average number of adjournments per indictable case (91/92 target: 0.1)
- real unit costs per case (91/92 target: no increase)
- reduction in variation between key indicator results (1992 target to be set 12/91)

7. Reduce number of separate benches through amalgamations (SIs for 20 schemes made by 1/93).

8. Encourage inter-area coperation

- IT procurement
- fixed penalty administration
- fine enforcement effort
- training
- banking
- documentation

15. Take power t require inter-area cooperation (7/93).

Issue

3. LOCAL LEVEL: EFFECTIVE AND CONSISTENT MANAGEMENT

Lack of clear line management or VFM controls over justices' clerks; inconsistent and wasteful use of resources; lack of management skills and focus

Aim

To establish clear lines of accountability between local managers (ie justices' clerks and their staff) and area management (ie courts committees); to empower and equip senior management within each area to meet relevant national and local planning targets

Success to be measured by:

- Management Information System key performance indicators (see section 2)
- Service performance targets (see section 2)
- Proportion of senior staff completing specified management training (all new appointments from 10/92)
- Proportion of senior staff satisfying competency

Objectives over next 18 months

1. Issue guidelines on standard fixed term contracts for senior staff, subject to appropriate performance objectives (1/93; to apply in 93/94 pay round).

2. Encourage reduction of clerkships (see section 2).

3. Define competencies required of clerks (1/92).

4. Use power to approve appointment of clerks to establish new shortlist screening procedure reflecting competencies (10/92).

5. Roll out Senior Management Development Programme and Diploma in Management Studies.

   - 175 sponsored places a year at management college/ polytechnics (ongoing)
   - specialist workshops through 14

Objectives over following period (assuming legislation 92/93)

8. Take power for Home Secretary to approve terms of service for senior staff (7/93; SI 12/93).

9. Secure incorporation of performance-related pay in relevant national agreements (6/93, dependent on objective 3.1)

10. Take power to approve appointment of service staff below justices' clerk level (7/93; SI 12/93).

11. Harmonise administrative procedures through standard magistrates' courts computer system MASS (roll-out 93-98).

12. Use Inspectorate to police and spread best practice and monitor use of court user surveys/ questionnaires (start 10/92, then ongoing; dependent on objective 1.2).

requirements (all new appointments from 10/92)

- Court user surveys/ questionnaires (all courts to conduct 3/92, then ongoing)

regional trainers (ongoing)

6. Maintain programme of identifying and promoting best practice.

- issue guidance on fine enforcement (9/91); listing (10/91); objective setting; quality of service; mentally disordered offenders; documentation (92)

7. Encourage greater use of performance measures as local management tools prior to MASS

- progressive use of performance based formula to distribute specific grant (20% in 1992/3; 40% in 1993/4 until 100% in 1996/7)

- development of local MIS package through a court service

consortia
(subject to
outcome of
field trials
10/91,
available for
purchase in
1992)

ak.32/mgttw.col

DRAFT PARLIAMENTARY QUESTION AND ANSWER

To ask the Secretary of State for the Home Department, what plans he has for the future management of the magistrates' courts service.

DRAFT REPLY

The scrutiny report of 1989 amply demonstrated the need for improved management of the magistrates' courts. A number of its recommendations are already being implemented. I have been considering separately the major recommendations about organisation of the magistrates' courts service, taking account of a study of costs which I commissioned from independent consultants, and the results of extensive consultations.

There has been a widespread acceptance of the pressing need to modernise the management structure of the service with a view to improving standards and strengthening accountability while at the same time maintaining the independence of the judicial process and the valuable contribution of local magistrates in the local management of the service. In order to achieve these aims I propose, in further consultation with the service, to implement a programme of reforms, upon some of which an early start can be made whilst others will require legislation. They include the establishment of an inspectorate, to provide an effective management audit and to promote the spread of best practice; changes in the structure and role of magistrates' courts committees which strengthens and clarifies the management responsibility of the committees with concomitant changes in the organisation and responsibilities of the senior professional managers; the introduction of systematic performance review and planning throughout the service; and a more coherent geographic structure, taking account as necessary of the review of the structure of local government as a whole which has now begun.

The aim of these reforms will be to secure the improvements identified by the scrutiny. I do not believe it is necessary for that purpose to bring forward legislative proposals to create a unified, and centralised, national service.
It will be important to ensure that the new arrangements are strong but flexible, enabling the service to adapt to changing circumstances while at the same time guaranteeing a satisfactory career structure for court staff, high standards of performance, and effective working relationships with other parts of the criminal justice system throughout England and Wales.

I do not envisage any immediate change in the balance between central and local financing of the service; but the continuing involvement of local authorities in the financing and management of the service must clearly be subject to more general review.

I intend to set out these proposals in more detail in a White Paper and to continue to consult interested bodies as necessary.

HOUSE OF LORDS,
LONDON SW1A 0PW

3rd July 1991

THE MAGISTRATES' COURTS

We are to consider Kenneth Baker's proposals for reforming the magistrates courts at our meeting on 9 July. These were set out in his letter of 16 April, though I understand that he will be circulating a further note in support of the proposals.

When this first came to us in April, you suggested, and I and others agreed, that we should consider whether it might be appropriate now for responsibility for all aspects of the magistrates' courts to be transferred to the Lord Chancellor. I should be grateful if we could discuss this when we meet. My view is that we should now suggest to the Prime Minister that this should be looked at again. The case for transfer seems a strong one on both political and practical grounds.

I agree with the general approach that Kenneth is proposing of not pursuing an agency now but rather of seeking to address the problems identified in the LeVay scrutiny through developments within the existing framework. But I do not think we should underestimate the extent of the likely opposition of local interests to a number of the proposals, and in particular to an inspectorate reporting to the Home Secretary. However misguided, many will be concerned that this could be used by the Minister with overall responsibility for the police and the remainder of the criminal justice system to influence the ways in which the magistrates' courts operate, with the risk that they will no longer be perceived as providing a fair and impartial forum. This danger would be reduced if the Lord Chancellor were to be responsible for the magistrates' courts. The response of the magistrates and the justices clerks to the LeVay report shows that it is a change that they would favour in any event, and I believe that our ability to carry through changes on the lines that Kenneth proposes would be much enhanced if it were known at the outset that the Lord Chancellor were to be responsible for carrying them through.

The Right Honourable
The Lord Waddington QC
The Lord Privy Seal
Privy Council Office
Whitehall
London SW1A 2AI

Turning to the practical considerations, I have attached a short note* on the present arrangements. If the court system were being established from scratch, I cannot believe that responsibility would be split between two Ministers. There are considerable overlaps between the magistrates' courts and the higher courts. For example

- many criminal cases can be heard either in the magistrates' courts or the Crown Court

- under the Children Act, public law cases involving children will generally start in the magistrates' courts but will transfer to the county courts or to the High Court if the case is one of exceptional gravity, importance or complexity, if part of the case is necessarily being conducted there, or if the case is urgent and upward transfer would result in an earlier hearing date

- the legal aid in the magistrates' courts is granted by the magistrates' courts on the basis of tests undertaken by the court but paid by the Legal Aid Board, for which the Lord Chancellor is responsible.

There is at least a prima facie case that the difficulties inherent in these overlaps would be reduced if one Minister were responsible for all aspects of the court system.

I have no view on the advantages or disadvantages of centralising the administration of the magistrates' courts, though I am sure that it is essential to retain a strong local element in the way that they are run. If the Lord Chancellor were responsible for the magistrates' courts, however, it would be possible without any move towards centralisation to use the LCD regional structure to monitor the performance of individual magistrates' courts and to provide liaison between courts separated by local authority boundaries and between magistrates' courts and the higher courts. Opportunities for the more efficient use of accommodation and for the consistent handling of case papers could be exploited. And the LCD Court Service could provide a framework for a more centralised administration if that is the way we decide to go in the future.

There are a number of other issues which bear on a transfer. It has been suggested that a transfer would result in a further fragmentation of the criminal justice system. I find this argument difficult to follow. In my view it is the responsibility for the court system which is currently fragmented and these are strong arguments for saying that the courts should be in some ways at a remove from the police and prosecuting authorities. On a couple of points of detail, I am considering the implications for LCD of taking on the additional work, especially in view of the extra complexity entailed by local funding; and I shall need to think further about the additional burden on the Lord Chancellor and the Law Officers.

* This has not reached us yet

who answer on behalf of the Lord Chancellor in the House of Commons, which would arise if responsibility were transferred.

I understand that the Prime Minister may wish to seek advice from the Machinery of Government Division in the Cabinet Office before making up his mind on this. I would welcome that, and I and my officials would let them have any background material they needed.

i.e. the review Carlisle recommends

There is no reason why a review directed at this issue need take long, or hold up significantly the announcement or implementation of the proposals in Kenneth's paper. If I were to become responsible for the magistrates' courts, I would of course wish to look at the proposals in detail with full advice from officials before deciding whether to go ahead exactly in the way proposed: but that need not stop work continuing on taking the changes forward, and it may be possible to announce some immediately. At the worst, we should be delaying an announcement from immediately before the Recess to the early autumn. Given the time that has elapsed since Le Vay was published, this does not seem too high a price to pay for ensuring that we achieve the most efficient and political defensible system.

I am sending copies of this letter to members of HS Committee, to the Attorney-General, the Minister for Agriculture and to Sir Robin Butler.

THE RIGHT HONOURABLE THE
LORD MACKAY OF CLASHFERN

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

2 July 1991

MAGISTRATES' COURTS

We are due to discuss in HS on 9 July the proposals for the reform of the magistrates' courts service set out in my letter of 16 April.

Following that letter some colleagues suggested that it would be helpful to have a clearer indication both of my reasons for rejecting the 1989 Scrutiny recommendation that the service should be reconstituted as a national agency and of the ways in which my proposals would address the serious deficiencies identified in the Scrutiny report. Other colleagues suggested that we should consider whether my responsibility for the service should be transferred to the Lord Chancellor. The purpose of this letter is to respond to both points, with a view to helping us I hope to reach agreement on 9 July that I should take early action to implement my reform proposals and that we should recommend to the Prime Minister that no machinery of government review or transfer of responsibility takes place for the time being.

The scrutiny of the magistrates' courts service has proved extremely valuable. It has dramatically changed the terms of debate by demonstrating the need for improved management and quality of service. Its analysis has been broadly accepted. On the key recommendation that the service should be centralised, the magistrates' courts committees abolished, and a new agency set up to run a national service, there has been widespread disagreement, and the proposal has significant financial implications.

.... I enclose a note setting out more fully my reasons for concluding that we should not accept the agency solution, but have good reason to believe that we can secure the much needed improvements in other ways. The note has been discussed with officials from the other departments directly concerned. My principal reasons are:

(i) It is clear that the agency option would be costly. Independent consultants have costed it at £100 million over five years (at 1989 prices). This estimate has not been challenged.

(ii) It would be very disruptive of the courts' activities.

(iii) It would run into substantial opposition from magistrates, whose voluntary contribution to the administration of justice must not be taken for granted. Any reduction in that contribution would have additional expenditure implications.

The Rt Hon The Lord Waddington QC
Lord Privy Seal

/cont...

(iv) And a decision now to go for a national service would in practice rule out until we could find room for the necessary legislation effective changes to the present set-up for example in relation to magistrates' courts committees which are needed urgently. The time needed to prepare, legislate for, and implement such changes would be at least three years.

Annex C to the enclosed note, which has also been discussed at official level, sets out how the reform proposals in my letter of 16 April will, however, directly address the problems which the Scrutiny report identified. These proposals are very much in line with the Citizen's Charter initiative, with their emphasis on improved performance, accountability, openness and incentives to better management. I have also indicated a commitment to identifying and setting challenging targets in which process I am glad to say Treasury officials will participate. They set out a demanding programme of action, not only from government but of course from the courts service itself; and there will no longer be any doubt about what is required and who is responsible for delivering it.

As my letter of 16 April and the enclosed papers make clear, action on these proposals could begin promptly, although legislation would be needed to give full effect to the package. A number of improvements can be achieved without start-up or other costs. The proposals will not run into entrenched magisterial opposition. They should not therefore jeopardise the future of the lay magistracy. Indeed, one of the important aspects which I would want to stress in presenting them is the extent to which they will tap local energy and initiative through the involvement of magistrates and other new members of reformed courts committees.

My proposals do not rule out further changes in due course. As my letter of 16 April noted, the structure I propose could for example accommodate a move to 100% central government funding at some point. Initially there will be an opportunity for us to take stock when I bring forward legislative proposals to supplement the initial management action and I am proposing a further interim assessment by the end of 1993, with a prospect of a full review some three or four years after the programme has begun. Given the necessary lead time it should by then already be clear whether the initial part of the programme of action is proceeding at the necessary pace and is likely to produce the necessary results. But it is vital to make an early start.

There remains the question of Ministerial responsibility which you and other colleagues have raised, and whose mechanics officials have explored. I have to say that I think it would be extremely unhelpful to undertake a machinery of government review at this stage. I certainly do not see a transfer of Ministerial responsibility - which the Scrutiny report itself considered and rejected - as a price which has to be paid to secure magisterial support for the reform proposals:

/cont...

(i) A review would in practice be difficult to confine to the question of which Minister should be responsible for the management of the magistrates' courts in isolation. A review would at least raise the issue of the relationship between the practices and procedures of the courts and penal policy, including the sentencing framework. It would also open up questions about the provision of probation and other court services.

(ii) Consideration would also need to be given to the question of accountability to the House of Commons. We have to bear in mind that any indication of our willingness to contemplate constitutional reforms of this sort will inevitably fuel debate over the Opposition's proposals in this area, the proposals for a Ministry of Justice which the Law Society has just published, and so on.

(iii) We should not embark on a review without having a clear idea of what we want to achieve, and confidence that its achievement depends on changes of this sort. I do not believe we have such a basis for a review. It would not bring any significant benefit or save any money.

(iv) The transfer of a service which is 80% funded by local authorities and 20% by specific grant to the Lord Chancellor's Department would be bound to reopen the question as to whether magistrates' courts should be a national service wholly financed by the Exchequer, that is like the higher courts.

A review would take some time to cover the ground thoroughly. New issues would be exposed, and completion before the end of the year could not be guaranteed. This would cause undesirable further delay to the implementation of the managerial reforms and their public presentation.

In my view, therefore, a review would divert effort better directed to the implementation of reform and could be politically unhelpful. In my view too the case for a transfer of Ministerial responsibility is not sufficiently strong to justify these risks. In particular I am not persuaded that a transfer would deliver improved value for money or help deliver better management of the criminal justice system taken as a whole.

/cont...

Conclusion

I shall accordingly on 9 July seek colleagues' agreement to an early announcement of the overall shape and direction of the enclosed proposals, to be followed by a White Paper, as soon as possible. I would propose to make the announcement in the form of a reply to an arranged Question as soon as possible afterwards. I enclose a revised draft for this purpose. There will of course be an opportunity for you and other colleagues to consider the terms of the White Paper when I circulate it for clearance, and officials are of course ready to deal with drafting suggestions.

I am copying this letter to the Prime Minister, the members of HS, the Minister for Agriculture, Fisheries and Food, Sir Robin Butler and Sir Angus Fraser.

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF

Telephone 071-273 . 5802 . .
Telex 915564 Fax 071-273 5821

Secretary of State

The Rt Hon Kenneth Baker MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

20th May 1991

Dear Kenneth

MAGISTRATES COURTS

Thank you for sending me a copy of your letter of 16 April to David Waddington setting out your proposals to reform the management of the magistrates courts service.

I have no specific comments on your proposals. However, I was interested to see that they result from a scrutiny of the service in 1989. Colleagues may be aware that an efficiency scrutiny of the industrial tribunals, whose administration is the responsibility of my Department, is at present taking place. The final report is due later this month. Since there are evidently some parallels between the two scrutinies I shall be interested to learn how your proposals develop in case there are any lessons to be drawn for the action which must follow the industrial tribunal scrutiny.

I am copying this letter to the Prime Minister, the members of HS, Sir Robin Butler and Sir Angus Fraser.

Yours ever
Michael

MICHAEL HOWARD

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

15 May 1991

MAGISTRATES' COURTS

I am grateful to you and other colleagues for your response to my letter of 16 April and agree that there should be a discussion in HS.

In the meantime I have asked officials to meet to consider what colleagues have said about a possible transfer of responsibilities for the magistrates' courts service to the Lord Chancellor. At the same meeting my officials will explain further the reasons - primarily, but not only, financial - why I decided not to recommend that we should implement the 1989 Scrutiny proposal of placing those courts under a national Next Steps Agency and should instead continue with a locally managed system, but one whose management and accountability would be substantially strengthened.

My letter was not a bid outside PES. The financial implications of whatever we decide will fall to be examined during the Survey. I judged it necessary first to consult colleagues more widely about the course I proposed to take before entering into detailed discussions about its funding.

I am copying this letter to the Prime Minister, the members of HS, Sir Robin Butler and Sir Angus Fraser.

The Rt Hon the Lord Waddington of Read, QC
Lord Privy Seal
Privy Council Office
Whitehall
London SW1

CABINET OFFICE
OFFICE of the MINISTER for the CIVIL SERVICE

THE RT HON TIM RENTON MP
The Minister of State
Privy Council Office

Horse Guards Road
London SW1P 3AL
Telephone: 071-270 5929

C91/Baker

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

9 May 1991

Dear Kenneth

MAGISTRATES' COURTS

David Mellor copied to me his letter of 30 April and I have now seen the earlier correspondence.

Given my responsibilities for taking forward the Next Steps Initiative I too would be interested in the detailed reasoning behind your rejection of the Agency proposal. The reference in your letter to "centralisation before modernisation" does not, I feel, do justice to the Next Steps philosophy. We now have 50 Agencies of widely differing size and characteristics, all tailored to the individual circumstances of the operation in hand, and most set up to challenging timetables in which the process of establishing the Agency has served as a catalyst for further change. The track record of the Next Steps programme in delivering major change quickly is its own best advocate.

I agree with David Mellor and others that the question of the future organisation of the magistrates' courts would benefit from further consideration by officials on the basis of another, more detailed, paper to be prepared by the Home Office. As well as your officials and those of the Treasury, it seems to me that this further work could helpfully involve my officials, and the Efficiency Unit. It may be that a working group reporting to HS Committee would be the right forum for taking forward this work.

I am copying this letter to the Prime Minister and the members of HS Committee, and to Sir Robin Butler and Sir Angus Fraser.

Yours

Tim

TIM RENTON

Home Affairs: Magistrates
Cont Pt 2

ATTORNEY GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London SW1H 9AT

3 May 1991

Dear Kenneth,

MAGISTRATES COURTS

Thank you for copying to me your letter of 16th April 1991 to David Waddington outlining your proposals for reforming the management of the Magistrates Courts Service.

I very much welcome the proposals you now put forward. They are much better than the recommendation made by the scrutiny team that a national Magistrates Courts Service should be created as a Next Steps Agency. The supposed advantages of that course were in my view illusory. To build on the existing local arrangements, with a programme of modernisation aimed at improving management quality and overall efficiency, is the best way forward. This is what the Magistrates themselves want, - not an entirely incidental matter, when you consider that they handle 97% of all criminal cases.

There is indeed a need for a very strong inspectorate of the modernised service. Some clerks are notorious for glorying in being unco-operative with anyone else, and they manage to bully their magistrates into not minding what is their own business. Judicial independence is entirely compatible with being reasonably helpful to other players in the criminal justice scene, such as the Crown Prosecution Service. This is a delicate area, I know, but I hope that any aims and objectives that may be devised for the Service will promote the notion of inter-dependence within the system.

The inspectorate might well get its teeth first into the Magistrates Courts Service in Inner London. You quite rightly describe this as very inefficient, and isolated from developments elsewhere. There is a lack of clear management responsibility. Court user groups, which are such a valuable means of identifying and eliminating friction points, do not always thrive in Inner London. For a start, the stipendiaries take no part in them. You might consider giving them a statutory character.

My welcome for your wise proposals does not however preclude me from adding my own support to colleagues who in this correspondence have argued that your responsibilities for the magistrates courts should be transferred to the Lord Chancellor. I came to favour this when I was in the Home Office, and my opinion has strengthened since.

Copies of this letter go to The Prime Minister, The Lord Privy Seal, the members of HS, Sir Robin Butler and Sir Angus Fraser.

James

Patrick

Home Affairs: Courts
A2

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UNCLASSIFIED

CSPU

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

The Right Honourable Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

30 April 1991

Dear Ken,

MAGISTRATES COURTS

Thank you for copying to me your letter of 16 April to David Waddington. I have also seen the letter from the Efficiency Unit (19 April) and from the Lord Privy Seal (24 April).

2. The proposals outlined in your letter are of course new to me, and represent a significant departure from the options for management reform previously considered. There may be good reasons for this, but it is not immediately clear what they are. Neither your letter nor the enclosed paper explain exactly:

- why the Agency proposal in the 1989 efficiency scrutiny report has been rejected (though I would not want to suggest that this is my own favoured solution);

- why the more radical local option which was examined by consultants in the costings exercise has been rejected; and
- how your current, more limited, proposals tackle the serious deficiencies in magistrates' courts management identified in the scrutiny report.

3. It would, I think, be helpful to have a full answer to these questions before reaching final conclusions. I understand that the Efficiency Unit have expressed similar views. Probably the best way forward would be for your officials to produce a further paper which covered these issues and which could be considered first at official level before being submitted to you and me.

4. I have to say I am also a little concerned that you are coming forward with yet further proposals for spending money - albeit not a great deal of money - outside the Survey process. In the light of the considerable additions I have already agreed for

Home Office programmes over the last few months, I would feel much happier if final decisions on the future of the magistrates courts service were taken as part of the Survey exercise, when the costs can be weighed against your other priorities.

5. I am copying this letter to the Prime Minister, the members of HS, Tim Renton and to Sir Robin Butler and Sir Angus Fraser.

DAVID MELLOR

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

cc PS.

HOUSE OF LORDS,
LONDON SW1A 0PW

30 April 1991

The Right Honourable
The Lord Waddington QC
The Lord Privy Seal
Privy Council Office
Whitehall
LONDON
SW1

Dear David,

MAGISTRATES' COURTS

I have seen Kenneth Baker's proposals for the modernisation of the magistrates' courts, set out in his letter of 16 April to you, and your reply of 24 April. I also spoke briefly to Kenneth about this last Thursday. I would certainly favour a discussion of the issues in HS Committee.

As well as looking at the detailed problems identified by the 1989 Le Vay Scrutiny I think it would be helpful, at the very least, to consider the wider issues Kenneth raises about ministerial responsibilities and future funding of the magistrates' court service. There are a number of seemingly intractable problems here but it may be as well to consider them at this stage. There would be a certain logic in extending my current responsibilities for the higher courts and for legal aid so as to include the magistrates' courts. I already appoint nearly all the magistrates and have close links with them.

I do not underestimate the magnitude of the task if transfer were decided upon and I should want to consider it carefully before reaching any conclusion. I should therefore be grateful if we could discuss this before settling the way forward.

Copies of this letter go to the Prime Minister, the members of HS, Sir Robin Butler and Sir Angus Fraser.

Yours ever,

James.

HOME AFFAIRS : MAGISTRATES COU
STAFF IT

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

24 April 1991

MAGISTRATES' COURTS

Thank you for your letter of ~~16~~ April with proposals to reform the management of the magistrates' courts service.

I have not yet seen comments from colleagues, but thought it would be helpful to feed in at this stage my own immediate reaction on one particular issue. This is the question whether it is appropriate to continue the present arrangements under which responsibility for the magistrates' courts is somewhat awkwardly divided between the Home Office and the Lord Chancellor's Department. A transfer of the entire responsibility to LCD seems to me to be at least worth considering now, not least because I understand that a number of magistrates themselves would favour such a change, and I think we should take time to do that.

I note that the comments made by the Efficiency Unit imply that quite a number of issues will require to be looked at in more depth anyway before a decision can be reached on your proposals. It would be helpful for the question of transfer to LCD to be looked at in that context. If necessary, I would be happy to arrange a meeting of HS Committee to enable all this to be discussed with colleagues in due course.

I am copying this letter to the Prime Minister, the members of HS Committee, Sir Robin Butler and Sir Angus Fraser.

WADDINGTON

The Rt Hon Kenneth Baker, MP

HOME AFFAIRS: MAGISTRATES COURTS A72

→ CF

10 DOWNING STREET

Note:

I spoke to Carolyn Sinclair, who confirmed there was no need for Mr Baker's and Mr Brevetai's notes to be shown to the PM. She is discussing with HO and LCD.

If the magistrates were transferred to LCD, they'd like that and be more

willing to accept
the recruiting
recommendations.

LEC

25/4

R2014

EFFICIENCY UNIT

70 WHITEHALL, LONDON SW1A 2AS

Enquiries: 071-270 0273
Fax: 071-270 0099
Direct line: 071-270 **0257**

19 April 1991

C J Walters Esq
Private Secretary to the
Secretary of State for the Home Department
Queen Anne's Gate
LONDON SW1

Dear Mr Walters

MAGISTRATES' COURTS

A copy of Mr Baker's letter of 16 April to the Lord Privy Seal was passed to me yesterday. I will not be able to consult Sir Angus Fraser until next week but I would not expect him to support the approach set out in the letter to members of HS Committee.

As stated in the Home Secretary's letter the need for a reformed management structure was a central finding of the Efficiency Scrutiny of Magistrates' Courts which reported in July 1989. Sir Angus was sent an interim implementation report last month pending proposals on the main recommendations. He expected these later proposals to be put to us in a form which set out the clear weaknesses needing to be addressed, the reasons why the scrutiny recommendations were rejected and the evidence to show that alternative proposals would provide more efficient and effective remedies. The papers circulated only partially address these issues and I understand that Treasury have not had any opportunity to consider the revised bid for expenditure nor the cost-effectiveness of current proposals. It may be sensible for these issues to be pursued further by officials and I would be glad to assist in arranging for this to happen.

I am copying this letter to Andrew Turnbull (No 10), Miss Kirton (Privy Council Office), Miss Rowe (Lord Chancellor's Office), Mr Yates (Sir Clive Whitmore's Office), Peter Kemp (OMCS), Muir Russell (Cabinet Office), Jamie Mortimer (Treasury), Caroline Sinclair (No 10 Policy Unit) and Bob Morris in the Home Office.

Yours sincerely

D BRERETON

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

16 April 1991

MAGISTRATES' COURTS

The purpose of this letter is to seek colleagues' support for proposals to reform the management of the magistrates' courts service.

A Scrutiny in 1989 analysed the problems. The service is inefficient and fragmented, and the Scrutiny proposed its reconstitution as a Next Steps Agency. I do not believe that this is the right prescription. To proceed as recommended by the Scrutiny would be to put centralisation before modernisation with no certainty of modernisation being achieved at an acceptable pace or minimum cost. This is because, first, the magistrates are solidly against it; they would misrepresent it as designed to interfere with judicial decision-making; and they would hold back the co-operation it would need. And secondly, not only would the benefits be hard to realise but further analysis has also shown that the costs would be substantially higher than the Scrutiny estimated.

I therefore favour an alternative set of reforms designed to encourage local initiative within a common framework. They would build on the continuing involvement of the volunteer magistracy in the management of the service, but at the same time impose new disciplines and controls. Some would require legislation, but others can be set in hand at once.

My detailed proposals are in the enclosed annex. They follow the same pattern as my proposals for the probation service, where my responsibilities and the form of local control are similar. The main reforms would:

- rationalise and strengthen the management role of magistrates' courts committees, drawing in new expertise;

- reduce the number of separate management units;

- create an Inspectorate, to spread best practice and review management performance and service delivery;

- establish more effective control over senior appointments;

The Rt Hon Lord Waddington, QC.
Lord Privy Seal
Privy Council Office
WHITEHALL, S.W.1.

/cont....

- introduce performance review and planning throughout the service;

- take default powers.

The costs would be modest: £4 million - £5 million a year. I would need provision for this in the 1991 Survey; but it should be possible fairly quickly to achieve the savings necessary to offset these costs in later years. Once the new structure was fully in place it would provide a means, allied to cash limits applying to the service from April 1992, of securing the delivery of improvements in the efficient performance of the service as a whole.

As with the probation service, these reforms would not rule out any further changes in the organisation and financing of the service which we might want to bring forward in future. Experience may, for example, point to the need for still more extensive changes in the composition of magistrates' courts committees. The structure I propose would be flexible enough to accommodate both the introduction of 100% central government financing and any changes resulting from our review of the structure of local government as a whole. But I can see no case for holding up overdue changes until we are clear about the outcome of that review: there are benefits to be gained now, not only for the magistrates' courts service itself, but also for the other criminal justice agencies.

I do not think it necessary to pursue further at this stage the question of where Ministerial responsibility for the magistrates' courts service should lie. This can best be addressed in the context of decisions about the balance between central and local financing. If it were decided at some future date to introduce 100% central funding, that could justify a fresh look at more direct central control.

The magistracy and the magistrates' courts service have been subject to continuing uncertainty about the future since the 1989 Scrutiny. The changes I propose will be broadly popular while bringing about much needed change. I should therefore like to make an early announcement, followed by a White Paper, which will necessarily have some green edges. I enclose the draft of an arranged Question and reply for this purpose. I should be grateful to know whether you and colleagues are content for me to proceed on this basis. It would be desirable to avoid a long interval between publication of the probation service decision document and an announcement on magistrates' courts.

I am copying this letter to the Prime Minister, the members of HS, Sir Robin Butler and Sir Angus Fraser.

ANNEX A

THE MAGISTRATES' COURTS SERVICE
A PLAN FOR DEVELOPMENT WITHIN THE EXISTING ORGANISATIONAL STRUCTURE

1. Magistrates' courts committees: management role

1.1 Legislation is needed to define more precisely the management role of committees. They would act essentially as boards of directors, responsible for setting budgets, determining priorities, allocating resources and setting the staffing and administrative policies of the area eg determining policy on the training of staff and on issues relating to cooperation with other parts of the criminal justice system. Their relationship with justices' clerks would be clarified (see also 5 below) so that it was established via standard contracts providing for clerks to manage courts within the policy framework laid down by the committee and with performance objectives peculiar to their particular courts. This would replace the present arrangement under which clerks held office at the committee's pleasure, but would retain a sufficient degree of independence for clerks when submitting advice to benches on judicial matters.

Legislation and resources

1.2 Legislation would be required. The redefined management role of committees would lead many to require additional administrative support: total costs are estimated at £3.0m a year.

2. Courts committees: composition and size

2.1 Too often at present election to committees is by seniority rather than on merit. As a matter of best practice, the Home Office could set out the criteria for membership.

2.2 It would also be desirable to extend membership beyond the magistracy to include local people with finance or management expertise. The Audit Commission may have a useful role in identifying them. At present committees are allowed to co-opt

only judges or recorders. Powers could be given to committees to co-opt non-magistrate members (subject to the Home Secretary's approval) and to the Home Secretary himself to appoint them. Primary legislation would be required for both these steps.

2.3 As an additional step it would be possible for the Home Secretary to take power to appoint the chairman of each committee, to ensure the right calibre of person.

2.4 Most committees are too large to carry out their management tasks effectively. The present maximum, defined in regulations made under the 1979 Act, of 35 could be reduced by at least half. It would also help to reduce parochialism if members ceased to see themselves as representing their own benches. A committee of 10 might have six elected magistrate members and four co-opted or appointed members (who might or might not be magistrates). Detailed proposals would need to be worked up in consultation with the service to decide on how magistrates would be nominated to the committee and the mechanisms whereby individual benches might bring concerns to the attention of the committee.

Legislation and resources

2.5 Primary legislation would be required to secure a change in the composition of committees. Changes to the size of committees could be effected by amendment to the regulations made under the 1979 Justices of the Peace Act. There would be a small saving in payments of travelling, subsistence and financial loss allowance by reducing the number of committee members.

3. Courts committees areas

3.1 The number of committees (105) is one of the primary causes of fragmentation within the service and the cause of difficulties in liaison with other parts of the criminal justice system. There are many small metropolitan committee areas - 20 in Outer London, 10 in Greater Manchester, 7 in the West Midlands, 5 in Merseyside, 5 in West Yorkshire, 5 in Tyne and Wear and 4 in South Yorkshire. There are also a number of county committees with very low workloads eg Dyfed, Powys and Shropshire. The 1979

Act empowers the Home Secretary to combine committees if requested to do so by the magistrates concerned. This power has never been used. What is needed is legislation to empower the Home Secretary to combine committees on his own initiative, after consultation. There is scope for an initial and immediate reduction from 105 to perhaps 65, using criteria based on workload and budget size. There is a case for further reduction in due course.

Legislation and resources

3.2 Legislation would be required. Much of the planning work could be achieved locally within existing resources but the service would probably need consultancy support in planning new staffing and administrative structures for each new area. The cost of the consultancy would be likely to be in the region of up to £50,000 for each amalgamation. There could also be costs in terms of possible redundancies, the assimilation of staff into a new local pay structure, and the need to liaise with several paying authorities, although the extent would vary from area to area. The same would be true of staff savings arising from rationalising administration. The overall effect would be cost neutral at worst.

4. Single justices' clerks

4.1 A feature of the present arrangements is that at present (with one exception) each committee comprising more than one bench employs at least two justices' clerks. At the extreme Lancashire has 10 clerks between its 15 benches. The one exception is Northamptonshire, which last year appointed one clerk to serve the 6 benches in the county, supported by legal advisers at bench level responsible for day to day operation of the courts. The single clerk is also clerk to the committee. In this way there is no scope for conflict between justices' clerks and the committee (or its staff). The Northamptonshire arrangement has worked well and produced financial savings. It would therefore be possible to encourage committees where this is appropriate to rationalise and reduce clerkships (without

necessarily reducing numbers of benches). It would have to be recognised that such encouragement would have only partial success: there will be many benches (like Bournemouth which successfully opposed a single clerk for Dorset) which insist on their own clerk. Legislation enabling the Home Secretary to prescribe the maximum number of clerkships in any area would therefore be needed to give full effect to the policy. On the other hand, the single clerk approach might not work as well for the largest areas (like the West Midlands) where the scale of the job would require significant additional senior support, with corresponding resource implications. A different model might be required here depending more on appropriate management delegation to justices' clerks subject to the overall direction and supervision of a Chief Executive acting with the authority of the magistrates' courts committee.

4.2 A combination of fewer committee areas and a number of single clerkships would substantially reduce the present number (270) of justices' clerks. A major restructuring of pay arrangements would almost certainly be needed in consequence.

5. Inspectorate

5.1 The magistrates' courts service is the only local authority funded service for which the Home Office is responsible which does not have an Inspectorate. An Inspectorate could be introduced without legislation but would be more effective if its powers and duties were put on a statutory footing. Apart from discussing with MCCs and justices' clerks the objectives set for the service locally and fostering good practice, the Inspectorate's assessment of performance would play a significant part in resource allocation and in the appointment of senior management. We would envisage a certificate of efficiency by the Inspectorate underlying the payment of grant, as for police forces. This taken together with the default powers proposed at 12 below would be the ultimate sanction to protect the Home Secretary's position as majority stakeholder in the service. An Inspectorate would also facilitate the process of inter-agency liaison and co-operation.

Legislation and resources

5.3 No legislation is required but it would be desirable to put the Inspectorate on a statutory footing. The cost of an Inspectorate has been assessed by consultants at £1m per annum. It is hard to attribute offsetting savings directly to a new Inspectorate; but the existence of an Inspectorate would increase the likelihood of delivering the efficiency gains to which the other proposals in this Annex are directed.

6. **Reports**

6.1 It would be desirable for the Home Secretary to have power to call formally for reports from courts committees or justices' clerks. This would help to reinforce the Home Secretary's enlarged role in relation to the efficient management of the service. (A similar power exists in relation to probation committees.)

Legislation and resources

6.2 Legislation would be required. There are no resource implications.

7. **Appointment of senior staff**

7.1 Under the 1979 Act the appointment of a justices' clerk requires the approval of the Home Secretary. In practice this is a formality. The power could, however, be used in a way which helped to ensure that the key management roles in the service were filled by people with relevant management skills and interests as well as the more traditional legal skills: the present arrangements tend to select candidates who will create no difficulties for the appointing magistrates. We would propose to define in guidance the experience we would expect, including the key competencies required and possibly a requirement that candidates should have participated in our new senior management development programme or something equivalent. At present the name of the candidate for appointment is submitted to the Home Office for approval along with details of his or her

qualifications. We would propose to ask courts committees to submit their short lists prior to interview and to provide us with standard details on each candidate. We would indicate which candidates we would be prepared to approve and give an indication as to any we thought particularly suitable.

7.2 The process of approving appointments would be strengthened by the existence of an Inspectorate which on its visits would seek to establish a view on the competence and ability of justices' clerks and those aspiring to that office.

7.3 If justices' clerks were appointed under fixed-term contracts (see paragraph 1 above) the same approval arrangements could apply on contract renewal.

7.4 When the new arrangements had bedded in they could be extended to other senior staff, but this would require legislation.

8. **Judicial independence safeguard**

8.1 The consultations on the Scrutiny have demonstrated the sensitivity of this issue. Even in the absence of any major reorganisation there would be strong presentational benefits in enshrining in legislation the independence of a justices' clerk's advice to his magistrates on judicial matters.

Legislation and resources

8.2 Legislation is required; there are no resource implications.

9. **Strategic plans**

9.1 It would be desirable to require each courts committee to produce a strategic plan each year embodying a review of performance, a statement of objectives and an assessment of the resources required to achieve them and to produce an annual report. This would focus service thinking on resource usage and performance measurement. It would also provide the Inspectorate with a mutual point of focus when inspecting a committee area.

Legislation and resources

9.2 Legislation would be required. The task of preparing plans could be handled by the additional committee support staff envisaged at paragraph 1.2 of this Annex and of reviewing them by the Inspectorate staff envisaged at paragraph 5.3.

10. **Magisterial training**

10.1 The Magistrates' Association are very keen for responsibility for all aspects of magistrates' training to be exercised by LCD. At present responsibility is split between LCD and the Home Office. This split responsibility is a source of muddle and impedes sensible planning. LCD are at present undertaking a survey to assess the present total cost of magisterial training. Subject to any necessary PES transfer, all funding could be undertaken by the Lord Chancellor. This would need legislation. This would not affect the Home Secretary's responsibility for the training of magistrates' courts staff.

Legislation and resources

10.2 Legislation is required; there are no resource implications providing the correct level of PES transfer is achieved.

11. **Regional cooperation**

11.1 Courts committees are already encouraged to form consortia to share the costs of desirable developments eg computer systems, regional staff trainers and the recruitment of court clerks. It would be possible to take powers to require cooperation.

Legislation and resources

11.2 Legislation would be required; there are no resource implications.

12. **"Default" powers**

12.1 It would be desirable in any package of reforms to make express provision for the possibility that a committee persistently failed to provide an effective or efficient service, or failed despite adequate warnings to correct bad practices identified by the Inspectorate. There are broadly two possible ways of dealing with such a situation should the need arise. One would be to take power to withhold grant on the basis of the inability of the Inspectorate to certify the service in the area concerned as efficient. This would follow the police precedent. The other would be to give the Home Secretary powers to direct the committee to take the necessary remedial actions. This power would be enforceable through the courts with contempt of court as the ultimate sanction. At this stage, it should suffice for Ministers to make it clear that they wanted appropriate back-up power. The possibilities would then be proved further in consultation with the service.

Legislation and resources

12.2 Legislation would be required; there are no resource implications save in the event of default.

13. Inner London

13.1 The Inner London service is organised and funded quite differently from the rest of England and Wales. It is dominated by stipendiary magistrates (with the Chief Magistrate chairman ex officio of the equivalent of the courts committee). Its paying authority is the Receiver for whom the courts service is understandably a poor relation in terms of his resources and attention. At the same time the Receiver precepts in a way which protects the service from local authority scrutiny. Relations between the service headquarters and the divisional courts are ill-defined. The service is very inefficient and isolated from developments elsewhere. Any reform of the present arrangements would be inadequate if it left London untouched.

13.2 A first step (but one requiring legislation) would be for the chairman of the committee of magistrates to be appointed by the Home Secretary, with a brief to put in place adequate

internal management, financial and reporting systems. A lot could be done within the present system by new top management. Further possible measures, including breaking the link with the Receiver, will also need to be addressed.

Legislation and resources

13.3 To pursue the first step (paragraph 13.2) legislation would be required. It should be possible for new management to finance systems improvements out of immediate savings.

ak.5/pm.n

ANNEX B

DRAFT ANNOUNCEMENT

To ask the Secretary of State for the Home Department, what plans he has for the future management of the magistrates' courts service.

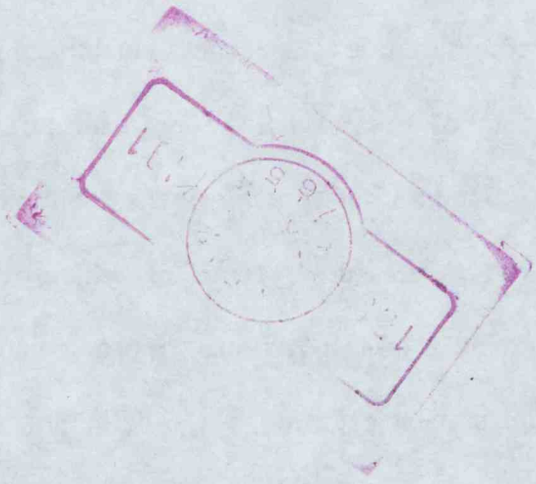
DRAFT REPLY

In the light of extensive consultations following the Scrutiny of the magistrates' courts service and of a study of costs undertaken by independent consultants, I have concluded that it would not be right to reconstitute the service as an executive agency as recommended by the Scrutiny. However, there has been a widespread acceptance of the need to modernise the management structure of the service with a view to improving its performance and strengthening lines of accountability, while at the same time maintaining the independence of the judicial process and the valuable contribution of local magistrates in the local management of the service. Some useful first steps have already been taken since the Scrutiny. But in order to achieve these aims I propose to work with the service to develop a package of measures, some of which will require legislation. They include the establishment of an inspectorate, to provide an effective management audit and to promote the spread of best practice; a strengthening and clarification of the management role of magistrates' courts committees; the introduction of systematic performance review and planning throughout the service; and a more coherent geographical structure, taking account as necessary of the review of the structure of local government as a whole which has now begun.

It will be important to ensure that the new arrangements are strong but flexible, enabling the service to adapt to changing circumstances while at the same time guaranteeing a satisfactory career structure for court staff, high standards of performance, and effective working relationships with other parts of the criminal justice system throughout England and Wales.

I do not envisage any immediate change in the balance between central and local financing of the service; but the continuing involvement of local authorities in the financing and management of the service must clearly be subject to more general review.

I intend to set out these proposals in more detail in a White Paper and to continue to consult interested bodies as necessary.



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n.5.P.M.
BHP
26/7

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington QC MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

25th July 1990

Dear David

MAGISTRATES' COURTS SERVICE PAY

Thank you for your letter of 18 July in which you asked for my agreement to the approach you propose to adopt to magistrates' courts staff pay this year.

2. As you say the arrangements for magistrates' courts staff pay are very similar to those for probation officers. As with probation officers the prospect of a 9.2 per cent increase is most unwelcome. However, in view of the unsatisfactory and inflexible nature of the current arrangements I am reluctantly prepared to agree to a maximum offer being made at the level you propose, provided that it will achieve an early settlement within the JNC.

3. I note your reasons for not wishing to press the employers side of the JNC to seek a differentiated offer by grade. I would however expect that the prospects for a staged settlement should be explored fully, although such a settlement should carry an overall full year cost of no more than 9.2 per cent. The drop in Court Clerk vacancies is welcome news, and at 9 per cent is well below the CPS national vacancy rate of 20 per cent. In any case, I understand that the rates of pay for the two groups are not significantly out of line.

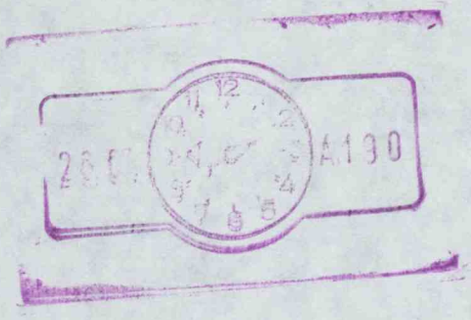
4. I note you do not feel able to offer offsetting savings to meet the additional cost of funding an award of 9.2 per cent. As with probation pay I suggest we should consider this alongside other pressures in your programme later in the year.

CONFIDENTIAL

5. I am sure you are right to keep up the pressure on the employer's side of the JNC to withdraw the damaging unilateral access to arbitration procedure. I also note that you are beginning to introduce staff appraisal systems as a first step towards the possible introduction of performance related pay arrangements. I am sure these are moves in the right direction. As I said in my letter of 23 April to John Patten about the Scrutiny of magistrates courts, it is important to institute a more appropriate and flexible national framework for pay bargaining in this area. To this end I would be grateful for my officials to be consulted as preliminary ideas on the future shape of pay arrangements are developed.

6. I am copying this letter to the Prime Minister, members of E(PSP) and to Sir Robin Butler.

NORMAN LAMONT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Home Affairs cc/ SV.

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

15 August 1982

Dear Leon

1982 PAY AWARD FOR PROBATION AND MAGISTRATES' COURTS STAFF

I am most grateful to you for your helpful letter of 9 August, enabling me to approve pay settlements of 6% for the probation service and magistrates' courts' staff on the understanding that the specific grant consequences will be met.

I shall of course use my best endeavours to find offsetting savings for 1982-83. As for 1983-84 onwards I quite understand your position and shall be ready to discuss this at our bilateral meeting next month.

I am copying this to members of E Committee, the Lord Chancellor and Sir Robert Armstrong.

The Rt. Hon. Leon Brittan, QC. MP.

16 AUG 1982

With the Compliments
of the
Chief Secretary to the Treasury's
Private Secretary

Treasury Chambers,
Parliament Street,
SW1P 3AG

CeJV

Mr Burr
Miss Kelley
Mr L Watts
Mr Ridley

cc Chancellor
Financial Secretary
Economic Secretary
Minister of State (C)
Minister of State (R)
Sir A Rawlinson
Mr Barratt
Mr Le Cheminant
Mr Mountfield
Mr Pearce

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon William Whitelaw CH MC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

9 August 1982

Dear Willie,

1982 PAY AWARD FOR PROBATION AND MAGISTRATES' COURTS STAFF

Thank you for your letter of 4 August.

I should like to be helpful on this, and I can see some merits in an early settlement at 6%. On the other hand, there is a point of some substance concerning the cost of settlements above pay indicator levels.

As you know, employers are expected to find offsetting savings (as we are to do ourselves on civil service pay). And there is the problem of the consequential impact on PES for 1983-84 etc.

I suggest then that you go ahead on 6% for the two settlements. If asked you could say that the specific grants would be adjusted accordingly. I would, however, expect you to use your best endeavours to find offsetting savings from within your programme as a whole for 1982-83. But I would reserve for our bilateral discussions, questions on the PES implications for 1983-84 and the later years and whether (and how) some or all of the pay costs might be offset. I hope you see no difficulty about this.

I am copying this letter to Geoffrey Howe, the other members of E(PSP), the Lord Chancellor and Sir Robert Armstrong.

Yours ever,

Leon

LEON BRITTAN

cc A. Duguid
J. Vereker

Home Affairs

NBPM

MCS

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon W Whitelaw CH MC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

7 October 1981

Dear Willie,

JUSTICE'S CLERKS AND CHIEF PROBATION OFFICERS: PAY 1981

Thank you for your letter of 28 September about the pay award in 1980-81 for the two remaining groups of staff in the magistrates' courts and the probation service which has not yet been settled.

I note that, like the cost of the main pay award, you are undertaking to do everything possible to accommodate the additional costs of the pay award for Justices' Clerks and Chief Probation Officers within the existing Home Office programme. On this understanding, I would not wish to stand in the way of the proposed settlement.

I am copying this letter to the recipients of yours.

Yours ever,

Leon

LEON BRITTAN

cc Mr Vereker

Home Affairs

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

25 September 1981

Dear Leon

JUSTICES' CLERKS AND CHIEF PROBATION OFFICERS: PAY 1981

I am writing to you about the two remaining groups of staff in the magistrates' courts and the probation service whose pay increase in the 1980-81 round has not yet been settled.

The first group comprises justices' clerks in England and Wales outside Inner London, whose pay is negotiated in the Joint Negotiating Committee (JNC) for Justices' Clerks (to which the Government is not a party); and their counterparts in Inner London - the chief clerks - whose pay requires my formal confirmation but has always followed the rates for justices' clerks elsewhere. In each case there is an additional group of deputies whose pay is directly related to that of their clerks. The second group comprises chief probation officers (CPOs) and their deputies, for whose salaries I have statutory responsibility; these are negotiated separately from the salaries of other probation officers but by the JNC of which my representative is a member.

The pay of both groups has well-established links with that of local authority chief officers. As regards justices' clerks, you will remember that less than two years ago we agreed to underwrite a pay settlement that gave them pay parity with local authority chief officers: since then we have enabled that settlement to be honoured in full. From 1979 CPOs' pay scales also have been based on those of chief officers although not at parity. This year the local authority chief officers have, like the APT & C group which includes their staff, received 7½% from 1 July. In addition they have been awarded 2% (of June 1980 salaries) backdated to 1 April to match the award to the APT & C grades in last autumn's arbitration. The purpose and effect of the chief officers' settlement was to restore the relationships in local government salaries disturbed by last year's APT & C settlement.

We have been asked by the JNC for Justices' Clerks for an assurance that specific grant of 80% will be available to support an award in line with that for the local authority chief officers. The cost of the main element (7½%) was included in the estimate I gave in my letter of 13 July to you (written before the chief officers' settlement was negotiated); my officials subsequently

The Rt. Hon. Leon Brittan, QC., MP.

/cont .....

subsequently confirmed that, as you acknowledged in your reply of 27 July, the Home Office is able to absorb the cost of the main element. The cost of the extra 2% from 1 April 1981 (which we had not foreseen) would be about £180,000 in this financial year, of which some £146,000 would be payable in specific grant to the paying authorities. The position for CPOs is analgous; the total additional cost for this group, i.e. of the 2%, would be £24,000, of which £19,000 would fall on the Home Office budget.

Having ourselves given encouragement, in order to avoid maverick pay settlements, to the strengthening of links between these groups and local authority staff, I attach considerable importance to our continuing to support the establish pay linkages. So far as the justice's clerks are concerned, their goodwill is essential in our search for ways to reduce waiting time in the magistrates' courts and improve fine enforcement and efficiency generally. It will be even more needed if we have fresh industrial trouble in the prisons. I simply do not believe that, for the small sums involved, it is worth risking the loss of that goodwill by withholding specific grant on the extra 2%. Moreover, if - under threat that grant would not be paid on the 2% - the management side refused to award more than 7½%, they might well be taken to arbitration, in which case there can be little doubt that they would lose. In that situation the magistrates' courts' committees would be obliged to honour the award and the local authorities would be obliged to pay up without reimbursement, with all the difficulties that would bring for us.

In the case of the CPOs, a settlement regarded by both them and the employers as unjust would unite the two groups in angry antagonism to the Home Office. The enthusiastic and energetic response which CPOs have recently given to Ministers' exhortations to help with the reduction of the prison population would inevitably be diminished as would their efforts in support of the New Initiative and my proposals for supervised release. If CPOs chose to go to arbitration, it seems certain that, as for justices' clerks, I should be faced with an embarrassing ruling. I am, of course, aware that, as you will know from our recent correspondence, the Home Office is in difficulty in funding the main probation officers' settlement. I have undertaken to do my utmost to find offsetting savings within existing Home Office programmes; on that basis, Nigel Lawson agreed in his letter of 18 August that the Treasury would not wish to stand in the way of the probation officers' settlement. Because the sums now in question are very small while the potential for political embarrassment is considerable, I propose that the small additional cost of funding these proposed tail-end settlements from the 1980/81 pay round (although they are really consequences of the 1979/80 round) for justices' clerks and chief probation officers (i.e. £165,000) should be treated in the same way.

I am copying this letter to the Prime Minister, members of E, the Lord Chancellor and Sir Robert Armstrong.

Yours ever.

William.

9 SEP 1981

Home Affairs

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

21.8.81

c/ Mr Vereker

Dear Nigel,

PAY: MAGISTRATES' COURTS' STAFF AND PROBATION SERVICE 1981

Thank you for your letter of ~~18~~ August to the Home Secretary. We are grateful to you for responding without delay on this issue.

I can, of course, give you an assurance that we shall explore every avenue to accommodate the shortfall on provision for the probation service pay settlement and I note what you say about bringing into question if necessary other desirable projects to this end. We are appreciative, however, of your understanding of the need to avoid delay in approving the pay settlement, which I have now done. My officials will be in touch with yours in due course about the means of meeting the additional costs.

I am copying this letter to the Prime Minister, members of E, and Sir Robert Armstrong.

Yours sincerely,

(BELSTEAD)

Nigel Lawson Esq M.P.

7 · 1981

cc J Vereker
Home Affairs.
✓ NAP.

FINANCIAL SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AA

18 August 1981

Dear Home Secretary,

PAY MAGISTRATES' COURTS' STAFF AND PROBATION SERVICE 1981

I am replying to your letter of 5 August for Leon Brittan who is away.

I appreciate the importance that you attach to dealing quickly with the probation service pay claim in view of the service's role in implementing the policy of greater use of non-custodial sentences for offenders. But, on the other hand, there are the very powerful wider considerations set out in Leon's letter of 27 July: in present circumstances we simply cannot afford to treat everything with a law and order connotation as a special case.

While I am grateful, therefore, for your assurance that the magistrates' settlement can be absorbed, and that you will do everything possible to accommodate the additional payments in respect of the probation staff within existing Home Office allocations, I must press you to ensure that every avenue is explored - even if other desirable projects have to be abandoned or postponed in order to find the necessary savings. On this understanding I would not wish to stand in the way of the probation staff pay settlement. But I must make it clear that it would in my view be extremely difficult to justify providing extra finance for this settlement.

I am copying this letter to the Prime Minister, members of E, and Sir Robert Armstrong.

Yours sincerely,

D.L. Willetts

pp NIGEL LAWSON

(approved by the Financial Secretary & signed in his absence)

19 AUG 1981

Home Affairs

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

5 AUG 1981

PAY OF MAGISTRATES' COURTS' STAFF AND PROBATION SERVICE 1981

Thank you for your letter of 27th July.

I fully appreciate your concern about the levels of these settlements and your wish that they should be accommodated within the provision made. My officials have looked very carefully at the scope for absorbing the extra costs of the probation service pay as well as that of the magistrates' courts' staff but at this time in the financial year it would be imprudent to offer savings which could not be guaranteed.

I attach a great deal of importance to dealing quickly with the probation service pay claim and I am sure that against the background of the pressure on the criminal justice system arising from the recent civil disturbances and our commitment to a policy of encouraging diversion from custody, we must, as a Government, be seen to be giving adequate support to a service on whose co-operation we shall have to rely if we are to keep down the numbers of people being committed to prison.

I will of course do everything possible to accommodate the additional grant payments within existing Home Office allocations and I hope that on this basis you will feel able to agree to the proposed pay settlement for the probation service even though I cannot at present guarantee to find the necessary savings.

W. W

The Rt. Hon. Leon Brittan, M.P.

- 6 AUG 1981

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon William Whitelaw CH MC MP
Secretary of State
Home Office
St Anne's Gate
London SW1H 9AT

27 July 1981

Dear Willie,

PAY OF MAGISTRATES' COURTS STAFF AND PROBATION SERVICE 1981

Thank you for your letters of 13 and 18 July about pay settlements for the justices' clerks' assistants and for probation officers.

While I recognise that in neither case is the proposed level of settlement of itself perhaps unreasonable, I am naturally concerned about the shortfall in provision for them which arises in part at least because both groups did rather better than some other public sector workers last year, and in the case of courts' staff, with staging being used as a way of getting round the standard pay allowance. If our policy on staging and on pay in the current round is to be sustained, it is important that we adhere firmly to the principle that pay settlements must be funded from within the provision made. The exceptional reasons, which have led to very generous treatment of police pay (and for different reasons for servicemen) do not apply in other cases.

I would be prepared to accept both settlements provided that they can be accommodated within your programme provision in the current year. I understand that your officials have agreed that savings can be found to offset the £1.6m required for the courts' staff. Naturally I am pleased at this and grateful for your efforts. But I must ask you to look again at the possibility of absorbing the £1.8m for probation staff also.

In this letter I have dealt with the Vote consequences for 1981-82. Nothing I have said affects the position for the later years on which I note that you have lodged additional bids.

I am sending copies of this letter to the recipients of yours.

Yours ever,

LEON BRITTAN

CONFIDENTIAL

27 JUL 1981

HOUSE OF LORDS,
SW1A 0PW

With the
Lord Chancellor's Compliments

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

16 July 1981

Dear Willie Magistrates' Courts Staff: Pay 1981

Thank you very much for sending me a copy of your letter of the 13th July to Leon Brittan regarding Magistrates' Courts Staff Pay.

With the present civil disorders in some of our main cities, we cannot afford militant action by the Magistrates' Courts staff if it can be sensibly avoided. A quick settlement of the pay issue is clearly desirable, and it is certainly not the time to make the determination conditional upon court staff reductions.

I am sending copies of this letter to the recipients of yours.

Yrs

The Right Honourable
William Whitelaw, C.H., M.C., M.P.

17 JUL

copied to Probation Service file

c. Mr. Duguid

MR. LANKESTER

PAY OF MAGISTRATES COURTS STAFF, AND OF THE PROBATION SERVICE

You asked for advice, in case the Home Secretary raises this with the Prime Minister on Friday, about his two letters of 13 July, attached. I have had a word with the Treasury.

one letter - a probation service file

These are not large groups; and the pay rise proposed by the Home Secretary is not of a scale that creates significant difficulties for our pay policy. The problem, at least in the case of the magistrates staff, is a cash limits one.

I think therefore our line should be:

i. this really ought to be sorted out between the Home Office and the Treasury, without bothering the Prime Minister;

ii. if the Home Secretary goes out of his way to raise it, the Prime Minister could say that she accepts the principle of maintaining the link between these two groups and the local authority white collar workers, since the latter settled for a reasonable amount; but that his proposals do raise difficulties over the cash limit, and his office ought to discuss with the Treasury ways of making offsetting savings.

15 July 1981

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

13 July 1981

Dear Leon.

MAGISTRATES' COURTS STAFF: PAY 1981

The various groups employed in the magistrates' courts in England and Wales are due for a pay settlement effective from 1st July. So far the justices' clerks themselves, whose pay is linked to that of local authority chief officers, have not opened negotiations. However, both the Association of Magisterial Officers (A.M.O.) representing justices' clerks' assistants outside Inner London and the civil service unions representing the equivalent Inner London staff have lodged claims, and we have been approached by the management side negotiators for authority to settle. As you will no doubt recall, the pay of assistants outside Inner London is negotiated in the Joint Negotiating Committee for Justices' Clerks' Assistants (the J.N.C.), in which the Government is not represented, and my interest arises from the 80 per cent specific grant that is payable to the local authorities which finance the employing magistrates' courts committees. In Inner London I have an additional concern, since my formal confirmation is required before a pay settlement can take effect.

The pay of justices' clerks' assistants has traditionally been linked with that of the local authorities' A.P.T.&C. grades. A.M.O.'s claim has two principal features: progress towards the establishment of the recommended new pay structure; and a general increase in line with that of comparable groups. The management side of the J.N.C. are almost certain to seek to preserve the long established pay linkage by making an offer on 28th July in line with the recent A.P.T.&C. settlement of seven and a half per cent overall (including a small element for restructuring).

The A.P.T.&C. settlement is of course above the amount for which the Government made provision in the rate support grant settlement, and the gap will no doubt have to be bridged by job losses or other offsetting savings, or from the rates. A similar increase for justices' clerks' assistants would also exceed the available provision; although we provided for a six per cent increase from 1st July I understand that the cost of the final staged element of the 1980 pay settlement (namely two per cent from 1st April) must be deducted from it, leaving only some three and a half per cent available for an increase on 1st July.

It would of course be quite unrealistic to expect an offer at anything like that level to be accepted, and the management side explicitly declined to make such an offer when the J.N.C. met on 9th June. Instead we have been asked by the management side for an advance assurance that specific grant will be available to support a settlement of seven and a half per cent.

/The

The Rt. Hon. Leon Brittan, Q.C., M.P.

The management side acknowledge that some other settlements at a similar level have been partly offset by staff reductions. However, they argue that such reductions would be undesirable in this law and order group and that modest increases may well be justified to cope with the growth of business. I might add that staff reductions would almost certainly be counterproductive, since the first activity to suffer when resources are scarce is fine enforcement. The management side also argue that it would be inequitable and illogical to require this group - simply because the option of staff reductions is not available - to settle for pay levels lower than their traditional comparators in the town hall. Finally, the management side strongly believe that the A.M.O. claim is reasonable and that it would do the credibility of all those involved no good if it met with an unreasonable response.

I am bound to say that I have considerable sympathy with these arguments: it is hard to see any prospect of a settlement being achieved at less than about seven and a half per cent, nor what would be the rationale of an offer pitched somewhere below that, but above three and a half per cent. I believe that it would be sensible to recognise this from the start and that our best policy would be to help the J.N.C. to conclude a settlement on the lines proposed when they meet on 28th July.

At the same time I should want to authorise the Committee of Magistrates for Inner London to make a comparable offer when they meet the unions on 21st July. The unions' claim is couched in terms similar to those for their members in the civil service. The Committee have already rejected as likely to precipitate industrial action any suggestion of offering the three and a half per cent which is all that present provision allows for. Moreover, as you well know, we have never agreed to a pay linkage with the civil service and it has been our consistent aim to keep the pay of the Inner London staff broadly in line with that of magistrates' courts staff elsewhere. The longer we delay the Inner London pay increase the greater the risk there is that the staff will make common cause with their union colleagues elsewhere, and I need not spell out the consequences for the administration of justice in London which such action might bring. We have an opportunity to head off that risk now by enabling the Committee of Magistrates to make an early offer on the lines of what the J.N.C. intend. It would then be open to me to confirm the Inner London settlement as soon as the J.N.C. conclude theirs.

I have naturally given consideration to the public expenditure implications of settlements of seven and a half per cent. If, as I think we may assume, the justices' clerks and their deputies, together with their Inner London equivalents, seek to settle at a similar level, the total effect will be that we shall have to seek supplementary provision of some £1.6m in this financial year. We should also need consequential cash increases over the survey period for which bids have provisionally been included in the Home Office draft contribution to this year's Public Expenditure Survey Committee report to Ministers. As I have already explained, I see no way of finding offsetting savings from within the magistrates' courts programme itself; and I cannot offer savings from other Home Office programmes. I shall be grateful, therefore, to have your early

/agreement

that the necessary additional provision will be forthcoming, so that we may signify our support for these proposed settlements.

I might add that there is still a sense of resentment among all the groups in the magistrates' court about the very long delays in settling the 1980 pay round. Slowness on our part to deal with these expenditure questions not only undermines the negotiating structures in the service but also projects the Government into a position of prominence from which we derive no credit. This year, however, there are far graver considerations. Even without the events of the last few weeks I should have felt bound to tell you that there appears to have been a very considerable increase in the courts' criminal business last year, and it seems likely that this upward trend will be continued in 1981, regardless of recent events. It goes without saying that in the light of these events I cannot take any chances with the ability of the magistrates' courts to deal with their business effectively and quickly. I hope therefore that I may receive your agreement to these proposals before the Committee of Magistrates meet the Inner London unions again on 21st July.

I am copying this letter to the Prime Minister, members of E, the Lord Chancellor and Sir Robert Armstrong.

14 JUL 1981

Home Affairs

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon William Whitelaw CH MC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

16 January 1981

Dear Secretary of State,

PAY INCREASES FOR JUSTICES' CLERKS AND THEIR ASSISTANTS

Thank you for your letter of 14 January.

I note what you say about the background to this award, and need not go into the arguments underlying it.

The main thing from my point of view is, of course, the fact that funds have now been found from within your expenditure totals to cover the cost of the award in PES terms. I welcome that since the way is now clear for the announcement you want to make. The specific grant will, of course, now be calculated in accordance with the appropriate factors for cash.

I am copying this to the other members of 'E' Committee, the Lord Chancellor, and Sir Robert Armstrong.

Yours sincerely

T. Matthews

for LEON BRITTAN

[Approved by the Chief Secretary and signed in his absence]

Home Affairs

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

14 JAN 1981

PAY INCREASES FOR JUSTICES' CLERKS AND THEIR ASSISTANTS

I am replying to John Biffen's letter of 5th January.

Although so much correspondence has already been exchanged on this subject I think I must record once again that the pay settlements in question are reached in an independent negotiating machinery and that my responsibility arises from the specific grant that is paid for the running of the magistrates' courts. The only action that I can take to hold down expenditure is to withhold, or threaten to withhold, grant on whatever element of a pay determination was unacceptable to me. In the circumstances I believe that I have no realistic alternative but to allow this settlement to go ahead: the alternative of telling this law and order group that they must be treated less favourably than local authority staff is one that I cannot contemplate. I think we must keep in mind that what we are discussing is the final settlement of a 1980 pay round - not the opening of a settlement in the 1981 pay round - which has been caught up in the present restrictions by being excessively delayed by events beyond our control.

I think I ought to say also that I have reservations about a situation in which, in effect, I am being told that there are no objections to the proposed pay settlement provided that offsetting savings can be found from within the total expenditure for which I am responsible. As you will know, expenditure on the specific grant services is not cash limited and I think that the proposition to which I am being asked to assent could only be logically sustained if it were so limited, an issue which as you may know is under separate consideration at official level. For that reason, I would not wish the settlement that we are now discussing to be treated as a precedent.

Nevertheless I naturally appreciate your position too, and in the light of John Biffen's helpful letter I understand that your officials and mine have now identified a way of offsetting the amount due. I therefore propose to tell the management side of both J.N.C.s that they may settle on the lines they propose and that specific grant

/will be

The Rt. Hon. Leon Brittan, Q.C., M.P.

will be paid on the expenditure that is incurred. I propose also to confirm the pay increase for Inner London chief clerks and their deputies which is consequential on this settlement for justices' clerks outside Inner London.

I am sending copies of this letter to the members of E Committee, the Lord Chancellor and to Sir Robert Armstrong.

Leon Brittan

15 JAN 1988

cc Mr Duguid
Mr Vereker

LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

31 Dec 80

12
2/1

Dear John:

Justices' Clerks and their Assistants: Pay

You will be aware that I have seen copies of recent correspondence between yourself and the Home Secretary and I feel that I should rise to support the stance taken by the Home Secretary on this matter.

I am concerned that the magistrates' courts should operate smoothly and efficiently without hindrance from the type of strike action over pay which we saw a little while ago in London. Any repudiation of the pay agreement endorsed by the Government twelve months ago may well lead to a lowering of morale among court staff which could lead to yet another strike - something which the administration of justice just cannot afford.

I would urge you to endorse the present proposals because, in my view, this is not the right group of people upon whom we should seek to exert a very tough line.

I am copying this letter to the members of E, the Home Secretary, the Chancellor of the Exchequer and Sir Robert Armstrong.

yrs:

The Rt. Hon. John Biffen, MP
Chief Secretary to the Treasury,
Treasury Chambers,
Parliament Street,
SW1

- 2 JAN 1981

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 December 1980

JUSTICES' CLERKS AND THEIR ASSISTANTS: PAY

Thank you for your letter of 12th December replying to mine of 24th November to Geoffrey Howe.

As I understand it, your position is that unless I can meet from my own resources the cost of the proposed increases in 1981-82, I should not now endorse any increase above the 12 per cent for which provision has already been made. Had I been able to make with confidence offsetting savings on the scale required I should have gladly done so. But as you well know, I have had to make substantial reductions already and - as I said in my earlier letter - I am unable to offer offsetting savings for this purpose.

I am afraid that I do not think I can simply tell the management side of the two Joint Negotiating Committees that we are not prepared to pay grant on anything over 12 per cent in the 1979-80 pay round. This would inevitably mean the repudiation of the agreement for justices' clerks which we endorsed only a year ago; and for assistants it would - for the reasons explained in my earlier letter - be damaging to the low morale of the staff. Both groups have links with local authority staff and the effect of our not underwriting the two settlements would be to leave the two small groups of justices' clerks and, especially, their assistants trailing appreciably behind their established analogues; as I suggested to Geoffrey Howe, this would be widely regarded as inconsistent with the emphasis we place on law and order.

As you recognised, there should be no difficulty in meeting the cost of these proposals in this financial year; and I naturally accept that the treatment of the April 1981 element must be consistent with that for the A.P.T. & C. grades. The difficulty therefore arises only in respect of the cost in 1981-82 of the excess over 12 per cent of the increases proposed from 1st July 1980. The sum involved is about £0.6 million (of which the Government would bear £0.48 million). Although, as I have said, I cannot guarantee to find offsetting savings, it is possible that at least some of the cost will be met from the existing provision for the service. What I am seeking, therefore, is in

/the nature

The Rt. Hon. John Biffen, M.P.

the nature of contingent cover for a relatively small amount. I should be most grateful if you would reconsider the matter urgently in the light of all the arguments, and agree that I may proceed on the lines set out in my earlier letter.

I am copying this letter to the members of E, the Lord Chancellor and Sir Robert Armstrong.

18 DEC 1980

Home Affairs

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon William Whitelaw CH MC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

12 December 1980

Dear Secretary of State,

PAY INCREASE FOR JUSTICES' CLERKS AND THEIR ASSISTANTS

Thank you for your letter of 24 November to Geoffrey Howe proposing settlements for magistrates' courts' staff. I have also seen the letter of 2 December from the Private Secretary to the Prime Minister.

Unlike your proposals on probation, about which you also wrote on 24 November, I see some difficulties in your proposals. This stems not so much from the elements of the awards themselves, although the complex of settlements for the clerks' assistants is not free of controversy, but because of the implications for 1981-82.

I understand that the cost of the awards falling on your Vote this year could well be contained within the cash now provided for 1980-81. I must ask you to achieve this. It will be understood, of course, between us that the 20% share falling on local authorities will, in accordance with policy, have to be found without an increase in the cash limit for RSG.

I appreciate that this expenditure concerns a demand-determined service. However, the fundamental question for pay policy is the control of cash flow. Geoffrey Howe put this very crisply in the Economic Statement on 24 November:

> "We must restrict the cost, and so the cash requirement, of the public sector. The cost of public expenditure programmes is as important as volume".

In short, if you want to approve all the elements of these two pay increases at the levels you have suggested, some other service has to be forgone. I do not think it can be argued that our commitment to accept the Clegg recommendations commits us irrevocably to your proposals on justices' clerks' assistants. Our policy is to increase pay only to the extent that funds are available to cover the cost of the resulting increase in earnings. Since you say you cannot manage this, I have to ask you to

re-examine the priorities. In case it will help in that re-examination, I should make plain that at least two elements of the award to the assistants (which date from 1 April 1981) would have to be found from within the 6% pay factor applicable for 1981-82 awards. This is in line with the Cabinet's discussion of 13 November on Staging and with the handling of the recent APT and C award in the 1981-82 RSG cash limit.

I am sorry not to be more helpful.

I am copying this letter to the other members of 'E' Committee, to Lord Hailsham and to Sir Robert Armstrong.

Yours sincerely

T. Matthews

for JOHN BIFFEN

[Approved by the Chief Secretary and signed in his absence]

17 DEC 1980

cc: John Vereker
FCO
HMT
DInd
LPO
Emp
MAFF
D/T
D/En
Ch. Sec. HMT
CO
LCO

10 DOWNING STREET

From the Private Secretary

2 December 1980

Original on:—
Home Affairs June 79
Probation pay.

The Prime Minister has read the Home Secretary's two letters of 24 November on pay in the Probation Service and the pay of Justices' Clerks and their Assistants. She is content with the Home Secretary's proposals in both these cases provided that the Chancellor is also content.

I am sending copies of this letter to Private Secretaries to members of E, the Lord Chancellor and Sir Robert Armstrong.

T P LANKESTER

John Halliday, Esq.,
Home Office

Original on:- Home Affairs
Probation Pay: Title 79
cc:- Mr Duguid

MR LANKESTER

PAY OF THE PROBATION SERVICES AND OF JUSTICES' CLERKS

The Home Secretary has written two letters, dated 24 November, to the Chancellor, copied to E, on the pay of the Probation Service and of Justices' Clerks and their Assistants respectively. Neither of these cases raises a significant public sector pay issue.

In the case of the Probation Service, the Home Secretary proposes not to use his power of veto over the arbitration award of 13.85%. This award is reasonable, and relates to the last pay round, and the group involved is small; I would not expect there to be significant knock-on effects. The only difficulty is the accommodation of the award within a 13% cash limit (the Probation Service is paid for out of the Rate Support Grant) and we can safely leave it to the Treasury to worry about that.

In the case of the Justices' Clerks and their Assistants, the Home Secretary proposes an arrangement whereby they would receive a similar increase to that recently proposed by the arbitrator for local authority white collar workers. Again this is a small group and a hang-over from the last pay round, with no expected knock-on effects; and again the principal difficulty is the accommodation of a 2% increase as from 1 April, 1981 (the staged element of the 1 July, 1980 settlement) within the cash limit.

If the Prime Minister agrees, I think it would be appropriate for you to write to the Chancellor's Private Secretary indicating that she is content with the Home Secretary's proposals provided that the Treasury are content with the arrangements for paying for them.

JOHN VEREKER

26 November, 1980

cc A Duguid
J. Jeckes

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

24 November 1980

Dear Chancellor of the Exchequer,

JUSTICES' CLERKS AND THEIR ASSISTANTS: 1980 PAY

I am writing to you about the pay of the various groups employed in the magistrates' courts in England and Wales, all of which share a common settlement date of 1st July. As you will no doubt recall, the pay of the justices' clerks and their assistants outside Inner London is negotiated in two Joint Negotiating Committees (J.N.Cs.) in which the Government is not represented. My interest flows from the 80 per cent specific grant that is payable to the local authorities which finance the magistrates' courts committees. In Inner London however I am more directly concerned, since my formal confirmation is required before a pay settlement can take effect.

Justices' Clerks

Last December colleagues agreed to the proposal set out in my letter of 11th December that we should accept the agreement reached in the J.N.C. for Justices' Clerks that justices' clerks' basic salaries should be fixed at fulcrum minus one increment on the local authority chief officers' scale. It was also accepted that the agreement should be applied to the chief clerks and their deputies in Inner London whose salaries have always followed those settled for the rest of England and Wales. The J.N.C. now propose, in accordance with that agreement, to apply as from 1st July 1980 the local authority chief officers recent settlement of a 13 per cent increase. I understand that the total cost of the J.N.C. settlement would be about £0.54m in a full year (or about £0.4m in 1980-81). There would be an additional £0.4m or so (about £0.3m in 1980-81) in respect of the consequential application of the increase to deputy justices' clerks, whose pay is set as a proportion of the justices' clerk's salary. The estimated cost of applying the settlement to Inner London is about £0.15m in a full year.

Justices' Clerks' Assistants

The position regarding justices' clerks' assistants outside Inner London is more complicated. I wrote to Keith Joseph (copied to colleagues) on 21st July about the interim agreement which had been reached in the J.N.C. for Justices' Clerks' Assistants, and in my letter of 27th August to you I suggested that the time to review the pay position of this group would be when the Clegg Commission had reported.

The Clegg Commission has now reported (Cmnd 8061). Its report was based on a survey conducted by the Civil Service Pay Research Unit (P.R.U.), which found that pay increases of varying size were justified for the clerical and administrative divisions which contain the majority of the staff, as well as for senior court clerks and administrators. But the survey also suggested that the majority of court clerks were due for reductions in pay, tapering down from 9 per cent at the lower end of the scale. The Commission ruled out the imposition of substantial pay reductions and therefore offset the cost of avoiding them against the pay increases which were due to other staff. Its conclusion, after making allowance for fringe benefits and for payments made on account, was that the group as a whole was entitled to an increase of around 1 per

/cent. The

The Rt. Hon. Sir Geoffrey Howe, Q.C., M.P.

cent. The Commission argued that to propose such an increase would be "pointless" and its main recommendation on pay therefore was that there should be no revision in the pay scales which operated from 1st December 1979 up to 1st July 1980 (in other words there is no question of clawing back any of the payments made on account).

The Commission's second recommendation on pay was that the parties should use the final pay settlement for 1st July 1980 and the settlements for the two succeeding years to introduce as soon as possible the pay relationships derived from the P.R.U. survey. For the future the Commission suggested that the parties should consider introducing specific links with the pay of local authority A.P.T. & C. grades once the adjustments for the new internal pay relationships have been fully carried out.

The J.N.C. have already met to consider the final settlement for 1980 and have established a working group to examine some of the subsidiary recommendations in the Clegg Report. The J.N.C. are to meet again on 27th November and meanwhile the management side have approached my officials for advice on the Government's likely attitude to the settlement they hope to achieve. The J.N.C. have been advised in the first place to put off their next meeting for a week or two, but the union representatives have declined to agree. Both sides are aware that no final agreement can be reached until Government assurances on funding are forthcoming.

The management side see as their prime objective in the 1980/81 settlement to get as close as possible to the new pay relativities which Clegg has recommended. They believe that the magistrates' courts cannot be expected to live for very long with a situation in which low paid staff are denied increases which the P.R.U. survey has found appropriate, solely because much higher paid staff are already being paid more than the survey found was justifiable. It is doubly unfortunate first that those who are said to be overpaid are court clerks nearest the bottom of the scale which was established only last year as a national minimum rate, and secondly that it is in respect of the court clerks that the P.R.U.'s methods are most vulnerable to criticism - and have already been strongly criticised by the Justices' Clerks' Society.

As a first step towards achieving their objective therefore, the management side propose to award from 1st July 1980 the 1 per cent which Clegg thought "pointless" to propose from 1st December last year. As this element was not the subject of a positive recommendation by Clegg for 1979-80, the Government are not committed to support it. But the staff see it as money to which they have a just claim and it is not easy to argue with that, given that Clegg's only counter-argument was that an award of so small a sum would be "pointless".

Clegg's acceptance of the management side's case for linking the pay of magistrates' courts staff with that of local authority A.P.T. & C. grades (who have been the traditional analogues) will have come as a considerable disappointment to the

/Association

Association of Magisterial Officers (A.M.O.). Ironically, having sought to reject their longstanding link with local authority pay (on which we have always insisted), the magistrates' courts staff did appreciably worse as a group - even with their payments on account - than the A.P.T. & C. grades in 1979. This gap will widen now that the local authority workers stand to receive more than 12 per cent as a result of their recent arbitration. Although Clegg suggested that specific links with A.P.T. & C. grades should eventually be established, he was silent on how pay should be determined meanwhile. The management side, however, regard the logic of the Report as supporting a continuation of the link with local authority pay and are therefore anxious to ensure that the pay of magistrates' courts staff as a group keeps in line with that of the A.P.T. & C. grades.

In a nutshell, the management side would like an indication that the Government would support its share of a settlement giving the magistrates' courts staff both (a) the 1 per cent outstanding from Clegg, and (b) the same award as the A.P.T. & C. grades receive. The money would then be distributed differentially so as to achieve as far as possible the new internal relationships recommended by Clegg.

The cost of the two elements would be as follows. The outstanding "Clegg 1 per cent' relates to the pay bill on 1st July last year and would cost about £0.22m in a full year (or £0.17m in this financial year). The "A.P.T. & C. followers" award of 13 per cent from 1st July 1980 (i.e. an extra 1 per cent over the interim award) would cost about £0.24m in a full year (£0.18m in this financial year); the further 2 per cent from 1st April 1981 would cost about £0.47m in a full year. The full replacement cost of the improved annual leave allowance is estimated at about £0.15m but it is expected that the actual cost would be substantially less than that.

I hope I may assume that there will be no dissent from the first proposition - that the staff should receive the remaining "Clegg 1 per cent". As to the second proposition, I must stress that even if the magistrates' courts staff receive everything the management side now have in mind to offer, they will still be behind the A.P.T. & C. grades. It would be a curious commentary on the priority we attach to the law and order services if we allowed this group to fall behind their traditional analogue, a link which Clegg described as "sensible".

There is another aspect of the matter which concerns me: the group covered by the J.N.C. will have fallen behind the Inner London magistrates' courts staff - who are represented by the civil service unions. The Clegg Report has come as a painful shock to A.M.O. The advice reaching me leaves me in no doubt that a further rebuff on the pay front could well lead to the eclipse of A.M.O. by a union far less moderate in outlook and with better resources to support a militant line. I do not think such a prospect is one which we can contemplate with equanimity, and I believe that a little flexibility on our part now could do much to neutralise that risk.

/My conclusion

My conclusion therefore is that we should allow the management side of the J.N.C. to settle on the lines they propose. I must stress that I have reached this conclusion only after a great deal of thought about the financial implications of what I propose. In my letter of 27th August to you, I said that I could not guarantee to absorb the effect of the awards then agreed within the existing provision for 1980-81. This was because the package contained a substantial element relating to the 1979 pay settlement for which provision could not be made in the 1980-81 budget estimates. The latest returns from the providing authorities confirm this position and we have had to seek a supplementary estimate this year. The cost of the proposals in this letter will add about £1m to the pay bill next year, for which I am unable to offer any offsetting savings.

Conclusion

I should be grateful to have your agreement that, as regards the justices' clerks and their deputies, we should accept the implementation of the agreed linkage with local authority chief officers and that I should confirm the application of this settlement to the Inner London chief clerks and their deputies. I should also be grateful for your agreement to my officials conveying to the management side of the J.N.C. for Justices' Clerks' Assistants that the Government is prepared to meet its share of a settlement on the lines I have mentioned above.

I am writing to you separately about the pay of probation officers.

I am copying this letter to the members of E, the Lord Chancellor and Sir Robert Armstrong.

Yours sincerely.

S.W. Boys Smith

(Approved by Chief Secretary and signed in his absence.)

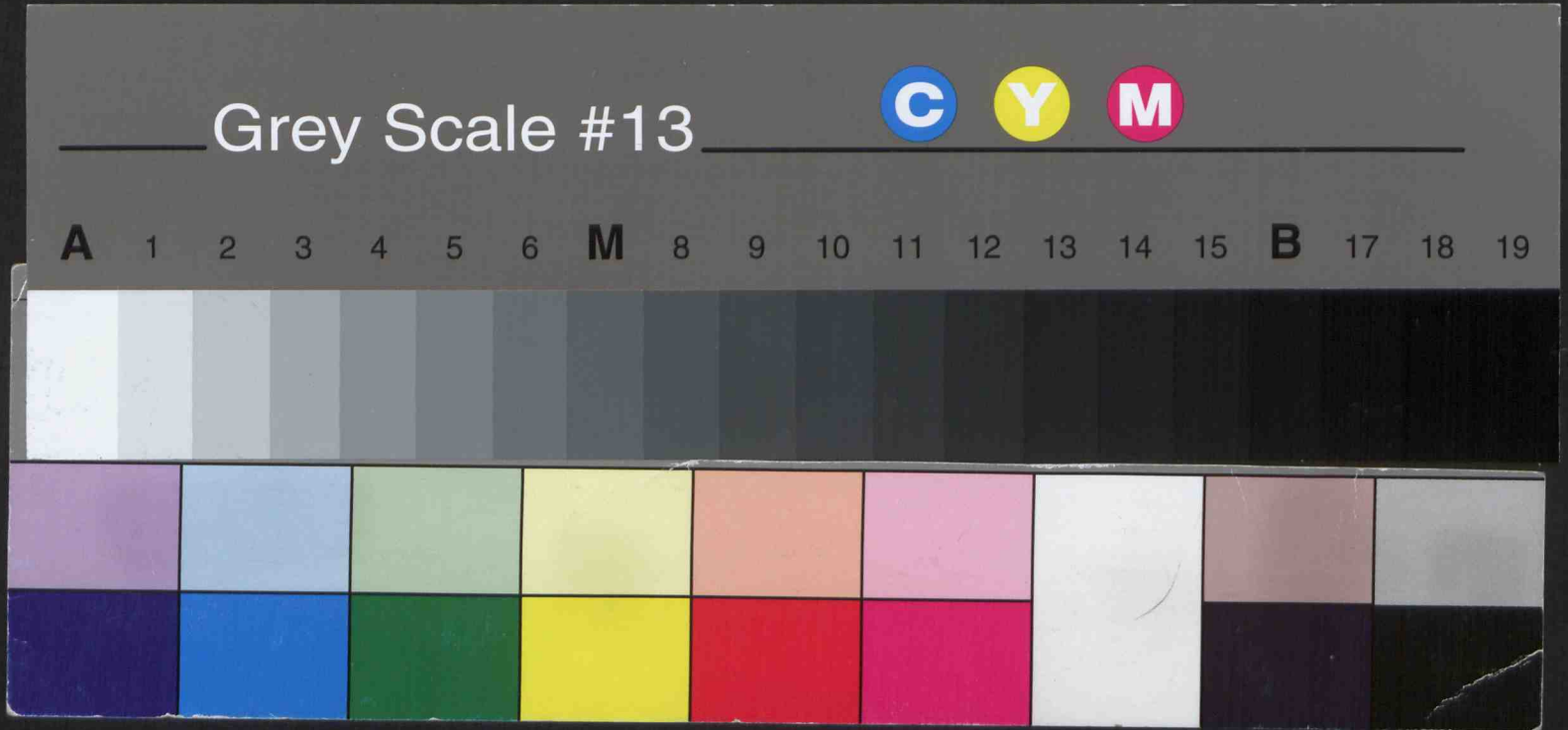
25 NOV 1980

PART 1 ends:-

PM to Clegg 13.10.80

PART 2 begins:-

Home Secy to Ch Ex 24.11.80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