

JUSTICES' CLERKS' SOCIETY

The Role of the Justices' Clerk and the Legal Adviser

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Justices' Clerks' Society

England and Wales

The Role of the Justices' Clerk and the Legal Adviser

The Justices' Clerk (of whom there are forty nine in England and Wales) occupies a unique position within HMCS in that, although a civil servant and subject to the management of the Area Director for administrative purposes, he/she has complete independence when undertaking judicial functions and giving legal advice to magistrates. He/she is appointed as a Justices' Clerk under the Courts Act 2003 by the Lord Chancellor and designated as such after consultation with the Lord Chief Justice.

The Justices' Clerk has the powers of a single justice, for example, to issue a summons, adjourn proceedings, extend bail, issue a warrant for failing to surrender to bail where there is no objection on behalf of the accused, dismiss an information where no evidence is offered, request a pre-sentence report, commit a defendant for trial without consideration of the evidence and give directions in criminal and family proceedings. (A more detailed paper will follow on the role of the Justices' Clerk and legal adviser in family proceedings). The Justices' Clerk may delegate these functions to a legal adviser (assistant justices' clerk in statutory terms).

Subject to the directions of the Justices' Clerk, the legal adviser has the same independence as the Justices' Clerk in exercising judicial functions and giving legal advice to magistrates. Both should act in conformity with the Bangalore Principles of Judicial Conduct, namely judicial independence, impartiality, integrity, propriety, ensuring equality of treatment to all before the law, competence and diligence.

The Justices' Clerk is responsible for the legal advice tendered to magistrates in and out of the courtroom. General legal advice may be given through training events or otherwise. The Justices' Clerk is also responsible for the performance of the legal advisers and must ensure that competent advice is available when he/she is not personally present. He/she must also ensure the effective delivery of case management and the reduction of unnecessary delay.

In the courtroom, whether or not requested, a legal adviser must provide advice necessary for magistrates to properly perform their functions. This includes advice on:-

- questions of law
- mixed law and fact
- practice and procedure
- range of penalties
- relevant decisions of higher courts and other guidelines
- other relevant issues
- decision making structures

Where appropriate, the legal adviser is responsible for assisting magistrates with the formulation and recording of reasons.

Additionally, the legal adviser may ask questions of witnesses and parties to clarify evidence and issues; must ensure that every case is conducted fairly and assist unrepresented defendants to present their cases (without becoming an advocate).

As well as fulfilling the above functions, the Justices' Clerk, assisted by deputies and legal team managers, leads and manages the legal advisers. He/she gives guidance and directions to other staff on legal issues and, in particular, listing. He/she is a member of the Bench Judicial Leadership Group, the Justices' Issue Group, the Area Judicial Forum and the HMCS Area Management Team. The Justices' Clerk is involved in bench management issues; deals with magistrates' pastoral issues in conjunction with the Bench Chairman; supports Bench Committees, including the Bench Training and Development Committee and supports Youth and Family Panels. The Justices' Clerk also works with other criminal justice agencies, including Local Criminal Justice Boards, on operational issues and implementing new initiatives. He/she may be Secretary or Assistant Secretary to an Advisory Committee. The Justices' Clerk is also responsible for the training and development of magistrates and legal advisers. As before, the Justices' Clerk may be assisted by his/her deputies in exercising these functions.

The Justices' Clerks' Society, the membership of which includes all Justices' Clerks and many legal advisers, provides professional leadership for lawyers who work in the magistrates' courts by giving legal advice and guidance. It is represented on a number of national bodies, including the Judicial Studies Board, and works with the Magistrates' Association, the National Bench Chairs' Forum, the Sentencing Guidelines Council and others on matters of mutual interest. The JCS is also represented on numbers of HMCS steering and working groups. Its President meets regularly with the Senior Presiding Judge for England and Wales.

Sources: The Courts Act 2003, ss 27-29
The Practice Direction on the Role of the Legal Adviser
The Guide to the Conduct of Justices' Clerks and Assistant Justices' Clerks (2007)