INTRODUCTION

1. Thank you for the opportunity to comment on the Reform Programme. I am a lay Justice who has also held pastoral responsibility in the recent past for 120 magistrates in a newly merged Bench. I have not done active research amongst colleagues as this might foment discontent, but I believe many would agree with my sentiments below. I write in the spirit of one who wants the Reform Programme to succeed in improving the delivery of justice.

2. In your Terms of reference whilst I have concerns on all topics, I am mainly addressing Number 3 on communication.

3. My underlying assertions are that change, both past and in the offing, is at the root of the morale problem amongst magistrates; and that the effects on the lay magistracy of the changing ways of doing court business could be very damaging to the judicial edifice, if the Reform Programme is not fully explained and open to amendment based on the Judiciary’s feedback.

4. I am aware (though I am sure not fully) of the sterling work being done by the Magistrates’ leadership at every level from SPJ to my own Bench Chairman and in no way imply criticism of them.

EXECUTIVE SUMMARY

- 2017 Survey did not ask Magistrates what they think of the Reform Programme, and the Survey results cannot be indicative of contentment with it.
- Failure of magistrates to offer themselves for Bench offices and attend AGMs in the previous numbers indicates disaffection with the direction of travel, though they are just as committed when in court.
- This is the result of changes already made in recent years (examples are at the appendix) which have damaged the delivery of justice and made magistrates sceptical about the change to come in the Reform Programme.
- Few magistrates have a clear view of the Reform Programme and what it envisages and most assume it is a cost cutting exercise with insufficient regard to the delivery of justice. Work is needed to disabuse them of this view.
- I recommend a succinct document is produced showing everyone a clear aim and principles for the Reform Programme and the ways in which these will be enacted; that feedback is encouraged; and that the programme is adjusted where feedback is persuasive. Bench Chairmen will then have the means to lead their magistrates through
the change. I suggest 3 further measures to reassure magistrates about the delivery of justice.

- It surely bodes very badly for a complicated and expensive *ab initio* project if there are no clear aim and principles.
- As an example from another testing and changeable situation which is instructive, the 10 UK Principles of War have the necessity for an aim and maintenance of morale at the very top. So should the Reform Programme.

**CONTEXT**

5. **Results of 2017 Survey.** The 2017 survey of magistrates’ views did not ask what they thought of the new structures nor of the Reform Programme, and therefore there is no data on this; but there is plenty of anecdotal evidence of worry and discontent, which I am sure has been recognised by the House of Commons Justice Committee, the Senior Judiciary and magistrates’ leaders. Magistrates have not been resigning in large numbers and according to the survey 91% would still recommend the role to others; but that is almost certainly due to their loyalty to the magistracy rather than an indication of satisfaction. The questionnaire did explore whether magistrates felt undervalued, and found that 54% did.

6. **Evidence of Low Morale.** Magistrates are not coming forward for election to the statutory positions on the Bench and supporting committees, nor offering to be mentors/appraisers, nor attending Bench AGMs, in anything like the numbers in the past: this looks like apathy which is a sure sign of disaffection. In the Retiring Room if they talk of it at all, no-one is impressed by the trends. Why is this?

7. **Reasons for Low Morale.** The changes in recent years have delivered a significant shock to the magistrates’ courts and their supporting administration. Of course some innovations are working better and better, and under determined local leadership everyone is trying very hard to make new ways work; but overall the widespread observation is that changes have not yet delivered more efficient justice but less. Examples of the causes of discontent are at the appendix to this letter.

8. **Consequence.** Whilst (it must be emphasised) still very dedicated to their work in court, magistrates have already lost faith in the direction of travel and are apprehensive and sceptical about the Reform Programme to come.

**THE REFORM PROGRAMME**

9. Magistrates know of no clear and admirable aim for the Reform Programme and most only have a vague idea what it will bring. They strongly suspect it is merely a staff and estate reduction exercise with little concern for the effect on justice which is, they fear, going to be detrimental.

10. There is, therefore, much work to be done by the MOJ to disabuse magistrates of their gloomy misgivings, persuade them that after the turbulence all will be well, and take them on a path they would not have chosen themselves. It may also be that the programme should be revised to reflect any of their concerns which are found to have force:
magistrates between them have a very wide set of skills and much experience of their courts and their views deserve to be weighed carefully.

RECOMMENDATIONS

11. For the Reform Programme create a succinct document which states:
   a. A convincing aim for the Reform Programme, based solely on improving the delivery of justice.
   b. Principles which emphasise, *inter alia*:
      i. Retaining the competence and dedication of lay JPs, thereby acknowledging their essential and valued role in the judiciary and the importance of their training;
      ii. Preserving substantial, satisfying court work, common cause in an amiable atmosphere, and the close relationship with court staff, which together sustain magistrates’ dedication.
   c. The way the reforms will achieve the aim and follow the principles.

12. Invite comment on measures in the Reform Programme via the leadership, respond to worries on the delivery of justice, and if necessary, adjust the Reform Programme based on feedback.

13. Reassess the effect on efficient justice of centralising court and administrative work.

14. Provide Bench Chairmen with a clear and convincing brief, so they can lead their Benches through the change and pass considered, helpful feedback to the Senior Judiciary.

15. Other measures to reassure and encourage magistrates might be to:
   a. Implement the long awaited 12 month prison sentencing powers thereby sending a morale boosting message and increasing work of substance; this being perhaps an important power if custody sentences under 6 months are banned.
   b. Review the powers given to the Police to make Our of Court Disposals (OOCD) with a view to ensuring judicial decisions are made where best for justice and consistency. Even with the best will and scrutiny panels of magistrates to sample OOCD decisions, the police having judicial powers as well as a key role in prosecution of offences is fundamentally at odds with justice.
   c. Provide National, Regional, Bench and panel chairmen with proper secretarial support to ease the very considerable, unpaid load they are carrying, ease the pressures and make these offices more attractive.

16. **Project Management.** I have heard it said more than once that articulating an aim for the Reform Programme is difficult. It is surely extremely risky indeed to run a £1Bn programme for systems which have never been tried elsewhere (itself risk enough), without a clear aim and principles.
17. **An Example from the Armed Forces.** The ten UK Principles of War (a volatile, crucial and highly dangerous state of change), compiled by the Service Chiefs after WWII to capture their acquired wisdoms, put at 1st and 2nd, before eight other vital principles:

   a. Selection and Maintenance of the Aim
   b. Maintenance of Morale

   If the Reform Programme with its very radical change is run without adherence to these two principles I fear it will be, to coin a naval expression, standing into danger. It may already be.

Appendix: Examples of changes to date which cause magistrates’ discontent and concern

February 2019

Appendix to HBD Letter of 13 February 2019

**Examples Of Changes To Date Which Cause Magistrates’ Discontent and Concern**

1. Closures and brigading of work (a Transforming Summary Justice principle) which has diminished local justice and made access harder for defendants and witnesses most of whom are poor and disorganised, and increasing numbers of whom are mentally ill - we read in the press that half the court houses have closed since 2010.
2. Loss of legal aid which has left so many defendants unrepresented and disadvantaged, slowing the court process, and increasing the risk of disorder in the courtroom with no advocate to calm excited clients.
3. Reduction in CPS staff cutting the available prosecutors and therefore courts in use and slowing the delivery of court business; and documents not being shared in good time (sometimes not at all) due perhaps to technical/staff difficulties.
4. Granting jurisdiction to the Police in Out of Court Disposals, blurring the line between policing and judicial decision making, and leading to significant discrepancies from Sentencing Guidelines.
5. Centralisation of administration functions making the administrators perforce remote, busier and less available.
6. Pressures placed on HMCTS colleagues and their uncertain futures.
7. Amalgamation of Benches which none would have sought. My Bench has an excellent Chairman, who works tirelessly to ensure a cohesive, well-briefed Bench, and magistrates the great majority of whom have entered very responsibly into the new regime; but it is always more difficult to run a bigger organisation than a smaller one and maintain good spirits, especially at a time of radical change.
8. Poorly implemented IT (especially that of eJudiciary which was inept and intensely annoying to busy people) undermining faith in the higher management’s ability to implement new ways of working.
9. Reduction in valuable training which was previously considered so important.