



JUDICIAL STUDIES  
BOARD

**BENCH TRAINING AND DEVELOPMENT  
COMMITTEES  
AND  
MAGISTRATES' AREA TRAINING  
COMMITTEES**

---

**INTERIM GUIDANCE ON THE OPERATION OF  
SECTIONS 49 AND 50 OF THE COURTS ACT 2003**





JUDICIAL STUDIES  
BOARD

**Bench Training and Development Committees and Magistrates’  
Area Training Committees**

**Interim Guidance on the operation of sections 49 and 50 of the  
Courts Act 2003**

**Contents**

<b>Topic</b>	<b>Page</b>
Introduction	5
Summary of provisions	7
Effect on Family and Youth Panels	9
Authorisation to sit in the family proceedings and youth courts	11
Chairmanship in the family proceedings and youth courts	13
Effect on membership of BTDCs	17
Other implications for BTDCs	19
Family Training and Development Committees (and the Inner London Youth Training and Development Committee)	21
Further information	23
JSB Workshops – reminder	25



# 1 Introduction

1.1 This document provides interim guidance to all recipients on the provisions of the following statutory instruments made to support the operation of sections 49 and 50 of the Courts Act 2003:

- The Justices of the Peace (Training and Development Committee) Rules 2007 (SI 2007 No. 1609);
- The Family Proceedings Courts (Constitution of Committees and Right to Preside) Rules 2007 (SI 2007 No. 1610 (L.8)); and
- The Youth Courts (Constitution of Committees and Right to Preside) Rules 2007 (SI 2007 No. 1611 (L9)).

Copies of these rules can be viewed and downloaded from [www.opsi.gov.uk](http://www.opsi.gov.uk).

1.2 More detailed guidance will be provided during September 2007 by way of updated versions of the JSB publications *1<sup>st</sup> Revision MNTI2 Good practice guidance for BTDCs* and *Good practice guidance for Magistrates' Area Training Committees (MATCs)*. This interim guidance describes the main effects of the statutory provisions, and the actions that need to be taken immediately to ensure compliance. It is issued by the Judicial Studies Board, and has the approval of the Ministry of Justice and the Judicial Office. It is not intended as a definitive guide to the statutory interpretation of those rules.

1.3 Specific interim guidance is not being issued for London. Separate consideration has already taken place in London and the outcome thereof has been checked against the contents of the guidance for the rest of England and Wales.



## 2 Summary of provisions

- 2.1 The statutory instruments referred to above come into force on **13<sup>th</sup> July 2007**.
- 2.2 Although they contain transitional provisions, the statutory instruments take immediate effect. They repeal and replace the Justices of the Peace (Training and Development) Rules 2005, The Youth Courts (Constitution) Rules 1954, the Family Proceedings Court (Constitution) Rules 1991 and the Family Proceedings Court (Constitution) (Greater London) Rules 2003.
- 2.3 The statutory instruments make important changes to the way in which family and youth court magistrates will be authorised and chairmen in those courts selected. The transitional provisions are intended to ensure that the move to the new processes can be implemented over time whilst the business of the courts continues, although there are some issues that justices' clerks, BTDCs, panels and others may wish to consider immediately.
- 2.4 The Training and Development Committee Rules re-enact the requirement for there to be MATCs and BTDCs and includes provisions to carry over matters such as membership of those committees.
- 2.5 There are specific provisions relating to the administration of family work across the whole of London, and youth work in the Inner London Youth Panel area. Other than in those London areas, the main changes are as follows:
- The coming into force of sections 49 and 50 of the *Courts Act 2003* in 2005 gave the power to authorise magistrates to sit in family proceedings and youth courts to the Lord Chief Justice. Hitherto he has exercised that power through the election and panel process. The Lord Chief Justice has now delegated his role of granting authorisation to sit in the family proceedings and youth courts to the BTDC. Appointment will no longer be by election at bench meetings. The rules set down a procedure for authorisation, and

magistrates who wish to sit in these courts must meet certain criteria; will be required to complete an application form; and must be assessed as suitable.

- An authorisation to sit in the family proceedings or youth court is permanent: the concept of the triennium on the panels is abolished. Thus all those previously authorised under the election system will continue to be authorised to sit until they resign, retire or if their authorisation is revoked by the Lord Chief Justice.
- The BTDC also assumes responsibility for appointing magistrates as chairmen in the family proceedings and youth courts, removing this from the respective panels themselves. The rules set down a procedure, which mirrors that which BTDCs have been administering some time for the selection and training of chairmen in the adult court.
- The panels therefore cease to exist in their current form. However the rules re-introduce a local panel structure for specified purposes, including automatically recreating joint panels where they existed previously.
- BTDCs and Family Panels can apply jointly to the Lord Chief Justice to form a Family Training and Development Committee that would carry out the authorisation and chairmanship selection functions for the family panels, in place of BTDC(s).
- They cannot, however, apply to form a separate Youth Training and Development Committee – the provisions for the Inner London Youth TDC are specific to Inner London.
- BTDCs will be required to have six or nine members, and benches will have to ensure at their 2007 October Annual General (or Election) Meeting that their BTDC has a youth and a family panel member.

2.6 The following sections of this interim guidance give further details and recommend actions for justices' clerks, BTDCs, and youth and family panel chairmen, pending the publication of the full revised guidance.

### **3 Effect on Family and Youth Panels**

3.1 The two sets of constitution rules provide a new framework for youth and family panels. In many aspects they reflect the previous operation of family and youth panels. There are however a number of new features that affect both jurisdictions similarly.

- The panel no longer elects magistrates to sit as chairmen in court. The function of authorisation on behalf of the Lord Chief Justice passes to the BTDC.
- The panel is permanent, not needing to be re-elected every three years. Membership is a result of authorisation and only ends when a magistrate resigns, retires or is otherwise removed.
- The panel has specific functions, including (in conjunction with justices' clerks and the area director) advising BTDCs of the number of new panel members and court chairmen that it needs; and liaising with other bodies to share information and represent the views of the panel justices.
- The panel must hold at least two meetings a year, one of which must be between 1<sup>st</sup> September and 30<sup>th</sup> November, referred to in the rules as the "election meeting".
- At that election meeting (unless it decides to do so by postal ballot in future years), the panel elects a panel chairman for the following year. The panel can also elect one or more 'deputy chairmen'. Deputy chairmen deputise for the panel chairman. Being a deputy chairman does not, as it did under the previous scheme, authorise a magistrate to be a court chairman.
- The rules on constitution of family and youth justice and eligibility to chair youth and family courts and the absence of a justice entitled to preside remain largely unaltered by the new constitution rules. The precise detail of the new rules should be studied. az

3.2 The Greater London Family Panel, and the Inner London Youth Panel have separate specific statutory frameworks within the rules.

## **ACTION:**

### **Justices' clerks, Family and Youth Panel chairmen**

Justices' clerks and panel chairmen will need to keep panel members and benches advised of the changes.

Existing panel chairmen (but not deputy chairmen, and therefore not court chairmen, please see below under action for BTDCs) are carried over automatically until 31<sup>st</sup> December 2007.

Justices' clerks and panel chairmen need to fix a date for a Youth and a Family Panel Election meeting between 1<sup>st</sup> September and 30<sup>th</sup> November 2007. That meeting will need to include the following items in its agenda:

- Election by secret ballot of a panel chairman from 1<sup>st</sup> January 2008.
- Determining the number of deputy panel chairmen from 1<sup>st</sup> January 2008.
- Election of that number of deputy chairmen by secret ballot.
- Determination of method of appointment of panel chairman and deputies at the election meetings in 2008.
- To fix the dates for a minimum of two panel meetings for 2008.

## **4 Authorisation to sit in the Family Proceedings and Youth Courts**

- 4.1 Under the new provisions, Benches will no longer appoint panel members by election. Sections 49 and 50 assign the responsibility for the authorisation of magistrates to sit in youth and family proceedings courts to the Lord Chief Justice. Through the rules he has delegated the function to BTDCs.
- 4.2 The rules set out a procedure for magistrates to follow in applying to sit in family proceedings and youth courts, together with a number of minimum requirements they must fulfil:
- The magistrate must have sat in the adult court for at least two years.
  - He or she must have been appraised as competent in the adult court.
  - He or she has observed proceedings in the relevant court on at least two occasions.
  - He or she must make a written application. The revised guidance will include a suggested form.
  - The BTDC will assess the applicant's suitability against criteria that will be contained in the application form and in the revised guidance.
  - The rules allow BTDCs to interview candidates. The revised guidance will provide advice on whether and how this could be done.
  - The BTDC decides whether to authorise the magistrate to sit in the relevant court.
- 4.3 Any magistrate appointed to sit (but not to sit as court chairman) in the family proceedings or youth court prior to the introduction of the rules is authorised thereafter under the new provisions. However, his or her appointment is permanent, and not limited to a triennium. All future

appointments to sit in the family proceedings or youth court will also be permanent. The triennium is therefore abolished.

- 4.4 BTDCs have power to recommend the removal of a magistrate's authorisation to the Lord Chief Justice on a number of specified grounds.
- 4.5 If a magistrate transfers from another local justice area where he or she has been authorised to sit in the family proceedings and/or youth court, he or she, because of the national jurisdiction, is automatically a member of that panel in the new area. However, this does not mean that the incoming magistrate needs automatically to be scheduled on the rota to sit on the panel in his or her new area. The BTDC may have to decide, on the basis of panel workload, whether the incoming magistrate should be included on the panel rota. The revised guidance will contain advice on this.
- 4.6 Separate provisions apply in the rules to the Greater London Family Panel and to the Inner London Youth Panel.

**ACTION:**

**Justices' clerks, Family and Youth Panel chairmen and BTDC chairmen**

Justices' clerks need to keep benches, BTDCs and Panels informed of the implementation and implications of the changes.

Our advice is that BTDCs should not authorise new magistrates to sit in the family proceedings or youth courts until the publication of the revised guidance and after attending the JSB implementation workshops. If any local justice areas cannot manage their family or youth court workload without additional magistrates, they can temporarily recruit members from neighbouring areas. If that is not possible, then please see "Further Information" below for a contact for specific advice.

## **5 Chairmanship in the Family Proceedings and Youth Courts**

- 5.1 Family and Youth Panels will no longer elect court chairmen. Instead, BTDCs will select magistrates for chairmanship training, arrange their appraisal, and include them on the list of approved court youth or family chairmen. They will also be responsible for maintaining the list of approved chairmen for those courts.
- 5.2 It is not clear whether the rules allow those magistrates who had been elected as court chairmen (i.e. as deputy panel chairmen) under the previous provisions to continue as court chairmen after 13<sup>th</sup> July 2007. For the avoidance of doubt, BTDCs, under the guidance of their justices' clerk, may wish either to meet, or to agree out of committee, to adopt the current list of court chairmen for each of their family and youth panels. The rules provide in any event that BTDCs must include such persons in the list of approved youth or family court chairmen, which BTDCs must eventually establish. This should be done in consultation with the relevant panel chairman.
- 5.3 Once included on the list of approved court chairmen for the youth and family proceedings court magistrates are appointed permanently, subject to removal by the BTDC in certain circumstances.
- 5.4 If a magistrate who is a court chairman in his or her family proceedings or youth court moves to another area, the BTDC in the original area will remove him or her from the chair approved list in that area. The BTDC acting for the new area then determines whether he or she should be included in the list of approved court chairmen there. The revised guidance will provide advice on how this process should be managed.
- 5.5 Youth and family panels sometimes find themselves short of chairmen, and look to recruit chairmen ad hoc from neighbouring panels. There is a slight difference in the wording of the two sets of panel constitution rules that may affect how this can be done. For the family proceedings court there is no difficulty in continuing that practice. For the youth

court, for the avoidance of doubt the court may wish to rely on the fallback provision in rule 12(1) of the youth constitution rules.

5.6 There is a statutory process for appointment of new family proceedings and youth court chairman. It is similar to the process BTDCs currently use for the selection, training and appointment of adult court chairmen:

- For the youth court, the magistrate must be on the list of approved court chairmen in the adult court.
- For the family proceedings court, the magistrate does not have to be on list of approved court chairmen in the adult court, although if he or she is not, the training and appraisal requirements are more onerous (see below).
- The magistrate must have been a family or youth court magistrate for at least two years.
- He or she must have been appraised as competent to sit as a winger in the relevant court within the last three years.
- The BTDC selects, from those eligible, which magistrates to send for the chairmanship training.
- The magistrate attends the required training: a minimum of one day's training in any event for the youth court; one day's training for the family proceedings court if the magistrate is already on the list of approved court chairmen in the adult court; or two days' training for the family proceedings court if the magistrate is not already on the list of approved court chairmen in the adult court.
- The magistrate is appraised a minimum of one and a maximum of three times (or between three and six for the family proceedings court if the magistrate is not already on the list of approved court chairmen in the adult court).
- The BTDC decides whether or not to add the magistrate to the relevant list of approved court chairmen.

5.7 The revised guidance issued in September may include recommended criteria for selection of family and youth court chairmen.

**ACTION:**

**Justices' clerks, Family and Youth Panel chairmen and BTDC chairmen**

Justices' clerks should keep family and youth panels advised of the relevant changes.

In consultation with the relevant panel chairmen, and under the guidance of their justices' clerk, BTDCs may wish, as a matter of urgency, to adopt the current list of family and youth panel chairmen as their own list of approved court chairmen.

Our advice is that BTDCs should not appoint new chairmen in the family proceedings or youth courts until publication of the revised guidance and after attending the JSB implementation workshops. If that is not possible, then please see "Further Information" section for a contact for specific advice.



## **6 Effect on membership of BTDCs**

- 6.1 The transitional provisions of Training and Development Rules maintain the current membership and chairmanship for BTDCs and MATCs.
- 6.2 From 1<sup>st</sup> January 2008, BTDCs will have to comprise six or nine members. It will no longer be possible to have a BTDC of three members.
- 6.3 From 1<sup>st</sup> January 2008, BTDCs must have at least one member who sits in the youth court, and one who sits in the family proceedings court. As the youth panel chairman and the family panel chairman will no longer be involved in appeals from decisions made by the BTDC, the guidance that recommends they should not be members of the BTDC will be revoked. Note that different provisions apply to Greater London, where the BTDC is not required to have a family panel member, and in Inner London the BTDC is not required to have a youth panel member.
- 6.4 A BTDC shall be quorate to make decisions about family and youth panel magistrates only if a member of the family or youth panel is present at the meeting at which the decision is made.
- 6.5 The current position of BTDCs will be retained until 31<sup>st</sup> December 2007. Therefore if any BTDC currently has only three members, and/or does not have a family and/or youth panel member, it can continue to function, and, if required to do so, make decisions about family and youth panel magistrates with its current membership. However, if the BTDC does have a family and/or youth panel magistrate member, that magistrate has to be present at any meeting after 13<sup>th</sup> July at which decisions are made about family or youth panel magistrates.

**ACTION:**

**Justices' clerks and BTDC chairmen**

If your BTDC has only three members you must ensure that at the 2007 Bench Annual General (or Election) Meeting that provision is in place to increase the number to six or nine (see Rule 5 of the Training and Development Committee Rules for the process).

Except in London where different considerations apply, if your BTDC does not currently have a family and/or youth panel member, you must ensure that at the 2007 Bench Annual General (or Election) Meeting such a member is appointed. If you have a selection panel to appoint BTDC members, that panel must appoint a family and/or youth panel member, as the case may be.

## **7 Other implications for BTDCs**

- 7.1 As well as those provisions related to membership noted above, there are a number of additional matters to which BTDCs will need to give attention.
- 7.2 It would appear that those magistrates already on a list of approved court chairmen in the adult court will continue to be so approved but BTDCs may wish to confirm this formally at their next meeting.
- 7.3 BTDCs will need a new constitution to cover their additional functions. It would be a good time for them to conduct a more thorough review of their constitutions. The revised BTDC guidance will contain a model constitution. BTDCs may therefore wish to wait until that is published before conducting their review.
- 7.4 In the meantime, BTDCs will need to ensure that their current schemes concerning appraisal, chairmanship etc. are effective. It is not clear whether the rules allow BTDCs to continue to operate their current schemes. For the avoidance of doubt therefore, BTDCs may wish formally to re-adopt their current constitution and schemes until they agree a new constitution.
- 7.5 It is clear from the scheme for selecting chairman for family proceeding and youth courts that BTDCs will have to conduct appraisals in those courts. The rules confirm the necessity for BTDCs to have published appraisal schemes for family proceedings and youth courts. We are aware that panel appraisal may not be carried out currently universally across England and Wales. The JSB is conducting a review of appraisals overall within the MNTI 2 scheme, and the revised guidance document will provide some preliminary advice about appraisal in these courts to fulfil the requirements of the rules. However, BTDCs must start to consider the implications for them of the need to carry out appraisal in these courts.

- 7.6 Following the responses received from consultation over the rules, the service has asked for an appeals process whereby all appeals against decisions by the BTDC would be directed to the bench chairman. The revised guidance will contain a model appeals procedure.

**ACTION:**

**Justices' clerks and BTDC chairmen**

Solely for the avoidance of doubt, BTDCs at their next scheduled meeting may wish formally to confirm that they will continue to use their current constitution and other schemes (adult court chairmanship, appraisal etc.) until a new constitution and schemes are approved.

BTDCs may wish to give early consideration to their processes for amending their constitution. However, we advise that they await revised guidance before putting anything in place.

BTDCs need to review their current position with regard to panel appraisal, and the resources they will need to carry out panel appraisal to satisfy the requirements of the rules.

## **8 Family Training and Development Committees (and the Inner London Youth Training and Development Committee)**

- 8.1 A Greater London Family Training Development Committee (which had previously existed on an informal basis) is established under the Training and Development Committee Rules. Elsewhere in England and Wales, the family panel and BTDCs may apply to the Lord Chief Justice to form a Family Training and Development Committee (FTDC). This Committee would exercise all the functions (appraisal, authorisation, selection for chairmanship training and maintenance of the approved list of court chairmen) that the BTDCs would otherwise exercise for the family panel.
- 8.2 A Family Training and Development Committee is likely to be of interest to family panels covering a number of local justice areas, or to a large family panel. The revised BTDC guidance document will give advice on the process. Any areas wishing to start the process of forming an FTDC before that guidance is published should contact one of those referred to in the “Further Information” section.
- 8.3 An Inner London Youth Training and Development Committee is established for Inner London, covering the area previously served by the Inner London Youth Panel. There is no provision for other areas to establish Youth Panel Training and Development Committees.

**ACTION:**

No action is required unless family panels and BTDCs wish to put in progress an application for an FTDC prior to the publication of final guidance, in which case they should contact one of those mentioned in the “Further Information” section.

## Further Information

If you require further information about the provisions generally, or any specific aspect, please contact:

<b>Name</b>	<b>Email</b>	<b>Telephone</b>
Chris Rayner (JSB)	chris.rayner@jsb.gsi.gov.uk	020 7217 2431
Peter Spence (Ministry of Justice)	peter.spence@justice.gsi.gov.uk	020 7210 1818
Malcolm Watts (Judicial Office)	malcolm.watts@judiciary.gsi.gov.uk	020 7073 1611
Michael Osei (JSB)	michael.osei@jsb.gsi.gov.uk	020 7217 2402

**Queries about the JSB workshops only.**

<b>Chris Rayner</b>	<b>Peter Spence</b>	<b>Malcolm Watts</b>
Manager of Legal and Policy Advice (Magistrates)	Policy Manager	Head of Magistrates' Branch
Judicial Studies Board	Ministry of Justice	Judicial Office



## **JSB Workshops**

### **Reminder**

The JSB is running a series of workshop to enable BTDCs to consider and plan for the medium and longer term implications of the operation of sections 49 and 50 of the Courts Act 2003. Applications for the workshop are invited from:

- At least one member of each BTDC in England and Wales (we may be able to accommodate more than one at some workshops – please enquire);
- The justices’ clerk or legal adviser that provides support to the BTDC. It would be useful, but not essential, that the legal adviser accompanies his or her BTDC member.
- Chairmen of the family and youth panels. These were not included in the original invitation, but panel chairmen will be crucial to the successful implementation of the provisions.

The venues and dates of the workshops are as follows:

<b>Date</b>	<b>Location</b>
12 September 2007	North East – Marriott Hotel, Gosforth
17 September 2007	London – JSB, Millbank Tower
2 October 2007	London – JSB, Millbank Tower
22 October 2007	North West - Wychwood Park, Crewe
5 November 2007	Wales – Copthorne Hotel, Cardiff
8 November 2007	South West – Bailbrook House, Bath
14 November 2007	Midlands – Highgate House, Northampton
28 November 2007	South East - Marriott Hotel, Regents Park, London

The aim, purpose and objectives of the workshops are as follows:

### **Aim**

To prepare Training and Development Committees to implement sections 49 and 50 of the Courts Act 2003.

### **Purpose**

To promote the use of fair and consistent recruitment and selection practice by Training and Development Committees when appointing magistrates and chairmen to the youth and family panels.

### **Objectives**

By the end of the workshop you, without reference to written material, be able to:

- list five ways in which the implementation of sections 49 and 50 of the Courts Act 2003 will affect the current working practices of their Training and Development Committee;
- explain two significant benefits of the new system for appointment of family and youth panel magistrates and chairmen;
- list three key good practice principles in relation to recruitment and selection processes; and
- draft an action plan to support their Training and Development Committee in implementing the changes required by the new provisions and to communicate the operation and benefits of the new scheme to key bench stakeholders.

**ACTION:**

**Justices' clerks, Training Managers and BTDC chairmen**

**We do not have delegates from all BTDCs or all Family and Youth Panel chairmen. If your BTDC, Family and/or Youth Panels are not represented at a workshop, (or if you would like to send additional delegates if space permits) please contact: [Hmichael.osei@jsb.gsi.gov.uk](mailto:Hmichael.osei@jsb.gsi.gov.uk). Telephone 0207 2717 2402**







JUDICIAL STUDIES  
BOARD

**Judicial Studies Board**

**9th Floor**

**Millbank Tower**

**Millbank**

**London**

**SW1P 4QU**