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Kathy Mack

Sharyn Roach Anleu

Anne Wallace
Edith Cowan University

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Caseload Allocation and Special Judicial Skills: Finding the ‘Right Judge’?

By Kathy Mack, Sharyn Roach Anleu, and Anne Wallace

Abstract:

Australian courts, as with those in most common law systems, value judicial officers who are generalists. Appointment to a court indicates that the appointee is capable of dealing impartially with all types of cases that come before it. However, caseload allocation processes within courts also recognize and value different skills or expertise that may be applied to particular types of cases or to particular judicial tasks.

Our research investigates ways magistrates courts in Australia (first instance courts of general criminal and civil jurisdiction) manage caseload allocation processes to match magistrates’ skills and abilities to specific work demands within their general jurisdictions as well as to the demands of specialist lists and courts. The research draws on interview data collected from judicial officers and court staff involved in caseload allocation in four Australian jurisdictions.

This research finds that these courts place a high value on the principle that ‘everyone should be able to do everything’ and the entitlement of individual judicial officers to a caseload that is balanced and fair in relation to their colleagues. However, this preference for generalist judicial officers can create tensions in relation to the need to staff specialist lists, and to sometimes use particular skills in the general lists.

Despite the presumption of competence, those allocating generalist and specialist caseload take into account different skills and expertise in the judicial workforce in the allocation decisions. Preferences of judicial officers for particular types of work can also play a role. However, the process by which assessments are made about expertise is also less than transparent in many cases, and draws largely on informal sources of knowledge.

Magistrates and court users may benefit from a more clearly defined and transparent process to identify and develop skills and expertise, and allocate caseload accordingly. Such a process must preserve the flexibility that these high-volume courts need to deal with their caseload efficiently and appropriately and to match judicial skills to the needs of particular types of cases.

1. Introduction

Occupational specialization is a feature of modern world,¹ yet until quite recently judicial officers² hearing and deciding cases in Australia, as in other common law countries,³ have been viewed as generalists⁴ — capable of tackling any form of work that comes before the court to which they are appointed. To some extent, this has been allied with the principle of judicial impartiality; if all judicial officers in a court are equally qualified to hear and decide a particular case, it should not matter which one does so. Cases can be allocated randomly to judicial officers, rather than by reference to judicial expertise or preference. This ‘randomness principle’ enhances public confidence in the impartial administration of justice.⁵

A requirement for judicial officers to be generalists also simplifies administration, as it allows any case to be allocated to any judicial officer. A judicial officer whose expertise is confined to one or only a few aspects of a court’s jurisdiction is a less flexible or mobile resource than one who can tackle all aspects of the court’s work.

¹ Lawrence Baum, *Specializing the Courts* (2010, University of Chicago Press) 1.

² The term ‘judicial officer’ is used throughout this paper to refer to both judges (judicial officers appointed to superior and intermediate courts in Australia) and to magistrates (judicial officers appointed to first instance courts).

³ Lawrence Baum, ‘Probing the Effects of Judicial Specialisation’ (2009) 58 *Duke Law Journal* 1668; Baum, *Specializing the Courts*, above n 1, xi.

⁴ Baum, *Specializing the Courts*, above n 1, 1-2; This preference is still reflected in the Law Council of Australia’s suggested criteria for judicial appointment which state that judges who are appointed with more specialist experience should also possess ‘the ability to acquire quickly an effective working knowledge of the law and rules of procedure in areas necessary for their work not covered by their previous experience’: Law Council of Australia, *Policy on the Process of Judicial Appointments* (September 2008, Law Council of Australia) 3. A discussion paper by a former Federal Attorney-General on the process and criteria for judicial appointments refers to a similarly broad requirement for ‘knowledge of the law’: Michael Lavarch, *Judicial Appointments: Procedure and Criteria: Attorney-General’s Discussion Paper* (1993, Commonwealth Attorney-General’s Department) 5.

⁵ Caroline Sage, Ted Wright & Carolyn Morris, *Case Management Reform: A Study of the Federal Court’s Individual Docket System* (2002, Law and Justice Foundation of New South Wales) 58; Petra Butler, ‘The Assignment of Cases to Judges’ (2003) 1 *New Zealand Journal of Public and International Law* 83, 86, 112.

A commitment to judges as generalists assumes substantial similarity in the kind of work, and the necessary knowledge and skills, across the court's caseload. However, judicial systems also have a long history of identifying different types of cases that require particular knowledge, skills or processes, and creating specialist courts or divisions to handle them.⁶

Like other common law judicial systems,⁷ Australian courts are experiencing increased specialization, including specialized courts, lists and jurisdictions within individual courts.⁸ Court users might expect this development to be accompanied by specialist and focused judicial expertise.

As well as specialist caseloads, there are different tasks and roles to be performed by judicial officers within the general caseload. These may require particular skills and expertise.

Australian courts generally operate on a master calendar, so that cases lodged with a court are received by the court organization and then allocated to a particular list. Judicial officers are allocated to lists, rather than to particular cases.⁹ The challenge for a court is to make best use of its judicial expertise across a variety of case types.

This article draws on a recent study of judicial caseload allocation in Australian magistrates' courts (high volume, first instance, general jurisdiction courts¹⁰) to investigate how they approach these issues. Firstly, it examines the notion of specialization, both in terms of the types of caseload in these courts, and the nature of skills relevant to dealing with them. The findings of the study are then analyzed with a focus on two questions: To what extent is specialized judicial knowledge or specific types of skills utilized in caseload allocation? How are they identified?

2. Specialization in Courts

Specialization in relation to courts can refer to a jurisdiction delimited by subject-matter, whether formally and informally.¹¹ Specialization in relation to a specific legal area is not new.¹² For example, the Australian legal system, as with most common law systems, has traditionally drawn distinctions between criminal and non-criminal ('civil') cases, between courts of equity and common law, and between appeal courts and courts of first instance.¹³ In magistrates courts, the primary distinction has been a long-standing differentiation between civil and criminal caseload, with the latter clearly dominating their work.¹⁴

In recent decades, specialization in the law and the recognition of more complexity and diversity in areas of legal practice¹⁵ has resulted in a variety of new specialist courts to deal with civil caseload. Examples from Australia and overseas include commercial or business courts, administrative courts, labor or industrial courts, family courts and

⁶ See discussion below, pp 3-4.

⁷ Baum, *Specializing the Courts*, above n 1, 18, 21-3; Michael King, Arie Freiberg, Becky Batagol & Ross Hyams, *Non-Adversarial Justice* (2009, The Federation Press) 138-43.

⁸ King et al, above n 7, 35-8, 143-58, 178-83.

⁹ Ernest C Friesen, Edward C Gallas & Nesta M Gallas *Managing the Courts*, (1971, Bobbs-Merrill) 184-187; David C Steelman, John A Goerd & James E McMillan *Caseflow Management: The Heart of Court Management in the New Millenium*, (2004, National Center for State Courts) 95.

¹⁰ Australia is a federal system, with national courts and a court system for each state operating separately. Commonwealth courts include the High Court, the Federal Court, the Family Court and the Federal Magistrates Court. Each Australian state and territory has a Supreme Court, and a Magistrates or Local Court (as it is called in New South Wales). There is also an intermediate trial court, the District or County Court, except in the smallest jurisdictions, Australian Capital Territory, Northern Territory and Tasmania. In 2010-2011 over 96% of all criminal cases and 88% of civil cases were initiated in a magistrates courts: Steering Committee for the Review of Commonwealth/State Service Providers, *Report on Government Services 2012* (2012, Productivity Commission) 7.18. These courts have a wide general jurisdiction in less serious criminal cases and lower value civil matters. Magistrates sit alone (without juries) and make many decisions, typically extemporaneously, on law and facts.

¹¹ Baum, 'Probing the Effects' above n 3, 1672-3.

¹² Arie Freiburg, 'Problem-Orientated Courts: Innovative Solutions to Intractable Problems?' (2001) 11 *Journal of Judicial Administration* 8, 11; Lee Applebaum 'Some Observations on Modern Business Courts and the Bar's Role in Their Development' (2008) (March/April) *Business Law Today*.

¹³ Freiburg, 'Problem-Orientated Courts' above n 12, 11.

¹⁴ Kathy Mack, Sharyn Roach Anleu & Anne Wallace, 'Everyday work in the magistrates courts: Time and tasks' (2011) 21 *Journal of Judicial Administration* 34, 40-1.

¹⁵ Paul Maffei, 'Specialisation of Judges - Different aspects to consider in drafting the structure of the Opinion No. 15' Paper prepared for the Working Group of the Consultative Council of European Judges' (20 March 2011, CCEG, Strasbourg); Lee Applebaum, 'The Steady Growth of Business Courts' *Future trends in State Courts* (2011, National Center for State Courts) 70.

environment courts.¹⁶ Australian courts, as with overseas jurisdictions, have also seen the creation of specialist lists within existing courts, such as building cases, intellectual property,¹⁷ commercial and corporations' lists.¹⁸

Specialization can also refer to courts that utilize particular (usually novel) approaches to dealing with certain types of cases. Within the criminal jurisdiction the development of specialist courts to deal with juvenile criminal offenders dates back to the latter part of the nineteenth century.¹⁹ More recently the increasing popularity of 'problem-solving' or 'therapeutic' theories that aim to address underlying issues (social, personal and economic) that result in criminal behavior,²⁰ and restorative justice approaches designed to resolve cases through mediated encounters between offenders and victims,²¹ have resulted in new specialist jurisdictions. Features of these approaches can include direct engagement by judicial officers with, and ongoing supervision of, offenders, a multi-disciplinary collaborative process between the courts and relevant service providers, a non-adversarial approach and outcomes which address more broadly the needs of the community, as well as those of victims.²² Such approaches are often employed in drug courts,²³ family violence courts,²⁴ community courts,²⁵ mental health courts²⁶ and indigenous courts.²⁷ These are often not entirely separate from mainstream courts and judicial officers retain their judicial authority alongside their new role.²⁸

Over the last decade these developments have been reflected in Australian magistrates courts.²⁹ Some new specialized courts have adopted problem-solving, or therapeutic approaches, others are specialist in the more traditional sense, that is, they have a jurisdiction limited to dealing with a particular type of case, for example, family violence,³⁰ or cases of child sexual assault.³¹ Others, such as indigenous courts, combine specialization by type of offender with some problem-solving, restorative or therapeutic aspects.³² In many instances, what is labeled as a specialist 'court' is, in fact, a specialist division within an existing court,³³ nearly all of them within magistrates courts. The advantage of this approach is that it enables the court to more easily adjust the structure (independently of the legislature) if, for example, the specialization is later perceived as unnecessary or there is a desire to change its focus.³⁴ It also enables the court to deploy its judicial workforce more flexibly, across the whole range of the court's work.

A third concept of specialization relates to particular kinds of tasks within a wide range of a court's overall jurisdiction, such as presiding at trial as distinguished from managing pre-trial processes. Even within the typical criminal and civil jurisdictions of a generalist court, judicial officers in magistrates courts undertake an increasingly wide range of in and out

¹⁶ Markus B. Zimmer, 'Overview of Specialized Courts' (2009) *International Journal for Court Administration* 6-15; Freiburg, 'Problem-Orientated Courts' above n 12, 11; Applebaum, 'Some Observations' above n 12; Applebaum, 'The Steady Growth' above n 15, 74.

¹⁷ Freiburg, 'Problem-Orientated Courts' above n 12, 11.

¹⁸ Hon James Jacob Spigelman AC, 'Implications of the current economic crisis for the administration of justice' (2009) 18 *Journal of Judicial Administration* 205, 209.

¹⁹ Baum, *Specializing the Courts*, above n 1, 29.

²⁰ Joyce Plotnikoff & Richard Woolfson, *Review of the effectiveness of specialist courts in other jurisdictions*, Research Series 3/05 (2005, Department of Constitutional Affairs) 3-4; King et al, above n 7; Michael King, 'Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts' (2010) 19 *Journal of Judicial Administration* 133; Sharyn Roach Anleu & Kathy Mack, 'Magistrates courts and Social Change' (2007) 2 *Law & Policy* 183, 190-1.

²¹ King et al, above n 7, 39-64.

²² Plotnikoff & Woolfson, above n 20, 3-4; Arie Freiburg, 'Innovations in the Court System' (Paper delivered to the Australian Institute of Criminology Crime in Australia Conference, Melbourne, Australia, 30 November 2004) 2-4; Greg Berman & Aubrey Fox, *Lasting Change or Passing Fad? Problem-Solving Justice in England and Wales* (2009, Policy Exchange) 11-14, Law Reform Commission of Western Australia, *Court intervention programs: final report* (2009, Law Reform Commission of Western Australia) 5-6; King, above n 20, 133.

²³ Plotnikoff & Woolfson, above n 20, 5-7; Freiburg, 'Innovations' above n 22, 5-6.

²⁴ Plotnikoff & Woolfson, above n 20, 8; Freiburg, 'Innovations' above n 22, 10-2.

²⁵ Plotnikoff & Woolfson, above n 20, 7; Freiburg, 'Innovations' above n 22, 7-8.

²⁶ Plotnikoff & Woolfson, above n 20, 8-10; Freiburg, 'Innovations' above n 22, 6-7.

²⁷ Elena Marchetti & Kathleen Daly, 'Indigenous Courts and Justice Practices in Australia' (2004) *Trends and Issues in Criminal Justice* No. 277, Australian Institute of Criminology, Canberra; Freiburg, 'Innovations' above n 22, 8-10.

²⁸ King, above n 20, 133, 144-45.

²⁹ King et al, above n 7, 35-8, 143-7, 148-58; Freiburg, 'Innovations' above n 22, 1, 3-13; Andrew Phelan 'Solving Human Problems or Deciding Cases? Judicial Innovation in New York and its Relevance to Australia, Part I' (2003) 13 *Journal of Judicial Administration* 98.

³⁰ Freiburg, 'Innovations' above n 22, 2.

³¹ Ibid 12.

³² Where typically the 'key features are participation, co-ordination of service delivery and community involvement': Ibid, 8; King et al, above n 7, 42-3, 178-83.

³³ For example, in the State of Victoria, the indigenous (or Koori) court, the Family Violence Court and the Drug Court are all specialist divisions within the Magistrates' Court: *Magistrates' Court Act* 1989 (Vic) ss 4D, 4H, 4A.

³⁴ Law Reform Commission of Western Australia, above n 22, 25.

of court tasks.³⁵ Presiding at trial takes the most judicial time but judicial officers must also be able to manage pre-trial processes, promote settlement, work through a busy criminal list considering adjournment requests, bail applications, hear guilty pleas, impose sentences and set matters for other proceedings. They must also be able to prepare detailed written judgments as well deliver appropriate extempore judgments.³⁶ These tasks require a range of skills, some of which can be relatively specialized and distinct from the conventional judicial qualities. In this article, we refer to these as 'special' skills.

3. Specialization, Special Skills and Caseload Allocation

Specialization has implications for the way that caseload is allocated within courts. 'Playing to strengths', that is, allocating caseload to judicial officers according to their particular expertise (knowledge and skills) can have a number of benefits, but also has potential disadvantages.³⁷ Allocating cases to judicial officers who have greater familiarity with a particular type of work, or possess skills required to manage it, may result in more appropriate outcomes and in cases being dealt with more effectively.³⁸ For example, a judicial officer appointed from a background as a criminal lawyer will be more familiar with the law relating to criminal cases, and so more likely to make a correct decision (reducing the likelihood of appeal) than one appointed from a different background. They will also be more familiar with the relevant processes, and therefore likely to deal with the case more expeditiously than a judicial officer who lacks that familiarity.

On the other hand, specialization can impact adversely on the judicial work force, for example, by increasing the chances of judges becoming 'burnt out'³⁹ or traumatized, for example as a result of repeated exposure to instances of particularly emotionally difficult jurisdictions, such as domestic violence.⁴⁰ A lack of variety in judicial caseload may lead to boredom and reduce job satisfaction.⁴¹ Surveys of judicial officers working in specialist therapeutic courts suggest that such specialization can result in increased job satisfaction.⁴² However, this appears to be correlated with several factors including their willingness or enthusiasm for undertaking the specialist role in the first place, and an increased involvement with, and direct feedback from, court participants, a distinctive feature of problem-solving courts.⁴³

There are also possible organizational difficulties. Specialization can reduce a court's flexibility. This is a particular concern for smaller courts, where:

It is not always possible to have specialized judges for each subject; some Chambers are responsible for several specialized subjects; judges will therefore have to show multi-competences; [and] it will sometimes be necessary to replace a competent colleague in a certain matter in the absence (vacation, illness, missions); here too, the multi-competences and flexibility will be needed.⁴⁴

Specialist judges may sit idle if there are not enough specialist cases to keep them busy,⁴⁵ whereas courts require the ability to allocate judges in accordance with the demands of their caseload.⁴⁶

Our research identifies concerns about flexibility and job satisfaction for judicial officers in the allocation of specialist caseload in Australian magistrates courts. It also suggests that courts already identify and use particular skills and qualities in the general caseload and that those allocating the caseload typically acquire information about magistrates' skills through a variety of sources.

³⁵ Mack, Roach Anleu & Wallace, above n 14, 34, 43.

³⁶ Ibid 43-5.

³⁷ Rachel Laing, Saskia Righarts & Mark Henaghan, *A Preliminary Study on Civil Case Progression Times Report* (15 April 2011, The Law Foundation New Zealand) 18-9.

³⁸ Baum, 'Probing the Effects' above n 3, 1676; Maffei, above n 15; Applebaum, 'The Steady Growth' above n 15, 70.

³⁹ Plotnikoff & Woolfson, above n 20, 38.

⁴⁰ Robyn Mazur & Liberty Aldrich, 'What Makes a Domestic Violence Court Work? Lessons from New York' (Spring 2003) *The Judges' Journal* 5, 41; King et al, above n 7, 168.

⁴¹ Freiburg, 'Problem-Orientated Courts' above n 12, 12; Sharyn Roach Anleu & Kathy Mack, 'Gender, Judging and Job Satisfaction' (2009) 17 (1) *Feminist Legal Studies* 79.

⁴² Plotnikoff & Woolfson, above n 20; Deborah J Chase & Peggy Fulton Hora 'The Implications of Therapeutic Jurisprudence for Judicial Satisfaction' (2000) 37 (1) *Court Review* 12, 18.

⁴³ Plotnikoff & Woolfson, above n 20, 38.

⁴⁴ Maffei, above n 15.

⁴⁵ Baum, 'Probing the Effects' above n 3, 1676; David Williams, 'Technology Boom Prompts Call for a Specialised Court' CNN News Center, 2 October 2000.

⁴⁶ Williams, above n 45.

4. Identifying Different Knowledge, Skills and Qualities

The creation of specialist courts or lists clearly implies the appointment of judges who have particular expertise in their subject matter,⁴⁷ in terms of knowledge of a particular area of law and/or the background or social context in which particular types of cases arise. For example, appointment to a commercial list would require familiarity with commercial law, whereas appointment to an indigenous court requires awareness of cultural issues and appropriate communication skills.⁴⁸

Appointment to a therapeutic, or problem-solving court, may require a more dramatic change in the judge's role 'from being a detached, neutral arbiter to the central figure in the team... the judge is both a cheerleader and stern parent, encouraging and rewarding compliance, as well as attending to lapses.'⁴⁹ This new role requires more attention to developing personal and interpersonal skills that facilitate the problem-solving approach.⁵⁰ These include the ability to establish empathy, foster mutual respect among courtroom participants, active listening, and the capacity to provide praise and constructive criticism, operate in non-coercive, non-paternalistic ways, and communicate clearly.⁵¹

Within the general caseload, different skills might be valued at particular stages of the process. In Australian magistrates courts, most criminal cases that come into a court will go into a large intake list, where they are identified as requiring a further adjournment, or be allocated to another list where they will either be dealt with by way of a hearing or as a plea of guilty. Effective time-management skills and the capacity to make timely and appropriate decisions will be highly valued qualities at this stage of the process.

Cases to be dealt with as guilty pleas may also be listed in relatively large lists. Judicial officers dealing with these lists will require the ability to make quick and reasoned decisions, as well as good communication skills, to ensure that defendants understand both the process and the case outcome.⁵²

A case that is allocated for hearing will generally have some type of pre-trial process where the court attempts to identify and narrow the issues, and possibly promote a settlement, if appropriate. Where backlogs exist, expedited hearing lists might be created as a way of identifying cases that have been languishing and which need to be cleared. A judicial officer dealing with these stages might also draw on problem-solving and facilitative skills as well as a capacity to quickly identify relevant issues, and manage and organize the parties.⁵³

If a case is not settled, there will be a hearing, and then, in a criminal cases, a post-hearing or sentencing phase if the offender is found guilty. In these processes, there might be less emphasis on time-management skills and more on ensuring that all relevant issues are identified and explored, and appropriate decisions are made.⁵⁴

One approach to ensuring that cases are only allocated to those who have the knowledge or skills necessary to deal with them, is to require such knowledge or skills as a qualification or condition for appointment to a court,⁵⁵ or to serve on a specialist list or division within a court, or to handle a particular stage of the caseload. That requirement might be satisfied by virtue of the person's prior professional experience and expertise, or by means of subsequent or ongoing training.⁵⁶

⁴⁷ Freiburg, 'Innovations' above n 22, 2; Zimmer, above n 16, 1.

⁴⁸ King, above n 20, 141-3.

⁴⁹ Chase & Hora, above n 42, 12. See also Jelena Popovic, 'Mainstreaming Therapeutic Jurisprudence in Victoria: Feelin' Groovy?' in G Reinhardt & A Cannon (eds) *3rd international Conference on Therapeutic Jurisprudence: Transforming Legal Processes in Court and Beyond* (2007, AIJA) 187, 195.

⁵⁰ King, above n 20, 134.

⁵¹ Susan Goldberg, *Judging for the 21st Century: A Problem-solving Approach* (2006, National Judicial Institute) 9-18; Michael King, *Solution-Focused Judging Bench Book* (2009, AIJA) 6, 30-39, 121-149. Although King has pointed out that many of these so-called 'therapeutic skills' have considerable value in mainstream judging: King, above n 20, 144-5.

⁵² Christopher Roper, *A Curriculum for Professional Development for Australian Judicial Officers*, (January 2007, National Judicial College of Australia) 15.

⁵³ *Ibid* 15-8.

⁵⁴ *Ibid* 19-20.

⁵⁵ Baum, 'Probing the Effects' above n 3, 1676.

⁵⁶ If training is the required pathway, then decisions need to be made as to the type of training, its form, and how it is provided: Maffei, above n 15; Berman & Fox, above n 22, 37,42; Law Reform Commission of Western above n22, 23, 81 & Submission No.17 (13 October 2008) Dr Andrew Cannon, Deputy Chief Magistrate of South Australia, 2.

While judicial education for those in therapeutic court roles appears to be increasingly encouraged in the United States, Canada and Australia,⁵⁷ it is rarely mandatory.⁵⁸ A recent survey found that judicial appointments to these courts are generally made by the judicial head of the court, usually as a result of the appointee signaling his or her interest to undertake such an appointment.⁵⁹ This is broadly consistent with the findings of our research, as noted below.

Appointing only those who are willing to take on the challenges of a specialist role in a therapeutic court might be seen as a useful way of identifying those who do not have the skills, interest, or personality to undertake such a role.⁶⁰ However, it is not a guarantee that those who volunteer necessarily have the required attributes. In England and Wales, a lack of interest among lay magistrates in specialized therapeutic approaches has been identified as a barrier to their more widespread implementation.⁶¹ In Australia, with a professional magistracy,⁶² there has been much greater interest among the magistrates in therapeutic and problem-solving approaches.

Judicial officers might be appointed to specialist courts on a permanent basis or given opportunities to specialize by being assigned to particular types of case or subject matter for periods of time.⁶³ They might be able to move between specialist and generalist work over periods of time.⁶⁴ Similarly, judicial officers might be allocated only to a particular stage of case processing, such as presiding at trial, for a set period of time.

Appointment to specialist courts or lists is sometimes viewed as an opportunity for the judge who has an interest in a particular area to gain greater expertise in that area of law,⁶⁵ and its case management.⁶⁶ In these circumstances the appointment itself provides the training opportunity. Similarly, skills required to successfully manage a large intake list, or facilitate a settlement in a pre-trial conference, for example, might be learned or honed, on the job.

An alternative approach to allocating caseload is to assume that all judges have the required skills and not to differentiate between them in caseload allocations; appointment to the court implies competence to deal with any aspect of its jurisdiction. In their 2007 study, Langbroek and Fabri identified this as the approach inherent in the caseload allocation policies in some European countries, notably France, Italy and Denmark.⁶⁷

This approach is congruent with the reported desire of many judicial officers to have a balanced caseload, that is, one that provides variety in terms of the nature and type of their work. This was a recurrent theme in the studies in Western European judiciaries surveyed by Fabri and Langbroek⁶⁸ and was reflected in the study of Australian magistrates courts, to which we now turn.

5. Judicial Caseload Allocation in Australian Magistrates Courts

Magistrates courts exist in all Australian jurisdictions and, as noted above, are the courts of first-instance jurisdiction that deal with the majority of caseload.⁶⁹ This study of the way in which their caseload is allocated was undertaken as part of a series of research projects undertaken by the second and third-named authors that have explored the work of magistrates.⁷⁰ Two issues from that previous research were identified as particularly pertinent to this study; firstly, that the

⁵⁷ Plotnikoff & Woolfson, above n 20, 3. The survey from which this conclusion was drawn included a total of 10 courts drawn from Australia (drugs and domestic violence courts); the USA (drugs, domestic violence, community and mental health courts) and Canada (drugs and domestic violence courts).

⁵⁸ Ibid 32-4.

⁵⁹ Ibid 31.

⁶⁰ Ibid.

⁶¹ Berman & Fox, above n 22, 37.

⁶² In Australia magistrates are paid; for some time the minimum statutory qualification for appointment has included admission as a barrister/solicitor/legal practitioner, and most magistrates are now legally qualified: Sharyn Roach Anleu & Kathy Mack, 'The professionalization of Australian magistrates: Autonomy, credentials and prestige' (2008) 44 *Journal of Sociology* 185, 190-1, 193; In England and Wales, magistrates courts are staffed by both stipendiary magistrates (paid, legally qualified persons appointed as District Judges), but mostly by lay magistrates (community volunteers) who sit in panels of three: Berman & Fox, above n 22, 36.

⁶³ Baum, 'Probing the Effects' above n 3, 1673.

⁶⁴ Ibid.

⁶⁵ Ibid 1676; Applebaum, 'The Steady Growth' above n 15, 73.

⁶⁶ Applebaum, 'The Steady Growth' above n 15, 73.

⁶⁷ Philip M. Langbroek & Marco Fabri, *Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries* (2007, Intersentia) 24.

⁶⁸ Ibid 22-3.

⁶⁹ See above n 9.

⁷⁰ Since 2000, the Magistrates Research Project and the Judicial Research Project of Flinders University have undertaken extensive empirical research into many aspects of the Australian judiciary. The research has used interviews, surveys and observation studies to

work of these courts is dominated by the high-volume, criminal list;⁷¹ and, secondly, that magistrates themselves derive high levels of satisfaction from a variety of work.⁷²

In order to explore the process for allocating caseload in depth, data was collected in the form of semi-structured interviews conducted with magistrates and court officers who had been identified, through a process of consultation with the courts participating in the study, as individuals with knowledge and experience of caseload allocation in those jurisdictions. Interviews took place in two jurisdictions with large metropolitan populations, and one jurisdiction with a more widely dispersed smaller population covering very remote areas. In larger jurisdictions, interviewees were selected from courts within each jurisdiction, including both metropolitan and suburban courts, in order to explore differences in the nature of caseload and the available judicial resources that might affect the allocation process.⁷³

In total nine judicial officers and nine court officers or court administrators in magistrates courts from four jurisdictions were interviewed. Interviews were recorded and transcribed, and transcripts were checked and corrected by the interviewers after listening again to the digital recordings of the interviews. Interviews were then analyzed thematically to identify views of a range of interviewees on particular issues related to caseload allocation. Initial findings drawn from an analysis of the interview data were subsequently refined through a process of feedback and consultation with the courts who had participated in the study, through presentations made to magistrates from those courts and their responses to a draft report.⁷⁴

The findings reveal a somewhat ambivalent approach by Australian courts to specialist caseload allocation. The two competing approaches can be characterized by two phrases used by interviewees 'everyone does everything' and 'horses for courses'. The first re-states the principle of the generalist judicial officer, the second denotes the ability to allocate caseload according to expertise and skills. Analysis of the data also shows that those responsible for workload allocation place a high value on being able to identify particular capabilities and qualities ('special skills') among the judicial workforce that can be deployed to manage the general criminal caseload efficiently.

6. 'Everyone Does Everything'

A constant theme that emerged from the analysis of the interview data was the fundamental principle of caseload allocation: every judicial officer appointed to a court was presumed to be capable of handling all types of cases that come before that court. As one interviewee expressed it: '[E]verybody does everything...capacity to be a judicial officer means the capacity to do everything in your jurisdiction.'

This presumption means that judicial officers are interchangeable, which links to the importance placed on the impartiality and neutrality of judicial officers, that is, that the identity of the judge or magistrate concerned should make no difference to the outcome of the case.⁷⁵ It also has implications for efficiency; a case can be speedily disposed of without having to wait for a magistrate who has expertise in its particular subject matter to become available, and all judicial resources can be fully utilised. This was seen as especially important in smaller courts, reflected in the following quote from the same

investigate the attitudes of magistrates and judges towards their work, their experiences of their everyday work and how matters are handled in court. See details at <<http://www.flinders.edu.au/ehl/law/research-activities/current-projects/magistrates-research-project/>>. The Magistrates Research Project was funded initially by a University-Industry Research Collaborative Grant in 2001 with Flinders University and the Association of Australian Magistrates (AAM) as the partners and received financial support from the Australasian Institute of Judicial Administration (AIJA). From 2002 until 2005, it was funded by an Australian Research Council (ARC) Linkage Project Grant (LP210306), with AAM and all Chief Magistrates and their courts as industry partners and with support from Flinders University as the host institution. From 2006, the Judicial Research Project has been funded by an ARC Discovery Grant (DP0665198). The Workload Allocation Study has been funded by an ARC Linkage Project Grant (LP 0669168) 2006-2009 with the magistrates courts of Victoria, South Australia and the Northern Territory as well as the AIJA as collaborating organisations. From 2010 additional funding has been supplied by ARC DP1096888. All phases of these research projects involving human subjects have been approved by the Social and Behavioural Research Ethics Committee of Flinders University. We are grateful to Russell Brewer, Carolyn Corkindale, Colleen deLaine, Elizabeth Edwards, Ruth Harris, Julie Henderson, John Horrocks, Lilian Jacobs, Leigh Kennedy, Lisa Kennedy, Mary McKenna, Rose Polkinghorne, Wendy Reimens, Mavis Sansom, Chia-Lung Tai, Carla Welsh, Rae Wood, and David Wootton for research and administrative assistance in connection with this project.

⁷¹ Kathy Mack and Sharyn Roach Anleu, "'Getting Through the List": Judgecraft and Legitimacy in the Lower Courts' (2007) 16 *Social and Legal Studies* 341, 342-3.

⁷² Roach Anleu & Kathy Mack, 'Gender' above n 41, 90.

⁷³ The processes, documentation and procedure for all phases of this research were approved by the Flinders University Social and Behavioural Research Ethics Committee.

⁷⁴ Kathy Mack, Anne Wallace & Sharyn Roach Anleu, *Judicial Workload: Time, Tasks and Work Organisation* (forthcoming).

⁷⁵ John Alford, Royston Gustavson and Philip Williams, *The Governance of Australia's Courts: A Managerial Perspective* (2004, Australian Institute of Judicial Administration) 72-3.

interviewee: '[I]f I don't have everybody potentially available to sit in that court, we're going to come to a time where there's nobody left to sit in there.'

The notion that 'everyone does everything' is also supported on the grounds of equity and job satisfaction. All interviewees identified the importance of providing a variety of work to magistrates, both in terms of amount and type of work. As one Allocating Magistrate⁷⁶ expressed it: 'Over a period of time it should roughly be equal, both in terms of the, ... time spent but also the sort of level of degree of difficulty, diversity, doing familiar vs. unfamiliar work.' This is congruent with earlier findings from survey research done among Australian magistrates that they indicate that their work contains considerable variety and also express very high levels of satisfaction with the variety of their work.⁷⁷

One aspect to satisfaction with variety is that it is seen as signifying fairness of treatment between magistrates, spreading the burden of particularly onerous work. As one Allocating Court Officer⁷⁸ explained: 'Generally speaking you do have courts where people would prefer not to be, so you just try and share that around and make it as even as possible for the courts that they don't like.'

Varying the allocation of magistrates between lists also helps to deter lawyers and other court users from manipulating their own schedules or availability in an attempt to ensure a case is heard by a particular magistrate.⁷⁹ The less predictable the pattern of allocation of magistrates to cases, the less likely this can occur.

7. 'Horses for Courses' – Matching Skills to Tasks

Despite the emphasis on equality in caseload allocation, and the concept that everyone can do everything, interview data reveals that an understanding of magistrates' strengths and weaknesses is used to inform allocation to specialist lists and sometimes to particular kinds of work within more general lists. Particular types of ('special') skills are valued as specialist knowledge or expertise, and matched to specific tasks within generalist and specialized caseload.

One interviewee commented:

"I think there are horses for courses – it's nonsense to suggest that every judicial officer is good at every type of work – we know they're not – it's a lie, to say that they are good at all types of work. ... People have particular skills and I try and utilize their skills."

Recognition of strengths, might also imply cognizance of weaknesses as well, something adverted to by the same interviewee, who admitted: 'some people have particular weaknesses and [I] try and make sure that their weakness are put in a place where they will not hurt people or themselves.' An Allocating Court Officer provided an example of how this might play out in practice:

"Yes, for example, [a] magistrate that's known to be very strict, ... we've got Crimes Family Violence that sits four days a week, very vulnerable, mainly women, as you can imagine – I wouldn't let him loose on the women, ... on the Monday, the Monday's the day when all the weekend bashings come in – I wouldn't let him loose on them because he's, he just hasn't got the right attitude."

These tensions can be particularly acute with specialist courts or lists, as one Allocating Magistrate explained: 'So you create special lists, you create special expertise. ... The specialist lists I'm quite thoughtful about who I put in there.'

Interviews revealed a somewhat ambivalent attitude to the specialist caseload in the courts that were studied, which is reflected in the European jurisdictions studied by Langbroek and Fabri. On the one hand, identifying particular knowledge and skills within the judicial workforce enables a court to marshal that expertise to deal more effectively and efficiently with specialist and general caseload. On the other, too great a differentiation between judicial officers in terms of expertise is seen as an implicit threat to the efficient running of the court, in that, if carried too far, it can reduce the court's capacity to exercise flexibility in deploying its judicial resources.⁸⁰

⁷⁶ The magistrate who has primary responsibility for caseload allocation in each court is referred to in this article as the 'Allocating Magistrate'. They usually supervise the work of the Allocating Court Officer (see below) who does the 'hands on' work in the allocation process.

⁷⁷ Roach Anleu & Mack, 'Gender' above n 41, 86-7, 90.

⁷⁸ The court staff member who has primary responsibility for workload allocation in a court is referred to in this article as the Allocating Court Officer. They work with the Allocating Magistrate.

⁷⁹ A practice known colloquially as 'magistrate shopping'.

⁸⁰ Langbroek & Fabri, above n 67, 21.

Generally interviewees did not support specialization being permitted to the extent that individual magistrates would only be capable of doing a particular type of caseload. It was emphasized that each magistrate appointed to a court should retain the capacity to do every type of work handled by that court. Underlying this view appears to be a concern that having judicial officers who were exclusively specialists could adversely impact on a court's ability to cover all types of caseload. Judicial resources need sufficient flexibility to be capable of being allocated to different types of work, depending on the particular mix of the cases before the court at a particular time.

It appears that in larger metropolitan courts, specialization is more easily accommodated, and more entrenched, in particular, the long-standing divide between civil and criminal work. In practice, magistrates who sit in civil work are rarely asked to work outside their specialization. This appears to be, at least in part, a consequence of the volume of work associated with that specialty in larger courts. However, even in metropolitan courts, concerns were expressed about the trend towards specialization. Some interviewees felt that over-specialization can result in magistrates effectively becoming de-skilled, in terms of their ability to tackle work outside their specialty.

Concerns were greater in smaller jurisdictions. Although there was a clear appreciation of the value of expertise or particular skills, that appeared often to take second place to concerns about the ability to ensure that all cases within the court's jurisdiction were dealt with as speedily and efficiently as possible. This view was expressed by one Allocating Magistrate as follows:

"On a busy day, it's sort of all bets are off and you go wherever we need you but normally we would try and list to their strength."

Matching skills to tasks could be especially important in the allocation of caseload in the generalist, high-volume, criminal list, as a way to achieve timely and effective disposition of cases. As expressed by one Allocating Magistrate:

"So, whilst I start with this philosophy of everybody being equal and having equal access to the various courts,...underpinning all of that is if you use your, or deploy your, appropriate resources to the areas where they have an expertise, so you match their skills to the case. ...you then look at your specialization and you match your resources to your caseload, you've always got to do that, because at the end of the day we think that we've got to dispose of the cases."

Attitudes of individual magistrates, or their approaches, were also sometimes used in a strategic way in caseload allocation. For example, a magistrate who is known to have a lenient attitude to sentencing might be allocated to a list of contested matters with a view to encouraging early guilty pleas. This was often expressed in terms of the desire to achieve an efficient, in the sense of speedy, disposition of the caseload and to avoid late, especially day of trial, pleas.⁸¹

8. Knowledge and Skills

Certain types of legal knowledge were particularly valued. In courts where most appointees are drawn from a background in criminal law, a magistrate with expertise and interest in civil litigation might be seen as an asset. More specialized expertise – in taxation, fraud, proceeds of crime – might come in handy if the court received a complex matter in such an area. Greater familiarity with the law and procedure in complex matters, such as family violence or sexual assault cases, or, in the civil jurisdiction, workers compensation or building cases was also thought to facilitate better decisions, as one Allocating Magistrate explained:

"You don't give building disputes to people who don't have any ability to manipulate complex technical information, complicated accounting and all that, because it will just go forever, and they'll never be able to take control at all and at the end of it they'll muck it up because they just didn't understand it – it will get on top of them."

Magistrates who were not subject-matter experts might still be selected for particular types of lists on the basis of their skills and experience. The ability to manage a hearing list in a timely fashion – 'to get through the work' – was high on the list of desirable skills. One Allocating Court Officer expressed it this way:

"I've got a massive DVA [Domestic Violence] list, I've got a massive hearing list, and I think well, OK, how am I going to work – I work out roughly who I think that can manage the load because there is some that are a little bit slower than others."

⁸¹ Most cases in these courts are resolved by way of a plea of guilty whereby the defendant admits the charge and elects to make submissions to the magistrate as to the circumstances of the offence and appropriate penalty. However, late changes of plea (when cases are listed for hearing and change to a plea of guilty very close to the hearing time) create problems for courts in scheduling cases: Sentencing Advisory Council, Victoria, *Sentence Indication and Specified Sentencing Discounts: Final Report* (2007, Sentencing Advisory Council) 15.

In the case of a slower magistrate:

“So if you get a big list of 100 or 90 or 80 you’re simply not going to put that person in that list because to do so would be detrimental to him, or her, and ultimately to the delivery of the service, the justice service, to serve the people that are appearing before the court.”

Despite the pressure of work in these courts, speed was not always seen as the most desirable quality. As one Allocating Magistrate commented:

“A slower magistrate versus a faster magistrate - couldn’t tell you which one’s better, depends, so many dependencies – the nature of the case, the quality of their interaction; a fast magistrate might be brilliant or terrible, depending entirely on your perspective of how quality is decided.”

While Allocating Court Officers were inclined to put slightly greater emphasis on the need for speedy disposition of caseload, they also found it useful to be able to deploy slower magistrates in a strategic fashion, as the following quote illustrates:

“I don’t judge a magistrate by how quick or slow [s/he] is, there’s other things to take into account, ...I’ve got a particular magistrate who’s very, very quick but none of the barristers like appearing before him because he’s so strict and, if I put them before him, they will move heaven and earth to think of a reason to adjourn their case to avoid being in front of him, and so I’ve gained nothing by putting my huge big list in front of [...], because so much of it’s been adjourned, whereas the magistrate who’s slow, the barristers love appearing before [...] because he’s lenient, so it’s, um, more tempting to put my cases in front of him, so there’s lots of things to take into account.”

Some Allocating Court Officers indicated an awareness that the balance between efficiency and quality outcomes may need to be struck differently in a specialized list, so, for example, a magistrate who is slower, but has good rapport with juvenile offenders might be particularly valuable in achieving quality outcomes in a Children’s Court or specialist list.

Allocating Magistrates and Allocating Court Officers seek out other qualities in magistrates, such as the ability to be thorough and methodical, to promote settlement discussions and to sentence fairly, and generally achieve quality outcomes. As one Allocating Magistrate expressed it: Efficiency...”in the sense of did they get a fair hearing, were they listened to, if you interviewed the offenders did they feel they were looked at, listened to, or just treated as a number.”

9. Preferences

Identifying particular judicial skills and expertise in caseload allocation was seen as important to maintain morale. Allowing magistrates to work in areas they enjoyed could improve their job satisfaction, and was something that both Allocating Court Officers and Allocating Magistrates were prepared to accommodate, at least to some extent. Listing magistrates in areas that they did not like working might not be productive, although it was rarely the decisive factor in caseload allocation.

It was generally easier to cater for preferences where those allocating the caseload considered there was a good match between their own assessment of the magistrate’s skills and abilities and the magistrate’s preference. As one Allocating Court Officer expressed it:

“We have some magistrates who prefer to do...[a type of court], so if they were good at it, you’d try and give it to them fairly regularly because it’s in your own interests. ...normally we would try and list to their strength.”

What became more difficult, for those allocating caseload, was the situation where their assessment of a magistrate’s skills and abilities did not tally with the magistrate’s own preference. In that situation, those allocating the caseload would normally try and find a way to avoid a direct refusal, as one explained:

“I’ll be hoping when that happens that the people who volunteer will be the sort of people who won’t cause grief in a particular list – and usually it works without me having to have any embarrassment. Occasionally I get a volunteer for a listing which I know that will come to grief – the court’s grief. I normally try and find something else they want to do that clashes with that – and give them that. So they don’t get that work – it’s not apparent or obvious anyway – that I’m avoiding giving them that work.”

The size of a court is a limitation on allocating to preferences as another Allocating Magistrate from a small court explained:

“In a way you’re limited as to how you can do that because, you know, you get certain dates where there’s X number of magistrates in town and really the ones who are here will need to do it.”

The desire to ensure a spread of the work that was perceived as fair by other magistrates was another limitation, as one Allocating Magistrate explained:

“I have to share work around, but I’ll do my best to make sure people sitting in that court are interested in doing that sort of work.”

Another commented on similar lines:

“But some magistrates do not like working in particular areas and, if it doesn’t upset the balance of things, then I’m happy to accommodate.”

As well as considering preferences, those allocating caseload need to identify which magistrates are appropriate choices to handle particular types of cases. The notion of ‘horses for courses’ implies the ability to identify differences in expertise (skills and knowledge) between individual magistrates in order to allocate caseload.

10. Identifying Expertise

Some courts require training for magistrates to undertake certain specialist lists or divisions, such as indigenous, mental health, drug courts, and sexual assault cases. For example, Victorian magistrates are required to undergo particular training provided by the Victorian Judicial College prior to their appointment to sit in the sexual assault list, and Northern Territory magistrates are required to undergo training to sit in that jurisdiction’s Alcohol Court.⁸² More informally, magistrates appointed to co-ordinate specialist lists might be asked to identify other magistrates who are suitable for appointment to that list, whether or not formal training is required. This approach is being used, for example, in the Koori (indigenous) Court in Victoria, where the coordinating magistrate works with the Allocating Magistrate to select magistrates to work in that division of the Magistrates Court.

However, in most jurisdictions, particular skills and qualities are identified through informal processes, whether for designated specialist work or for different assignments within the general jurisdiction of the court. In the absence of specific training or other requirements, the general caseload allocation process will determine how and by whom judgments about relevant expertise are made. In this process, those responsible for allocation will be looking for ‘special’ rather than ‘specialist’ expertise.

In some courts, Allocating Magistrates may use their own knowledge to make quite specific allocations of individual magistrates to particular lists. In others, where the normal practice is for the Allocating Court Officer to make the specific allocations from a list of available magistrates provided to them by the Allocating Magistrate, it will be that court officer who decides which magistrate is the most suitable choice for a particular list.

Allocating Magistrates and Allocating Court Officers acquire information about different skills, knowledge and preferences of individual magistrates in a variety of ways. Initially, when a magistrate is appointed to a court, there will be information made available (formally and informally) about their professional background prior to that appointment which will indicate the legal areas in which they have worked and their broader professional experience. Both Allocating Magistrates and Allocating Court Officers also garner information over the course of time in dealing with individual magistrates, by talking with them, being told about their interests, preferences, likes and dislikes in terms of type and volume of caseload. In addition, there is feedback and information provided, either directly, or indirectly from other court staff, lawyers, and prosecutors, and, less often, directly from members of the public, as the following quotes illustrate (the first from an Allocating Magistrate, and the second from an Allocating Court Officer):

“Talking to people and talking to practitioners...and you get a sense of what do people think about your court,...in conversation I will see them at functions or wherever.”

“Without spying on everyone, and I don’t – you just sort of hear – people make comments. I know within the court here I’ve got a pretty good handle on the practices of the magistrates even though I’ve never been to see them in court. I really don’t know how I know – I don’t ask for information – you just pick up comments and remarks. The clerks know. If I wanted to know I could find out – I would just go and ask the clerks.”

Allocating Court Officers sometimes also observe magistrates in the courtroom and hear reports from other court staff about how magistrates process particular types of cases, as the following quote illustrates:

“Whether people are quick or slow, you’ll see it by how much work they get through. If a magistrate is given a list of 65 or 70 mention matters, and will need assistance if by lunchtime there’s still 40 there, you know that their capacity’s going to be 20/25 in the morning and 20/25 in the afternoon.”

One Allocating Court Officer expressed the judgment in instinctive terms:

⁸² Now replaced by the Substance Misuse Assessment and Referral for Treatment Court (SMART Court).

“You know, you get a gut feel for it, too, whether they’re going to be good in that court or there’s another area which they would be better in.”

Interviewees bring considerable experience to their assessment of the skills and expertise of judicial officers in their courts. However a striking feature of the process was the lack of any formal process within which expertise might be recognized, for example, the ‘ticketing system’ used in England and Wales, whereby, for example, cases in the family jurisdiction must be dealt with by magistrates or judges who have received specific training to deal with those types of cases.⁸³

11. Conclusion

This research finds that, in Australian magistrates courts, overall, judicial officers are generally regarded as interchangeable, and individualization of caseload is the exception, rather than the rule. However, as specialization in types of cases and tasks has increased in Australian magistrates courts, there has been a need to identify different types of expertise within the judicial workforce and to try and organize the process of caseload allocation in such a way as to take best advantage of particular knowledge and skills among magistrates. However, while a trend to increased specialization in caseload allocation is apparent in some larger jurisdictions, it is a less practical option in smaller courts.

The skills that might be valued depend on the nature of the jurisdiction and its priorities. The capacity to allocate caseload to judicial officers who have particular types of skills or knowledge is not relevant only to specialized caseload. In these high-volume lower-instance courts, ‘getting through the work’ is a primary consideration. Those responsible for caseload allocation seek out abilities, such as dealing efficiently with a large list, or case managing to promote settlement, as useful skills to be deployed strategically to assist with managing overall caseload.

At present, identification of expertise is often being undertaken on a fairly ad hoc basis. Judgments made by those allocating the work are sometimes informed by expressions of preference from the magistrates themselves, but are usually made on the basis of a variety of information that comes to them from various sources.

These informal judgments may be serving the courts well, although it might be questioned whether, in the absence of a clearly defined standards for the skills and expertise for particular types of work, the appropriate judgments are always being made on the best sources of information. There is potential for misjudgments to occur, and for judicial officers to perceive inequities and imbalances in the way that opportunities to specialize are provided.

There is potential for conflict between magistrates’ expressed preferences and the judgments that those allocating the work of the court make about their skills. Our data suggests that, in the absence of a formal process to recognize expertise, such conflicts may sometimes be dealt with by avoidance rather than direct resolution.

Regard should be given to the need for caseloads that are perceived to be fair or balanced in terms of type and volume of work. Processes that require or encourage too much judicial specialization might reduce job satisfaction for magistrates, and limit the court’s ability to manage its caseload efficiently and flexibly, leaving a few specialists doing the least desirable work and/or a few specialists during the most desirable work.

A system that allocates even part of its caseload on the basis of skill or expertise needs to have a process which allows magistrates to demonstrate or acquire expertise in order to be allocated to specialist areas of work. One possibility is for Australian courts to consider adopting a ticketing system such as that used in some United Kingdom courts (as noted above). A second is to build on the approach currently being adopted in Victoria and the Northern Territory requiring training in relation to certain types of specialist lists. However, either process might add a layer of bureaucracy and rigidity that could reduce the flexibility required for caseload allocation in a high volume court, especially in a smaller jurisdiction.

A response that is less onerous than formal accreditation is to articulate criteria and processes for decision-making by those who allocate the caseload, as to how specialist expertise and skills are identified and how allocations relying on particular ‘special’ qualities are made. A formal statement by the court could be directed to two audiences; firstly, to judicial officers within the court, and second to the public. Within the court it could promote clearer understandings of how magistrates who wish to specialize or gain experience in particular types of work can do so. It could also enhance perceptions of equity and fair treatment between magistrates in caseload allocation. This would have the potential to

⁸³ John Flood, Avis Whyte, Reza Banakar and Julian Webb, ‘Case assignment in English courts’ in Langbroek & Fabri, above n 67, 133, 171-2; Judicial Office, ‘Judiciary of England & Wales’ (2012) at <<http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jurisdictions/family-jurisdiction>> accessed 15 August 2012.

promote positive dialogue within the court about the nature of skills and expertise needed for specialist and generalist work and how they might be fostered and supported. At the present time, this openness is lacking. Such a statement might also serve as a guide to the public, promoting transparency about the caseload allocation process, and enhancing public confidence in the administration of justice by promoting awareness of the court's expertise.

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