

MAGISTRATES

INTRODUCTION

There are over 30,000 lay magistrates who are also known as Justices of the Peace. They normally sit as part of a bench of three, for at least 26 half days each year.

In court, they will be advised on questions of law, practice and procedure by a Magistrates' Clerk (who must have been qualified as a barrister or solicitor for at least five years).

ROLE

Criminal matters

Magistrates' courts dispose of over 95% of all criminal cases. They:

issue warrants for arrest and search;

decide whether a case should be adjourned;

grant applications for bail or remand defendants in custody;

in summary trials, determine whether a defendant is guilty or not;

pass sentence on a defendant who has been found guilty;

may decide to hear an either-way offence, if the defendant also agrees;

commit defendants convicted of either-way offences to the Crown Court for sentence;

sit in the Crown Court with a judge to hear appeals from Magistrates' courts against conviction or sentence;

sit in the Crown Court with a judge to hear committals for sentence;

enforce financial penalties; and

sit in the Youth Court to hear cases involving young offenders aged 10-17.

For a single criminal offence committed by an adult, magistrates' sentencing powers include the imposition of fines, community service orders, probation orders or a period of not more than six months in custody.

Civil matters

Magistrates hear cases in the Family Proceedings Court and make decisions on a range of issues affecting children and families. For example, making orders for residence of and contact with children.

Magistrates also decide whether to grant certain orders, licences or certificates. For example, liquor licences, permits relating to betting and the registration of gaming clubs.

APPOINTMENT

Lay magistrates in England and Wales are appointed by the Lord Chancellor on behalf of the Queen. In the Duchy of Lancaster they are appointed by the Chancellor of the Duchy of Lancaster. The procedure is as follows:

Individuals make an application to the Local Advisory Committee, which consists of magistrates and other local people. People or organisations may also recommend a candidate for appointment. Committees also advertise for magistrates.

The Committee will consider if the person has the qualities to serve as a magistrate or is disqualified from being appointed.

The Committee will also consider the local bench requirements. Each bench should broadly reflect the community it serves in terms of age, gender, ethnic origin, geographical spread, occupation, political affiliation, and membership of clubs/organisations.

The applicant will then be interviewed.

The Committee will recommend suitable candidates to the Lord Chancellor.

TRAINING

The Magistrates' Courts' Committee is responsible for each magistrates training. The training programme is not intended to make magistrates proficient in the substantive law that they will be called upon to apply, but rather to assist them in understanding the nature of their duties. Magistrates receive the following training:

Mentors

Mentors will assist newly appointed magistrates to achieve the four competences expected of magistrates sitting in the adult court. These are: (1) an understanding of the framework in which magistrates operate; (2) an understanding of basic law and procedure; (3) thinking and acting judicially; and (4) working as a member of a team.

Induction course (before sitting)

Sixteen hours' training consisting of:
three hours' instruction at Bench level, including the trial system and human awareness;
six hours' observation in court, including at an outside Bench;
six hours' participatory decision-making exercises; and
a one hour appraisal session by the Clerk.

Basic training (in year one)

Twelve hours' training covering the main areas of the work they will do, including adjourning cases, bail applications, legal aid, handling guilty and not guilty pleas, sentencing and road traffic offences. They will also visit a prison and a young offenders' institution and receive an introduction to the probation service.

Basic training (in years two and three)

Eight hours' training from a list of topics provided by the Judicial Studies Board.

Refresher training (after three years and every three years)

These twelve hour refresher courses will include chairmanship training.

Handbook

Magistrates are also issued with a Handbook and a guide to sentencing.

Special training

Specialist training is only provided for magistrates appointed to the Youth Court or Family Proceedings Court.

STIPENDIARY MAGISTRATES

Note: Stipendiary Magistrates were renamed District Judge (Magistrates' Court) in August 2000.

Stipendiary magistrates are full-time magistrates who sit alone. They will have been qualified as barristers or solicitors for at least seven years and have served as Acting Stipendiary Magistrates for a minimum of two years. They are usually aged between 40 and 55.

There are 48 Metropolitan Stipendiary Magistrates who hear cases in London, and 48 Provincial Stipendiary Magistrates who hear cases in magistrates' courts outside London, generally in busy urban areas. They are appointed by the Queen on the recommendation of the Lord Chancellor.

Applications for appointment as Acting Stipendiary Magistrate are made to the Judicial Appointments Group. Selected candidates are interviewed by a panel including a senior Stipendiary Magistrate and a senior official of the Judicial Appointments Group, which advises the Lord Chancellor.

Before sitting alone, successful candidates are asked to sit in for one week with a serving Stipendiary Magistrate, to attend a Judicial Studies Board induction seminar, to visit penal institutions and to meet with a senior representative of the Probation Service.

Acting Stipendiary Magistrates sit for two weeks on the first occasion, and at least 20 days a year thereafter. If an Acting Stipendiary Magistrate does not achieve a full-time Stipendiary post within five years, he or she is unlikely to be invited to undertake further sittings. There are 107 Acting Stipendiary Magistrates.

ADVANTAGES & DISADVANTAGES OF LAY MAGISTRATES

MERITS	CRITICISMS
<p><i>1. Providing a cross-section of society</i></p> <p>The system involves members of the community and provides a wider cross-section of society than professional judges.</p> <p>For example, 47% of magistrates are women compared against 5% of professional judges. Even though there is a shortage of ethnic minority magistrates, there is more involvement than in the main judiciary.</p>	<p>Lay magistrates tend to be 'middle-class, middle-aged and middle-minded' they are not a true cross-section of the local community, and will have little in common with the young working-class defendants who make up the majority of defendants.</p>
<p><i>2. Local knowledge</i></p> <p>Since magistrates have to live within 15 miles of the area, it is intended that they should have local knowledge of particular problems in the area.</p>	<p>As most magistrates come from the professional and managerial classes, it is unlikely that they live in, or have any real knowledge of, the problems in the poorer areas.</p>
<p><i>3. Cost</i></p> <p>The use of unpaid lay magistrates is cheap. The cost of replacing them with paid stipendiary magistrates has been estimated at £100 million a year. The cost of a trial in the magistrates' court is also much cheaper than in the Crown Court.</p>	
<p><i>4. Training</i></p> <p>Improved training means that lay magistrates are not complete 'amateurs'.</p>	<p>There are criticisms that the training is variable in quality and inadequate for the workload. This poor training may be the cause of marked variations in sentencing and granting of bail between different benches.</p>
<p><i>5. Inconsistency in sentencing</i></p> <p>A study by Professor Diamond in 1991 found that lay magistrates were more lenient in the sentences they passed than stipendiary magistrates.</p>	<p>Several studies in recent years have revealed worrying differences in the number of defendants sent to prison.</p> <p>A study of sentencing by Liberty showed that in 1990 twice as many defendants were sent to prison by magistrates in Greater Manchester compared to Merseyside.</p> <p>1995 Home Office figures revealed that there were major differences in sentencing practice for the same type of offence, eg, of those convicted of common assault, London magistrates sent about one out of every three offenders to prison, while in Northampton no offenders were jailed.</p>

6. *Advice of the clerk*

<p>The lack of legal knowledge of lay magistrates should be offset by the fact that a legally qualified clerk is available to give advice.</p>	<p>This will not prevent inconsistencies in sentencing since the clerk is not allowed to help the magistrates decide on a sentence.</p> <p>In some courts it is felt that the magistrates rely too heavily on their clerk.</p>
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7. *Prosecution bias*

<p>Comparatively few defendants appeal against the magistrates' decision, and many of the appeals are against sentence and not against findings of guilt.</p> <p>In 1995 there were almost 25,500 appeals out of 1.5 million criminal cases. Rather less than half of the appeals were completely successful.</p>	<p>It is often said that lay magistrates tend to be prosecution-biased, believing the police too readily.</p> <p>There is a low acquittal rate in magistrates' courts; for instance the CPS report 1994/5 showed that of 93,000 defendants who pleaded not guilty, only 22% were acquitted.</p>
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Advantages and disadvantages from J. Martin, *The English Legal System*.