

## **Could The English Legal System Function Without Lay Magistrates?**

Lay magistrates are unqualified, part-time and unpaid, yet they deal with the vast majority of cases in the legal system. They do not hear cases on their own but sit as a bench or panel of two or three magistrates. The use of such unqualified judges is open to criticism.

The role of magistrates is that they are expected to deal with a wide variety of cases. Their main work is trying minor criminal cases, but they also have some civil functions, e.g. hearing applications for licenses to sell alcohol and dealing with community debts such a non-payment of the community charge. They also deal with domestic jurisdiction such as adoption, divorce etc.

There are two types of magistrate – lay and stipendiary. It is said that lay magistrates are the backbone of The English Legal System. Lay magistrates must live within 5 miles of the commission area and are normally aged between 27 and 65 on appointment, and sit at least 6 half days per year. There are over 30 000 lay magistrates in England and Wales and an idea of their importance can be seen from the fact that they hear over 1 000 000 criminal cases in a year which is about 90% of criminal cases that start and finish in the Magistrates' Court. There is a heavy reliance on lay magistrates as with juries.

In criminal cases, magistrates have four main functions:

- Hearing applications for bail.
- Set guidelines for people they release
- Hear committal proceedings
- Try criminal cases

There are many advantages of using lay magistrates for example, The system involves members of the community and provides a wider cross-section on the bench than would be possible with the use of professional judges.

Because Lay magistrates are just average, but professional people such as teachers, doctors etc. it is an advantage because they can see what goes on in their community and so are more in touch with realistic issues, this also pleases public opinion of magistrates.

Improved training means that lay magistrates are not complete 'amateurs'. New magistrates are given about 40 hours of training spread over the first three years. This consists of:

- Observing court proceedings and learning 'on the job'
- Attending lectures and workshops
- Visiting penal institutions

The training is not meant to make magistrates proficient in the law, but to give them an understanding of their duties. A major part of the training is aimed at sentencing. Magistrates on the Youth panel and the Family panel receive extra training for this.

A legally qualified clerk is available to give advice. Every bench is assisted by a clerk. The main duty is to guide the magistrates on questions of law, practice and procedure. The clerk should not assist in the decision-making. Clerks have been given increased power to deal with routine matters at early administrative hearings.

It is cheap both for the government and for the defendant. The only money paid to lay magistrates is that of expenses. In 1989 the system cost 200 million pounds a year to run but brought in an income of 270 million pounds from fees, fines and penalties. If professional judges were being paid to deal with these cases it is estimated that in salaries alone, per year, would cost in excess of 100 million. It would also take a long time to become qualified and there would be a massive backlog of cases because there are nowhere near as many professional judges as there are lay magistrates.

Cases are dealt with relatively quick which helps prevent backlog.

There are few appeals from magistrate's decisions.

There are also many disadvantages of using lay magistrates. Lay magistrates tend to be middle-class, middle-aged and middle minded and will have little in common with the young working class defendants who make up the majority of defendants.

Both working-class and ethnic minorities are under-represented.

The training that magistrates receive is also inadequate for the workload.

A major criticism of lay magistrates is that they tend to be prosecution biased, believing the police too readily. They only acquit about 25% of cases and some magistrates may rely too heavily on their clerk.

There is inconsistency in sentencing and in the granting of bail and the workload is becoming too great and complicated especially in the family court.