

**Describe The Work of The Magistrates Court, The Problems
and The Proposals for Reform**

Plan

English Legal System → 2 primary courts

↓

Crown Court

↓

Professional judge and a jury

↓

Magistrates

↓

3 lay magistrates and the clerk of the court

Functions:

- Granting of licences for premises
- Issues warrants for premises/detention/bail
- A filter in terms of offences-initially all cases (clearing house)
- * Summary offences - minor offences – trial court
- * Each way – minor or serious depending on the consequences (e.g. driving without due care and attention could lead to death by dangerous driving)
- * Indictable offences – serious offences (magistrates look for sufficient evidence and then refer the case to the crown court)

Composition:

- 3 magistrates (lay people → none professionals) → local people who know about local circumstances.
- Recruitment → 27-60
- Retirement → 70 (or can be retired earlier for misconduct)
- Who cannot be a magistrate?
- How much training before becoming a magistrate? How much a year?
- Clerk of the court who is usually referred to (this is a legal advisor with at least 5yrs standing (usually a solicitor or barrister))
- In complex cases stipendiary magistrates are also present. They are district judges who have a lot more training than lay magistrates.

Problems:

- Inconsistent – punishments vary from one part of the country to another
- Prosecution bias – the police are favoured more than the defendant instead of initially being equal
- The magistrates are lay people who have no legal background and only limited legal knowledge → inadequate training?
- The magistrates are overworked (lots of cases-lack of time)
- Class/age/ethnic and social bias magistrates not really representative of society
- The clerk is relied on too much

Dealing with the problems:

- Modernising justice → The Auld Report, 2001

3 recommendations:

- 1) Some cases to be transferred from the Crown Court to the Magistrates. This restricts the right of the defendant to choose where the case is heard (more pressure on magistrates and more complex cases)
 - 2) Proposal for a new court to look at middle ranking offences (1 judge, 2 lay magistrates → magistrates become rubber stands/judge takes over)
 - 3) Minor offences to be processed via post (e.g. failure to pay TV licence)
- The system needs to be revised (follow the U.S. using night courts)
 - The selection process for the magistrates needs to be widened
 - The clerks role needs to be revised
 - Improvements in consistency of punishments
 - Possibly put a judge on the bench with 2 magistrates to deal with more serious cases as well (although the judge may be too dominant or too much pressure may be put on them)

Appeals

Describe The Work of The Magistrates Court, The Problems and The Proposals for Reform

The English legal system has two main courts, the Crown Court and the magistrate's court. The Crown court consists of a judge and a jury, whilst the magistrate's court consists of three lay magistrates and a clerk.

The magistrate's court deals with 95% of all the criminal trials in the country, the rest being heard in the Crown Court. They are therefore "the backbone of the criminal justice system."

They have several functions, including some civil jurisdictions. These include granting licences to pubs and betting shops. They also have power over criminal jurisdiction. This includes the issuing of warrants for the police to search premises, extending the detention time a suspect can be held for by the police and issues concerning bail.

There main function however is being a 'filter' or 'clearing house' in terms of offences, as all cases initially go through the magistrate's court. There are three types of offences; firstly, 'summary offences', these are minor offences such as petty theft. These cases can be dealt with in the magistrate's court and it is here that the defendant will be tried.

Secondly, 'each-way offences', these are offences that depending on the consequence(s) of the crime will either be heard in the magistrate's court or will be referred to the Crown Court. For example, if the initial charge was driving without due care and attention this could be heard in the magistrate's court, however, if as a result of this someone was knocked down and killed, the charge would become death by dangerous driving, and the case would have to be heard in the Crown Court.

Finally, 'indictable offences', these are serious offences which carry longer sentences/harsher punishments than the magistrate's court can grant. In such cases the magistrates check that there is sufficient evidence for the case and then refer it to the Crown Court.

The magistrate's court consists of the clerk of the court, the court reporter, the usher and of course three lay magistrates. The court reporter may work for the local/national press. They attend court and report on the cases.

The usher is there to ensure that the proceedings run smoothly and that order is maintained.

The clerk of the court is usually either a barrister, or a solicitor who has at least five years standing. They act as a legal advisor, but the final judgements are up to the magistrates.

In complex cases a stipendiary magistrate may also be present. They are professional district judges who have a lot more legal knowledge and training than lay magistrates. Stipendiary magistrates can earn up to £74,000 a year.

The magistrates are lay people (none professionals) who have legal training. They are also known as 'Justices of the Peace' (JP's). To become a magistrate you must be of good character, have knowledge on local issues and local circumstances, be able to work as part of a team and have the ability to weigh evidence and reach reasoned decisions. Although magistrates receive a small allowance for travelling expenses and so on, they do not receive a salary.

However, not everyone can become a magistrate; the police, traffic wardens and anyone else who is a serving member of Her Majesty's Forces are unable to become magistrates. Other people who cannot become magistrates, are people who are bankrupt, the close relatives of a person who is already a magistrate serving on the same bench, anyone who has a disability which stops them from carrying out all the duties of a magistrate, or anyone who has a serious criminal record. The recruitment age for magistrates is between the ages of twenty-seven and sixty. The retirement age is usually seventy, unless a magistrate is guilty of misconduct, in which case they are retired by the Lord Chancellor (or someone on his behalf).

Magistrates receive careful training before they sit on the bench and continue training throughout their service. Training takes place during the first two years of their training and the topics they cover are, court procedure, current legislation, sentencing powers and options, decision making and communication skills, mentoring, and importantly on-the-job training.

There are however several problems with the Magistrate's court. Firstly, the inconsistency in punishments given out for the same crime. For example in one part of the country you could receive a higher sentence for the same crime as someone in another part of the country.

Secondly, prosecution bias is a big problem for the defence. This is when the police are automatically believed over the defendant instead of the proceedings starting with both sides being neutral.

A main problem is with the magistrates themselves. They are lay people who have no legal background and only have limited legal knowledge. They are very overworked as they have many cases but only a short amount of time, and many people believe that they do not have adequate enough training. Other associated problems are, class/ethnic/age and social bias. This is because most magistrates are middle class, middle aged, white people who have little knowledge of the people coming before them.

Another problem is connected with the clerk of the court, and how much they are relied on. They are not supposed to take any part in the actual decision of the bench, they should only comment in front of all the court and should not be present if/when the magistrates retire to discuss a decision.

There have been several proposals for reform concerning the magistrate's court. In 2001, the Auld Report was published. It had three main recommendations. Firstly, it suggested some cases should be referred from the Crown Court to the Magistrates court. This would mean more complex cases would be heard and it would restrict the right of the defendant to choose where the case be heard. This would however put more pressure on the magistrates who are already overworked.

Secondly, it proposed a new court be made up to deal with middle ranking offences. It would consist of two lay magistrates and a judge, but the fear here is that the judge may become dominant, and the lay magistrates merely 'rubber stands'.

Finally, it suggested that all minor offences, such as failure to pay TV licenses, be processed via the post. This would mean that the magistrates would be less overworked and would get to more serious cases quicker.

Other proposals to the magistrates system are taken from America where night courts are widely used. Although this would take pressure off the magistrates, (as they would have more time) the proposal has been refused on the grounds of funding, as they are expensive to run.

The selection process for people wanting to become magistrates also needs to be widened and revised. The people chosen need to be more representative of society, because at the moment they only really represent middle class, middle aged, white people.

The clerk's role also needs to be revised to ensure they are simply advising the magistrates and not involved in the actual judgement of the bench.

The inconsistency of punishments also needs to be looked at, because it is wrong for two people who are charged with the same crime to be punished differently just because they live in different parts of the country.

Another suggestion for improvement is to put a judge on the bench with two lay magistrates; this would result in more serious cases being heard and subsequently harsher punishments being able to be granted.

Finally, in cases where the defendant is unhappy with the verdict or their punishment they can appeal. If the defendant pled guilty at the trial they can only appeal against sentence, whereas if the defendant pled not guilty then they can appeal against both their sentence and their conviction. To appeal, a 'notice of appeal' must be given within twenty-one days of the conclusion of the case to the court and to the prosecutor. (Legal Aid can be applied for) The appeals are heard in the Crown Court, where a full rehearing of the case goes ahead, but before a judge and two magistrates, instead of a judge and jury. If the appeal is successful then the conviction could be quashed or the sentence reduced. However, if the appeal fails, the defendant could incur the court fees. Also if the court feels that the original sentence was too light it could be increased. The decision of the Crown Court is final (and there is only one rare situation in which you can pursue your case any further). These are risks which the defendant will have to think about before going ahead with an appeal