

## **Magistrates**

### **(a) Explain the role that magistrates play in the criminal justice system**

Magistrates are involved with many aspects of the criminal justice system and have lots of jobs to do. Criminal cases where the offence is summary or triable either way are heard by magistrates. Summary would be cases with minor offences such as speeding and drink driving, whilst triable either way are potentially more serious cases such as theft, burglary or ABH. Magistrates will listen to the case presented by the defence and prosecution, decide on the verdict and pass sentence. 3 magistrates will sit on every case.

A magistrate has sentencing restrictions and can give a maximum of 6 months prison, £5000 fine or 240 hours community punishment order per offence. A clerk will sit in court with the magistrates and provide legal information for the lay magistrates. A clerk is a paid professional and must have 5 years experience of being a barrister or solicitor to get appointed. A clerk can give legal advice but can't be seen to influence the decision of the magistrates. In the case of *R v Eccles* a clerk was thought to have influenced the magistrates decision and a successful appeal was launched.

All summary cases are heard by magistrates. A triable either way case can be heard in a magistrate's court or in the crown court if the offence is deemed too serious. A magistrate will conduct what is known as mode of trial hearings for either way cases, which is where they decide whether the case will be heard by magistrates or by judge and jury. If the offence is considered serious enough to require a harsher sentence than 6 months prison/£5000 fine, then it will be heard in the crown court. Also a magistrate can make a decision to go to a crown court if during a trial they think 6 months/£5000 fine is not a big enough sentence. Magistrates conduct committals for those cases that go on to the crown court.

It is a magistrate's job to decide on matters of bail and legal aid, for every case that goes to the crown court. Legal aid and bail are decided on by certain criteria, for example legal aid is given only if you stand to lose your reputation, and also depends on your income. Magistrates are involved with the police as they can extend detention time for questioning of a suspect after arrest. Magistrates can award extra time up to a maximum of 96 hours (in total), but valid reasons have to be given in order for the extension. Magistrates also grant police warrants for arrests, and warrants to search premises.

Other jobs for magistrates include granting licences (to pubs and bars for example) for selling alcohol and gambling, and enforcing council tax debts. Magistrates have the power to remove any licences given for alcohol and gambling. If for example there were frequent fights/disturbances at a pub the license for selling alcohol could be removed by magistrates.

**(b) How are magistrates appointed? Does this produce a balanced bench?**

To be eligible for being a magistrate you have to live in or within 15 miles of the commission area and be under 65. There are exemptions for example people with serious previous convictions, undischarged bankrupts and police can't become magistrates.

Applicants must show 6 main criteria which are be of good character, have a good level of social awareness, show sound judgement, have a good understanding and communication, show maturity and sound temperament, show commitment and reliability. The Local magistrates advisory committee recommend people for appointment to the Lord Chancellor. A prospective magistrate can be put forward by any person or organisation or put themselves forward. The advisory committee (staffed by magistrates) consider applicants as well as advertising and interviewing prospective magistrates. It is argued that interviewing applicants is not the best way. The reasons for this would be that people from a professional and particularly managerial background would have greater experience of interviews, and therefore a better chance of being successful than someone with a non-professional occupation. This causes most of the magistrates to be from a professional background, which isn't really balanced.

The composition of the bench is also affected by the fact that magistrates are not paid (but may receive expenses and compensation for loss of earnings), and must sit at least 26 times a year. Because they don't get paid it would be difficult for someone with a low paid job to be a magistrate. Also the time off work to sit can reduce your chances of promotion at work and make you less attractive to prospective employers. This is perhaps why most magistrates are middle class and over 40 as working class often cannot afford to take that amount of time off unpaid. Younger people who have only just started out in their jobs and careers would fear that taking the time off would jeopardise their promotion and increased salary chances.

The lord chancellor has said that there should be a balance of suitable people with political affiliations to the main parties and those who do not support anyone. Also the bench should reflect the community in gender, ethnic origin, job, geographical location and political affiliation. The bench does not have to be balanced in terms of age. The criteria of political affiliation is a controversial one as it suggests that politics has an affect on criminal justice which is not wanted as trials could be seen as unfair because of government influence. Research by the Lord Chancellors department is showing that magistrate applicants are increasingly unwilling to declare their support for a particular party. Political affiliation will affect the selection of a magistrate as a balance will try to be achieved. For example if there are too many labour supporting magistrates then a conservative applicant will be preferred to a labour supporting applicant as the conservative will make the political affiliation numbers more balanced between the major parties. This is not really making the selection process fair and just on ability.

Other criteria for a balanced bench is class, race and gender. Research shows that magistrates are almost all middle class with only 16% working class and 8% manual workers. The new condition brought in allows over 60's to be appointed was aimed at increasing the amount of working class people (as they probably would have retired

and have enough money and free time) applying to become magistrates. So far it hasn't really worked as intended. In 1992 research from the lord chancellors department show 2% of magistrates were black. This doesn't seem a lot but as there is only a 5% black population it is reasonably balanced. Gender of magistrates is very balance with figures showing 47% female.

Magistrates usually retire when they get to 70 unless they get removed earlier through infirmity. Magistrates can be sacked by the lord chancellor without reason if they behave badly. This happened with Kathleen Cripps in 1985 where she was removed when seen demonstrating against poll tax outside the court in which she sat as a magistrate.

I think that because of the fact that magistrates are not paid and will have to sit at least 26 times, missing work often it is difficult to attract younger people or working class and manual workers to become magistrates. Because of this it is quite difficult to achieve a balanced bench. The lord chancellors criteria does help to ensure there are all different magistrates from wider reaching backgrounds making the bench more balanced. But sometimes the selection process can be made unfair as a balanced bench is trying to be achieved, where prospective magistrates that are too similar to the type of existing magistrates that they can't get appointed.