

The professionalisation of local courts' justice

Peter Seago, Clive Walker and David Wall consider whether the lay magistracy in England and Wales has a future.

Introduction

During the next century it is likely that the stature of the concepts of localism and laity will continue to change as the courts become more professionalised. Traditionally, the involvement of lay people and their proximity to the local community have been particularly crucial features of the courts' processes. At Crown Court, for example, they are exemplified by the jury and in the magistrates' courts by justices of the peace. Yet, both concepts are currently being challenged, whether through changes to mode of trial rules or through the growth in the number of court professionals. Given that it is the summary courts which handle the vast majority of criminal proceedings in England and Wales, this article will focus at that level and will examine the data from a study conducted by the authors of the role and appointment of stipendiary (paid) magistrates (Seago, *et al* 1995; 2000).

The professional magistracy and its challenge to local laity

The majority of judicial actors in the summary criminal courts are lay magistrates, who, in January 1998, numbered a record high of

30,361. However, the lay magistrates are now complemented by around 90 permanent stipendiary magistrates and a further 90 or so acting stipendiaries (part-time, temporary appointees). Whilst this paid, professional, judicial office originally developed as a response to the failure in the system of lay justice in London from about 1740 and in the provinces from 1813, the numbers remained small until recent years.

During the past two decades three factors have contributed to the gradual re-emergence of provincial stipendiaries. The first was the increasing workload of the summary courts and the incapacity of many areas to recruit sufficient lay justices. The second factor was a heightened political concern about court delays as the Narey report identified. The third factor was the Administration of Justice Act 1973 which simplified the mechanisms for permanent appointments and also enabled the appointment of temporary, visiting stipendiaries.

standardisation of judicial practices through a Senior District Judge (Chief Magistrate). Finally, the 1999 Act allows for the greater use of acting stipendiaries ("Deputy District Judges (Magistrates' Courts)").

As a result of all of this encouragement, the number of stipendiary magistrates has grown significantly (Lord Chancellor's Department, 1999). There are proposals to raise the provincial figure to 60.

Whilst the overall totals of stipendiary magistrates remain relatively small, a major concern has been the perception that they undermine the local and lay characteristics of summary justice. The first arena of conflict might occur if it could be shown that stipendiary magistrates act as thinly disguised government placemen - the agents of central executive prosecution or sentencing or courts policies. In the second arena of conflict, established values would be compromised if the professional judges began acting in the interests

Number of stipendiary magistrates since 1989

Year	Provincial stipes.	Met. stipes	Acting stipes.
1989	17	48	Not available (66 in 1991)
1994	32	46	90
1999	45	48	95

These factors will be given added impetus by recent legislation whenever it comes into force. First, the role of stipendiary magistrates in the youth courts has been expanded by section 48 of the Crime and Disorder Act 1998. Next, the Access to Justice Act 1999, section 78 and schedule 11, will unify the Metropolitan and Provincial stipendiary benches by granting to all stipendiaries jurisdiction within every justice of the peace commission area. This creation of a national judicial cadre follows the *Venne Report* (Lord Chancellor's Department Working Party, 1996) and the Lord Chancellor's Department consultation paper, *Creation of a Unified Stipendiary Branch* (1998: para. T5). A further signal of the growing status of the stipendiary is the grant of a new title - District Judges (Magistrates' Courts). There will also be a mechanism for

of legal professionals rather than the local public. In the third arena of conflict, established values might be compromised in a geographical sense if power is centralised.

Our studies revealed that the presence of stipendiary magistrates has as yet not been sufficiently influential outside London to make a major impact on the work cultures or administrative procedures in magistrates' courts. Furthermore, stipendiary magistrates were shown to share the values and concerns of their lay brethren - for example, an emphasis upon common sense and local experience rather than policy or doctrine. Neither is their diet of work distinctive (aside from the "sensitive" extradition hearings before the Chief Metropolitan Stipendiary Magistrate). It is true that both metropolitan and provincial stipendiaries are

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generally more expeditious than lay justices. However, this saving in time arises mainly from the mathematically simple fact that stipendiary magistrates preside alone and have no need to confer. Furthermore, stipendiary magistrates are experienced and legally-trained professionals, and so tend to spend less time being advised by the clerk and may also be better able to curtail excessive advocacy.

The policy of local laity

The concept of geographically sensitive justice is troublingly vague, but lay magistrates do view themselves as representing and understanding the locality and its customs and values. By contrast, as already described, stipendiary magistrates will have a commission throughout England and Wales under the Access to Justice Act, 1999, and the supposition is that stipendiary magistrates are less socially reflexive than lay magistrates. A counter-argument to the assertion of lay localism is that localism is itself much diluted in contemporary times, with, for example, a diminishing number of magistrates' courts sites. In any event, is local justice consistent with good quality justice? The arguments for it seem to revolve around concepts such as trial by one's peers, as well as the benefits of local knowledge and sensitivity to local needs. More generally, all recent major studies have supported the continuance of a fundamentally lay and local system as a democratic and educative "bridge" between the public and the courts. Yet the criticism of unequal treatment arises whenever local differences do markedly emerge (Alugo, *et al* 1996:329).

The wholesale replacement of the lay magistracy is not, and never has been, government policy. The exclusive employment of stipendiary magistrates would be

more expensive and would dilute the fundamental principles of citizenship and democracy. Equally, the extinction of stipendiary magistrates seems highly impracticable, as a significant number of Benches would find it impossible to appoint sufficient lay justices or to administer unwieldy Benches of over 700 justices. So, the consensus seems to be a compromise between legality and local laity. A strong rhetorical emphasis at the summary level rests upon "community", as articulated through lay involvement, but the lay judiciary must work within a framework of legal formality, represented by training and professional assistance through clerks. One might then depict the stipendiary as a further form of complementary compromise to community involvement - dealing with cases or case-loads which lay justices find too hot or too heavy to handle.

If local laity is to be retained, then an important agenda for the future is accountability, but that concept is not addressed in any of the recent policy papers. One might then conclude that the driving force behind the growth of the professional magistracy is the bureaucratic objectives of the New Public Managerialism. The opposition, from lay magistrates has also been pitched at an ideological level, but it is equally an ideology in which the relationship with the community is one way and paternalistic. Nevertheless, the appendage of a professional magistracy does call into question the justifiability and working of local justice and may expose at the same time the strength of the ideology as well as the weaknesses of its application.

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References:

- Alugo, C., Richards, J., Wise, G. and Raine, J. (1996) "The magistrates' court and the community", *Justice of the Peace*, Vol.160, p.329.
- Lord Chancellor's Department Working Party (Venne Report) (1996) *The Role of the Stipendiary Magistrate*, London: Lord Chancellor's Department.
- Lord Chancellor's Department (1998) *Creation of a Unified Stipendiary Branch* <<http://www.open.gov.uk/lcd/consult/general/stipecon.htm>>, para. 15.
- Lord Chancellor's Department (1999) Circular to Advisory Committees (9)99, 24 June.
- Seago, P., Walker, C., and Wall, D. (1995) *The Role and Appointment of Stipendiary Magistrates*, Leeds: Centre for Criminal Justice Studies and Lord Chancellor's Department.
- Seago, P., Walker, C., and Wall, D. (2000) "The development of the professional magistracy in England and Wales" (forthcoming).

"The most likely significant development in the next decade will be the tightening of managerial control by central government leading to the de-skilling of professionals throughout the criminal justice system."

Professor David Downes, Director, Mannheim Centre for the Study of Criminology and Criminal Justice LSE.

"The most important development in recent years and the challenge for the next ten, is the recognition by the Government and the various agencies, (courts, police, defence, prosecution etc.) which contribute to the 'Criminal Justice System' that it is one system. Cooperation between those agencies to achieve effectiveness, justice and public satisfaction is essential, and does not mean that the independence of each to make its own decisions is compromised."

David Calvert-Smith, Director of Public Prosecutions