

# 7 Lay Involvement in Adjudication

## Introduction

- 7.1** One of the four aims of the criminal justice system identified in paragraph 4 of the *Policing and Justice* section of the Belfast Agreement was to “be responsive to the community’s concerns, and encouraging community involvement where appropriate”. Included in our terms of reference is a requirement to consider “measures to improve the responsiveness and accountability of and any lay participation in the criminal justice system”.
- 7.2** These pointers are concerned with the criminal justice system as a whole and do not specifically refer to the process of adjudication. The non-adjudicatory role of lay people in criminal justice is addressed in several other parts of this report, including chapters dealing with the courts, community safety, juvenile justice and restorative justice. However, so far as adjudication is concerned, in these islands and many other jurisdictions juries have for generations had the responsibility of determining guilt or innocence, usually in more serious cases. Also, in a number of jurisdictions, lay people have judicial roles of various types in the trial of less serious or summary cases and of juveniles, or in pre-trial procedures. They may have such roles in their own right or sitting alongside professional magistrates or judges.
- 7.3** It was apparent throughout our work that the principle of jury trial in Northern Ireland was not at issue; and many people positively looked forward to the time when it would no longer be necessary to have guilt or innocence in scheduled cases determined by a single judge in trials conducted under the provisions of emergency legislation. It is not for us to comment on when that position might be reached or on the issue of so-called Diplock courts. However we wish to say at the outset that **we fully endorse the principle of jury trial in cases tried on indictment at the Crown Court**, which brings lay people to the very heart of the criminal justice process and, particularly in the circumstances of Northern Ireland, constitutes a symbol of normality with all that means for public confidence.
- 7.4** In the circumstances we see no need to go into detail about the theory lying behind the jury trial or experience in other jurisdictions. We do recognise that there are some issues

surrounding the use of juries and while they do not in our view call the principle into question, some particular features of the jury trial in Northern Ireland are addressed at the end of this chapter. However, we now go on to look at other aspects of lay involvement in adjudication, in particular the position of justices of the peace (JPs) and the lay panellists who sit alongside resident magistrates in the youth courts in Northern Ireland. In considering this chapter, and the associated research carried out for the Review,<sup>1</sup> we invite readers to have in mind the three possible models identified in the research:

- (i) *professional*, where only paid professionals or stipendiaries preside, as in adult magistrates' courts in Northern Ireland and as is the case in the Republic of Ireland;
- (ii) *lay*, where the court is presided over by a bench made up entirely of lay people, as is the case with most magistrates' courts in England and Wales;
- (iii) *hybrid*, where a mix of professionals and lay people make up the bench, for example in the youth court in Northern Ireland and the lower courts in a number of European jurisdictions.

## Human Rights Background

**7.5** To the extent that lay people carry out judicial functions in the criminal justice system, it is important to emphasise that human rights considerations have as much relevance as is the case with the professional judiciary. The references in the European Convention and the ICCPR to the right to be heard by a competent, independent and impartial tribunal apply to the magistrates' court in England, with three lay justices on the bench, as they do to Crown Court hearings presided over by a High Court judge. The *UN Basic Principles on the Independence of the Judiciary* are explicitly applied to "all judges including, as appropriate, lay judges".<sup>2</sup>

**7.6** This has implications for the selection procedures and management processes, which must be based on considerations of merit, with no discrimination on grounds of race, colour, sex or political opinion and which must be consistent with the requirements of independence. Those selected should be "individuals of integrity and ability with appropriate training or qualification in law".<sup>3</sup> That does not rule out any lay involvement and is not interpreted as requiring legal expertise to a high standard, but it does place a premium on training and competence. Independence runs through all of the relevant instruments, meaning independence from the executive but also from any improper influence that might interfere

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1 Doran and Glenn, Research Report 11.

2 *Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary*. Procedure 3. See Livingstone and Doak, Research Report 14, Appendix 8.

3 Article 10 of *UN Basic Principles on the Independence of the Judiciary*.

with impartial adjudication. We should stress our view that these human rights norms apply to all circumstances where judicial discretion is being exercised, including pre-trial procedures. We note Article 5(3) of the European Convention, which provides that “everyone arrested or detained ... shall be brought promptly before a Judge or other officer authorised by law to exercise judicial power...”.

## Current Position in Northern Ireland

- 7.7** In assessing the current and possible future role of lay justices in Northern Ireland, the cultural and historical background is particularly significant. It explains why, despite having a criminal justice system with the same roots, the tradition of a lay magistracy playing a central role in summary justice has not been sustained in Ireland, North or South, as it has in England and Wales.
- 7.8** The historical context is addressed in the research report prepared for the review.<sup>4</sup> In short, by the 19th century it was increasingly apparent that the development of the role of JPs to the point where they had jurisdiction over summary cases was hampered by a combination of factors, including a climate of civil unrest and the effective exclusion of the Catholic gentry from service in the office. There were concerns about partiality and inconsistency of approach and in some areas it proved difficult to make appointments. The response to this was to appoint full-time resident magistrates, at that time not necessarily qualified lawyers, whose role was initially to assist the justices in their work but which increasingly involved their sitting alone and dispensing justice in their own right. In the early days the resident magistrates were required to live in the area to which they were appointed, hence the term “resident” magistrate.
- 7.9** After partition, judicial functions in the Republic became the preserve of full-time judges while in Northern Ireland JPs initially retained the ability to hear summary cases in petty sessions. However the Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935 confirmed the trend away from lay adjudication. It provided that courts of summary jurisdiction would in future be presided over by resident magistrates sitting alone and stipulated that those appointed to such positions would be practising barristers or solicitors of at least six years standing. From the debates leading up to the passage of this legislation, it is apparent that the motivating factors behind this change included concerns that some lay justices were inconsistent in approach and had a tendency to allow personal opinions to override impartial adjudication on the basis of the law.<sup>5</sup> It must also be pointed out that substantial numbers of lay magistrates were said to carry out their duties impartially and

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4 Doran and Glenn, Research Report 11, Chapter 3.

5 Second Reading Debate at 17 HC Debates (NI), Cols 467 to 580 (11-12 December 1934).

courageously, while there was a body of opinion that the legislation was contrary to democracy and that unpaid justices had “brought in humanity... experience... knowledge of local conditions and the circumstances of our people”. While this Act removed the ability of lay justices to sit at the scheduled summary courts where the vast majority of business was dealt with, it left them with some important judicial functions, many of which they continue to carry out today.

**7.10** As of 1 November 1999 there were 901 JPs in Northern Ireland, whose functions are largely prescribed in the Magistrates’ Courts (Northern Ireland) Order 1981. Some of their functions are concerned with matters outside the criminal law field, including administering oaths and statutory declarations and signing official forms such as passport applications. We confine ourselves here to their judicial functions within a criminal law setting, both in and out of court.

**7.11** The most common “in court” function performed by JPs is presiding at special courts for remand purposes. If a person is charged with an offence and kept in custody, he or she must be brought before such a court as soon as practicable and in any event not later than the day following that on which the charge is laid (unless the following day is a Sunday, Christmas Day or Good Friday, in which case the court appearance can be the next following day). The JPs (or resident magistrates) sitting at such a court will exercise judicial discretion in determining whether to grant bail or remand a defendant in custody. In 1998 a total of 65 JPs presided at 264 of the 417 remand courts, with resident magistrates presiding at the remaining 153.

**7.12** A JP may also sit in a special court to:

- extend the period of time that a suspect may be held in custody without charge beyond 36 hours;
- determine whether there is sufficient evidence to justify committing a defendant for trial at the Crown Court;
- adjudicate on a range of complaints against adults where the adult consents to have the case heard in this way (the list of such complaints is to say the least anachronistic and includes such activities as pretending to tell fortunes, wandering abroad and begging in a public place, leaving a cart unattended etc).

In the first two of these categories, the complexity of evidence and issues to be determined are liable to be such that it is very rare for JPs to preside and they are normally brought before resident magistrates; it is usually possible for these cases to be heard at the scheduled sittings of fixed petty sessions courts. It is extremely rare for a JP to be required to hear and determine an offence in the third category of case outlined above. Many of these offences are extinct and, in others that are to be prosecuted, the police will normally bring such cases before fixed courts of summary jurisdiction as part of their normal prosecution process.

- 7.13** Out of court, JPs and clerks of petty sessions have an important role in considering complaints that a person has or is suspected of having committed an offence and determining whether to issue a summons requiring that person to appear in court. About 40,000 summonses are issued each year in respect of criminal offences, of which some 25,000 relate to complaints by the police, the remainder being divided between motor tax, TV licence and other regulatory cases brought by government departments and public authorities. Where the police are involved, they currently take summonses prepared by the Central Process Office to JPs at their workplace or homes or have them dealt with by JPs attending police stations on a rota basis. Similar procedures apply in respect of witness summonses.
- 7.14** A JP may also issue a warrant of arrest on the strength of a complaint made in writing and substantiated on oath. In doing so, the JP must be satisfied that the warrant is lawful and must take account of all the circumstances including the fact that the liberty of the individual is at issue. Similarly, a considerable number of statutes empower a JP, if satisfied by a complaint in writing and on oath, to issue a search warrant authorising entry of premises and the seizure of goods found.
- 7.15** While JPs do not hear and determine cases in the magistrates' courts, we wish to register our view that many of the functions outlined above are extremely important. They affect the liberty, privacy and other human rights of the individual, require the exercise of judicial discretion and involve a degree of oversight of the processes employed by the police and other investigating agencies. At present JPs receive no formal structured training, although some local groups have arranged for resident magistrates and clerks of petty sessions to give them talks and seminars on relevant topics. JPs appearing in special courts receive training on an individual basis and build up a degree of knowledge and experience over time. In 1997, a *Procedural Guide for Justices of the Peace* was issued to all JPs. This detailed handbook replaced an earlier production dating from 1987 and comprehensively set out the jurisdiction, powers and procedures to be followed by JPs in Northern Ireland in the performance of their duties in and out of court.
- 7.16** The one area where there is significant lay involvement in adjudication at trials is in cases involving juveniles. A youth court is normally made up of a resident magistrate sitting with two lay panellists of whom one is a woman. Decisions of the court on guilt or innocence and on sentence are made by a majority of its members, although the resident magistrate's view prevails on a point of law. The jurisdiction of the youth courts is extensive in that they can deal with any offence other than homicide and have the ability to make any disposal that might otherwise have been available to the Crown Court if it had been hearing the case. Lay panellists also sit with resident magistrates in family proceedings courts, established by the Children (Northern Ireland) Order 1995 to deal with civil issues relating to the welfare, custody, care and protection of children, matters which are outside our remit. In 1998 there were 409 sittings of juvenile courts, as they were then known, dealing with criminal matters,

and 518 sittings of family proceedings courts. Lay panellists also sit as assessors with county court judges in appeals from juvenile courts, although in these circumstances they are acting in an advisory capacity only, with decisions being taken by the judge.

**7.17** There are 145 lay panellists of whom 93 are JPs. Lay panellists may be considered for appointment as JP after four years of satisfactory service. The rationale behind the involvement of lay panellists is that where children are involved they can bring a breadth of experience and knowledge to the court and help keep proceedings relatively informal. Appointees as lay panellists are required by statute to undertake training during their first year of appointment and further training is provided as part of an ongoing programme. The training programmes are co-ordinated through a lay panel training committee. They consist of:

- a two-day induction programme covering procedures and disposals of the youth court, followed by observations at court and visits to juvenile establishments;
- in-service training covering topics associated with offending behaviour and new legislation; and
- locally arranged training and regular visits to children’s homes and establishments and community based programmes.

## **APPOINTMENTS PROCEDURES**

**7.18** The Lord Chancellor appoints justices of the peace. He has appointed eight advisory committees in Northern Ireland, each chaired by a Lord Lieutenant, to recommend suitable candidates for appointment, to keep under review the level of cover in their respective areas and to make recommendations on the need for further appointments. The committees are encouraged actively to go out into the community, talking to employers and other organisations, in order to secure nominations from all parts of the community. The guiding principles for selection are:

- merit, regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation and religion;
- personal qualities, such as integrity and the ability to command confidence; and
- the need to include men and women from all walks of life in order to preserve a balanced representation.

Candidates for appointment are normally between the ages of 40 and 64. Appointments are for life, although the Lord Chancellor has decided that JPs aged 70 or over should be restricted to “out of court” work and placed on a reserve list, leaving the remaining 542 justices to focus on “in court” activities.

**7.19** Appointments to the Juvenile Lay Panel in Northern Ireland are also made by the Lord Chancellor, on the basis of recommendations by an advisory committee chaired by a senior resident magistrate. The guiding principles for appointment and appointment procedures are similar to those that apply in relation to JPs but lay panel members must retire at 70. On 1 November 1999 there were 145 lay panellists.

**7.20** These appointments procedures are similar to those which apply in England and Wales in relation to the appointment of lay magistrates there.

**7.21** We record below some profile information on JPs and lay panellists (some of whom are, as we have indicated, also JPs) as of 1 November 1999, recorded by religious background, age and gender.

	JPs	Lay Panellists*
<b>Religion</b>		
Protestant	687 (74%)	95 (66%)
Catholic	218 (24%)	49 (34%)
Other	18 (2%)	1 (-)
<b>Age</b>		
20-29	-	1 (1%)
30-39	15 (2%)	4 (3%)
40-49	70 (9%)	38 (26%)
50-59	183 (20%)	61 (42%)
60-69	265 (29%)	41 (28%)
70+	381 (41%)	-
<b>Gender</b>		
Male	732 (79%)	64 (44%)
Female	191 (21%)	81 (56%)

\*The figures for age ranges of lay panellists are recorded slightly differently from JPs in that they cover age groups 31-40, 41-50 etc rather than 30-39 and 40-49.

## Views Expressed During the Consultation Process

**7.22** Outside of the professionals and lay people actually involved in the criminal justice system, the question of whether there should be greater lay involvement in adjudication was not an issue upon which there were firm views. In general, when asked, most people tended to

favour the introduction of lay magistrates able to deal with less serious cases on their own or sitting alongside professionally qualified resident magistrates. But there was no overriding common theme or argument behind such sentiments.

- 7.23** Some of those in favour saw a strong lay magistracy as establishing a link between the courts and the communities which they served, helping to enhance public confidence and understanding of the system. Others saw it as a means of redressing a gender and class imbalance on the part of the professional judiciary and magistracy. Such views came through in some of the focus groups and seminars. There was a feeling that lay people could bring humanity and a knowledge of the community to court business. The introduction of lay assessors in South Africa was quoted as a positive example of how lay involvement could enhance perceptions of the justice system in parts of the community that had formerly been alienated from it. They were seen as counteracting any tendency towards case-hardening on the part of full-time professional magistrates.
- 7.24** The more sceptical view came from those who were concerned that efficiency and speed might be compromised if lay people were appointed to the bench. Also, in a reflection of some of the concerns that led to the supplanting of the lay magistracy with professional resident magistrates, there was mention of the possibility of intimidation, undue local influence being brought to bear and inconsistency in decision making. There were one or two expressions of concern about the possibility of ex-paramilitaries being appointed to the bench.
- 7.25** During our consultations, resident magistrates and others in the judiciary supported the widespread view that lay panellists added considerable value to the deliberations of youth courts. However, they did not feel that a case had been made for introducing lay magistrates to hear adult cases and some were strongly opposed to the idea. Concerns were expressed about the implications for efficiency and delay, both in terms of organising sittings and the length of time which might be taken to deliberate over individual cases. They pointed to the growing complexity of legislation which made lay involvement more difficult and expressed doubts about whether it would be possible to find suitable lay people to deal with or sit alongside professional magistrates in hearing the more lengthy contested cases. Such views were also expressed by those representing practitioners and by some political parties.
- 7.26** Some lay panellists and JPs who spoke to us could on the other hand envisage a gradual move towards panels of lay magistrates adjudicating on minor matters.
- 7.27** As for the workings of the present system, lay panellists spoke favourably about their training regime, which they felt should be extended to JPs, whose training and guidance some felt to be inadequate. There were doubts, some of them expressed by JPs themselves, about whether the current selection arrangements secured appointments from a sufficiently broad cross-section in terms of class, gender and community background. There was a desire to get away from what was still felt to be a predominantly male middle-class image, associated with JPs. Open and transparent appointments procedures were favoured, with vacancies being

advertised. We heard one suggestion that advisory committees tended to be made up of existing JPs who might be inclined to recommend appointments in their own image and that thought should be given to including representatives of trade unions, community groups and other organisations on such committees. We should record one expression of concern that the independence of the judicial function was open to compromise if the police were able to choose which JP held a special court or signed a summons or warrant.

**7.28** It was clear to us that many JPs whom we met were strongly committed to serving their communities but, at the same time, some were seeking a more focused and clearly defined role. Lay panellists too were clearly committed to their work and, from observation and discussion, we doubt whether one comment - that they were subservient to the resident magistrates - reflects the general position.

## Research and Experience in Other Jurisdictions

**7.29** Lay involvement in the adjudication process is not a universal feature of the jurisdictions which we have examined and indeed in some there has been a move away from a lay magistracy over the years to greater reliance on professionals. In the Republic of Ireland, while after partition some minor judicial functions were retained by commissioners of the peace, it has since been determined that the exercise of such functions is the preserve of professional judges appointed under the Constitution. However, lay adjudication is sufficiently widespread to provide a variety of models which may have some lessons for us to draw on in the Northern Ireland context. As in many other areas, we have to make the point that arrangements suited to one criminal justice system and cultural and political environment do not necessarily transplant into another.

**7.30** England and Wales provide perhaps the clearest example of a jurisdiction where the hearing of summary cases by a lay bench is the norm, although the stipendiary (full-time legally qualified) magistrate has become increasingly significant in recent years. The lay bench there has developed over the centuries as an integral part of the criminal justice system. There are currently around 30,000 lay magistrates in England and Wales and about 100 stipendiaries, who tend to be appointed in the larger conurbations with high volumes of court business.

**7.31** Stipendiaries, sitting alone, usually take the more complex and lengthy cases, but the Lord Chancellor has made it clear that he sees them as complementary to, and not supplanting, their lay colleagues. At the time of our visit to Brighton Magistrates' Court, there were 175 lay magistrates and one stipendiary serving 250,000 people and manning up to eight full courts each day. A bench of three lay magistrates may hear all classes of summary cases as well as dealing with committals. A key feature of the system is the presence of a legally qualified clerk

who is able to advise the magistrates on points of law and procedure and sentencing issues. Lay magistrates are expected to sit between 26 and 35 half days per year, although the pressure of court business can result in a significantly heavier workload.

- 7.32** With the increasing complexity of the law relating to all types of case, and the future incorporation of the *European Convention on Human Rights*, training is regarded as of central importance in England and Wales. A core programme for newly appointed magistrates is prescribed by the Lord Chancellor, providing a basic grounding in the rules of evidence, law and procedure and the principles behind sentencing. A minimum of 12 hours training is provided every three years. During our visit to Brighton we learned that from 1 September 1999 there was to be a more practical element for new appointees, with mentors being assigned to individual magistrates and records of competencies kept.
- 7.33** The appointments procedure in England and Wales is similar to that in Northern Ireland for JPs, with the central role being played by local advisory committees, chaired by Lords Lieutenant. Criteria for selection are set by the Lord Chancellor and include: character and integrity; listening and communication skills; social awareness; judgement; and commitment and reliability. In recent years particular emphasis has been placed on trying to secure a bench representative of the community in terms of class, gender and racial background. Also, the Lord Chancellor has responded to concerns that the advisory committees are dominated by magistrates, with the attendant danger that the focus of selection might be narrowed, by requiring that at least one third of their membership should consist of other local representatives not serving on the bench. We did hear concerns that in some areas there were difficulties in recruiting new and younger magistrates, able to give up the time to sit on the bench.
- 7.34** If part of the rationale behind the lay magistracy is to bring community awareness and a broad understanding of social issues into the courts, then the importance of a diverse and broadly representative bench is self-evident. Recent initiatives in England and Wales have been developed with this in mind. From the Scottish perspective we should draw attention to the experiment in Perth recorded in the research report prepared for the Review<sup>6</sup> where a proactive effort was made to secure nomination for lay appointees to the district court through approaching community councils, churches, voluntary organisations, trade unions, the private sector and others. In Scotland district courts, administered by local authorities, hear summary cases at the lower end of the spectrum.
- 7.35** It is worth recording that it was the lay magistracy in England and Wales that provided the stimulus for a significant innovation in New Zealand. There, at the time of a visit made by two of our members, a new paid judicial office of community magistrate was being created on a pilot basis to sit in the district courts and handle minor criminal matters. Community magistrates need not be legally qualified and it is not intended that they should be assisted by legally trained staff. It is expected that they will sit for two days a week and will take over

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6 Doran and Glenn, Research Report 11.

what little remains of the jurisdiction of unpaid JPs as well as a more extensive jurisdiction covering non-defended criminal cases where the penalty is up to three months imprisonment or a fine of \$5,000. They are not able to imprison. The rationale behind the move is to increase community involvement in the criminal justice system, relieve pressure on the district courts and enable full-time professionally qualified district judges to concentrate on more serious and complex cases. Six weeks of initial training is provided, divided between theory in judicial skills, observation at court and mentoring by a professional judge.

**7.36** A number of European jurisdictions have lay judges sitting alongside professionals in court, on a similar basis to the lay panellists in Northern Ireland. During our visit to Germany, where juries were abolished in 1924, lay judges were seen as a significant link between the criminal justice system and the community. They are selected by city councils and serve for periods of four years, attending court on 12 days per year. Their role is seen as of most significance in local courts where they can exert considerable influence in keeping proceedings and language straightforward and comprehensible; they also bring a community perspective to sentencing which might sway the court in the direction of leniency or more severe penalties depending on the nature of the offence and public opinion.

**7.37** Other countries where professional judges sit alongside lay people are Sweden, Denmark and Finland. Selection tends to be in the hands of local government or sometimes by election. In most of these jurisdictions, the professional judge takes the lead role in matters of law and procedure, while lay participation would tend to be on an equal basis when it comes to matters of fact and sentencing.

**7.38** When we visited South Africa, lay assessors had just been introduced in magistrates' courts and consideration was being given to extending their role into the High Court. There the change was largely driven by a desire to transform the racial composition of the bench, formed of professional magistrates who were civil servants often drawn from the ranks of prosecutors and, in doing so, to enhance public confidence in the formal system of justice. Lay assessors receive formal training in the Justice College alongside prosecutors and court staff.

**7.39** From our brief overview of other jurisdictions, it is apparent that a range of factors lie behind the involvement of lay people in the judicial process, including:

- tradition;
- establishing an institutional link between the courts and the community;
- public confidence;
- helping to keep language and procedure comprehensible to court users; and
- relieving pressure on the professional judiciary.

Training receives a high priority in some jurisdictions, although it is recognised that its purpose is not to convert lay people into qualified lawyers. Securing a representative lay bench is

often an issue but, given the commitment involved, it is not always easy to recruit a cross-section of people in full-time work. We should also point out that there are many jurisdictions where adjudication is regarded as entirely a matter for professional judges or magistrates.

## Evaluation and Recommendations

### A LAY MAGISTRACY

- 7.40** We now consider the case for introducing a lay element on the bench in magistrates' courts hearing adult cases in Northern Ireland and go on to make recommendations about the work of JPs. We remind readers that the basic options under consideration are: no change, i.e. cases heard by professional magistrates sitting alone; the lay model, where cases are heard by a bench made up entirely of lay people; and hybrid, where lay people sit alongside professional judges or magistrates.
- 7.41** The case for introducing a strong lay magistracy in Northern Ireland seems quite compelling in the context of the Belfast Agreement which talks of a criminal justice system that is responsive, encourages community involvement and promotes public confidence. It is argued that the representativeness of the bench, in terms of class, gender and community background, could be enhanced and community values brought into the heart of the administration of justice. Enhancing the role of lay justices would also provide an opportunity to harness the strong commitment to community and voluntary work that exists in Northern Ireland. Some have suggested that a lay element would moderate any case-hardening tendencies that might be associated with professional resident magistrates, who hear cases on a daily basis; and there is a view that lay involvement might help provide an impetus towards the use in court of language and procedures which are understandable and take account of the interests of other court users. Overall, this is seen as a means of binding the community into the justice system after many difficult years.
- 7.42** It is also observed that one of our neighbouring jurisdictions, England and Wales, which has a very similar legal system, provides the ultimate demonstration that a lay magistracy works. However we are conscious of the words of the previous Lord Chancellor, Lord Mackay, who observed: "although similar systems were put into operation in other countries following the English pattern, I do not know of any in which it has survived with anything like the strength that obtains in England and Wales ... I do not believe that it is easy to replicate this system anywhere else".<sup>7</sup> The experience of the lay magistracy in Ireland over the centuries demonstrates that what works in one cultural and political context is not necessarily suited to another.

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<sup>7</sup> Lord Mackay in his Hamlyn lectures on the Administration of Justice in 1993, quoted by Doran and Glenn, Research Report 11, paragraph 5.11.

- 7.43** The argument about representativeness and being in a position to take account of community concerns is, on the face of it, a strong pointer in favour of lay involvement in adjudication. However, it must be viewed with some caution against the background of Northern Ireland. It would be inimical to human rights standards requiring a fair, impartial and independent tribunal, if there were any suggestion that lay adjudicators were on the bench to represent particular groups or to bring personal or sectional perspectives to bear in dealing with individual cases. There is a fine dividing line between bringing the experience and wisdom of everyday life to the bench and allowing extraneous factors to interfere with objectivity of judgement. Of course, representativeness can be taken as relating to the bench as a whole being reflective of society, and careful selection, training and ongoing support should help reinforce objectivity and independence, together with consistency of decision making. However, we should not underestimate the challenge that this would represent in a society emerging from a period of civil unrest and division, if Northern Ireland were to move to a predominantly lay bench.
- 7.44** If Northern Ireland were to have a lay bench for a significant proportion of adult summary trials or a hybrid model, there would be a requirement for large numbers of people to be recruited and trained and for them to commit themselves to a significant workload. We note that of the 923 JPs, only 65 sat in first remand courts during 1998. We think that it is open to question whether it would be possible to secure the necessary commitment from a sufficient number of people with the right qualities, representative of society in terms of such factors as gender, age, community background and employment status. Also, we wonder how comfortable such people would feel if they were adjudicating in high profile cases, perhaps involving public order or which aroused very strong public emotions. It would be a serious setback to public confidence if a decision to introduce more widespread lay adjudication had to be reversed because of difficulties over recruitment or because the system was unable to withstand pressures exerted on it.
- 7.45** Dispensing justice expeditiously is a key objective with human rights implications. We are conscious of and take account of a number of representations made to us to the effect that organising sittings around the availability of lay magistrates would be a major undertaking in itself, liable to result in some delay. Also it is possible that hearings of individual cases would take longer, given the need for lay justices to take advice from a legally trained clerk or, in the hybrid model, for them to discuss legal issues with a professional magistrate.
- 7.46** The current arrangements for adjudicating in adult summary trials have some significant attractions. With a small complement of 17 resident magistrates, managing cases and securing consistency in approach should be relatively straightforward, provided that the necessary structures are in place for training and regular contact between them. Moreover the professional model, employed also in the Republic of Ireland, has taken Northern Ireland through the last 30 years with all the difficulties and pressures which that entailed.

- 7.47** We note that the Community Attitudes Survey of 1997/98 recorded 77% of respondents as being confident or very confident in the fairness of judges and magistrates, a higher figure than for any of the other subjects of the survey (the figure for Protestant respondents was 82% and Catholics 67%). However, when asked in the omnibus survey of 1999 whether people felt judges and resident magistrates to be in or out of touch with what ordinary people think, only 34% found resident magistrates to be a bit in touch or very in touch. These findings point to the need for such measures as greater outreach into the community and enhanced training, rather than wholesale structural change.
- 7.48** The arguments for and against introducing either model of lay involvement in adjudication in adult cases (lay or hybrid) are finely balanced. On the one hand such an initiative might help bind the community into the criminal justice system and thus enhance public confidence; but there are some doubts about whether in the present circumstances of Northern Ireland this would be the outcome and it would be a major managerial and organisational undertaking. We are conscious that recommendations elsewhere in this report, if accepted, will bring about major change in the criminal justice system. Bearing that in mind and the importance of not putting the process under too much strain, **we do not believe that a sufficiently strong case has been made at present to warrant change from the current system whereby a professional magistrate sitting alone adjudicates at summary adult trials.** We considered the possibility of a pilot but that would not test out the fundamental issues associated with large-scale lay involvement. Nor do we see any point in asking lay people to try uncontentious cases such as guilty pleas in respect of minor offences.
- 7.49** That is not to say that we are recommending that the system should continue as before. We are conscious of the findings noted above that a substantial proportion of respondents believed magistrates and judges to be “out of touch” and we believe that present circumstances offer the opportunity for more interaction with the community. Accordingly, **we strongly endorse the view that efforts should be made to make the system more responsive to community concerns and to encourage lay involvement in an informal capacity. We make recommendations elsewhere about opening up the courts to the public and we believe that the judiciary could make a significant contribution to this. Participating in various types of discussion fora, facilitating court visits and seeking out the views of the public on the way in which the system works should significantly reduce the likelihood of their being “out of touch” and should enhance confidence generally.** Good communications skills in a variety of settings will of course be an important element of this.

## JUSTICES OF THE PEACE AND LAY PANELLISTS

- 7.50** In one respect, our recommendations do involve a significant enhancement of lay involvement in adjudication. **We strongly endorse the continued involvement of lay**

**panellists in youth courts** and, by recommending that the age range covered by that court be extended to include 17-year-olds (Chapter 10) we envisage that the workload of lay panellists will be increased by some 50%. This is likely to require a significant number of additional people to be recruited to the panel. There is a particular value in having a lay input in cases involving children where a whole range of considerations, requiring different types of expertise, come into play. Moreover this expansion of the role of lay panellists would not impact upon the system as a whole in the way that might be the case with the introduction of lay magistrates in the adult courts.

**7.51** The question arises of the future of JPs in the criminal justice system. We do not think that the current position is satisfactory. It is apparent that many of the 923 JPs play little or no part in the criminal justice system, while others, though willing and committed, are uncertain of the contribution that is expected of them. Some carry out significant judicial functions, but work is not allocated to them in a coherent way and nor does there seem to be any focus or structure in their training. We believe that it would be an enhancement of lay involvement and public understanding and confidence if lay people fulfilling these functions were recruited, trained and organised in a structured way that met the needs of the criminal justice system.

**7.52** The functions of JPs are various and sometimes anachronistic, and we can see a case for removing those which they hardly, if ever, perform. This is in part so that they are clear about what it is that they are required to do but also in order to safeguard the interests of justice; for example we do not believe that it should be possible for a lay person to be approached with a case for extension of detention unless properly trained and with an understanding of what to expect. **We do not think that lay people should any longer have the power to extend the period during which a suspect might be held in custody by the police, hear committal proceedings or adjudicate on a range of complaints against adults. There should however continue to be a role for suitably trained lay justices in presiding over special courts for first remand hearings**, since this is a significant function which, if they were not performing it, would impose an additional burden on resident magistrates.

**7.53** **We recommend that lay people should continue to have a role in hearing complaints with a view to issuing summonses and warrants.**

**7.54** This leaves three distinct categories of work of a judicial nature for lay people in the criminal justice system:

- first remand hearings in special courts;
- hearing complaints with a view to issuing warrants and summonses; and
- sitting as lay panellists in youth courts and as assessors at the hearing of appeals to the county court from youth courts.

**7.55** **We recommend that all lay appointees empowered to fulfil these judicial functions should be designated as lay magistrates.** This should not cause any confusion with

resident magistrates if our recommendation is accepted on renaming them as district judges (magistrates' courts). If these arrangements are introduced, we envisage no further role for JPs in the criminal justice system.

**7.56** It will be for the Lord Chancellor or the responsible appointing body to determine how many lay magistrates are required to fulfil the functions outlined above and to make the necessary appointments. Existing JPs, along with others in the community, would of course be able to apply to become lay magistrates. There is no reason why one individual should not fulfil all three functions, and there may be some advantage in that but **we recommend that a system be devised whereby lay magistrates would be formally authorised to perform each of the three functions only following appropriate training. We would envisage training being the responsibility of a sub-committee of the Judicial Studies Board. Current members of the Juvenile Lay Panel will already have received structured training and we envisage that they would therefore be eligible for re-appointment as lay magistrates without the need for a selection process in their case; it will of course be necessary to appoint significant numbers of additional lay panellists to provide for the expanded jurisdiction of the youth courts.**

**7.57** We envisage appointments to the position of lay magistrate being made using the same mechanism as used for other members of the judiciary. The selection procedure should, however, draw upon the advice of local committees, as now, which should include a mix of existing magistrates and representatives of outside interests, including people with a community focus. The objective should be to secure the appointment of magistrates on the basis of publicly available criteria through advertisement and a proactive effort to secure nominations from organisations in the community including, for example: the private sector, voluntary and community organisations, churches and other local groups. There should be a retirement age of 70 for lay magistrates.

**7.58** It should be for the body responsible for courts' administration to organise the attendance of lay magistrates at court to enable them to fulfil their functions and stand-by rotas in case they are needed out of hours. We regard this as a particularly important recommendation if the independence of the lay magistracy is to be safeguarded and public confidence in it sustained.

**7.59** In making these recommendations we have been conscious of the resource implications. If resident magistrates were to assume responsibility for all first remand hearings at special courts, it is likely that there would be a requirement for an additional resident magistrate to provide the necessary flexibility for out of hours cover, at a cost of around £100,000 per annum. Even then there would be concerns over whether the resident magistrates would be sufficiently accessible at short notice in all districts. The Court Service advise that specially trained lay magistrates (perhaps 150), supplementing the work of resident magistrates, would provide the necessary resource as well as enabling the lay magistrates to sit sufficiently

frequently to build up their knowledge and experience. As for “out of court” functions, resident magistrates would not be able to provide sufficiently comprehensive out of hours cover, especially to meet tight time-scales for hearing complaints before issuing warrants of arrest and entry/search. Ideally some 500-600 lay magistrates would be required for this purpose, many of whom would, of course, also be authorised to sit in special courts or in the youth courts. The cost implications of these changes will require careful consideration.

**7.60** We estimate that the costs of training lay magistrates, recruited on this scale, would be in the region of £150,000 per annum, to include administrative staff, training events and materials. There would also be a relatively small additional cost to provide for a proactive approach to recruitment. However these costs should be offset against the cost of recruiting an additional resident magistrate.

**7.61** We are conscious that, apart from the expansion of the youth court, our recommendations do not entail any increase in the formal role of lay people in adjudication. However, we believe that they will enhance the quality of lay input. Also, in addition to the greater role which we see for the professional magistrate (or district judge (magistrates’ courts)) at the interface with the community, there are many other areas in which our recommendations in subsequent chapters should increase community involvement in the criminal justice system, for example in community safety partnerships, the development of community based diversionary programmes, youth conferences and in our proposals to improve public understanding of the criminal justice system. **We recommend that the quality and impact of lay involvement, especially in the youth court and in the county court, be monitored and evaluated as a possible basis for extending the work of lay magistrates.**

## JURIES

**7.62** In common with many other common law countries, jury trial has by tradition been recognised as the ideal mode of trying serious criminal cases in Northern Ireland. Although international human rights instruments do not expressly guarantee a right to jury trial in criminal cases, Northern Ireland has a strong adversarial tradition which is bolstered by a lay jury able to give a wholly independent assessment of the merits of the prosecution case.<sup>8</sup> However, the use of trial by judge alone - so-called “Diplock” trials - in cases connected with the Northern Ireland emergency over the last 27 years has meant that jury trial has not operated in as extensive a manner in Northern Ireland as in other common law jurisdictions. Although emergency legislation is outside the scope of our review, a large number of submissions were made to us calling for a restoration of jury trial as soon as possible. We also

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8 Jackson and Doran, *Judge without Jury: Diplock Trials in the Adversary System* (1995), pages 287-304.

note from the attitudes survey commissioned by the review that there appears to be strong support for the principle of jury trial, with most people (77%) expressing the view that juries were better placed than judges sitting alone to decide questions of guilt.

**7.63** Since 1996 there has been a considerable drop in the number of people tried in Diplock courts and a corresponding increase in the number of persons committed for trial by jury. We also noted the Home Secretary's announcement<sup>9</sup> that the Secretary of State for Northern Ireland is reviewing the arrangements for non-jury trials in Northern Ireland. That review is considering and will report on what changes could be made to the present system and, when ministers judge the time right, what arrangements might be put in place to facilitate the transition to a system of trial by jury and to safeguard the proper administration of justice in that event. The review is expected to be complete by Easter 2000.

**7.64** As more cases are sent for jury trial, it will be essential to maintain confidence in the jury system. We are conscious that, while there has rightly been considerable attention given of late to the experiences of intimidated or vulnerable witnesses, much less attention has been given to the experiences of jurors. So long as section 8 of the Contempt of Court Act 1981 remains intact, jurors cannot be asked about their experiences in the jury room. However there is a range of other matters that they may be asked about, including the facilities available to them at court and the treatment they receive.<sup>10</sup>

**7.65** It is important to insulate jurors as far as possible from the threat of any intimidation. A number of recent legislative measures have been taken in England and Wales and Northern Ireland to prevent intimidation, including the creation of new offences of intimidating jurors and harming or threatening harm to jurors and provision for the retrial of defendants who have been acquitted by juries which have been intimidated.<sup>11</sup> But there is also scope for considering a range of practical ways in which jury intimidation may be countered. A number of suggestions for reducing intimidation have been made in the context of endeavouring to return as many cases as possible to jury trial, including measures to protect the anonymity and privacy of jurors and the idea that juries be selected on a province-wide basis in certain classes of case.<sup>12</sup> We are also aware of the trauma that can be caused by the experience of acting as a juror in certain classes of case and of what is expected of jurors in long and complex cases such as some of those involving fraud or organised crime.

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9 Terrorism Bill, Second Reading debate, 14 December 1999, Hansard Col 166.

10 A small survey of Belfast jurors conducted in 1989 asked many of these questions: see J Jackson, R Kilpatrick and C Harvey, *Called to Court: A Public View of Criminal Justice in Northern Ireland* (1991). For a summary of the findings, see Jackson, Quinn and O'Malley, *The Jury System in Contemporary Ireland* (1999) 62 *Law and Contemporary Problems* pages 203, 226-227.

11 See section 51(1)(2) of the Criminal Justice and Public Order Act 1994 (Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996; sections 54-57 of the Criminal Procedure and Investigations Act 1996 brought into force in Northern Ireland by Northern Ireland Order 1504.

12 See S Greer, *Abolishing Diplock Courts* (1996), Gearty and Kimball, *Terrorism and the Rule of Law* (1995), pages 56-57, Lord Lloyd, *Inquiry into Legislation Against Terrorism (1996)*, Cm 3420, paragraph 16.18.

**7.66** In the light of the considerations outlined above, in recognition of the role of juries in the criminal justice system and in order to sustain and enhance confidence, **we think that there are aspects of jury trials that should be reviewed including, inter alia, measures to prevent intimidation of jurors, and the role of juries in particular classes of case.**