

Criminal Courts and Lay People FACTSHEET

OCR H415/01 – The legal systems and criminal law

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Need to know:

- Criminal process: jurisdiction of the Magistrates' Court and the Crown Court, including classification of offences and pre-trial procedures
- Appeals and appellate courts
- Sentencing and court powers: aims, factors and types of sentences
- Lay magistrates and juries: qualifications, selection, appointment and their role in criminal cases
- Evaluation of the different types of sentences and of using lay people in criminal cases

Introduction

There are two courts dealing with criminal cases, the Magistrates' Court and the Crown Court. The case will be heard in the court with the correct jurisdiction (see below). All preliminary matters are dealt with at the Magistrates' Court and then the case is sent to the appropriate court. Appeals are heard in the Crown Court, High Court, Court of Appeal and Supreme Court. Sentencing occur in both the Magistrates' Court and the Crown Court. Both courts have access to all four available sentences (discharge, fine, community sentence, custodial sentence). In the Magistrates' Court, cases are decided and sentenced by lay magistrates. In the Crown Court, cases are heard by a judge and jury.

Jurisdiction of the Magistrates' Court

The Magistrates' Court deals with all summary offences and some triable either-way offences. Their sentencing power is limited to 6 months imprisonment.

Jurisdiction of the Crown Court

The Crown Court hears some triable either-way offences and all of the indictable offences. The judge in the Crown Court has unlimited sentencing powers.

Classification of offences

There are three types of criminal offences:

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Summary Offences

- ❖ These are the least serious 'petty' crimes. They are tried summarily at the Magistrates' Court.
- ❖ Summary offences include assault, and most traffic offences.

Triable Either-Way Offences

- ❖ These offences may be tried at the Magistrates' Court or at the Crown Court depending on the circumstances of the case.
- ❖ Assault occasioning actual bodily harm (ABH) and theft are triable either-way offences.

Indictable Offences

- ❖ These crimes must be tried at the Crown Court. They are the most serious offences.
- ❖ Murder, robbery and rape are all indictable offences.

Pre-Trial Procedures

The accused will be put before the Magistrates' Court who will deal with administrative matters (known as an **Early Administrative Hearing**). This may be done by a single Magistrate or the Legal Adviser who will make decisions about legal aid and bail.

Summary offences

These may be dealt with at the Magistrates' Court at the first hearing. If the defendant pleads guilty, the magistrates can sentence the defendant immediately or adjourn the case to allow for a pre-sentence report to be made by the probation service (these reports outline the defendant's circumstances and can aid the magistrates in their sentencing). The jurisdiction of the Magistrates' Court is imprisonment up to 6 months for one offence

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(maximum of 12 months for two offences). Magistrates can also impose community-based sentences, fines and conditional or absolute discharges.

Triable either-way offences

After the Early Administrative Hearing, a person charged with a triable either-way offence will have a '**plea before venue**' hearing where the defendant will enter a guilty or not guilty plea. If the defendant pleads guilty, the magistrates will sentence. If however, the magistrates believe that the defendant deserves a more severe punishment than they have the power to give, the magistrates will send the defendant to the Crown Court for a judge to pass sentence.

If the defendant pleads not guilty, there will be a '**mode of trial**' hearing. Magistrates will consider the case and decide if they accept jurisdiction (have enough sentencing power). They will consider the seriousness of the case and hear reasons from both the prosecution and the defence.

If the magistrates decline jurisdiction, the case will be sent to Crown Court for a trial by judge and jury. If the magistrates accept jurisdiction, the defendant has the right to opt to be tried summarily at the Magistrates' Court or choose a trial by jury at the Crown Court.

Indictable offences

After the preliminary administrative matters have been dealt with at the Magistrates' Court, a defendant charged with an indictable offence will be sent to the Crown Court. If the defendant pleads guilty to an indictable offence, the judge will pass sentence. If the defendant pleads not guilty, he or she will be tried by a jury who will decide the verdict. If found guilty by the jury, the judge will pass sentence.

Appeals and appellate courts

The defendant has had their case heard at the Crown Court or Magistrates' Court depending on the type of offence they have committed. If defendant pleaded guilty, they would have been sentenced by the court. If they pleaded not guilty, a trial will be held and the verdict of guilty or not guilty would be made. This decision can be contested by way of an appeal to a higher court.

Appeals can be made by both the defence and prosecution.

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Appeals from the Magistrates' Court:

Defence – If the defendant has their trial at the Magistrates' Court an appeal can be made to the Crown Court regarding the facts or the sentence. The case will be re-heard by a Circuit Judge and two Magistrates, who can uphold the conviction, quash the conviction or vary the sentence. If the Crown Court wishes to increase the sentence, they must not exceed the jurisdiction of the Magistrates' Court (max. 6 months imprisonment). If during the Crown Court appeal a point of law becomes evident in the case, it will then be sent to the Queen's Bench Division of the High Court for consideration.

Defence & Prosecution – Both the defence and prosecution can appeal on a point of law by way of case stated. This appeal is from the Magistrates' Court to the Queen's Bench Division of the High Court. The High Court Judge will re-try the case and can send the case back to the Magistrates' Court (remit), confirm the decision of the Magistrates' Court, reverse the decision and acquit the defendant or change the charge to a different offence.

A final appeal can be made from the Queen's Bench Division of the High Court to the Supreme Court if the case involves a point of law of general public importance. Such an appeal requires leave granted by either the High Court or the Supreme Court itself.

Appeals from the Crown Court:

Defence - If the defendant has their trial at the Crown Court an appeal can be made under the **Criminal Appeals Act 1995** if there has been an unsafe conviction. This appeal goes to the Court of Appeal who has the power to vary the sentence, order a re-trial, quash the conviction or vary the offence. An appeal on the facts will require substantial new evidence and leave to appeal. The Criminal Case Review Commission may ask the Court of Appeal to grant an appeal if they believe that a miscarriage of justice has occurred. Appeals can also be made regarding the law (in that the judge has misdirected the jury) or that the sentence was too harsh.

Cases concerning human rights issues may be appealed further to the **European Court of Human Rights**. The Supreme Court may refer a case concerning European Union law to the **Court of Justice of the European Union** for a decision. This is known as an Article 267 referral. This is rare in criminal cases.

Prosecution – The Attorney-General can appeal to the Court of Appeal against a lenient sentence under the **Criminal Justice Act 1988** in order to get the sentence increased. The Attorney-General can also make an Attorney-General's Reference to the Court of Appeal

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under the **Criminal Justice Act 1972**. This is where the defendant has been acquitted by a jury and the Attorney-General believes the law needs to be changed for future cases. An appeal by the prosecution can be made to quash an acquittal under the **Criminal Justice Act 2003**. This can only be made to the Court of Appeal when there is compelling new evidence.

The prosecution can also appeal under **Criminal Procedure and Investigations Act 1996** to the High Court. This is where there the prosecution asked the High Court to quash an acquittal because of interference with a witness or the jury.

A final appeal can then be made by the defence and prosecution to the Supreme Court if the case involves a point of law of general public importance. Such an appeal requires leave granted by either the Court of Appeal or the Supreme Court itself.

Sentencing and court powers:

Introduction to Sentencing

If someone pleads guilty or is found guilty after a trial then the magistrates or judge, depending upon where the case was held, must decide what will happen next. The courts have a range of options open to them including sending an offender to prison or requiring them to pay a fine. The option that is chosen will be based on many factors including the type of offence, the minimum/maximum sentence available, the circumstances of the offence, the age of the defendant, their background and the aims of sentencing. Often, the court will order a pre-sentencing report to be compiled by the probation service which looks at the offender and their crime in greater detail.

Aims

The aim/purpose of a sentence is what the judge hopes it will achieve.

Criminal Justice Act 2003 s.142 lists the main aims of sentencing as:

Punishment of offenders, reduction of crime (including deterrence), reform and rehabilitation of offenders, protection of the public, the making of reparation of the offenders to persons affected by their offences.

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Young offenders – s.142A states that as well as these aims, the principal aim for young offenders is to prevent offending or reoffending. Consideration must also be given to the welfare of the offender.

PUNISHMENT

The aim of a retributive sentence is to punish the offender. The idea is that if a person has knowingly done wrong, they deserve to be punished and society expects that they are. This aim of sentencing does not seek to reform the offender although it could be argued that threat of a severe punishment could act as a deterrent.

Another form of punishment is denunciation. Society expresses its outrage at the behaviour of the individual and condemns it. This is sometimes used in America as convicted shop-lifters are made to stand outside the shop that they stole from with a sign proclaiming that they are a thief. Local newspapers also feature sections 'naming and shaming' those who have been convicted.

REDUCTION IN CRIME (DETERRENCE)

This aim is to reduce crime by dissuading people from offending or reoffending.

There are two different types of deterrence:

1. A **specific** deterrent applies to an individual and the aim is to deter that particular person from re-offending. A custodial sentence could act as a deterrent as the offender who is sent to prison will be reluctant to reoffend as they do not want to be sent back in the future.

A suspended sentence acts as a deterrent as the offender does not go to prison for the offence they have been convicted of unless they commit another similar offence within a specified time.

2. A sentence designed to act as a **general** deterrent is aimed at the public. The hope is that people will be deterred from committing crimes by the level of punishment that they will receive if convicted. People convicted of certain crimes will be given a very harsh sentence to deter others from committing the same crime. This might be used if a particular type of crime has become a problem in an area – for example football hooliganism, joy-riding or mobile phone robberies.

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REFORM & REHABILITATION

An offender is helped to solve the issues that lie behind his/her criminal behaviour. The intention is that if the problems are solved then the offender will avoid committing further offences.

A drug addict who steals to fund their habit may be assisted to overcome their addiction thereby removing the need to steal in future. A person who reacts aggressively and commits acts of violence may be sent on an 'Anger Management' course. Other offenders may be helped to develop their social skills and some may undertake training to improve their chances of employment.

Individualised community sentences are often used to help rehabilitate the offender in the hope that this will reduce the chance of reoffending in the future. The probation service will often be involved to help the offender deal with the issues that have resulted in their offending.

PROTECTION OF THE PUBLIC

This aim is frequently used as a strong general justification for punishment and imprisonment in particular. It is argued that the public need protection from dangerous criminals who commit violent or sexual offences. Imprisonment removes these criminals from the public domain by restricting their liberty. In physically restraining offenders, it protects the public, albeit temporarily from becoming the victims of further acts of crime.

The public can also be protected from offenders who are given other sentences. For example, a drink driver will be disqualified from driving. Offenders who are subject to a curfew or electronic tag will restrict their movements and therefore, reduce their contact with the general public.

REPARATION

This is based on the notion that the offender "makes amends" for their crime. They attempt to 'repair' the damage caused by their offence, usually by carrying out work in the community or by paying financial compensation. This encourages offenders to accept responsibility for their crime.

Restitution requires the offender to make reparation to society as a whole. This could be done through a community order for unpaid work to clean graffiti or clean up a playground. The courts are more ready to consider reparation directed specifically at the victim of the offender's crime.

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Section 142 of the **Criminal Justice Act 2003** makes specific reference to '*the making of reparation of the offenders to persons affected by their offences*'. This means that the victims of a crime will be considered in the sentencing of the offender. If the offender has caused criminal damage, the sentence could involve them repairing the actual property they have damaged.

Section 130 of the **Powers of the Criminal Courts (Sentencing) Act 2000** the court must consider making a compensation order for the offender to pay to the victim of their crime. The Act states that the court must give a reason if they decide not to make a compensation order.

Factors

In the Magistrates' Court, it is the magistrates who decide on the sentence whilst at the Crown Court it is the judge who sentences the offender. Additionally, under the **Powers of Criminal Courts (Sentencing) Act 2000**, the magistrates may send a convicted offender to the Crown Court to be sentenced if they feel that their powers of sentencing are not sufficient.

Pre-Sentence Reports

The court may order a pre-sentence report to be prepared by the probation service before proceeding to sentence. The offender meets with a probation officer who then prepares the report. Each report will contain basic information such as the offender's age, background and detail any previous convictions. Additionally, it will include details of offender's attitude to the offence as well as details of the offence itself. The report may also include the views of the victim. The offender will be assessed as to the risk of their re-offending and whether they are considered to be a danger to the public. On the basis of this information, a type of sentence is recommended.

Aggravating Factors

These are factors which make an offence more serious and can result in a more severe sentence being passed. They can include a number of things such as the use of a weapon, a pre-meditated attack, if the offence involved a breach of trust, a racist or religious motive behind the offence, if the victim was particularly vulnerable. It also includes any relevant previous convictions and if the offence was committed whilst on bail.

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Mitigating Factors

The court will take these into account and they may mean that the offender receives a more lenient sentence than they would have done. Mitigating factors may relate to the offender and can include previous good character, personal circumstances and the fact that they have shown remorse. Under s.144 of the **Criminal Justice Act 2003**, a prompt guilty plea can reduce the sentence by up to one third. This reduction reduces the closer it gets to the trial. A reduction of one tenth will be made if the offender changes his/her plea to guilty on the day the trial starts.

Other mitigating factors include assisting the police, the fact that the offence was committed on the spur of the moment rather than being pre-meditated, the fact that the offender was provoked or an attempt by the offender to compensate the victim.

Sentencing Council

The Sentencing Council for England and Wales was set up by the **Coroners and Justice Act 2009**. Their roles are to prepare sentencing guidelines, monitor the operation and effect of its sentencing guidelines, draw conclusions and promote awareness of sentencing and sentencing practice to the general public.

Types of sentences

There are 4 main types of sentences available to a judge or magistrate. They range from a discharge all the way to a custodial sentence.

DISCHARGE

Imposed in 8% of cases when the defendant has been convicted of an offence but the court is of the opinion that punishment is unnecessary for some reason. There are two different types –conditional and absolute.

A **conditional discharge** means that although the offender will have a criminal record, no further action will be taken against them as long as they do not commit a further offence within a specified time period of up to 3 years. If they do commit a further offence, they may be re-sentenced for this offence as well as receiving whatever sentence is passed for the second offence.

An **absolute discharge** means that they will have a criminal record but no further action is taken against them. This may be imposed on first-time offenders charged with a very minor offence.

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FINE

A fine requires the offender to pay a financial penalty and may be imposed alone or in addition to another type of sentence. When setting the level of a fine, the court must take into account two factors. Firstly, the seriousness of the offence and secondly, the financial means of the offender - as they may go to prison if the fine is not paid. According to the Home Office, fines are imposed in approximately 71% of cases each year making them by far the most common type of sentence.

COMMUNITY SENTENCE

A community sentence is imposed in 13% of cases each year. It is still a serious punishment but is an alternative to prison. Anyone aged 16 or over can be given a community sentence and it is seen as more effective at rehabilitating offenders than sending them to prison.

Under s.48 **Criminal Justice Act 2003**, it can only be passed if the offence is serious enough to warrant it. Community sentences can be made up of various elements. The advantage of a community sentence is that it can be tailored to the needs of the individual.

A community order can combine one or more requirements from the list stated in s.177 **Criminal Justice Act 2003**: an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a curfew requirement, an exclusion requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement and an attendance centre requirement (if the offender is under 25 years old).

All of these community orders are available for offenders over the age of 16 years.

There are many types of community-based sentence, including:

1. Unpaid Work

This is an order of between 40 hours and 300 hours of work supervised by the Probation Service. This work is usually at weekends and therefore, it is a punishment as the offender will have their free time restricted. They are also involved in a reparation activity to the community as a whole. Work includes clearing litter, cleaning graffiti, painting schools and play areas etc.

2. Activity Requirement

This may include activities for the purpose of reparation. The activity will not exceed 60 days and may involve contact between offenders and persons affected by their offences.

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3. Mental Health Treatment Requirement

Section 207 **Criminal Justice Act 2003** states ‘...the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition.’

4. Alcohol Treatment Requirement/Drug Rehabilitation Requirement

This order puts the offender under the supervision of a specified person who will offer treatment to the offender with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs or alcohol.

5. Curfew Requirement/Electronic Monitoring Requirement

A curfew orders the offender to stay at a fixed address between certain hours of the day for up to 6 months. This is a much cheaper option than prison as the offender will still be allowed to work (if they have a job) and therefore, pay their own living expenses. The offender may be fitted with an electronic tag to monitor their whereabouts.

6. Supervision Requirement

A probation officer will regularly meet with the offender and supervise them for up to 3 years. The probation officer will use the opportunity to try to rehabilitate the offender.

7. Attendance Centre Requirement

The main purpose of an Attendance Centre Requirement is punishment where the level of seriousness is low. It offers constructive activities in a group environment for offenders under 25 years old, whilst imposing a restriction on their leisure time. The requirement is one whereby the offender must attend an Attendance Centre specified for the number of hours specified (at least 12 and a maximum of 36 in total). The court should only impose this requirement if it is satisfied that the Attendance Centre is reasonably accessible to the offender.

8. Residence Requirement

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This order requires the offender to live at a specified address for a given period of time. This requirement could be used in conjunction with other requirements such as curfew etc so that the probation service knows the whereabouts of the offender.

9. Exclusion Requirement

This prevents offenders from visiting certain places where they are likely to commit crimes. This can include football grounds or town centres. An offender over 16 years old can have an exclusion requirement for up to 2 years (under 16 years old, the order can be a maximum of 6 months).

10. Programme Requirement

The programme aims to teach the offender how to think or behave differently so as to help reduce the risk of reoffending. The programme may include looking at how to handle problems, how to deal with other people and how to behave in difficult situations. The offender may attend the programme alone or as part of a group.

11. Prohibited Activity Requirement

The court imposes such an order to try to prevent the offender committing the same type of offence in the future. The prohibited activity will relate to the offence committed e.g. a person who has caused criminal damage by spraying illegal graffiti can be banned from carrying spray paint, a shoplifter may be banned from a shopping centre etc.

CUSTODIAL

As there is no longer the death penalty in the UK, the most severe criminal sanction for those over 21 is imprisonment. The punishment is the removal of the offender's liberty but can often go beyond this as the prisoner's whole life is affected. They may lose their jobs, homes and families as a result of a prison sentence.

Under the **Criminal Justice Act 2003**, the court can only pass a custodial sentence if it thinks that the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence.' It may also be imposed to protect the public from violent or sex offenders.

Mandatory Life Sentences

The crime of murder carries an automatic life sentence. The judge will set the minimum time that is to be served before the offender is eligible to be considered for release on

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licence. The minimum terms as stated by the **Criminal Justice Act 2003** include; whole-life, 30 years and 15 years. Whole-life sentences for murder include offenders who have previously been convicted of murder, murder of two people with sexual or sadistic conduct, murder of a child involving abduction with sexual or sadistic conduct and terrorist murders.

A 30 year minimum sentence for murder includes offenders who have murdered a police officer or prison warden, used a firearm or explosive, racially aggravated murder and a sexual or sadistic murder of an adult.

Any other types of murder will have a set minimum term of 15 years (12 years for offenders under 18 years old).

Discretionary Life Sentences

Some crimes carry a discretionary life sentence. For manslaughter, rape and robbery, the judge has the power to sentence the offender anything up to life imprisonment.

Fixed-Term Sentences

Offenders who have committed other crimes will be given a fixed-term sentence for a set number of months or years. The offender will be automatically released after half of their sentence.

Suspended Sentences

In exceptional circumstances, an offender may receive a suspended prison sentence varying in length from 6 months to 2 years. This means that the offender does not have to go to prison. Their sentence may be suspended for a period between 1 and 2 years. The offender may also be obliged to carry out work in the community and must not commit any further offences during the time the sentence is suspended otherwise the sentence will be activated and the offender will go to prison.

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Evaluation of the different types of sentences

Type	Advantages	Disadvantages
Custodial	<ul style="list-style-type: none">• Custodial sentences protect the public from dangerous criminals. Crimes cannot be committed whilst the convict is in jail.• The prospect of a jail sentence should act as a deterrent e.g. a suspended sentence would deter a person from committing another crime.	<ul style="list-style-type: none">• The public are only protected whilst the convict is in jail.• Reoffending rates are high which means that the deterrent doesn't work for many.• Expensive drug rehabilitation schemes are only offered to people who are subject to lengthy prison sentences.
Community	<ul style="list-style-type: none">• Community sentences can work with the offender and help to solve the reasons behind the offending and rehabilitate them.• The probation service monitor the offender whilst serving the sentence.	<ul style="list-style-type: none">• As many of these sentences are concerned with rehabilitation, critics argue that there is a lack of punishment and that these are the soft option.
Fine	<ul style="list-style-type: none">• A fine works well as a deterrent particularly with motoring offences as it deters the driver from committing dangerous offences such as speeding and running traffic lights.• A fixed penalty fine is fair because everyone is treated equally (same crime, same fine).	<ul style="list-style-type: none">• There is an inequality when issuing fines. Rich people will not be punished or deterred by a fine as they can easily pay it.• Many people have fines taken directly from their benefits. It could be argued that fining people who are already very poor, will only make matters worse and could increase their need to commit more crimes.
Discharge	<ul style="list-style-type: none">• A conditional discharge acts as a deterrent as the offender is told that they	<ul style="list-style-type: none">• An absolute discharge is only used for the most petty of crimes. It could be argued that the time and

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	will face a penalty should they commit another crime in the future.	money of taking the case to court should result in some sort of penalty. Alternatively, the CPS shouldn't prosecute the case in the first place. A police warning could be sufficient.
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Lay magistrates

There are around 29,000 lay magistrates sitting as part time judges in the Magistrates' Court. They are also known as Justices of the Peace. Magistrates have been used in the justice system for over 1000 years. Magistrates work in a bench of three that consists of two wingers and a chairman.

Qualifications

Lay magistrates do not have any legal qualifications however there are some key requirements that each prospective magistrates must meet.

Six Key Qualities

There are 6 key qualities which each candidate must have.

1. Good character
2. Understanding & communication
3. Social awareness
4. Maturity & sound temperament
5. Sound judgement
6. Commitment & reliability

Selection & Appointment

About 1,500 lay magistrates are appointed each year. The appointments are made by the Lord Chief Justice. Candidates must first apply to the Local Advisory Committees (LAC). The LAC is made up 12 members who are a mixture of magistrates and non magistrates. To try to encourage a wide variety of candidates the committee must place adverts in local press and newspapers aimed at particular ethnic groups. The intention is to create a balanced

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panel to represent the society as a whole. Once the candidates have applied they must face two interview panels. During the first interview the panel are trying to find out if the candidate has the 6 key qualities. Successful candidates then progress to the second interview which is a practical test to assess the candidate's judicial aptitude as they are presented with at least 2 case studies. The advisory committee will then recommend candidates for appointment to the Lord Chief Justice. Lay magistrates are expected to sit for a minimum of 13 full days or 26 half days a year.

The traditional view is that magistrates are 'middle-class, middle-aged and middle-minded'. However this view is starting to change as the adverts aimed at ethnic minorities appear to work.

Role in criminal cases

Lay magistrates have a wide variety of duties the criminal courts. They hear 97% of all criminal cases and deal with the preliminary matters for every criminal case.

Criminal Courts

Magistrates are responsible for deciding bail for each defendant. They also hear summary and some triable-either way trials, during which they are responsible for the sentence and verdict for the defendant. Magistrates also hear mode of trial hearings for triable-either way offences or committals for indictable offences. In the criminal courts the magistrates can also issue search and arrest warrants, they are also responsible for extending detention periods for suspects being held at the police station.

Youth Court

Magistrates can take part in additional training to sit on the Youth Court Panel for offenders between the ages of 10 and 17 years old. The panel must include one man and one woman and each member must be under the age of 65. Magistrates can also undertake special training to heard family cases under the **Children Act 1989**, including adoption orders.

Appeals

Lay magistrates can also sit in the Crown Court to hear appeals from the Magistrates' Court alongside a qualified judge.

The Legal Adviser

Each bench of lay magistrates is assisted in carrying out their role by a clerk, who is often called the legal adviser. The legal adviser must have been a solicitor or barrister for at least 5

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years to qualify. Their job is to advise the magistrates on practice and procedure and answer any questions about the law. The legal adviser is not supposed to assist in the decision making and would normally retire whilst the magistrates come to their decision.

Evaluation using lay people in criminal cases

The use of lay magistrates in criminal cases is heavily criticised, however there are some that support their continued use.

Advantages	Disadvantages
<ul style="list-style-type: none">• Lay magistrates are representative of society based on gender.• Lay magistrates are appointed from their local area, so they have local knowledge.• Lay magistrates are unpaid, the system is cheap.• Lay magistrates can rely on the advice of the legal adviser to help them reach the right decision.• There are very few appeals from the Magistrates' Court so they must get most of their decisions right.• Lay magistrates are described as 'case-hardened'.• Lay Magistrates tend to rely heavily on the evidence of the police and the prosecution.	<ul style="list-style-type: none">• Lay magistrates are criticised for being 'middle-aged and middle-classed' and failing to represent society.• Lay magistrates are criticised for being too reliant on the legal adviser and not making their own decisions.• Lay magistrates are criticised for being inconsistent when sentencing and delivering a variety of sentences for very similar offences.

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Juries

Qualifications

The **Juries Act 1974** contains the qualifications for jury service (as amended by the **Criminal Justice Act 2003** and **Criminal Justice and Courts Act 2015**).

Name the 3 main qualifications for jury service:

- Aged between 18 and 75
- Registered as a parliamentary or local government elector
- Ordinarily resident in the United Kingdom, the Channel Islands or Isle of Man for at least five years since their thirteenth birthday

Some people cannot do jury service. They are:

1. Deferred

Jury service can be deferred under certain circumstances - such as a hospital appointment or a family wedding. If granted a deferral, the person will be able to undertake jury service at another date within 12 months of the original summons. Decisions on whether someone may defer or be excused from jury service are made by the **Jury Central Summoning Bureau**.

2. Excused

An excusal can be given at the discretion of the court if a person is ill or elderly. Certain professions can also ask for a discretionary excusal. Since the **Criminal Justice Act 2003**, the armed forces, doctors, pharmacists etc. can only be granted an excusal if they have good reason. An excusal can be made at the court's discretion but it is more likely that they will grant a deferral instead.

3. Incapacity

A judge may remove a juror if they believe that they are not capable of coping with the case. An inability to understand English and certain disabilities such as being blind can make a potential juror incapable. Deaf jurors have also been deemed to be incapable of sitting on a

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jury. This was because a sign language interpreter would not be allowed in the jury room during deliberation as this is strictly limited to the 12 jurors.

4. Ineligible

Mentally disordered people are ineligible to serve on a jury. The **Criminal Justice Act 2003** defines the different types of mental illness e.g. psychopathic disorder and mental handicap.

Qualifications – before the Criminal Justice Act 2003

Before the **Criminal Justice Act 2003**, there were more categories of people who were ineligible for jury service due to their profession. These professions are no longer ineligible and include police, lawyers, judges and the clergy. In 2004, Lord Justice Dyson was the first judge to be picked for jury service under the new rules. Cases such as **R v Abdroikof, R v Green and R v Williams (2007)** have challenged the fairness of having police officers sitting on a jury but the Supreme Court has decided that it would be unfair if the police officer on the jury worked at the same station as the arresting officer.

R v Abdroikof, R v Green and R v Williams (2007)

- ❖ These three separate cases were appealed together to the House of Lords (now known as the Supreme Court).
- ❖ Abdroikov's appeal was due to the fact that there was a police officer on his jury.
- ❖ Green also had a police officer sitting as a juror where the victim of the crime was also a police officer from the same local area.
- ❖ Williams was charged with rape and one of the jurors was a Crown prosecutor.
- ❖ Although there was no evidence of bias and Lord Bingham accepted that all human beings has their own prejudice, the convictions of Green and Williams were quashed by a majority in the House of Lords as it was considered that the inclusion of these legal professionals meant that the trials would not be considered fair by a reasonable onlooker.
- ❖ Lord Roger (dissenting) said that these decisions go against the **Criminal Justice Act 2003** and therefore go against Parliament's wishes that police and other legal professionals are eligible for jury service. He also thought that the Act could be in contravention of article 6 of the **Human Rights Act** – the right to a fair trial.

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5. Disqualified

Criminals who have received prison sentences of 5 years or more are permanently disqualified from sitting on a jury. A criminal who have served a short custodial sentence or community sentence will be disqualified from jury service for 10 years. People are also disqualified whilst on bail.

Selection & Appointment

Summons

Those selected will receive a jury summons through the post advising them that they have been chosen and informing them where they must go and when. They must reply to the jury summons within seven days. Failure to complete jury service when summoned is a criminal offence and can be punished with a fine of up to £1000. Jurors are usually expected to sit for ten working days and since the average trial lasts about a day and a half, it is highly likely that a juror will sit on more than one trial. Sometimes, a juror will be required to sit for more than 10 working days if the trial is expected to last longer.

At Court

The 'jury in waiting' will wait in a large room known as the jury pool. When a jury is required, a court official will choose a number of jurors – usually 15, at random from those called for duty. The court clerk will shuffle the names of the 15 potential jurors. Although only 12 are needed for the trial itself more people are taken into the court in case a juror is unable to sit, for example, if they know the defendant or anyone involved in the case.

Vetting

The prosecution and defence have the right to see the list of selected potential jurors. The pool of jurors may be vetted through a:

- routine police check, or
- wider background check

A police check would identify if any of the jurors have criminal records. Vetting of the jury's wider background will only be allowed in exceptional circumstances. Permission must be granted by the Attorney General in cases involving national security or terrorism. Such vetting was used in **ABC Trial (1978)**.

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The ABC Trial (1978)

Fact: Two journalists interviewed a former army corporal who divulged secrets. All three were charged with criminal offences under the Official Secrets Act 1911.

Held: The jury had been vetted in this case involving the **Official Secrets Act 1911**. Since this case, it has been decided that juries can only be vetted if the case involves national security, terrorism or 'professional' criminals. Permission for such vetting of a jurors criminal record must be granted by the Attorney General.

Challenging

Once the 12 jurors have been chosen for the case, the defence and prosecution may challenge 'the array' or 'for cause':

- Challenge the array – under **s.5 Juries Act 1974** both the defence and prosecution can challenge the whole jury if they consider they were chosen in an unrepresentative or biased way. In 1993 the array was successfully challenged when it turned out that 9 out of the 12 jurors all live in the same area of Romford.

R v Fraser (1987) & R v Ford (1989)

R v Fraser (1987)

The array was successfully challenged when the jury were all white and the defendant was from an ethnic minority background.

R v Ford (1989)

A randomly selected jury cannot be challenged simply because it is not multi-racial.

- Challenge for cause – a valid reason must be given to remove an individual jury member. Reasons could be that the juror is found to be disqualified or they know someone involved in the trial.

The final type of challenge can only be made by the prosecution:

- Stand by for the Crown – the prosecution can make sure a person will not be picked for a jury except as a last resort. According to the Attorney General, these powers will only be used as a last resort. The juror is put on stand-by.

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After any challenges have been made, the jury will be sworn in and the trial will commence.

Role in criminal cases

Jurors are lay people and as such do not require any legal knowledge. The judges will assist them with any points of law and the lawyers will be aiming to make their case as clear as possible so that the jury can understand.

Juries are only used in about 1% of criminal cases because magistrates deal with the majority of criminal offences. The use of juries is reserved for the more serious cases such as murder, rape and GBH. Trials take place in the Crown Court, with a jury of 12. Since most jurors will not have legal experience, the judge will guide them on the relevant law. The role of the jury is to decide on the facts by consideration of the evidence. Jurors then reach a verdict of 'guilty' or 'not guilty'.

Unanimous Verdicts

The jurors must aim to reach a unanimous verdict initially but under the **Criminal Justice Act 1967** allows for majority verdicts to be accepted (10-2 or 11-1) to reduce the number of retrials when not all jurors can agree and also to counteract the effects of jury tampering.

Majority Verdicts

Majority verdicts are only acceptable if the jury have been deliberating for more than 2 hours. If the jury has during the trial dropped to 11, the majority must be 10-1. If it has dropped to 10, it must be 9-1. If 9 jurors are left, it must be a unanimous decision. If the jury drops below 9, the trial must start again with a new jury.

Majority verdicts were introduced to prevent jury tampering. This is where the jury is bribed or threatened. The **Criminal Justice Act 2003** states where there is evidence of jury tampering s.44 of the Act allows the trial to be heard by the judge alone. This is very rare and there must have been attempts to influence the jury.

If the defendant is found guilty by the jury, it will be the judge who passes sentence upon them.

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Alternatives and Reforms

Many suggestions have been made over the years as to how the jury system should be reformed. It should be remembered however, that juries only deal with 1 % of cases.

- Make juries undergo training prior to sitting on a case
- Use fewer jurors as there is no good reason why 12 are required
- Make juries give reasons for their verdicts
- Allow judges to retire with juries to assist them
- End trial by jury and replace them with a single judge or panel of judges
- Have professional jurors

Evaluation using lay people in criminal cases

The use of juries in criminal cases is heavily criticised, however there is also a lot of support for their continued use.

Advantages	Disadvantages
<ul style="list-style-type: none">• The public participate in the justice system. This is an advantage because justice is seen to be done, as ordinary members of the public are involved in the administration of justice making the whole process public.• Jury equity whereby juries make decisions according to their conscience rather than the strict letter of the law. Jury equity is an advantage, which was established in Bushell's case (1670) which means that juries cannot be pressurised by a judge.• Juries are representative of society. This is an advantage because the process of random selection should result in a cross section of society which should lead to an impartial	<ul style="list-style-type: none">• They do not have to give reasons for their decision. This is a disadvantage because it makes it difficult for defendants to appeal against their verdict.• They do not receive any training so most are complete amateurs. Sir Louis Blom-Cooper QC – ‘the jury is the high point of amateurism, potentially a recipe for incompetence and bias.’• Juries may not understand the law and reach the wrong/perverse decision. This is a disadvantage because there is no way of knowing if jury understood case and came to decision for right reasons, because they don't have to give a reason for their decision.

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<p>jury as they are not connected to anyone in the case.</p> <ul style="list-style-type: none">• Their deliberations are kept secret and their decision made away from external influence.	<ul style="list-style-type: none">• The secrecy of the jury room means that it is impossible to tell how jurors reached their verdict. This is a disadvantage because there is no way of knowing if the jury understood the case and have come to the decision for the right reasons.
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