

Discussion Box 2.1**Replacing lay persons with professional judges?**

We have already noted several benefits that derive from the use of lay persons in the magistrates' courts, namely it enhances the reputation of England and Wales as a participatory democracy and provides a relatively cheap system of justice. But does the use of lay persons bring any disadvantages? Should we consider replacing magistrates with district judges? There are strong suspicions that the government has begun this process via the increasing use of district judges/deputy district judges and increased powers given to clerks of the court. One prominent report¹ advocated that all cases in the magistrates' court should be heard by a panel consisting of one district judge, assisted by two lay magistrates. What would be the benefits of replacing fully lay benches?

- *Lack of Competence*: it can be argued that applying the law is a highly specialised task that requires skills that lay people simply lack. One report states that adjudicating on cases requires a 'dispassionate application of the rule of law' and that '[l]awyers, by virtue of their training, are imbued with the spirit of the law and its impartial and practical application.'² It could be argued whether lay persons have such impartiality.
- *Unrepresentative*: it is often argued that as magistrates come from a variety of different backgrounds, they will have access to a wider array of beliefs and perspectives that can better enable them to reach a balanced decision. In practice, however, magistrates do not derive from a wide-social background. The magistracy may be gender-balanced, but it severely unbalanced in terms of age (only 4% are under 40), ethnicity (reports estimate around 95% of magistrates are white) and social status (magistrates are overwhelming drawn from professional and middle-class ranks).³
- *Expense*: it is often argued that using lay persons is considerably cheaper than using professional judges, and on a one-to-one basis this may be true. However, this is an unfair comparison, as district judges can handle the annual workload of around 30 magistrates. It has been contended that taking into account all costs of a lay magistracy (including training, administration, the appointment of clerks, loss to employers of time taken on the bench), the use of district judges/deputy district judges might actually be less expensive.⁴

It should, however be noted that in virtually all the reports examining the issue, the final conclusion has been the retention of a lay magistracy. It would therefore appear that lay involvement in the justice system is likely to remain for the foreseeable future.

¹ A Sanders, *Community Justice: Modernising the Magistracy in England and Wales* (Institute for Public Policy Research 2001).

² R Morgan and N Russell, *The Judiciary in the Magistrates' Courts* (Home Office RDS Occasional Paper No 66) [1.4.1].

³ *Ibid.* [2.2.1 – 2.2.4]

⁴ *Ibid.* fig 6.5.