

# Wildy's Handbook for Magistrates

THIRD EDITION

Robert J. Allan and Pauline M. Callow  
with a foreword by  
The Rt Hon. Lord Judge,  
Lord Chief Justice of England and Wales

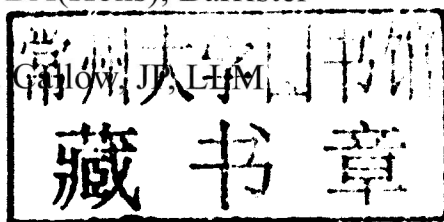
Wildy, Simmonds and Hill Publishing

# HANDBOOK FOR MAGISTRATES

Third Edition

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*Handbook for Magistrates, Third Edition*

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

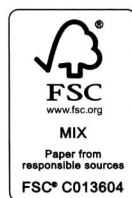
ISBN 978-0854901-128

Printed and bound in the United Kingdom by Antony Rowe Ltd, Chippenham,  
Wiltshire

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First published in 1997 by Blackstone Press  
This edition published in 2013 by  
Wildy, Simmonds & Hill Publishing  
58 Carey Street  
London WC2A 2JF  
England



# HANDBOOK FOR MAGISTRATES

Third Edition

## Foreword

The medieval concept of the King's Peace created during the reigns of the earliest Plantagenets, applied and maintained by members of the local community and given legislative force by the Justice of the Peace Act 1361, although ancient, remains vibrant. The celebrations of the 650th anniversary of this statute in 2011 were amply justified. They reminded us both of the obvious and crucial importance attached by the community to the principle that they and their families should be allowed to live their lives in undisturbed peace and, simultaneously, that the enforcement of the laws to maintain it continued to rest very largely with the magistracy, in front of whom the overwhelming majority of criminal prosecutions are heard and decided. The various recent legislative changes to the structure of the judiciary mean that the twenty-seven thousand or so lay magistrates are now members of the judiciary, to be treated as such. They perform their responsibilities in the same professional, objective and independent way as the full-time judiciary, and their jurisdiction is no longer confined to criminal matters.

The second edition of the *Handbook for Magistrates* was published in 1997, which in contemporary terms is a very long time ago. The new edition takes account of landmark legislative changes, of which the Criminal Justice Act 2003 and the Courts Act 2003 provide two examples. Training requirements for magistrates have evolved, and the introduction of rules to govern the management of cases and the efficient use of resources has added to the responsibilities of magistrates.

This new third edition of the *Handbook for Magistrates* explains all these matters and their practical importance to the daily administration of justice with accuracy and clarity. It begins with the process of appointment and continues through to the logical conclusion of that rare event, disciplinary proceedings, which may arise when a magistrate has misconducted himself or herself in this important judicial office. The book is not, emphatically not, a textbook and does not seek to replicate the detail of legal technicality, which is found in, for example, *Stone's Justices' Manual*. It demonstrates that the energy of the ancient office of Justice of the Peace continues undiminished, by offering what I may reasonably describe as detailed information and thoughtful insight into the practical realities of the issues which magistrates are required to address, and the context in which these sometimes difficult issues may arise for consideration. It does so in comprehensive non-technical language, which will be appreciated both by serving and prospective magistrates and, indeed, anyone with an interest in this hugely important feature of the administration of justice in England and Wales.

Igor Judge

Lord Chief Justice of England and Wales

## Preface

In writing this edition of *Handbook for Magistrates*, we have sought to provide a wide-ranging account of the work of magistrates in England and Wales. The book is intended primarily for those who might be thinking about becoming magistrates, those who have recently been appointed, and magistrates in their first few years on the bench. We hope it will also be valuable as a reference book for more experienced magistrates, especially those whose responsibilities include training their less experienced colleagues.

The work of the magistrates' courts affects many others besides the magistrates themselves, and we hope the book will be of some interest to them too. Individual defendants and witnesses, and the general public whom the magistrates' courts serve, may find something worth reading. Likewise the professionals – probation officers, social services personnel, court legal advisers, the police, the Crown Prosecution Service and other prosecutors, newly qualified lawyers, and teachers – perhaps may find some insights not easily available elsewhere.

Training courses for magistrates cover, in varying degrees of depth, a good proportion of what is said in this book, but we hope the book will prove a useful, permanent, and perhaps more comprehensive, source of reference. Other books for magistrates tend to concentrate on procedural and legal matters, but here we have tried to go beyond these, to give a flavour of what life as a magistrate is really like, touching on the pressures, responsibilities and rewards of the work. We have also sought to put the work of the magistrates into a wide context, for example, explaining the powers under which people are brought before the court in the first place, and linking what goes on in the magistrates' court to the court system as a whole and to certain broad principles on which the system of justice operates.

We examine how magistrates are appointed – a subject about which there are probably many misconceptions; what they are empowered to do; how their courts are organised and operated; the kinds of matters they deal with, such as criminal offences, traffic matters and civil work (notably in family matters); how they go about assessing evidence and deciding what to accept as true; how they decide whether defendants should be released on bail or kept in custody; the sentences they may impose and how they endeavour to make the punishment fit the crime. The popular press might have us believe that magistrates send people to prison with great frequency; in fact imprisonment is a sentence of last resort reserved for the most serious cases,

and new magistrates soon come to realise that it is a rare outcome indeed. We also look at how legal aid works, a subject of continuing public and political concern. Last, but not least, we have tried to address some matters of concern to magistrates as individuals.

The book illustrates in detail the huge responsibility that magistrates take on their shoulders, and the fearsome consequences their decisions have on the people who come before them. It is no small matter for a person of hitherto unblemished character to face the possibility of being convicted of a criminal offence, or to have to await trial in prison rather than at liberty. It is a tribute to the diligence with which magistrates go about their tasks, and to the strenuous efforts of the Ministry of Justice and the Magistrates' Association to promote consistent principles, that public criticism is relatively rare.

In writing the book, we have tried to say what we have to say in a straightforward way, avoiding legal terminology when it was sensible to do so, but the nature of the subject limits the scope for this. We hope we have succeeded in explaining legal terms satisfactorily. This edition also includes, for the first time, a glossary listing and briefly explaining many of the terms used in the courts. It also gives the addresses of many websites where more information can be found.

The law is a dynamic subject and the criminal law in particular has been subject to many changes since the previous edition of this book was published. The landmark Criminal Justice Act 2003 gave rise to many changes in the workings of the courts, while the evolving Criminal Procedure Rules are revolutionising procedure. This third edition was prepared during the winter of 2011/2012 and, as far as the law is concerned, is up to date to 1 May 2012.

The authors will be glad to hear of any comments or suggestions for improvements in future editions of *Handbook for Magistrates*.

The authors take this opportunity to thank Neil McKittrick, co-author of the first and second editions of this book. Despite the extensive updating of the text, much of his original work remains.

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# Chapter 1

## Becoming a Magistrate

### BACKGROUND

The year 2011 was the 650th anniversary of the magistracy. It is well known that the office of justice of the peace or magistrate (the words are interchangeable for all practical purposes) can be traced back to before the fourteenth century. A statute of 1361 is still the source of certain powers of modern magistrates. Much has happened since those days of relatively primitive justice, but the disposal of the vast majority of criminal cases by people without special legal qualification, who are not paid for the work, remains unique in the world.

Magistrates deal with about two million criminal cases a year – something over ninety-five per cent of the total. These include assaults, theft, illegal possession of knives and other weapons, burglary, possession and supply of drugs, benefits fraud, harassment, obstructing police officers, public order offences and a host of motoring offences, to name but some. In all these cases, if the defendant pleads not guilty, the magistrates hear the evidence and decide whether or not the defendant is guilty or not guilty. Then they must select the most appropriate punishments for the guilty. In almost all the remaining five per cent of cases – the most serious – the magistrates have a role in the preliminary stages. This includes sending cases to be tried in the Crown Court, and deciding whether defendants are to be released on bail in the meantime. Magistrates also have an important role in cases which are not criminal in nature, principally family proceedings, discussed in Chapter 7.

There are about 27,000 magistrates, serving in some 280 courts in England and Wales. There are also about 140 district judges (magistrates' courts) and 150 deputy district judges (magistrates' courts). The district judges and deputy district judges are legally qualified and are paid (see also Chapter 4). They were first appointed in the eighteenth century, to deal with the increasing workload, and were then known as stipendiary magistrates.

In the early days, magistrates were selected from the 'great and the good', often the highest-ranking or wealthiest in society. The twentieth century saw the introduction of a far broader-based magistracy. The idea now is that magistrates should be drawn from all sectors of society. While that is fine in theory, in reality individual commitments and circumstances still restrict the

sphere of people from whom magistrates can be drawn. Although employers are, strictly, obliged to allow people time off work to serve as magistrates, there is no requirement to pay them. Advertising in newspapers and even on the sides of buses has helped to attract a wider range of people, but the system probably still favours certain types and militates against others. Work and domestic responsibilities will always be inhibiting factors. The journal *Magistrate* reported in October 2009 on Judicial Office statistics which showed that 41 per cent of magistrates were in professional or technical occupations, 18 per cent in managerial or senior occupations, and 16 per cent in administrative or secretarial occupations. 10.5 per cent were not employed or unemployed, while small percentages were skilled tradespeople, sales people, self-employed or retired.

This is, however, an area in which women play a full part. The first woman magistrate was appointed in 1919, and 51 per cent of magistrates are now women. On the other hand, the make-up of some benches of magistrates is said not fully to reflect the social and cultural mix of the populations they serve. The website of the Judiciary of England and Wales describes 92 per cent of magistrates as white, 4 per cent as black and 2.7 per cent as Asian. Over half of magistrates are aged sixty or more, while just under 4 per cent are under forty.

Magistrates are not paid, although they can claim expenses. More about this is said in Chapter 12.

## FINDING OUT

Many people may never give a thought to the possibility of becoming a magistrate. The justice system, in operation every day in the magistrates' courts, passes them by, and any knowledge they may have results from hearing about court cases in television news reports or the local press. But in recent years, the Magistrates' Association has been making unstinting efforts to provide information about who magistrates are and what they do. Much material about the work of magistrates is now available on the internet:

- the Magistrates' Association ([www.magistrates-association.org.uk](http://www.magistrates-association.org.uk))
- Directgov ([www.direct.gov.uk](http://www.direct.gov.uk))
- the Ministry of Justice ([www.justice.gov.uk](http://www.justice.gov.uk))
- Judiciary of England and Wales ([www.judiciary.gov.uk](http://www.judiciary.gov.uk))

Other sources of information include the Magistrates in the Community project, which the Magistrates' Association launched in 1995 to increase



public awareness of the role of magistrates. Almost every court area now has a panel of magistrates who go to workplaces, schools, colleges and community groups, explaining how magistrates are appointed and the work they do. Courts may hold ‘open days’, when those invited may tour the courts, and magistrates and staff are available to answer questions. A telephone call to the local magistrates’ court will elicit further details.

The clerk to the justices, or deputy clerk to the justices, at the local magistrates’ court will also assist with information, but the best way to get an insight into what magistrates do is to find out when the local court sits, and go along and watch. A list of courts is available at [hmctscourtfinder.direct.gov.uk/HMCTS/](http://hmctscourtfinder.direct.gov.uk/HMCTS/). At least one such visit is required before a person applies to become a magistrate. All magistrates’ courts are open to the public – justice in this country is administered openly – and all courtrooms have seats (sometimes called the ‘public gallery’) where ordinary members of the public can go. The public is not allowed into youth courts, that is, those dealing with children and young persons who have not attained their eighteenth birthdays. Nor is the public usually allowed into family proceedings courts, where sensitive matters involving families and the welfare of children are heard. The so-called ‘secrecy’ of the family courts has been a matter of controversy, and more will be said about this in Chapter 7.

Two or three visits to sit in the public gallery should give an excellent insight into what magistrates do, and the observer will also be able to identify the roles of those in court: the defendant, the prosecution and defence advocates, the court’s legal adviser, witnesses, the probation officer, a press reporter perhaps, court security officers and the usher (or list caller). The role of the usher is critical to the smooth running of the courts, and ushers are usually unfailingly helpful. Try to have a few words with the usher and explain that you have come along to observe proceedings. The usher may well be able to tell you what is coming up in the court session, and may give you a copy of the court list which will enable you to follow cases easily. Ushers have many jobs to do: informing the legal adviser which cases are ready, calling parties into court, swearing in witnesses, rounding up advocates who may have cases in other courtrooms, and handing forms to the defendant and others involved in a case. Despite all these responsibilities, most will find time for those who are genuinely interested to know a little about how the court is run.

After a couple of visits, you will have an idea of whether the work is likely to be for you. You may have seen some interesting cases, and others which are fairly routine, where traffic offenders have been fined in fairly