CABINET

THE APPOINTMENT OF JUSTICES OF THE PEACE IN ENGLAND AND WALES

Memorandum by the Lord Chancellor

The Cabinet at their meeting on 9th December, 1965, (CC(65) 69th Conclusions, Minute 5) invited me "to bring before them in due course proposals for improving the arrangements for selecting Justices of the Peace in England and Wales". I am now in a position to do this. My proposals were considered by the Home Affairs Committee at their meeting on the 24th June (H(66) 14th Meeting, Minute 3) and they were in favour of them, subject to certain minor qualifications.

2. This subject has given rise to considerable and continual controversy for 135 years and has already resulted in two Royal Commissions. This memorandum begins with a review of these years and of the recommendations of the Royal Commissions. It goes on to describe the present position and its defects, and concludes with a summary of my proposals for dealing with the problem once and for all.

Historical

3. For many years from 1830 there was considerable complaint by the Whigs that Tory Governments always appointed Tory Justices and by the Tories that Whig Governments always appointed Whig Justices.

4. By the end of the century the complaint was mainly that of the Liberals that the Conservatives appointed too many Conservative Justices. It was also complained that Church of England Justices were appointed to the exclusion of Catholic and Non-Conformist Justices.

5. After the Liberal landslide in 1906 the Government abolished the property qualification for Justices and in 1910 appointed a Royal Commission "to consider and report whether any and what steps should be taken to facilitate the selection of the most suitable persons to be Justices of the Peace irrespective of creed and political opinion". The Commission included Mr. John Simon and Mr. Arthur Henderson and it reported in 1911 (Cmd. 5250).

6. Since 1536 Justices of the Peace in England and Wales have been appointed by the Crown on the advice of the Lord Chancellor (except in Lancashire where they are appointed on the advice of the Chancellor of the Duchy). In 1906 the Lord Chancellor acted in nearly all cases on the advice of the Lords Lieutenant.
7. I am going to quote fairly extensively from the Report of the Royal Commission of 1910-11 as it seems to me that their views are just as apposite today as they were more than half a century ago.

In their Report they said:—

"Speaking very generally we in the first place express the opinion that the evils now existing in the system of selecting Justices of the Peace can, to a great extent, be remedied by removing political opinions and political action from the influences affecting such selection.

The substitute for such political opinion and influences should be found in the fitness of the intended Justices, and such fitness should be constituted by their moral and personal character, their general ability, business habits, independence of judgment, and common sense.

The voluntary system, no doubt excludes the existence of a high judicial standard; but such standard may find some equivalent if only men of high character and intelligence be appointed to act as Justices.

Political zeal and decided political convictions in no way represent such equivalent standard.

We therefore express the confident view that political opinion or political services should not be regarded as in any way controlling or influencing the appointment of Justices. The man most fitted to discharge the duties of the office should be appointed. The declaration contained in the Statute of Henry V should still prevail: Justices of the Peace must be residents in their several counties, 'of the best reputation, and most worthy men in the county'.

We seek to enforce these views by recording an opinion, formed after full inquiry, that appointments influenced by considerations of political opinion and services are highly detrimental to public interests, and tend to lower the authority of the Magisterial Benches in the country.

We have shown how necessary it is to consider the qualities which render a person suitable to be a Justice of the Peace, and we have already referred to the important judicial and administrative duties which the holders of the office are called upon to discharge. We have also expressed the opinion that in view of these duties it is necessary that Justices should be men of sufficient ability, of impartial and independent judgment, and of high personal character. But it is also in the public interest that they should be men who command general confidence.

And for this reason also it is desirable that the area of selection should be wide, and the choice comprehensive, so that the Bench may include men of all social classes and of all shades of creed and political opinion.
The removal of the property qualification for County Justices by the Act of 1906 has of course materially enlarged the field of selection. Under the operation of this Act members of all classes are eligible for appointment, and we concur in the view which has been presented to us very forcibly that it is in the public interest that working men with a first-hand knowledge of the conditions of life among their own class should be appointed to the County as well as to the Borough Benches.

8. The Royal Commission recommended that Justices of the Peace should continue to be appointed to the bench on the recommendation of the Lord Chancellor, who, as Head of the Judiciary, ought to remain the Minister responsible for their selection and discipline. They recommended too that the Lords Lieutenant of Counties should retain their functions of making recommendations for appointment to the Lord Chancellor, but that they should be assisted by small advisory committees appointed by the Lord Chancellor and acting in accordance with practice and procedure approved by him. The Lord Chancellor was to appoint similar committees for the Boroughs.

9. Thus it was that the present system of advisory committees came into being, though the first committees were not actually appointed until 1912.

10. The Royal Commission went on to express themselves, in definite and forthright terms, on the high importance of keeping politics out of the appointment of Justices and as to the qualities which must be sought in men and women to be appointed to the Bench. I think it well worth while setting out their views verbatim:

"We are of the opinion that it is not in the public interest that there should be an undue preponderance of Justices drawn from one political party.

We strongly condemn the influence and action of politicians being allowed to secure appointments on behalf of any political party.

We submit to the Lord Chancellor for the time being that he ought to reject and repudiate any such influence, and we equally urge that Lords Lieutenant and anyone recommending persons for appointment as Justices should decline to recognise political or religious opinions as any ground of qualification or disqualification.

We also submit that the Lord Chancellor and the Lords Lieutenant should refuse to receive any unasked-for recommendations for appointment from Members of Parliament or candidates for such membership in their own constituencies, or from political agents or representatives of political associations.

In view of the important judicial and administrative duties which Justices of the Peace are called upon to discharge, it is necessary that persons appointed to the office should be men of moral and good personal character, general ability, business habits, independent judgment, and common sense."
It is in the public interest that persons of every social grade should be appointed Justices of the Peace, and that working men with a first-hand knowledge of the conditions of life among their own class should be appointed to the County as well as to the Borough Benches.

The appointment of every Justice should be accompanied by a formal undertaking on his part to fulfil his fair share of magisterial duties and in the absence of any valid excuse for neglect to discharge such duties he should be called upon to resign his office, and if he refuses to resign he should be removed from the Commission of the Peace. But a request on the part of a Justice who has changed his place of residence out of the area of the Commission for which he acts to be transferred to the Commission for the district in which the new residence is situated should receive very favourable consideration.

11. Lastly, the Royal Commission recommended no change in the statutory qualifications of Justices, nor did they recommend any change in the numbers or tenure of office of ex-officio Justices.

12. When the Labour Government was elected in 1945 there were similar complaints that an undue proportion of the Justices were Conservative or Liberal and the Labour Government appointed another Royal Commission inter alia "to review the present arrangements for the selection and removal of Justices of the Peace in Great Britain, and to report what changes, if any, in that system are necessary or desirable to ensure that only the most suitable persons are appointed to the Commission of the Peace".

13. This Commission, which included Mr. Dingle Foot, sat for two years and received 93 memoranda and heard 75 witnesses. In their Report (Cmd. 7463 of July, 1948) they confirmed the views of their predecessors that the Lord Chancellor (and the Chancellor of the Duchy of Lancaster) should retain their existing functions in regard to the appointment of Justices. They thought that the Lord Chancellor's staff for dealing with this section of his responsibilities was undergraded and inadequate; they wished to see the advisory committee system retained, recommending that the committees should be small and constituted as follows:

"The first aim should be to appoint as members of such committees judicially minded people who will recognise that the selection of men and women to sit in judgment on others is a high responsibility, that their duty as members of an advisory committee is to find the men and women who are best qualified for this office, and that in making recommendations to the Lord Chancellor they must subordinate to this all other considerations. Secondly, members of advisory committees should be drawn from different sections of the community, so that as far as possible the advisory committee will represent a cross-section of society - the members being people who have such local knowledge and associations that they can provide or obtain the information which the committee requires to enable it to select from persons in various walks of life..."
those men and women who are best fitted to be justices. Thirdly, the proportion of members of the committee who are appointed because of their affiliation with political parties should be restricted, so that their influence shall not be predominant and that room may be found for other members whose interests and associations lie in other fields than political work. Fourthly, if in any area it is found practicable without including persons chosen because of their affiliation with political parties to constitute an effective committee which will have the requisite local knowledge and the requisite impartiality and freedom from political bias, the Lord Chancellor should feel free to appoint such a committee."

14. The Royal Commission recommended that advisory committees should be given general directions on the carrying out of their duties which should include the following:

(a) No member of the committee should regard himself as 'the representative' of any political party, and that it is the duty of each and every member of the committee to be vigilant, to prevent the recommendation of any person for appointment or the exclusion of any person from appointment as a justice, on the sole ground that he is a member of a particular party.

(b) In appointing justices the paramount consideration is the person's fitness for the discharge of judicial duties.

(c) Care must be taken to see that there are persons in the commission representative of various sections of the community.

(d) If, after a preliminary selection has been made, it is found that a considerable majority of the proposed new justices are of one political faith, the list should be revised with a view to seeing whether equally good, or better, nominations can be made from among members of other political parties. If the answer is that they cannot, then the original list should stand.

15. The Royal Commission further recommended that Chairmen of County Councils and of Urban and Rural District Councils should cease to be Justices ex-officio. The Mayor of a Borough should be a Justice ex-officio during his period of office but not as ex-Mayor, and his rights to preside over the Justices should be curtailed.

Current facts

16. There are 64 Commissions in the Counties and 129 in the Boroughs in England and Wales. Apart from the Justices ex-officio, who number about 2,300, there are some 18,000 Justices of whom about 18,300 are on the Active List and the remaining 2,700 on the Supplemental List.
17. Sufficient information does not exist to admit of their classification into social groups but before the recent election the political affiliation of the Justices on the Active List was, so far as known, as follows:

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<th></th>
<th>Con.</th>
<th>Lib.</th>
<th>Lab.</th>
<th>Not known</th>
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</thead>
<tbody>
<tr>
<td>Counties</td>
<td>4,729</td>
<td>1,124</td>
<td>3,328</td>
<td>1,886</td>
</tr>
<tr>
<td>Boroughs</td>
<td>1,682</td>
<td>519</td>
<td>1,458</td>
<td>598</td>
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</table>

These figures are not accurate. Over the years there has been a substantial shift to Labour but the figures represent the political opinions of the Justices when they were first appointed - in many cases 30 years ago.

18. The votes cast in Boroughs and Counties at the 1966 General Election were, as far as I have been able to ascertain, as follows:

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<thead>
<tr>
<th></th>
<th>Con.</th>
<th>Lib.</th>
<th>Lab.</th>
</tr>
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<tbody>
<tr>
<td>Counties</td>
<td>5,104,079</td>
<td>1,378,904</td>
<td>5,248,170</td>
</tr>
<tr>
<td>Boroughs</td>
<td>6,963,835</td>
<td>746,239</td>
<td>6,470,418</td>
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</tbody>
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19. Notwithstanding the recommendations of the two Royal Commissions, the average Advisory Committee has consisted of a Chairman and two Conservatives, two Labour and one Liberal. Nor have the ex-officio Justices been abolished.

**Criticisms**

20. The following criticisms are currently made of the existing system:

(a) That, whereas in our past history all judicial officers were at one time appointed on political grounds, today no attention is paid to politics in appointing any other judicial officers (Judges, Recorders, Chairmen and Deputy Chairmen of Quarter Sessions and Stipendiary Magistrates who are all appointed on merit alone) and it is quite wrong that any attention whatever should be paid to party politics in appointing justices.

(b) A complaint (which comes only from the Labour Party) that not enough attention is paid to party politics in appointing justices.

(c) That the proportion of the population who take an active part in local party politics is very small and that this small class is greatly over-represented on the Bench although —
(i) There is no reason to suppose that local party politicians are necessarily qualified to be good magistrates; if they are, they should be appointed on their merits like anyone else.

(ii) They are usually too busy to undergo courses of training.

(iii) They are naturally unable to sit in any case in which the local authority has an interest and such cases are frequent.

(iv) Their Council and Committee meetings make it difficult for them to sit regularly.

(d) That Justices have not sufficient knowledge of what they are doing and in particular that there is too great disparity in the sentences they impose.

(e) That the ex-officio Justices ought to be abolished as recommended by the Labour Government's Royal Commission because, as the County Councils Association themselves said to the Commission:

"The Association entertain no doubt that, if any approach is to be made to the ideal that only the most suitable persons are appointed to the commission of the peace, then chairman of county, borough, urban and rural district councils should cease to qualify for admission to the list merely by their assumption of these offices. The qualities which enable a chairman of a local authority to perform his duties with success are not of necessity those requisite for the office of justice of the peace, added to which there is the point that in many areas the office of chairman is a matter of rotation rather than of distinctive merit. In any event, if a chairman of a local authority is suitable for appointment as a justice of the peace, the ordinary procedure should suffice to ensure his consideration for that office".
My own conclusions

21. I have read not only the reports but also all the evidence given before both Royal Commissions.

22. On the 28th February I had a meeting which I had called of all the Chairmen and Secretaries of both County and Borough Advisory Committees and 268 attended and we discussed the questions referred to above. I have since received many letters from them expressing additional views. These have raised a number of problems with which I need not trouble my colleagues such as the anonymity of Advisory Committees, the method of selection of Chairmen of Benches, the minimum number of sitting days required of Justices, the holding of Regional Conferences of Chairmen of Advisory Committees, removals from one district to another and whether prospective Justices should be interviewed and, if so, by whom.

23. I have however come to a number of conclusions based on my observations and experience both at the Bar and while I have held office as Lord Chancellor. These conclusions are as follows:

(i) In recent years the functions of Justices of the Peace have increased greatly both in volume and in difficulty, and it is more necessary than ever that those who are appointed Justices should be well qualified to carry out this important work.

(ii) The paramount qualification for the office of Justice is that a person should have a judicial temperament, possess more than average intelligence, enjoy the respect and confidence of the community in which he lives and preferably have shown a desire for public service in some field.

(iii) It is satisfactory that it is now generally accepted (a) that a man should not be appointed a Justice for services rendered in some other field and (b) that no attention should be paid to what his religion is.

(iv) It is important that Justices should be drawn from all social classes in the community so that whoever appears before a Bench will probably have someone on it who is familiar with his habits of thought and speech and his economic and living conditions. Justices are not at present so representative and I think it important that steps should be taken to make them so.

(v) Advisory Committees are confused as to whether the Lord Chancellor wants them to concentrate on class or on party politics. No doubt at one time it was broadly the same thing, the propertied class being Conservative, the middle class Liberal and the man in the cloth cap Labour. Today the manual worker may well turn out to be a staunch Conservative and the young electronic scientist Labour.
I cannot help thinking myself that a spread of the social classes is much more important than any exact equilibrium between party political affiliations. Moreover, an excessive proportion of local party politicians on a Bench gives the impression that the Bench is substantially the perquisite of the political parties.

(vi) There are, however, a number of difficulties in obtaining a sufficient spread of social classes because:

(a) The lower income groups are much less inclined to undertake public work than they used to be ("What do I get out of it?"). According to a survey recently made in a representative large village, the percentage in income groups doing public work has been:

<table>
<thead>
<tr>
<th>Year</th>
<th>Upper</th>
<th>Middle</th>
<th>Lower</th>
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<tbody>
<tr>
<td>1955</td>
<td>44.0</td>
<td>24.5</td>
<td>31.5</td>
</tr>
<tr>
<td>1965</td>
<td>34.5</td>
<td>38.5</td>
<td>27.0</td>
</tr>
<tr>
<td>% change</td>
<td>-9.5</td>
<td>+14.0</td>
<td>-4.5</td>
</tr>
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(b) It is not easy for the weekly wage earner to get the necessary time off in a time of full employment. Employers need encouragement about this; and the Government and Nationalised Industries should set a better example. Civil Servants are usually not allowed more than twelve days off a year for public work and the same rule is applied by the National Coal Board and by the Transport Commission.

(c) The pecuniary loss may be too great. Justices should have financial loss allowances, similar to those payable to local authority members. The Home Affairs Committee agreed that, pending consideration of the report of the Maud Committee on allowances for elected members of local authorities, Justices should be entitled to financial loss allowances on the basis applicable to members of local authorities, the problem of self-employed and others not reached by this allowance being considered in conjunction with the similar problems in the local government field.

(d) The three-mile limit for subsistence allowances is a great handicap for Justices who are weekly wage earners. The Home Affairs Committee was disposed to agree to the abolition of this limit provided that this could be done on grounds special to Justices which would not affect subsistence allowances generally. Justices can in fact be distinguished from members of local government bodies because the Courts cannot resume after the luncheon adjournment unless all the members are present. Consequently it is difficult for Justices to go home, and those who cannot afford to lunch in a restaurant are compelled to go to a public house where they may be thought to be associating with persons appearing before them.
(vii) I would like to see the present retiring age for Justices gradually reduced from 75 to 70.

(viii) One of the principal complaints which I receive from members of the public about Magistrates' Courts is that the sentencing is unsatisfactory - either because the penalties imposed are too great or too small or because the sentences imposed by different Courts are inconsistent. It is not open to me, in my executive capacity, to give directions to Magistrates on the level of sentences which they are to impose. I propose, however, to deal with this problem by organising Sentencing Conferences throughout the country on the lines of the Conferences organised by the Lord Chief Justice for High Court Judges, Recorders and Chairmen of Quarter Sessions. At these Conferences all Justices in each area would be required to consider different types of case and to compare the sentences which they would impose. The Conferences would be attended, in an advisory capacity, by persons who are expert in the Probation Service, Prisons and other institutions and in penology in general, and they would be presided over by a senior Chairman of Quarter Sessions.

(ix) Ex officio Justices ought to be abolished. Conditional approval was given to this proposal by the Home Affairs Committee at their meeting on 3rd December, 1965 (H(65) 28th Meeting). A list of the offices concerned is contained in my memorandum to the Committee (H(65) 129). The Cabinet, however, at their meeting on 9th December, decided to defer further consideration of this question until they had had an opportunity to consider my proposals for improving the system of selecting Justices (C.C. (65) 69th Conclusions, Minute 5). It is quite anomalous that there should now be two groups of Justices, one of which have been appointed on their merits, have undergone a course of training and sit regularly, and another group who have not been appointed on their merits, undergo no training and cannot sit regularly. There are more Conservative than Labour ex officio Justices. Out of a total of 1,470 local authorities only 364 are actually controlled by Labour.

Following the meeting of the Home Affairs Committee on 3rd December, the Minister of Housing and Local Government informed the local authority organisations of my proposal to abolish the ex officio Justices. The County Councils and the Greater London Council were prepared to accept the abolition of all local government ex officio Justices, but the Municipal Corporations and the Urban and Rural District Councils were opposed to abolition, though they recognised that some restriction should be placed on everyone who became a Justice and who did not both complete a course of instruction and also undertake to sit regularly. I have seen representatives of the latter three authorities' associations and have discussed the question with them.
(x) The key to the problem of appointing Magistrates lies in the Advisory Committees. The Advisory Committee system was introduced following the recommendations of the Royal Commission of 1910, and it was carefully reviewed and approved by the Royal Commission of 1946-48. I am convinced that this is the best system for appointing Justices that can be devised, but I am equally convinced that the existing Advisory Committees require fairly drastic reorganisation. They are much too limited in their scope and most of them show little initiative in seeking candidates from all sections of the local community. Moreover, most of them tend to be self-perpetuating because the Lord Chancellor has been obliged to rely very largely upon the Chairman of each Committee in finding persons to serve as members of the Committee.

I propose to carry out a thorough review of all the Committees throughout the country, to get rid of the dead wood, and to reconstitute the Committees on the following lines:

(a) Each Advisory Committee should consist of at least one member of each of the leading political parties; but it should also include persons who are not active politically but are drawn from different walks of life, and in particular it should include persons such as Doctors who in their work meet large numbers of men and women of all social classes.

(b) No member of an Advisory Committee should normally serve for more than six years. It may be desirable to modify this rule in the case of Chairmen but even they ought to change more often than they do now. As regards County Committees, all of these have as their Chairmen the Lords-Lieutenant of the Counties. This, however, is a matter of long-standing custom. I propose in future to appoint someone else, instead of the Lord Lieutenant, as Chairman of the County Committee if I think that this is in the best interest of the administration of justice in that particular area.

(c) Committees must be made to take active steps to seek suitable candidates among all sections of the local population. The Lord Chancellor’s Office should also approach organisations throughout the country and ask for recommendations.

(d) The Lord Chancellor should exercise a much closer supervision over the Advisory Committees and their work.

(xi) The main reason for the unsatisfactory condition of the present Advisory Committee system is that in the past the Lord Chancellor has not been able to exercise adequate supervision of the Committees owing to the smallness of his staff. This consists of the Secretary of Commissions, one other lawyer, one training officer, three Executive Officers and secretaries.
To organise the provision of training courses for Justices, to maintain an adequate system of records of Justices throughout the country, to deal with an average of 900 appointments of new Justices and the removal of some 200 existing Justices every year, and to maintain a close supervision over my 192 Advisory Committees throughout England and Wales, my present staff is wholly inadequate. In addition to this work they also have to deal with the appointment and remuneration of Chairmen and Deputy Chairmen of Quarter Sessions, Recorders, Deputy Recorders, Assistant Recorders, and Metropolitan and Provincial Stipendiary Magistrates, as well as some 1,900 Chairmen and members of ten different kinds of Administrative Tribunals and no less than 5,200 General Commissioners of Income Tax, in addition to dealing with questions relating to the Central Criminal Court and Commonwealth legal matters. It would not be possible for me to carry out my proposals relating to Justices unless this section of my Department was increased by at least two more officers of administrative grade with the necessary secretarial assistance.

(xii) If my proposals are accepted the additional cost of the staff and administration in my Department will be not more than £9,000 a year.

It is not possible to give an exact figure for the cost involved in granting financial loss allowances to Justices nor in the removal of the three-mile limit, because it is not known how many persons would apply for the allowances. The Home Secretary and I estimate that the probable additional cost resulting from the removal of the three-mile limit would be in the neighbourhood of £50,000 a year, and that the grant of a financial loss allowance would cost about £100,000 a year. The figure of £100,000 is based on the assumption that about 10 per cent of the Justices would draw the allowance; but the Treasury think that 50 per cent would be more realistic as a longer term assessment. If they are right, the figure could be as much as £500,000. If all Justices were to draw the allowance the cost might amount to £1 million; but this could not in fact happen because all Justices would not be eligible for the allowance.

Summary of Recommendations

24. My proposals may be summarised as follows:

(1) Justices of the Peace, who must be well qualified for the work, should be drawn from all social classes in the community.

(2) To achieve this -

(a) The Advisory Committee system should be reorganised and the Committees placed under close supervision by the Lord Chancellor's Department.
Employers should be encouraged to allow their employees more time off to attend Court; and the Government itself should make it easier for Civil Servants to accept appointment as Magistrates.

(c) Justices should be entitled to financial loss allowances.

(d) The three-mile limit for subsistence allowances should be abolished.

(3) The retiring age for Justices should be reduced gradually from 75 to 70.

(4) Ex officio Justices should be abolished.

(5) Sentencing Conferences should be organised by the Lord Chancellor's Department throughout the country at regular intervals.

(6) To enable the Lord Chancellor to improve the selection of Justices of the Peace he should be given a small increase in staff.

Recommendations (2) (c) and (d), (3) and (4) would require legislation.

G.

House of Lords, S.W. 1.
4th July, 1966