

# The judiciary: the basics

Why do we need judges? What kinds of cases do they hear? Why do they wear robes and wigs? Can a judge be sacked? Whose 'side' are they on?

## What are judges for?

A judge's job is to use their knowledge and experience to make sure that cases are conducted, and jury verdicts given, as the law says they should be. The judge will then give a judgment or sentence that also follows the guidelines set out by the law.

Judges act within the law (and may change it - see 'do judges make laws? below'), but they are independent. Judicial independence is a key principle of our constitution. It means that judges decide cases according to their own judgement, without any outside influence - including from the Government.

The beginnings of our judicial and courts system date back almost 1,000 years. The very first judges were priests and officials who advised the King on the best way to solve disputes.

## What types of case do judges deal with?

There are three main jurisdictions, or areas of law: civil (disagreements between people and other individuals, businesses or the government), criminal (individuals who have broken the law) and family (decisions involving the welfare of children). Judges will mostly specialise in one of these, but may hear cases in more than one. There is also a tribunals system, which deals with many different types of civil case.

## Do you have to go to university to be a judge?

No, you don't. It is true that most judges go to university, become legally qualified and then get at least five years' experience as a barrister or solicitor before they are appointed as a judge.

However, Chartered Legal Executives are able to become judges and partners in law firms and do not need to have degrees to begin their training.

Magistrates, who also act as judges in deciding cases and sentencing, do not need any legal training at all - they are volunteers from the local community, and are guided in court by a qualified legal adviser.

Today, magistrates - unpaid volunteers - deal with more than 90 per cent of all criminal cases in England and Wales.

## Do judges make laws?

Not exactly. A judge's role is not to make law, but to act according to the laws made by Parliament. Different judges hearing different cases have to decide for themselves exactly what the law means, so they may not agree - in this situation, a judge may follow the conclusions of a higher court in a situation with similar facts. If there are no similar cases, the judge must decide for themselves - and their decision may be used by lower courts to help make future decisions.

As a result of this process, known as the system of precedent, case law, or 'common law', is developed which adds to the legislation made by Parliament.

### Do judges make up sentences?

Definitely not. The independent Sentencing Guidelines Council produces sentencing guidelines - based on laws created by Parliament - to help judges and magistrates decide the right sentence for a criminal offence.

Within these guidelines, judges have some freedom to decide on a sentence, but must ensure that it fits the crime the offender has committed and the seriousness of the offence.

Judges must excuse themselves from judging cases involving family, friends, or in which they may have a financial interest.

### Is the judge on the side of the police?

No. A judge is on no-one's side.

In the oath they take on being sworn in, judges promise "to do right by all manner of people", and to do it "without fear or favour, affection or ill will". Their responsibility is to see that everyone in court is treated equally and that verdict, judgments and sentences are carried out according to the law.

### Why do judges wear robes and wigs?

Strange as it might seem now, when judges first started wearing robes and wigs they would not have stood out on the street.

The costume of a High Court judge, for example, has not changed much since the time of Edward III (1327-77) and was based on the correct dress for attending the royal court.

Robes and wigs are still worn today out of a respect for court traditions – but in some difficult cases, can also have a practical use in making it harder to recognise (and potentially threaten or even attack) the judge entering or leaving court.

### Can judges use computers?

Of course! Just as in the rest of the population, there are: some judicial office-holders who are not confident about using computers; some who are perfectly happy with them; and some who blog, tweet, design apps and build their own websites.

Many judges take laptops into court and make notes on them, and some are working on a project aimed at making courts more accessible.

### Can judges be sacked?

Yes. The most senior judges - the Heads of Division, Law Lords, Lords Justices of Appeal and High Court judges - can be removed by The Queen at the request of Parliament, although this has never happened.

Other judicial office-holders can be removed by the Lord Chief Justice for incapacity (for example, illness) or misbehaviour. This is very rare, and in the case of a full-time judge, has happened just once, in 1983, when a circuit judge was removed from office after pleading guilty to several charges of smuggling.

### Can judges be arrested or jailed?

Yes. Judges have to obey the law, just like everybody else.



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## Myths and traditions

### Why do lawyers and court officials bow to the judge when they come into court?

They are not bowing to the judge, but to the Royal Coat of Arms, which appears in every courtroom in England and Wales (with the exception of the magistrates' court in the City of London), demonstrating that justice comes from the king or queen, and a law court is part of the Royal Court (where its name comes from).

Bowing to the coat of arms shows respect for the Queen's justice.

### Why do judges use gavels?

Although they're often seen in cartoons and TV programmes and mentioned in almost everything else involving judges, the one place you will not see a gavel is an English or Welsh courtroom - they have never been used in the criminal courts.

### Do judges still wear a black cap?

The black cap - based on court headgear in Tudor times - was traditionally put on by judges passing sentence of death.

Since the abolition of capital punishment in 1969, there has been no need for the cap to be worn. High Court judges still carry the black cap, but only on an occasion where they are wearing full ceremonial dress.

### Why are court papers tied with red ribbons?

Red or 'pink' tape was once used to tie up official papers - indeed, that is where the term "red tape" to describe excessive bureaucracy comes from. The tape is still used by the legal profession for briefs (the documents outlining a case) from private citizens. White tape is used for briefs from the Crown.

### What do judges promise when they are sworn in?

Judges, magistrates and tribunal members take two oaths when they are sworn in. The first is the oath of allegiance to the reigning monarch, and the second the judicial oath:

"I, *Judge's Name*, do swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law."

"I, *Judge's Name*, do swear by Almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of \_\_\_\_\_, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will."





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# Judicial independence

## Why do we need judges?

Anyone can look at the evidence of a case and draw their own conclusions - that is the basis of our jury system. A judge's role is to use their specialist knowledge and experience of the law to ensure cases and verdicts are conducted within the limits of the law, and then to hand down a judgment or sentence that takes all these considerations into account.

The independence of the judiciary is also a cornerstone of our democratic system, safeguarding the freedom and rights of citizens.

## What is judicial independence?

Judicial independence is a key principle of our constitution. It means that judges decide cases according to their own judgement, free from outside influence and not subject to the views or control of the Government.

In each case a judge must see that justice is done in accordance with the law and according to the circumstances of the case, whether his or her decision is popular or not.

Judicial independence also means independence from one judge from another. Judges can ask advice from fellow judges and will take account of views expressed by other judges in other cases, and they must take note of judgments given by higher courts which are binding. But no judge, however senior, is entitled to tell another judge how to decide any individual cases.

## Do judges make laws?

Not exactly. A judge's role is not to make law, but to uphold and apply the laws made by Parliament. The laws must be interpreted and applied by the judges to different cases. In deciding a case, a judge must follow the precedent set by a higher court in a situation with similar facts. As a result of this process, known as the system of precedent, case law, or 'common law', is developed which supplements the legislation made by Parliament.

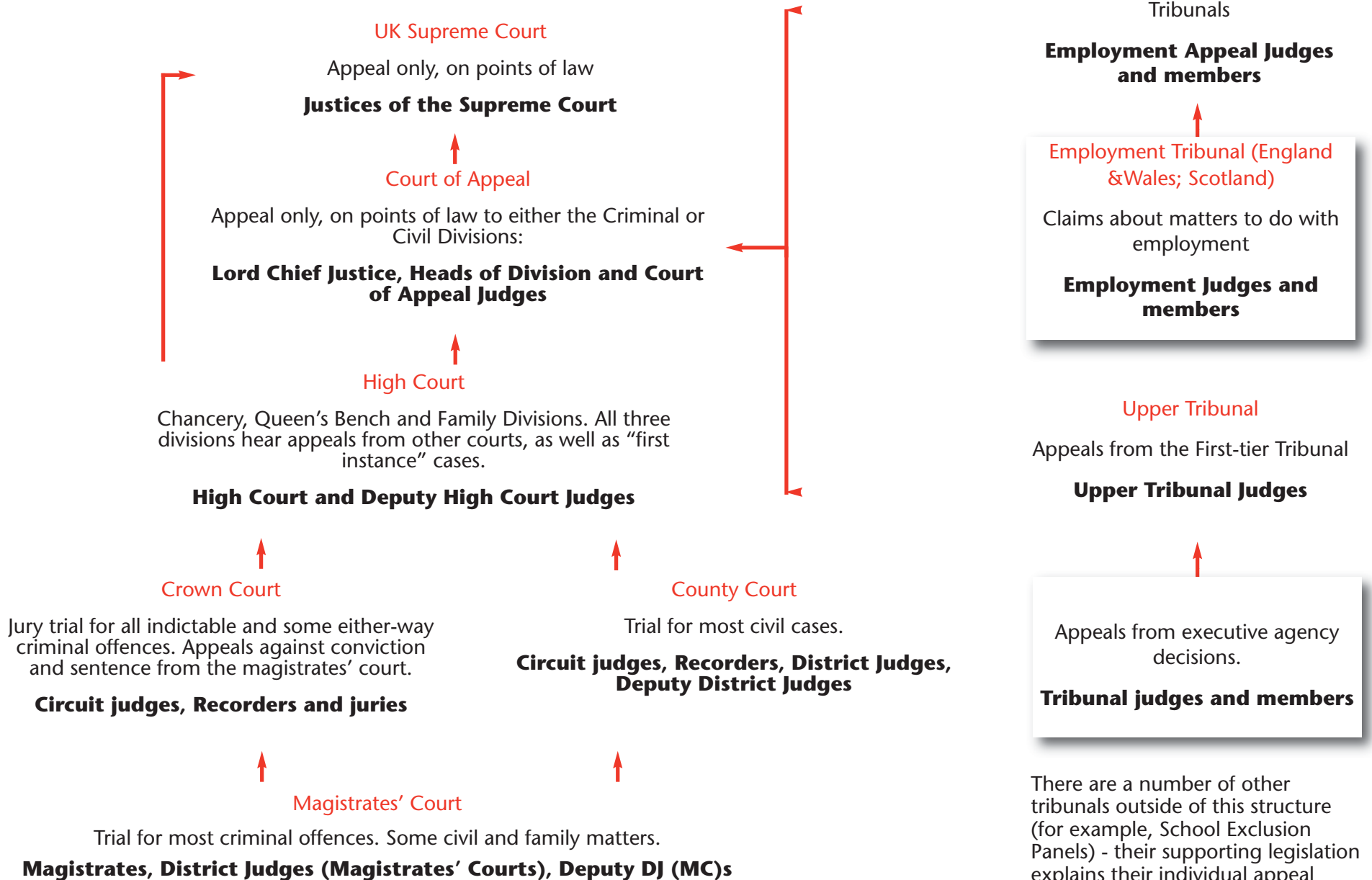
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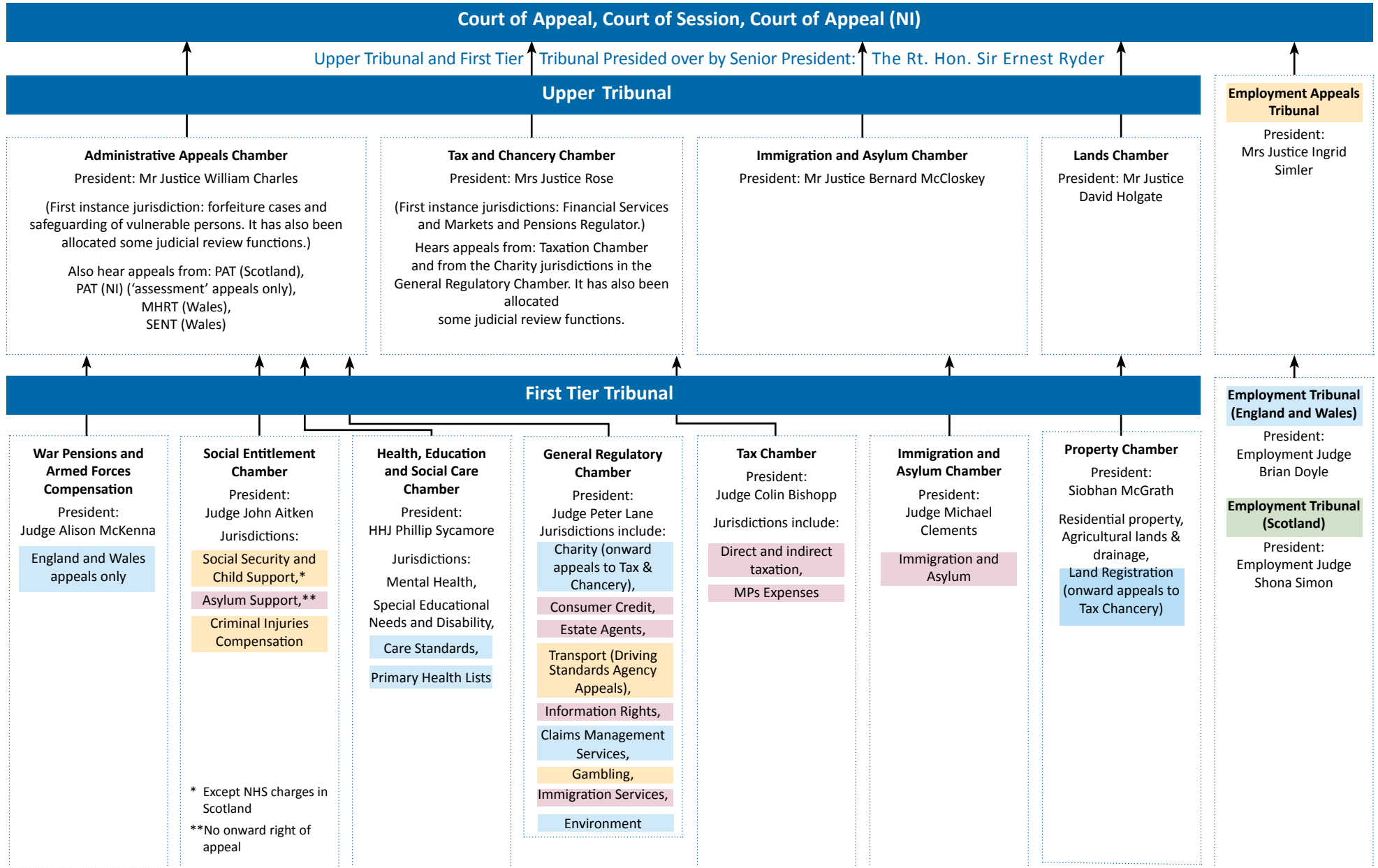
## Is the judge on the side of the police?

No. A judge is on no-one's side; their job is purely to interpret the law without bias or prejudice.

# The structure of the courts



There are a number of other tribunals outside of this structure (for example, School Exclusion Panels) - their supporting legislation explains their individual appeal routes.



Key: United Kingdom Great Britain England and Wales England only Scotland only



# Jurisdictions

## Civil justice

Civil court cases arise where an individual or a business believes their rights have been infringed.

Civil justice in England and Wales is mainly dealt with in the county courts and, in the case of more substantial or complex cases, the High Court. The jurisdiction runs from quite small or simple claims, for example damaged goods or recovery of debt, to large claims between multi-national companies.

Civil cases can be dealt with by: hearings in open court which the public may attend; hearings in the judge's private room from which the public are excluded; and matters decided by the judge in private on the basis of the papers alone.

Most civil disputes do not end up in court. Many are dealt with through mediation - both parties sitting down with a neutral person to discuss the problem and try to find a compromise.

Judges in the civil jurisdiction do not have the power to imprison. Usually - but not always - they award financial 'damages' to the successful party, the size of which depends on the claim.

## Criminal Justice

Criminal cases come to court after a decision has been made by (usually) the Crown Prosecution Service, to prosecute someone for an alleged crime. In the vast majority of cases (over 95 per cent), magistrates hear the evidence and make a decision on guilt or innocence.

For more serious cases a district judge (Magistrates' Court) or a circuit judge in the Crown Court will hear the evidence, and in the case of the latter, this will involve a jury trial. Very serious criminal cases, such as murder and rape, may be heard by a High Court judge.

Both magistrates and judges have the power to imprison those convicted of a crime, if the offence is serious enough. But imprisonment is not the only solution; a judge or magistrate can order a community punishment, or put an individual under some sort of control order where their movements or activities are restricted.

Although punishment is the key consideration when sentencing, judges will also keep in mind how a particular sentence may reduce the chances of an individual re-offending.

## Family justice

Family judges deal with disputes involving parents about their children. They also deal with cases where local councils take action to remove children from their parents' care.

If at all possible, families are encouraged to resolve their disputes out of court, for example through mediation – on the grounds that they are more likely to stick to any agreement if they themselves have had a role in forming it.

When disputes do come to the courts, the cases are dealt with by magistrates and judges specially trained to deal with issues affecting families. These disputes often involve very difficult circumstances, for example relationship breakdown or child contact. Judges and magistrates work to hearings as informal as possible with, for example, all parties sitting around a table together.

Family law mainly involves two sorts of work: private and public.

**Private cases** are disputes that involve parents and concern their children, for example, in divorces or separations, who the children should live with, who they should see, where they should go to school or even if they can move to live abroad with one of their parents. The cases can also involve grandparents and other relatives.

**Public work** is the term used for cases when local authorities take action to remove children from their parents' care because they are being hurt in some way. Such cases can lead to children being adopted and this is also dealt with by a family judge.

## Tribunals justice

Tribunals deal with about one million civil cases a year, on a huge variety of issues such as disputes over tax, pensions or immigration.

The tribunal system has two parts: a First-tier Tribunal and an Upper Tribunal, both of which are split into Chambers. Each Chamber is made up of similar jurisdictions (types of work) or brings together similar types of experts to hear appeals.

The Upper Tribunal mainly, but not exclusively, reviews and decides appeals from the First-tier Tribunal.

## Military justice

The Judge Advocate General (JAG) and his team deal with court-martials - criminal offences and disciplinary issues committed by members of the armed forces.

The JAG and many Judge Advocates also sit in the Crown Court. It is also possible for a High Court Judge to preside in the Court Martial as a Judge Advocate; this is done for exceptionally serious cases, just as in the Crown Court.