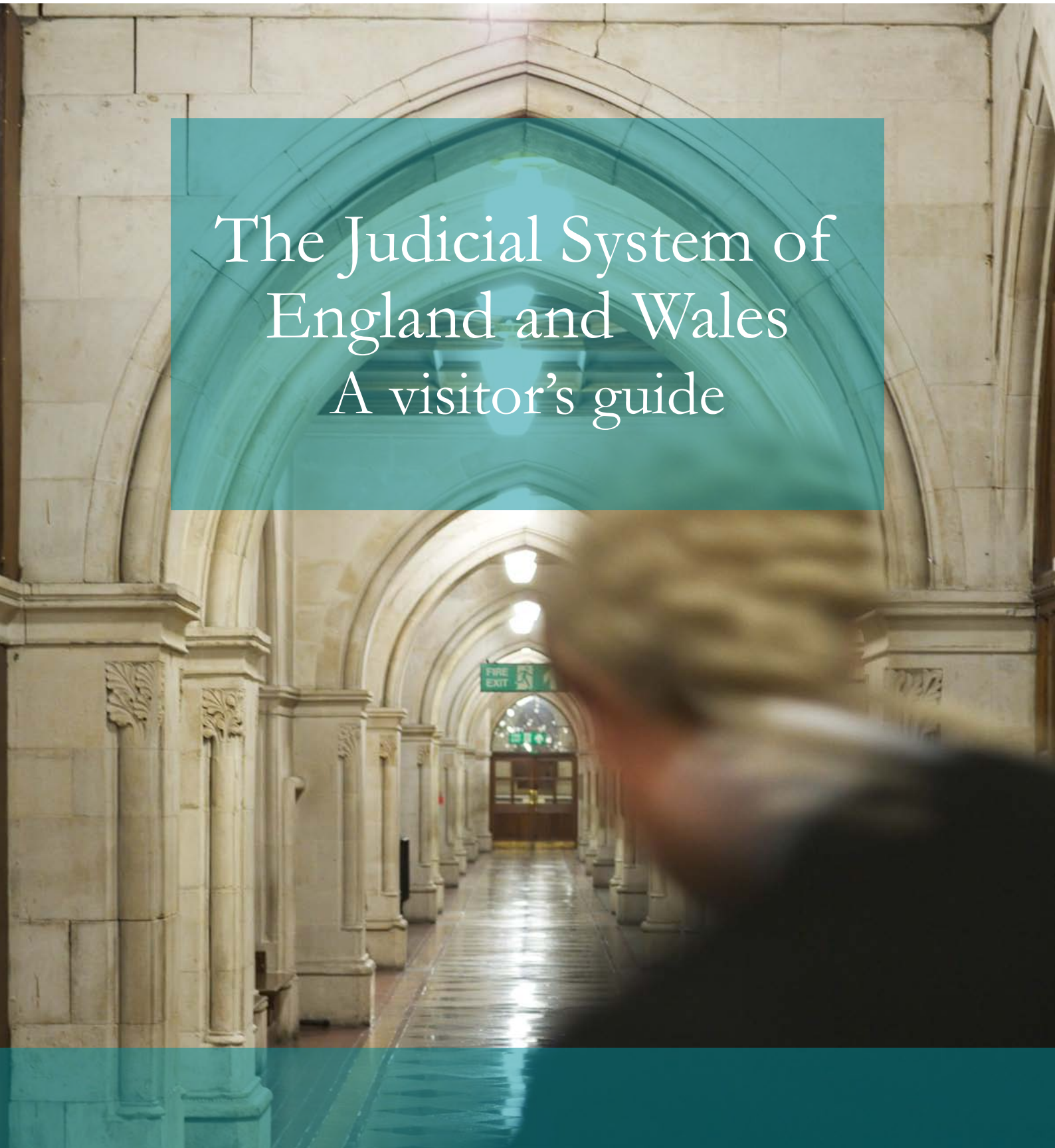




JUDICIAL OFFICE

# The Judicial System of England and Wales

## A visitor's guide



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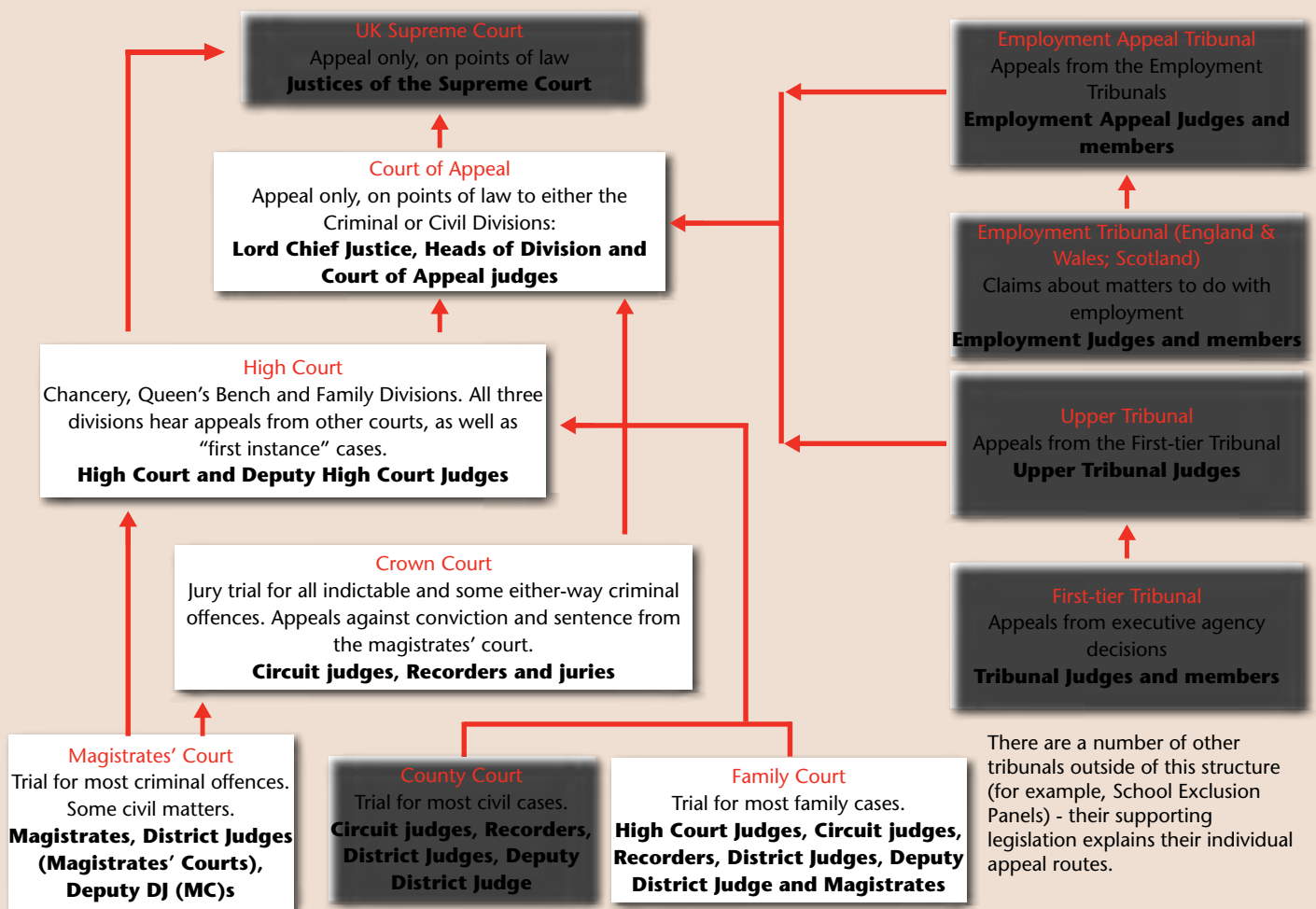
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# Part 1: Courts and Tribunals

The diagram below illustrates the structure of the court system.

Please note that the arrows indicate the route of appeal through the different courts.

## The Structure of the Courts





## The Supreme Court

This is the final court of appeal in the United Kingdom<sup>1</sup>. It hears appeals on arguable points of law of the greatest public importance, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases. In Scotland, appeals can be made from the lower courts in criminal cases to the High Court of Justiciary, which is Scotland's supreme criminal court.

Although it is the highest Court of Appeal in the United Kingdom, the Supreme Court must give effect to directly applicable European Union law, and interpret domestic law in a way that is consistent with it, so far as possible. It must also give effect to the rights contained in the [European Convention on Human Rights](#) and take account of any decision of the [European Court of Human Rights](#) (ECHR) in Strasbourg. The Supreme Court must also refer to the

<sup>1</sup> A Court of Appeal, also known as an appellate court, hears cases from the lower courts, which in turn hear cases at first instance.

[Court of Justice of the European Union](#) (CJEU) in Luxembourg any question on European Union law, where the answer is not clear and it is necessary for it to give judgment. The Supreme Court also decides “devolution issues”, concerning the devolved executive and legislative authorities in Scotland, Wales and Northern Ireland.

Permission to appeal will be given only if a case raises a point of general public importance. Cases are heard by five, seven or nine of the twelve Justices of the Supreme Court, each of whom reaches an individual decision, their overall verdict being achieved either by unanimity or a simple majority. Decisions made in the Supreme Court and the Court of Appeal become precedents that must be followed by courts in all future cases.

## History of the Supreme Court



The Supreme Court was established in 2009 to achieve a complete separation between the United Kingdom's senior Judges and the Upper House of Parliament, emphasising the independence of the Law Lords and increasing the transparency between Parliament and the courts. (The Law Lords, also known as Lords of Appeal in Ordinary, were highly qualified, full-time judges who carried out the judicial work of the House of Lords until July 2009, when they left Parliament to become the Justices of the new United Kingdom Supreme Court).





## The Court of Appeal

The Court of Appeal and the High Court constitute what are called the [Senior Courts of England and Wales](#). It is an appellate court and is divided into two divisions, [Criminal](#) and [Civil](#). Bringing an appeal is subject to obtaining 'permission', which may be granted by the [High Court](#) or, more usually, by the [Court of Appeal](#) itself. Applications for permission to appeal are commonly determined by a single judge of the Court of Appeal.

Cases are generally heard by three judges, consisting of any combination of the Heads of Division (who lead the different jurisdictions of the courts of England and Wales – see below), and the Lord Justices of Appeal, who are the most senior judges, with lengthy judicial experience who hear cases on appeal; it is from these judges that the Heads of Division are selected.

The [Civil Division](#) hears appeals in all leading cases in civil and family justice from the High Court and, in some instances, from the County Courts and certain tribunals as well such as the Employment Appeal Tribunal. In a Court of Appeal civil court, there is a bench of three Lord or Lady Justices<sup>2</sup>.

Each of the three judges reaches an individual decision. The Court's overall verdict can be made either unanimously or by a two-to-one majority. When this happens, the judge who is in the minority gives a dissenting (disagreeing) judgment, explaining why they do not agree with the others.

The [Criminal Division](#) hears appeals in criminal matters from the Crown Court and points of law referred by the Attorney General following acquittal in the Crown Court or where the sentence imposed was unduly lenient. The bench in this Division usually consists of a Lord or Lady Justice and two High Court judges - they hear appeals against conviction and sentence.

The most important Criminal appeal cases are often heard by the Lord Chief Justice, the President of the Queen's Bench Division or the Vice-President of the Court of Appeal Criminal Division, sitting with two judges of the High Court. Their decisions are always unanimous; if one judge disagrees, he or she will follow the others and not give a dissenting judgment.

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2 A bench is the location in the courtroom where the

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judge sits. The term is also used to describe judges collectively, or a group of judges within a particular court or division.



## The High Court

This court hears the more serious and complex civil and family cases at first instance. It contains three divisions - [Queen's Bench](#), [Family](#) and [Chancery](#).

Each of these has a judicial 'Head'. The Head of the Chancery Division is known as the Chancellor of the High Court (not to be confused with the Lord Chancellor). The Queen's Bench Division and the Family Division are both led by a President.

### The Divisions of the High Court

The [Queen's Bench Division](#) is the biggest of the three High Court Divisions, and has the most varied jurisdiction. Included within it are a number of specialist courts: the [Admiralty](#), [Commercial](#), [Mercantile](#), [Technology & Construction](#), and [Administrative Courts](#).

Part of the civil work of the Division is handling those contract and tort (civil wrongs) cases which are unsuitable for the county courts for reasons of cost or complexity. It also handles libel cases. In London, this work is administered in the Central Office at the Royal Courts of Justice by the Senior Master with the support of the Judge in Charge of the Queen's Bench Civil list, acting under the authority of the President of the Queen's Bench Division. Outside London, the Division's work is administered in provincial offices known as District Registries.

The [Admiralty Court](#) is the oldest of all the Division's specialist courts and deals principally with the legal consequences of collisions at sea, salvage, and damage to cargoes.

The [Mercantile Courts](#) operate in eight regional centres throughout England and Wales. Established in the 1990s, they decide business disputes of all kinds apart from those which, because of their size, value or complexity, are dealt with by the Commercial Court. They also decide smaller disputes.

The [Commercial Court](#) has a wide jurisdiction over banking and international credit and trade matters; the judges of this court can arbitrate in commercial disputes.

The [Technology and Construction Court](#) covers areas including traditional building cases, adjudication enforcement, arbitration and professional negligence claims, and engineering and Information Technology disputes. In addition to London, the work of the Technology and Construction Court is carried out in eleven regional centres around the country.

The [Administrative Court](#) exercises the 'supervisory jurisdiction' of the High Court, which means that it has the power to oversee the quality and legality of decision-making in the lower courts and tribunals and hears applications for judicial review<sup>3</sup> of decisions of public bodies. Sitting as the [Divisional Court of the Queen's Bench](#), its judges also hear certain criminal appeals originating in the magistrates' courts and

3 Judicial Review is a High Court procedure for challenging the administrative actions of public bodies. The Court can make what are known as 'prerogative orders', commanding a person or body to perform a duty, prohibit a lower court or tribunal from exceeding its jurisdiction, or quash the decision under challenge. It is not, however, concerned with the conclusions of the actions being undertaken and whether they were 'right'; instead the focus is on making sure that the correct procedures were followed. The High Court will not substitute what it thinks is the 'correct' decision. Judicial Review is only appropriate when all other avenues of appeal have been exhausted. Its use has become more prevalent in recent years.

### 1166: The Assize of Clarendon Act is passed by King Henry II of England.

It begins the transformation in English law for deciding the prevailing party in a case from trial by ordeal or trial by combat into an evidentiary model, in which evidence is considered and inspection made by laymen. This Act greatly fosters the methods that will eventually become known in Common Law countries as trial by jury.

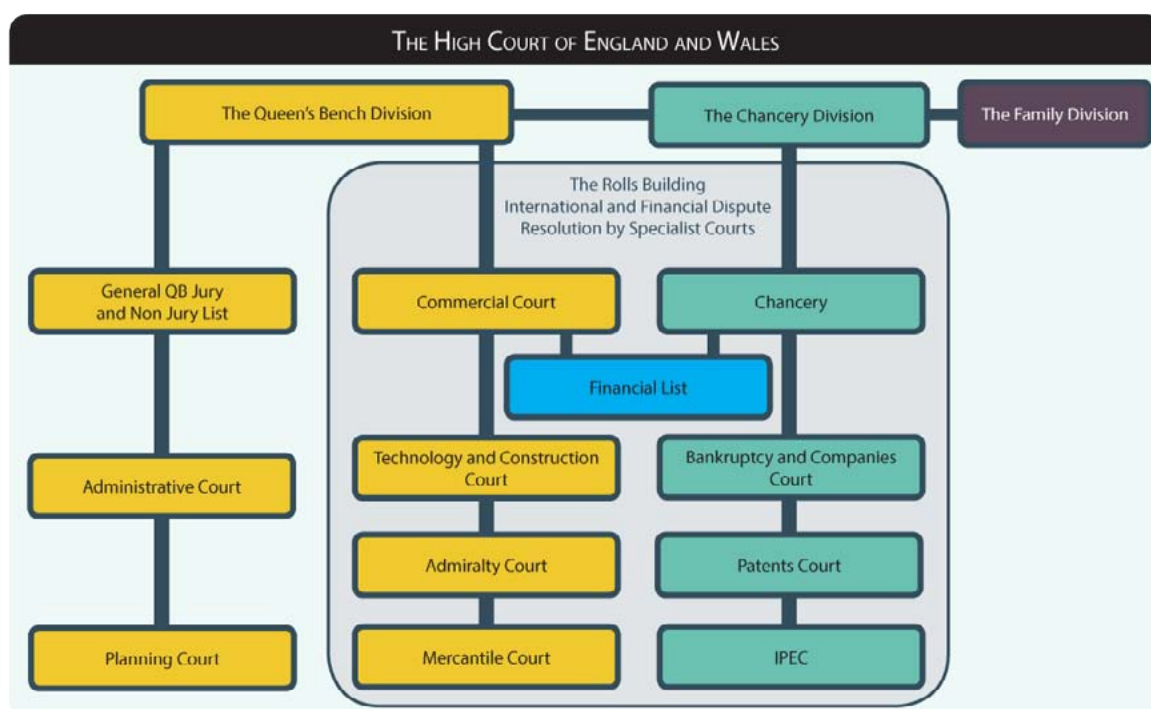
the Crown Court, as well as applications for judicial review which are so important that they are heard by two or three judges sitting together. Queen's Bench Division judges also sit in the Court of Appeal Criminal Division on appeals from the decisions of the Crown Court. When doing so they sit as a bench of two or three judges, usually presided over by a judge of the Court of Appeal.

The **Planning Court** deals with all judicial reviews and statutory challenges involving planning matters including appeals and applications relating to enforcement decisions, planning permission, compulsory purchase orders and highways and other rights of way. It forms part of the Administrative Court.

The **Chancery Division** deals with company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. The division includes three specialist courts: the Companies Court, the Patents Court and the Bankruptcy Court. The Bankruptcy and Companies Courts deal with personal actions

## The Origin of the Queen's Bench Division

**Did you know** that the office of President of the Queen's Bench Division is comparatively recent? Although the Division can trace its origins back to the reign of King Alfred the Great in the ninth century, up until 2005 the head of Division was the Lord Chief Justice. The role was separated under the provisions of the Constitutional Reform Act 2005, and Sir Igor Judge (later Lord Chief Justice) became the first President.



for bankruptcy and compulsory liquidation of companies and other matters arising under Insolvency and Companies Acts. The Patents Court deals with a range of intellectual property matters and hears appeals from the decisions of the Comptroller-General of Patents, Designs and Trademarks<sup>4</sup>. The **Family Division** does not have the same range of specialist courts for its work as the Queen's Bench Division, but it does contain the **Court of Protection**, which gives judgments on behalf of those who are unable to make decisions for themselves, such as persistent vegetative state victims. The Family Division deals with the most difficult and sensitive situations involving families, such as divorce and disputes over children, property or money; adoption, wardship (guardianship over a child) and other matters involving children. It is also responsible for

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<sup>4</sup> Intellectual Property refers to creations of the mind such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

undisputed cases of probate - the legal recognition of the validity of a will - through the Probate Registry of the Family Division across England and Wales. Under its President, who is a member of the Court of Appeal.

The **Financial List** is a specialist Queen's Bench/Chancery cross-jurisdictional list set up to address the particular business needs of parties litigating on financial matters.

## What are Circuits?

Circuits are the six distinct geographical regions which England and Wales are split into for the practice of law. They are the areas around which the High Court judges travel ('go out on circuit') as they try the most important cases. The six circuits are: South Eastern, North Eastern, Midland, Northern, Wales and Western.

The Senior Presiding Judge oversees the work of Presiding Judges on each Circuit in England & Wales and provides a general point of liaison between the Judiciary, the courts and government departments.

## The Crown Court

This sits in centres throughout England and Wales, dealing with indictable criminal cases that are transferred from the magistrates' courts, including serious criminal cases (such as murder, rape and robbery). Defendants can sometimes be convicted in a magistrates' court, but sent to the Crown Court for sentencing due to the seriousness of the offence. Crown Courts also hear appeals against the decisions made by magistrates' courts. Cases are heard by a judge and a jury. The judge does not decide guilt or innocence - this is done by the jury. A jury's decision will usually be unanimous, but the judge may decide to accept a majority decision if it proves difficult for all twelve jurors to agree. The jury is advised about the law by the judge, whose role also includes imposing a sentence if the defendant is found guilty. Decisions of the Crown Court may be appealed to the Criminal Division of the Court of Appeal.

## The County Court

These courts deal with civil (non-criminal and non-family) cases where an individual or a business believes their rights have been infringed. The types of civil case dealt with in the County Court include businesses trying to recover money they are owed, individuals seeking compensation for injuries and land-owners seeking orders that will prevent trespass. The more complex civil cases or those involving very large amounts of money appear at the High Court.

Both Circuit Judges and District Judges sit at most County Court hearing centres. Circuit Judges generally hear cases worth over £25,000 or involving greater importance or complexity, whilst District

## Circuit Judges

**Did you know** that the role of Circuit Judge was first established by King Henry II in 1166? That year, Henry issued a Declaration at the Assize of Clarendon (an assize was an early form of the King's Council; the term later became the name for a sitting of a court). The Assize of Clarendon ordered judges to travel the country – which was divided into different circuits – deciding cases. To do this, they would use the laws made by the judges in Westminster, a change that meant many local customs were replaced by new national laws. These national laws applied to everyone and so were common to all. Even today, we know them as the 'Common Law'.

The system of judges sitting in London while others travelled round the country became known as the 'assizes system'; it survived until 1971.

Judges maintain an overview of the cases underway to make sure they are running smoothly (known as "case management") as well as deciding cases under £25,000 and the less complex cases over that figure. County Court judgments usually call for the payment or return of money or property. The majority of civil cases tried in court do not have a jury (libel and slander trials are the main exceptions). Instead, the judge hears the case on his or her own, deciding the case by finding the facts, applying the relevant law and then giving a reasoned judgment.

## The Family Court

The Family Court was established in April 2014 when the relevant sections of the Courts and Crime Act 2013 came into force. It has a national

jurisdiction and brought all levels of family judiciary to sit together in the same court for the first time – magistrates, District Judges, District Judges (Magistrates Court), Circuit Judges and High Court Judges. Family cases are no longer heard in the County Court or the Family Proceedings Court (which was abolished). One of the principal advantages of the new Court is that time and resources are not wasted in transferring cases between different courts which was a feature of the previous structure.

The Family Court comes under the judicial leadership of Designated Family Judges (DFJs). The Court is divided into some 42 DFJ areas. Each DFJ area will have a Designated Family Centre which will be the principal Family Court location for each DFJ area. This is the location where all family applications issued in that DFJ area will be sent to for initial consideration and allocation. A typical DFJ area will have several locations where the Family Court sits but responsibility for listing, allocation and judicial deployment rests with the DFJ and each DFJ area has a single listing system.

Proceedings issued in the Family Court are considered by an allocation team of a legal adviser and a District Judge who allocate cases to the appropriate level of judge according to their type and complexity. Allocation guidance for the effective distribution of Family Court business has been published by the President of the Family Division and will be amended from time to time. Each DFJ area has an allocation team overseen by the DFJ.

## Magistrates' Courts

They hear all criminal cases at first instance. Serious cases are transferred to the Crown Court after a preliminary hearing in the magistrates' courts. Less serious cases and those involving juveniles are tried in magistrates' courts, as are some civil cases, including family proceedings. Civil decisions of the

magistrates' courts may then be appealed to the County Courts. Magistrates deal with three kinds of offences:

- Summary, (less serious cases);
- Either-way, (cases which can be heard either in a magistrates' court or before a judge and jury in the Crown Court); and
- Indictable-only, (serious cases which have to go to the Crown Court).

Cases are heard by three magistrates or by one District Judge.

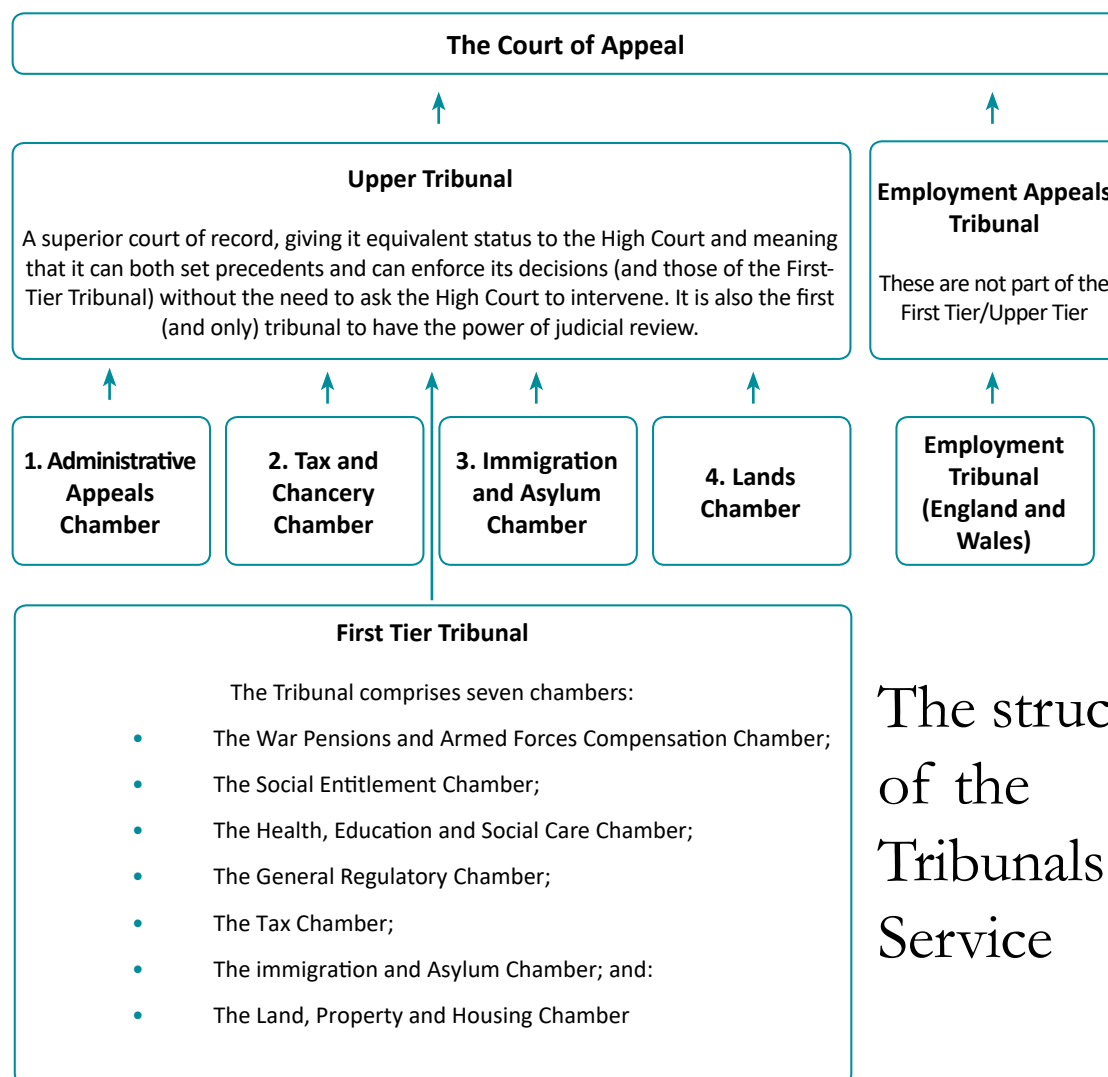
## Specialist Courts

In addition to the courts listed above, the judiciary also sit on a number of specialist courts - some of the key courts are as follows:

**Coroners' Courts:** the role of the coroner is to investigate sudden, violent or unnatural deaths. They do this by holding an inquest. The court hears evidence relating to the body and the circumstances of the death. There is no prosecution or defence case in an inquest, simply a search for the truth. The evidence is considered, and from that evidence the cause of death is established. Unlike with an inquiry, it is not a public hearing with set terms of reference. The coroner and the jury (if there is one - inquests with juries accounted for only 2% of all inquests in 2012) cannot express any opinion on any matters other than who the deceased was, how, when and where they came by their death and the particulars required by law to be registered concerning the death.

**The Office of the Judge Advocate General (OJAG):**

The Court Martial: this deals with the criminal trials of Servicemen and women in the Royal Navy, the Army and the Royal Air Force for serious offences or cases where the defendant chooses not to be



## The structure of the Tribunals Service

dealt with by his or her Commanding Officer. The Court Martial is an independent standing court which is part of a separate jurisdiction called the Service Justice System which broadly mirrors the civilian justice system, although it has a UK wide jurisdiction and can sit anywhere in the world where our armed forces are present.

Every Court Martial trial has an independent civilian judge on the bench, known as the Judge Advocate, who presides over the conduct of the proceedings and rules on all legal matters arising, in the same way as in a civilian Crown Court trial. Where the jurisdiction differs is in the use of a Board made up of Officers and Warrant Officers who are selected at random and replace the jury in the Crown Court to decide guilt. In order the

address the need for the operational effectiveness of our armed forces they also sit with the judge to assist in sentencing and a slightly different range of sentencing options are available.

Judge Advocates also preside over the Summary Appeal Court (which hears appeals from summary cases dealt with by Commanding Officers) and the Service Civilian court (which deals with summary offences committed by civilians subject to service discipline). Appeals go to the court Martial Appeal Court which is staffed by Court of Appeal judges in the same way as civilian criminal appeals.

The senior Judge Advocate is the Judge Advocate General (JAG). He is not a General of the Army – the word ‘General’ here signifies broad oversight. In



the UK, the JAG is the presiding judge of the Service Justice system and has a leadership role in relation to the judges and court officials. The JAG has a number of statutory responsibilities including specifying a judge advocate for each trial and maintaining the records of court proceedings as well as issuing sentencing guidance and practice memoranda.

## The Tribunals Service

This is an important, specialised part of the judicial system. Tribunals are independent judicial bodies set up by Parliament to rule on disputes between individuals or private organisations and state agencies. (An example of such a hearing might be an ex-serviceman or woman who has had their claim for a war pension rejected by the Secretary of State for Defence). Such Tribunals sit across the United Kingdom. Within England and Wales, there are almost 100 different Tribunals, each dedicated to a specific area. Amongst the most common are those dealing with Agricultural Land, Employment, Asylum and Immigration and Mental Health reviews and Tribunals which make decisions affecting the finances of the public, such as whether or not people are entitled to social security or child support payments and questions concerning the liability of individuals and companies to pay tax and rates.

Tribunals adopt procedures that are less complicated and more informal than those typically associated with the courts. They are split into a First-Tier, and

an Upper Tier, a system created by the Tribunals, Courts and Enforcement Act 2007. The First-Tier Tribunal is a generic structure which for the first time merged the administration of most Tribunals. It is organised into sections, called 'Chambers', in which Tribunals are grouped according to their field of work; each Chamber is headed by a President. Appeals to the First-Tier Tribunal are against decisions from government departments and other public bodies, with the Upper Tribunal acting as a 'superior court of record', hearing appeals from the First-Tier Tribunal on points of law, (i.e. an appeal made over the interpretation of a legal principle or statute (Act of Parliament)). Further appeals can be made, with permission, to the Court of Appeal. Employment Tribunals are not part of this system - appeals from these Tribunals go to a specialist appeal forum known as the Employment Appeal Tribunal, with any appeal from there then going on to the Court of Appeal.

Tribunals have their own statutory administrative structure separate to the courts of England and Wales, (although High Court Judges routinely sit in the Upper Tribunal).

The Tribunals Service was created in April 2006. It merged with Her Majesty's Courts Service in 2011 to form a new agency of the Ministry of Justice, Her Majesty's Courts and Tribunals Service (HMCTS).

Tribunals are made up of 'panels', comprising a Tribunal Judge, who is legally qualified, and Tribunal members, who are often drawn from other professions, such as medicine, chartered surveyancy, the armed forces or accountancy. The panels listen to the evidence and question parties and witnesses where appropriate. The members are not legally qualified, but do bring to their panels valuable specialist knowledge. They take an equal part in the decisions made by their Tribunal but are advised on points of law by the legally qualified chairperson who also writes the decision. The Senior President of Tribunals, based at the Royal

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## The Royal Courts of Justice

**Did you know** that the Royal Courts of Justice was the first government building to be lit by electricity, or that 35 million Portland stone bricks were used in its construction?

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The Great Hall  
Royal Courts of Justice  
London



Courts of Justice, is responsible for the leadership, guidance and training of the 'Tribunals' judiciary across the country.

Tribunals take place in Hearing Rooms. Unlike in a court room, many of these do not have a raised dais on which the Judge and panel sit at the front, but instead contain a large table which the litigant and the panel sit around. (However, some Immigration and Asylum and Employment Tribunals do have a dais).

## The Royal Courts of Justice and the Rolls Building

Up until the mid-19th Century a number of separate courts existed in and around Westminster Hall. This was a very inefficient system, which was slow and expensive. With the support of British Prime Ministers Gladstone and Disraeli, the Judicature Acts of 1873-5 abolished all these courts and replaced them with one Supreme Court of Judicature, which housed the Court of Appeal and the High Court of Justice. Designed by George Edmund Street, these Royal Courts were opened by Queen Victoria in 1882. This prestigious Victorian building is one of the last great wonders of Gothic revival architecture in England and is similar to a cathedral. It contains 1,000 rooms (including 80 courtrooms and 200 judges' rooms) and has 3.5 miles of corridors.

Since its opening in 2011 the Rolls Building has also become part of the Royal Courts of Justice estate. Located nearby in Fetter Lane in the City of London, the Rolls Building is the largest specialist centre for the resolution of financial, business and property disputes in the world. Located in London, the Rolls Building is a state-of-the-art complex and the largest specialist court centre in the world. It contains 31 courts which deal with commercial and business disputes. For the first time the Chancery Division and the Admiralty, Commercial, and Technology and Construction Courts are housed together under one roof. The Rolls

Building's presence underpins the City of London's position as the world's pre-eminent financial centre for both international and national dispute resolution, and is a strong symbol of the contribution which the legal profession makes to the United Kingdom's Gross Domestic Product (GDP) – the monetary value of all the goods and services produced within a country during a given period of time. In 2009/2010 it contributed £23.1 billion, representing 1.8% of overall Gross Domestic Product.

## Part 2: The justice system

The day-to-day running of the courts of England and Wales is managed by Her Majesty's Courts and Tribunals Service (HMCTS). Every year this organisation handles over two million criminal cases, 1.8 million civil claims, more than 150,000 family law disputes and almost 800,000 tribunal cases. It is an agency of the Ministry of Justice.

### Case management

The way individual cases are managed through the courts has always been a key part of the work of the judiciary and courts staff. This is even truer today when courts everywhere struggle to manage growing caseloads. Case management is also frequently a subject of keen interest for international visitors to England and Wales.

There are two kinds of law that need to be taken into account when considering how an individual's case is managed when it gets to court. These are:

- Substantive law - the specific rules which tell the judiciary what the law of contract or crime says, about, for example, selling fireworks or importing livestock; and:

- Procedural law - this lays down how a case is brought before the court and tried.

Case management focuses on procedural law, which can be further divided between civil cases concerning individuals and criminal prosecutions brought by the state.

Case management in civil cases in England and Wales is subject to a procedure which governs both High Court and County Court litigation. The main sources for the rules are the Civil Procedure Rules and a range of Practice Directions (supplemental protocols issued when required by the courts to regulate proceedings which provide practical advice on how to interpret rules).

A set of 'pre-action rules' have to be followed before a case is brought to court. These rules set out how the courts expect parties to behave prior to the commencement of any claim; they include a timetable which the parties have to follow: for example, a party must disclose to the other the documents (including emails) which it seeks to rely on, as well as the documents which adversely affect or support its own or another party's case; statements are also allowed.

Each potentially defended case is allocated to a 'track' by the court. There are three:

- A 'small claims track' for low-value cases (up to £10,000) which are normally dealt with by way of small claims arbitration in the County Courts. (Hearings in the small claims track are informal and strict rules of evidence do not apply).
- A 'fast track' which is designed to deal with the simpler, lower value cases (up to £25,000) which will normally end up in the County Court; and:

- A 'multi-track' which deals with the rest of the workload of the county and High Courts – e.g. the higher value and more complex cases.

There are opportunities for parties to become involved in Alternative Dispute Resolution (ADR)<sup>5</sup>. Judges can suspend proceedings for up to 28 days to allow the parties to settle the matter through mediation outside of court. Such developments in legal proceedings are becoming increasingly common worldwide.

With criminal cases, many of the duties of the court are the same as with civil cases. For example, the court must identify as early as possible the real issues involved and the needs of witnesses, and discourage delay by setting a timetable for progression of the case. The timetable must ensure that participants cooperate in this progression, whilst evidence is presented in the shortest and clearest way.

The Criminal Procedure Rules govern the way criminal cases are managed. The rules give courts explicit powers to actively manage the preparation of criminal cases waiting to be heard, removing unfair and avoidable delays. The rules apply in all magistrates' courts, the Crown Court and the Court of Appeal (Criminal Division). The Rules are arranged into eleven divisions, reflecting the stages of a criminal trial. These are:

- General matters;
- Preliminary proceedings;
- Custody and bail;

<sup>5</sup> Alternative Dispute Resolution is a generic term which describes a number of techniques that can be used to promote early and cost-effective settlement. One such technique is mediation, whereby a trained neutral mediator acts as a go-between for the parties and facilitates negotiations. The result is consensual (e.g. both parties agree to it).

- Disclosure;
- Evidence;
- Trial;
- Sentencing;
- Confiscation and related proceedings;
- Contempt of court;
- Appeal; and
- Costs.

It is very important that case management principles are also followed closely in the family courts.

The Family Procedure Rules were introduced by statutory instrument in 2010 and came into effect in 2011. They are a single set of rules governing the practice and procedure in family proceedings in the High Court, County Courts and magistrates' courts. According to statute, the 2010 Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved. This means:

- Ensuring that cases are dealt with efficiently and fairly;
- Dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- Ensuring that the parties are on an equal footing;
- Saving expense; and
- Allotting to it an appropriate share of the court's resources, while taking into account the need to spare resources for other cases.

## Sentences

These are the punishments which a court may impose for a criminal offence. Sentencing offenders is one of the most difficult of all the duties a judge has to perform. If a jury finds the defendant guilty then the judge will decide on an appropriate sentence. Magistrates can find a defendant guilty and pass sentence themselves, or send the case to Crown Court for sentencing if the offence is too serious for their own sentencing powers. Judges and Magistrates are guided in their decision-making by the Sentencing Guidelines, which are produced by the Sentencing Council for England and Wales<sup>6</sup>. The sentence imposed on an offender should reflect the crime they have committed and be proportionate to the seriousness of the offence. The guidelines provide guidance on factors the court should take into account that may affect the sentence given.

There are four main types of sentence:

- **Prison:** offenders sometimes spend half their sentence in prison, and the rest on licence in the community. For some this will mean wearing an electronic tag, severely restricting where they can go. If they break the conditions of their licence, they can be sent back to prison for the rest of the sentence.
- **Community sentences:** these combine rehabilitation with activities carried out in the community, such as unpaid work to remove graffiti or clear up litter, getting treatment for drug addiction or keeping to a curfew.
- **Fines:** the most common type of sentence, these are for less severe offences. The amount is set by the court after considering

6 The Council was established in 2010.

the seriousness of offence and the offenders' ability to pay.

- Discharges: these are used for the least serious offences for which the experience of being prosecuted and taken to court is thought to be punishment enough. However, if an offender commits another crime within a set period, a sentence for the original offence as well as a new one can be given.

The judge will take into account mitigating circumstances - circumstances which do not constitute a justification or excuse for the offence in question, but which, in fairness, may be considered as extenuating or reducing the degree of moral culpability. Typical examples are difficult personal circumstances, expressions of remorse or a guilty plea. If an offender does admit to their crime it usually means that they get a reduced sentence with a maximum of a third off when they admit their crime at the very earliest opportunity; the later the plea, the smaller the reduction. Only once the judge has considered all of these factors will the appropriate sentence or punishment be pronounced.

As well as imposing sentences on offenders, the judiciary has also created many sentencing principles through case law<sup>7</sup>. Certain cases then act as examples for other judges, helping them decide an appropriate sentence for a case they are dealing with for the same offence. This is called precedent - what is of concern is not who won or lost the case but the legal principles that can be taken from it.

Listing is the term used for the fixing of dates and times for the hearing of trials and other items of court business. Each day a court will display the cases to be heard on a cause list in order to inform visitors

and the public, media, etc, what is happening on any particular day. This is displayed in a public part of the court and on the internet.

The only information usually provided about parties in the case is the name(s) of the defendant, e.g. Regina (the Queen) v John Smith or R v John Smith and others. The Lord Chief Justice has responsibility for the listing practice of the judiciary as a whole. This is delegated in practice to other Judges who exercise the listing function in individual courts. Presiding Judges have an important role, as they are responsible for allocating cases between different courts on circuit. Their work is overseen by the Senior Presiding Judge.

An important aspect of case management is the measurement of the work flow of the courts of England and Wales, which have Information Technology systems in place to monitor the caseload passing through them. Her Majesty's Courts and Tribunals Service (HMCTS) uses the Activity Based Costing (ABC) system for modelling the activities and tasks relating to categories of cases in each judicial jurisdiction. Measures of working time are estimated for each activity and case category. The results are used to weigh cases for monitoring purposes. However, it should be noted that these systems only relate to courts as a whole and not to individual judges. Similarly, HMCTS provides detailed data on the performance of courts but this is not linked to the performance of individual judges.

## Other parts of the justice system

The justice system is made up of a number of organisations in addition to the judiciary. Amongst the most important are:

The [Ministry of Justice](#), which is one of the largest government departments. It works to protect the

<sup>7</sup> Case law is created by judges' decisions in individual cases – it is the term used to describe the principles of law which can be taken from all the cases on a given subject.



public and reduce reoffending, and to provide a more effective, transparent and responsive criminal justice system for victims and the public. The Ministry has responsibility for making new laws, strengthening democracy, and safeguarding human rights. The Ministry holds responsibility for 500 courts and tribunals and 133 prisons as well as probation services and attendance centres. The Ministry was created in May 2007; for the first time responsibility in one department for criminal justice, prisons, and penal policy (which had previously been within the remit of the Home Secretary) was combined with management of the courts service and legal aid (which had been the responsibility of the Lord Chancellor). The Ministry also took over the work of two previous government departments, the Department for Constitutional Affairs and the Lord Chancellor's Department.

**The Crown Prosecution Service (CPS)** is the government department responsible for prosecuting criminal cases investigated by the Police in England and Wales, and is headed by the Director of Public Prosecutions. It was created in 1986, and its role includes:

- Advising the police on cases for possible prosecution;
- Reviewing cases submitted by the police;
- Determining any charges in more serious or complex cases;
- Preparing cases for court, and presenting cases at court.

Criminal cases come to court after a decision has been made by the Crown Prosecution Service, to prosecute someone for a crime. Crown Prosecutors must decide whether a case passes the two tests laid down in the Code for Crown Prosecutors: is there enough evidence against the defendant for them to be

## The Probation Service

**Did you know** that the Probation Service started as a religious organisation? The earliest Probation Officers, in the late nineteenth century, were Christian missionaries. Their role was to work with petty criminals from London's overflowing prisons – particularly juveniles and first-time offenders - to try and prevent them from committing more crimes.

convicted of the crime in a court of law? And if the prosecutor decides that there is a realistic prospect of conviction, is it in the public interest<sup>8</sup> to prosecute the defendant?

The Crown Prosecution Service also has a multi-agency Witness Care Unit, whose job is to reduce ineffective trials, improve public confidence in the Criminal Justice System, increase victim and witness satisfaction, and bring more offences to justice by providing an enhanced level of information to victims and witnesses. For information on the **Crown Prosecution Service Witness Care Unit**.

**The Police** is a body of persons empowered by the state to enforce the law, protect property, and limit civil disorder. In the United Kingdom they are an arm of the state separate from the military. The development of the Police Service in England and Wales was much slower than in the rest of Europe. In September 1829, the Metropolitan Police Act was passed by Parliament; this led to the founding of the London Metropolitan Police by the Home

<sup>8</sup> 'Public Interest' is a phrase that is traditionally hard to define. The Greek philosopher Aristotle defined it as "common interest" - the foundation for his distinction between "right" constitutions, in the common interest, and "wrong" constitutions that were merely in the interests of the rulers. For further information on 'public interest', please visit 'Public Interest in UK courts', a research project that ran between 2009 and 2011.

Secretary Robert Peel. Nicknamed 'Peelers' in the Minister's honour or 'bobbies', the Police were a deterrent to crime and disorder. There are 43 separate Police Forces across England and Wales; each has a high level of autonomy in terms of how it spends its budget. In London, for example, there is the Metropolitan Police Force, the City of London Police Force, and the British Transport Police (which polices the railways). Each is led by a Chief Constable, and each has a Criminal Investigation Department (CID), that deals with the more complex cases. The majority of Police Officers in this country are not armed.

The Probation Service is a key part of the criminal justice system for England and Wales (Northern Ireland and Scotland have their own systems). The Probation Service is split into areas according to region, similar to the structure seen within the Police. Probation Services are provided by 35 Probation Trusts across England and Wales. Trusts receive funding from the National Offender Management Service (NOMS), an executive agency of the Ministry of Justice, to whom they are accountable for their performance and delivery. Probation can mean either a sentence given by a judge or magistrate whereby an offender is released from confinement but is still under court supervision or a trial period given in lieu of a prison term, or part of a suspended prison sentence. These are sentences carried out in the

community, where the person has to meet certain conditions, such as staying away from a particular place or person, or by doing unpaid work, which is called 'Community Payback. Probation Officers prepare pre-sentence reports for judges and magistrates in the courts to enable them to choose the most appropriate sentence. Probation Officers also work with victims of crimes where the offender has committed a sexual or violent offence and has been given a prison sentence of 12 months or longer. Probation Trusts manage approved premises (hostels) for offenders with a residence requirement on their sentences or licences. Probation staff also work in prisons, assessing offenders, preparing them for release and running offending behaviour programmes. Once people have been released on probation, Reporting Officers keep in contact with them for an agreed period, helping them to reintegrate into the community.

Social services support each local authority in England and Wales, in their duty by law to support, care and protect the neediest of its citizens. This work is done in conjunction with the Department of Health, HMCTS and other relevant public bodies such as the police, voluntary organisations, etc. As regards the family justice system, councils in England and Wales have Children's Services Departments, which work to provide a range of social services for children

## 1217: The first professional judge

Martin de Pateshull, Archdeacon of Norfolk and Dean of St Paul's, becomes a Justice of the bench in 1217; he is the first professional judge. Like Martin, many judges of this era are members of the clergy, for at a time when the church is rich and the King poor, joining the clergy is often seen as a sensible means of support. The first professional judges are appointed from the order of serjents-at-law, (a barrister of the highest rank), who practice as advocates (lawyers) in the Court of Common Pleas - (one of the main English courts for over 600 years).

and families including family support, fostering and adoption, residential care, child protection etc. These services aim to protect and support vulnerable children, and help families to stay together.

The Witness Service provides information and support to people who have seen a crime at first hand. In recognition of the fact that the justice system in England and Wales can seem complicated and participation in it stressful for individuals unaccustomed to it, the Service is present in every court. It supports witnesses for both the prosecution and defence. Victim Support is a charity for victims and witnesses of crime in England and Wales which runs this service. Established in the 1970s, it is now the oldest and largest victims' organisation in the world. Every year, it contacts over 1.5 million people after a crime to offer them help. The Witness Service also provides support to family and friends who are attending court and to children, and operates in Courts Martial. The Witness Service provides information about what to expect in court, including a chance to see the court beforehand and learn about court procedures; it allocates someone to go with a witness into the courtroom to help them feel more comfortable and provides easier access to court staff.

## Juries

A jury is a panel of independent citizens selected to assess the evidence produced by the parties involved in a dispute in court and to come to a verdict on guilt or innocence at the end of a trial. Juries are considered a fundamental part of the English legal system. Members of a jury are known as jurors.

Citizens of England and Wales are obliged to undertake jury service in court when asked. The

Jury Central Summoning Bureau is responsible for finding juries for trials. The bureau operates on a national basis and selects names at random from the electoral register by computer, taking into account the number of prospective jurors needed for each area.

Jury service is unpaid, but people can claim for food and drink, travel and loss of earnings. Jury service usually lasts for ten working days, but can be longer. Jurors are obliged not to tell anybody about the trial, either before or during it, and not to post comments on social media websites. When the jury retire to the jury room to consider their verdict, they hold their discussion in private. The jury is not allowed to communicate with anyone other than the judge and an assigned court officer. The court ensures that nobody violates or eavesdrops on the deliberating jury.

Juries elect a foreperson, who speaks for the jury and announces the verdict in open court. Juries are not required to give reasons for the decision or to disclose any other form of information as to how they reached the conclusion - the verdict of the jury is final.

Juries are predominantly used in criminal cases; indeed, the Crown Court remains the only court in the English and Welsh system in which a judge regularly sits with a jury. The function of the judge is to advise the jury on the law but it is for the jury alone to decide whether an accused is guilty or innocent as charged. When juries sit in civil cases, their function is to decide on how much money should be awarded in damages.

## Sources of law

There are a variety of sources from which law is made in England and Wales. These sources include legislation, common law and European Union law.

The table below illustrates the key differences between the two legal systems.

| Civil law  | Common law   |
|--|--|
| <p>A system commonly used to underpin the legal systems of many European countries. It is based on a series of written codes or laws, which originates with the Roman concept of <i>ius civile</i> (Latin for 'citizen's law'). It was further developed by the French Napoleonic Code of 1804.</p>                      | <p>A system commonly used in many English-speaking parts of the world, it has been established by the subject matter heard in earlier cases and so is law co-created by judges. It originated during the reign of the English King Henry II (1154-89), when many local customary laws were replaced by new national ones which applied to all, and were thus 'common to all'.</p>  |
| <p>Civil law holds legislation as the primary source of law; the court system is usually inquisitorial, unbound by precedent, and composed of judicial officers with a limited authority to interpret law. Independent juries are not used, although sometimes volunteer lay judges do participate.</p>                  | <p>Judges who work in a common law system have more authority to interpret law but are bound by precedent. Indeed, apart from the authority ceded to the European Union following the European Communities Act 1972, Parliament is supreme, because it is the only body that has the right to enact a new law, or alter or reverse a law which it itself has passed. Any law passed by Parliament which clashes with, alters or reverses any part of the common law automatically takes precedence, and becomes the law of the land. Juries are used in criminal and some civil cases.</p> |
| <p>Civil law has an <b>inquisitorial</b> system, whereby one or more judges try criminal cases alone, without juries; they try to get at the truth by inquiring into the case, directing investigations and questioning witnesses. Defendants entering a criminal trial are considered guilty until proven innocent.</p> | <p>Common law has an <b>adversarial system</b>, whereby the parties involved investigate their own cases and call their own evidence. A case is thus argued by two opposing sides who have the primary responsibility for finding and presenting facts. The prosecutor tries to prove the defendant is guilty, and the defendant's lawyer argues for their acquittal. The case is then decided by a judge (or a jury) who does not investigate the facts but acts as an umpire. Defendants entering a criminal trial are considered innocent until proven guilty.</p>                      |

Below is information on each of these sources:

**Legislation** is law created by the legislature, (i.e. Parliament, which consists of the House of Commons and the House of Lords). Acts of Parliament apply in all four countries of the United Kingdom. The Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales can only pass laws on devolved matters which just apply in their own countries.

**Common Law** is a system which originated in England and was subsequently adopted (wholly or in part) by the United States of America and many of the Commonwealth countries. It is a phrase used to describe all those rules of law that have evolved through court cases (as opposed to those which have emerged from Parliament) over the past 800 years<sup>9</sup>. It is very different to the civil law system which today forms the basis of the legal systems of countries in continental Europe. Some other countries have mixed together elements of these systems to create a hybrid legal structure.

**European Union law** has had a major impact on domestic law. The European Community was first created in 1957 when six countries signed the Treaty of Rome. The United Kingdom signed up in 1972, and formally joined the European Community (now called the European Union) on 1 January 1973. European law was incorporated into United Kingdom law by the European Communities Act 1972<sup>10</sup>. Since then, European law has been considered to be a valid and binding source of United Kingdom law. Sometimes Community law and domestic law sit side by side and the litigant (the party to a case) can use either. The Treaty on European Union in 1992, (often referred to as

the Maastricht Treaty), and the Lisbon Treaty of 2009, respectively revised the Rome and Maastricht Treaties and strengthened the European Union's internal functions. The treaties are the primary source of European law. With each treaty the United Kingdom has passed 'delegated legislation' which corresponds to European Communities Acts and ensures that the Treaties take effect as United Kingdom law.

There are also secondary sources of European law; these are laws made under the terms of the treaties generally involving The Council of Ministers and the European Parliament. They are divided into:

- **Regulations**, which are binding and directly applicable to all member states. (This means that they do not have to be transposed<sup>11</sup> into any national legislation). Regulations are the most direct form of EU law - as soon as they are passed, they have binding legal force throughout every member state, on a par with national laws. If there is a conflict between a regulation and an existing national law, the regulation prevails;
- **Directives**, which are used to bring different national laws into line with each other (and are particularly common in matters affecting the operation of the single market such as product safety standards). EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Directives may concern one or more member states, or all of them. Each directive specifies the date

<sup>9</sup> See James Holland and Julian Webb, 'Learning Legal Rules' (Seventh Edition), Oxford University Press, 2010, p. 13.

<sup>10</sup> No distinction has to be drawn between the different jurisdictions within the United Kingdom.

<sup>11</sup> Transposition in a European legal context means a process by which the European Union's member states give force to a directive by passing appropriate implementation measures. Guidance on effectively transposing European Directives into UK law was published by Her Majesty's Government in April 2013.



by which the national laws must be adapted  
- giving national authorities the room for manoeuvre within the deadlines necessary to take account of differing national situations;

- **Decisions of the Court of Justice of the European Union**, which are binding on the parties to whom they are addressed, whether member states or individuals; and
- **Recommendations and opinions**, which have no binding force, but merely state the view of the institution issuing them (such as the European Commission, the body within the European Union which proposes legislation and carries out decisions, or the Council of Ministers).

## The judiciary's relationship with the supranational courts

The supranational courts are those courts whose authority transcends established national borders and which are made up of judges from multiple countries. These courts are, formally speaking, not a regular part of the English and Welsh court system, but they are still of considerable importance, both to it and to all the other member states of the European Union and signatories to the European Convention on Human Rights. This is because as these supranational courts have developed their own extensive case-law, the domestic courts have had to learn to understand and react to their judgments and decisions.

**The Court of Justice of the European Union (CJEU)** in Luxembourg is the highest court in the European Union in matters of European Union law. Created in 1951, it is responsible for:

- Interpreting and enforcing European Union law and seeing that it is applied equally in all the member states;

## The European Court of Human Rights



Photo Credit: theholylama at Flickr.com

**Did you know** that the building housing the European Court of Human Rights in Strasbourg was designed by the British architect Lord Richard Rogers in 1994?

- Settling legal disputes between European Union governments and institutions;
- Hearing cases brought by individuals, companies or organisations who feel their rights have been infringed by a European Union institution.

The Court of Justice can make preliminary rulings on cases handed up by national courts. A reference for such a ruling may also seek to review the validity of an act of European Union law. The Court of Justice's reply is not merely an opinion, but takes the form of a judgment or reasoned order. The national court to which it is addressed is, in deciding the dispute before it, bound by the interpretation given, as are other national courts before which the same problem is raised.

Most of the Court's better known judgments have been delivered under this mechanism. At the request of the national court, the Court gives its interpretation of the relevant European Union law, but the Court does not actually decide the substance of the case, which returns to the national



court for a decision, based on the Court of Justice's interpretation. On the whole, the Court of Justice is obliged to deal with all cases referred to it.

The court is made up of one judge from each of the 28 member states and eight Advocates-General and is based in Luxembourg. Their job is to present opinions on the cases brought before the Court, publicly and impartially. Court of Justice rulings are binding on nations and citizens via two principles, which emerged from two significant cases during the 1960s:

- Direct Effect (first introduced in the case *Van Gend en Loos* in 1964): It enables European citizens to rely directly on rules of European Union law before their national courts; and
- Supremacy or primacy of Community law over domestic law: (first introduced in the case *Costa v Ente Nazionale per l'energia Elettrica – ENEL* - in 1964).

The results of these cases meant that the Court of Justice could use powers previously the preserve of nation states.

The relationship which the judiciary of England and Wales enjoys with the European Court of Human Rights (ECHR) in Strasbourg is different, because there is no preliminary ruling procedure. Instead, individual citizens can petition the court once domestic remedies have been exhausted. The domestic courts of England and Wales have no control over which cases become the subjects of an application to the European Court of Human Rights, or over which cases are held to be admissible by this court. Thus the judiciary may not be able to conduct a dialogue with the Strasbourg court through its judgments to indicate to that court what the domestic court within England and Wales thinks the answer should be. Neither the Court of Justice of the European Union nor the European Court of Human

Rights can enforce their own judgments, but the former can issue penalties for non-compliance and the Committee of the Council of Europe supervises the execution of judgments of the Court in Strasbourg.<sup>12</sup>

The European Court of Human Rights was established in 1959, with the power to adjudicate cases involving its application. It is wholly separate from the Court of Justice of the European Union. Judges are drawn from each of the member states. They are elected by the Parliamentary Assembly of the Council of Europe for a non-renewable term of nine years.

In almost 50 years the Court has delivered more than 10,000 judgments. These are not binding, but must be 'taken into account' by the governments concerned, and have led to changes in legislation and administrative practice in a wide range of areas.

The European Convention on Human Rights was created by the Council of Europe. Although it shares common routes with the European Union, the Council is separate. The Convention was signed in Rome in 1950, and incorporated into the law of this country by the Human Rights Act 1998, which came into force in October 2000.

The Act has given judges in England and Wales the duty to interpret legislation consistently with Convention Rights; where this cannot be achieved, the domestic courts can declare such laws incompatible with Convention rights by issuing a 'declaration of incompatibility,' but cannot dis-apply an existing Act of Parliament.

Another key supranational court is the International

<sup>12</sup> The Council of Europe is separate from the European Union. It is a political association of European states founded in 1949 which promotes co-operation between them with regards to the rule of law. Its Committee of Ministers is made up of the Foreign Ministers of all of the 47 Member States.

Criminal Court (ICC), which is the first permanent, treaty-based, international criminal court. Established following the entry into force of the Rome Statute in July 2002 after ratification by sixty countries, the Court seeks to help end impunity for the perpetrators of the most serious crimes of concern to the international community such as war crimes and genocide. It is independent of the United Nations, and is based in The Hague in Holland.

The Rome Statute was given effect in law in England and Wales and Northern Ireland through the International Criminal Court Act 2001. This Act stipulates that 'where the Secretary of State receives a request from the International Criminal Court for the arrest and surrender of a person alleged to have committed an International Criminal Court crime, or to have been convicted by the International Criminal Court, he shall transmit the request and the documents accompanying it to an appropriate judicial officer'.

The relationship the judiciary of England and Wales has with this court and the other member states is different to the one they have with the other supranational courts, because the court's function is to prosecute individuals, for crimes committed on or after the date it was formed. It complements existing national judicial systems by only exercising its jurisdiction when national courts are unwilling or unable to investigate or prosecute such crimes.

The [International Criminal Court](#) is another key supranational court and is the first permanent, treaty-based, international criminal court.

## Change and reform

Modernisation and the improvement of delivery are key priorities for the court service; as of 2013, a number of key projects are underway to achieve this. Many of these reforms focus on making better use of

Information Technology (IT) in courts; other reforms are looking at issues such as greater community involvement in the delivery of justice and a more rapid turn-over of cases.

Some of the key technical changes underway are as follows:

[Streamlined digital working](#): the criminal justice digitisation programme will deliver an efficient process for the preparation and use of a single digital file - instead of paper - to carry out the criminal justice process. This will be for each case that goes to court and is jointly used and owned by the Police, Crown Prosecution Service and Her Majesty's Courts and Tribunals Service. Crown Prosecution Service prosecutors are beginning to use tablet devices to prosecute cases in open court.

[Increased use of video technology](#): this is now being used routinely across the criminal justice system, reducing the need for Police and civilian witnesses to appear in court. Currently any witness in criminal proceedings, other than the defendant, may give evidence by live video link, on application to the court. Police Officers have now started giving evidence in trials via a video link from a police station.

["Virtual courts"](#) have been established in some areas which facilitate first hearings from Police stations to magistrates' courts. This allows proceedings to take place more quickly, and reduces the need for prisoners and papers to be transported. Other Information Technology initiatives currently underway include the establishment in July 2012 of an independent Police Information and Communications (ICT) Company, jointly owned by the Association of Police Authorities and the Home Office and the launch of an Open Justice internet micro-site which allows the public to access local crime maps and local court performance information, thus promoting greater transparency and accountability.

Administrative reforms are also underway which focus on procedures. Two reform programmes are being implemented by the judiciary to strengthen the way that cases are managed through the courts – the Early Guilty Plea Scheme for Crown Court cases and Stop Delaying Justice in the magistrates' courts. The former scheme involves early identification and fast-tracking to an early hearing of those cases likely to plead guilty, or where the case for the prosecution is overwhelming. Defendants who plead guilty at this hearing are afforded the maximum reduction in sentence available for a guilty plea under existing guidelines, and are sentenced on the same day; early assessments of the scheme have been encouraging. Stop Delaying Justice is seeking to ensure that trials are fully case-managed at the first hearing and disposed of at the second hearing. It has led to a more robust approach to applications for adjournments.

There is a new emphasis on a community-based approach to justice. Elections were held for the first time in November 2012 for Police and Crime Commissioners. These individuals have been appointed and have replaced old-style Police Authorities. They are holding Chief Constables to account to ensure that policing is available and responsive to communities and are also commissioning services for victims of crime. Neighbourhood Justice Panels are also being established in 15 areas. These involve community representatives working together with local authorities, local agencies and police; they are using restorative justice techniques<sup>13</sup> to combat low-level offending.

Following lessons learned from the riots which took place in London and several other English city

centres in August 2011, and from a pilot scheme for shift-sittings at Croydon Crown Court, the Ministry of Justice is considering how flexible courts might better support the criminal justice system and its users. They are looking at potential changes to court operating hours such as evening and weekend courts, (as happened during the riots), so that cases can be processed more quickly.

By closing courts that are underused, the system will cost the taxpayer less money to operate; resources will be targeted in a more focused way so that more can be saved from running and maintaining unnecessary buildings. This will leave extra money to be invested in upgrading facilities, improving services and developing innovative ways to deal with cases to the benefit of those who use the courts and the community at large.

## History and myths

Judicial robes are just about the most distinctive working wardrobe in existence. Judges and barristers traditionally wear court dress – wigs, gowns, robes and white bands. The wearing of wigs first became fashionable in 17th Century France. Modern robes, introduced in 2008, are lighter and easier to wear than the old ones. Judges wear robes; barristers wear gowns. Full ceremonial dress is only worn these days for formal ceremonies such as the Opening of the New Legal Year every October.

Different colours on the robes denote the different types of courts the judges are sitting in. Chairpersons and judges in tribunals always wear business suits and not wigs or gowns. If you are visiting the Royal Courts of Justice, a selection of robes is available to view in the Costume Gallery on the first floor, above the Great Hall. There you will also find more information on how these robes have evolved over the centuries.

<sup>13</sup> Restorative justice techniques enable the victim, the offender and affected members of the community to be directly involved in responding to the crime, often through face-to-face meetings.

Some of the most famous trappings associated with judges are as follows:

**Gavels:** Contrary to popular myth, these wooden hammers are not and never have been used in the criminal courts of England and Wales.

**The black cap:** This is based on court headgear in Tudor times. It was traditionally put on by judges passing sentence of death. Since the permanent 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.

**Red ribbons/tape:** Traditionally this is symbolic of all things bureaucratic because red or 'pink' tape was once used to tie up official papers. 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.

**Wigs:** These made their first appearance in a courtroom because of their popularity in wider society. The reign of King Charles II (1660-1685) made wigs essential wear for the wealthy, although wigs do not seem to have been adopted wholesale by the judiciary until 1685. The reign of King George III (1760-1820) saw wigs gradually go out of fashion. Judges wore only full-bottomed wigs until the 1780s, when the less formal, and smaller, bob-wig, was adopted for civil trials. The full-bottomed wig continued to be used for criminal trials until the 1840s, but is today reserved for ceremonial dress; smaller wigs are used on a day-to-day basis.



*Examples of judge's dress on display at the Royal Courts of Justice, London*





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## The Royal Coat of Arms

**Did you know** the Royal Coat of Arms appears in courtrooms in England and Wales? The crest depicts justice coming from Her Majesty the Queen, and shows that a law court is part of the Royal Court (hence its name). Judges and Justices of the Peace are therefore officially representatives of the Crown. Lawyers and court officials traditionally bow to the judge or magistrates' bench when they enter the court room to show respect for the Queen's justice.

The crest is not always displayed in all of the spaces in which tribunals take place. This is because some of these spaces are not specifically designed with legal functions in mind. For example, Hearing Rooms can be found in hospitals or other such similar institutions.

The Royal Coat of Arms came into being in 1399 under King Henry IV and is used by the reigning Monarch. The motto on it is in French – Dieu et mon droit - which means 'God and my right', referring to the divine right of the Monarch to govern.

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## Part 3: Judges in England and Wales

### The Lord Chief Justice

The Lord Chief Justice is the most senior judge in England & Wales and President of the Courts of England and Wales. Under the Constitutional Reform Act 2005, the Lord Chief Justice has some 400 statutory duties (i.e. duties that are required by law). His key responsibilities include:

- Representing the views of the judiciary of England and Wales to Parliament and Government;
- Overseeing the judiciary's welfare, training and guidance;
- Discussing with Government the provision of resources for the judiciary, (which are allotted by the Lord Chancellor); and:
- Deploying judges to and allocating work to the courts of England and Wales.

### The Heads of Division

Supporting the Lord Chief Justice in his role are five very senior Judges; the [Senior President of Tribunals](#) and four Heads of Division, each responsible for a particular part of the law and the court structure. In order of seniority they are: the Master of the Rolls; the President of the Queen's Bench Division; the President of the Family Division; and the Chancellor of the High Court.

The [Master of the Rolls](#) is second in judicial seniority to the Lord Chief Justice, and is Head of Civil Justice and President of the Civil Division of the Court of Appeal. He is also a Judge of the Court

## Master of the Rolls

[Did you know](#) that the office of the Master of the Rolls was created hundreds of years ago, to protect all charters, patents and records of the most important judgments and decisions made by the courts? (These were recorded on parchment rolls, hence the name). Famous Masters have included Thomas Cromwell (an ancestor of Oliver Cromwell) and Lord Denning. Today the Master of the Rolls is a member of the Court of Appeal and is the leading judge dealing with that court's civil work.

of Appeal. The Master of the Rolls is consulted on matters such as the civil justice system and rights of audience<sup>14</sup>.

The Heads of Division and the judges of the Court of Appeal are addressed as 'The Right Honourable', followed by their judicial titles. In court they are called 'My Lord' or 'My Lady'.

## The Court of Appeal

The judges of the Court of Appeal are senior judges with lengthy judicial experience, who hear both criminal and civil appeals which have been referred up to them from the High Court and the Crown Court and County Courts. Traditionally, such judges are also appointed to the ranks of the Privy Council<sup>15</sup> and are therefore known as 'The Right

14 'A right of audience' means the right to appear in court. In English law, it is most associated with lawyers – barristers and solicitors – but it can also refer to persons granted rights by statute, such as Local Government officials, people representing themselves in court (known as litigants in person) and persons so allowed at the discretion of the court.

15 The Privy Council is made up of people appointed by Her Majesty the Queen as a reward for political and public service. Appointments are made on ministerial advice and are for life. The Council dates back to the earliest days of the



Honourable Lord or Lady Justice'. They almost always sit in the Royal Courts of Justice in London, although occasionally the Court of Appeal has sittings elsewhere in England and Wales.

## High Court Judges

High Court Judges are assigned to one of the three divisions of the High Court – the Chancery, Queen's Bench or Family Division. High Court judges are mainly based in London, but also travel to major court centres around the country. For example, Chancery Division judges also hear cases in Cardiff, Bristol, Birmingham, Manchester, Liverpool, Leeds and Newcastle.

High Court judges try serious criminal and important civil cases and assist the Lord Justices of Appeal to hear criminal appeals.

The official designation of a High Court judge is 'The Honourable Mr/Mrs Justice Name'; they are referred to as 'My Lord' or 'My Lady' in court.

## Circuit Judges

Circuit Judges are appointed to one of the six circuits in England and Wales, and sit in the Crown and County Courts within their particular region.

Some Circuit Judges deal specifically with criminal or civil cases, while others are authorised to hear public and/or private law family cases. Some may sit in specialised civil jurisdictions, hearing, say, chancery or mercantile cases. They can hear both fast track civil claims, (for between £5,000 and £25,000) and multi-track claims, (e.g. claims for over £25,000 which may appear before a High Court).

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Monarchy. The Council is used to gain inter-departmental agreement on those items of Government business which, for historical or other reasons, fall to Ministers as Privy Counsellors rather than as Departmental Ministers.

## High Court Judges

**Did you know** that High Court Judges are often called 'Red Judges' because of the colour of the robes they traditionally wear?

## Recorders

Recorders are a type of fee-paid judicial office-holder who sit in both Crown and County Courts. (Fee-paid Judges are part-time and sometimes deal with less complex or serious cases. They are paid according to the number of sittings or days worked). They are solicitors or barristers with at least ten years practice before these courts. Their jurisdiction is broadly similar to that of a Circuit Judge, but they generally handle less complex or serious matters coming before the court. Recorders are required to manage cases actively as well as to determine claims at trial. A recorder's duties include assisting the parties to prepare for trial, presiding over court proceedings and delivering judgments in both applications and contested trials. It is often the first step on the judicial ladder to appointment to the Circuit bench. Appointments are made for five years, and Recorders normally sit for between 15 and 30 days a year.

## District Judges

District Judges are full-time judges who deal with the majority of cases in the County Court. In the Family Court, District Judges hear most of the cases involving the division of family assets and, along with the Circuit Judges, they also hear the cases involving children. They preside over a wide range of family and civil law cases such as claims for damages and injunctions, possession proceedings against mortgage borrowers and property tenants,

divorces, child proceedings, domestic violence injunctions and insolvency proceedings. District Judges are assigned on appointment to a particular Circuit and may sit at any of the County Court or Family Court hearing centres or District Registries of the High Court on that circuit. These Judges deal with the small claims track (for claims up to £10,000 in value) and fast track (for claims up to £25,000) but can also deal with multi-track cases over £25,000. They sit for 215 days a year.

## Deputy District Judges

Deputy District Judges are part-time and fee-paid. They sit in the County Courts and District Registries of the High Court for between 15 and 50 days a year. In general their jurisdiction is the same as that of a District Judge.

## District Judges (Magistrates' Courts)

District Judges (Magistrates' Courts) are legally qualified, full-time salaried Judges who sit alone in court without a legal adviser. District Judge (Magistrates' Courts) hear the longer and more complex cases - criminal, youth and some civil proceedings - which come before the magistrates' courts. They do not normally wear robes in court. The Senior District Judge, the Chief Magistrate, is responsible for hearing many of the most sensitive,

lengthy or complex cases in the Magistrates' Courts and in particular extradition and special jurisdiction cases.

Deputy District Judges (Magistrates' Courts) are fee-paid part-time judges, who sit for a minimum of 15 days a year. In general, their jurisdiction is the same as that of a District Judge (Magistrates' Courts).

## Magistrates (Justices of the Peace)

Magistrates, or Justices of the Peace, are members of the local community without legal background or knowledge who act as judges in the magistrates' court. They bring a broad experience of life to the bench, working part-time and dealing with over 95% of all criminal cases. These are the less serious cases, such as minor theft, criminal damage, public disorder and motoring offences. Justices of the Peace sit with a qualified Legal Adviser.

Justices of the Peace can also hear some civil and family cases involving unpaid Council Tax, Television Licence evasion and child custody and adoption. Justices of the Peace cannot normally impose sentences of imprisonment that exceed six months (or 12 months for consecutive sentences), or fines exceeding £5,000. Justices of the Peace receive support in court from Legal Advisers (they cannot in fact hear cases without them), and must sit for at

### 1642: Judges "during good behaviour"

King Charles I is forced to agree to the appointment of judges "during good behaviour"; their salaries are raised from under £200 to £1,000 a year in 1645. However, in 1668 the system of appointments "during pleasure" is re-introduced, and King Charles II and his successor King James II sack 23 judges in just 14 years. Judges now know that their jobs are at risk if the sovereign does not like their judgments.

least 26 half-days a year. Justices of the Peace are unpaid, although they do receive reimbursement for their travel and expenses.

## Masters and Registrars

The Masters and Registrars are the procedural judges for the majority of the civil business in the Chancery and Queen's Bench Divisions who deal with all aspects of an action, from its issue until it is ready to go ahead in court, where it is presided over by a trial judge (usually from the High Court). After the trial the Master resumes responsibility for the case.

They are based at the Royal Courts of Justice.

The Masters comprise:

- the Senior Master and nine Queen's Bench Division Masters;
- the Chief Master and five Chancery Masters; and
- the Chief Registrar and five Bankruptcy Registrars.

One of the Queen's Bench Division Masters is the Admiralty Registrar.

Masters undertake interlocutory work, which means that they act as gatekeepers for judges, sifting through the thousands of public claims which come in every year concerning issues such as personal injury, negligence and tort<sup>16</sup>, to make sure that only the most serious are put in front of a judge in court. They can hear cases in their offices, and always try to gain a 'consent order', whereby the parties reach agreement out of court. Practice Masters offer procedural advice.

The Masters deal with over 5,000 public claims a year.

In courts around the country outside of the Royal

<sup>16</sup> Tort is a civil wrong not arising out of a contract or statute (an Act of Parliament).

## The Justice of the Peace: A short history

Justices of the Peace were the earliest form of 'community policing'. The office dates back to 1195, when King Richard I made a royal proclamation that 'knights of the peace' should assist sheriffs with the keeping of law and order. The actual title was created by King Edward III in 1361. Well respected members of the community were, as Justice of the Peace, given powers to conscript ordinary citizens who became known as 'Constables' and who kept order in public houses and at executions – they would go on to become the nucleus of the fledgling police force. Justices of the Peace also employed 'thief-takers' to catch criminals, who were themselves often former criminals. Until the nineteenth century and the election of County Councils, Justice of the Peace also acted as de facto councillors, fixing wages, regulating food supplies, building and managing roads and bridges and providing other local services at county level. Women in Britain were not allowed to become Justices of the Peace until 1919. Today in England and Wales approximately half of Justices of the Peace are women.

Courts of Justice the interlocutory work Masters and Registrars do is undertaken by District Judges.

## Coroners

Coroners investigate sudden, violent or unnatural deaths. They are barristers, solicitors or medical practitioners of not less than five years standing, who continue in their legal or medical practices when not sitting as coroners. As of 2012 there were 98 coroners and around 400 deputy and assistant deputy coroners serving 111 coroner jurisdictions across England

and Wales, lead by a Chief Coroner. 32 of these coroners are full time and salaried. The remainder are paid according to the number of cases referred to them. The coroner's jurisdiction is territorial - it is the location of the body that dictates which coroner has jurisdiction in any particular case. Coroners are required to appoint a deputy or assistant deputy to act in their stead if they are out of the district. (The deputies have the same professional qualifications as the coroner). Coroners and their deputies are supported by Coroners' Officers, who, when a body is discovered, carry out investigations on the Coroners' behalf, receive reports of deaths, make inquiries and liaise with relatives.

The post of Chief Coroner was established under the Coroners and Justice Act 2009 to provide national leadership to the coroner with the aim of providing better local services to the bereaved. The first Chief Coroner was appointed in May 2012 and took up his post that September. (Although legal qualifications and experience are often required for the role, it has only been since 2012 that coroners have been considered to be members of the courts judiciary). The Judicial Office has established an Office of the Chief Coroner to support him in his role. Since 2013 the Judicial College (the body responsible for training judges) has been responsible for the delivery of training to coroners.

## Ticketing

Judicial office-holders can be 'authorised' to deal with different types of cases, which is often referred to as

## Princess Diana Inquest

**Did you know** that Lord Justice Scott Baker, the Coroner in the Diana Inquest (investigating the death of Princess Diana in 1997) had to study around 6,000 pages of evidence before commencing the inquest?

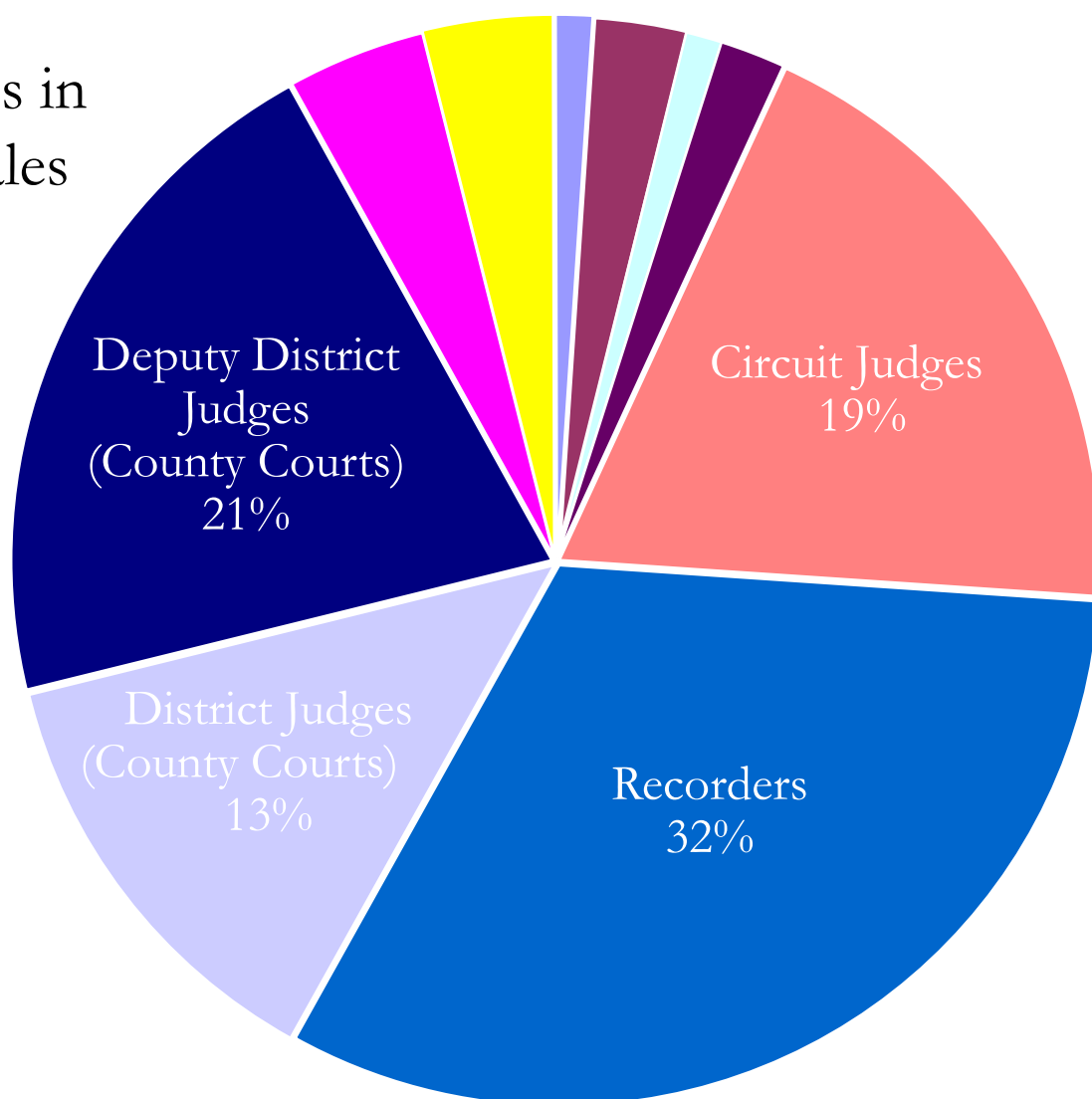
'ticketing'. Different types of matters require judicial office-holders to have specialist knowledge, skills or expertise to deal with a case; for example, dealing with Family Public Law cases or serious sexual offences. If a judicial office-holder requires an authorisation, it is necessary for the Presiding or Family Division Liaison Judge to support the request, which is then approved by the Head of Division or another senior judge. It may be necessary for the office-holder to undertake specialist training.

Once a judge has been authorised in a particular jurisdiction or to deal with a certain type of case, he or she is sent a letter to confirm their authorisation (this was once known as 'a ticket'). The most common types of ticketing are for Private and Public Law (Family); Civil Law; Attempted Murder; Murder; and Serious Fraud.

## 1701: The Act of Settlement is passed.

Along with the Bill of Rights 1689, this Act remains today one of the main constitutional laws governing the succession to the throne of the United Kingdom. The Act contains, among other things, items on paying judges' salaries out of public funds, and preventing judges being removed or suspended from office, "unless by due cause of law".

## Split between types of Judges in England & Wales 2012



|   |   |      |
|---|---|------|
| ■ | Recorders   | 32%  |
| ■ | Deputy District Judges (County Court)   | 21%  |
| ■ | Circuit Judges  | 19%  |
| ■ | District Judges (County Court)  | 13%  |
| ■ | District Judges (Magistrates' Courts)   | 4%   |
| ■ | Deputy District Judges (Magistrates' Courts)  | 4%   |
| ■ | High Court Judges   | 3%   |
| ■ | Deputy Masters, Deputy Registrars, Deputy Costs Judges and Deputy District Judges *(PRFD)         | 2%   |
| ■ | Heads of Division / Lord Justices of Appeal   | 1%   |
| ■ | Masters, Registrars, Costs Judges and District Judges (Principal Registry of the Family Division) | 1%   |
| ■ | Judge Advocates & Deputy Judge Advocates  | < 1% |

\* Principle Registry of the Family Division

## Part 4: Judicial Governance and administrative responsibilities

### Additional responsibilities

Judges often hold additional responsibilities beyond their day-to-day duties.

#### Leadership responsibilities

The key leadership responsibilities are held by the following judges:

The [Lord Chief Justice](#) has leadership responsibility for all of the judicial family in addition to his responsibilities as chairman of the Judicial Executive Board, the Judges' Council and the Criminal Procedure Rules Committee.

Each of the [Heads of Division](#) (the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division and the Chancellor of the High Court) has leadership, management and pastoral responsibility for the judges of his or her own Divisions; (in the case of the Master of the Rolls this includes for the Lord Justices of Appeal). The Heads of Division also have responsibility for those specialist judges doing civil or family work throughout the country.

The [Senior President of Tribunals](#) has statutory responsibilities comparable to those of the Lord Chief Justice in relation to the management and welfare of the tribunals' judiciary, and a similar power and responsibility to make representations to Parliament and to represent the views of tribunal members.

The [Senior Presiding Judge](#) specifically acts as the chief of staff to the Lord Chief Justice, advising him and exercising many delegated powers in relation to the management and deployment of the judiciary around the country. The Senior Presiding Judge co-ordinates and oversees the work of the Presiding Judges for each Circuit.

The [Head of International Judicial Relations](#) is a senior Court of Appeal judge with specific responsibility for the judiciary's relations outside of Europe and also its relations with the supranational courts: the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR). The Judge's key tasks are to identify areas where the judiciary of England and Wales can proactively forge stronger relations with other judiciaries and to direct the prioritisation of activities. Since the passing of the Constitutional Reform Act 2005, the judiciary manages its own international relations, which support a series of objectives established by the Lord Chief Justice.

The [Chair of the Judicial College](#) is a senior Court of Appeal judge who chairs the Judicial College Board and in so doing sets the overall strategy for the College, agrees business plans and oversees the delivery of training within the budget allocated to the College. The Chair is also a member of the Judicial Executive Board, through which he/she advises and supports the senior judiciary in training issues.

[Presiding Judges](#) exercise leadership authority in their Circuits and Courts, on behalf of the Lord Chief Justice. Presiding Judges assist the Lord Chief Justice and the Senior Presiding Judge in discharging their overall responsibility for representing the views of the judiciary; for maintaining appropriate arrangements for the welfare, training and guidance of the judiciary; and for the deployment of the judiciary and the allocation of work within the courts.



**Resident Judges** assist the Presiding Judge by taking responsibility for leading the judiciary at their own courts, and for ensuring the smooth running of business. Resident Judges have a pivotal role to play in ensuring that each court is run as efficiently and effectively as possible and that the other judges and the staff at the court play their part. They ensure monthly performance statistics such as waiting times are analysed and steps are taken to address issues arising and give guidance for the efficient conduct of the business of the court; and ensure that cases of particular importance or sensitivity are heard by a judge specifically assigned to that case. In some major cities Resident Judges are also made Honorary Recorders by local councils; this means they have civic responsibilities, in addition to their authority over the judicial administration of criminal justice for a large area.

**Designated Family Judges** are appointed to courts which have heavy workloads in these particular areas. Designated Family Judges have overall responsibility for the conduct and timely completion of all public and private family law cases, spending most of their time on family work - approximately 75 per cent. They are based at one court but regularly visit all of the other family courts within their circuit. Other duties they undertake include overseeing visiting Circuit Judges and Recorders, providing mentoring and advice when needed and liaising on local issues and delays.

**Designated Civil Judges** are appointed to courts which have heavy workloads in these particular areas, and have responsibility for the overall strategy for civil justice within a group of courts, under the guidance of the Presiding Judges. They sit for the greater part of their time hearing civil work and visit each court regularly, dealing with issues of judicial deployment, judicial and administrative resources and allocation of work.

**Diversity and Community Relations Judges (DCRJJs)** act as a link between the judiciary and the community. They aim to engage with the community, increase their trust in the law and contribute to progress towards a more diverse judiciary. Their activities are targeted according to the specific issues of their local area. They host school visits, preside over mock trials, host marshalling schemes for schools, law students and lawyers<sup>17</sup>, forge links with local universities to facilitate activities which promote a judicial career, and share knowledge to create a better public understanding of issues such as forced marriages. The judiciary recognises that it needs to become more diverse so as to better reflect society as a whole and enhance public confidence. As of April 2013, 24.3% of the courts judiciary in England and Wales other than Justices of the Peace (JP) were women. As of 31 March 2013, 51.8% of JPs were female. Tribunals have a higher ratio of female to male judges, with 43.2% of such office-holders across the United Kingdom being female as of 1 April 2013.

In magistrates' courts, the **Magistrates' Liaison Judge** chairs an Area Judicial Forum. The role of the Forum is to:

1. Help ensure that magistrates who sit in the Crown Court are treated in every way as full members of the Court;
2. Arrange for magistrates to attend the Crown Court from time to time as observers;
3. Swear-in new magistrates; , and;
4. Ensure that there is in place a system for appropriate communication between

<sup>17</sup> Marshalling is the shadowing of judges by law students. It is undertaken by judges at all levels, including the High Court.

magistrates sitting in the family jurisdiction and the Designated Family Judge.

The judiciary also maintains close links with the supranational courts. (These are courts not of any one particular country which practice international law)

### Administrative responsibilities

The amount of time judges sit varies depending on the type of judge. Fee-paid positions are paid according to the number of sitting days worked, which is generally at least 15 a year.

All judges also have out-of-court duties to perform such as reading case papers, writing judgments, and keeping up-to-date with new developments in the law. In addition, some judges also undertake additional responsibilities by sitting on various boards and committees, which play a key role in the effective delivery of justice in this country. Some of these responsibilities are listed below:

- **Local Criminal Justice Boards (LCJBs)** bring together the chief officers of the criminal justice system agencies to co-ordinate activity and share responsibility for delivering criminal justice in their areas. There is a network of 42 such boards across the country. Each contains a Circuit Judge from the local area as a point of liaison.
- Circuit Judges who sit in the Crown Court are also members of the **Probation Board** for their local area. Appointed by the Lord Chancellor, their role is to spot problems and identify issues such as how resources should best be used, whilst ensuring special attention is paid to the matters in which the court has a particular interest, such as changes that are brought about by Acts of Parliament when they relate to the work

of the criminal courts or the Probation Service.

- The **Civil Procedure Rules Committee**, which was established as part of the 'Woolf reforms'<sup>18</sup> of the 1990s. It is an advisory non-departmental public body set up to manage the Civil Procedure Rules and make rules of court for the Civil Division of the Court of Appeal, the High Court and the County Courts. The Committee is chaired by the Master of the Rolls, who is also Head of Civil Justice. Other judicial representatives on the Committee include the Deputy Head of Civil Justice, two High Court judges, a High Court Master, a Circuit Judge, two District judges and several barristers and lawyers, as well as lay members<sup>19</sup>. The Civil Procedures Rules which were brought in by these reforms have been further developed by the 'Jackson Review'<sup>20</sup>, which has also led to further changes to the way in which civil cases are funded<sup>21</sup>.
- The **Criminal Procedure Rules Committee**, which is responsible for modernising court procedure and practice for criminal cases. The Committee is made up of members from across the criminal justice system and meets regularly to ensure that there is effective consultation on proposals to make or update the Rules. It is chaired by the Lord Chief Justice and is made up of a number of judges and other key individuals within the justice system such as the

18 Named after Lord Woolf, the then Master of the Rolls.

19 A lay person is someone who does not have specialised or professional knowledge of a subject.

20 Named after a judge of the Court of Appeal, Lord Justice Jackson.

21 These reforms came into effect in April 2013.

Director of Public Prosecutions (DPP)<sup>22</sup> and a representative of the Association of Chief Police Officers.

- The **Family Procedure Rules Committee**, which updates the Family Procedure Rules, which are a single set of rules governing the practice and procedure in family proceedings in the High Court, County Courts and magistrates' courts. They are updated as necessary in the light of legislative changes, representations by practitioners (those who practice law) and stakeholders (other people who are not practitioners but nonetheless have a legitimate interest in how the law is framed), and their own proposals for improvements. The Committee is chaired by the President of the Family Division. It is made up of representatives from all of the different levels of the judiciary – a Judge of the Court of Appeal, a Judge of the High Court, a Circuit Judge, a District Judge of the Principle Registry of the Family Division, a District Judge of the County Court and magistrates' courts and a Justice of the Peace, as well as barristers, solicitors, a justice's clerk<sup>23</sup>, and a representative of the Children and Family Court Advisory Support Service (CAFCASS)<sup>24</sup>.
- The **Judicial Appointments Commission (JAC)**, which decides who to appoint

as judges. The JAC employs 15 commissioners, who select candidates for judicial office on merit, through fair and open competition, from the widest range of eligible candidates. Five of the Commissioners are judges, with the rest being drawn from the legal profession, the magistracy and the public.

- Other important bodies through which judges exercise responsibility include **Councils** and **Commissions**. These fulfil a variety of tasks, amongst the most important of which are developing guidelines for the sentencing of offenders. This is done by the **Sentencing Council**, an independent body consisting of a Chairman, seven judges and six non-judicial members which develops sentencing guidelines and monitors the application of the guidelines by judges in court.

## Inquiries and Inquests

**Inquiries** are official reviews of events or actions which are ordered by a government. They are held in common law countries. In the United Kingdom, inquiries are conducted on behalf of the Crown and are headed by an appointee chosen by the government. From time to time judges are called upon to chair such inquiries, because of their impartiality and experience. The inquiry investigates issues of serious public concern by scrutinising past decisions and events.

A public inquiry accepts evidence and conducts its hearings in a public forum. Interested members of the public, companies, organisations, etc. are invited to make submissions of evidence in writing, and can also listen to oral (spoken) evidence given

<sup>22</sup> The DPP is the senior prosecutor in the Crown Prosecution Service, responsible for prosecutions, legal issues and criminal justice policy.

<sup>23</sup> Justice's clerks and Assistant justice's clerks are officials who give legal advice to magistrates, both in individual cases and more generally, through training courses, etc. They are independent of direction, other than by the High Court.

<sup>24</sup> The Children and Family Court Advisory Support Service is a non-departmental public body.

by other parties. Records created by or given to the inquiry therefore become public records.

Sometimes inquiries receive evidence in private, (as with the 2009-2011 Chilcott inquiry into the Iraq War), or they do not make all of their findings public.

**Inquests** are a type of inquiry held to establish the cause of death of anybody who appears to have died by violent or unnatural means, or who has died in prison. In high profile cases senior judges may be specially appointed to oversee an inquest.

## The independence of the judiciary

Judicial independence means that judges are not subject to pressure and influence and are free to make impartial decisions based solely on fact and law. It is embodied in statute in the judicial oath and runs through legal training, judicial culture and judicial education. It ensures that judges are not subject to political pressure and the dictates of the legislature (Parliament), or public pressure or that of individual interest groups.

Judicial independence from the **Executive** (the government) and the **legislature** is an essential part of democracy and rule of law. It ensures that power is not held in one entity, so reducing the risk of tyranny, and it provides assurance of impartial hearings (including disputes with the Executive). Independence for judges at an individual level means that no judge is accountable to another for any judicial decision that they make; they are held to account instead through the appeals process. Judges are also given immunity from prosecution for any acts they carry out in performance of their judicial function.

The judiciary is one of the three branches

of the state. The other two are the executive, (government), and the legislature, (which comprises the two Houses of Parliament, the Lords and the Commons). In most democracies these three branches are separate from each other, with roles and functions defined within written constitutions, preventing the concentration of power in any one branch and enabling each to serve as a check on the other two – this is known as **separation of powers**.

The United Kingdom famously and almost uniquely, does not have a constitution that is contained in a written constitutional instrument (it is 'unwritten'); this is one of the consequences of the way the country and its political and legal institutions have evolved since the Norman Conquest of 1066. The constitution is found in the statutes passed by Parliament and in **common law**, the law developed over the centuries in the decisions of the courts. Traditionally the United Kingdom's institutions did not separate the functions and powers of the three different branches of the state. For example, until the creation of the Supreme Court in October 2009 the highest court for the entire United Kingdom was the **Appellate Committee of the House of Lords**, which combined the judiciary with the legislature, - "Law Lords" sitting in the second chamber of the Houses of Parliament with peers.

When considering the separation of powers and the **unwritten constitution**, it has to be remembered that the United Kingdom of Great Britain and Northern Ireland consists of four countries: England, Wales, Scotland and Northern Ireland. Some law applies throughout the whole of the United Kingdom and some only in parts of it. The United Kingdom has three separate legal systems: one each for England and Wales, Scotland and Northern Ireland.

For the first time in almost 900 years, judicial

# Inquiries and Inquests

'The Leveson Inquiry: Culture, Practice and Ethics of the Press' - named after its chairman, Lord Justice Leveson (now known as Sir Brian Leveson) - was ordered by the Prime Minister David Cameron, in July 2011, to investigate the phone-hacking scandal which had engulfed the British media. It was a two-part inquiry; with part one examining the culture, practices and ethics of the press and, in particular, the relationship of the press with the public, police and politicians. Part two cannot commence until the current police investigations and any subsequent criminal proceedings have been completed.

Lord Justice Leveson was assisted during the first part of the inquiry by a panel of six independent assessors with expertise in the key issues that were considered. The judge opened the hearings in November 2011, saying: "The press provides an essential check on all aspects of public life... At the heart of this Inquiry, therefore, may be one simple question: who guards the guardians?" A wide range of witnesses, including newspaper reporters, management and proprietors, police officers and politicians of all parties, gave evidence to the Inquiry under oath and in public. In all, eight months of hearings - 97 days of sittings - were held in Court 73 at the Royal Courts of Justice. Lord Justice Leveson published his Report on part one of the Inquiry in November 2012.

The [Diana Inquest](#) of 2006-08 was held in the spotlight of the national media. This inquest took six months from October 2007, and was held at the High Court in London. It investigated the circumstances surrounding the death in 1997 of Diana, the Princess of Wales, and Dodi Al Fayed, and was one of the most high-profile inquests ever held in this country.

A more recent high-profile inquest is the one into the Hillsborough Disaster. In February 2013 a senior Court of Appeal judge was appointed as a coroner for the inquests into the deaths of the 96 people which occurred on 15 April 1989, at the Hillsborough Football Stadium in Sheffield.



independence was officially enshrined in law in April 2006, with the passing of the Constitutional Reform Act 2005. This resulted in dramatic revisions to the roles of the Lord Chancellor (who is also Secretary of State for Justice) and the Lord Chief Justice; traditionally these were the two most senior positions in the judiciary of England and Wales. Some of the key changes brought about by the Act included:

- The Lord Chancellor ceasing to be the head of the judiciary of England and Wales. His judicial functions were transferred to the President of the Courts of England and Wales, which was a new title given to the Lord Chief Justice.
- A duty on government ministers to uphold the independence of the judiciary.
- The Lord Chief Justice becoming responsible for the training, guidance and deployment of judges and for representing the views of the judiciary of England and Wales to Parliament and ministers. (These functions were previously undertaken by the Lord Chancellor). The Lord Chancellor and the Lord Chief Justice continue to be responsible, where both have an interest, for approving judicial appointments and discipline.
- The establishment of an independent Supreme Court.
- The establishment of an independent Judicial Appointments Commission, which is responsible for selecting candidates to recommend for judicial appointment to the Secretary of State for Justice and for ensuring that merit remains the sole criterion for appointment within a transparent system.
- The establishment of an independent [Judicial Appointments and Conduct Ombudsman](#), responsible for investigating and making recommendations concerning complaints about the judicial appointments process, and the handling of judicial conduct complaints within the scope of the Constitutional Reform Act.

The real differences brought about by the passing of the Act have been in the day-to-day management of the judiciary and the way judges are appointed and complaints dealt with. These procedures enhance accountability, public confidence and effectiveness.

## The process by which the judiciary governs itself

The [Judicial Executive Board \(JEB\)](#) was created by the Lord Chief Justice to help provide direction for the judiciary; in addition to the Lord Chief Justice, the Board is composed of the Heads of Division, the Vice-President of the Queen's Bench Division, the Senior Presiding Judge, the Senior President of Tribunals, the Chairman of the Judicial College

## 1873: The Supreme Court of Judicature Act is passed.

It re-organises the English court system by establishing the High Court and the Court of Appeal. It also merges common law and equity, so that although one of the Divisions of the High Court is still called Chancery, all courts can now administer both equity and common law, with equity to reign supreme in any dispute. (Equity is the system allowing judges to make remedies in cases that are not covered by settled common law or statutes.

and the Chief Executive of the Judicial Office.

The JEB meets on a monthly basis to discuss a range of issues and determine the way forward. The issues they consider may include approving strategies for judicial training and engagement and how the judiciary should respond to topical matters that affect judges and tribunal members across the country.

The [Judges' Council](#) also plays a key role. It is representative of the judiciary, with members coming from every level. Founded in 1873, the primary function of the Judges' Council is to inform and advise the Lord Chief Justice (who is its Chair). The Council considers and conveys views, ideas or concerns of the wider judicial family; provides detailed analysis and consideration of specific matters on which judicial views are sought; and develops policy in matters within its areas of responsibility. The Council meets three times a year. Detailed work is carried out through standing committees and working groups. The Council currently comprises ten committees, which cover Information Technology, Security, Judicial Support and Welfare, Resources, Wales, Tribunals, Europe, Communications, Judicial Conduct and the Library.

In 2004 the Judges' Council for England and Wales became a member of the [European Network of Councils for the Judiciary \(ENCJ\)](#), an organisation which promotes judicial independence and analyses and exchanges information on issues of common interest such as case management and judicial conduct and functions.

There are a number of representative bodies of the judiciary, which exist to express the views of the judiciary at all levels. These are as follows:

- The [High Court Judges' Association](#), which represents the views of its members

to the senior judiciary and, as appropriate, the government.

- The [Council of Her Majesty's Circuit Judges](#), which collects the views of circuit judges, and acts on their behalf by negotiating with the government on matters such as salaries and other terms of service. The council's committee also speaks for all circuit judges when responding to government consultations, proposals on law reform and changes to the structure of the courts.
- The [Association of Her Majesty's District Judges](#), which represents all 420 of the District Judges who exercise a civil and family jurisdiction in the County Courts and district registries of the High Court throughout England and Wales. Acting through its committee and officers, the Association gives pastoral advice and assistance to its members. It also represents the district bench in varied discussions and meetings with the senior judiciary, the Ministry of Justice, Her Majesty's Courts and Tribunals Service and many other organisations.
- The [Association of High Court Masters](#), which represents all five High Court branches – the Chancery Masters, the Queen's Bench Masters, the Bankruptcy (& Company) Registrars, the District Judges of the Principal Registry of the Family Division and the Senior Court Costs Judges<sup>25</sup>. The Association represents the views, interests, opinions and resolutions

<sup>25</sup> Costs Judges assess the costs of, or arising out of, any cause or matter in the Senior Courts such as the Court of Appeal (Civil Division) and the Administrative and High Courts. Normally, a Costs Judge assesses bills above £75,000.

of the Masters to the Lord Chief Justice and other judicial office-holders.

- The [Council of Her Majesty's District Judges \(Magistrates' Courts\)](#), which represents about 150 full-time District Judge (Magistrates' Courts). There are nine elected members, one from each of the regions, plus some nominated judges. The Chief Magistrate and the Deputy Chief Magistrate are *ex officio*<sup>26</sup> members of the Council, which meets quarterly, usually a fortnight after the Judges' Council meeting. It discusses topical issues and the main developments considered earlier by the Judge's Council. Members of the Council of HM District Judges (Magistrates' Courts) act as a conduit for national information to be provided promptly to local judges, who also meet regularly.
- The [National Bench Chairmen's Forum](#), which provides a framework to support the 230 chairs of magistrates' benches in England and Wales and provides a voice at national level so that Chairmen's views can be effectively taken into account.
- The [Magistrates' Association](#), which is a membership organisation representing over 80% of serving magistrates.

## Judicial appointments

Judges are appointed by Her Majesty the Queen upon recommendation by the Lord Chancellor. The exception to this rule is Justices of the Peace, who follow a different process - they are recruited by Local Advisory Committees. All appointments

follow a fair and open competition.

All potential applicants must be a citizen of the United Kingdom, the Republic of Ireland or a Commonwealth country. (Holders of dual nationality that includes one of the above may also apply). There is no upper or lower age limit for candidates, apart from the statutory retirement age of 70 for judges and Justices of the Peace. However, in practice, because judges in England and Wales are expected to have had a career in the law prior to sitting on the bench, and (if they are salaried) are not allowed to return to legal practice following their retirement, they tend to be older than their counterparts in other parts of the world, where people can become career judges straight out of university.

The [Judicial Appointments Commission](#), an independent body established in 2006, selects and recommends candidates for appointment. For each vacant judicial position, its Commissioners select one candidate to recommend to the Lord Chancellor for appointment. He in turn can accept or reject a recommendation, or ask for it to be reconsidered. If the Lord Chancellor asks for a recommendation to be reviewed he is required to provide his reasons in writing to the Commission. He can only exercise that power once for each candidate and cannot select an alternative.

Justices of the Court of Appeal are appointed by Her Majesty the Queen on the advice of the Prime Minister and the Lord Chancellor following the recommendation of an independent selection panel chaired by Lord Chief Justice. Judges must have had a [right of audience](#) for a certain number of years before taking up their position – for example High Court Judges must have had a right of audience in relation to all proceedings in the High Court for at least ten years or have been a Circuit Judge for at least two years before taking up

<sup>26</sup> *Ex officio* means somebody who is a member of a body by virtue of holding another office.

their post, and District Judges' (Magistrates Courts) must have had a right of audience of seven years.

The Judicial Appointments Commission has a specific statutory duty to "encourage diversity in the range of persons available for selection for appointments". However, there are no quick fixes: the judiciary of today reflects the type of person qualifying as a solicitor or barrister ten or perhaps 20 years ago, because both types of lawyer must gain a certain level of experience before applying to join the judiciary.

## Swearing in and the judicial oath

The swearing-in ceremony is a traditional ceremony conducted whenever a judge is appointed. During the ceremony the judicial office-holder in question takes the judicial oath and the Oath of Allegiance, which are collectively referred to as the judicial oath (or alternative affirmations, if the person becoming a judge is of no religious faith).

Other versions of the oaths above are available for members of the Hindu, Jewish, Muslim and Sikh faiths. These oaths are embedded in statute. During the ceremony for a judge, he or she takes the Judicial Oaths in front of invited family and friends. The Lord Chief Justice or the appropriate Head of Division presides over the ceremony and gives a short speech about the new appointee.

## Preferment

**Did you know** that promotion for judges is known as elevation? When a judge is elevated to a higher court it is called 'preferment'.

## Judicial diversity

As Head of the Judiciary of England and Wales, the Lord Chief Justice has a statutory duty to encourage judicial diversity. The Lord Chief Justice regards this as an imperative and established a high level Judicial Diversity Committee of the Judges Council in 2013 to ensure that work is done in a co-ordinated way. This involves a range of initiatives to improve diversity with a particular focus on gender, ethnicity and social mobility. These include the appointment of over 90 judicial role models to support various outreach events across the country, network with potential applicants and support a formal mentoring scheme launched in February 2015. In addition, over 100 Diversity and Community Relations Judges are actively engaged in a voluntary capacity giving talks to local schools, colleges and community groups and inviting groups to court to see justice in action.

Whilst judicial appointment is necessarily based on merit, considerable effort is being put into ensuring a level playing field through a range of targeted

## 1949: The Rushcliffe Committee

Following the recommendations of the Rushcliffe Committee in 1945, the first ever Legal Aid scheme is established in the UK – this is the Legal Aid and Legal Advice Act 1949. The importance of access to justice and the right to legal representation is recognised as being one of the key pillars of the new post-war welfare state, which encompasses the National Health Service, universal housing, state security (benefits) and universal education. The first Law Centre, offering legal advice to the public, opens in 1970.

### The judicial oath

#### The Oath of Allegiance:

"I, \_\_\_\_\_, 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."

#### The judicial oath:

"I, \_\_\_\_\_, 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. "

**Affirmation (allegiance):** "I, \_\_\_\_\_, do solemnly sincerely and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second Her Heirs and Successors according to Law."

**Affirmation (judicial oath):** "I, \_\_\_\_\_, do solemnly sincerely and truly declare and affirm 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."

support to encourage a wider range of candidates. In 2015 the Judicial Appointments Commission ran, for the first time, a special exercise to appoint a number of Deputy High Court Judges using the provisions of Section 9(4) of the Senior Courts Act 1981 to remove the requirement for prior judicial experience. In parallel with this exercise, the judiciary introduced an intensive programme to give practical support to potential applicants from non-traditional backgrounds. Such initiatives, together with the work being undertaken to bust the myths that surround the judiciary, is paving the way for a judiciary comprised of the best lawyers whatever their race, gender, social background or previous legal career. Such diversity is the hallmark of justice itself.

With the 'Tribunals' judiciary, a key step has been the passing of the Tribunals, Courts and Enforcement

(TCE) Act 2007, which has extended the range of people eligible for judicial appointment by reducing the number of years a potential applicant needs to have possessed a relevant legal qualification before they can apply for a judicial post. The range of relevant legal qualifications has also expanded, whilst the Act has opened up some judicial posts beyond solicitors and barristers for the first time.

### Judicial training

Training is very important for all judges. The Lord Chief Justice has statutory responsibility for the training of the judiciary of England and Wales (including Justices of the Peace and their legal advisers) under the Constitutional Reform Act 2005, whilst the Senior President of Tribunals has a duty to maintain appropriate arrangements for



training, guidance and welfare of judges and other members of the First Tier and Upper Tribunal.

On first appointment, all new judicial office-holders go through a programme of induction which normally includes attending a course. Many new judges, magistrates and tribunals members are assigned a mentor (usually an experienced judicial office-holder) to support them during the first few years. Subsequent authorisations to other jurisdictions will usually require attendance at the corresponding induction seminar.

There is then a system of continuing professional development to hone judges' skills and knowledge throughout their careers. For example, when judicial office-holders take on new responsibilities, they receive additional training; similarly, when the judiciary as a whole is undergoing change and modernisation, training needs across the piece are identified and relevant programmes instigated to support major changes to legislation and the administration of justice. This training is delivered via a mixture of residential and non-residential seminars supplemented by e-learning.

### The Judicial College

All judicial office-holders in England and Wales and Tribunal Judges and members who come

under the leadership of the Senior President of Tribunals across the United Kingdom are trained by the Judicial College. It provides some direct training as well as training materials, advice and support to those who exercise judicial functions in the magistrates' courts in England and Wales. The College was created in April 2011.

The Judicial College strategy identifies three main elements for judicial training:

1. Substantive law, evidence and procedure and, where appropriate, subject expertise;
2. The acquisition and improvement of judicial skills including, where appropriate, leadership and management skills;
3. The social context within which judging occurs.

A fundamental principle underpinning the Judicial College's work is that training is for judges by judges - this supports judicial independence and public confidence in the justice system. Training is mainly designed and delivered by judges, but they are assisted by advisers and administrators.

The College also participates in various domestic and

## 1971: The Crown Court is created

The Royal Commission on Assizes and Quarter Sessions, 1966-1969, had led to the abolition of the Courts of Assize and Quarter Sessions and the establishment of the new Crown Court to deal with business from both. (A Royal Commission is a body set up by the Monarch on the recommendation of the Prime Minister to gather information about the operation of existing laws or to investigate any social, educational, or other matter. It reports to the government on how any change might be achieved). The Courts of Assize were courts held in the main county towns and presided over by visiting judges from the higher courts based in London, since the 12th century. The court of Quarter Sessions was instituted in 1362 and was held continuously until 1971 - it dealt with all matters of civil concern as well as any criminal case that did not go to Courts of Assizes.

overseas networks and responds to requests to provide assistance for programmes organised by European, Commonwealth and international judicial training institutions.

### International training networks

Training is one area in which the judiciary works closely with other judiciaries. The Judicial College takes part in events organised by:

- The [Academy of European Law](#) (ERA), a non-profit public foundation that provides training in European law to legal practitioners. Its patrons include most European Union member states and it is supported by the EU. The ERA organises conferences and seminars around Europe, has an e-learning platform and publishes a legal journal, the ERA Forum.
- The [European Judicial Training Network](#) (EJTN), which co-ordinates judicial exchanges, study programmes and a catalogue training programme and fosters co-operation between the national training bodies. Judges from England and Wales participate in the network's annual exchange programmes and study visits. The International Team of the Judicial Office administer this programme, which is open to all levels of the judiciary with the appropriate language skills.
- The [European Law Institute](#), an independent, pan-European body, founded in 2011, which

seeks to improve the quality of European law through research, making recommendations, and providing guidance on European legal development. A hub in the United Kingdom opened in 2012.

- The [International Organisation for Judicial Training](#) (IOJT), a worldwide judicial body dedicated to the promotion of the rule of law in other countries and to helping them establish training schools which further such rule.

## The Judicial Office

The Judicial College is part of the Judicial Office, an organisation which supports the judiciary. Established in 2006, the Office reports to the Lord Chief Justice. Its purpose is to:

- Support the courts and tribunals judiciary across England in discharging their responsibilities under the Constitutional Reform Act 2005, in upholding the rule of law and in delivering justice impartially, speedily and efficiently;
- Support the Lord Chief Justice in the conduct of his duties, including representing the views of the judiciary of England and Wales to Parliament, the Lord Chancellor and ministers generally;
- Maintain arrangements for the welfare, training and guidance of the judiciary, within the resources made available by the Lord Chancellor; and:

### 1988: First Lady Justice of Appeal

Dame Elizabeth Butler-Sloss becomes the first woman to be appointed to the Court of Appeal. She goes on to become President of the Family Division of the High Court in 1999.

- Maintain arrangements for the deployment of judges and the allocation of work within the courts.

Amongst the JO's staff are professional trainers, legal advisers, Human Resources and communication experts, policy-makers and administrators. The JO comprises five groups:

- Communications, Coroners and Core Support;
- HR for the Judiciary;
- Judicial private offices;
- Judicial College; and
- The Judicial Conduct Investigations Office.

The Judicial Office is funded by the Ministry of Justice and is accountable to Parliament through the Permanent Secretary for financial propriety and regularity. Its senior management team is based at the Royal Courts of Justice.

## The judiciary and the media

Open justice is a long-standing and fundamental principle of the legal system of England and Wales. Justice must be done and seen to be done if it is to command public confidence, and so the relationship between the judiciary and courts and the media is a vital one.

An important part of this relationship concerns the issue of the broadcasting of image and sound recordings from courts, which has been prohibited since 1925. However, a significant change in the law took place when the Supreme Court opened in 2009, as broadcasting was allowed from it - footage recorded in the Court could be shown on television news programmes. In December 2011, the Lord Chief Justice published new guidance for consideration by courts, litigants, their legal representatives and the media when dealing with journalists wishing to use live text-based communications<sup>27</sup> in court rooms, during the conduct of a court case.

The Judicial Office contains a Press Office, which deals with media enquiries from journalists. The Judicial Office also has a Communications Team which publishes online the most high-profile (often landmark) judgments made in court.

The Judicial Office Corporate Communications team also maintains an intranet providing valuable information for judges across the country and it publishes an online newsletter for judicial office holders, called *Benchmark*.

## International team

The International Team supports the Lord Chief

<sup>27</sup> Text-based communications covers mobile email and social media on smartphones and laptops and tweets from mobile phones.

## 2006: Constitutional Reform Act 2005

With the passing of the Constitutional Reform Act 2005, the Lord Chancellor is no longer a member of the judiciary. The Lord Chief Justice becomes President of the Courts of England and Wales and Head of its Judiciary, in place of the Lord Chancellor. For the first time an express statutory duty is placed on the Lord Chancellor and other Ministers of the Crown to protect the independence of the judiciary, and for the first time in its 1,000-year history, the judiciary is officially recognised as a fully independent branch of the government.

Justice, the Head of International Judicial Relations, and the lead judges on the European Committee of the Judge's Council, in their international work.

The team is based in the Royal Courts of Justice. It has developed a central co-ordinating role, providing an oversight of all international issues and logistical support to the judges and jurisdictional teams. It also has responsibility for the organisation of judicial visits, both incoming and outgoing; the funding of international visits made by judicial office-holders from England and Wales and Tribunals judiciary to conferences and seminars; the facilitation of international judicial exchanges in conjunction with the Judicial College; the organisation of international bilateral conferences; and secretarial support to the European Committee of the Judges' Council.

Chances are the International Team has had a hand in the visit you are making to this country.

Feel free to contact the team at any time for advice and information. Their mailbox address is:

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