LORD CHIEF JUSTICE
OF ENGLAND AND WALES

The Lord Chief Justice's Report

2013

The Lord Chief Justice's Report 2013

Presented to Parliament Pursuant to Section 5 (1) of the Constitutional Reform Act 2005

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Introduction by the Lord Chief Justice

This is my final report as Lord Chief Justice of England and Wales.

It is nearly 25 years since I was first appointed a Justice of the High Court. I have witnessed remarkable changes to our constitutional arrangements and the operation of the administration of justice.

The greatest change, of course, was the constitutional revolution brought about by the Constitutional Reform Act 2005, followed by the changes in 2007 which extended what was once the small Lord Chancellor's Department into the massive Ministry of Justice. The responsibilities of the Lord Chief Justice as Head of the Judiciary, the arrangements for the financial support for the administration of justice, the system for judicial appointments and the relationship between the Judiciary and the Legislature and the Executive, on their own, have combined and are combining to affect changes to our constitutional arrangements. The consequences have yet fully to emerge. What cannot be allowed to emerge is any diminution in the independence of the judiciary.

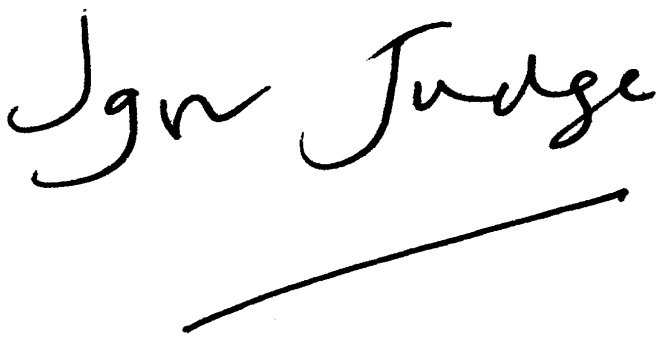
Economic realities have led to budget cuts which have had direct effects on the administration of justice. In many different ways the administration of justice has been or is under review and reform as part of the drive for further public sector efficiency. Contrary to general belief judges have not recently arrived at an understanding of the need for greater efficiency. Active, hands on case management, saving both Court time and tax payers' money, and reducing the stresses and strains of litigation, has come to be regarded as an essential part of the duty of every judge. The Courts have made and are continuing to take the initiative in the drive for greater efficiency, with a clear understanding of the obligation to ensure that justice continues to be done and is seen to be done. Quite separately, the courts have continued to make their contribution to the wealth of the nation, a contribution which, however it is addressed, it is perhaps worth noting far exceeds the budget available to Her Majesty's Courts and Tribunal Service.

The scale of change therefore is unprecedented. The responsibility of many judges is no longer confined to presiding over trials and hearings, and reaching conclusions on the issues before them,

but in addition to their commitment sitting in court they are directly involved, and lead on what are sometimes described as "administrative" duties.

This level of commitment comes without any additional remuneration, and indeed the expansion of the responsibilities now placed on the judiciary, allied to less attractive terms and conditions and pension arrangements, as the Senior Salaries Review Body made clear, has resulted in reduced morale. I fully appreciate that in the current financial situation, their recommendation cannot be addressed, but the terms in which the Senior Salaries Review Body has spoken on are clear and unequivocal. It would be unwise for it to be ignored.

Without loyal help and support from many different people, both within and outside the judiciary, I should not have been able to fulfil my responsibilities as Lord Chief Justice. My gratitude is profound, and the memories of many kindnesses will continue to be warm long after my retirement.



The Lord Chief Justice's responsibilities

Introduction

The consequences of the changes ushered in by the Constitutional Reform Act 2005 have yet fully to emerge. For now, the constitutional position of the Lord Chief Justice (LCJ) and the statutory framework which guides the exercise of his functions is as follows:

Sitting as a judge is an essential feature of the Lord Chief Justice's role. The Lord Chief Justice is entitled as a right to sit in the Court of Appeal, the High Court, the Crown Court, the County Court and the Magistrates' Court, and at the invitation of the President of the Supreme Court, in the Supreme Court. The current Lord Chief Justice, as head of Criminal Justice, presides in the most important criminal appeals and from time to time in civil and family appeals which have importance across the judicial system.

In addition, under the Constitutional Reform Act 2005, as Head of the Judiciary and President of the Courts of England and Wales, the Lord Chief Justice is responsible for:

- Representing the views of the judiciary to Parliament, the Lord Chancellor and Ministers of the Crown;
- Maintaining arrangements for the welfare, training and guidance of the judiciary of England and Wales, within the resources made available by the Lord Chancellor;
- Maintaining appropriate arrangements for the deployment of the judiciary of England and Wales and the allocation of work within courts.

The Lord Chief Justice also has a statutory role in the judicial appointment process and shares responsibility with the Lord Chancellor for exercising disciplinary powers in relation to judicial conduct. This role will change under new legislation in both areas, which will be implemented in October 2013.

In carrying out his responsibilities the Lord Chief Justice is supported by the Judicial Executive Board (JEB) and the Judges' Council, both of which he chairs, as well as by members of the wider judiciary and the staff of the Judicial Office.

As set out in the previous report, the Senior President of Tribunals (SPT) has similar responsibilities for the judiciary working in Tribunals. In September 2010 the Lord Chancellor announced that he, the Lord Chief Justice and the SPT had agreed to the aim of establishing a single head of the judiciary for England and Wales, with the Lord Chief Justice assuming leadership of both Courts and Tribunals judiciary. Having considered this and the associated issue of devolution of the reserved tribunals administration to the Scottish Government, the Secretary of State confirmed in June 2013 that the UK Government has decided to delay the proposals to take forward those plans. The UK Government have said they will keep this issue under review over the next three to four years.

Judicial Governance and Leadership

The Lord Chief Justice is supported by a Judicial Executive Board (JEB), which meets regularly throughout the legal term. Membership is as follows: Heads of Division; the Senior President of Tribunals; the Senior Presiding Judge; the Chairman of the Judicial Studies Board; the Vice President of the Queen's Bench Division[1]; and the Chief Executive of the Judicial Office.

This membership enables the sharing of information and best practice across Divisions and between the courts and tribunals, ensuring appropriate coherence and consistency. It also ensures that judicial training needs are factored in to decisions. The attendance of the CEO of the Judicial Office enables the JO to provide the appropriate support.

The Lord Chief Justice also chairs the Judges' Council, which was first set up under the Judicature

1 At present the roles of Chairman of the Judicial Studies Board and the Vice President of the Queen's Bench Division are held by the same person.

Leadership example: Key responsibilities of a Resident Judge

- **Leading the judiciary at the court centre to ensure its effective operation.**
- **Ensuring effective case management within the court centre as well as managing their own cases and caseload.**
- **Maintaining close working relationships with the court manager and other staff to ensure that cases are listed effectively and the business of the court is done as efficiently as possible.**
- **Providing leadership to the magistracy ensuring good communication between the Magistrates' Courts and the Crown Court.**
- **Acting as the key liaison point with the Presiding Judges and other members of the judiciary**
- **Maintaining and building relationships with others in the justice system and more widely**
- **Seeking advice and help where appropriate from, for example the Presiding Judges, the Regional Secretariats, the Judicial Office.**

Act 1873. The Judges' Council meets three times a year. Membership includes the JEB, and judges selected by judicial representative groups. The Judges' Council is supported by a series of Committees which focus on issues of interest to the judiciary, ranging from Judicial Security to Justice in Wales.

The Judicial Office is currently working with the Judges' Council to conduct a review, to ensure that it operates as effectively as possible.

Annex 1 lists the members of the JEB and Judges' Council as at June 2013.

The leadership structure for the judiciary working in courts consists of the Lord Chief Justice, the Heads of Division and Senior Presiding Judge, their Deputies and a structure of Resident and Presiding Judges around the Country. These judges provide leadership, guidance and support to their colleagues as well as scrutinising court performance statistics[2] with a focus on improving performance, in addition to their court commitments and without additional remuneration.

There is also a network of judges who have volunteered for additional responsibilities such as working with the Office for Judicial Complaints (OJC) as nominated judges leading on complaints, or working with the Judicial Appointments Commission (JAC) on a range of tasks around appointment to the Bench.

Judicial Diversity

The judiciary remain convinced of the many benefits of a more diverse judiciary and are committed to supporting the development of the judiciary in a way that supports greater diversity. The situation is improving in several areas. The latest analysis by the JAC showed a general pattern of improving diversity among court judiciary among women and candidates from a Black, Asian and Minority Ethnicity (BAME) background since 2005, and at the time of writing the JAC had just announced that women made up one third of the most recent recommendations for appointment to the High Court (Queen's Bench and Family Divisions)[3]. Also three women (out of 10 recommendations) were recently promoted to the Court of Appeal. Overall, in 2012/13 women made up 44% of applicants and 52% of recommended candidates in JAC-run selection exercises for judicial posts requiring legal qualifications[4]. This is most welcome, but there is still a long way to go. It remains a concern that the Bench, particularly at the higher levels, does not have a broader representation of women, and men and women from minority ethnic communities. Overall, 24.3%

- **Women made up one-third of the most recent recommendations for appointment to the High Court Queen's Bench and Family Divisions**
- **Overall, 24.3% of the court judiciary are women, and 4.8% have a Black, Asian or Minority Ethnic (BAME) background**

2 Detailed court statistics are published on the internet: https://www.gov.uk/government/organisations/ministry-of-justice/series/courts-and-sentencing-statistics

3 http://jac.judiciary.gov.uk/static/documents/Official_Statistics_June_2013.pdf

4 http://jac.judiciary.gov.uk/static/documents/Annual_Report_2012-2013.pdf

of the court judiciary are women (compared to constituting between 29 and 44% of the pool of candidates eligible to apply), and 4.8% have a Black, Asian or Minority Ethnic (BAME) background (compared to constituting between 6 and 10% of the eligible pool).

Professional diversity of the courts and tribunals judiciary is also an area which is monitored closely. Current figures for those in post show 37% of judges in the court system were solicitors before taking judicial office. It is a matter of concern that the same JAC analysis shows there has been a decrease in the proportion of successful candidates with a professional background of solicitor. Particularly in the last three years, solicitor applications have fallen in both courts and tribunals selection exercises, while at the same time, the proportion of barristers applying has increased.

In the last year (2012-2013), 48% of judicial appointments which required legal experience were solicitors. This area deserves attention.

Pool of applicants

One of the stubborn problems remains the eligible pool for the Bench. Appointments are made by the independent Judicial Appointments Commission (JAC), and are based solely on merit[5]. However, the JAC can only appoint people by selecting from those who are eligible and apply, and the pool for the senior courts judiciary is not very diverse.

To illustrate this, see information about the eligible pool for the High Court (Family and Queen's Bench) exercise that launched last November 2012[6].

Eligible Pool		
	Number of possible applicants	**%**
Male	4012	71%
Female	1623	29%
BAME	329	6%

Judicial activity

The judiciary have spent considerable time and energy encouraging judicial diversity and in particular increasing applications to the Bench from suitably qualified/experienced lawyers from diverse

5 "Schedule 13, Part 2, Paragraph 9 of the Crime and Courts Act 2013 clarifies that making selections 'solely on merit' does not prevent a candidate being chosen on the basis of improving diversity where there are two candidates of equal merit. The JAC is currently considering the responses to its recent consultation on the application of the "equal merit" provision and will publish and promulgate its policy in early 2014 before commencing the application of the provision."

6 The standard eligible pool is calculated by data provided from the Law Society, Bar Council and CILEx for all those members with 5 years or more PQE. The additional selection criterion for this exercise was that candidates should have judicial experience either in a salaried or fee-paid role.

backgrounds. The Lord Chief Justice has overall responsibility for the strategy and direction of work in this area. The Senior Presiding Judge also plays a key role, as do leadership judges. There are two Senior Liaison Judges for Diversity (SLJDs) who report to the Lord Chief Justice, and promote diversity throughout the courts and tribunals judiciary, by, for example, promoting understanding of diversity issues across the judiciary and working with the JAC to encourage high quality applications to the Bench from lawyers from a diverse range of backgrounds. The SLJDs work closely with the network of 80 Diversity and Community Relations Judges (DCRJs) from across courts and tribunals, whose main role is to act as a bridge between the judiciary and the public whom the justice system serves. Their work includes: working with the community to improve understanding of the role of a

Crime and Courts Act

The Crime and Courts Act, which was given Royal Assent on 25 April 2013 introduces some relevant changes. The Act:

- **Places a duty upon the Lord Chancellor and the Lord Chief Justice to take such steps as each considers appropriate for the purpose of encouraging judicial diversity (Schedule 13, Part 2, Paragraph 11).**
- **Changes the appointment processes for the Lord Chief Justice and Heads of Division.**
- **Extends the availability of salaried part-time working, which is already available to salaried judicial office holders below the High Court, to judges of the Court of Appeal and the High Court.**
- **Allows flexible deployment of tribunal judges into the courts as well as enabling existing courts judiciary to sit more flexibly in other courts (Section 21 Deployment of the judiciary).**
- **Transfers responsibility for running competitions under section 9 of the Senior Courts Act 1981 from the Heads of Division to the JAC.**

The provisions of the Act (Schedule 13, Part 2, Paragraph 10) also include the "equal merit" provision, previously referred to as the "tipping point". This amendment clarifies that whilst the JAC is required to make selections solely on merit, this does not prevent a candidate being chosen on the basis of improving diversity when there are two candidates of equal merit. These provisions are now in force but are unlikely to be implemented before January 2014. The JAC is currently considering the responses to its recent consultation on the application of the "equal merit" provision.

judge and the justice system; engaging with law students and lawyers to widen the pool of applicants for judicial office; and providing colleagues with guidance on good practice on equality and diversity issues.

The judicial work shadowing scheme continues to be hugely popular, with lawyers from various backgrounds applying to shadow judges in both the courts and tribunals. In the last financial year over 60% of applicants were female, and 80% were solicitors. The two biggest events over the last year with the aim of increasing applications to the Bench have been 'Judge for Yourself' in November 2012, hosted by the Lord Chief Justice and supported by the Bar Council, the Law Society and CILEx and the JAC, and an event in Cardiff in February 2013 with a particular focus on attracting women on to the Bench. Feedback on both events has been overwhelmingly positive. A similar exercise directed at women and the judiciary is to be held in Bristol in February 2014.

The Act also provides for the Lord Chief Justice and SPT to take, from the Lord Chancellor, responsibility for appointments below High Court level.

Open Justice

It is fundamental that justice must both be done and seen to be done. Since the last report, work has continued to allow the broadcasting of selected court or tribunal proceedings, starting with the Court of Appeal. The enabling legislation[7] has now received Royal Assent and a pilot process is running to assess practical and technical working points. Close attention has been given to the detail of the contracts with broadcasters, and the need at all stages to ensure that victims, witnesses and defendants appearing in court hearings are protected. Under the Crime and Courts Act, the joint agreement of the Lord Chancellor and the Lord Chief Justice will be needed for any further extension to broadcasting, and the individual judge is able to refuse filming of a particular case where it is in the interests of justice or to avoid undue prejudice to any person to do so.

Work continues by the President of the Family Division (PFD) on raising public awareness of the way the courts deal with family cases and of the role of the Court of Protection, keeping in mind the particular sensitivities that exist in cases involving children and families. The PFD also continues to support the reporting of anonymised judgments on the free Bailii website.

Pay and Pensions

The recruitment and retention of high quality candidates to the Bench is essential to ensure that the justice system functions effectively and efficiently. It is central to the UK's ability to continue to attract international litigation.

The pool of eligible candidates for the Bench, particularly at High Court level and above, is extremely limited and many of the senior barristers and solicitors who join the judiciary from private practice take a substantial pay cut to do so. In 2011 the Senior Salaries Review Body (SSRB) reported that on taking up judicial office at High Court level, successful applicants took a cut in

7 Section 32 of the Crime and Courts Act 2013, Ch22

earnings of 59%, after allowing for the value of the pension.

With regard to pay, a three year pay freeze resulted in significant decline in take home pay for judges[8]. This pay freeze has now ended. In 2013 the SSRB recommended, and the Lord Chancellor agreed, that a 1% pay increase, the maximum possible in this financial year, be awarded across the judiciary. This is welcome, though it should be noted that the gap between the earnings of senior barristers and solicitors and senior judges continues to grow.

At the time of the last report discussions about proposed changes to the judicial pension were ongoing. Since then the Government has shared final proposals for the scheme with the judiciary, to apply to service from 1 April 2015. The new scheme brings the Judicial Pension Scheme closer to other public sector schemes. Key features include:

- a stand-alone scheme for the judiciary, reflecting the terms of the new civil service scheme;
- benefits dependent on average earnings over a career, rather than final salary;
- an accrual rate of approximately 1/43, compared with 1/40 at present;
- no automatic lump sum; pension can be commuted for lump sum at the rate of £1 of pension for every £12 of lump sum; and
- registration with HM Revenue and Customs for taxation purposes, unlike the existing unregistered scheme.

"The current Judicial Pension Scheme could not bridge the financial gap between private practice and public service but it had a psychological impact well beyond its financial value, signalling acknowledgement of what had been given up for ever and marking public respect for the judiciary as an institution. While we believe that there will still be senior practitioners willing to perform public service by joining the judiciary, the combination of the reduction in the value of the pension and prolonged pay restraint will result in a tipping point when there will be too few of the right quality willing to make the transition. We believe we may be at that tipping point now."

The 35th report of the SSRB, p37, para 5.45
http://www.ome.uk.com/SSRB_Reports.aspx

8 For example, the SSRB calculated that the pay freeze had resulted in a reduction in take home pay of circuit judges by 15.9 per cent.

Judges within 10 years of pension age at 1 April 2012 will continue in their current pension schemes until retirement. Given the age profile of the judiciary, on 1 April 2012 74% of the judiciary were entitled to full protection, with 13% in each of the tapered protection and no protection categories. The percentage on full protection is likely to have fallen below 70% in the year to 2013 as protected judges have retired and been replaced. Benefits accrued before 1 April 2015 (or later for those aged 51½ and over on 1 April 2012) will be preserved.

The impact of these changes on the ability to recruit, retain and motivate sufficient high quality people to the judiciary raises real concerns. At present, many who join the judiciary take a substantial pay cut to do so, and the gap between the earnings of senior barristers and solicitors and senior judges is growing.

In the past, this pay cut has been compensated, at least to some extent, by the pension arrangements. This is no longer the case. The reduction in benefit is significant, and this may deter some from applying to the Bench, especially at more senior levels. Further, uniquely in the public sector, judges by convention can not return to private practice after retirement. A further matter of concern is that it is the younger judges, who are also the most diverse, whose pension benefits will be reduced most.

The 35th Annual Report of the SSRB (2013) highlighted that the combination of the reduction in the value of the judicial pension and prolonged pay restraint meant that the judiciary were at a 'tipping point', beyond which recruitment of sufficient quality people to the Bench may become difficult[9].

Future work

The SSRB intend to commission research on the effect of the pension changes on total reward and will continue to monitor recruitment and retention closely.

Relationship with the Executive and relationship with Parliament

Executive

As set out above, the Lord Chief Justice is responsible for representing the views of the judiciary to Government. He continues to meet with the Lord Chancellor and the Permanent Secretary for the Ministry of Justice regularly to discuss the operation of the courts and administration of the wider justice system. He meets annually with the Prime Minister to discuss the strategic interaction of the executive and judiciary. In addition, the Senior Presiding Judge has significant contact with government departments and other Ministers. The Lord Chief Justice and other senior members of the judiciary also meet with other Ministers and Law Officers on appropriate topics.

Over the period covered by this report, the Government have issued a number of consultations proposing reform of the justice system. The judiciary have engaged with these fully, respecting the parameters for judicial comment by focusing responses on the practical impact of Government

9 http://www.ome.uk.com/SSRB_Reports.aspx

proposals for the administration of justice. Further details are available in the sections below.

Overall, the relationship between the executive and judiciary is productive and positive, whilst fully respecting the separation of powers.

Relationship with parliament

For the most part parliamentary business, including the business of select committees, is conducted without the involvement of the judiciary, and without the appearances of judges before them. On occasion, however, the judiciary are able to assist Parliament with their enquiries. Since the last review, the following judges have appeared before Parliament:

20 November 2012	House of Lords Select Committee on Adoption Legislation	District Judge Crichton
20 November 2012	House of Commons Public Bill Committee on the Children and Families Bill.	Mrs Justice Pauffley; Mr Justice Ryder
27 November	House of Lords Select Committee on Adoption Legislation.	Lord Justice McFarlane; Mr Justice Ryder; HHJ Heather Swindells QC; and HHJ Estella Hindley QC.
30 Jan 2013	Constitution Committee	Lord Chief Justice
13 Feb 2013	Constitution Committee	Lord Neuberger and Lord Hope
5 March 2013	House of Commons Public Bill Committee on the Children and Families Bill.	President of the Family Division
5 March 2013	House of Commons Privileges Committee	Lord Chief Justice and Mr Justice Beatson

The judiciary have also submitted written evidence to the Justice Committee on the Children and Family Bill on 10 November 2012; HMCTS on 24 January 2013; and the Post legislative Assessment of the Legal Services Act 2007 in March 2013.

In January 2013 the Justice Committee held a discussion of the draft Guideline with the Deputy Chairman of the Sentencing Council Lord Justice Hughes (now Lord Hughes), for the Committee to meet its role as statutory consultee.

Her Majesty's Courts and Tribunals Service

HMCTS was created on 1 April 2011 as an executive agency of the MoJ, bringing together HM Courts Service and the Tribunals Service. The agency provides support for the administration of justice in courts and tribunals and operates as a partnership between the Lord Chancellor, the Lord

Chief Justice and the Senior President of Tribunals[10].

HMCTS objectives and business priorities are set out in the HMCTS Business Plan 2011-15[11].

This is the second year for the agency, which remains focussed on maintaining and improving service delivery in a challenging economic climate. The integration, modernisation and closure of the existing estate continues, with a further seven courts closed during 2012-13, bringing the total (as at May 2013) to 136 courts, 88 magistrates' courts and 48 county courts and improved or new courts in Basingstoke, Aberystwyth, Chelmsford and Colchester. The staff reduction target for HMCTS, set at 2,980 in the Spending Review of 2010, has been met early and the implementation of Headquarters and Regional Operational Structures has now been completed. Judges owe a deep debt of gratitude to all HMCTS staff who provided, and continue to provide, us with an excellent service.

The Lord Chief Justice and Senior President of Tribunals recognise fully that securing adequate funding to support and develop the Courts and Tribunals is essential to uphold the rule of law and protect access to justice, as long as funding arrangements are consistent with the independence of the judiciary, the responsibility of the State to provide access to justice and the need for appropriate accountability. On 26 March 2013 the Lord Chancellor announced that he had asked the Ministry of Justice to explore proposals for the reform of the resourcing and administration of our Courts and Tribunals. The Lord Chancellor's statement marked the beginning of an examination of alternative options for funding HMCTS with which the senior judges remain engaged fully as options are explored.

Wales

The Lord Chief Justice exercises his functions as Lord Chief Justice of Wales as well as of England. He meets the First Minister and officials from the Welsh Government regularly, to discuss practical aspects of Government proposals on the justice system in Wales.

The previous review set out the position with regard to the administration of justice in Wales. By way of update, the Lord Chief Justice continues to be supported and advised on matters affecting the administration of justice in Wales by the Wales Committee of the Judges' Council, which he chairs. The Vice-Chair is now Lord Justice Richards and membership consists of judges and tribunals of Wales.

The Committee responded to both the Constitutional and Legislative Affairs Committee of the National Assembly for Wales and the Welsh Assembly Government consultations on a separate Welsh legal jurisdiction, as well as the Silk Commission's review in to the present constitutional arrangements in Wales. Their responses are restricted to the technical issues on which judges could properly comment. Other issues considered by the Committee include: the operation of Welsh tribunals in devolved areas, for which all or some executive responsibility sits with the Welsh Assembly Government; use of Welsh language in the court room; and sitting in Wales.

10 HMCTS Framework: **http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2011/hmcts-framework-document.pdf**

11 **www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2012/hmcts-business-plan-11-15**

On the latter, the Lord Chief Justice has made clear that cases appealed in Wales should be heard there, unless this would introduce an unacceptable delay. The present arrangements are working well. Experience to date suggests that the Court of Appeal will sit for a week in Wales in each of the Michaelmas, Hilary and Summer terms next year.

The Judicial College Wales Training Committee has been set up to look into training needs in Wales and held its first full meeting in June 2013 in Cardiff. The members are: Mr Justice Wyn Williams; (Chairman and Director of Training for Wales); HHJ Niclas Parry (Course Director for Wales Training Committee); Stuart Williams (Tribunal member) from April 2013 to April 2017; and Gareth Lewis (Tribunal member). HHJ Eleri Rees (Liaison Judge for Welsh Language) is an ex officio member. The two key priorities identified for 2013-14 are to consult the judiciary in Wales on learning needs to identify any gaps in current training materials; and to devise a system to Inform the judiciary who sit in Wales of the legislation passed by the National Assembly and draw their attention to relevant areas where the legislation in Wales differs from that in England.

Criminal Justice

The development and implementation of criminal justice reforms over the last 12 months

Workload and performance

Court of Appeal (Criminal Division) (CACD)

As set out above, an essential feature of the role of the Lord Chief Justice is to sit on important cases both high profile, and those involving complex legal issues, principally in the CACD.

The caseload of the CACD has continued to rise over the past year. The CACD has to deal with approximately 7,500 applications over the year of which some 3,000 went to hearings. In order to deal with this workload all conviction appeals (and some sentence appeals) are prepared by Criminal Appeal Office (CAO) lawyers. That work involves:

(i) Identifying and crystallising the issues at any early stage,

(ii) Communicating with the parties and assisting in the preparation of a case for determination[12],

(iii) Preparation of a full CAO summary for the use of the Court after service on the parties.

This work is vital, it substantially reduces any risk of ineffective hearings (very few cases in CACD are ever adjourned) and the work required by the Court to prepare a judgment is made much more straightforward. This is undoubtedly the reason why, in a very high proportion of cases, judgment is given ex tempore without the inevitable delay caused by judgment being reserved. The value of lawyers' input has a particular significance in difficult cases where legal representatives are not as experienced as would be ideal, there have been many instances where the representatives have been very grateful for the expert assistance the CAO lawyer has been able to provide.

The CACD prides itself in speedy and efficient delivery of justice. Experience over many years has confirmed that there is no substitute for lawyers doing this vital work. If the system were to change and this work were not to be undertaken by experienced CAO lawyers of sufficient calibre:

(i) The danger of ineffective hearings would vastly increase,

(ii) Judges would inevitably take longer to prepare judgments; far more judgments would be reserved,

12 It should not be overlooked that much of the CACD's work involves applicants who are either publicly funded or have no representation. In many case much work is done by legal representatives acting pro bono. The parties are not able to indulge in the kind of casework or prepare paperwork which is a feature of work in other Divisions where parties are better resourced.

(iii) There would be an inevitable need to reduce the lists so as to make the workload for the judges manageable.

Without this vital component the Court could not deal with the applications it should and Court users in their various forms would be denied access to speedy and efficient justice. In conviction cases, where an appeal succeeds, it would mean that an appellant would have been kept in custody for longer than would otherwise be the case and in sentence appeals it may result in applicants remaining in custody longer than they should. The matter is not confined to parties of appeals, in any case the public (not least victims of crime) are entitled to demand speedy and proper resolution.

The CACD publishes its own annual review, which provides a comprehensive analysis of its work. Since publication of the 2011-12 review, the court has dealt with noteworthy cases on a range of matters; this report contains summaries of just three of these, on loss of control, victim personal statements/family impact statements and whole life sentences.

Loss of control

In *Asmelash* [2013] EWCA Crim. 157 the court had to decide whether the voluntary consumption of alcohol fell within the ambit of the loss of control provision in section 54(1)(c), as amplified by section 54(3) of the Coroners and Justice Act 2009, when consideration was being given to the question whether a person of a defendant's sex and age "with a normal degree of tolerance and self-restraint and in all of the defendant's circumstances other than those whose only relevance or self-restraint might have reacted in the same or similar way to the defendant". The court found it did not: there was nothing in the loss of control defence to suggest that Parliament had intended that the normal rules applying to voluntary intoxication should not apply; if that had been Parliament's intention it would have been spelled out in unequivocal language. The court stressed that a defendant who had been drinking was not deprived of any possible loss of control defence: it simply meant that the defence had to be approached without reference to the defendant's voluntary intoxication.

Victim Personal Statements/Family Impact Statements

In *Perkins and others* [2013] EWCA Crim 323 the court heard three unrelated cases in order to consider questions relating to victim personal statements and family impact statements. The court noted that the purpose of such statements was to allow victims a more structured opportunity to explain how they had been affected by the crime or crimes. Principles concerning such statements were contained within the current Practice Direction. The

The CACD publishes its own annual review, which provides a comprehensive analysis of its work. Since publication of the 2011-12 review, the court has dealt with noteworthy cases on a range of matters.

court, without wishing to suggest any amendments or additions to the Practice Direction emphasised a number of matters: the decision whether to make a statement was one to be made by the victim personally; when the decision whether or not to make a statement was being made it should be made clear that the victim's opinion about the type and level of sentence should not be included; the statement constituted evidence; the responsibility for presenting admissible evidence remained with the prosecution; and the statement could be challenged in cross-examination and it could give rise to disclosure obligations and could be used to deploy an argument that the credibility of the victim was open to question.

Whole life sentences

In *Oakes and others* [2012] EWCA Crim 2435 a five-judge court considered sentences following the commission of very serious crimes for which life sentences were imposed. The appeals were particularly concerned with the judicial assessment of the minimum term to be served for the purposes of punishment and retribution before the possibility of release could be considered. The court observed that there was express statutory provision vesting the court with jurisdiction, in an appropriate case of exceptionally high seriousness, to order a whole life minimum term. It noted that the language of Schedule 21 was not prescriptive. There was no statutory provision requiring the judge to impose a whole life order if the interests of justice did not require it. The Schedule provided an indication of appropriate starting points which applied to the assessment of the seriousness of the offence of murder, or its combination with other offences associated with it. It recognised that the level of seriousness might be so exceptionally high that the court should consider whether a whole life order would be appropriate. It was also clear from a series of decisions that the statute did not create a sentencing straightjacket, nor require that a mechanical or arithmetical approach to the problem of the assessment of the minimum term might be taken. The court was satisfied that the provisions of Schedule 21 of the 2003 Act, and paragraph 4 which enabled the court to make a whole life order, were not incompatible with and did not contravene Article 3 of the European Convention of Human Rights.

This conclusion was not upheld by the European Court of Human Rights in the judgment *Vinter and Others v the United Kingdom* (application nos. 66069/09, 130/10 and 3896/10). The issue will have to be decided by the Supreme Court and potentially, in the final analysis, Parliament.

Magistrates' Courts and Crown Court

Detailed court statistics are published quarterly and annually and are available on the **www.gov.uk** website[13].

There were 418,316 criminal cases completed in magistrates' courts and 33,137 completed in the Crown Court in the fourth quarter of 2012. This was a reduction of one per cent and nine per cent respectively when compared to the same quarter in 2011 and a fall of 11 per cent and seven per cent respectively on the same quarter in 2008.

13 https://www.gov.uk/government/organisations/ministry-of-justice/series/courts-and-sentencing-statistics

The magistrates' courts recorded 152,700 trials during 2012-13, of which 44% were recorded as effective. This proportion has been relatively stable since 2005. 38.5% of trials were cracked and 17.2% were ineffective. During the same period, 41,200 trials were recorded in the Crown Court, of which 46% were recorded as effective. This is part of a rising trend since the third quarter of 2010. 39% cracked and 15% were ineffective.

The average time taken between the first listing of criminal case in magistrates' courts and the final completion in either a magistrates' courts or the Crown Court was 4.6 weeks. This has remained relatively stable since the second quarter of 2010.

Judicial reform initiatives

Over the past twelve months the judiciary has been proactive in leading progress to improve efficiency in the Crown Court.

The judicially led Early Guilty Plea Scheme was implemented fully across the Crown Court in April 2013. The principle of the Scheme is to identify those cases where a defendant is likely to plead guilty and to ensure, through discussion between the defence and the prosecution, that, where appropriate, the defendant enters a guilty plea, ideally at the first hearing at the magistrates' court or alternatively at the first hearing in the Crown Court. It also seeks to ensure that, wherever possible, defendants are sentenced at their first hearing. The Scheme encourages proportionate gathering of evidence and preparation of the file in such cases, only putting forward evidence sufficient to demonstrate to the defence that the case will stand up. The Scheme should reduce the number of witnesses attending to give evidence at court; reduce the level of unnecessary gathering of evidence and preparation of the file; and ensure resources are focussed on those cases that are contested. The Senior Presiding Judge will be overseeing the embedding of the principles of the Scheme during 2013.

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Committal proceedings have been abolished across the Crown Court with effect from 28th May 2013, so that cases to be heard in the Crown Court no longer require a hearing in the magistrates' court. While these are still very early days for assessing how the Scheme and the abolition of committals work together in practice, together they should reduce the number of unnecessary hearings and enable the judiciary to focus on the quality and effectiveness of the first hearing in the Crown Court.

The judicially led Case Management

initiative is designed to ensure that in those cases that are contested early resolution of the case is encouraged through more efficient use of time, better use of courts and judges, a reduction in unnecessary work by all criminal justice agencies, a more focussed and shorter trial and parties in every case knowing and complying with the Criminal Procedure Rules. Following six pilots the Senior Presiding Judge is currently making the necessary refinements before developing an implementation strategy to encourage greater compliance across England and Wales. The review began in May 2013.

The experience of the judiciary is that in cases with strong case management, there is a marked decrease in the difficulties and delays that frequently bedevil the more difficult, document-heavy trials. By applying significant time and resources to the case during its earliest stages, the proceedings tend to progress with far greater efficiency. Guilty pleas (if they are to be forthcoming) are entered at a relatively early stage, and the ineffective and cracked trial rate is improved.

Following a request by the Lord Chancellor, the Lord Chief Justice asked Lord Justice Gross (then Deputy SPJ) and Lord Justice Treacy to carry out a review of disclosure sanctions in criminal trials against both the prosecution and the defence. It was published in November 2012 and concluded that the creation of additional sanctions against either the prosecution or the defence was not required. It recommended implementation of existing legislation, full implementation of the recommendations of the earlier review of disclosure conducted by Lord Justice Gross published in September 2011, and made additional recommendations relating to the Criminal Procedure Rules.

To implement one of the recommendations of Lord Justice Gross' review, the judiciary has been working with the Attorney-General's Office to produce new, complementary guidance that will consolidate and shorten the existing guidance. The consultation closed on 28 June 2013.

One of the initiatives borne out of the two disclosure reviews is the Disclosure Case Management Initiative, which is designed to improve the handling of contested document-heavy cases and reduce delays. A bespoke case management regime will be implemented in four pilot sites and will be monitored closely for approximately twelve months from June 2013. The experience of the judiciary is that in cases with strong case management, there is a marked decrease in the difficulties and delays that frequently bedevil the more difficult, document-heavy trials. By applying significant time and resources to the case during its earliest stages, the proceedings tend to progress with far greater efficiency. Guilty pleas (if they are to be forthcoming) are entered at a relatively early stage, and the ineffective and cracked trial rate is improved. It goes without saying that all cases, however well managed, can "go wrong" but the pilots will explore whether, by applying this approach to a wider range of serious criminal offences, real improvements can be made to the progress of cases through the Crown Court.

In the magistrates' courts, the Stop Delaying Justice campaign, which continues the work of CJSSS

and is led by the magistracy and District Judges working together, has been relaunched and aims to ensure that trials are case-managed fully at the first hearing and disposed of at the second hearing. The project has the support of the Justices' Clerks Society, the Magistrates' Association, the National Bench Chairmen's Forum and the Chief Magistrate. It has led to a more robust approach to applications for adjournments.

The Senior Presiding Judge has asked the Chief Magistrate and HHJ Kinch QC to carry out a review into disclosure in the magistrates' court. This will follow similar terms of reference to the 2011 disclosure review conducted by Lord Justice Gross and will consider the practical operation of the disclosure regime in criminal cases in the magistrates' courts, with a particular focus on the proportionality of the time and costs involved.

Victims and Children's Evidence

The judiciary welcomed the Government's confirmation that it will implement Section 28 of the Youth Justice and Criminal Evidence Act 1999 to allow pre-recorded video evidence of children and other vulnerable witnesses in three pilot courts, and looks forward to wider implementation of the scheme in due course. The Lord Chief Justice has long called for this reform. While it will not resolve all of the problems with how evidence is taken from children in the current system, it represents significant progress. Questions such as whether it is necessary for a child witness ever to come to court, and whether for some of them, at any rate, attendance at trial cannot be arranged in a more congenial place, with necessary safeguards to ensure judicial control over the trial process and the safeguarding of the interests of the defendant, are largely matters of policy for the Government. However, for its part the judiciary is committed to reviewing and improving its own training for judges in handling cases where children are still required to give evidence in court.

Senior judicial responses have been provided on the following areas of proposed reform:

- **those on legal aid;**
- **victims and witnesses and the Victims' Code;**
- **probation, community sentencing and rehabilitation;**
- **and Law Commission consultations on contempt of court and insanity and automatism.**

Judicial involvement in Government reform initiatives

In addition to the numerous judicial initiatives for criminal justice reform over the past year, the scale of current Government reforms to the Criminal Justice System is striking.

The senior judiciary has contributed its views on the practical impact of proposed reforms to the

Criminal Justice System through formal and informal responses to Government consultations and reviews including those on legal aid; victims and witnesses and the Victims' Code; probation, community sentencing and rehabilitation; and Law Commission consultations on contempt of court and insanity and automatism.

The senior judiciary provides input into oversight of the implementation of the Government's Strategy and Action Plan for reform of the Criminal Justice System, published on 28th June 2013, through the Senior Presiding Judge's role as an observer on the Criminal Justice Board.

Judges recognise that Police and Crime Commissioners are an important new addition to the Criminal Justice System. Presiding Judges and members of the senior judiciary have met Police and Crime Commissioners and representatives of the Association of Police and Crime Commissioners to discuss their respective roles and develop a working relationship.

Statutory position and bodies

Under section 8 of the Constitutional Reform Act 2005, the Lord Chief Justice is the Head of Criminal Justice. In discharging this responsibility, he receives support from a number of members of the judiciary, many of whom represent his views on Boards, Committees and other bodies. The Presiding Judges for each of the Circuits play a vital role in supporting the judiciary and magistracy working in the Crown Court and magistrates' courts across England and Wales. A wide range of judges, including those in leadership roles and members of the Council of HM Circuit Judges, the Magistrates' Association and the National Bench Chairmen's Forum make a substantial contribution to the running of the criminal justice system, both locally and nationally.

Criminal Procedure Rule Committee

The Lord Chief Justice chairs the Criminal Procedure Rule Committee. Lady Justice Rafferty is his deputy. The Committee's statutory obligations[14] include making rules to ensure that "the Criminal Justice System is accessible, fair and efficient".

In 2010 the Committee began a practice of a full consolidation of the Rules every October, at the start of the legal year, with any necessary amendments made each April. This system has continued. The most significant changes in the past year include new Rules to govern applications for search warrants and applications for access to search warrant application material, new Rules for cases under the Extradition Act 2003, and amendments to accommodate the abolition of committal.

The Criminal Procedure Rule Committee is also overseeing the revision of the Consolidated Criminal Practice Direction. It is anticipated that the Rule Committee will recommend the draft to the Lord Chief Justice after its meeting on 19th July. Subject to the necessary approvals, it is hoped that the new Practice Direction will come into force at the beginning of October at the same time as the Criminal Procedure Rules 2013.

14 Courts Act 2003, section 69(4)

Sentencing Council

The Sentencing Council is an independent non-departmental public body of the Ministry of Justice. It is chaired by Lord Justice Leveson; the Lord Chief Justice is its President, although not a member.

The Sentencing Council publishes its own Annual Report, which provides detailed information about its work and priorities. In the period covered by this report, it has published definitive guidelines on allocation, offences taken into consideration and totality (11 June 2012) and dangerous dogs (20 August 2012) and has issued consultations on two major guidelines on sexual offences and environmental offences.

Further information on the Sentencing Council can be found online[15].

Criminal Justice Council

The Criminal Justice Council draws together expertise from a broad range of people whose work has an impact on the Criminal Justice System, including judges and magistrates. The Senior Presiding Judge is the Chairman of the Council, which is consulted by Government about the development and implementation of criminal justice policy.

Criminal Justice Board

In February 2012, the Government established the Board, chaired by the Right Honourable Damian Green MP, Minister of State for Policing and Criminal Justice, to provide advice on strategy for the Criminal Justice System and changes needed to achieve performance improvements. There is a formal relationship between the Board and the Council, with the Chairman of the Council's participation as an observer to the Board and an official remit for the Board to consider the advice and recommendations of the Council.

Magistrates' Liaison Group

The Senior Presiding Judge chairs this group, which brings together the heads of the national associations representing magistrates, bench chairmen and justices' clerks as well as senior officials from HMCTS and the Judicial College. It is a problem-solving and decision-making group which deals with operational, policy and legislative matters affecting magistrates.

15 http://sentencingcouncil.judiciary.gov.uk/

Civil Justice

Court of Appeal (Civil Division)

The Court of Appeal's Civil Division is presided over by the Master of the Rolls and hears appeals in civil or family matters from decisions made in the High Court, County Court or Tribunals.

The Court usually sits in constitutions of two or three judges, who will ordinarily be Heads of Division or Justices of Appeal. Occasionally High Court judges do however also sit in the Civil Division.

An out of hours duty system means that a judge of the Court of Appeal is available to deal with urgent applications out of hours such as children being taken into care or appeals against deportation.

The Civil Division's caseload has been rising steadily, with a 25% increase in Permission to Appeal (PTA) applications disposed of over the last 5 years. Approximately 30% of applicants are litigants in person.

Civil Appeals Office (CAO) lawyers and administrative staff, assigned to particular case groups in specialist areas, carry out a considerable amount of preparatory work on both PTAs and appeals. Each specialist area is under the overall supervision of a supervising Lord or Lady Justice. The Master of the Rolls and the Vice-President of the Court of Appeal (Civil Division) work closely with the CAO Deputy Masters, who are senior CAO lawyers, and other CAO senior officials to manage overall case progression and listing.

The CAO lawyers' work involves, amongst other things:

(i) Case management;

(ii) Ensuring cases raising similar legal issues are linked and assisting in the selection of appropriate test cases;

(iii) Corresponding with litigants-in-person and legal representatives;

(iv) Performing some functions under delegated authority e.g. dismissal of applications where a party has failed to comply with rules.

In addition to this the CAO lawyers have also been instrumental in ensuring the effective operation of a pilot scheme, which is currently being run, that is designed to encourage the greater use of mediation in respect of appeals.

This work is of fundamental importance. It enables the court to operate effectively and efficiently. Given the increase in litigants-in-person bringing appeals its value is becoming ever more significant. The use of specialist lawyers, well versed in the wide variety of cases coming to the court, is critical to the effective functioning of the appellate system.

The Civil Division plans to publish its own annual review, which will contain a more detailed summary of the work it undertakes.

For the period July 2012-June 2013 it has dealt with a large number of cases of public interest and legal significance, three of which are summarised below by way of illustration:

The civil judiciary is very supportive of moves to increase e-working. The Chancellor is promoting this use of IT, in particular for the Rolls Building, and there is a board which meets monthly and which is investigating the costs and logistics of implementing:

- **the electronic filing of cases,**
- **the use of electronic (as opposed to paper) files and**
- **an e-listing system that would enable the electronic listing of cases in the Chancery Division (and other jurisdictions in the Rolls Building).**

Bankers' Bonuses

In (1) *Dresdner Kleinwort Ltd (2) Commerzbank AG v (1) Richard Attrill & Ors* (2) *Fahmi Anar & Ors* [2013] EWCA Civ 394 the court had to decide whether an investment bank who made an oral promise in a "town hall" meeting to pay relevant employees a guaranteed performance-related bonus had done so in accordance with powers of unilateral variation of the employees' terms and conditions set out in the employee handbook and with the intention that the promise would be legally binding. The aim of the promise was to retain employees at a time of speculation about the bank's future. Each employee was subsequently sent a letter confirming that a discretionary bonus had been provisionally awarded at a specified sum, subject to a "material adverse change clause" (MAC clause). After the acquisition of the bank, the MAC clause was invoked and the employees were told that their bonus awards would be cut by 90%. The court held that the variation had been effected in accordance with the provisions of the employee handbook; there was overwhelming evidence that the bank had intended its promise to be legally binding; the employees were under no legal obligation to communicate acceptance of the bonus offer and the introduction of the MAC clause was a breach of the implied duty of mutual trust and confidence.

Disclosure of Criminal Records

In the linked appeals of *R(on the application of T) v (1) Chief Constable of Greater Manchester (2) Secretary of State for the Home Department (3) Secretary of State for Justice & (1) Liberty (2) Equality and Human Rights Commission (Intervener); R (on the application of JB) v Secretary of State for the Home Department; R (on the application of AW) v Secretary of State for the Home Department [2013]* EWCA Civ 25 the court had to consider whether the disclosure provisions of the Police Act 1997 and the

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, which imposed a blanket statutory regime requiring disclosure of all convictions and cautions held on the police national computer to potential employers, were compatible with Article 8 of the European Convention on Human Rights 1950 (right to private and family life). The applicants had brought claims for judicial review of the statutory scheme which was intended to protect employers and vulnerable individuals in their care and to enable employers to assess the suitability of a candidate for a particular kind of work. The court held that the blanket nature of the disclosure regime went beyond what was necessary to achieve its protective purpose and could not be justified on the basis that it was a "bright line" rule which had the merit of simplicity and ease of administration. The court held that neither the disclosure provisions of the 1997 Act nor the 1975 Order were compatible with Article 8 and made Declarations of Incompatibility in respect of two of the appellants.

Risk of Future Harm to a Child

In *Re B (A Child)* [2012] EWCA Civ 1475 the court declined to overturn a judge's decision to make a care order and endorse a care plan in a case based on anticipated future harm of a child within the meaning of section 31(1)(a) of the Children Act 1989. The two year old child had spent her life in foster care having had only supervised contact with her parents. The local authority did not assert that the child had suffered any harm attributable to her parents' care but the care plan was for the child to be adopted on the basis that the parents had psychological issues likely to impair their ability to provide good enough physical and emotional care for her. The mother had severe personality problems, a history of dishonesty and false complaints against professionals and had failed to co-operate reasonably with the local authority. The father used drugs, had a history of dishonesty and did not accept that the mother was a risk to the child. The expert evidence was divided and the court recognised the need to be particularly cautious in such circumstances. The court held, however, that the judge had not erred in the harm he identified or in his characterisation of it as significant. There was also no realistic hope that things would change. The judge had been entitled to conclude that any strategy to manage the risks would need to involve social services, but the parents were not willing or able to engage with professionals.

Workload and performance

Civil justice is the main generator of income for courts in England and Wales. The majority of civil justice cases are heard in county courts, and the figures for the last five years for which full year data is available (see table below) show that the numbers of claims being made overall has fallen progressively, although in 2011 some areas saw a small increase e.g. claims for recovery of land. However, the pressures on civil justice remain powerful, with the increasing complexity of cases and growing specialism in the law meaning that workload and performance cannot be measured on mass volume alone. The Jackson review has led to a number of changes to case and cost management, introduced from April 2013. The judiciary have been involved closely at all stages of the review.

Civil proceedings in county Courts	
Year	**Total proceedings started**
2006	2,183,539
2007	2,011,814
2008	2,064,124
2009	1,879,405
2010	1,616,536
2011	1,553,983
2012	1,432,299

Designated Civil Judges around the country provide leadership, guidance and support for all judges sitting in county courts.

As noted in the last review, the processes used in the majority of civil justice cases have benefited from modernisation – with national dedicated court business centres for individual and also bulk court users (such as financial institutions). The judiciary has supported the modernisation in principle and practice, with judges supervising work at the centres. The move to a single County Court from April 2014 will also help to improve operational efficiency, and puts in place a reform originally proposed by retired Lord Justice, Sir Henry Brooke, in 2008. The civil judiciary is very supportive of moves to increase e-working, and the ability of parties to conduct business electronically. The Chancellor is promoting this use of IT, in particular for the Rolls Building, and there is a board which meets monthly and which is investigating the costs and logistics of implementing the electronic filing of cases, the use of electronic (as opposed to paper) files and an e-listing system that would enable the electronic listing of cases in the Chancery Division (and other jurisdictions in the Rolls Building).

Civil justice also covers the work of a number of specialist jurisdictional courts; in the Chancery Division; Bankruptcy Court, Companies Court, Patents Court; in the Queen's Bench Division; the Admiralty Court, Commercial Court and Technology and Construction Court. Queen's Bench Masters provide specialist knowledge in additional specialist areas of law such as clinical negligence and mesothelioma, and the Chancery Registrars provide specialist advice to District Judges across the country upon request in matters related to personal and corporate insolvency. All of these courts deal with highly complex litigation, and the expertise of our judiciary attracts substantial international demand for determining disputes in England and Wales, in particular in the areas of asset recovery, banking and financial services, company law, shipping, and intellectual property and patents. The Court of Appeal (Civil Division) hears appeals from across the broad spectrum, and also family and administrative justice appeals.

This year the SPJ set up a Civil Management Information Review working group to look at how the data collected on civil cases could be improved. For the first time a single report will bring together the following information; the number of cases being issued, the number of cases being issued through the bulk centre at Northampton (including Money Claim Online), at Salford, via Possession Claim Online and those residual cases still being issued over the-counter at our county courts. The

number of cases issued can be broken down into those which are defended, those transferred in and out, the number allocated to track, the number of final hearings and the number either settled or withdrawn at final hearing. Information will likewise be available on the number of cases that are allocated to each of the small, multi and fast tracks, and a complete breakdown of the number of sitting days across each rank of judiciary. It will also be possible to break down all of this information into national, circuit and individual court statistics.

Suggestions that are already emerging from the consultation process for the Chancery Modernisation Review include:

- **increasing the use of docketing in Chancery cases and generally ensuring that the right cases are heard by the right level of judges**
- **standardising procedure across the country**
- **accelerating the rate at which court orders are issued in the Division**
- **facilitating access for litigants-in-person, and**
- **implementing the Jackson reforms in respect of early and efficient case management where appropriate.**

Statutory position and bodies

(see also Chancery and Queen's Bench Division entries below for additional civil justice material)

The Master of the Rolls is President of the Court of Appeal (Civil Division) and Head of Civil Justice. He has overall responsibility for civil justice, and is chairman of the Civil Justice Council and the Civil Procedure Rule Committee. Civil cases are heard by Court of Appeal, High Court, Circuit and District Judges, High Court Masters and Registrars and a range of fee-paid judicial office-holders.

Leadership for these judges comes from the Master of the Rolls and the other Heads of Division, but also – through the Deputy Head of Civil Justice and the Senior Presiding Judge – from regional Designated Civil Judges who normally cover two or more counties.

There are also lead judges for the specialist courts, the Administrative, Commercial, Mercantile, Patents and Technology & Construction Courts (see below). These judges provide direction and guidance to their colleagues, but also play an important role in ensuring that the senior judiciary is aware of any important issues and concerns. The Council of Her Majesty's Circuit Judges and Association of Her Majesty's District Judges also make important contributions to the operation of the civil and family jurisdictions.

Civil Procedure Rule Committee

The Civil Procedure Rule Committee (CPRC) is an advisory body that drafts the procedural rules for all civil courts in England and Wales. It is chaired by the Master of the Rolls, although the de facto chair is Lord Justice Richards. It plays an invaluable role in making sure that rules keep pace with new legislation and other changes – for example new court processes arising from judicial review reforms.

In the period of this report the CPRC has dealt with a number of important issues, principally a complete overhaul of the Rules and the Costs Practice Direction arising from the Jackson Review. This has involved, for instance, revising the CPRs' overriding objective to introduce an explicit obligation to manage cases at proportionate cost, a revision to CPR 36 (settlement) and a complete review of CPR Practice Direction 52 (Appeals). The CPRC is made up of a number of specialist judges, practitioners and others (e.g. academics) who meet regularly and give their time and expertise freely.

Civil Justice Council

The Civil Justice Council (CJC) is an advisory body chaired by the Master of the Rolls. It is responsible for monitoring the civil justice system in order to ensure that it is fair, accessible and efficient. Members include representatives from across the legal profession, court users and consumer representatives as well as the judiciary. It is uniquely placed to analyse issues, provide advice and recommendations for reform in an even-handed, expert and objective way, and is often able to broker common ground in discussions on major civil justice reforms.

During the period covered by this report, the CJC carried on work arising from a major report it had previously completed on access to justice for litigants in person. It held a successful national forum in November 2012 that was widely felt to have helped encourage service improvements within the system in advance of an expected increase in such litigants. Changes to legal aid from April 2013 resulted in this work becoming a major focus and priority during the year. Regional workshops were held and the CJC published its own guide to bringing small claims.

The CJC invested considerable effort on implementation of aspects of the Jackson review reforms on civil litigation costs. One working group produced a detailed report for the Ministry of Justice on Qualified One-Way Costs Shifting (QOCS) and another on Damages-Based Agreements (DBAs). Draft regulations were produced. A further group of specialists was convened to produce a report on costs in defamation and privacy cases. Most significantly it has now established a Costs Committee, which has, amongst other things, taken over responsibility (from the Advisory Council on Civil Costs) for providing the Master of the Rolls with evidence-based advice on setting solicitors' Guideline Hourly Rates, which assist judges in making summary assessments of costs.

Guidance was also produced on the use of expert witnesses giving evidence in proceedings. The CJC also produced a number of consultation responses to Government proposals in this period .e.g., on whiplash claims.

The Bankruptcy and Companies Court Users Committee

The Bankruptcy & Companies Court Users Committee is a personal committee of and chaired by the Chancellor of the High Court. Its membership consists of a High Court judge of the Chancery Division, the chief bankruptcy registrar, a district judge, members of the Bar, solicitors and insolvency practitioners, as well as representatives of the Insolvency Service and HM Courts & Tribunals Service. It meets twice a year and acts as a consultative body to the Chancellor on a wide range of issues affecting the courts that deal with insolvency proceedings and proceedings under the Companies Act and related legislation.

This year, the committee has drafted two new Practice Directions, one on Insolvency Proceedings and one on the Company Directors Disqualification Act, that will both be taken forward and implemented in 2013.

The development and implementation of civil justice reforms generally

Review of Civil Litigation Costs ('Jackson Review')

Mr Justice Ramsey acted as lead judge for co-ordinating and implementing the reforms, in the light of the Legal Aid, Sentencing & Punishment of Offenders Act 2013, which came into effect in April 2013. He undertook a wide range of activities, including oversight of costs pilots, speaking at numerous events and liaising with other judges and officials in order to ensure that all the necessary rule changes were in place by the April 1st 2013 implementation date and that the judiciary and professions were properly prepared for the new costs regime. This latter work included delivering educational lectures and working with the Judicial College on the provision of formal training for all salaried civil judges, featuring costs budgeting exercises.

Chancery Modernisation Review

The Review, initiated by the Chancellor as a means of making civil litigation proceedings in the Chancery Division across the country as speedy, efficient, and cost effective as practicable, has been led by Lord Justice Briggs with the assistance of Mr Justice Newey and an Advisory Committee since February 2013 and has benefited from an extended and detailed consultation process. Questionnaires were sent to over 1,000 legal organisations, associations of specialist barristers and solicitors, and other court users for feedback on how the Division's services could be better delivered and to identify areas for development. Hundreds of responses were received and analysed by the CMR Team. Meetings with consultees and stakeholders have taken place, and the CMR Team has travelled to the regions to obtain feedback from judges and court users from around the country. Statistics are being compiled from the data thus obtained, in an unprecedented divisional performance assessment exercise. A provisional report incorporating all of the suggestions made and proposing areas for reform was published in July 2013 for public consultation. A nationwide Chancery Judicial Conference, doubling as a training event and due to take place in October 2013, will also serve as a platform for Chancery judges and masters to express their views on the provisional report, which will then further be

amended throughout the Autumn, to be finalised by December 2013 and implemented in 2014.

Suggestions that are already emerging from the consultation process include increasing the use of docketing in Chancery cases and generally ensuring that the right cases are heard by the right level of judges, standardising procedure across the country, accelerating the rate at which court orders are issued in the Division, facilitating access for litigants-in-person, and implementing the Jackson reforms in respect of early and efficient case management where appropriate.

Defamation and Privacy

The judiciary has provided evidence to Parliament ahead of the coming into force of the Defamation Act 2013. The CJC provided advice on costs matters and is currently looking at awards in defamation and privacy proceedings (following recommendations in the Leveson Inquiry report).

European Unified Patent Court (UPC)

The Chancellor and the specialist judges sitting in the Patents Court are involved in discussions with the Intellectual Property Office and the Ministry of Justice about the implementation of the United Kingdom division(s) of the Unified Patents Court, likely to launch in early 2015. The creation of the Unified Patents Court responds to a commercial need for a unitary European patent that will be valid in most EU countries and for a specialised court which can deal with both the new unitary patent and current European bundle patents. Issues in respect of judicial selection and ways to guarantee the quality of the UK judges serving on the UPC are being considered, as well as questions concerning the possible location(s) of the UK division(s). In addition, assistance with the judicial training needs of those judges from other EU member States that currently lack sufficient expertise to conduct patent cases is being considered.

Patents County Court

His Honour Judge Birss QC has been extremely successful in his endeavour in recent years to make the Patents County Court an accessible forum for intellectual property litigation, particularly for small and medium-sized enterprises. In October 2013 the Patents County Court will be reconstituted as a specialist list in the Chancery Division, but with the same distinctive procedures. Following Judge Birss' elevation to the High Court, a new Patents Judge will be appointed in the summer of 2013.

Court of Appeal

The Master of the Rolls liaises with HM Courts & Tribunals Service in overseeing the efficient operation of the Court of Appeal (Civil Division). This work has included promoting a revised mediation scheme and a consultation response on court fees.

The Queen's Bench Division

The Division can be separated into four distinct parts: the QB List, the Administrative Court, the Commercial Court and the Technology and Construction Court.

The QB List

The QB deals with about 5,000 cases per year in the Royal Courts of Justice ranging from clinical negligence, tort and breach of contract amongst others. Another 9,000 are issued from the district registries. The QB Masters have a role in the management of these cases, using their specialist knowledge to find agreement between parties, to dismiss cases or refer cases to a High Court Judge. Of particular note is the work of the Senior Master in managing all cases involving mesothelioma (a cancer most commonly caused by exposure to asbestos).

Significant change for the QB lies ahead. Important work has already begun to facilitate the movement of the Central London County Court (CLCC) from its present location near Regent's Park to within the Royal Courts of Justice around April / May 2014.

The adoption of the CLCC within the RCJ estate will be a valuable opportunity look at how civil work is distributed between High Court and Deputy High Court Judges, District Judges and Masters and to improve the administration of justice by combining the resources and administrations at the RCJ and CLCC.

The website for the Judiciary of England and Wales contains a section with links to high profile judgments or those which are thought to set particularly important precedents[16]. In the period since June 2012 the following cases have been listed. This selection also gives an indication of the nature of the work now done in the Queen's Bench Division lists other than the Administrative and Commercial Courts.

16/7/12: *Robert Crow -v- Boris Johnson* – a libel action by the General Secretary of the RMT against the Mayor of London in respect of election leaflet was struck out.

5/10/12: *Ndiki Mutua & others -v- The Foreign and Commonwealth Office* claims for personal injuries said to have been deliberately inflicted on the claimants while they were in detention in Kenya, in varying periods between 1954 and 1959

22/10/12: *Attorney General -v- Associated Newspapers Ltd and MGN Ltd* - a newspaper was fined for contempt of court

23/10/12: *Jeffrey Jones and others -v- The Secretary of State for Energy and Climate Change and Coal Products Limited* - a Group Action brought by former employees and the families of

16 http://www.judiciary.gov.uk/media/judgments/2013/index

former employees at the Phurnacite Plant, Aberaman, in South Wales for various forms of respiratory disease and cancers which are alleged to have been caused by the exposure of men working at the Plant to harmful dust and fumes.

9/11/12: *Patrick Raggett -v- The Society of Jesus Trust 1929 for Roman Catholic Purposes and Governors of Preston Catholic College* – the court awarded damages in a claim for sexual abuse as a child.

17/1/13: *AKJ and others -v- Commissioner of Police for the Metropolis and others* – the court considered women could bring a claim that that they had been sexually abused by undercover police officers.

1/3/13: *RH -v- University Hospitals Bristol NHS Foundation Trust* – provides guidance on the indexation of periodical payments for personal injuries.

15/3/13: *Jacqueline Thompson -v- Mark James and Others* – a libel action by a blogger against the Chief Executive of a local authority was dismissed.

24/5/13: *Lord McAlpine -v- Sally Bercow* – the court determined the meaning of a Tweet referring to the claimant in the context of allegations of child sex abuse.

The Administrative Court

There has been a programme of significant reform in the Administrative Court and in October 2012 a Master was appointed to take on a leadership role, especially of the lawyers employed by the court. As a result of changes in the Civil Procedure Rules both the Master and the court lawyers have been able to relieve the judges of many minor tasks through the delegation of judicial powers. In addition the lawyers are being reorganised into specialist units and an expert extradition team, made up of lawyers, caseworkers and support staff has already been created.

The Administrative Court has continued to face considerable pressure caused by the sheer volume of cases it receives. In a year the Court receives approximately 12000 challenges by way of Judicial Review. Of these about 9,000 cases relate to immigration. The pressure under which the Court is operating will remain until the transfer of immigration and asylum work to the Upper Tribunal Immigration and Asylum Chamber in the autumn of 2013, as provided for by the Crime and Courts Act 2013. Until then urgent applications seeking review of a decision to remove an individual from the UK will continue to encumber the Court.

As well as being a difficult resource issue for the judiciary the large number of applications is also a burden on certain Government departments, particularly where applications are submitted very late, just before the removal of an individual on a flight specially chartered for that purpose. Earlier this year the judiciary developed a valuable protocol with the UK Border Agency, as it then was, and the Treasury Solicitor's Department in an attempt to identify and build upon efficiencies in the processes

for dealing with last minute applications and to ensure that the court's interests are taken into account in matters such as the scheduling of charter flights (which are used to remove failed claimants to places such as Afghanistan and can generate many urgent claims for the court in respect of each flight).

In court the President of the Queen's Bench Division has heard a number of cases in relation to poorly presented, incomplete, late and unmeritorious applications. The first was *R (on the application of Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin), These widely publicised judgements have been a stern reminder that judges will deal firmly with incompetent lawyers putting forward legal arguments that do not just have little merit, but are actually fundamentally nonsensical.

In *Hamid* the President made reference to the work that the judiciary had done to revise Form N463:

> *"The form was revised because the Administrative Court faces an ever increasing large volume of applications in respect of pending removals said to require immediate consideration. Many are filed towards the end of the working day, often on the day of the flight or the evening before a morning flight. In many of these applications the person concerned has known for some time, at least a matter of days, of his removal. Many of these cases are totally without merit. The court infers that in many cases applications are left to the last moment in the hope that it will result in a deferral of the removal"*

The initial impact of these judgments has been encouraging with many judges reporting that advocates have been better prepared, forms have been completed more carefully and that the number of unmeritorious applications per flight is down overall. The evidence is that these hearings have been welcomed by the legal community more generally and have had a favourable impact.

Notable cases decided in the Administrative Court in the last year have included -

16/8/2012: *Nicklinson & "AM" v Ministry of Justice and the DPP*: the Court refused permission to two individuals suffering from "locked-in syndrome" to seek judicial review to challenge the DPP's policy on prosecution for assisted suicide

12/10/2012: *Lithuania v Mindaugas Bucnys : Marius Sakalis v Lithuania : Dimitri Lavrov v Estonia* - In the case of a European Arrest Warrant based on a conviction in the requesting state, a Ministry of Justice could constitute a judicial authority for the purposes of the Extradition Act 2003

18/12/2012: *R (on the application of Serdar Mohammed) v Secretary Of State For Defence* - The court had to consider whether it was prohibited from ordering that although a claim for public interest immunity in relation to the disclosure of certain material should not be upheld, the material should only be disclosed to those identified within a confidentiality ring on specified terms.

19/12/2012: *Attorney General v HM Coroner Of South Yorkshire (West)* An inquest into the deaths

of 96 Liverpool football fans at Hillsborough stadium in 1989 was quashed and a new inquest was ordered as a result of a fresh report into the incident that criticised the police, the rescue operation and decisions made in the original inquest.

04/02/2013: *R (on the application of Lindsay Sandiford) v Secretary Of State For Foreign & Commonwealth Affairs* - The Government's policy not to fund the legal expenses of British nationals involved in criminal proceedings abroad was not unlawful. The claimant, who had been sentenced to death by a court in Indonesia following her conviction for drug trafficking, issued judicial review proceedings seeking an order requiring the defendant to provide and fund an "adequate lawyer" to represent her in her appeal against conviction and sentence.

08/02/2013: *R (on the application of Daniel Roque Hall) v (1) University College London Hospitals NHS Foundation Trust (2) Secretary Of State For The Home Department* - Although the level of care received by a severely disabled prisoner whilst in prison was lower than that to which he was accustomed, it did not amount to inhuman and degrading treatment contrary to the European Convention on Human Rights 1950, Art.3 and Art.8 Nor had that treatment put his life at risk or reduced his life expectancy contrary to Art.2 of the Convention; although the prisoner had been admitted to hospital, his symptoms were caused by his medical condition, not by the prison's treatment of him.

13/02/2013: *R (on the application of Lewisham London Borough Council & Ors) v (1) Assessment & Qualifications Alliance (AQA) (2) Pearson Education Ltd (Edexcel) (3) Office Of Qualifications & Examinations Regulation (Ofqual)* - The court refused an application by a number of local authorities, schools, teachers and students for judicial review of decisions of the Office of Qualifications and Examinations Regulation and two qualifications-awarding organisations in relation to the award of GCSE English qualifications in August 2012. There had been no conspicuous unfairness in the marking process adopted in June 2012.

22/5/2013: *R (on the application of McGreavy) v Parole Board and Secretary of State for Justice* – the Court gave guidance on the practice and procedure for making anonymity orders under CPR Part 39.2

11/6/2013: *R (on the application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* – the court held that the Secretary of State's decision to create a Marine Protected Area around the British Indian Ocean Territory and to impose a total ban on commercial fishing was not unlawful.

15/0/2013: *R (on the application of Buckinghamshire County Council, HS2 Action Alliance Limited & Others) v Secretary of State for Transport* – a challenge to the proposed new high speed rail network connecting London to Birmingham, High Speed 2, in which

the Court found that the Government's consultation process on blight and compensation was so unfair as to be unlawful.

18/7/2012: *R (on the application of Brian Hicks and others) -v- Commissioner of Police for the Metropolis* – a Divisional Court rejected claims that the policing of events at the time of and immediately prior to the Royal Wedding on 29 April 2011 had been unlawful.

4/9/12: *Chong Nyok Keyu, Loh Ah Choi, Lim Kok, Wooi Kum Thai -v- (1) Secretary of State for Foreign & Commonwealth Affairs (2) Secretary of State for Defence* – a Divisional Court rejected claims that a decision in 2010 and 2011 not to conduct a further investigation into deaths of 24 civilians shot by British troops during the insurgency in Malaya in 1948 was unlawful.

18/2/13: *Her Majesty's Attorney General -v- The Times Newspapers Ltd* – a newspaper was found not to have been in contempt of court.

24/5/13: *Ali Zaki Mousa & others -v- Secretary of State for Defence* – a Divisional Court gave permission to a group of Iraqis to bring proceedings alleging ill treatment by British troops.

The Commercial Court

In 2012, there were over 1,000 claims issued within the Commercial Court and over 200 in the Admiralty Court. This reflects the general overall increase in work since 2008. There were 21 trials in the Admiralty Court, five of those trials lasted between two and five months, with significant time out for the judges concerned in writing judgments, as well as time taken for judges in writing judgments from similar long trials heard the previous year. Providing judges with time to write judgments generally is an increasing problem.

There were 1,022 applications heard in the same year, some of substantial length and complexity relating to jurisdictional issues, anti suit injunctions, contested freezing injunctions or contempt, in addition to the shorter Case Management Conferences and the like. 1,386 Claim Forms were issued during the year. The figures reveal how the vast majority of actions settle, mostly now well before trial. As always the preponderance of actions involved foreign parties and concern matters of an international nature. The longer actions mostly concerned corporations and individuals carrying on business of one kind or another in the Eastern bloc. Whilst the actions giving rise to long trials have taken up a substantial amount of judicial time in interlocutory hearings, the trials themselves and the follow on proceedings, the usual business of the court in arbitration challenges, shipping, banking, insurance/reinsurance, international trade and derivative disputes has continued, with rather more shipping disputes than in the preceding years. With 8 or 9 judges assigned to the Court at any one time, the pressures have increased and waiting times for 3 week trials (and longer) are now about 9 months, whilst listing of applications of half a day or more can be as far away as 3 months. Urgent matters, whether on notice or not, are always given priority and are dealt with speedily.

The Technology and Construction Court

The TCC is now staffed fully by five High Court judges. All cases are allocated to individual judges who case manage them through to trial. The TCC has been in the forefront of recent innovations for instance having been the only section of the High Court to pilot (for about 2 years) the new cost management regime recently rolled out across the other divisions of the High Court and the new simultaneous giving of evidence ("hot-tubbing") procedures.

In the most recent year, there were 452 new claims brought in the London TCC, with 35 fully contested trials proceeding to judgment. A substantial number of cases settle which is in no small measure due to active case management by the judges. There were 499 applications dealt with, including case management conferences, pre-trial reviews and specific applications. Some of these were dealt with in court, some by telephone and some in writing. Often the preparation time by the court in advance of the hearing exceeds the hearing time itself but this preparation enables the applications to be dealt with more rapidly and effectively.

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The nature of the cases covers the traditional construction case involving defects, delays and final accounts, increasingly technology cases relating to hardware, software and computer services issues, engineering claims involving civil, structural, mechanical, electrical and nuclear engineering, public procurement, fire damage, product liability, leasehold dilapidations, environmental and contamination cases, professional negligence and other tort cases such as nuisance and trespass.

Relatively recent trends have shown a large increase in contracts which identify the TCC as the court of final dispute resolution (for instance many of the London Olympics contracts and in international disputes with up to about 20% having some international element.

Family Justice

New President of the Family Division

The President of the Family Division is responsible for the family courts of England and Wales. He is supported by Family Division Liaison Judges, each with responsibility for one region. They, in turn, have support from a Designated Family Judge (DFJ) responsible for leading the work of one, or more, of the 54 care centres across England and Wales. The magistracy also plays a valuable role in family proceedings and they will form an integral part of the single Family Court to be established by April 2014.

Sir James Munby was sworn in as the new President of the Family Division on 11th January 2013, following the retirement of Sir Nicholas Wall due to ill health. It is a matter of considerable regret that Sir Nicholas's term of office was cut short in this way. Since his appointment Sir James has undertaken an extensive programme of circuit visits. By the end of the period covered by this report Sir James had visited about a third of the care centres in England and Wales. The intention is to visit all of them by January 2014.

At each centre Sir James has met all levels of judiciary and magistrates involved in family work, together with HMCTS staff and the other key professional groups working in the family justice system: barristers, solicitors, local authority lawyers and social workers and Cafcass officers. Each visit is concluded with an open meeting and Question and Answer session.

Sir James has led the judicial contribution to the establishment of the single Family Court, building on the work of Mr Justice Ryder, and the preparation for the 26 week time limit for public law proceedings. These two major strands of reform amount to the most fundamental changes in the family justice system in a generation.

The Crime and Courts Act 2013, which is likely to be implemented in April 2014, will bring a single Family Court into being. This will provide a single point of entry for all family cases, moving away from the present three tier system of Family Proceedings Court, county court and High Court, which can be confusing for families and is wasteful in requiring time and processes for the formal transfer of cases between these courts.

Workload and performance

Public Law

The number of children involved in public law applications made by local authorities jumped in 2009 from around 20,000 per year to almost 26,000 per year following the Baby P case. Since 2011 the figures have stabilised at between 7,200-7,500 per quarter, or 30,000 per year, with the latest figures showing that there were 7,249 children involved in public law applications made in the first quarter of 2013. This means that public law applications have experienced a 50% increase on the 2009 levels. This continues to present a major challenge to the judiciary in managing such an increase.

The average time for the disposal of a care, or supervision, application in the first quarter of 2013 was 42.2 weeks, continuing the fall seen since the peak of 54.8 in 2011. This sustained fall is due, in significant part, to determination on the part of the judiciary to address the causes of delay and to encourage the other professions and agencies in the system to work together to reduce delay. The valuable role of the national Family Justice Board, under the chairmanship of Sir David Norgrove, and its 42 local boards, must also be acknowledged as a powerful means of bearing down on delay through the promotion of inter-agency cooperation.

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There were 9,761 children involved in public law orders made in the first quarter of 2013, up 19% from the equivalent period of 2011. Annually, the increase from 2011 to 2012 was 22 per cent. The number of orders made is generally higher than the number of applications made, as some orders relate to applications made in an earlier time period, and an application for one type can result in an order or orders of a different type being made.

The most common types of order applied for in the fourth quarter of 2012 were care (69% of children involved in applications), emergency protection (6 per cent) and supervision (4 per cent). The proportions for orders made were different as an application for one type can result in an order of a different type being made. Care orders were still the most common (37 per cent of children involved in orders made). The next most common was supervision (16 per cent of children involved) and the third most common was residence (13 per cent).

Private Law

The number of children involved in private law applications rose to a peak in 2009 and has since fallen back, to 117,500 in 2012, which was however a rise of 4 per cent on 2011. The first quarter of

2013 shows 30,010 children were involved in private law applications, also an increase of 4 per cent from 27,280 in the equivalent period of 2011. The number of applications made, which can cover more than one child, also rose in the fourth quarter of 2012 by 4 per cent, to 14,457 compared with 13,093 in the same period of 2011.

The most common types of order applied for in the first quarter of 2013 were contact (35 per cent of children involved in applications), residence (31 per cent) and prohibited steps (17 per cent).

The most common types of order applied for in the first quarter of 2013 were contact (35 per cent of children involved in applications), residence (31 per cent) and prohibited steps (17 per cent). These were also the most common orders made, although the proportions varied as an application for one type can result in an order of a different type being made. In the first quarter of 2013 a contact order was made for 57 per cent of the children involved in orders made, a residence order was made for 21 per cent and a prohibited steps order was made for 11 per cent.

The Family Justice Reforms

The Judge in Charge of the Modernisation of Family Justice (Mr Justice Ryder) published his report on the judicial proposals for the modernisation of family justice in July 2012. The President is grateful to (now Lord Justice Ryder) for his valuable report, which proposed a practical programme of work, to be led by the judiciary, much of which is being implemented without the need to wait for legislative change. The report was prepared following extensive consultation across all of the family justice system and the changes are being implemented in the same cooperative spirit. The report can be found at: **http://www.judiciary.gov.uk/publications-and-reports/reports/family/the-family-justice-modernisation-programme.** Implementation bulletins can be found at the same address.

The sections of the Crime and Courts Act 2013 relevant to the single Family Court are being implemented in April 2014. This will provide a single point of entry for all family cases, moving away from the present three-tier system of Family Proceedings Court, county court and High Court, which can be confusing for families and is wasteful in requiring time and processes for the formal transfer of cases between these courts. The case will be allocated to the correct level of judge (which will include magistrates) as it is received in the court, and the workload of the present three levels of court will be managed as one entity under the leadership of the Designated Family Judge. While the existing legislative landscape remains in place until the Crime and Courts Act is implemented, the President is working closely with Kevin Sadler, Director of Civil, Family and Tribunals, Her Majesty's Courts and Tribunals Service to plan for and make changes as they become possible. The President and Kevin have issued joint statements - **http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/single-family-court-guide-final-08042013.pdf** - advising of progress.

The Family Justice Review identified that the absence of reliable management information for family cases was of great concern. In April 2012, the judiciary and HMCTS began piloting the system they

had jointly designed at no additional cost to monitor the progress of care cases through the courts. The system was refined during this period and is now provides reports to managing judges on caseload, delays, reasons for adjournments and requests for expert evidence.

Sir Nicholas Wall agreed with the conclusion of the Family Justice Review Panel that there was a need for a culture change within the judiciary in terms of proactive leadership of the work of the family courts and the need for robust case management in individual cases. Sir James Munby has continued the work of his predecessor, in this regard, by actively contributing to the design of both leadership training for the senior judiciary and case management training for all 600 judges who hear care cases. He is also working with the Judicial College to ensure that the case management training material is developed for the magistracy and that the Justices' Clerks or their deputies with lead responsibility for family work ensure all family magistrates receive the training in advance of the legislative changes in April 2014.

The Court of Protection

Sir James Munby is President of the Court of Protection. The Court of Protection has jurisdiction over the property, financial affairs, and personal welfare of those who lack the mental capacity to take decisions themselves. The Court has to decide whether a person has the capacity to make a particular decision for themselves and if necessary make declarations, decisions or orders on financial or welfare matters affecting them. Where circumstances require ongoing decisions for people lacking capacity, the court may appoint a deputy to take on this responsibility.

In making its decisions, the Court must consider a statutory checklist to ensure it focuses on the best interests of the person lacking capacity. It must also make the least restrictive order possible in the circumstances. The majority (about 90%) of applications require the Court to exercise its powers under the property and affairs jurisdiction, rather than to make personal welfare decisions. Very few applications are contested and nearly all are decided on the basis of paper evidence without holding a hearing. In around 95 per cent of cases, the applicant does not need to attend court.

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In the period of this report, the Court of Protection has continued to review its processes to reduce costs and improve performance. Work this year has consolidated the improvements made in 2011/12 when the Court of Protection was awarded Beacon Office status, in recognition of its commitment to service transformation and modelling continuous improvement. Applications are routinely issued within 48 hours of receipt and, where a hearing is required to determine the matter: all cases are listed to be heard within 20 weeks. For routine applications for the appointment of a deputy for property and affairs, around three quarters of orders are dispatched within 16 weeks (this

includes the statutory waiting period of six weeks for service of documents, and time for the deputy to arrange a security bond or insurance for acting as deputy). This performance has taken place against a backdrop of reduced staffing levels and increasing workloads.

In 2012 the Court of Protection received 24,877 applications: an increase of 6 per cent on the previous year. The number of hearings has also increased by almost 50 per cent from 1,176 in 2011-12 to 1,570 in 2012-13. The reasons for this include greater awareness among local authorities about when to apply to the Court of Protection, particularly in the light of widely reported judgments, such as *LB Hillingdon v Steven Neary* [2011] EWHC 3522 (CoP). This case highlighted weaknesses and inconsistencies by public authorities in applying the Deprivation of Liberty Safeguards, and a more rigorous approach to the supervision of court appointed deputies by the Public Guardian.

In autumn 2013, the Central Registry of the Court of Protection will move to new premises at First Avenue House in High Holborn. This is one of a series of moves aimed at making better use of the HMCTS estate in central London. A working group has been set up to oversee the move, and it is anticipated that, as with the move to the Royal Courts of Justice in December 2011, it will take place with minimal impact on service users.

The Family Justice Council

The Family Justice Council is an advisory Non Departmental Public Body sponsored by the Judicial Office. It is an inter-disciplinary body responsible for providing independent expert advice on the family justice system to Government, principally through the Family Justice Board. The Council is chaired by the President of the Family Division. Its membership reflects all the key professional groups working in the family justice system and includes: judges, lawyers, social workers, health professionals and academics.

During the period covered by this report, the Council focused on drafting a set of standards to apply to experts giving evidence in family proceedings. The standards are designed to improve the quality, supply and use of expertise in family proceedings. They are intended to help experts, and the courts, to ensure that they are delivering relevant and high quality opinions based on the best possible evidence.

The standards seek to set out clear expectations relating to the qualifications and expertise of those instructed to give evidence in family proceedings. The standards cover several areas including:

- the expert's area of competence and its relevance to the particular case;
- Continuing Professional Development;
- statutory registration or membership of appropriate professional bodies;
- applying the standards to experts from overseas;
- compliance with the relevant Family Procedure Rules and Practice Directions;

- the need for solicitors and judges to provide feedback to experts; and
- good practice and transparency in relation to fees in publicly funded cases.

Drafting the standards is an important piece of work which will help to reinforce the effect of the amendment, made in January 2013, to Part 25 of the Family Procedure Rules which changed the test for permission to put expert evidence before the court from 'reasonably required' to 'necessary'. The standards were published for public consultation jointly with the Ministry of Justice in May 2013.

The motion for the Council's Annual Debate in December 2012 was: "Women who have children removed to care, year after year, are being failed by a system unable to respond to them as vulnerable adults needing support in their own right." The debate helped to publicise recent research, and interventions, in this area which the Council is seeking to promote. A transcript and podcast of the debate is available at: **http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc/fjc-6th-annual-debate.htm**

Several members of the Council served on the steering group for a literature review on research on child development and the impact of neglect. The literature review was carried out by the Childhood Wellbeing Research Centre. Its purpose is to provide a summary of the existing research evidence on the impact of adversity on child development and the likely outcome for the child. The report, authored by Rebecca Brown and Harriet Ward, is available at: **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200471/Decision-making_within_a_child_s_timeframe.pdf**

The Council-funded research into the operation of finding of fact hearings in child contact applications where domestic violence is an issue. The report, authored by Rosemary Hunter and Adrienne Barnett, presents the results of a national survey of judicial office-holders and practitioners on the implementation of the President's Practice Direction: Residence and Contact: Domestic Violence and Harm (2008/9). The research will be used to inform decisions on whether to amend the Practice Direction.

The Family Procedure Rule Committee

The President chairs the Family Procedure Rule Committee. The Committee has the complex task of juggling three workstrands at once. Its present main focus is on developing the statutory instruments necessary to support both the implementation of the single Family Court following the enactment of the Crime and Courts Act 2013 and the anticipated changes in the way the courts will be required to consider family cases consequent upon the Children and Families Bill presently going through Parliament. Both of these changes are expected to be implemented in April 2014.

Secondly, the Committee maintains its duty to change/improve rules and procedure of the family courts as required on an ongoing basis. A valuable example of this is the change in roles and Practice Directions under Part 25 relating to court appointment of experts in family proceedings. These changes were implemented in January 2013. Expert evidence is now restricted to that which in the opinion of the court is necessary to assist the court to resolve the proceedings. The previous test was whether expert evidence was reasonably required to resolve the proceedings, and it was considered

that over-ordering of expert evidence contributed to unnecessary delay in resolving children cases. The President, sitting in the Court of Appeal, has given a judgment on the importance of this change and guidance for the courts on how to apply the rule. *Re H-L (A child)* [2013] EWCA Civ 655.

Thirdly, in January 2013 the President asked the Committee to use Part 36 of the rules (which provides for pilot schemes) to draft revised rules and Practice Directions to support courts to work towards the completion of public law children cases within 26 weeks from July this year so that they are prepared for the change in legislation which will require them to hear cases in this timeframe from April 2014. This has been achieved; the Part 36 Practice Direction was signed by the President and the Minister at the end of May 2013. Local Family Justice Boards are preparing plans to introduce the revised procedures with the aim of completing cases in 26 weeks where it is just to do so. There will be a formal evaluation of these changes so that lessons learned can be incorporated into the legislative framework to be in place by April 2014.

Office of the Chief Coroner

The first Chief Coroner for England Wales, His Honour Judge Peter Thornton QC, was appointed by the Lord Chief Justice in 2012. He took up his duties in September 2012. The Chief Coroner's role is to provide national leadership for the coroner service, a service which continues to be delivered locally, and in the past, as a result, not always consistently. Judge Thornton is tasked with raising standards and developing reform, for the benefit of bereaved families and the wider public. Greater consistency in the provision of services and reducing delays are two of his main objectives.

In order to achieve these aims the Chief Coroner is developing a package of reform. First he has oversight of the implementation of the Coroners and Justice Act 2009 (which came in to force in July 2013). With that has come his close involvement with the Ministry of Justice in drafting accompanying Rules and Regulations. These measures will involve coroners for the first time in greater openness and transparency in court proceedings. Dates will be set for early inquest hearings, usually within six months, directions will be given for the provision of reports, there will be greater disclosure of documents, written statements will be used more frequently, and all hearings will be recorded.

In addition, the Chief Coroner has special responsibilities for training coroners and their officers, now for the first time under the auspices of the Judicial College. The Chief Coroner has already led ten one-day training courses in regional centres on the new Act and is developing specialist training for a cadre of service death coroners. Induction and continuation seminars are in design and senior coroners will be trained in leadership and management. A training event involving bereaved organisations will take place next spring.

In order to listen and learn the Chief Coroner has travelled country-wide to meet coroners and their staff. He has discussed coroner issues with local authorities, Chief Constables, medics, government agencies, charities, faith groups and bereavement organisations. He is a member of the Ministerial Board on Deaths in Custody. He has been briefed in detail on mass disaster planning.

Under the 2009 Act all coroner appointments must be made by the local authority and no appointment may be made without the Chief Coroner's consent. The Chief Coroner has already been closely involved with senior appointments and has designed a standardised appointments' procedure, involving greater openness and competition. Local authorities are already complying with these changes.

The Chief Coroner also works towards greater consistency in other ways. He sits as a judge of the High Court on inquest cases (such as Hillsborough). He provides written guidance to coroners on practice and procedure, and he issues law sheets to them on specific legal topics. He has produced the Chief Coroner's Guide to the 2009 Act as well as revised forms and letters for the new procedures with check-lists and case management systems.

Judge Advocate General

The Judge Advocate General (JAG) is head of the service judiciary and presiding judge of the Court Martial. The current JAG is His Honour Judge Jeff Blackett. He is assisted by the Vice Judge Advocate General (VJAG) and six Assistant Judge Advocates General (AJAGs). They are all independent civilian judges appointed by the Judicial Appointments Commission. The JAG deals with criminal trials of Service men and women (and civilians covered by the Service jurisdiction) in the Royal Navy, the Army and the Royal Air Force for serious offences (or where the defendant chooses not to be dealt with summarily by the Commanding Officer).

Although the system of military justice is distinct from its civilian counterpart, the Lord Chief Justice and the senior judiciary maintain regular contact with the Judge Advocate General concerning the state of the Court Martial and on other matters of common interest.

Cases are heard in a standing court known as the Court Martial created by the Armed Forces Act 2006 section 154. Serious matters, including offences against the civilian criminal law and specifically military disciplinary offences, may be tried in the Court Martial, which is broadly analogous to the Crown Court.

Trials in the Court Martial 2008-2012

2008	2009	2010	2011	2012
731	702	634	623	516

These figures do not include the Summary Appeal Court or Standing Civilian Court trials which are also conducted by Judge Advocates.

A significant development this year was the full implementation of section 26 of the Armed Forces Act 2011 which allows Judge Advocates to sit in the Crown Court. In addition to their Court Martial sittings, and within the existing salary and other costs of the Judge Advocates, all the AJAGs now offer up to 65 sitting days a year to the civillian courts, ensuring that Judge Advocates are fully deployed and working across jurisdictional boundaries to support the civillian court system at a time of significant financial pressure.

In addition the Judge Advocate General now sits as a Deputy High Court Judge.

Judicial Office

The Judicial Office (JO) supports the Lord Chief Justice, SPT and other members of the senior judiciary in the discharge of their statutory and constitutional responsibilities. Though JO staff are employed by the Ministry of Justice they work to the judiciary, with the exception of some processes on which they support both the judiciary and the Lord Chancellor, for example judicial appointments.

The last report set out the history of the Office and the considerable changes made since it was established. Since then there have been further changes, with a new Chief Executive, Jillian Kay, joining the organisation in February 2013, the establishment of an office to support the newly appointed Chief Coroner and the dedication of resource to key areas of family justice reform and implementation of Lord Justice Jackson's recommendations in relation to civil costs.

Under Jillian and previous Chief Executive, Anne Sharp, the Judicial Office has delivered results across a broad range of areas: drafting and co-ordinating responses to numerous Government consultations; supporting judges in attending Parliament; drafting and refreshing diversity and other HR policies; supporting the judiciary through pensions change; engaging with legislative change on judicial appointments and diversity; and providing ongoing support and advice to the Judicial Executive Board and the Judges Council, to name a few. The Judicial Office Business plan for 2013-14 sets out the challenging programme of work for the year ahead (**http://www.judiciary.gov.uk/publications-and-reports/reports/general/judicial-office-business-plans/judicial-office-business-plan-2013-14**). The Judicial Office incorporates the Office for Judicial Complaints and the Judicial College.

The Office for Judicial Complaints (OJC) is an independent body within the JO which provides support to the Lord Chief Justice and the Lord Chancellor in their joint responsibility for judicial discipline. Over the last year, in addition to processing over 2,000 complaints of which 55 were upheld, the OJC has completed a review of OJC rules and regulations governing judicial discipline. This process began in February 2012 with the objective of streamlining and improving the process. The results of the public consultation were published in September 2012 and new rules

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and regulations have now been drafted. It is hoped that these will be implemented before the end of 2013. Further information about the OJC's performance and review is available at: **www.judicialcomplaints.gov.uk**

The Judicial College, created in April 2011 and responsible for the training of judicial office-holders in the courts, and in most tribunals, has had another successful year. In the period covered by the report 473 courses were delivered for the courts and tribunals judiciary, attended by a total of 14,747 participants. The Judicial College Board, chaired by Lady Justice Hallett, who is also a member of JEB, sets the direction for the College and oversees its governance. A review of the College's activities, details of the Prospectus for Courts Judiciary, the Judicial College Strategy 2011-2014 and other publications can be found here: **http://www.judiciary.gov.uk/training-support/judicial-college**

The economic climate makes this a difficult time across the public sector. The JO has continued to contribute fully to current savings targets and is already engaged in work to identify savings for the rest of the current spending round, in 2014/15 and beyond. It is not yet clear what the new, challenging, savings target announced by the Government in June 2013 will mean for the JO, though it is anticipated that all public sector bodies will be expected to continue to deliver efficiencies year on year.

Annex 1: Judicial Executive Board and Judges' Council membership

Membership of the Judicial Executive Board, August 2013

The Lord Chief Justice of England & Wales
The Rt. Hon. The Lord Judge
(Chairman)

Master of the Rolls and Head of Civil Justice
The Rt. Hon The Lord Dyson

President of the Queen's Bench Division
The Rt. Hon. Sir John Thomas

President of the Family Division and Head of Family Justice
The Rt. Hon. Sir James Munby

The Chancellor of the High Court
The Rt. Hon. Sir Terence Etherton

The Vice-President of the Queen's Bench Division and the Chairman of the Judicial College
The Rt. Hon. Lady Justice Hallett DBE

The Senior President of Tribunals
The Rt. Hon. Sir Jeremy Sullivan

The Senior Presiding Judge
The Rt. Hon. Lord Justice Gross

Judges' Council of England & Wales, August 2013

ex officio membership

The Lord Chief Justice of England & Wales
The Rt. Hon. The Lord Judge
(Chairman)

Master of the Rolls and Head of Civil Justice
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The Rt. Hon. Lady Justice Hallett DBE

The Senior President of Tribunals
The Rt. Hon. Sir Jeremy Sullivan

The Senior Presiding Judge
The Rt. Hon. Lord Justice Gross

Representative Members

A Justice of the Supreme Court of the United Kingdom
The Rt. Hon. The Baroness Hale of Richmond DBE

A Presiding Judge
The Hon. Mr Justice Sweeney / The Hon. Mr Justice Wyn Williams

A High Court Judge of the Chancery Division
Vacancy

A High Court Judge of the Family Division
The Hon. Mrs Justice Hogg DBE

A High Court Judge of the Queen's Bench Division
The Hon. Mrs Justice Swift DBE

The President of the Council of Her Majesty's Circuit Judges
Her Hon. Judge Isobel Plumstead

The Honorary Secretary of the Council of Her Majesty's Circuit Judges
His Hon. Judge Neil Bidder QC

A District Judge (Magistrate's Court)
Senior District Judge (Chief Magistrate) Howard Riddle

Member of the Association of High Court Masters
Master Barbara Fontaine

The President of the Association of Her Majesty's District Judges
District Judge Harold Godwin

The Honorary Secretary of the Association of Her Majesty's District Judges

District Judge Tim Jenkins

A Senior Tribunal Judge
Upper Tribunal Judge Andrew Lloyd Davies

A Tribunal Judge
Tribunal Judge Michael Dineen

A Tribunal Judge
District Tribunal Judge Yvette Thomas

A Member of the Magistrates' Association
Justice of the Peace Mr John Fassenfelt

A Member of the National Bench Chairmen's Forum
Justice of the Peace Eric Windsor

Co-opted Members

Representative on the ENCJ
Lord Justice Vos

Judicial Member on the board of HMCTS
District Judge Michael Walker CBE

Liaison with the Judicial Council for Scotland
His Honour Judge David Wood

Non Voting Member

Chief Executive of the Judicial Office
Jillian Kay

Secretariat

Anna Coleman