



JUDICIARY OF  
ENGLAND AND WALES

The Lord Chief Justice's Review  
of the Administration of Justice  
in the Courts

March 2008

# Judiciary of England and Wales

## The Lord Chief Justice's Review of the Administration of Justice in the Courts

Presented to Parliament by the Lord Chief Justice for  
England and Wales in pursuance of section 5(1) of the  
Constitutional Reform Act 2005.

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# LCJ's Review of the Administration of Justice in the Courts

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# 1 Introduction

1.1 On 3 April 2006, when the reforms under the Constitutional Reform Act 2005 came into effect, I became Head of the Judiciary of England and Wales, and thus head of one of the three branches of the state. My role as Head of the Judiciary and my responsibility, and that of the rest of the judiciary, for the administration of justice is quite properly of interest to the public, the media, and to Parliament and the government, the other two branches of the state.



1.2 One of the key purposes of this review, which I present to The Queen, as Head of State, and to Parliament, is to identify the matters which appear to me to be of importance to the judiciary and to the administration of justice in England and Wales.<sup>1</sup> These include the successes of the judiciary and Her Majesty's Courts Service ("HMCS"), with whom the judiciary has had a close working relationship, and the pressures and demands they are facing. I consider the areas for which the Lord Chief Justice and the judiciary are now responsible. I also consider the impact on those areas of matters for which the judiciary is not responsible but which have a direct impact on the effectiveness of the court system and thus our ability to administer justice.

1.3 In future, the period reviewed will be the previous legal year. In this, the first review, I consider the period since 3 April 2006, and the issues raised by the changes introduced by the Constitutional Reform Act and by the creation of the Ministry of Justice in May 2007.

1.4 My aim is to increase public understanding of the role of judges, the way we do our job, and our constitutional role. Our job is to do justice, to maintain the rule of law, and to decide disputes between citizens and between citizens and governmental authorities impartially. The principle of the independence of the judiciary and its impartiality is deeply embedded in our common law and now enshrined in the Constitutional Reform Act. Increased understanding of its importance and its implications will also help to set the context for considering what judges may properly do and what they may not do. I hope that this will serve to strengthen understanding between the judiciary, Parliament and government. We recognise the boundaries of our role and the need to accord proper respect to the respective roles of the other two branches of the state, and that of the media, and we hope and expect that they will do the same in respect of our role.

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1 My responsibilities (and thus this review) do not include the Judicial Committee of the House of Lords, soon to become the Supreme Court, because that is a United Kingdom court, presided over by the Senior Lord of Appeal.

- 1.5 The idea of reports and reviews by the judiciary about the administration of justice is not new. For some years, as a result of an initiative by Lord Bingham when he was Lord Chief Justice, reports of all Crown, County and Family Courts have been published. They are now on the HMCS website,<sup>2</sup> with overview introductions by the Lord Chancellor, and the Senior Presiding Judge, and more recently the President of the Family Division. There have been annual reports and reviews by other courts, for example the Court of Appeal and the Commercial and Admiralty Courts, for a longer period. These reports and reviews are intended to set out a true and fair view of the business of the courts. They are all joint reports by a judge and a member of HMCS, for example, the Crown Court reports are by the Resident Judge and the Court Manager, and give both a judicial and an administrative perspective. The wealth of information in the court reports and reviews for the 2006-2007 legal year (i.e. until the end of September 2007) enables me to draw material together and to concentrate on wider issues about the system as a whole. On some matters, for example the number of judges and the caseload of the Administrative Court, information to December 2007 is available and is used.
- 1.6 Because this is the first review to be presented I have thought it helpful to describe in some detail the work of the various different courts for which I am responsible. Future reviews will not contain this degree of detail but will focus on the material events that have occurred since the presentation of the previous review.



**Lord Phillips**

Lord Chief Justice of England and Wales  
March 2008

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2 Links to the reports and reviews for the 2006-2007 legal year are listed in Appendix 1.

## 2 Highlights

### **The contribution of the judiciary to improvements to the administration of justice**

- The CJSSS (Simple, Speedy and Summary Criminal Justice) initiative, which depends on judicial leadership through effective case management in the courtroom together with inter-agency cooperation, has been the main tool for improving the speed and effectiveness of summary cases in the magistrates' courts. (§§ 5.27-5.29)
- The steps taken to create what is effectively a Unified Family Court within the present layered court structure have involved co-ordinated initiatives by the family law judges, the Ministry of Justice and HMCS. (§§ 5.51-5.56)
- The significant judicial role in the reform of the tribunal system by the Tribunals, Courts and Enforcement Act 2007. (§§ 4.8)

### **Organisation and governance of the judiciary**

- The transition to the new constitutional arrangements, and the developing roles of the Judicial Executive Board and the Judges' Council, supported by the Judicial Office. (§§ 4.12-4.14)
- The outcome of the negotiations during 2007 about the implications of the creation of the Ministry of Justice. In January 2008 the Lord Chancellor and I agreed on a new partnership between us in relation to the governance, financing and operation of HMCS, recognising that the courts are by their nature a shared responsibility between the judiciary and government, and that HMCS will be under a joint duty to each of them to secure the effective and efficient operation of the courts. (§§ 4.22-4.26)
- The increasing number of leadership and administrative responsibilities upon judges in addition to their judicial work that are the result of the transfer of responsibilities from the Lord Chancellor to me. (§§ 4.9-4.11)

### **Increasing public understanding of the judiciary**

- The work of the Judicial Communications Office in providing information to the media and the public to increase their understanding of the judicial system and the work of the judiciary. (§§ 10.1-10.4)
- The creation by the Judicial Communications Office of two major communication channels; a website providing the public with direct access to information about the judiciary, and an intranet for judges, magistrates and tribunal judges. (§§ 10.5-10.8)



## **The operation of the courts**

- The opening of the striking 14 floor Manchester Civil Justice Centre with 47 courts on 23 October 2007, but concern about the overall condition of the court estate. (§§ 6.1-6.8)
- The impact of increasing workloads on judges and courts against a background of budgetary and resource restrictions and reductions in the number of court staff. (§§ 5.9-5.13)
- The impact of a greatly increased caseload in the Administrative Court where nearly 75% of the 11,320 cases lodged in 2007 concerned asylum or immigration. (§§ 5.69-5.75)
- The impact of terrorism on the work of the courts, both the criminal courts, where a terrorism protocol helps ensure efficient handling of the caseload, and the Administrative Court, which considers the cases on control orders. (§§ 5.67-5.68)
- The effect of overcrowding in prisons. (§§ 14.7)

### 3 The Size of the System

- 3.1 The judicial system for which I am responsible is a large one. At present there are 650 courts in England & Wales (of which 400 are magistrates' courts) staffed by some 20,000 members of HMCS. There are approximately 1,500 judges, nearly 30,000 magistrates, and nearly 2,250 fee paid part-timers.

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<b>Court of Appeal:</b>	Master of the Rolls (MR) and 37 Lord and Lady Justices
<b>High Court:</b>	Heads of Division, 110 High Court Judges and 28 Masters and Registrars (not including deputies)
	<i>Queen's Bench Division:</i> President (PQBD) and 73 judges
	<i>Chancery Division:</i> The Chancellor (C) and 18 judges
	<i>Family Division:</i> President (PFD) and 19 judges
<b>Circuit Bench:</b>	652 judges
<b>District Bench:</b>	421 District Judges & 141 District Judges (Magistrates' Courts)
<b>Recorders:</b>	1,318 Recorders
<b>Deputy District Judges:</b>	761 Deputy District Judges and 155 Deputy District Judges (Magistrates' Courts)
<b>Magistracy:</b>	c. 30,000 magistrates

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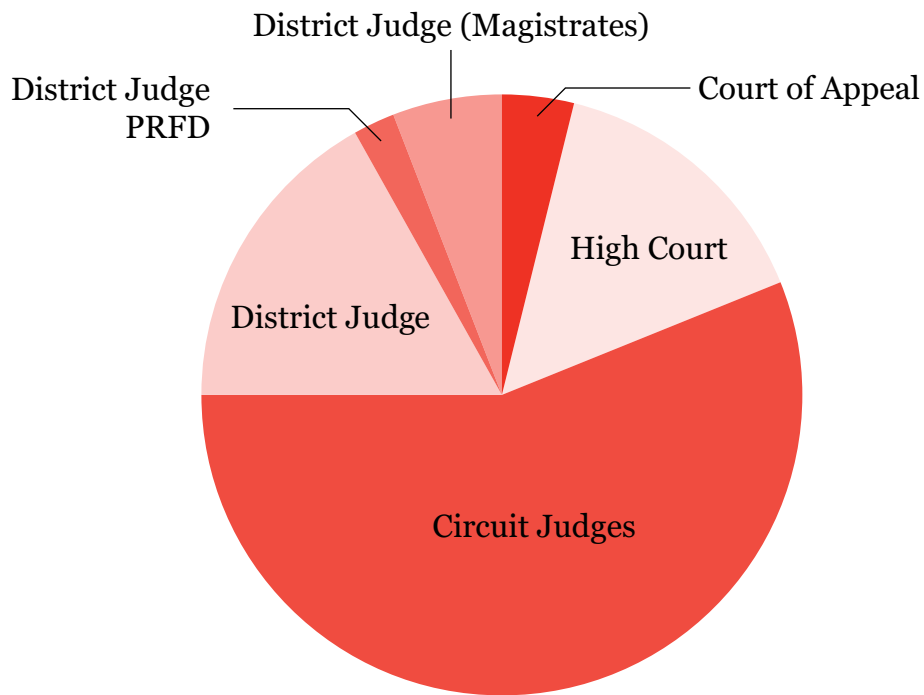
#### **Numbers on 31 December 2007**

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- 3.2 A system of this size is not static. Retirement, death in service, and vacancies caused by promotion mean there is a regular need for further appointments of judges. The fee-paid Deputy High Court Judges, Recorders and Deputy District Judges, who supplement the full time bench, help in dealing with fluctuations in the caseload and covering judges on holiday or on sick leave.

3.3 An indication of the movement in the system can be seen from the numbers involved. During the period between April 2006 and September 2007, 90 judges and 3,376 magistrates were appointed. Of the judges, 4 were promotions from the High Court to the Court of Appeal, 11 were appointments to the High Court (including 3 promotions from the Circuit Bench), 34 were appointments to the Circuit Bench (including 10 promotions from the District Bench), 21 were District Judges in the county court or the Principal Registry of the Family Division and 7 were District Judges (Magistrates' Courts).

**Appointments April 06 - December 07**



## 4 Issues arising from the changes made by the Constitutional Reform Act 2005

### **The Lord Chief Justice's role and the constitutional position of the judiciary**

- 4.1 The changes made by the Constitutional Reform Act were designed "to put the relationship between the executive, the judiciary and the legislature on a modern footing" and to increase the separation of powers in our constitutional arrangements by "enhancing the independence of the judiciary from the other two branches of government".<sup>3</sup> One of the ways in which this was done was by the Lord Chief Justice becoming the Head of the Judiciary of England and Wales. What does this mean?
- 4.2 In general terms under the new arrangements responsibility for the administration of justice in England and Wales is shared between the government, which has overall responsibility for the system including its funding and the staffing of the courts, the Judicial Appointments Commission (JAC), which, subject to the Lord Chancellor's remaining role, is responsible for the selection of judges, and the judiciary. The judiciary is the branch of the State responsible for delivering justice independently and impartially.
- 4.3 My responsibilities include the deployment of individual judges and their welfare, training and guidance, and the judicial business of the courts (including the allocation of work within the courts). I am also responsible for representing the views of the judiciary to Parliament, to the Lord Chancellor and to Ministers generally. I share responsibility with the Lord Chancellor for the provision of a complaints and disciplinary system for the judiciary.
- 4.4 We have had to make arrangements for our internal governance. In 2005 the Judicial Executive Board (JEB) was established. It has formal monthly meetings and informal weekly meetings, and is the body through which I, as Lord Chief Justice, primarily exercise my responsibilities. Changes were also made to the composition and role of the existing Judges' Council, a body (broadly) representative of the judiciary as a whole. It includes representatives of the magistracy and tribunal judges, meets six times a year and its executive committee meets monthly. It has a number of specialist working groups. It informs and advises me and considers broad issues relating to the judiciary as a whole, and publishes an Annual Report<sup>4</sup>. The members of the JEB and the Judges' Council are listed in Appendix 2.
- 4.5 The changes made by the Constitutional Reform Act and the responsibilities given to the judiciary mean that judges now undertake tasks which were previously undertaken by the Lord Chancellor and his officials. Our consideration of the practical effect of this has led us to consider our institutional and constitutional position, including our relationship with the other branches of the State. There

3 See Lord Falconer of Thoroton LC's Introduction to Consultation Papers CP 10/03, CP11/03 and CP 13/03.

4 See [www.judiciary.gov.uk/docs/judges\\_council](http://www.judiciary.gov.uk/docs/judges_council)

has also been new interest in the judiciary by others, and examination of long understood rules and understandings about us.

- 4.6 Government has increasingly (although not invariably) consulted the judiciary over the terms of proposed legislation which affects the administration of the courts and the administration of justice. It is desirable that constructive engagement within a clear understanding of the respective roles and responsibilities of the judiciary and government, and transparency in the sense that all the formal responses by the judiciary to consultation papers are made on terms that they can be published, should continue. In the area of criminal justice, for a number of years, this has been done through the Rose Committee, so named after Lord Justice Rose, then the Vice-President of the Court of Appeal Criminal Division. This committee examines proposals for law reform in the area of criminal justice. The essence of its work is to use the experience of the judiciary to ensure that the proposals are as well formulated as possible and can work in practice.
- 4.7 One example of our own consideration of our constitutional position is seen in the document we have published on our website<sup>5</sup> discussing the forms of judicial accountability and their limits. While there has been a new interest in the accountability of the judiciary, the existing forms of accountability and the limits upon accountability inherent in the independence of the judiciary, which is acknowledged as necessary in a democracy, have not always been appreciated. We have sought to address these issues.
- 4.8 The period since 3 April 2006 has also seen the enactment of the Tribunals, Courts and Enforcement Act 2007 which establishes a new United Kingdom structure for tribunals bringing together most of the existing tribunal jurisdictions administered by central government. Tribunals and tribunal judges are a vital but distinct part of the civil justice system administered by Tribunal Service which is separate from HMCS and under the leadership of the Senior President of Tribunals. The first Senior President, appointed with the concurrence of myself, the Lord President of the Court of Session in Scotland and the Lord Chief Justice of Northern Ireland, is Lord Justice Carnwath, a member of the Court of Appeal. He has, together with Sir Michael Harris, former President of the Appeal Tribunals, Judge Gary Hickinbottom, President of the Social Security Commissioners and Deputy Senior President of Tribunals, and other judges played a significant role in the creation of the new tribunal system. This review does not deal with the UK tribunal system. Although I have some responsibilities for tribunals within England and Wales, and tribunal judges are represented on the Judges' Council and assisted by the Judicial Communications Office, under the 2007 Act overall responsibility will lie with the Senior President of Tribunals.

#### **Increased leadership and administrative responsibilities on judges**

- 4.9 It was always envisaged that the responsibilities assigned to the Lord Chief Justice by the Constitutional Reform Act would not be carried out by him alone. I have

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5 [http://www.judiciary.gov.uk/about\\_judiciary/judges\\_and\\_the\\_constitution/judicial\\_independence/acc\\_jud.htm](http://www.judiciary.gov.uk/about_judiciary/judges_and_the_constitution/judicial_independence/acc_jud.htm).

exercised the power given to me in the Act to delegate specific responsibilities to individual judges, and have asked others to assist in a number of areas. The consequence is that there has been a significant increase in the number of judges who undertake a variety of onerous leadership and administrative duties in addition to their judicial work, and who have to take some time out of court to do so.<sup>6</sup> This is particularly so in the case of the Heads of Division, the Senior Presiding Judge and the Presiding Judges, Family Division Liaison Judges, Chancery Supervising Judges, and Resident, Designated Civil and Family Judges.

- 4.10 There are also considerable administrative duties on judges who chair or serve on committees such as IT committees. Those to whom I have made delegations under the CRA and other judges with leadership responsibilities are listed in Appendix 3. Involvement in the new system of judicial appointments and the new procedure for dealing with complaints about judicial office holders also involves a considerable demand on judicial resources and burden on individual judges.
- 4.11 I am extremely grateful for the time and dedication judges give to these responsibilities. I am, however, concerned that they do not have available to them adequate administrative support. In the Crown and County Courts, the Resident Judges and the Designated Civil Judges respectively have vital leadership roles in relation to the business in their area. Designated Family Judges cover the same areas as their civil counterparts. The situation is the same for those members of the High Court who take on additional work in relation to the administration of the courts, whether as Presiding Judges, or with particular responsibilities for estates, IT, or other specialised business. All of them have huge, and continuously growing, administrative responsibilities. I appreciate that the reductions in staff numbers make this a difficult issue for the Ministry of Justice and HMCS but we have to address how these judges can be properly supported to discharge their administrative responsibilities.

### **The Directorate of the Judicial Offices of England and Wales**

- 4.12 The Directorate of the Judicial Offices comprises the Judicial Studies Board, which will celebrate its 30<sup>th</sup> Anniversary next year, and two new bodies created in response to the constitutional reforms: The Judicial Office and the Judicial Communications Office. Its structure is set out in Appendix 4. Debora Matthews was appointed as the first Director of the Judicial Offices in November 2005 and, with the rest of her team, has helped us steer through the first 20 months of the new constitutional world.
- 4.13 The Judicial Office was established in April 2006, with a small team of 58 staff to provide the essential administrative support to ensure that I and other members of the senior judiciary can fulfil our new responsibilities. We have been well served by the members of the Judicial Office. They have worked with dedication and utter professionalism but, in the light of our experience, it has become clear that what was required to support me and other judges in the exercise of our

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6 On the resulting pressures, see the First Progress Report of the Standing Committee of the Judges' Council, *Judicial Support and Welfare* (December 2007).

new responsibilities was significantly underestimated. This is not a criticism of those who made the decisions: the enterprise was an entirely new one and nobody could have properly understood what the actual workload would be. But it is now time for the original estimate to be reviewed. This can conveniently be done at the same time as the current review of responsibilities within the Ministry of Justice. The Judicial Office is particularly short of people at a senior level. A single person will typically cover areas which would in any other public office be covered by more than one. Moreover, a relatively small office suffers a greater impact from transfers of staff (sometimes at short notice) and from gaps before their replacements arrive. One consequence has been that judges have had to do more high level administration than was envisaged. For example, the Senior Presiding Judge is now assisted by District Judge Michael Walker and, when his duties at the International Criminal Court permit, Mr Justice Fulford.

- 4.14 I deal with the work of the Judicial Communications Office and the Judicial Studies Board in sections 10 and 12 of this review.

#### **Relations with government and Parliament**

- 4.15 While the CRA brought a change in the constitutional relationship between the judiciary and government, it did not change the desirability of constructive engagement between us within a clear understanding of our respective roles and responsibilities. I have referred to the way the judiciary can appropriately provide government and Parliament with the benefit of their experience about matters affecting the administration of the courts and the administration of justice. My relationship with the Lord Chancellor has, as before, continued to be very satisfactory and constructive. I deal with the creation of the Ministry of Justice in paragraph 4.22 below. Its increased policy remit has had no noticeable effect upon my relationship with the Lord Chancellor. However, I now have to pay increasing regard to possible conflicts to ensure I do not engage with the Lord Chancellor on matters that may arise in the course of litigation before me. The contribution of the judiciary through bodies such as the Rose Committee, to which I have referred, continues.
- 4.16 In the period of this review, the impact of overcrowding in the prisons led the government to set up Lord Carter's review of prisons. He reported in December 2007 and, as is apparent from the report of the review,<sup>7</sup> the judiciary had extensive discussions with Lord Carter during the course of it. Lord Justice Gage is the judicial chair of the Sentencing Commission Working Group set up in the light of Lord Carter's review. It will report to the Lord Chancellor and to me.
- 4.17 The increased responsibilities of the judiciary, my statutory role, and issues raised by the creation of the Ministry of Justice in 2007 have led to understandable attention by the media and to invitations by Parliamentary Committees to me and other judges to appear before them. Judges at all levels have given evidence to Parliamentary

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<sup>7</sup> *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales (2007)*.

Committees in the past, but this has been a rare occurrence. In the last 18 months they have done so on 20 occasions. The details are set out in Appendix 5.

- 4.18 We anticipated this. For this reason I asked Mr Justice Beatson to serve as Judge in charge of Parliamentary Relations. We also created a Parliamentary Liaison Officer in the Judicial Office to liaise with the clerks of Parliamentary committees and, with Mr Justice Beatson, to assist judicial witnesses. After consulting the relevant Parliamentary officials, we revised existing guidance (originally issued by the Lord Chancellor's Department) given to judges appearing before Committees, about matters on which well established and longstanding rules prevent judges from commenting on certain matters, or restrict what can be said. We have also participated in Parliamentary processes in other ways. For instance, our response to the July 2007 report of the House of Lords' Select Committee on the Constitution, *Relations between the Executive, the Judiciary and Parliament*,<sup>8</sup> was the first such response to a report of a Parliamentary Select Committee.
- 4.19 I have said that Select Committees can represent an appropriate and helpful forum for me or other senior judges to explain or state our views on aspects of the administration of justice that are of general interest and concern and upon which it is appropriate for us to comment.<sup>9</sup> It was appropriate for judges to assist the House of Lords' Select Committee's inquiry into relations between the executive, the judiciary and Parliament, and the House of Commons' Select Committee on Constitutional Affairs' inquiry into the creation of the Ministry of Justice.<sup>10</sup> Sir Igor Judge, President of the Queen's Bench Division, Lord Justice Thomas and I appeared before one or both of these Committees.
- 4.20 But I have also said that consideration should always be given to whether it is necessary for a judge to appear. Judges have tried to give government and Parliament the benefit of their experience as to how a particular jurisdiction operates in practice. However, the fact that judges might, at some stage, be asked to adjudicate on an issue they had commented on in the past, means that there are difficulties in judges giving views on the operation of the law or proposals for new legislation. As subjects such as criminal justice, civil liberties and human rights become more politically charged it becomes more difficult for judges to comment on them without risking prejudicing the public perception of their impartiality.
- 4.21 The appearance of judges and magistrates before Select Committees should not become routine lest the perception of impartiality is prejudiced and the proper boundary between the judiciary and Parliament is infringed. It is noteworthy that appearances by judges before Parliamentary Committees in other Commonwealth common law countries which share our legal and judicial traditions, but where there has been a greater separation of powers, are much less frequent and in Canada are almost unknown. I have referred to the fact that one aim of the

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8 Sixth Report of Session 2006-07, HL 151 (26 July 2007)

9 See [www.judiciary.gov.uk/docs/speeches/lcj\\_kenya\\_clc\\_120907.pdf](http://www.judiciary.gov.uk/docs/speeches/lcj_kenya_clc_120907.pdf) and [www.judiciary.gov.uk/docs/const\\_committee\\_response.pdf](http://www.judiciary.gov.uk/docs/const_committee_response.pdf)

10 Sixth Report of Session 2006-07, HC 466 (26 July 2007)



changes introduced by the Constitutional Reform Act 2005 was to increase the separation of powers in our constitutional arrangements. There has, as yet been little consideration of the implications of this on the matters upon which it is appropriate for judges to comment to Parliamentary Committees. The changes in the 2005 Act and the increasingly political nature of matters connected with the administration of justice may mean that judges will have to be more circumspect than they have recently been and to hesitate before venturing into new territory.

### **The creation of the Ministry of Justice**

- 4.22 The creation of a Ministry of Justice in May 2007 brought together responsibility for criminal justice, prisons and penal policy (previously in the Home Office), and responsibility for the courts service and legal aid (previously in the Department for Constitutional Affairs). This was a significant constitutional change, in part because, once these areas are funded by the same departmental budget, there is a potential conflict between the resource needs of the courts and those of the prisons, and a consequent risk to the independence and impartiality of the judiciary. The risk to judicial impartiality arises because adverse financial consequences on other parts of the Ministry's budget resulting from judicial decisions may be perceived to put the financial position of the courts at risk.
- 4.23 Since the decision to create the new ministry became public in January 2007, there have been discussions about its implications between myself and other members of the judiciary,<sup>11</sup> and the Lord Chancellor and his predecessor, and their officials. I considered that the constitutional significance of the change and the new wide-ranging responsibilities of the Lord Chancellor and his department, required a different relationship between the new ministry, the judiciary and HMCS. My concern was to ensure the independence of the judiciary in performing their duties to uphold the rule of law and to deliver the proper administration of justice. Given the potential conflicts of interest, judicial representation on the Board of the DCA, which was one of the important safeguards in the concordat entered into by Lord Woolf and Lord Falconer, was no longer appropriate for the Board of the Ministry of Justice.
- 4.24 Our discussions addressed two substantial and complex issues. The first, since independence requires the courts to be properly resourced, concerned a new mechanism to set and safeguard the courts' budget. The second concerned a new relationship recognising that the courts are by their nature a shared responsibility between the judiciary and government, and the judiciary has a distinct responsibility to deliver justice independently within the framework and resources set by Parliament. Building on the experience of countries with an autonomous court administration, we proposed that HMCS come under a duty to the judiciary and be responsible to the Lord Chancellor and to the Lord Chief Justice jointly for the performance of all its functions.

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11 Lord Justices Thomas and Leveson, District Judge Walker and Mr Justice Stanley Burnton represented the judiciary's interests during these negotiations.

- 4.25 Our discussions were fruitful. On 23 January 2008 the Lord Chancellor and I announced our agreement on a new partnership in respect of the operation of HMCS. The new arrangement is not as far reaching as the autonomous court administration responsible to the judiciary in Ireland or the proposed system for Scotland,<sup>12</sup> but the Lord Chancellor and I will jointly agree the aims, priorities and funding for HMCS. New arrangements will apply at regional, area, and local level as well as at the centre. It builds on the excellent working relationship that has previously existed between us and between our predecessors, and the spirit of co-operation, in particular between Resident Judges, Designated Civil and Family Judges, and HMCS officials.
- 4.26 A new HMCS Board will be created to hold the Chief Executive and the executive team to account for the delivery of its agreed aims and objectives. The Board will consist of representatives of the judiciary, the Ministry, the HMCS executive team, and two independent non-executive directors. It will be chaired by an independent non-executive and not by a judge, a minister or a civil servant. The Lord Chancellor and I have agreed that all HMCS staff will owe a joint duty to us for the effective and efficient operation of the courts and that there will be an open and transparent method of setting the budget which includes greater judicial engagement in the resourcing of the courts through the HMCS Board. We will jointly examine how we can improve performance and efficiency across all aspects of the operation of the courts. This will include the contribution the judiciary may make while fully respecting the principle of the independence of the judiciary as a body and in respect of individual decisions.

### **Appointments**

- 4.27 It is fundamentally important to the efficient administration of justice that candidates of the highest ability continue to be attracted to the judiciary, and that there are adequate numbers of judges. The responsibility of appellate judges in a common law system for developing the law makes their quality particularly important.
- 4.28 The creation of the Judicial Appointments Commission (JAC) was one of the most significant features of the Constitutional Reform Act. The principle of selection on merit is enshrined in the new system. In addition, the JAC is required to have regard to the need for diversity in the range of persons available for selection. I am, with Baroness Prashar, who chairs the JAC, and the Lord Chancellor, who retains a defined but limited role in the process, a signatory to the tripartite diversity strategy, and describe the role of my office in part 8 of this review. I consider that the present structure reflects the correct balance of responsibilities between the executive, the judiciary and an independent Commission. Since the JAC has been in operation, the quality of judicial appointments has remained consistently high. In the light of the experience to date, however, the Judicial Executive Board (JEB) and the Judges' Council consider that there are a number

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12 See the Judiciary and Courts (Scotland) Bill 2008.

of technical adjustments which, if made, would streamline the system and ensure that delays in filling vacancies are kept to a minimum.<sup>13</sup>

- 4.29 The new Commission started in April 2006 without any shadow operation and subject to a process which, in some respects, was unduly cumbersome. The administrative and staffing implications of the creation of the JAC and in particular the need to identify requirements further in advance than had been the case under the previous system, were underestimated. The Commission's resources are limited and in the light of our experience clearly require review. It has had to face competing demands from both HMCS and the Tribunal Service upon those limited resources. As far as courts are concerned, HMCS needs to be able to forecast the numbers of various categories of judges to be appointed with greater accuracy. There is a particular difficulty when a vacancy arises from a promotion because there will usually be little advance notice, but the lapse of time presently being experienced can have serious repercussions. The Commission is working through the problems that it faces and it has my total support.
- 4.30 The problems have, however, resulted in delays to appointments.<sup>14</sup> The resulting shortage of judges has affected court performance in many parts of the country, in particular in London and the South East, the Midlands and the North East. These delays also affect applicants, both in relation to their learning of the outcome of their application and, in the case of those who were successful, their knowing when they will be appointed. Uncertainty of this sort can have an impact on the practice of a lawyer and may, unless it is minimised, discourage applicants, who may be concerned lest their work will fall away if it is known (and they are sometimes asked by their clients) that they may be leaving practice to become a judge. I am pleased to note that this problem is also being addressed.
- 4.31 A snapshot of the effect of delay in the appointment process on court performance can be seen by the experience of two court centres. Snaresbrook Crown Court, having submitted its original bid in April 2006, was waiting for six appointments by 1 April 2007. This represents 30% of the total complement of full-time judges that Snaresbrook Crown Court has now been provided with. At Maidstone Crown Court the lack of full-time judges with the necessary experience to try the increasing number of trials of the most serious criminal charges, such as murder, manslaughter and rape, caused performance to deteriorate and exacerbated the pressure on those judges who were authorised to deal with these offences. This meant that the court was faced with a situation where: it had to sit 100 days less than it would otherwise have done; serious and longer cases were delayed, and more than 100 cases had to be transferred to Canterbury Crown Court.<sup>15</sup>

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13 See Response to the Government's Consultation Paper, *The Governance of Britain: Judicial Appointments*.

14 On the number of appointments since April 2006, see para 3.3 above. On the effect of delay in Family Courts, see para 5.62 below.

15 *Crown Court Annual Reports 2006/7* Introduction by Lord Justice Leveson p.1.

- 4.32 The current system is very much a tripartite one that depends on accurate and timely contributions from the JAC, HMCS and the Ministry of Justice. Unfortunately this system is not best disposed towards dealing with specific appointments, such as Senior Circuit Judge posts, that arise at short notice. Delays in the replacement of these judges, whose leadership responsibilities are so important, such as the Recorder of Cardiff (who was promoted to the High Court Bench), and of specialists such as the Chancery Judge in Birmingham, the Mercantile Judge in Manchester, and the Designated Family Judge for London, have put particularly acute strains on those circuits and courts.
- 4.33 I have referred to the importance of fee-paid Recorders for the efficient administration of justice in the Crown and County Courts. The position in relation to numbers of Recorders is more serious. On the North Eastern Circuit, numbers are currently at a critical level. I am pleased to say that the JAC, the Senior Presiding Judge, the Judicial Office, HMCS and the Ministry of Justice have worked closely together and have identified a way forward. On the Midland Circuit the Presiding Judges have received reports from their courts that, as a result of a shortfall of 42 Recorders, they have had to adjourn lists of cases. The shortfall has arisen principally because there has been no national competition for the appointment of Recorders since 2003-04. The Presiding Judges and HMCS are doing everything possible to cope with the situation.
- 4.34 The implications of the move to a system wholly based on applications were significant for both those under-represented and those well represented in the court judiciary, the latter being senior members of the bar, a group used to a process in part based on approaches by the Lord Chancellor to those he thought suitable. Active steps to encourage the former group to apply are to be welcomed, and I have encouraged them, for example in the formal Work Shadowing Scheme administered by my office.<sup>16</sup> They are, however, likely to take time to bear fruit. It is particularly important that the process should not inhibit outstanding candidates from either group from being considered.
- 4.35 The efforts of all concerned with appointments have enabled progress to be made in solving a number of the immediate problems that have arisen. It is, however, vital that the system is better placed to phase the implementation of new appointments to take over from those being replaced within a shorter time period, in particular by improved forecasting of future needs.

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16 Paragraph 8.3 below.

## 5 The Operation of the Courts

### **Introduction**

- 5.1 The efficient and effective operation of the courts depends upon five fundamentals: the quality of the judges (to which I have referred in the section on appointments), the quality of staff, the adequacy of resources, efficient and effective processes and the availability and quality of representation and advocacy.
- 5.2 I do not deal with representation and the quality of advocacy in this review, save to observe that it is vital that changes in the public funding of representation do not lead to shortages of suitably qualified advocates, particularly in the criminal and family courts. The judiciary made submissions to Lord Carter's Review of Legal Aid<sup>17</sup> on the importance of quality in advocacy and warmly welcomed his recommendation that a scheme for quality assurance for publicly funded advocates be developed; the judiciary are playing their part in taking the recommendation forward.
- 5.3 As far as the other fundamentals are concerned, most of the key points I would like to highlight apply throughout the court system. However, they can best be illustrated through examining work done on the circuits. For this reason, after a number of introductory and thematic points, this review starts with the magistrates' courts and ends with the Court of Appeal rather than, as is usual, starting at the top of the legal process.
- 5.4 The material in this section is based on (i) the court reports and reviews for 2006-2007, (ii) the valuable findings of the Senior Presiding Judge on the criminal and civil courts, and by the President of the Family Division on the family courts, following their annual visits to each circuit, and (iii) the observations of the Presiding Judges and Family Division Liaison Judges, which have ensured that this review gives an up to date picture to September 2007 and allows me to include the magistrates' courts. The court reports and reviews are statistically based; the other information is intended only to provide a snapshot of the perception of the senior judiciary responsible for oversight of the circuits.
- 5.5 There are many examples of good performance that reflect the way that the judiciary and court staff are working together to improve the administration of justice notwithstanding budgetary and resource restrictions. The overall picture, however, is one that does give rise to concern.
- 5.6 Before turning to my concerns, it is important for me to emphasise that I am continually encouraged by the ability of judges and court staff to find new and innovative ways of tackling the same problems, and with such positive results. At present some of what is happening is work in progress. Two of the many examples of this are the regular meetings between senior HMCS managers, Designated Civil Judges and senior District Judges on the Midlands Circuit to consider how the delivery of civil justice may be improved across the circuit, and the efforts of the

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17 *Legal Aid: A market-based approach to reform* (July 2006).

newly formed National Family Programme Forum to improve performance and reduce the outstanding case load of family work. As seen from the “Highlights” section, there are also some real success stories. Three are shown below, purely by way of example. There are others in the sections dealing with particular courts.

- **The CJSSS (Simple, Speedy and Summary Criminal Justice) initiative** has been the main tool for improving the speed and effectiveness of summary cases in the magistrates’ courts. Full implementation of CJSSS in the vast majority of courts was due to commence by the end of 2007 and therefore it is too early to reach firm conclusions about its effectiveness. However, the initial reports have been very positive and show some remarkable reductions in the average number of pre-trial reviews. What is clear, moreover, is that the success of the initiative depends on judicial leadership through effective case management in the courtroom together with inter-agency cooperation in preparation for trial.
- **The speedy and co-ordinated response of the judiciary and others in the court system to the many thousands of county court claims brought in 2006 and 2007 by customers of the retails banks challenging bank charges.**<sup>18</sup> Following agreement with the Financial Services Authority and eight major banks dated 25 July 2007, the Office of Fair Trading, who are themselves conducting an investigation into the charges, issued Commercial Court proceedings designed to clarify the legal position. The Court responded by arranging a hearing for this purpose in January 2008 and, in light of guidance issued by Lord Justice Moore-Bick, the Deputy Head of Civil Justice, judges in the county courts were able to manage their cases accordingly. The trial in the Commercial Court lasted over three weeks during January 2008, and the trial judge has explained what points are to be decided by it. It is hoped that in this way the county court claims will be decided in an orderly and consistent way, without undue delay or expense for litigants.
- **The steps taken to create what is effectively a Unified Family Court within the present layered court structure.** This has been done by co-ordinated efforts by the family law judges, the Ministry of Justice and HMCS. Work is being allocated flexibly between judges of the High Court, Circuit and District Judges in the county court, and the magistrates of the Family Proceedings Court, according to the complexity of the work and the availability of judges within the circuits and areas.

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18 According to the Financial Times (10 July 2007) there were more than 40,000 new claims per month during the first half of 2007. This figure cannot be confirmed from HMCS data which does not record how many cases were bank charges claims.

5.7 There are other pilots, including the Dedicated Drugs Courts which were piloted in Leeds and West London Magistrates' Courts. These pilots have been positive although it is my view that there should be further pilots to allow for a more robust evaluation of the success of the project. It is evident that the success was due to effective cooperation between the judiciary, members of HMCS and others within the Criminal Justice System. It is important not to forget other less headline-catching efforts, for example:

- a listing review on the South Eastern Circuit which aims to equalise work and waiting times across the circuit;
- more effective deployment of judges on the Midlands Circuit;
- flexible listing of specialist Chancery, Mercantile and Technology and Construction Court work in Birmingham and in Bristol which helps to reduce the waiting time for trials in these specialised areas and increased visits by the specialist civil, mercantile and chancery judges to North Wales.

What these examples show is the contribution the judiciary can make to improving the system by providing leadership and cooperation with HMCS and others in ways that do not imperil the independence of the judiciary.

5.8 These achievements do not, however, mean that there is no cause for concern. Returning to the overall picture, the common themes that have emerged around the country include:

- Budgetary, resource and staffing restrictions;
- The reliability of statistical information necessary for the effective operation of the courts;
- Difficulties with IT.

I expect that my new partnership with the Lord Chancellor about HMCS will enable the judiciary to play its part together with the Ministry of Justice in helping HMCS to address these problems.

### **Staffing**

5.9 The effect of financial constraints on the level of staffing is of most concern. On top of this the increase of workload, in the Crown and county courts falling most heavily in the South East, and the shortages of judges, have led to backlogs and delays and consequent increase of pressure on judges and court staff. The delays affect the High Court as well as the Crown and county courts, with particular pressure on lead times (the time between the date when a hearing is fixed and the date when the hearing is fixed to take place) in the Administrative Court and the Commercial Court.<sup>19</sup>

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19 I deal with these at paras 5.72 and 5.82 below.

- 5.10 The pressure on HMCS staff is not to be underestimated. They are its most valuable resource. All the court reports pay tribute to their true professionalism. It is particularly noteworthy that court staff have maintained their dedication despite the very real problems caused by the continuing financial stringency, and the resulting understaffing and insufficiency of resources. What is critically needed is for the continuing increase in workload to be matched by increases in judicial and administrative resources.
- 5.11 Some court reports cite examples of staff having to cover long absences of senior managers while still managing their own workload. In Surrey, the county courts have been operating at 20% under strength. Some courts in Wales are beyond the point of reducing non-essential posts and changing management structures to save money, and have been driven to cut back essential front-line posts, such as court clerks and county court bailiffs. In some areas problems have been tackled by the use of temporary staff, either employed through an agency or on loan from other court centres, to overcome difficulties resulting from centrally imposed headcount targets. There are also concerns (see below) about the accuracy of the statistical data upon which these headcount targets are based. Resource allocation decisions based on flawed statistical data could lead to further hardships.
- 5.12 In many areas, particularly in the county courts, the courts also suffer from a high turnover of staff. An example of this is Wandsworth County Court which has had a remarkable 60% staff turnover during the financial year 2006-2007. There are a number of reasons for this, including the ever increasing demands made of staff as a result of reductions in staffing numbers, the delay in filling vacancies, the lack of cover during sick leave, the level of remuneration and the wage differentials between government departments and the private sector.
- 5.13 Despite this strain, HMCS staff continue to work with extremely impressive determination and dedication, especially during times when circumstances have been difficult. It is, however, evident that morale is suffering. Although the effort of covering for others as well as doing one's own job can be maintained in the short term, I have no doubt that it is not capable of being sustained in the long term. It is naïve to think that the high turnover of staff and the use of temporary staff does not significantly reduce the pool of experience available to HMCS. The Ministry of Justice has recently conducted a Pay and Grading review to introduce consistent terms and conditions for all staff and to improve the pay ranges for some of the lower pay grades. It remains to be seen whether this will have a positive effect on the retention of experienced staff.

### **Information Technology**

- 5.14 The deployment of effective IT systems is essential for the effective operation of the courts. The Ministry of Justice provides IT systems for the judiciary and the courts and is responsible for the maintenance and development of IT generally. We are fortunate that there are judges on the various national and local IT boards throughout England and Wales, which feed into the overall departmental process, under the leadership of Mr Justice Stanley Burnton, who is the Judge in Charge of IT, Modernisation and the Estate. I am grateful to him and the other judges for the time and dedication they give to this subject. There have been significant



developments but it is unfortunate that progress has been slow in some areas as a result of low investment in the past. The judiciary is keen to work closely with the Ministry of Justice and HMCS to support these needs.

- 5.15 In the period of this review a number of new systems have been introduced. The long awaited Libra IT system has been introduced to magistrates' courts, the XHIBIT system providing court users with online information about hearings has been introduced in the Crown Court, and the online PCOL (Possession Claims Online) and MCOL (Money Claims Online) services and the electronic diary system, E-Diary, have been introduced in the county courts.
- 5.16 There were technical difficulties, similar to those in many new IT systems, when Libra was initially introduced, but it is hoped that the experience gained will mean that these will reduce when the system is introduced to more courts during 2008. In the county courts there are recurrent problems with the PCOL and E-Diary systems. The operation of PCOL and E-Diary have contributed to delays and backlogs, although I am aware that HMCS is working to address the problems. PCOL in particular has suffered from slow connection speeds, a measure of inflexibility and system failures. Although improvements have been proposed, the position at present is that a significant percentage of possession claims are still issued in paper form, thereby creating extra work at LINK courts which then have to transfer the claims on to PCOL. I also have some concern that the inflexible 8 week fixed date generated by PCOL for a hearing may affect the disposal of other business in the county courts. Many courts report that it has been found to take longer to input information into E-Diary than the manual diary or bespoke systems that it has replaced. It has also been found to be unsuitable for use in large courts.
- 5.17 In the family courts, continued slippage in the "FamilyMan SUPS" project to upgrade the system which supports private and public law work means that the President of the Family Division is unable to present information in a satisfactory form. This is because the performance data for the magistrates' courts received from the existing Family Case tracker system provides aggregated Area-level data, but without the means to present the private law case information in the format required for the Annual Reports.
- 5.18 Phase 1 of the Commercial Court IT project, which came online in April 2006, provides an integrated electronic diary facility combined with a document repository. Although the need for phase 2, a fully integrated filing system, is acknowledged and is crucial if the Commercial Court is to be able to provide a proper service to the international business community, HMCS has not yet been able to commit funds to this, and the national electronic filing system will not be ready for piloting when Commercial Court hearings are expected to start in the new Rolls Building in 2010. All these matters are aspects of the continued lack of funding for a modern case-management system such as that promised almost ten years ago when the reforms to civil procedure and the new Civil Procedure Rules were introduced, following Lord Woolf's *Access to Justice* Report in 1996.

5.19 On a more positive note, I welcome the decision to complete the LINK network that connects all Crown Court centres and most county courts by connecting the remaining county courts and the Probate Registry offices. Most of the remaining courts should be connected during 2009. In the Crown Court, XHIBIT is operating successfully in most areas. It does not, however, lead to any savings for HMCS. Indeed, on days with long plea or other lists, many courts find they need to have two members of staff in court to ensure that the court maintains an appropriate pace while appropriate orders are recorded on the system. There are also some exceptions to its success. Some courts reported many problems, including lack of speed or a failure of the system entirely. I hope that the new IT contracts issued as the result of the recent re-tendering exercise under the "DISC Project" will provide effective and timely day to day support for staff so that system faults are fixed more quickly.

#### **The quality of the statistical information available**

5.20 Accurate statistical information about the workload, capacity and time taken for cases to come to trial is a necessary tool for assessing the efficiency and effectiveness of the administration of justice, the achievement of the targets set by HMCS for the disposal of business, and for assessing future needs for judges, staff and court buildings. The court reports show that there continue to be real problems. The principal problems are that the right data needed to enable the system to be administered properly is not collected in several parts of the business and there is inconsistency between the figures that are collated and published centrally and locally held data. This is something that requires the most urgent consideration and I know that HMCS has taken steps to improve the quality of its data.

5.21 I give two examples. Figures held centrally by HMCS about multi-track trials at Central London County Court differed from the data held by that court by as much as a factor of three. What is particularly worrying is that the centrally held figures indicated the workload had reduced, whereas the local checked data showed quite the reverse. Many of the court reports state that the errors are the result of the current pressures on funding and resources and I am concerned that incorrect statistics may have an adverse impact upon the allocation of resources and thus compound the problems they face. This concern has subsequently been taken on board the HMCS management team who have put in place arrangements to avoid any repetition in the future.

5.22 Similar problems are evident in the family courts. Statistics for the magistrates' courts are collected on a different basis from those in the other courts and continued slippage in the "FamilyMan SUPS" project to upgrade the IT system means that the information required for the Family Court Reports for public law cases in the magistrates' courts is not available. There is also no means at all to record performance data in private law cases. I share the President's concern<sup>20</sup> about the lack of progress and that, at a time when the judiciary are being asked to improve on performance and to ensure that work is being heard by the right level of judge, they are being provided with contradictory statistics at a local and national level.

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20 Introduction by the President of the Family Division to the 2006-7 Family Court Annual Reports, p. 4.

5.23 I also note and endorse concerns raised by the Family Division Liaison Judges and Designated Family Judges about the data used to assess whether the target of forty weeks for completion of public law care proceedings is being met. This only records the number of full care and supervision orders made so that if, as frequently arises, a care case concludes with the making of a private law order, or a special guardianship order, or is withdrawn, that is not recorded in the Family Proceedings Court or county court statistics. This means that many completed cases are not reflected anywhere in the statistics, and produces a misleadingly adverse picture of the percentage of cases concluded within the target period. This in turn has an adverse effect upon the morale of judges and staff, bearing in mind that the performance of staff is measured by reference to a PSA target which is not imposed upon any of the other agencies involved in the process, and whose delays frequently lead to that target period being exceeded.

5.24 Having made these general observations, I now turn to consider the individual courts.

### **The Magistrates' Courts**

5.25 Since the creation of the Unified Court Administration in 2005, the relationship between the magistracy and the judiciary has developed and improved. As community based volunteers, magistrates make a vital contribution to the criminal and family justice systems. I believe that magistrates accept and, I hope, appreciate their important place within the judicial family.

5.26 Management groups (consisting of the Chairman of the Bench, a designated District Judge where available, the Justices' Clerk or Bench Legal Manager, and the Court Manager) have been formed throughout the country and are taking on the leadership responsibilities for the magistrates' courts in the most appropriate way for their court. Liaison between management groups and the Magistrates' Liaison Judge and the local Resident Judge appears to work well. I hope that these changes will provide strong judicial leadership at a local level during the lifetime of the CJSSS project and help in the long term to underpin the cultural changes that have been brought about. The Senior Presiding Judge has regular meetings with the Senior District Judge (Magistrates' Court), the Magistrates' Association, the National Bench Chairmen's Forum and the Justices' Clerks' Society to discuss areas of mutual concern.

5.27 *The CJSSS Initiative: Simple Speedy and Summary Criminal Justice:* I have referred to this as one of the success stories in the period under review<sup>21</sup>. The thinking behind it was largely that of the judiciary, in particular Lord Justice Thomas, who was then the Senior Presiding Judge, and Lord Justice Leveson, who succeeded him in that post and has been responsible for its implementation.

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21 Para 5.6 above.

- 5.28 CJSSS is directed not only to ensuring proportionate preparation of case files and early identification either of a guilty plea or the issues in the case, but to encourage collaborative working by all the agencies concerned with the disposal of work at the magistrates' court. These include the police, the Crown Prosecution Service, defence solicitors, probation and HMCS. I have referred to the fact that, although full implementation in the vast majority of magistrates' courts was achieved by December 2007, it is too early to provide detailed statistical analysis of the current position but initial reports have been very positive reflecting the progress made in the test sites. For example, an increase to 60% of being dealt with at first hearing.<sup>22</sup>
- 5.29 The success of the initiative has depended on judicial leadership through effective case management in the court room, together with inter-agency cooperation before trial. I am confident that the new judicial leadership groups in the magistrates' courts will become a focal point for continuing to effect this change.
- 5.30 *Tackling problems of delay, late pleas, and adjourned trials:* Many court centres had taken steps to reduce delays before CJSSS was instituted. Since 2004/05, the percentage of magistrates' courts trials that are not heard when they are listed (known colloquially as "ineffective trials") has fallen across all of the circuits except HMCS Wales (although this has improved during 2007/08 and levels are now within target). The progress made reflects much hard work and commitment on the part of District Judges (Magistrates' Courts), magistrates and court staff. Nevertheless, an important reason for ineffective trials remains the availability of the prosecution; whether it be the responsibility of the police or the CPS to ensure that all of the witnesses and any other evidence is available on the day of trial; or, if difficulties have been experienced for whatever reason, to have alerted the court in sufficient time for consideration to be given to whether trial date should be vacated. The percentage of trials which do not go ahead either because the defendant pleads guilty or to a level of criminality acceptable to the prosecution or because the prosecution does not proceed (known as "cracked trials") has, however, generally not fallen.
- 5.31 I have referred to the Libra IT system introduced at magistrates' courts over the course of 2007 and 2008 and to the initial technical difficulties. When assessing court performance, especially when reviewing statistics in the context of the CJSSS project, it will need to be borne in mind that courts adapting to Libra may suffer a temporary fall in performance.
- 5.32 *Variations in workload:* Most circuits saw a fall in the number of trials listed in magistrates' courts in 2006/07 financial year. Wales and the South East are the exceptions. There was a peak in the number of trials in Wales in 2006/07, but figures for the current year to date indicate a downturn similar to that in 2005/06. It remains to be seen to what extent the downturn in workload in Wales may be attributed to the move of Cheshire into the Northern Circuit. On the other circuits,

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22 See *Delivering Speedy, Simple, Summary Justice: An Evaluation of the Magistrates' Courts Tests* p. 3 (2007). The tests were in Coventry, Camberwell, Thames and West Cumbria magistrates' courts.

the downward trend may be influenced at least in part by the increased use of fixed penalty notices and other diversionary measures including conditional cautions. This may be because crimes diverted out of the court system still count towards achieving the performance target of “Offences Brought to Justice” (OBTJ).<sup>23</sup>

- 5.33 *Diversion:* Although permitted by legislation, out of court, private disposals cause real and, in my view, legitimate concern on the part of the magistracy, and the efficacy of diversion and its effects on offending remain to be assessed. To the extent that it is used because of delays in the court system, the success of CJSSS in reducing delays means that this will be a less persuasive reason for diversion.

### **The Crown Court**

- 5.34 *Introduction:* The work of the Crown Court varies considerably, from the heaviest criminal trials by High Court and Senior Circuit Judges, to very short cases, so that each court has the task of administering justice in circumstances which are not comparable. The position in different courts is dealt with in the individual court reports, and additional detail about the general themes of the year can be found in the Senior Presiding Judge’s overview introduction to the court reports.<sup>24</sup> I have commented on the effect in Crown Court centres of shortages of judges, particularly Senior Circuit Judges with leadership roles, and about the issues concerning IT.<sup>25</sup>
- 5.35 The court reports show the contribution judges, and particularly Resident Judges, make in collaboration with Court Managers to improving efficiency in the administration of the criminal justice system. The issues Resident Judges have to deal with include: monitoring the volume of work received, ensuring that delays are minimised, monitoring the number of trials that, for a variety of reasons, are not heard when they are listed, the length of time each case takes (the disposal rate), the extent to which witnesses are called to give evidence but not ultimately required and the time that those who do give evidence have to wait before being called. The aim is to ensure that witnesses are heard without unreasonable delay, and whether the time given by members of the public summoned for jury service is properly used.
- 5.36 *Workload, capacity and time taken for cases to come to trial:* The trend in statistics with respect to workload across England and Wales is somewhat varied. The South Eastern Circuit (including London) has experienced substantial increases in workload, as have a number of courts in the North Eastern Circuit. In these areas, the overall capacity in terms of court buildings and judicial personnel is not sufficient to deal with the work and many courts are suffering from backlogs.<sup>26</sup> Solutions to this increase in workload are complicated by the fact that fluctuations

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23 An offence is said to have been brought to justice when a recorded crime results in an offender being convicted, cautioned, issued with a penalty notice for disorder or a cannabis warning, or having an offence taken into consideration. Although permitted by legislation, out of court disposals such as these cause real (and in my view, legitimate) concern on the part of the Magistracy.

24 [www.hmcourts-service.gov.uk/cms/annual\\_reports.htm](http://www.hmcourts-service.gov.uk/cms/annual_reports.htm)

25 See para 4.32 and paras 5.14-5.19

26 On buildings and the court estate, see section 6 below

can occur within an individual circuit, and geographical considerations may preclude magistrates' courts addressing the problem by committing a case to a less busy Crown Court. Some of the factors identified as contributing to this situation are longer trials and the transfers of cases from other courts.

- 5.37 Longer trials are in part a consequence of legislative and other developments in law and practice. In relation to the law, the Criminal Justice Act 2003 has permitted applications to be made in relation to the admissibility of evidence of bad character and hearsay. As to practice, increasing reliance on technology and sophisticated expert evidence has also played its part. These reasons can at least in part be addressed by effective use of the case management powers in rules, practice directions and protocols created as a result of judicial initiative<sup>27</sup> since Lord Justice Auld's report,<sup>28</sup> but still regrettably underused (see below).
- 5.38 The issue of whether a transfer will lead to delay depends on the capacity of a court and what other courts are available. In the South East, for example, many instances are reported where courts will transfer cases they are unable to deal with to another court with a greater capacity. However, once the limit of that court has been exceeded, cases have to be moved elsewhere, causing a further alteration to the flow of business. The closure in March 2007 of Middlesex Guildhall, which represented 5% of the Crown Court capacity in London, has also contributed to the complicated distribution of cases in London and the South East. The skill of HMCS in coping with this should not lead to an underestimation of the pressures on London.
- 5.39 *Tackling problems of delay, late pleas, and adjourned trials:* As in the magistrates' courts,<sup>29</sup> the main factors contributing to the level of ineffective trials have been the non-attendance of prosecution witnesses and defendants. In most courts, the level appears to be stable, with many performing better in comparison to the average figures for England and Wales. Courts with a significantly low ineffective trial rate state that their good performance results from the contribution of Case Progression Officers. It is clear that throughout the country Case Progression Officers have performed an invaluable function in this regard. There are marked differences in the ineffective and particularly in the cracked trial rates in different parts of the country. It is important that the reasons for this are identified, and, where they demonstrate differences in practice, lessons are learned and applied from the courts that have shown the greatest success in tackling the problem.
- 5.40 The action necessary to improve ineffective and cracked trial rates is considered in court user meetings and Joint Performance Management Committees. These are chaired by one of the local judges and attended by Case Progression Officers, the Crown Prosecution Service, the Police, Witness Care Unit and defence solicitors.

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27 Criminal Procedure Rules 2005 SI 2005 No 384; *Disclosure: A Protocol for the Control and Management of Unused Material in the Crown Court*, (February 2006); *A Protocol for the Control and Management of Heavy Fraud and Complex Criminal Cases* (March 2005).

28 Review of the Criminal Courts of England and Wales (2001).

29 See 5.30 above.

It is important to consider the two problems together because increases in the ineffective trial rate are often accompanied by decreases in the cracked trial rate, a matter which warrants further investigation. It is essential that the enormous benefits of collaborative working which have been identified in the magistrates' courts should also be recognised and applied in the Crown Court.

- 5.41 *Compliance with Court Orders:* Some delays are caused by failures on the part of one or more of the parties to comply with court orders for serving evidence, disclosure or ensuring availability of witnesses. There is a problem, to which we are still seeking a solution, of devising effective sanctions for failure to comply with Court Orders on the part of both prosecution and defence. At present reliance has to be placed on Case Progression Officers. However, although extremely valuable and, in places, critical, their cost is borne by HMCS, the resources of which should not have to be used simply to encourage and exhort those conducting criminal litigation to comply with the Criminal Procedure Rules. The Senior Presiding Judge has regular discussions with the Chief Executive of the Crown Prosecution Service in relation to these, and other, performance issues.
- 5.42 *The Criminal Procedure Rules 2005.*<sup>30</sup> The judiciary recognised one way of tackling problems of delay in the Crown Court was by strengthening the power of the court to manage criminal cases. They actively promoted the changes now contained in the Criminal Procedure Rules 2005, which facilitate case management by judges within an overriding objective of dealing with cases justly, which includes dealing with them efficiently and expeditiously. If increases in the efficient despatch of criminal lists are to be achieved, judges, courts and practitioners must embrace the cultural change that they envisage.
- 5.43 *Witnesses and Jurors:* I have been pleased to note that facilities and procedures for the care of witnesses and jurors are being steadily improved and developed to accommodate their particular needs. This is particularly so for vulnerable witnesses.
- 5.44 *The Victims' Advocate Scheme:* This scheme, which enables the relatives of murder and manslaughter victims to address the court after conviction and before sentence, is in operation at a number of pilot court centres. Both resources and time have been committed to support it. The Central Criminal Court reports that very few have used an independent advocate to address the court, and the responsibility for representing the views of the families of victims generally falls on the prosecutor. In my view, that is a sensible approach. I am not persuaded that one can justify the cost of providing independent advocates for victims.
- 5.45 *The Prison Escort Contract:* I am pleased to say that the improvement in the performance of the Prison Escort Contract has continued. Unfortunately, many courts commented that progress has been undermined by the stresses caused by the current prison population level, with prisoners being delivered late to the court, an absence of dock staff because of pressures on van crews, and some

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30 SI 2005 No 384.

court buildings, such as Snaresbrook and Croydon, having to stay open late in the evening to deal with late pick ups. The increased prison population has also caused communication difficulties, as prisoners have been moved from prison to prison without the court or parties being informed. Accounts of prisoners not being available when required for video links are common, as are accounts from probation officers, counsel and solicitors of visits to prisons to see a defendant only to learn that he or she has been moved to a different prison. This increased circulation of prisoners between prisons can only make courts situated far from prisons, such as those in North Wales, more vulnerable to delays.

### **The County Courts**

- 5.46 The county courts undertake a huge volume of civil work, varying from very small claims to substantial claims that until relatively recently were routinely heard in the High Court. The work covers a wide variety of claims including consumers with debt problems, business people in commercial disputes, personal injury, and housing disputes and repossessions. In addition to its civil work, the county courts have a heavy caseload of family cases. Much litigation is carried out in large Civil Justice Centres in the big cities, notably Birmingham, Leeds, Liverpool and Manchester, where the new Civil Justice Centre contains 47 courts and modern supporting facilities. The facilities at other county courts, however, are less than adequate.
- 5.47 *Performance:* Under the leadership of the Designated Civil Judges and the specialist Chancery, Mercantile and TCC judges, and despite the restrictions on resources and the enormous pressures on HMCS staff that have resulted, measured performance in the county courts is on the whole being maintained. As to the problems these courts face, I have referred to their difficulties in recruiting and retaining staff and the remarkable 60.6% staff turnover at Wandsworth County Court during the financial year 2006-2007, and to the recurrent problems in the PCOL and E-Diary IT systems.<sup>31</sup> They also have to handle a huge volume of paper, and deal with fluctuations in the volume of work, which reflect changes in social and economic conditions.
- 5.48 *Targets:* It is the practice of HMCS to impose performance targets on its staff. It is important that attempts to meet such targets do not conflict with listing priorities, which are properly a matter for judicial determination. This is a matter which must be addressed under the new partnership between the judges and HMCS.
- 5.49 *Alternative Dispute Resolution:* Settling disputes by litigation should be a last resort. More work is required to encourage the public to take up Alternative Dispute Resolution (ADR). The numbers of those seeking the assistance of the HMCS-sponsored National Mediation Helpline remains disappointingly low despite the efforts of HMCS staff to raise awareness of this service. The HMCS Small Claims Mediation Service has settled over 2,500 small claims since March 2007.

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31 See paras 5.12 and 5.16 above.



## **The Family Courts**

- 5.50 *Introduction:* This year's Family Court Reports and the President of the Family Division's introduction to them show a steadily increasing workload in all areas of family law: adoption and care (known as public law work), and divorce, custody and access to children, and financial arrangements (known as private law and ancillary relief work).<sup>32</sup> This comes at a time when, in addition to their day-to-day business in the courts, the judiciary (through the President's Office, the Family Division Liaison Judges, and Designated Family Judges) and the administration (through the Ministry of Justice and HMCS's Regional and Area Directors) are seeking to create what is effectively a Unified Family Court.
- 5.51 *The Unified Family Court:* This involves unifying the administration of the Family Proceedings Courts ("FPCs") and county courts where this is feasible. The scheme provides for the flexible allocation of work between the Judges of the High Court, the Circuit and District Judges in the county court, and the magistrates in the Family Proceedings Courts, according to the complexity of the work and the availability of judges.
- 5.52 The exercise is a complicated one, and the complication is exacerbated because, apart from the jurisdictional split between these three courts, magistrates' courts had had prior to 2005 a separate administration but a concurrent jurisdiction. The IT issues to which I have referred<sup>33</sup> and other problems have also made it difficult to unify the administration of the FPCs and the county courts.
- 5.53 The preparations for what will effectively be a Unified Family Court within the present layered court structure have involved judicial initiatives (supported by HMCS) in Liverpool, London and Portsmouth to pilot arrangements for allocation, gate-keeping and the management of public law cases according to criteria in judicially prepared draft Allocations Guidance which will be finalised for nationwide application in Autumn 2008. The initiatives have proved successful in improving performance and have been extended to additional areas. The judiciary involved in them have shared their practices, experiences, and local variations so as to provide for greater judicial continuity, restructuring listing procedures, and reducing duplication of work processes between the FPCs and county courts. Under the supervision and encouragement of the Family Division Liaison Judges the example set by the judges and members of HMCS involved in the initiatives will be followed at a national level.
- 5.54 The aim, where possible under the new arrangement, is to have several courts including both Circuit and District Judges and magistrates, in a single court building, or at least to have central listing. However, despite the undoubted efforts of HMCS and Ministry of Justice staff to produce a Unified Family Service blueprint, the picture nationally is of a sporadic pattern of magistrates' and county courts ill-suited by reason of their location and incompatible IT systems to the efficient implementation of a Unified Family Court.

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32 The Reports can be found at [www.hmccourts-service.gov.uk/cms/annual\\_reports.htm](http://www.hmccourts-service.gov.uk/cms/annual_reports.htm).

33 Paras 5.14-5.19 above.

- 5.55 Family work depends on the supporting services in children cases provided by CAFCASS and Local Authorities in public law childcare proceedings. Because of this the process of co-ordination has been progressed by the President's Combined Development Board consisting of the President, the Head of Family Policy in the Ministry of Justice, the Director of CAFCASS, and a representative of the Department for Children, Schools and Families ("DCSF").
- 5.56 The responsibility and weight of work for the Family Division Liaison Judges and Designated Family Judges arising from these developments has, when added to their ordinary judicial duties, placed increasing strains upon them and has, in a number of cases, led to breakdowns in health. This situation is likely to be exacerbated by the planned reduction in resources, and I am pleased that the Chief Executive of HMCS has recognised the need for greater personal administrative support for Designated Family Judges. I hope that the National Family Programme Forum, which is considering this matter, will also recognise this need.
- 5.57 *Increases in care and adoption work:* Another source of strain is the steady rise in the complexity of care proceedings. Taken on a nationwide basis, it has not proved possible to improve court performance in the dispatch of care cases when considered against the PSA target of 40 weeks. The position has been aggravated by considerable delays in the appointment of family judges to fill vacancies through retirement and restraints upon resources restricting the appointment of sufficient deputies to assist in hearing the cases. It was against this background that the "Public Law Outline" was devised. Family judges gave leadership in the development of this simplified and improved system for the case management of public law children cases. It has been piloted successfully and will shortly be implemented throughout the country in order to improve case management and reduce delays.
- 5.58 In addition, the jurisdiction of a number of specially authorised District Judges to handle care cases at individual court centres is being increased in order to ease the burden on the Designated Family Judges and other Circuit Judges. The Family Proceedings Courts have also been encouraged to look critically at the applications before them with a view to retaining cases which, on analysis, are not of undue complexity.
- 5.59 *Managing the growth of work concerning financial arrangements, custody, and access to children:* The outstanding achievement in the period under review in managing the growth of such cases in the county courts has been the continuing success of the first conciliation hearing, developed through the cooperation of local judiciary and CAFCASS. At this hearing a CAFCASS officer, under the direction of the District Judge, seeks to secure resolution of the dispute by agreement leading to a consent order. This has produced success rates as high as 80% in some court centres. The facility is now in the course of being extended to proceedings in the FPCs.
- 5.60 *Allocation of business between county courts and the FPCs:* The bulk of private law proceedings are issued and heard in county courts, and there has been a progressive reduction of cases commenced in the FPC over the years. However, in

the light of the recommendations of the Judicial Resources Review and following the success of pilot schemes in Medway and Chester, an increasing number of contact disputes and domestic violence cases are being transferred from county courts to the FPCs for hearing. In the face of the increasing workload and the limited number of judges available to deal with it, increasing use of the FPCs is essential. To date, some court centres have been more successful than others in this regard. The volume of work being transferred to FPCs will be required to be monitored carefully, as in some court centres it has already led to reports of delays in private law work being heard in the FPC when compared with hearing dates available in the county courts. However, a new allocation order is being proposed which will seek to address the problem.

- 5.61 In the FPCs it is important for there to be specialist family legal advisers available to assist and advise the magistrates. Their role will be central to the implementation and performance of the joint gate-keeper role between the county courts and the FPC. I am glad that this need is recognised by HMCS which is working to achieve an increase, particularly in the London region.
- 5.62 *Tackling delay and ensuring case progression:* I share the President's view<sup>34</sup> that there are considerable benefits in having a member of the court staff responsible for monitoring the progress of cases and avoiding unnecessary delays and last minute adjournments. In a unified court centre, such as Liverpool, legal advisers perform this role admirably.<sup>35</sup> However, in the family jurisdiction (unlike the Crown Court) a court centre may consist of a number of different locations at which hearings take place. In such cases the court reports show that the appointment of a Case Progression Officer achieves notable improvements in efficiency and performance.<sup>36</sup> In the family jurisdiction a Case Progression Officer maintains regular contact with the various family justice agencies and the parties to establish progress of the child's case, ensuring that update reports are filed in time and that the circumstances of the family have not changed significantly so as to affect the final hearing date of the case. The Circuits are looking at opportunities to improve case progression in family courts through the Family Programme Forum.
- 5.63 *Other agencies:* Separately funded by DCSF, the staff of CAFCASS, which looks after the interests of children involved in family proceedings, are a vital component of the family justice system. The President has noted the marked difference in the level of resources allocated in England and Wales. CAFCASS Cymru is described as "an efficient, flexible and responsive service". In England, however, there are delays because CAFCASS is reported to be at full stretch and unable to allocate immediately anywhere in the country. There have been signs of movement in some areas, for example Kent and Newcastle, where the judiciary is working closely with CAFCASS to address difficulties and senior managers are being brought in to tackle the poor performance and long delays in producing reports.

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34 *Introduction to Family Court Reports 2006/07*, see also paras 4.30-4.31

35 [www.hmcourts-service.gov.uk/cms/annual\\_reports.htm](http://www.hmcourts-service.gov.uk/cms/annual_reports.htm)

36 See the court reports for Derby, Leicester, Nottingham, Stoke, and Worcester.

- 5.64 Unless these difficulties are addressed, and despite the fact that judges have reduced the number of requests made of CAF/CASS and now ask for shorter and more focussed reports, private law cases will continue to be adjourned due to the pressures on CAF/CASS staff. Similarly, delays are frequently experienced as a result of the problems of Local Authorities recruiting and retaining staff in relation to children work which is seen by many as too stressful and demanding and in which there is a high turnover in social workers.

## **The High Court**

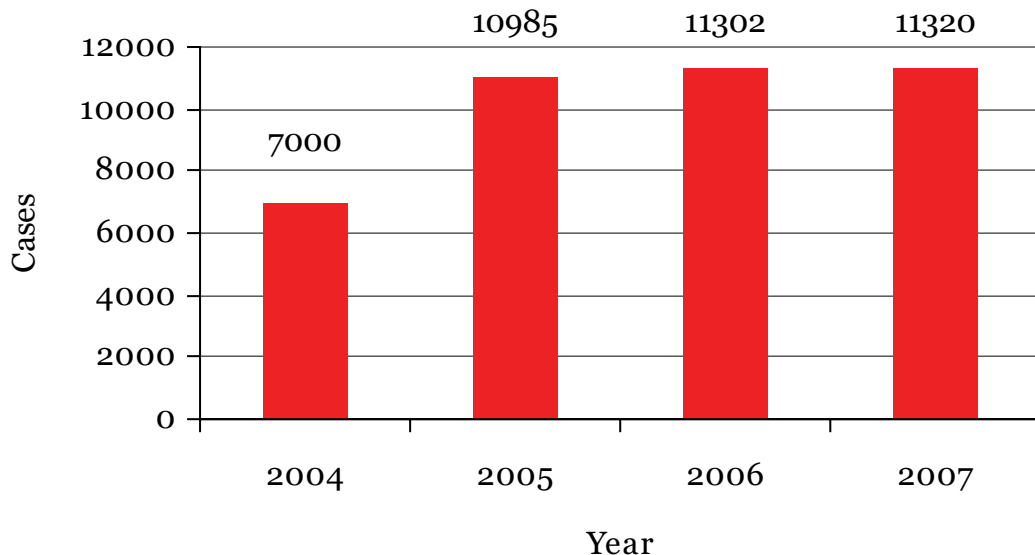
### **(i) Queen's Bench Division**

- 5.65 This is the largest of the three divisions of the High Court, consisting of the President, Sir Igor Judge, and 73 judges, and a great variety of business. There are considerable pressures on the judges of the Queen's Bench Division, who not only try the heaviest criminal cases on circuit but also, depending on their individual specialities, carry out the work of the Administrative Court, the Admiralty and Commercial Courts, the Technology and Construction Court, the Employment Appeals Tribunal, and the Asylum and Immigration Tribunal. In addition, all Queen's Bench Judges sit in the Court of Appeal Criminal Division.
- 5.66 Quite apart from their judicial responsibilities, judges of the Division also undertake a variety of different administrative responsibilities. Many of these are already mentioned elsewhere in this review. The majority of the Presiding Judges are drawn from the Queen's Bench Division. In addition five of the six main Committees of the Judicial Studies Board are chaired by Queen's Bench Judges, Mr Justice Butterfield is Vice-Chairman of the Parole Board and Mr Justice Goldring is a JAC Commissioner. Mr Justice Fulford is the United Kingdom judge on the International Criminal Court.
- 5.67 The Queen's Bench Division has tried to cope with the various demands being placed upon it through the goodwill and dedication of the judges who make up the Division. There are, however, real concerns about the pressures on the Administrative Court and the judges who sit there, and the extent to which they will continue to be able to cope. As well as the large increase in asylum and immigration work, their burdens have been steadily increased in recent years by legislation which falls within the jurisdiction of the Administrative Court.
- 5.68 We anticipate a considerable number of major terrorist trials which will have a significant impact on the judges of the Queen's Bench Division. These cases are managed in accordance with a protocol issued by the President of the Queen's Bench Division and are tried by High Court Judges nominated by him. The Terrorism Cases List is managed by Mr Justice Calvert-Smith.

### **The Administrative Court**

- 5.69 *Caseload:* In the four years since 2004 the numbers of cases lodged in the court has risen from 7,000 to 11,320, an increase of 61.7%.

## Cases lodged in the Administrative Court



- 5.70 *Asylum and Immigration cases:* The Asylum and Immigration (Treatment of Claimants) Act 2004 replaced the system of adjudicators and an Immigration Appeal Tribunal with a one-tier system of immigration appeals and reconsiderations. In 2005 3,396 applications came to the Court from the AIT. In 2007 the number was 3,749. The vast majority (about 90%) are found to have no merit in law.
- 5.71 In 2007, the court received 6,694 claims for judicial review in both civil and criminal matters. Of those, 4,357, about two-thirds of the court's judicial review workload, concern asylum or immigration. When the 3,749 reconsideration applications are added, the total of immigration cases reaches 8,106, which is nearly three-quarters of the total number of cases lodged.
- 5.72 The pressure of the asylum and immigration cases has meant that there are unacceptable delays. Claimants may wait 12 months or more. Understandably, concerns are being expressed at the delays. In December 2007 a review under the chairmanship of Lord Justice Richards and Lin Homer (a senior Home Office official) was established to address the entire question of the immigration and asylum work currently undertaken in the Administrative Court. Circuit Judges with the requisite experience to sit in this court offer a short term solution, and also work will be shared with the major Civil Court Centres outside London.
- 5.73 *Other causes of the increased caseload:* The work of the court has also increased as a result of its supervisory jurisdiction over the control orders imposed pursuant to the Prevention of Terrorism Act 2005 on those suspected of involvement in terrorism-related activity. The hearings are time consuming since (unlike most judicial reviews) they require the court to determine issues of fact and to have two separate hearings for the open and closed (national security) material to be considered. The court also deals with claims under the Proceeds of Crime Act (POCA), which the Civil Procedure Rules require to be commenced in the Administrative Court. In view of the similarity of the work to that undertaken in

the criminal courts and the pressure on the Administrative Court a decision has been made that all substantive hearings in POCA cases will be transferred to the Queen's Bench Division.

- 5.74 A review will be undertaken to ensure that the Administrative Court deals only with claims which merit the attention of a High Court Judge and that, to avoid the build up of a backlog, claims (particularly if factual issues need to be resolved) may be transferred to other Divisions of the High Court.
- 5.75 *The impact of new legislation:* While the Asylum and Immigration (Treatment of Claimants) Act 2004 has significantly increased the work of the Administrative Court, the Tribunals, Courts and Enforcement Act 2007, which provides for the transfer of statutory appeals from certain tribunals to the new Upper Tribunal, is likely to lead to some reduction in the workload. It is unlikely to be a significant reduction but its extent is difficult to assess. Although under 10% of the less than 200 statutory appeals heard by the Court in 2007 came from tribunals, judicial reviews against the decisions of tribunals (such as Mental Health Review Tribunals) from which there has in the past been no statutory appeal are, in future, likely to be heard as statutory appeals in the Upper Tribunal. Of potentially greater significance, however, given the pressures on the Administrative Court, is the impact on judicial resources if some of the High Court Judges who sit in the Court will, in the future, spend part of their time sitting in the Upper Tribunal.
- 5.76 *Change in legal and administrative support:* 2007 saw a major change in the legal and administrative support for the Court. Lynne Knapman, a senior lawyer and the head of the Court's administration, retired in August, as a result of a reconsideration of the administration of the Queen's Bench Division generally. Fortunately, Lynne Knapman has agreed to attend part-time, since there is a clear need for a lawyer with judicial functions who can assess the importance of claims, liaise with senior lawyers in government, deal with judicial matters such as adjournments and consent orders and generally oversee the running of the court. While formally part of the Queen's Bench Division, the work and procedures of the Administrative Court are fundamentally different from the rest of the Division, and it should be regarded as a separate court when decisions are made about its administration.

### **The Admiralty and Commercial Courts**

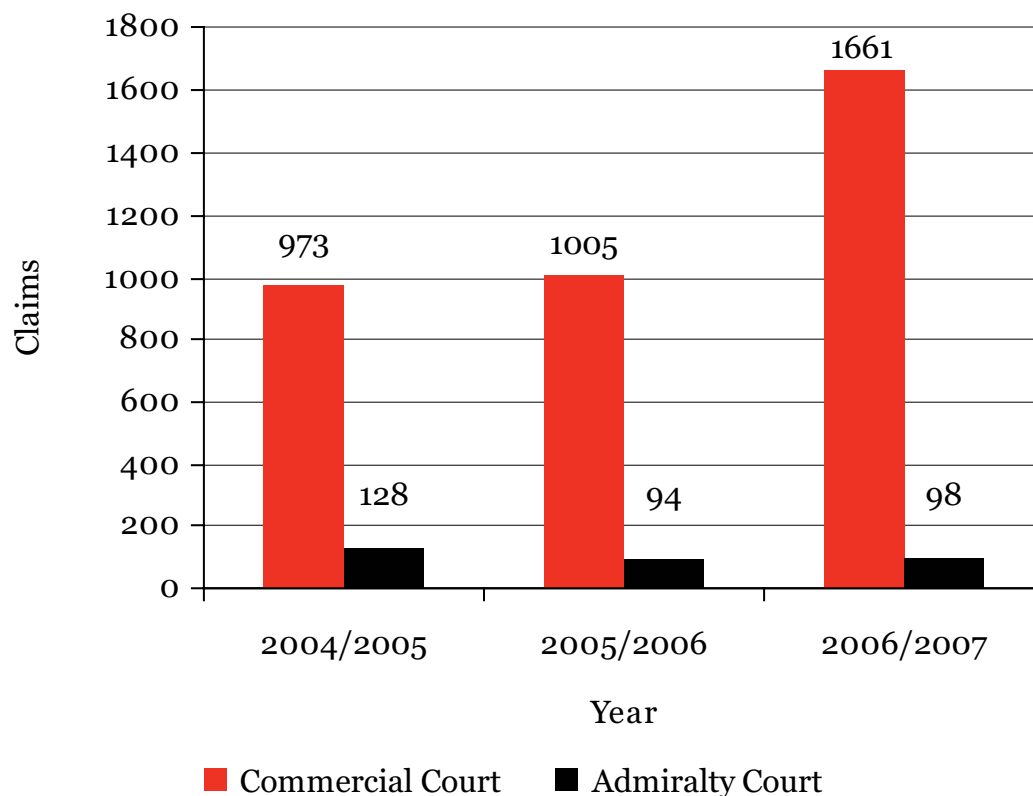
- 5.77 The jurisdiction of the Commercial Court extends to any claim relating to the transaction of trade and commerce. The Admiralty Court's jurisdiction overlaps to some extent, but it has exclusive jurisdiction over maritime claims, including the arrest of ships, collisions and salvage. The Commercial Court's business generally involves disputes where the sums at stake exceed £1 million (and usually much more). Smaller cases are transferred to the Mercantile Court. A full report of the work of these courts is contained in their Annual Report.

- 5.78 *International nature of caseload:* The two courts remain a forum of choice and, accordingly, the litigation pursued in them retains its international flavour with over 70% involving foreign parties. The Commercial Court is a necessary adjunct to the international arbitration role of London, and it and the legal and ancillary services in the City of London make a substantial contribution to invisible exports and to the United Kingdom's economy. For this reason, I share the concern of the judges of the courts to ensure that trials take place without delay, that its premises and procedures are suitable for the many complex cases that come before it, and that has the integrated electronic filing system it needs,<sup>37</sup> and I welcome the initiatives they have taken in these areas.
- 5.79 *A new modern dedicated business court building:* In December 2006 it was announced that a "modern dedicated business court" would be constructed in Fetter Lane. The plan approved by the Treasury was to meet a longstanding need and to provide up to date facilities for high value and high profile business disputes, many with international connections. The building will provide 29 courtrooms with enhanced natural daylight and modern acoustic standards, 12 hearing rooms, 44 public consultation rooms, better waiting facilities for parties involved in proceedings and better working facilities for HMCS staff. The building is due to be completed in mid-2010 at which time HMCS will vacate St. Dunstan's House, where some Commercial Courts are situated. This building could and should have been built within the precincts of the Royal Courts of Justice to replace the existing Queen's Building. That it was not was attributable to funding rules that the Treasury then applied but have now been abandoned.
- 5.80 *Caseload:* The volume of business in the Commercial Court remains substantial, although the figure for 2006-07 includes a number of smaller claims in respect of bank charges.

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37 HMCS has not yet committed funds for this: see para 5.18 above.

## Comparison of the volume of claims in the Commercial and Admiralty Courts



- 5.81 In the year to 31 July 2007, (covering 221 working days) eight of the fifteen nominated Commercial Court judges heard 66 trials (the pre-trial settlement rate being 70%) and 1,030 applications (including 95 “without notice” applications).
- 5.82 *Lead Times:* The lead times (i.e. the time between the date when a hearing is fixed and the date when the hearing is fixed to take place) have now become a source of concern. The demands made on High Court Judges to try crime, both at first instance and on appeal, have resulted in the Court having to manage with only 8 judges sitting at any one time (in contrast to the accepted need for at least 9). In particular, trials estimated for 1 or 2 days, which ought to have a lead time of 4 to 5 months, now have the same lead time as a 4 week trial (i.e. 9 months).
- 5.83 *Large-scale and complex litigation:* During the course of the period under review, in the wake of two very long trials which came to abrupt ends at the end of 2005,<sup>38</sup> an initiative by Mr Justice Steel, then the judge in charge of the Commercial Court, with my support, led to a symposium and then a working group under the auspices of the Commercial Court User’s Committee and chaired by Mr Justice

38 *Three Rivers DC v Governor and Company of the Bank of England*, the “BCCI” case (where the Commercial Court Judge’s decision to strike out the claim had been reversed by the House of Lords) collapsed on 2 November 2005. The Equitable Life’s proceedings against their auditors and former non-executive directors collapsed in September and December 2005.

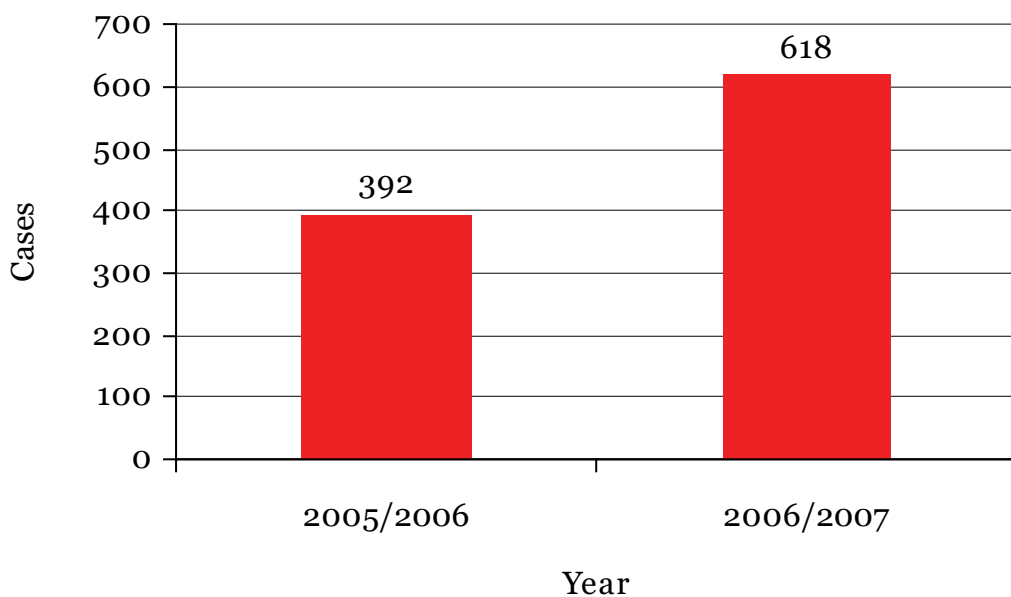


Aikens to consider improvement to the procedure and practices of the Commercial Court in large scale litigation. The group reported in November 2007,<sup>39</sup> and the proposals have been put into practice for a trial period during 2008. The judges of the Commercial Court will then decide whether to continue the trial, or whether the recommendations should be adopted, either in whole or in part.

### **The Technology and Construction Court**

5.84 The TCC deals with technical, engineering, building and construction litigation in and outside London. A full account of its work is contained in its annual report.<sup>40</sup> Both in and outside London, there has been an increasing workload over the period between April 2006 and September 2007. In London, 618 new cases were issued between April 2006 and September 2007, an increase of 63% from the previous twelve months.

### **Cases issued in the Technology and Construction Court**



5.85 The majority of cases arise from construction claims (29%) or adjudication enforcement (18%) but there are significant numbers of claims in respect of arbitration, professional negligence, dilapidations, IT projects, fires and nuisance. A significant number of the claims have an international element. The creation of this additional demand has been largely attributable to a policy of providing specialist High Court Judges to try this important work. I have no doubt that there is scope for further expansion, particularly because of the litigation that is likely to arise out of the contracts that relate to preparation for the Olympics. We must make sure that we have the judges to meet the demand.

39 The Report can be found at [www.judiciary.gov.uk/docs/rep\\_comm\\_wrkg\\_party\\_long\\_trials.pdf](http://www.judiciary.gov.uk/docs/rep_comm_wrkg_party_long_trials.pdf).

40 [www.judiciary.gov.uk/docs/tcc\\_3rd\\_annual\\_report.pdf](http://www.judiciary.gov.uk/docs/tcc_3rd_annual_report.pdf)

5.86 When Mr Justice Jackson's remarkably successful term as Judge in Charge of the Court came to an end in August 2007, Mr Justice Ramsay assumed these responsibilities. The TCC Guide, which provides practical guidance to the court users, was updated in September 2007. The report of a working party on the Pre-Action Protocol for Construction and Engineering Disputes, chaired by Mr Justice Ramsay, has led to changes aimed at reducing the cost and time of complying with the Protocol. The TCC is also active in promoting alternative dispute resolution. A pilot scheme for a Court Settlement Process under which London TCC Judges act as mediators commenced in 2006 and ended in December 2007. The Court, in conjunction with King's College, London, is carrying out research into mediation and its impact and timing in the context of disputes in the TCC, and published an Interim Report in June 2007.<sup>41</sup>

### **(ii) Chancery Division**

5.87 The Chancery Division consists of the Chancellor of the High Court (who sits both at first instance and in the Court of Appeal) and 18 High Court Judges. In 2007 it was agreed that the post of President of the Competition Appeals Tribunal should be held by a High Court Judge (assigned to the Chancery Division) or the equivalent in Scotland or Northern Ireland. The complement of High Court Judges has since been increased from 107 to 108 (and in Chancery from 17 to 18) for such a time as the post of President is held by a High Court Judge. Mr Justice Barling is the current President of the Competition Appeals Tribunal, and Mr Justice Etherton is the Chairman of the Law Commission. The core business of the Chancery Division is the resolution of disputes involving property in all its forms, ranging from commercial, business, intellectual property and competition disputes, through taxation of all sorts to its traditional work relating to companies, partnerships, mortgages, insolvency, land and trusts. Much of the work of the Division has an international element (for example cross-border insolvencies and parallel litigation throughout Europe in patent and trademark cases). The work is primarily in London at the Royal Courts of Justice but eleven specialist Circuit Judges and two of the High Court judges sit in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. The business of the Division, both in and out of London, increased in 2006.

5.88 *Caseload:* Excluding insolvency, proceedings issued in London rose by 7.3% and those issued out of London by 21%. Those involving corporate insolvency issued in London went up by 32% and those issued out of London rose by 126%.

## Summary of proceedings started in 2005 and 2006

Nature of Proceedings	2005	2006
<b>Claims, originating and non-originating proceedings issued</b>		
London	4,219	4,528
Outside London <sup>42</sup>	1,672	2,025
Bankruptcy Petitions	13,149	13,559
<b>Companies Court proceedings<sup>43</sup></b>		
Winding up petitions in London	4,749	5,152
Other petitions, applications and summonses in London <sup>44</sup>	6,822	10,122
Outside London <sup>45</sup>	3,508	7,941
<b>Patents Court appeals received</b>	<b>6</b>	<b>-</b>
<b>Total</b>	<b>34,125</b>	<b>43,327</b>

5.89 The Chancery Division incorporates the Patents Court which in 2006 heard 20 actions, taking 160 court days, and 152 interlocutories. The Patents Court only deals with patents, registered designs and appeals against the Comptroller General of Patents. Many other cases concerning intellectual property rights such as copyright, trademarks and passing off are dealt with in the Chancery Division. The dispatch of business in the Chancery Division is still heavily dependent on deputy judges appointed under what had been envisaged as an emergency provision in s9(4) of the Supreme Court Act 1981. Discussion have been taking place with HMCS and the MoJ about the creation of a new class of Civil Recorders, recruited through an open JAC competition, who could take on specialist civil work and gain the necessary judicial experience to prepare them for possible future appointment to the High Court Bench.

42 Contains estimated originated summonses of 171 in 2005 and 185 in 2006

43 Excluding transfers from the Chancery Division

44 Includes non-originating proceedings for Companies Court

45 Includes winding-up petitions outside London

- 5.90 During 2006 and the first half of 2007 judges from the Peoples' Republic of China, Russia and Kazakhstan came to see the work of the Chancery Division. Individual judges attended specialist and other conferences overseas.
- 5.91 In common with the judges of other divisions, all judges of the Chancery Division now undertake a wide variety of administrative duties in addition to their judicial work. The range and burden of such work has increased since the implementation of the Constitutional Reform Act 2005.

### **(iii) Family Division**

- 5.92 The Family Division of the High Court consists of the President, who sits principally at first instance, and 19 High Court Judges, who sit at the Royal Courts of Justice in London and at regional court centres dealing with High Court business. Its judges, led by the President, have been fully involved in the movement described earlier in this review<sup>46</sup> to what will effectively be a Unified Family Court.
- 5.93 High Court Judges deal with the most difficult and complex of family and welfare disputes, which would otherwise be dealt with in the county courts or Family Proceedings Courts. They also deal exclusively with Hague Convention and other cases involving the wrongful removal of children from or to the United Kingdom and other areas of specialist jurisdiction reserved to them.
- 5.94 The family courts continue to receive a high profile in the media. One issue being addressed by government is the degree to which proceedings in the family courts should be confidential in order to protect the privacy of children involved in proceedings. This is still under consideration, and family judges have contributed to the debate and will continue to do so.
- 5.95 In 2007, due to the planned refurbishment of the Queen's Building in which many of the Family High Court Judges were accommodated, 15 of them were displaced throughout the Royal Courts of Justice, and in St Dunstan's House. On the whole the move was managed successfully and the difficulties of hearing certain kinds of cases (e.g. custody cases) at St Dunstan's House have been accommodated.
- 5.96 *Caseload:* The total number of High Court hearings listed during the year 2006/7 fell by 0.6%. At the same time, and notwithstanding the long-term absence for reasons of ill health of one of the judges, the number of cases listed with a time estimate of 5 days or more increased by 21%, thus maintaining the overall workload of the previous year. During the period there has been a considerable improvement in waiting times, although there has been a small increase in the number of outstanding cases. There has been a 10% decrease in the number of High Court Judge days spent on circuit in order to accommodate family business needs in London, including time spent by individual judges of the Family Division in the Court of Appeal and the Administrative Court.
- 5.97 *Administrative support for High Court work on circuit:* I have referred to the need for additional administrative support for the Designated Family Judges. There is

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46 See paras 5.51-5.56 above.

also a need for dedicated administrative support for High Court Judges on circuit. The organisation and listing of family work are a good deal more complex than in the other jurisdictions, and there is a need for dedicated administrative assistance and listing officers for family High Court work wherever it is heard on circuit. Local schemes in Birmingham, Cardiff and Swansea provide a permanent small and experienced team to support the Family and Civil Judges, but this is not available across the country. Where it is not, either the criminal High Court team or an already overstretched county court administration provide cover but, notwithstanding the efforts of staff, do so without the benefit of specialist experience.

### **Court of Appeal Civil Division**

- 5.98 The work of the Court of Appeal Civil Division is discharged by the Master of the Rolls, and 37 Lords and Lady Justices. The Master of the Rolls is assisted by the Vice-President of the Court, Lord Justice Waller, and by Lord Justice Moore-Bick, Deputy Head of Civil Justice. At the apex of the legal system under the House of Lords, the Court hears appeals on important points of law and carries significant responsibility for the development of the statutory and non-statutory civil law, a particularly important responsibility in a common law system. It considers appeals from orders of High Court Judges, final decisions from the county courts in ‘multi-track’ (i.e. significant) claims, and various tribunals, notably the Asylum & Immigration Tribunal (AIT) and the Employment Appeals Tribunal.
- 5.99 A full account of its work is contained in the Master of the Rolls’ most recent review, of the legal year 2006-07.<sup>47</sup> In that period the significant cases decided by the Court included the first appellate decisions on control orders imposed on suspected terrorists under the Prevention of Terrorism Act 2005, and decisions on the scope of the statutory protection given by employment legislation to whistleblowers, restrictions on the publication of confidential and private information, the liability of an expert witness (a doctor) to disciplinary proceedings in respect of evidence given in criminal proceedings, and the procedure when raising causation issues in personal injury claims.<sup>48</sup>
- 5.100 The Court sits mostly in the Royal Courts of Justice in London but also sits in Cardiff twice a year and for two further periods of a week at a time in Birmingham, Manchester or Leeds each year.
- 5.101 *Caseload:* The Master of the Rolls’ review shows that there has been an increase in almost every category of work of the court.<sup>49</sup> The principal reason for overall growth both in application for permission to appeal and appeals is the increase in the number of AIT matters. The AIT was created in 2000. I have referred to the serious effect of this change in the legislation governing asylum and immigration cases on the Administrative Court.<sup>50</sup> The legislation has also had a profound impact on the resources of the Court of Appeal both in terms of staff and judicial time. It

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47 [www.hmcourts-service.gov.uk/cms/files/review\\_legal\\_year\\_2007.pdf](http://www.hmcourts-service.gov.uk/cms/files/review_legal_year_2007.pdf)

48 See the Master of the Rolls’ *Review, of the Legal Year 2006-07*, pp 20-27.

49 See Tables 1 and 2, pp 28-29.

50 Para 5.70 above

continues to place an enormous burden on the resources of the Court, representing 28.8% of all appeals and 22.8% of all permission to appeal applications in the last year. There has been a 47% increase in the asylum and immigration workload of the Court since the creation of the AIT.

- 5.102 The position has been exacerbated because the AIT, unlike its predecessor, the IAT, is unable to remit a reconsideration determination to a differently constituted tribunal and thus deal with it internally even where it agrees that it contains an error of law. This means judges of the highest calibre are devoting over 25% of their time to appeals from a single immigration judge, the majority of which raise no point of general importance and some of which the AIT may itself accept are erroneous.
- 5.103 With the exception of Chancery permission to appeal applications and appeals, there has been an increase in appeals and applications for permissions to appeal from all lower courts and tribunals. That the impact of this growth and the growth in AIT business has not resulted in even higher overall increases in permissions to appeal and appeals receipts is largely due to an unrelated decline in the number of Chancery permission to appeal applications (233, down from 272 in 2005/06) and Chancery appeals (133, down from 185 in 2005-06).
- 5.104 *Numbers of judges:* The number of Lord and Lady Justices has not increased since 1999; a significant fact given that the number had stood at 26 in 1990, the increase in almost every category of work by the court, and the prospect of further increases. A majority of the Lord and Lady Justices also have onerous duties presiding in the Court of Appeal Criminal Division. Other demands have also caused pressure on their availability to sit in both Divisions of the Court. For example, Lady Justice Hallett has been a member of the JAC since January 2006 and its Vice Chairman since October 2007, Lord Justice Scott Baker has been serving as Assistant Deputy Coroner for Inner West London and conducting the inquests into the deaths of Diana, Princess of Wales, and Mr Dodi Al Fayed, and in December 2007 Lord Justice Gage was appointed as the judicial Chair of the Sentencing Commission Working Group set up by the government in the light of the Carter Review of Prisons.
- 5.105 *Permission to Appeal:* Since 1999 permission to appeal has been required in almost every case. Since 2001, the Court has seen an average of 2,449 applications for permission to appeal and 1,204 appeals each year. There were 2,551 permissions to appeal filed in 2007; the second year that numbers have exceeded the previously unsurpassed 2,499 in 2002-03. The number of appeals filed (1,266) has increased for the third year in succession. Permission to appeal can, in some circumstances, be granted by the lower court, but these represent only about 20% of the cases issued each year. The majority require permission to appeal from the Court of Appeal; a process requiring consideration of cases on the papers by a single Lord or Lady Justice which, where permission to appeal is refused, may be followed by an oral reconsideration. 374 of these were heard by a single Lord or Lady Justice, 257 by 2 and 29 by 3, where renewal of an application, if successful, was followed immediately by the appeal.

5.106 The burden on members of the Court in considering permission to appeal is considerable and consideration has been given to ways of reducing it. Following a process of consultation, including a report by Professor Dame Hazel Genn, the Civil Procedure Rules were changed on 2 October 2006 so as to give the Court the power when refusing permission to appeal on the papers to certify the application as "Totally Without Merit". There is no right to an oral reconsideration if an application is so certified. The system remains under review.

### **The Court of Appeal Criminal Division**

5.107 I am pleased to record that, for the most part, the Court of Appeal (Criminal Division) is working well. The Court, led by Sir Igor Judge, Head of Criminal Justice, and Lord Justice Latham, Vice-President of the Court, and with the support of Roger Venne, the Registrar of Criminal Appeals and the Criminal Appeal Office, plays a pivotal role in protecting and promoting public confidence in the criminal justice system.

5.108 The Court exists to determine appeals from the Crown Court and to provide guidance on the interpretation of criminal law and its procedures. In most cases, it is also the court of final appeal, and its role is therefore fundamental in protecting the rights of the individual defendant from miscarriages of justice while preserving the convictions of the guilty who have received a fair trial.

5.109 A full account of the Court's work is contained in its Review of the legal year 2006-07.<sup>51</sup> In that period significant cases included *R v Cole and R v Keet*,<sup>52</sup> in which the Court considered the admissibility of written hearsay evidence under the Criminal Justice Act 2003 and *R v Bree*,<sup>53</sup> in which the Court dealt with the problems relating to the effect of intoxication on consent to sexual intercourse.

5.110 At the Court's invitation, and to mark the centenary of the Court, the Criminal Procedure Rule Committee produced a new set of rules governing all proceedings before the Court.<sup>54</sup>

5.111 *Caseload*: Since 2002, the number of applications received had fallen slightly every year, but this trend appears to have changed over the last year, with the Court receiving 5176 sentence applications and 1598 conviction applications. This was 262 more sentence applications and 68 more conviction applications than in the previous year. Despite this increase in cases, the Court has continued to manage its workload efficiently and the number of applications outstanding has continued to fall to its lowest level for 5 years.

5.112 Over the year, 2,131 sentence applications and 495 conviction applications resulted in a full appeal hearing and, of those, 72% of sentence appeals and 38% of conviction appeals were allowed by the Court. In respect of conviction cases, the percentage of conviction appeals which were allowed increased by 6% from the

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51 [www.judiciary.gov.uk/docs/coareview2006-7.pdf](http://www.judiciary.gov.uk/docs/coareview2006-7.pdf)

52 [2007] EWCA Crim 1924

53 [2007] EWCA Crim 804.

54 Criminal Procedure (Amendment No. 2) Rules, SI 2007 No 2317

previous year, whereas the percentage of sentence appeals which were allowed remained approximately the same.

- 5.113 There were an increased number of applications made under jurisdiction other than that conferred by the Criminal Appeal Act 1968. During the period of this review, the Court dealt with 25 cases where the Prosecution exercised their right of appeal under the Criminal Justice Act 2003. This was more than double the cases heard the previous year. Of the 17 appeals that were heard, the trial judge's order was confirmed in 5 cases and reversed in 12 cases. Although still relatively small in number, these applications often have to be listed at very short notice which means that the Court lists have to be completely re-organised to accommodate them. The number of interlocutory applications also more than doubled to 33 cases.
- 5.114 *Unlawful sentences:* In my judgment in *R v Cain*,<sup>55</sup> I drew attention to the number of cases where unlawful sentences were passed, and the essential role which counsel must play in assisting judges to unravel the excessively complex sentencing legislation with which they must grapple. I am very pleased that the Attorney General has now amended the guidance to prosecutors by requiring a plea and sentencing document in every Crown Court case. Much will depend on the quality of these documents which will most certainly be kept under review, by the Court itself, over the coming year.
- 5.115 *Waiting time:* The average waiting time for cases disposed of by the Court was 10.9 months for conviction appeals and a remarkable 4.2 months for sentence appeals, which is well below the target of 5 months. This is a considerable improvement on previous years and clearly reflects the progress the Court is continuing to make in reducing waiting times. I am, however, well aware that there is still work to be done to reduce conviction waiting times further.



## 6 Court Buildings and the Estate

- 6.1 *Introduction:* The provision of an effective justice system depends on the availability of sufficient suitably equipped court buildings. Mr Justice Stanley Burnton chairs the Judicial Estates Advisory Group, which includes judges at all levels, and provides input and advice from the judiciary on the national and local estate strategies and plans that are developed by HMCS.



Manchester Civil Justice Centre

- 6.2 The court estate consists of over 700 buildings, of which some 650 are court buildings. They are of varying size, age, and state of repair. Despite a number of significant and successful new developments, this is an area of ever growing concern because of a history of under-investment and growing maintenance backlog.
- 6.3 *New developments:* The opening of new purpose built Civil Justice Centres in Manchester and Liverpool are notable successes. They will considerably enhance the profile of the Northern circuit in the sphere of civil justice. Work has begun on a new Civil Justice Centre in Bristol, and the construction of new courts in Sunderland, Birmingham, Liverpool, Bolton, Salford and Aylesbury has been authorised. As mentioned above, the Roll's Building in Fetter Lane is due to be completed in 2010. Additional courts are to be built at Isleworth Crown Court (partly to replace the Crown Court at Middlesex Guildhall, which will become the court house of the new Supreme Court), and a number of additional courtrooms are to be built to accommodate terrorist trials, which often involve a significant

number of defendants (and therefore of their legal representatives) and require a high level of security.

- 6.4 *Investment in the court estate:* It is impossible to ignore the fact that the current estate plan is the product of many years of underinvestment in the court estate. For more than 10 years spending on repairs and maintenance has been only about half of what was required to keep the courts in good condition, and it is currently 30% less than the recommended level.<sup>56</sup> In 2000 the maintenance backlog was £38 million. It is now £200 million, of which £90 million is maintenance required for urgent operational requirements.
- 6.5 The condition of some of our courts can be seen from Mr Justice Stanley Burnton's report following his visit to Aylesbury Crown Court in 2006:
- “Aylesbury Crown Court is not fit for purpose. It is frankly a disgrace that we retain such courts in use in the 21<sup>st</sup> century. It is a conversion of part of a Victorian council building. There are two court rooms. One is a former council meeting room. The other is more suitable as a court room. The court furniture is typical Victorian: beautifully made, attractive, but not suitable for a modern court. Only one court room has a secure passage to the cells. Perhaps more importantly, there is only one waiting area, which has to be used by waiting defendants on bail, the public, witnesses, supporters on both sides, and others.”*
- 6.6 Happily, construction of a new Crown Court in Aylesbury has now been authorised. However, it will not be completed before 2011, and until then those involved in serious criminal trials there must suffer the conditions described in this report.
- 6.7 HMCS recognises that funding levels for the coming years, which have already seen the proposals to reduce the size of the existing estate, will impact “harder than expected”. Even so, HMCS predicts that the maintenance backlog will remain at some £200 million throughout the next three years.
- 6.8 The court reports give examples of the practical problems caused by this lack of investment and maintenance. Several court centres express their concern about the lack of adequate accommodation or the effects of the long-term deterioration in the fabric of the court. In some cases this has prevented courts from sitting, most notably in Winchester, Gloucester, Bournemouth and Aylesbury, and it is clear that some of the damage caused by the floods in the summer of 2007 would not have occurred if the courts in question had been properly maintained.<sup>57</sup> Inadequacies of accommodation include courts which are potential security risks because vulnerable witnesses and families share entrances with those visiting the criminal courts.

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56 See the Review of the Court and Tribunal Estate by Turner & Townsend, construction and management consultants, p. 47. The industry recommendation is that of Building Cost Information Services, a division of the Royal Institute of Chartered Surveyors.

57 [www.hmcourts-service.gov.uk/publications/annual\\_reports](http://www.hmcourts-service.gov.uk/publications/annual_reports)

- 6.9 *Court amalgamations and closures:* HMCS's proposals to "seriously redraw the scope" of the existing estate, include proposals to reduce the number of court buildings, where possible by amalgamating magistrates' courts and county courts, dispose of 187 (some 25%) of the present 726 buildings which are regarded as surplus by 2011 and, where new buildings are to be provided, to do so where possible by Private Developer Schemes (PDS) involving leasing instead of purchase and construction by the Ministry of Justice itself.
- 6.10 There is no objection to amalgamation provided the court building being retained or acquired has the capacity for both county court and magistrates' court work and is or can be made architecturally suitable, with separate entrances and waiting areas where appropriate. Closures of courts where no replacement or amalgamation is envisaged raise different and difficult issues. Although in some cases the retention of a separate court is financially and logistically difficult to defend, some closures will result in those involved in court cases having to travel significant distances, without adequate public transport. Additionally, local courts and local justice are important and the loss of such a court can give rise to a perception that justice is unavailable, or at any rate remote.

## 7 Courts and the Community



An open day at Derby Crown Court

- 7.1 It is very pleasing to note the extensive interaction that takes place between judges and court staff and the community. I am not here referring to the Community Courts which have been established in a number of locations including Salford, but to the involvement of courts, judges and staff with their communities by visiting schools, and arranging visits to courts and open days. Such involvement is important because it is essential to promote the confidence of the public in the justice system. Increasing understanding of and participation in the system across all the various sections of the population is fundamentally important to achieving this aim.
- 7.2 Visits by local schools, as well as work experience placements, are regular features of the working life of courts. The Crown Court at Manchester Crown Square, for example, was visited by 45 school parties during the year.<sup>58</sup> There appears to be greater participation in open days as well as 'Inside Justice' week programmes, charity events, police officer training and 'You be the Judge' events (which, in Manchester, have been particularly valuable in increasing public confidence). One notable example of many is that of the open day that was held for special needs students in Mold Crown Court.<sup>59</sup> Over 2,000 school students take part in the annual Bar National Mock Trial Competition organised by the Citizenship Foundation and sponsored by the Bar Council, the Inns of Court, and the local Bar Circuits, and their Scottish and Northern Ireland equivalents. Over 90 judges

58 [www.hmcourts-service.gov.uk/docs/annualreports\\_crown06\\_07/Manchester-Crown-Sq-Crown-Court2006-2007.pdf](http://www.hmcourts-service.gov.uk/docs/annualreports_crown06_07/Manchester-Crown-Sq-Crown-Court2006-2007.pdf)

59 [www.hmcourts-service.gov.uk/docs/annualreports\\_crown06\\_07/Mold-Crown-Court-2006-2007.pdf](http://www.hmcourts-service.gov.uk/docs/annualreports_crown06_07/Mold-Crown-Court-2006-2007.pdf)

at all levels take part. Courts are opened on Saturdays for local heats and the competition relies very heavily on the work and assistance of judges, barristers and court staff.

- 7.3 The contribution of magistrates is illustrated by the Magistrates in the Community Project (MiC), a Magistrates' Association initiative involving some 3,000 magistrates that has developed over the past few years to increase public awareness of the role of magistrates in the criminal and civil justice system. Teams of magistrates are willing to attend primary, secondary, 6th form colleges, schools, community groups and employers etc to give a presentation and discuss how they are appointed and their work. As far as possible presentations are tailored to suit requests, whether it be an informal ten minute talk or a more participative sentencing exercise such as acting out a mock trial.
- 7.4 In addition to these activities, I have supported the work of the Diversity Community Relations Judge (DCRJ) network, a group of 45 Circuit Judges spread around the circuits, led by HHJ Geoffrey Kamil. Their purpose is to act as an interface between the courts and local minority communities, with a view to increasing the confidence of those communities in the justice system, and for the judges to better understand the issues and needs of those communities. They also show that the judiciary are no longer remote and unaware of how most people live. Some of the work undertaken by these judges has involved arranging for community leaders, religious leaders, schools and colleges to visit the courts and meet the judges and court staff. It has also involved the promotion of working within the justice system, by taking part in justice related employment events. Judge Kamil has left me in no doubt of the value of this work.
- 7.5 One example of the sort of activity undertaken is the successful faith leaders' reception in Birmingham at which two Circuit Judges and a District Judge (Magistrates' Court) spoke. It is hoped that this will lead to invitations to judges to speak, in particular to young people, at mosques, temples, churches, and synagogues. It is hoped that the Diversity Community Relations Judges will encourage members of all communities to have no fear in engaging in court proceedings, and in seeking employment as part of the court service, probation service, magistracy and the legal profession.

## 8 Diversity in the Judiciary

- 8.1 If we are to have a judiciary that has the confidence of our citizens, it is important that it fairly represents all sections of society that are in a position to provide candidates of the requisite ability. One of the ways in which I have acted to promote diversity and to show my commitment and that of the judiciary to it is in the tripartite diversity strategy adopted in May 2006 by myself, the Lord Chancellor, and the Chairman of the JAC.<sup>60</sup> Its four strands seek to promote judicial service and widen eligibility, encourage a wider range of applicants in order to ensure the widest possible range of candidates for selection, promote diversity through fair and open processes for selection to judicial office solely on merit; and ensure that the culture and working environment for judicial office holders encourages and supports a diverse judiciary and increases understanding of the communities served. The judiciary, together with the Ministry of Justice, has also developed salaried part-time working and reasonable adjustment policies for judges.
- 8.2 Mrs Justice Dobbs has been the Liaison Judge for diversity for the past three years, during which time her activities on behalf of the judiciary have expanded. She supports the JAC, works with organisations such as the Bar Council, the Law Society, Ministry of Justice, and the Attorney-General on matters of diversity in the professions and the judiciary, and attends the functions of various organisations, often giving keynote or after dinner speeches.

Of particular note in our efforts to encourage more applications from women and members of ethnic minorities is the formal Work Shadowing Scheme which is administered by my Judicial Office, and which regularly receives very positive feedback from all who participate. It offers the opportunity to experience the working life of a judge with an experienced Shadow Judge, and the benefits to potential applicants are clear. This opens the eyes of participants to the possibility of judicial service.

- 8.3 As far as the magistracy is concerned, since 2001 the judiciary and the Ministry of Justice have run the Magistrates Shadowing Scheme (MSS), which aims to help improve Black and other minority ethnic representation within the magistracy and to increase awareness in those communities of the criminal justice process. More than 800 people have applied to join the scheme since its inception. Over 100 of those who have taken part subsequently applied to become magistrates and over 30 have been appointed as magistrates.

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60 [http://www.judicialappointments.gov.uk/docs/Judicial\\_diversity\\_strat\\_0506.pdf](http://www.judicialappointments.gov.uk/docs/Judicial_diversity_strat_0506.pdf)

## 9 Pastoral Care

- 9.1 Judicial office is immensely demanding and the pressures are increasing. As Head of the Judiciary in England and Wales, I am responsible for making and maintaining appropriate arrangements for the welfare and guidance of more than 33,000 judges and magistrates. There is a grievance procedure, and health service provision and guidance is available on deployment and propriety issues. There are plans to introduce mentoring schemes for newly appointed Recorders, District Judges and Circuit Judges. There is already a mentoring scheme in place for Deputy District Judges.
- 9.2 As part of the support service for salaried judges, the Judicial Assistance Programme, or Helpline, was set up in April 2007 as a pilot scheme to provide a welfare helpline service to all salaried court judges. This free service is also available to the judges' immediate families. We shall evaluate its success at the end of March 2008 and consider whether to continue and possibly expand the service. A Committee of the Judges' Council chaired by Mr Justice Forbes reported on career development, resources, and health issues in December 2007, and its recommendations are under consideration.<sup>61</sup>

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<sup>61</sup> See the First Progress Report of the Standing Committee of the Judges' Council, *Judicial Support and Welfare* (December 2007), pp 6-7, 12

## 10 The Judicial Communications Office

- 10.1 *Introduction:* The Judicial Communications Office (JCO) was set up in April 2005 in order to increase public understanding of the role of judges in our democracy and thus to maintain and enhance public confidence in the judiciary in England and Wales. It also aims to instil a greater sense of the "judicial family" amongst judges, magistrates and tribunal judges. Its professional communications advice and support is available to all judges, magistrates and tribunals judiciary. It has built two major communications channels, a publicly accessible website (which by the end of January 2008 was attracting an average of 38,000 visits per month), and an internal intranet for the judiciary. A team of eight officials offers advice and support on media issues, assists the judiciary to communicate with each other (through the intranet and newsletters), and provides information to the media and the public to increase their understanding of the judicial system and the work of the judiciary.
- 10.2 *The media team:* As well as providing assistance with a range of queries, the media team is in the process of organising a small panel of serving judges who will be trained to undertake media interviews where it is necessary to provide an informed judicial perspective on issues of sentencing and process. This need was identified following widespread inaccurate media coverage of a paedophile sentencing case in 2006 and formed part of the recommendations of the House of Lords Constitution Select Committee to whom Sir Igor Judge, the Head of Criminal Justice, and senior JCO officials gave evidence in February 2007.
- 10.3 Increasingly, the media team makes high-profile judgments and sentencing remarks in potentially controversial cases available on the judicial website. This service is appreciated by journalists and has generally led to more accurate and balanced reports. Ensuring the public have full access to the full facts of cases is integral to the aim of enhancing public confidence in the judiciary.
- 10.4 The media team also provides media handling support to the Office for Judicial Complaints and is called on by judges operating in other capacities, such as Lord Justice Scott Baker, the Assistant Deputy Coroner for Inner West London, who is hearing the Inquests into the deaths of Diana, Princess of Wales and Mr Dodi Al Fayed. In the latter case the JCO has been able to provide the support without prejudicing its day-to-day support to the judiciary, by contracting-in press officer support from the Government News Network, although some larger projects, such as improvements to the website, have been affected.
- 10.5 *Websites:* The judicial website ([www.judiciary.gov.uk](http://www.judiciary.gov.uk)) highlights the independence of the judiciary and provides the public with direct access to information about the judiciary without the information being conveyed by a media filter. Site content is kept under constant review and there are plans to provide more information about the constitutional position of the judiciary. The website also contains a series of interactive educational resources, including an online interview given with me which, by the end of January 2008, had been downloaded 18,047 times since April 2006.



- 10.6 The team also built and maintains the website for the Inquests into the deaths of Diana, Princess of Wales, and Mr Dodi Al Fayed ([www.scottbaker-inquests.gov.uk](http://www.scottbaker-inquests.gov.uk)). The website is updated twice daily with the transcripts and evidence seen by the jury. At its peak the website has attracted more than 70,000 visitors daily.
- 10.7 *Internal Communications:* The judicial intranet is supported by both weekly and urgent email alerts, and there are more than 4,000 subscribers. It contains updated and expanded media guides for judges and magistrates. These systems have been successfully utilised by me on a number of occasions to communicate important information – for example the creation of the Ministry of Justice – ensuring information reaches the judiciary quickly and accurately. Approximately 75% of judges in the High Court and above have signed up. The figures for Circuit Judges, District Judges, magistrates, and tribunal judges are respectively 65%, 70%, 11%, and 40%. Although internal communications is a relatively new concept for the judiciary, it has been embraced with a degree of enthusiasm by a large number of judges and magistrates.
- 10.8 Additionally, the office publishes a monthly electronic judicial newsletter, *Benchmark*, which is sent to more than 4,000 judges, magistrates, and tribunal judges. The JCO also sends out a monthly *Tribunal Bulletin* on behalf of the Senior President of Tribunals. Judges, magistrates and tribunal judges have contributed information about their own experiences, and there have been articles by others, such as the Rt Hon Alan Beith MP, who chairs the House of Commons Justice Committee.

## 11 Complaints about Judges

- 11.1 The Constitutional Reform Act gives the Lord Chancellor and me joint responsibility for considering and determining complaints about the personal conduct of all judges, magistrates and tribunal judges in England and Wales, and some tribunal judges who sit in Tribunals in Scotland and Northern Ireland. The Senior President of Tribunals acts as my delegate in relation to complaints of judicial misconduct by tribunal judges.
- 11.2 The Office for Judicial Complaints (OJC), headed by Ms Dale Simon, was set up on 3 April 2006, to handle these complaints and provide advice and assistance to the Lord Chancellor and me in our joint responsibility for the system of judicial complaints and discipline.<sup>62</sup> The OJC's procedure is laid down by the Judicial Discipline (Prescribed Procedures) Regulations 2006 ("the Regulations"), which were made under the CRA 2005. It can only consider complaints relating to the personal conduct of judicial office holders – they cannot consider judicial decisions.
- 11.3 Prior to the formation of the OJC, complaints about judicial office holders were dealt with by the Judicial Correspondence Unit in the Department for Constitutional Affairs. The Lord Chancellor was solely responsible for such matters – although, in practice, he consulted me (and my predecessors) for our views before taking decisions such as those to reprimand or remove a judge.
- 11.4 The OJC handled a total of 1,674 complaints in the period 6 April 2006 – 31 March 2007. Many of these complaints are dealt with, in accordance with the Regulations, by the OJC at first instance, and therefore never reached me. We took disciplinary action in a number of cases:

### **Disciplinary action taken by the Lord Chief Justice and Lord Chancellor (6 April 2006 – 31 March 2007)**

	<b>Mainstream judiciary</b>	<b>Coroners</b>	<b>Tribunals</b>	<b>Magistrates</b>	<b>Total</b>
Formal Warning/ Advice	0	0	1	2	3
Reprimand	2	0	0	11	13
Removed from office	0	0	1	15	16

62 The OJC's website can be found at <http://www.judicialcomplaints.gov.uk/>

Further information and other figures can be found in the OJC's Annual Report.<sup>63</sup>

11.5 When that report was published I stated:

*"I take complaints about the judiciary very seriously, and consider it important to maintain public confidence by ensuring such complaints are dealt with by an independent body. I am pleased to note that the number of complaints dealt with, and upheld, is very low and that across the judicial spectrum the percentage of Judicial Office Holders subject to disciplinary action is below 0.1%."*

11.6 In 16 of the cases where we took disciplinary action, the subject of the complaint exercised their right for the case to be referred to a Review Body. Members of each Review Body were drawn from levels of the judiciary appropriate to the case and from a pool of lay members. In each case the Review Body upheld the recommended penalty.

11.7 The system is working very effectively, and it is an important mechanism in ensuring the independence and accountability of the judiciary. The fact that the Lord Chief Justice and Lord Chancellor have to agree before a judge is removed or disciplined in some other way is of fundamental importance. This ensures that the independence of an individual judge is not improperly infringed, either by the executive, or internally by another member of the judiciary.

11.8 The Judicial Appointments and Complaints Ombudsman was also established on 3 April 2006.<sup>64</sup> The Ombudsman, who publishes an annual report,<sup>65</sup> is Sir John Brigstocke. He is independent of the Government and the judiciary.

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63 Available at: [http://www.judicialcomplaints.gov.uk/docs/OJC\\_Annual\\_Report\\_2006-2007.pdf](http://www.judicialcomplaints.gov.uk/docs/OJC_Annual_Report_2006-2007.pdf)

64 The Ombudsman's website can be found at <http://www.judicialombudsman.gov.uk/>

65 This can be found at <http://www.judicialombudsman.gov.uk/docs/annualreportfinal.pdf>

## 12 Training

- 12.1 One of the other responsibilities of the Lord Chief Justice is the provision and sponsorship of judicial training, within the resources provided by the Lord Chancellor. I am fortunate to have the skills and experience of the well-established Judicial Studies Board (JSB) in trying to meet these commitments.
- 12.2 The JSB produces its own Annual Reports. The most recent one, published in June 2007 contains a full account of its work in 2006-07.<sup>66</sup> That Report includes details of the JSB's current strategy and priorities, a summary of expenditure, and reports from the seven Committees, with details of the courses held between 1 April 2006 and 31 March 2007. The JSB's Strategy 2007-2011 can also be found on its website.
- 12.3 The purpose of the JSB is to deliver high quality training to judicial office holders to help them carry out their duties effectively, in a way which preserves judicial independence and supports public confidence in the judiciary. Since April 2007, it has restructured itself by creating two new bodies, an Executive Board and an Advisory Council. The Advisory Council's main role is to ensure that the work of the JSB can be scrutinised and challenged. Its members include sponsors and interested parties such as the Permanent Secretary of the Ministry of Justice and the Tribunals Service Chief Executive, representatives of the judiciary, representatives of the legal professional bodies, and academic specialists who were selected through open competition.<sup>67</sup> The Executive Board includes two Non Executive Directors (appointed in July 2007) who provide a valuable external perspective on the Board's activities.
- 12.4 I am immensely grateful to Lord Justice Keene, who completed four years chairing the JSB in July 2007, and HHJ Victor Hall, who ended his term as Director of Studies in December 2006. Both gave enormous support and encouragement to the Board, as they oversaw a considerable increase in its responsibilities and the development of numerous new training methods. Lord Justice Maurice Kay, who is now in the Chair, and HHJ John Phillips CBE who is Director of Studies, will continue this work.
- 12.5 Annually the JSB runs more than 80 training events, as well as providing support and training materials for regional based events. In the period of this report, it has completed reviews of the provision of judicial education in England and Wales, including an analysis of learning needs of the judiciary. The JSB's Annual Report describes these in detail, including the move of the civil continuation course to a modular form to enable participants to choose topics suitable to their individual needs, and courses for those judges (such as Resident, Designated Civil and Designated Family Judges) with leadership and management roles designed to provide an opportunity for them to improve their effectiveness. As a result of the first two reviews, it has developed detailed proposals for the future of judicial education, including the needs of the senior judiciary which were approved in principle by the Judicial Executive Board in Autumn 2007.

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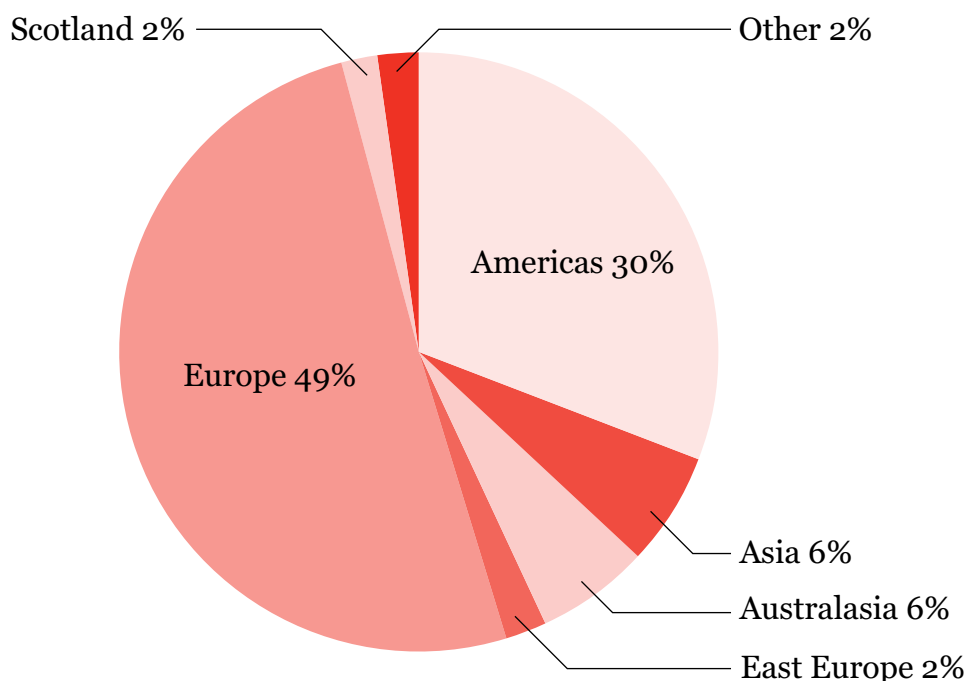
66 It is available on the JSB's website [www.jsboard.co.uk](http://www.jsboard.co.uk)

67 For details see *JSB Annual Report 2006-07*, p 2.

## 13 International Judicial Relations

- 13.1 I consider it important for the judiciary in England and Wales to be involved in the international arena so that we can develop good links which will assist us in dealing collaboratively with cross-border issues, learn from the experience of others, and provide support for the judiciary in developing countries and new democracies. Such international links have led to continuing benefits under the co-operative arrangements about international child abduction and child relocation under the Brussels II and Hague Conventions and the 2003 UK/Pakistan Judicial Protocol on child abduction. For example, in the period under review our Hague Convention network enabled assistance to be given to the President of the Family Division about an urgent matter concerning the return of two children to Alberta.
- 13.2 Lady Justice Arden acts on my behalf as Judge in Charge of International Relations, and, supported by a small team in the Judicial Office, has coordinated a range of activities in furtherance of these objectives. Lord Justice Thorpe, as Head of International Family Justice, and Lord Justice Thomas, who has taken on responsibility for much of our involvement in the judicial institutions of the EU, also make valuable contributions to this ever-growing area of work.
- 13.3 We are involved in the various European Networks including the Councils of the Judiciary, Presidents of the Supreme Courts, and Judicial Training. We are taking the lead in the working group on the impact of EU criminal justice legislation on national judiciaries and, at the end of 2006 and in October 2007, we participated in a series of 2-week programmes for European Judges who came to London as part of the European Judicial Training Network Exchange programme.
- 13.4 Our judges have assisted the judiciary of several states in improving their judicial systems. These include new EU accession states such as Romania, Commonwealth countries such as Jamaica and Guyana, and states that were formerly part of the USSR, such as Kazakhstan. Members of the judiciary have also participated in a variety of visits and conferences around the world, on topics including alternatives to custodial sentences, arbitration, constitutional reform, intellectual property rights, patent litigation, and mutual recognition of judicial decisions in criminal matters. The range of locations visited is depicted below.

## Time spent by world region



- 13.5 Close links also continue to be forged through bilateral exchanges with India (June 2006) France (June 2006), Israel (May 2007) and Germany (September 2007) and the visits by judges from many countries who I, and other members of the judiciary, have been pleased to welcome.
- 13.6 I was also very pleased to be the host of a three day conference for Common Law Judiciary in April 2007, organised with Judge Cotter a retired judge from Washington, and a 2–day workshop with the Judges of the European Court of Human Rights in October. Both events proved highly successful, providing the opportunity for judges from different jurisdictions to share and discuss experiences and knowledge.

## 14 Looking Ahead

- 14.1 If a single theme runs through this review it is that both judiciary and staff are seriously overstretched. I am aware that pressure on resources is likely to be even more acute the next few years and I am concerned at the implications of this.
- 14.2 High Court Judges are a particularly precious resource. The demands on the time of the High Court judiciary have been increasing. A large part of the increase has been asylum and immigration work that falls within the jurisdiction of the High Court Bench but which does not justify the input of High Court Judges. More generally, judicial review falls within the exclusive jurisdiction of the High Court, although not all work justifies this exclusive jurisdiction. The public law

jurisdiction requires review as does the manner in which public law cases are shared between the courts and the Tribunals Service.

- 14.3 We must ensure that High Court Judges are used to best advantage, and this calls for reconsideration of how court business is allocated. A proposal to unify the High Court and the county courts into a single civil jurisdiction provoked serious concerns on the part of some of the senior judiciary and will not be pursued without detailed research and consultation. I believe that it is important that this proposal receives proper consideration.
- 14.4 Development of our common law as well as authoritative interpretation of the huge flow of new statute law requires a High Court judiciary of high calibre, the best of which will be promoted to the Court of Appeal and the House of Lords/ Supreme Court. The majority of the High Court Bench is, and is likely to continue to be, drawn from the practising bar. We rely on advocates of high calibre not merely as a source of the judiciary but because our legal system depends on the assistance that advocates provide to the court. I view with concern the steadily increasing numbers of litigants in person, due in part to difficulties of getting legal aid. This problem is particularly acute in relation to the family jurisdiction. I am also concerned that the increasing use of 'in house' advocates by the Crown Prosecution Service and concerns about legal aid remuneration have reduced the number of those who are starting at the criminal bar.
- 14.5 So far as civil justice is concerned, the major problem remains the cost of civil litigation. The Woolf reforms have not solved this problem. Indeed I do not believe that there is an easy solution when the adversarial system can involve so many professional people in resolving a single dispute. In almost all cases litigants should explore alternative means of resolving their disputes before resorting to the courts. I believe that there is scope for more court involvement in encouraging and facilitating mediation.
- 14.6 Our criminal justice system has been put under pressure by legislation, some of which has reflected the politicisation of sentencing. The task of judges and magistrates who have to sentence offenders has been made infinitely more complex by a stream of legislation. The judiciary is willing, if consulted, to advise on the practical implications for the administration of justice of proposed legislation. I hope, however that there will be less occasion to do so.
- 14.7 I write this review at a time when prison overcrowding presents an acute problem. Legislation lays down clear principles governing when a court can and when a court cannot impose a custodial sentence. Magistrates and judges do their best to comply with these principles. I have lent support to Lord Justice Gage's working party that is considering whether a Sentencing Commission might assist in controlling, or at least more accurately predicting, pressure on prison places. The judiciary will be anxious that any proposal does not fetter the judge's discretion to sentence each offender in a manner that justly reflects the circumstances of the particular case.

## Appendix 1

### **Court and other Reports and Reviews covering the period 2006/07**

#### **Court of Appeal (Criminal Division)**

[www.judiciary.gov.uk/docs/coareview2006-7.pdf](http://www.judiciary.gov.uk/docs/coareview2006-7.pdf)

#### **Court of Appeal (Civil Division)**

<http://www.hmcourts-service.gov.uk/cms/1302.htm>

#### **Technology and Construction Court**

[www.judiciary.gov.uk/docs/tcc\\_3rd\\_annual\\_report.pdf](http://www.judiciary.gov.uk/docs/tcc_3rd_annual_report.pdf)

#### **Commercial Court and Admiralty Court**

[www.hmcourts-service.gov.uk/publications/misc/admiralcomm/index.htm](http://www.hmcourts-service.gov.uk/publications/misc/admiralcomm/index.htm)

#### **Crown Court Reports**

[www.hmcourts-service.gov.uk/publications/annual\\_reports/crown/index.htm](http://www.hmcourts-service.gov.uk/publications/annual_reports/crown/index.htm)

#### **County Court Reports**

[www.hmcourts-service.gov.uk/publications/annual\\_reports/county/index.htm](http://www.hmcourts-service.gov.uk/publications/annual_reports/county/index.htm)

#### **Family Courts Reports**

[www.hmcourts-service.gov.uk/cms/11041.htm](http://www.hmcourts-service.gov.uk/cms/11041.htm)

#### **Magistrates' Courts Reports**

[www.hmcourts-service.gov.uk/publications/annual\\_reports/magistrates/index.htm](http://www.hmcourts-service.gov.uk/publications/annual_reports/magistrates/index.htm)

#### **Judges' Council**

[www.judiciary.gov.uk/about\\_judiciary/representation\\_and\\_support/judges\\_council.htm](http://www.judiciary.gov.uk/about_judiciary/representation_and_support/judges_council.htm)

#### **Judicial Studies Board**

[www.jsboard.co.uk/aboutus/annualreports.htm](http://www.jsboard.co.uk/aboutus/annualreports.htm)

#### **Office for Judicial Complaints**

[www.judicialcomplaints.gov.uk/publications/publications.htm](http://www.judicialcomplaints.gov.uk/publications/publications.htm)

#### **Judicial Appointments and Conduct Ombudsman**

[www.judicialombudsman.gov.uk/docs/annualreportfinal.pdf](http://www.judicialombudsman.gov.uk/docs/annualreportfinal.pdf)

#### **Judicial Appointments Commission**

[www.judicialappointments.gov.uk/docs/JAC\\_AR2006\\_07.pdf](http://www.judicialappointments.gov.uk/docs/JAC_AR2006_07.pdf)

#### **Civil Procedure Rule Committee**

[www.dca.gov.uk/procedurerules/civilpr/061115.htm](http://www.dca.gov.uk/procedurerules/civilpr/061115.htm)

#### **Family Procedure Rule Committee**

[www.dca.gov.uk/procedurerules/familypr\\_annualrpt06.htm](http://www.dca.gov.uk/procedurerules/familypr_annualrpt06.htm)



## Appendix 2

### **Members of the Judicial Executive Board**

Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales (Chair)  
Sir Anthony Clarke, Master of the Rolls  
Sir Igor Judge, President of the Queen's Bench Division and Head of Criminal Justice  
Sir Mark Potter, President of the Family Division  
Sir Andrew Morritt, The Chancellor  
Lord Justice May, Vice-President of the Queen's Bench Division  
Lord Justice Leveson, Senior Presiding Judge  
Steve Humphreys, Interim Director of the Judicial Office

### **Members of the Judges' Council**

Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales (Chair)  
Baroness Hale of Richmond  
Lord Justice Leveson, Senior Presiding Judge  
Lord Justice Waller  
Lord Justice Scott Baker  
Lord Justice Thomas  
Mr Justice Andrew Smith (until 31/12/06)  
Mr Justice Simon  
Mr Justice Wilkie (from 1/1/07)  
Mr Justice Warren  
Mr Justice Bennett  
Mr Justice Butterfield  
HHJ Christopher Tetlow (until 31/12/06)  
HHJ Shaun Lyons CBE (from 1/1/07)  
HHJ Michael Harris (until 31/3/07)  
HHJ Keith Cutler  
Senior District Judge (Magistrate) Tim Workman CBE  
District Judge Terence John (until 31/3/07)  
District Judge Michael Tennant (from 1/4/07)  
District Judge Michael Walker CBE  
Senior Master Robert Turner (until 31/10/07)  
Chief Chancery Master, Jonathan Winegarten (from 1/11/07)  
Sir Stephen Oliver, President of the Finance and Tax tribunal (from 1/4/07)  
Designated Immigration Judge Paul Shaerf, President of the Council of Immigration Judges  
Peter Hildebrand, Regional Employment Judge  
Cindy Barnett JP, Chair of the Magistrates' Association

## Appendix 3

### Judicial leadership roles

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#### Heads of Division

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Lord Chief Justice of England and Wales	The Rt Hon Lord Phillips of Worth Matravers
Master of the Rolls and Head of Civil Justice	The Rt Hon Sir Anthony Clarke
President of the Queen's Bench Division and Head of Criminal Justice	The Rt Hon Sir Igor Judge
President of the Family Division and Head of Family Justice	The Rt Hon Sir Mark Potter
The Chancellor of the High Court	The Rt Hon Sir Andrew Morritt CVO

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#### Other Senior Leadership Roles

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Deputy Head of Civil Justice	Lord Justice Dyson (until 31/12/06) Lord Justice Moore-Bick (from 1/1/07)
Vice-President, Court of Appeal (Civil)	Lord Justice Brooke (until 30/9/06) Lord Justice Waller (from 1/10/07)
Vice-President, Court of Appeal (Criminal)	Lord Justice Rose (until 23/4/06) Lord Justice Latham (from 24/4/06)
Senior Presiding Judge	Lord Justice Thomas (until 31/12/2006) Lord Justice Leveson
Judge in charge of the Administrative Court	Mr Justice Andrew Collins
Judge in charge of the TCC	Mr Justice Jackson (until 31/8/07) Mr Justice Ramsey (from 1/9/07)
Judge in charge of the Commercial Court	Mr Justice Aikens (until 31/5/06) Mr Justice David Steel (from 1/6/06)

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## Presiding Judges

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Midland Circuit	Mr Justice Gibbs Mr Justice Treacy
Northern Circuit	Mr Justice McCombe Mr Justice David Clarke
North Eastern Circuit	Mr Justice Simon Mr Justice Andrew Smith (until 31/12/2006) Mr Justice Wilkie (from 01/01/2007)
South Eastern Circuit	Mrs Justice Rafferty (until 31/12/2006) Mr Justice Gross Mr Justice Calvert-Smith Mr Justice Bean (from 01/01/2007) Mr Justice Cooke (from 01/01/2007)
Wales Circuit	Mr Justice Roderick Evans Mr Justice Davis
Western Circuit	Mr Justice Owen Mr Justice Royce

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## Family Division Liaison Judges

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Midland Circuit	Mr Justice Kirkwood (until 24/04/2006) Mr Justice McFarlane (from 25/04/2006)
Northern Circuit	Mr Justice Ryder
North Eastern Circuit	Mr Justice Bodey
South Eastern Circuit	Mr Justice Munby (until 31/03/2007) Mr Justice Hedley (from 01/04/2007) Mrs Justice Macur Mrs Justice Pauffley
Wales Circuit	Mr Justice Hedley (until 31/03/2007) Mr Justice Wood (from 01/04/2007)
Western Circuit	Mr Justice Coleridge

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### **Chancery Supervising Judges**

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South Eastern Circuit	The Chancellor of the High Court
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North Eastern and Northern Circuits (also Vice-Chancellor of the County Palatine)	Mr Justice Patten
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Midland, Wales and Western Circuits	Mr Justice Lewison
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### **Tribunals Leadership Roles**

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Senior President of Tribunals	Lord Justice Carnwath
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President of the Employment Appeal Tribunal	Mr Justice Elias
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Chairman of the Special Immigration Appeals Commission	Mr Justice Mitting
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President of the Asylum and Immigration Tribunal	Mr Justice Hodge
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President of the Competition Appeal Tribunal	Mr Justice Barling
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## Other senior judicial roles

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Judge in charge of International Relations	Lady Justice Arden
Chairman of the Judicial Studies Board (JSB)	Lord Justice Keene (until 31/7/07) Lord Justice Maurice Kay (from 1/8/07)
Judge in charge of Europe	Lord Justice Thomas
Nominated Judge – Judicial Discipline (Courts)	Lord Justice Maurice Kay (until 30/7/07) Lord Justice Scott Baker (from 31/7/07)
Nominated Judge – Judicial Discipline (Tribunals)	Lord Justice Wilson (from 31/7/07)
Judicial Appointments Commissioner	Sir Robin Auld (until 30/9/07) Lady Justice Hallett Lord Justice Toulson (from 1/10/07) Mr Justice Goldring
Chairman of the Law Commission	Lord Justice Toulson (until 31/07/06) Mr Justice Etherton (from 1/8/06)
Judge in charge of Judicial Welfare	Mr Justice Forbes
Vice Chairman, The Parole Board	Mr Justice Butterfield
Judge in charge of the jury and non-jury lists	Mr Justice Eady
Deputy Chairman, Boundary Commission for England	Mr Justice Sullivan
Chairman of the Family Committee, JSB	Mrs Justice Black
Chairman of the Criminal Committee, JSB	Mr Justice Pitchford
Chair of the Civil Committee, JSB	Mr Justice Owen
Chair of the Tribunals Committee, JSB	Mr Justice Langstaff
Chair of the Magisterial Committee, JSB	Mrs Justice Dobbs
Chair of Equal Treatment Advisory Committee, JSB	Mrs Justice Cox
Judge in charge of IT Modernisation and Estates	Mr Justice Stanley Burnton

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Nominated Judge – Judicial Discipline	Mr Justice Mitting
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Nominated Judge – Judicial Discipline (Magistrates)	Mr Justice Pitchers
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Member, The Parole Board	Mr Justice Pitchers Mr Justice MacKay
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Judge in charge of Parliamentary Relations	Mr Justice Beatson
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Liaison Judge for Diversity	Mrs Justice Dobbs
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### Resident Judges

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Name	Court
Aylesbury Crown Court	HHJ Christopher Tyrer
Basildon Combined Court	HHJ Philip Clegg (until 31/12/07) HHJ Christopher Mitchell
Birmingham Crown Court	HHJ John Saunders (until 17/04/07) HHJ Frank Chapman
Blackfriars Crown Court	HHJ Aidan Marron QC
Bolton Combined Court Centre	HHJ William Morris
Bournemouth Crown Court and Dorchester and Weymouth Combined Court Centre	HHJ John Beashel DL (until 31/8/06) HHJ Samuel Wiggs
Bradford Combined Court Centre	HHJ Stephen Gullick
Bristol Crown Court	HHJ Thomas Crowther QC
Cambridge Crown Court	HHJ Jonathan Haworth (until 27/11/07) HHJ Gareth Hawkesworth
Canterbury Combined Court Centre	HHJ Anthony Webb
Cardiff Crown Court and Newport Crown Court	HHJ John Griffith Williams (until 10/01/07) HHJ Nicholas Cooke QC
Carlisle Combined Court Centre	HHJ Paul Batty QC

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Central Criminal Court	HHJ Peter Beaumont QC
Chelmsford Crown Court	HHJ Christopher Ball QC
Chester Crown Court	HHJ David Hale (until 30/5/06) HHJ David Elgan Edwards DL
Chichester Combined Court Centre	HHJ Anthony Thorpe
Coventry Crown Court and Warwick Crown Court	HHJ Richard Cole DL (until 31/1/07) HHJ Christopher Hodson
Croydon Crown Court	HHJ Warwick McKinnon
Derby Combined Court Centre	HHJ John Wait
Doncaster Crown Court	HHJ Jacqueline Davies
Durham Crown Court	HHJ Richard Lowden
Exeter Combined Court Centre	HHJ Graham Cottle
Gloucester Crown Court	HHJ James Tabor (until 13/4/07) HHJ Martin Picton
Grimsby Crown Court	HHJ John Reddihough
Guildford Crown Court	HHJ John Crocker (until 30/11/07) HHJ Christopher Critchlow
Harrow Crown Court	HHJ Alan Greenwood
Inner London Crown Court	HHJ Roger Chapple
Ipswich Crown Court	HHJ John Devaux (until 31/07/06) HHJ Neil McKittrick
Isleworth Crown Court	HHJ Richard McGregor-Johnson
Kingston-upon-Hull Combined Court Centre	HHJ Michael Mettyear
Kingston Crown Court	HHJ Charles Tilling
Leeds Combined Court Centre	HHJ Norman Jones QC (until 17/06/07) HHJ Peter Collier QC
Leicester Crown Court	HHJ Michael Pert QC

Lewes Combined Court	HHJ Richard Brown DL
Lincoln Crown Court	HHJ Michael Heath
Liverpool Combined Court Centre	HHJ Henry Globe QC
Luton Crown Court	HHJ John Bevan QC
Manchester Crown Square	HHJ David Maddison
Manchester Minshull Street	HHJ Peter Lakin
Maidstone Combined Court Centre	HHJ Andrew Patience QC
Merthyr Tydfil Combined Court Centre	HHJ John Curran
Mold Crown Court	HHJ John Rogers QC
Newcastle-upon-Tyne Combined Court Centre	HHJ David Hodson
Northampton Combined Court	HHJ Charles Wide QC
Norwich Combined Court Centre	HHJ Peter Jacobs
Nottingham Crown Court	HHJ Michael Stokes QC
Oxford Combined Court Centre	HHJ Julian Hall
Peterborough Crown Court	HHJ Nicholas Coleman
Plymouth Combined Court	HHJ Francis Gilbert QC
Portsmouth Combined Court Centre and Newport (IOW) Crown Court	HHJ Richard Price
Preston Crown Court and Burnley Crown Court	HHJ Anthony Russell QC
Reading Crown Court	HHJ Zoe Smith QC
Reading Crown Court	HHJ Christopher Critchlow
St. Albans Crown Court	HHJ Michael Baker QC
Salisbury Crown & County Court	HHJ Keith Cutler
Sheffield Combined Court Centre	HHJ Alan Goldsack QC



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Shrewsbury Crown Court	HHJ Robin Onions
Snaresbrook Crown Court	HHJ David Radford
Southampton Combined Court Centre	HHJ Antony Hope
Southwark Crown Court	HHJ Geoffrey Rivlin QC
Stafford Combined Court Centre	HHJ Russell Tonking
Stoke on Trent Combined Court Centre	HHJ Granville Styler (until 31/10/07) HHJ Paul Glenn
Swansea Crown Court	HHJ John Diehl QC
Swindon Combined Court	HHJ John McNaught (until 31/07/06) HHJ Douglas Field
Taunton Crown Court	HHJ Anthony Jones
Teesside Combined Court Centre	HHJ Peter Fox QC
Truro Combined Court Centre	HHJ Jeffrey Rucker (until 31/12/07) HHJ Christopher Elwen
Winchester Combined Court	HHJ Michael Brodrick
Wolverhampton Combined Court Centre	HHJ John Warner
Wood Green Crown Court	HHJ Shaun Lyons
Woolwich Crown Court	HHJ Shirley Anwyl QC (until 30/7/07) HHJ Charles Byers
Worcester Combined Court	HHJ Alistair McCreath
York Crown Court	HHJ Paul Hoffman (until 31/10/07) HHJ Stephen Ashurst

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## Designated Family Judges

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Name	Court
Birmingham Family Courts	HHJ Donald Hamilton
Blackburn and Lancaster County Courts	HHJ David Gee (until 1/04/07) HHJ Barbara Watson
Bournemouth County Court	HHJ Richard Bond
Brighton County Court Family Centre	HHJ Stephen Lloyd (until 30/06/07) HHJ Suzanne Coates
Bristol County Court	HHJ Susan Darwall Smith DL
Caernarfon and Rhyl County Courts	HHJ Michael Farmer QC
Cambridge and Peterborough County Courts	HHJ Isobel Plumstead
Cardiff and Pontypridd Family Centres	HHJ Crispin Masterman
Carlisle Combined Court Centre	HHJ Barbara Forrester
Chelmsford County Court	HHJ Godfrey Gypps
Chester and Warrington County Courts	HHJ Kevin Barnett
Coventry Combined Court Centre	HHJ John Fletcher (until 30/9/06) HHJ Clifford Bellamy
Derby Combined Court Centre	HHJ James Orrell
Exeter and Plymouth County Courts	HHJ David Tyzack QC
Guildford County Court	HHJ Stuart Sleeman
Ipswich County Court	HHJ Caroline Ludlow
Kingston-upon-Hull Combined Court Centre	HHJ Thomas Cracknell (until 04/04/07) HHJ John Dowse
Leeds Combined Court Centre	HHJ Peter Hunt
Leicester County Court	HHJ David Brunning

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Lincoln County Court	HHJ Richard Jenkins (until 31/08/07) HHJ Heather Swindells QC
Liverpool Civil and Family Court	HHJ Margaret De Haas QC
London	HHJ Valerie Pearlman (until 10/04/07) HHJ John Altman
Luton County Court	HHJ John Farnworth
Manchester County Court	HHJ Iain Hamilton
Medway and Canterbury County Courts	HHJ Donald Cryan
Milton Keynes and Oxford County Courts	HHJ John Altman (until 10/06/07) HHJ Antony Hughes
Newcastle-upon-Tyne and Sunderland County Courts	HHJ Judith Moir
Newport County Court	HHJ Mark Furness
Northampton Combined Court Centre	HHJ Stephen Waine
Norwich County Court	HHJ Philip Curl (until 30/06/07) HHJ Jeremy Richards
Nottingham County Court	HHJ Joan Butler QC
Peterborough Combined Court Centre	HHJ Peter de Mille (until 31/3/07)
Portsmouth Combined Court Centre	HHJ Linda Davies
Reading County Court	HHJ Charles Elly
Rhyl County Court	HHJ David Davies (until 15/06/07)
Sheffield Combined Court Centre	HHJ Trevor Barber
Stoke-on-Trent Combined Court Centre	HHJ Granville Styler (until 28/02/07) HHJ Ross Duggan
Sunderland County Court	HHJ Maurice Carr (until 9/5/06)
Swansea Civil Justice Centre	HHJ Isabel Parry
Swindon Combined Court Centre	HHJ John McNaught (until 17/11/06) HHJ Charles Wade

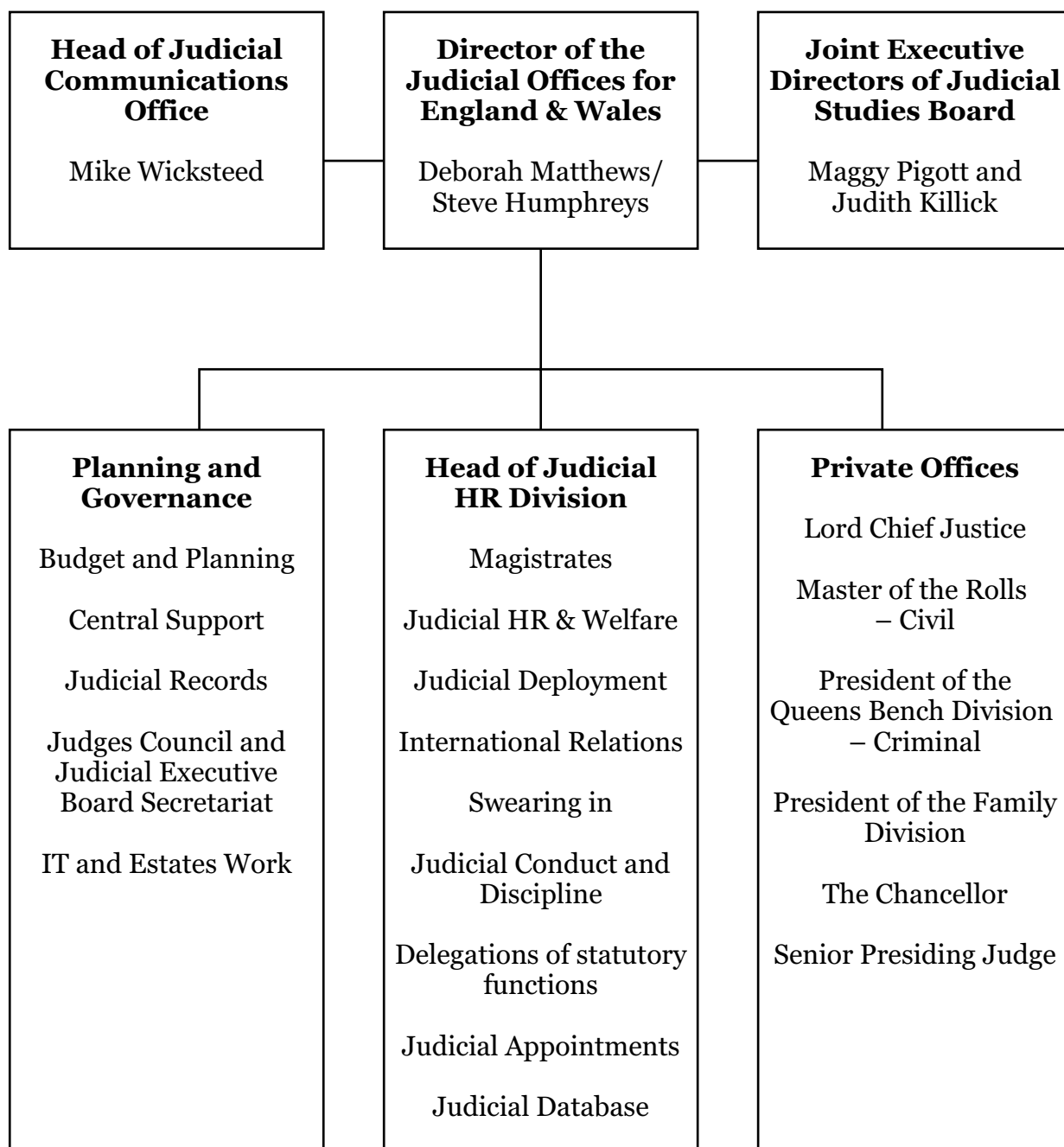
Taunton County Court	HHJ Stephen O'Malley DL
Teesside Combined Court Centre	HHJ David Bryant (until 01/11/07) HHJ Michael Taylor
Truro Combined Court Centre	HHJ Nicholas Vincent
Warrington County Court	HHJ Philip Hughes (until 31/03/07)
Watford County Court	HHJ Leon Viljoen (until 9/7/06) HHJ Peter Wright
Wolverhampton and Telford County Courts	HHJ Helen Hughes
Worcester Combined Court	HHJ Richard Rundell
York County Court	HHJ Graham Cliffe

### **Designated Civil Judges**

Birmingham Civil Justice Centre	HHJ Alistair MacDuff QC
Bradford Combined Court	HHJ Simon Hawkesworth QC
Brighton County Court	HHJ Richard Simpkins
Bristol County Court	HHJ Rupert Bursell QC
Cambridge County Court	HHJ Patrick O'Brien
Canterbury Combined Court Centre	HHJ David Mitchell (until 16/11/07)
Cardiff Civil Justice Centre	HHJ Gary Hickinbottom
Chelmsford Combined Court	HHJ Peter Dedman
Chester Civil Justice Centre	HHJ Derek Halbert
Coventry Combined Court Centre	HHJ Stephen Oliver-Jones QC
Exeter Combined Court	HHJ Jeremy Griggs
Guildford County Court	HHJ Robert Reid QC
Kingston-upon-Hull Combined Court Centre	HHJ Roger Thorn QC

Leeds Combined Court	HHJ Simon Grenfell
Liverpool Civil and Family Court	HHJ Stephen Stewart QC
London	HHJ Paul Collins (until 16/11/07) HHJ David Mitchell
Luton County Court	HHJ John Farnworth
Manchester Civil Justice Centre	HHJ Richard Holman
Manchester Civil Justice Centre	HHJ Christopher Tetlow
Newcastle-upon-Tyne Combined Court Centre	HHJ Christopher Walton
Northampton and Leicester Trial Centre	HHJ Alison Hampton
Norwich Combined Court Centre	HHJ Alasdair Darroch
Nottingham and Derby County Courts	HHJ Richard Inglis
Oxford Combined Court	HHJ Charles Harris QC
Preston Combined Court	HHJ John Appleton
Sheffield Combined Court	HHJ John Bullimore
Southend County Court	HHJ Michael Yelton HHJ Peter Dedman
Stafford Combined Court	HHJ John Rubery
Teesside Combined Court Centre	HHJ Michael Taylor
Winchester Combined Court Centre	HHJ Ian Hughes QC
Worcester Combined Court	HHJ Andrew Geddes
<b>Director of Studies, JSB</b>	HHJ Victor Hall (until 31/12/06) HHJ John Phillips CBE (from 1/1/07)

## Appendix 4



## Appendix 5

<b>Date of hearing</b>	<b>Committee and subject matter</b>	<b>Judge/s</b>
May-06	House of Lord's (HoL) Constitution Committee: The new constitutional arrangements	Lord Chief Justice (LCJ)
May-06	House of Common's (HoC) Constitutional Affairs Select Committee (CASC): Family Justice	President of the Family Division (PFD), Munby J, DJ Crichton
Jun-06	Joint Committee on the Draft Legal Services Bill (HoL/HoC)	LCJ & Master of the Rolls (MR)
Jul-06	CASC (HoC): the Judicial Appointments Commission	Auld LJ
Oct-06	CASC & Home Affairs Select Committees (HoC): Joint Inquiry on the Human Rights Act	Maurice Kay LJ
Jan-07	CASC (HoC): Inquiry on the Carter Review	MR, PFD & Thomas LJ
Feb-07	Joint Committee on Human Rights (HoL/HoC): Treatment of Asylum Seekers	Hodge J - President of the Asylum and Immigration Tribunal
Feb-07	Home Affairs Select Committee (HoC): Inquiry on Justice & Home Affairs issues at EU level: European Arrest Warrant	Senior DJ Workman
Feb-07	Constitution Committee (HoL): Short inquiry into the Executive/ Judicial relationship	President of the Queen's Bench Division (QOBD)
May-07	Constitution Committee (HoL): Evidence session on the Ministry of Justice	QOBD & Thomas LJ
May-07	CASC (HoC): Evidence session on the Ministry of Justice	LCJ & Thomas LJ

May-07	Law & Institutions Sub-Committee of the EU Committee (HoL): Inquiry on the European Supervision Order	Senior DJ Workman
Jun-07	CASC (HoC): Inquiry on Towards Effective Sentencing	HHJ Hall & Magistrates' Association
Jul-07	CASC (HoC): Inquiry on Towards Effective Sentencing	LCJ & PQBD
Oct-07	Criminal Justice and Immigration Public Bill Committee	Magistrates' Association
Oct-07	CASC (HoC): Inquiry on the Sentencing Guidelines Council's consultation on assault	Magistrates' Association
Dec-07	Constitution Committee (HoL): the judiciary's response to the report on relations between the executive, the judiciary & Parliament	LCJ & Thomas LJ
Jan-08	Health and Social Care Bill Committee	Smith LJ
Jan-08	Justice Committee (HoC): Lord Carter's proposals on a structured sentencing framework & sentencing commission	PQBD
Jan-08	Home Affairs Committee (HoC): Inquiry on Domestic Violence	Wall LJ & DJ Mornington







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