



JUDICIARY OF
ENGLAND AND WALES

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

February 2010

Judiciary of England and Wales

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

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Contents

Introduction	5
1. The Lord Chief Justice’s Responsibilities	6
2. Criminal Justice	9
3. Civil Justice	15
4. Family Justice	23
5. Leadership Responsibilities	27
6. The Judiciary	30
7. The Operation of the Partnership Agreement	34
Annex 1: Links to other Reports or sources of detailed information	36

Introduction

By Lord Judge, Lord Chief Justice of England and Wales

I am pleased to present my first Annual Review. It covers the period of the 2008-09 Legal Year. Future Reviews will be produced to provide information about the preceding Legal Year.

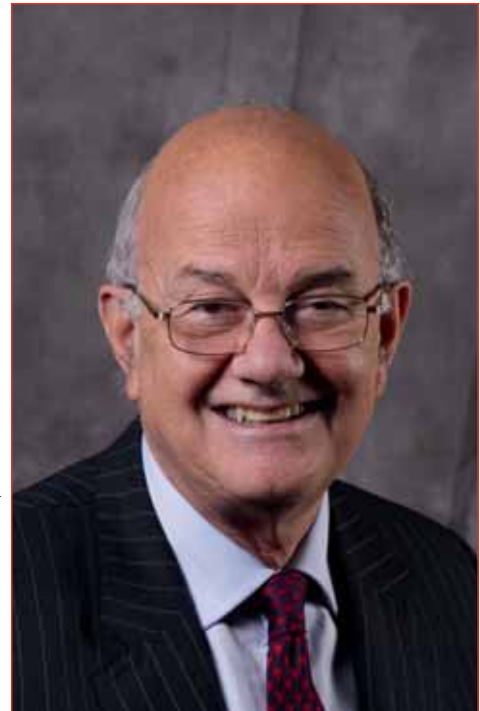
This Review does not seek to repeat information that may be found in other public sources. The annex at the back of this Review lists other sources of information, in particular about the detailed working of the courts or more generally, Her Majesty's Courts Service.

It might be expected that I would in this introduction commend the activities of the judiciary of which I am Head. I do so unreservedly and with pride. The men and women who serve the Crown in judicial office engage daily with their fellow citizens, often when they are at their most vulnerable. They are asked to make extremely difficult and sensitive decisions affecting their lives and to do so calmly and with fair and measured patience. The work is unremitting and at times very stressful and the moral courage required properly to exercise judicial authority can be considerable. It should not be underestimated.

The nations of England and Wales should share the pride I have that they are served so well.

A handwritten signature in black ink that reads "Lord Judge". The signature is written in a cursive style and is positioned above a single horizontal line that extends to the right.

Lord Chief Justice of England and Wales



1 The Lord Chief Justice's responsibilities

Introduction

1.1 The *Review of the Administration of Justice in the Courts* published by my predecessor, Lord Phillips of Worth Matravers, in March 2008 set out the new constitutional landscape within which I and the judiciary now operate. The new partnership agreement for the operation of Her Majesty's Courts Service (HMCS), agreed in April 2008, has put flesh on the bones of the recent constitutional settlement (see Chapter Seven for further details). Whilst there have been no fundamental alterations to constitutional arrangements since April 2008, it remains appropriate to draw out the statutory framework which guides the exercise of my functions.

1.2 As Head of the Judiciary and President of the Courts of England and Wales, I am charged with several statutory duties of critical importance. These include responsibility for representing the views of the judiciary to:

- Parliament;
- the Lord Chancellor; and
- Ministers of the Crown.

I am required to maintain appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales and to maintain appropriate arrangements for the deployment of the judiciary and the allocation of work within courts. I am responsible, in conjunction with the Lord Chancellor, for the administration of a disciplinary system for the judiciary. I have also a statutory role in the judicial appointment process.

1.3 During the period covered by this Review, the Heads of Division were: Master of the Rolls, Lord Clarke of Stone-cum-Ebony; President of the Queen's Bench Division, Sir Anthony May; President of the Family Division, Sir Mark Potter; and The Chancellor of the High Court, Sir Andrew Morritt. The Senior Presiding Judge was Lord Justice Leveson.

Representing the Views of the Judiciary to Parliament

1.4 Whilst I have not appeared before any Parliamentary committees since becoming Lord Chief Justice, the Master of the Rolls and Lord Justice Jackson have provided both written and oral evidence to the Culture, Media and Sport Committee¹.

1.5 I am able to represent the views of the judiciary to government through regular meetings with government Ministers. Those with whom I meet regularly are the

1 Their evidence can be reviewed at the following link – www.publications.parliament.uk/pa/cm/cmcmds.htm

Lord Chancellor and the Attorney General. It is the Lord Chancellor with whom I meet most frequently for monthly bilateral meetings. These meetings provide the opportunity to discuss matters of general concern to the judiciary.

Speeches by the Judiciary

- 1.6 During the year judges are regularly asked to speak at lectures and legal events. Some of these are public events and others will have a more restricted attendance or may be private events. The judicial website contains those speeches which the judge wished to be made available publicly, or which were made in a public forum. In the past year the subject matters have ranged across the various disciplines of the law, to matters concerning judicial independence and the rule of law, and judicial diversity².

The Directorate of Judicial Offices

- 1.7 I continue to be supported in the exercise of my statutory functions by the Directorate of Judicial Offices of England and Wales (“the Directorate”). The Directorate exists in order to support me and other members of the senior judiciary in the discharge of our statutory and constitutional responsibilities. Following the sad, early death of Debora Matthews I was pleased to be able to announce that Anne Sharp had been appointed as Chief Executive of the Directorate in April 2009. Anne is to steer us through a period of consolidation in which we build on the foundations laid by the Constitutional Reform Act 2005.
- 1.8 Some of the areas in which the senior judiciary has been supported by the Directorate in the past legal year include –
- Judicial Diversity
 - Judicial Appointments
 - Parliamentary Relations
 - Pastoral Care (Welfare)
 - International Relations
 - Judicial Training
 - Communications

Judicial Discipline

- 1.9 The Office for Judicial Complaints (OJC) was set up in April 2006 to handle complaints against judicial office holders and to provide advice and assistance to the Lord Chancellor and me in the exercise of our joint statutory responsibilities in this area. Mrs Sheridan Greenland OBE became the new Head of the Office for

2 www.judiciary.gov.uk/publications_media/speeches/index.htm

Judicial Complaints in August 2009 and will strengthen and develop the work of the OJC.

- 1.10 In March of 2009 the Lord Chancellor and I decided to increase transparency and accountability in the disciplinary process. We agreed that, where a judicial office-holder is removed from office following disciplinary procedures, there should be a presumption that both the identity of the judicial office-holder and the reason for removal should be made public. Whilst mindful of this presumption, we will nonetheless continue to make decisions about disclosure on a case-by-case basis. Further details may be viewed on the website of the OJC³.
- 1.11 Elsewhere, the OJC continued to provide both advice and assistance to the Lord Chancellor and me as we exercised our statutory functions under the Constitutional Reform Act 2005. The Annual Report of the OJC sets out the number of complaints made against judicial office-holders in the reporting year 2008/2009, along with the number and types of investigations which were conducted and details of disciplinary action that was taken.

3 www.judicialcomplaints.gov.uk

2 Criminal Justice

Head of Criminal Justice and other statutory positions

- 2.1 The Lord Chief Justice is the Head of Criminal Justice. This is a statutory role under section 8 of the Constitutional Reform Act 2005. To assist me I appointed Lord Justice Thomas as the Deputy Head of Criminal Justice, also under section 8 of the Constitutional Reform Act 2005. Lord Justice Thomas, who is also Vice-President of the Queen's Bench Division, has worked on my behalf on many of the issues in criminal justice which require judicial input.
- 2.2 Understandably there is significant public interest in the operation of the criminal law and the criminal courts. We are supported by the Senior Presiding Judge – at the time of writing, Lord Justice Leveson – in relation to the more operational aspects of the criminal justice system, and the running of the courts throughout England and Wales. He is supported by the Deputy Senior Presiding Judge, Lord Justice Goldring, and District Judge Michael Walker.
- 2.3 Lord Justice Hughes was appointed Vice-President of the Court of Appeal (Criminal Division) to succeed Sir David Latham, who retired in February 2009. This appointment was made under section 3 of the Supreme Court Act 1981. Lord Justice Hughes works closely with Master Venne, the Registrar of Criminal Appeals, to ensure the Court of Appeal (Criminal Division) runs efficiently and can accommodate its workload of over 6,500 cases per year.

Resident Judges

- 2.4 My colleagues and I draw on the particular expertise of Resident Judges in England and Wales, a body of dedicated and extremely experienced members of the judiciary with commanding expertise in the criminal jurisdiction. As usual they have supplied considerable information about the operation of the criminal justice system, highlighting particular problems when they arise and commenting on the impact of proposed solutions. I meet with all Resident Judges once a year at their annual conference, an important forum for gathering and sharing information amongst ourselves. At the November 2008 conference, for example, we discussed how to ensure appropriate quality of advocates in the Crown Court; how Resident Judges could, without compromising their independence, ensure that they established working relationships with their local Chief Crown Prosecutors; and developments in Europe and the need for active participation through the European Network of Councils for the Judiciary. Many such judges sit as judges of the Court of Appeal (Criminal Division) and, in doing so, bring valuable experience of front-line criminal trials to the appellate process.

Legislative Scrutiny and Law Reform

- 2.5 In the final analysis, all legislation is for Parliament. However, one of my roles as Head of Criminal Justice is to consider draft criminal justice legislation proposed by the Government. Assisted by Lord Justice Thomas and, on occasion, the Rose Committee, we examine the practical impact of Government proposals for law reform on the practice and procedure of the criminal courts. The Rose Committee (so named after a former Vice-President of the Court of Appeal (Criminal Division), Sir Christopher Rose) comprises senior Lord and Lady Justices, two High Court Judges and the Registrar of Criminal Appeals, who draw on their experience of the criminal law to examine whether, and if so how, proposals for reform would work in practice. This year we have paid particular attention to those parts of the Coroners and Justice Bill which impact the practice and procedure of the criminal courts, including clauses relating to witness anonymity, homicide and sentencing.
- 2.6 Members of the senior judiciary assist with the judicial responses to various public consultations. For example, the judiciary submitted a response to the Law Commission's consultation on *The Admissibility of Expert Evidence in Criminal Proceedings*, which had been drafted by Mrs Justice Gloster and Mr Justice Fulford, and considered by the Rose Committee. A copy of that consultation response is available on our judicial website⁴. This is quite separate from individual responses sent by other members of the judiciary, at all levels, to public consultations, acting in their own capacity, rather than on behalf of the judiciary as a whole.

Criminal Procedure Rule Committee

- 2.7 The Criminal Procedure Rule Committee is a Non-Departmental Public Body, created by the Courts Act 2003, in response to the recommendations of Sir Robin Auld's 2001 *Review of the Criminal Courts of England and Wales*. The statutory objectives of the Rule Committee are to produce rules of court governing the practice and procedure of the criminal courts, to ensure that the criminal justice system is accessible, fair and efficient, and that the rules it makes are both simple and simply expressed. The Lord Chief Justice is the statutory Chair of the Rule Committee and I have appointed Lord Justice Hooper as deputy chair, to run the Committee on a daily basis. The Committee boasts an eminent membership, including two Lord Justices of Appeal, a High Court judge, two Senior Circuit Judges, the Director of Public Prosecutions, a Chief Constable of police, senior members of the legal profession, and representatives of the users of the criminal justice system.

4 www.judiciary.gov.uk/publications_media/judicial_views_responses/index.htm

General Criminal Justice Matters

- 2.8 There has been a significant increase in Crown Court work (ten per cent in the last year). The reasons are complex and multi-faceted. For example, I am concerned about the increasing number of defendants who elect for trial by jury and subsequently plead guilty at the first hearing in the Crown Court. I have asked the Deputy Senior Presiding Judge to look at ways to simplify the process and reduce delay. There are unlikely to be many easy solutions, but to begin with the criminal justice system must do all it can to encourage those who are guilty to plead at the earliest opportunity. Put more simply, we must look at ways to resolve, where appropriate, cases in the magistrates' courts, which have the capacity, instead of the more expensive Crown Court which at present does not.
- 2.9 There are, however, wider issues at play. I can well understand that difficult decisions have to be made at a time of acute financial pressure, but the efficiencies currently demanded of the CPS, Probation and the courts are having a very real impact on the administration of justice. At present, problems such as custody time limits or cancelled sittings are relatively isolated, but there is an undoubted danger they will become increasingly commonplace.
- 2.10 At the same time there are inefficiencies within the courts system which must be tackled. CJSSS (Criminal Justice: Simple, Speedy, Summary) was a programme designed and implemented by the judiciary, greatly supported by HMCS, with a view to reducing delay, and the number of hearings, in the magistrates' courts. It was an enormous success, largely because all of those involved in the process (defence, prosecution, police, courts, and the judiciary) worked together to address inefficiencies and delay. It has led to a reduction of more than 20 per cent in the average number of weeks taken from charge to disposal in cases involving adult defendants (now at 6.9 weeks), and a reduction of more than 20 per cent in the number of hearings per case (now at 2.3 hearings). I am keen, however, to ensure that these benefits are not allowed to slip, by re-emphasising the importance of case management by everyone concerned. This applies both in the Crown and magistrates' courts. The judiciary will play a key role in ensuring the parties comply with case management directions given under the Criminal Procedure Rules. As resources become tighter, it will be important to reduce the number of wasted hearings to an irreducible minimum.
- 2.11 The Rule Committee aims to produce rules that will enable the courts and parties to manage cases in an efficient way, in accordance with the overriding objective of the rules, which is to deal with cases justly. To that end it has replaced reams of obscure procedural rules for both magistrates' courts and the Crown Court, with the result that users of the criminal courts are able to rely on a single set of simply expressed rules for many areas of criminal procedure, available on the Ministry of Justice website, and in hard copy.⁵ I am troubled that the Rules are honoured more in the breach than in compliance. This needs to change. The Criminal Procedure Rule Committee is acutely aware of this and is considering

5 www.justice.gov.uk/criminal/procrules_fin/rulesmenu.htm

how to introduce a culture of using the rules and improved case management to the criminal courts.

- 2.12 For some time I have been troubled by the increased use of fixed penalty notices, cautions and conditional cautions in cases that should have been brought before the courts. I have said publicly that any assault which causes injury should be dealt with by a court. I was very pleased to read therefore the comments of the Metropolitan Police Commissioner, Sir Paul Stephenson, in his recent interview with *The Times* when referring to an assault by an older child on a younger one: “What was the result? The assailant was issued with a police caution. I cannot imagine anyone would see this as justice.”⁶ I welcome the review launched by the Lord Chancellor and I hope that it will lead to material changes in the way fixed penalty notices, cautions and conditional cautions are used.
- 2.13 I would also urge caution on the introduction of more legislative changes. Not only can these bring about an increase in workload when it comes to issues raised in individual cases, but there is potential for them to impact negatively on the system as a whole. In my speech at the Lord Mayor of London’s annual banquet for the judiciary in July ⁷, I pointed out that in 2003 alone five Acts of Parliament added to the criminal law 1,118 Sections, and 68 Schedules containing 2,268 paragraphs. I contrasted this with the single major piece of legislation in 1972. At least one criminal justice Bill has appeared every year, in some guise or other, for over a decade, and often they are accompanied by other criminal justice legislation.
- 2.14 One reason why I view with concern the introduction of means testing in the Crown Court is that it is liable to bring about an increase in the number of defendants represented in person. Unrepresented defendants inevitably increase the length of trials as they seek to decipher an increasingly complex legislative regime with no professional assistance.

Sentencing Guidelines Council

- 2.15 At present I chair the Sentencing Guidelines Council, assisted by the deputy chairman, Lord Justice Thomas; we are both actively involved with the Council and its work, which is supported by the valued advice of the Sentencing Advisory Panel and guided effectively by the secretariat team. During a busy period, the Council concluded several key projects, and published definitive guidelines relating to sentencing offences of theft and non-domestic burglary, attempted murder and statutory offences of fraud. Two of the projects included associated updates to the *Magistrates’ Court Sentencing Guidelines*.⁸ The Council also produced a guideline covering the overarching principles relevant to sentencing youths, which was published to coincide with the introduction of statutory provisions relating to

6 *The Times* 8 November 2009

7 www.judiciary.gov.uk/docs/speeches/lcj-lord-mayor-speech-14072009.pdf

8 www.sentencing-guidelines.gov.uk/docs/magistrates_court_sentencing_guidelines_update.pdf

the sentencing framework for offenders aged under 18. In addition, information for judges and magistrates was published in the joint annual report of the Council and Panel and a statistical newsletter which provided local, regional and national sentencing data for 2007.

- 2.16 As a result of the Coroners and Justice Act 2009 a new Sentencing Council has been created and in consequence the Sentencing Advisory Panel will be abolished and the ambit of the new Council's responsibilities will be wider than before. Although the Lord Chief Justice will be President of the new Sentencing Council he will not be a member of it. The Council will be chaired by Lord Justice Leveson who ceases to be the Senior Presiding Judge at the end of the calendar year. We are fortunate that he will be able to bring all his natural energy and enthusiasm to this role.
- 2.17 I have been very impressed by the dedication of the members of the Sentencing Advisory Panel and the quality of the contributions each one of them has made to the development of sentencing guidance. We have all been very ably supported by the Secretary and staff of the Sentencing Guidelines Council.

Criminal Justice Council

- 2.18 Lord Justice Leveson chairs the Criminal Justice Council, which brings together a wide range of representatives from those involved in or concerned with the criminal justice system. The Council meets quarterly to keep all aspects of the operation of criminal justice under review and to offer expert advice to those who come before it on the form and likely operational effectiveness of potential reforms. In its analysis of current issues in crime the Council has provided a number of consultation responses over the past year, including suggestions on how best to engage communities in criminal justice.

Fraud

- 2.19 In May 2009, an amendment to the *Consolidated Criminal Practice Direction*⁹ was handed down. This governs the conduct of cases in which the prosecution and defence have sought to follow the Attorney General's *Guidelines on Plea Discussions in Cases of Serious or Complex Fraud*. These enable the prosecution and defence to discuss acceptable pleas before charges are brought, and to make joint submissions as to the appropriate sentencing authorities and applicable sentencing ranges. The practice direction followed liaison with the Attorney General's Office as to the content of the Attorney General's guidelines and a consultation directed specifically at those with an interest in the criminal justice system.

Quality Assurance of Advocacy

- 2.20 It is an essential requirement of the administration of justice that both sides are represented by advocates with the appropriate skill and experience to handle the

9 www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm

case. Lord Justice Thomas has continued to provide judicial input to assist the Legal Services Commission (LSC) and Ministry of Justice (MoJ) in their work to develop a quality assurance scheme for publicly funded criminal defence advocates. Lord Justice Thomas has created a strategic body of high level representatives to inform and guide the work of the LSC and MoJ.

European Criminal Justice

2.21 Lord Justice Thomas is also lead judge responsible for European Criminal Justice. He continues to liaise with the Government and European colleagues to ensure the judiciary are effectively engaged with European reforms relating to criminal justice. He has focussed particularly on extradition matters and the practical implementation of various European Commission Framework Decisions, such as those relating to the use of previous European convictions in courts in England and Wales. Additional work includes exploring opportunities for English and Welsh judges to exchange information with other European judges on common problems and the way in which different legal issues are dealt with within differing systems. It is imperative to ensure that the development of specific European criminal law is complementary to our common law heritage.

3 Civil Justice

- 3.1 The Master of the Rolls is both President of the Court of Appeal (Civil Division) and Head of Civil Justice. In this capacity, the Master of the Rolls has overall responsibility for policy and rules in civil justice; he is also chairman of the Civil Justice Council and chairman of the Civil Procedure Rules Committee (CPRC), although the day to day responsibility for the CPRC is delegated to the Deputy Head of Civil Justice.
- 3.2 The President of the Queen's Bench Division is Head of Public and Administrative Law. His responsibilities include taking a strategic overview of the judicial approach to MoJ and other departments' policies in relation to substantive administrative and public law, including the efficient conduct of the work of the Administrative Court in London and elsewhere. He maintains close liaison with the Senior President of Tribunals in relation to the interface between the work of the Administrative Court and the Upper Tribunal. In addition the President has oversight of the Queen's Bench lists, the Admiralty and Commercial Court, the Technology and Construction Court and of deployment of Queen's Bench Division judges sitting out of London on circuit, and in the Asylum and Immigration Tribunal (AIT) and the Employment Appeals Tribunal (EAT).
- 3.3 The Chancellor of the High Court is President of the Chancery Division, Vice-President of the Court of Protection and a member of the Judicial Executive Board. He maintains overall supervision of the work of the Chancery Division (including the Bankruptcy, Companies and Patents Courts) conducted at the Royal Courts of Justice and at the eight regional Chancery District Registries. In conjunction with the Deputy Head of Civil Justice and the Senior Presiding Judge, he is also responsible for the conduct of specialist business outside the Royal Courts of Justice.

Review of Costs

- 3.4 In light of the growing concerns at the increasingly high level and often disproportionate costs in litigation, the Master of the Rolls (then Lord Clarke of Stone-Cum-Ebony), appointed Lord Justice Jackson to undertake a fundamental review of the costs in civil litigation. The review, undertaken over the course of 12 months, commenced in January 2009 and consisted of three phases.
- 3.5 During phase one, Jackson LJ identified the issues for consideration and in his *Preliminary Report*,¹⁰ issued in May 2009, set out the available evidence and competing arguments. A period of consultation followed in phase two which involved numerous meetings with interested bodies and seminars with the judiciary, academics, legal professions and court users. Written submissions were invited from all interested bodies by 31 July 2009.

10 www.judiciary.gov.uk/about_judiciary/cost-review/reports.htm

- 3.6 For the first time the issue of disproportionate costs in civil litigation has been considered across the board rather than in a piecemeal fashion. I expect by the time this Review is released that Lord Justice Jackson's report will have been published. It is very much hoped that the Ministry of Justice (MoJ) will recognise the importance of his report and the opportunity it brings for positive reform. It is also hoped that the necessary steps will be taken by the MoJ to bring about implementation of the recommendations as soon as possible.

Reform of the Civil Courts

- 3.7 In January 2008 the Judicial Executive Board invited Sir Henry Brooke to conduct an inquiry to ascertain whether there was a case for unifying the civil courts. Sir Henry produced a detailed report in August 2008 in which he concluded that plans for unification should not be proceeded with. However, Sir Henry also concluded that there were a number of steps that should be taken to improve the current system and he set out a series of helpful recommendations in his report.
- 3.8 The Judicial Executive Board (JEB) invited Lord Justice Moore-Bick to establish a working group comprised of a cross-section of judges, HMCS and MoJ officials, to consider the implications for implementation of the recommendations. The working group's report was accepted by the JEB and I wrote to the Lord Chancellor on 22 May 2009 submitting the working group's report as the JEB's response to the Brooke recommendations.
- 3.9 It was agreed that a further group should be formed to oversee implementation of the approved recommendations and that the group should again be chaired by Lord Justice Moore-Bick. That work will continue over the course of the next year.
- 3.10 HMCS has separately been considering its long-term strategy for the administration of civil business and is developing a Civil Business Modernisation Programme. There are clearly synergies between the two programmes of work and the two groups will need to work in close collaboration.
- 3.11 It is encouraging to see that there is now a focus on civil business which has for a long time been the neglected part of the justice system. Whilst recognising the financial pressures facing all areas, this is an opportunity to make real improvements to the administration of civil justice and it is hoped that the necessary investments will be made to optimise the planned improvements.

Legal Services Reform

- 3.12 The Legal Services Act 2007 transferred the Master of the Rolls' appellate and supervisory jurisdiction over solicitors to the High Court. Work has continued this year to ensure that the last remaining appeals under this jurisdiction have been determined in good time. Liaison has continued with the MoJ, the Solicitors

Regulation Authority (SRA) and the Law Society to ensure that transitional provisions, governing those appeals and governing the issuing and making of regulatory provisions for the solicitors' profession, have been drafted satisfactorily and implemented in good time. Under those transitional provisions the Master of the Rolls has continued to exercise a scrutiny, issuing and concurrence role in respect of solicitors' practising regulations. It is anticipated that that role will end in January 2010, when the Legal Services Board becomes fully operational.

Civil Procedure Rules Committee

- 3.13 The Civil Procedure Rules Committee (CPRC) is an advisory Non-Departmental Public Body formed under the Civil Procedure Act 1997 to make rules of court for the Civil Division of the Court of Appeal, the High Court and the county courts.
- 3.14 The Master of the Rolls is the *ex officio* chairman of the CPRC but the day to day running and management of the committee is delegated to the Deputy Head of Civil Justice, Lord Justice Moore-Bick. The membership of the committee is made up of judiciary, solicitors, barristers and lay representatives. The CPRC has a heavy workload both reviewing existing rules and drafting new rules for new legislation. The committee plays a vital role in ensuring that any amendment or new rules are fit for purpose.
- 3.15 Statutory instruments have been laid before Parliament containing the 48th, 49th and 50th updates to the rules. Some of the most significant amendments to the CPR during the period of this Review are set out below:
- For claims issued on or after 6 April 2009 the financial limit of the fast track procedure was increased from £15,000 to £25,000;
 - New rules to allow applications for and variation of costs capping orders on future costs;
 - A new Practice Direction setting out the procedures for issue, administration and hearing of cases outside London and Cardiff;
 - A review of experts: amendments were made to clarify the definition of an expert and provide guidance to reduce any inconsistency in the appointment of single joint experts; revise the expert's statement of truth; and ensure that the questions posed to experts are proportionate and appropriate;
 - A pilot cost budgeting scheme to be run in the Royal Courts of Justice and High Court at Manchester in relation to defamation, libel and malicious falsehood cases only; and
 - A Pre-Action Protocol for possession claims based on mortgage or home purchase plan arrears in respect of residential property.¹¹

11 www.civiljusticecouncil.gov.uk/files/Mortgage_Pre-Action_protocol_21_Oct.pdf

Civil Justice Council

- 3.16 The Master of the Rolls has responsibility for the Civil Justice Council (CJC), of which he is chairman. The Council has under his guidance produced a major piece of policy advice, submitted to the Lord Chancellor in December 2008, on reform of collective actions. That advice has now largely been adopted by the Lord Chancellor. It has also submitted a number of consultation responses on, for instance, the European Commission's Green Paper on consumer collective redress and its consultation on reform of Regulation 44/2001 on cross-border recognition and enforcement of judgments.
- 3.17 The CJC conducted, at the MoJ's request, a significant mediation on personal injury matters, which successfully produced agreement from the interested parties. It has also carried out further work on third-party funding of litigation, contingency fees and other costs-related issues. The pressure on homeowners has been well publicised this year; to address concerns in this area the CJC's housing committee developed a mortgage pre-action protocol. The protocol which encourages parties to exchange information at an early stage was issued by the Master of the Rolls in November 2008. Full details of the Council's activities will be given in its 2008–2009 annual report.

Culture Media and Sport Select Committee

- 3.18 The Master of the Rolls and Lord Justice Jackson submitted both written and oral evidence to the Culture, Media and Sport Select Committee's investigation into Press Standards, Privacy and Libel². The evidence submitted examined costs in defamation proceedings; legal developments concerning Article 8 and 10 of the European Convention on Human Rights and the balancing act the courts are required to carry out when assessing issues as to the right to respect for privacy and the right to freedom of expression; the relationship between the judiciary and the media; and contempt of court.
- 3.19 The evidence highlighted how the costs of defamation proceedings, especially in respect of costs arising from conditional fee agreements, were symptomatic of such costs across the whole of litigation and that reform proposals would be made in Sir Rupert Jackson's report on costs. It highlighted how, contrary to a common misunderstanding, the developments in respect of defamation, privacy and freedom of the press were not a consequence of decisions taken by Mr Justice Eady but arose due to appellate (Court of Appeal and House of Lords) decisions; those decisions arising as a consequence of the incorporation of the European Convention on Human Rights into English law and the requirement placed on the courts, by the Human Rights Act 1998, to: i) give effect to that Act; and ii) take account of jurisprudence emanating from the European Court of Human Rights. It also outlined the work carried out by the media panel of judges and issues arising about the implementation of the Contempt of Court Act 1981.

12 www.publications.parliament.uk/pa/cm200809/cmselect/cmcmums/memo/press/ucps6702.htm

Designated Civil Judges

- 3.20 The Designated Civil Judges (DCJ) have a general responsibility within a court centre or group of courts, for the allocation of civil judicial work to ensure the just and efficient despatch of the business. In this respect the DCJs play a key leadership role.
- 3.21 County courts have seen a steep rise in the number of “copycat” cases which often originate on the internet and then develop into large numbers of cases throughout the country. This trend started with the bank charges cases, and has recently been seen again with cases involving the Consumer Credit Act 1999. The DCJs’ management of these cases, in consultation with Lord Justice Moore-Bick in his capacity as Deputy Head of Civil Justice, has to date kept disruption to a minimum whilst decisions are awaited in the higher courts.
- 3.22 The DCJ conference was held on 25 and 26 June 2009. This is an important annual event which provides the only opportunity for DCJs, Presiding Judges and the senior judiciary to meet and discuss the issues that are affecting civil justice. The conference was chaired by His Honour Judge Rubery, and the occasion was also used to mark the tenth anniversary of the CPR and the creation of the DCJ role.

Rolls Building

- 3.23 The long-awaited building in London of a dedicated court for Chancery, Commercial and Technology and Construction work is now well under construction, with the Rolls Building being on target for occupation in 2011. It is intended that this purpose-built courthouse with modern high quality facilities will reflect the importance to the business community, both nationally and overseas, of the courts housed there.

The Administrative Court

- 3.24 The work of the Administrative Court is varied, consisting of the administrative law jurisdiction of England and Wales as well as a supervisory jurisdiction over inferior courts and tribunals. The supervisory jurisdiction, exercised in the main through the procedure of judicial review, covers persons or bodies exercising a public law function – a wide and still growing field.
- 3.25 In the last *Review*¹³ Lord Phillips described the considerable pressure the Administrative Court is under, especially the burden of asylum and immigration work. There remain real concerns about the pressures on the Administrative Court and the judges who sit there, and the court continues to rely on the goodwill and dedication of the judges who sit in it, as well as the hard work of the staff in supporting them.

13 www.judiciary.gov.uk/docs/lcj_review_2008.pdf

- 3.26 In the financial year 2008-9, the court received 7,375 claims for judicial review. Of those, 4,797, about two-thirds of the court's judicial review workload, concern asylum or immigration. When the 4,028 reconsideration applications (under section 103A of the Nationality, Immigration and Asylum Act 2002) are added, the total of immigration cases reaches 8,825.
- 3.27 The last year has seen a number of developments in the field of Administrative Justice, some of which will only come to fruition in 2010. I describe these below. I anticipate that these will go some way towards easing those burdens on the Administrative Court, although the eventual impact of the changes will only become clear over time.

The Administrative Court outside London

- 3.28 The report *Justice Outside London*,¹⁴ the product of a judicial working group chaired by the then-Lord Justice May, was published in 2007. The report's main recommendation was that fully operational offices of the Administrative Court should be established in Cardiff, Birmingham, Leeds and Manchester, and that judges should regularly sit to hear Administrative Court cases in those centres. This was quickly adopted as judicial policy and, after much hard work by the judiciary and HMCS, the Administrative Court outside London opened for business on 21 April 2009.
- 3.29 Judicial leadership in these regional centres is provided by Mr Justice Beatson and Mr Justice Langstaff, who are the Queen's Bench Liaison Judges for Wales and the Midlands, and the North and North Eastern circuits respectively. They hear Administrative Court matters whilst on circuit and liaise with Presiding Judges, other nominated Administrative Court judges and Senior Circuit Judges sitting as deputy High Court judges to ensure that the Administrative Court workload out of London is appropriately managed.
- 3.30 Early indications from the first operational months of the regional Administrative Court centres are encouraging – cases lodged outside London now account for approximately ten per cent of all cases lodged in the Administrative Court overall and numbers are increasing all the time.

Reforms to immigration appeals

- 3.31 Currently, those whose appeal to the Asylum and Immigration Tribunal (AIT) has been refused can, under section 103A of the Nationality, Immigration and Asylum Act 2002, ask for an order requiring the AIT to reconsider its decision in an appeal. This is initially made to the AIT itself. If the Tribunal decides not to order reconsideration, the Act enables applicants to notify the appropriate court (in England and Wales, the High Court) that they wish the court to consider their applications under section 103A. These reconsideration applications, at

14 www.judiciary.gov.uk/publications_media/judicial_views_responses/justice_outside_london/

over 4,000 a year, represent a significant portion of the Administrative Court's caseload.

- 3.32 In December 2007 a review under the chairmanship of Lord Justice Richards and Lin Homer, Chief Executive of the UK Borders Agency, was established to address the entire question of immigration and asylum work currently undertaken in the Administrative Court. The government published a consultation paper based on the group's recommendations on 21 August 2008. The government's formal response to the consultation was published on 8 May 2009 and included a commitment to transfer the work of the AIT into the new unified Tribunals structure, which, importantly for the Administrative Court, will create a statutory appeal route to replace reconsideration applications.
- 3.33 Work is now underway by the Tribunals Service and others to make preparations for the new Immigration and Asylum Chamber to take over from the work of the AIT in early 2010. The England and Wales courts' judiciary, led by the President of the Queen's Bench Division, is taking an active role in assisting in these preparations.

Transfer of Judicial Review to Immigration and Asylum Chamber in the Upper Tribunal

- 3.34 As well as the transfer of reconsideration applications out of the High Court and into the statutory appeals structure provided by the tribunal system, 2010 should see a type of judicial review application, 'fresh claims' – currently dealt with in the High Court – being transferred to the Upper Tribunal. This will be made possible by provisions contained in the Borders, Citizenship and Immigration Act 2009, which received Royal Assent over the summer. 'Fresh claim' judicial reviews concern claims that the Secretary of State has erred in law in holding that certain representations do not amount to a fresh claim under Immigration Rule 353. These claims are generally dealt with on paper and most are refused (in 2008 76 per cent were refused on that stage) but a number proceed to an oral hearing, when most are refused permission to apply for judicial review (in 2008 56.5 per cent failed at an oral renewal hearing and there were only 12 substantive hearings).
- 3.35 Once the Senior President of Tribunals, Lord Justice Carnwath, has indicated to me that he is satisfied that the Upper Tribunal is ready to deal with such applications, I intend to exercise the power within the Act to make a direction to the effect that these judicial review applications, as a class, should be dealt with in the Upper Tribunal rather than in the Administrative Court. They will be heard by a combination of the Senior President of Tribunals himself, the Chamber Presidents, who are all High Court judges, and those members of the Upper Tribunal specially designated by the Senior President, with the agreement of the Lord Chief Justice, to preside over judicial review cases. I anticipate that this transfer will take place during 2010.

- 3.36 The combined effect of the transfer of reconsiderations and fresh claim judicial reviews to the Upper Tribunal, will, it is hoped, have a significant and beneficial impact on the volume of work of the Administrative Court. The transfer of reconsideration work to the tribunal system should allow the Administrative Court to pursue, alongside the important asylum and immigration work that will remain within its jurisdiction, its core judicial review work.
- 3.37 I have described this as a time of change for Administrative justice. In particular the relationship between the courts and the tribunals is a changing one and there may be further developments in the years to come. Judicially there is clearly greater potential for working across traditional jurisdictional boundaries, as the transfer of judicial review and reconsideration work shows.

4 Family Justice

- 4.1 The President of the Family Division, Sir Mark Potter, is Head of Family Justice under Section 9 of the Constitutional Reform Act 2005 and has responsibility for the implementation of policy and the creation of appropriate rules; he is chairman of the Family Procedure Rule Committee (FPRC) and chairman of the Family Justice Council (FJC). He is also Head of Probate and President of the Court of Protection. Lord Justice Thorpe, the Deputy Head of Family Justice, has day-to-day responsibility for the FJC and is Head of International Family Law.
- 4.2 The President, in close liaison with his senior family judges, has taken forward the elements of his Family Court Framework. In particular, he has worked with Her Majesty's Court Service (HMCS) and Ministry of Justice (MoJ) to bring family proceedings courts and county courts together, under one roof, as fully integrated family courts. These sit at the various family hearing centres in England and Wales. Where that is not possible, they co-locate their administrations, with minimal funding. These measures, and discussions between the judiciary and administration locally, have resulted in cases being heard more efficiently and have provided greater flexibility in where cases can be heard.
- 4.3 As Chair of the FPRC, the President has formulated rules of court to support legislative changes in the family jurisdiction, including a complete overhaul of the family rules regime, whereby the Committee seeks to align the work of the magistrates' courts with that of the county courts and High Court through a harmonisation process, without changing the levels of court through primary legislation. Additional work was tabled, at very short notice, in relation to media access and disclosure rules by the Government, in order to achieve transparency in the work of family courts. Close liaison between the President (as Head of Family Justice and Chairman of the FPRC) and the MoJ was essential to enable the draft rules and practice directions to be in place by the extremely short deadline of April 2009. The President also produced judicial guidance¹⁵ on the new transparency rules, within a very short timescale, for the judiciary in all courts.

President's Private Law Programme

- 4.4 The President initiated a judicially-led cross-agency working group to consider revisions to the President's Private Law Programme (PPLP). The group was set up to propose the method (or methods) of resolving private family law disputes, as a development of the PPLP and in order to accommodate appropriate means of dispute resolution and the aims of the Children and Family Court Advisory and Support Service (Cafcass) Private Law Pathway.¹⁶ The practicalities of the proposed new guidance were tested in six court areas over the summer, with a view to issuing a Practice Direction by the end of 2009.

15 www.judiciary.gov.uk/judgment_guidance/practice_directions/family-media.htm

16 www.cafcass.gov.uk/PDF/Private%20law_final.pdf

Public Law Outline

4.5 The President and his senior family judges (in liaison with the MoJ) have led and overseen the judicial monitoring of the Public Law Outline (PLO) following implementation in April 2008. On the basis of feedback obtained from the judiciary and family justice agencies on the President's Circuit visits, they have worked closely with the MoJ to achieve the necessary amendments to the PLO in five main judicial areas of concern relating to paperwork and forms, use of experts and the timetable for the child. The President has agreed with the new Chief Adviser on the Safety of Children to supply judicial input into the Chief Adviser's new expert group.

Cafcass guidance

4.6 At short notice, and in order to manage the mounting delays by Cafcass in the appointment of public law guardians and the rendering of reports in private law cases, the President has produced Interim Guidance in respect of Cafcass and Cafcass Cymru. These documents support the principles of the Public Law Outline (PLO) and Private Law Programme (PLP), and were approved by HMCS, MoJ, Department for Schools Children and Families, Cafcass and Cafcass Cymru before the summer recess. They are not formal Practice Directions, but are intended to create a flexible framework for local arrangements pending a review of progress in April 2010.

Allocation and Transfer of Proceedings

4.7 The President and his senior judges, in liaison with HMCS, have drafted a new Allocation and Transfer of Proceedings Order,¹⁷ categorising and distributing work between the levels of courts and amending former Allocation to Judiciary Directions, categorising the type of work to be heard by the various levels of judges 'ticketed' for that purpose. The President continues to review the effect of the allocations upon the work of the family judges, with the assistance of HMCS.

Events

4.8 The President has attended and spoken at several high profile family justice events in England.¹⁸ These include:

- the Forced Marriage Seminar at the London Muslim Centre;
- the 5th World Congress on Family Law and Children's Rights;
- the Commonwealth Magistrates' & Judges' Association 15th Triennial Conference; and

¹⁷ www.judiciary.gov.uk/docs/judgments_guidance/pd/practice-direction-on-allocation-final.pdf

¹⁸ www.judiciary.gov.uk/publications_media/speeches/index.htm

- the Hershman/Levy Memorial Lecture (a copy of which was annexed to the House of Commons Justice Committee Report on Family Legal Aid Reform 2009 – HC714).

High Court

- 4.9 The President has initiated the first stage of implementation of a new listing structure for the Family Division judges, providing for block weeks of continuity of sitting by Family Division judges on Circuit and in London with more structured ‘standby’ slots so as to ensure the most effective use of High Court judge time. A system of ‘block’ weeks has been put in place for financial dispute resolution cases, which will be fully in place by the beginning of 2010.

County courts and magistrates’ courts

- 4.10 The Designated Family Judges (Circuit Judges) have a responsibility for all courts within their Care Centre areas. In all areas the process of achieving a unified administration of all family courts, including Family Proceedings Courts (FPCs), has continued and has been largely achieved. The Designated Family Judges are responsible for liaison between county courts and the FPCs on all matters of administration and the allocation and transfer of proceedings. The Designated Family Judges are in turn responsible to the Family Division Liaison Judges (High Court family judges) who oversee the organisation of family business within the various Regions for which they are appointed. The task of the Family Division Liaison Judges and Designated Family Judges has become progressively more onerous in the face of limited resources and a remorseless increase in the number of public law care applications and private law applications in respect of residence and contact and financial disputes.

The increase in family work

- 4.11 This increase has placed great strains upon the family judges at all levels and upon the administration in the face of the limited number of court days available for the dispatch of family business. As a result of the limited resources and mounting delays of Cafcass upon whose work the family courts are reliant in both public and private law children proceedings, delays in the dispatch of family business are inevitably increasing and represent cause for concern. Despite the production of the President’s Interim Guidance in an effort to assist this problem, this trend seems unlikely to be reversed.

Mental Capacity Act

- 4.12 Sir Mark Potter was nominated by the Lord Chief Justice (having consulted the Lord Chancellor) to be President of the Court of Protection (CoP). During the year, the President:

- 4.13 (i) ensured that new rules and practice directions were agreed within the timeline to enable the Deprivation of Liberty provisions to come into force in April 2009 and that arrangements were put into place for training to be provided for the Family Division and Chancery High Court judges and the CoP judges at Archway in London and across England and Wales;
- (ii) ensured that there was close liaison with the administration and judiciary concerning issues arising in forecasting for additional judicial appointments, including renewing and reviewing the ticketed CoP judges; assisting with securing backfill for CoP District Judges with county court District Judges from across England and Wales; and agreeing communication structures and procedures in relation to the CoP moving under the wing of HMCS from 1 April 2009;
- (iii) together with the Senior Judge of the CoP, ensured that adequate, strengthened structures are in place for the hearing of District Judge appeals and CoP work on the Regions and that only High Court work be transferred to the Family Division;
- (iv) issued a CoP Practice Direction¹⁹ to achieve consistency across England and Wales in the preparation of court bundles and in respect of other related matters in connection with personal welfare and other applications in the Court of Protection; and
- (v) set up an *ad-hoc* Rules Committee to undertake a review of the Court of Protection Rules 2007 and the practice directions and forms which accompany the Rules.

Probate

- 4.14 The Probate Service forms part of the Family Division of the High Court and therefore comes under the authority of the President. During the year, the President set up the judicially led Non-Contentious Probate Rules Committee to consider the revision of the Non-Contentious Probate Rules 1987 (NCPR), including the question of the publication and disclosure of wills. The working group will be chaired by Lord Justice Munby and membership will be drawn from the legal profession, Probate Service, the Citizens' Advice Bureau and members of the public. Its aim will be to produce a draft up-to-date and user-friendly set of rules and supporting practice directions.

19 www.hmcourts-service.gov.uk/cms/14705.htm

5 Leadership responsibilities of other judges

Judicial Executive Board

- 5.1 The Lord Chief Justice chairs the Judicial Executive Board, which includes the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, The Chancellor of the High Court, Vice-President of the Queen's Bench Division, Senior Presiding Judge and the Chief Executive of the Judicial Offices. Individual items are attended by other senior judges and by officials from the Directorate of Judicial Offices. The judicial members of the JEB meet informally every week when there is not a formal meeting. The JEB discusses many of the jurisdictional issues set out above, but also discusses and decides on matters which are of general interest to the judiciary, both in our relations with the Ministry of Justice and more widely. Towards the end of the legal year I began a review of the functions and responsibilities of the JEB and the Judges' Council. The present arrangements were put in place in 2005. After three years the time has come for me to satisfy myself that these arrangements are the best that can be devised. I have asked Steve Humphreys of the Judicial Office to undertake this review. I expect to give more information on the outcome of this work in next year's *Review*.

Heads of Division

- 5.2 Each of the Heads of Division (the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, and The Chancellor of the High Court) has leadership, management and pastoral responsibility for the judges of his own Division (in the case of the Master of the Rolls this embraces the Lords Justices of Appeal) and this includes responsibility for those specialist judges doing civil or family work throughout the country. Lord Justice Waller is the Vice-President of the Civil Division and Lord Justice Hughes is the Vice-President of the Criminal Division of the Court of Appeal. The President of the Queen's Bench Division is assisted by the Vice-President Lord Justice Thomas.

Senior Presiding Judge

- 5.3 Perhaps the most onerous burden of management and leadership responsibility falls on the Senior Presiding Judge (Lord Justice Leveson from 1 January 2007 to 31 December 2009), who is responsible for what is sometimes called the 'Country Division' – or the courts and judges around the country below the High Court. This job has steadily evolved into what amounts almost to a full-time leadership and administrative role – the holder is rarely able to sit in the Court of Appeal, but acts as the chief of staff to the Lord Chief Justice, not only advising him but also exercising many delegated powers in relation to the management and deployment of the judiciary round the country. He also co-ordinates and oversees the work of the Presiding Judges for each Circuit (four for the South East and two each for the other Circuits). The Senior Presiding Judge is assisted in his work by the Deputy

Senior Presiding Judge (Lord Justice Goldring) and by District Judge Michael Walker; the three of them are currently also members of the Board of HMCS (Lord Justice Goldring took the place of Lord Justice Stanley Burnton when he stepped down from the Board in June 2009). When Lord Justice Leveson steps down as Senior Presiding Judge on 31 December 2009, Lord Justice Goldring will replace him, and his place on the HMCS Board will be taken by His Honour Judge William Kennedy.

Senior President of Tribunals, Chairman of the Law Commission and Chairman of the Judicial Studies Board

- 5.4 Three other Lords Justices of Appeal carry out distinct leadership and administrative responsibilities on a large scale, but head organisations which publish their own reports and so will only be mentioned briefly here. The first is the Senior President of Tribunals (Lord Justice Carnwath). He has statutory responsibilities in relation to the management and welfare of the tribunals' judiciary comparable to those of the Lord Chief Justice in relation to the courts judiciary, and a similar power and responsibility to make representations to Parliament and to represent the view of tribunal members²⁰.
- 5.5 The second is Chairman of the Judicial Studies Board, Lord Justice Maurice Kay. The role of training for the judiciary has never been more important and I am very grateful to Lord Justice Maurice Kay for the leadership he has given as the JSB has developed and begun to implement the Judicial Training Strategy. More detailed information can be found in the Judicial Studies Board Annual Report²¹.
- 5.6 The third post is that of Chairman of the Law Commission. With effect from September 2008 the chairman will normally be a Lord Justice of Appeal. Lord Justice Munby succeeded Lord Justice Etherton in August 2009.

Other Lords Justices

- 5.7 A number of members of the Court of Appeal have other distinct responsibilities. These include: Lord Justice Scott Baker and Lord Justice Wilson, who act as nominated judges for judicial disciplinary cases in relation to the courts and tribunals judiciary; Lady Justice Arden, Head of International Relations; Lord Justice Thorpe, Deputy Head of Family Justice and Head of International Family Law; Lord Justice Thomas, President of the European Network of Councils of Judges; and Lady Justice Hallett and Lord Justice Toulson, commissioners of the Judicial Appointments Commission. Lord Justice Stanley Burnton was the judge in charge of IT, modernisation and estates until he stepped down in June 2009. His responsibilities have been divided between Mr Justice Lewison (estates) and Mr Justice Mann (IT and modernisation).

20 To read the Senior President's recent publications, see www.tribunals.gov.uk/Tribunals/About/president.htm

21 www.jsboard.co.uk/downloads/annual_report_2009_web.pdf

The High Court

- 5.8 Among the High Court judges there are 26 who have substantial leadership roles as either a Presiding Judge, of whom there are 14, or a Family Division Liaison Judge (eight), Chancery Supervising Judge (two in addition to the Chancellor), or an Administrative Court Liaison Judge (two). Their responsibilities for ensuring the efficient despatch of judicial business within their jurisdiction are substantial. It has increased markedly in recent times and, quite simply, without their efforts the system could not cope.
- 5.9 In addition: Mr Justice Eady is the judge in charge of the jury and non-jury lists in the High Court; Mr Justice Gross is the judge in charge of the Commercial Court; Mr Justice Ramsey is the judge in charge of the Technology and Construction Court; Mr Justice Underhill is the President of the Employment Appeal Tribunal; Mr Justice Walker is President of the Administrative Appeals Chamber; Mr Justice Barling is the President of the Competition Appeal Tribunal; all judges of the Chancery Division are nominated to sit as Chairmen of the Competition Appeal Tribunal and are assigned to the Upper Tier Tax and Chancery Chamber; Mr Justice Warren is the President of the Tax and Chancery Chamber of the Upper Tribunal; Mr Justice Mitting is the Chairman of the Special Immigration Appeals Commission; and until his sad death in June 2009 Mr Justice Hodge was President of the Asylum and Immigration Tribunal. Mr Justice Blake is the President Designate of the Asylum and Immigration Chamber of the new tribunal system.
- 5.10 High Court judges with responsibilities outside the courts or tribunals include: Mrs Justice Black, a member of the Judicial Appointments Commission; Mrs Justice Dobbs, the judge responsible for judicial diversity issues; and Mr Justice Beatson, the judge in charge of parliamentary relations. Mr Justice Griffiths Williams and Mr Justice Mitting assist in dealing with judicial disciplinary matters. Sir Thayne Forbes was the judge in charge of judicial welfare and for the time being has continued in that role following his retirement in January 2009.

6 The judiciary

Senior Appointments

- 6.1 I was appointed on 1 October 2008 as Lord Chief Justice, in succession to Lord Phillips of Worth Matravers who became the Senior Law Lord. During the year Sir Anthony May succeeded me as President of the Queen's Bench Division, also on 1 October 2008. Lord Justice Collins was appointed to the Appellate Committee of the House of Lords on 28 April 2009, as Lord Collins of Mapesbury. On 1 October 2009 Lord Clarke of Stone-cum-Ebony was appointed a Justice of the Supreme Court of the United Kingdom and Lord Neuberger of Abbotsbury was appointed to succeed him as Master of the Rolls.

Independence

- 6.2 One of the main purposes of the Constitutional Reform Act 2005 was to clarify the separation of powers between the Executive, Judiciary and Legislature and so bolster and guarantee the independence of the judiciary. Section 3 of the Act provides a guarantee of judicial independence and imposes a constitutional duty to uphold judicial independence on Ministers of the Crown, all those involved in the administration of justice and particularly on the Lord Chancellor. The last major part of the Act to be implemented, in October 2009, was Part 3, which removed the Law Lords from the House of Lords and created a new Supreme Court for the United Kingdom. As a result of these changes members of the House of Lords who hold salaried judicial office are now disqualified from sitting or voting in the House of Lords until retirement.
- 6.3 This will be a significant change, as although my predecessors have attended debates in the Lords infrequently, they have from time to time spoken there, notably when there have been significant constitutional or legal proposals on which the views of the senior judiciary were relevant and of interest. In the future the Lord Chief Justice will have to make his views known by other means. Section 5 of the Constitutional Reform Act provides that the Chief Justice of any part of the United Kingdom may lay written representations before Parliament on matters that appear to him to be of importance relating to the judiciary or otherwise to the administration of justice. This is an evolving area of the constitution, and it remains to be seen how it develops.

Diversity

- 6.4 Over the last year the issue of judicial diversity has taken more prominence, in part as a result of the conference on the issue, entitled *A judiciary for the 21st Century*, which took place in March 2009. The conference brought together lawyers and non-lawyers to consider how the diversity of the judiciary could be improved. A report of the conference was published on 27 November²². We must do everything we can to achieve wider judicial diversity. In my speech to

22 www.judiciary.gov.uk/docs/pub_media/judicial-diversity-conf-2009.pdf

the conference I said: “We must make sure that the pool of eligible candidates for consideration for judicial appointment is as wide as it can possibly be, and that all eligible candidates at least consider whether to seek a judicial career. There are many who, for their own reasons, would not be interested in a judicial career. Not everyone enjoys or would enjoy the responsibilities. But some undoubtedly would and would discharge them with distinction. But how do we make sure that their decisions whether or not to seek a judicial career are founded on fact and reality rather than misconceptions? And how do we get rid of unnecessary barriers which hinder our objectives?”

- 6.5 The Judicial Work Shadowing Scheme was re-launched in November 2008 and the numbers of participants has more than doubled since the re-launch. It has been publicised to the Law Society and the Bar Council as well as courts and other agencies employing lawyers.
- 6.6 The Diversity and Community Relations Judges (DCRJ) have continued to undertake work to explain the law and the legal system to community groups and to encourage people from all parts of the community to consider a career in law. The Judicial Office has provided DCRJ with better methods of communicating with each other and the Judicial Office and, following requests from DCRJ at their 2009 annual conference, they have also been provided with links to community organisations.
- 6.7 Last but not least, Lord Justice Goldring is a member of Baroness Neuberger’s panel, which has been asked by the Lord Chancellor to consider the issue of judicial diversity and to make recommendations. At the time of writing we wait to see what the panel will recommend.
- 6.8 Detailed information about the numbers of judges, including information about gender and ethnicity can be found on our judicial website²³.

Relations with the media

- 6.9 I noted with interest that in the 2009 annual poll, *Trust in Professions*²⁴, carried out by Ipsos MORI, judges came third equal with professors, behind doctors and teachers. That they did does not surprise me, as judges have scored consistently highly in this poll since its inception in 1983, although this does not mean we can ever take public trust for granted. An interesting aspect is that very few, if any, of the 2,000 respondents to the poll will ever have met a judge.
- 6.10 For most people, reports in the media are their main insight into the way that judges, magistrates and the courts work. However, not all judicial sentencing decisions are popular or easy to understand, so to help reporters and the public the Judges’ Council has established a small media panel of judges trained to give

23 www.judiciary.gov.uk/keyfacts/statistics/index.htm

24 www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=2478

interviews on issues where we feel it is important to enhance public understanding and confidence in the judiciary and justice system, and in particular the sentencing aspects of our work. The judges on the media panel will not comment on individual cases or enter into politically-charged debates, but they and our Judicial Communications Office help provide some context and breadth to news stories.

- 6.11 In October 2009 I accepted an invitation to address the Society of Editors' annual conference and the theme of my address was that the entire fabric of a free society is dependent on an independent press and an independent judiciary – a view I have long held. The full text is available on the judicial website²⁵.

Magistrates

- 6.12 The largest part of the judiciary is formed by the magistracy. The 29,000 or so Justices of the Peace who sit in magistrates' courts deal with more than 95 per cent of all criminal cases, as well as a significant proportion of family cases. The administration of justice in England and Wales would collapse without the contribution made by men and women volunteering to serve their local communities. I believe society owes them a huge debt and I am not sure that their value is always appreciated.

Tribunals

- 6.13 After the magistracy, the next largest group of judiciary is the tribunals' judiciary, of whom there are around 7,000. These are a mixture of salaried and fee-paid judiciary, many of whom are legally qualified but who also include a wide variety of other specialists, from doctors and other medical professionals to chartered surveyors and those with experience of life in the armed forces.

Recorders

- 6.14 There are 1,235 Recorders. These are part-time, fee-paid members of the judiciary who can sit in the Crown Court or county courts, and have the same jurisdiction as Circuit Judges. Both barristers and solicitors are eligible to be appointed, but in fact the overwhelming majority are barristers; 1,176, as opposed to only 59 solicitor Recorders. The difference partly reflects the fact that, in the past, only barristers were eligible, but also reflects the fact that many solicitors, who would be suitable for appointment do not always find it easy to obtain the agreement of their firms to apply for part-time judicial work. This is an area of particular concern and one I have raised with the Law Society. Barristers in private practice are self-employed, and can decide for themselves whether they wish to take on the work.

25 www.judiciary.gov.uk/docs/speeches/lcj-society-editors-nov-2009.pdf

- 6.15 Many Recorders never become full-time judges, but because gaining experience as a Recorder is usually a key stage in moving to a full-time career as a Circuit Judge or High Court Judge, the lack of solicitor Recorders has a serious impact on who is available to be appointed to those posts. This has a wider impact on the overall diversity of the judiciary, not least because without experience as a Recorder it is unlikely that anyone would be appointed as a full-time judge. Baroness Prashar of the Judicial Appointments Commission and I have both spent some time encouraging the solicitors' profession to seize this issue and encourage firms to allow partners to apply for Recordership. We are both anxious to encourage solicitors of the necessary quality to apply for appointment.

Circuit and District benches

- 6.16 There are 640 Circuit Judges who hear serious criminal cases, and the more complex civil and family cases in the county court. There are 444 District Judges in the county courts hearing civil and family cases. In addition to the civil District and Deputy District Judges, there are 134 District Judges (Magistrates' Courts), formerly known as Stipendiary Magistrates, and 166 Deputies.
- 6.17 The Judge Advocate General, His Honour Judge Jeff Blackett, is a Circuit Judge and he leads a team of eight Judge Advocates and 11 deputy Judge Advocates hearing criminal cases brought against military personnel.

High Court and above

- 6.18 Turning to the High Court, there are 47 Masters and equivalents, including District Judges in the Principal Registry of the Family Division. They are assisted by 84 deputies.
- 6.19 In addition there are 107 High Court judges and two other judges who hold office as High Court judges because they sit in international Courts. There are 38 Lords Justices of Appeal and the five Heads of Division. In July 2009 the Judicial Executive Board decided that in respect of this group of judges we would collect, for the first time, information on the expenses incurred by these judges in the course of their official duties. Collection of the information began on 1 October 2009 and the first publication of information will take place in the early part of 2010.

7 The operation of the Partnership Agreement

- 7.1 The creation of the Ministry of Justice (MoJ) necessitated the establishment of a partnership agreement between the Lord Chief Justice and the Lord Chancellor in relation to the running of the courts. The principles behind this agreement are set out in the *Framework Document for HMCS*²⁶, agreed in April 2008. These arrangements have resulted in all HMCS staff owing a joint duty to the Lord Chief Justice and Lord Chancellor, with a view to preserving the due and independent administration of justice. The framework must be reviewed within three years, by April 2011.
- 7.2 The agreement is still in its infancy and so it is too soon to reach a view as to whether it provides the best mechanism for safeguarding the independence of HMCS. On a day-to-day basis, it is unlikely that many will have noticed a significant difference of approach. That is as it should be. At a national level, I do have some concern that the joint duty placed upon the Chief Executive and her senior staff is difficult in practice to achieve. This is no criticism of any of the individuals involved, indeed I am pleased to say that difficulties have largely been overcome because of the positive approach adopted by all concerned; rather, it is a comment on the fine balance the Chief Executive must achieve when managing her allocated resources, given the sometimes differing perspective of each partner.
- 7.3 I am grateful to the Judicial Directors of HMCS (the Senior Presiding Judge, Lord Justice Stanley Burnton and District Judge Michael Walker) for all their work in ensuring that the judiciary are fully engaged at a national level in the running of HMCS. As a result, I have been able to limit my involvement to maintaining an overview of the system and the formal Concordat discussions with the Lord Chancellor, which take place once a year to agree the HMCS budget. In July I appointed Lord Justice Goldring to succeed Lord Justice Stanley Burnton as a Director of HMCS, ahead of his becoming the Senior Presiding Judge in January 2010.
- 7.4 I have commented before on the number of administrative and leadership tasks which the judiciary have taken on since the Constitutional Reform Act 2005. I must also mention again my enormous gratitude to those judges who are willing to take on these roles. The system would simply not cope without them. I am pleased to say that, during the course of this year, HMCS has put in place formal support arrangements for those judges with leadership responsibilities. HMCS is, of course, under significant pressure in terms of available staff resources, but I very much hope that, as these arrangements bed down, the judiciary will have the administrative support they need in order that they can more effectively fulfil the demanding functions asked of them in maintaining the administration of justice.

26 www.hmcourts-service.gov.uk/cms/files/Framework_Document_Final_Version_01-04-08.pdf

- 7.5 In terms of the court estate, once again I must comment on the continued under-investment which has resulted in the maintenance backlog remaining static for some years. The consequence is that most of the more serious problems have been addressed, but many basic repairs remain outstanding. The longer minor problems are unresolved, inevitably the more major and expensive they become. I am pleased that work is being undertaken to look at where court and tribunal functions can share the same accommodation, which in turn may lead to economies of scale, and the provision of more suitable accommodation. At the same time, we must ensure that the basic principles surrounding local justice are maintained.
- 7.6 Given the savings which the Ministry needs to make, the negotiations surrounding the HMCS budget take place in a difficult climate. The Lord Chancellor has been very constructive in his approach but I am bound to say that I have real concerns about HMCS' ability to cope with the budget under which it is expected to operate. That is not to say that efficiencies cannot be made, but there is a danger that the courts have been pared back to the point where there are insufficient staff, an inadequately maintained estate, and not enough sitting days to dispense justice in the manner which society expects.
- 7.7 I remain concerned that HMCS is still dependent on income received from fines and fees for a substantial part of its budget allocation. It cannot be right that HMCS is negatively affected as a result of inaccurate prediction of fee receipts, or delays by Government in implementing fee increases. There are also important constitutional issues about the extent to which judges can be involved in the levying of fines whilst also having joint responsibility for the operation of the courts. I am pleased that the Lord Chancellor appears to recognise the difficulties and has asked his officials, along with the Senior Presiding Judge, to look in detail at the issues involved.
- 7.8 To conclude, although the Lord Chancellor has a statutory duty to fund an effective and efficient courts service, I can well understand why HMCS cannot be considered immune when it comes to the cuts the Ministry has to make in the current economic climate. So far as staffing levels are concerned, I am reassured by the Government's commitment that wherever possible the frontline is to be protected. I also recognise the temptation to make savings by curtailing new initiatives and improvements in IT, but there should be no doubt that this approach will make it increasingly difficult for HMCS to modernise the administration of justice, and to improve the levels of service offered to the public. In essence, it will be all HMCS can do to stand still; realistically there is a likelihood that performance will deteriorate.

Annex 1: LINKS TO OTHER REPORTS OR SOURCES OF DETAILED INFORMATION

The Judiciary

The judicial website contains a considerable amount of detailed information about the judiciary, including a comprehensive list of the senior judiciary, information on judicial salaries, the business costs for which a judge may be reimbursed, and publications and speeches by the judiciary. The web address is: www.judiciary.gov.uk

Judicial Studies Board Annual Report 2008-09

www.jsboard.co.uk/downloads/annual_report_2009_web.pdf

Departmental and Agency Reports

Ministry of Justice Annual Report 2008-09

www.justice.gov.uk/publications/docs/justice-annual-report-08-09ii.pdf

HMCS Annual Report 2008-09

www.hmcourts-service.gov.uk/cms/files/HMCS-AnnualReportAndAccounts-2008-09.pdf

Court Reports

Court of Appeal (Criminal Division)

www.hmcourts-service.gov.uk/cms/files/Criminal_Division_Review_2007-08_web.pdf

Court of Appeal (Civil Division)

www.hmcourts-service.gov.uk/cms/files/review_legal_year_2008.pdf

Technology and Construction Court

www.hmcourts-service.gov.uk/docs/infoabout/tcc/tcc_annual_report_2008.pdf

County court

www.hmcourts-service.gov.uk/publications/annual_reports/county/index.htm

Family court

www.hmcourts-service.gov.uk/cms/11041.htm

Crown Court

www.hmcourts-service.gov.uk/publications/annual_reports/crown/index.htm

Judicial Appointments

Annual Report of the Judicial Appointments Commission

www.judicialappointments.gov.uk/static/documents/JAC_AR09_web.pdf

Judicial Complaints

Office for Judicial Complaints

www.judicialcomplaints.gov.uk

Judicial Appointment and Complaints Ombudsman Annual Report 2008-09

www.judicialombudsman.gov.uk/docs/JACOAnnualReport2008-09.pdf

Civil Justice

Civil Justice Council

www.civiljusticecouncil.gov.uk

Civil Procedure Rules Committee

www.justice.gov.uk/about/civil-proc-rule-committee.htm

Tribunals

Senior President's Implementation Reviews

2nd Review October 2008

[www.tribunalservice.gov.uk/Tribunals/Documents/Publications/SecondIR\(psrc301008\)final.pdf](http://www.tribunalservice.gov.uk/Tribunals/Documents/Publications/SecondIR(psrc301008)final.pdf)

3rd Review July 2009

www.tribunals.gov.uk/tribunals/Documents/Publications/SeniorPres3rdReview.pdf

Tribunals Service Annual Report 2008-09

www.tribunals.gov.uk/tribunals/Documents/Publications/239_016_TS_AR_2009_Web_Version.pdf



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