INTERNATIONAL COMPARATIVE STUDY ON THE ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of England and Wales

By Christopher Menzies LL.B (Hons), Anglia

Polytechnic University, School of Law, Languages and Social Sciences, England

June 2004
# Table of Contents

## 1. Profile of the Judicial System

1.1 Introduction ................................................................. 111
1.2 Criminal Law .............................................................. 112
1.3 Civil Law ......................................................................... 113

## 2. Legal Rules & actual functioning of case allocation between courts and within courts & Allocation of cases within a court

2.1 Introduction ................................................................. 118
2.2 Civil Law cases ............................................................. 118
2.2.1 Offers to settle ......................................................... 121
2.2.2 Single Joint Experts .................................................. 121
2.3 Criminal Courts ........................................................... 122
2.4 Magistrate's Court ......................................................... 123
2.4.1 Youth Courts ........................................................... 123
2.5 Crown Court ............................................................... 123
2.6 Court of Appeal (Criminal Division) ................................. 125
2.7 High Court of Justice ..................................................... 125
2.7.1 Chancery Division (of the High Court) ......................... 125
2.7.2 The Companies Court .............................................. 126
2.7.3 The Patents Court ..................................................... 126
2.7.4 Family Division (of the High Court) ........................... 126
2.7.5 Queens Bench Division (of the High Court) ................. 126
2.7.6 The Divisional Court ................................................ 127
2.7.7 The Admiralty Court .............................................. 127
2.7.8 The Commercial Court ............................................ 127
2.7.9 Technology and Construction Court ......................... 127
2.7.10 The Court of Protection ......................................... 128
2.7.11 Court of Appeal (Civil Division) ............................... 128
2.8 House of Lords (The Supreme Court of Appeal) ............... 128

## 3. Unexpected Changes in caseloads and backlogs

3.1 Magistrates and Crown courts ........................................ 130
3.2 Civil Cases ....................................................................... 130
3.3 Alternative Dispute Resolution (ADR) ................................ 131
3.4 Court of Appeal mediation Scheme ................................ 132
3.5 Costs ............................................................................. 132
3.6 Proposals for reform of the Court of Appeal .................... 132

## 4. Emerging Problems and Creative Solutions

4.1 Magistrates and Crown courts ........................................ 130
4.2 Civil Cases ....................................................................... 130
4.3 Alternative Dispute Resolution (ADR) ................................ 131
4.4 Court of Appeal mediation Scheme ................................ 132
4.5 Costs ............................................................................. 132
4.6 Proposals for reform of the Court of Appeal .................... 132

## 5. Judicial Appointments (removals)

5.1 Lords Justices of Appeal ............................................... 133
5.2 High Court Judges ....................................................... 133
5.3 Retired Law Lords and Supreme Court Judges authorised under Section 9(1) of the Supreme Court Act 1981 .................................................. 134
5.4 Circuit Judges .............................................................. 134
5.5 Recorders ....................................................................... 136
5.6 District Judges ............................................................. 136
5.7 Masters and Registrars of the Supreme Court ................ 137
5.8 Tribunals ....................................................................... 138
5.9 Removal of judges be removed from office? ..................... 138
1. Profile of the Judicial System

1.1 Introduction

The judicial systems of England and Wales (E & W) have undergone and continue to undergo substantial reform and review. It was considered that the Civil Justice system was too costly, slow, complex and ineffective and this led to a thorough review of this system in 1994\(^1\). This led to the report ‘Access to Justice’ being published in 1996 and subsequently the enactment of the Civil Procedure Act 1997. Consequently the Civil Procedure Rules 1998 were implemented in 1999. These rules remain a substantial improvement on the previous position where civil litigation was subject to two distinct codes of practice depending on which court the case was to be heard.

The Criminal Justice system of England and Wales (E & W) also recently underwent a thorough review in 2001\(^2\). Three hundred and twenty eight recommendations were made for reform to improve access and efficiency. Further reform has been included within the Criminal Justice Act 2003.

There remains a culture for continuous reform and increased efficiency within the justice systems with particular focus upon the victim and the sentencing of offenders. This has to be balanced with the obligations and duties imposed by the Human Rights Act 1998 which in effect incorporated into E & W law the Articles of the European Convention on Human Rights and the Protection of Fundamental Freedoms\(^3\), and funding.

Because of the cost and time taken for trial by jury the Government have further reduced a defendant’s right to be tried by jury\(^4\). Funding for the Prison Service is also under review especially as prisons are now full\(^5\) and a whole new industry has developed into creating more meaningful and appropriate sentencing programmes with custodial sentences now the option of last resort. The efficiency of the justice systems inevitably causes pressure upon those agencies that enforce or monitor the sentences of the courts e.g. the Prison and Probation Services\(^6\).

My research has made it clear that there are very distinct prescribed and different routes where criminal and civil matters are to be heard / proceed. In the former this depends largely upon the value and nature of the claim, in the latter, it depends on the seriousness attributed to the crime as reflected by the potential maximum sentence the court could hand down to the defendant. Within both systems there are sets of rules. Within the Civil Justice system this has been almost completely codified into the Civil Procedure Rules 1998, whereas, the criminal justice system, extracts rules and procedures from a number of sources, i.e. Primary and Secondary legislation\(^7\) the defendant to be tried by jury and so the matter must now proceed to

\(^1\) The ‘Woolfe Report’

\(^2\) The ‘Auld report’ (Lord Justice Auld)

\(^3\) 1954

\(^4\) Sections 43 – 46 of the Criminal Justice Act 2003 (these sections not yet in force)

\(^5\) The population of England and Wales is currently recorded at 52,041,916 of which 73,688 make up the prison population (i.e. 15%). Public opinion is also concerned that during 2003 more motorists were imprisoned than burglars.

\(^6\) On the 29\(^{th}\) and 30\(^{th}\) of January 2004 parts of the Court Service took strike action over pay.

\(^7\) Primary legislation = Acts of Parliament, Secondary legislation = made under the authority of the Act but not subject to full Parliamentary scrutiny
the lower courts. Tensions within the justice systems appear mainly connected with funding. Some tension certainly remains as to who can represent a defendant / claimant in which court. Socio-political factors also exert influence as can be demonstrated by the re-classification this week (February 2nd 2004) of cannabis. This has reduced the penalty for possession of this substance but in the process has also reduced the option for

The Court Service is an executive agency of the Department for Constitutional Affairs. The purpose of the Court Service is the delivery of justice. The Agency is responsible for the running of most of the courts and tribunals in England & Wales i.e. Crown, County and Appeal Courts (with the exception of the House of Lords and the Magistrates Courts), and provides the necessary services to the judiciary and court users to ensure its impartial and efficient operation. The Agency also has responsibility for advice to the Secretary of State on his responsibilities in relation to magistrates' courts although they remain a locally managed service as defined in statute. As the key service-delivery arm of the Department, the Court Service plays an important part in implementing the government's agenda for a modern justice system.

On the 26th of January 2004 the Secretary of State for Constitutional Affairs and the Lord Chancellor announced proposals for the Secretary of State to be responsible for the administration of the courts and for setting the overall framework for the organisation of the court system but the posting of individual members of the judiciary within that framework should fall to the Lord Chief Justice. See Appendix 2 for the procedure for the appointment and removal of judges.

1.2 Criminal Law

The Crown Prosecution Service (CPS) is the national agency that considers the evidence against the accused to determine if there is sufficient evidence to offer a realistic chance of securing their conviction. This decision is made by Crown Prosecutors in accordance with criteria contained within their Code of Practice. If so satisfied the matters proceed to court otherwise proceedings are usually discontinued.

For the period 2002 / 2003 the CPS had a budget of £453 million and employed just over 7,046 staff and increased its number of lawyers by 300. During this same period 1,046,000 offences were brought to justice an increase on the previous year of 20,000. During 2003 the CPS worked with other departments within the criminal justice system to develop new structures to manage delivery and reform. Since April 2003 Chief Officers of local criminal justice agencies meet to drive performance improvement in their local areas.

Currently a ‘Case Management’ project is under way to reform case management in both the Magistrates’ and Crown Courts. The aim of this project is to ensure better case progression and certainty for victims, witnesses, defendants, defence and prosecution. The number of cracked and ineffective trials continues to be monitored

---

8 Formerly the Lord Chancellor’s Department and formed on the 12th of June 2003. Leadership of this Dept. is now combined with the role of Lord Chancellor who is responsible in government for upholding justice, rights and democracy.
9 Divided up into 42 geographical areas
10 The Code for Crown Prosecutors
11 In the most basic term this means that a penalty has been incurred, see the Annual Report of the CPS 2003 p.11
12 Cracked = guilty plea or no evidence offered on the day. Ineffective = adjourned on the day of hearing to another day.
1.3 Civil Law

In 1994, Lord Woolf reviewed the rules and procedures of the civil courts in England and Wales. Five years later in 1999 substantial and significant reform of the Civil Justice system was introduced throughout following the report ‘Access to Justice’. It proposed that the Civil Justice system should have the following 10 key features:
1. Litigation will be avoided wherever possible, (2) litigation will be less adversarial and more co-operative, (3) litigation will be less complex, (4) the time scale of litigation will be shorter and more certain. (5) the cost of litigation will be more affordable, more predictable, and more proportionate to the value and complexity of individual cases, (6) parties of limited financial means will be able to conduct litigation on a more equal footing, (7) there will be clear lines of judicial and administrative responsibility for the civil justice system, (8) the structure of the courts and the deployment of judges will be designed to meet the needs of litigants, (9) Judges will be deployed effectively so that they can manage litigation in accordance with the new rules and protocols, (10) the civil justice system will be responsive to the needs of litigants. This led to the drafting and subsequent implementation of the Civil Procedure Rules 1998 (CPR).

These Rules provided a single set of rules for the High and County Courts and all proceedings commenced within them. The CPR clearly state their overriding objectives and impose a duty upon the court effectively and efficiently manage cases. Simplification of case management by the court by striking out issues or whole claims where there is no real prospect of success, control discovery, and apply sanctions. One of the functions of case management is to reduce the need for applications in the course of proceedings.

The CPR have reduced the number of ways of commencing a case to 6 different claim forms covering the whole range of civil procedure including probate and possession claims.

Excessive delay and costs have been achieved by the introduction of the aforementioned CPR. To achieve these aims; all procedural decisions under the CPR are guided by the overriding objective stated in rule 1.1. In summary, the court must deal with cases:
1. justly;
2. ensure the parties are on an equal footing,
3. reduce costs
4. proportionately having regard to the sum at stake, the importance & complexity
5. each party's financial position,
6. ensure expedition
7. fairness
8. allotting to each case an appropriate share of the court's resources.
<table>
<thead>
<tr>
<th>Human resources</th>
<th>Number/Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Registered attorneys (Solicitors &amp; Barristers</td>
<td>95,528</td>
</tr>
<tr>
<td>entitled to practice)</td>
<td></td>
</tr>
<tr>
<td>Professional judges</td>
<td>3441</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>1,867</td>
</tr>
<tr>
<td>Administrative judges (High Court)</td>
<td>N/A</td>
</tr>
<tr>
<td>Personnel of the civil and criminal courts</td>
<td></td>
</tr>
<tr>
<td>Prosecutors’ office administrative personnel</td>
<td>3,799</td>
</tr>
<tr>
<td>Personnel of the administrative courts</td>
<td></td>
</tr>
</tbody>
</table>
The Court Structure in England and Wales

The Court Service carries out the administrative and support tasks for the Court of Appeal, the High Court, the Crown Court, the county courts, the Probate Service, and certain tribunals. The structure of the courts in England and Wales is set out below.

- **House of Lords**: Appeals from the Court of Appeal and in exceptional circumstances from the High Court (also Scotland and Northern Ireland)

- **Court of Appeal**
  - **Criminal Division**: Appeals from the Crown Court
  - **Civil Division**: Appeals from the High Court, tribunals and certain cases from county courts

- **High Court**
  - **Queen's Bench Division**: Contract and tort, etc., Commercial Court, Admiralty Court
  - **Family Division**: Matrimonial proceedings, Proceedings relating to children, Probate Service
  - **Chancery Division**: Equity and trusts, contentious probate, tax partnerships, bankruptcy, Companies Court, Patents Court
  - **Divisional Court**: Appeals from the magistrates' courts
  - **Divisional Court**: Appeals from the county courts on bankruptcy and land

- **Crown Court**: 78 Centres, Trials of indictable offences, appeals from magistrates' courts, cases for sentence

- **Magistrates' Courts**: Trials of summary offences, committals to the Crown Court, family proceedings courts and youth courts

- **County Courts**: 218 courts, majority of civil litigation subject to nature of the claim

- **Tribunals**: Hear appeals from decisions on immigration, social security, child support, pensions, tax, and lands

*Although the House of Lords and the magistrates' courts form part of the structure within England and Wales, the Court Service does not administer them. This diagram is, of necessity, much simplified and should not be taken as a comprehensive statement on the jurisdiction of any specific court.*
Convention\textsuperscript{15} has established that this structure is explained by reference to the hierarchical judicial authority of the courts on a descending basis. I have decided that a greater and more logical and meaningful explanation can be obtained by considering the court structure on an ascending scale. Following the identification of each court or tribunal I have included an explanation of its jurisdiction and structure and any proposals for its reform and where relevant statistical analysis of the workload for that court or Division.

**Tribunals**
The Court Service administers the 12 Tribunals that fall under the direct responsibility of the Lord Chancellor. The main Tribunals are:

The Court Service administers the 12 Tribunals that fall under the direct responsibility of the Lord Chancellor. The main Tribunals are:

- Immigration Appellate Authority (IAA)
- Office of the Social Security and Child Support commissioners (OSSCSC)
- Pensions Appeal Tribunals (PAT).
- VAT and Duties Tribunals, Special Commissioners and Financial Services and Markets Tribunal (F&TT). These three tribunals are administered jointly as the Finance and Tax Tribunals.
- Lands Tribunal.
- Transport Tribunal
- Immigration Services Tribunal

**Magistrate’s Court**
Approximately 96\% of criminal cases are dealt with at a magistrates’ court (though all criminal trials start in this court) and are heard by at least two but usually three lay\textsuperscript{16} (legally unqualified) magistrates (a Bench) or by a District Judge(Magistrates) (legally qualified) who may hear the matter alone. Each ‘Bench’ has a ‘chair’ who is the senior officer of the court and announces the decision of the ‘Bench’ and provides reasons for their decision. Certain magistrates’ courts are designated as Youth Courts\textsuperscript{17} and Family Proceedings Courts (FPC) and proceedings within theses courts are heard by specially trained lay magistrates. FPCs have jurisdiction to hear both public and private law matters relating to children. This court does not deal with divorce.

**Crown Court**
The Crown Court is the only court with jurisdiction to hear criminal trials on indictment i.e. the more serious criminal offences

**County Court**
There are 218 County Courts dealing with the majority of civil cases, as well as some family and bankruptcy hearings. The largest number of cases dealt with by the Court Service come before the County Courts, and it is here that all but the most complicated civil law proceedings are handled. Civil cases include claims for debt, personal injury, breach of contract concerning goods or property, family issues such as divorce or adoption, and the repossession of houses.

\textsuperscript{15} Custom and practice
\textsuperscript{16} Lay = volunteer but this is further prescribed by s.9 of the Courts Act 2003
\textsuperscript{17} As defined by S.45 of the Courts Act 2003
High Court of Justice
Most of the civil law cases not dealt with in county courts are heard in the High Court, either at the Royal Courts of Justice in London or at High Court centres in England and Wales. The High Court has jurisdiction to hear all cases relating to Children's welfare and interest, and exercises an exclusive jurisdiction in wardship cases. The High Court is made up of three Divisions, Chancery, Family and Queen’s Bench.

Court of Appeal (Criminal Division)
This court normally sits at the Royal Courts of Justice in London and hears criminal case Appeals from the Crown Court. This court has the power to quash or uphold a conviction or order a re-trial and vary sentences. It also has the power to increase a sentence following a request to do so by the Attorney General.

Court of Appeal (Civil Division)
Appeals against the outcome of a hearing in the County Court or a High Court, are usually dealt with by the Civil Division of the Court of Appeal. Presided over by the Master of the Rolls. Witnesses are rarely heard in this court as decisions are based upon documentary evidence including transcripts from previous hearings and the submissions from the lawyers of the parties.

House of Lords (The Supreme Court of Appeal)
The highest domestic court in the United Kingdom is the Appellate Committee of the House of Lords (the House) on which the Lords of Appeal in Ordinary, the so-called Law Lords, sit. It is an idiosyncrasy of the British constitution that the final court of appeal sits technically as a committee of Parliament. However it is a court. The ‘House’ is the final court of appeal for the whole of the United Kingdom civil cases and for England and Wales and Northern Ireland, criminal cases.

Other courts (not shown)
The Restrictive Practices Court.
This court deals with applications under the Restrictive Trade Practices Act 1976 and the Fair Trading Act 1973. This court has jurisdiction to declare that certain agreements are contrary to the public interest and to restrain parties from enforcing them. Proceedings are heard by three judges. This court is a superior court of record and thus only in very limited circumstances on a question of fact may an applicant appeal to the Court of Appeal.

The Privy Council
This is one of the oldest parts of Government. Appointment to it is for life. Much of its work is concerned with the affairs of Chartered Bodies and the 400 or so institutions, charities and companies who are incorporated by Royal Charter.

The Privy Council through its Judicial Committee is the final Court of Appeal for a number of Commonwealth countries who have chosen to retain it. The Committee consists of Lords Justices of Appeal and some senior commonwealth judges.

---

18 The High Court and the Court of Appeal are collectively the Supreme Court of England and Wales
2. Legal Rules & actual functioning of case allocation between courts and within courts & Allocation of cases within a court

A: Allocation of cases between courts

2.1 Introduction

The systems in place do not permit defendants or litigants to choose who hears / deals with their case. In specific and prescribed circumstances a litigant or defendant may propose / indicate their preference as to where their case is heard. In civil matters this is a matter of location where as in criminal law this restricted to a choice between the Magistrates’ and Crown court.

Matters may not be commenced in more than one court at the same time.

2.2 Civil Law cases

The majority of cases dealt with by the Court Service come before the 218 County Courts within England and Wales, dealing with the majority of simple civil law proceedings are heard e.g. bankruptcy, claims for debt, personal injury, breach of contract concerning goods or property the repossession of houses and personal injury claims as well as some family proceedings including divorce, children’s cases including abuse and domestic violence, adoption and parental rights. The type of work the family courts undertake depends on their jurisdiction. County Courts that are Family Hearing Centres deal with divorce and private law family cases, whereas Care Centres deal with all private and public law cases. Proceedings are heard before a presiding judge, often in Chambers.

It is here that all but the most complicated civil law proceedings are handled. County Court staff process the necessary paperwork and account for any fees payable. They also deal with correspondence and personal callers, prepare cases for hearing, sit in court with the judge and prepare orders. Bailiffs attached to each court will, if an application is made, enforce orders and seek to collect money if a judgement has not been paid.

The litigant commences their claim by indicating its type and value. That claim is then issued and the other party notified who are invited to acknowledge receipt or file a defence. The court will then send to each party a questionnaire asking them to provide specific information and return it to the court so that the District Judge of the County Court can then allocate the case to one of the three available ‘tracks’. Claims not exceeding £5000 are allocated to the ‘Small Claims Track’ where the strict rules of evidence required elsewhere are not relied upon. This ‘track’ is designed for simplicity, speed and low cost (No lawyers fees are recoverable).

Cases where the value exceed £5000 but not £15,000 & with a time estimation of no more than one day. This enables simple Directions (instructions) by the Judge to be given and also restricts expert evidence and places limits on the costs recoverable at the final hearing.

---

19 Chambers = Private hearing
Those cases not fitting into either of these two tracks are allocated to the ‘Multi – Track’ pro-
cedure.

The term ‘District’ Judge (colloquially referred to as the DJ) confers a territorial and geo-
graphical parameter. Each County Court will have at least one ‘DJ’ sitting on a full or part-
time basis within the District for that County Court. Each County – a geographical area- being
divided into a number of specific Districts. Every DJ is appointed to sit at every County Court
within their Circuit. A Circuit is a number of Counties joined together (see Appendix 2). The
County Court is usually an open court and members of the general public may listen to the
proceedings but may be excluded on the discretion of the DJ on grounds of privacy or sensi-
tivity as prescribed by the CPR e.g. involving children or debt.

Each County court will also have a Circuit Judge usually hearing the more complex or ‘Multi-
Track’ cases.

This procedure means that at the earliest stage the DJ makes a decision based on the afore-
mentioned criteria which ‘track’ the case is to be allocated to, based simply on, value and
complexity.

Once this decision has been made, should the value or complexity increase, the case can be
re-allocated by the DJ. This is a judicial decision and not one for the litigants or the Court
Service. The party requesting the variation will need to convince the DJ of the necessity for
re-allocation and their application may be opposed by the other party and refused. The final
decision as to who appears before the DJ, when, the validity of their action and the urgency of
those matters forming the ‘daily list,’ prepared by the Court Service 20, remains with the DJ.
These are judicial decision and not matters for the Court Service.

Litigants who fail to make reasonable time estimates for their claim risk the DJ removing the
case from the ‘daily list’ and having it rescheduled at a latter date when more court time is
available. They effectively miss their slot.

Where a DJ strikes out or refuses a litigants application, the dissatisfied party may appeal
against this action to a Designated Civil Judge (DCJ) who overseas the running of the civil
justice system.

Litigants are not at liberty to select a specific judge to hear their claim or application but
where one DJ has made a recent Order and that Order now needs to be enforced or there are
issues of interpretation then the DJ before whom it is listed for hearing may send it to the DJ
who made the original Order as he / she will clearly be in the best position to know the terms
and scope of that Order.

Cases are steered towards specific court locations on the basis of their type for efficiency and
convenience. E.G. Fast and Multi Track cases are usually directed to the Trial Centre for that
County. Should that Centre become overwhelmed then the parties are informed at a very early
stage that their matter may be heard by another Judge at a different Court as arranged by the
Court Service reducing delay and increasing efficiency. The DJ often sets aside a specific day
or days of each month to deal with one particular type of case, e.g. bankruptcy.


20 See fn 9.
The tension is that the Court Service are constantly trying to make more efficient use of the facilities and therefore wish to increase the number of cases heard but listing remains a judicial decision.

During the last 5 years (since April 1999) when the ‘tracking’ system for civil law claims was introduced the amount of court work has increased due to the efficiency of this system.

Caseloads. Courts are under more pressure because of promises made by the Court Service and Government relating to best practice including time deadlines for certain procedures E.g., Fast Track trials must be heard within 30 weeks.

<table>
<thead>
<tr>
<th>Year</th>
<th>Claims</th>
<th>Fixed Date</th>
<th>Warrants</th>
<th>Divorce Petitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>1,959,958</td>
<td>257,958</td>
<td>736,402</td>
<td>169,748</td>
</tr>
<tr>
<td>1998-1999</td>
<td>1,960,938</td>
<td>305,784</td>
<td>684,400</td>
<td>171,545</td>
</tr>
<tr>
<td>1999-2000</td>
<td>1,579,277</td>
<td>281,474</td>
<td>670,923</td>
<td>166,524</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1,563,149</td>
<td>284,648</td>
<td>608,563</td>
<td>160,051</td>
</tr>
<tr>
<td>2001-2002</td>
<td>1,437,224</td>
<td>276,707</td>
<td>526,856</td>
<td>166,157</td>
</tr>
<tr>
<td>2002-2003</td>
<td>1,349,673</td>
<td>266,085</td>
<td>511,853</td>
<td>171,363</td>
</tr>
</tbody>
</table>

The ‘small claims track’ is designed for cases of value that do not exceed £5000, or personal injury cases that do not exceed £1000. ‘Fast track’ for those cases with a value exceeding £5000 but not exceeding £15000 with a timetable leading to trial within 20 to 30 weeks and finally the ‘multi-track’ for complex cases regardless of value. This is supported by the judiciary then stipulating a timetable for the completion of specified stages.

Both these stages of ‘track’ allocation and then judicial management of the case timetable help to reduce delay and costs. Such timetabling is made clear in advance to all parties to the litigation by ‘Pre-action’ protocols.’ In addition these set out common standards and good practice and these encourage settlement without recourse to the courts where possible and narrow the issues in dispute in those matters that proceed to the court.

Following a peak of claims in 1999 there was a substantial reduction following the introduction of the Civil Procedure Rules. This overall downward trend has now been stable for 3 years since April 1999. Following restriction of proceedings in the High Court to claims exceeding £15,000 there has been a fall in the number of claims issued in the Queens Bench Division of the High Court, now at approximately 2000 per month.

Data from the Court Service on fast and multi track trials shows that average time from issue to trial was lower post-CPR; 498 days in 2000/01 following a rise pre CPR from 546 days in March 1994 to 639 days in September 1997. Post-CPR 51% of cases which went all the way to trial took less than 1 year. The decline in average time from issue to trial between 1997 and 2000/01 was spread across cases regardless of type or value. Multi track cases took an average of 656 days, and fast track cases 411 days, including 177 from allocation to trial post-CPR. 25% of fast track cases took longer than the 30-week timeframe from allocation to trial. However, it must be borne in mind that some of those trials heard post-CPR were for claims issued under the old system.

Although the reforms did not introduce specific timetabling requirements for small claims cases, the average time taken for these cases from issue to hearing has increased as shown in Figure 12. The Court Service collects information on small claims hearings through the Small
Claims Sampler which 29 courts are asked to complete three times a year in February, July and October.

It is notable that much of the increase seems to be concentrated between October 1998 and July 1999, the length of time taken being no more in October 2001 than in July 1999.

The overall rise in average time is not merely due to a few longer cases. However, it can be partly attributed to a large proportionate decrease in claims of under £1,000 that tended to take less time from issue to hearing and the increase in the upper claims limit from £3,000 to £5,000 which resulted in a greater number of larger value claims that tended to take more time from issue to hearing.

Average time between issue and hearing was particularly high post-CPR compared to pre-CPR in cases involving personal injury (74 days extra), and where both sides were represented by solicitors (46 days extra). Cases (mostly debt and contract) from 950 days pre-CPR to 774 days post-CPR while for cases involving personal injury or negligence the average fell from 1,302 to 1,265 days.

2.2.1 Offers to settle
A procedure enabling the claimant and or the defendant to make an offer to settle (so-called Part 36 offers) was introduced in April 1999. These can be made before the claim is issued or during proceedings. This effectiveness of such offers are practically impossible to evaluate because of the lack of available figures.

Claimant solicitors thought Part 36 offers provided "a way to make things happen" without issuing proceedings and helped speed up the settlement process. There was a strong consensus among those involved in clinical negligence cases that claimant offers provided a crucial element of control over the progress of claims.

2.2.2 Single Joint Experts
The use experts had become a major problem in the civil justice system. They contributed to the cost of litigation, increased the complexity and delayed the proceedings. It was recommended\(^{21}\) that a single joint expert should be appointed where possible and that the duty of the expert to the court should be emphasised.

Data obtained by The Court Service was evaluated for 8,411 cases heard pre-CPR (March 1994-September 1997) and for 1,979 cases post CPR (September 2000-September 2001). This analysis shows that the percentage of trials involving experts has increased since the introduction of the CPR. However, post-CPR, joint experts were used in 46% of trials involving any experts. The proportion of personal injury trials involving experts rose particularly strongly; from 28% in 1997 to 41% post CPR. Prior to the CPR it was relatively rare to appoint a single joint expert to a case, but now such appointments are becoming increasingly common and are not just restricted to smaller cases. As a consequence, the use of shadow experts appointed by either side to advise on the case has increased. The assistance of a skilled shadow expert can be highly cost effective, particularly as their input would not involve preparing a report, just giving advice." In addition a trend has developed of appointing 3 experts once the court had appointed a joint expert.

It is considered that joint experts are generally appropriate in ‘fast track’ cases and generally inappropriate in ‘multi-track’ cases, although it depends on the nature of the case and the

\(^{21}\) By Lord Woolf in his report ‘Access to Justice’
sues involved. In some cases use of a joint expert increased costs as the parties appoint their own expert as well, resulting in 3 experts in total.

Improvements. Not every County Court can deal with all types of Civil work. Some have bankruptcy jurisdiction some do not and this is not as efficient as it could be but jurisdiction and procedure are set out by the CPR and any changes would need these to be varied. Local variations to these Rules are not permitted.

CPR considered a huge success as they have saved costs and time and the principle of proportionality e.g. directions to ask questions of the court expert witness rather than each litigant appointing their own.

Changes to the Rules. Rules on costs has generated complex costs assessments and has become the subject of much litigation. The process for dealing with costs needs to be re-assessed.

2.3 Criminal Courts

Where the accused stands trial depends partly on the type of offence he/she is accused of and their age. Criminal offences are currently separated into three categories;

a) Summary only
b) Triable either-way
c) Indictable only

a) Summary only offences
Offences that are created by statute (not common law) and must be heard and determined by magistrates. No right to trial by jury. These tend to be the least serious offences e.g. many road traffic law offences.

b) Triable either way offences.
These may be heard by magistrates’ or by jury if this is elected by the accused or jurisdiction is refused by magistrates’ who are assisted in their decision by ‘National Mode of Trial Guidelines’.

c) Indictable only
The most serious offences where the accused must be tried by a jury. A judge will preside.

Who presides at the appropriate court? Committals for trial are currently divided up into a number of classes of seriousness according to directions given by the Lord Chief Justice and the Lord Chancellor. The first three classes are as follows

Class 1- the most serious offences, usually tried by a High Court Judge\(^{22}\), e.g. murder
Class 2-Usually tried by a High Court Judge, e.g. Rape and manslaughter
Class 3 -May be tried by a High Court Judge, Circuit Judge\(^{23}\) or Recorder\(^{24}\)

\(^{22}\) By Royal appointment from among the senior members of the legal profession or by promotion from the office of Circuit Judge on the recommendation of the Lord Chancellor and assigned to one of the three Divisions of the High Court.\(^{23}\) \(^{24}\)
2.4 **Magistrate's Court**

The statutory responsibility for the efficient and effective administration of the magistrates' courts currently falls to Magistrates’ Courts Committees (MCC). These are body corporate, comprised of up to twelve magistrate members selected by a statutory selection panel for each MCC area. The detailed powers and duties of these committees and the requirement for the selection process are laid down in legislation.

Lay magistrates are unpaid appointees of the Crown from the community. They determine facts and are advised on the law by qualified clerks. Their sentencing powers are capped by Statute, currently, 6 months imprisonment (or 12 months for consecutive sentences) or fines not exceeding £5,000. Where greater punishment is warranted this court has the power to send the offender to the next superior court, the Crown Court, for sentencing. The powers of the crown court for sentencing are limited only by Statute.

It is common practice for matters to be listed in one magistrates’ court but be heard in another (in the same building) because the first matter has taken longer than anticipated. This appears to be arranged by the Clerk to the Magistrates’ (legally qualified) who sits with magistrates’ to advise them on legal issues on an informal basis the only restriction being if the magistrates’ have to be specifically authorised to hear the matter referred to the court e.g. a case concerning a juvenile.

2.4.1 **Youth Courts**

Cases are heard by specially trained magistrates’ and deal only with charges against and applications relating to children and young persons aged under 18. It sits apart from other courts and, unlike other courts, is not open to the public. It consists of not more than three magistrates and must include both sexes.

2.5 **Crown Court**

The Crown Court is the only court with jurisdiction to hear criminal trials on indictment i.e. the more serious criminal offences and is based at 78 locations within six geographical circuits throughout England and Wales. (each centre may have a number of courts within the same building). Trials are heard before (usually) a single presiding Judge and a jury comprised of 12 jurors who determine matters of fact. The sitting Judge determines matters of law.

It also has jurisdiction to hear matters including;
- ‘either way’ offences – these can be heard in this or the magistrates’ court

---

23 By Royal appointment following the recommendation of the Lord Chancellor and assigned to one of the six Circuits and may sit at any of the Crown Court centres and county courts (dealing respectively with criminal and civil/family cases) on that Circuit. Normally Circuit Judges can hear both criminal and civil cases, although some exercise specialist civil jurisdictions or deal wholly or mainly with criminal cases (e.g. at the Central Criminal Court).

24 By Royal appointments following the recommendation of the Lord Chancellor. It is a part-time judicial appointment open to most lawyers who fulfil the statutory requirement of a 10 year right of audience qualification in the Crown Court or county court.

25 This will be altered by S.6 of The Courts Act 2003

26 The Courts Act 2003 will also alter this.

27 Unlimited sentencing powers.

28 Midland & Oxford are an example of a ‘circuit’. The famous ‘Old Baily is a Crown Court within the South Eastern Circuit.
• defendants sent (committed) from the magistrates court for sentence
• appeals against decisions of the magistrates’ courts (conviction & sentence)

As stated earlier the type of cases that proceeds to the Crown Court is dictated by the type of offence and the circumstances in which it was committed. (above).

This is further regulated by the level of security available at the court described as follows;

First - tier: Highest levels of security and are presided over by High Court and Circuit judges and Recorders. Civil and criminal work

Second – tier: As above. No civil work

Third – tier: Presided over only by Circuit Judges and Recorders.

Part of The workload of the Crown Court is shown below.

**Committals for Trial**

<table>
<thead>
<tr>
<th>Year</th>
<th>Receipts</th>
<th>Disposals</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>88,587</td>
<td>89,460</td>
<td>24,531</td>
</tr>
<tr>
<td>1998-1999</td>
<td>75,282</td>
<td>75,906</td>
<td>23,804</td>
</tr>
<tr>
<td>1999-2000</td>
<td>75,168</td>
<td>74,078</td>
<td>24,984</td>
</tr>
<tr>
<td>2000-2001</td>
<td>72,658</td>
<td>71,330</td>
<td>26,380</td>
</tr>
<tr>
<td>2001-2002</td>
<td>79,125</td>
<td>77,265</td>
<td>28,237</td>
</tr>
<tr>
<td>2002-2003</td>
<td>84,264</td>
<td>83,463</td>
<td>29,048</td>
</tr>
</tbody>
</table>

**Cases for Sentence**

1

<table>
<thead>
<tr>
<th>Year</th>
<th>Receipts</th>
<th>Disposals</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>18,911</td>
<td>16,586</td>
<td>4,461</td>
</tr>
<tr>
<td>1998-1999</td>
<td>30,505</td>
<td>29,778</td>
<td>4,700</td>
</tr>
<tr>
<td>2000-2001</td>
<td>26,375</td>
<td>27,018</td>
<td>3,637</td>
</tr>
<tr>
<td>2001-2002</td>
<td>26,382</td>
<td>26,006</td>
<td>3,874</td>
</tr>
<tr>
<td>2002-2003</td>
<td>29,165</td>
<td>28,728</td>
<td>4,054</td>
</tr>
</tbody>
</table>

**Appeal Cases**

<table>
<thead>
<tr>
<th>Year</th>
<th>Receipts</th>
<th>Disposals</th>
<th>Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>16,542</td>
<td>16,275</td>
<td>2,564</td>
</tr>
<tr>
<td>1998-1999</td>
<td>15,986</td>
<td>16,309</td>
<td>2,231</td>
</tr>
<tr>
<td>1999-2000</td>
<td>15,030</td>
<td>15,277</td>
<td>1,965</td>
</tr>
<tr>
<td>2000-2001</td>
<td>13,497</td>
<td>13,698</td>
<td>1,752</td>
</tr>
<tr>
<td>2001-2002</td>
<td>12,505</td>
<td>12,573</td>
<td>1,666</td>
</tr>
<tr>
<td>2002-2003</td>
<td>11,807</td>
<td>11,875</td>
<td>1,583</td>
</tr>
</tbody>
</table>

**Waiting Times Between Committal to the Crown Court and Commencement of Trial (weeks)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Defendants on bail</th>
<th>Defendants in custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>13.3</td>
<td>8.7</td>
</tr>
<tr>
<td>1998-1999</td>
<td>15.3</td>
<td>9.6</td>
</tr>
<tr>
<td>2000-2001</td>
<td>15.7</td>
<td>9.9</td>
</tr>
<tr>
<td>2001-2002</td>
<td>5.9</td>
<td>11.6</td>
</tr>
<tr>
<td>2002-2003</td>
<td>15.7</td>
<td>12.9</td>
</tr>
</tbody>
</table>
2.6 Court of Appeal (Criminal Division)

This court normally sits at the Royal Courts of Justice in London and hears criminal case appeals from the Crown Court. This court has the power to quash or uphold a conviction or order a re-trial and vary sentences. It also has the power to increase a sentence following a request to do so by the Attorney General. Three judges usually sit but only one judgement is provided. The senior judge for this division is the Lord Chief Justice. 'Leave' of a judge is required before an appeal can be made against conviction or sentence in a criminal case.

Cases may be referred back to this court by the Criminal Cases Review Commission though this body usually only considers those cases that have already passed through the available appeal structure. The function of the commission is to consider whether there would be a real possibility that a conviction, finding of fact, verdict or sentence would not be upheld by the Court of Appeal if the case was referred back to them.

Part of the workload of this court

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications for leave</th>
<th>Matters dealt with by full Court</th>
<th>Cases outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-98</td>
<td>9,452</td>
<td>4,773</td>
<td>2,541</td>
</tr>
<tr>
<td>1998-99</td>
<td>8,600</td>
<td>4,436</td>
<td>3,026</td>
</tr>
<tr>
<td>1999-00</td>
<td>8,098</td>
<td>4,459</td>
<td>3,049</td>
</tr>
<tr>
<td>2000-01</td>
<td>7,574</td>
<td>3,649</td>
<td>3,218</td>
</tr>
<tr>
<td>2001-02</td>
<td>7,383</td>
<td>3,471</td>
<td>3,783</td>
</tr>
<tr>
<td>2002-03</td>
<td>7,910</td>
<td>2,420</td>
<td>3,869</td>
</tr>
</tbody>
</table>

2.7 High Court of Justice

Most of the civil law cases not dealt with in county courts are heard in the High Court, either at the Royal Courts of Justice in London or at High Court centres in England and Wales. The High Court has jurisdiction to hear all cases relating to Children's welfare and interest, and exercises an exclusive jurisdiction in wardship cases. The High Court is made up of three Divisions, Chancery, Family and Queen's Bench.

2.7.1 Chancery Division (of the High Court)

The effective head of the Chancery Division is the Vice-Chancellor. There are currently seventeen High Court Judges attached to this Division supplemented, in the Royal Courts of Justice in London by six Masters (one of whom is the Chief Master), and six Bankruptcy Registrars (one of whom is the Chief Registrar).

The Chancery Division undertakes civil work of many kinds, including specialist work such as companies, patents business disputes and contentious probate.

Part of the workload of this court.

<table>
<thead>
<tr>
<th>Year</th>
<th>Chancery Chambers Claims issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-00</td>
<td>5,282</td>
</tr>
<tr>
<td>2000-01</td>
<td>5,715</td>
</tr>
<tr>
<td>2001-02</td>
<td>4,866</td>
</tr>
<tr>
<td>2002-03</td>
<td>4,116</td>
</tr>
</tbody>
</table>

29 I.e., permission
30 The High Court and the Court of Appeal are collectively the Supreme Court of England and Wales
2.7.2 The Companies Court
This court deals primarily with the compulsory liquidation of companies and other matters arising under the Insolvency Act 1986 and various Companies Acts.

2.7.3 The Patents Court
Deals with matters concerning intellectual property and appeals against the decisions of the Comptroller General of Patents.

2.7.4 Family Division (of the High Court)
The Family Division is concerned with actions relating to divorce; children, probate, and cases concerning medical treatment.

Probate Registries are located around the country and form part of the Family Division of the High Court. If probate is necessary after someone has died, a Probate Registrar will confirm the validity of the will (if any) and appoint the correct person (the executor) to administer the called a Grant of Representation allowing the lawful collection of the assets of the deceased for distribution according to law.

The Principal Registry has copies of all wills proved and grants issued since 1858, and can provide these documents for inspection or supply a permanent copy

Part of the workload of this Division

<table>
<thead>
<tr>
<th>Year</th>
<th>Divorce</th>
<th>Petitions</th>
<th>Children Act applications</th>
<th>Adoptions</th>
<th>Probate Grts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-2001</td>
<td>9,544</td>
<td></td>
<td>6,064</td>
<td>307</td>
<td>258,120</td>
</tr>
<tr>
<td>2001-2002</td>
<td>8,552</td>
<td></td>
<td>6,025</td>
<td>405</td>
<td>261,973</td>
</tr>
<tr>
<td>2002-2003</td>
<td>9,263</td>
<td></td>
<td>7,782</td>
<td>505</td>
<td>268,611</td>
</tr>
</tbody>
</table>

2.7.5 Queens Bench Division (of the High Court)
The Lord Chief Justice is President of the Queen’s Bench Division, and certain High Court Judges and Masters are assigned to it. Outside London, the work of the Queen’s Bench Division is administered in provincial offices known as district registries. In London, the work is administered in the Central Office at the Royal Courts of Justice.

Data on High Court trials in the Queen's Bench Division for 1,726 cases heard pre-CPR (February 1997-February 1999) and 784 cases post-CPR (November 1999-November 2001). Over the five year period represented in the figure above, cases related to personal injury and negligence tended to take longer than average; 1,291 days compared to 905 days for other, mostly debt related cases. Most of the extra time taken in personal injury and negligence cases was between issue and setting down/allocation; 1,038 days on average compared to 689 days for 'other' cases.

The average time between setting down/allocation and trial was 273 days for personal injury and negligence cases compared to 255 days for 'other' cases.

6.7 Average time from issue to trial was lower post-CPR, continuing a downward trend, 1,188 days post-CPR compared with 1,235 days pre-CPR. 35% of cases took less than 2 years to get from issue to trial post-CPR compared with 32% pre-CPR. The reduction in average time from issue to trial was more marked in non-negligence
Part of the workload of this Division

*Year Claims issued*

<table>
<thead>
<tr>
<th>Year</th>
<th>Claims issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-2000</td>
<td>6,596</td>
</tr>
<tr>
<td>2000-2001</td>
<td>5,541</td>
</tr>
<tr>
<td>2001-2002</td>
<td>4,758</td>
</tr>
<tr>
<td>2002-2003</td>
<td>4,375</td>
</tr>
</tbody>
</table>

2.7.6 *The Divisional Court*

Within England and Wales the concept of ‘administrative justice’ is controversial and its existence and form are not completely agreed upon. Usually this area is entangled within the Civil Justice system and this can be traced back to writers in the 19th century who felt that such a creation would bestow upon public officials and public bodies preferential legal treatment in contrast to the maxim that all should be treated equally before the law. Consequently no distinct and separate branch of administrative justice exists but administrative justice is primarily dealt with by the Divisional Court, tribunals and ombudsmen.

The supervisory jurisdiction (for Administrative law) 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. E.g. decisions of local authorities in the exercise of their duties to provide various welfare benefits and special education for children in need of such education; certain decisions of the immigration authorities and Immigration Appellate Authority; decisions of regulatory bodies; and, decisions relating to prisoners’ rights.

The Divisional, Admiralty, Commercial and the Technology and Construction Courts are all part of the Queen’s Bench Division. However, each undertakes specialised work and publishes its own Guide or is subject to its own Practice Directions. The Divisional Court is the heart of the Administrative Justice system and is where the fundamental principles of ‘Judicial Review’ – the review and possible declaration that a public official has acted beyond the law is determined. It is the reported decisions of this court and above that have developed the jurisprudence of judicial review. This court will also hear appeals by way of ‘case stated’ and habeas corpus.

2.7.8 *The Admiralty Court.*

2003 has seen a return to the wider jurisdiction of the Admiralty Court, with claims arising from collision, cargo damage, salvage, oil pollution, ship mortgages and limitation of liability. The flexibility and speed of the Admiralty Court in dealing with the arrest, release and sale of vessels has been enhanced by the revised form of the relevant rules and associated Practice Directions.

2.7.9 *The Commercial Court*

This court will deal with matters concerning banking and international credit along with contracts relating to ships and insurance.

2.7.10 *Technology and Construction Court*

This court deals with building and engineering disputes and computer litigation. It may also deal with valuation disputes and landlord and tenant matters such as dilapidations and with all

---

31 A.V.Darcy
32 This court will in the future be renamed as the ‘Administrative Court’
33 Habeaus Corpus = a writ requiring a person to be brought before a judge
those complicated and technical civil disputes which are not the province of some other specialist tribunal.

2.7.11 The Court of Protection
This court exercises judicial functions in respect of the property and the financial affairs of persons who are incapable because of mental disorder of managing and administering their own property and affairs.

2.8 Court of Appeal (Civil Division)

Appeals against the outcome of a hearing in the County Court or a High Court, are usually dealt with by the Civil Division of the Court of Appeal. Presided over by the Master of the Rolls. Witnesses are rarely heard in this court as decisions are based upon documentary evidence including transcripts from previous hearings and the submissions from the lawyers of the parties.

Part 52 of the CPR, implemented in May 2000, together with its supporting Practice Direction, refined the requirement for permission to appeal for nearly all cases. Permission to appeal is now only granted where the court considers that there is real prospect of success or where there is a compelling reason why the appeal should be heard. Overall there has been a considerable reduction in numbers of cases reaching the Court of Appeal. Permission to appeal, peaking in 1999/2000 at 2441, the number decreased in the last year (2001) to 2328. In addition there was a further reduction in the number of appeals filed to a total of 1319 for 2000/2001 - this represents the continuation of an established decline since 1996/1997 when 1787 appeals were filed. In September 1997 the figure of outstanding appeals was 1589 and in September 2001 the total was 832. Currently, there are over 240 statutory appeal provisions. Consideration of absorption of these within the CPR is underway.

Part of the workload of this court.

<table>
<thead>
<tr>
<th>Year</th>
<th>Apps filed</th>
<th>Apps disposed</th>
<th>Apps outstanding</th>
<th>App filed</th>
<th>App disp</th>
<th>Apps outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-1998</td>
<td>1,647</td>
<td>2,089</td>
<td>1,273</td>
<td>2,816</td>
<td>2,808</td>
<td>1,098</td>
</tr>
<tr>
<td>1998-1999</td>
<td>1,573</td>
<td>1,739</td>
<td>1,107</td>
<td>2,862</td>
<td>3,015</td>
<td>945</td>
</tr>
<tr>
<td>1999-2000</td>
<td>1,361</td>
<td>1,599</td>
<td>869</td>
<td>3,358</td>
<td>3,059</td>
<td>1,244</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1,395</td>
<td>1,434</td>
<td>831</td>
<td>3,041</td>
<td>3,460</td>
<td>824</td>
</tr>
<tr>
<td>2001-2002</td>
<td>1,270</td>
<td>1,404</td>
<td>699</td>
<td>3,180</td>
<td>3,131</td>
<td>870</td>
</tr>
<tr>
<td>2002-2003</td>
<td>1,254</td>
<td>1,365</td>
<td>591</td>
<td>3,130</td>
<td>3,117</td>
<td>858</td>
</tr>
</tbody>
</table>

These trends are as a direct result of the CPR which have ensured that only work of an appropriate weight now reaches the Court of Appeal. Additionally, during 2002 / 2003 this court arranged a management contract with CEDR (The Centre for Effective Dispute Resolution)

2.9 House of Lords (The Supreme Court of Appeal)

The highest domestic court in the United Kingdom is the Appellate Committee of the House of Lords (the House) on which the Lords of Appeal in Ordinary, the so-called Law Lords, sit. It is an idiosyncrasy of the British constitution that the final court of appeal sits technically as a committee of Parliament. However it is a court.
The ‘House’ is the final court of appeal for the whole of the United Kingdom civil cases and for England and Wales and Northern Ireland, criminal cases and has carried out this work for at least 600 years as part of the High Court of Parliament and will hear appeals on points of law, that have been certificated from the court appealed from, as being of general public importance.

Petitions for leave to appeal are heard by an Appeal Committee of three Lords of Appeal. If they grant leave or leave has been granted by the court below the appeal proceeds to the Appellate Committee of five Lords of Appeal for a full hearing.

The judicial work of the ‘House’ is now carried out by twelve salaried but independent Lords of Appeal in Ordinary and collectively they hear approximately 85 appeals a year. Five Law Lords usually sit to hear and appeal. Its decisions bind all inferior courts.

3. Unexpected Changes in caseloads and backlogs

The Court Service compiles statistics of output and would investigate any comparative inefficiency between courts but no actual targets relating to the number of cases to be disposed of appear to be set.

Where there are any backlogs the usual method used to deal with this is ask ‘part-time’ judges to sit, e.g. Deputy District Judges / Recorders (The role of both are explained post). The Lord Chancellor may recommend the appointment of additional numbers of ‘part-time’ judges should the need arise. Saturday sittings – emergency applications. E.g. an arrest following the breach of an injunction. The offender must be brought before a judge within 24. The Court Service will arrange for a Judge to attend the police station where the offender is being held or at a court by special arrangement. Additionally, the DCJ may also permit the DJ to hear in excess of their permanent remit where the parties to the litigation agree. However, DJ do not hear criminal cases.

4. Emerging Problems and Creative Solutions

It is proposed that The Head of Civil Justice will have overall responsibility for the civil justice system in England and Wales. In October 1998 the Lord Chancellor appointed a senior civil judge, known as the 'Designated Civil Judge' to each civil trial centre (30 in number). Their role is to provide leadership with particular responsibility for promoting an effective and consistent approach to case management. Designated Civil Judges work closely with the Group Manager and Diary managers to maximise available judicial resource to meet the respective demands of cases allocated to the three different tracks. They liaise closely with the Senior Presiding Judge and other senior supervising judges on the prioritisation of workload to ensure that the needs of civil work take equal precedence with those of family and crime.

---

34 There are proposals to further reform the ‘House’
35 Referred to as ‘Law lords’
36 The minimum number is 3, Appellate Jurisdiction Act 1876, S.5
37 Officially referred to as ‘Lords of Appeal in Ordinary’ indicating their salaried status
38 There are plans to abolish this title but currently …
39 An order of the court restraining behaviour
Money Claim On Line (MCOL) was officially launched in February 2002. It is the first in a range of electronic services for court users accessible via the Internet. MCOL is designed to be easy to use and has on-screen help at each stage. Individuals, solicitors, government departments and businesses can issue claims for fixed sums of money up to £100,000 and pay the court fees electronically with a credit or debit card. The system also allows a claimant to file an acknowledgement of service or defence, enter judgement by default or by admission, and apply for the issue of a warrant of execution if the judgement is not paid as ordered. Claimants can check the progress of their claims at any time of the day or night.

4.1 Magistrates and Crown courts

It is proposed to replace these courts by a unified Criminal Court with three Divisions. This will directly effect which cases are allocated to which courts. Firstly, the Crown Division with the same structure as now but with extended jurisdiction to hear not only all indictable matters (as now) but also the more serious triable ‘either way offences.’

Secondly the District Division presided over by a District Judge or Recorder and at least two magistrates’ with jurisdiction over those ‘either way’ offences of sufficient seriousness to merit up to two years custody. The current threshold is 6 months imprisonment on two separate counts to run consecutively (so 12 months). This restriction has recently been doubled to 12 months on two counts (so 24 months) under the Courts Act 2003.

Thirdly, the Magistrates Division. This ‘Division would allocate cases to the appropriate court on a ‘seriousness basis and hearings presided over by a District judge or magistrates with jurisdiction extended to cover all ‘summary only’ offences (as now) but in addition the less serious either way offences. This will of course remove or at least restrict the number of offences where there is a right to be tried by jury.

Disputes as to jurisdiction would be determined by a District judge following representations from both the prosecution and the defence. The defendant would not enjoy any right, as he does now, where his matter should be tried.

It is proposed that whilst plans are progressed and evaluated as to the implementation of these reforms then in this interim period defendants should lose their elective right to trial by jury in ‘either way’ cases. This has not been fully implemented within the Criminal Justice Act 2003

4.2 Civil Cases

More complex cases should be heard at trial centres equipped with the necessary resources including specialist judges. Courts should have access to the necessary technology to monitor the progress of litigation, and litigants should be able to communicate with the courts electronically and through video and telephone conferencing facilities.

The Court Service issued a consultation paper 'Modernising the Civil Courts' in January 2001. Over 100 replies were received and a report on the outcome of the consultation process was published in May 2002 entitled 'Modernising the Civil and Family Courts'. The report shows how Court Service think civil justice should be administered, what structures are needed and how services should be provided.
The proposed new model for Civil and Family justice aims to:

- increase the choices for people who need to use the courts;
- reduce social exclusion in the system of justice;
- improve the use of technology in the courts to enhance service.

- Primary Hearing Centres - 93 principal venues will be established for civil and family hearings.

- Local Hearing Venues - 52 full time and 130 part time local venues will improve access to hearings, particularly in rural areas, through the use of existing county courts, partnerships with magistrate’s courts and hired venues. This will result in a total of 275 hearing venues which represents an increase of 15% over current arrangements.

- Technology - A new case management computer system will be developed which will support electronic files, records and diaries; information about court hearings will be made available on the Internet.

- Business Centres - Centres will be established to carry out most of the administrative work, providing back-office support to hearing centres and dealing with all aspects of undefended cases. The centres will be the focus for all customer contact whether by letter, telephone, or e-mail beyond the current limited opening hours of 10.00am to 4.30pm offered by most courts.

- Electronic Service Delivery - Services will be provided electronically including via the internet, telephone, digital TV and video conferencing. The Money Claim Online service is an example of this which has already started.

- Field Based Enforcement - There will be a new structure for the county court bailiff service. It will be a field based organisation supported by regional offices and modern technology.

- Easy payment methods - Payments into court will be able to be made through banks and building societies and regular users will be able to use debit or credit cards.

4.3 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution can be undertaken at any time once a dispute has arisen and the pre-action protocols encourage the use of ADR before a claim is issued. The introduction of the Civil Procedure Rules raised the profile of ADR by putting a duty on the courts to encourage its use. In March 2001 the Government announced a major new initiative to promote ADR by issuing a pledge that all Government Departments and Agencies will consider and use ADR in all suitable cases wherever the other party accepts it.

CEDR (Centre for Effective Dispute Resolution) in their newsletter for Spring 2002 identify that for the year ending March 2002 there was a reduction of 26% in the number of commercial mediations over the previous year. This scale of reduction is also reported by other mediation providers. This appears to be evidence of a return to the steady growth trend that was distorted by the significant 141% increase in mediations in the first full year after the reforms were introduced.

A review of the ADR scheme in the Commercial Court and the Court of Appeal, Civil Division, discovered that during the 4 year period July 1996 to June 2000 and found 233 cases where an ADR order was made. It is clear that the use of ADR orders has grown since the in-

---

40 undertaken by Professor Hazel Genn. The report was published in the spring of 2002 under the title 'Court based ADR Initiatives for non-family civil disputes: the Commercial Court and the Court of Appeal'
troduction of the Civil Procedure Rules. During the first 3 years of the study period there were about 30 orders made annually but in the last 6 months 68 orders were made.

The case of *Dunnett v Railtrack plc (in administration)* [CA 22 Feb 2002] has been seen as a major endorsement as this was the first time that a successful party has been refused costs because they declined to mediate. The message to lawyers is clear, take mediation seriously or face the consequences.

*Shirayama Shokusan v Danovo Ltd.* [2003] EWHC Ch
December 5 2003, the court granted an order for mediation, which had been applied for by the defendant despite the resistance of the claimant them. The judge found that the case management powers conferred on the court by CPR Part 1.4 entitled the court to order ADR even against the wishes of one party.

4.4 Court of Appeal mediation Scheme

Established in 1996, is voluntary. Cases are not individually selected but, with certain exceptions, a standard letter of invitation is sent to parties involved in appeals. If both parties agree, the court arranges the mediation and mediators provide their services without charge.

In 2003 the Government made it clear that it was committed to ADR and was convinced of its benefits and mediation because of the part both played in improving access to justice, particularly through reducing the number of cases confronted by the delays and costs of the present system of litigation. The DCA have, therefore, been allocated a budget of £1.5 million with which to conduct pilot schemes that will operate in 40 courts around the country from April 2004.

The CPR clearly state their overriding objectives and impose a duty upon the court effectively and efficiently manage cases. Simplification of case management by the court by striking out issues or whole claims where there is no real prospect of success, control discovery, and apply sanctions. One of the functions of case management is to reduce the need for applications in the course of proceedings.

4.5 Costs

A number of initiatives have been developed in this area. The Civil Division of the Court of Appeal has further developed its very successful liaison with the Citizens Advice Bureau located within the Royal Courts of Justice and with other bodies providing services pro bono. A pilot scheme was announced which would enable most litigants in person, who obtain permission to appeal to the court, to be assisted with the preparation and be represented by a barrister, pro bono, at the hearing.

4.6 Proposals for reform of the Court of Appeal

This should be reconstructed for improved efficiency and appeals should be split into those that concern complex issues and those that do not. The same tests for appeal against conviction and sentence should be adopted. A single route of appeal from the Magistrates’ Division and above to the Court of Appeal in all criminal matters thereby abolishing the current system

---

41 Under Secretary at the Department for Constitutional Affairs, David Lammy MP.
whereby appeal is permitted from the Magistrates’ courts to the Crown or High Court and thereafter to the Court of Appeal.

Proposal for a new Supreme Court
Lord justice Auld undertook a review of the Criminal Courts in England and Wales. The remit of this review included "the practices and procedures of, and the rules of evidence applied by, the criminal courts at every level, with a view to ensuring that they deliver justice fairly, by streamlining all their processes, increasing their efficiency and strengthening the effectiveness of their relationships with others across the whole of the criminal justice.’ The ‘Auld Report was published in October 2001 and made 328 recommendations.

In June 2003 the Prime Minister’s Office announced the creation of a Department for Constitutional Affairs to incorporate most of the responsibilities of the former Lord Chancellors Department including the Lord Chancellor’s judicial role. At the same time the Government announced proposals for the creation of a new Supreme Court to replace the existing system of Law Lords operating as a Committee of the House of Lords and the creation of an independent Judicial Appointments Commission to appoint judges. These matters remain under consideration. Is it not It is inevitable that a Supreme Court will be much more expensive. and not independent of the Government?

5. Judicial Appointments (removals)

Law Lords are generally appointed from among the experienced judges of the Court of Appeal in England and Wales. They are appointed by The Queen on the recommendation of the Prime Minister, who receives advice from the Lord Chancellor.

5.1 Lords Justices of Appeal

The Lords Justices of Appeal are the ordinary judges of the Court of Appeal, which is subdivided into Civil and Criminal Divisions to deal respectively with appeals in civil and criminal cases. Lords Justices of Appeal are generally appointed from among the experienced judges of the High Court. They too are appointed by The Queen on the recommendation of the Prime Minister, who receives advice from the Lord Chancellor.

5.2 High Court Judges

High Court Judges are appointed from among the senior members of the legal profession or by promotion from the office of Circuit Judge. High Court Judges are appointed by The Queen on the recommendation of the Lord Chancellor. On appointment, High Court Judges are assigned to one of the three Divisions of the High Court.

High Court Judges with specific responsibilities
Under section 72 of the Courts and Legal Services Act 1990 the Lord Chief Justice, with the agreement of the Lord Chancellor, appoints a number of High Court Judges to serve for four years as a Presiding Judge of one of the six Circuits (or regions) of England and Wales.

Each Circuit has two Presiding Judges, except the South Eastern Circuit which has three, who have general responsibility for the judicial administration of the Circuits. The Presiding
Judges' work on the Circuits is co-ordinated on behalf of the Lord Chief Justice by the Senior Presiding Judge for England and Wales who is a Lord Justice of Appeal.

**Deputy High Court Judges**
The Lord Chancellor has power under section 9(4) of the Supreme Court Act 1981 to authorise persons qualified for appointment as High Court Judges to be Deputy (part-time) High Court Judges in one or more of the Divisions of the High Court. The Lord Chancellor considers those for appointment as a Deputy High Court Judge following nomination either by the Presiding Judges or after request from individual practitioners. Those authorised are added to an approved list of deputies who may be invited to sit in accordance with the needs of the Courts.

### 5.3 Retired Law Lords and Supreme Court Judges authorised under Section 9(1) of the Supreme Court Act 1981

The Lord Chancellor has power under section 9(1) of the Supreme Court Act 1981 to authorise those who have been Court of Appeal Judges or High Court Judges to sit in retirement on a part-time basis in the Court of Appeal, the High Court and the Crown Court. The authorisations of all of those currently on the approved list run until the date of an individual's 75th birthday.

**Court of Appeal Civil Division**
At the beginning of the year 2001/2002, 18 retired judges were authorised to sit in the Court of Appeal Civil Division.

**Court of Appeal Criminal Division**
At the beginning of the year 2001/2002, 13 retired judges were authorised to sit in the Court of Appeal Criminal Division. By the end of the year 2001/2002 two judges were removed and four retired judges were added to the list, making a total of 15 retired judges authorised to sit in the Court of Appeal Criminal Division.

### 5.4 Circuit Judges

The Queen appoints all Circuit Judges on the recommendation of the Lord Chancellor. Once appointed they are assigned to one of the six Circuits and may sit at any of the Crown Court centres and county courts (dealing respectively with criminal and civil/family cases) on that Circuit. Normally Circuit Judges can hear both criminal and civil cases, although some exercise specialist civil jurisdictions or deal wholly or mainly with criminal cases (e.g. at the Central Criminal Court).

Some Circuit Judges are specifically authorised to hear public and/or private law family cases. These relate to issues about the care and custody of children or divorce and related financial matters. Others sit on a more or less full-time basis in specialist courts and jurisdictions including Judges of the Central Criminal Court, dealing with serious criminal cases, and Chancery Circuit Judges, Mercantile Judges and Judges of the Technology and Construction Court, all of whom deal with the heavier and more complex and specialised cases arising within the civil jurisdiction.
Some Circuit Judges are authorised by the Lord Chancellor to hear High Court work, and others are approved by the Lord Chancellor to sit in the Criminal Division of the Court of Appeal.

**Circuit Judges with Specific Authorisations and Responsibilities**

Authorisations under Section 9(1) of the Supreme Court Act 1981.
The Lord Chancellor has the power under section 9(1) of the Supreme Court Act 1981 to authorise Circuit Judges to sit part-time in the High Court, either in London or elsewhere.

Authorisations under Section 9(2)(b) of the Supreme Court Act 1981
At the beginning of the year 2001/2002, 29 Circuit Judges were authorised to sit in the Court of Appeal Criminal Division.

**Designations to sit in proceedings under the Children Act 1989**
The Senior Judicial Appointments Division of Judicial Group is responsible for supporting the Lord Chancellor in the procedure for nominating judges to hear proceedings in the county courts under the Children Act 1989 involve both parents and a local authority. The Act provides for the different levels of judiciary within the county courts (that is Circuit Judges, Recorders, District Judges and Deputy District Judges) to deal with each category according to the complexity of the work. Circuit Judges have limited jurisdiction in proceedings under the Children Act unless specifically nominated (authorised) to hear a wider range of proceedings by the Lord Chancellor.

**Resident Judges**
The Lord Chancellor appoints Resident Judges for an initial period of four years on the recommendation of the Senior Presiding Judge and the Presiding Judges. Resident Judges are responsible for the management of judicial work at the Crown Court centre at which they sit.

**Designated Civil Judges**
The Lord Chancellor, on the recommendation of the Senior Presiding Judge, appoints Circuit Judges to sit as Designated Civil Judges. They are appointed initially for a period of four years. On behalf of the Senior Presiding Judge and the Presiding Judges they have responsibility for the judicial management of the full-time and part-time judges hearing civil work in their area.

**Designated Family Judges**
Designated Family Judges are appointed by the Lord Chancellor on the recommendation of the President of the Family Division and Family Division Liaison Judges. They serve initially for four years and sit at care centres (county courts at which public law Children Act cases are heard).

**Deputy Circuit Judges**
Deputy Circuit Judges are appointed by the Lord Chancellor from among the recently retired Circuit Judges who wish to sit part-time. There must be a court business need for them to sit and the Lord Chancellor will not consider those who have retired on health grounds. Those appointed are usually available at very short notice providing a valuable judicial resource.
5.5 Recorders

Appointments to Recordership are made by The Queen on the recommendation of the Lord Chancellor. It is a part-time judicial appointment open to most lawyers who fulfil the statutory requirement of a 10 year right of audience qualification in the Crown Court or county court. For the competition covered in this report applicants should normally be aged between 35 and 53. Appointments to Recordership are made following a competition. The final decision is then taken by the Lord Chancellor.

Recorders have limited jurisdiction in proceedings under the Children Act, unless specifically nominated (authorised) to hear a wider range of proceedings by the Lord Chancellor. They may be authorised to hear private law proceedings alone, or, following the introduction of the Family Proceedings (Allocation to Judiciary)(Amendment) Directions 1999, where they already have such jurisdiction in another judicial capacity, both private and public family law proceedings.

5.6 District Judges

The Lord Chancellor appoints District Judges. These Judges determine civil cases in the county courts. They are assigned, on appointment, to a particular Circuit and may sit at any of the county courts or District Registries on that Circuit. A District Registry is part of the High Court situated in various districts of England and Wales dealing with High Court family and civil business. District Registries are often co-located at county courts. The Lord Chancellor normally considers for appointment applicants who have been serving as a Deputy District Judge for at least two years, or who have completed 30 sittings in that role. Until recently only candidates who were aged between 40 and 60 were considered for appointment, but these age limits were applied flexibly (see also paragraph 2.15 regarding changes to age limits). All Deputy District Judges are notified personally when there is a District Judge competition and invited to request an application form if they want to apply. In determining the individual itinerary of judges, the Department strives to ensure that judges have no more than a one hour journey to their court.

Designations to sit in proceedings under the Children Act 1989

District Judges have limited jurisdiction in proceedings under the Children Act unless specifically nominated (authorised) to hear a wider range of proceedings by the Lord Chancellor. When nominated, they only have limited jurisdiction in public family law proceedings under the Children Act.

District Judges of the Principal Registry of the Family Division

District Judges at the Principal Registry of the Family Division (PRFD) in London deal with the whole range of family law cases including financial and property adjustment issues relating to the care and upbringing of children. The criteria for appointment and selection procedures followed for PRFD District Judges are similar to those for other District Judge appointments and competitions are held as and when vacancies arise.

Deputy District Judges

Service as a Deputy District Judge is a testing ground for subsequent appointment as a District Judge. Deputy District Judges deal with the types of cases which would otherwise be heard by a District Judge, although they would not routinely deal with the most complex matters. However, they are not authorised to undertake certain types of work, such as Public Law Children Act cases.
Deputy District Judges of the Principal Registry of the Family Division
Deputy District Judges of the Principal Registry of the Family Division (PRFD) have broadly the same jurisdiction as PRFD District Judges but, in particular, they are not allocated public family law proceedings. The criteria for appointment and the advertisement and selection procedures followed for PRFD Deputy District Judges are similar to those for other Deputy District Judge appointments and competitions are held as and when vacancies arise.

Retired District Judges sitting as Deputies
Between April 2001 and the end of March 2002, 12 District Judges sitting in retirement as part-time Deputy District Judges were re-appointed for a further 1 year term. In addition 5 District Judges who retired during this period were appointed as Deputies.

District Judges (Magistrates' Courts)
District Judges (Magistrates' Courts) are appointed by The Queen on the recommendation of the Lord Chancellor. They are full-time members of the judiciary and deal with the broad range of business that comes before the magistrates’ courts but in particular may be expected to hear the lengthier and more complex criminal matters coming before those courts. They are entitled to sit alone, but they may on occasions sit with lay magistrates. They based at particular magistrates' courts but have a national jurisdiction throughout England and Wales. As at 1 April 2002 there were 105 District Judges (Magistrates' Courts) in post. The head of the national bench is called the Senior District Judge (Chief Magistrate). She is responsible for the deployment of the District Judges (Magistrates' Courts), on behalf of the Lord Chancellor, to the courts in England and Wales where they are needed.

The Lord Chancellor will normally only consider for appointment as full-time District Judges (Magistrates' Courts) applicants who have been sitting as Deputy District Judges (Magistrates' Courts) (i.e. part-time) for at least two years or who have completed 30 sittings in that capacity.

Deputy District Judges (Magistrates' Courts)
Deputy District Judges (Magistrates' Courts) are appointed by the Lord Chancellor. They are part-time members of the judiciary but they nevertheless undertake the full range of business, in the adult court only, that normally falls to full-time District Judges (Magistrates' Courts) and may do so either alone or sitting with lay magistrates. All applicants must hold a seven year right of audience qualification for all proceedings in any part of the Supreme Court or for all proceedings in county courts or magistrates' courts. The jurisdiction of Deputy District Judges (Magistrates' Courts) mirrors that of the full-time District Judges (Magistrates' Courts). They can sit anywhere in England and Wales and are expected to sit for a minimum of 15 days and a maximum of 50 days each year. In common with other part-time appointments they are now appointed for periods of five years at a time. As at 1 April 2002 there were 156 Deputy District Judges (Magistrates' Courts) in England and Wales.

5.7 Masters and Registrars of the Supreme Court
Masters and Registrars of the Supreme Court are appointed by the Lord Chancellor and are generally responsible for exercising the jurisdiction of the High Court where, by statute or under Rules of Court, that jurisdiction does not fall to be exercised by a High Court Judge. They accordingly deal with civil cases which are proceeding in one of the Divisions of the High Court i.e. the Queen's Bench Division which deals with most types of civil law, including admiralty and commercial matters and defamation, or the Chancery Division which deals
with issues such as property matters, banking and financial matters, bankruptcy and copyright law. Queen's Bench and Chancery Masters, and Bankruptcy Registrars deal with most of the interim (preliminary or intermediate) work arising within their areas of jurisdiction, and in certain circumstances may also try cases. Taxing Masters (now known generally as Costs Judges) have power to "tax" (i.e. assess and determine) the costs and bills of lawyers in any cases in the Supreme Court (Court of Appeal and High Court) and to hear appeals against decisions made by determining officers about the size of legal bills in the Crown Court. All applicants must hold a seven year right of audience qualification for all proceedings in any part of the Supreme Court or for all proceedings in county courts or magistrates' courts. Masters and Registrars of the Supreme Court are normally drawn from the ranks of Deputy Masters and Deputy Registrars of the Supreme Court.

5.8 Tribunals

There is a wide range of tribunals comprising large numbers of both full-time and part-time office holders and the procedures for appointing their Presidents, Chairmen and Members reflect that diversity, in part as a result of their historical creation and development. The geographical jurisdiction of tribunals varies. In some cases it extends to Scotland and/or Northern Ireland as well as England and Wales. Most tribunal appointments are held on a part-time basis, but some of the larger tribunals have full-time Presidents and Chairmen. The Chief Immigration Adjudicator, the President of the Appeals Tribunal and the Chief Social Security Commissioner are currently Circuit Judges seconded from their duties on the Circuit Bench to serve as full-time head of the tribunal in question. High Court Judges serve as Presidents of the Employment Appeal Tribunal and Immigration Appeal Tribunal. Other full-time office holders are generally appointed from the ranks of the part-time office holders in the same jurisdiction. Chairmen are usually, but not exclusively, legally qualified; in some tribunals there are part-time medical members or other experts (e.g. surveyor members of the Rent Assessment Panel); and some have part-time lay members who do not have to be specialists in any particular discipline, but are chosen from a wide variety of backgrounds.

The statutory qualification for each tribunal varies but, in general, legal members are expected to hold a seven year right of audience qualification for all proceedings in any part of the Supreme Court or for all proceedings in county courts or magistrates' courts. For some appointments they may also be an advocate or solicitor in Scotland of at least seven years' standing, or a member of the Bar of Northern Ireland of at least seven years. Most part-time office holders are appointed for a five year period, which is renewed automatically, unless grounds are shown for non-renewal, subject to the statutory retirement age.

5.9 Removal of judges be removed from office?

Since the Act of Settlement of 1701, the Heads of Division, Law Lords, Lords Justices of Appeal and High Court Judges can only be removed by the Queen after an address from both Houses of Parliament. That has never happened in the case of an English judge. Circuit Judges and other judicial officers can be removed by the Secretary of State and the Lord Chancellor if necessary for incapacity or misbehaviour.