A Report by

JUSTICE

THE JUDICIARY

in England and Wales

Chairman of Committee

Robert Stevens

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1992

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JUSTICE

British Section of the International Commission of Jurists

95a Chancery Lane, London WC2A 1DT

JUSTICE

Extracts from the Constitution

PREAMBLE

Whereas JUSTICE was formed through a common endeavour of lawyers representing the three main political parties to uphold the principles of justice and the right to a fair trial, it is hereby agreed and declared by us, the Founder Members of the Council, that we will faithfully pursue the objects set out in the Constitution of the Society without regard to consideration of party or creed or the political character of governments whose actions may be under review.

We further declare it to be our intention that a fair representation of the main political parties be maintained on the Council in perpetuity and we enjoin our successors and all members of the Society to accept and fulfil this aim.

OBJECTS

The objects of JUSTICE, as set out in the Constitution, are:

to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible; in particular to assist in the maintenance of the highest standards of the administration of justice and in the preservation of the fundamental liberties of the individual;

to assist the International Commission of Jurists as and when requested in giving help to peoples to whom the Rule of Law is denied and in giving advice and encouragement to those who are seeking to secure the fundamental liberties of the individual;

to keep under review all aspects of the Rule of Law and to publish such material as will be of assistance to lawyers in strengthening it;

to co-operate with any national or international body which pursues the aforementioned objects.

This report has been endorsed and approved for publication by the Council of JUSTICE

COMMITTEE ON THE JUDICIARY
TERMS OF REFERENCE

'To inquire into the judiciary with special reference to the appointment and consultation process; training, promotion, and retirement, the use of deputy and retired judges; the concept of a career judiciary; extra judicial appearances and statements, the concept of a Judicial Commission, the independence of the Judiciary and professional and public confidence in it.'

FOREWORD

This is the second Report which JUSTICE has commissioned on the judiciary. The first Report, published in 1972, caused great controversy within the Council of JUSTICE and was eventually published as a Report of the sub-committee which prepared it, without the endorsement of the Council which JUSTICE publications usually carry.

Looking back from twenty years on, it is hard to see what the fuss was about. Some of the main proposals in the 1972 Report – such as making solicitors eligible for appointment to the Circuit Bench, and setting up an institution for judicial training – have been successfully adopted. Other proposals, though not yet adopted, are attracting a growing body of support. Some of them reappear in this Report.

The present Report contains a number of proposals which may be regarded as controversial. Inevitably, not all members of Council agree on every individual recommendation. But on this occasion the Council firmly endorses the general thrust of the Report. In particular, we wish to make it clear that what is likely to be seen as the most important proposal – the establishment of a Judicial Commission with the responsibility given to it in the Report – is supported in principle by a large majority of the members of the Council.

The Council is most grateful to the Committee for its work on the Report and particularly to Professor Stevens himself. We are pleased to be able to authorise its publication as a Report of JUSTICE.

Lord Alexander of Weedon QC
Chairman of the Council

Sir William Goodhart QC
Chairman of the Executive Committee

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1. PROLOGUE

The Committee on the Judiciary was established by the Council of Justice in the Summer of 1991. We met regularly and extensively. We were eventually able to agree on a Report in August 1992. Although there were some areas, where, even as we signed, some members continued to have concerns, the thrust of the Report is unanimous and reflects the common view of the Committee.

We are conscious of the Report of a Sub-Committee of Justice chaired by Sir Peter Webster, entitled *The Judiciary*, and published in 1972. We have reviewed this Report, and admired its tone and contents. In retrospect it appears both moderate and cautious. It has had a considerable impact on the concept of the judiciary over the past twenty years. We should be content to see the value of our Report judged over a similar extended period.

We are not a governmental Commission or Committee, mandated to come up with a series of detailed recommendations. We are a predominantly legal group of citizens, differing in our political and professional views, invited by Justice to articulate our perceptions on certain aspects of the English judiciary. We have tried to write for both a legal and a non-legal audience. In this spirit we have been at greater pains to reconsider fundamental approaches and open up debate on them rather than to present detailed suggestions. In practice, many of the details would have to be worked out by the Judicial Commission we propose. What is remarkable is the degree of unanimity we achieved in our fundamental approach.[1]

In this Report we attempt to uphold what we see as the strengths of the English judiciary. The English trial judge is noted for technical competence. The elegance in oral and written style is impressive. English appellate judges have a reputation for legal science and learning which is respected by informed observers in other common law countries. Court of Appeal and House of Lords' decisions are still regarded as highly persuasive precedents by judges and lawyers in independent commonwealth countries, some of which have chosen to retain the Privy Council (made up primarily of British judges) as their final court of appeal. Although there have been much-publicised occasions when individual judges have shown themselves to be out of touch with contemporary social and moral attitudes, English judges at all levels have a enviable record for personal integrity. These strengths – of legal learning and incorruptibility – are fundamental and they are the strengths which we seek to support and build upon in this report.

In this Report we also dwell – inevitably at length – on the weakness of the current system. In order to protect what is excellent we believe that there needs to be greater emphasis on the professional role of the judge, a greater openness in appointment, appointments from a broader range of lawyers, a somewhat demystified bench,[2] a more diverse bench, a younger and more flexible judiciary and one chosen for, and better trained in, the skills of judging. There also needs to be, in what is inevitably seen by the citizen as a public service, a more effective machinery for dealing with complaints about the judiciary.

In order to achieve these goals we call for significant changes in the openness of the judiciary. We also call for a new independent agency, the Judicial Commission, to supervise appointments, training, complaints and careers. The Commission would improve the quality of justice by a more professional selection of judges from a wider pool of candidates on the basis of their judicial skills rather than predominantly on their quality as advocates. The Commission would maintain and raise standards by improving the arrangements for training, career development and support.

The nineteenth century provisions for the administration of justice, of which the judges are a part, have come under increasing strain, despite extensive amendment by the Courts Act, 1971, the Supreme Court Act, 1981 and a series of Administration of Justice Acts, culminating in the Courts and Legal Services Act, 1990. (The current arrangements are set out in *Appendix 1*). Steps taken to accommodate increased and changed workloads within the structure have left important unfinished business. Failure to complete it in our view undermines the administration of justice. (See *Appendix 2*). The unfinished business comprises appropriate arrangements for selecting, training and deploying judges, as well as the completion of the move to a hierarchy of trial judges, hearing specialised lists.

Appropriate arrangements for selecting, training and deploying judges are critical to the quality of justice under any arrangements. They are largely within our terms of reference – the deployment of the judiciary straddles them. A few matters are outside our terms of reference,[3] but impinge upon them to the extent that satisfactory arrangements for the judiciary are impossible without such changes. We have therefore suggested that consideration be given to the possibility of something like a 'Courts Commission' to take care of the deployment issues outside our terms of reference, and to complete the move to a hierarchy of trial judges rather than a hierarchy of courts. (We note parenthetically that both a Judicial Commission and a Courts Commission would fit elegantly into the recent Waldegrave proposals for administrative agencies.)

1992 is a good year to be producing a Report about the judiciary. Over the last few decades, the greater involvement of judges in the judicial review of administrative decisions, in labour law and monopolies legislation, their involvement in non-judicial committees and commissions of every kind, and in the supervision of the security services, have thrust the judges and the judicial office far more into the limelight. Some of the publicity has been unfavourable[4] particularly that arising from recent cases in which justice has been proved to have miscarried. Some blame the judges for this,[5] although judges can hardly be held responsible for the lack of integrity of policemen, the unfairness of prosecutors, the dissemblings of Home Office scientists and the biases of jurors. All these factors have directly influenced convictions which have belatedly been recognised as wrongful. In an adversarial system, trial judges are referees not participants. Some judges may be open to criticism in particular cases for refereeing naively (for example, by suggesting to juries that allegations of police misconduct are difficult to credit) but the attitude of some in a previous generation of judges is not, in our view, shared by the great majority of those who presently hold that office. The great challenge for appellate judges in the future is to build into the criminal law procedural safeguards against wrongful convictions, and the challenge for future trial judges is to be ever more vigilant in understanding and applying those safeguards.[6]

2. THE INDEPENDENCE OF THE JUDICIARY

Central to our discussion is judicial independence. In turn, judicial independence is fundamental to justice. The position is nowhere better stated than in Article 6 of the European Convention on Human Rights: 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. Judicial independence requires that judges be protected from governmental and other pressures in order that they may try cases fairly and impartially.

There are inevitably tensions within the concept of judicial independence. The litigant (or accused) sees the judge as a provider of a public service who should be impartial, fair, courteous and competent (and, if the Crown is involved, be independent of the Government). Constitutional lawyers, looking from the other end of the telescope, see different issues. Primarily concerned with appeal courts, their interest is in the judges as law-makers or at least balancers of interests, with the bench as an independent force in the Constitution. While we have sought to cover both aspects of this independence of the judiciary, our concerns have been primarily with the judges as providers of a public service, since we believe that is where, for the public at large, the public interest chiefly lies. We are, of course, conscious that, in the long run, the constitutional aspects are crucial and we endeavour to open up these issues in Chapter 7.

In this context it is clear that Judicial independence is not absolute independence. Judicial independence has never justified substandard justice nor, for instance, the proposition that judges may sit when and where they please to try whatever cases they please in whatever manner they choose. Judicial independence is constrained by the demands of good judicial administration, for which someone or some body must be accountable to Parliament. In the English Constitution ultimate sovereignty rests with Parliament.

In the rhetoric of the political marketplace, the tendency has been to perceive judicial independence in terms of the doctrine of the separation of powers. This has produced a reluctance to address the question of the balance between judicial independence and judicial administration for fear of offending against the doctrine of independence. For example the court structure was significantly reformed in the 1870s, but the judges were not judged by the rigorous standards of, for example, the Northcote-Trevelyan reforms in the civil service.

The issue within the British Constitution is probably better approached in terms of the independence of individual judges rather than through the doctrine of the separation of powers. The Act of Settlement, 1700, while it confirmed the independence of individual judges, made it clear that the judiciary was subject to the sovereignty of Parliament.[7] For England there was to be no written Constitution or fundamental laws to enforce. In the nineteenth century, Dicey, still today the most influential force underlying the spirit of the British Constitution, confirmed the role of the judges as an interstitial one within the constitution. Within this same peculiarly English concept of the separation of powers, judicial independence has emphasized the independence of individual judges. Such independence emphasises freedom from governmental pressures, as well as economic independence to ensure impartiality. It is appreciably different from the concept of the independence of the judiciary collectively, as a co-ordinate branch of government under the constitution, as that concept has been developed in some other common law countries.

As we noted, judicial independence must also be approached in terms of the fact that the courts provide an essential public and social service. The government in the *Next Steps Initiative* has announced: '*Next Steps* offers a prize to all future governments: an effective and adaptable civil service, with all its traditional values of propriety and impartiality intact but better attuned to deliver the high quality public services for which the citizen increasingly looks.' (Cm 1761, 1991.) We see parallels with the judiciary. Is there anything in the concept of the independence of individual judges that impedes this?

We believe that the question is one of means rather than of ends. It depends on how the goal is reached, on the machinery for reconciling the independence of individual judges with the demands of good judicial administration. During the court reforms of the 1860s and 1870s the judges rejected the idea of a Ministry of Justice based on the Home Office. They felt that this would be inconsistent with their independence. A solution was found in handing administrative responsibility for the judges to the Lord Chancellor, who was both judge and minister. The complexity of judicial administration and the rapid growth of the Judiciary over the last 120 years have made it difficult to place responsibility in any one individual, even with the assistance of an executive department. Despite our respect for the Lord Chancellor's Department we believe that the arrangements for judicial appointments – and related issues – are inappropriate for control by a traditional civil service department. Nor do we believe that the answer lies in appointment by a Ministry of Justice, nor in the Lord Chancellor abdicating his responsibilities in favour of the judiciary. We recommend an independent commission comprising lay persons, lawyers and judges as a means of providing independent support for the Lord Chancellor in what is an extremely onerous task – maintaining the strength and independence of the judiciary. It is in this context that we turn to our examination of the current arrangements for the appointment, training, remuneration, sanctioning and retirement of the judiciary.

3. THE JUDGES: THE PRESENT SYSTEM

With our concerns about the concept of judicial independence stated, we turn first to the issue of appointments. As in other aspects of the judiciary, here too there have been remarkable changes.

i. Appointments

Fifty years ago, with a Bar of some 1500, no more than 40 judges in the Supreme Court and some 60 in the County Courts, the Lord Chancellor was personally involved in choosing judges, as he was personally involved in choosing QCs. Sometimes he consulted senior judges and sometimes a powerful Permanent Secretary to the Lord Chancellor, like Lord Schuster, had considerable influence. With the end of the Second World War, Lord Chancellor Jowitt extended the process of consultation with senior judges, partly to allay any hint that he was appointing Labour sympathizers to the bench. We might add that by this time the demise of political appointments to the bench had led to an overwhelming interest in success in practice, especially as an advocate, as the ideal quality for appointment to the bench.

The big change in the method of selecting judges came with the Courts Act of 1971. The Act was based on the Royal Commission on Assizes and Quarter Sessions, Cmnd 4913 (The *Beeching Commission*), which had been strong on the need to make the criminal courts run on time, but had seriously underestimated the size and weight of the workload of the Crown Court which it recommended. In particular it failed to foresee the large number of those charged with offences triable in magistrates courts who would elect trial by jury in the Crown Court, as well as the number of persons who were charged with less serious offences who would be committed by magistrates. The result was not only an imbalance between quality of case and quality of judge, but also a continuous and overriding need to appoint more judges to the Crown Court to get through the cases and keep down waiting times. This increase in work and growing workloads elsewhere led to a more than fourfold increase in the number of judges between 1970 and 1992.

An increase of this order required major reforms. These were primarily undertaken by Sir Derek Oulton, the Secretary of the Beeching Commission who, as head of the Judicial Appointments Division within the Lord Chancellor's Department, was called upon to produce the judge-power needed to meet the increasing workloads particularly in the Crown Court. While these reforms were in many ways commendable, they were essentially the

adaptation of a system which had been developed to choose 100 judges from a bar of 1500 to what rapidly became some 2000[8] judges frm a legal profession (since solicitors became eligible for some judicial appointments) of 60,000.

Building on a system which had its genesis in the Schuster period, the Department established a more elaborate system of records on barristers (and where appropriate solicitors) in which were recorded comments by judges and senior lawyers. Together with regular pilgrimages around the circuits and consultations with presiding judges and senior judges on circuit, this highly confidential system became the basis of appointment as Assistant Recorder (538, including those in training), Recorder (786) and Circuit Judge (467), as well as 124 full-time and 2470 part-time appointments to tribunals.[9] *A fortiori*, it became the method for appointing the higher judiciary.

So far as the judiciary was concerned, the system gave special weight to the four heads of division: the Lord Chief Justice, the Master of the Rolls, the Vice-Chancellor and the President of the Family Division. If any of these persons opposed a senior appointment, it was most unlikely to go through. The same was true, with respect to appointment as Circuit Judge or Recorder, if the candidate had failed to satisfy the Presiding Judge on Circuit. It is not entirely fanciful to say that successive Chancellors have allowed senior judges to play a decisive role in senior appointments, while civil servants play a decisive role in inferior judicial appointments.

In an effort to make the process less opaque, the Lord Chancellor's Department has, in recent years, published a document entitled *Judicial Appointments: the Lord Chancellor's Policies and Procedures*. The appointment process is described at some length, and the qualities looked for were described in the most recent edition in 1990 as "professional ability, experience, standing, integrity, a sound temperament, and the physical ability to carry out the duties of the post". The document also gives details of the work of the Judicial Appointments Group. To understand the process fully, we were greatly helped by meetings with Thomas Legg, the Permanent Secretary to the Lord Chancellor, and John Heritage, the then Head of the Judicial Appointments Group. To make certain we had understood qualifications and procedures absolutely correctly, we then drafted our own statement, which was reviewed for accuracy by the Lord Chancellor's Department. (This appears as *Appendix 3*.)

ii. Training

The provision of judicial training is a relatively new development. It was not part of the nineteenth century arrangements. The first steps were taken in respect of the criminal work. In 1963 the then Chief Justice, Lord Parker, presided over a one day sentencing conference. This was followed by regular sentencing conferences. Their duration was extended to a week in 1968 and four years later they became residential courses. In 1974 an official working party under Lord Bridge was appointed to review the system. Its report[10]

recommended the establishment of a programme and the creation of an administrative framework for judicial studies. As a result two types of course were developed. First, introductory seminars for new judges appointed to the Crown Court and second, refresher courses (every five years), for experienced Circuit Judges and Recorders sitting in the Crown Court. The former were reinforced by a period of 5 to 10 days sitting with an experienced judge and visits to penal establishments.

The administrative structure of the Judicial Studies Board differed from that recommended in the Bridge Report. The Report had proposed a controlling board, a small semi-permanent staff and an institutional base to which the staff would be attached without coming under its control. Instead there was a Board but no attachment to an academic base. The chairman was a High Court Judge and members included full and part-time judges and academics. Seminars were provided by members and others invited by the Board. Administrative support was provided by the Lord Chancellor's Department. The Board was only concerned with the criminal law. Its work extended from seminars and sentencing exercises to penological issues and the conduct of criminal trials. It has also published a Bulletin. As early as 1964 some training had been provided for magistrates indirectly through a National Advisory Council, replaced by the Lord Chancellor's Advisory Committee on the Training of Magistrates in 1974. In 1985 the two bodies were brought together in a new Judicial Studies Board to cover the training of the judiciary in civil, family and criminal business and the supervision of the training of magistrates and legal chairmen and members of tribunals. (For further details see *Appendix 4*.)

iii. Performance: Standards and Sanctions

There is little structure designed to maintain standards or to provide sanctions for the behaviour of the judiciary. There are at least two reasons for this. First has been a reluctance to appear to interfere with the independence of the judges; and second has been the difficulty of providing such machinery. Thus performance and discipline have primarily been a matter for the Lord Chancellor and the senior judiciary. The Chancellor is supported by an executive department. The senior judiciary have no formal machinery for taking action in this important area. Moreover they must be kept in reserve to consider any proceedings for Judicial review brought by a dissatisfied judge. In terms of complaints and termination, there has always been a significant difference in how these matters were handled. Part-time judges, Recorders and Assistant Recorders are simply not re-appointed, normally without explanation. Deputy Judges are appointed on an *ad hoc* basis and therefore have no necessary expectation of re-appointment as Deputies.

For the full-time judges, there has been a difference between the Circuit judges and the High Court. The Circuit judges have been reprimanded in a relatively public manner. While the Lord Chancellor's Office papers record that High

Court judges have been reprimanded on issues as divergent as outspoken views on the Amritsar Massacre (Mr. Justice McCardie) and nuclear disarmament (Mr. Justice Lloyd-Jacob), such reprimands have been administered privately and frequently ignored. Tenure has its impact. High Court Judges are effectively non-dismissable under the Act of Settlement (1700). Circuit Judges may be dismissed by the Lord Chancellor for misbehaviour and have no constitutional protection beyond proceedings for judicial review.[11] There is, however, still no formal complaint body, to which citizens aggrieved by the behaviour of the judges may appeal. MPs are, in practice, prevented from criticising judges;[12] thus such remedy as there is is by complaint to the Lord Chancellor's Department.

iv. Remuneration and Pensions

a. *Salaries*

Salaries have always been a sensitive issue. Until 1825, High Court judges were paid – handsomely – by a modest salary, generous fees and the sale of offices. In that year their salaries were set at the then enormous figure of £5,500 reduced to £5,000 in 1832.[13] When the County Court was established in 1846, judicial salaries were set at £1,200. In 1878 a House of Commons Select Committee recommended an increase to £1,500, eventually agreed to in 1938. High Court salaries stayed at £5,000 until 1954 when they were raised to £8,000.

In 1957 the Judicial Offices (Salaries and Pensions) Act increased the salaries of County Court judges (since 1971 Circuit judges) to £3750 and conferred power on the Lord Chancellor to increase them by statutory instrument, subject to an affirmative resolution by both Houses of Parliament. This was a significant development. It led in practice to the negotiation of salaries being closely related to those of the higher civil service, which was based on the work of the Civil Service Pay Research Unit. The result was more frequent increases in salary. The arrangements for High Court judges were later changed in a similar way. The Judges Remuneration Act 1965, which increased their salaries to £10,000, also provided for their salaries to be further increased by Order in Council subject to an affirmative resolution of both Houses of Parliament.

In 1971 the Courts Act introduced Circuit judges and provided that their remuneration was to be "such salary as may be determined by the Lord Chancellor with the consent of the Minister for the Civil Service", i.e. by the government without parliamentary intervention. Similar provision was made for High Court Judges and above in the Administration of Justice Act, 1973, (now the Supreme Court Act 1981) with the result that judicial salaries are now fixed by the government of the day in the light of recommendations contained in the annual reports of the Review Body on Top Salaries. Parliament is not involved.[14]

The current salary of a High Court Judge is £84,250 (comparable to a Permanent Secretary or a General), that of a Circuit judge £59,900.[15] (The average net earnings of persons appointed to the High Court bench in 1990 for the preceding three years in practice was £211,300; for those appointed to the Circuit bench £75,700.). The salary of a District Judge and Stipendiary Magistrate is £49,100. Recorders are paid at a rate of £294, Assistant Recorders of £230 and Deputy District Judges £207 *per diem*.

b. *Pensions*
The arrangements for judicial pensions are currently the subject of change. Broadly speaking the present position is that High Court Judges receive a non-contributory pension on retirement, that is to say on completion of 15 years' service, or after attaining the age of 70, or at any time for reasons of ill health. After 15 years the pension is 50 per cent of salary. It is fully index linked. There is also a tax-free bonus of two years' salary. Broadly similar arrangements exist for Circuit Judges. Changes in the arrangements for judicial pensions were proposed in a consultative document issued in December 1990;[16] and were largely incorporated in the Judicial Pensions and Retirement Bill, presented to Parliament in June 1992. A major provision called for a 20-year period to qualify for the full pension.

c. *Conditions of Service Generally: Career Development, Deployment and Support.*
No formal arrangements have ever been made for career development and the deployment of the judiciary. These matters are dealt with partly through the informal arrangements for judicial administration set out in *Appendix 1, Diagram 16* and partly by the Lord Chancellor, the heads of Divisions, and the Judicial Appointments Group in the Lord Chancellor's Department. In terms of support, Lords Justices and High Court Judges are aided by clerks who provide secretarial and administrative back up. Judges have little in the way of help with legal research. In London, they have access to the excellent facilities of the Supreme Court library, but the position on circuit and the facilities for Circuit Judges are more limited.

4. OUR AREAS OF CONCERN

In recent decades great strides have been taken in improving the administration of justice, mainly through the passage and implementation of the Courts Act 1971, the Supreme Court Act 1981, the Children Act 1989, and the Courts and Legal Services Act 1990. In addition, the appointments system has been reorganised and the Judicial Studies Board established.

There remain, however, areas of concern. These stem mainly from unfinished business. We list them in this chapter, suggest solutions in the next chapter and outline the kind of Judicial Commission that we believe is needed to implement those suggested changes in a further chapter.

i. Judicial Appointments

We agreed on the following areas of concern:

a. *The lack of formal and generally accepted appointments procedures.* We are especially concerned that the absence of job descriptions, or specifications of the qualities needed in a judge, means that no candidate is evaluated for his or her skills in hearing particular types of cases. Judges are currently appointed to particular courts, but at each level the courts decide a mixture of cases, varying in nature and quality. It is important to appoint judges for the qualities and characteristics which suit the kind of cases they will try. Clear articulation of the work to be done and the nature of the people best suited to do it is therefore the prerequisite of an effective structure for appointments, training and pay, as well as for the development of performance standards.

b. *The absence of openness, lay (i.e. non-lawyer) involvement and public accountability in the appointment process.* Judges play a vital role in society, perform a significant role in the Constitution and provide an essential public service. In these circumstances we believe it important that the process be as open as is consistent with confidentiality. Lay persons should be significantly involved. Legal input should come from all sectors of the legal profession and the involvement of existing members of the judiciary should be limited.

c. *Failure to identify and set out the range of qualities required for judging as opposed to advocacy.* We are concerned that undue emphasis is given to performance as an advocate and to standing in the litigating side of the profession.

It is true that both judges and advocates must be able to grasp the essentials of a case quickly and have the mental toughness to deal with difficult parties and to withstand the passions that litigation arouses. Equally, advocacy gives a grounding in court procedures essential to the judge.

Procedures can, however, be learned in other ways. The thrust of the advocate's job is in analysis of a case for the purpose of deploying emphasis and persuasion to present the case at its best. Beyond that, he or she has no business in judging it or the client. Judges must decide where the merit lies between warring parties and make judgments on conflicting facts. The best drama producers may not be the best critics; the best players do not necessarily become the best referees. In particular the strong combative or competitive streak present in many successful advocates is out of place on the Bench. Advocates without these qualities (and possibly with smaller practices as a result) may make better judges. Thus we regard as misconceived the argument that judges of the higher courts should be drawn exclusively from the ranks of the most successful advocates.

d. *The absence of public advertisements for judicial posts.* Although there is a requirement that persons must apply for silk and the lower judicial posts, senior judicial appointments are by invitation only. The Lord Chancellor's Department has in the past advertised for candidates for the magistracy, for District Judges and for members of Tribunals. Advertisements would encourage a broader pool and give greater confidence to the public.

e. *The extent to which the present system is dominated by the senior Judiciary.* This is at its worst in respect of the High Court bench, for which there is no advertisement, no job description, no interview and also where four senior judges have a virtual power of veto. It is true, however, at all levels of appointment. Selection relies largely on the views of those in post, and there has proved to be a risk of bias towards self-replication.

f. *The collection of data about members of the bar (and now solicitors) based on unsolicited views or on comments in response to unstructured questions.* Again, this gives undue weight to the current judges. Under the present system of gathering information, anecdote and personal bias are inevitable. This is unacceptable in a modern legal system.

g. *The absence of formal measures of performance for those in training or in part-time or full-time judicial posts.* If appointment to permanent positions depends on performance in post (e.g, Recorder or Assistant Recorder), structured procedures for measuring performance are essential, even while protecting judicial independence. There are

obvious problems. Rigid performance indicators can be counter-productive. On the other hand there have been considerable advances in the assessment of top people's performance and the task is by no means insuperable. Such developments should be one of the tasks of the Judicial Commission.

h. *Undue emphasis on "on the job" training whether as an advocate or judge, and an insufficient amount of formalised pre-appointment training.*

i. *The widely-held view of the dangers of remoteness on the part of the judges.* While this generation of judges is undoubtedly more open and in touch than earlier generations, the perception on the part of a significant segment of the public is still one of remoteness, well beyond the distance needed to ensure decorum.

j. *The under-representation of women and ethnic minorities.* As *Appendix 6* shows, the judiciary is dominated by white males. There is no woman among the Law Lords, only one among 27 Lords Justices, three out of 83 High Court Judges and only 22 in 467 Circuit Judges. Ethnic minorities fare even worse, with three Circuit Judges being their only representation on the full-time bench.

The historical reason for this – namely that white males overwhelmingly dominate the profession at the levels at which judicial appointments are made – is ceasing to be valid. Women and members of ethnic minorities have entered the profession in substantial numbers and many have now reached the point of eligibility for appointment. Yet it would appear that of the cohort eligible for appointment to Assistant Recorder and Recorder, a smaller proportion is appointed than the proportion of eligible white males. This means, in due course, that there will be fewer such persons to appoint to senior positions. The apparent case of bias needs to be tackled now.

ii. Education and Training

Effective education and training are critical to a successful appointments system and to the flexible deployment of the judiciary. They are even more critical to the quality of justice. We applaud the work of the Judicial Studies Board over the years and though we still have concerns we feel that these are largely due to the circumstances within which it has had to operate. Our concerns are as follows:

a. *The absence of formal links between those responsible for training, appointments and the management of the courts.* These issues are inevitably closely related. Performance while in training is an important factor to be taken into account in making an appointment, particularly if performance as an advocate is not regarded as the determining factor. The release of judges for training is important.

The judiciary should be staffed at a level that will make that possible. Public interest in the long run is best served by a well-trained judiciary.

b. *The adequacy of the resources devoted to training.* Using the same judges to try a wide range of civil, criminal and family cases calls for a high degree and level of training in a variety of work if all these cases are to be tried effectively. In practice, few judges have the qualities necessary to be successful in all the fields in which they are required to work without significant and high quality training.

c. *The absence of a Director of Judicial Studies.* The organisation of a wide variety of training on the scale required calls for a professional Director of Studies. We do not think that the work can be done by a number of judges taking time off from their judicial duties. First, this is a waste of scarce judicial resources. Second, they are no substitute for a professional approach. Of course, the judiciary should have a substantial input into the nature and extent of the training provided but we feel that this should be at the policy level, as lecturers where appropriate and as mentors with whom new appointees sit.

iii. Performance: Standards and Sanctions

Our main concern is with standards rather than sanctions. We feel that a positive and supportive approach is required. The standard of judicial appointment has been such that serious cases of judicial misconduct are virtually unknown. This does not mean that nothing need be done. Our concern is more with behaviour falling short of the ideal. Something more than the current informal arrangements is needed.

We have already expressed our concern at the absence of job descriptions and articulated statements of the qualities required of judges in relation to appointments. Similar statements of expectation are required with respect to standards. It is difficult to maintain, let alone improve, quality without them.

We are also concerned at the absence of any arrangements for monitoring quality and behaviour. These are needed to identify those who should be considered for promotion. They are also needed to ensure that judges receive feedback on their performance - not on the correctness of their decisions, that is the work of appeal courts - but on the way in which they conduct themselves so as to secure a fair trial. Unless judges know where they are going wrong they cannot improve what they do.

Finally we are concerned at the absence of formal complaint provisions. These should prove largely unnecessary if the new arrangements for appointment and training are working, but the present informal arrangements are in need of attention.

iv. Pay and Pensions

The arrangements for remuneration - pay and pensions - appear to us to be broadly satisfactory. They are not ungenerous and salaries in particular are based on the recommendations of an independent review body. While that is not an ideal solution it is probably, constitutionally, the most satisfactory that can be devised.

a. *Pay*

Having said that, we note that it is especially difficult to arrive at adequate criteria for determining pay in the absence of a market. It is difficult to find any appropriate outside comparison. Yet using the comparison of successful advocates has its drawbacks. First, is it appropriate where there is a monopoly in advocacy and where a substantial portion of advocates' fees, particularly the high fees in heavy criminal cases, are met from public funds? Second, linking judicial salaries to advocacy further emphasises a single quality which we believe is over-valued in judicial selection. Inevitably, too, salaries based on the earnings of leading advocates may be higher than are needed to attract those with ideal judicial qualities. Not all legal skills are so highly remunerated. The earnings of top academics are a fraction of those of top advocates. There are also substantial differences in the earnings of individual solicitors and barristers generally.

As between different levels of the judiciary, the issue of relativity is equally unsatisfactory. As we argue elsewhere, the hierarchy of courts - Court of Appeal, High Court and County Court - is not necessarily logical and the absence of any objective method for determining the weight of different cases makes hierarchy an unsatisfactory criterion for salary differentials. We believe the issue of relativities within the judiciary will not be solved satisfactorily until the hierarchy of courts is replaced by a hierarchy of judges, assigned to cases by reason of their skills and the relative difficulty of the cases. Responsibility allowances also appear to be in need of rationalization.

There is also a wide discrepancy between payment for part-time judicial work and payment for professional legal services. Undertaking training and *a fortiori* undertaking part-time judicial work can mean a serious reduction in income. This is more of a problem for solicitors, whose partners and firms depend on their fee income to cover overheads, than for barristers. We see no simple solution to this problem. We feel that what limited solutions there are lie in the arrangements for training and sittings and in the development of special arrangements for those who wish to embark on a judicial career at an early stage.

b. *Pensions*

We believe the arrangements for judicial pensions should cover all judicial officers so that service in one office will count towards service in another. This change appears in the legislation currently before Parliament for a revised judicial pension scheme. We welcome this development and hope that it may be possible to include service in the term and part-time posts we envisage. We are concerned, however, that the implications of the 20 year retirement period have not been fully thought through. While the Committee favours a younger judiciary, we would rather see this accomplished directly than indirectly through the pension scheme.

We also note that the pension arrangements for the judiciary predate today's sophisticated pension arrangements which make a judicial pension less important to those earning substantial incomes. "What you pay is what you get" may be a more satisfactory basis for pensions than percentage of final income regardless of what you pay.[17] The position is complex and there may be something to be said for exploring the possibility of meeting existing pension contributions up to a particular level in some cases. Pension arrangements should be as flexible as possible to encourage the varied arrangements for appointment being proposed and to encourage those from a wide range of practices to apply for judicial appointments.

c. *Other Terms of Service: Arrangements for career management deployment and support for the Judiciary.*

We consider the absence of formal arrangements for the career development of judges to be a serious defect. It is crucial that judges should (if they want to) know why they are asked to do particular types of work and not asked to do others. Judicial management is also essential to ensuring that the best use is made of available judicial talent.

Arrangements for the deployment of the Judiciary are important. The present informal arrangements are insufficient to support such a sophisticated system of matching quality of judge to quality of case. The difficulty is that they straddle the court management and judicial personnel functions. The task of getting the right judges into the right places is difficult and requires more formal arrangements in which the judges concerned have some input. (We note, in passing, that some judicial work is currently not well organized for those - men or women - with family responsibilities.) It is in this context that we assume the ultimate creation of a Courts Commission.

5. OUR RECOMMENDATIONS FOR REFORM

We have a number of specific recommendations for reform. We appreciate that their implementation is a substantial undertaking. We deal first with our specific suggestions for reform and then with the kind of Judicial Commission which we feel would be the best way of giving effect to many of them. Some of the recommendations we make, particularly as to details, are inevitably only indications of our thinking. Many matters on which we make suggestions will have to be determined by the Judicial Commission once appointed, on the basis of professional advice. We also assume that the management of the Judiciary is something which will have to be significantly altered. While the details of such a management revolution lie outside our mandate, the assumption of such a change (presumably through a Courts Commission or similar body) is fundamental to many of our suggestions.

i. Appointments

a. *The qualities and skills required of judges at different levels should be established and articulated. They and their identifying factors should be publicised.*

We appreciate that this is a difficult task because of the extensive and overlapping jurisdiction exercised by the different types of court. We give an indication of the size of the problem and an example of the kind of job description we have in mind in *Appendix 7.*

b. *Those from whom appointments are made (practising barristers and for some appointments solicitors) should be broadened.*

A wider pool is essential if the quality of justice is to be improved through a more diverse bench. *Eligibility* for consideration for the bench at all levels should be extended to all qualified barristers and solicitors, whether in private practice or employed in commerce, industry, the unions, in central and local government, in universities or elsewhere. Such eligibility should be clear. *Appointability* should relate to, and depend upon, the job description and definitions of skills to be developed by the Judicial Commission within the framework laid down by Parliament. The experience demanded should be related to the skills needed.

With respect to this recommendation we return to the concept of the Independence of the Judiciary. In recent years some senior judges, in support of their arguments that only barristers should be appointed to the bench, have suggested that only at the bar are these instincts for independence 'inculcated'. While we respect the instincts of the bar,

we do not think the instinct for independence unique. Rather we share Lord Chancellor Mackay's concern for an open profession. ("Is there any difference between the independence of barristers who practice from chambers and the independence of barristers who may be employed?"[18] While 'independence' may well be a quality to be considered by the Judiciary Commission in considering candidates, we are not convinced that any sub-branch of the legal profession has unique access to the concept or instinct.

c. *A reduction in the mandatory retirement age.*

The Committee was in no doubt that the present position relating to the retirement age of judges is not satisfactory. In many respects this situation is not surprising. Originally notions of the independence of the judiciary were such that no retirement age at all was provided for the judges. To the concern of some, in 1936 the Royal Commission on the Dispatch of Business at Common Law, chaired by Lord Peel, recommended a mandatory retirement age for High Court judges of 72 (with pro-rata pensions for those retiring early). Nothing was done; although in 1921 County Court judges had been required to retire at 72 (with possible extensions to 75). Eventually the Judicial Pensions Act, 1959, set the retiring age for High Court judges and above at 75. In 1991, Lord Chancellor Mackay committed himself to a general retirement age of 70; now proposed in statutory form in the Judicial Pensions and Retirement Bill 1992. The fact that Permanent Secretaries have a mandatory retirement age of 60 underlines the complexity of comparing judges with other public servants.

The Committee considered the issue of retirement at great length. The issue is not an easy one. In any profession there are problems caused by the fact that none of us, physically or mentally, ages at the same rate. The issue of retirement is further complicated in the case of the judiciary by reason of the fact that under the current English system, judges come to their positions late in life; they play a peculiar role in the constitution; and their retirement is artificially constrained by the full pension requirement of a fifteen year term – about to be increased to twenty years.

The Committee examined in detail the possibility of retirement bands (and following the Webster Report with different bands for appeal and trial judges). Within those bands judges would be free to retire without loss of pension and could continue only with an affirmative annual medical examination. Ultimately, the Committee rejected this solution as too complex and as raising too many issues of constitutional propriety.

The majority of the Committee believes trial and appeal judges should be treated in the same way and, while welcoming the Lord

Chancellor's recent statement, the majority of the Committee, sharing the view of the Bar Council, believes that ultimately the retirement age should be 65 for all judges.[19] A minority of the Committee believes, if there is to be a fixed retirement age, that should be 70.

The difficulty of a late retiring age is the difficulty of determining which judges are up to the exacting standards of health and mental capacity required of all judges. There is also the question of who should make the decision. In this connection the provision in the new legislation (the Judicial Pension and Retirement Bill 1992) for annual extension by 'the appropriate Minister' up to the age of 75 raises concerns of both a constitutional and legal services nature. Such an arrangement already exists for circuit judges between 72 and 75; yet, even within the traditional pragmatic English approach to judicial independence, it appears to the Committee to be unacceptable. In our view, this arbitrary power of extension should be in the hands neither of other members of the judiciary nor of the government.

We are also of the view that no ex-judge should be entitled to sit after retirement. We realise that this is a controversial position. We believe the present discretionary system to offer the possibility of abuse. At the trial level we believe that recalling one judge and not another is invidious. Moreover litigants are entitled to have their cases heard by judges whom society has determined not to be too elderly to sit regularly. As Lord Wigoder put it in the recent debate on judicial pensions: "it is unfair on the litigants and it does not do the cause of justice any good that there should be people who are known to have retired and who are brought back after their retirement to try cases".

At the appeal level, allowing the Executive (or even a senior judge) to select some judges to sit in some appeals runs the danger of undermining the concept of the independence of the judiciary. The English system of hearing appeals in panels rather than *in banc* already poses problems; the ability to insert retired judges further undermines the integrity of the system.

d. *Restructuring judicial work to allow the appointment of permanent part-time appointments.*

Part time appointments at all levels, in addition to Recorderships, should considerably widen the pool from which appointments are made, particularly for women. It will also reduce the dangers of staleness flowing from trying the same type of cases for too long and provide a better solution to the problem of peaks and troughs than the present system of deputies. Part-time judges might specialize in some particular area; and this too would provide an important addition to judicial expertise. We appreciate that this new system would impose

burdens on judicial court management, but we feel that the more structured and formal arrangements for judicial and court administration to which we have alluded would reduce such burdens to manageable proportions.

Within the Committee, while there is unanimous support for part-time appointments, there is disagreement about whether the part-time judge should be allowed to continue with a part-time practice. In this situation a purist approach to independence of the judiciary might well assume the part-time High Court judge or Circuit judge would not be free to practice concurrently. Within the *de facto* world of the English approach to independence, however, it is difficult to see a greater threat to judicial independence by allowing concurrent practice than the system which allows Deputy High Court judges, recorders and district judges such freedom.[20]

e. *For those who are strong candidates, the option of embarking on a judicial career at an early stage.* They would not be career judges in the continental sense, but in the sense that they might reach the High Court through a series of judicial appointments rather than directly from legal practice. We are also conscious that, as the retirement age for judges is gradually lowered, there will be a need to turn towards a younger cohort of lawyers for appointment. This will become even more necessary if the currently proposed 20 year period for a full pension is implemented.

In passing, we question the assumption by some that there is no *cursus honorem* in the English judiciary as it exists today. While there is not a career judiciary in the Continental sense, over the last one hundred years England has developed a judiciary where, at almost all levels, there is a form of promotion, and promotion which is in the hands of the government of the day. This is almost inevitable in any organisation. The Assistant Recorder is clearly a training role for the Recordership, and promotion is based on reputed performance. District Judges hope to become Circuit Judges and many Recorders are interested in becoming either Circuit Judges or High Court Judges. Circuit Judges are increasingly encouraged to think of the High Court as a goal. Indeed, that was articulated as government policy at the time of the Courts Act, 1971. High Court Judges frequently find the life of a typical Queen's Bench Judge rather limited in scope and pine for the more intellectual and less peripatetic life in the Court of Appeal. Some Lords Justice inevitably hope the Prime Minister will promote them to the House of Lords or the Mastership of the Rolls, or the Lord Chief Justiceship. We are not suggesting that such prospect of promotion affects judicial behaviour. Indeed, our argument is that it does not and therefore the danger of government

influence even on the part-time term judge is greatly exaggerated. In any event, even the appearance of such influence would be avoided as promotions came to be handled by the Judicial Commission.

We equally believe that the acceptance of a judicial career path for those who choose it should not cause concern. Effective arrangements for judicial training should make it possible to lower the ages for appointment without loss of quality. This possibility exists at present, but satisfactory arrangements for career development would have to be developed before it could become a normal and serious option. We believe that a structured career path would make it easier for solicitors and qualified lawyers in salaried employment to embark on judicial careers. It should also appeal to those with strong judicial qualities or those who have heavy family responsibilities. Persons on such a track might be appointed Deputy District Judges or legal members of tribunals or Assistant Recorders. They might become District Judges or Recorders with a heavier load than usual. Thereafter they might be considered for the Circuit or High Court Bench along with other candidates in the normal way.

f. *The introduction (at least on an experimental basis) of term appointments at all levels – for four or five year terms for those who would prefer them.*

Long-term permanent appointments make for inflexibility and produce too many or too few of the right kind of judges to deal with particular needs and the changing work of the courts. At present this problem is met at least partly by the use of Deputy Judges. While not being opposed to the use of Deputies altogether, we are concerned that such *ad hoc* arrangements run the danger both of appearing to offer an inferior form of justice as well as suggesting a more than usually casual approach to the independence of the judiciary.

The majority of our Committee feels that term appointments are a better solution. Persons appointed to them would have to meet the regular standards of High Court or Circuit Judges, whereas those used as deputies may well have been passed over for the High Court. Term appointments have been found useful in some (but not all) of the 'old' Commonwealth countries. In 1900 they were recommended in the United Kingdom by Lord Chancellor Halsbury and the Conservative administration. (A bill was introduced for seven-year term Lords of Appeal). Our expectation is that such appointments would not normally be renewable; but might become so only on the initiation of the Judicial Commission.

Term appointments would bring to the Circuit bench, High Court or appeal courts distinguished lawyers who do not now wish to commit their lives to judging, but who could be expected, during a four or five

year term, to make a significant contribution; it would help broaden the bench and would make available talent in areas such as public law, conflicts of law, EC law or any other area where the regular judiciary does not always have members with appropriate expertise. It would provide a way for a lawyer who had not thought it appropriate (nor been in a position) to accept a judgeship at 45 or 50 (which under the proposed legislation will presumably become the norm for appointment), to make a contribution to public service at 60. It would also provide a means of combating staleness where judges are suited primarily to trying one type of case. It would respond to the Treasury's concern about making financial commitments to those who might not be needed in the long run.

A minority is not convinced that the new arrangement would attract appropriate candidates. There are certainly dangers. 'Contract' judges in Anglophonic Africa, while they may have helped the public service image of the courts, have frequently not worked out in a constitutional sense. All of us, however, see the necessity of some such innovatory arrangement as the retirement age is progressively lowered and the period for a full pension is lengthened. None of us feel this scheme will in any way infringe upon judicial independence as it is currently understood.

We are told that one of the difficulties of this change is handling the problem of the traditional knighthoods for High Court judges. The desirability of automatic honours is under consideration generally and the knighthoods conferred on senior judges on appointment should be looked at in that context. We would certainly not wish to see our suggestion of term appointments, which the majority regard as important, founder on such a concern.[21] We would look to the Judicial Commission to evaluate this reform.

As part of this suggested reform the prohibition against judges returning to practice would have to be abandoned. Fifty years ago it was accepted that judges had such a right, although it was felt 'bad form' to exercise it. We regret that bad form has been escalated to a purported constitutional principle. We understand that commitments not to return to practice are now extracted from judicial appointees. The committee urges the abandonment of this practice.

We also believe that, as the practice of term appointees becomes accepted, the apparent professional advantage of the returning judge will be seen as a benefit to the whole profession. The fear of unfair competition would wither away. We assume that this is the way the profession views the judges who now retire to their old chambers to conduct arbitration practices and to give affadavits on English law. Such re-entry to the profession appears to be the practice in Scotland

and other common law countries. The Canadian Bar Association regards it as an inherent right of an independent judiciary.[22] We see no reason why barrister or solicitor judges should not bring added skills back to firms or chambers. If the term judge (or indeed any other judge) went on to the City or an academic appointment we would also think this entirely appropriate. Indeed, in the long run, we would see such translations as strengthening rather than undermining the judiciary, not to mention the other institutions involved. The danger of inappropriate behaviour as judges make the transition to their new positions certainly exists. We, however, have the greatest confidence in the integrity of the English bench and legal profession to handle such change without engaging in any conflict of interest.

ii. The arrangements for appointment

a. *The introduction of formal, generally accepted, appointment procedures.* These should include public advertisements, job descriptions, skills specifications, judicious headhunting efforts to encourage applications from diffident candidates, interviews with professional selectors, and generally accepted tests and appointments boards.

b. *Formal arrangements for developing the careers of the junior judiciary.* We have discussed this elsewhere, but we mention it here to ensure that formal arrangements are made for younger judges to receive appropriate training and to be considered for changes of work and/or promotion.

c. *Machinery for assessing the performance of those holding full and part-time judicial posts.*
Again we refer to this elsewhere but such arrangements are also necessary for the purpose of appointment and promotion.

d. *In developing a list of skills necessary for the bench, we recommend that advocacy be considered as one among many qualities and by no means a decisive one.*
This will involve amending s. 71 of the Courts and Legal Services Act, 1990. We might add that we share some of the concern of the Law Society that the closer the solicitors' branch of the profession has come to being eligible for all levels of the judiciary, the greater has become the judiciary and bar's emphasis on advocacy as a *sine qua non* for judicial appointments.

e. *Positive action to widen opportunities to qualified women and members of ethnic minorities.* We are anxious to see many more women and members of ethnic minorities on the bench. This can be accomplished with no lowering of standards. It can be achieved by a vigorous programme of positive action. In this respect we are much impressed

by what has been set in place by Opportunity 2000, an initiative of Business in the Community. While we are opposed to reverse discrimination and quotas, we believe the Judicial Commission should set goals at all levels for the number of minority and women judges and issue regular reports on the progress being made. The basis of these reports would be a regular audit of the intake and composition of the two branches of the legal profession. Based on this, goals and action plans would be established to achieve the percentage of women and ethnic group members expected to rise to judicial office. Regular monitoring of what has been achieved would be made public and would enable appropriate modifications in the various action plans.

Some of the progress will be achieved by the changes we have already suggested: a more open selection process; term and part-time appointments; earlier retirement ages for Circuit Judges and above. Nevertheless, insistence that all judicial appointments are open to all barristers and solicitors will be the most important change of all.

iii. Training and Education

Broadly speaking, we are impressed with the development of education and training under the Judicial Studies Board, which we believe should be re-organized as a Committee or Sub-Committee of the Judicial Commission, with a Director having educational experience. Our suggestions for improvement relate to questions of scale, organisation and links with other aspects of judicial administration. In particular, we recommend that before becoming eligible for judicial appointment a barrister or solicitor must have attended a Judicial Training course, ideally an extended residential course.[23] The educational purpose of the course would be twofold: (1) to provide instruction in those relevant branches of the law with which the trainee has had little occasion to be involved in his or her practice; (2) to equip the trainee to be a 'good judge' in the broadest sense.

A lawyer would normally seek admission to the courses if and when he or she contemplates the possibility of seeking his or her first judicial appointment. Admission to the course would be under the aegis of the Judicial Commission. Completion of the Judicial Training Course would not entitle a barrister or solicitor to automatic appointment to the bench; although performance in the course would, appropriately, be taken into account by the commission in making recommendations for appointment to the bench. We would, incidentally, see the course phasing out the necessity for the post of Assistant Recorder.

After appointment, serving judges should be required to attend regular 'refresher' courses - perhaps annually. A major objective should be 'up-dating', not only with regard to changes in the law, but also with regard to other changes, general and specific, which should bear upon the work and behaviour of a judge, including training in dealing with the public and the media.

iv. Performance: Standards and Sanctions

The development of standards and procedures to enforce them should be left to the Judicial Commission. A balance must be struck between protecting the public and protecting the constitutional position of the judges. We envisage the creation of a Judicial Standards Committee as a sub-committee of the Judicial Commission responsible for all judges, permanent or term, full or part-time. Its function would be to provide an independent mechanism for reviewing the professional conduct of judges. The Sub-Committee would have its own secretariat but individual members of the Commission would supervise the consideration of complaints on a rota basis. For this purpose it might well be appropriate if there were two rota members: one legal, one lay. We set out a possible procedural outline in *Appendix 9*, including, in the most serious cases, a hearing before a tribunal where the case would be presented by an advocate on behalf of the Standards Committee.

v. Pay and Pensions

We consider that many of the problems mentioned in relation to pay will be resolved relatively easily once less emphasis is placed on success in advocacy as a qualification and more specific job descriptions have been developed for the different tiers of judge. We do not think that the Judicial Commission, which we recommend as the solution to the major problems of judicial administration, should be responsible for determining judicial salaries. This is better left - whatever its failings - to the Top Salaries Review Body. Judicial salaries, however, pose particular problems for the Review Body. Its reports sometimes lack convincing rationalisations when analysing judicial issues. Judges comprise more than half the posts within the ambit of the Body and there is a wide spread of judicial offices within that number (see *Appendix 5*). These factors and the absence of clear criteria and comparisons suggest that there may be something to be said for strengthening the Body's capacity to deal with judicial salaries and to give greater direction concerning appropriate comparisons. Clearer criteria might well have avoided the embarrassment of the Government turning down the Body's recommendations in the summer of 1992.

We would merely add that we appreciate the importance of a well-paid judiciary. Independence of the judiciary must involve financial independence. We also believe there have to be responsible limits. The obligation to accept public service should count for something. We note that the law lords are better paid than the Justices of the Supreme Court of the United States (though the latter have generous retirement arrangements) and even Circuit Judges earn salaries comparable with members of the British Cabinet.

Pensions are in need of a comprehensive review, part of which will be achieved if the Judicial Pensions and Retirement Bill reaches the statute book. Particular attention should be paid to the arrangements to allow flexibility to enable (and encourage) appropriate persons to accept part-time and term appointments.

vi. Other matters: career development and support for the judiciary.

a. *Adequate arrangements should be made for judicial career development.* We would see that as most appropriately accomplished by the staff of the Judicial Commission.

b. *More formal and structured arrangements should be made for the deployment of the Judiciary.* This matter spans personnel and court management and arrangements must be made to bridge the gap between them. It is too important a matter to be left to the present uncoordinated and largely informal arrangements for court management, training and performance monitoring. While outside our mandate, something like a Courts Commission is needed.

c. *Judges should have support from trained specialist legal librarians and legal research assistants.* Specialist law librarians can be of considerable assistance in ensuring that all relevant material on particular points is available to the court. We feel that there should be more of them and that their services should be more widely available to the judiciary. We do not go so far as to say that trial judges should have law clerks on the American model, but a strong case can be made for them at the appeal level.

6. A JUDICIAL COMMISSION

We consider that the establishment of a Judicial Commission is the best way of completing the unfinished business referred in this Report and thereby reducing the strain on the arrangements for the administration of justice. In particular we consider it to be the only satisfactory way of resolving the tension between the independence of individual judges, which lies at the core of our system of justice, and the dictates of good judicial administration. As recourse to judicial review increases as a remedy against abuses by the executive, and as judges progressively examine the validity of legislation and executive action as a result of European legislation, this tension will increase. For these reasons we believe the appointment of judges should be at least partially isolated from the executive. We are comforted by the thought that such a model has been satisfactorily operated in some Commonwealth countries.[24] Moreover we note that some such advisory body has been recommended for England by different groups going as far back as the *Report on the Committee on the Machinery of Government* (1918).[25]

We do not think that the work of the Commission could be undertaken by the judiciary. In the first place there is no clear judicial command structure. There are the Heads of Divisions, Presiding and Resident Judges and a large number of independent judges. It would be necessary to devise a collegiate body which would begin to look very like the Judicial Commission we propose without the absolutely essential lay element. A collegiate body consisting of judges would perpetuate the problem of judicial control and reinforce the kind of judiciary and judicial management we believe to be unacceptable. The judiciary would, however, have input as members of the Commission.

The arrangements we have in mind for the Commission are as follows:

i. The Responsibilities of the Commission

a. *All judicial appointments* including those tribunals to which the Lord Chancellor currently appoints members and lay magistrates. The latter would continue to be appointed through advisory committees but these would be overseen by the Commission.

b. *All judicial training* - Judicial training is too closely linked to appointments and performance to be the subject of separate arrangements.

c. *The career development of Circuit Judges, Recorders, Assistant Recorders, District Judges, Deputy District Judges, Stipendiary Magistrates and Chairmen and members of Tribunals appointed by the Lord Chancellor.*

d. *Performance: standards and complaints.*

ii. The Constitution of the Commission

No doubt everyone would construct the Commission slightly differently. We spent considerable time discussing its composition. Some thought it should have a majority of lay persons with a legal chair, others a majority of lawyers with a lay chair. What we all agreed upon was that while it was appropriate to have the judiciary represented, its representation should be small to avoid the defects in the present system. After considerable discussion, we would suggest three general principles:

First, we would suggest there be thirteen members of the Commission, seven of them lay persons.

Second, we would suggest the Chair be a lawyer or judge. The Chair would be half-time, as would the Deputy Chair, who should be a non-lawyer. The administrator should ideally be a non-lawyer.

Third, among the six professionally qualified persons, an effort should be made to include three solicitors and three barristers. No more than two of the six lawyers should be judges.

We are conscious of the importance of a strong lay element, which should be functional in the sense that members would contribute substantially to the work of the Commission. Unless lay members are functionally relevant - and have proven experience of selection, training, performance assessment and the management of change, preferably at a senior level - the lawyers will inevitably dominate a Committee concerned with the administration of justice. It is also important that the lawyer members be selected for their knowledge of management, training and of the administration of justice. We would hope to see a representative with particular knowledge of the concerns of users of the courts. We also believe, if we are to have a more diverse bench, we must have effective representation of women and minorities on the Commission. The two half-time and eleven part-time members should be paid. The Commission would have a budget negotiated with the Lord Chancellor, who would be responsible to Parliament for such a budget.

iii. Independence

It is critical to the success of the arrangements that the Commission should be and be seen to be independent of the executive and the judiciary. It would be created by statute and operate within the ambit of an Order in Council. Members, chosen by the Lord Chancellor, after a rigorous selection process, would hold office for a term of four years, which might be extended for a further three years. It will be necessary to stagger the term of members to ensure continuity and to spread appointments over a period of more than one Parliament.

iv. Staff

The Commission would have a Chief Executive (Administrator) and be free to choose its own staff either on secondment from the civil service or elsewhere, or on term or permanent appointments as circumstances required.

v. Method of Work

The Commission might work in teams under a particular commissioner or commissioners each undertaking a particular aspect of its work, subject to the overall agreement of the Commission as a whole.

vi. Report

The Commission would report annually to the Lord Chancellor, who would be obliged to lay its report before Parliament. The report would outline its procedures and provide statistics of applicants accepted and rejected and of the composition of the bench as a whole. The Report would be required to deal with and explain any discrepancies between the composition of the bench and the profession as a whole and where appropriate set out the steps it was taking to deal with such discrepancies.

vii. Specific Matters

The Judicial Commission would operate in the following way with respect to appointments:

The Commission would organise the system of appointments within a framework laid down by the Lord Chancellor, to whom it would be advisory. In most cases we assume the relevant time frame would be one year. At the beginning of that year the Commission would be informed of the likely needs of the Lord Chancellor's Department for that year.

In the case of lower judicial appointments the Commission would process applications, consult and organise boards, in much the same way as the Civil Service Commission. In the case of senior appointments, appropriate members of the Commission might constitute the selection board. With respect to other judicial appointments, the Commission would supervise the panels reviewing names, monitoring for quality and diversity.

1. With respect to judges in the High Court, Court of Appeal and House of Lords, the Commission would submit a short list or short lists to the Lord Chancellor, who would choose one or more names. (We are assuming that the appointment of Lords Justice and Law Lords be transferred from Prime Minister to Lord Chancellor.)

2. Circuit judges would be appointed on the basis of performance as a recorder, appropriate current references and a board chaired by a member of the Commission. The Commission would send a list of

names corresponding to the number of judges needed to the Lord Chancellor. If the Lord Chancellor did not accept any of the names, he would give confidential written reasons to the Commission.

3. The appointment of recorders and district judges would be made on the basis of performance during training, appropriate current references and formal boards. The boards would be chosen by the Commission, and manned by specialist selectors, lawyers and judges. The Commission would send an appropriate list of names to the Lord Chancellor, who would either accept them or if any names were rejected would give written reasons. Reappointment or non-reappointment of Recorders would be on the recommendation of the Commission. The advice might be rejected by the Lord Chancellor who would again be required to put his reasons in writing.

The current procedure involving a heavy reliance on responses to unstructured questions (supplemented by interviews in the case of Recorders and Assistant Recorders) or unsolicited views would be abandoned and the files destroyed. In their place, there would be a system of referees (from those nominated by the candidate and from those chosen by the Commission) coupled with extended interviews, supplemented by evaluations during judicial training and earlier judicial work (if any).

In short, our recommendations are designed to produce a more diverse bench, chosen from a broader pool, with greater emphasis on judicial skills rather than practice-oriented skills, leading to a bench less remote from the mainstream of society. We believe this can be achieved without any loss of the most distinctive characteristics of the English judiciary - independence of mind, technical competence and personal integrity.

We would see the other responsibilities for the Judiciary Commission as:

i. Training
We envisage this being undertaken by a Committee of the Commission which would be able to co-opt members with the agreement of the Commission. The sub-committee would closely resemble the former Judicial Studies Board as regards methods of work, but it would have a Director of Studies. The Judicial Studies Board would be abolished.

ii. Career Development
This would be the responsibility of a Committee of the Commission which would work closely with the training and education committee as well as with those responsible for the management of the courts.

iii. Performance: standards and sanctions
This too would be the subject of a separate Committee, although all members of the Commission would serve in tandem as rota members hearing complaints. Development of both standards and sanctions would be the responsibility of the Commission, subject to the approval of the Lord Chancellor.

7. OTHER CHANGES NEEDED TO MEET THE CHALLENGE OF THE FUTURE

Generals are always accused of "fighting the last war"; lawyers of "walking forwards looking backwards". We are conscious that, thus far, we have been seeking to make the system we all know - and about which we all care - work even better. It is now time to consider at least some of the changes needed in the administration of justice generally to enable it to meet the challenge of the future. This we present in stages.

We would look to a long-term restructuring of the courts. This would simplify litigation, make better use of judge power and ease the problems of judicial administration because judges would be categorised by the work they did rather than the court to which they were formally appointed.

On the criminal side restructuring is virtually complete. The higher and lower courts (assizes and quarter sessions) were merged in the Crown Court to become part of the Supreme Court so that matching quality of case to quality of judge is a question of ensuring cases come to the right level of judge (High Court, Circuit, Recorder/Assistant Recorder) and not of moving up the hierarchy of courts.

On the civil side the process of re-structuring is incomplete: the County Court was not incorporated in the Supreme Court. Accordingly, in order to match quality of judge to quality of case, it is necessary to move up or down the hierarchy of courts (in child care cases, for instance, between three courts) via a complex transfer mechanism.

Public law cases apart, most of civil and criminal trial work done by High Court judges and those Circuit judges at the top of the Circuit bench is similar. The gap is between those at the bottom or middle of the Circuit bench and the High Court Judges, but even here High Court Judges do similar cases when their lists of heavier cases collapse. So far as the handling of civil cases in the High Court and County Court outside the Royal Courts of Justice in London is concerned, the same judges hear the interlocutory stages, the same staff handle the papers and all normally operate in the same premises.

As a result of such rethinking, it might well be that the jurisdiction of the High Court and County Court could be merged and the appellate functions of High Court judges transferred to the Court of Appeal. This would mean increasing the size of the Court of Appeal - presumably by adding some of the current High Court judges. If in fact the courts were merged, all judges of first instance would be appointed to a general trial court; and then cases would be allocated

to lists according to their type (civil, family, criminal, etc.) which would be tried by the judge (or category of judge) most qualified to hear them in accordance with the appropriate procedure. Appellate judges could sit in the trial courts to hear appropriate specialist cases - i.e. those requiring the degree of independence and expertise possessed by such judges. In this way standards might be maintained without the need for High Court judges to make pilgrimages around the country.

Such thoughts drive us to consider what we mean by the 'good Judge' at the appeal level. We believe that in the House of Lords, the Law Lords ought to be outstanding jurists whose views command wide respect throughout the common law world. We ought to expect high standards of literacy and scholarship. In order to attract outstanding persons capable of balancing interests and developing the law it may be necessary to move outside appointments from the Court of Appeal. Some of the best appointees (Reid, Radcliffe) have come directly from the bar and we believe there should be more such appointments directly from ranks of solicitors and barristers, wherever their current employment. There should also be appointments of those with political experience,[26] especially as the discussion of constitutional change continues. Where there is a conspicuous absence of a law lord with specific skills (criminal law, etc.) there should be a panel of academic lawyers available to sit as advisers on an *ad hoc* basis. In order to ensure that in important cases the law is seen to develop in intelligent ways (and to avoid any hint of a selective panel) the House of Lords should ideally sit *in banc*. With respect to the Court of Appeal, we would make two points. Again, there should be appointments directly from practice as a solicitor or barrister; and recent cases strongly suggest that in its criminal work the Court of Appeal should be more heavily staffed by those skilled in criminal law and civil rights.

This brings us back to the beginning of our Report. We do think there is an important role for, and indeed room for, an increased emphasis on the independence of the judges if the judiciary actually performs a significant role in the Constitution. Assuming the British Constitution moves in the direction of a Bill of Rights or perhaps even a written Constitution, we could imagine the appeal courts with their own arrangements for judicial management and having their status protected by the Constitution. With the patriation of the Canadian Constitution in 1982, for instance, Canadian Courts have moved to Americanise their position and to demand a broader concept of independence of the judiciary, recalling the US approach of the judiciary as a co-equal branch of Government[27] replacing the British concept of judges subject to Parliamentary sovereignty as embodied in the 1867 Constitution Act.

In the United Kingdom today, there is an increasing number of writers[28] and organisations such as the Institute of Public Policy Research[29] and Charter 88 which see a Bill of Rights and a written Constitution as inevitable and desirable. Membership in the European Community has inevitably pushed in this direction. If a written constitution were to come to pass, particularly if it

involved judicial review of British legislation, it would revolutionise the British Constitution, with a vastly enhanced political role for the judiciary. It would call for a different concept of judges and their independence. With the right of judicial review, however, may go the politicisation of the judiciary, as Canada has found. These are heady ideas. To discuss the role of the judiciary with the power to enforce fundamental rights and engage in judicial review of legislation, in the view of this Committee, lies beyond the scope of this Report. We can imagine, however, that this issue would provide an ideal topic for a subsequent Justice Committee.

With this brief consideration of these longer-term thoughts, we conclude our Report.

Signed:

Nicholas Aleksander
Kamlesh Bahl
Vera Baird
Malcolm Dean
John Gasson
Helen Grindrod
Anthony Heaton-Armstrong
J Anthony Holland
Elspeth Howe
Thomas Kellock
Geoffrey Robertson
Anthony Scrivener
Robert Stevens

Footnotes

1 We should note that, in our deliberations, we sought views from a number of individuals and organisations. We list them in Appendix 9 and thank those who either met us or provided, sometimes at short notice, views or information.

2 What we have in mind here is the message in Lord Devlin's observation that judges "have become too much like priests to whom alone the oracle speaks". Devlin, *Samples of Law Making,* (Oxford, 1962), p.3.

3 At the same time, within our charge, we have ignored the analysis of "extra judicial appearances and statements". The relatively recent changes by Lord Mackay require time to mature before it will be appropriate to consider whether further changes are needed. We also agreed early on to limit our discussions to professional judges and to exclude the magistracy. We have also, in general, resisted the invitation to discuss at length "public confidence in the judiciary".

4 A Gallup Poll conducted in February 1985 found that since June 1969, the number of persons who thought the judges were influenced by the government had risen from 19 percent to 43 percent, while those who thought the judges to be independent had dropped from 67 percent to 43 percent. Dawn Oliver, *The Independence of the Judiciary*, 1986 *Current Legal Problems* (1987), p.237.

5 See, for instance, Chris Mullin M.P. "The truth is that judges, both at trial and on appeal played a large part in the most recent miscarriages of justice and there is nothing to be gained from suggesting otherwise". Letter to *The Times,* 24 June, 1992.

6 An example of how the present generation of judges is accepting that challenge is *R.v. Mackenzie,* 24 July 1992 in which the Court of Appeal laid down a strict rule requiring cases which hinge on unreliable confessions by mentally abnormal persons to be withdrawn from the jury.

7 This English concept of the separation of powers was most eloquently and vigorously restated by Lord Diplock a decade ago: "at a time when many more cases involve the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasized that the British Constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interprets them." *Duport Steels v Sirs.* [1980] I All E.R. 529, 541 (H.L.).

8 Many part-time. The process was exacerbated by the transfer in 1949 of the appointment of Recorders exclusively to the Lord Chancellor's Office.

9 A parallel system, with consultation at a lower level, became the basis for appointment as Deputy District Judge (601) and District Judge (232) formerly County Court and District Registrars.

10 *Judicial Studies and Information. Report of Working Party* (HMSO ISBN 01340).

11 In fact successive Lord Chancellors have limited the right to dismiss Circuit judges, in practice, to situations where the judge has either been convicted of (or admitted to) a criminal offence bearing on his office.

12 Early Day Motions afford a theoretical opportunity, but they are seldom debated.

13 To achieve a salary comparable to that of 1825, High Court Judges would have to be paid some £250,000 per annum. If the rate of taxation were taken into account this would be even larger.

14 After the outcry which followed the fiscal crisis in 1931 in which judges' salaries were cut, it is now provided that judicial salaries cannot be reduced without legislation.

15 These were raised by roughly four percent in the Summer of 1992.

16 They arise from the need to deal with inconsistencies in the present schemes and the need to conform to the provisions of the Finance Act, 1989, which requires the salary on which benefits from tax approved schemes are calculated to be capped at a specific level - currently £74,000. The Treasury has, however, in a special dispensation, agreed that judges may keep, in addition, the benefits of any already established private pensions.

17 We consulted a leading mutual insurance company to find the cost of going to the market to provide the judicial pensions as of January, 1992. For the Circuit Judges it is £590,723; for High Court Judges it would be £843,533. These assume an index-linked annuity, and appointment to the bench at 50.

18 *Parliamentary Debates* (H of L) Vol. 505, Col. 1307 (April 7, 1989).

19 On the other hand we have no objections to ex-judges returning to private practice, as a number do, *de facto,* today, because in those cases their work will be determined by the market, not provided as a state service.

20 For a defence of part time, term judicial appointments, see the Beeching Report. Royal Commission of Assizes and Quarter Session (1969), Cmnd. 4153, p.81.

21 We are informed that Knighthoods are a not unhelpful recruitment device. We also understand that the selective giving of Knighthoods might be seen as the attempt by the government to influence individual judges. We note only that, originally, during the reign of George III, judges and law officers were strongly opposed to the acceptance of automatic Knighthoods on the ground that their bestowal "savoured of trade".

22 Canadian Bar Association, *Report of the Committee on the Independence of the Judiciary,* 1985, p.15.

23 While the majority of the Committee thinks in terms of one month, Anthony Heaton Armstrong would like a course lasting up to six months. His extended views are on file in the JUSTICE offices.

24 In Canada for instance, each province now has a Committee to advise on judicial appointments made by the Ottawa government. Ontario has a Judicial Commission for provincial appointments.

25 Chaired by Lord Haldane.

26 We are conscious of the distinction drawn by Alan Paterson between those appointed for political reasons - which we oppose - and those with political experience - which we support. We note incidentally that the Judicial Commission would be a useful device for discouraging purely political appointments.

27 J M Law, "A Tale of Two Humanities, 28 *Alberta Law Review* 468, 498, (1990).

28 E.g. Ferdinand Mount, *The British Constitution Now,* (1992), Chap. 4.

29 In this regard we take note of the IPPR Report, *The Constitution of the United Kingdom* (1991), which calls for such developments, and spells out its implications for the independence of the Judiciary.

APPENDIX 1

THE LORD CHANCELLOR, THE JUDGES, THE COURTS AND THE ADMINISTRATION OF JUSTICE

Lord Chancellor and his Department

The Lord Chancellor is:
(1) the head of the judiciary and a judge,
(2) the cabinet minister responsible for judges, courts, lawyers, the civil law and law reform, and
(3) the 'speaker' of the House of Lords.

His responsibilities and the structure of his Department with particular reference to judicial appointments are set out in the attached diagrams:

Diagram 1: The constitutional position of the Lord Chancellor
Diagram 2: The Lord Chancellor's Department
Diagram 3: The Judicial Appointments Group
Diagram 4: The Crown Court Bench and Tribunals Appointments Divisions

The Judges

The judges are organised hierarchically: Law Lords, Lords Justice, High Court Judges, Circuit Judges, Recorders, Assistant Recorders and District Judges.

Different levels of judges sit in different courts to try different sorts of case. High Court Judges sit in the High Court (civil and family cases), the Crown Court (criminal cases) and may be requested to sit in the Court of Appeal (civil and criminal appeals). There is no Circuit Court and no District Court. Circuit Judges sit in the Crown Court and the County Court (civil and family cases) and may be requested to sit in the High Court. District Judges sit in the High Court and the County Court to deal with matters within their limited powers, e.g. preliminary matters.

Diagrams 5-10 give particulars (numbers, gender, ethnic origin, age ranges etc) of the judges at different levels in the judicial hierarchy, and the courts where they sit.

Diagram 11 shows the time spent ('days sat') by different levels of judge on different types of case in the courts where they sit.

The Courts

The term 'court' is confusing. It can be used in many senses to mean: the judge or judges of the court; the building in which they sit; the court office; a particular grouping of courts (e.g. the 'Supreme Court', which comprises the Court of Appeal, High Court and Crown Court); or a legal entity with defined powers in relation to defined classes of litigation which are exercised by defined categories of judge in accordance with a defined procedure. In this note it is used in the latter sense.

The overall structure and work of the courts is outlined in *Diagram 12*. Details of the work of the Divisions of the High Court (the highest civil and family trial court) are set out in *Diagram 13*. *Diagram 14* describes the flow of cases through trial courts, i.e. where cases are commenced and where they may be tried. The flow of appeals from trial to appellate courts is set out in *Diagram 15*.

The Administration of Justice

This comprises three elements: trying cases and hearing appeals; 'judicial administration' (broadly the appointment, training, deployment and oversight of the judiciary); and 'court administration' (broadly the management of support staff, accommodation and ancillary operations, e.g. summoning jurors, organisation of enforcement of judgments – bailiffs etc).

The first is undertaken exclusively by the judges as individuals in the sense that they are not subject to direction from anybody, including other judges, as to the decisions they reach in particular cases.

Judicial administration is undertaken by the Lord Chancellor, Lord Chief Justice, Master of the Rolls, Vice Chancellor and President of the Family Division with Presiding and Resident Judges and in consultation with senior officials of the Lord Chancellor's Department and its Court Service. Court administration is undertaken by the Court Service (civil servants in the Lord Chancellor's Department) in consultation with the judiciary.

There is a measure of overlap between judicial and court administration, particularly in listing cases. Listing involves matching quality of case with quality of judge within the constraints of the powers of particular courts, the availability of judges, buildings and staff, and the urgency of the cases awaiting trial.

The arrangements for judicial and court administration are operated by judges and administrators on the basis of an informal partnership: see *Diagram 16*. Its success depends to a large extent on what the judiciary know of the qualities, experience and performance of judges; on what the Court Service knows of likely workloads and the availability of resources; and on how well the Lord Chancellor can hold the two hierarchies together.

Diagram 1

The Constitutional Position of the Lord Chancellor

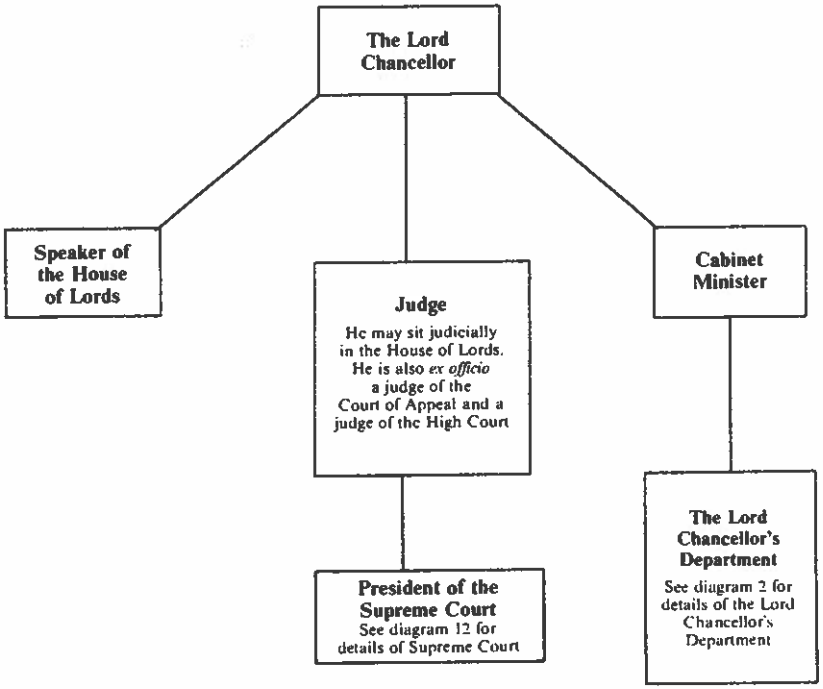


Diagram 2

The Lord Chancellor's Department

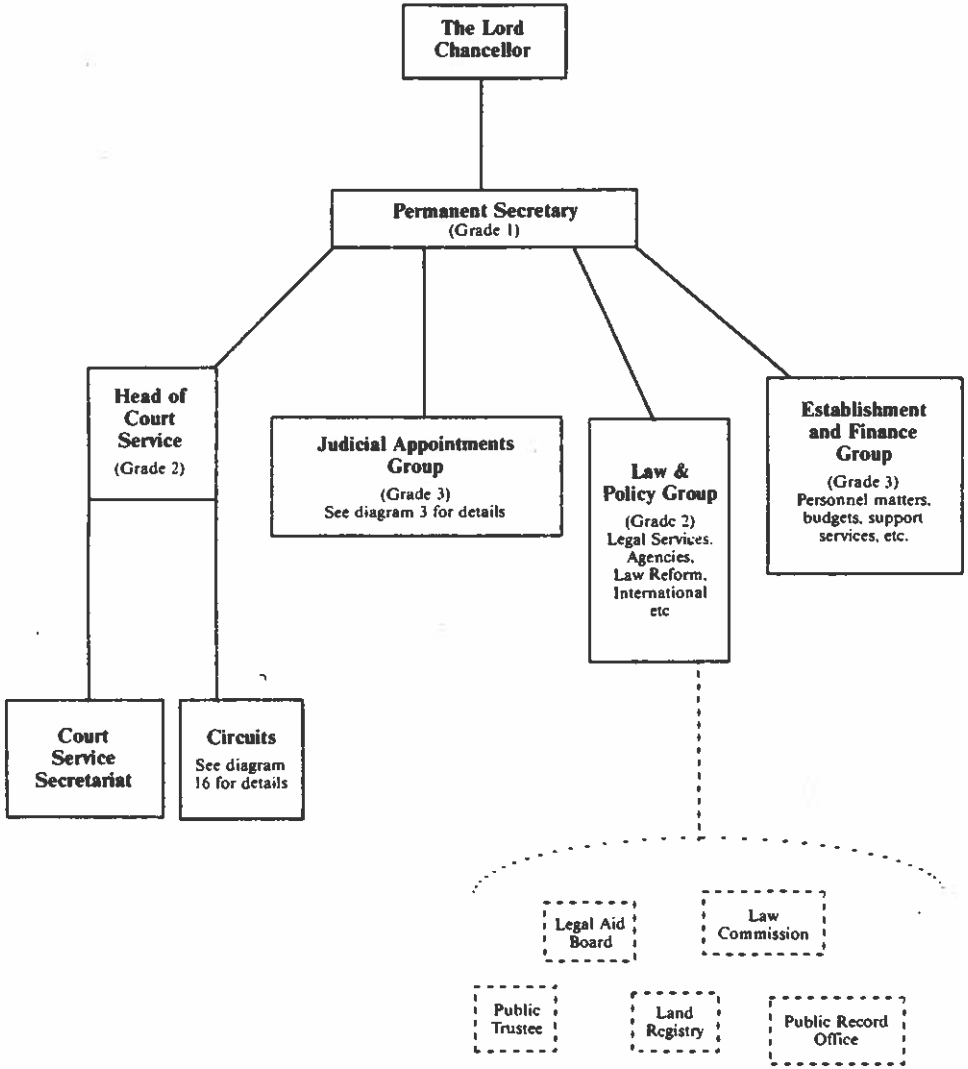


Diagram 3

Judicial Appointments Group

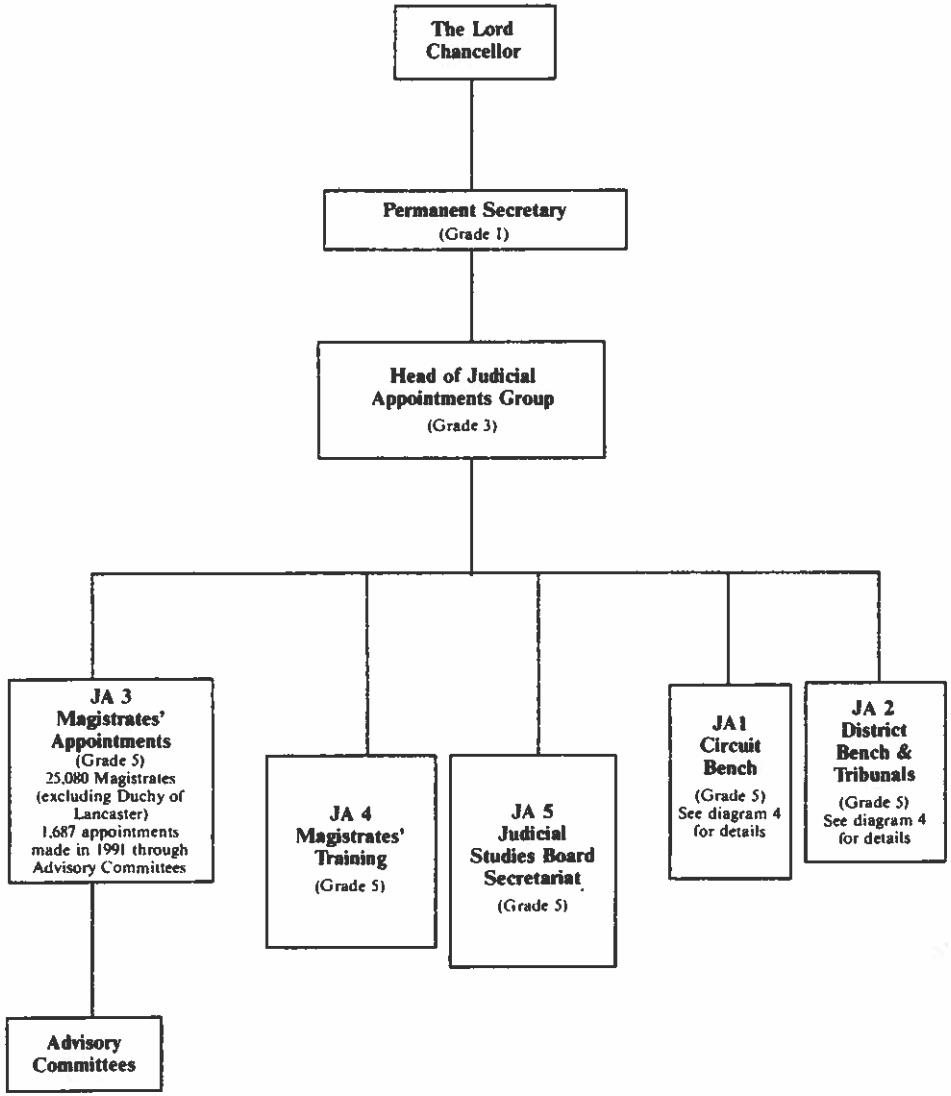


Diagram 4

Circuit Bench and District Bench and Tribunals Divisions of Judicial Appointments Group

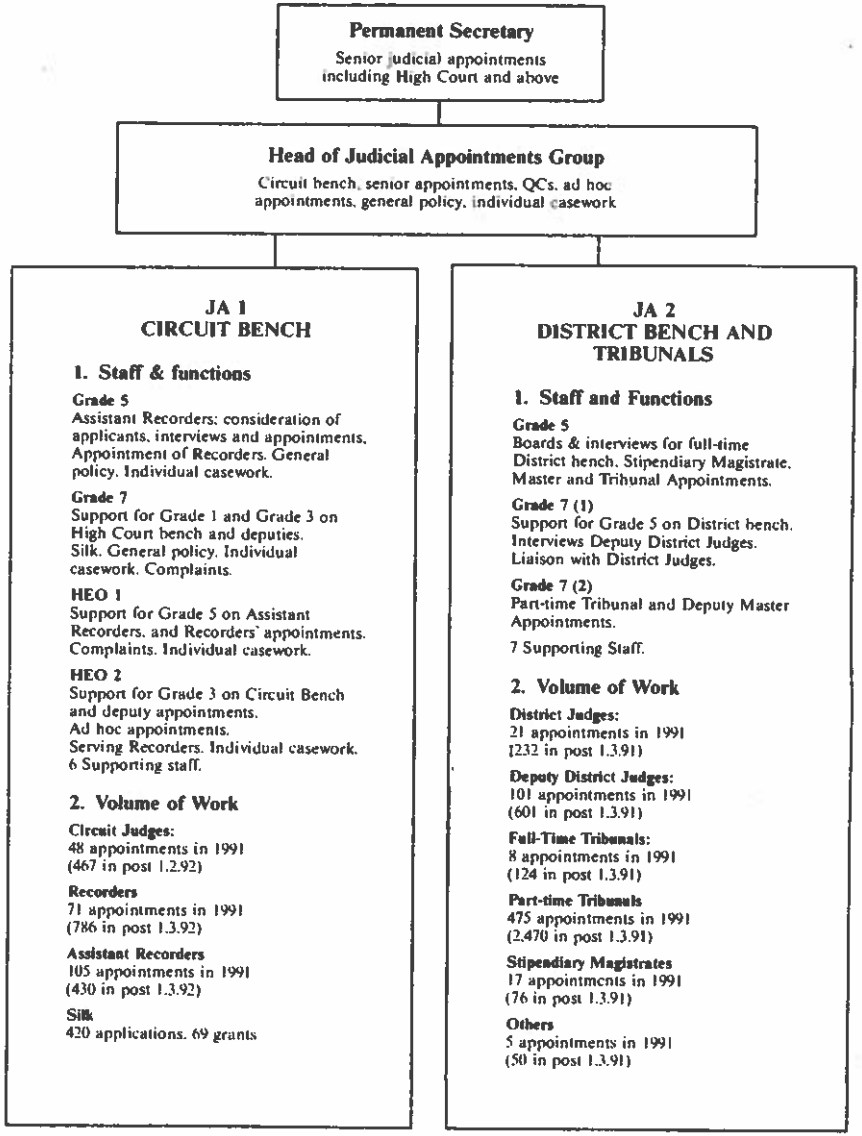


Diagram 5

HIGH COURT JUDGES AND THE COURTS IN WHICH THEY MAY SIT

(for further details of sittings see Diagram 11)

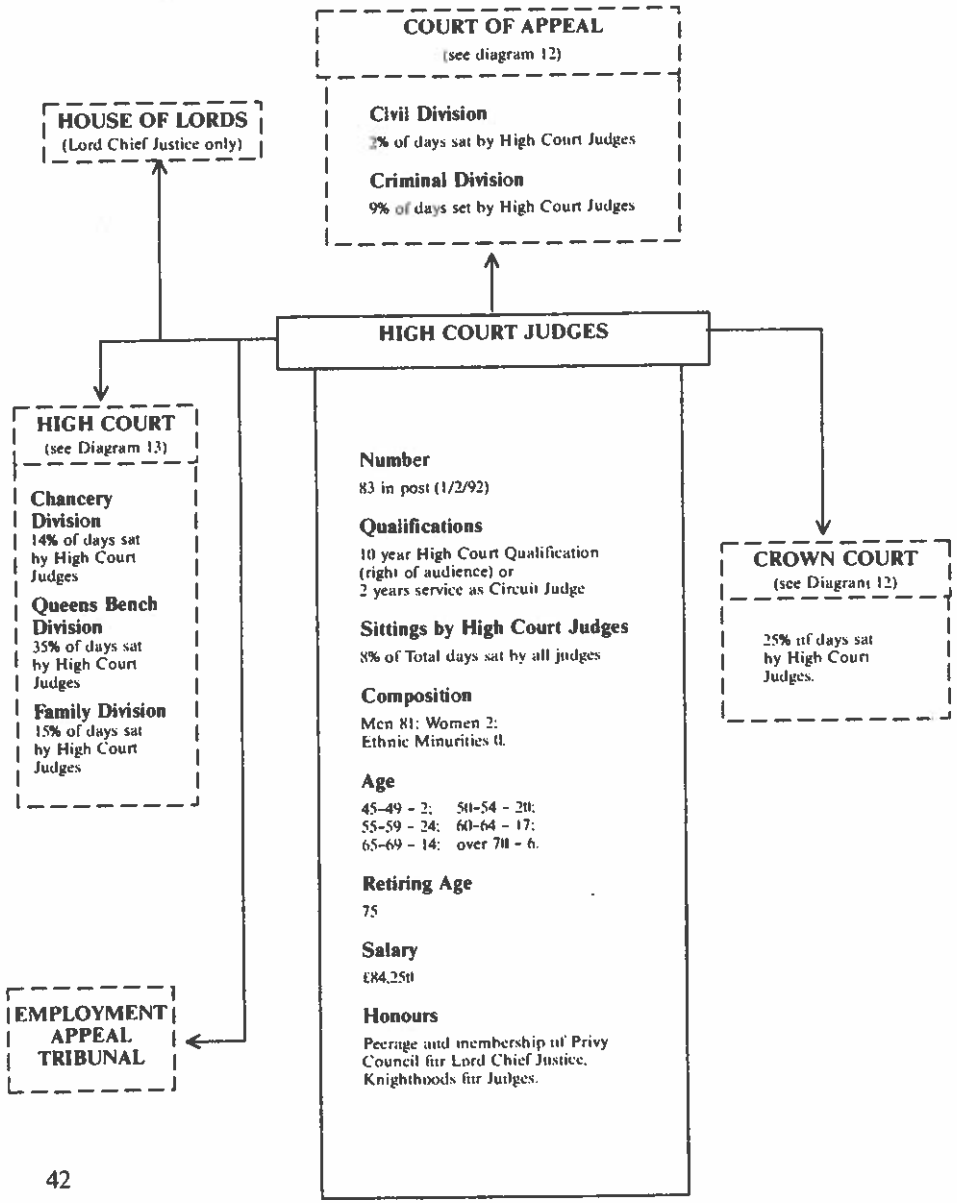


Diagram 6

CIRCUIT JUDGES AND THE COURTS IN WHICH THEY MAY SIT

(see Diagram 11 for further details of sittings)

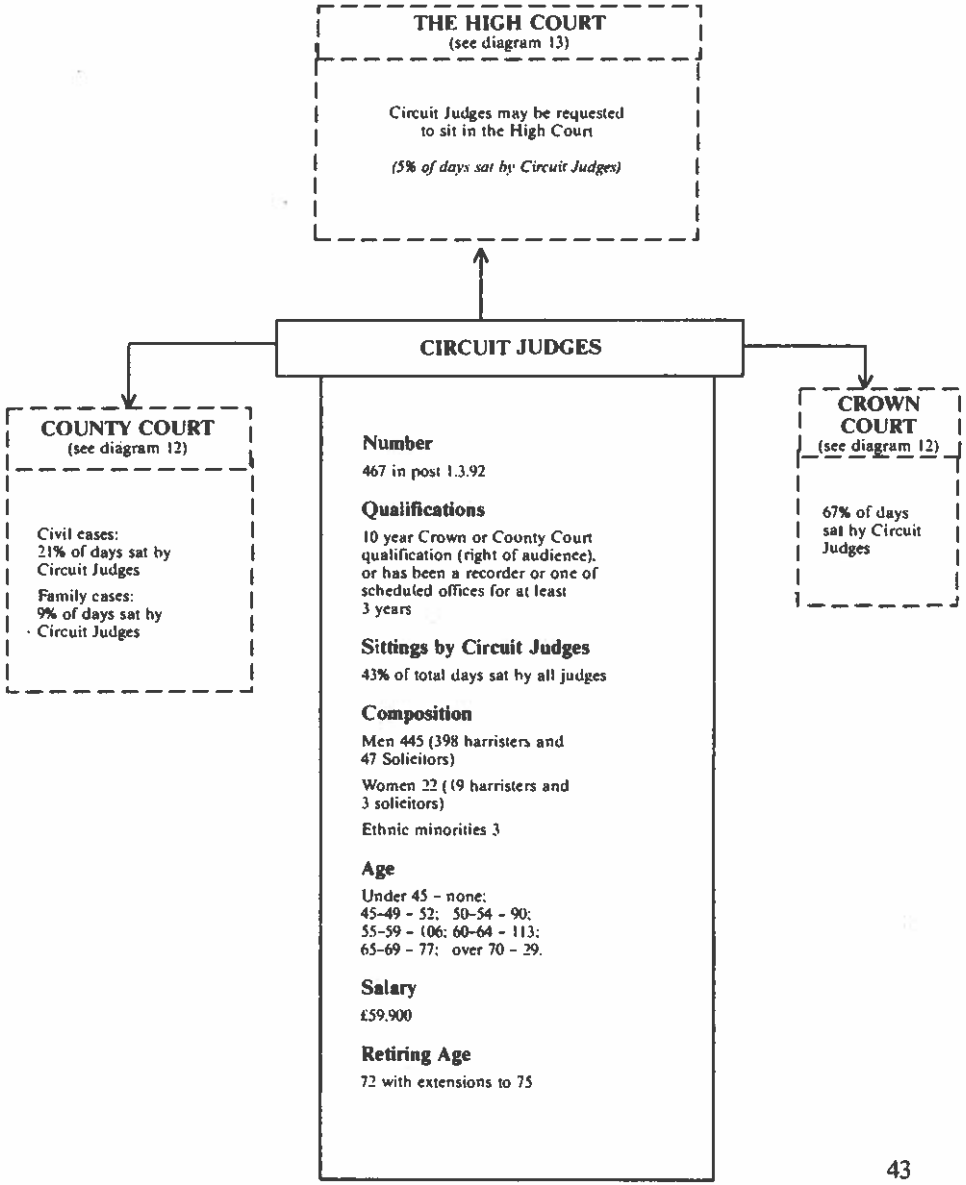


Diagram 7

RECORDERS AND THE COURTS IN WHICH THEY MAY SIT

(for further details of sittings see Diagram 11)

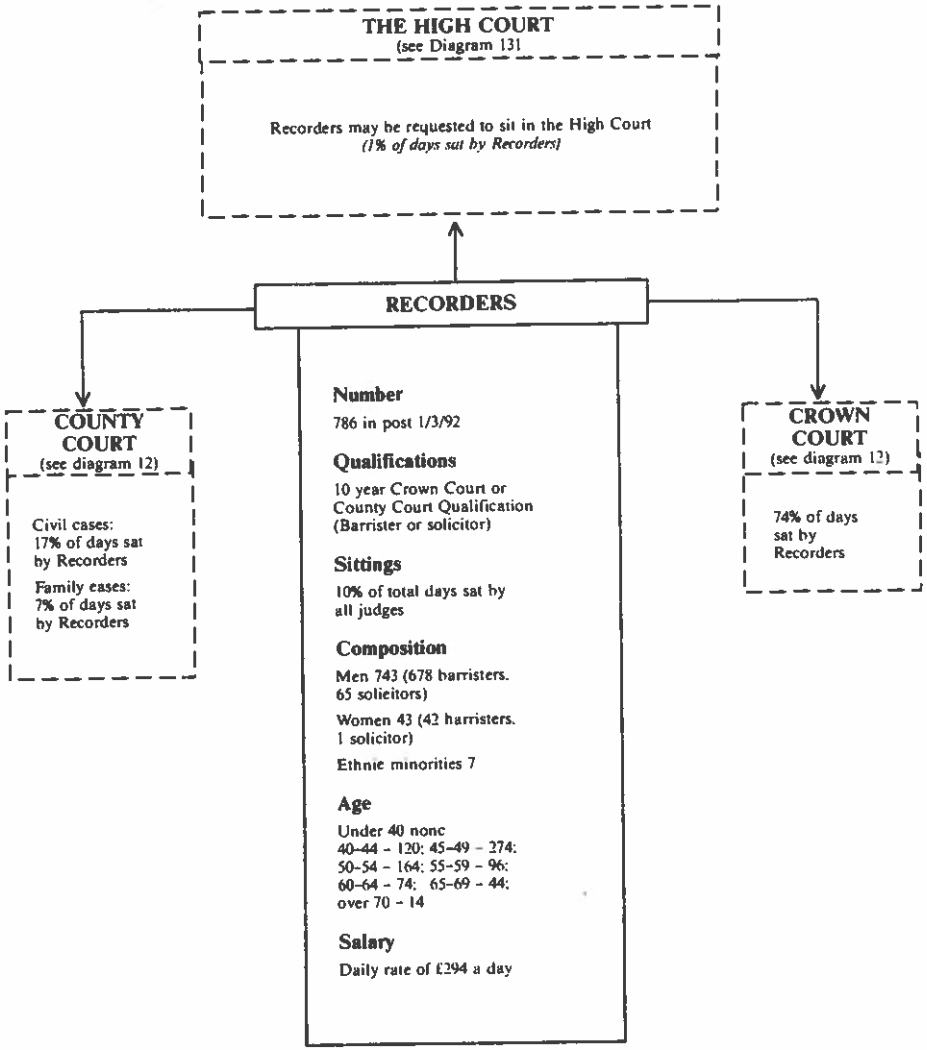


Diagram 8

ASSISTANT RECORDERS AND THE COURTS IN WHICH THEY MAY SIT

(for details of sittings see Diagram 11)

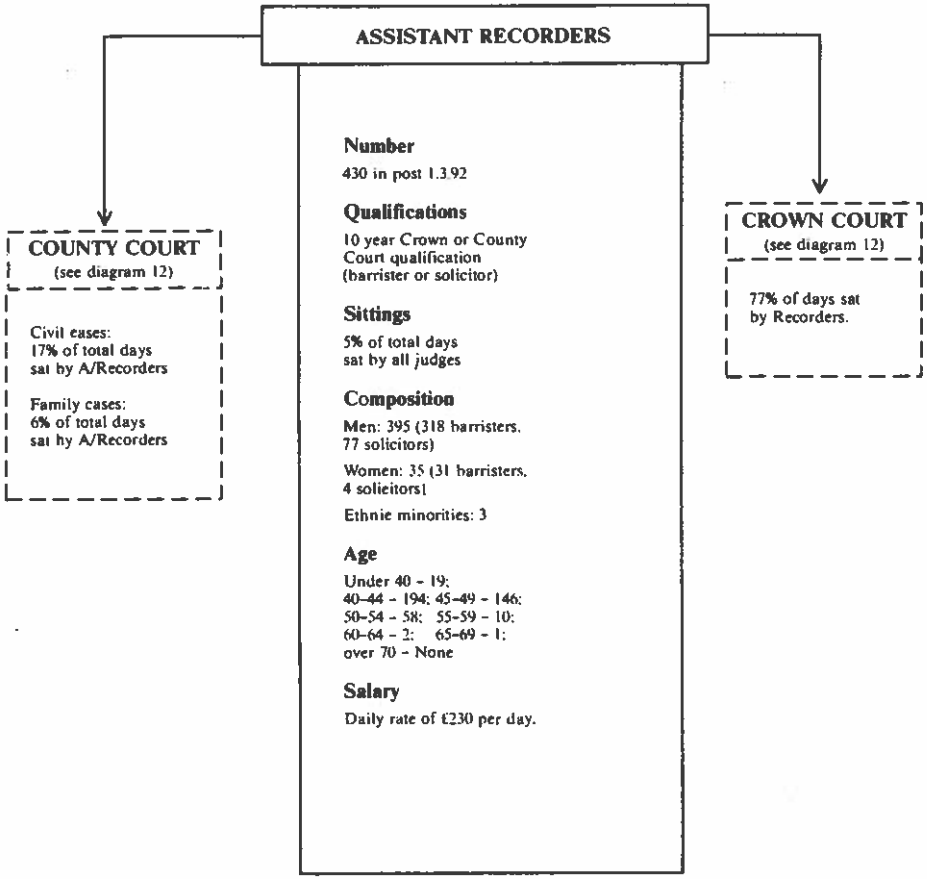


Diagram 9

DISTRICT JUDGES AND THE COURTS IN WHICH THEY MAY SIT

(formerly County Court and District Registrars and Family Division Registrars)

(for further details of sittings see Diagram 11)

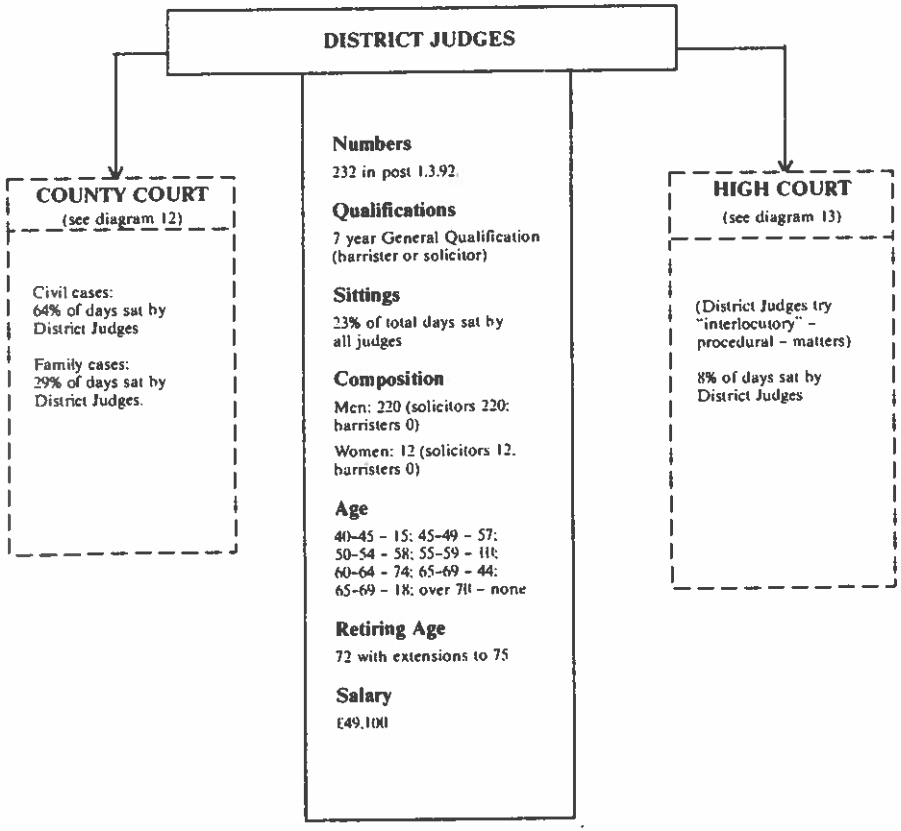


Diagram 10

LORDS JUSTICES AND THE COURTS IN WHICH THEY MAY SIT

(for further details of sittings see Diagram 11)

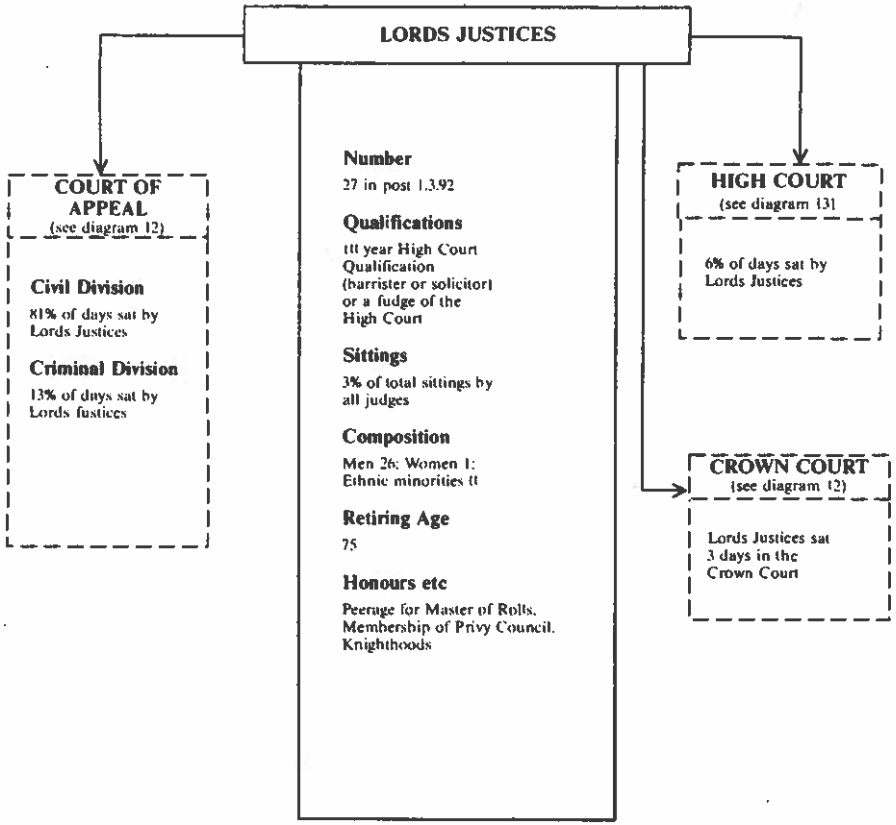


Diagram 11

Days sat by the different levels of judge in different courts

The figures give a broad indication of days sat by different judges in different courts. The number of judges varies throughout the year and all sittings in all courts are not shown, e.g. sittings in EAT or as Official Referees.

LEVEL OF JUDGE	NUMBER OF JUDGES ON 1.1.91	SITTINGS BY LEVEL OF JUDGE Days sat & % of total	LJ=Lords Justices HC=High Court Judges CJ=Circuit Judges R = Recorders	SITTINGS BY LEVEL OF JUDGE AND TYPE OF COURT											
				Court of Appeal				High Court				Crown Court		County Court	
				Criminal		Civil		Chancery		QBD		Family		Civil	Family
				Days sat		Days sat		Days sat		Days sat		Days sat		Days sat	Days sat
				No.	%	No.	%	No.	%	No.	%	No.	%	No. %	No. %	No. %	No. %
Lord Justice	27	4444 3	Judge days sat by LJ % of total LJJ days sat	573 13	30	3607 81	87			261 6	2			3 0.068	0		
High Coun Judge	83	13955 8	Judge days sat by HCJ % of total JCJ days sat	1312 9	68	313 2	8	2015 14	44	4871 35	45	1938 14	47	3506 25	5		
Deputy HCJ		2539 1	Judge days sat by DHCJ % of total DHCJ days sat	36 1	2	221 9	5	671 26	15	1221 48	11	390 15	10				
Circuit Judge	420	76386 43	Judge days sat by CJ % of total CJ days sat					702 1	15	1544 2	14	1666 2	41	49541 64.86	67	16371 21	30 6562 28 9
D/Circuit Judge		1531 1	Judge days sat by DCJ % of total DCJ days sat									4 0.26	0.10	841 55	1	442 29	1 244 1 16
Recorder	752	17144 10	Judge days sat by R % of total R days sat					34 0.20	0.74	141 1	1	72 0.42	2	12731 74	17	2901 17	5 1265 5 7
Assistant Recorder	421	8960 5	Judge days sat by A/R % of total A/R days sat											6885 77	9	1502 17	3 573 2 6
District Judge	225	40122 23	Judge days sat by DJ % of total DJ days sat					1191 3	26	1932 5	18	26 0.06	1			25492 64	46 11481 50 29
D/District Judge	533	12246 7	Judge days sat by D/DJ % of total D/DJ days sat					4 0.03	0.09	792 6	7	3 0.02	0.07			8424 69	15 3023 13 25
Totals	2461	177327		1921		4141		4617		10762		4099		73507		55132	23148

Source Based on tables 9.1 and 9.2 of the 1990 Judicial Statistics

Diagram 12

The Structure and Work of the Courts

(for details of judges see Diagrams 5 – 10)

HOUSE OF LORDS

Judges: Law Lords
Work: Civil & Criminal Appeals

THE SUPREME COURT

COURT OF APPEAL

Judges: Master of the Rolls & 27 Lords Justices
Work: Civil & Criminal Appeals

THE HIGH COURT (for details see diagram 13)

Judges: Lord Chief Justice, Vice Chancellor, President of the Family Division & 83 High Court Judges. District Judges also sit to deal with preliminary issues.
Work: More important civil & family cases, public law cases and appeals from Magistrates Courts on points of law.

THE CROWN COURT

Judges: High Court Judges, Circuit Judges, Recorders, Assistant Recorders.
Work: More serious criminal cases.

THE COUNTY COURT

Judges: Circuit & District Judges, Recorders and Assistant Recorders
Work: Less important civil and family cases

MAGISTRATES COURT

Judges: Stipendiary and Lay Magistrates
Work: Less serious criminal cases, domestic (family) and administrative, e.g. poll tax cases

Diagram 13

The Divisions of the High Court

(for details of judges see Diagram 5)

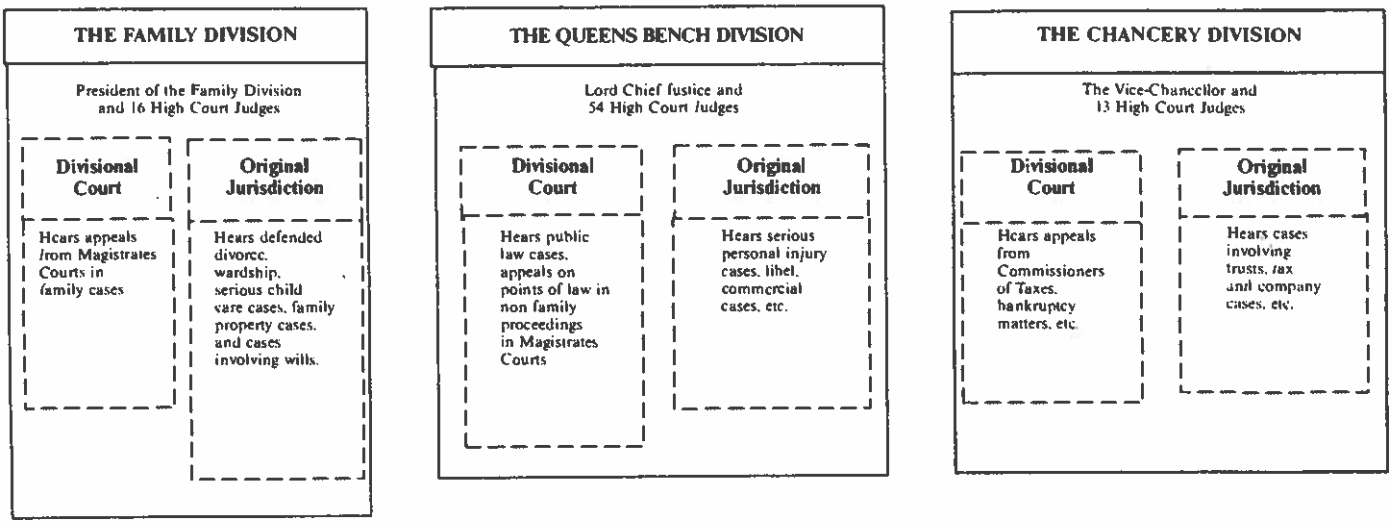


Diagram 14

CASE FLOW THROUGH TRIAL COURTS

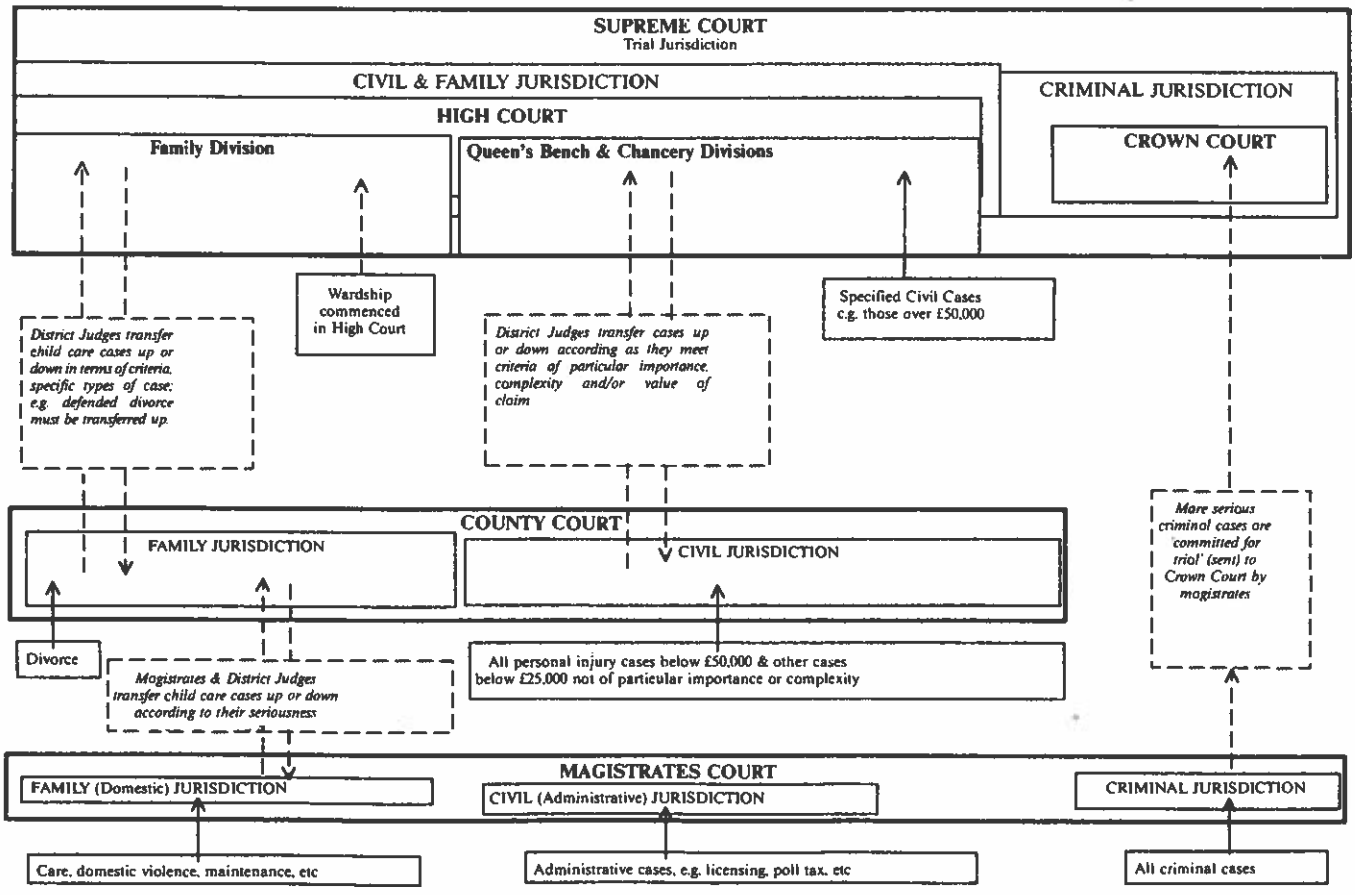


Diagram 15

Case Flow Through Appeal Courts

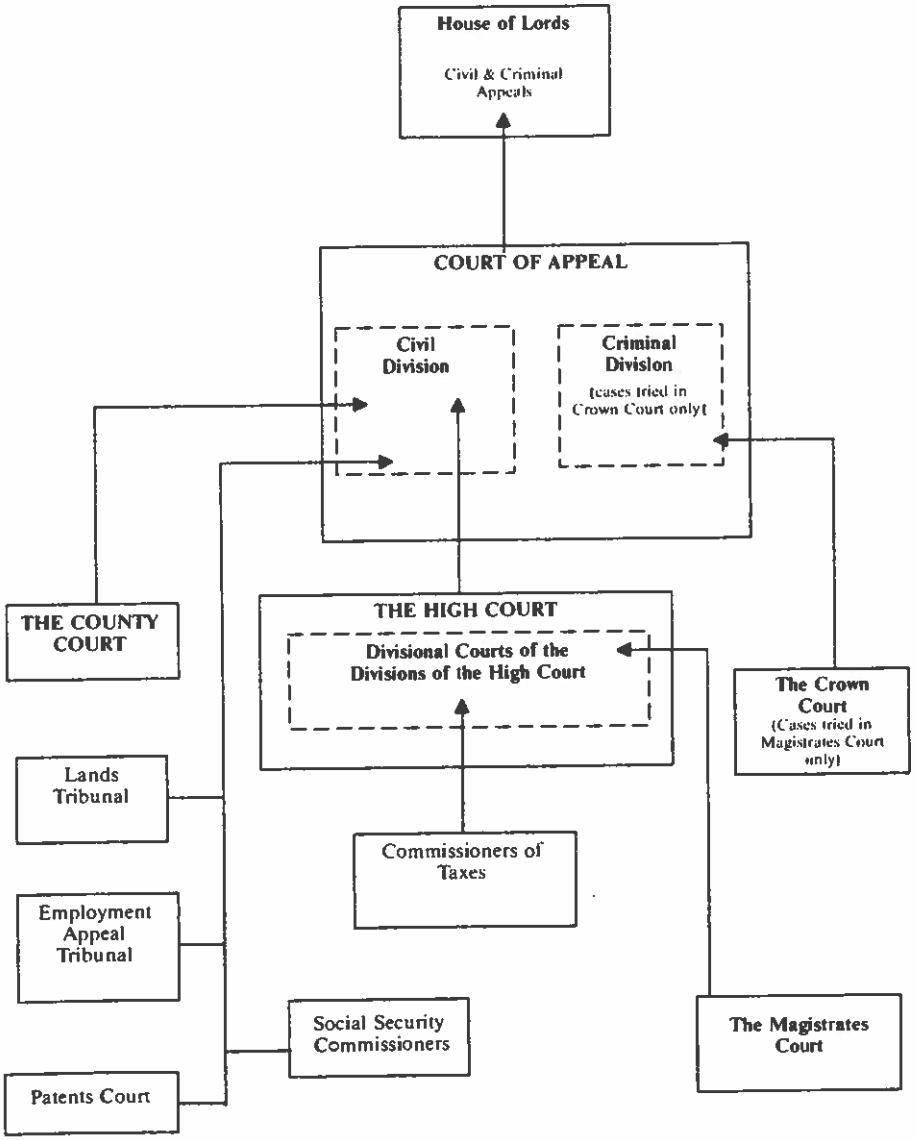
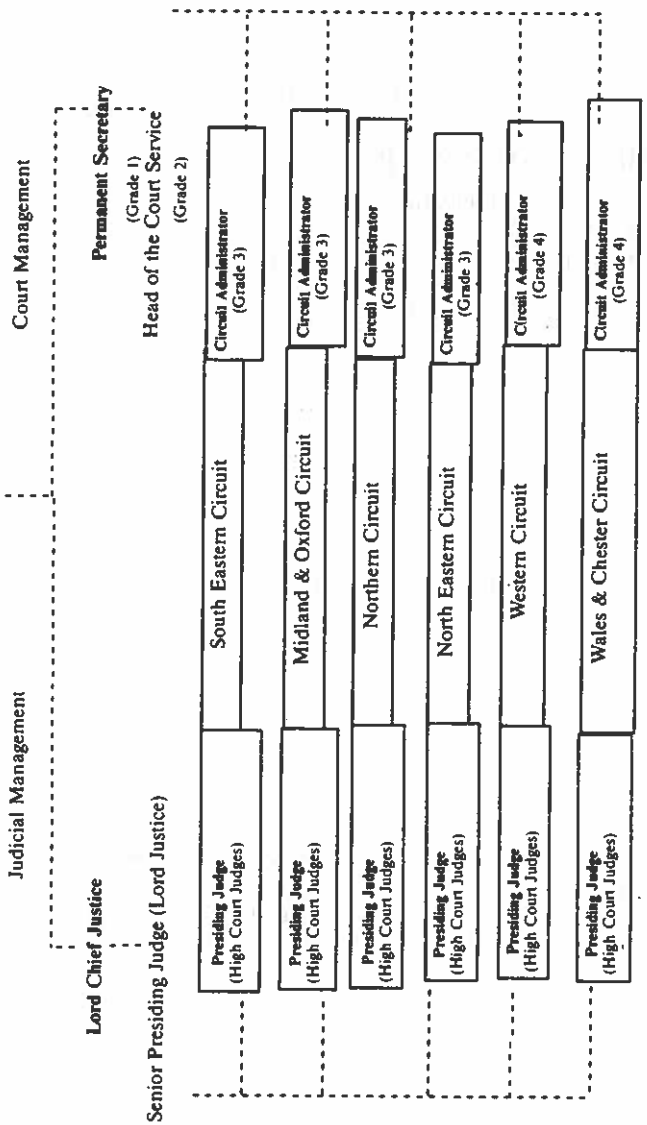


Diagram 16

CIRCUIT ORGANISATION



High Court, Crown and County Court cases (except those tried at the Royal Courts of Justice in London) are tried at 90 High Court and Crown Court centres & 270 County Courts located separately or at combined centres on 6 Circuits. For judicial matters each Circuit has one or more Presiding Judge, a High Court Family Division Liaison Judge (family law matters) and nominated resident Circuit Judges responsible for large courts or groups of courts. On the administrative side each Circuit has a Circuit Administrator and Courts Administrators responsible for groups of courts on the Circuit. There is close liaison nationally between the Lord Chancellor, the senior judiciary and officials and on circuit between Presiding and Resident Judges and Circuit and Courts Administrators.

APPENDIX 2

ADMINISTRATION OF JUSTICE: UNFINISHED BUSINESS

Broadly speaking, the nineteenth century arrangements for the administration of justice in the higher courts involved separate hierarchies of civil and criminal trial courts: the High Court and County Courts for civil cases and Assizes and Quarter Sessions for criminal cases. There was a Court of Appeal for civil appeals only and the House of Lords as the final court of appeal. The nineteenth century court structure is set out in *Diagram 17*.

The courts were largely separately organised and there was no Lord Chancellor's Department. There was a Lord Chancellor's Office, (headed by his Permanent Secretary and a small staff of lawyers) and the 'Lord Chancellor's Departments', whose number grew over the years to include those listed in *Diagram 19*, which shows the position just before the major changes made by the Courts Act 1971.

Increasing and changing workloads combined with the need to make civil and family justice more readily available outside London made heavy demands on the nineteenth century arrangements for the administration of justice.

A number of changes were made over the years to meet these demands. The principal changes were the introduction of criminal appeals, the replacement of Assizes and Quarter Sessions by the Crown Court, improved arrangements for hearing civil cases outside London, the establishment of a unified court service and the development of the Lord Chancellor's Department to support the Lord Chancellor in what had become a very substantial task.

The High Court and County Court were not combined. Instead a number of sophisticated arrangements were developed over the years for:
(1) transferring cases up or down
(2) releasing cases for trial by a lower tier of judge, and
(3) empowering judges of lower courts to sit in higher courts.

Taken as a whole, the thrust of the changes was from hierarchies of specialist courts towards a hierarchy of generalist judges. The aim was to reduce waiting time, particularly in the Crown Court, by making the most of all available 'judge power' through the flexible deployment of judges across a range of work: civil, criminal and family. The current position is set out in *Diagrams 18 and 20*.

The relevant legislation left the arrangements for the appointment, training, assessment of performance and management of judges largely untouched. They have been developed informally over the years to meet immediate needs. These matters are critical to the quality of justice. Civil, family and criminal litigation differ in important respects and make different demands of judges. The flexible deployment of judges to deliver quicker justice can result in substantial injustice unless judges trying all three kinds of case are selected and trained accordingly; and unless those deciding which judges should try which cases have reliable information about ability, experience and performance.

The present arrangements are non-statutory. The arrangements for appointments and training are more developed than those for deploying and managing the judiciary.

Diagram 17

19th Century Court Structure

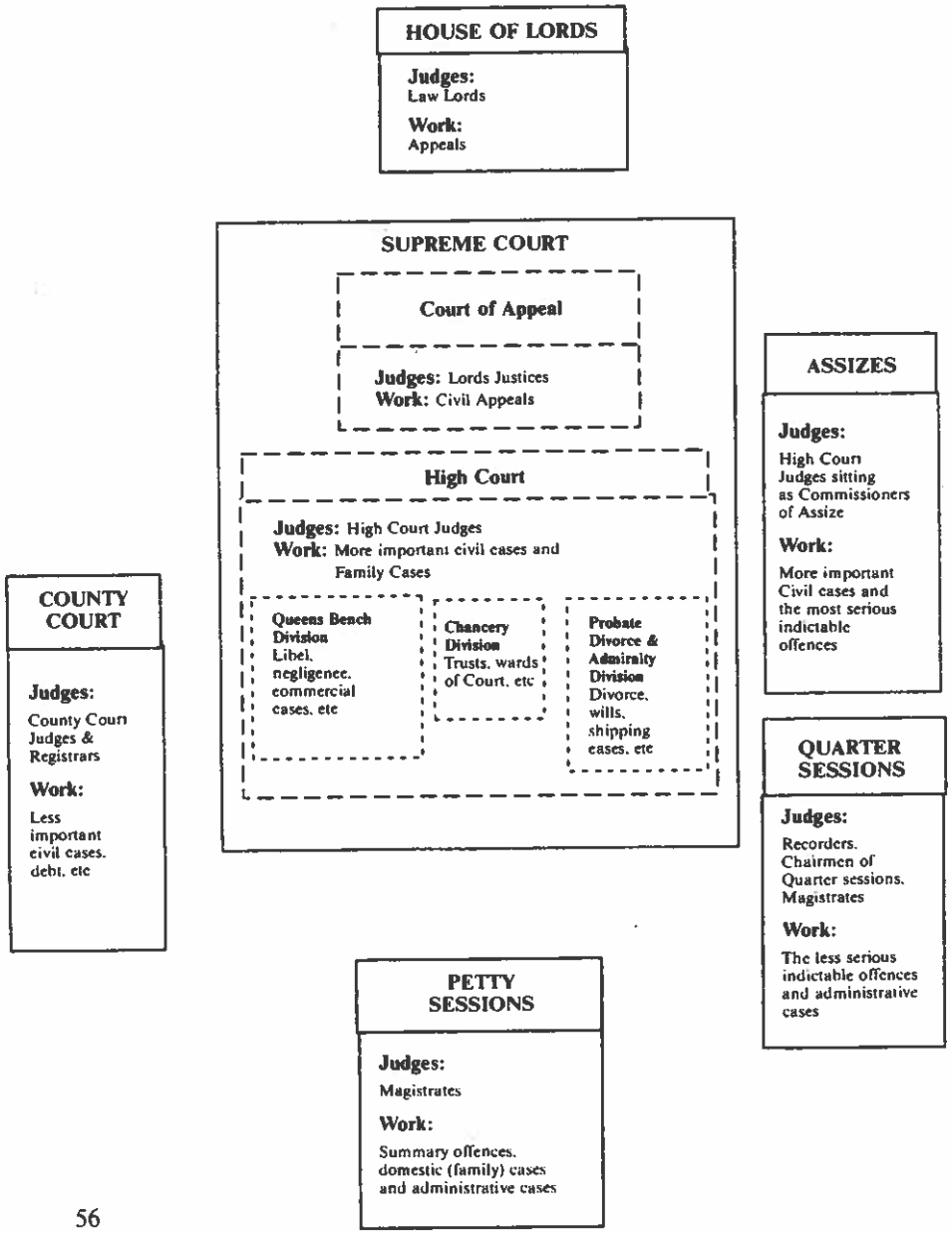


Diagram 18

1992 Court Structure

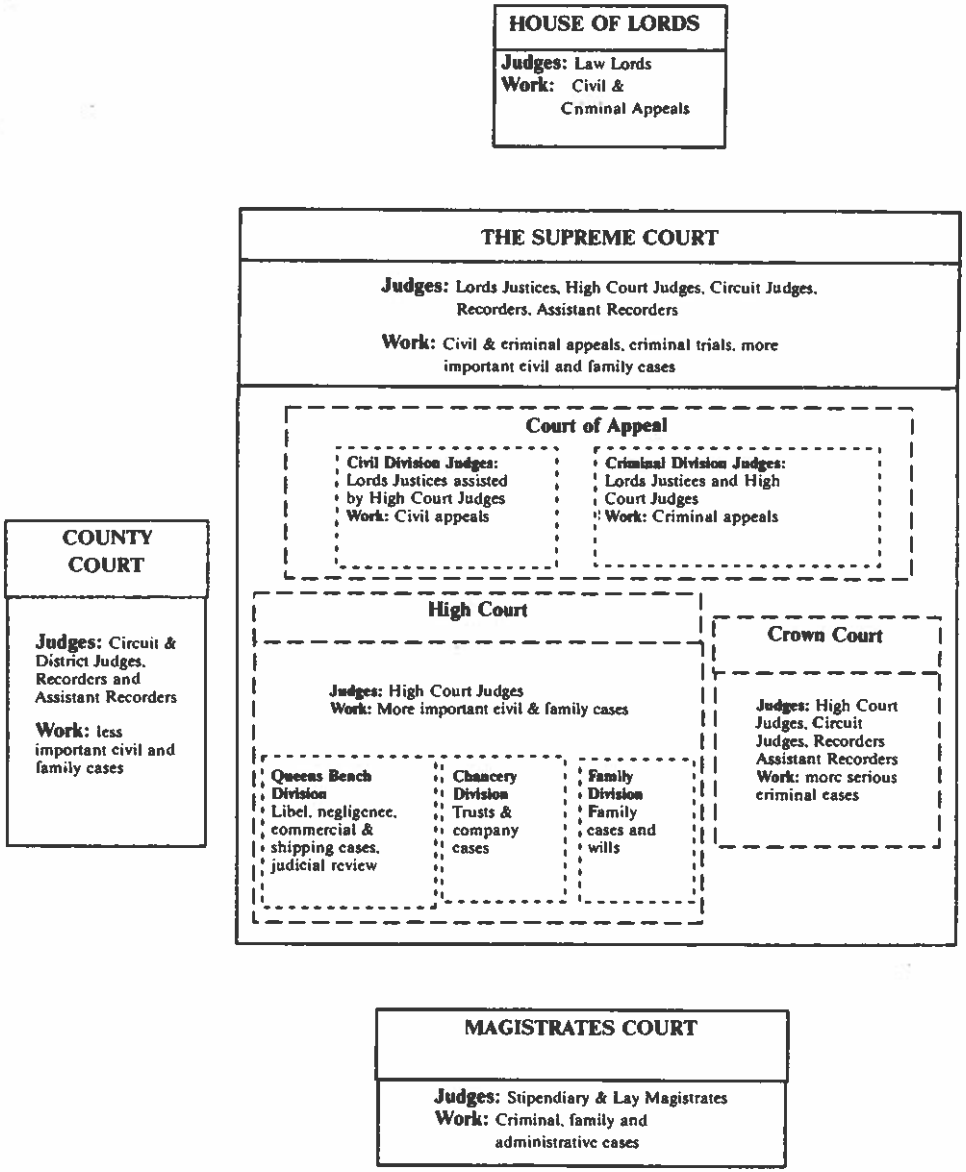


Diagram 19

The Lord Chancellor's Office 1970

(Pre Courts Act 1971)

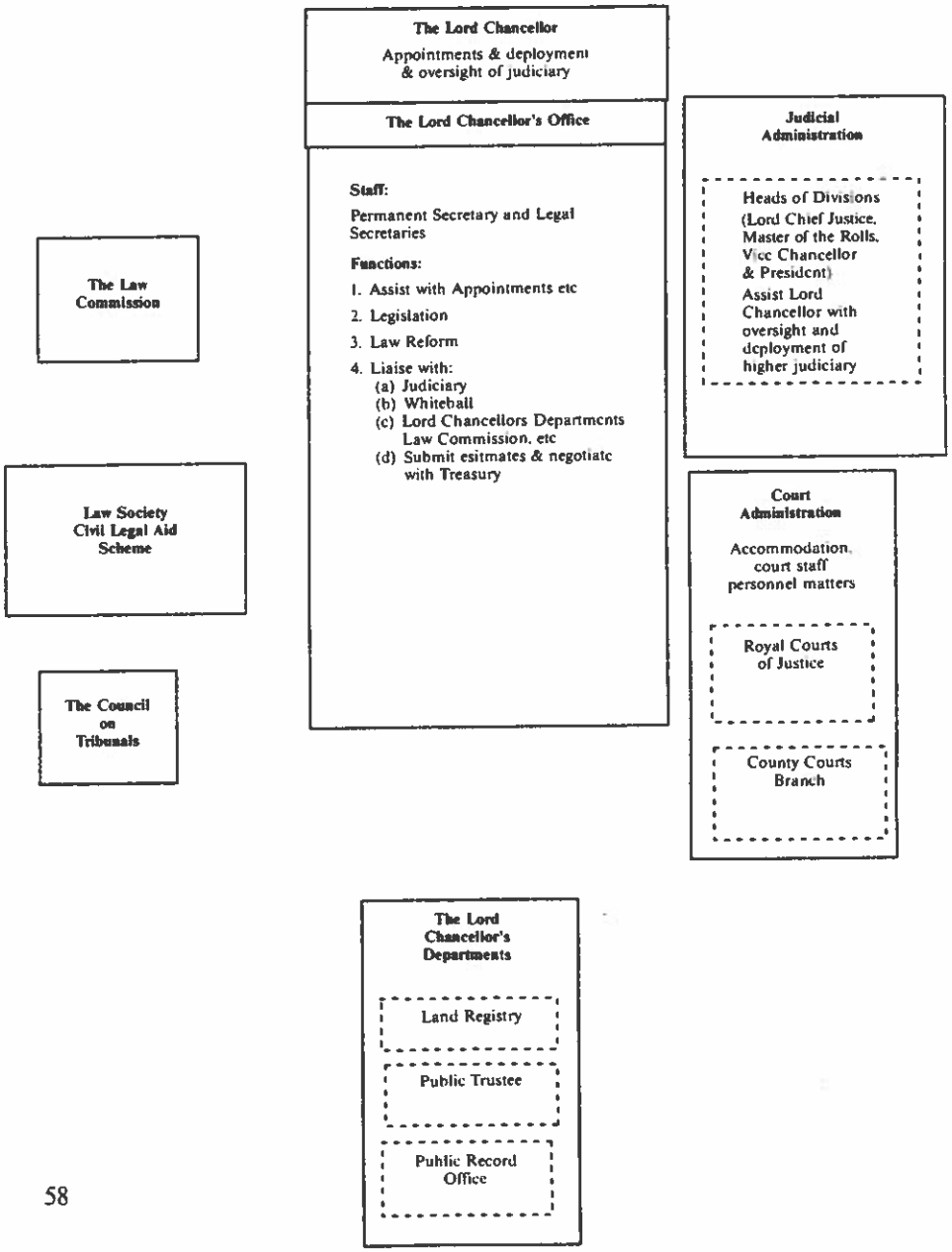
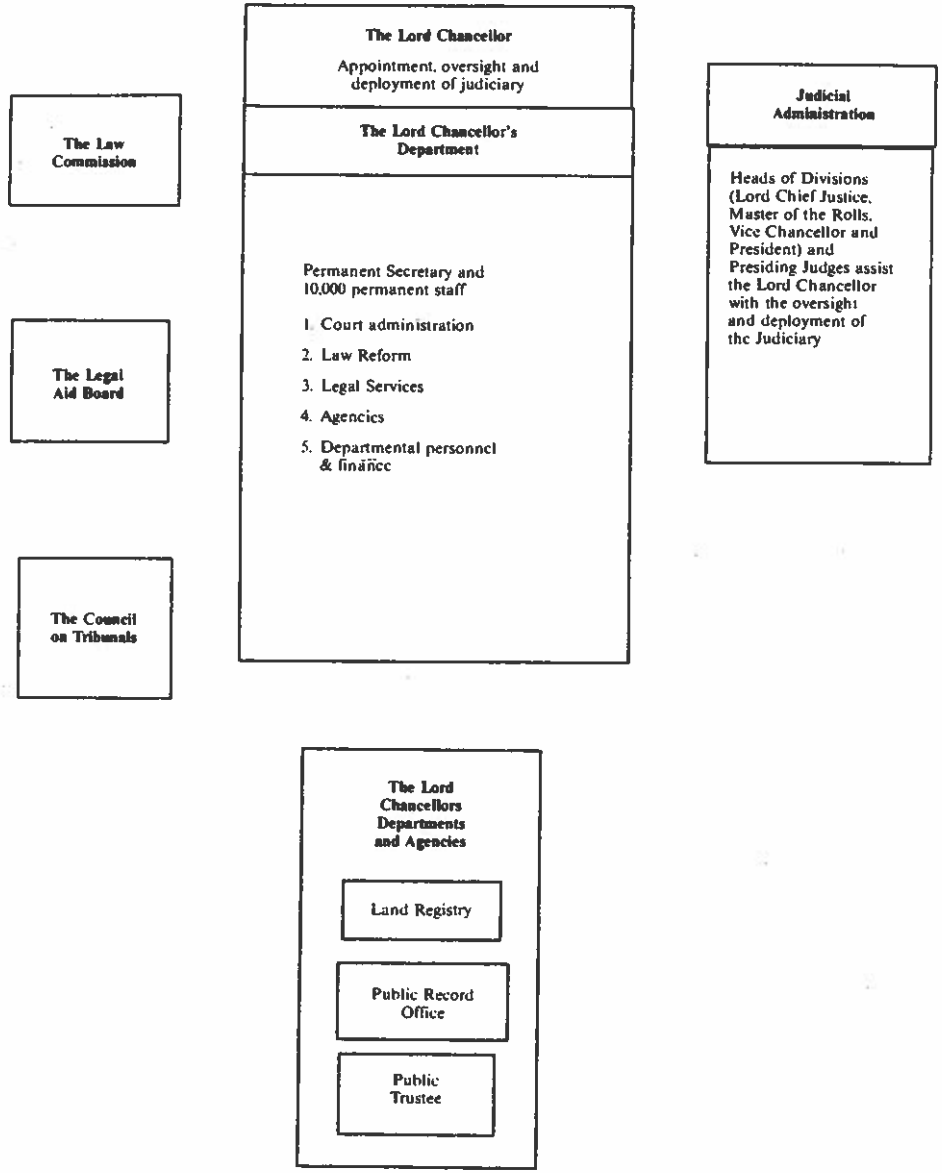


Diagram 20

The Lord Chancellor's Department 1992



APPENDIX 3

THE ARRANGEMENTS FOR THE APPOINTMENT OF HIGH COURT AND CIRCUIT JUDGES

1. Introduction

The arrangements are largely administrative. They have been developed over the years, particularly in response to the need for more judges to try increasing numbers of criminal cases in the Crown Court.

The most comprehensive statement of them is the Lord Chancellor's Department's pamphlet *Judicial Appointments: the Lord Chancellor's Policies and Procedures*. This note is based on the pamphlet and information available elsewhere.

2. The arrangements in brief

High Court and Circuit Judges are appointed by the Queen on the recommendation of the Lord Chancellor from suitably qualified barristers and solicitors. The majority of those appointed will already have held one or more full- or part-time judicial appointments. The more common judicial appointments and the routes they offer to the High Court and Circuit benches are set out in *Annex 1*.

The Lord Chancellor is assisted in arriving at his recommendations by the Judicial Appointments Group of his Department. Judicial posts are not advertised. Candidates for appointment write to the Judicial Appointments Group asking to be considered or are recommended by third parties.

They are interviewed by a member of the Group. A file is opened on each and their claims to appointment are kept under continuous review. This involves regular consultation with senior judges, the judges before whom they appear, barristers, solicitors and others as appropriate. This provides a wide spread of the views of judges and senior colleagues on their work and abilities. Views gathered in this way over a sufficient period are treated as having great weight, especially if they reveal a consensus or clear predominance of opinion.

When a new appointment is needed, lists of suitably qualified candidates are prepared by the Judicial Appointments Group and considered by the Lord Chancellor in consultation with senior judges. The Lord Chancellor then makes his recommendation to the Queen.

3. The arrangements in detail

A. Organisation of the appointments operation

The operation as a whole covers a wide range of judicial appointments: 9 Law Lords, 27 Lords Justices, 83 High Court Judges, 467 Circuit Judges, 786 Recorders, 430 Assistant Recorders, 232 District Judges, 601 Deputy District Judges, 76 Stipendiary magistrates, 124 full-time and 2470 part-time members of tribunals and 25,880 lay Magistrates.

The arrangements are operated by the Judicial Appointments Group of the Lord Chancellor's Department under the Lord Chancellor's direction. The Group's main function is to supply all the information and advice the Lord Chancellor needs to fulfil his repsonsibilities for appointments and to provide him with material on which to make a fair and informed judgment about every appointment.

This includes corresponding with, and interviewing, candidates and potential candidates; consulting judges and senior members of the profession; filing and recording the results; and following the Lord Chancellor's instructions and guidance, both on individual appoitnments/candidates and on general policy (through the Permanent Secretary where necessary).

The Group is headed by a senior civil servant working directly to the Permanent Secretary. It is divided into five divisions (one of which is responsible for the special arrangements for the appointment of lay magistrates) as follows:

JA 1:	The appointment of High Court Judges, Circuit Judges, Recorders, Assistant Recorders
JA 2:	Masters, Registrars, District Judges, Stipendiary Magistrates and Tribunal appointments.
JA 3:	Magistrates (Appointments)
JA 4:	Magistrates (Training)
JA 5:	The Secretariat of the Judicial Studies Board

B. Qualifications for Appointment

Statutory qualifications. These require candidates to have held appropriate advocacy qualifications or an appropriate judicial post for the appropriate length of time.

Extra-statutory qualifications. In making appointments the Lord Chancellor looks for the following qualities:

> *Professional ability, experience, and standing.*
> These are major requirements. The Lord Chancellor first needs to be satisfied that the applicant has not only attained a high standard of professional ability and experience but is also suited to judicial work by personal character and temperament.

Integrity.
Checks are made to confirm that candidates for full-time judicial office do not have criminal records. Checks are also made with the Inland Revenue and HM Customs to ensure that there have been no past difficulties over the payment of tax or VAT.

Sound temperament.
It appears that this means a temperament suited to judicial work.

The physical ability to carry out the duties of the post.
A candidate must satisfy the Lord Chancellor that his health is satisfactory. This involves a questionnaire which is sent to the Occupational Health Services Medical Adviser together with the candidate's own doctor's report on his or her medical history.

Age
Deputy District Judges 35-62
District Judges 40-62
Assistant Recorders 35-50 unless there are special circumstances, e.g. women returning after a career break to have a child.
Recorders are unlikely to be appointed before the age of 38.
Circuit Judges 45-62
High Court Judges 45-62

Principles on which the Lord Chancellor acts in making appointments.

The best candidate is appointed regardless of sex, ethnic origin, political affiliation or religion.

No single consultee's view is decisive in itself, however wise or eminent that person, and whether that view is positive or negative.

Service as a member of part-time or full-time judiciary for long enough to establish competence and suitability. This principle does not yet extend to appointments to the High Court Bench though it is becoming the practice.

Confidentiality: consultees' views on candidates are confidential to enable them to speak frankly.

D. Methods of Appointment

There are different methods of appointment for different tiers of judge:

i. By invitation – High Court Judges
When appointments are made to the High Court the process involves consultation between the Lord Chancellor and the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice Chancellor and the Senior Presiding Judge. Most practitioners appointed to the High Court Bench will be expected to have served as Deputy High Court Judges and/or Recorders.

Deputy High Court Judges are appointed in consultation with the Head of the appropriate Division from the most experienced and able practitioners and, increasingly, usually from Recorders.

(ii). By application and assessment of performance in a full-time judicial post – Circuit Judges.

Holders of appropriate judicial offices can be appointed Circuit Judges if they have held office for at least two years.

(iii). By application and assessment of performance in a part-time judicial post – Circuit Judges and Recorders.

This involves regular review of candidates with:

(a) The Judiciary
The Head of the Judicial Appointments Group consults presiding judges, leaders of circuits and judges at all principal courts. Each is asked to express a view on the suitability of candidates for appointment or promotion.

(b) Others
Where appropriate senior members of the profession are consulted. If there are gaps (for example, the candidate only appears in magistrates and county courts): enquiries are made in those courts. If the candidate does not appear in court, opinions are obtained elsewhere.

Collation of the outcome of each review. This provides a collection of informed views on candidates' ability, standing in the profession and suitability for judicial office.

Consultation with senior judges before appointment. The Presiding Judges play a key role and are regularly consulted on appointments.

(iv). By application and assessment - Assistant Recorders.
This involves
An application form.
Consultation with appropriate people.
An interview with a senior member of the appointments team and a senior member of the practising profession drawn from a panel of Recorders.
An induction course.
Sittings with a Circuit Judge.

(v). By competitive Selection Board – District Judges.
The procedure involves a short list of candidates drawn from Deputy District Judges and a Selection Board.

Appointment as a Deputy District Judge.

Qualifications
Some litigation experience, preferably in County Courts, a sound knowledge of law and procedure in most major fields covered by County Courts including matrimonial law.

Application form
A form giving personal information and names of judiciary familiar with work.

Interview
An interview with the Judicial Appointments Group.

Appointment as District Judge

Qualifications
An appropriate number of sittings (at least 20) as a Deputy District Judge.

Application Form

Interview
With a member of the Judicial Appointments Group.

Consultations
With members of the judiciary before whom the candidate often appears. References are taken up.

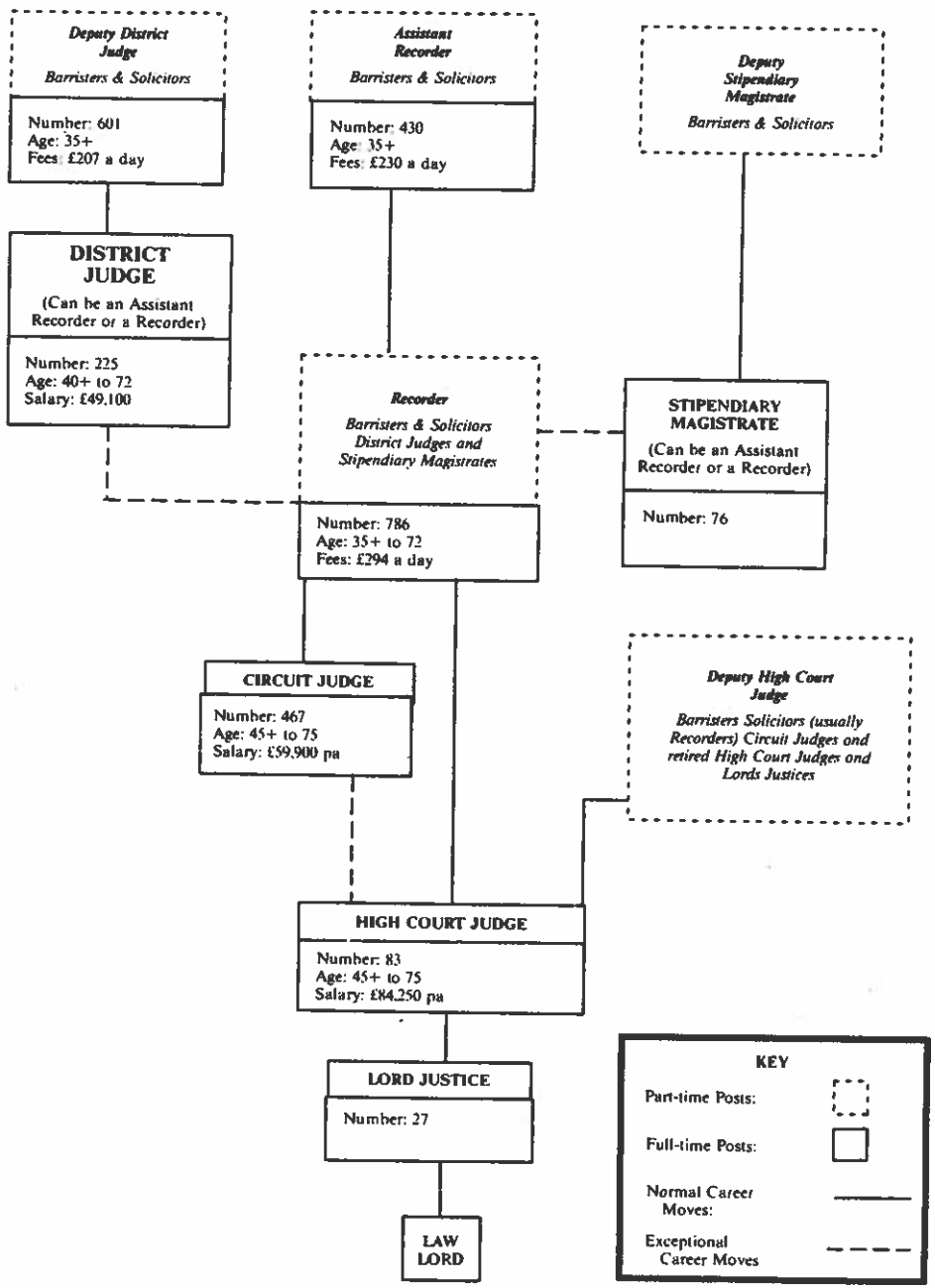
Shortlisting
When a vacancy occurs a shortlist is prepared of candidates who satisfy criteria relating to seniority, experience and performance.

Competitive Interview
A Board which includes a serving District Judge sits to select the best candidate. (Failure before one Board does not necessarily preclude further appearances before other Boards).

Recommendation to the Lord Chancellor

Annex 1

ROUTES TO THE HIGH COURT AND CIRCUIT BENCH



APPENDIX 4

THE JUDICIAL STUDIES BOARD

The Judicial Studies Board comprises a main board and a number of committees.

The Main Board

The Main Board is responsible for policy and planning. Its aim is:

(a) to provide, and to expand and improve where necessary, facilities for the training and instruction of full and part-time judges, and
(b) to consider and advise on appropriate standards for, and the nature and content of, training for lay Magistrates and Chairmen and members of Tribunals.

It is chaired by a Lord Justice and its members include High Court and Circuit Judges, a studies consultant, a magistrate and officials.

The Committees

The Board's executive functions, including planning and making arrangements for seminars and conferences, are exercised by four committees.

The *Criminal,the Civil and the Family Committees* provide induction training and refresher training for the full-time judiciary and include High Court and Circuit Judges, academics and officials of the Lord Chancellor's Department.

The *Magisterial Committee* provides induction and refresher training for stipendiary magistrates and monitors and advises on the training of lay magistrates. It is chaired by a Circuit Judge and includes stipendiary and lay magistrates, justices' clerks and officials.

The *Tribunals Committee* is responsible for advising on standards and methods of training of chairmen and members of tribunals. It is chaired by the President of the Social Security Appeal Tribunals and its members include a member of the Council on Tribunals, academics and officials.

The Board's clientele in 1991 included: 125 members of the senior judiciary, 426 Circuit Judges, 7 Official Referees, 740 Recorders, 451 Assistant Recorders, 103 Assistant Recorders in training, 43 Supreme Court Registrars/Masters, 222 District Judges, 69 Stipendiary Magistrates, 67 Acting Stipendiary Magistrates, 120 Justices Clerks, 29,000 Lay Magistrates, 20,000 Members of Tribunals.

APPENDIX 5

THE TOP SALARIES REVIEW BODY

1. Terms of Reference
The Top Salaries Review Body's terms of reference are to 'advise the Prime Minister on the remuneration of the higher judiciary and certain other judicial posts; senior civil servants; senior members of the armed forces; and other groups which may be referred to it'.

2. Remit
The Review Body's remit comprises some 2,140 members of the judiciary, senior civil servants and senior members of the armed forces. The judiciary, who include the English and Welsh, Scottish and Northern Irish judiciary, are by far the largest group. They account for 60% of the total salaries of those within the Review Body's remit. They are also the only group that is increasing: the judiciary numbered 1,170 in 1991 and 1,290 in 1992; senior civil servants 670 in 1991 and 660 in 1992; and senior members of the armed forces 200 in 1991 and 190 in 1992.

The most senior posts within its remit are the Lord Chief Justice, the Head of the Home Civil Service and the Chief of the Defence Staff. Below them are members of the judiciary in some 60 individual posts or categories of post; senior civil servants in grades 1, 2 and 3 (i.e. those in the senior open structure); and the senior members of the armed services comprising the top three ranks (i.e. down to Rear Admiral, Major General and Air Vice Marshal).

3. The Review Body's Approach to Remuneration
The Review Body reports on its annual review of 'top salaries'. Broadly speaking, it undertakes fundamental reviews when it believes that levels of pay of those within its remit have fallen seriously out of line with each other or with comparable salaries elsewhere. Between major reviews, its practice 'is to adjust salaries and examine internal differentials and such other issues as may arise'.

It undertook a fundamental review in 1985 and recommended a major realignment of salaries, including significant changes to judicial salary structure, and established horizontal links between the groups within its remit, particularly the link between High Court Judges, Permanent Secretaries, Admirals, Generals and Air Chief Marshals, which is still accepted.

The 1990 and 1991 Reports expressed the view that 'factors other than pay, particularly career progression, influence recruitment to the Circuit Bench;

and that an expansion of the upper tier of Circuit Judges would have a significant effect upon the morale of the Circuit Bench as a whole with consequent benefits to recruitment'.

The 1992 Report was the occasion for a further fundamental review but this was not accepted by the government. The approach adopted was to start by establishing the appropriate salary for those at the lowest level where there was an 'acute problem of compression of differentials'. Senior civil servants and members of the armed forces were promoted from ranks within their services where the government had accepted that their pay should be fixed by reference to the private sector. The judiciary were normally recruited from practising lawyers and their earnings were 'directly responsive to the market'.

The Review Body commissioned pay comparison studies which analysed the jobs of senior civil servants and members of the armed forces to find precise comparisons of job weight and function in the private sector. It considered that such pay comparisons were not appropriate for the judiciary as no directly comparable jobs exist in the private sector.

The Office of Manpower Economics conducted a study of lawyers' earnings on behalf of the Review Body. It was found that the median pre-appointment earnings of High Court Judges (£166,200) were about twice their judicial salary and that those of Circuit Judges were about a quarter more. The Review Body concluded that the discount below the level of candidates' previous earnings had become too great even when account was taken of 'the status and security of judicial office, with its prospect of continuing in paid, rewarding and pensionable employment to a later age than is possible in most walks of life'.

Although the evidence showed that there were relatively few recruitment problems at present, the Review Body felt that it should 'view the improvement in recruitment in the context of the current economic recession' and that its concern in conducting a fundamental review should be 'to consider the long-term salary levels which are required to attract sufficient candidates of the right quality over time'. It concluded that the salary offered had 'an immediate bearing on recruitment and retention, and as candidates are recruited from a pool of persons already established in a profession where earnings are determined by the market, salary levels must bear a reasonable relationship to such earnings if sufficient numbers of individuals of the right quality are to be attracted to judicial office'.

4. Judicial Salary Structure

Judges are grouped with Chairmen of Tribunals to form a judicial salary structure. This is broadly:

Group 1: The Lord Chief Justice.

Group 2: Lords of Appeal in Ordinary, Master of the Rolls, Lord President of the Court of Session (Scotland) and Lord Chief Justice (Northern Ireland).

Group 3: includes Lords Justices of Appeal, the President of the Family Division and the Vice Chancellor.

Group 4: includes High Court Judges.

Group 5: includes Senior Circuit Judges, Chief Social Security Commissioners, Presidents of Industrial Tribunals, President of Value Added Tax Tribunals and Presiding Special Commissioner of Income Tax.

Group 6: includes Circuit Judges; Chief Metropolitan Magistrate; Chief Registrar and Senior and Chief Masters, Registrars of Civil and Criminal Appeals, President and Vice Presidents of the Immigration Appeal Tribunal, Regional Chairmen of Social Security Appeal and Medical Appeal Tribunals and Regional Chairmen of Industrial Tribunals.

Group 7: includes District Judges, Stipendiary Magistrates, Masters and Registrars of the Supreme Court, President of the Pensions Appeal Tribunal, Chairmen of Social Security Appeal Tribunals and Medical Appeal Tribunals, Special Commissioners of Income Tax, and Immigration Adjudicators.

5. Horizontal links between judicial salaries and those of senior civil servants and members of the armed forces.

The judiciary are horizontally linked to the senior civil service and senior members of the armed forces. The links recommended in the Review Body's Report are broadly as in the following table.

APPENDIX 6

WOMEN AND ETHNIC MINORITIES

Comprehensive and accurate figures for the composition of the profession and judiciary are not available largely because they were not collected in the past.

The figures for the numbers of men and women are more complete because they are easier to obtain and have been collected for longer. So far as ethnic minorities are concerned, records depend on the willingness of individuals to provide information and are dependent on self-classification.

The general position as set out in the following tables makes it clear that there is a preponderance of white males; though there are some signs of change.

TABLE 1

Judiciary	Civil Servants	Armed Forces
Group 1		
Lord Chief Justice	Head of Home Civil Service	Admiral of the Fleet, Field Marshal, Marshal of RAF
Group 2		
Law Lords and Master of the Rolls	Permanent Secretary to the Treasury	-
Group 3		
Lords Justice of Appeal, President of Family Division and Vice Chancellor	-	-
Group 4		
High Court Judges	Grade 1 (Permanent Secretaries)	Admiral, General, Air Chief Marshal
-	Grade 2 (at range maximum*)	-
Group 5		
Senior Circuit Judges, President of Value Added Tax Tribunals and Presiding Special Commissioner of Income Tax, etc		-
Group 6		
Circuit Judges. Registrars of Civil and Criminal Appeals Presidents Industrial Tribunals, etc		Vice Admiral, Lieutenant General, Air Marshal
-	Grade 2 (at range minimum*)	-
-	Grade 3 (at range maximum*)	-
-		Rear Admiral, Major General, Air Vice Marshal
Group 7		
District Judges, Stipendiary Magistrates, etc		-
-	Grade 3 (at range minimum*)	-

* The pay of grades 2 and 3 is performance related. Broadly speaking there is a pay range with maximum and minimum points. Individuals enter at the minimum and movement up the scale depends on performance.

TABLE 2

Composition of the Judiciary and the Legal Profession

THE JUDICIARY

1. By gender and former profession (solicitor or barrister)
(number in post as at 1.3.92)

MEN Former Profession	High Court Judges	Circuit Judges	Record-ers	A/Record-ers	A/Record-ers in training	District Judges	Deputy District Judges
Barristers	81 100%*	398 89%	678 91%	318 81%	76 86%	0	1
Solicitors	0 0%**	47 11%	65 9%	77 19%	12 14%	220	548
Total	81	445	743	395	88	220	549
% of Men in category	**98%**	**95%**	**95%**	**92%**	**81%**	**95%**	**91%**

* % of barristers
** % of solicitors

WOMEN Former Profession	High Court Judges	Circuit Judges	Record-ers	A/Record-ers	A/Record-ers in training	District Judges	Deputy District Judges
Barristers	2	19	42	31	18	0	3
Solicitors	0	3	1	4	2	12	49
Total	2	22	43	35	20	12	42

2. By Ethnic Origin

	High Court Judges	Circuit Judges	Record-ers	A/Record-ers	A/Record-ers in training	District Judges	Deputy District Judges
Number	0	3	7	6	3	*	*

* Estimated – ethnic origin was not recorded in the past.

3. By Former Profession

Former Profession	High Court Judges	Circuit Judges	Record-ers	A/Record-ers	A/Record-ers in training	District Judges	Deputy District Judges
Barristers	83	417	720	349	94	0	4
Solicitors	0	50	66	81	14	232	597
Total	83	467	786	430	108	232	601

4. By Age
(number in post as at 1.2.92 with age as at 26.3.92)

Age Range	High Court Judges	Circuit Judges	Recorders	Assistant Recorders	Assistant Recorders in training	District Judges
70+	6	29	14	0	0	5
65–69	14	77	44	1	0	18
60–64	17	113	74	2	0	44
55–59	24	106	96	10	0	53
50–54	20	90	164	58	5	40
45–49	2	52	274	146	32	57
40–44	0	0	120	194	50	15
under 40	0	0	0	19	21	0
Total	83	467	786	430	108	232

Source: Lord Chancellor's Department

THE LEGAL PROFESSION

A. BARRISTERS

1. By Gender
(13.3.92)

Category	Men	Women	Total
Practising Bar	5,761	1,367	7,128
QCs	702	34	736
Pupils	474	322	796

Source: General Council of the Bar

2. Ethnic Minorities (1988) (a further survey is in the course of preparation)

a % of Barristers from Ethnic Minorities

Type of Barrister	Percentage from Ethnic Minorities
All Barristers	5%
QCs	1%
Juniors	6%
Pupils	12%

Source: Bar Survey 1988 quoted in *Quality of Justice*

b % of main Ethnic Groups among Ethnic Minority Barristers (1988)

Ethnic Group	% of Category
Asian	41%
West Indian	27%
Black African	19%

Source: Bar Survey 1988 quoted in *Quality of Justice*

c Pupillages (1988)

	% of category
Applications	17%
Interviews	17%
Pupillages	12%

Source: Bar Survey 1988 quoted in *Quality of Justice*

3. Appointment of Queen's Counsel 1992

	Total	Men		Women		Ethnic Minority	
Applicants	420	386	92%	34	8%	14	3%
Grants	69	62	90%	7	10%	1	0.2%

Source: Lord Chancellor's Department

B. Solicitors (as at 31.7.91)

1. Men and Women Practising Certificate Holders

(1). Holders of Practising Certificates by sex and date of admission

(a) Solicitors in Private Practice

Year since Admission	Total	Per cent	Men	Women & percentage of total in private practice	
0-9	19,846	41.2%	11,796	8,050	17%
10-19	16,198*	33.6%	13,495	2,702	6%
20-29	7,221	15.0%	6,816	405	0.8%
30-39	3,361*	7.0%	3,242	118	0.2%
40-49	1,053	2.2%	1,037	16	
50+	473	1.0%	465	8	
All years	48,152	100.0%	36,851	11,299	23%

Includes one case each where solicitor's sex is not known

Source: Law Society Report for 1991

(b) Solicitors in Employment

Years since admission	Total	Per cent	Men	Women and percentage of total in employment, etc	
0-9	3,611	40.1%	1,729	1,882	21%
10-19	3,431	38.1%	2,542	889	10%
20-29	1,382	15.3%	1,293	89	1%
30-39	473	5.2%	456	17	
40-49	92	1.0%	89	3	
50+	26	.3%	26	0	
All years	9,015	100.0%	6,135	2,880	32%

Source: Law Society Report for 1991

(2) Practising Certificate Holders by Category

Category	Total	Men	Women
Private Practice	48,152	36,851	11,299
Commerce/Industry	2,687	1,987	691
Local Government	2,394	1,594	800
Crown Prosecution Service	1,263	790	473
Solicitors abroad	664	516	148
Locum	371	197	174
Clerk/Assistant Clerk to Judges	215	165	50
Retired	198	182	16
Not in active practice	148	71	77
Law Centre/CAB	113	52	61
Agent CPS	93	56	37
National Undertaking	91	58	33
Government Service	80	56	24
Law Society staff	69	31	38
Legal Aid Board	60	36	24
Academic	30	21	9
Other	513	304	209
Unknown	35	19	16
Total	57,167	42,986	14,179

Source: Law Society Report for 1991

(3) Practising Certificate Holders in Private Practice by Position in Firm

Position in Firm	Men	%	Women	%	Total
Partners	22,846	87.1	3,203	12.3	26,051
Sole Practitioners	3,291	86.1	530	13.9	3,821
Assistant Solicitors	8,105	53.8	6,955	46.2	15,060
Consultants	1,881	93.8	125	6.2	2,006
Unknown	728	60.0	486	40.0	1,214
Total	36,851	75.6	11,299	23.5	48,152

Source: Law Society Report for 1991

2. Solicitors by Ethnic origin

Ethnic Origin	Men	Women	Total	%
White/European	29,951	7,861	37,814	66.1
Afro/Caribbean	48	39	87	.2
Asian	373	139	512	.9
Chinese	62	42	104	.2
African	15	10	25	0
Other	31	18	49	.1
Unanswered	4,212	620	4,832	8.5
Unknown*	8,294	5,450	13,744	24
Total	42,986	14,179	57,167	100

* Likely to include a large number admitted since the Law Society's ethnic minority exercise was undertaken in 1986

Source: Law Society Report for 1991

APPENDIX 7

JUDICIAL JOB DESCRIPTIONS

The task of drafting job descriptions for the various levels of judge within the present court system is complicated: first by the extensive and overlapping jurisdiction of High Court and Circuit Judges, second by the fact that most judges exercise only part of their jurisdiction in practice, and third by the absence of information about which of them exercise which parts and to what extent.

Thus, job descriptions for specialist and High Court and Circuit Judges would not necessarily be appropriate for High Court or Circuit Judges who try several types of case. Nevertheless, it would probably be possible to develop some 'core' job descriptions which could be elaborated to meet special requirements.

Elizabeth Sidney of the Mantra Consultancy Group generously volunteered to prepare a tentative job specification for some aspects of the work of a Circuit Judge. It is attached as an example of the kind of developments that are possible and, in the view of the Committee, necessary.

Circuit Judge - Job Description

Job Title: Circuit Judge

Responsible to: The Lord Chancellor

Overall Responsibilities:

1. To conduct the proceedings of the court in such a way that the issues relevant to each case are presented and considered as fairly and expeditiously as possible and are seen to be so.

2. To sentence, having regard to the law, to legal precedent, to the facts of the particular case and to contemporary public understanding of legal justice.

Key Tasks

1. Rapidly to ascertain, in advance whenever possible, an understanding of the central issues of each case.

2. Rapidly to acquire an appreciation of any technical matters or areas of expertise relevant to that understanding.

3. To hear cases in chambers prior to court work as necessary.

4. To control court proceedings in such a way that counsel, jury, witnesses, all concerned with the running of the court and the general public accept the authority of the judge and respect his/her rulings on how the case should be conducted.

5. To promote a fair hearing of the case by such means as seeking clarification, elucidating evidence and preventing inadmissible evidence; checking excessive domination by any one participant; defusing emotion; counterbalancing bias; maintaining high standards of courtesy.

6. To guide the jury on court procedure and assist their understanding at all times including having regard to the intellectual, emotional and physical demands imposed upon them by different cases.

7. To expedite the administration of cases by such means as checking unnecessary paperwork; disallowing repetition; speaking concisely.

8. To exercise judgment regarding the motives and values of participants and their possible influence on evidence.

9. To decide the court timetable with regard to the need to maintain a high level of attention for the duration of sittings.

10. To exercise the personal discipline required to run the court fairly, including maintaining personal good health and faculties and controlling any personal reactions which could threaten objectivity.

11. To sentence concisely in language intelligible to the general public.

12. To maintain and update personal knowledge of legal developments by appropriate reading and study.

Additional Discretionary Tasks

1. To undertake, as requested, work in the higher courts.

2. To undertake tasks in support of other sectors involved in the administration of justice, such as serving on Advisory Committees, Compensation Boards or appointment of magistrates.

3. To contribute to public understanding of the judiciary e.g. by accepting educational and speaking assignments.

APPENDIX 8.

JUDICIAL STANDARDS COMMITTEE

Suggested Procedure

The Judicial Standards Committee would be a sub-committee of the Judicial Commission. It would have a separate secretariat. Complaints which were either vexatious or allegations of miscarriage of justice would be screened out and returned to the originator, where appropriate, with a note on legal aid for appeal and/or the address of JUSTICE or other aid organisation.

Members of the Committee would deal with complaints on a rota basis. Any party could request that the complaint be considered by a three person tribunal, but, in general, slight complaints, e.g. minor discourtesy, would be resolved by the member, with the power to advise the Judge as to future conduct and/or recommend an apology.

More serious complaints would be forwarded to the Judge and his comments returned to the Complainant. The member could demand transcripts and interview witnesses where appropriate. Resolution would be by Tribunal. It would be inappropriate for the procedure before the tribunal to be treated as a form of litigation between the complainant and the judge. In particular the proceedings should not be seen as a means of reopening the case in which the complaint arose and there should be no confrontation between the judge and the complainant. The judge's duty of observing proper judicial standards of behaviour is owed to the public at large, not just to the individual complainant. The procedure would therefore be similar to that employed in dealing with complaints against barristers – i.e. the case against the judge would be presented independently of the complainant.

First and second written warnings, usually accompanied by a recommendation for retraining, would be the normal penalties available. In extreme cases, the Tribunal could recommend suspension or dismissal to the Lord Chancellor.

The Committee could make references to itself, e.g. from press reports. The Court of Appeal could also refer after determining any appeal if a case presented disciplinary implications.

Complaints could not be dealt with until the end of the relevant proceedings and there should be a time limit of six months from that time.

Tribunals could be in public at the Judge's request, but would usually be in camera. Findings against a Judge should be made available to the press.

APPENDIX 9

LIST OF PERSONS CONSULTED BY THE COMMITTEE.

(a) Persons who met the Committee

John Heritage, CB, The Lord Chancellor's Department,
David Kay, GKR Associates Ltd,
Thomas Legg, CB, QC, Lord Chancellor's Department,
David Pannick, QC
Elizabeth Sidney, Mantra Consultancy Group
Russell Wallman, The Law Society

(b)Organisations whose views were sought by the Committee

Association of First Division Civil Servants
Association of Women Barristers
Bar Association for Local Government and the Public Service
Canadian Bar Association
Commission for Racial Equality
Conservative Central Office
Confederation of British Industry
Criminal Bar Association
Equal Opportunities Commission
Family Bar Association
Federal Judiciary Centre, Washington DC
Federation of Business and Professional Women
Liberal Democratic Lawyers
Liberal Democratic Party
London Chamber of Commerce
London Common Law and Commercial Bar Association
Midland and Oxford Circuit
NACRO
National Centre for State Courts, Williamsburg, Virginia
National Council of Women
Official Referees Bar Association
Parliamentary Bar Mess
Patent Bar Association
Society of Black Lawyers
Society of Labour Lawyers
Trades Union Congress
Western Circuit
Women's Bar Federation
Women's National Commission