

CHAPTER 2

SUMMARY AND RECOMMENDATIONS

1. In this chapter, I summarise and set out my recommendations. In the summary I take a different order from that of the main body of the Report. I start with the recommendation for codification in Chapter 1 and continue with the structure of the criminal justice system over-all and that of the criminal courts and their composition, and then with the way in which cases progress through them. I follow the summary with the recommendations in the order made and with references to the paragraphs and pages in the text to which they relate .

Introduction (Chapter 1 – pages 7-22, rec 1)

2. The criminal law should be codified under the general oversight of a new **Criminal Justice Council** and by or with the support as necessary of the Law Commission. There should be codes of offences, procedure, evidence and sentencing (**paras 35-36, rec 1**). See also: as to a code of criminal procedure, **Chapter 10 paras 271-280, recs 228-234**); as to a code of criminal evidence, **Chapter 11, paras 76-77,**); and as to a sentencing code, **Chapter 11, para 198, and Chapter 12, paras 110-111**).

The Criminal Justice System (Chapter 8 – pages 315-336, recs 121-139)

3. A national **Criminal Justice Board** should replace all the existing national planning and ‘operational’ bodies, including the Strategic Planning Group, and the Trial Issues Group. The new Board should be the means by which the criminal justice departments and agencies provide over-all direction of the criminal justice system (**paras 37-66, recs 121-122**). It should have an independent chairman and include senior departmental representatives and chief executives of the main criminal justice agencies (including the Youth Justice

Board) and a small number of non-executive members (**paras 67-72, recs 123-125**). At local level, **Local Criminal Justice Boards** should be responsible for giving effect to the national Board's directions and objectives and for management of the criminal justice system in their areas. Both the national and local Boards should be supported by a centrally managed secretariat and should consult regularly with the judiciary (**paras 73-77, recs 126-129**). The national Board should be responsible for introducing an integrated technology system for the whole of the criminal justice system based upon a common language and common electronic case files, the implementation and maintenance of which should be the task of a **Criminal Case Management Agency** accountable to the Board. (**paras 92-114, recs 137-139**).

4. A **Criminal Justice Council**, chaired by the Lord Chief Justice or senior Lord Justice of Appeal, should be established to replace existing advisory and consultative bodies, including the Criminal Justice Consultative Council and the Area Strategy Committees. It should have a statutory power and duty to keep the criminal justice system under review, to advise the Government on all proposed reforms, to make proposals for reform and to exercise general oversight of codification of the criminal law. The Council should be supported by a properly resourced secretariat and research staff (**paras 78-88, recs 130-135**).

A unified Criminal Court (Chapter 7 – pages 269-314, recs 83-120)

5. The Crown Court and magistrates' courts should be replaced by a unified Criminal Court consisting of three Divisions: the Crown Division, constituted as the Crown Court now is, to exercise jurisdiction over all indictable-only matters and the more serious 'either-way' offences allocated to it; the District Division, constituted by a judge, normally a District Judge or Recorder, and at least two magistrates, to exercise jurisdiction over a mid range of 'either-way' matters of sufficient seriousness to merit up to two years' custody; and the Magistrates' Division, constituted by a District Judge or magistrates, as magistrates' courts now are, to exercise their present jurisdiction over all summary matters and the less serious 'either-way' cases allocated to them (**paras 2-35, recs 83-87**). The courts, that is those of the Magistrates' Division, would allocate all 'either-way' cases according to the seriousness of the alleged offence and the circumstances of the defendant, looking at the possible outcome of the case at its worst from the point of view of the defendant and bearing in mind the jurisdiction of each division. In the event of a dispute as to venue, a District Judge would determine the matter after hearing representations from the prosecution and the defendant. The defendant would have no right of election to be tried in any division (**paras 36-40, recs 88-95**). (In the event of the present court structure continuing, the defendant should lose his present elective right to trial by jury in 'either-way' cases; see paragraph 10 below.)
6. Whether or not the Crown Court and magistrates' courts are replaced with a unified Criminal Court, there should be a single centrally funded executive

agency as part of the Lord Chancellor's Department responsible for the administration of all courts, civil, criminal and family (save for the Appellate Committee of the House of Lords), replacing the present Court Service and the Magistrates' Courts' Committees. For the foreseeable future, circuit boundaries and administrations should remain broadly as they are and the courts should be locally managed within the circuits and the 42 criminal justice areas (**paras 41-73, recs 96-103**). Justices' clerks and legal advisers responsible to them should continue to be responsible for the legal advice provided to magistrates (**para 74, rec 104**) see also **Chapter 4 – Magistrates paras 50-58, recs 6-7**).

Magistrates (Chapter 4 – pages 94-134, recs 2-15)

7. Magistrates and District Judges should continue to exercise their established summary jurisdiction and the work should continue to be allocated between them much as at present (**paras 1-49, recs 2-5**). If my recommendation for the establishment of a new unified Criminal Court with a District Division is adopted, they should also sit together in that division exercising its higher jurisdiction. I do not recommend any further extension of justices' clerks' case management jurisdiction (**paras 50-58, rec 7**). Steps should be taken to provide benches of magistrates that more broadly reflect the communities they serve. (**paras 59-86, recs 8-9**). In order to strengthen the training of magistrates, the Judicial Studies Board should be made responsible, and be adequately resourced, for devising and securing the content and manner of their training (**paras 91-100, recs 11-15**).

Juries (Chapter 5 – pages 135-225, recs 16-60)

8. Jurors should be more widely representative than they are of the national and local communities from which they are drawn. Qualification for jury service should remain the same, save that entitlement to, rather than actual, entry on an electoral role should be a criterion. Potential jurors should be identified from a combination of a number of public registers and lists (**paras 21-24, recs 17-18**). While those with criminal convictions and mental disorder should continue to be disqualified from service, no one in future should be ineligible for or excusable as of right from it. Any claimed inability to serve should be a matter for discretionary deferral or excusal (**paras 27-40, recs 20-24**). Provision should be made to enable ethnic minority representation on juries where race is likely to be relevant to an important issue in the case (**paras 52-62, rec 25**).
9. The law should not be amended to permit more intrusive research than is already possible into the workings of juries, though in appropriate cases trial judges and/or the Court of Appeal should be entitled to examine alleged improprieties in the jury room (**paras 76-98, recs 26-29**). The law should be declared, by

statute if need be, that juries have no right to acquit defendants in defiance of the law or in disregard of the evidence (**paras 99-107 rec 30**).

10. The defendant should no longer have an elective right to trial by judge and jury in ‘either-way’ cases. The allocation should be the responsibility of the magistrates’ court alone and exercisable where there is an issue as to venue by a District Judge. The procedures of committal for trial and for sentence in ‘either-way’ cases should be abolished. Under my recommendation for a unified Criminal Court with three divisions, matters too serious for the Magistrates’ Division would go direct either to the District or Crown Division depending on their seriousness. In the meantime ‘either-way’ cases for the Crown Court should be “sent” there in the same way as indictable-only cases (**paras 119-172, recs 32-36**). Trial by judge and jury should remain the main form of trial of the more serious offences triable on indictment, that is, those that would go to the Crown Division, subject to four exceptions. First, defendants in the Crown Court or, if my recommendation for a unified Court with three divisions is accepted, in the Crown and District Divisions, should be entitled with the court’s consent to opt for trial by judge alone (**paras 110-118, rec 31**). Second, in serious and complex frauds the nominated trial judge should have the power to direct trial by himself and two lay members drawn from a panel established by the Lord Chancellor for the purpose (or, if the defendant requests, by himself alone) (**paras 173-206, recs 37-47**). Third, a youth court, constituted by a judge of an appropriate level and at least two experienced youth panel magistrates, should be given jurisdiction to hear all grave cases against young defendants unless the charges are inseparably linked to those against adults (**paras 207-211, recs 48-50**). Fourth, legislation should be introduced to require a judge, not a jury, to determine the issue of fitness to plead. (**paras 212-213, rec 51**).

The Judiciary (Chapter 6 – pages 226-268, recs 61-82)

11. The current hierarchy of judges and their jurisdictions should continue, subject to my recommendations for the establishment of a District Division of a new unified Criminal Court and extension of the powers of District Judges and magistrates when sitting in it (**paras 1-18**). Systems of judicial management and deployment should be strengthened and also made more flexible to enable a better match of High Court and Circuit Judges to criminal cases, proper regard also being given to the arrangements for civil and family justice. In particular, there should be a significant shift in heavy work from High Court Judges to the Circuit Bench, coupled with greater flexibility in the system for allocating work between them. Save in the case of Circuit Presiding Judges, the present rigid circuiting pattern of High Court Judges should be replaced by one in which they travel out to hear only the most serious of cases (**paras 19-56, recs 63-70**). In implementing the recent recommendations for reforms in the system of appointing judges, the Lord Chancellor’s Department should exercise vigilance to root out any indirect discrimination, hurry forward the substitution of assessment exercises for short interviews and establish and publish a clear policy

for the appointment of disabled persons to judicial office (**paras 65-88, recs 76-78**). There should be a strengthening in the training provided to judges, appropriately enlarging the Judicial Studies Board's role for the purpose (**paras 89-97, rec 79**). There should be a system of appraisal for all part-time judges, and consideration should be given to the appraisal of full-time judges (**paras 98-104, recs 80-82**).

Decriminalisation and alternatives to conventional trial (Chapter 9 – pages 367-394, recs 140-151)

12. I have found little scope or justification for decriminalisation of conduct that Parliament has made subject to penal sanctions (**paras 1-6**). There should, however, be greater use of a system of fixed penalty notices subject to a right of challenge in court, for example for television licence evasion and the existing provisions for road traffic offences (**paras 7-25, recs 140-142**). There is no compelling case at present for the creation of any specialist courts, in particular, drugs or domestic violence courts (**paras 26-40**). Consideration should be given to the wider use of conditional cautioning or 'caution-plus' alongside existing and future restorative justice schemes, for which a national strategy should be devised (**paras 41-47 and 58-69, recs 143-144 and 150**). Once the Financial Services Authority has assumed full responsibility for supervision in the financial services field, consideration should be given to transferring appropriate financial and market infringements from the criminal justice process to the Authority's regulatory and disciplinary control. Consideration should also be given in this field for combining parallel criminal and regulatory proceedings (**paras 48-57, recs 145-149**). Preparatory work should be undertaken with a view to removal of all civil debt enforcement from courts exercising a criminal jurisdiction (**paras 70-77, rec 151**).

Preparing for trial (Chapter 10 – pages 395-513, recs 152-235)

13. The key to better preparation for, and efficient and effective disposal of, criminal cases is early identification of the issues. Four essentials are: strong and independent prosecutors; efficient and properly paid defence lawyers; ready access by defence lawyers to their clients in custody; and a modern communications system (**paras 1-34, recs 152-153**). All public prosecutions should take the form of a charge, issued without reference to the courts but for which the prosecutor in all but minor, routine or urgent cases, would have initial responsibility. It should remain the basis of the case against a defendant regardless of the court which ultimately deals with his case, thus replacing the present mix of charges, summonses and indictments (**paras 35-63, recs 154-170**). A graduated scheme of sentencing discounts should be introduced so that the earlier the plea of guilty the higher the discount for it. This should be

coupled with a system of advance indication of sentence for a defendant considering pleading guilty (**paras 91-114, recs 186-193**).

14. The scheme of mutual disclosure established by the Criminal Procedure and Investigations Act 1996 should remain, but subject to the following reforms: its expression in a single and simply expressed instrument; a single and simple test of materiality for both stages of prosecution disclosure; automatic prosecution disclosure of certain documents; removal from the police to the prosecutor of such responsibility as the police have for identifying all potentially disclosable material; and encouragement, through professional conduct rules and otherwise, of the provision of adequate defence statements (**paras 115-184, recs 194-205**). There should be a new statutory scheme for third party disclosure (**paras 185-190, rec 206**) and for instruction by the court of special independent counsel in public interest immunity cases where the court considers prosecution applications in the absence of the defendant (**paras 191-197, rec 207**).

15. In the preparation for trial in all criminal courts, there should be a move away from plea and directions hearings and other forms of pre-trial hearings to cooperation between the parties according to standard time-tables, wherever necessary, seeking written directions from the court. In the Crown and District Divisions and, where necessary, in the Magistrates' Division, there should then be a written or electronic 'pre-trial assessment' by the court of the parties' readiness for trial. Only if the court or the parties are unable to resolve all matters in this way should there be a pre-trial hearing before or at the stage of the pre-trial assessment. The courts should have a general power to give binding directions and rulings either in writing or at pre-trial hearings (**paras 198-234, recs 208-221**). In the Crown and District Divisions and, where necessary, in the Magistrates' Division, following the pre-trial assessment and in good time before hearing, the parties should prepare, for the approval of the judge and use by him, them, and the jury in the hearing, a written case and issues summary setting out in brief the substances of charge(s) and the issues to be resolved by the court (**para 235; see also Chapter 11, paras 15-24, recs 235-236**).

The Trial: procedures and evidence (Chapter 11 – pages 514-610, recs 236-300)

16. In trials by judge and jury, the judge, by reference to the case and issues summary, copies of which should be provided to the jury, should give them a fuller introduction to the case than is now conventional (**paras 14-24, recs 235-236**). The trial should broadly take the same form as at present, though with greater use of electronic aids in appropriate cases. The judge should sum up and direct the jury, making reference as appropriate to the case and issues summary. So far as possible, he should 'filter out' the law and fashion factual questions to

the issues and the law as he knows it to be. Where he considers it appropriate, he should require the jury publicly to answer each of the questions and to declare a verdict in accordance with those answers (**paras 25-55, recs 237-250**).

17. In trials by judge and magistrates in the District Division, the judge should be the sole judge of law, but he and the magistrates should together be the judges of fact, each having an equal vote. The order of proceedings would be broadly the same as in the Crown Division. The judge should rule on matters of law, procedure and inadmissibility of evidence in the absence of the magistrates where it would be potentially unfair to the defendant to do so in their presence. The judge should not sum up the case to the magistrates, but should retire with them to consider the court's decision, which he would give and publicly reason as a judgment of the court. The judge should be solely responsible for sentence (**paras 57-61, rec 251**).
18. There should be a comprehensive review of the law of criminal evidence to identify and establish over-all and coherent principles and to make it an efficient and simple agent for securing justice. Subject to such review, I consider that the law should, in general, move away from technical rules of inadmissibility to trusting judicial and lay fact finders to give relevant evidence the weight it deserves. In particular, consideration should be given to the reform of the rules as to refreshing memory, the use of witness statements, hearsay, unfair evidence, previous misconduct of the defendant, similar fact evidence and the evidence of children (**paras 76-128, recs 254-261**). There should be reforms to strengthen the quality and objectivity of expert evidence and improve the manner of its presentation both from the point of view of the court and experts, following in some respects reforms made in the civil sphere by the Civil Procedure Rules (**paras 129-151, recs 262-275**). Urgent steps should be taken to increase the numbers and strengthen the quality of interpreters serving the criminal courts and to improve their working conditions (**paras 155-162, recs 276-286**). There are a number of ways in which the facilities and procedures of the courts should or could be modernised and better serve the public (**paras 163-196, recs 287-295**). The criminal courts should be equipped with an on-line sentencing information system (**paras 200-211, recs 296-299**).

Appeals (Chapter 12 – pages 611-658, recs 301-328)

19. There should be the same tests for appeal against conviction and sentence respectively at all levels of appeal, namely those applicable for appeal to the Court of Appeal (**paras 5-13, and 45-46, recs 300-301**). There should be a single line of appeal from the Magistrates' Division (Magistrates' Courts) and above to the Court of Appeal in all criminal matters. This would involve: 1) abolition of appeal from magistrates' courts to the Crown Court by way of rehearing and its replacement by an appeal to the Crown Division (Crown Court) constituted by a judge alone; and 2) abolition of appeal from magistrates' courts and/or the Crown Court to the High Court by way of a case stated or claim for

judicial review and their replacement by appeal to the Court of Appeal under its general appellate jurisdiction enlarged if and to the extent necessary (**paras 14-44, recs 302-307**).

20. I support the general thrust of the Law Commission's recommendations for the introduction of statutory exceptions to the double jeopardy rule, save that a prosecutor's right of appeal against acquittal should not be limited to cases of murder and allied offences, but should extend to other grave offences punishable with life or long terms of imprisonment (**paras 47-65, recs 308-309**). There should be provision for appeal by the defence or the prosecution against a special verdict of a jury which on its terms is perverse; see para 16 above (**paras 66-67, rec 310**).

21. The Court of Appeal should be reconstituted and its procedures should be improved to enable it to deal more efficiently with, on the one hand appeals involving matters of general public importance or of particular complexity and, on the other, with 'straightforward' appeals (**paras 73-101, recs 311-321**). The law should be amended: to widen the remit of the Sentencing Advisory Panel to include general principles of sentencing, regardless of the category of offence; and to enable the Court of Appeal to issue guidelines without having to tie them to a specific appeal before it (**paras 108-111, recs 324-325**).

RECOMMENDATIONS

CHAPTER ONE INTRODUCTION

Codification (*paras 35 – 36, pages 20 - 22*)

1. A Code of criminal law should be produced and maintained in four sections:
 - criminal offences;
 - criminal procedure;
 - criminal evidence; and
 - sentencing.

CHAPTER FOUR MAGISTRATES

Introduction (*paras 1 – 14, pages 94 - 99*)

2. Magistrates and District Judges should continue to exercise summary jurisdiction.

Present working patterns (*para 18, pages 100 - 101*)

3. Whilst magistrates should continue to be appointed to one commission area, there should be a ready mechanism for enabling them, when required, to sit in adjoining areas.

The extent of summary jurisdiction (*para 20, pages 101 - 102*)

4. There should be no general change in the level of summary jurisdiction as it is presently defined, of District Judges or magistrates; though the matter may need review in the light of the Halliday recommendations for the introduction of a new sentencing framework, including combined custody and community sentence orders.

Deployment and allocation of work *(paras 21 – 49, pages 102 - 114)*

5. In the exercise of their summary jurisdiction:
 - 5.1 District Judges and magistrates should not routinely sit as mixed tribunals to deal with the general range or any particular type of case or form of proceeding, though there may be training and local ‘cultural’ advantages in their doing so from time to time depending on their respective availability and case loads;
 - 5.2 subject to changing workloads resulting from implementation of any of my recommendations or otherwise, there should be no significant change in the balance of numbers of District Judges and magistrates, or in the relative volumes or nature of summary work assigned to each of them; and
 - 5.3 summary work should continue to be allocated between District Judges and magistrates in accordance with the recommendations of the Venne Committee, namely that each, normally sitting separately, should be available to deal with the whole range, but that District Judges should concentrate on case allocation and management, cases of legal or factual complexity, cases of priority, such as those involving young offenders or offences of a sexual nature, and long cases.

Justices’ Clerks *(paras 50 – 58, pages 114 - 119)*

6. District Judges should normally sit without a legal adviser.
7. There should be no extension of justices’ clerks’ case management jurisdiction.

Composition of the bench

Selection and appointment of magistrates (paras 80 – 86, pages 126 - 129)

8. Steps should be taken to provide benches of magistrates that reflect more broadly than at present the communities they serve by:
 - 8.1 reviewing the number, role and support given to them, including, in the event of the establishment of a unified Criminal Court, the present division of responsibility for them between the Lord Chancellor's Department and the Duchy of Lancaster;
 - 8.2 passing responsibility for determining the number of magistrates required for each commission area from local Advisory Committees to court staff in consultation with the chairman of each bench, the justices’ clerks and, in the event of the establishment of a unified Criminal Court, also the Resident Judge;
 - 8.3 reviewing the community relations and educational initiatives of benches with a view better to inform the public of their work and to attract more suitable candidates for appointment;

- 8.4 in support of the local Advisory Committees, establishing a properly resourced National Recruitment Strategy aimed, not only at candidates for the magistracy, but also at their employers;
 - 8.5 equipping local Advisory Committees with the information to enable them to submit for consideration for appointment, candidates that will produce and maintain benches broadly reflective of the communities they serve, including the establishment and maintenance of national and local data-bases of information on the make-up of the local community and on the composition of the local magistracy;
 - 8.6 instituting a review of the ways in which the role and terms of service of a magistrate might be made more attractive and manageable to a wider range of the community than is presently the case; and
 - 8.7 persisting with the current search for occupational and/or social groupings as a substitute for political affiliations as a measure of local balance.
9. The Lord Chancellor should continue with – but keep under careful review – his present policy of not normally appointing certain persons who are close to the criminal justice system or who, by the nature of their occupation, could not commit themselves to sitting regularly, or whose character or association would make them undesirable for appointment.

District Judges (paras 87 – 90, pages 129 - 131)

- 10. The Lord Chancellor should be more ready to take the initiative to assign a District Judge to an area where, having consulted as appropriate, he is of the view that local justice in the area requires it.

Training (paras 91 – 100, pages 131 - 134)

- 11. The Judicial Studies Board should be made responsible, and be adequately resourced, for devising and securing the content and manner of training of all magistrates.
- 12. Such training should, in the main, be provided at local level through trainers, ideally justices' clerks and/or legal advisers, appropriately trained for the purpose by the Board.
- 13. District Judges should also be involved in the training of magistrates in the area or at the court centre at which they are normally based.
- 14. The Magistrates' National Training Initiative scheme should be refined in order to provide a less complex, weighted set of competences for magistrates, supported by clear national standards.
- 15. The Judicial Studies Board should establish systems to ensure that appraisal of magistrates takes place in a timely and effective manner across the country and that training programmes take account of the training needs identified during that process.

CHAPTER FIVE JURIES

Composition of the jury

Size of the jury (paras 17 – 20, pages 142 - 143)

16. A system should be introduced for enabling judges in long cases, where they consider it appropriate, to swear alternate or reserve jurors to meet the contingency of a jury otherwise being reduced in number by discharge for illness or any other reason of necessity.

Qualification for jury service (paras 21 – 24, pages 143 - 145)

17. There should be no change in the present statutory criteria for qualification for jury service, save as to registration, as distinct from entitlement to registration, on an electoral roll.
18. The law should be amended to substitute for the condition of registration on an electoral roll, inclusion in such a roll and/or on any one or more of a number of other specified publicly maintained lists or directories, but excluding anyone listed who, on investigation at the summons stage, is found not to be entitled to registration as an elector.

Enforcement of jury service (paras 25 – 26, pages 145 - 146)

19. There should be rigorous and well publicised enforcement of the obligation to undertake jury service when required, and consideration should be given to doing so by way of a system of fixed penalties subject to a right of appeal to the magistrates.

Ineligibility (paras 27 – 34, pages 146 -149)

20. Everyone should be eligible for jury service, save for the mentally ill, and the law should be amended accordingly.
21. There should be no change to the categories of those disqualified from jury service.

Excusals as of right and discretionary excusal (paras 35 – 40, pages 149 - 152)

22. Save for those who have recently undertaken, or have been excused by a court from, jury service, no-one should be excusable from jury service as of right, only on showing good reason for excusal.
23. The Central Summoning Bureau or the court, in examining a claim for discretionary excusal, should consider its power of deferral first.
24. The Bureau should treat all subsequent applications for deferral and all applications for excusal against clear criteria identified in the jury summons.

Random selection

Ethnic minority representation on juries (paras 52 – 62, pages 156 - 159)

25. A scheme should be devised, along the lines that I have outlined in Chapter 5, paragraphs 60 and 61, for cases in which the court considers that race is likely to be relevant to an issue of importance in the case, for the selection of a jury consisting of, say, up to three people from any ethnic minority group.

Verdicts

Jury research (paras 76 – 87, pages 164 - 168)

26. There should be no amendment of section 8 of the Contempt of Court Act 1981 to enable research into individual juries' deliberations.
27. Careful consideration should be given to existing research material throughout the common law world on jury trial in criminal cases, with a view to identifying and responding appropriately to all *available* information about how juries arrive at their verdicts.
28. If and to the extent that such research material is insufficient, consideration should be given to jury research of a general nature that does not violate the 1981 Act.

The unreasoned verdict (paras 88 – 98, pages 168 - 173)

29. Section 8 of the Contempt of Court Act 1981 should be amended to permit, where appropriate, enquiry by the trial judge and/or the Court of Appeal (Criminal Division) into alleged impropriety by a jury, whether in the course of its deliberations or otherwise.

Perverse verdicts (paras 99 – 108, pages 173 - 176)

30. The law should be declared, by statute, if need be, that juries have no right to acquit defendants in defiance of the law or in disregard of the evidence, and that judges and advocates should conduct criminal cases accordingly.

Trial of cases on indictment without a jury

Defendant's option for trial by judge alone (paras 110 – 118, pages 177 - 181)

31. Defendants, with the consent of the court, after hearing representations from both sides, should be able to opt for trial by judge alone in all cases tried on indictment (whether, as now, in the Crown Court or, if my recommendations in Chapter 7 for a new unified Criminal Court are adopted, in the Crown or District Divisions).

‘Either-way offences’ (paras 119 – 172, pages 181 - 199)

32. In all ‘either-way’ cases, magistrates’ courts, not defendants, should determine venue after representation from the parties.
33. In the event of a dispute on the issue, a District Judge should decide.
34. The defence and the prosecution should have a right of appeal on paper from any mode of trial decision on which they were at issue to a Circuit Judge nominated for the purpose, and provision should be made for the speedy hearing of such appeals.
35. The procedure of committal of ‘either-way’ cases to the Crown Court for trial should be abolished and, pending the introduction of a system of allocation as part of my recommendations in Chapter 7 for a new unified Criminal Court, such cases should be “sent” to the Crown Court in the same way as indictable-only cases.
36. The procedure of committal for sentence should be abolished.

Fraud and other complex cases (paras 173 – 206, pages 200 - 214)

37. As an alternative to trial by judge and jury in serious and complex fraud cases, the nominated trial judge should be empowered to direct trial by himself sitting with lay members or, where the defendant has opted for trial by judge alone, by himself alone.
38. The category of cases to which such a direction might apply should, in the first instance, be frauds of seriousness or complexity within sections 4 and 7 of the Criminal Justice Act 1987.
39. The overriding criterion for directing trial without jury should be the interests of justice.
40. Either party should have a right of appeal against such decision to the Court of Appeal (Criminal Division).
41. Judges trying such cases, by whatever form of procedure, should be specially nominated for the purpose as now, and provided with a thorough, structured and continuing training for it.
42. There should be a panel of experts, established and maintained by the Lord Chancellor in consultation with professional and other bodies, from which lay members may be selected for trials.
43. The nominated trial judge should select the lay members after affording the parties an opportunity to make written representations as to their suitability.
44. Lay members should be paid appropriately for their service.
45. In a court consisting of a judge and lay members, the judge should be the sole judge of law, procedure, admissibility of evidence and as to sentence; as to conviction, all three should be the judges of fact.
46. The decision of a court so constituted should wherever possible be unanimous, but a majority of any two could suffice for a conviction.

47. The judge should give the court's decision by a public and fully reasoned judgment.

Young defendants (*paras 207 – 211, pages 214 - 217*)

48. All cases involving young defendants who are presently committed to the Crown Court for trial or for sentence should in future be put before the youth court consisting, as appropriate, of a High Court Judge, Circuit Judge or Recorder sitting with at least two experienced magistrates and exercising the full jurisdiction of the present Crown Court for this purpose.
49. The only possible exception should be those cases in which the young defendant is charged jointly with an adult and it is considered necessary in the interests of justice for them to be tried together.
50. The youth court so constituted should be entitled, save where it considers that public interest demands otherwise, to hear such cases in private, as in the youth court exercising its present jurisdiction.

Fitness to plead (*paras 212 – 213, pages 217 - 218*)

51. Legislation should be introduced to require a judge, not a jury, to determine the issue of fitness to plead.

Information for and treatment of jurors

Information (*paras 217 – 220, pages 219 - 221*)

52. The essential parts of the jury summons and explanatory documents issued by the Central Summoning Bureau should be expressed in several languages, and over-all, the documentation should be more informative and couched in a more informal and friendly tone than at present.
53. The Court Service should review the adequacy of the information courts provide to potential jurors against the best provided by other jurisdictions.

Length and frequency of service (*paras 221 – 224, pages 221 - 223*)

54. There should be an urgent review of the machinery, as between the Central Summoning Bureau and the courts, for summoning jurors who may be called upon to serve on long case.
55. There should be an examination and piloting of options for shortening the length of jury service by introducing as an aim a one day or one trial system or a variation of it.
56. Consideration should be given to lengthening the cycle over which it is possible to claim excusal by reason of previous jury service.

Facilities (*para 225, page 223*)

57. The Court Service should press on with its present programme to improve court facilities for jurors and jurors in waiting, including those who are disabled.

58. As a matter of urgency, it should also institute a programme of provision at all courts of adequate working facilities and other means to enable jurors in waiting to conduct their own affairs.

Compensation (para 226, page 224)

59. There should be a review of the amounts of allowances payable to jurors for their attendance at court.
60. Consideration should be given to an additional allowance to cover the cost to potential jurors who, but for it, could justifiably claim excusal because of caring responsibilities.

CHAPTER SIX THE JUDICIARY

The judicial hierarchy

Recorders (paras 14 – 16, pages 231 - 232)

61. It should be a condition of a Recorder's appointment to sit for a minimum of three weeks a year in one continuous block, unless for exceptional reasons a Presiding Judge permits him to sit in more than one block.
62. The Judicial Group in the Lord Chancellor's Department should, in consultation with the Presiding Judges, liaise closely with the Court Service to ensure that a minimum of three weeks' annual sitting is provided for each Recorder.

Matching judges to cases

'Ticketing' (paras 20 – 25, pages 234 - 237)

63. Most of the rigidities of the present 'ticketing' system should be removed and replaced by the conferment on Resident Judges wide responsibility, subject to general oversight of the Presiding Judges, for allocation of judicial work at their court centres, but coupled with:
- 63.1 regular and systematic appraisal enabling Resident Judges and Presiding Judges to determine the experience and interests of the judges; and
- 63.2 the undertaking by judges of such training by the Judicial Studies Board as may be required as a pre-condition for the trial of particular categories of work.

Circuit listing (paras 26 – 43, pages 237 - 243)

64. Consideration should be given to reducing the formal legal vacation periods for High Court Judges sitting in the Crown Court, in particular, to confining the summer vacation to the month of August.

65. This should be achieved by greater staggering of the existing sitting commitments of the High Court Bench, not by increasing them.
66. The systems of appointment and assignment of judges should be reviewed with a view to achieving a more efficient system than now obtains to ensure a planned and prompt succession of Resident Judges and appropriately experienced judges at court centres and, for this purpose, the Presiding Judges, Resident Judges, and Circuit Administrators should be consulted regularly.
67. The Lord Chancellor's Department should agree targets with the Presiding Judges within which vacancies for Resident, Circuit and District Judges should be filled after it has received notification of projected or actual vacancy.

Better matching of judges to cases (*paras 44 – 56, pages 243 - 249*)

68. There should be a formal and significant shift in the balance of heavy circuit work from High Court Judges to the more experienced Circuit Judges, coupled with greater flexibility in the system of allocating work between them, along the following lines:
 - 68.1 all work within the jurisdiction of the Crown Court should be triable by a Circuit Judge unless, on referral to a Presiding Judge, he specially reserves it for trial by a High Court Judge;
 - 68.2 the listing officer should draw to the attention of the Resident Judge any case which in accordance with criteria set by the Lord Chief Justice may be appropriate for reservation to a High Court Judge, for the Resident Judge, if he agrees, to refer it to one of the Presiding Judges for his decision; and
 - 68.3 the overriding criterion for reservation for trial by a High Court Judge should be whether “the case is one of special complexity and/or seriousness and/or public importance requiring trial by a High Court Judge”.
69. The formal ‘tiering’ of court centres for the trial of certain classes of cases should be abolished and replaced by a more flexible system, overseen by the Presiding Judges, for the assignment of cases, adapted to the needs of each circuit and the work, and having regard to the physical constraints and convenience of location of different courts.
70. Save for the Presiding Judges, the present regular pattern of circuitteering by High Court Judges should be replaced by one under which the Presiding Judges decide, in consultation with their Circuit Administrators, where and when cases specifically reserved to High Court Judges should be tried.

Judicial administration (*paras 57 – 59, pages 249 - 250*)

71. Adequate time should be given to:
 - 71.1 judges to enable them to manage and prepare cases assigned to them; and

- 71.2 judges with additional administrative responsibilities to enable them to fulfil those responsibilities.
72. In each case suitable provision should be made in secretarial, administrative or clerical help, as may be appropriate, to meet those needs.

Judges' lodgings (*paras 60 – 64, pages 250 - 252*)

73. Future use of judges' lodgings should depend on the future volume and pattern of distribution of High Court Judge work on each circuit, not the other way round.
74. In assessing the future volume and pattern of circuit High Court Judge work, allowance should also be made for present and projected needs of civil and family work and the development of intermittent provincial administrative law and appellate jurisdictions.
75. If my recommendations are adopted for confining High Court Judge work on circuit to the gravest cases and for greater flexibility as to where and when they should be tried:
- 75.1 lodgings that are reasonable value for money, taking into account among other things their convenience to major court centres and the number of judges they normally accommodate and for how long, should be retained or obtained; and
- 75.2 in other cases consideration should be given to suitable alternative accommodation appropriate to length of sitting and type of case[s], for example, hotels, guest houses of the Wolsey Lodge variety and rented and serviced accommodation.

Composition of the judiciary

Appointment to judicial office (paras 68 – 87, pages 254 - 262)

76. The risk of indirect discrimination in those cases where the candidates for judicial appointment may not have had much exposure in the consultation process, notably women, ethnic minorities and solicitors is the most constantly raised and anxious concern of those who feel that the appointments system is unfair to them. It is not enough to wait for the professions to present the Lord Chancellor's Department with suitably 'visible' as well as qualified candidates for appointment. He should vigorously pursue his declared policy of consulting as widely as possible in all cases.
77. If the assessment centre pilot proposed by the Lord Chancellor proves to be successful, consideration should be given to extending its use to other full and part-time judicial appointment procedures.

Disability (para 88, pages 262 - 263)

78. The Lord Chancellor's Department should establish and publish clear guidelines on the appointment of disabled persons to judicial office.

Training and appraisal

Training (paras 89 – 97, pages 263 - 266)

79. The Judicial Studies Board should be adequately resourced to meet the increasing training needs of the judiciary, including those in respect of special jurisdictions, case management, information technology and judicial administration.

Appraisal (paras 98 – 104, pages 266 - 268)

80. An appraisal scheme should be introduced for all part-time judicial post-holders, and reinforced by a system of regular self-appraisal.
81. The assessments produced should be available to those advising the Lord Chancellor on full-time judicial appointments.
82. Consideration should be given, following wide consultation among the judiciary and others, to a system of appraisal for full-time judges; the results of such assessments should, however, only exceptionally be made available to anyone other than the Presiding Judges or the relevant Head of Division.

CHAPTER SEVEN A UNIFIED CRIMINAL COURT

A unified Criminal Court *(paras 2 – 35, pages 270 - 281)*

83. A unified Criminal Court should be established.
84. There should be three levels of jurisdiction within the unified Criminal Court consisting of: the Crown Division to exercise jurisdiction over all indictable-only matters and such ‘either-way’ cases as are allocated to it; the District Division to exercise jurisdiction over such ‘either-way’ matters as are allocated to it; and the Magistrates’ Division to exercise jurisdiction over all summary-only matters and such ‘either-way’ cases as are allocated to it.
85. The Crown and Magistrates’ Divisions should be constituted as are the Crown Court and magistrates’ courts respectively, and the District Division should consist of a judge, in the main a District Judge, and at least two experienced magistrates (or if a defendant with the consent of the court so opts, of a judge alone).
86. The District Division’s jurisdiction over ‘either-way’ offences should be limited to those within a likely maximum sentence in the circumstances of the case viewed at its worst (as distinct from the legal maximum for a case or cases of that category) of, say, two years custody, a maximum financial penalty to be determined and/or a maximum of community, or combination of custody and community, sentences to be determined in the light of future reforms of the sentencing framework.

87. The District Division, sitting as a youth court, should also try grave cases against young defendants presently dealt with in the Crown Court; see recommendation 48.

The allocation of cases (*paras 36 – 40, pages 281 - 283*)

88. All cases should have an allocation hearing in the Magistrates' Division at which pleas should be taken.
89. All cases triable only summarily should remain in the Magistrates' Division and all cases triable only on indictment should be sent to the Crown Division.
90. The court should allocate all 'either-way' cases according to the seriousness of the alleged offence and the circumstances of the defendant in accordance with statutory and broadly drawn criteria, looking at the case at its worst from the point of view of the defendant and bearing in mind the jurisdiction of each division.
91. Where there is no dispute or uncertainty as to venue, magistrates should allocate the case; otherwise a District Judge should do so after hearing representations on the matter from both parties.
92. The Government should ensure, as a matter of urgency, routine provision, through an integrated system of information technology or otherwise, of complete and accurate information of a defendant's criminal record at all allocation hearings.
93. Where there are linked charges and/or defendants, all should normally be allocated to the division with jurisdiction to hear the most serious of the charges.
94. The defence and the prosecution should have a right of appeal on paper from a contested allocation decision to a Circuit Judge nominated for the purpose, and provision should be made for speedy hearing of such appeals.
95. The defence and the prosecution should be able, up to a specified point before trial, to seek re-allocation in the light of any material change in the circumstances of the alleged offence(s) and/or of the defendant between allocation and trial.

The circuits (*paras 41 – 49, pages 283 - 287*)

96. For the foreseeable future circuit boundaries and administrations should remain broadly as they are.
97. Each circuit should continue to have Presiding Judges, Chancery Supervisory and Family Liaison Judges and a Circuit Administrator undertaking their present respective functions, so that the Circuit Administrator continues to act as the focal point of contact for them.
98. Whatever changes are contemplated for the administrative organisation of the circuits, a decision should first be made whether to replace the present dual system of courts with a unified Criminal Court paying close attention to the

needs of the civil and family jurisdictions outside London as well as to those of crime.

99. There should be a review from time to time of the appropriateness of the South Eastern Circuit remaining one circuit, taking into account, among other things, its size and the special needs of Greater London.

A new management structure (*paras 50 – 73, pages 287 - 295*)

100. A single centrally funded executive agency, as part of Lord Chancellor's Department, should be responsible for the administration of all courts, civil, criminal and family (save for the Appellate Committee of the House of Lords), replacing the Court Service and Magistrates' Courts Committees.
101. The agency should be headed by a national board and chief executive.
102. Within each circuit the criminal courts should, if consistent with the efficient and effective operation of civil and family courts, be organised managerially on the basis of the 42 criminal justice areas.
103. Implementation of national policy and management at local level for all three jurisdictions should be the responsibility of local managers working in close liaison with local judges and magistrates, much as the Circuit Administrators and Presiding Judges, Chancery Supervisory and Family Liaison Judges do at circuit level.

The future role of the justices' clerk (*para 74, pages 295 - 295*)

104. In a unified Criminal Court:
 - 104.1 justices' clerks should continue to be responsible for the legal advice provided to magistrates;
 - 104.2 arrangements should be made to ensure that, in the absence of the justices' clerk, magistrates at each courthouse have ready access to a senior legal adviser; and
 - 104.3 justices' clerks should not normally exercise administrative responsibilities unrelated to their role as legal adviser to the magistrates.

Judicial management (*paras 75 – 83, pages 296 - 300*)

105. In a unified Criminal Court:
 - 105.1 Resident Judges should be responsible, under the oversight of the Presiding Judges, for judicial management of court centres;
 - 105.2 in relation to the District Bench and magistracy, these responsibilities should include oversight of: listing; membership of panels; case allocation; training and development; and appraisal;
 - 105.3 Resident Judges should be provided with the necessary time out of court and degree of administrative and other support to carry out these additional responsibilities;

- 105.4 there should be consequential reviews of the number and location of Resident Judges, and also of their remuneration; and
- 105.5 the future organisation and structure of the District Bench should be reviewed in the light of these changes.

Court accommodation (*paras 84 – 90, pages 300 - 304*)

106. If my recommendations in Chapter 8 for a national Criminal Justice Board and local Criminal Justice Boards are accepted, decisions as to the provision and closure of court centres should become the responsibility of local Boards, subject to oversight and guidance of the national Board.
107. Decisions should be made in the interests of all involved in the criminal justice process in their areas, and with the benefit of a cost/benefit exercise taking the public interest in its widest sense into account.
108. There should be a review of all accommodation of the courts and criminal justice agencies to enable a joint assessment of the most efficient use for the system as a whole of available accommodation and planning for future needs.
109. In the planning and provision of court accommodation, proper allowance should be made for the fact that a just and efficient criminal justice system does not require all courtrooms to be in use full-time.
110. In the planning and provision of court accommodation, a significant tolerance should be allowed for the high volatility of demands on court time and the uncertainties of future criminal justice policy initiatives (that is, “an adequate tolerance over assumed full capacity”).
111. A new Criminal Court Design Guide should be prepared as a standard to which, over time, court buildings should conform.

Information technology (*paras 91 – 102, pages 304 - 308*)

112. A single information technology system should be developed for the unified Criminal Court, combining the best design elements of all the systems currently under development in the magistrates’ courts and Crown Court and taking into account corresponding developments in the civil and family jurisdictions.
113. The management of the implementation of information technology for a unified Criminal Court should be under the supervision of a Board upon which the judiciary are represented, and should be undertaken in close consultation with the Judicial Technology Group.
114. Planning and implementation of procedural reforms should go hand in hand with development and introduction of the necessary supporting information technology.

Security (*paras 103 – 116, pages 309 - 314*)

115. The Lord Chancellor should, as a matter of urgency, take direct responsibility for and control of security of courts of all levels and jurisdictions.

116. Those invested with a duty of providing security should have the same powers in all criminal courts.
117. Consideration should be given to requiring the police to resume provision of security in all criminal courts, or to the establishment of a uniformed Sheriff Officer Service which would be fully trained, have police powers and would operate under the general oversight of the local judiciary.
118. There should be a review of the necessary provision, in terms of accommodation, technology and otherwise, to protect vulnerable witnesses and others at court, and to enable the former where appropriate and necessary to give their evidence by video-link away from the court.
119. In the event of my recommendations in Chapter 8 being adopted, the extent of and financial responsibility for security provided in the Criminal Court should become a joint criminal justice responsibility exercised by the Criminal Justice Board on behalf of Ministers.

Inspection (*para 117, page 314*)

120. If, in accordance with my recommendations, a unified Criminal Court and single supporting administrative agency are established, there should be created an independent Inspectorate of that agency, which should report to the Lord Chancellor.

CHAPTER EIGHT THE CRIMINAL JUSTICE SYSTEM

Managing criminal justice (*paras 43 – 77, pages 330 - 346*)

121. A Criminal Justice Board should replace the Strategic Planning Group, the national Trials Issues Group and its sub-groups, and take over such responsibilities of the Criminal Justice Consultative Council as may be operational.
122. The Criminal Justice Board should be responsible for over-all direction of the criminal justice system, with a remit including, but not limited to:
 - planning and setting criminal justice system objectives;
 - budgeting and the allocation of funds;
 - securing the national and local achievement of its objectives;
 - the development and implementation of an integrated system of information technology;
 - research and development; and
 - combating inequality and discrimination throughout the criminal justice system.

123. The Board should be chaired by an independent chairman and its membership should include senior civil servants from the three main criminal justice departments and the Treasury, the Chairman of the Youth Justice Board, Chief Officers of the Criminal Case Management Agency, the unified Criminal Court, Police, Prison and Probation Services and a small number of non-executive members.
124. The Board should not include a judge, but should consult regularly with the Lord Chief Justice and other senior judiciary.
125. The Board should be supported by a secretariat and a national administrative structure accountable to it and be responsible for developing a system of information technology for the whole criminal justice system.
126. Local Criminal Justice Boards should replace the Area Strategy Committees, local TIGs, Chief Officer Groups and, where they exist, informally constituted local Criminal Justice Boards, and should draw on their memberships.
127. Local Criminal Justice Boards should be responsible for giving effect at local level to the national Criminal Justice Board's directions and objectives and for management of the criminal justice system in their areas.
128. Membership of the local Boards should include: local managers of the Criminal Court, the Prison Service and the National Health Service; the local Chief Constable; the local Chief Crown Prosecutor; the local Chief Probation Officer; representatives from the Youth Offenders Team, Victim Support, possibly representatives of the local Bar and solicitors and at least two non-executive members.
129. Each local Board should be provided with a dedicated and properly resourced secretariat accountable to the national secretariat, be provided with a joint local budget and should select its own chairman.

Advising on criminal justice (*paras 78 – 88, pages 346 - 351*)

130. The Criminal Justice Consultative Committee should be replaced with a Criminal Justice Council with a statutory power and duty, and suitably equipped:
 - to keep the criminal justice system under review;
 - to advise the Government on the form and manner of implementation of all proposed criminal justice reforms and to make proposals to it for reform;
 - to provide general oversight of the programme and structures for introduction and maintenance of codification of substantive criminal law, procedure, evidence and sentencing that I recommend in Chapter 1;
 - to advise the Government on the framing and implementation of a communication and education strategy for the criminal justice system; and
 - for any of those purposes, to consult and/or commission programmes of research.

131. Before initiating key proposals for reform of the criminal justice system, the Government should be statutorily obliged to refer them to the Council for advice and to take account of any proposals or advice tendered by it in response to such reference or of its own accord.
132. The Council should be chaired by the Lord Chief Justice or a senior Lord Justice of Appeal and composed of judges of all levels, magistrates, criminal practitioners, representatives of the key agencies and organisations involved in the criminal justice process and one or more distinguished legal academics specialising in the field (none of whom should be members of the Criminal Justice Board).
133. The Council should be provided with a properly resourced secretariat and research staff.
134. Such of the Criminal Justice Consultative Council's functions as relate to the development and improvement of inter-agency co-ordination, through the Area Strategy Committees and otherwise, of national policies and objectives should become the responsibility of the Criminal Justice Board and its administrative support structure.
135. The Area Strategy Committees should cease to exist.

Joint inspection (*paras 89 – 91, pages 351 - 352*)

136. A Joint Inspection Unit should be formally established under the collective control of the Criminal Justice Chief Inspectors and be given sufficient resources to instigate and co-ordinate a programme of cross-agency inspection.

Information technology (*paras 92 – 114, pages 352 - 366*)

137. The Criminal Justice Board should discontinue the IBIS project of linking up the six main information technology systems in the criminal justice system, and should instead, within a set timescale, produce an implementation plan for an integrated information technology system for the whole of the criminal justice system based upon a common language and common electronic case files.
138. The implementation of an integrated system of information technology should be organised in six projects, to run either in parallel or sequentially, namely:
 - case tracking;
 - management information;
 - unification of data;
 - extending the categories of user;
 - case management; and
 - unification of enabling technologies.
139. A Criminal Case Management Agency should be established, to be accountable to the Criminal Justice Board for managing the implementation

of the integrated system and, when implemented, managing those elements of the system that require central management, namely:

- production of system protocols and quality assurance of system data;
- management and monitoring of case progression;
- data standards for system management information;
- standards and protocols for access by victims, witnesses, defendants and their representatives;
- storage and maintenance of data;
- data security and control of access to data; and
- case management at the system level.

CHAPTER NINE DECRIMINALISATION AND ALTERNATIVES TO CONVENTIONAL TRIAL

Summary prosecutions

Television licence evasion (paras 10 – 13, pages 369 - 371)

140. The use of a television without a licence should remain a criminal offence, but should be dealt with in the first instance by a fixed penalty notice discounted for prompt purchase of a licence and payment of penalty, and subject to the defendant's right to dispute guilt in court.

Other summary matters (20 – 25, pages 371 - 375)

141. Fixed penalty notices should be used in respect of all offences provided for in the Road Traffic Offenders Act 1988, Part III and Schedule 3, unless there are special circumstances requiring the offender to attend court.
142. There should be a systematic review leading to similar fixed penalty and/or notice-to-correct schemes for a wider range of infringements that are presently the subject of criminal prosecution.

Alternative procedures

'Caution-plus' (paras 41 – 47, pages 380 - 381)

143. Consideration should be given to the introduction of a conditional cautioning scheme over a wide range of minor offences, enabling the prosecutor with the consent of the offender and, where appropriate, with the approval of the court:
- to caution him subject to his compliance with specified conditions; and
 - to bring the conditionally cautioned offender before the court in the event of his failure to comply with the conditions.

144. In considering the introduction of such a scheme, regard should be had to its place alongside existing provisions for avoiding or modifying the criminal process and future developments in the form of ‘restorative justice’, with a view to over-all rationalisation into a single scheme.

Regulatory enforcement (paras 48 – 51, pages 383 - 384)

145. Once the Financial Services Authority has assumed full responsibility for supervision in the financial services field, consideration should be given to transferring appropriate financial and market infringements from the criminal justice process to its regulatory and disciplinary control.

Parallel proceedings (paras 52 – 55, pages 384 - 386)

146. Consideration should be given, for appropriate cases of parallel proceedings, to combining the criminal justice and regulatory processes, with a judge as the common president, and with lay members or expert assessors for the second and regulatory part.
147. In cases of fraud and other financial offences courts should, wherever possible and appropriate, exercise their existing powers of a regulatory nature as part of their sentencing disposal.
148. Consideration should be given, in appropriate offences, to enlarging or extending the courts’ conventional sentencing powers in this respect.
149. In the exercise of such powers courts should be assisted by counsel on behalf of the parties, properly instructed for the purpose.

Restorative justice *(paras 58 – 69, pages 387 - 391)*

150. A national strategy should be developed and implemented to ensure consistent, appropriate and effective use of restorative justice techniques across England and Wales.

Enforcement of civil debts *(paras 70 – 77, pages 392 - 394)*

151. Preparatory work should be undertaken with a view to the removal, in due course, of all civil debt enforcement from courts exercising a criminal jurisdiction.

CHAPTER TEN PREPARING FOR TRIAL

Essentials

A strong and independent prosecutor (para 12, page 399)

152. The Crown Prosecution Service should be given greater legal powers, in particular the power to determine the initial charge, and sufficient resources to

enable it to take full and effective control of cases from the charge or pre-charge stage, as appropriate.

Efficient and properly paid defence lawyers (paras 13 – 27, pages 400 - 404)

153. Urgent consideration should be given to changing the structure of public funding of defence fees in the criminal courts so as properly to reward and encourage adequate and timely preparation of cases for disposal on pleas of guilty or by trial, rather than discourage such preparation as it perversely does at present.

Identifying the issues

The charge (paras 35 – 45, pages 408 - 413)

154. The Crown Prosecution Service should determine the charge in all but minor, routine offences or where, because of the circumstances, there is a need for a holding charge before seeking the advice of the Service.
155. In minor, routine cases in which the police charge without first having sought the advice of the Service, they should apply the same evidential test as that governing the Service in the Code for Crown Prosecutors.
156. Where the police have preferred a holding charge, and in other than minor, routine offences, a prosecutor should review and, if necessary, reformulate the charge at the earliest possible opportunity.
157. ‘Minor’ or ‘routine’ offences for this purpose should be identified in the Criminal Procedure Code that I have recommended or in other primary or subsidiary legislation.

Private prosecutions (paras 46 – 50, pages 413 - 414)

158. The right of private prosecution should continue, subject to the power of the Director of Public Prosecutions, on learning of a private prosecution, to take it over and discontinue it.
159. Any court before which a private prosecution is initiated should be under a duty forthwith to notify the Director of it in writing.
160. The Director, in deciding whether to discontinue a private prosecution that he has taken over, should apply the public interest test as well as the evidential test set out in the Code for Crown Prosecutors.

Consent to the charge (paras 51 – 52, pages 415 - 416)

161. The Law Commission’s recommendation to remove the requirement for the Attorney General’s or Director of Public Prosecution’s consent to prosecution should be adopted, save in those categories of case where its retention clearly protects the public interest.

Mechanics of charging (paras 53 – 63, pages 416 - 422)

162. All public prosecutions should take the form of a charge, issued without reference to the courts, which should remain the basis of the accusation against the defendant throughout all stages of the case, irrespective of the level of court in which it is tried.
163. The charge may be oral or in writing, a written copy or original, as the case may be, being served manually or by postal service.
164. In either case, under arrangements with the court's administration, the charge should specify the date of first attendance at court on pain of arrest on warrant.
165. The present procedure for application for a warrant, by swearing an oath as to service of process, in summary offences should be abolished and replaced by paper application considered and determined in open court.
166. The same regime for commencing proceedings should apply to private prosecutions, save that: 1) the charge should only be administered in writing; 2) it should be subject to the prior permission of the court; 3) the permission should be endorsed on the charge sheet by an officer of the court; and 4) the court, before listing the matter, should notify the Director of Public Prosecutions.
167. The voluntary bill of indictment should be abolished and, to the extent necessary under new procedures of allocation of work in a unified Criminal Court, safeguards should be introduced to secure the interests of justice by Criminal Procedure Rules.
168. The form of charge should be common to summary and indictable offences.
169. The prosecution should be entitled to amend the charge up to the pre-trial assessment date (or in a summary trial without such an assessment, up to a date to be specified), but thereafter only with the permission of the trial court.
170. The procedure for issue of warrants should be simplified.

Dropping the prosecution *(paras 64 – 68, pages 422 - 424)*

171. The law should be amended to provide a form of procedure common to all courts to enable a prosecutor, without the consent of the defendant or the approval of the court, to discontinue proceedings at any stage before close of the prosecution case on trial.
172. In the event of the prosecution discontinuing at any time before pre-trial assessment or, where there is no pre-trial assessment, before a stage to be specified, the prosecution should be entitled to reinstate the prosecution, subject to the court's power to stay it as an abuse of process.
173. In the event of the prosecution discontinuing after that stage, the defendant should be entitled to an acquittal, save where the court for good reason permits the prosecution to 'lie on the file'.

174. There should be common provision for all courts, subject to their approval and the agreement of the parties, to give formal effect to such discontinuance and, where appropriate, acquittal in the absence of the parties.

Bail (*paras 69 – 82, pages 424 - 431*)

175. Magistrates and judges in all courts should take more time to consider matters of bail.
176. Listing practices should reflect the necessity to devote due time to bail applications and allow the flexibility required for all parties to gather sufficient information for the court to make an appropriate decision.
177. Courts, the police, prosecutors and defence representatives should be provided with better information for the task than they are at present, in particular, complete and up to date information of the defendant's record held on the Police National Computer, relevant probation or other social service records, if any, verified information about home living conditions and employment, if any, and sufficient information about the alleged offence and its relationship, if any, to his record so as to indicate whether there is a pattern of offending.
178. Courts and all relevant agencies should be equipped with a common system of information technology, as recommended in Chapter 8, to facilitate the ready availability to all who need it of the above information.
179. There should be appropriate training for magistrates and judges in the making of bail decisions, with Article 5 ECHR and risk assessment particularly in mind, as the Law Commission has proposed.
180. All courts should be provided with an efficient bail information and support scheme.
181. Bail notices should be couched in plain English, printed and given to the defendant as a formal court order when the bail decision is made, so that he understands exactly what is required of him and appreciates the seriousness of the grant of bail and of any attached conditions.
182. All courts should be diligent in adopting the Law Commission's proposals for the recording of bail decisions in such a way as to indicate clearly how they have been reached.

Appeals against bail decisions (*paras 83 – 90, pages 431 - 434*)

183. The right of application to a High Court Judge for bail after determination by any criminal court exercising its original or appellate jurisdiction should be removed, and there should be substituted therefor a right of appeal from the District Division or Crown Division (Crown Court) on a point of law only.
184. Defendants should have a right of appeal against conditional grants of bail in the Magistrates' Division (magistrates' courts) to the Crown Division (Crown Court) in respect of conditions imposed as to their residence away from home and/or to the provision of a surety or sureties or the giving of security.
185. The prosecution should have a right of appeal to the Crown Division against the grant of bail by the Magistrates' Division (magistrates' courts) in respect

of all offences that would, on conviction, be punishable by a custodial, or partly custodial sentence.

Advance indication of sentence (*paras 91 – 114, pages 434 - 444*)

186. There should be introduced, by way of a judicial sentencing guideline for later incorporation in a Sentencing Code, a system of sentencing discounts graduated so that the earlier the tender of plea of guilty the higher the discount for it, coupled with a system of advance indication of sentence for a defendant considering pleading guilty.
187. On the request of a defendant, through his advocate, the judge should be entitled formally to indicate the maximum sentence in the event of a plea of guilty at that stage and the possible sentence on conviction following a trial.
188. The request to the judge and all related subsequent proceedings should be in court, in the presence of the prosecution, the defendant and his advisers and a court reporter, but otherwise in private, and should be fully recorded.
189. The judge should enquire, by canvassing the matter with both advocates, as to the mental competence and emotional state of the defendant and as to whether he might be under any pressure falsely to admit guilt.
190. The prosecution and defence should be equipped to put before the judge all relevant information about the offence(s) and the defendant, including any pre-sentence or other reports and any victim impact statement, to enable the judge to give an indication.
191. The judge should only give an indication if and when he is satisfied that he has sufficient information and if he considers it appropriate to do so.
192. Where, as a result of such an indication, a defendant's advocate indicates to the judge that he wishes to plead guilty, the judge should, by questioning the defendant direct, satisfy himself that the defendant understands the effect of his proposed plea, that it would be true and that it would be voluntary.
193. The judge should be bound by his indication, as should any other judge before whom the defendant may appear for sentence, on the consequent plea of guilty.

Disclosure

Advance disclosure by the prosecution (*paras 117 – 120, pages 445 - 447*)

194. There should be a single set of statutory rules imposing on the prosecution in all cases a duty to provide its proposed evidence in sufficient time to enable the defence adequately to prepare for trial, the precise timescale to be prescribed by rules.

Disclosure of unused material and defence statement (*paras 121 – 184, pages 447 - 474*)

195. The Criminal Procedure and Investigations Act 1996 scheme of material disclosure should be retained, in particular, two stages of prosecution

disclosure under which the second stage is informed by and conditional on a defence statement indicating the issues that the defendant proposes to take at trial.

196. The present mix of primary and subsidiary legislation, Code, Guidelines and Instructions should be replaced by a single and simply expressed instrument setting out clearly the duties and rights of all parties involved.
197. There should be the same test of disclosability for both stages of prosecution disclosure providing in substance and, for example, for the disclosure of “material which, in the prosecutor’s opinion, might reasonably affect the determination of any issue in the case of which he knows or should reasonably expect” or, more simply but tautologically, “material which in the prosecutor’s opinion might weaken the prosecution case or assist that of the defence”.
198. In addition, there should be automatic primary disclosure in all or certain types of cases of certain common categories of documents and/or of documents by reference to certain subject matters.
199. The police should retain responsibility for retaining, collating and recording any material gathered or inspected in the course of the investigation; police officers should be better trained for what, in many cases, may be an extensive and difficult exercise regardless of issues of disclosability, and subject, in their exercise of it to statutory guidelines and a rigorous system of ‘spot’ audits by H.M. Inspectorates of Constabulary and/or of the Crown Prosecution Service.
200. Such responsibility as the police have for identifying and considering all potentially disclosable material should be removed to the prosecutor.
201. The prosecutor should retain ultimate responsibility for the completeness of the material recorded by the police and assume sole responsibility for primary and all subsequent disclosure.
202. The requirements of a defence statement should remain as at present, as should the requirements for particulars where the defence is alibi and/or the defence propose to adduce expert evidence.
203. More effective use of defence statements should be facilitated by the general improvements to the system for preparation for trial that I have recommended, and encouraged through professional conduct rules, training and, in the rare cases where it might be appropriate, discipline, to inculcate in criminal defence practitioners the propriety of and need for compliance with the requirements.
204. There should be a clearly defined timetable for each level of jurisdiction for all stages of mutual disclosure unless the court in any individual case orders otherwise.
205. The Prison Service should introduce national standards for access to due process for remand prisoners that ensure they experience no greater difficulty than bailed defendants in preparing for their trials.

Third party disclosure (paras 185 – 190, pages 474 - 476)

206. There should be consideration of a new statutory scheme for third party disclosure, including its cost implications to all concerned, to operate alongside and more consistently with the general provisions for disclosure of unused material.

Public interest immunity (paras 191 – 197, pages 476 - 479)

207. A scheme should be introduced for instruction by the court of special independent counsel to represent the interests of the defendant in those cases at first instance and on appeal where the court now considers prosecution applications in the absence of the defence in respect of the non-disclosure of sensitive material.

Case management

Case allocation (paras 200 – 202, pages 480 - 481)

208. Under the present system of criminal courts, a single, simple form of procedure for movement of all cases from magistrates' courts to the Crown Court should be substituted for the present mix of procedures of committal, voluntary bill, transfer and sending.
209. If my recommendations for a unified Criminal Court are adopted, a similar, single procedure should govern the movement of all cases from the Magistrates' Division to the District or Crown Divisions.

Pre-trial hearings and pre-trial assessments (paras 204 – 235, pages 482 - 495)

210. In the preparation for trial in all criminal courts, there should be a move away from plea and direction hearings and other forms of pre-trial hearings to co-operation between the parties according to standard or adapted time-tables, wherever necessary seeking written directions from the court.
211. There should be national standard timetables and lists of key actions for preparation for trial in each of the three divisions of the new unified Criminal Court, with suitable variations to meet categories of case of different nature and complexity.
212. The Magistrates' Division, when allocating cases to the Crown or District Divisions and, where appropriate, in summary cases at an early administrative hearing, should issue the parties with the appropriate standard timetable and list, including dates for mutual disclosure and a date within a short period after secondary disclosure for 'pre-trial assessment'.
213. The parties, by agreement or on notice to each other, should be at liberty to seek in writing leave from the trial court to vary the standard timetable.
214. The parties should endeavour to prepare for trial in accordance with the timetable and list of key actions appropriate to the case and to resolve

between themselves any issues of law, procedure or evidence that may shape and/or affect the length of the trial and when it can start.

215. The timetable in each case should set a date for the ‘pre-trial assessment’, that is, an assessment by the parties and the court as to the state of readiness for trial.
216. By the pre-trial assessment date the parties should complete and send to the trial court a check-list showing progress in preparation and as to readiness for trial, and seeking, if appropriate, written directions.
217. Only if the court or the parties consider it is necessary for the timely and otherwise efficient preparation for, and conduct of, the trial should there be a pre-trial hearing, for example where one or other of the parties cannot comply with the timetable, or where there are unresolved issues affecting the efficient preparation for or conduct of the trial, or when the case is sufficiently serious or complex to require the guidance of the court.
218. Where there is a pre-trial hearing, and the defendant is in custody and consents, he should not be brought to court, but should participate in it to the extent necessary by video-link with the prison in which he is housed.
219. A judge or magistrates conducting an oral pre-trial hearing should be empowered to give binding directions or rulings subject to subsequent variation or discharge if justice requires it.
220. Where a pre-trial hearing is necessitated by one or other or both parties’ failure without good cause to comply with the time-table or other directions of the court, or to resolve issues of procedure, law or fact between them, the court should have power:
 - 220.1 to make such order as to payment of a publicly funded defence advocate for his attendance at the hearing as may be appropriate in the circumstances; and/or publicly to reprimand either party’s advocate or those instructing them as appropriate; any such public reprimand to be communicated to and taken into account by the professional body of the person reprimanded and, where the person is franchised for publicly funded defence work, by the Legal Services Commission; and/or
 - 220.2 to make such order of costs against one or other or both sides as may be appropriate.
221. All interlocutory court rulings, orders or directions in criminal courts as presently structured or in a new unified Criminal Court should be expressed in writing as a formal document of the court and served forthwith or shortly afterwards on all parties.

Listing and docketing (paras 236 – 238, pages 495 - 496)

222. There should be a move to greater use of fixed trial dates in cases of substance.
223. There should be a corresponding move to early allocation of such cases to a judge for case management and trial.

Information technology (*paras 256 – 261, pages 501 - 504*)

224. The present provision for the use of video-link with prisons in pre-trial hearings in magistrates' courts should be extended to all such hearings in all criminal courts; and as technology develops, consideration should be given to the use of web technologies for them.

Time limits (*paras 262 – 270, pages 504 - 508*)

225. The present maximum custody periods should continue, save that, in the event of abolition of committal proceedings for 'either-way' offences and/or of the establishment of a unified Criminal Court, the periods should be 56 days for cases tried summarily (whether summary only or 'either-way') and 182 for those tried otherwise.
226. Section 22 of the Prosecution of Offences Act 1985 should be amended to enable a court to consider and grant an extension of the custody time limit after its expiry, but only if such power is closely circumscribed, including a provision that the court should only grant an extension where it is satisfied that there is a compelling public interest in doing so.
227. An effective right of appeal should be provided outside the custody time limit period against the refusal of an extension within the period.

A code of criminal procedure (*paras 271 – 280, pages 509 - 513*)

228. The law of criminal procedure should be codified, but in two stages:
- 228.1 first, the Law Commission should be requested to draft legislation consolidating existing primary and secondary legislation coupled, possibly, with some codification of the more important and uncontroversial common law rules; and
- 228.2 second, a statutory Criminal Procedure Rules Committee should be established to draft a single procedural code for a unified Criminal Court, restating and reforming as necessary statute and common law, custom, judicial practice directions and other guidance.
229. The code, which should be expressed concisely and in simple English and Welsh, should provide, so far as practicable, a common set of rules for all levels of jurisdiction, and different rules only to the extent that they are necessary for different forensic processes.
230. The draft code should be enacted in primary and subsidiary legislation, and the Committee should, thereafter maintain it, proposing amendments where necessary for the Lord Chancellor's approval and initiation of amendment by secondary legislation subject to negative or positive resolution as may be appropriate.
231. In all its activities, the Committee should be under the general oversight of the Criminal Justice Council.
232. The Government should be under a statutory duty to refer to the Committee all proposals for amendment of the law of criminal procedure.

233. The Criminal Procedure Rules Committee should be chaired by the Lord Chief Justice and its membership should include: the Vice-President of the Court of Appeal (Criminal Division), the Senior Presiding Judge, at least two High Court Judges and two Circuit Judges sitting in crime, together with an appropriate number of District Judges, magistrates and justices' clerks, a number of experienced criminal practitioners from both branches of the profession and at least one academic specialising in the field, together with appropriate representatives of voluntary organisations with a direct interest in the work of the criminal courts.
234. The Committee should be supported by a full-time staff of lawyers and administrators experienced in the work of the criminal courts.

CHAPTER ELEVEN THE TRIAL: PROCEDURES AND EVIDENCE

The start of a jury trial (paras 15 – 24, pages 518 - 523)

235. In all cases tried by judge and jury:
- 235.1 each juror should be provided at the start of the trial with a copy of the charge or charges;
- 235.2 the judge at the start of the trial should address the jury, introducing them generally to their task as jurors and giving them an objective outline of the case and the questions they are there to decide;
- 235.3 the judge should supplement his opening address with, and provide a copy to each juror of, a written case and issues summary prepared by the parties' advocates and approved by him;
- 235.4 The judge, in the course of his introductory address, and the case and issues summary, should identify:
- the nature of the charges;
 - *as part of a brief narrative*, the evidence agreed, reflecting the admissions of either side at the appropriate point in the story;
 - *also as part of the narrative*, the matters of fact in issue; and
 - with no, or minimal, reference to the law, a list of likely questions for their decision.
236. If and to the extent that the issues narrow or widen in the course of the trial, the case and issues summary should be amended and fresh copies provided to the judge and jury.

Time estimates (paras 25 – 26, pages 523 - 524)

237. Advocates should regard it as of the highest importance to attempt accurate estimates of the likely length of their principal witnesses' evidence, including a review of them as the issues become clearer in the course of preparation for trial.

Opening speeches (paras 27 – 28, pages 524 - 525)

238. I endorse the Runciman Royal Commission's recommendation that a defence advocate should be entitled to make a short opening speech to the jury immediately after that of the prosecution advocate, but normally of no more than a few minutes.

Evidence in chief (paras 29 – 33, pages 525 - 527)

239. Screens and projection equipment should be more widely available to enable electronic presentation of evidence in appropriate cases.

The defence case (para 35, page 528)

240. A defence advocate who makes a short opening speech after the prosecution opening should not, thereby, forfeit his right to make an opening speech at the beginning of the defence case.
241. A defence advocate's entitlement to make an opening speech at the start of the defence case should no longer depend on whether he intends to call a witness as to fact other than the defendant.

Taking stock (paras 37 – 39, pages 529 - 531)

242. At the close of evidence and before speeches, the judge and advocates, in the absence of the jury, should finally review the case and issues summary and, if necessary, amend it for the jury.
243. Such a procedure, along with those already established by the Court of Appeal for review of evidential and legal issues at this stage of a trial, should be considered for express inclusion in the Criminal Procedure Code that I have recommended and, in the meantime, by the Lord Chief Justice for a special practice direction.
244. If, and to the extent that, the law and professional codes of conduct do not require a defending, as well as a prosecuting, advocate to seek to correct a judge's error of law or of material fact of which he becomes aware, both the law and the codes should be changed to require it.

Judges' directions on law and summing up (paras 41 – 55, pages 532 - 538)

245. Consideration should be given to including in the Code of Criminal Procedure that I have recommended and, in the meantime in a practice direction of the Lord Chief Justice, a requirement that a judge should use a case and issues summary and any other written or visual aid provided to a jury, as an integral part of his summing-up, referring to the points in them, one by one, as he deals with them orally.

246. Courts should equip judges with, and in cases meriting it they should consider using, other visual aids to their summings-up, such as PowerPoint and evolving forms of presentational soft-ware.
247. So far as possible, the judge should not direct the jury on the law, save by implication in the questions of fact that he puts to them for decision.
248. The judge should continue to remind the jury of the issues and, save in the most simple cases, the evidence relevant to them, and should always give the jury an adequate account of the defence; but he should do it in more summary form than is now common.
249. The judge should devise and put to the jury a series of written factual questions, the answers to which could logically lead only to a verdict of guilty or not guilty; the questions should correspond with those in the updated case and issues summary, supplemented as necessary in a separate written list prepared for the purpose; and each question should be tailored to the law as the judge knows it to be and to the issues and evidence in the case.
250. The judge, where he considers it appropriate, should be permitted to require a jury to answer publicly each of his questions and to declare a verdict in accordance with those answers.

Trial by judge and magistrates in the District Division (*paras 57 – 60, pages 538 - 540*)

251. In the District Division:
 - 251.1 the judge should be the sole judge of law;
 - 251.2 the judge and the magistrates should together be the judges of facts, each having an equal vote;
 - 251.3 the judge should normally conduct any pre-trial hearings on his own;
 - 251.4 the judge should be empowered to make binding pre-trial rulings as would a Crown Division judge;
 - 251.5 the judge should rule on matters of law, procedure and the admissibility of evidence in the absence of the magistrates whenever he considers it would be potentially unfairly prejudicial to the defendant to do so in their presence;
 - 251.6 the same order of speeches and structure of trial should apply as in the Crown Division;
 - 251.7 the judge should not sum up the case to the magistrates, but, after retiring with them to consider the court's decision, should give a publicly reasoned judgment of the court; and
 - 251.8 the judge should be solely responsible for sentence.

Trial in the Magistrates' Division (*paras 62 – 64, page 541*)

252. The structure and procedures of trial in the Magistrates' Division of a new unified Criminal Court should broadly follow those of the present magistrates' courts.

Abbreviated procedures (paras 65 – 67, pages 542 - 543)

253. All prosecuting authorities should use the provisions of section 12 of the Magistrates' Courts Act 1980, as amended, for disposal of cases on pleas of guilty or on proof of guilt in the absence of the defendant.

Evidence

General principles (paras 76 – 78, pages 546 - 547)

254. The English law of criminal evidence should, in general, move away from technical rules of inadmissibility to trusting judicial and lay fact-finders to give relevant evidence the weight it deserves.

Refreshing memory/witness statements (paras 81 – 85, pages 548 - 551)

255. As a first step and/or failing adoption of the following recommendation for use of prior witness statements as evidence, consideration should be given to making the only condition for a witness's use of a written statement for refreshing memory that there is good reason to believe that he would have been significantly better able to recall the events in question when he made or verified it than at the time of giving evidence.

Prior witness statements as evidence (paras 86 – 94, pages 551 - 556)

256. Consideration should be given to amending the law as to admissibility of witness statements so that:
- 256.1 where a witness has made a prior statement, in written or recorded form, it should be admissible as evidence of any matter stated in it of which his direct oral evidence in the proceedings would be admissible provided that he authenticates it as his statement;
 - 256.2 an integral part of the new rule should be that a defendant's previous statement should in principle be admissible whether it supports or damages his case and the fact that it may appear to be self-serving should go only to weight; and
 - 256.3 the witness should be permitted, where appropriate, to adopt the statement in the witness box as his evidence in chief.
257. There should be consideration in the long term of extending the present provisions for the use of video-recorded evidence to the evidence of all critical witnesses in cases of serious crime, coupled with provision where required of a record and/or transcripts or summaries of such evidence and also of that in cross-examination and re-examination.

Hearsay (paras 95 – 104, pages 556 - 560)

258. There should be further consideration of reform of the rule against hearsay, in particular with a view to making hearsay generally admissible subject to the principle of best evidence, rather than generally inadmissible subject to specified exceptions as proposed by the Law Commission.
259. In this respect, as with evidence in criminal cases generally, there should be a move away from rules of inadmissibility to trusting fact finders to assess the weight of the evidence.

Unfair evidence (paras 105 – 111, pages 560 - 563)

260. As part of the over-all reform of the law of criminal evidence that I have recommended, consideration should be given to rationalising and simplifying the various forms of statutory and common law rules for exclusion of evidence because of its unfairness and that of staying a prosecution for abuse of process on account of improperly obtained evidence.

Previous misconduct of a defendant/Similar fact evidence (paras 112 – 120, pages 563 - 568)

261. There should be consideration of the Law Commission's imminent final report on evidence in criminal proceedings of a defendant's misconduct in the context of a wider review of the law of criminal evidence, having regard, in particular, to the illogicality, ineffectiveness and complexity of any rule, whatever its form, directed to keeping a defendant's previous convictions from lay, but not professional, fact finders.

Expert evidence (paras 129 – 151, pages 571 - 582)

262. Consideration should be given to concentrating in one self-governing professional body within England and Wales the role of setting, or overseeing the setting, of standards and of conduct for forensic scientists of all disciplines, the maintenance of a register of accreditation for them and the regulation of their compliance with its conditions of accreditation.
263. For those purposes, the several existing expert witness bodies providing for all or most forensic science disciplines should consider amalgamation with, or concentration of their resources in, the Council for the Registration of Forensic Practitioners.
264. The new Criminal Procedure Rules that I recommend should contain a rule in the same or similar terms to that in Part 35.3 of the Civil Procedure Rules that an expert witness's overriding duty is to the court.
265. Any witness statement or report prepared by an expert witness for the assistance of the court should contain at its head a signed declaration to that effect.
266. Criminal courts' power to control the admission of experts' evidence should be formalised in the new Criminal Procedure Rules that I have recommended, and put on a similar footing to that for the Civil Courts as set out in the Civil Procedure Rules, Part 35, 1 and 4, namely by imposing upon them a duty, and

declaring their power, to restrict expert evidence to that which is reasonably required to resolve any issue of importance in the proceedings.

267. Judges and magistrates should rigorously apply the test governing that power and duty, and the Court of Appeal should support them.
268. In publicly funded defence cases, where a judge or magistrates' court has directed that it would be justifiable to call a defence expert, that direction should constitute authorisation for the expenditure of public money on an expert at a specified rate.
269. Where there is an issue on a matter of importance on which expert evidence is required, the court should not have a power to appoint or select an expert, whether or not it excludes either party from calling its own expert evidence.
270. Where there is no issue, or one in which the parties are content that the matter should be resolved by a single expert, they should be encouraged to deal with it in that way, agreeing his report or a summary of it as part of the evidence in the case.
271. The prosecution and defence should normally arrange for their experts to discuss and jointly to identify at the earliest possible stage before the trial those issues on which they agree and those on which they do not agree, and to prepare a joint statement for use in evidence indicating the measure of their agreement and a summary of the reasons for their disagreement.
272. Failing such arrangement, the court should have power to direct such a discussion and identification of issues and preparation of a joint statement for use in evidence and to make any consequential directions as may be appropriate in each case.
273. Close attention should be given in any further and general review of the rule against hearsay to the increasing reliance of forensic science laboratories and of many experts in certain disciplines on electronic recording, analysis and transmission of data.
274. There should be greater use by legal practitioners of video-conferencing and other developing new technology for communicating and conferring with experts in preparation for trial.
275. The law and the provision of national facilities should be developed to enable experts to give evidence by video-link or other new technologies in appropriate cases.

Interpreters (*paras 155 – 162, pages 584 - 587*)

276. The Government should continue to encourage the concentration in the two national Registers as appropriate of the role of oversight of national training, accreditation and monitoring of the performance of interpreters, with a view to providing an adequate national and local coverage of suitably qualified interpreters.
277. Training and accreditation of all interpreters should include coverage of the basics of criminal investigation and court procedures, and should provide for changing and different geographic demands for linguists.

278. The Government should consider central funding of further education establishments to equip them, where necessary, to provide courses in lesser known languages for the Diploma in Public Service Interpreting.
279. The Government should undertake a national publicity campaign in further education establishments and other colleges in support of the two national Registers.
280. There should be a review of the levels of payment to interpreters with a view to encouraging more and the best qualified to undertake this work and to establishing a national scale of pay.
281. Interpreters should be provided with facilities appropriate to an officer of the court when attending court to provide their services.
282. The standard check-list for agreement or directions leading to the pre-trial assessment should require all parties to indicate to the court in good time before the trial date the need for an interpreter, identifying the party or witness for whom he is required and the language.
283. The check list should also require the parties to agree or, failing agreement, to seek the court's directions for making available to the interpreter in good time before trial, any documents likely to assist him in his task at court.
284. An engaged interpreter should be entitled to apply direct to the Court for such access.
285. In all cases where an interpreter is provided with or given access to such documents, it should be in circumstances under which he undertakes to preserve their confidentiality until trial or otherwise in conditions of security directed by the court.
286. Standards of best practice in the design of new court buildings should be developed and equipment adapted in existing courtrooms for the provision of adequate accommodation and facilities to interpreters.

Information about the court (*paras 163 – 168, pages 588 - 590*)

287. Early progress should be made to equip each court centre or group of court centres, as appropriate, with:
 - 287.1 its own website containing information of cases listed for future hearing and their fixed or estimated hearing dates, daily listings of cases and information as to their progress; and general information about the court centre, travel to it and local facilities; and
 - 287.2 an automated telephone information system giving like information.
288. Early progress should also be made to equip each court centre with:
 - 288.1 electronic bulletin boards indicating the progress of cases listed each day; and
 - 288.2 diagrams of the layout of courtrooms in waiting areas and corresponding signs inside each courtroom.

Sitting times (*paras 169 – 178, pages 590 - 593*)

289. There should be thorough examination of the need for and the costs/benefits of extending court working hours, including the use of evening, night and weekend courts, whether as a general provision or for areas with a concentration of serious and/or minor crime.
290. Out-of-hours provision should be made for administrative assistance to court users through the medium of help-desks, the telephone and electronic means for obtaining advice or information, paying fines, obtaining forms etc.

Court dress (*paras 179 – 184, pages 594 - 595*)

291. The Higher Judiciary, in consultation with all levels of the judiciary, the legal professions and any other appropriate bodies, should consider and advise the Lord Chancellor on what, if any, formal court dress judges, barristers and solicitors should wear in future in the Supreme Court of Justice and the County Court.

Forms of address (*paras 185 – 187, page 596*)

292. The Higher Judiciary, in consultation with all levels of the judiciary, the magistracy, the legal professions and any other appropriate bodies, should consider and advise the Lord Chancellor on future forms of address in all courts.

Court language (*paras 188 – 189, page 597*)

293. A Criminal Procedure Rules Committee should examine all court procedures, forms and terms with a view simplifying their language and content.

Oaths and affirmations (*paras 190 – 196, pages 598 - 600*)

294. The witness's oath and affirmation should be replaced by a solemn promise to tell the truth.
295. The juror's oath and affirmation should be replaced with a promise in the following or similar form: "I promise to try the defendant and to decide on the evidence whether he is guilty or not".

Sentencing (*paras 197 – 226, pages 600 - 610*)

296. There should be early establishment of an online sentencing information service for all full- and part-time judges. The system should include:
 - 296.1 a statistical record of sentences imposed in the criminal courts at all levels, analysed according to key case features;
 - 296.2 a statement of sentencing principles and the text of judgments in key cases via an online sentencing textbook; and
 - 296.3 online and up-to-date information about the availability of sentencing and related facilities.

- 297. The sentencing information system should be available online to members of the public and the media and should be designed with their needs also in mind.
- 298. Consideration should be given to charging the Judicial Studies Board with the responsibility for establishing and administering a sentencing information system, resourcing it sufficiently for the purpose.
- 299. I support the recommendation in the Halliday Sentencing Review Report for the creation of a sentence review jurisdiction for the criminal courts, provided that resource and practical difficulties can be overcome.

CHAPTER TWELVE APPEALS

The appellate tests *(paras 5 – 11, pages 612 - 615)*

- 300. There should be the same tests for appeal against conviction and sentence respectively at all levels of appeal below the Appellate Committee of the House of Lords, namely those applicable to the Court of Appeal.
- 301. Consideration should be given to amendment of the statutory test of unsafety as the ground for quashing a conviction so as to clarify whether and to what extent it is to apply to convictions that would be regarded as safe in the ordinary sense, but that follow want of due process before or during trial.

Appeals from magistrates' courts *(paras 14 – 35, pages 616 - 623)*

- 302. A defendant's right of appeal against conviction and/or sentence in the magistrates' court to the Crown Court by way of re-hearing should be abolished.
- 303. It should be replaced by a right of appeal to the Crown Division (Crown Court), with leave from that court, on the same grounds that would support appeal from the Crown Division (Crown Court), sitting in its original capacity, to the Court of Appeal.
- 304. The constitution of the Crown Division (Crown Court) for this purpose should be a judge sitting alone who, depending on the nature and importance of the appeal, could be a High Court Judge, Circuit Judge or Recorder.
- 305. There should be no right of appeal from the Magistrates' Division (magistrates' courts) to the High Court by an appeal by way of case stated or by a claim for judicial review.

Appeals from the Crown Court to the Court of Appeal *(paras 36 – 44, pages 623 - 627)*

- 306. Where it is sought to challenge the decision of the Crown Division (Crown Court) sitting in its appellate capacity:
 - 306.1 there should be no right of challenge to the High Court by appeal by way of case stated or by claim for judicial review;

- 306.2 instead, appeal should lie to the Court of Appeal under its general appellate jurisdiction enlarged, if and as necessary, to cover matters presently provided by the remedies of appeal by way of case stated or claim of judicial review – and for which the Court should be suitably constituted; and
- 306.3 all such appeals should be subject to the permission of the Court of Appeal, which it should only give in a case involving an important point of principle or practice or where there is some other compelling reason for the Court to hear it.
- 307. Where it is sought to challenge the decision of the Crown Division (Crown Court) as a court of first instance or of the District Division:
 - 307.1 there should be no right of challenge to the High Court by appeal by way of case stated or by claim for judicial review; and
 - 307.2 instead, appeal should lie only to the Court of Appeal under its general appellate jurisdiction enlarged, if and as necessary, to cover matters presently provided by the remedies of appeal by way of case stated or of claim for judicial review - and for which the Court should be suitably constituted.

Prosecution rights of appeal (*paras 47 – 65, pages 627 - 636*)

- 308. Whilst I support the general thrust of the Law Commission’s recommendation for the introduction of statutory exceptions to the double jeopardy rule, I recommend that:
 - 308.1 the exceptions should not be limited to murder and allied offences, but should extend to other grave offences punishable with life and/or long terms of imprisonment as Parliament might specify; and
 - 308.2 there should be no reopening of an investigation of a case following an acquittal without the Director of Public Prosecution’s prior, personal consent and recommendation as to which police force should conduct it.
- 309. I also support the general thrust of the Law Commission’s recommendations for:
 - 309.1 extending the present preparatory bearing regime to include appealable rulings on potentially terminating matters such as severance, joinder, quashing the indictment or staying the prosecution as an abuse of process;
 - 309.2 giving the prosecution a right of appeal against an acquittal in certain cases arising from a terminating ruling during the trial up to the close of the prosecution case; and
 - 309.3 giving the prosecution a right of appeal against an acquittal arising from a ruling of no case to answer under the first limb of the rule in *R. v. Galbraith*.

Appeals against perverse verdicts (*paras 66 – 67, pages 636 - 637*)

310. Where any special verdict of a jury reveals on its terms that it is perverse:
- 310.1 if the verdict is guilty, the defence should have a right of appeal to the Court of Appeal, subject to the usual leave procedure, on the ground that the perversity renders the conviction unsafe; and
- 310.2 if the verdict is not guilty, the prosecution should have a right of appeal to the Court of Appeal, also subject to leave, on the ground that the perversity indicates that the verdict is probably untrue or unfair and such as to merit a re-trial.

Procedure on appeals to the Court of Appeal (*paras 73 – 101, pages 639 - 651*)

311. Single judges of the Court of Appeal should be allowed time to consider and determine written applications for leave to appeal against conviction or sentence in chambers as part of their regular sitting plan.
312. A single judge of the Court of Appeal should be empowered, when considering applications for leave to appeal, to give procedural directions for the hearing of the application or of the appeal that need not trouble the Full Court, subject to a right on the part of the applicant or the prosecution, as the case may be, to renew the application to the Full Court.
313. Consideration should be given to combining, or more closely associating in content and time, appellants' grounds of appeal and skeleton arguments, and to making appropriate adjustments to time limits for their filing and service.

Reorganisation and reconstitution of the Court of Appeal (*paras 87 – 94, pages 644 - 647*)

314. The Court of Appeal should be variously constituted according to the nature, legal importance and complexity of its work:
- 314.1 in cases where there is a point of law of general public importance or of particular complexity or public interest, including sentencing cases calling for guidelines or involving some other point of general principle or very long custodial sentences, the Court should consist of the Lord Chief Justice or the Vice-President or a Lord Justice and two High Court Judges;
- 314.2 in straightforward appeals against conviction, or in respect of short sentences where the law and procedures are clear and the only issue is whether the trial judge has correctly followed them, or where the issue turns on his treatment of the facts, the Court should consist of two High Court Judges or one High Court Judge and one Circuit Judge; and
- 314.3 consideration should be given to introducing a system under which, in cases of exceptional legal importance and complexity, a distinguished academic could either be appointed *ad hoc* to act as a judge of the

Court or be invited to submit a written brief to the Court on the point(s) in issue.

315. A single judge of the Court should be responsible for allocation of appeals to the Full Court as variously constituted under these recommendations, subject to review by the Full Court before or during the hearing of the appeal.

Practice and procedure (*paras 95 – 101, pages 648 - 651*)

316. The Court, however it is constituted, should ‘slow down’ - its judges should be allowed more time for preparation and judgment writing as part of their sitting plan, and appeal hearings should be less rushed so as to allow advocates adequate time to deploy their arguments and judges to consider them.
317. The Lord Chief Justice should consider issuing a Practice Direction for the better conduct by the parties of their preparation for hearing, including provision for pre-appeal directions hearings in complex cases, the form and contents of appeal bundles and advance notification to the Court of last minute changes likely to affect the content or duration of the appeal.
318. Criminal practitioners should provide a standard of service to the Court of the same level as is presently required of their counterparts in the Court of Appeal (Civil Division) and they should be paid properly for it.
319. In conviction appeals the Court should support trial judges’ robust case management and control of the trial, so long as it has not prejudiced the fairness of the trial over-all and thereby put the safety of the conviction at risk.
320. In sentence appeals the Court should be vigilant not to ‘tinker’ with the sentence of the court below, but only to intervene where it is wrong in principle, that is, of the wrong sort or far too long in the circumstances.
321. The Crown Prosecution Service should consider on a case by case basis whether to appear on the hearing of an appeal against sentence so as to be able to assist the Court, if required, on matters of fact, including the effect on any victim, or of law.

Criminal Cases Review Commission (*paras 102 – 107, pages 651 - 653*)

322. Section 23A of the Criminal Appeal Act 1968 should be amended to extend the Court of Appeal’s power to direct the Criminal Cases Review Commission to investigate and report on a matter on appeal, to a matter in an application for leave to appeal.
323. On any reference by the Commission to the Court of Appeal or the Crown Court of a conviction or sentence, those courts should apply the law in force at the time of conviction or sentence as the case may be.

Sentencing Advisory Panel (*paras 108 – 111, pages 653 - 655*)

324. The law should be amended to widen the remit of the Sentencing Advisory Panel to include general principles of sentencing, in particular as to the courts’

use of the various sentencing options available to them regardless of the category of offence.

325. The law should be amended, to enable the Court of Appeal to work more closely with and respond more speedily to the Panel's advice, by empowering it to issue guidelines without having to tie them to a specific appeal before it.

Appeals to the House of Lords (*paras 112 – 117, pages 655 - 658*)

326. Consideration should be given to introducing a system under which, in cases of exceptional legal importance and complexity, a distinguished academic could be invited to assist an Appellate Committee, say, by the submission of a written brief, with copies to the parties, on the point(s) at issue.
327. On points of law of general public importance, where there are conflicting decisions of the Court of Appeal or the law on them is otherwise in such an unsatisfactory state that only the House of Lords can resolve it, consideration should be given to introducing a form of 'leap-frog' appeal from the Crown Division (Crown Court) to the House of Lords, similar to that provided for civil appeals by Part II of the Administration of Justice Act 1969.
328. Section 34(2) of the Criminal Appeal Act 1968 should be amended to empower the House of Lords and Court of Appeal, as the case may be, to extend the time within which a prosecutor may apply for leave to appeal, as it does in the case of a defendant.