

## CHAPTER 3

# THE CRIMINAL COURTS AND THEIR MANAGEMENT

### INTRODUCTION

- 1 Many readers of this Report will be familiar with the system of criminal justice in England and Wales, others less so. For the latter, I hope the following brief outline will be of help. The former can, if they wish, move straight to the next chapter, though there are some aspects of the management of magistrates' courts and that of the Crown Court that may be new, even to them.
- 2 There are two levels of criminal courts, magistrates' courts and the Crown Court. About 95%<sup>1</sup> of all prosecuted cases start and finish in the magistrates' courts. These are prosecutions for the less serious – 'summary' - offences, some of which carry a penalty of up to 6 months' imprisonment. Magistrates also have jurisdiction in certain civil, family and child care matters and, for the present, also licensing matters. Barristers and solicitors exercise the main rights of audience in magistrates' courts. The remainder of the criminal work,

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<sup>1</sup> this may be an under-estimate because annual criminal statistics understate their significance; see Dr Penny Darbyshire, *An Essay on the Importance and Neglect of the Magistracy* [1997] Crim LR 627, pp 628-9

the more serious – ‘indictable’ - cases are sent to the Crown Court for trial by a judge and jury or for sentence by a judge.<sup>2</sup>

- 3 Magistrates’ courts’ powers to commit cases for trial in the Crown Court are the vestiges of the old grand juries’ function of examining and, where they considered there was sufficient evidence, committing indictable cases for trial by judge and jury. I say ‘vestiges’ because, since 1987<sup>3</sup> serious frauds and, since 1991,<sup>4</sup> sexual offences and offences involving violence or cruelty to children may be ‘transferred’, and since 15<sup>th</sup> January 2001,<sup>5</sup> all offences triable only on indictment must be ‘sent’, direct to the Crown Court. Only ‘either-way’ cases,<sup>6</sup> - offences that are triable summarily or on indictment - are still committed for trial and then, in the main, by a paper process and without consideration of the evidence. Magistrates’ courts may deal summarily, but only with the consent of the defence, with ‘either-way’ offences. However, in the event of their deciding, in a matter that has proceeded before them summarily, that their sentencing power is insufficient, they must commit the offender to the Crown Court for sentence.
  
- 4 Lay magistrates or Justices of the Peace have an ancient history, dating from the late 12<sup>th</sup> century when Richard I commissioned certain knights to preserve the peace in unruly areas. They were responsible to the King for ensuring that the law was upheld and were known as Keepers of the Peace.<sup>7</sup> They first acquired the title of Justices of the Peace in 1361,<sup>8</sup> by which time they had authority to arrest suspects, investigate alleged crimes and punish offenders. For centuries they also had local administrative responsibilities. But in the 19<sup>th</sup> century, except for liquor and gaming licensing, these passed to local authorities; and their policing role passed to local police forces. They are appointed by the Lord Chancellor from all walks of life; few are lawyers. When sitting they rely for legal advice on a legal adviser, who is, or is responsible to, a justices’ clerk.
  
- 5 Lay magistrates, sitting part-time and normally in benches of three, account for about 91% of all summary criminal cases ; they also deal with some civil cases, in the main family and licensing matters. There are about 30,400 of them and, typically, they serve for between 10 and 20 years. They are unpaid, receiving only a modest allowance for financial loss and subsistence. They are required to sit for a minimum of 26 half-day court sittings each year, but on average sit 40 or more times a year. In addition, they spend the equivalent

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<sup>2</sup> a comparison between workloads in terms of trials showed that in 1995 “over four times as many trials took place in magistrates’ courts as in the Crown Court”; Penny Darbyshire, *ibid* p 629

<sup>3</sup> Criminal Justice Act 1987, ss 4 and 5

<sup>4</sup> Criminal Justice Act 1991, s 53

<sup>5</sup> Crime and Disorder Act 1998, ss 51 and 52

<sup>6</sup> unless related to an indictable-only offence ‘sent’ for trial; see 1998 Act s 51(11)

<sup>7</sup> in 1327, by a statute of Edward III, there were assigned in every county “good men and lawful . to keep the peace”

<sup>8</sup> by virtue of the Statute of Westminster of that year

of about a week a year on training and other magisterial activities. They are 'lightly', but reasonably well, trained for their increasingly demanding work. They have only a local jurisdiction, that is, for the Commission area to which they are appointed, and they have no national judicial 'champion' in the form of, say, a Chief Magistrate. But, as I describe below, they organise such matters as deployment and sittings through their local benches and justices' clerk, and their general administration through the medium of magistrates' courts committees.

- 6 District Judges (Magistrates' Courts) - until recently known as stipendiary magistrates - sitting singly and full-time, deal with the remaining 9% of the criminal work of the magistrates' courts. They are legally qualified, either as barristers or solicitors of at least seven years' standing, but nevertheless they too have the assistance in court of a legal adviser. They rarely sit with magistrates. There are about 105 of them,<sup>9</sup> supported by about 150 Deputy District Judges who sit part-time. About 50 of the full time appointees sit in London and 50 in the Provinces. They are headed by a Senior District Judge (Chief Magistrate), who sits in Bow Street. The current annual employment costs of a full-time appointee are about £90,000.<sup>10</sup>
- 7 Stipendiary magistrates stem from the mid-eighteenth century when they were introduced in London largely to replace the corrupt Middlesex Justices of the Peace. In the early 19<sup>th</sup> century they were also appointed to some of the other large metropolitan areas to complement, not to replace, the lay bench. In what became Inner London, stipendiaries did all the work in their own court-houses, lay magistrates sitting in separate courthouses dealing only with trivial matters. In 1964, as a result of the Administration of Justice Act of that year, they began to share some jurisdictions and court-houses. The pattern in the provinces was quite different. There, the two normally shared jurisdictions and court-houses, but with the strengthening of the lay benches, there was a gradual falling off in numbers of stipendiaries.<sup>11</sup> In the last 20 years or so provincial stipendiaries began to increase again. As academic commentators from the Centre for Criminal Justice Studies at the University of Leeds have recently pointed out,<sup>12</sup> there were three reasons for that: first, they were needed to meet the increasing workload and difficulties in many areas in recruiting lay magistrates; second, there was heightened political concern about court efficiency and delays; and third, in 1973 legislation<sup>13</sup> introduced for the first time a power to appoint acting stipendiaries for up to

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<sup>9</sup> the present statutory limit is 106

<sup>10</sup> the figures in this paragraph and elsewhere in this report on the subject of magistrates are taken from Rod Morgan and Neil Russell, *The Judiciary in the Magistrates' Courts*, RDS Occasional Paper No 66 (Home Office, December 2000)

<sup>11</sup> *Stipendiary Magistrates and Lay Justices* (1946) 9 MLR 1; Report of the Interdepartmental Committee on Magistrates in London, Cmnd 1606, 1962 - the "Aarvold Committee"; and Sir Thomas Skyrme, *History of the Justices of the Peace*, Barry Rose, Chichester, 1991

<sup>12</sup> *The Development of the Professional Magistracy in England and Wales*, Peter Seagoe, Clive Walker and David Wall, [2000] Crim LR 631, pp 633-4

<sup>13</sup> Administration of Justice Act 1973, s 2(7)

three months at a time. As the Leeds University commentators and Rod Morgan and Neil Russell<sup>14</sup> have also noted, the growth over-all of stipendiaries has been modest and proportionate to that of lay magistrates, though there has been a rapid increase in the number of provincial appointments in the last decade - from 16 to over 50.

- 8 As a result of the Access to Justice Act 1999,<sup>15</sup> London and provincial District Judges (Magistrates' Courts) have become a unified body. The Lord Chancellor, in announcing the change, said that its purpose was to provide greater flexibility in their allocation to fluctuations in workloads throughout the country for District Judges and "to complement and work alongside" lay magistrates. Each District Judge, although assigned to a specific area, has a national jurisdiction enabling him to sit elsewhere when needed. Acting stipendiaries have now become Deputy District Judges (Magistrates' Courts), without statutory limitation of the period for which they may be appointed, as a precursor to substantive appointment. Although District Judges are assigned to a particular centre or Magistrates' Courts Committee area, they may be required to sit anywhere as the work demands. It is unusual<sup>16</sup> for them to be involved in the management of the courts in which they sit, save for those in London where they have a formal role in the management structure.
- 9 District Judges and lay magistrates have exactly the same jurisdiction, enabling them to try summary offences carrying a maximum penalty of 6 months' imprisonment or, in certain cases of more than one offence, of up to 12 months' imprisonment.<sup>17</sup> District Judges undertake the same range of criminal and civil work as magistrates, though they are often assigned cases that are longer, more complex and/or sensitive, frequently the 'either-way' cases.
- 10 The Crown Court, which was created by the Courts Act 1971, replaced the old system of Quarter Sessions and Assizes swept away in the Beeching reforms.<sup>18</sup> It is a single Court, which sits at centres throughout England and Wales. Every case in the court is presided over by a judge who, when trying the issue of guilt, sits with a jury of 12 randomly selected lay people. When dealing only with sentence the judge sits on his own, and when hearing appeals against conviction from a magistrates' court, which are by way of rehearing, he sits with two lay magistrates. Many judges who sit in the Crown Court also exercise, as judges of the High Court or county court, a

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<sup>14</sup> *The Judiciary in the Magistrates' Courts*, p 3, para 1.2

<sup>15</sup> by amendment of the Justices of the Peace Act 1997, s10; and see the LCD Consultation Paper *Creation of a Unified Stipendiary Bench*, 1998

<sup>16</sup> some have been elected to Magistrates' Courts' Committees

<sup>17</sup> when sitting in a Youth Panel, both can impose a Detention and Training Order. These orders can be made for a maximum period of operation of 2 years, but only half of the time may be served in custody

<sup>18</sup> see Report of *The Royal Commission on Assizes and Quarter Sessions 1966 -1969*, chaired by Lord Beeching, Cmnd 4153

civil and/or family jurisdiction, often moving from one jurisdiction to another as their daily list requires.

- 11 There are 78 permanent and 15 satellite Crown Court centres throughout the country,<sup>19</sup> designated as first, second and third tier, reflecting the seriousness of the offences normally triable there. These centres are spread among six judicial circuits, having their origin in the centuries old system of judges travelling around the country to administer criminal and civil justice.<sup>20</sup> An important feature of the circuit system introduced by Lord Beeching, and formalised by statute,<sup>21</sup> is that of the Presiding Judges. Their role today, and the reasons for it, are much as he intended them when, in 1969, he recommended their creation:

“256. ... it is our intention that the administrative officers, to whom we refer later, shall exercise firm managerial control over all matters affecting the smooth running of the courts other than those which have a direct bearing upon the discharge of judicial functions. This being so, we consider it very necessary, on constitutional grounds, to provide a visible and effective safeguarding of the position of the judges serving the Circuits by assigning to each Circuit a senior member of the judiciary who will have a general responsibility for that Circuit and a particular responsibility for all matters affecting the judiciary serving there.”<sup>22</sup>

- 12 Judges of the Crown Court consist of those High Court Judges who visit the more important centres regularly on circuit and, in much greater numbers, Circuit Judges and Recorders (part-time judges) who are, in the main, attached to particular centres. However, they all have jurisdiction to sit anywhere in the country if asked to do so. There are just over 100 High Court Judges, nearly 600 Circuit Judges and about 1,400 Recorders. Practising barristers at present exercise the main right of audience in the Crown Court. But recent statutory provision has allowed for the appearance there of greater numbers of practising solicitors than before and also for barristers and solicitors in employment, including Crown prosecutors.<sup>23</sup>
- 13 All judges of the Crown Court are headed by the Lord Chief Justice of England and Wales who is responsible, in consultation with the Lord Chancellor, for their deployment and allocation of judicial work, and for advice on judicial appointments. In exercising these responsibilities, he acts largely through the Senior Presiding Judge for England and Wales, the

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<sup>19</sup> including the Central Criminal Court in the City of London

<sup>20</sup> Midland, North Eastern, Northern, South Eastern, Wales and Chester and Western

<sup>21</sup> Courts and Legal Services Act 1990, s 72

<sup>22</sup> Beeching Report, paras 256-259

<sup>23</sup> Courts and Legal Services Act 1990, s 31A inserted as from 31 July 2000 by Access to Justice Act 1999, s 37

Presiding Judges of each of the six judicial circuits and the Resident Judges<sup>24</sup> of the major court centres within each circuit. Save for those constitutionally important responsibilities and their involvement in a consultative capacity in various bodies concerned with the administration of justice, the judges have no formal role in the management of their courts.

- 14 Appeals against conviction and sentence lie from magistrates' courts to the Crown Court by way of rehearing, and from the Crown Court to the Court of Appeal (Criminal Division). The Court of Appeal normally sits in the Royal Courts of Justice in London, but in recent years has occasionally sat for short periods on circuit. In London it sits in several constitutions or panels of judges. Each constitution normally consists of three, one Appeal Court Judge drawn from a list of 19 who regularly sit in that Division, sitting with two High Court Judges or with one High Court Judge and one experienced Circuit Judge. Appeals require leave, either from the trial or sentencing judge, or from the Court of Appeal itself, most commonly acting through a single High Court Judge.
- 15 More limited forms of appeal, on points of law or jurisdiction or matters of procedure, also lie from magistrates' courts and the Crown Court to the High Court, sitting mostly in London but occasionally on circuit, by way of case stated or judicial review.
- 16 The final court of appeal for England and Wales, though not for Scotland in criminal matters,<sup>25</sup> is the Appellate Committee of the House of Lords. It consists of twelve Lords of Appeal in Ordinary who normally sit in panels of five. Appeals lie to the Appellate Committee only on points of law of general public importance and with leave of the Court of Appeal or of the Committee.

## **MAGISTRATES' COURTS**

### **Management**

- 17 As I have said, unlike professional judges at any level<sup>26</sup>, magistrates are responsible for the administrative management of their own courts, though subject to increasing oversight by the Lord Chancellor's Department. Since 1949, they have done so through local magistrates' courts committees

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<sup>24</sup> ie the senior Circuit Judge at each centre appointed to oversee its criminal work

<sup>25</sup> where the Scottish Inner House sitting in Edinburgh is the final court of appeal, save for devolution issues, where appeal lies to the Judicial Committee of the Privy Council

<sup>26</sup> save for District Judges in London; see para 20 below

(‘MCCs’) - in effect, local management boards - responsible for the “efficient and effective administration” of their courts.<sup>27</sup> These now number 42 and correspond to the 42 criminal justice system areas established for England and Wales.<sup>28</sup> The MCCs are composed in the main of magistrates, but act through a justices’ chief executive and his staff. Their role is purely administrative.

- 18 An MCC may have more than one ‘bench’ of magistrates within its area, each with its own chairman. His responsibilities are informal, but various and heavy. They include: chairing meetings of the bench and of its sub-committees; regular consultation with the justices’ clerk on such matters as sitting rotas and court listing; election of members of the bench to various positions; liaison with the MCC and the various criminal justice agencies; the application of various guide-lines and bench policies; review of sentencing statistics as against national patterns; general encouragement of good practice; pastoral matters; attendance at meetings of various local criminal justice bodies; and maintenance of good public and media relations. The justices’ clerk, who in many MCC areas is now responsible for more than one bench, has dual roles, not always readily distinguishable, of principal legal adviser to the magistrates and of responsibility for administrative and staff matters to his ‘line-manager’, the MCC’s justices’ chief executive.
  
- 19 The current annual cost of administration of the magistrates’ courts is about £330 million. Local authorities, as ‘the paying authorities’, provide the courthouses and ancillary accommodation and, initially, all the funding for MCCs in their respective areas. The Lord Chancellor’s Department repays 80% of revenue expenditure which, since 1992, has been subject to a cash limited grant, leaving the local authorities’ obligation at 20%. Despite this obligation of local authorities, MCCs have little accountability to them. And local politicians or council officers have little direct involvement in the business of the courts other than as serving magistrates or in connection with local authority prosecutions, so it does not often figure highly in their priorities.<sup>29</sup> The authorities have no right to representation on the MCCs or say in their spending plans, save by inefficient and sometimes confrontational statutory procedures. These are particularly troublesome in the case of capital projects where several local authorities may together provide a 6% contribution towards the running costs of an individual PFI/PPP scheme. On one view, one of the authorities may obstruct and delay an MCC’s plans with which the other local authorities agree; on another view, it may be expected to contribute to a project outside its area in which it has no interest or which it regards as contrary to its interest.

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<sup>27</sup> created by the Justices of the Peace Act 1949; see now Justices of the Peace Act 1997, s 31; see also Seago, Walker and Wall, p 640

<sup>28</sup> see para 31 below

<sup>29</sup> as distinct from their involvement in local crime prevention, youth offending teams, crime and disorder partnerships etc

- 20 There are now special financial arrangements for London. On 1<sup>st</sup> April 2001 a new body, called the Greater London Magistrates' Courts Authority, came into being. It differs from MCCs in a number of important respects: in mandatory inclusion of representatives of local authorities and of the District Judge Bench; in its ownership of property; and in the mechanics of its financing. It consists of magistrates, at least one of whom must be a District Judge, and mayoral and other local authority nominees. Not only does it own its courthouses and associated property, but it also acts as a paying authority in its own right. However, it will receive its revenue funding from two different sources and in the same proportions as the MCCs, namely 80% from the Lord Chancellor's Department and 20% from the Corporation of the City of London and the 32 London Boroughs.
- 21 I have attempted to describe in a few paragraphs the present highly complex system of administration of magistrates' courts. I find it hard to believe that anyone skilled and experienced in the art of public administration and financing would, if starting afresh, devise it that way today. It is, of course, a product of history and an increasingly tortuous legislative overlay, which the following may in part explain.

## Origins

- 22 Until half way through the 20<sup>th</sup> century there was a patchwork system throughout the country of about 1,000 county and borough Commissions of the Peace of different sizes. Benches administered summary justice in court-buildings usually provided and maintained by their local authorities. They were largely independent entities who appointed their own justices' clerk, mostly a part-time appointment from among the local solicitors, and contributed to their running costs out of fines and fees that they paid to their local authorities. Local authorities found themselves making up increasing deficits in the cost of running their local courts. Under somewhat loose oversight of the Home Office, each court was administered by its own bench of magistrates and in their own way, with their justices' clerk doubling as legal adviser and court administrator.<sup>30</sup>
- 23 In 1944 a Departmental Committee on justices' clerks chaired by Lord Roche recommended<sup>31</sup> the establishment of MCCs to administer petty sessional areas based on administrative counties and large boroughs. In keeping with the long and close involvement of magistrates in local public administration alongside their judicial duties, the Committee was content to leave the

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<sup>30</sup> see the Report of the Le Vay *Efficiency Scrutiny of Magistrates' Courts* (HMSO, 1989), Vol 1, para 2

<sup>31</sup> Report, Cmnd 6507, HMSO, para 231



membership of MCCs and responsibility for their administration to magistrates themselves.

- 24 The Justices of the Peace Act 1949 implemented that recommendation, creating MCCs for each administrative county and for certain non-county boroughs. The Committees were made up of magistrates chosen from each commission area together with one or two ex officio members.
  
- 25 The main functions of MCCs, under the continuing general administrative oversight of the Home Office, were administrative. They were to propose, where appropriate, for order by the Home Secretary, the division of their areas into petty sessional divisions, to appoint one or more justices' clerks for their area and to provide courses of instruction to magistrates. Each petty sessional division was to have a bench chairman chosen by its magistrates in secret ballot. The local authority(ies) within whose area each MCC was located was (were) to be responsible for the court accommodation and all the expenses of transacting the business of the court, the nature of that provision to be determined by the MCC in consultation with the authority(ies). All fines and fees were to be paid to the Home Office. The Home Office in turn was to make a grant to the local authority(ies) within each MCC area of an amount representing the proceeds of certain fines, plus two-thirds of the difference between them and actual expenditure. In practice the grant represented about 80% of the total cost, leaving the local authority(ies) to fund the balance of 20%. The Criminal Justice Act 1972 formalised that funding ratio.
  
- 26 A key principle of the 1949 Act was that magistrates' courts should operate on a local basis with a large degree of autonomy. However, as Julian Le Vay, who, in 1989, conducted an *Efficiency Scrutiny of the Magistrates' Courts* on the instruction of the Home Secretary, commented, neither the Roche Report nor the 1949 Act dealt with management in any modern sense:

“The Act left the justices' clerk with responsibility for day to day running of courts and court offices, but did not make clear to whom he was answerable (if at all), now that he was appointed by a body separate from the bench he served. Nor was central Government given any say in the level or use of resources it was committed to provide.”<sup>32</sup>
  
- 27 In the 1960s and early 1970s the Bar Council, Law Society, Magistrates' Association and Justices' Clerks' Society proposed centralisation of the management of magistrates' courts with a view to achieving greater efficiency, training and use of accommodation. The county councils opposed the proposal, arguing that it was against the trend of devolution. The Home

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<sup>32</sup> Le Vay Report, para 2.3

Secretary of the time also resisted it on the ground, amongst others, that it would transform justices' clerks and their staff into a central government service.

28 As a side note in this short history, I should mention again Lord Beeching's inquiry in the late 1960s into the administration of Assizes and Quarter Sessions, another layer of justice countrywide steeped in antiquity, complexity and some amateurism. He recommended the abolition of both those jurisdictions and their replacement with a single, nationally administered court.<sup>33</sup> If his terms of reference had included magistrates' courts, it is inconceivable that he would not have included their even more complex administration in the same or some similar national reorganisation.<sup>34</sup> That appears to have been the initial instinct of the Government in the late 1960s. With the encouragement, amongst others, of the Justices' Clerks' Society, it considered amalgamating magistrates' courts and their management into a new national courts structure like that proposed for the Crown Court. However, it did not pursue it.<sup>35</sup> In 1976 the Layfield Committee recommended that funding for MCCs should be centralised, but its recommendations were not adopted.<sup>36</sup>

29 By 1989 when Le Vay was conducting his efficiency scrutiny of the magistrates' courts, the cost of administering them was about £200 million. Most of it was met from central funds, but with limited central supervision. He observed in his report that "it would be difficult to think of any arrangements less likely to deliver value for money", and added:

"The arrangements for managing magistrates' courts and their resources retain the local, part-time, almost amateur flavour of an earlier age. The arrangements have never been systematically appraised, and have not adapted to take account of the enormous increase since 1949 in the volume of business and the number of permanent staff, or the fact that central Government now foots most of the bill".<sup>37</sup>

His principal recommendation was that administration of magistrates' courts should be "run as a national service, funded entirely by the Government - but with maximum delegation of managerial responsibility and control of resources to the local level", a proposal rejected, seemingly, on the grounds of expense. He also made a number of other recommendations for improvements of the system, many of which found more favour.

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<sup>33</sup> Report of the *Review of Assizes and Quarter Sessions*, chapter IV

<sup>34</sup> *ibid.*, see eg para 155

<sup>35</sup> Le Vay Report, para. 2.5;

<sup>36</sup> *Local Government Finance: Report of the Committee of Inquiry*, Cmnd 6453 (HMSO, May 1976), pp 114

- 30 On 1<sup>st</sup> April 1992, the Lord Chancellor assumed responsibility for the administration of the magistrates courts. By then the cost of administering them was approaching £300 million. Le Vay's findings prompted the Government to issue a White Paper in 1992 entitled a *A New Framework for Justice*, which in turn led to changes introduced by the Police and Magistrates' Courts Act 1994. These included: the amalgamation of MCCs; making them more clearly responsible for the administration of magistrates' courts in their areas and defining their responsibilities; permitting the co-option of two members in place of the former ex officio members; requiring each MCC to appoint a legally qualified chief executive, a justices' chief executive, whose function was to be purely administrative, as distinct from the legal and advisory role of the justices' clerk; giving the Lord Chancellor power to combine MCC areas and to direct MCCs as to their standards of performance; and the establishment of the Magistrates' Court Service Inspectorate.
- 31 When the present Government came to power it expressed a strong desire to improve the over-all management of the criminal justice system at both national and local level. It sought to reduce the number of MCC areas, creating larger ones to share boundaries ('co-terminosity') with other criminal justice agencies, and to enable MCCs to determine and vary the structure of their petty sessional areas. It also sought a clearer distinction than had been achieved by the 1994 reforms between the administrative functions of the justices' chief executive and the legal and advisory responsibilities of the justices' clerk. The chosen areas for co-ordination of management were the 42 police authority areas<sup>38</sup> established by the Local Government Act 1972. In 1997 there were 105 Magistrates' Courts Committees but, as I have said, these have now been reduced to 42. There has been similar re-organisation of the Crown Prosecution Service and Probation Service. And the Prison Service has moved to a 13 area structure which aligns more closely with the 42 area boundaries.
- 32 The move to sharpen the distinction between the administrative role of the justices' chief executive and the legal and advisory role of the justices' clerk was impeded by a statutory requirement<sup>39</sup> that justices' chief executives could not be appointed unless eligible for appointment as a justices' clerk. This led to many of the posts being filled by former justices' clerks or their legally qualified deputies. The Access to Justice Act 1999 removed that requirement and further defined the functions of justices' chief executives in an attempt to reinforce the distinction.<sup>40</sup> However, both are employed by the MCCs. And, although justices' clerks' primary duty is to their bench or benches as legal

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<sup>37</sup> Le Vay Report, paras 1.5 and 2.7

<sup>38</sup> for this exercise the City of London is included with the Metropolitan Police

<sup>39</sup> initially in the Police and Magistrates' Courts Act 1994 and subsequently incorporated into the Justices of the Peace Act 1997, s 40(5)

<sup>40</sup> Access to Justice Act 1999, ss 87 and 88(1)

advisers and in the organisation and conduct of their court work, they continue, if their MCC so decides, to exercise certain administrative functions on behalf of the justices' chief executive.<sup>41</sup> As I have said, he is their 'line-manager' for that purpose.

## Commentary

- 33 I make recommendations for the future administrative structure of the criminal courts in chapter 7,<sup>42</sup> but discuss here some of the present problems of the system. Nicholas Stephens, the President of the Justices' Clerks Society for 1999-2000, described the legal and administrative divide in the magistrates' courts as creating a "leadership vacuum".<sup>43</sup> Put another way, it is not always clear where the boundary lies between the responsibilities of the bench and of the MCC or to whom the justices' clerk is accountable in his different responsibilities. For example, the divide between 'scheduling' of work - the MCCs' responsibility - and 'listing' of cases and case-management - magistrates' and justices' clerks' responsibility - is not always easy.<sup>44</sup> And an issue that has arisen in at least one MCC area is whether a justices' chief executive could direct a justices' clerk to delegate his powers and to whom he should delegate them.
- 34 There have been further changes in the roles and responsibilities of MCCs. Members of MCCs are now selected for the contribution they can make to the task of efficient administration of their courts, not as representatives of individual benches. The Lord Chancellor's Department has set targets, in the form of public service agreements, for magistrates' courts, and collects data to establish 'National Performance Indicators' of their efficiency and effectiveness. The 1999 Act also gave the Lord Chancellor greater authority over MCCs, including: an ability to direct them to implement recommendations of the Magistrates' Courts' Service Inspectorate; to issue a code of conduct for MCC members; and the right to dismiss them for non-compliance with it. The Judicial Studies Board has introduced the Magistrates' New Training Initiative (MNTI) to all MCC areas from September 1999. Also, the Narey reforms for reducing delays in the criminal justice system were introduced from November 1999. Reports of the Magistrates' Courts Inspectorate indicate a substantial improvement in MCCs' performance since 1997. Notable achievements, in addition to the sometimes painful Government-driven structural re-organisations of the MCC areas and of court provision within them, are the improvements they have

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<sup>41</sup> see *A Strategic Steer*, the LCD's response in January 2000 to its September 1998 consultation paper, *The Future Role of the Justices' Clerk*

<sup>42</sup> Ch 7, paras 50 - 73

<sup>43</sup> in an address at the Justices' Clerks' Conference in May 2000

<sup>44</sup> as the Association of Justices' Chief Executives and the Justices' Clerks' Society have pointed out in a joint submission in the Review

made in the service to and treatment of those who use the courts. These include better facilities for witnesses and the disabled, the introduction of complaints procedures, expressing court documents in plain English and the publication of charters concerning quality of service.

- 35 The MCCs and the courts that they administer are still in a state of transition. Their reduction, from over 100 in 1997 to the present 42, has been accompanied by a steady progression of amalgamations of benches and closures of little-used courts, mainly in rural areas.<sup>45</sup> These amalgamations have been accompanied by a move to confine a number of benches within individual MCC areas to a single justices' clerk. A number of factors have contributed to these developments, the most important being the limits placed by central Government on MCCs' budgets, recognition of the need to provide better facilities for all who have to attend court, and a drive to concentrate work to achieve speedier, more efficient and cost effective justice.
- 36 These developments have caused, and continue to cause, concern among magistrates and many others about loss of 'local justice'. MCCs are responsible for very large areas, mostly corresponding with counties but some, such as Dyfed-Powys, West Mercia, Devon and Cornwall and Thames Valley, extending over several counties. Within these new areas the courts are already widely spaced, making unreal any notion of 'local justice'. For example, in the Cumbria MCC area six courthouses serve a population of less than 500,000 spread over nearly 2,700 square miles, and the distance between them is up to 50 miles. Similarly, in North Yorkshire, nine magistrates' courts serve a population of 742,000 spread over 3,000 square miles.
- 37 The members of the MCCs are responsible, through their justices' chief executives and, subject to the Lord Chancellor's Department guidelines and oversight, for administering considerable budgets and any capital or PFI spending plans. For example, the 1999/2000 annual expenditure for the Merseyside and West Midlands MCCs were respectively nearly £10 million and about £17.5 million. Examples of corresponding figures for MCCs at the lower end of the scale are Bedfordshire - about £3.2 million and Warwickshire - about £2.4 million. However, whatever the level of annual expenditure, as the Central Council of Magistrates Courts Committees (CCMCC) has observed, the reality is that MCCs have no budgetary control over their affairs - in the sense that they simply bid each year to the maximum permitted by the Treasury. And the arrangements for their accounting as between themselves and the local authority or authorities in whose area(s) they fall are unsatisfactory. In addition, they are not subject to a satisfactory regime of audit.

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<sup>45</sup> The Justices of the Peace Act 1997, s 33, imposes a duty on MCCs to keep their petty sessional areas under review and, if directed by the Lord Chancellor, to consider whether any alteration is required and, having done so, to submit to him a draft order for their alteration or a report for not doing so

- 38 Although MCCs do not have to submit their budgets to the Lord Chancellor's Department for approval and, almost without exception, set budgets that will utilise all the available grant, technically they are still required to 'determine' their expenditure needs. And although the local authorities, as 'paying authorities' are entitled to appeal to the Lord Chancellor against the determination of the budget by the MCC, they see no point in doing so, believing that a budget based on the cash limit will, by its nature, be considered reasonable. Thus, the introduction of the cash limit, though providing an effective cap on MCCs' expenditure, has, paradoxically, reduced the extent to which the paying authorities have any incentive to monitor or challenge their budget-setting processes.
- 39 The MCCs' accounting arrangements are unsatisfactory because, with the exception of the Greater London Magistrates' Courts Authority (GLMCA),<sup>46</sup> they hold no money or property. This arrangement is particularly cumbersome and productive of delay where an MCC falls within two or more local authority areas. Normally, one of the authorities takes the lead in any dealings with the Lord Chancellor's Department, but there can be disputes about the contribution each authority makes towards the 20% local authority funding. And, more seriously there can be disputes about the principle of MCCs' proposals for capital projects (normally by PFI or PPP<sup>47</sup>) or minor works for which they must make special bids to the Lord Chancellor's Department. Such disputes, if not resolved, may have to be submitted to the Lord Chancellor for his determination. This is a particularly unhappy and inefficient consequence of the combination of MCCs' responsibility to determine their need for court and other accommodation with the local authorities' obligation to provide it.
- 40 In addition, with the exception of the GLMCA, there is no statutory requirement for audit of MCCs' accounts; and there are only patchy and variable internal audits by the local authorities. Similarly, there is little detailed examination of MCCs' financial affairs by the external auditor appointed by the Audit Commission to scrutinise local government expenditure or by the Lord Chancellor's Department's internal auditors. And, although the Magistrates' Courts Service Inspectorate has indicated that it expects MCCs to institute an appropriate auditing regime, it frequently finds gaps in coverage during inspections.
- 41 Despite increasing oversight by the Lord Chancellor's Department of MCCs' management of their affairs, there remain considerable differences in the ways

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<sup>46</sup> established by Access to Justice Act 1999, s 83 which inserted a new s30A in the Justices' of the Peace Act 1997

<sup>47</sup> in the case of PFI or PPP projects the effective cost to local authorities is 6% of the total cost. So far three magistrates' courts projects have commenced, and ten more are in the pipeline. None has been delivered

in which they do things. They are left to devise their own procedures and forms in implementation of legislation and central government policy. As a result, practices vary considerably from one MCC to another, for example, the format of case file sheets and even legal aid application forms. They do not have the same information technology systems to enable the establishment of common data-bases of their work for the setting and monitoring of targets of efficiency, or to facilitate research,<sup>48</sup> or even for the ready communication of information to each other. In addition, each MCC is responsible for training its magistrates, which it pays for out of its own budget. The Magistrates' Committee of the Judicial Studies Board provides much material and some support to the MCCs for this purpose, but each devises and conducts its own training scheme.

- 42 This lack of administrative consistency, which spills over into court procedures, is to some extent mitigated by the separate efforts of four bodies, the CCMCC, the Magistrates' Association, the Justices' Clerks' Society and the Association of Justices' Chief Executives. However, as to the CCMCC and the Magistrates' Association, their 'constituencies' appear to be different and their relationship, if any, distant - mirroring the distance between those of MCCs who administer large areas and local benches who are primarily concerned with the day to day running of their own courts. The Justices' Clerks' Society and the Association of Chief Executives have a closer and good working relationship, assisted in part by the fact that many current justices chief executives were formerly justices' clerks.
- 43 The CCMCC represents all the MCCs in England and Wales. It is composed of one magistrate member of each MCC, eight justices' chief executives as associate members and a number of co-opted and observer members from other bodies and associations involved directly and indirectly with magistrates' courts. The Council, which meets four times a year, has a management committee that meets more frequently. The Council concerns itself with anything involving the work of MCCs, including the training of magistrates and issuing of good practice guidance and advice on Lord Chancellor's Department's initiatives. It also responds to proposals for reform or reviews, such as this, affecting them.
- 44 The Magistrates' Association, which was incorporated by Royal Charter in 1962, is a 30,000 strong body of magistrates, that is, most of the magistrates in England and Wales. It has 59 branches throughout the country. Through its Council and various committees and through the medium of its monthly journal, *The Magistrate*, it provides information and advice to its members. It also contributes to their training and, from time to time, issues guidance on specific matters. Recently, and with the approval of the Lord Chief Justice, it

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<sup>48</sup> see, for example, *The Judiciary in the Magistrates' Courts*, p 33, para 3.1

has issued sentencing guidelines, which have been well received. The Association also provides representation on, and liaises with, various bodies concerned with the criminal justice system.

- 45 The Justices' Clerks' Society was founded in 1839 and incorporated in 1909. Its aim is "to provide national cohesion and to harness its members' expertise to develop: the legal framework for magistrates' courts, the science and practice of the law, good practice and effective relationship with others interested in the provision of justice". It comprises all the justices' clerks and the great majority of justices' chief executives in England and Wales. As it said in its first response in the Review, "[b]etween them, they are responsible for providing legal advice and support, including training and development, to every lay justice in the country".
- 46 The Association of Justices' Chief Executives is constituted to lead the development of the management and administration of the Magistrates' Courts. It comprises all the justices' chief executives in England and Wales and meets at least four times a year. The Association acts as the national forum of justices' chief executives to consider matters affecting their duties, and works closely with the Central Council and the Justices' Clerks' Society in the best interests of the magistrates' courts as a whole.
- 47 I should add that District Judges, though working in the same courts and exercising the same jurisdiction as the magistrates, have no part in the CCMCC or the Magistrates' Association. That is not just because they have always had their own organisation, now the National Council of Her Majesty's District Judges (Magistrates' Courts). It results from their separateness from magistrates because of their professional status, the manner of their appointment and payment, the fact that they sit alone and that they are not necessarily confined to one MCC area or court. Whilst, in many areas, District Judges and the local benches of magistrates have established good working relationships, there are, unfortunately, some pockets of mutual resentment and distrust. Some benches feel threatened by the arrival of District Judges to share or, as they see it, to take their work. They do not welcome them, they criticize their different working patterns and attitudes and they try to control the work that is given to them. The Runciman Royal Commission noted this unhappy phenomenon over 10 years ago,<sup>49</sup> and I regret that there are still traces of it here and there. Some District Judges, on the other hand, make little effort to involve themselves socially or otherwise with the magistrates and the courts in which they sit, or to assist them in disposing of their lists when necessary. Some appear to be critical of the competence or suitability of magistrates to do their job. This is not the general picture, but it is frequent enough to be of concern for the administration of justice where it

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<sup>49</sup> The Report of the *Royal Commission on Criminal Justice*, Cmnd 2263 (HMSO, July 1993), Ch 8, para 103



occurs. I am glad to say that the National Council of District Judges, the CCMCC and the Magistrates' Association are all alive to such problems and are taking vigorous steps to overcome them.

## **THE CROWN COURT**

### **The Judiciary**

- 48 The Lord Chief Justice, in consultation with the Lord Chancellor, is responsible for the deployment of and allocation of work to the judiciary, and for advising the Lord Chancellor on a number of matters of judicial administration and on senior judicial appointments. He has no responsibility, statutory or otherwise, for magistrates or District Judges (Magistrates' Courts). He fulfils his responsibilities by means of practice and other directions, and by general oversight, assisted by the Senior Presiding Judge, Presiding Judges of the circuits and Resident Judges of Crown Court centres. He heads no formal administrative structure. The nearest to it is his chairmanship of a body of senior judges known as the Judges' Council and his chairmanship of a termly meeting of the High Court Judges, a meeting given over, in the main, to their deployment and allocation of work in London and on circuit in the ensuing law term.
- 49 The Senior Presiding Judge and the Vice-President of the Queen's Bench Division assume much of the responsibility of the Lord Chief Justice for deployment of High Court Judges who try crime. And the Senior Presiding Judge has a wider and demanding delegacy of administrative and pastoral responsibilities for High Court and Circuit Judges sitting on circuit, whether in crime or in civil or family matters. This he exercises, in consultation with the Chief Executive of the Court Service and/or, as appropriate, through the Presiding Judges, Chancery Supervisory or Family Liaison Judges in conjunction with Circuit Administrators. These responsibilities include judicial deployment and allocation of work, court practices generally and at individual court centres.
- 50 The Senior Presiding Judge has other responsibilities that he exercises independently of administrators, notably advising the Lord Chancellor and the Lord Chief Justice on judicial appointments and authorisations to Circuit Judges to try particular classes of work and to sit in the Court of Appeal, Criminal Division. He spends one day of each working week on his administrative duties and chairs meetings of the Presiding Judges twice every law term. In addition, he usually spends one week of each law term visiting court centres, meeting judges, circuit and court administrative staff and

representatives of various criminal justice agencies. I refer again to his role and those of the Presiding and Resident Judges in connection with the circuit system in Chapters 6<sup>50</sup> and 7<sup>51</sup> below.

## **The Court Service**

51 I have mentioned that many High Court and Circuit Judges deal with civil and family matters as well as crime, often in the same court and sometimes in the course of a mixed daily list. In whatever jurisdiction they sit, their deployment and allocation of work are matters of judicial administration, as I have mentioned. But the administration and management of their courts are the responsibility of the Court Service, an executive agency of the Lord Chancellor's Department established in 1995. That was the scheme intended by Lord Beeching in 1969:

“... our proposals are consistent with the preservation of all existing safeguards which ensure the independence of the judiciary, and which keep the judicial work of the courts subject to the overriding control of the judges, and we recommend that they be preserved”.<sup>52</sup>

52 The Court Service is responsible for the administration and management of criminal justice in the Crown Court as well as for civil and family matters in the county court, the High Court of Justice and in the Court of Appeal, Civil and Criminal Divisions. It is also responsible for certain tribunals and the Probate Service. The administration of the Appellate Committee of the House of Lords is the responsibility of the House.

53 The Court Service Board is responsible for the strategic direction of the Service. It meets monthly and consists of the Chief Executive, a number of Executive Directors, two Circuit Administrators and two non-executive Directors. At present, there is no division for administrative purposes between criminal, civil and family work above the level of the courts themselves. However, the Service has recently made some changes to its internal management structure, and is considering more wide-ranging changes – on which it has reached no final decision – that could involve a separation of those jurisdictional responsibilities at a higher level.

54 The Court Service Board administers the courts through a dispersed regional organisation divided into the six judicial circuits, the Supreme Court Group

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<sup>50</sup> paras 20 - 21

<sup>51</sup> paras 75 - 83

<sup>52</sup> *Royal Commission on Assizes and Quarter Sessions*, para 170

and the Criminal Appeal Office. From April 2002, the circuits will be divided into 18 court groups, each made up of a number of court centres, each with an appropriate level of administrator. The Circuit Administrator, in the conduct of his circuit-wide responsibilities, consults the Presiding Judges of the circuit on important matters, in the main on deployment of the judiciary and allocation of their work. At the group or court level the managers consult in a similar way on more day to day matters with Resident or other local judges.

- 55 Only in London are the civil and criminal courts administered separately. The administration of civil business in London, both in the High Court and the county court, is now the responsibility of the Supreme Court Group. All of the London Crown Court centres are administered by one Group Manager and, uniquely, the Criminal Appeal Office is headed by a person combining administrative and judicial roles, the Registrar of Criminal Appeals and Master of the Crown Office.

### Commentary

- 56 I should begin by saying how submissions in the Review have more than confirmed my long experience of the high commitment of Court Service staff, particularly those in the courts and at group level. They have had to bear the main brunt of frequent change and inadequate resources which have characterised the early years of the Service, and they have invariably done so with stoicism, improvisation and cheerfulness. That spirit and the strong bond at local level between them and the judiciary in attempting to provide a fair and efficient justice system are one of the most heartening features of it. In the short life of the Court Service there has been much restlessness within its structure and organisation. And there have been a number of proposals for change, including a management structure review, a pay and grading review and an ill-considered project called *Transforming the Crown Court*. It has also had a number of organisational shortcomings, most of them, no doubt, dictated by policies and directives of the government of the day and short-term funding arrangements, namely:

- setting its own inward-looking ‘commercial’ targets regardless of their impact on other agencies in the criminal justice system and others exposed to it;
- over-centralisation of its organisation, leaving those whose job it is to manage and work with other agencies at court level with little autonomy or budgetary flexibility;
- short-termism or lack of strategy in planning, particularly in the field of information technology and accommodation needs; and
- failure to consult adequately or in a timely fashion with the judiciary and others in or involved with the criminal justice system about its projects for

change, of which the largely unworkable project, *Transforming the Crown Court* was a particularly unfortunate example.

- 57 However, with the present impetus for all criminal justice agencies to establish common aims and plans and to work more closely together, the Court Service has begun to take a broader look at the way in which it should manage the courts. The extent to which it can succeed in shedding its inward-looking ‘commercialism’<sup>53</sup> will depend largely on the vigour with which the Government pursues its goal of a criminal justice system in which all agencies can truly work towards a common end, untrammelled by their separate finances and lines of accountability. The Court Service is not alone among the criminal justice agencies in having to change old habits.
- 58 As to over-centralisation within the Court Service, local managers still lack the authority and budgetary freedom exercised by their counterparts in other criminal justice agencies. This, coupled with the fact that the organisation of the Court Service within each circuit does not coincide with the 42 area structure adopted by most of the other agencies, including the Police, the Crown Prosecution Service and the Probation Service, leaves them unable to commit the Service to local joint agency initiatives as most other agencies can. However, the Service has now largely realigned its management areas with the ten administrative regions of Government, some of them approximating to the six judicial circuits and others to be established within them. Within those ten regions the Court Service is also considering re-organisation within the circuit boundaries, rather than within the regional boundaries - and, possibly, setting up three separate jurisdictional accounting mechanisms for criminal, civil and family work and two separate administrative mechanisms at court level.
- 59 As to re-alignment of Court Service management areas, there is obvious sense in making them correspond as closely as possible with those of other criminal justice agencies, but there are three main difficulties.
- 60 The first is that, as I have said, the courts outside London are not only concerned with criminal justice, but also with civil and family work whose administrative arrangements and needs are not the same.
- 61 The second is that in some parts of the country the present distribution of courts and the centres of population that they serve are so widely dispersed that re-aligning the management of the courts with the criminal justice areas would be very difficult. Before the most recent re-organisation of group

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<sup>53</sup> or “silo mentality”, as it is known in Whitehall

boundaries, there was concern among some in the Court Service that some group budgets were too small to allow for effective and flexible management of resources. To establish 42 separate budgets for the Crown Court alone would increase, not reduce, this concern. An extreme example is the poorly located and uncoordinated provision of court accommodation in Wales. The overriding principle of the Beeching Commission in determining circuit boundaries was to contain rather than to divide main concentrations of population.<sup>54</sup> Such a principle would have led to the disappearance of the Wales and Chester Circuit, because it did not

“have such predominant concentrations of population in limited areas as do most of the other circuits, and its mountainous terrain prevents the development of natural lines of communication between north and south”.<sup>55</sup>

However, the Commission retreated from its preferred solution because of the special circumstances for treating the circuit as a single unit and administering it from Cardiff.<sup>56</sup> Today, the circuit has four criminal justice areas. The largest of those, Dyfed Powys, is vast, mountainous and thinly populated. It extends from Haverfordwest, Carmathen and Llanelli in the south west into the whole of central Wales and as far north as Welshpool. It has no permanent Crown Court; its needs are met by three separate Crown Court centres in other criminal justice areas,<sup>57</sup> with only occasional Crown Court sittings within it. As the Presiding Judges for the Wales and Chester Circuit have observed in the Review, there is no need for a permanent Crown Court or any separate management for this huge criminal justice area. Also, Cardiff and Newport operate and are jointly managed, though in different criminal justice areas, a system which works well and in respect of which few, if any, local agencies want change. Conversely, the Crown Court centres in Swansea and Cardiff, the two largest civil and criminal court centres in Wales, though in the same criminal justice area, are managed separately and work well that way. The peculiar problems of Wales have led the Presiding Judges, in consultation with the Magistrates’ Courts Committees, to prepare a strategy for consultation on the future location and better use of court and associated accommodation throughout the Principality.

- 62 The third difficulty in aligning management of the Court Service with the 42 criminal justice areas is that the circuits are an established and integral part of the deployment of judges and of allocation of judicial work in all three jurisdictions throughout the country. Much of their strength in those respects is the single point of contact that they provide at senior level between Presiding Judges and Circuit Administrators. They are also an important and hallowed part of the organisation of the bar in providing a service to the

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<sup>54</sup> *Royal Commission on Assizes and Quarter Sessions*, para 284

<sup>55</sup> *ibid*, para 295

<sup>56</sup> *ibid*, paras 285 and 295-297

<sup>57</sup> namely, Swansea and Merthyr in the South Wales police area and Chester (including Mold) in the Cheshire police area

courts outside London. However, such traditions are not untouchable, particularly as to circuit boundaries. There have been changes in those boundaries in the past to meet the needs of the time and there may be a case for further changes now.

- 63 As to the Court Service's proposals for financial accounting, the intention is to ensure that expenditure on each of the three jurisdictions is matched by the resources allocated to each. Put another way, the intention is that each jurisdiction should pay for itself and should not subsidise or draw on either of the others. Now, why a public service organisation should fragment itself administratively and financially at the point, as the Service puts it, of 'delivery of services', and according to the nature of the services, is not immediately obvious where so much of the medium of 'delivery' is common or interchangeable. Although the courts and the judges are, in the main, employed in more than one of the three jurisdictions, sometimes, as I have indicated, in the same courtroom and in the course of a mixed list on the same day, it is proposed to separate the administrative and financial systems supporting them. The need for such complicated machinery has, it seems to me, little to do with administrative efficiency. It is to be found in the separate sources of funding that the Treasury has decreed for the three jurisdictions, notwithstanding the shared and overlapping resources devoted daily to their administration and exercise. Any attempt to provide the sort of data collection at court level to enable separate accounting for the costs of each jurisdiction would, even if it were worth it, require considerably more sophisticated information technology than that presently available or planned.
- 64 As to consultation, there has been some improvement. But there is considerable scope for better and more timely involvement of the judiciary and others, particularly at national level.

## **ONE SYSTEM OR TWO?**

- 65 Thus, the system of administration of the Crown Court is very different from that of magistrates' courts. It is centralised and, some say, too monolithic and inflexible to meet local needs and the different jurisdictions it has to administer. The MCCs, despite increasing oversight by the Lord Chancellor's Department, are a fragmented and diverse system of local bodies hobbled by difficult financial and managerial mechanisms and with inconsistent practices and procedures. Not only are there great differences between the two systems, there is poor co-operation between them. Those who are likely to have the closest experience of this are the members of the Justices' Clerks' Society who, in their submission in the Review, wrote:

“There is little, if any, day to day co-operation between the administration of the Crown Court ... and the

Magistrates' Courts... The Society would suggest that the enquiry examine whether the time has come to establish a single, integrated courts service with common rules and practices (possibly with a separate, specialist arm for youth justice)".

- 66 However, both systems are striving to overcome their considerable structural problems; and both, in their present forms, are relatively new and in a state of transition. The question for decision is whether to continue them as separate administrative structures, leaving them to develop their own improvements, with or without structural change, or to consider a single administrative body and, possibly, a unified court, accommodating both levels of jurisdiction.