

CHAPTER 7

A UNIFIED CRIMINAL COURT

‘PRINCIPLES’

- 1 In considering the structure of our criminal courts and looking to see how it could be improved, I have accumulated a number of general propositions. I hesitate to call them ‘principles’. Like most such generalisations, they are blinding glimpses of the obvious; but here they are:
 - although different cases may call for different tribunals, practices and procedures, each should be capable of providing a fair hearing and of securing a just outcome;
 - the nature of the tribunal to which a case is allocated and its procedures should be proportionate in form, time and cost to the seriousness and/or complexity of the alleged offence and the severity of the potential sentence;
 - the allocation decision should be taken by a court;
 - practices and procedures should be simple and, as far as practicable, the same for all tribunals;
 - after allocation, all cases should start and finish at the same level, subject to an appeal;
 - concerns about the quality of justice in one level of court should not be a basis for allocation of cases to another and higher level if they are not sufficiently serious and/or difficult to warrant its practices and procedures; no system of justice should be structured or operated on the basis that part of it is not working properly; it should be made to work properly at all levels;
 - the structure of the courts should be such as to contribute to the efficient working of the criminal justice system as a whole;
 - the administration of criminal justice should be organised in such a way as to achieve justice, efficiency and economies in the shared and flexible use of accommodation, judiciary, administrative staff and other resources; and

- the courts should treat all of those involved in or exposed to their procedures with consideration.

A UNIFIED CRIMINAL COURT

- 2 The Review has demonstrated a strong and widely supported case for unifying the Crown Court and magistrates' courts into one criminal court with, so far as practicable, the same practices and procedures and a common administration.¹ As I have explained in Chapter 3, the differences in practices, procedures, management and funding of the two systems and their respective administrative cultures are inefficient and harmfully divisive. They also contribute to the fractured nature of the criminal justice system as a whole, aggravating its present difficulties in providing a fair and efficient criminal process for all. In my view:
 - there should be a single criminal court accommodating all levels of jurisdiction; and
 - it should be supported by a single and nationally funded administrative structure, but one providing significant local autonomy and accountability.
- 3 As recent research projects have demonstrated,² many of the public do not know that there are two criminal court systems or appreciate the difference between them. The media tend to concentrate on cases in the Crown Court, where only a small fraction of all prosecuted cases, albeit the most serious, are heard by a professional judge and jury. Many do not know that panels of lay magistrates or a single District Judge hear the vast majority of criminal cases. For many, a court is a court and they do not know what to expect when first exposed to it or why, after a case has seemingly started, they may be required to attend another with a different tribunal and different procedures. Others, particularly in large metropolitan areas, think of magistrates' courts as 'Police Courts'. It would be an important start to improving public confidence in the system to create a simpler structure and process – a single court with as many common characteristics and procedures as practicable in which cases could start and finish at the same level.
- 4 If my recommendations for greater jurisdictional flexibility in the allocation of cases to levels of tribunal and for a single and simpler code of procedure for most criminal process are adopted, a unified court and administration would be the best medium for ensuring a fair, efficient and effective criminal process. Some have argued for unification of the two administrations whilst leaving the court systems separate. However, I see little point in that. If, as I

¹ among its supporters are the Justices' Clerks Society, the Association of Chief Police Officers, the Crown Prosecution Service, members of the judiciary and the Bar

² see Chapter 4, paras 2, 5 and 26 - 32

believe, there is a strong case for unifying the administration and, so far as possible, the procedures of magistrates' courts and the Crown Court, it is a short step to unifying the court itself.

- 5 I have in mind a single criminal court, which might be called simply the Criminal Court, in which professional judges and lay magistrates would sit, at their different levels, all as judges of the same court. I emphasise that I do not mean by this a concentration of all courts in present Crown Court centres, regardless of the needs of the communities served by the present two systems. No doubt, there may be centres for which a long term court building programme might suitably provide a combined court building or co-located court buildings, but there will be many instances in which separate centres or buildings will continue in the main to provide separately for different levels of offences. But they would all be part of the same court and, depending on the available accommodation, location and facilities, would be available for use at any jurisdictional level as the need arises. Thus, such a reform should not involve any reduction otherwise than is presently under way in the 'locality' of lay or professional justice, or in a concentration of work in fewer court centres than would, in any event, be required. On the contrary, as I explain below, my proposals are likely to preserve some magistrates' court centres that might otherwise be closed. The important thing is for the structure to continue to provide at the appropriate level and where it is needed a strong lay element reflective of the community it serves. As the Magistrates Courts' Service Inspectorate has observed,³ in some ways the present trend is towards an increase in the local character of criminal justice in the closer working of local agencies within the same areas and the introduction of Crime and Disorder Partnerships. To which I would add the prospect of using information technology to bring the courts and the agencies working with them into closer contact with those who become involved in the criminal justice process.

- 6 The replacement of the present dual system of administration with a single organisation need not involve the creation of a national monolithic and rigid administrative structure. Whilst Magistrates' Courts Committees would disappear, magistrates would not - only the confusion of their judicial role with that of administrators introduced by the Justices of the Peace Act 1949 - a confusion not thrust on judges sitting in the Crown Court. Local control and accountability could be preserved at summary level and introduced at indictable level through the medium of professional managers with more autonomy than now enjoyed by Court Service local managers, but within a national framework.

³ in its Annual Report for 1998/99, at p v; see also its 1999-2000 Report, in which, at p 8, it states that there are many courthouses at which it will never be possible - or only at prohibitive cost - to provide the range of facilities for custody, professional users and disabled people that are expected nowadays

- 7 If, as I recommend below,⁴ a third, intermediate tier of jurisdiction of a mix of professional and lay judges is introduced, it would be vital to set it in a single court structure consisting also of the other two tiers and supported by the same administration. In addition, it would fit and benefit from the system of judicial management provided by the Presiding Judges and Resident Judges.
- 8 The establishment of a single court for all criminal cases would not, I believe, prejudice or affect the administration of civil and family justice. Judges or magistrates exercising more than one of those jurisdictions in the same or different courts could continue to be deployed between them. Thus, judges, when exercising their civil and family jurisdiction would sit, as now, as judges of the High Court or county court, and magistrates would continue to exercise their family jurisdiction.
- 9 The establishment of a unified Criminal Court would bring some feeling of unity of function and purpose between judges in the Crown Court and magistrates, and encourage and facilitate more consistency in their respective approaches to trial and sentencing.
- 10 There is also the unsatisfactory feature that magistrates, unlike judges, have no formal support structure at a national level, no judicial ‘champion’ to whom they can turn for general support and guidance. At a local level they have their bench chairmen and justices’ clerks⁵ and, more broadly, they have the invaluable guidance and assistance of the Magistrates’ Association. But District Judges can turn to their Senior District Judge and Circuit Judges all have the support of the hierarchy of the local Resident or Senior Circuit Judge, the Presiding Judges, the Senior Presiding Judge and, ultimately, the Lord Chief Justice. In my view, the present large and widely perceived gap between lay magistrates and the Crown Court should be removed by bringing all members of the judiciary, whether lay or professional, within the responsibility of the local Resident Judge and the judicial hierarchy of which he is part. Such incorporation in the general judicial ‘college’ would, in any event, be a practical necessity if, as I recommend, a third, intermediate, tier of jurisdiction is created in which magistrates would sit with judges as part of a mixed tribunal.
- 11 There are many other aspects of the current system that could be improved through the introduction of a unified Criminal Court. I shall refer to many of them as the Report progresses, but mention three of them here for convenience.

⁴ see paras 21- 35

⁵ and informal advice and guidance of the local liaison judge

- 12 First, the fact that cases have to commence in the magistrates' court before being sent or committed to the Crown Court for trial or sentence means that there are unnecessary delays inherent in our current system. The Narey changes have clearly helped to reduce the delays in indictable-only cases, but little has been done to address 'either-way' cases. A unified Criminal Court would enable the appropriate court to take control of a case at the earliest opportunity, thus keeping delays to a minimum.
- 13 Second, we generate unnecessary confusion in our current system by allowing the separate courts to operate under different procedural codes, even though they are dealing with a continuum of criminal work. Although this is not dependant on the introduction of a unified court, the adoption of a single criminal code would be a more straightforward, and therefore speedier, exercise if the judiciary, professional and lay, and the administration of the courts were all part of the same structure.
- 14 Third, the separate administrations of the Crown and magistrates' courts mean that there is no electronic sharing of information between the two. This results in duplication of work, can contribute to delays in hearing cases, and increases the risk of error. Again, a unified Criminal Court is not a necessary precursor to the introduction of a common information technology system, or, indeed, one that could be shared with the other criminal justice agencies, but a single administration serving all levels of criminal jurisdiction should help to speed the implementation process. I return to this in more detail towards the end of this chapter.
- 15 There are a number of arguments against the establishment of a unified Criminal Court. One, made mostly by magistrates, is that it would be a 'judge dominated' system and would "thereby remove appropriate tensions between the professional and lay judiciary at their different levels, particularly when one is an appellate tribunal of the other".⁶ But different jurisdictional levels, including a route of appeal within the same court structure are common-place in various of our jurisdictions. And there is no reason why lay magistrates, any more than judges, should be insulated from the oversight and guidance of judiciary at the next level up. In the criminal jurisdiction Circuit Judges already preside in appeals, by way of rehearing from magistrates, they share the jurisdiction of the Crown Court with High Court Judges who frequently, as members of the Court of Appeal (Criminal Division), hear appeals in cases over which they have presided, and the most experienced Circuit Judges also sit in that court. And District Judges (particularly in London) are well used to a formal system of judicial management, albeit one organised nationally rather than locally.

JURISDICTION

- 16 A number of authoritative reviewers of and commentators on the criminal justice system have queried from time to time the artificiality of our rigid courts structure, with a view to substituting a more flexible and suitable matching of judges to caseloads and individual cases across jurisdictional boundaries. The Beeching Commission contrasted the convention of artificial tiering of cases and judges with the reality of a gradation of the two; it noted the frequency of changes in jurisdiction; and it pointed out the subjectivity of the notion of seriousness of an alleged offence, especially when unqualified by its difficulty, urging a more flexible system for allocating cases based on both those factors.⁷
- 17 While the Beeching Reforms went some way to relaxing jurisdictional boundaries, the rigid line between summary trial and trial by judge and jury still remains. The seriousness of many ‘either-way’ offences can vary considerably according to their nature and circumstance. The present choice is limited to a summary trial, which may be a panel of lay magistrates or a single professional judge with no lay element, and the full panoply of trial in the Crown Court by a judge and jury of twelve. Many, mostly ‘either-way’, cases now dealt with in Crown Court are not sufficiently serious or difficult to warrant the use of what is a relatively slow, cumbersome and expensive process.⁸ Some indication of the relative seriousness of the Crown Court’s case-load can be seen from the following figures. 54% of all adult custodial sentences are of six months or less. The Crown Court accounted for about 25% of those and, in addition, imposed nearly 26,000 non-custodial sentences. If the latter were treated as six months or less, the Crown Court might be said to account for a much higher percentage of cases that need not have left the magistrates’ courts. 14% end up with a sentence of between six and 12 months, of which most are imposed in the Crown Court, and 15% between 12 months and 24 months.⁹ There is thus a readily discernible tendency of the Crown Court to give much the same sentence that magistrates could have done or not to give a significantly heavier sentence below a threshold of about 12 months.
- 18 In those cases that remain in the magistrates’ courts, some may be essentially ‘jury’ issues where a panel of magistrates might be thought by some to be more appropriate. Some may be legally or factually complex where a District Judge would often be the preferred tribunal. Some may fall into both categories where a mix of a judge and magistrates would be ideal. At present,

⁶ the Central Council of Magistrates’ Courts Committees’ submission in the Review

⁷ Report of *Review of Assizes and Quarter Sessions*, paras 134–139; see also Dr Penny Darbyshire *The lamp that shows that freedom lives – is it worth the candle?*, [1991] Crim LR 740, at 741; Morgan and Russell, *The judiciary in the magistrates’ courts*, p 119, para 8.6

⁸ see Chapter 5, paras 157–172

⁹ *Criminal Statistics England and Wales 1999*, Cmnd 5001, (Home Office, December 2000)

despite best efforts to list cases appropriately in accordance with the Venne recommendations,¹⁰ the small number of District Judges makes it difficult always to allocate cases to the more appropriate form of tribunal. And even then, the choice is limited to a professional judge or magistrates, never or rarely a mix of both.

- 19 Thus, there are two ways in which the sharp divide between the summary trial and trial on indictment will continue to result in the trial of a significant number of cases at a level and by a process that are not appropriate for them.

- 20 As I have noted in Chapter 6, a judicial system should be designed and run so as to give maximum flexibility in the matching of judges to cases. However, like judicial discretion, it requires some guidelines or outer limits if chaos is to be avoided. Whatever new courts structure may be contemplated, the Review has not thrown up any significant argument for the abolition of trial by judge and jury for the more serious cases or of trial by professional judges sitting on their own or magistrates in the vast majority of less important cases. Nor has there been any convincing suggestion for a radical re-definition of the boundary between indictable and summary offences. I take as my starting point, therefore, a continuation of the basic boundary line between the two forms of trial according to the two broad categories of offences presently described as indictable and summary offences. The question is whether, for many cases around the borderline, a mixed tribunal would be a more appropriate and acceptable forum than consigning them to one or other of the present two very different forms of proceeding.

A MIDDLE TIER OF JURISDICTION

- 21 There has been much support in the Review for a tier of jurisdiction between that of magistrates' courts and the Crown Court to be exercised by a tribunal consisting of a professional judge and two lay magistrates. There is also a widespread view that our system does not make optimum use of the skills of the District Bench. 'Mixed' tribunals are commonplace in many civil law jurisdictions and account for a good deal of cases of medium seriousness, though the roles of the lay members vary considerably.¹¹ They are less common in common law jurisdictions, where the trend has increasingly been to rely on professional judges.¹²

¹⁰ see Chapter 4, paras 44 – 47

¹¹ eg Austria, France, Finland, Germany, and Sweden

¹² see *Toward a Unified Criminal Court* (Law Reform Commission of Canada Working Paper 59, 1989)

- 22 I recognise that there is a limit to which one can import models from other jurisdictions, whether civil law or common law, because their legal institutions and practices are the products of their own national traditions and constitutional frameworks. However, there are some comparisons close at hand. First, as Morgan and Russell point out,¹³ some District Judges occasionally sit with lay magistrates in family and youth courts and they always do so in Northern Ireland.¹⁴ In Scotland there have been multi-disciplinary children's panels for some time, and they have recently been introduced in England and Wales for juveniles appearing in court for the first time and pleading guilty.¹⁵ And there is, of course, the Crown Court which, when sitting as a court of appeal by way of rehearing from magistrates' courts - that is, essentially as a first instance hearing - consists of a judge and two or more magistrates.
- 23 The main rationale for mixed tribunals is that they combine the advantages of the legal knowledge and experience of the professional judge with community representation in the form of lay magistrates, and as Professor Andrew Sanders has noted,¹⁶ there is evidence to suggest that a degree of collectivity in decision-making can improve its quality. What distinguishes England and Wales from the many civil jurisdictions in which mixed tribunals are well established, and also from the models suggested by Professor Sanders, is the existence of the magistracy, with its wide experience of hearing cases carrying a custodial penalty of up to six months. I believe that these skills could be put to good use as part of a tribunal of fact in cases of medium seriousness. The use of magistrates in this way should also increase the locality of justice, since such a mixed tribunal could sit in existing magistrates' courthouses, as well as in existing Crown Court centres, and in that way contribute to the preservation of some presently under-used magistrates' courts that might otherwise disappear.
- 24 One contrary view is that such a system would not work because the presiding judge would tend to dominate the magistrates sitting with him. I do not see why that should be so. Magistrates already sit in the Crown Court on appeals from magistrates' courts in which they can and do out-vote the judge, as their predecessors did for many years in Quarter Sessions. Accounts vary as to the influence they have on the decisions. Much depends on personalities and relative experience. As I have said, they have the advantage over many of their counterparts in mixed tribunals in civil jurisdictions in that they are well trained and often of considerable experience. Their recent introduction to structured decision-making as part of the move to reasoned decisions should strengthen their competence and their confidence in this respect.

¹³ *The judiciary in the magistrates' courts*, pp 107-108, para 7.4.5

¹⁴ *ibid*, p 103

¹⁵ see the provision for mandatory and discretionary referral of young offenders the Powers of Criminal Courts (Sentencing) Act 2000, Part III

¹⁶ *Community Justice: Modernising the Magistracy in England and Wales* (IPPR 2001) p 29

- 25 Another argument against introducing such a mixed tribunal is that it would be difficult to find sufficient magistrates to sit in such courts, because few would be willing to commit themselves to the longer trials, possibly lasting for several days, that some of them could involve. I do not see this as an insuperable problem and nor do the Magistrates' Association in their submissions in the Review. There are many magistrates who, for one reason or other, are not restricted by their employment or other commitments to sitting for half a day a week and who might well relish the opportunity to sit on longer and more substantial cases. And, as I mentioned in Chapter 4,¹⁷ there is a strong case for introducing greater flexibility into magistrates' sitting patterns, for example, to enable and encourage block sittings and to enable some to sit more than they do at present.
- 26 In my view, it is time for a further step along the Beeching road towards greater flexibility in matching cases around the borderline between the present two tiers of jurisdiction to the right level and form of tribunal. There should be a third tier for the middle-range of cases that do not warrant the cumbersome and expensive fact-finding exercise of trial by judge and jury, but which are sufficiently serious or difficult, or their outcome is of such consequence to the public or defendant, to merit a combination of professional and lay judges, but working together in a simpler way. Cases eligible for such a jurisdiction could be those where, in the opinion of the court, the defendant could face a sentence of imprisonment of up to, say, two years or a substantial financial or other punishment of an amount or severity to be determined. In the main, these would fall within the present categories of 'either-way' cases. For the purposes of this Report, I have called the three tiers of the unified Criminal Court the Magistrates' Division, the District Division and the Crown Division.
- 27 How should the jurisdiction of the District Division be defined? The logical approach, it seems to me, would be to confine it to 'either-way' cases, subject to general sentencing maxima turning on the seriousness of the circumstances of the case or cases charged as distinct from the legal maxima for a case or cases of that category. I do not include complexity because, as between a judge and jury and a judge and two experienced magistrates, the critical common factor is the judge, and it is doubtful what advantages juries have over experienced magistrates as the lay element in cases of complexity. Mostly, but not always, seriousness of a case would be measured by the likely sentence it could attract looking at the case at its worst, which would require consideration both as to the circumstances of the offence as well as of the defendant, including any previous convictions.

¹⁷ Chapter 4, para 73

- 28 Under our present sentencing options, general maxima for this purpose could be two years' custody and a significantly higher financial penalty than those marking out the limits for summary jurisdiction of six months or £5,000 respectively. I have suggested a maximum level of custodial jurisdiction of about two years given the large number of cases with outcomes not only well within that limit but also within that of the summary jurisdiction which currently reach the Crown Court. To allow such a bracket of sentencing at cases near the margin would enable them to be tried at a level and in a manner more appropriate to their individual seriousness. However, how and where to draw the line in the future will shortly need wider consideration in the light of the Government's proposal in its recent policy paper, *The Way Ahead*,¹⁸ and the recommendations of the Halliday Report on Sentencing¹⁹ for focusing more on the offender and introducing a range of mixed custodial and community sentences. If anything, such widening of sentencing options would provide an even stronger reason for the added flexibility that the new jurisdiction could bring.
- 29 Trial by such a 'mixed' tribunal would have a number of the characteristics and safeguards provided by trial in the Crown Court. A professional judge would make all the rulings and orders at the pre-trial stage, conduct any necessary case management and rule on bail. In the trial itself, the professional judge would also deal with all questions of law, procedure and evidence, hearing arguments on them and making rulings, where necessary in the absence of the magistrates.
- 30 For all other purposes, however, the mixed bench would constitute a single tribunal. It would hear all the evidence together and, at the close of the trial, the judge and magistrates would retire together to consider the question of guilt or innocence. Clearly the judge would take the leading role in guiding the discussion in areas in which the law, or the application of the law to the facts, is in any way uncertain. But he would not need to give magistrates the sort of elaborate directions Crown Court judges give to juries, since they come to the task with the benefit of their experience and training in structured decision taking in the magistrates' court. Trials in the District Division should thus be considerably shorter than trial by judge and jury, since the magistrate members would be familiar with the practices, procedures and language of the court, together with much of the day-to-day law required. At the close of their deliberations, the judge and magistrates would make their decision, by majority if necessary, each having an equal vote. On their return to the courtroom, the judge would give the reasoned decision of the court.

¹⁸ *Criminal Justice: The Way Ahead*, paras 2.61-2.75

¹⁹ *Making Punishments Work – Report of a Review of the Sentencing Framework for England and Wales* (Home Office, July 2001), recommendations 15-22

- 31 As in the Crown Court, the task of passing sentence would be reserved to the judge. There are important questions of competence and experience to consider here. Sentencing in cases of the level of seriousness which would be considered by the District Division would be a different exercise from that at the summary level under the existing sentencing framework. And the division may become more complicated if the recommendations of the Halliday Sentencing Review Report are implemented. It is also relevant that Parliament has recently taken away the jurisdiction of magistrates to contribute to decisions on cases committed to the Crown Court for sentence, and reserved these instead to the professional judiciary.²⁰ However, this is partly also a matter of practicality, as many of the cases coming before the District Division would have to be adjourned for reports after conviction. It would often be difficult to reconstitute the same panel for the purpose of passing sentence.
- 32 The judge in the District Division would normally be a District Judge, but depending on the case and circumstances, it could be a judge of any level, from High Court Judge to Recorder. For example, a particular case or block of cases, perhaps involving young children or complex legal issues, or a grave case against young defendants presently beyond the jurisdiction of the youth court, could be assigned to a court presided over by a High Court Judge or by a Circuit Judge experienced in such work. Recorders could spend much of their time sitting in the new jurisdiction, to the advantage of the system and to them. As to the magistrates assigned to sit in it, they would need to be experienced so as to hold their own with the judge and, as I have mentioned, they would probably need to be able to give more time for continuous sittings than is now normally required in summary proceedings. Some system of selection would have to be devised to ensure a sufficient panel of experienced, available and, so far as possible, broadly representative magistrates for the task. In paragraph 81 below, I recommend that this function should be exercised under the ultimate control and oversight of the local Resident Judge.
- 33 To those who fear for the jury system, I would say that the history of the criminal law has been one of constant jurisdictional changes of boundary according to the needs and developments of the time, and it is necessarily a matter of policy for the government of the day to determine where the line needs to be drawn. The introduction of an intermediate tier, as I propose it, is not so much a re-drawing of a line, but of spanning two systems of trial with one that draws on the strengths of both and allocates cases between all three according to the individual circumstances of the offence and offender. It recognises the line, but also gives effect to the Beeching Commission point²¹ about the unreality and rigidity of jurisdictional demarcations in individual cases. And, in the allocation system that I propose - in which a District Judge

²⁰ Access to Justice Act 1999, s 79

²¹ Report of *Review of Assizes and Quarter Sessions*, para 137

would determine disputed issues of venue subject to appeal²² - it provides an objective way of matching cases to the appropriate tribunal.

- 34 The creation of a unified Criminal Court would necessitate the assimilation of the current magistrates' courts and Crown Court procedural rules, new rules governing the conduct of trials in the new District Division, and also as to the allocation of cases. I recommend the way in which these tasks should be approached, when discussing a new Code of Criminal Procedure in Chapter 10.
- 35 If my recommendation for the introduction of an intermediate tier, when coupled with a power in the court of allocating cases to it, does not find favour, I urge its introduction on the basis that a defendant may, with the consent of the court, opt for it, either by a mixed tribunal or by judge alone in either-way cases in which the court would otherwise determine that he should be tried by judge and jury. For many of the reasons that I consider defendants might opt for trial by judge alone in the Crown Court,²³ so I believe that many defendants might wish to take advantage of it by opting for one or other form of trial in the District Division. Such an option would be of particular value in particularly complex and/or lengthy cases and in high profile and/or otherwise emotive cases which have attracted much publicity.

Accordingly, I recommend:

- **the establishment of a unified Criminal Court;**
- **the establishment of 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;**
- **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);**
- **the District Division's jurisdiction over 'either-way' offences should be limited to those within a likely**

²² paras 36 – 40 below

²³ see Chapter 5, paras 110 - 118

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; and

- **the District Division, sitting as a youth court, should also try grave cases against young defendants presently dealt with in the Crown Court.**

THE ALLOCATION OF CASES

36 The criteria and procedure for allocation of either-way cases between the District Division and the Crown Division should be broadly the same as that between the Magistrates' Division and the other two Divisions, save only that it is governed by a higher jurisdictional boundary and, for the reasons I have given, complexity need not be a consideration.

37 Thus, the criteria should be broadly drawn according to the seriousness of the alleged offence, mostly, but not always, judged by the severity of the potential sentence. As to the potential sentence, the allocation should be based on the prosecution case at its highest, taking into account also the alleged offender's criminal history, if any. If there is a real possibility that the appropriate sentence on conviction would exceed six months custody but not, say two years, the matter should be allocated to the District Division. If there is a real possibility that the appropriate sentence would exceed two years custody, or any other maxima, then it should go to the Crown Division. However, even if it is considered that the sentence in any individual case would not exceed the relevant limit, it could still be allocated to a higher level by means of its seriousness whatever the likely sentence.

38 As all indictable-only cases would automatically be sent to the Crown Division and all summary-only cases would remain in the Magistrates' Division, an allocation procedure would only be necessary, as now, in 'either-way' cases. The decision should be made in the light of the defendant's plea, taken at that stage. In the majority of cases the question of venue would be likely to be undisputed and could be dealt with by magistrates. Where there is an issue or uncertainty about venue, I consider, as I have said in Chapter 5, that the matter should be put before a District Judge. He could then hear both parties and inform himself of all the relevant circumstances of the offence and of the defendant, including his criminal record, if any. He would then allocate the case, looking at the possible outcome at its worst from the defendant's

point of view. I should add that the efficiency of the procedure would depend on accurate information of the defendant's criminal record, if any. At present, the police are poorly equipped to provide this information; the Chairman of the Magistrates' Association has recently commented that antecedents presented to magistrates can be three to four months out of date.²⁴ Early implementation of the integrated information technology system that I recommend in Chapter 8 should overcome the problem.

- 39 Where a defendant faces a number of linked charges, some of which would merit allocation to a higher level of jurisdiction than others, all, so far as practicable, should normally be allocated to the higher level. Similarly, where co-defendants are facing a number of charges triable at different levels, the trial and sentencing of all of them should be allocated to the level appropriate for the most serious. Of course, if the more serious matter is later dropped, the linked cases could then revert to the appropriate Division for their disposal. The present statutory provisions covering such matters are a muddle²⁵ and will need a radical revision to enable courts at higher levels to exercise jurisdiction over all matters at and below their levels.
- 40 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. Quite separately from such right of appeal, both defence and prosecution should be able to seek re-opening of the matter, if the circumstances of the case or of the defendants change before trial. In that event, application should be made to the Division to which the case has been allocated, at any time in the Crown and District Divisions up to and including the completion of the pre-trial assessment and, in the Magistrates' Division to a date before the trial to be specified.

I recommend that:

- **all cases should have an allocation hearing in the Magistrates' Division at which pleas should be taken;**
- **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;**
- **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**

²⁴ *Improving Sentence Information*, The Magistrate, Summer 2001, p208

²⁵ principally the Criminal Justice Act 1988, ss 40 and 41 and the Magistrates' Courts Act 1980, s 20

defendant and bearing in mind the jurisdiction of each Division;

- **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;**
- **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;**
- **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;**
- **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; and**
- **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

41 As I have said, the circuits had their origin in itinerant judges, their key officials and members of the Bar setting out from London at regular intervals to tour different regions of the country. Over the centuries these circuits varied from time to time, but they continued to be based, until the Beeching reforms, on groupings of counties, most of the Assizes being held at each county town.²⁶ Those reforms made great improvements, notably in providing a better match of judges to cases and caseloads. For the lower tier of indictable work, they substituted for the periodic sittings of Quarter Sessions, a permanent Crown Court in which full-time Circuit Judges sat at fewer court centres. They also concentrated High Court circuit sittings in Crown Court centres where they were most needed - mainly at major centres of population - and for longer and more regular periods.

²⁶ Courts Act 1971

- 42 The Beeching reforms left largely untouched the traditional circuit boundaries. The new administration, though no longer itinerant, organised itself on a regional basis corresponding with them. When the Court Service was formed in 1995 to assume responsibility for, *inter alia*, the administration of the High Court, the Crown Court and the county courts, it continued the same circuit structure. And the Bar, though becoming more locally based, continued to organise itself on a circuit basis. Thus, each circuit has its Presiding Judges responsible for judicial administration and associated 'pastoral' responsibilities for Bench and Bar on the circuit. Each circuit has a Circuit Administrator responsible, in consultation with the Presiding Judges, for the administration of all the courts within the circuit. Each circuit has a Bar Association taking its name, headed by a 'Circuit Leader', which provides a professional and social focus for its members. The Leader is also an important point of contact with the Presiding Judges and the Circuit Administrator on such matters as appointments to silk and the bench and the administration of justice generally on the circuit. I should mention that solicitors, who have an increasingly important role to play in the efficient operation of the Crown Court, both in their preparation of cases and as advocates, have no corresponding circuit organisations.
- 43 However, Judges, Circuit Administrators and their staff and the Bar are not the only people concerned with the administration of justice, particularly of criminal justice. As I have mentioned in Chapter 3, there are ten Government regions, each with a Regional Director, representing central Government, developing its policies in the regions and encouraging regional integration in the work of the various Government departments. Within those ten Government regions are grouped the 42 criminal justice areas on which the Police, the Crown Prosecution Service, the Probation Service and the MCCs are based and with which the Lord Chancellor has decided the circuits should largely correspond.²⁷
- 44 Whatever the future structure of the criminal courts, it makes sense for the circuits to correspond broadly with the territorial organisation of most of the criminal justice agencies. It is for consideration whether, as presently organised judicially and administratively, they can achieve that. Before looking at that question in a little more detail, I should say that the strong ties of tradition and affection that bind the Judges and the Bar together in defending the circuit system should not hinder change if it is necessary and beneficial to the administration of justice as a whole. The system is not for their benefit; they are there to serve it. In any event, the long history of Assizes and circuiting has seen many territorial and administrative changes, before and since the Beeching reforms.²⁸ At the time of the

²⁷ some concessions being made to the Wales and Chester and Western Circuits

²⁸ see eg *Aspects of the Legal Profession in the late Fifteenth and Early Sixteenth Centuries*, E W Ives (University of London PhD thesis, 1955); Clarke's *New Law List* (1787) showing six English and four Welsh circuits; and an Order in Council of 5

Beeching Report there were seven circuits, the old Oxford Circuit only merging with the old Midland Circuit to form the Midland and Oxford Circuit in 1972. The dwindling band of Oxford circuiteers have had to come to terms, successively, with losing Berkshire to the South Eastern Circuit, part of Gloucestershire to the Western Circuit and, most recently, Oxfordshire to the South Eastern Circuit. If my recommendations for a unified Criminal Court are adopted, consideration may have to be given to further change, especially as the Presiding Judges would become ultimately responsible for over 30,000 magistrates.

- 45 There have been suggestions of a need to align the administration of the courts and of the circuits with the ten Government regional groupings of the 42 areas. The Northern Circuit is the only one that contains only one region, though not all of it, namely North West minus Cheshire. The Wales and Chester Circuit and the Western Circuit each broadly corresponds with one region, namely, Wales and South West respectively. The former includes Cheshire from the North West Region²⁹ and the latter includes Hampshire which is part of the South East Region. I understand that the Lord Chancellor proposes no change in the administration of those circuits to align them with the regional boundaries. That leaves the other three circuits, the Midland and the North Eastern accounting for two regions each and the South Eastern Circuit, accounting for three. As I understand it, the Lord Chancellor is of the view that there is no case for dividing the Midland or the North Eastern Circuit administrations to align them with the regional divisions, but is concerned about the size of the South Eastern Circuit independently of the regional structure.
- 46 As to all six circuits the questions are: 1) whether they and the circuit administrations should remain as they are, broadly aligned with the 42 area boundaries; 2) whether the circuits should remain broadly as they are, but with a regional Court Service manager or managers, based on the Government region pattern, replacing the present Circuit Administrator and Group Manager structure; or 3) whether the present six circuits should be replaced by ten corresponding to the regional groupings. In the case of the South Eastern Circuit, as I have said, there are concerns, regardless of the Government regional structure, that it is too large and should be broken up into smaller circuits.
- 47 I have already referred to one of the difficulties of a change of the administration of criminal justice to a structure based on regional groupings; it does not take account of the mix of civil and family work undertaken by the High Court and Circuit Bench at main court centres throughout the country.

February 1876, reducing the number of eight circuits to seven, including an amalgamation of the Home and Norfolk Circuits to the South Eastern

²⁹ the Wales and Chester Circuit's problems are 'internal' rather than associated with its boundaries; see Ch 3, para 61

And the Presiding Judges also see a problem in any attempt to combine the existing circuit pattern with more than one regional manager for each circuit. It is the loss of the Circuit Administrator as a single point of contact for them in dealing with the already arduous and time-consuming business of administering judicial business on the circuit. They reject the counter-suggestion that one of the regional managers could take the lead for both or all on each circuit. In their view, it would be administratively cumbersome since the selected manager would not have authority to deal with many matters requiring speedy decision, often on the telephone, without reference back to his colleagues. And, it would place him in an invidious position in cases of possible conflict as to the allocation of limited resources between his and another region for which he was deputed to speak. As to the alternative that the present six circuits could be broken up into ten to correspond with the regional groupings, they consider that it would be judicially and administratively inefficient and increase rather than reduce the present rigidity in the deployment of judges.

- 48 In my view, for all those reasons, the first option – maintenance of present circuit boundaries and administrations, broadly aligned to the 42 areas – would be the best course for the time being. A decision should first be made whether to replace the existing dual system of courts with a unified Criminal Court, with all the increased responsibilities that that could bring to the Presiding Judges and court administrators. There is also the problem of ensuring that, in any system introduced to replace the present, suitable arrangements are made for civil and family jurisdictions who, though sharing their judiciary, administrators and courts with the criminal justice system, have needs of their own.
- 49 The South Eastern Circuit is undoubtedly a special problem by virtue of its size and number of judges and courts and heavy concentration of work in the London area. It includes the whole of East Anglia, Greater London (including much of the newly enlarged Supreme Court Group), Thames Valley,³⁰ Buckinghamshire and Berkshire to the west and Surrey, Sussex and Kent to the south and south east. It accounts for 268 of the country's 570 Circuit Judges and has over 220 criminal courtrooms. It is a vast and burdensome responsibility for its Presiding Judges and for its Circuit Administrator. There are three options. The first, which has just taken place,³¹ is to leave the circuit and circuit administration broadly as it is, but increase the number of Presiding Judges to three, with the intention that one of them, at any one time, should take the major responsibility for Crown Court centres in Greater London. The second is to divide the circuit into three to correspond with the three Government regions, namely Eastern, Greater London and South East. The third is to divide it into two, Greater London and the rest. There is much

³⁰ from 1 April 2001

³¹ Mr Justice Bell has been appointed as the third Presiding Judge for the South Eastern Circuit, with effect from 30 June 2001

to be said for the last, so as to treat London separately. Criminal and civil work there are already dealt with in separate Crown and county court centres. The civil courts, which formerly fell within one of two separately administered groups, the Supreme Court and the London county courts, have, from 1 April 2001, become the responsibility of one court group. However, given the recent appointment of a third Presiding Judge to the circuit to enable one of the Presiders to concentrate on the Crown Courts in Greater London, I think that the first of the options should at least be given a trial.

I recommend that:

- **for the foreseeable future circuit boundaries and administrations should remain broadly as they are;**
- **each circuit should continue to have Presiding Judges, Chancery Supervising 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;**
- **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; and**
- **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

50 Much of the debate about the management structure of the courts has had as its premise the continuance of the present system of two separate criminal court structures, the Crown Court and the magistrates' courts. As I have described in Chapter 3, their respective forms of management through the Court Service and the Magistrates' Courts Committees are unsatisfactory in themselves and also in the divide between them. There are strong arguments for unifying the two systems whether or not the court structures they serve are unified. They become overwhelming if unification of the two court structures is contemplated, especially if it includes the introduction of an intermediate tier of jurisdiction.

- 51 As I have already detailed in Chapter 3, the administration of magistrates' courts is now organised on the basis of the 42 criminal justice areas, and the Court Service has recently re-organised its boundaries to ensure that no group or circuit boundary crosses through a criminal justice area.³² However, local Court Service managers have comparatively little budgetary or other independence, which inhibits the efficiency of their contribution to the handling of the continuum of work shared with magistrates' courts. On the other hand, Magistrates' Courts Committees, though subject to increasingly close oversight by the Lord Chancellor's Department, have considerable independence. This results in inconsistency among themselves in implementation of national policy, in court practices and procedures and, indirectly, in local sentencing levels. Their funding system – 80% provided by national and 20% by local government - is cumbrous and inefficient, and their dependence on local authorities for their court and other accommodation can obstruct orderly planning and fail to make the optimum use of court space. There is little feeling of unity of purpose in the performance of the two administrative systems.
- 52 Many have urged the replacement of the Court Service and the Magistrates' Courts Committees with a single administrative structure. Some have argued that the two court systems should continue to be separately administered, but each in the form of local management based on the 42 areas operating within a national framework for the criminal justice system as a whole. The Central Council of Magistrates' Courts Committees is a strong proponent of this solution and of continuing the committees in all but name. It suggests that magistrates, selected for their managerial and other expertise, should continue to have the main responsibility, with their justices' chief executive, for the administration of their courts, but possibly supplemented by few non-magistrates from the local community, acting together as a local management authority on the model of the Greater London Magistrates' Courts Authority. The Central Council accepts that the current system of financing can be frustrating and that there is a need to 'clarify' it, but nevertheless urges retention of the 80/20 funding arrangement, particularly for revenue expenditure under the cash limit formula.³³ However, it recommends a review of the present grant allocation formula, permitting Magistrates' Courts Committees to bid for additional 100% revenue expenditure or capital monies direct from the Lord Chancellor's Department and to own and manage their own estate.
- 53 Some, including the Central Council, have expressed the view that, at the very least, Magistrates' Courts Committees, having undergone much change, most recently in their amalgamation and reduction in numbers to match the 42 criminal justice areas, should be given time to settle down and prove

³² with the exception of Welshpool on the Wales and Chester Circuit

³³ see Chapter 3, paras 19 - 20

themselves. There have been similar suggestions in respect of the Court Service, so as to enable it to develop its administrative structures to meet the modern needs of the Crown Court. It is a relatively new agency, which has also undergone considerable change in its short life.

- 54 The Magistrates' Courts Service Inspectorate, in its 1998-1999 Annual Report, expressed the view that it was too early to say whether the present system should give way to a centralised, national system. It commented:

“On the whole the MCC structure seems still to work well. It has shown itself capable of reform, and of increasing efficiency and effectiveness. The challenge is to help MCCs to strengthen their membership and improve their procedures to meet the new requirements.”³⁴

- 55 In the Inspectorate's 1999-2000 Report, it appeared to be of the same view, noting that the Committees were making steady progress despite recent changes and uncertainties and that there had been an improvement in over-all efficiency throughout the Service.³⁵

- 56 However, the Inspectorate has a much narrower remit than this Review, in particular as to the administration of the criminal courts system as a whole. And, as to the magistrates' courts, I note that the Inspectorate's 1999-2000 Report confirms the continuance of the difficulties in the legal and administrative divide in the Magistrates' Courts Service to which I referred in Chapters 3 and 4:

“Unfortunately, in some parts of the Service, this distinction has led to unhelpful tension between the legal and administrative staff. Inspectors have seen MCCs where there is a reluctance to take responsibility for some issues which fall between the two, and others where there is physical segregation of legal and administrative staff. There are many areas of an MCC's work in which both legal and administrative inputs are required – the listing of cases is an obvious example. It is essential that the distinction of roles is balanced by a recognition of the importance of both sides of the MCC's staff working together as a team.”³⁶

- 57 In my view, the deficiencies in the individual systems that I have identified and the lack of commonality in their structures and working are so fundamental that little is to be gained by waiting for them to settle into their respective new roles. To do so would not overcome the unnecessary,

³⁴ *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1998-1999*, p v

³⁵ *Annual Report of Her Majesty's Chief Inspector of the Magistrates' Courts Service 1999-2000*, p 6

³⁶ *ibid*, p 8

inefficient and often wasteful divide between the two systems as they are, and would certainly frustrate the establishment of a unified Criminal Court. Although simplification of funding and property management for Magistrates' Courts Committees or their successors might be achievable, it would not cure the problems of duplication of effort and of inconsistency that arise from each Committee alighting in isolation on different solutions to similar problems and devising different forms and procedures to implement national policies, a constant irritant to legal practitioners working in more than one Magistrates' Courts Committee area.

- 58 The separation of administrative responsibilities, particularly in the case of the Court Service, is an added complication to the already complex relationship with the various local criminal justice agencies which, through one or other medium, are responsible for trying to make the system work at local level. It is clearly desirable that, in the new 42 area structure, there should be a representative of all of the criminal courts in each area, with budgetary authority to commit them to a single, efficient and effective system of working with the other agencies.
- 59 There is also the question of investment in and use of common information technology. Perpetuation of the present dual system of administration would in the short to medium term encourage unnecessary and wasteful duplication of expenditure between Magistrates' Courts Committees or their successors and the Court Service in the phased development of a common information technology system for the criminal justice system.³⁷ In addition, the continuance of and vesting of funds in local administrative bodies for the magistrates' courts could complicate and delay its development.
- 60 The present divided system leads to much waste of court and other accommodation. There is some sharing between the Crown Court and magistrates' courts. But it is complicated by different ownerships, funding and timing arrangements and Treasury Guidelines affecting the Court Service on the disposal of un-used and under-used property. It usually involves the passing of public money from one public agency to another, the general scheme being that the occupying agency should reimburse the owning agency for its occupation. It depends on the willingness of the agency with spare courtroom capacity to make it available to the other, and on the willingness of the other to spend money to use it.³⁸ Many magistrates' courts are under-used and some Crown Court centres, from time to time, have insufficient courtrooms to list the work they have. The Lord Chancellor's Department has been working recently to reduce the over-capacity in the magistrates' courts;

³⁷ see Chapter 8, paras 92 - 111

³⁸ in January 2001 the Lord Chancellor's Department issued guidance in the form of *Principles for the Joint Usage of Magistrates' Courts and Court Service's Buildings*, the overriding principle of which is that "financial arrangements are to be directed at reimbursing the party in occupation for the costs that the other party's occupation causes".

and, through closer working with other courts and tribunals, more efficient use is now being made of the estate in many areas. However, a unified court with a single budget would be better placed to deal flexibly, at short notice, if need be, and without concerns about budgetary boundaries, with allocating work between courts whatever their customary use. In that way, the system could deal more sensitively with venue in terms of jurisdiction, location, physical access, facilities for child witnesses, secure custody areas, number of defendants, media interest etc.

61 A unified administration should also bring various other economies of scale and scope for an appropriate level of specialisation in support functions such as personnel, finance, office accommodation, information technology and management and staff training.

62 I am, therefore, driven back to the conclusions of the Beeching Commission in 1969 and Le Vay in his 1989 Scrutiny, writing of the future administration respectively of the Crown Court and magistrates' courts, but in terms applicable to both. The Beeching Commission stated:

“We consider that the administration of justice should be recognised for what it has largely become, namely a central Government responsibility, and that it should be financed directly, by the Exchequer, instead of indirectly, as much of it is at present....”³⁹

63 And Le Vay concluded that:

“the requirement is for a centrally-funded and centrally-run service which:

- ensures that overall policy responsibility for administration of the courts rests clearly with the Government;
- but shields magistrates from an excessive degree of Government influence in judicial policy;
- and allows the service to be so far as possible, locally managed, with managers having the control over (and responsibility for) resource use which is needed to achieve optimum performance”.⁴⁰

64 If a unified administration is the answer, what form should it take? Again, it seems to me that Le Vay's interpretation and modification of the Beeching

³⁹ Report of *Review of Assizes and Quarter Sessions*, para 307

⁴⁰ *Efficiency Scrutiny of the magistrates' courts*, para 8.2, and see generally paras 7.15 – 8.13

Commission's approach suggests an answer⁴¹ – an executive agency providing a national service, but with maximum delegation of managerial responsibility and control of resources to an accountable local manager working in close liaison with the professional and lay judiciary. Such a system would provide much needed efficiency and flexibility in the use of judges, accommodation, staff and other resources for the two tier system that we have and, even more so, for the three tier system that I recommend. Subject to what I say below, it should be able to do the same for the three jurisdictions, civil, family and crime at all levels. It would fit reasonably well with the circuit system and the structure of judicial oversight and management provided by the Presiding and Resident Judges. As a nationally directed, but locally managed, service, it would be more effective than the present fragmented systems. And it would provide greater flexibility and, I believe, would be quicker and cheaper to achieve than the alternatives.

- 65 It would follow that there is no sensible reason why local authorities should continue to fund 20% of the magistrates' part of the system, or to provide or manage its accommodation and other facilities. As I have said, the funding that they are presently required to provide gives them little or no control or influence over the way in which summary justice is provided within their areas, and most have little feeling of involvement in its provision. The new unified Criminal Court should be 100% funded by central government.
- 66 But for one aspect, such a structure would also suit the administrative requirements of the civil and family jurisdictions, often presided over by the same judges or magistrates using the same courts. In general terms, it seems to me that it could only be beneficial for all three jurisdictions if they were managed by one administrative structure. It would encourage readier sharing of court and other accommodation and of speedier allocation of work to the right levels. And it should bring with it other the advantages of a single administrative system. One of these is flexibility in the deployment and sharing of resources, particularly important in the court system which suffers from high volatility over short periods in the relative workloads of the three jurisdictions for which it has to provide. However, a complication is the Government's resolve, now partly achieved, to organise the administrations of the criminal courts and the criminal justice agencies on the 42 areas basis. As I have said, the Court Service remains a notable exception and there may be sound administrative and geographical reasons for it or any new body undertaking responsibility for the courts over-all to remain so. An additional factor is the Government's policy decision to operate separate systems of funding and accounting for each of the three jurisdictions.

⁴¹ *ibid*, paras 7.15 – 7.24

- 67 One alternative would be to introduce local and largely autonomous court agencies or boards on the lines of the Magistrates' Courts Committees, but each responsible for both levels of criminal jurisdiction. The only rationale for such a course could be to maintain a degree of locality in the management of the courts. Now, I can see an argument for locality in the lay membership, and in the siting, of courts themselves, but not for managers in the sense of their reflecting the local community. Nor can I see a case for extending to all the criminal courts the confusion of judicial and management functions embodied in Magistrates' Courts Committees. I do not see how it could work efficiently alongside the civil and family jurisdictions with which it would have to share judicial, accommodation and staff resources - unless it is to be suggested that they too should be governed by the same local bodies.
- 68 In family work for instance, the High Court, county court and magistrates' courts, for the most part, exercise the same jurisdiction and are, in all but name, a Family Court in which the work is allocated to different levels according to certain criteria. Yet they too have, as between the magistrates' court on the one hand and the county courts and High Court on the other, different administrations, with problems of discontinuity, inconsistency and delay in allocation of work between them similar to those I have described in the criminal courts. At the magistrates' courts level, they also suffer from inconsistencies in priorities and practices between Magistrates' Courts Committees similar to those in the administration of their criminal jurisdiction.
- 69 The second main alternative would be to create two new national agencies, one to administer the whole range of criminal jurisdiction and the other to combine responsibility for the civil and family work of all courts. In my view, such a course would be a highly expensive way of introducing an unnecessary and highly inefficient divide at national and local level in the running of three jurisdictions which require a single over-all direction and maximum flexibility in the use of their shared resources.
- 70 Whatever form a unified administrative structure is to take, I am of the view that it should be seen as a fresh start. If, for example, the decision is for a national agency with maximum delegation to local managers, it should not be seen as a modified and enlarged Court Service taking over the Magistrates' Courts Committees. One of the important factors in determining the organisational structure would be the sheer scale of the responsibilities it would be undertaking when compared, say, to those of the Court Service. It would add 435 magistrates' courts and their 95% of all criminal cases to its 78 Crown Court centres and their small, in percentage terms, balance of criminal work.

- 71 In my view, there should be one administrative agency, as part of the Lord Chancellor's Department, responsible for the three criminal jurisdictions at all levels, save for the House of Lords. The responsibilities of the Magistrates' Courts Committees and the Court Service should be transferred to this new agency, which should also be responsible for the whole court system. I have already recommended in this Chapter that, for the moment at least, there should continue to be six Circuit Administrators responsible for all of the courts on their circuit. Below circuit level, there should be a structure dedicated to the administration of the unified criminal court and, possibly, separate and similar structures for the administration of the civil and family jurisdictions.
- 72 In order to meet the concerns I have discussed, a unified Criminal Court should, if possible, be organized managerially on the 42 area basis. The amalgamation of the present separate systems should make such areas financially viable with large enough budgets to enable flexible management of resources in a way that the Court Service, so far, has not been able to achieve. The precise administrative and geographical relationship between the structures of all three jurisdictions is beyond the scope of this Review. However, as I have said more than once, it is vital that the relationship, at local, as well as at national level is given careful attention. It is at local level that the judiciary, day to day management, support facilities and accommodation have, in the main, to be shared between them. And it is at local level, the way the Court Service is seemingly headed, that budgetary divides and controls will have to be erected to keep the three jurisdictions financially separate. I caution against any move to organising a new criminal court system on a strictly 42 area basis until a satisfactory scheme for management of the whole justice system has been devised.
- 73 It would, therefore, be for others to determine the most practical way to link administratively and geographically the three Criminal Court Divisions that I propose and the civil and family courts. I have assumed that each magistrates' court (including its youth court) should be joined with the Crown Court to which it sends cases, and with which, as parts of a unified Criminal Court, it would provide District Judges and experienced magistrates to sit in the new District Division. Of course, workload and local accommodation could influence how this would work in practice. The question of London, where all class 1, 2 and 3 cases within the Greater London area are sent to the Central Criminal Court, would also need to be considered separately. It would follow that the present Court Service would disappear, or be reconstituted for a wider role, along with the local administrative and court staffs of the magistrates' courts. Magistrates' Courts Committees would cease to exist and so, in their present manifestation, would justices' chief executives. However, the latter would, I am sure, become much sought after for senior administrative roles of comparable or greater responsibility in the new national agency. Justices' clerks and legal advisers in the magistrates'

courts would retain their distinctive advisory role, but exercise it in the Magistrates' Division of the new Criminal Court.

I recommend that:

- **a single centrally funded executive agency, as part of the 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;**
- **the agency should be headed by a national board and chief executive;**
- **within each circuit the criminal courts should, if consistent with the efficient and effective operation of civil and family courts, be organized managerially on the basis of the 42 criminal justice areas; and**
- **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 Supervising and Family Liaison Judges do at circuit level.**

The future role of the justices' clerk

74 I discussed in Chapter 4 variations in the role and geographical coverage of justices' clerks. The creation of a unified Criminal Court would provide an opportunity to clarify their responsibilities in order to ensure that the primary focus is on their role as professional legal adviser to the justices. This would require them to have management responsibility for all legal advisers within the area and, therefore, to play a part within the wider structure of the criminal court. However, priority should be given to ensuring that there are direct and effective lines of communication between justices' clerks and their benches and that magistrates have ready access to good quality and authoritative legal advice.

I recommend that, in a unified court:

- **justices' clerks should continue to be responsible for the legal advice provided to magistrates;**
- **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**

- **justices' clerks should not normally exercise administrative responsibilities unrelated to their role as legal adviser to the magistrates.**

JUDICIAL MANAGEMENT

Introduction

- 75 As I have said,⁴² judges in England and Wales - in contrast to judges in many other common law jurisdictions - have no formal role in the management of their courts. However, an increasingly important system of judicial management (ie the management of judges by judges) has nevertheless grown up since the passing of the Courts Act 1971 under the oversight of the Senior Presiding Judge and Presiding Judges of the circuits.⁴³
- 76 In the Crown Court, the fulcrum of the system is the Resident Judge.⁴⁴ His responsibilities cover:
- allocation of work - including the implementation of directions from the Lord Chief Justice and Presiding Judges, and judicial oversight of the listing of cases;
 - judicial performance - including leadership of the local full and part-time judiciary, promoting consistency of approach and nomination of judges for authorisations and training;
 - court performance – including regular review of cases which are delayed and initiatives to reduce the number of cracked and ineffective trials; and
 - communication – promoting regular communication with the other relevant agencies, chairing the Court User Committee and, in appropriate cases, the Area Strategy Committee.
- 77 In practice, the time required by these responsibilities varies considerably. Some of the tasks involved, particularly in relation to allocation and court performance, are in any event undertaken by court staff under the Resident Judge's judicial supervision. This is also a field in which the advance of information technology, and in particular the provision to all full-time judges

⁴² Chapter 3 para 13

⁴³ who were given statutory recognition in the Courts and Legal Service Act 1990, s 72

⁴⁴ similar responsibilities are exercised in relation to Civil Law by Designated Civil Judges

of computers with access to the internet,⁴⁵ has further eased the administrative burden. But it is of real constitutional importance that these functions are ultimately under the control and oversight of the judiciary rather than the executive, and that there is an ultimate line of accountability through Resident Judges to the Presiding Judges for the way they are exercised.

- 78 In the magistrates' courts, however, there is no equivalent of the Resident Judge. Each petty sessions area has a bench comprising all the magistrates who sit in that area, which has wide responsibilities for the administration of justice at summary level, including the election of magistrates to sit on youth and other panels. In practice, most of these responsibilities are delegated either to a bench training and development committee, which is responsible for providing training to magistrates under the MNTI scheme, or to the officers elected at the bench annual general meeting, in particular, the chairman of the bench. Arrangements vary, but the bench chairman will typically be the main link between the magistracy and the justices' chief executive and justices' clerks, and will take a key role in decisions relating to rostering arrangements, composition of panels, and questions of conduct or discipline. The bench chairman would also normally act as the main contact point where there is a statutory requirement for the bench to be consulted, for example over proposals for court closures. In addition, one of the Circuit Judges at each Crown Court centre will be nominated as liaison judge, responsible for providing the institutional link and channel of communication between the judiciary and magistracy.
- 79 Different again are arrangements for the District Bench. Outside London, few District Judges have any formal link with their local bench or MCC (and many have no link at all). Nor do District Judges normally have any regular contact with the Resident Judge or other judges sitting in the Crown Court, unless they (the District Judges) are Recorders. Indeed, until recently, stipendiary magistrates (as they then were) sitting in courts outside of London were not subject to any form of judicial management at all. Now there is a Senior District Judge (Chief Magistrate), who has over-all responsibility for the deployment of the full- and part-time District Bench countrywide and takes a leading role in appointment, training and 'pastoral' issues.
- 80 Whether or not my recommendation for a unified Criminal Court is adopted, I believe that it would provide a helpful collegiality to the judges of the criminal courts, professional and lay, to be brought under the responsibility and to have the support of the Presiding Judges. In a unified court it would, I believe, be essential to put all questions of judicial administration within a circuit under the oversight of the Presiding Judges. This would enable them to gain a wide perspective of the performance of all Divisions of the Criminal Court, the manner and speed in which cases were disposed of, and the effectiveness of its links with the other relevant agencies. It would enable

⁴⁵ see below, para 97

them to exercise a more effective role when being consulted, by those within and outside the courts system, on questions that would affect its working at every level.

- 81 Within each court centre, the key figure would be the Resident Judge. Resident Judges would retain their current responsibilities for the existing work of the Crown Court, but would also assume oversight of the following functions in relation to the work of District Judges and magistrates:
- Listing – it is a well established principle in the Crown Court that the listing of cases, while generally carried out by administrative staff, is undertaken under judicial supervision and with judicial authority. This approach should, in my view, be applied throughout a unified Criminal Court, so that whoever in future undertakes the listing of cases at whatever level would be ultimately accountable for it to the Resident Judge.
 - Panels – as I have mentioned, the membership of the youth and other panels is at present decided by election at the annual general meeting of each bench. While I have no doubt that the decisions reached are, in the main, perfectly satisfactory, it does not seem to me that this method of selection provides an adequate institutional link between the jurisdictions magistrates exercise and their acquisition of competences under MNTI. I therefore believe that members of panels dealing with criminal jurisdiction should be appointed by the Resident Judge on the advice of the bench chairman, who would no doubt consult with his fellow magistrates as he considers appropriate. This would include the membership of panels of suitably experienced magistrates eligible to sit with professional judges trying more serious cases in the District Division. An equivalent mechanism could be adopted for membership of family panels.
 - Case allocation – a consequence of the recommendation I have made in Chapter 6 for the abolition of most forms of judicial ‘ticket’ is that Resident Judges would become much more closely involved in the allocation of complex or sensitive cases to individual judges in the Crown Division. This responsibility would extend also to oversight in the District Division of a system of assignment of judicial chairmen in accordance with national guidelines and, in the Magistrates’ Division, of allocation of work between the magistracy and District Judges in accordance with the Venne criteria.⁴⁶
 - Training and development – Resident Judges would also take an interest in the training of full- and part-time judges, in order to assist them in their case allocation function.
 - Appraisal – In the event of acceptance of my recommendation in Chapter 6 for the extension of performance appraisal to judges and Recorders, Resident Judges would acquire an additional role in this sensitive area in relation to Circuit Judges, Recorders, and full- and part-time District Judges. They should also assume general oversight of the appraisal arrangements for

⁴⁶ see Chapter 4 paras 44 - 47

magistrates, providing clear judicial leadership and also a means of resolving any disputes that might arise.

- 82 I have already recommended in Chapter 6 that Resident Judges need more time and administrative support to enable them to carry out their existing responsibilities alongside their court work. It is plain from what I have just said that, within a unified Criminal Court, those responsibilities would increase and so would their need for time and adequate support. I believe that as the court is being established there should be a review of their number and location and also of their remuneration.
- 83 As to the magistracy, the local bench should remain the key group for liaison with the judiciary and court staff. Bench chairmen should continue to provide the principal channel of communication between the Resident Judge, the court administration and magistrates, as well as retaining significant leadership responsibilities of their own. For many, the change should be one of form rather than substance. Similarly, I see a continuing and important role for the Magistrates' Association in the national support and representation of the magistracy. However, I am not so sanguine about the future of the office of Senior District Judge (Chief Magistrate).⁴⁷ There is no national equivalent for any other tier of the judiciary below the High Court Bench: there is no Chief Circuit Judge, nor a Chief District Judge on the Civil side, nor Chief (lay) Magistrate. I also believe that the existence of a national chain of judicial authority for one cadre of judges would, in a unified court, cut across the local line of accountability to the Resident Judge upon which much would depend. As to liaison judges, I would expect them to continue in their valuable role of maintaining contact with, and training of, the magistracy, though possibly working more closely with, or deputising for Resident Judges in these respects.

I recommend that in a unified Criminal Court:

- **Resident Judges should be responsible, under the oversight of the Presiding Judges, for judicial management of court centres;**
- **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;**
- **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;**

⁴⁷ created by the Access to Justice Act 1999, s 78

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

COURT ACCOMMODATION

84 Different cases, even when they fall within the same levels of jurisdiction, may require different court accommodation and supporting facilities. If a unified Criminal Court is introduced, it should be possible ultimately for cases to be heard in court buildings or at court centres with sufficiently varied accommodation to provide, where needed, for all types of case – from the Magistrates’ Division to the Court of Appeal. This should not be seen as a threat to local justice. When and where such accommodation is provided, it would allow for more, rather than fewer, cases to be heard locally. Where the range of work at many court centres does not, and would not, justify so generous a provision, a more modest standard of accommodation should be retained or provided, even if, for the time being, it would fall short of what is now regarded as ideal court design. I am uneasy about continuation of the current trend to concentrate work at fewer and more widely spaced court centres. The rationale for this trend is that many court buildings, particularly in rural areas, are under-used, old, small, in bad condition and incapable of providing adequate facilities, for example, for witnesses, disabled persons and young persons. But it seems to me that there must come a time when a balance has to be drawn between, on the one hand, cost and the provision of modern court facilities, and, on the other, a sense of local justice which the presence of a court and reasonable accessibility to it gives.

85 As to the cost of running a court under consideration for closure, it is the financial cost to the Lord Chancellor’s Department, not the financial and wider costs to the criminal justice system as a whole in the area, which seems to dominate the decision. And the decision is that of the Lord Chancellor, not of all the Departments and agencies responsible for criminal process in the area, notwithstanding that it affects their budgets and the pockets of other court users too. In the case of closure of a Crown Court centre, which, unlike that of county court and magistrates’ court buildings, has not occurred for some years, he would decide after local consultation with interested bodies and parties. In the case of closure of a magistrates’ court, the decision is notionally that of the Magistrates’ Courts Committee, but they are so bound by his guidelines as to usage, available modern facilities, accommodation for

prisoners⁴⁸ and budgetary restrictions that, effectively, closures are driven by his Department. They too are required to consult before submitting a draft order for closure to the Lord Chancellor, but only with the relevant local authority(ies) and the magistrates for the area. Some, but not all, consult more widely. The Lord Chancellor only intervenes personally in the event of an appeal by local authorities from a Committee's decision as to closure.⁴⁹

86 In the replacement of old and inadequate court buildings with adequate court accommodation and modern facilities, the Lord Chancellor can direct Magistrates' Courts Committees to meet specified standards of performance, including proper provision for the disabled. The question is not just one of the cost to the Lord Chancellor's Department of meeting such standards in an existing or replacement court building relative to the use of the building for court purposes. That is, of course, an important factor, but there are the other costs to the system too. Closure of existing courts can result in magistrates and court users, official, professional and otherwise, having to travel great distances at great cost to them in money, time and convenience. In mid-Wales, Devon and Cornwall and Cumbria, for example, current closures can result in 30 or 40 miles travelling distance to and from court, often without a choice of convenient public transport. In my view, whatever the future court structure, the Lord Chancellor should not have the monopoly of making decisions that can so affect the way in which criminal justice is provided, or not provided, locally. These are decisions which, if my recommendation in Chapter 8 is accepted, should be taken by local Criminal Justice Boards, subject to oversight and guidance of the national Criminal Justice Board, in the light of the interests of all involved in the criminal, civil and family justice process in their areas, and with the benefit of some sort of cost/benefit exercise taking the public interest in its widest sense into account.

87 The Lord Chancellor's Department is undertaking an audit of all its property with a view to securing the best use of its available accommodation and to disposing of what may be surplus to its requirements. In my view, this is far too narrow an exercise. There should be a much broader examination of the availability of, and need for, accommodation throughout the criminal, civil and family justice systems generally, with a view to sharing and/or flexibility of user where appropriate. For example, looking just at the criminal justice process, the Probation Service, the Crown Prosecution Service, the Criminal Defence Service as it develops and video-link conferencing facilities for defence advocates and their clients in custody could, with advantage to all, be based in or close to major court centres. If such omnibus provision is made in the same building or neighbouring buildings for all those most closely

⁴⁸ these guidelines are in turn informed by Magistrates' Courts Committees' National Performance Indicators and Standards as to facilities set by the Magistrates' Courts Inspectorate

⁴⁹ the Justices of the Peace Act 1997, ss 56(1) and 56(3); in 1999 there were nine appeals, one of which the Lord Chancellor allowed; in 2000 there were 11 appeals, one of which he allowed; and, so far in 2001, there have been 12 appeals, none of which he has allowed

involved in the criminal justice process, I see no danger to the respective independence of the courts or of the various agencies. The advantages of joint planning and sharing of expense in the provision and maintenance of such accommodation and its supporting facilities are obvious.

- 88 In assessing, as part of such broader exercise, likely court accommodation needs, regard should be had to two factors not conspicuously present in the Court Service's or Magistrates' Courts Committees' planning to date. The first is that the courts and the judges or magistrates are there to serve the criminal justice system, not to receive preferential treatment from all agencies, bodies and individuals using or exposed to it. As I have said in Chapter 6, it should no longer be a tenet of court administration that, regardless of the convenience of others, courtrooms should be in full-time use and that on no account should judges or magistrates be kept waiting. For many years now that has been a Court Service management imperative rather than a judicial edict. Judges have more than enough to do in preparation for their work in court and in case management behind the scenes to feel that their dignity is slighted if they are not on show in court. Second, in the planning of courtroom accommodation, a significant tolerance should be provided to allow for the high volatility of demands on court time and uncertainties of future criminal justice policy initiatives, patterns of offending and priorities in the prosecution of offences.
- 89 Rationalising and providing modern court accommodation are long-term exercises. The introduction of a unified Criminal Court should assist this rationalisation, not only in terms of efficient use of resources, but also in preserving and strengthening 'locality' of justice. Much of the District Division work could, with advantage, be undertaken in many presently under-used magistrates' courthouses, reducing the trend of closure of magistrates' courts towards ever larger and more distantly spaced Crown Court and magistrates' courts centres. Within limits, there may be some scope for varying the standards of provision according to the size and use of the court centre. However, the adequacy and condition of court buildings and their supporting facilities are a practical contribution to the quality of justice provided and to the public face of the criminal justice system. Inadequate and run-down accommodation engenders inefficiency, low morale and is unlikely to earn public confidence. Some basic aims should be formulated and gathered together in the form of a new Criminal Court Design Guide to provide standards to which courts should, over time, be made to conform. It should also be possible to design more flexible courtrooms, which should be capable of being used for hearings in each Division of the unified Criminal Court.
- 90 I shall not attempt to prescribe a list of standards, but there are a number of obvious issues that I know the Lord Chancellor's Department has well in mind:

- separate waiting areas for prosecution and defence witnesses;
- accommodation for witness and victim support;
- access and supporting aids for disabled persons;
- separate access, where required, for young persons, jurors, vulnerable witnesses and defendants in custody; and
- an information system at court and - through the medium of telephonic and information technology - away from it as to the listing and progress of cases, witness requirement etc.

I recommend that:

- **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;**
- **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;**
- **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;**
- **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;**
- **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”); and**
- **a new Criminal Court Design Guide should be prepared as a standard to which, over time, court buildings should conform.**

INFORMATION TECHNOLOGY

- 91 The establishment of a unified Criminal Court would require integration of a range of functions and processes which have developed separately in the magistrates' courts and the Crown Court. One of these is information technology. If a unified Criminal Court is to function efficiently and effectively in its own right, and also as part of the wider criminal justice system, it will need a system of information technology apt for the role.
- 92 At present, the two court structures have separate information systems and technical infrastructures. In magistrates' courts, the Lord Chancellor's Department has, since 1998, been progressively introducing LIBRA,⁵⁰ a computer-based case-management system providing standard office automation and dedicated information technology support for key processes. The present contract with its suppliers runs until 2013. The development and implementation of the new software applications has recently run into difficulties and, as a result, has fallen behind schedule. But, the hope is that, when installed, LIBRA will enable magistrates' courts to transfer information to and from the main criminal justice agencies via a secure web-site. It is also intended to provide a nationwide network infrastructure for external e-mail for all staff, courtroom computing, with on-line access during hearings, and a data store for policy evaluation and information on performance.
- 93 The Crown Court system – CREST – is more limited in scope. It enables court staff to create electronic case files. But it does not allow them to share them with the main criminal justice agencies, nor to draw much local management information from them. However, the Court Service, as part of its modernisation of the Crown Court (the 'Crown Court Programme'), is developing a new information technology system (CREDO), designed to introduce some sharing of use by all the main criminal justice agencies and to provide hearing information to the public. Other parts of the Programme under development are digital audio recording, electronic presentation of evidence, courtroom technology and improvements in case management. Computerised jury summoning (the JUROR system) has already been implemented. A 'Pathfinder Court' has recently been established in the Crown Court at Kingston-upon-Thames for testing and illustrating the working of the various parts of the Programme. And, over the next year various of them will be piloted in about one quarter of Crown Court centres.
- 94 Clearly, there is a good deal of work under way in both jurisdictions and there are a number of significant advances in prospect. In particular, one of the projects demonstrated at a recent open day at the Kingston-upon-Thames

⁵⁰ *Lord Chancellor's Department's Annual Report 2000/2001*, Cmnd 5107, (The Stationery Office), p 30

Pathfinder Court was a computerised listing system that would enable staff to communicate from courtroom terminals, via the listing office, real time progress and listing information to parties, criminal justice agencies and others involved in its proceedings. This is complemented within the court-building with monitor screens in the public areas displaying information about the progress of each court's work. If, as I hope, such facilities become standard in all or most criminal courtrooms in the country, it would not only make for a much more efficient criminal process, but a more considerate and helpful one to all involved in it, in the provision of timely information and notice and in the reduction in waiting times. There are also the obvious benefits which result from electronic transmission of data: 75% of endorsements of driving licenses are currently transmitted direct from magistrates' courts to the DVLA via magnetic tape or electronic data input.

- 95 All that is good news, but there remains the wasteful duplication of the LIBRA and CREDO projects, quite apart from their joint and individual shortcomings as part of a general system of information technology for the criminal justice system as a whole. I do not believe that efficiency is best served by the development of two entirely separate systems of information technology in support of the management of criminal cases. If my recommendation for a unified Criminal Court is adopted, the duality of approach would be unsustainable. In Chapter 8 I consider the ways in which an integrated system of information technology, based on the internet could be developed to serve the whole criminal justice system. But, again, even without such a development, there is, in my view, a clear and urgent need for integrating case management support systems for all levels of criminal jurisdiction.
- 96 In the criminal justice system as a whole, information technology systems should not be developed in isolation from the various agencies or the other bodies, the judiciary and the professions who will, directly or indirectly, use them. There have been a number of initiatives to encourage a more integrated approach, sometimes overlapping, sometimes with the various agencies envisaging different levels of integration and, often, faltering. Since 1985 the Information Technology and the Courts Committee (ITAC), chaired by Lord Saville of Newdigate, has provided a forum for a wide range of participants to exchange views and news about their respective investments and plans. Its membership includes representatives of a number of Government departments and agencies and of the Bar Council and Law Society. Although, it has no executive authority, it has been an important contributor to better identification of common future needs and collaboration in the development of individual systems. The inclusion of professional legal practitioners in its membership is important since, with the increasing use of information technology in the pre-trial and trial processes of the courts, they will have an important interest in, and contribution to make to, the development and use of an integrated system. ITAC is, and should continue to be, a good forum for this.

- 97 A more recent judicially centred variant of ITAC (and with some overlap in membership) is the Judicial Technology Group, established in 1997, also chaired by Lord Saville and consisting of judges from all tiers of the judiciary, the Director of Studies of the Judicial Studies Board and senior officials of the Court Service. It does not, but in my view, should, include representatives of the District Judges and the magistracy. Its main purpose is to identify judicial information technology needs to enable the Court Service to determine the future of its information technology support for the judiciary. In this, thanks to the persistence of, among others, Lord Justice Brooke, great advances have been made. Through the Judicial Technology Project, over 1,000 judges have been provided with computers and access to the internet. And in April 2001 the Lord Chief Justice announced Lord Justice Brooke's appointment as 'Judge in Charge of Modernisation', his remit being to ensure that the needs of judges are fully taken into account when any decisions are taken which may affect the way we administer justice in our courts. As such, he will represent the judiciary on the Crown Court Programme Board, as he already does on the Civil Courts Programme Board, and lead the judiciary on a new Judicial Technology Project Board, one of the tasks of which will be to develop a strategy for judicial use of information technology over the next ten years.
- 98 In my view, whatever body and programme emerges for development of a wider system of information technology to serve the whole of the criminal justice system, the judiciary, legal practitioners and others involved in the criminal justice process should be closely involved in its development. The court based initiatives that I have mentioned here are a useful starting point for such involvement and should be continued, whatever the outcome of my recommendations for a unified Criminal Court and administration.
- 99 As I have mentioned earlier in the Report, information technology is not just a way of doing more quickly and otherwise more efficiently what we do now; it is also a way of changing to advantage the way we do it. It is important to be alert to this potential in the field of criminal procedure which, despite its great changes in the last two and a half centuries, still has a mould which too readily shapes and restricts thoughts for improvement. Unfortunately, there are likely to be few criminal lawyers proficient in information technology systems design and even fewer systems designers with a good working knowledge of criminal law and procedure. Something needs to be done to combine these skills. One of the biggest disappointments to the judiciary has been that civil courts still lack the basic information technology that Lord Woolf envisaged as necessary support for them in the implementation of his civil justice reforms.⁵¹ The problem was in part the inability of the Court Service to commit itself to the long-term capital funding and planning that

⁵¹ *Access to Justice*, Final Report, p 284

such technology required, and partly the separate development of the Civil Procedure Rules themselves and of the system of information technology required to support them. Lord Woolf's reforms are still dogged by the Lord Chancellor's Department's and Court Service's under-estimation of the considerable investment and work required to develop and introduce the necessary supporting systems. These errors should not be repeated in the development and planning of procedural reforms for criminal justice. Planning and implementation of the reforms should go hand in hand with development and introduction of the necessary supporting information technology.

100 It is important to keep in mind in the field of information technology, just as in that of reform of the criminal courts, the needs of the civil and family jurisdictions and the sharing of judicial and other resources between all three jurisdictions. There are likely to be overlaps and gaps between my recommendations and the current proposals of the Court Service to modernise the civil courts.⁵² There should, however, be differences between the system that would support a unified Criminal Court and those that would support the civil and family jurisdictions, not only because of the obvious differences in processes, but also because of the wider network of criminal justice bodies and agencies of which the courts are part. I believe that an information technology support system for a unified Criminal Court could connect with those for civil and family law, but should remain distinct from them. Apart from anything else, transfer of personal information between different databases could threaten individuals' rights to privacy.⁵³ Nevertheless, the Lord Chancellor's Department should identify the extent to which the common and different needs and uses could be accommodated within a single system and those that could not. In the internet solution that I propose in Chapter 8 for the criminal justice system as a whole, it should be possible to devise common technology and a common infrastructure for the various court jurisdictions, but which would enable separate processing of data and information.

101 The Judicial Working Group convened to consider the Court Service Consultation Paper of January 2001, *Modernising the Civil Courts*, has expressed the view that the achievement of further improvements in the civil and family jurisdictions will demand an electronic case record, comprising an electronic case file, an electronic diary and an electronic case management system. Allowing for all the obvious differences between the civil and criminal jurisdictions, there are clearly some common needs for which provision should be made in developing information technology support for them all, as the Judicial Working Group noted:

⁵² *Lord Chancellor's Department's Annual Report 2000/2001* p 29 and, in particular, the Court Service consultation paper *Modernising the Civil Courts*, issued in January 2001

⁵³ see Walker *Criminal Justice Processes and the Internet* in Akdeniz, Waler and Wall (eds): *The, Internet, Law and Society* (Longman, 2000) p203

“Although criminal business is outside our terms of reference, we emphasise that in our view such common information systems must also extend to criminal business. The civil and family justice systems do not exist in a vacuum....

The practical advantage of sharing the cost of system development and IT equipment across the whole justice system is obvious. The planning, piloting and implementation of electronic systems for civil, family and criminal business should be co-ordinated from the outset”.⁵⁴

- 102 The Court Service has responded to this sentiment by establishing a single Board, including in its membership Lord Justice Brooke, to oversee the court modernisation programmes for the criminal, civil and family courts. The Court Service has allocated a total of £165m to the three programmes over the next three years. I welcome this start in planning and development, with high level judicial involvement, of what may be common components, not only of information technology for all courts, but for one to serve the criminal justice system as a whole.

I recommend that:

- **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;**
- **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; and**
- **planning and implementation of procedural reforms should go hand in hand with development and introduction of the necessary supporting information technology.**

⁵⁴ *Modernising the Civil Courts, Report of the Judicial Working Group*, (The Court Service, May 2001)

SECURITY

- 103 One of the most serious examples of the tendency of criminal justice agencies to plan and provide for themselves regardless of the needs of the criminal justice system as a whole is in the field of security. In recent years Chief Constables, with their eyes on their own budgetary commitments, have gradually withdrawn their uniformed officers from court duty, taking the view that it is for the courts to provide their own security. In particular cases where there is a known risk of danger the police will provide security as necessary,⁵⁵ but generally not otherwise.
- 104 In Crown and combined court centres, police officers at court have, in the main, been replaced by security guards provided under contract,⁵⁶ just as prison officers have been replaced by contracted court escorts. Court security budgets are controlled centrally and there is regular assessment by the Court Service of the number of guards required at each court centre. Normally, even at the larger court centres, they are limited to duty at the main court entrance where they are equipped with security arches, hand held searching wands and CCTV cameras. Although their duties include patrolling the building, they do very little of that in normal court hours.
- 105 In magistrates' courts, it is for the Magistrates' Courts Committees to determine what, if any, security is provided in their courts. The only involvement of the Lord Chancellor's Department in their security is in the establishment of a Court Security Task Group, who have recently recommended that the Lord Chancellor should not exercise his statutory power⁵⁷ to fix and direct their compliance with standards of performance. Instead the Group has issued guidance⁵⁸ to Magistrates' Courts Committees which includes recommendations for assessing the risk of violent incidents, for the employment of court security officers and for close co-ordination on matters of security with the criminal justice agencies. It also contains elaborate guidance as to the system for reporting incidents of violence, for

⁵⁵ eg in the deployment, with the consent of the Senior Presiding Judge, of armed police officers in court buildings for particular cases where armed or otherwise violent conduct is feared

⁵⁶ however, Chief Constables have recently agreed with Resident Judges as to their respective court centres' individual police security requirements. There is now an agreed protocol for police security and liaison at each centre

⁵⁷ under Justices' of the Peace Act 1997, s 31

⁵⁸ 19 October 2000; the LCD also issued in February 2001 a *Protocol For Health and Safety and Fire Precautions In Custody Areas* drawing the attention of court staff and court escort contractors to their obligations under the Health and Safety at Work Act 1974 and associated regulations, including a reminder to the latter of their duty to protect their own staff from harm by withdrawing them, if necessary

reporting to Ministers and “as supporting information when considering bids for funding”.

- 106 Although many Magistrates’ Courts Committees employ security officers at their courts, many do not. Most do not make provision for search on entry for metal objects. Where there are no security officers the courts rely on the availability of police, usually on call from a nearby police station, if there is one, or on officers who happen to be attending court.
- 107 The main function of security officers, where they are provided, is to deter violence or threats of violence in the court building, though they are not responsible for security of the dock areas, which falls to the prison escort contractors. But as a deterrence or as an effective response to violence when it occurs, they are no substitute for a visible, uniformed and suitably equipped police presence in the public parts of the court and, from time to time and where necessary, in the courtrooms themselves. Court security officers lack the powers, training and evident authority of uniformed policemen. Curiously, they have less powers in the Crown Court than in magistrates’ courts. In the Crown Court they have no powers to search, eject, control or restrain persons in the court building. In magistrates’ courts they have powers of search and of exclusion or removal of any person who refuses to permit it, and of exclusion, removal or restraint in order to maintain order in the courthouse. But they cannot require the removal of clothing other than an outer coat, jacket or gloves,⁵⁹ or forcibly search or arrest anyone causing trouble inside the building. Their powers are limited to the use of reasonable force only in the exclusion or removal of a person from the building. As I understand it, the original reason for security guards having so little power in the Crown Court was because there used to be a significant police presence in court buildings to enforce security where required. The removal of police officers from Crown Court buildings has changed the position and left a potentially dangerous gap in security. The Court Service is now considering whether the security guards should have the same powers in all courts as they have in the magistrates’ courts. But even if that were to be taken forward, it would still fall far short of what many consider is necessary for the provision of adequate security in the courts as a whole.
- 108 An equal or greater threat to the administration of justice is the intimidation of witnesses outside court and before they are due to give evidence. Many judges, The Council of Circuit Judges and the Director of Public Prosecutions have expressed concern about such intimidation. There have been accounts in the submissions in the Review of potential witnesses being reluctant to give statements to police; failure of witnesses to attend court to give evidence or of their ‘forgetting’, when in the witness box, critical parts of their expected

⁵⁹ Criminal Justice Act 1991, s 77(2)

evidence. The last is an increasing problem, and particularly prevalent in areas of serious crime, such as South Wales and Merseyside. In the latter, it is said to be responsible for more than 50% of judge ordered acquittals, against a national average of 25%. There are clear limits to what can be done to deter or prevent such, mainly covert, intimidation, but a strong and highly visible police presence in and about the court would be of some encouragement and possible help to would-be witnesses who are in fear.

- 109 The present security position is, therefore, an unsatisfactory mix in the Crown Court of police and contracted security guards, the latter statutorily, contractually and in terms of training, limited in the effectiveness of security that they can provide. Whether even that level of security is available in magistrates' courts depends on individual Magistrates' Courts Committees; in many cases it is not, and they are also less likely to be equipped with electronic searching devices and CCTV cameras. The over-all picture is disturbing. But, most of all, the lack of a police presence and the reassurance and sense of order that it brings, have been the subject of many expressions of concern by the judiciary and magistracy in recent years. It was a recurrent theme in submissions in the Review. Notably, the Director of Public Prosecutions and his staff expressed the view that the absence of police as a security presence in the courts, is "very detrimental". They spoke of open attempts by defendants' supporters to intimidate prosecutors and magistrates on the hearing of bail applications and in other proceedings. The recent release by two armed men of defendants from Slough Magistrates' Court and the unchecked and serious assault on Her Honour Judge Goddard QC at the Central Criminal Court have shown how vulnerable our courts and those who work in them have become.
- 110 The problem has been obvious for years to anyone involved in the day to day business of the courts and has been well and truly communicated by the Presiding Judges and others to those with the ability to do something about it. I understand that the Lord Chancellor, spurred by the attack on Judge Goddard, is now considering action. I have not been told what he has in mind, but I make the following five main suggestions.
- 111 First, as a matter of urgency the Lord Chancellor should take direct responsibility for and control of the provision of security at summary level, not leave it to guidance and indications of what he expects Magistrates' Courts Committees to do if they are willing to spend the money. If my recommendation for the establishment of a unified Criminal Court and court administration are adopted, that should follow, but it should not wait until then. If my recommendations in Chapter 8 for greater direction of the criminal justice system as a whole are adopted, the responsibility should pass to the Criminal Justice Board to exercise on behalf of all the criminal justice Ministers.

- 112 Second, the level of security, in the sense of the statutory powers of those providing it, should be the same for all levels of jurisdiction, certainly not less in the higher jurisdiction than in the lower, as is now the case. This would require primary legislation.
- 113 Third, serious consideration should be given to returning to uniformed police officers the main responsibility for providing a visible and effective security presence in the criminal courts.⁶⁰ This could largely be provided in two ways. First, on a rota basis, officers attending court from time to time as witnesses or otherwise in connection with cases listed for hearing, could routinely patrol the court building instead of sitting in the police room. They could be contacted by tannoy or bleeper when required to give evidence. This suggestion has been made many times, but in general has had a poor response from the police. One of the reasons for that, I believe, stems from the natural concern of police officers to concentrate on the evidence they are about to give and not be distracted by other matters. This in turn is a result of the absurd practice, to which I refer in Chapter 11, of confining police officers in the witness box to aides-memoire in the form of notes made at or shortly after the events in question, yet permitting them unrestricted access to their witness statements until immediately before they enter the witness box to give evidence. The result is that officers huddle in the police room at court, reading and re-reading their notes and their witness statements so as to consign to memory what they are shortly about to say in evidence. If they were allowed to do in the witness box what they are now permitted to do shortly before going into it, the giving of evidence would be less a test of short term memory, and their time waiting at court could be better spent. Second, court corridors could be included on the beat of locally based police officers.
- 114 An alternative would be to introduce a uniformed Sheriff Officer Service which, unlike present contracted court security officers, would be fully trained and have police powers. They could be based in court buildings and act under the general oversight of the court manager. Such a system operates in British Columbia and is regarded as a success. The sheriff officers combine four roles: jury bailiff, bailiff, security guard and prison escort. They also have limited powers of arrest. The Court Service is currently looking at the feasibility of introducing a similar scheme here. Such a system might be better suited to serve all three jurisdictions. County courts, including their judges are particularly vulnerable. I believe that, unless they are family or care centres, they are not provided with security officers. Sheriff's officers might take over all criminal and civil enforcement, including the role of the civil bailiff.

⁶⁰ different provision may be acceptable in civil and family courts

- 115 Fourth, there are other aids to better security the purpose of which is to restrict the scope for intimidation of and violence to witnesses and others within the court building. These include: separate access and accommodation (including separate smoking accommodation) for prosecution and defence witnesses; special access and provision for vulnerable witnesses; court design, including secure docks and electronic door locks where necessary;⁶¹ use of screens or other shielding devices in court; where appropriate, control of public galleries; more efficient staggering of witnesses to minimise the time they have to spend at court; where appropriate and necessary, the giving of evidence by video-link from outside the court building or courtroom; the placing of notices in the public parts of the court building that intimidation is a serious offence and will be prosecuted; routine follow-up by the police of witnesses who have not attended; and vigorous prosecution of any attempted or successful intimidation.
- 116 Fifth, if ever there was a candidate for a criminal justice - rather than a single agency - budget, it is court security. There is no reason why the courts or - if police officers are to resume responsibility - police forces should carry the sole or main responsibility for this task. It should be regarded and treated, in budgetary and planning terms, as a joint responsibility of the Court Service and all the criminal justice agencies.

I recommend that:

- **the Lord Chancellor should, as a matter of urgency, take direct responsibility for and control of security of courts of all levels and jurisdictions;**
- **those invested with a duty of providing security should have the same powers in all criminal courts;**
- **consideration should be given to requiring the police to resume the 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;**
- **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**

⁶¹ in the Crown Court only five courtrooms in the country have a secure dock. A pilot scheme of docks fortified with a toughened glass screen has recently been piloted in eight further court centres. In the magistrates' courts there are 55 secure docks and the Lord Chancellor's Department has recently introduced a programme to equip a number of magistrates' courts with more where magistrates' courts' committees are prepared to bid for funds for the purpose

necessary to give their evidence by video-link away from the court; and

- **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

117 HM Magistrates' Courts Service Inspectorate has done much to improve the performance of Magistrates' Courts Committees in their administration and management of magistrates' courts. There is no equivalent body for the Court Service. If a unified Criminal Court with a single administration for courts of all jurisdiction and levels is established in accordance with my recommendation, it would be sensible to extend the system of inspection to the administration of all the courts. The first step would be to establish targets and performance indicators along with those for the criminal justice system as a whole⁶² against which to measure performance. It should report to the Lord Chancellor.

I recommend that:

- **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.**

⁶² see Chapter 8, paras 89 - 91