

FOREWORD

SCOPE OF THE REVIEW

- 1 On 14th December 1999 the Lord Chancellor, the Home Secretary and the Attorney-General appointed me to conduct this Review into the working of the Criminal Courts and to report within a year. My terms of reference were to inquire into:

“the practices and procedures of, and the rules of evidence applied by, the criminal courts at every level, with a view to ensuring that they deliver justice fairly, by streamlining all their processes, increasing their efficiency and strengthening the effectiveness of their relationships with others across the whole of the criminal justice system, and having regard to the interests of all parties including victims and witnesses, thereby promoting public confidence in the rule of law.”

- 2 The Lord Chancellor, in announcing my appointment, said:

“The Government’s aim is to provide criminal courts which are, and are seen to be:

- modern and in touch with the communities they serve;
- efficient;
- fair and responsive to the needs of all their users;
- co-operative in their relations with other criminal justice agencies; and
- with modern and effective case management to remove unnecessary delays from the system.”

- 3 The Review is primarily of the practices and procedures of the criminal courts. But it also goes beyond their workings. They are the focal point of

the criminal justice system of which a number of agencies, voluntary bodies and legal practitioners also form part. How well or badly they all work together has a significant and highly public effect on the daily working of the courts, both in the quality and in the efficiency of the justice they dispense. This is an important area in which the public appears to have little confidence in the system, despite strenuous efforts over recent years to improve it.

- 4 The Review is thus concerned with how the criminal justice system works insofar as it involves the courts, but not with criminal justice policy or philosophy or principles of sentencing. It is nevertheless a broad inquiry into how the criminal courts should do their job so as to combine fairness with efficiency, while also having regard to the interests of all involved in or exposed to their process. This involves practical questions about the structure and composition of the courts, their relationship with other parts of the criminal justice system, their procedures before and at trial and on appeal, some aspects of the rules of evidence they apply and the process of sentencing.

- 5 I was asked to take a radical and long-term look at the working of the whole of the criminal courts system and to make broad recommendations, where necessary, for its improvement. That I have attempted to do, considering the structural context along with the processes and their effect on each other, looking for short and medium term improvements as a path to long term reforms. I have not been asked to provide a costed blue-print for change and have, therefore, left to others the task of detailed examination of feasibility and costing of any of my proposals that the Government may wish to develop.

- 6 I have interpreted the Review's terms of reference as including:
 - the management and funding of 'the criminal justice system', including the relationship of the courts with others concerned in it;
 - the structure and organisation of the courts and the distribution of work between them;
 - their composition, including the use of juries in the Crown Court and of lay and professional judges in magistrates' courts;
 - case management, procedure and evidence and the contribution to all three of information technology;
 - treatment of all those concerned with criminal justice and securing public confidence in it; and
 - appellate structures and procedures.

GENERAL APPROACH

- 7 My general approach has been to explore under those main headings whether there is a clear need for change and, if so, what change might be feasible and sufficiently worthwhile to justify the disturbance of well established structures and procedures. In recommending change or no change, I have borne in mind the often ill-defined boundary between procedural and substantive law. Procedure and practice may have significant effects on substantive rights and duties, particularly now that our ancient common law principle of ‘due process of law’ has become underpinned by Articles 5 and 6 of the European Convention on Human Rights.

- 8 I thought at first that I could conduct the Review, as well as write the Report, in a structured way, starting by examining present case management, trial procedures and evidence against criteria of fairness and efficiency, and only moving on to consider larger questions, such as management and funding, structure, jurisdiction and composition of the courts if procedures under the present system demanded change of that order.

- 9 But I rapidly concluded that such an approach would be blinkered. It could have left undiscovered improvements in the system that might flow from the reshaping of it by structural, managerial and/or jurisdictional change and new information technology. It could also have discouraged consideration of improvements necessary to meet increasing public expectations. These include, for example, modern and higher standards of court accommodation, witness and victim care and proper provision for diversity and the likely demands of Human Rights on the trial process. I have, therefore, examined, as an aid to improvement of the courts’ practices and procedures, their structure, jurisdiction and management in the context of the criminal justice system as a whole, including the various government departments and agencies involved and their relationship one with another.

CONDUCT OF THE REVIEW

- 10 During the Review the Lord Chancellor, with the agreement of the Home Secretary and the Attorney-General, appointed twelve consultants to assist me. Each is highly distinguished and experienced in his or her respective field. They were: The Honourable Mr. Justice Crane, Jane Hickman, David Perry, QC, Sir David Phillips, QPM, His Honour Judge Pitchers, Andrew Prickett, CBE, Dame Helen Reeves, Professor John Spencer, Lord Stevenson of Coddenham, CBE, Professor Richard Susskind, OBE, Beverley Thompson, OBE, and Rosemary Thomson, CBE. I take this early opportunity to record

my gratitude to them all for their guidance in the conduct of the Review and their considerable contribution to this Report.

- 11 I must also mark my appreciation of, and give thanks to, the Review Secretariat, led first by Michael Kron, CBE, and then Edward Adams, for their dedicated and skilful support at every stage of the Review. The other members were Betty Blatt, Simon Boddis, Sarah Jameson, Amanda Jeffery, Shelley Johnston, Helen Journeaux, Nasrin Khan, Sarah McAdam and Barbara Saunders. They and my trusty clerk, Sylvia Slater, worked prodigiously throughout the Review, each in his or her field making valuable contributions to the Report. I could never have completed the task without them.
- 12 I have consulted widely. In the first instance I sought views under my interpretation of the terms of reference by letter, media advertisements and the Review's website. This resulted in written submissions from over 1,000 individuals and organisations in the United Kingdom and other Commonwealth Countries, Europe and the United States of America. Appendix 1 contains a list of all those who made written submissions. Many others expressed their views to me in meetings, conferences and seminars held for the purpose or concerned with subject matters of the Review. I have also visited many courts and criminal justice agencies and related bodies to observe and discuss their workings.
- 13 As a second stage of consultation, I circulated and published on the Review website a list of issues prompted by the submissions received. This generated supplemental and additional submissions and formed the basis for discussion at 20 Review Seminars that I held around the country for, among others, representatives of local criminal justice agencies, leading academics and others with local experience of or exposure to the system. With the assistance of the Cambridge University Law Faculty's Centre for European Legal Studies, and under the direction of Professor Spencer, one of the Review's Consultants, I convened a conference in Cambridge of distinguished European judges and jurists to learn something of their respective systems. And I have visited a number of court centres in Scotland, Northern Ireland, the United States of America (Miami, Philadelphia and New York) and Canada (Calgary and Ottawa) to view and discuss their practices and procedures.
- 14 I have attempted to thank individually all who have so generously contributed their time, knowledge and experience in these various ways to assisting me in the Review. I take this public opportunity to repeat those thanks and to offer them to any contributors to whom I or the Review Secretariat may not have written or spoken personally.

- 15 I have also drawn on the work of previous inquiries and reviews and commissions, including: Lord Morris of Borthy-y-Gest's 1963-1965 Departmental Committee on Jury Service;¹ Lord Beeching's 1966-1969 Royal Commission on Assizes and Quarter Sessions;² Lord Justice James' Committee on the Distribution of Business between the Crown Court and Magistrates' Courts in 1975;³ Sir Cyril Philips' 1978-1981 Royal Commission on Criminal Procedure, whose task was to review the criminal process from the start of investigation to the point of trial;⁴ Lord Roskill's Fraud Trials Committee, 1986;⁵ Mr Julian Le Vay's 1989 Home Office Efficiency Scrutiny of the organisation of Magistrates' Courts;⁶ Viscount Runciman's 1991-1993 Royal Commission on Criminal Justice,⁷ the focus of which was the integrity of investigation and trial of alleged offences in the Crown Court, rather than the organisation and efficiency of the criminal courts as a whole; Martin Narey's 1997 Review of Delay in the Criminal Justice System;⁸ Sir Iain Glidewell's 1997-1998 Review of the Crown Prosecution Service;⁹ Sir William Macpherson of Cluny's Stephen Lawrence Inquiry;¹⁰ and Professor Rod Morgan's and Neil Russell's research in 2000 for the Lord Chancellor's Department and Home Office on the judiciary in the magistrates' courts.¹¹
- 16 My reference to other inquiries and reviews has not been confined to those in this country. In recent years there has been much impressive work in this field in the Commonwealth and the United States of America, on which I have drawn for guidance in the Report where appropriate and which I have listed in Appendix 2. I owe a considerable debt to this large body of overseas research, as I do to the many Commonwealth and United States Judges who have been so generous of their time and hospitality.
- 17 In the time available to the Review I have only been able to commission a few limited projects of research. However, over the same period Government Departments have continued to conduct and/or have commissioned many, and sometimes overlapping, reviews, inquiries and research and pilot projects on various matters within my terms of reference. These, and those that I have commissioned, are listed in Appendix 3. The Law Commission has also had in hand a number of related projects, notably codification of the criminal law,

¹ Cmnd 2627 (HMSO 1965)

² Cmnd 4135 (HMSO 1969)

³ HMSO, 1975

⁴ Cmnd 8092 (HMSO 1981)

⁵ HMSO, 1986

⁶ HMSO, 1989

⁷ Cmnd 2263 (HMSO 1993)

⁸ Home Office, February 1997

⁹ Cmnd 3960 (HMSO 1998)

¹⁰ Cmnd 4262-1 (HMSO 1999)

¹¹ RDS Occasional Paper No 66 (Home Office, December 2000)

fraud, double jeopardy, bail and human rights, evidence of previous misconduct, prosecution appeals and sentencing. And the Government has continued to enact or attempt to enact legislation to introduce further legislative proposals covering Review issues, the most notable of which have been: the unsuccessful Mode of Trial Bills, designed to remove an accused's right to elect jury trial in 'either-way' cases the Powers of Criminal Courts (Sentencing) Act 2000, consolidating sentencing legislation; the Criminal Justice and Court Services Act 2000, which includes provision for a national probation service and various methods of dealing with offenders; and the Criminal Justice and Police Act 2001 which deals with a number of matters, including the treatment of vulnerable and intimidated witnesses.

- 18 In February of this year, the Government published a major policy paper, *Criminal Justice: The Way Ahead*¹² setting out its proposals for a comprehensive overhaul of the criminal justice system. This paper contained important commitments relating to the management of the Crown Prosecution Service, to law reform and to the criminal courts and the trial process. Finally, in July the Home Office published the Report of the sentencing review carried out by John Halliday CB.¹³ Although not within the subject matter of this Review, some of its recommendations have implications for the allocation of work within the courts structure that I consider in the Report.
- 19 I have regarded this wealth of emerging material as valuable information for the Review and have drawn on it where I have considered it helpful to do so. I have also taken into account recent and current initiatives within Government, including those concerning over-all planning, management and funding of the criminal justice system, case management, diversity, information and communications technology, witness and victim care and youth justice. In doing so, I have not sought to duplicate those initiatives, but to examine whether and in what way they support or conflict with candidates for reform suggested in the Review.

¹² Cmnd 5074 (The Stationery Office, February 2001)

¹³ *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (Home Office, July 2001)