

Legal Personnel.

Judges.





- In contrast to some continental European countries- *judges in England and Wales are not in a completely separate legal career.*
- This because as members of the *bench* (which judges are collectively referred to as)- are selected from among practising lawyers.
- *There is no fixed system of promotion*- as judges do to necessarily start from the lower courts and work their way up- they can enter the profession from the upper end of the judicial ladder.
- *The Constitutional Reform Act 2005* affected the appointment of judges- the old system- saw judges appointed by the *Queen on the advice of the Lord Chancellor or Prime Minister.*
- The new system- sees the new independent *Judicial Appointments Commission (JAC)* playing a key role- made up of a lay chairman & 14 commissioners- who are judges, legal practitioners, lay justices and non lawyers.
- The JAC *selects candidates on merit* following an *open application procedure* for judicial appointments up to and including High Court judges(*not including magistrates*) these selections are recommended to the Lord Chancellor.



- The Lord Chancellor can either *accept or reject* the selected candidates, *or he can ask the Commission to reconsider*- but *he cannot choose an alternative candidate of his own*.
- The Queen formally appoints the selected candidate.
- Magistrates are selected by the Local Advisory Committees- which comprise of serving magistrates as well as local non-magistrates.
- Although the Lord Chief Justice has the statutory power to appoint magistrates- *he delegates this power to the Senior Presiding Judge* for England and Wales.
- The *JAC institutes separate selection panels for posts of Lord Chief Justice and Heads of Divisions of the High Courts*- these selection panels' memberships are dependent on the appointment at hand.
- The Lord Chief Justice can *either accept, reject or ask for reconsideration of the recommended persons*, in each case.
- *The Lord Chancellor convenes the selection panel for the appointment of Supreme Court Justices*. Formal appointment of all senior positions is bestowed by the Queen.



- Previously, *the position of judges was only open to barristers*- appointment to the bench was dependent on the candidate's *right of audience- the right to appear before a court as an advocate*.
- However because *the right of audience of solicitors changed*- they have *gained rights of audience in all courts*- they then became eligible to become judges also.
- *The Tribunals, Courts and Enforcement Act 2007*- brought major changes to the process of becoming a judge:
- A candidate must satisfy the two fold test of '*judicial appointment eligibility criterion*'- firstly, *the candidate must hold a relevant qualification*- have a legal qualification specified in an *Order* made by the Lord Chancellor.
- Secondly, *the candidate must also have gained experience in law* for a qualifying period (quantified by statute). *Experience in law means engagement in law related activities* – carrying out judicial functions of any court and/or tribunal, advising on the application of the law, drafting documents intended to affect persons' rights or obligations or teaching or researching the law.
- *New rules made to promote diversity in judicial appointments* & have decreased the length of time required for one to a suitably qualified candidate prior to judicial appointment.
- New rules require barristers and solicitors to have held the *relevant legal qualification for 5-7 years*; must have gained experience during that time; are encouraged to work as part time judges prior to applying for full time positions.



- *The Act of Settlement of 1700* stipulated that as long as judges properly conducted themselves (*quamdiu se bene gesserint*)- they could only be removed by an *address* to Queen *by both Houses of Parliament*- & no longer by the King's will.
- The above rule is called the *security of tenure* and still applicable to High Court judges and above.
- The Lord Chancellor with agreement from the Lord Chief Justice may *remove other judges and magistrates due to incapacity or misbehaviour*. Recorders may also be dismissed *for failure to comply with conditions of appointment*. Retirement age of judges is 70 this can be extended to 75.
- Judges must be completely independent. The courts look at executive actions via judicial review and must be independent to do this effectively.
- Judges' *security of tenure*- plays a key role in the maintenance of judges' independence- this is because judges need not be apprehensive or fearful of a decision to remove a member of the executive-a minister.
- *Judicial immunity*- is another important part of judges' independence- *which means that a judge may not be sued in relation to acts done within their jurisdiction*. The superior judges have near total immunity due to their unlimited jurisdiction. Circuit judges and recorders have immunity only within their jurisdiction.
- Judges , generally *may not be sued for defamation* for anything said in court.
- Judges *may not be liable for false imprisonment* in terms of sentencing they imposed.



- *Judicial immunity*- is the immunity of a judge from civil action for official activities. It is absolute immunity from liability that is granted to judges and court officers such as grand juries and prosecutors and for tortious acts or omissions done within the scope of their jurisdiction or authority. For example, a judge may not be the subject of a slander or libel suit for statements made about someone during a trial, even if the defamatory statements had nothing to do with the trial at hand. A judge generally has Immunity from civil damages if s/he had jurisdiction over the subject matter in issue.
- *Defamation*- the act of communicating false statements about a person that injure the reputation of that person.
- *Right of audience*- In common law, a right of audience is generally a right of a lawyer to appear and conduct proceedings in court on behalf of their client.
- *The Bench*- general term for for all judges as in 'the bench' or for the particular judge or judges, as in an order coming from the 'bench'. It can also refer to the long and wide desk raised above the level of the rest of the courtroom, where the judge or panel of judges sit.



- *The Lord Chief Justice* is the most senior judge in England & Wales and President of the Courts of England and Wales. Under the *Constitutional Reform Act 2005*, the Lord Chief Justice has some 400 statutory duties (i.e. duties that are required by law).
- *His key responsibilities include:*
 - • Representing the views of the judiciary of England and Wales to Parliament and Government;
 - • Overseeing the judiciary's welfare, training and guidance;
 - • Discussing with Government the provision of resources for the judiciary, (which are allotted by the Lord Chancellor); and:
 - • Deploying judges to and allocating work to the courts of England and Wales.



Judges in England and Wales cont. The Heads of Division.



- Supporting the Lord Chief Justice in his role are five very senior Judges; the Senior President of Tribunals and four Heads of Division, each responsible for a particular part of the law and the court structure.
- In order of seniority they are: *the Master of the Rolls; the President of the Queen's Bench Division; the President of the Family Division; and the Chancellor of the High Court.*
- The *Master of the Rolls* is second in judicial seniority to the Lord Chief Justice, and is Head of Civil Justice and President of the Civil Division of the Court of Appeal.
- He is also a Judge of Court of Appeal. The *Master of the Rolls is consulted on matters such as the civil justice system and rights of audience.*
- The Heads of Division and the judges of the Court of Appeal are addressed as 'The Right Honourable', followed by their judicial titles. In court they are called '*My Lord*' or '*My Lady*'.
- The judges of the *Court of Appeal* are senior judges with lengthy judicial experience, who hear both criminal and civil appeals which have been referred up to them from the High Court and the Crown Court and County Courts.
- Traditionally, such judges are also appointed to the ranks of the Privy Council and are therefore known as '*The Right Honourable Lord or Lady Justice*'. They almost always sit in the Royal Courts of Justice in London, although occasionally the Court of Appeal has sittings elsewhere in England and Wales.
- *High Court Judges* are assigned to one of the three divisions of the High Court – the Chancery, Queen's Bench or Family Division. High Court judges are mainly based in London, but also travel to major court centres around the country.
- The official designation of a High Court judge is '*The Honourable Mr/Mrs Justice Name*'; *they are referred to as 'My Lord' or 'My Lady' in court.* High Court Judges are often called '*Red Judges*' because of the colour of the robes they traditionally wear.



- *Circuit Judges* are appointed to one of the six circuits in England and Wales, and sit in the Crown and County Courts within their particular region.
- Some Circuit Judges deal *specifically with criminal or civil cases*, while others are authorised to hear public and/or private law family cases.
- Some may sit in specialised civil jurisdictions, hearing, say, chancery or mercantile cases.
- They can hear both *fast track civil claims*, (between £5,000 and £25,000) and *multi-track claims*, (claims over £25,000 which may appear before a High Court).
- *Recorders* are a type of *fee-paid judicial officeholder* who sit in both Crown and County Courts.
- Fee-paid Judges are *part-time and sometimes deal with less complex or serious cases*.
- They are paid according to the number of sittings or days worked.
- They are *solicitors or barristers with at least ten years practice* before these courts.
- Their jurisdiction is more or less similar to that of a Circuit Judge.



- *Recorders* are required to manage cases actively as well as to determine claims at trial.
- *A recorder's duties* include assisting the parties to prepare for trial, presiding over court proceedings and delivering judgments in both applications and contested trials.
- It is often the first step on the judicial ladder to appointment to the Circuit bench. Appointments are made for five years, and Recorders normally sit for between 15 and 30 days a year.
- *District Judges are full-time judges* who deal with the majority of cases in the County Court. In the Family Court, District Judges hear most of the cases involving the division of family assets and, along with the Circuit Judges, they also hear the cases involving children.
- *They preside over a wide a range of family and civil law cases* such as claims for damages and injunctions, possession proceedings against mortgage borrowers and property tenants divorces, child proceedings, domestic violence injunctions and insolvency proceedings.
- District Judges are assigned on appointment to a particular Circuit and may sit at any of the County Court or Family Court hearing centres or District Registries of the High Court on that circuit.
- These Judges deal with the small claims track (for claims up to £10,000 in value) and fast track (for claims up to £25,000) but can also deal with multi-track cases over £25,000. They sit for 215 days a year.
- *District Judges (Magistrates' Courts) are legally qualified, full-time salaried Judges* who sit alone in court without a legal adviser. District Judge (Magistrates' Courts) hear the longer and more complex cases - criminal, youth and some civil proceedings - which come before the magistrates' courts. They do not normally wear robes in court.
- *The Senior District Judge, the Chief Magistrate*, is responsible for hearing many of the most sensitive, lengthy or complex cases in the Magistrates' Courts and in particular extradition and special jurisdiction cases.



- *Magistrates, or Justices of the Peace*, are members of the local community without legal background or knowledge who act as judges in the magistrates' court.
- They bring a broad experience of life to the bench, working part-time and dealing with over 95% of all criminal cases. These are the less serious cases, such as minor theft, criminal damage, public disorder and motoring offences.
- Justices of the Peace sit with a *qualified Legal Adviser*.
- They can also hear some civil and family cases involving unpaid Council Tax, Television Licence evasion and child custody and adoption.
- They cannot normally impose sentences of imprisonment that exceed six months (*or 12 months for consecutive sentences*), or fines exceeding £5,000.
- Justices of the Peace receive support in court from Legal Advisers (*they cannot in fact hear cases without them*), and must sit for at least 26 half-days a year. Justices of the Peace are unpaid, although they do receive reimbursement for their travel and expenses.
- *The Masters and Registrars* are *the procedural judges for the majority of the civil business in the Chancery and Queen's Bench Divisions* who deal with all aspects of an action, from its issue until it is ready to go ahead in court, where it is presided over by a trial judge (usually from the High Court). After the trial the Master resumes responsibility for the case.
- They are based at the *Royal Courts of Justice*. The Masters comprise of:
 - the Senior Master and nine Queen's Bench Division Masters; the Chief Master and five Chancery Masters; and the Chief Registrar and five Bankruptcy Registrars.
 - *One of the Queen's Bench Division Masters is the Admiralty Registrar.*
 - Masters undertake *interlocutory work*, which means that they act as gatekeepers for judges, sifting through the thousands of public claims which come in every year concerning issues such as personal injury, negligence and tort to make sure that only the most serious are put in front of a judge in court.
 - They can hear cases in their offices, and always try to gain a '*consent order*', whereby the parties reach agreement out of court. Practice Masters offer procedural advice.



- The legal profession is split between 2 distinct branches- *barristers & solicitors*- both lawyers- *however differ greatly in terms of training & work*.
- *Solicitors*- education & training: can initiate by doing 3 year law degree at university or- do another degree then qualify for vocational training for *solicitors- via the CPE or GDL*- covering core law areas.
- Vocational training is covered by the LPC- a one year law degree dealing with practical aspects of the work of a solicitor- *drafting legal documents & accounting*.
- After successful completion of LPC- prospective solicitor then undergoes a *2 year traineeship at a law firm* of solicitors- he/she must obtain a training contract with a law firm prior to starting this traineeship.
- A significant number of law firms *sponsor the huge LPC fees for students* that attain a training contract with them.
- The trainee will work in different departments during the 2 year traineeship- *in order to gain experience with different aspects of solicitors' work*. A trainee becomes a *qualified solicitor* after finishing their training contract.





- Solicitors' work is multifaceted- ranging from the *type of work undertaken, the type of advice to the subject matter*.
- They can work on their own, in partnerships or in Limited Liability Partnerships- LLPs.
- They *draft vast amounts of legal documents*- contracts & wills.
- They deal with *property matters*- conveyances & mortgages.
- They are the *1st point of contact for someone seeking legal advice*.
- If a matter goes to court they will be the ones filing the necessary documents.
- They also deal with preparatory stages of litigation- interviewing witnesses, evidence preparation.
- A solicitor can represent a client based on their *right of audience*.
- Traditionally, solicitors had right of audience before the lower courts- county and magistrates' courts.
- This limited right of audience has gradually changed and solicitors now *have right of audience in all courts up to the High Courts*- provided they took a *special advocacy skills course- the Professional Skills Course*- during their training contract.
- Further training (*in evidence & procedure*) can be done to qualify them as *solicitor advocates* giving them a right of audience up to the Supreme Court.
- Where a solicitor cannot or does not desire to go before a court on their own, *they must hand over the case to a barrister*.
- It is now governed by the independent *Solicitors Regulation Authority*- formerly so by the *Law Society* which now is a representative organisation of the profession.
- The SRA is responsible for LPC training.

- Similar to solicitors, barristers start their education & training by a 3 year law degree or pass the CPE or GDL.
- The prospective barrister must then be admitted to one of the 4 Inns of Court- *Gray's Inn, Inner Temple, Lincoln's Inn & Middle Temple*.
- These Inns serve as a disciplinary powers and *admit and call students to the Bar*.
- After admission to one of the Inns, the prospective barrister then undergoes *a one year vocational course- BPTC & pass the assessments*.
- The prospective barrister must complete *12 qualifying sessions* in their Inn- which include educational sessions as well as dining at the Inn.





- After successful completion of the BPTC- the prospective barrister is then *called to the Bar* by their Inn.
- Prior to being able to practice the, the student must undergo *a one year pupillage* where he serves as a *pupil* and will follow and learn from a senior member of the Bar.
- The pupillage period is divided into *2- six month periods- non- practising and practising*.
- Upon completion of pupillage, the new barrister may become a member of a *chambers* by being offered *tenancy*.
- *Advocacy* is the main part of a barrister's work-presenting cases before courts.
- *Barristers have rights of audience before every court within the country*- they are referred to as *counsel* in courts.
- They can be self employed, work in a set of chambers, or work as in-house counsels by firms or other organisations.
- Those who work in chambers are self-employed but *share renting costs and remuneration of clerks' wages*.
- Usually, barristers do not have direct contact with clients- but receive instructions from solicitors- via *brief counsel*.
- However this has changed by the *Licensed Access* and *Public Access*- established to modernise the profession and make barristers more accessible- now organisations and public persons can directly approach certain barristers.
- Barristers typically specialise in specific fields of law- *solicitors select a barrister most suitable to represent their client*.
- Unless unable to provide their best services to the client , a barrister must accept a case offered to him- *cab-rank rule*.



- Highly experienced barristers may be appointed as *QC* via recommendation of the *Independent Queen's Counsel Selection Panel*.
- Appointment is based on assessment against a competency framework.
- Appointed barristers *take silk*-referring to their robes as QC-made from silk.
- Gowns and wigs are still worn in courts. QCs handle complex cases of great importance.
- The independent *Bar Standards Board* governs admission to the Bar-which formerly done by the *Bar Council* which now represents the profession.
- Law Officers- the Attorney-General and his deputy- the Solicitor- General.
- The AG has political and legal duties:
- Political- as a member of the government he gives advice to government departments. He represents the Crown in certain civil cases, actions for treason or similar sensitive political or constitutional crimes.
- Legal- can enter a *nolle prosequi* in criminal cases- it is a *prerogative power* which stops prosecution in question- this is done when it is in public interest that prosecution does not continue.
- He also does *relator actions*- appears on behalf of general public- where an action cannot be brought by an individual- acting as a guardian of public interest in cases of public nuisance.
- AG is the head of the English Bar- *but may not engage in private practice whilst in the office as AG*.



- The *Solicitor-General*- is a *barrister-despite title*- and also cannot engage in private practice whilst in that role.
- *He may act on behalf of the AG* if authorised to so do by the AG, or where the AG is ill or the post of AG is vacant.
- The *Crown Prosecution Service*- CPS established by the *Prosecution of Offences Act 1985*- created the 1st national system for the prosecution of offences outside the police system.
- The *Director of Public Prosecution*-DPP is the head of the CPS.
- The DPP takes over the prosecution process from the police where cases are complex or it is in the public interest to do so.
- Notably, the *CPS does not control the investigation process*. Investigations are carried out by the police- then information is passed to the CPS.
- CPS *have limited right of audience*- where they cannot appear before a court- they instruct a barrister to do so.