



Max Planck Institute
LUXEMBOURG
for Procedural Law

Legal Personnel

Dr Stephanie Law

Stephanie.law@mpi.lu

Legal Personnel

What do we mean by personnel or legal professionals?

- Judges
- Solicitors
- Barristers
- Law Officers
- Crown Prosecution Service



Judges

Who are judges?

- A collective of judges – a bench;
- Appointed from practising lawyers;
- No fixed exam for entry or fixed promotion system.

Who can be appointed as a judge?

- Previously, only those who had a „right of audience“ (ie the right to appear before a court) who could be appointed;
- Previously, this right was only attributed to barristers; over time, also given to solicitors.



Judges: How are judges appointed?

Appointments made by a Judicial Appointments Commission;

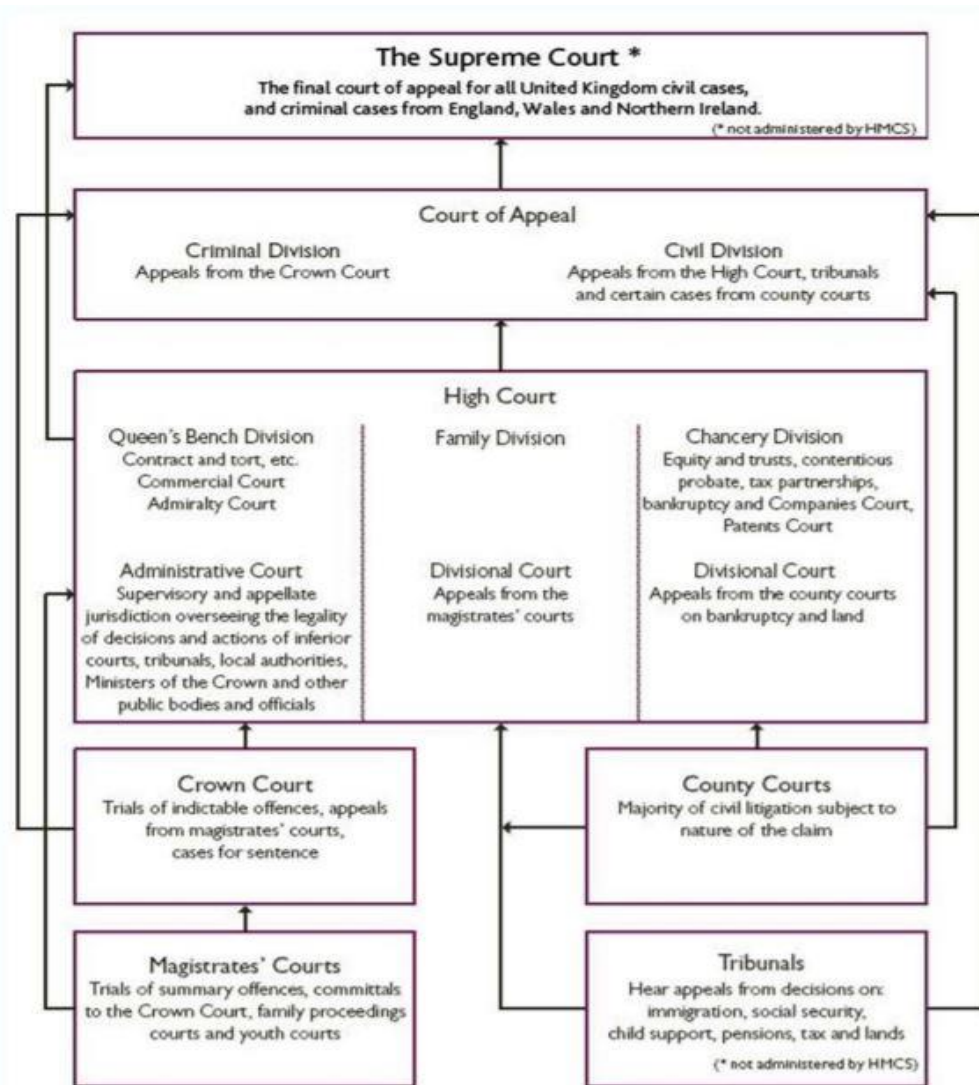
- The Commission: 15 commissioners:
- The Chairperson (lay person) and 12 commissioners appointed through open competition; 3 appointed by the Judges' Council;
- Formally appointed by the Queen.

Criteria: two-part criteria:

- Relevant qualification (be a solicitor, barrister or other specified by the Lord Chancellor);
- Certain number of years of experience in law (qualification for 5-7 years).



Court Structure



Judges: How does the appointment process proceed?

Magistrates:

- Selected by Local Advisory Committees (serving magistrates and non-magistrates); appointed by the Senior Presiding Judge for England and Wales.

Crown Court, County Courts, High Court:

- Judges appointed on merit on the basis of an open application; recommendations made to Lord Chancellor;
- Lord Chancellor can approve, reject or ask for a reconsideration but cannot appoint an alternative;
- Selected candidate is appointed by the Queen.



Judges: How does the appointment process proceed?

Judges of the Court of Appeal, and to the positions of Lord Chief Justice and the Heads of Division of the High Court:

- Lord Chief Justice is the Head of the Judiciary of England and Wales and President of the Courts of England and Wales;
- The Judicial Appointments Commission establishes ad hoc panels for each appointment – the panel makes a recommendation to the Lord Chancellor who can accept, reject or ask for a reconsideration of the nomination;

Supreme Court:

- Selected by a panel convened by the Lord Chancellor.



Judges: Tenure of Judges (Act of Settlement 1700)

- Judges of the High Court and above can only be removed by a request of the Houses of Parliament to the Queen and cannot be removed by the Queen herself (as long as they have acted properly);
- Judges of lower courts and magistrates can be removed by the Lord Chancellor (with agreement of Lord Chief Justice) if they have acted in an improper way or have become incapacitated;
- Recorder can be removed for failure to comply with the conditions of their appointment (eg their availability);
- Retirement age: 70 (Judicial Pensions and Retirement Act 1993).



Judges: The Concept of Judicial Independence

Judicial independence is a key principle of justice:

- Judges must be independent; from what?
- From politics – judges have to make decisions on the legality of decisions of the Government, government bodies and departments.

Tenure and independence:

- Key concepts that work together – judges need not fear that they will be removed;
- Judicial immunity: cannot be sued in matters re their own jurisdiction.



The Legal Professions

Two categories of legal professionals or lawyers in England and Wales:

- Solicitors;
- Barristers.

Significant differences re education, training, work and regulation of each profession.



Solicitors

Education:

- Three-year law degree or other degree with conversion (through Common Professional Examination or Graduate Diploma in Law) – academic.

Training:

- One-year Legal Practice Course – practical (eg drafting, accountancy);
- Followed by a two-year training contract (fixed term); normally in different departments to obtain overview;
- Following the training contract, the trainee becomes a qualified solicitor.



Solicitors

What do you think solicitors do?

Representating clients in court:

- Depends on the rights of audience before a court;
- Traditionally, solicitors only had a right of audience before lower courts;
- Now, tend to have rights of audience before all courts up to the High Court (requirement of Professional Skills Course during training contract – advocacy skills).



Solicitors

Solicitor Advocates:

- Solicitors who can represent clients in the high courts;
- Requires a degree of advocacy experience;
- Have a right of audience in all courts, including the UKSC;

How do lawyers work?

- Alone, or in partnerships or in Limited Liability Partnerships.

Regulation:

- The Law Society is the governing body; responsible for training and setting the compulsory courses;
- Solicitors Regulation Authority – disciplinary measures.



Barristers

Education:

- Three-year law degree or other degree with conversion (through Common Professional Examination or Graduate Diploma in Law) – academic.

Training:

- Must be admitted for training at an Inns of Court (Gray's Inn, Lincoln's Inn, Inner Temple and Middle Temple);
- Inns of Court are organisations of the Bar, with disciplinary powers, the power to „call“ barristers, and to admit students;
- Students must pass a one-year Bar Professional Training Course and attend at least 12 qualifying sessions;



Barristers

Training:

- Students must then complete a one year training (a pupillage), following a senior member of the Bar;
- Two stages – non-practising and practising, where the pupil can accept instructions on their own;
- Once the pupillage is completed, a barrister may become a member of a chambers, by being offered tenancy.



Barristers

What do barristers do?

- Mainly advocacy – what does this mean?

Barristers usually practice in a particular area of law;

Queen's Counsel:

- Barristers can be appointed as Queen's Counsel, as recommended by the Independent Queen's Counsel Selection Panel;
- These barristers are usually instructed to deal with the most complex of difficult cases.



Barristers

Regulation of barristers:

- Two professional organisations: The Bar Standards Board (established in 2006) and the Bar Council;
- The Bar Standards Board sets out the requirements and regulates entry to the Bar;
- It also deals with breaches of such standards
- The Bar Council is a professional body, responsible for all other representative matters.



Law Officers: Attorney-General

- Political and legal responsibilities;
- A member of the government and gives advice to the government (see advice on Brexit eg)
- Will represent the Crown (the state) in certain issues (mostly civil issues and constitutional issues);
- The AG can represent the public or part of it in certain actions; representing and protecting the public interest;
- Technically, head of the English Bar but does not practise law



Law Officers: Solicitor-General

- The deputy of the Attorney-General;
- A qualified barrister, not a solicitor;
- Cannot practise law while he or she holds the position;
- Can act on behalf of the AG.



Crown Prosecution Service

- Established by the Prosecution of Offences Act 1985;
- Headed by the Director of Public Prosecutions;
- The police always investigate and pass information to the CPS;
- Usually crimes are prosecuted by the police but the CPS is deemed to be independent of it;
- The CPS will prosecute serious or complex crimes;





Max Planck Institute
LUXEMBOURG
for Procedural Law

Rules of Civil Procedure – Before the Trial Begins

Dr Stephanie Law

Stephanie.law@mpi.lu

What are Procedural Rules for?

- Structuring procedure and case management – to ensure cases are handled in an efficient, just and fair manner.
- By the judge; helping parties to resolve the case.
- Amended post-Woolf Reforms of 1999.

CPR – Rules of Civil Procedure:

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules>



The Three „Tracks“ of Case Management

Small Claims

Fast Track

Multi-Track

- Allocation of a case depends mostly on the value and complexity of a case.
- Based on a questionnaire filled out by parties.



Small Claims

- A claim for money; less than 10,000 GBP.
- Typically less complex cases; simple and relatively informal procedure; judge will try to help parties to sort the case.
- Claimant initiates proceedings by completing form N1.

A claim can be made online if for a fixed amount:

<https://www.gov.uk/make-money-claim>



Fast Track

- Fast track: For claims between 10,000 and 25,000 GBP.
- Judge gives pre-trial directions, ie a timetable for the management of the case; to help the parties and the court.
- Judge gives information on experts witnesses allowed (given in writing).
- A delay of 30 weeks before the giving of directions and the trial date.



Multi-Track

Multi Track: Claims for over 25,000 GBP, or for lesser money sums where the case involves complex points of law and/or evidence.

- No standard procedure – differs depending on the case;
- Judge may use different case management approaches, including management conferences, setting of timetable, to identify issues of fact and law, evidence, timelimits, witnesses etc.



The Stages of Civil Proceedings

- Initiating proceedings with a claim form;
- Completion of particulars of claims;
- Service on the defendant;



Initiating Proceedings

- Issuing of claim form by claimant at court begins litigation;
- Litigation form sets out the basis of the claim;
- Claim form will also be accompanied by the particulars of claim (more detailed facts and the relief/remedy sought);



Service on the defendant

The defendant must be served with the claim form, and particulars of claim;

The defendant must have the opportunity to know he is being sued;

Within four or six months (depending on whether the defendant is served within or outside England and Wales);

Service can be made in person, by first class post, fax or other means of electronic communication.



Responses of the defendant

- Once served, the defendant can reply in different ways:
- If he doesn't reply, see the part on default judgments;
- Acknowledgment of service – should be served by the defendant once he has received service of the claim form;
- Statement of defence and any counterclaim against the claimant; claimant should serve a reply and must serve a defence to a counterclaim; will proceed to litigation and pre-action;



Disclosure

The process by which each party provides copies of their documents to each other;

Disclosure obligation can be broad in English law – includes all documents in a party's control, including those that support and undermine their case (standard disclosure);

The judge can order a more limited disclosure but this is rare;

An expensive and time-consuming stage of proceedings.



Evidence

Evidence can be given in writing (written witness statements on facts of the matter and on which the parties seek to rely);

Served on the other parties before the trial begins;

Expert evidence may be given in more complex cases, which require technical evidence or expert opinion;

Expert evidence reports will be given to parties before trial; experts are appointed and paid for by the parties but are independent.



When Might a Judgment be Given without a Trial?

Default judgment - If the defendant fails to acknowledge the Claim Form, or serve a defence, the claimant is entitled to enter a default judgment against the defendant at this early stage (ie the claimant obtains a judgment for the relief/remedy sought without a trial).

Summary judgment:



When Might a Judgment be Given without a Trial?

Summary judgment: given entered by a court for one party against another without a trial, on the application of that party if the court considers (i) that claimant has no real prospect of succeeding on the claim or issue; or (ii) that defendant has no real prospect of successfully defending the claim or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.



Next Session: 17/12/2018

Final Session: 17/12/2018 between 16.00 and 20.00.

Reading: Chapter 8 (constitutional law) and a revision session.

Exam: 11/01/2019.





Max Planck Institute
LUXEMBOURG
for Procedural Law

