

**In summary, therefore,** there is a presumption of trial in a county court but this presumption can be rebutted:

- by the financial value of the claim in some cases (see above); and/or
- by one of the grounds mentioned above, such as complexity of facts or high value of the claim.

These matters are also taken into account when the court is considering the transfer of a case from one court to another.

### **Territorial limits**

The territorial limits of the county court have been largely swept away, but the following material should be noted.

A claimant in a default action may sue out of any county court he wishes regardless of the defendant's place of residence or business or where the cause of action arose. A default action is one where the *only* relief claimed is the payment of money, e.g. a liquidated sum such as a debt for goods sold but not paid or an unliquidated sum such as a claim for damages for personal injury. However, if in a liquidated claim the defendant files a defence, this will generally result in the case being transferred to the defendant's home court and the defendant has a right to apply for a transfer to his home court in unliquidated claims. In actions in which there is a claim for relief other than the payment of money, e.g. a possession order for land or the recovery of goods or an injunction to restrain a nuisance, the general rule is that the claimant must bring his action in the court of the district where the defendant dwells or carries on business, or that for the district in which the cause of action wholly or mainly arose, and where land is involved, the action is generally brought in the court of the district in which the land is situated. Under s 3 of the Courts and Legal Services Act 1990 the county court has the same jurisdiction as the High Court to grant an injunction or a declaratory judgment setting out the rights of the parties, in respect of, or relating to, any land or the possession, occupation, use or enjoyment of any land. This jurisdiction applies only where the capital value of the land or interest in land does not exceed £30,000.

Apart from this, a county court can give the same remedies as the High Court although the orders of *mandamus*, *certiorari* and prohibition (now referred to as mandatory orders, quashing orders and prohibiting orders respectively) are available only in the High Court (see further Chapter 3). County courts are also prohibited – patent court apart – from granting a search order or a freezing injunction (see further Chapter 18). A freezing injunction is an order which restrains a party from moving his assets, for example, overseas so that they are not available to meet any judgment made against him. A search order is an order requiring the defendant to allow his premises to be searched by the agents of the claimant for documents or property. If the injunction or the order is asked for in a county court, the matter must be heard by a High Court judge. This involves a temporary transfer to the High Court after which the proceedings return to the county court.

The general jurisdiction of county courts and the procedure therein are governed by the County Courts Act 1984, the Courts and Legal Services Act 1990 and the High Court and County Courts Jurisdiction Order 1991 (SI 1991/724 (L5)) (as amended by the High Court and County Courts Jurisdiction (Amendment) Order 1999 (SI 1999/1014)) and the Civil Procedure Rules 1998 (SI 1998/3132). The latter are in the form of delegated legislation. In general terms, the extent of the jurisdiction apart from contract and tort, is as follows:

### **Other jurisdictions**

(a) **Equity matters**, e.g. mortgages and trusts where the amount involved does not exceed £30,000, unless the parties agree to waive the limit. Under this heading would be found requests for repossession orders by building societies against mortgage defaulters.

**(b) Actions concerning title to land, and actions for recovery of possession of land,** where the capital value of the land or interest in land does not exceed £30,000. There is unlimited jurisdiction in cases involving residential tenancy security issues (see, e.g., s 40 of the Housing Act 1988), or by agreement between the parties.

Proceedings under the Leasehold Reform Act 1967, the Leasehold Reform, Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002 are also covered. These Acts give tenants of leasehold *houses* the right, in certain circumstances, to acquire the freehold or an extended lease while the Act of 1993 (as amended and extended by the 2002 Act) allows *flat* owners collectively to enfranchise, i.e. purchase the freehold of the block and for individual flat owners to obtain a new lease if this is required as where, e.g. collective enfranchisement is not required by all residents in the block. (See further Chapter 22.)

**(c) Bankruptcies.** Here there is unlimited jurisdiction in terms of the value of the debtor's estate, though not all county courts have a bankruptcy jurisdiction. The appropriate court in which to commence proceedings is defined in the Insolvency Rules 1986.

Normally it will be the court for the district in which the debtor has resided or carried on business for the longest period during the previous six months. In the London Insolvency District the court will be the High Court and proceedings will be issued out of the Bankruptcy Registry which is part of the Chancery Division. Outside London it will be a county court which has a bankruptcy jurisdiction for the relevant area.

Under s 375 of the Insolvency Act 1986 appeal from a first instance decision whether made in the county court or by a Registrar of the High Court now lies to a single judge of the High Court and from the decision of that judge lies with leave of the judge or the Court of Appeal to the Court of Appeal. There is no further appeal to the House of Lords.

**(d) Company winding-up.** Where the paid-up share capital of the company does not exceed £120,000, the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court, provided that the relevant county court has a bankruptcy jurisdiction (ss 117 and 416 of the Insolvency Act 1986). A relatively small number of petitions are issued in the county court.

**(e) Probate proceedings,** where the value of the deceased's estate is estimated to be £30,000 or less. These proceedings could include the case where the court is being asked for a decree confirming that a will is valid or invalid where it is alleged to have been made under duress. In addition to the £30,000 monetary limit, only county courts in places where there are Chancery District Registries can hear a case. There are, for example, such Registries in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne and Preston.

**(f) Admiralty matters.** For the avoidance of doubt, county courts have lost their Admiralty jurisdiction. Admiralty proceedings, such as payment for salvage cases, must now be brought in the High Court, i.e. Queen's Bench Division.

**(g) Matrimonial and family proceedings.** The jurisdiction of county courts in matrimonial causes is derived mainly from s 33 of the Matrimonial and Family Proceedings Act 1984, and the Children Act 1989. The Civil Procedure Rules 1998 do not apply. Family proceedings are governed by their own rules.

A county court designated by the Lord Chancellor as a 'divorce county court' has jurisdiction in certain matters relating to any undefended matrimonial cause, but may *try* such a cause only if further designated as a court of trial. Every matrimonial cause must be commenced in a divorce county court and is to be heard and determined there, unless transferred

to the High Court, e.g. under s 39 of the 1984 Act (i.e. on the application of a party or on the court's own motion).

Thus, the divorce process generally takes place in the divorce county court. Divorce county courts are now divided into two, i.e. the divorce county court and the Family Hearing Centre. If in a divorce case where the parties have children an application is made for an order under s 8 of the Children Act 1989 (e.g. a residence order settling the arrangements to be made as to the person with whom the child is to live), then the s 8 application must be dealt with at a family hearing centre by a nominated circuit judge. Otherwise, what is referred to as the Special Procedure is used, whereby decrees in undefended cases are pronounced without hearing oral evidence. This is the most usual method of disposing of these cases.

As regards cases concerning children, the coming into force of the Children Act 1989 has reinforced the philosophy that children cases should be heard by a judiciary who by reason of their experience and training are specialists in family work. Accordingly the Lord Chancellor has, under the Courts and Legal Services Act 1990 with the agreement of the President of the Family Division, nominated certain circuit judges to deal with family proceedings and child care cases. There are special arrangements in London where jurisdiction is given to nominated district judges of the Family Division.

**(h) Civil partnerships.** There is now a class of county courts known as civil partnership proceedings courts. These have a similar status to divorce county courts. They derive from the coming into force of the Civil Partnership Act 2004. In brief this allows homosexual and lesbian couples to get rights similar to those of heterosexual married couples by registering their partnership in a civil ceremony at a register office. These partnerships can be dissolved on the grounds of unreasonable behaviour but not until after one year. Other grounds are separation for two years with the agreement of both parties or, failing that, separation for five years or more. These designated county courts will deal with dissolution proceedings and children of the civil partners either adopted or from previous heterosexual relationships.

**(i) Small claims.** A major jurisdiction of the county court is in regard to small claims allocated to what is known as the small claims track. The types of claims dealt with on this track are as follows:

- straightforward claims where the financial value is not more than £5,000 (or a greater sum if all parties consent to a small claims track allocation);
- cases which do not require a considerable amount of preparation;
- cases that will not lead to large legal costs since, in general, no costs are recoverable by the parties one against the other. Each side pays its own costs (but see below).

A claimant may limit the claim to bring it within the financial limits of the small claims track even if this is less than the proper value of the claim (see *Khiaban v Beard* [2003] 3 All ER 362 – a ruling of the Court of Appeal).

As regards personal injury claims, there are special rules under which the financial limit of the whole claim must not be more than £5,000 and that part of it which is for general damages, i.e. pain and suffering, not more than £1,000. The rest of the £5,000 claim will be made up of what are called special damages, e.g. loss of earnings. Claims by tenants against their landlords for an order to carry out repairs are a maximum of £1,000 for the necessary works plus a further £1,000 for any additional damages, e.g. for inconvenience. Fast track proceedings are not available where the tenant complains of harassment and/or unlawful eviction.

#### ***Small claims – involvement of lawyers and experts***

Very few small claims are conducted by solicitors from the beginning of the case to the end. The procedure is designed to allow a party to conduct his own case and assistance from the

court is available. Initial advice from a solicitor is normally required in terms of the merits of bringing or defending a claim. Some firms of solicitors will do this for a fixed fee for, say, an hour's consultation or less. No form of expert evidence is allowed in a small claims hearing unless with the permission of the court.

The court may be prepared to allow expert evidence in the form of a report where, in a claim for breach of contract, it is necessary to decide whether an article purchased failed because of a breach of contract by the seller/defendant or because the claimant failed to follow the seller's instructions. An expert's report may also be allowed where it might lead to the parties settling the case.

### ***Small claims – costs***

Generally speaking, only the fixed costs of issuing the claim are recoverable from the losing party. However, the court has a discretion to order payment of court fees, experts' fees (not exceeding £200 per report), travelling expenses and loss of earnings for the parties and any witnesses up to £50 a day maximum. In addition, the court may penalise a party in costs where he has 'behaved unreasonably' as in *Wright v Ryder* [1995] CLY 3985 where the defendant had lied in relation to his involvement in a road traffic accident which was the subject of the claim.

### ***Small claims – the judiciary***

Small claims are usually tried by a district judge with appeal to the circuit judge. A circuit judge may consent to hear a small claim, though, if he does, appeal is to a High Court judge.

### ***Small claims – appeal grounds***

There are rather few appeals against small claims judgments. The reason for this is that appeal can only be made on the grounds that:

- there is a serious irregularity affecting the proceedings; or
- the court has made a mistake of law.

Mistakes of law are unlikely, but if the district judge failed to take into account that a guarantee of a loan had to be evidenced in writing (see Chapter 11), this would be a ground of appeal to the circuit judge. As regards irregularity, a party may allege that he or she was not given adequate time to cross-examine a witness. The amount of time for cross-examination is fixed by the court before the hearing so that it is not difficult to see whether the time laid down has not been allowed.

### ***Costs and representation on small claims appeals***

The 'no costs' rule does not apply on a small claim appeal. In addition, lay representatives have no right of audience as they have on the initial hearing, though a party can still take his own case as he could at the initial hearing.

### ***Small claims and counterclaims***

In deciding whether a case is heard on the small claims track, the value of any counterclaim made by the defendant must be taken into account (see further Chapter 5). Thus, if the claim is for £3,000 but there is a counterclaim for £8,000, the case is a fast-track case unless the parties and the procedural judge at allocation agree otherwise.

### ***Pre-trial review***

The matter of a pre-trial review to consider the final programme for the trial is now part of the new Civil Procedure Rules 1998 which deal with the allocation of a case to a track. These rules are considered in Chapter 5. There is power to hold a preliminary hearing in small claims track cases, but it is unlikely to be necessary since the issues are not normally complex and district judges can fix a simple timetable for the case.

(j) **Patents county court.** Part VI of the Copyright, Designs and Patents Act 1988 provides for the setting up of patents county courts with a countrywide jurisdiction to hear and determine proceedings relating to patents and designs and matters ancillary thereto. Concern about the high cost of resolving patent disputes in the High Court led the Oulton Committee in its report of November 1987 to recommend the creation of specialist county courts as a solution to the problem. The Edmonton County Court was designated as the first patents county court. The Patents County Court (Designation and Jurisdiction) Order 1994 (SI 1994/1609) has established a patents county court at the Central London County Court and closed the one at Edmonton. Other than this, a patents court is set up as part of the Chancery Division of the High Court.

(k) **Miscellaneous matters.** The county court derives an important part of its jurisdiction from social legislation, e.g. adoption of children, guardianship of infants, legitimacy, claims other than those relating to employment, under sex, race and disability discrimination, and the enforcement of legislation concerning landlord and tenant.

(l) **Exclusive jurisdiction.** Although in many matters the county court has concurrent jurisdiction with the High Court, there are certain matters over which the county courts have *exclusive* jurisdiction so that actions concerning them cannot be commenced in the High Court: e.g. all regulated consumer credit agreements or hire agreements. Section 2 of the Consumer Credit Act 2006 removes the financial limit for the regulation of consumer credit and consumer hire agreements. Formerly, it was only where the credit provided or the hire payments did not exceed £25,000 that these agreements were regulated. Under the 2006 Act all such agreements are regulated and the county court has exclusive jurisdiction to hear disputes.

The earlier rules giving the county court exclusive jurisdiction to open what were called 'extortionate credit bargains' have been replaced under the 2006 Act by rules relating to 'unfair relationships' between debtors and creditors. The county court has exclusive jurisdiction in these proceedings. The court is given a number of powers to deal with unfairness, for example to require the creditor to repay in whole or in part any sum paid by the debtor or a guarantor by reason of the unfair relationship.

Furthermore, where the lender on mortgage is seeking to take possession of land and the mortgage includes a dwelling house and no part of the land is in Greater London, the county court has exclusive and unlimited jurisdiction (County Courts Act 1984, s 21, as amended). In addition, the Attachment of Earnings Act 1971, s 1 gives the county court alone the power to order attachment of earnings for ordinary civil debt.

## Enforcement of judgments

As regards the enforcement of judgments, the High Court and County Courts Jurisdiction (Amendment) Order 1999 (SI 1999/724) provides that county court judgments for the payment of sums of money of £5,000 or more *must* be enforced, e.g. by procedures leading to execution on property, as by obtaining a distress warrant to allow bailiffs to take the defendant's moveable property in payment, in the High Court and *may* be enforced in the High Court if they are for £600 or more (see SI 1996/3141). Below that they *must* be enforced in the county court.

In the case of county court judgments of £600 or more but less than £5,000, the judgment creditor can choose whether to issue execution in the High Court or the county court.

The advantage of proceeding in the High Court where there is a choice is that the judgment will attract interest under the Judgments Act 1838 once it has been registered in the High Court. Judgments for less than £5,000 do not attract interest in the county court unless

the enforcement is in connection with a debt under the Late Payment of Commercial Debts (Interest) Act 1998 (see further Chapter 18).

## Appeal

In the usual case of a small claim the hearing will be before a district judge. There is an appeal to the circuit judge. If the circuit judge dismisses the appeal *but without an oral hearing*, the appeal from the circuit judge is to a High Court judge and there is no further right of appeal.

If the circuit judge dismisses the appeal *following an oral hearing*, there is a further appeal to the Court of Appeal. This is known as a 'second appeal' and is granted sparingly.

Where a small claim allocated to the small claims track is heard (exceptionally) by a circuit judge, appeal is to the High Court with a second appeal to the Court of Appeal.

## What is meant by permission?

Permission may be granted either by the lower court at the hearing at which the decision to be appealed was made or by the appeal court. If the appeal court refuses an appeal *without an oral hearing* because no sufficient ground is shown in the notice of appeal, a request may be made for an oral hearing. If at that oral hearing the appeal court refuses permission to appeal, then no further right of appeal exists and that brings the matter to a close.

## Alternative dispute resolution (ADR)

The Civil Procedure Rules specifically recognise the advantages of ADR. This will receive a more extended treatment in Chapter 5. Mechanisms include *mediation* where a neutral intermediary encourages the parties to reach a settlement using a kind of 'shuttle diplomacy' between the parties. There is also *conciliation* which is similar but the conciliator is more pro-active and may put forward the terms of a possible settlement. Under the Civil Procedure Rules the court will encourage ADR and may stop proceedings for this to be considered but cannot enforce ADR on the parties unreasonably. If one of the parties to the dispute declines unreasonably to co-operate, the court may take this into account when awarding costs.

*Dunnett v Railtrack plc*, 2000 – Rejection of ADR: costs refused to successful party (5A)



## Online court service: money claims online (MCOL)

A website introduced by the Court Service allows undefended debt claims to be processed online without the claimant or defendant having to appear in court.

The site can deal with claims of up to £100,000 for all kinds of debt repayment from rent arrears and hire purchase payment to suppliers of goods and services who have not been paid.

Under the system the claimant registers initially by creating a password and typing in details of the money owed. The court fee is automatically calculated and can be paid online by credit card.

The claimant can then check the progress of the case and whether the defendant has filed a defence at any time. The claimant need not at any stage collect the forms from the court or even download them from the court website. Any defence of a claim has to be filed in person or by post which will then lead to a trial.

The website can be accessed at [www.hmcourt-service.gov.uk/mcol/index-htm](http://www.hmcourt-service.gov.uk/mcol/index-htm), where you can set out your claim to start the process in not more than 1,080 characters including spaces and punctuation.

Fortunately the MCOL screen has a character counter. The claim is issued through the county court at Northampton.

Failure to submit a defence leads to judgment in favour of the claimant without trial so that the judgment can be enforced through the bailiff service (see Chapter 5: enforcing a judgment).

## The Crown Court

The Crown Court is a superior court of record created by the Courts Act 1971. The Crown Court system replaced Courts of Assize and Quarter Sessions. It deals in the main with criminal work.

### Classification of Crown Court business

For the purposes of trial in the Crown Court, offences are classified as follows:

**Class 1** (main offences): (a) treason; (b) murder; (c) genocide; (d) torture and hostage taking; (e) offences under the Official Secrets Acts; (f) manslaughter; (g) soliciting, incitement, attempt or conspiracy to commit any of the above offences.

**Class 2.** In summary, these are rape, including oral penetration, and various forms of sexual abuse of children under 13 or with mental disorders, and family sex (formerly incest), such as sexual intercourse between a father and his daughter, though the definition is wider than this and covers intercourse between blood relatives and adoptive parents and those they have adopted.

**Class 3.** These are all other offences not listed in classes 1 or 2, e.g. wounding or causing bodily harm.

The Class 2 and 3 offences include soliciting, incitement, attempt or conspiracy to commit the main offence.

### Allocation of business to judges

**Cases in Class 1** can only be tried by a High Court judge, or a circuit judge or deputy circuit judge, provided that in all cases, except attempted murder, such judge is authorised by the Lord Chief Justice to try murder cases or in the case of attempted murder to try murder or attempted murder cases and also that the presiding judge (see Chapter 3) has released the case for trial by such a judge.

**Cases in Class 2** can be tried by a High Court judge, a circuit judge or deputy High Court judge or deputy circuit judge or a recorder, provided that in all cases such judge is authorised by the Lord Chief Justice to try Class 2 offences and the case has been assigned to the judge by or under the direction of the presiding judge.

**Cases in Class 3** can be tried by a High Court judge or, in accordance with guidance given by the presiding judge, a circuit judge, a deputy circuit judge or a recorder. A case in Class 3 should not be listed for trial by a High Court judge except with the consent of the presiding judge. The functions of a recorder can be carried out as required by an assistant recorder.

### ***Involvement of magistrates on appeals from magistrates' courts***

Appeals to the Crown Court from magistrates' courts are heard by a circuit judge or an experienced recorder or deputy circuit judge approved by the presiding judge for the purpose. In addition, between two and four magistrates sit with the judge or recorder. Where a judge of the High Court, circuit judge, or recorder, sits with magistrates, he or she presides and:

- (i) the decision of the Crown Court may be a majority decision; and
- (ii) if the members of the court are equally divided, the judge of the High Court, circuit judge, or recorder shall have a casting vote (Supreme Court Act 1981, s 73(3), which becomes the Senior Courts Act 1981 as the CRA 2005 comes into force).

Section 79 of the Access to Justice Act 1999 removes the former provision in the Supreme Court Act 1981 (see above) that where the Crown Court sits on the hearing of committal proceedings for sentence from the magistrates' court the court must be composed of magistrates as well as the Crown Court judge. Now a judge can deal with a committal for sentence without magistrates, and administrative overheads are reduced and time to make appointments with magistrates is saved. The main situation in which magistrates will sit with a Crown Court judge is thus where that court hears an appeal following a trial and conviction in a magistrates' court.

### **Appeal from the Crown Court: defendant**

In the case of a trial on indictment, there is an appeal by the defendant only against conviction and/or sentence, though leave of the Court of Appeal (Criminal Division) is required before that court will hear the appeal, unless the trial judge has, in each case, issued a certificate of fitness for appeal. The Attorney-General may ask the Court of Appeal to clarify a point of law in a case and may refer cases to the Court of Appeal where the sentence is unduly lenient. These matters are further considered when dealing with the Court of Appeal. Where the Crown Court has heard an appeal from magistrates, there is a further appeal to the High Court by way of case stated by either the prosecutor or the defendant on a point of law or excess of jurisdiction.

### **Appeal from the Crown Court: prosecution**

The Criminal Justice Act 2003 gives the prosecution a right of appeal to the Court of Appeal. The defendant has a right of appeal at the end of the trial and sentence (as described above) but the prosecution had no equivalent right of appeal against the decision of a judge to stop the trial. Part 9 (ss 57–74) of the CJA 2003 corrects the imbalance by introducing a prosecution right of appeal against a ruling of a Crown Court judge that has the effect of terminating the trial either at a pre-trial hearing or during the trial at any time up to the conclusion of the prosecution evidence. Such a ruling could be that there is no case to answer.

The judge or the Court of Appeal must give leave to appeal. The judge will decide, according to the circumstances of the case, whether the appeal will follow an expedited route and if so adjourn the trial until the appeal is concluded or a non-expedited route in which case where any jury has been empanelled it may be discharged. In any case the judicial ruling terminating the trial or a decision to acquit the defendant will not take place while the prosecution is considering an appeal or if an appeal is required until the conclusion of the appeal or its abandonment. When making an appeal the prosecution must agree to the acquittal of the defendant for the offence(s) concerned should the appeal not proceed or the outcome is that the proceedings against the defendant should not continue.

The Court of Appeal may confirm, reverse or vary the ruling that is the subject of the appeal and can order the acquittal of the defendant on the offence(s) involved. If it reverses



or varies the judge's ruling, the Court of Appeal may, if it is thought to be in the interests of justice, order that the proceedings in the Crown Court should continue or order a fresh trial. The prosecution and the defence may appeal to the House of Lords (Supreme Court from 2009, as the CRA 2005 comes into force) on a point of general public importance.

The CJA 2003 provides for reporting restrictions on the proceedings relating to the appeal and the appeal itself until the trial is concluded. The object is to ensure that if the appeal is successful matters prejudicial to the trial are not reported. Failure to observe the restricted reporting rules is a criminal offence punishable by fine.

### Judicial review

Decisions taken at a trial on indictment in the Crown Court are not subject to judicial review (*R v Harrow Crown Court, ex parte Perkins* [1998] Current Law 96).

### Jurisdiction

All indictable offences are triable in the Crown Court, as are either-way offences committed (currently) for trial by magistrates. An indictment is a formal statement of a serious crime prepared for a trial by jury. The Court also determines questions of bail and legal aid, and hears appeals from magistrates and committals for sentence from the magistrates (see p 28). It also hears appeals from youth courts and for this purpose forms a youth appeals court. This consists of a circuit judge plus two magistrates drawn from the youth court panel and chosen so that one is a man and one a woman.

### Judge-only trials

Sections 44–50 of the Criminal Justice Act 2003 make provision for trials on indictment without a jury. The Act permits the prosecution in the Crown Court to apply to the court to have the trial heard by a judge sitting alone. The prosecution may make an application to the court for a judge-only trial where the case is likely to be affected by jury tampering, which is a real and substantial risk. Further details of judge-only trials appear in Chapter 4: Criminal procedure.

Section 43, which provides for judge-only trials in complex fraud cases, will not now be brought into force but the government is, at the time of writing, contemplating further legislation.

## The Central Criminal Court

Before leaving the subject of the Crown Court, special mention should be made of the Central Criminal Court, otherwise referred to as the 'Old Bailey'. This court continues as a Crown Court sitting in the City of London. The judiciary is the same as that found in any other Crown Court, with the addition of the Recorder of London and the Common Serjeant, which is a special judicial office for London.

## The High Court – generally

Under s 4 of the Supreme Court Act 1981 (as amended by Sch 4, para 117 of the CRA 2005, which is in force) the High Court consists of the Lord Chief Justice, the President of the

Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court and not more than 108 justices known as *puisne* judges (pronounced 'puny'). The *puisne* judges of the High Court are styled 'Judges of the High Court'. The number of *puisne* judges may be increased by Order in Council, the latest being SI 1999/3138 which increased the number of *puisne* judges from 98 to 106, mainly in anticipation of the increase of work expected to come from the Human Rights Act 1998. Appointment is from those with a 10-year High Court qualification, i.e. from those who have had a right of audience (or advocacy) in relation to all proceedings in the High Court for at least 10 years. Also eligible are circuit judges who have held that office for at least two years (s 10(3) of the 1981 Act as amended by s 71 of the Courts and Legal Services Act 1990).

The CRA 2005, Sch 11, para 1 will, as it comes into force, rename the Supreme Court Act 1981 as the Senior Courts Act 1981.

**The Queen's Bench Division** has the largest staff, generally between 60 and 70 *puisne* judges. The court is presided over by the President of the Queen's Bench Division. As regards jurisdiction, every type of common law civil action, e.g. contract and tort, can be heard by the Queen's Bench Division at the Royal Courts of Justice in the Strand. In addition, the judges of this division staff the Crown Court and sit in the Court of Appeal (Criminal Division) as well as the Divisional Court of Queen's Bench and the Central Criminal Court. Admiralty business is now assigned to a separate court called the Admiralty Court within the Queen's Bench Division. The same is true of commercial business which is heard by a separate court called the Commercial Court within the Queen's Bench Division. The Commercial Court also provides an arbitration service (see below).

**The Chancery Division** currently has 17 *puisne* judges and is presided over by the Chancellor (a new post under the CRA 2005). Company business is assigned to a separate court called the Companies Court within the Chancery Division. Apart from company work, the Chancery Division deals with partnership matters, mortgages, trusts, revenue matters, rectification of deeds and documents, the administration of estates of deceased persons and contentious probate. The bulk of the bankruptcy work of the Chancery Division is performed by Registrars in Bankruptcy who deal with cases arising in the London insolvency district, provincial bankruptcies being dealt with by the local county court. The Patents Court forms part of this Division and deals with cases which are outside the jurisdiction of the patents county court.

**The Family Division** currently has 19 *puisne* judges and is presided over by the President of the Family Division. The court deals with all aspects of family law including family property and children in terms for example of adoption, guardianship and wardship. A more recent acquisition of jurisdiction arises under the Human Fertilisation and Embryology Act 1990 where the Family Division may, e.g., make an order providing for a child to be treated in law as the child of the parties to a marriage if the child has been carried by a woman other than the wife as a result of the placing in her of an embryo (s 20). All High Court business under the Child Support Act 1991 goes to the Family Division.

The Family Division has acquired jurisdiction under the Gender Recognition Act 2004. This Act aims to provide transsexual people with legal recognition in their acquired gender. This recognition follows from the issue of a full gender recognition certificate by the Gender Recognition Panel. The Panel consists of legal members and medical members. Before issuing a certificate, the Panel must be satisfied that the applicant has, or has had, gender dysphoria and has lived in the acquired gender throughout the preceding two years and intends to continue to live in that gender until death.

An applicant may appeal to the Family Division under s 8 of the 2004 Act on a point of law where the Panel has rejected the application.

## Divisional courts

Each of the three divisions of the High Court has divisional courts. These are constituted by not less than two judges.

**(a) Divisional Court of Queen's Bench.** This court has a supervisory jurisdiction under which it exercises the power of the High Court to discipline inferior courts and to put right their mistakes by means of judicial review through mandatory orders, prohibiting orders and quashing orders (formerly the orders of *mandamus*, prohibition and *certiorari*). When dealing with applications for these orders, the court is designated the Administrative Court.

Under s 28A of the Supreme Court Act 1981, the court has jurisdiction in cases stated and *habeas corpus* applications to the High Court and in some cases these functions may be carried out by a single judge of that court.

**(b) Divisional Court of the Chancery Division.** This court hears appeals in bankruptcy cases from county courts outside London, the Bankruptcy Court of the Chancery Division hearing bankruptcy appeals from London.

**(c) The Divisional Court of the Family Division.** This court hears appeals from magistrates' courts in family proceedings.

## The Commercial Court

Since 1964 the High Court has operated a Commercial Court. Section 6 of the Supreme Court Act 1981 now constitutes, as part of the Queen's Bench Division, a Commercial Court for the trial of causes of a commercial nature, e.g. insurance matters. The judges of the Commercial Court are such High Court judges as the Lord Chief Justice may, after consulting the Lord Chancellor, from time to time nominate to be Commercial judges. They are, in practice, drawn from those who have spent their working lives in the commercial field.

They combine the general work of a Queen's Bench Judge with priority for commercial cases. The Act merely continues formal independence to the Commercial Court. Commercial litigation has since 1895 been dealt with in the Queen's Bench Division on a simplified procedure and before a specialist judge, the intention being to overcome the reluctance of those in business, who prefer the privacy of arbitration, to resort to the machinery of the courts.

Two specific steps were proposed in the Administration of Justice Bill 1970 to attract such customers: first a power was to be taken to allow the court to sit in private and to receive evidence which would not normally be admissible in an ordinary court, and second, High Court judges were to be allowed to sit as arbitrators. The first of these proposals was rejected by the House of Commons at the Report Stage but the second was passed into law and is now to be found in s 93 of the Arbitration Act 1996 which enables a judge of the Commercial Court to take arbitrations. Before doing so he must obtain clearance from the Lord Chief Justice. However, given their court commitments it is unlikely that a commercial judge would be made available. Arbitrators are most often experts familiar with the industry or commercial area in which the dispute has arisen.

Thus, although in theory the court has no wider power than other courts of the Queen's Bench Division, there is, in practice, a general discretion for departures in procedure and admission of evidence where the parties consent or where the interests of justice demand it or where it is necessary to expedite business. The power to hold hearings in private is restricted, but s 12 of the Administration of Justice Act 1960 gives a power which could be